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Implementation of judgments of the European Court of Human Rights

Addendum to the report

Committee on Legal Affairs and Human Rights

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1. Introduction

1. This addendum is an updated version of paragraphs 128-148 of my report on the implementation of judgments of the European Court of Human Rights,¹ which was adopted by the Committee on Legal Affairs and Human Rights on 17 November 2010.

2. Unfortunately, I had not been able to visit Turkey before the adoption of this report by the committee, despite the committee's decision, taken on 29 January 2009, to authorise me to carry out fact-finding visits to eight countries, including Turkey. Repeated requests to the Turkish authorities, since September 2009, to undertake this visit before the completion of the report had been unsuccessful. The invitation to visit was received at a very late stage, when I met Mr Ahmet Davutoğlu, Turkey's Minister for Foreign Affairs, during the Assembly's Standing Committee meeting in Antalya on 12 November 2010.

3. The visit to Ankara took place on 10 and 11 January 2011. A summary of the principal problems encountered in the execution of the judgments of the European Court of Human Rights with respect to Turkey can be found in Appendix 1. The programme of the visit is set out in Appendix 2.

2. Turkey

4. Turkey has around 1 600 cases pending before the Committee of Ministers, representing 16.5% of the Committee's case load.² These cases comprise many issues,³ the most long-standing ones being:

- the failure to re-open proceedings;
- repeated imprisonment for conscientious objection;
- freedom of expression;
- excessive length of detention on remand;
- actions of security forces;
- issues concerning Cyprus.

1. . Assembly [Doc. 12455](#) of 20 December 2010.

2. . Statistics obtained in December 2010. Of these approximately 1 600 cases, just under 1 460 are "clone cases", which represent nearly 91% of the total. See the situation before the Strasbourg Court, where approximately 11% of cases before the Court concern Turkey.

3. . Some of these reveal structural problems, including compensation for loss of coastal property, loss of property rights in public forest areas, excessive length of proceedings, expropriation of property and other issues related to freedom of expression.



2.1. Failure to re-open proceedings

5. The *Hulki Güneş v. Turkey*⁴ group of cases concerns unfairness of criminal proceedings where the applicants were convicted on the basis of statements taken under duress and in the absence of a lawyer, in violation of Articles 3, 6, paragraph 1, and 6, paragraph 3(c), of the European Convention on Human Rights (“the Convention”). The re-opening of proceedings was requested by the Court, but legislation that was passed amending the provisions in the Code of Criminal Procedure only provided for reopening of judgments delivered before 4 February 2003 and in those applications lodged with the Court after that date; thus the cases pending at the time do not fall under the amendment.

6. Significant pressure has been brought to bear on the Turkish authorities over the last seven years, especially by the Committee of Ministers: two letters from the Chairperson of the Committee of Ministers,⁵ three interim resolutions,⁶ and a decision in September 2008⁷ to examine the case at every regular meeting of the Committee until the Turkish authorities provided information on the measures they envisaged to resolve the issue. The Ministry of Justice eventually indicated that a provision in a draft law allowing for the re-opening of proceedings in the present cases had been submitted to parliament for adoption. This text – as I was informed during my visit – was withdrawn by the Justice Committee of the Turkish Parliament; I am not aware of whether the Committee of Ministers has been informed of this.⁸ In these circumstances, I urge the head of the Turkish parliamentary delegation to the Assembly, together with the (Turkish) President of the Assembly, to ensure that parliament re-considers this decision.

2.2. Repeated imprisonment for conscientious objection to military service

7. Repeated imprisonment for conscientious objection, which is in violation of Article 3, stems from the possibility – provided for in legislation – of repeated prosecution for the rest of the applicant’s life. There are a few cases on the issue before the Court, but this does not detract from the fact that it is a grave violation of the Convention. In the case of *Ülke v. Turkey*,⁹ the applicant was convicted repeatedly over a number of years for refusing to wear his uniform on conscientious grounds, serving a total of 701 days in prison. He is currently in hiding for fear of further prosecution; he has no official address and has been forced to break off all contact with the administrative authorities. As the Court stated, such a life amounts “almost to civil death”.¹⁰

8. The individual measures and general measures in this case are intrinsically linked. Despite interim resolutions having been adopted in October 2007¹¹ and in March 2009,¹² no information has been forthcoming in response to the judgment of the Strasbourg Court regarding the individual measures. In March 2010, the Turkish authorities indicated to the Committee of Ministers that they would provide concrete information on legislative amendments. During my visit, I also enquired about developments and hope to receive information on this subject in the near future.

2.3. Freedom of expression

9. The *Inçal v. Turkey*¹³ group of cases concerns unjustified interferences with Article 10 of the Convention in relation to the applicants’ convictions for publishing articles and books. This has been an issue since 1998 and, thirteen years on, it remains so. In terms of individual measures, the Turkish authorities indicated that they would take measures to erase the convictions of several applicants who were convicted under Article 8 of the Anti-Terrorism Law No. 3713 following its abrogation.¹⁴

4. . Application No. 28490/95, judgment of 19 September 2003.

5. . The first on 21 February 2005, the second on 12 April 2006.

6. . CM/ResDH(2005)113, CM/ResDH(2007)26, and CM/ResDH(2007)150.

7. . 1035th meeting, 17-18 September 2008.

8. . See 1067th meeting, 7 October 2009. The reason for the withdrawal of this provision was triggered by concern, within the Justice Committee on 22 June 2010, that if this provision were not removed, this would put into jeopardy the adoption of the whole of the (draft) text amending the Anti-Terrorism Law and a number of other legislative provisions.

9. . Application No. 39437/98, judgment of 24 April 2006.

10. . Ibid., paragraph 62.

11. . CM/ResDH(2007)109.

12. . CM/ResDH(2009)45.

13. . Application No. 22678/93, judgment of 9 June 1998.

14. . Interim Resolution CM/ResDH(2004)38.

10. There have been general measures taken to solve the problem, such as: a number of constitutional amendments on freedom of expression, a package of laws to revoke and amend offending provisions of the Anti-Terrorism Law, and training and awareness-raising initiatives for judges and prosecutors in order to encourage the application of Convention standards, with examples of such practice from domestic courts.¹⁵

11. These legislative amendments, however, do not eradicate the root of the problem and are merely a different expression of the same Convention-violating substance. In addition, the examples of court practice provided by the Turkish authorities do not represent conclusive evidence that the Convention standards are being upheld, especially with respect to the 2004 constitutional amendment of Article 90 of the Constitution, which specifies the direct application of the Convention in domestic law. It is vital that the Convention and the Court's case law are reflected in the Turkish domestic legislation and its application. On this aspect, it is understood that the Committee of Ministers has been awaiting information since September 2008.

2.4. Excessive length of detention on remand

12. The leading group of cases identifying excessive length of detention on remand as a major problem is *Halise Demirel v. Turkey*,¹⁶ with the Court rendering a quasi-pilot judgment in *Cahit Demirel v. Turkey*, which exposed the "widespread and systemic problems arising out of the Turkish criminal justice system and the state of the Turkish legislation".¹⁷ There is an absence of relevant and sufficient reasons given by domestic courts in decisions to extend detention, violating Article 5, paragraph 3, of the Convention, as courts tend to use stereotypical wording that does not take into account individual circumstances. Further, an effective remedy to challenge the lawfulness of detention on remand does not exist and compensation cannot be obtained, resulting in a violation of Articles 5, paragraphs 4 and 5 respectively.

13. Positive steps have been taken by the Turkish authorities through legislative amendments, for instance the Code of Criminal Procedure (Law No. 5271), which came into force on 1 June 2005. This provides safeguards ensuring that reasons for detention are given; that continued detention on remand is reviewed every thirty days; that maximum detention on remand does not exceed two years for assize court crimes;¹⁸ and that there must be a right to compensation. The authorities have provided information on how certain of these measures have been implemented in domestic courts.

14. The legislative steps taken can be seen as progress, but the information provided on how they are implemented is inconclusive and further evidence is necessary to ensure that relevant and sufficient reasons are being used to justify detention. Indeed, information concerning a December 2009 Court of Cassation decision on the criminal liability of judges who do not provide such reasons has been received and is being scrutinised by the Committee of Ministers. In any event, legislative amendment to execute a judgment should not present a risk of future violations. Additionally, it must be noted that no information is forthcoming from the Turkish authorities on the introduction of an effective remedy to challenge the lawfulness of detention on remand, which must now be considered a matter of urgency for the chairperson of the Turkish parliamentary delegation.

2.5. Actions of security forces

15. The anti-terror actions of the security forces in the 1990s brought about an influx of cases to the Court, which found violations in relation to several articles, including Articles 2, 3, 5, 8 and 13 and Article 1 of Protocol No. 1.¹⁹ The 2008 Committee of Ministers' interim resolution reiterated previously identified²⁰ structural problems that caused these violations, particularly ineffectiveness of procedural safeguards in custody, attitudes and training of security forces, establishing criminal liability at domestic level, and shortcomings in ensuring adequate reparations to victims.²¹

15. . See Memorandum CM/Inf/DH(2008)26. See also paragraph 23 below.

16. . Application No. 39324/98, judgment of 28 January 2003.

17. . Application No. 18623/03, judgment of 7 July 2009, paragraph 46.

18. . Brought into force on 1 January 2011. The implementation of one provision – Article 102 – has been the subject of intensive debate in Turkey, both within the legal community and in the media, especially with respect to the interpretation of this provision by the Court of Cassation. See, for example, commentaries published on this subject in *Hürriyet*, *Bianet News* and *AP/Turkey* (translations of which I obtained when in Ankara).

19. . See the *Aksoy v. Turkey* (Application No. 21987/93, judgment of 18 December 1996) group of cases in Appendix 2.

20. . Interim resolutions CM/DH(99)434, CM/ResDH(2002)98 and CM/ResDH(2005)43.

21. . CM/ResDH(2008)69.

16. In the light of the Committee of Ministers' interim resolution in 2005,²² the Turkish authorities have made progress in resolving the structural problems: a legislative framework is now in place to provide procedural safeguards in police custody; human rights is in the curriculum for initial training of the security forces; legislative amendments have been made to give direct effect to the Convention in Turkish domestic law governing use of force by security personnel and a range of effective remedies have been introduced to complement the Law on Compensation of 27 July 2004, which provides the possibility for pecuniary compensation for damages in relation to terrorist activities and operations carried out between July 1987 and December 2006.

17. That said, a significant problem remains outstanding in the series of shortcomings still apparent in investigating abuses by security forces. The *Bati v. Turkey*²³ group of cases highlights the fact that, despite the passing of many years, impunity continues to reign in the absence of an effective investigation. The lack of independence of the investigating authorities, the impossibility for the applicants to access records or interview witnesses and accused officers, and the failure to suspend officials from duty despite proceedings against them, are just a number of the deficiencies that violate "procedural" Articles 2 and 3. In terms of individual measures, information on whether the investigations will be re-opened is awaited. In respect of general measures, Articles 94 and 95 of the new Criminal Code provide for longer sentences for the above-mentioned abuses, and the Ministry of Justice has taken steps to ensure safe prisoner transfers, but there has been no action taken to address the root of the problem and substantial improvement is needed.

18. It must also be noted that there exists a concern regarding the actions of the security forces in dispersing peaceful demonstrations. *Oya Ataman v. Turkey*²⁴ dealt with the use of excessive force in violation of Article 11 of the Convention, the freedom of assembly, and the connected group of cases showed violations of Articles 3 and 13. There have been a few amendments made to the legal framework surrounding police use of force in this area – the most notable being the gradual and proportionate use of firearms. However, the Committee of Ministers has been awaiting information on how these amendments will be applied in practice since April 2008.²⁵

2.6. Specific issues of concern

19. The interstate case *Cyprus v. Turkey*²⁶ relates to the situation that has existed in the northern part of Cyprus since the invasion, by Turkey, of the northern part of Cyprus in 1974 (euphemistically referred to as "conduct of military operations") and the continuing division of the Republic of Cyprus and the military occupation of 40% of the country's national territory. At present, the Committee of Ministers supervises closely the issues concerning missing persons and property rights of displaced Greek Cypriots.

20. As regards the issue of missing persons, additional measures are required to ensure effective investigations into their fate. That said, no answer has been given so far by the Turkish authorities to the Committee of Ministers' request for information on the concrete measures envisaged in the continuity of the work of the Committee on Missing Persons in Cyprus, with a view to the effective investigations required by the judgment.²⁷

21. As regards the property rights of displaced Greek Cypriots, the Committee of Ministers is currently examining the consequences of the Court's Grand Chamber decision on the admissibility of the application *Demopoulos v. Turkey*²⁸ and seven other cases delivered on 5 March 2010. The Court concluded in this decision that the Law 67/2005 of December 2005, according to which all natural and legal persons claiming rights to immovable or movable property could bring a claim before the Immovable Property Commission, "provides an accessible and effective framework of redress in respect of complaints about interference with property owned by Greek Cypriots".

22. As far as *Xenides-Arestis v. Turkey*²⁹ is concerned, the Committee of Ministers has already adopted two interim resolutions urging the Turkish authorities to pay the just satisfaction awarded in 2006 by the Court. The fact that this payment is still outstanding is an unacceptable state of affairs.

22. . CM/ResDH(2005)43.

23. . Applications Nos. 33097/96 and 57834/00, judgment of 3 June 2004.

24. . Application No. 74552/01, judgment of 5 March 2007.

25. . During my visit, I asked to see copies of, for example, circulars addressed to law enforcement agencies, such as the circular of 2008 on the use of tear gas addressed to the police. Ministry of Interior officials promised to supply these to me.

26. . Application No. 25781/94, judgment of 10 May 2001.

27. . See also *Varnava v. Turkey*, Application No. 16064/90, judgment (Grand Chamber) of 18 September 2009.

28. . Application No. 46113/99, decision of 5 March 2010.

29. . Application No. 46347/99, 22 December 2005.

2.7. Additional comments

23. Despite undoubted, and indeed significant, progress made in the amelioration of the human rights situation in Turkey,³⁰ coined as “the silent legal revolution”, it is nevertheless important for the Turkish authorities to maintain and intensify efforts to comply with Strasbourg Court judgments, a substantial number of which have been on the Committee of Ministers’ docket for many years. As indicated in the statement I made at the end of my visit (see Appendix 2): “[t]he Turkish authorities, presently chairing the Council of Europe Committee of Ministers, must lead by example and take urgent and decisive action to abide by Strasbourg Court judgments,” and “I count on my fellow parliamentarians, in particular, to effectively monitor and rapidly enact legislation to counter a certain dilatoriness in this respect”. There is an urgent need to overhaul the manner in which the heavily overburdened, understaffed and under-resourced judicial system functions.³¹ This problem was recognised as serious by most of my interlocutors in Ankara, as confirmed by the Turkish President himself.³² In this connection, note can be taken of an important European Union-Council of Europe project on enhancing the role of the supreme judicial authorities in respect of European standards with the objective of, *inter alia*, initiating further changes in the normative framework to ensure compliance with the European Union’s *acquis* and the rights and freedoms guaranteed by the European Convention on Human Rights, as interpreted by the Strasbourg Court. The beneficiaries of this project include the Constitutional Court, the Court of Cassation, the Council of State and the High Council of Judges and Prosecutors.³³

24. Finally, in the areas of concern enumerated above, it has often taken the Turkish authorities a number of years to inform the Committee of Ministers of progress made. It therefore appears necessary to establish a parallel structure – within the Turkish Parliament itself – to permit the country’s legislative organ to push forward and monitor developments in a more rigorous manner. Here, I fully endorse the initiative taken by certain members of the Grand National Assembly’s Human Rights Inquiry Committee, who have proposed the extension of the Committee’s mandate to undertake legislative initiatives (which it presently cannot do). This text, which is presently pending before parliament, could include – as mooted in discussions I had with the Chairperson of the Human Rights Inquiry Committee – a provision providing for effective and regular parliamentary supervision of the implementation, by Turkey, of Strasbourg Court judgments.³⁴

30. . See, for example, the recent European Commission staff working document “Turkey 2010 Progress Report” accompanying the communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2010-2011 (SEC (2010) 1327, 9 November 2010; COM(2010)660), especially pp. 6-38,

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf, and Venice Commission “Interim Opinion on the Draft Law on the High Council for Judges and Prosecutors” (document CDL-AD(2010)42, of 20 December 2010), paragraphs 11-16. See also paragraphs 10, 13 and 16 above.

31. . Mr Yurdakul, of the Court of Cassation, indicated to me that in 2005 the Court had 75 000 case files pending before it, with the figure being 1 850 000 in 2010!

32. . The cover page of the English-language “Today’s Zaman” of 11 January 2011 had a headline which read: “President Gül calls for radical judicial reform”.

33. . I was also informed, when in Ankara, that the “Human Rights Joint Platform”, an NGO network, is to launch a campaign in 2011 to encourage the Turkish authorities to execute Strasbourg Court judgments.

34. . The present situation appears to be the following: a sub-committee of the Constitution Committee of Parliament (the Committee) discussed a draft put forward by 22 MPs and made recommendations to the Committee. This “Draft Law on a Human Rights Committee” proposes a number of amendments to the Law on the Human Rights Inquiry Committee, in force since 1990.

The Committee observed that one of the proposed amendments would give the Human Rights Committee the powers to carry out its own examination. The sub-committee considered this to be incompatible with the principle of separation of powers because, in its opinion, it would place the Human Rights Committee above the judicial apparatus and the executive.

However, on 24 July 2008, the Committee adopted a number of the remaining amendments (with some modifications), and forwarded the text to Parliament. The draft law is currently pending before the parliament.

The proposed amendments, as accepted and modified by the Committee, include, notably, the following:

1. The name of the “Human Rights Inquiry Committee” to be changed to “Human Rights Committee”.
2. The Human Rights Committee to have the power to review all draft laws submitted to parliament with a view to assessing their compatibility with human rights norms.
3. In its examination of alleged human rights violations, the Human Rights Committee would have the powers to request documents and information from any person and legal entity.
4. In cases of urgency, the chairperson of the Human Rights Committee could meet representatives of relevant organisations, provided that he subsequently informs the Human Rights Committee about the substance of those meetings.

Appendix 1 – Summary of principal problems encountered in the execution of Strasbourg Court judgments in respect of Turkey

Leading case	Case description
<i>Aksoy v. Turkey</i> (Application No. 21987/93, judgment of 18/12/96) and 205 other judgments; Interim Resolution ResDH(2005)43 and CM/ResDH(2008)69.	Various violations of the Convention resulting from actions of the security forces, in particular in the southeast of Turkey (unjustified destruction of property, disappearances, infliction of torture and ill-treatment during police custody and killings committed by members of security forces, subsequent lack of effective investigations into the alleged abuses).
<i>Bati v. Turkey</i> (Application No. 33097/96, and 57834/00, judgment of 03/06/2004) and 60 other judgments.	Lack of independence in investigating authorities dealing with actions of security forces.
<i>Cyprus v. Turkey</i> (Application No. 25781/94, judgment of 10/05/01 – Grand Chamber); Interim Resolutions ResDH(2005)44 and CM/ResDH(2007)25.	Various violations of the Convention relating to the situation in the northern part of Cyprus following Turkish military operation in 1974 (missing persons, living conditions of Greek Cypriots in the northern part of Cyprus, the rights of Turkish Cypriots living in the northern part of Cyprus, and homes and property of displaced persons).
<i>Inçal v. Turkey</i> (Application No. 22678/93, judgment of 09/06/98) and 93 other judgments; Interim Resolutions ResDH(2001)106 and ResDH(2004)38.	Unjustified interferences in the freedom of expression, in particular on account of their conviction by state security courts following the publication of articles and books or the preparation of messages addressed to a public audience.
<i>Halise Demirel v. Turkey</i> (Application No. 39324/98, judgment of 28/01/2003) and <i>Cahit Demirel v. Turkey</i> (Application No. 18623/03, judgment of 07/07/2009) and 121 other judgments.	Excessive length of detention on remand.
<i>Hulki Güneş v. Turkey</i> (Application No. 28490/95, judgment of 19/06/03) and three other judgments; Interim Resolutions ResDH(2005)113, CM/ResDH(2007)26 and CM/ResDH(2007)150.	Lack of judicial independence and impartiality, unfairness of judicial proceedings, ill-treatment inflicted in police custody.
<i>Oya Ataman v. Turkey</i> (Application No. 74552/01, judgment of 05/03/2007) and 19 other cases.	Abusive use of force by security forces in dispersing peaceful demonstrations.
<i>Ülke v. Turkey</i> (Application No. 39437/98, judgment of 24/01/06); Interim Resolutions CM/ResDH(2007)109, CM/ResDH(2009)45, and DD(2009)56.	Degrading treatment of the applicant as a result of his repeated convictions and imprisonment for having refused to perform military service.
<i>Xenides-Arestis v. Turkey</i> (Application No. 46347/99, judgments of 22/12/05 and of 07/12/06); Interim Resolution CM/ResDH(2008)99, and DD(2009)540.	Violation of the right to respect for private life due to continuous denial of the applicant's access to her property in the northern part of Cyprus and consequent loss of control thereof.

Appendix 2

Background information concerning the rapporteur's visit to Turkey³⁵

Programme of visit: Ankara

Monday 10 January 2011

9:20: Meeting with Mr L. Kurt, Judge, Head of Department, DG for International Law and Foreign Relations, Ministry of Justice

10:25: Meeting with Mr M. Çöğgün, Deputy Director General, Directorate of Europe and Foreign Affairs, Ministry of the Interior

14:00: Meeting with Mr O. Yurdakul, Judge, Deputy General Secretary of the Supreme Court of Cassation

15:30: Meeting with Mr A. Kuyucu and Mr S. Kütahya, Deputy Chief Prosecutors, and Ms I. Altuntaş, Supreme Court of Cassation

16:45: Meeting with Mr M. O. Paksüt, Vice-President, Constitutional Court

Tuesday 11 January 2011

9:00: Meeting with civil society representatives

10:00: Meeting with Mr Z. Üskül, Chairperson of the Human Rights Inquiry Committee of the Grand National Assembly

11:15: Meeting with Mr K. Esener, Deputy Director General, Ministry of Foreign Affairs

12:45: Meeting with members of the Turkish delegation to the Parliamentary Assembly

13:15: Luncheon hosted by Mr E. Cebeci, Chairperson of the Turkish delegation to the Parliamentary Assembly

Press release issued at the end of the visit:

http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=6221&L=2

35. . The rapporteur was accompanied by Mr Andrew Drzemczewski, Head of the Assembly's Legal Affairs and Human Rights Department.