

**REPUBLIC OF TURKEY
MINISTRY OF JUSTICE
DEPARTMENT OF HUMAN RIGHTS**

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**THE RESPONSE OF
THE GOVERNMENT OF THE REPUBLIC OF TURKEY
TO THE QUESTIONS ASKED BY
THE EUROPEAN COURT OF HUMAN RIGHTS
CONCERNING THE APPLICATION
YAKAR AND OTHERS v. TURKEY (no. 38338/12)**

Annexes: Relevant Documents

Date : 18 February 2021

1. By letter from the European Court of Human Rights (“the Court”) dated 20 January 2021, certain information and observations of the Government of the Republic of Turkey (hereinafter “the Turkish Government” or “the Government”) have been sought on the additional questions concerning the application *Yakar and others v. Turkey, no. 38338/12*.

2. In this regard, the Government has the honour to submit to the Court the following observations:

3. The Government has been asked to address the following question:

« Quelles suites ont été données à la décision du 24 novembre 2014 du tribunal de police de Tunceli (n° 2014/286 D. İş). ? Alors que le procureur de la République de Hozat avait rendu une décision de non-lieu, le 26 septembre 2014 en constatant que les ossements prétendument restes de 1938, auraient été restes sur les lieux des meurtres et des blessures commis en 1938, mais qu'en regard du délai de prescription et dans la mesure où il n'y avait pas eu de fait rompant ce délai, il n'y avait pas de possibilité de mener une enquête ni ordonner une visite sur les lieux, le tribunal de police de Tunceli, après avoir décidé de lever le non-lieu, avait ordonné d'effectuer, afin de trouver les corps, une fouille et de la recherche plus amples sur les lieux ; d'effectuer une analyse dans les laboratoires sur les ossements, qui seraient éventuellement trouvés, afin de déterminer s'il s'agit des ossements humains ; et dans le cas où il serait des ossements humains, de déterminer l'année et les causes de leur décès, de procéder aux tests de correspondance d'ADN et confier les ossements aux proches parents. Cette décision a-t-elle été exécutée ?

Les parties sont priées de porter à la connaissance de la Cour tous les renseignements à ce sujet. ».

4. The Government observes that with the letter mentioned above, the Court asks the Government whether the requirements introduced by the decision of the Tunceli Magistrates' Court (Magistrates' Court), dated 24 November 2014 (Miscellaneous Decision no.2014/286) was fulfilled. In this regard, the Government would like to submit to the Court the following explanations:

5. The Government at the outset would like to remind that it submitted its observations on admissibility and merits on 24 March 2014 and the observations on just satisfaction claims on 28 May 2015. In this context, the Government reiterates its objections concerning the admissibility of the application in its first observations of 24 March 2014. In this regard, the applicants only applied to the Public Prosecutor's Office for the identification of their relatives who, as alleged by the applicants, were killed and for the delivery of the bodies to them. The applicants had the opportunity to apply to the

administrative authorities, especially the relevant Municipality and the Governor's Office with a petition within the scope of the Public Health Law No. 1593. Moreover, even though the applicants had the right to request the identification of evidence before the civil courts, they did not have recourse to the remedy in question. For that reason, the Government kindly invites the Court to declare the application inadmissible due to non-exhaustion of available and effective domestic remedies.

6. Regarding the question directed by the Court, the Government first of all brings to the attention of the Court that it cannot determine a relationship between the decision of the Magistrates' Court, whose information is given above, and the parties and the crime scene mentioned in this decision, and the present application. Indeed, in the present application the applicants are Canpolat Yakar, Hatice Düzgünkaya, Haydar Gökdemir, Gülçiçek Kartal, Hatice Dolu, Rıza Dolu, Erdal Çetinkaya and Seyfi Kılıçkaya. The applicants alleged in the application form that their relatives were killed by the security forces during the events known as the "Dersim Incidents" between 1937 and 1938, and then they were buried collectively in the place called "Zini Valley in Kılıçkaya Village of Erzincan Province".

7. When the decision of the Magistrates' Court, which is the subject matter of the question directed by the Court, is examined, it is observed that this decision concerns the annulment of the decision of non-prosecution rendered by the Hozat Chief Public Prosecutor's Office on 26 September 2014, and that it has nothing to do with the present application.

8. At this point, the Government would like to draw the Court's attention to the complaints of the parties of the investigation, which is the subject matter of the decision of the Magistrates' Court, which is mentioned in the question directed by the Court, and the developments in the aftermath:

9. H.B., C.B. and Ce.B. (complainants) applied to the Hozat Chief Public Prosecutor's Office as complainants and requested an on-site inspection in the "Saka Sure hamlet¹, Karabakır Village (Bargini), Hozat district, Tunceli province"

¹ Hamlet: smallest settlement consisting of a few houses in the rural.

regarding their relatives whom they claimed to have lost during the events known as the "Dersim Incidents" of 1937-1938.

10. The Hozat Chief Public Prosecutor's Office (Hozat Prosecutor's Office) rendered decision of non-prosecution on 29 September 2014 in respect of the he complainants' complaint and request. In the decision of the Hozat Prosecutor's Office, it was noted that the on-site inspection in respect of the said incident could not be carried out in accordance with the relevant articles of the Criminal Procedure Code, but the complainants could submit their requests to the relevant institutions in accordance with the Public Health Law No. 1593 (For the whole decision, see Annex 1).

11. Complainants H.B., C.B. and Ce.B. objected to the decision of the Hozat Prosecutor's Office before the Tunceli Magistrates' Court. On 24 November 2014, the Tunceli Magistrates' Court accepted the objection of the complainants and revoked the decision of non-prosecution rendered by the Hozat Prosecutor's Office and decided to continue the investigation decisively. (For the whole decision, see Annex 2).

12. On 16 March 2015, after the decision of the Magistrates' Court, the Hozat Prosecutor's Office decided to carry out an on-site inspection at the location indicated by the complainants (see Annex 3).

13. After the decision in question, on 14 - 15 April 2015 the Hozat Prosecutor, complainant H.B., the complainant's lawyer and relevant experts carried out the on-site inspection (see Annex 4, the report on the on-site inspection).

14. On 15 April 2015, the Hozat Prosecutor's Office sent the findings concerning the on-site inspection to the Istanbul Forensic Medicine Institute to examine and draw up a report.

15. The Forensic Medicine Institute completed its report on 1 February 2016 (see Annex 5 Forensic Medicine Report)

16. After the forensic report, on 19 February 2016 the Hozat Prosecutor's Office referred to the evaluations in the forensic report and noted that the statutory limitation period for the case concerning the incident in question had expired and rendered a decision of non-prosecution again (see Annex 6). The complainants objected to this decision. On 5 April 2016, the Tunceli Magistrates' Court, which

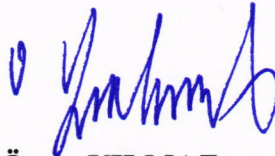
examined the objection, decided this time to dismiss the objection decisively. (see Annex 7).

17. The Government would like to state that the information regarding the matter asked by the Court in its letter dated 21 January 2021 is given above.

18. As can be understood from this information, the investigation which is the subject matter of the question directed by the Court and the decision of the Magistrates' Court has no relation with the present application. In other words, there is no condition that can establish a connection between the investigation and the decision of the Magistrates' Court which are the subject matter of the question directed by the Court and the present application. Moreover, it is seen that there is no situation that would require the investigation subject to the question of the Court to have an impact on the present application.

19. In addition, the Government would like to point out that it was found out in the examinations concerning the civil registry records that some of the applicants of the present application, namely Canpolat Yakar, Haydar Gökdemir, Hatice Dolu and Rıza Dolu, died (see Annex 8). Furthermore, the Government would like to point out that it was not notified whether the heirs of the deceased applicants had submitted information or documents to the Court stating that they would pursue the application. For these reasons, the Government kindly invites the Court to strike the application out of its list of cases insofar as it concerns these applicants pursuant to Article 37 § 1 (c) of the Convention.

18 February 2021



Ömer YILMAZ

Deputy co-Agent of the Government of the Republic of Turkey

ANNEXES

1. Decision of non-prosecution dated 26 September 2014 rendered by the Hozat Prosecutor's Office
2. Decision of the Tunceli Magistrates' Court, dated 24 November 2014
3. Decision on on-site inspection dated 16 March 2015 rendered by the Hozat Prosecutor's Office
4. Reports on the on-site inspection carried out on 14-15 April 2015 by the Hozat Prosecutor's Office
5. Letter of the Forensic Medicine Institute dated 01 February 2016
6. Decision of non-prosecution dated 19 February 2016 rendered by the Hozat Prosecutor's Office
7. Decision of the Tunceli Magistrates' Court dismissing the objection, dated 5 April 2016
8. Copy of civil registry records of deceased applicants

