



## Court declares complaint concerning impossibility to reopen criminal proceedings inadmissible as new Turkish law allows for such reopening

In its decision in the case of [Hulki Güneş v. Turkey](#) (application no. 17210/09) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

Mr Güneş had been sentenced to life imprisonment in 1994 following criminal proceedings that the European Court of Human Rights Court found to be unfair in a judgment of June 2003. In that judgment, the Court found that Mr Güneş had been convicted on the basis of confessions obtained in conditions contrary to Article 3 (prohibition of torture and inhuman or degrading treatment). Mr Güneş subsequently attempted, without success, to have the proceedings reopened in respect of the final judgment by the State Security Court.

The Court noted that, following communication of the case, Turkey had enacted a new law in April 2013. It provides for the possibility of reopening criminal cases in which the European Court of Human Rights had found a violation of the Convention and in respect of which execution proceedings had been pending before the Committee of Ministers, the executive arm of the Council of Europe, on 15 June 2012. The law covered Mr Güneş' case; he could therefore request reopening of the proceedings in his case within three months of the entry into force of the law, that is from April 2013.

### Principal facts

The applicant, Hülki Güneş, is a Turkish national who was born in 1964 and lives in Muş (Turkey). He is currently held in Diyarbakır Prison, where he is serving a life sentence.

On 11 March 1994, before the Diyarbakır State Security Court, he was convicted of separatism and undermining the integrity of the State, participating in two armed attacks and having, together with two other people, shot at the security forces, killing one soldier and wounding two others. He was sentenced to capital punishment, which was commuted to life imprisonment.

In May 1995 Mr Güneş lodged an application (no. 28490/95) with the Court. In its [judgment of 19 June 2003](#), the Court held that there had been a violation of Articles 3 (prohibition of torture and inhuman or degrading treatment), 6 § 1 (right to a fair trial) and 6 § 3 (d) (right to examine witnesses). The Court considered that the treatment meted out to Mr Güneş while in police custody had been both inhuman and degrading. Furthermore, it concluded that the Diyarbakır State Security Court had not been independent and impartial. The Court found that the lack of any confrontation between Mr Güneş and the prosecution witnesses before the trial court had deprived him, in part, of a fair trial. Lastly, the Court criticised the use of evidence obtained in conditions contrary to Article 3 of the Convention.

On 30 October 2003, following the delivery of the Court's judgment, Mr Güneş attempted, without success, to have the proceedings reopened and the final judgment by the State Security Court which had convicted him re-examined. The Security Court dismissed his request solely on the ground of the temporal limitation without ruling on

whether it was necessary to hold a new trial to remedy the specific violations found by the Court.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 18 March 2009.

Relying on Article 5 § 1 (a), Mr Güneş considered that the dismissal of his application for reopening of the proceedings was not compatible with the requirements of that Article, under which any deprivation of liberty must be effected in accordance with a procedure prescribed by law.

Relying also on Article 5 § 4 (right to speedy review of the lawfulness of detention), he complained that he had been unable to exercise the right to appeal to a court.

The decision was given by a Chamber of seven, composed as follows:

Guido **Raimondi** (Italy), *President*,  
Danutė **Jočienė** (Lithuania),  
Peer **Lorenzen** (Denmark),  
Dragoljub **Popović** (Serbia),  
Işıl **Karakaş** (Turkey),  
Nebojša **Vučinić** (Montenegro),  
Paulo **Pinto de Albuquerque** (Portugal), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

## Decision of the Court

The Court observed that Mr Güneş had been unable to have his trial reopened.

With regard to execution of the European Court of Human Rights' judgment of 2003, the Government had paid the amounts awarded to Mr Güneş by the Court. As to the other measures which could have been taken, the Court observed that this was a matter which was currently the subject of discussion between the Committee of Ministers and the respondent Government.

In its Interim Resolution CM/ResDH(2007)150, the Committee of Ministers considered, in particular, that "the Court's judgment required the adoption of individual measures in view of the extent of the violations of the right to a fair trial casting serious doubts on the safety of applicant's conviction" and invited the Government "to remove promptly the legal lacuna preventing the reopening of domestic proceedings in the applicant's case".

The Court reiterated that, subject to monitoring by the Committee of Ministers, the respondent State remained free to choose the means by which it would discharge its legal obligation under Article 46 of the Convention (binding force and execution of judgments). It noted that the Convention did not give it jurisdiction to direct a State to open a new trial or to quash a conviction. It followed that it could not find a State to be in breach of the Convention on account of its failure to take either of these courses of action when faced with the execution of one of its judgments.

The Court's case-law provided examples of supervision of execution in the context of examining the merits of cases. In particular, through the concept of "a new problem", the Court could hold that it had jurisdiction to examine a case which concerned, in part,

the execution of its earlier judgment. However, that consideration did not apply in this case.

The Court stressed the importance of ensuring that procedures at national level were in place which allowed a case to be revisited in the light of its finding that Article 6 of the Convention had been violated. Such procedures could be regarded as an important aspect of the execution of its judgments and demonstrated a State's commitment to the Convention and the Court's case-law. The Court observed that a new law enacted by Turkey on 11 April 2013 allowed the reopening of those cases against Turkey in which the European Court of Human Rights had found a violation of the Convention and in respect of which execution proceedings had been pending before the Committee of Ministers of the Council of Europe on 15 June 2012. Under that law, Mr Güneş had the possibility to request reopening of the proceedings in his case within three months of its entry into force, that is, from 30 April 2013.

The Court therefore considered that the complaint was manifestly ill-founded and declared it inadmissible.

*The decision is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.