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Communication from an NGO (İfade Özgürlüğü Derneği (İFÖD – Freedom of Expression Association)) (03/01/2022) in the case of COX v. Turkey (Application No. 2933/03).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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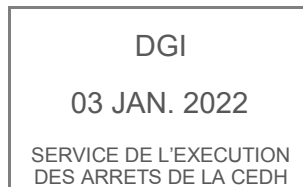
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Réunion : 1428<sup>e</sup> réunion (mars 2022) (DH)

Communication d'une ONG (İfade Özgürlüğü Derneği (İFÖD – Freedom of Expression Association)) (03/01/2022) relative à l'affaire COX c. Turquie (requête n° 2933/03) **[anglais uniquement]**.

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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## **RULE 9.2 COMMUNICATION**

**in the Case of Cox v. Turkey (Application No. 2933/03)**

**by**

**İFADE ÖZGÜRLÜĞÜ DERNEĞİ (İFÖD)**

**03 January 2022**

An independent non-governmental organization specialized in defending and promoting freedom of expression



DGI Directorate General of Human Rights and Rule of Law

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FRANCE

**03.01.2022**

**Rule 9.2 Communication from Freedom of Expression Association (İFÖD) in the Case of Cox v. Turkey (No. 2933/03)**

1. The submission is prepared by **İfade Özgürlüğü Derneği** (İFÖD – Freedom of Expression Association), a non-profit and non-governmental organization which aims to protect and foster the right to freedom of opinion and expression in Turkey.
2. The aim of this submission is to update the Committee of Ministers concerning the failure of the Turkish authorities to implement the required general measures deriving from the case of **Cox v. Turkey** (Application No. 2933/03) fully and effectively as well as report and address the failure of judicial practice in fully aligning the domestic legal framework concerning the right to freedom of expression with the European Court's case law.

**I. Background**

3. The case of *Cox v. Turkey* concerns a violation of the right to freedom of expression on account of an administrative decision imposing a ban on the applicant, a citizen of the United States of America who has spent considerable time in Turkey as a student as well as a lecturer, was expelled from Turkey in 1986 with an order of the Ministry of Interior. The order also imposed a re-entry ban if she ever returned. A subsequent entry ban was imposed when the applicant returned to Turkey in 1996. The expulsion, as well as the re-entry bans, were related to the applicant's views and expressions on heated political issues. Although the applicant was not convicted nor tried ever for her expressions; following her appeal against the administrative decision, the Ankara Administrative Court rejected the applicant's appeal on the ground that her political ideas and activities were incompatible with national security and also with political imperatives.<sup>1</sup> Her appeal and request for rectification were also dismissed by the Supreme Administrative Court during 2000 and 2001. The European Court found that the ban imposed on the applicant for her expressions '*was not necessary in a democratic society* within the meaning of article 10(2), considering that the controversial expressions may also require tolerance and broadmindedness, and the ban imposed was designed to repress the freedom of expression of the applicant. The Court further added that domestic courts failed to justify the interference to the applicant's freedom of expression.
4. The case of *Cox v. Turkey* illustrates **structural problems** with respect to **the full and effective** enjoyment of freedom of expression of the foreign nationals residing in Turkey as a result of the hostile environment in the public sphere and **lack of legal safeguards** for the foreigners against restrictions arising from the application of article 54 (d) of Law No. 6458 on Foreigners

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<sup>1</sup> See Cox v. Turkey, no. 2933/03, 20.05.2010, § 15.



and International Protection Law. Subject to this provision, a deportation order might be imposed on foreigners causing threat against public order, public security or public health. For those who have been subjected to an article 54(d) order, a ban of re-entry to the country could also be ordered subject to article 9 of the same Law. The main feature of this case was the authorities' failure to show a certain degree of tolerance towards critical expressions and the lack of legal safeguards for the foreigners against arbitrary deportation orders and subsequent imposition of bans on their re-entry to Turkey.

## II. The Action Plan of the Government

5. On 17.06.2021,<sup>2</sup> the Turkish Government submitted a new Action Plan regarding the case of *Cox v. Turkey*. However, this Action Plan is almost identical to the Government's previous Action Plan<sup>3</sup> which was submitted on 18.06.2015. İFÖD would like to note that in the previous action plan, the Government presented three sample decisions of the Supreme Administrative Court. However, in the latest Action Plan, the Government presented once again two of the three sample decisions that had already been presented to the Committee and the authorities did not provide any other sample decision apart from these two. Thus, İFÖD's observation will mainly focus on the latest Action Plan.
6. In the latest Action Plan, the Government argued that the **present case was an isolated incident**. In support of this argument, the government claimed no similar incident occurred and there has been no other communicated case to the Government nor there has been an application pending before the European Court. The Turkish Authorities further informed the Committee on training, and awareness-raising activities carried out by the Ministry of Justice aiming to provide a more freedom-based perspective for the judges and public prosecutors. The Government also briefly explained current legislation and as mentioned above, presented two sample decisions delivered by the Supreme Administrative Court, claiming similar violations to *Cox v. Turkey* have been prevented. The Government invited the Committee to close its supervision.

## III. İFÖD's Observations

7. İFÖD is of the opinion that the sample judgments presented by the Government **are not reflecting the current situation**. İFÖD will provide information on the recent issues and present examples from judicial practice. Unlike what the Government argues, it is considered that the judicial practice and legal framework do not meet the standards set by the European Court in *Cox v. Turkey*. İFÖD is in the belief that the recent judicial practice reflects complex and structural problems observed in the case of *Cox v. Turkey* and similar incidents are continuing which indicates that the problem identified in *Cox v. Turkey* was not an isolated incident.
8. The Government presented two sample decisions delivered by the 10<sup>th</sup> Chamber of Supreme Administrative Court. The Government claimed that the Supreme Administrative Court has adopted a parallel approach to the European Court. However, İFÖD believes that the sample

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<sup>2</sup> DH-DD(2021)618.

<sup>3</sup> DH-DD(2015)669.



judgments presented by the Government are misleading and do not represent the current situation in full.

9. First, İFÖD would like to draw the Committee's attention to the dates of the sample judgments. It should be noted that both incidents took place in 2010 and the 10<sup>th</sup> Chamber of Supreme Administrative Court delivered its decisions subsequently on 26.05.2014 and 23.06.2014. In recent years Turkey has received a considerable number of refugees and irregular immigrants. So, the number of foreigners living in Turkey has increased sharply. This caused new problems including violation of freedom of expression of foreigners living in Turkey. The refugee crisis began in March 2011 and since the crisis began, 6.6 million Syrian have been forced to flee their home country.<sup>4</sup> Turkey is among the countries where displaced people primarily fled. According to the UNHCR, more than 3.6 million Syrian refugees and over 330.000 illegal migrants from other nations are residing in Turkey by 2021.<sup>5</sup> Thus, considering the refugee crisis initially began emerging in 2011 and the case-law examples presented by the Government were concerning events that took place in 2010, it is not possible for the Committee to assess the current situation relying on these samples.
10. With the emerging crisis since 2011, foreign nationals residing in Turkey are subject to rigid and unforeseeable legislative procedures. They are under constant threat of deportation and a ban of re-entry to Turkey. In this oppressive environment, foreign nationals cannot fully enjoy the right to freedom of expression as protected under the Convention. The recent incidents which will be summarized below clearly show there is an arbitrary interference to the foreigners' right to freedom of expression. Similar to the case of *Cox v. Turkey*, foreign nationals are being deported from Turkey and also, they are being banned from re-entry simply because of participating in public debate.
11. In a recent example, on 17.10.2021, during a street interview, two citizens made racist and discriminating statements about Syrian refugees.<sup>6</sup> One of them claimed that Syrians have better living standards than Turkish nationals. He further stated that whilst he could not afford to buy a banana, Syrians were able to buy kilos of them. The video became viral on social media platforms and several refugees subsequently shared videos whilst eating bananas. This triggered an investigation by the Ministry of Interior Affairs against the Syrian refugees sharing "banana eating videos". 31 suspects were investigated and 11 Syrians were arrested in relation to the crime of inciting or insulting the public to hatred and hostility subject to article 216 of the Turkish Criminal Code.<sup>7</sup> They have been taken to administrative detention centers where they are kept for a maximum of 12 months subject to article 57 of Law No. 6458 on Foreigners and International Protection Law.

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<sup>4</sup> See UNHCR, "When did the Syrian Refugee Crisis Begin", 5 February 2021, Available at <https://www.unrefugees.org/news/syria-refugee-crisis-explained/>.

<sup>5</sup> For thematic report for Turkey see <https://www.unhcr.org/tr/en/factsheets-and-dashboards>.

<sup>6</sup> For the whole interview see [https://www.youtube.com/watch?v=cpDfay\\_IRI&t=36s](https://www.youtube.com/watch?v=cpDfay_IRI&t=36s).

<sup>7</sup> See The Jerusalem Post, "Syrian refugees deported from Turkey for 'provocative' banana-eating," 28.10.2021, at <https://www.jpost.com/middle-east/syrian-refugees-deported-from-turkey-for-provocative-banana-eating-683394>



12. The Directorate General of Migration Management decided to deport 45 Syrian refugees subject to article 54 (d) of Law No. 6458 on Foreigners and International Protection Law on the grounds that they were causing threat against public order.<sup>8</sup>
13. Majed Shama, a Syrian journalist working for the Syrian exile TV channel Orient News, was also charged with provoking hatred against Turkish nationals and faces deportation for sharing a video of himself pretending to hide bananas and secretly eating one.<sup>9</sup>
14. Subsequently, according to some media reports, the criminal investigation initiated against the refugees for sharing the above-mentioned videos was dropped with a decision of non-prosecution. Despite this decision, the refugees are still held in administrative detention centers.<sup>10</sup> The legal ground of the detention relied on these cases has been the above-mentioned article 54(d) of Law No. 6458 on Foreigners and International Protection Law. As mentioned above, merely considering the refugees as a threat against public order renders it possible to order administrative detentions. As it is in the present case, even when charges against refugees drop, refugees sharing peaceful critical social media posts in which racist and discriminatory comments are condemned, they still face deportation orders and they are detained indefinitely in administrative detention centers until deported.
15. A similar case to *Cox v. Turkey* occurred during 2016 when British academic Chris Stephenson<sup>11</sup> who resided in Turkey for over 25 years was deported after being found with invitations to Kurdish new year celebrations at a courthouse where he had gone to support three scholars charged with making terrorist propaganda.<sup>12</sup> The invitations found in his bag were issued by the pro-Kurdish People's Democratic party ("HDP"). While, the deportation order was lifted at a later date and Stephenson was allowed to return to Turkey, upon his return he was prosecuted for making terrorist propaganda. Stephenson was acquitted in June 2016 but his work permit was subsequently cancelled by the Turkish Higher Education Board ("YÖK").<sup>13</sup> Although Stephenson is "lucky" compared to Cox as he was allowed to return to Turkey to join his family, he was subjected to a prosecution and lost his work permit which can be regarded as an indirect punishment for having in possession HDP invitations.
16. Moreover, the arbitrary use of the article 54(d) orders also affects foreigners' other rights protected by the European Convention such as the right to freedom of thought, conscience and

<sup>8</sup> See the Directorate General of Migration Management press release, 12.11.2021 at <https://www.goc.gov.tr/12112021-tarihli-basin-aciklamasi2> and T24, "Göç İdaresi açıkladı: 'Muz yeme' videosu paylaştan 45 Suriyeli sınır dışı edilecek," 12.11.2021, at <https://t24.com.tr/haber/goc-idaresi-acikladi-muz-yeme-videosu-paylasan-45-suriyeli-sinir-disi-edilecek,992864>.

<sup>9</sup> See RSF, Syrian journalist would face deadly reprisals if deported, RSF warns Turkey, 05.11.2021, at <https://rsf.org/en/news/syrian-journalist-would-face-deadly-reprisals-if-deported-rsf-warns-turkey>.

<sup>10</sup> See Evrensel, "“Ensar” olmak, “muhacir” muz yiyene kadarmış!" 02.01.2022, at <https://www.evrensel.net/haber/451713/ensar-olmak-muhacir-muz-yiyene-kadarmis>.

<sup>11</sup> Formerly a computer sciences lecturer at Istanbul Bilgi University.

<sup>12</sup> See generally The Guardian, "British academic deported over Kurdish new year invitations," 16.03.2016, at <https://www.theguardian.com/world/2016/mar/16/british-academic-deported-over-kurdish-new-year-invitations>.

<sup>13</sup> See Hürriyet Daily News, "Turkish work permit of British academic Chris Stephenson canceled after 18 years," 07.04.2017, at <https://www.hurriyetaidailynews.com/turkish-work-permit-of-british-academic-chris-stephenson-canceled-after-18-years-111741>.



religion. According to the Association of Protestant Churches, 65 foreign protestants have been subjected to deportation orders from Turkey and re-entry bans since 2019.<sup>14</sup> According to the report, “when the family members of these people are also taken into account, more than 100 people have been affected by these bans”.<sup>15</sup> It is claimed that these 65 individuals received an N-82 restriction code on their visa admissions. The Association of Protestant Churches stated that foreigners subjected to the N-82 restriction code had challenged deportation decisions before administrative courts. In those cases, the respondent administrative authority claimed that these individuals had been involved in missionary activities, and added that their activities were threatening public order. By the date of the report, the Association of Protestant Churches stated that none of the cases were concluded in favor of the plaintiffs. It should be noted that administrative authorities never explained what the content of missionary activities was.

17. As in the case of 65 Protestants, the administration may arbitrarily apply a restriction on a visa or residence permit of a foreigner without presenting any justification. Moreover, the N-82 restriction code indicates that foreigners subject to this code are required to have prior permission before re-entering to Turkey. Although this code does not mean that the foreigners may not re-enter Turkey, in practice, visa applications are not approved once a foreigner receives a N-82 restriction code. According to the Association of Protestant Churches report, legal challenges at the Constitutional Court level has also been unsuccessful against such orders at the time of reporting.<sup>16</sup>
18. As this further example illustrates, implementation of article 54(d) of Law No. 6458 not only affects foreigners’ right to freedom of expression but also other rights such as the right to freedom of thought, conscience and religion protected by the European Convention.
19. Thus, contrary to the Government’s arguments, the case of *Cox v. Turkey* is not an isolated incident and the case law presented by the Government does not reflect the current situation in Turkey. İFÖD is of the opinion that both the legal framework and judicial practice are not in line with Convention standards. İFÖD is of the opinion that article 54(d) of Law No. 6458 on Foreigners and International Protection Law provides broad and arbitrary authority to the administration by means of issuing deportation orders based on vague terms such as causing threat to public order, security, or health.
20. The Committee should also note that the deportation orders are not necessarily based on criminal convictions and the orders can be issued before the criminal courts decide if such foreigners are prosecuted. For example, there were no prosecutions involved in relation to the 65 Protestants and their families who have been subjected to deportation orders from Turkey. The mere assumption that a foreigner causes a threat to public security, order, or health is enough for the administration to issue a deportation order. Moreover, foreigners that may be deported subject to article 54(d) orders are subjected also to a ban for re-entry to Turkey, as well as held in detention centers for a long time before being deported from Turkey. Therefore,

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<sup>14</sup> See Association of Protestant Churches, 2020 Human Rights Violation Report, 22.02.2021, at <http://www.protestankiliseler.org/wp-content/uploads/2021/02/2020-Human-Rights-Violation-Report-pdf>.

<sup>15</sup> *Ibid.*, p. 7.

<sup>16</sup> *Ibid.*, p. 7.





the application of this provision violates not only the principle of presumption of innocence but also *the principle of non-refoulement*. Furthermore, such orders also lack adequate legal safeguards against arbitrary interference to the right to freedom of expression and freedom of religion of the foreigners living in Turkey.

21. Finally, considering the above-mentioned legislation and current administrative and judicial practice, the threat of being deported for sharing social media posts would have a chilling effect on the freedom of expression of foreigners residing in Turkey. The recent examples clearly show that the foreign nationals living in Turkey are far from enjoying their right to freedom of expression as protected under article 10 of the Convention.

### **Conclusions and Recommendations**

22. İFÖD considers that structural problems observed by the Court and the Committee of Ministers remain and have not been properly addressed by the Turkish authorities.
23. The Government should be asked to provide detailed data about the implementation of relevant provisions of Law No. 6458 on Foreigners and International Protection Law.
24. The Government provides some examples from 2014, whilst following the refugee crisis, thousands of other incidents occurred and foreigners are deported or subjected to criminal charges for the peaceful expression of ideas is sanctioned. The Government, therefore, should also be asked to provide examples from recent judicial practice including from the Constitutional Court, where foreigners have been deported and imposed bans for re-entry to Turkey under article 54(d) of Law No. 6458 on Foreigners and International Protection Law.
25. Finally, considering the significance of freedom of expression of foreign citizens living in Turkey and vulnerability of the rights of the refugees, the Committee should continue to supervise the implementation of the judgement of the European Court of Human Rights in the case of *Cox v. Turkey*.

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**İfade Özgürlüğü Derneği (İFÖD)** has been set up formally in August 2017 protect and foster the right to freedom of opinion and expression. The Association envisions a society in which everyone enjoys freedom of opinion and expression and the right to access and disseminate information and knowledge.