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**DH-DD(2024)55**

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Meeting: 1492<sup>nd</sup> meeting (March 2024) (DH)

Communication from an NGO (İfade Özgürlüğü Derneği (İFÖD - Freedom of Expression Association)) (05/01/2024) concerning 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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Réunion : 1492<sup>e</sup> réunion (mars 2024) (DH)

Communication d'une ONG (İfade Özgürlüğü Derneği (İFÖD - Freedom of Expression Association)) (05/01/2024) 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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05 JAN. 2024

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## **RULE 9.2 COMMUNICATION**

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

**by**

**İFADE ÖZGÜRLÜĞÜ DERNEĞİ (İFÖD)**

**05.01.2024**

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



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**05.01.2024**

## **Rule 9.2 Communication from İFÖD in the Case of *Cox v. Turkey* (no. 2933/03)**

### **I. Introduction**

1. This 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 Türkiye. İFÖD has been informing the Committee of Ministers (“the Committee” or “the CM”) on the recent developments concerning the persistent failure of Turkish authorities in full and effective implementation of general measures in **the case of *Cox v. Turkey* (no. 2933/03)**. This short submission will be about the Turkish Government’s latest Action Report of **24.11.2023** requesting closure of the case.
2. It will be recalled that, on **17.06.2021**,<sup>1</sup> the Turkish Government submitted an Action Report regarding the case of *Cox v. Turkey*. However, this Action Report was almost identical to the Government’s previous Action Report which was submitted on **18.06.2015**.<sup>2</sup> The Government submitted another Action Report in this case on **11.05.2023**.<sup>3</sup> İFÖD submitted a Rule 9 communication about this Action Report on **10.10.2023**.<sup>4</sup> Finally, the Government submitted its latest **Action Report** on **24.11.2023**,<sup>5</sup> just after the submission of İFÖD’s communication. However, this latest Action Report **does not contain any new or updated information, nor does it contain any response to the concrete information included in the Rule 9 submission submitted by İFÖD in October 2023**.
3. Regarding the case of *Cox v. Turkey*, İFÖD submitted its first Rule 9.2 communication on **03.01.2022**.<sup>6</sup> In its submission, İFÖD provided the Committee with examples demonstrating that structural problems observed by the Court and the Committee of Ministers remained and had not been properly addressed by the Turkish authorities. İFÖD further asked the CM to request from the Government detailed data about the implementation of relevant provisions of Law No. 6458 on Foreigners and International Protection. İFÖD argued that the submitted examples by the Government were dated back to 2014, whilst following the migration *en masse* caused by the conflict in Syria, thousands of other incidents occurred, in which foreigners were deported or subjected to criminal charges after exercising their right to freedom of speech. Therefore, İFÖD asked the Committee to ask the Government to provide examples from recent judicial practice

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<sup>1</sup> DH-DD(2021)618.

<sup>2</sup> DH-DD(2015)669.

<sup>3</sup> DH-DD(2023)596

<sup>4</sup> See İFÖD’s submission dated 10.10.2023 in relation to the execution of the Cox judgment: DH-DD(2023)1256, at [https://hudoc.exec.coe.int/eng?i=DH-DD\(2023\)1256E](https://hudoc.exec.coe.int/eng?i=DH-DD(2023)1256E)

<sup>5</sup> DH-DD(2023)1457

<sup>6</sup> See İFÖD’s submission dated 03.01.2022 in relation to the execution of the Cox judgment: DH-DD (2022)59, at [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)59E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)59E).



including from the Constitutional Court, where foreigners have been deported and imposed bans for re-entry to Türkiye under article 54(d) of Law No. 6458 on Foreigners and International Protection.

4. İFÖD submitted its second Rule 9.2 communication on **10.10.2023**.<sup>7</sup> In its submission, İFÖD provided the Committee with information on the recent application of Law No. 6458 insofar as it relates to the freedom of expression of foreigners. Moreover, an assessment of the the Government's Action Report of **11.05.2023** was also provided. Furthermore, recent examples of journalists and academics who had been denied entry to or deported from Türkiye on public order and security grounds were presented. İFÖD reported that the relevant provisions of Law No. 6458 do not meet the foreseeability requirement of Article 10 of the Convention and do not provide any safeguards against abuse of power by public authorities.
5. The aim of this Rule 9.2 communication is to notify the Committee that the Government's Action Report of 24.11.2023 is the same as the one submitted on 11.05.2023 and to emphasize that the general measures are still not fully and effectively implemented in this case. Repeating the same information from time to time and ignoring recent information involving journalists and academics provided through the Rule 9.2 submissions should not be the approach to be adopted to rectify the problems identified by İFÖD or other civil society organisations.

## II. The 24.11.2023 Action Report of the Government

6. On 24.11.2023, the Turkish Government submitted a new Action Report regarding the case of *Cox v. Turkey*.<sup>8</sup> As mentioned above, this Action Report of the Government is the same as the Action Report of 11.05.2023 and does not contain any information about the recent cases and examples provided by İFÖD in its Rule 9 submission.<sup>9</sup> İFÖD would therefore like to draw the attention of the Committee of Ministers once again to the information contained in its Rule 9 submission submitted only three months ago. As stated in that submission, the problems identified by the ECtHR in *Cox v. Turkey* **have not been resolved** and in many similar cases, foreigners' freedom of expression protected under the Convention has been violated by the Turkish authorities.

## III. İFÖD's Observations

7. As set out in the previous Rule 9 submission of İFÖD, the facts of the Constitutional Court's A.G. judgement (Application No. 2018/6143), which the government presented as an example of the resolution of the problem identified by the ECtHR in *Cox v. Turkey*, are very different from the facts of the Cox case. In summary, the A.G. judgment of the Constitutional Court concerns the violation of the right to respect of the family life of the applicant, who was banned from entering the country on the grounds of general security and public order. On the other hand, the main issue in the *Cox v. Turkey* case concerns the exercise of the right to freedom of expression. The *locus decidendi* or *obiter dictum* of the judgment has little or nothing to do with the reasoning and findings of the *Cox v. Turkey*

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<sup>7</sup> See İFÖD's submission dated 10.10.2023 in relation to the execution of the Cox judgment: DH-DD(2023)1256, at [https://hudoc.exec.coe.int/eng?i=DH-DD\(2023\)1256E](https://hudoc.exec.coe.int/eng?i=DH-DD(2023)1256E)

<sup>8</sup> DH-DD(2023)1457

<sup>9</sup> DH-DD(2023)596



case. İFÖD underlines once again that this judgment cannot be an indication of the implementation of the general measures resulting from the *Cox v. Turkey* judgment.

8. Besides, none of the decisions of the 10<sup>th</sup> Chamber of the Council of State and 10<sup>th</sup> Chamber of the Ankara Regional Administrative Court submitted by the Government concerned the deportation of the individuals concerned due to the exercise of their right to freedom of expression, followed by a re-entry ban. **İFÖD considers that these decisions are also not indicative of the case of *Cox v. Turkey*.**
9. Therefore, İFÖD would once again like to draw the Committee's attention to the examples of current practice presented in its second 9.2 submission under the heading "**Recent examples of entry bans imposed on journalists and intellectuals**".<sup>10</sup> As these examples demonstrate, the fundamental problems identified by the ECtHR in *Cox v. Turkey* decision have not been resolved by the Turkish authorities. On the contrary, with the increase in the foreign population in Türkiye, the number and variety of violations of freedom of expression similar to Cox have increased.

#### IV. Conclusions and Recommendations

1. İFÖD considers that structural problems observed by the Court remain and have not been properly addressed by the Turkish authorities.
2. The Government should be asked to provide detailed data about the implementation of relevant provisions of Law No. 6458 on Foreigners and International Protection.
3. The Government provides sample judgments that do not pertain to the same Convention right as the case of *Cox v. Turkey*. The Government, therefore, should also be asked to provide examples from recent judicial practice, where foreigners have been deported and imposed bans for re-entry to Türkiye under article 54(d) of the Law No. 6458 on Foreigners and International Protection in relation to the exercise of their right to freedom of expression.
4. Finally, considering the significance of freedom of expression of foreign citizens living or working in Türkiye, 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.

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<sup>10</sup> *ibid.*