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Date: 12/04/2024

DH-DD(2024)406

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Meeting: 1501st meeting (June 2024) (DH)

Communication from an NGO (Ifade Ozgurlugu Dernegi (IFOD)) (03/04/2024) concerning the group of cases of Deryanv. Turkey (Application No. 41721/04) (appendices in Turkish are available at the Secretariat upon request).

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 : 1501^e réunion (juin 2024) (DH)

Communication d'une ONG (Ifade Ozgurlugu Dernegi (IFOD)) (03/04/2024) relative au groupe d'affaires Deryan c. Turquie (requête n° 41721/04) (des annexes en turc sont disponibles auprès du Secrétariat sur demande) **[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.



RULE 9.2 COMMUNICATION

in the *Deryan* (no. 41721/04) Group of Cases v. Turkey

by

İFADE ÖZGÜRLÜĞÜ DERNEĞİ (İFÖD)

03.04.2024

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



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03.04.2024

Rule 9.2 Communication from İfade Özgürlüğü Derneği (“İFÖD”) in the *Deryan* (no. 41721/04) Group of Cases v. Turkey

I. Introduction

1. This submission is prepared by **İfade Özgürlüğü Derneği** (“İFÖD” – Freedom of Expression Association), a non-profit and non-governmental organisation which aims to protect and foster the right to freedom of opinion and expression in Türkiye. The aim of this submission is to update the Committee of Ministers (“the CoM” or “the Committee”) with regard to the execution of the general measures stemming from ***Deryan* (no. 41721/04) Group of Cases v. Turkey**.
2. The aim of this submission is to inform the Committee concerning the execution of the ***Asan* (no. 28582/02) and *Deryan* (no. 41721/04) Groups of Cases v. Turkey**. As the findings of the Court in these groups of cases relate to the lack of reasoning in judicial decisions, İFÖD deemed it appropriate to ask for the statistics in which the lack of reasoning in civil and criminal court decisions led to a negative assessment in the promotion decisions issued and disciplinary sanctions imposed by the Council of Judges and Prosecutors. To that end, a copy of this Rule 9.2. submission will also be sent to the Committee with respect to ***Asan* (no. 28582/02) Group of Cases v. Turkey**.
3. The *Asan* group of cases concerns a violation of the right to freedom of expression on account of the lack of reasoning and assessment of the proportionality of an interference in judicial decisions. In the *Asan* case, the European Court found that the seizure of a publication based on historical, cultural, ethnographic and linguistic research with no political intent, applied to its second edition, was not necessary in a democratic society. In the case of *Güler and Zarakolu*, the Court stressed that the domestic courts disregarded the content of the seized books without making an assessment of whether they could contribute to a public debate on questions of general interest.¹ In the *Hatice Çoban* case, the European Court reiterated that the fairness of proceedings and the procedural guarantees afforded were factors to be taken into account when assessing the proportionality of an interference with freedom of expression and found that the national courts had not addressed the relevant arguments raised by the applicant to challenge the reliability and accuracy of the main item of evidence used in support of her conviction.²
4. In order to supervise the implementation of the ECtHR judgments in *Asan v. Turkey* (no. 28582/02, 27/11/2007), *Güler and Zarakolu v. Turkey* (no. 38767/09, 29/06/2021) and *Hatice Çoban v. Turkey* (no. 36226/11, 24/02/2020), the Committee of Ministers established the *Asan v. Turkey* group of cases. On 23.08.2012,³ the Turkish Government submitted its first Action

¹ *Güler and Zarakolu v. Turkey*, no. 38767/09, 29.06.2021.

² *Hatice Çoban v. Turkey*, no. 36226/11, 24.02.2020.

³ DH-DD(2012)763.



Report regarding the case of *Asan v. Turkey*. The Government submitted second action report in respect of this group of cases on 21.06.2018.⁴ Finally, the Government submitted its last revised action report in respect of this group of cases on 26.10.2023.⁵

5. In the last Action Plan, the authorities provided information on the legislative framework and in particular on the Press Law No. 5187 which entered into force on 26.06.2004 and which regulates the seizure of printed material among other things. The law was amended in 2012 so as to provide that seizure orders issued before 31.12.2011 would be void *ex officio* within six months unless the competent domestic courts order otherwise. In addition, the authorities indicated the subjects in which judges and prosecutors are trained through the Justice Academy such as “*the Grounds of the Court Judgments in light of the European Court of Human Rights, Human Rights and Practices of the European Court of Human Rights, Arrest- Custody- Detention- Undercover Witnessing, Reflections of the European Court of Human Rights Judgments in the Domestic Law, The European Convention of Human Rights and Türkiye, Arrest-Custody-Detention Practices, Freedom of Expression and European Union Law.*” Finally, with regard to the execution of judgements, it was stated that the judgements of the ECtHR are translated into Turkish, published on public websites and sent with an explanatory note to the relevant local courts, the Prosecutor’s Office, the Constitutional Court and the Court of Cassation.
6. Moreover, the Committee of Ministers decided to ask the authorities to submit **statistical information on the number of seizure decisions ordered by domestic courts within the past five years and sample decisions ordering the seizure of printed material.**
7. Regarding the supervision of the implementation of the ECtHR’s judgment of *Deryan v. Turkey*, the *Deryan v. Turkey* case group was established, and it was decided to carry out the monitoring of the implementation of the judgments on similar issues together. This group of cases on the violation of the right to a reasoned judgment in civil cases is related to the monitoring of the following judgments:

Application No	Case	Date of judgment	Finalised Date
41721/04	Deryan	21/07/2015	21/10/2015
13196/07	Uncuoğlu	05/09/2017	05/09/2017
10375/08	S.S. Yeniköy Konut Yapı Kooperatifi	10/10/2017	10/10/2017
26437/08+	Uğurlu ve diğerleri	14/11/2017	14/11/2017
40865/05	Murat Akın	09/10/2018	09/01/2019

8. The *Deryan* group includes cases where the main source of the violation was the lack of adequate reasoning in judicial decisions concerning civil proceedings. However, the Committee noted that the problem identified is cross-cutting in the sense that it arises as a further issue in a number of cases pending execution which are examined in different groups mainly focussed on

⁴ DH-DD(2018)664.

⁵ DH-DD(2023)1297.



other types of Convention violations. The CM highlighted that an analysis of all the relevant, pending cases reveals that **the problem of lack of adequate reasoning can be found at all levels of the Turkish jurisdiction**, including criminal and administrative proceedings as well as in detention orders.

9. The Government submitted action reports on 26.01.2016,⁶ 06.12.2018⁷ and on 30.03.2022⁸ regarding the *Deryan* group of cases.
10. The Committee of Ministers, in its 1436th meeting held on 8-10 June 2022, adopted a decision regarding the supervision of the execution of the *Deryan* group of cases and invited the authorities to consider adopting guidelines or checklists on the elements inherent to judicial decisions, to ensure effective implementation of the rules on disciplinary sanctions and promotion of judges in accordance with their performance on drafting high-quality decisions, and **to collect statistical data in this respect**.
11. Finally, the Government submitted an Action Report on 03.08.2023, which is currently under the Committee's consideration.⁹
12. As explained in the Action Reports, the Circular on the Promotion Principles of Judges and Prosecutors ("the Circular"), as amended on 15.01.2020, requires the Council of Judges and Prosecutors to take into account in the promotion of judges and prosecutors their compliance with judgments of the Constitutional Court and the European Court. The Circular was amended finally on 07.09.2021, published in the Official Gazette no. 31591. In its current version, article 6/1-k stipulates that the requirement of reasoned judicial decisions is also taken into account in the promotion of judges and prosecutors. Appeal courts conduct an additional assessment of the quality of decisions delivered by first-instance courts, which is also taken into account in the promotion of the judges and prosecutors.
13. As regards disciplinary liability, article 5 of the "Regulation on the Arrangement of the Legal Remedy Evaluation Forms" ("the Regulation"), as amended in December 2021, requires the appeal courts to notify the Council of Judges and Prosecutors ("the CJP") when a judicial decision does not contain sufficient reasoning, depending on the nature and gravity of the failure.
14. İFÖD, in its first Rule 9.2 communication of 13.09.2023,¹⁰ informed the Committee of the outcome of its request for access to information subject to Law No. 4982 from the Council of Judges and Prosecutors regarding the implementation of the Circulation and the Regulation. It was explained in that submission that İFÖD submitted its right to information request to the Council of Judges and Prosecutors on 16.08.2023, that the Council of Judges and Prosecutors issued a rejection decision on 31.08.2023 on the grounds of articles 7/2 and 21 of the Right to Information Law No. 4982 and that İFÖD appealed against this decision to the Review Board of Access to Information on 13.09.2023 in accordance with article 13 of Law No. 4982. İFÖD's appeal was rejected by the Review Board of Access to Information on 27.09.2023 (no. 88428622-E.4300/31829) without any reasoning. İFÖD then lodged an application with the Ombudsman Institution on 29.12.2023 arguing that the decision to reject this objection is contrary to the Law No. 4982 and the application should be evaluated with a view to

⁶ DH-DD(2016)115.

⁷ DH-DD(2018)1228.

⁸ DH-DD(2022)383.

⁹ DH-DD(2022)928.

¹⁰ See [https://hudoc.exec.coe.int/eng?i=DH-DD\(2023\)1137E](https://hudoc.exec.coe.int/eng?i=DH-DD(2023)1137E)



recommend to fulfil the right to information request. As of this writing, the application with the Ombudsman Institution is pending.

15. The aim of this second submission is to inform the Committee on the outcome of the official access to information request made to the Council of Judges and Prosecutors on **thirty-seven** Constitutional Court decisions regarding the implementation of the aforementioned Resolution and Regulation. In an effort to assess the effects of the recently introduced rules regarding the obligation of providing reasoned judicial decisions, İFÖD **demanding statistical information regarding the promotion and demotion decisions that pertained to the judges' and prosecutors in compliance with the obligation of delivering reasoned decisions.** In addition to that, İFÖD asked for statistical information regarding the disciplinary measures involving the members of the judiciary, taken with respect to the lack of reasoning in judicial decisions pursuant to article 5 of the Regulation on the Arrangement of the Legal Remedy Evaluation Forms.

II. İFÖD's Right to Information Request

16. İFÖD submitted its right to information request subject to Law No. 4982 to the Council of Judges and Prosecutors on 11.10.2023. In its request, İFÖD requested information from the Council of Judges and Prosecutors about a total of thirty-seven judgments of the Constitutional Court in which violations of freedom of expression were found due to lack of relevant and sufficient reasoning. İFÖD requested **information on whether any administrative action has been taken against the prosecutors and judges who signed these decisions** pursuant to the Circular and Regulation. With regard to judges and prosecutors who had taken part in the decisions about which the Constitutional Court ruled that the right to a reasoned decision was violated, the following questions were submitted to the Council:
 - a. The number of judges whose promotion in rank was suspended due to violation of the obligation to provide reasoned decisions,
 - b. Statistical information on the number of judges and prosecutors who have been subjected to disciplinary review and sanctioned by the Council of Judges and Prosecutors due to a judicial decision not containing sufficient justification, within the scope of article 5 of the Regulation on the Regulation of Legal Remedies Assessment Forms (**Annex-1**).
17. In its request, İFÖD provided detailed information on its monitoring activities and Rule 9.2. submissions. In addition, the information requested was further concretised by submitting Constitutional Court judgements, in which **thirty-seven** violation decisions were issued, as an annex to the application. It is deemed imperative to highlight once again that İFÖD asked only for statistical information that had no power to compromise any personal and sensitive information (**Annex-2**).
18. The Council of Judges and Prosecutors rejected İFÖD's request for information with a response on 18.10.2023. (**Annex-3**). The response was received by İFÖD on 27.10.2023. In this decision, the CJP, citing article 7/2 of Law No. 4982 on the Right to Information, stated in *a single sentence* that the İFÖD's request was rejected "Subject to article 7/2 and due to the fact that the requested information is of a kind that will require conducting of a separate study, research and examination, the request cannot be answered positively".
19. It should be reminded that, İFÖD, in its request for access to information, only asked the Council of Judges and Prosecutors whether the Circular and Regulation of the Council had been implemented in relation to **thirty-seven** Constitutional Court judgments. No further information was requested.



20. It is clear that such simple information does not require a separate study as claimed in the Council's decision. In light of this information, it can be assumed that the reason why such simple information is not available to the administration is that no action has been taken against the judges and prosecutors concerned as required by the Circular and Regulation.
21. İFÖD, therefore, considers it necessary to request from the Committee to invite the government to inform the Committee whether any administrative action has been taken in relation to the judges and prosecutors that had taken the relevant decisions.

III. Conclusions

1. İFÖD considers that structural problems observed by the Court persist and have not been properly addressed by the Turkish authorities. İFÖD argues that the administrative regulations are far from bringing material change as the problem is embedded in the judicial practices of Türkiye.
2. The Government should be asked to provide detailed data about the implementation of relevant provisions of the Circular and Regulation, in particular in cases concerning the application of the Constitutional Court's judgments in the above-mentioned thirty-seven cases. İFÖD would like to kindly ask the Committee to provide it with the statistics once they are obtained by the Committee to use them in its future submissions.
3. Finally, considering the importance of reasoned decisions with respect to freedom of expression, the Committee should continue its enhanced supervision of the *Deryan* (no. 41721/04) in an enhanced procedure, as well.

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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.