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RULE 9.2 COMMUNICATION

**Initial Observations on the Implementation of Telek and Others v. Turkey
(Application no. 66763/17, 66767/17 ve 15891/18)) final judgment**

ASSEDEL

(Association européenne pour la défense des droits et des libertés)

November 2024

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Council of Europe

DGI - Directorate General of Human Rights and Rule of Law

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Subject: Submission by ASSEDEL pursuant to Rule 9.2 of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments, Initial Observations on the Implementation of *Telek and Others v. Turkey* (Application no. 66763/17, 66767/17 ve 15891/18)) final judgment.

I. Introduction

1. In line with 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, ASSEDEL (Association européenne pour la défense des droits et des libertés) hereby presents this communication regarding the execution of the European Court of Human Rights (hereafter "the Court" or "ECtHR") judgment in the case of *Telek and Others v. Turkey* (Application no. 66763/17, 66767/17 ve 15891/18).

2. Our communication aims at providing updated relevant information and explanations to the Committee of Ministers concerning the individual and general measures reported by the Turkish Government for the execution of ECtHR judgment in the case of *Telek and Others v. Turkey*.

3. Our communication will first provide a brief summary of the background to the *Telek and Others v. Turkey* judgment. It will then provide information on the legal arrangements currently in force in Turkey with regard to the implementation of this judgment in terms of general measures. Finally, it will address the practice of restriction of freedom of movement, in particular by the Turkish Ministry of Interior.

II. Case Description

4. The case concerns a violation of the right to respect for private life on account of unlawful cancellation of the applicants' passports for considerable period under Decree-Laws enacted during the state of emergency, and refusal of their subsequent applications for the issuance of a new passport based on a regulation lacking sufficient clarity of the scope and manner of the authorities' discretion in the matter (Article 8).

5. Alphan Telek, the first applicant, and Edgar Şar, the second applicant, both former academics, were dismissed from public service under Article 1 of Decree Law No. 686 on the grounds of links to a terrorist organization or to an organization, structure or group identified by the National Security Council as engaging in activities detrimental to the national security of the State. Subsequently, both applicants' passports were revoked on 14 March 2017 by the Istanbul Security Directorate pursuant to Article 1, paragraph 2 of the same Decree Law.

6. The third applicant, Zeynep Kivilcim, also an academic, was dismissed from public service on 29 October 2016, pursuant to Article 1 of the Decree Law No. 675, on the grounds that she had links to a terrorist organization or to an organization, structure or group identified by the National Security Council as engaging in activities detrimental to the national security of the State. Her passport was also revoked on 2 November 2016 by the Istanbul Security Directorate pursuant to Article 1, paragraph 2 of the same Decree Law.

7. According to the Court, Article 22 of the Passport Law No. 5682 and the Decree Laws No. 675 and No. 686, which were the main grounds for the revocation of the applicants' passports, are not sufficiently clear as to the conditions and duration of the measure of confiscation of passports and the conditions to be met for the termination of this measure (Telek and Others v. Turkey § 123).

8. The Court further notes that, under domestic law, the administrative authorities' margin of appreciation in deciding to confiscate the applicants' passports is not subject to any conditions, the scope and manner of its exercise are not defined, and no other specific safeguards are provided for in this connection (Telek and Others v. Turkey § 125).

9. Consequently, the individual applications of each of the three applicants to the European Court of Human Rights were joined and the Court found, by judgment of 21 March 2023, that there had been a violation of Article 8 of the Convention in respect of each of the three applicants and a violation of Article 2 of Protocol No. 1 to the Convention in respect of applications nos. 66763/17 and 66767/17. The judgment became final on 25 September 2023.

III. Individual Measures

10. In the action plan submitted by the Turkish Government on 19 April 2024, it was claimed that the negative consequences found by the Court for the applicants were compensated. In this context;

The passport restriction for the first applicant was lifted on 2 December 2019, and a new, valid passport was issued in December 2019.

The passport restriction for the second applicant was lifted on 29 November 2019, and a new, valid passport was issued in December 2019.

The passport restriction for the third applicant was lifted on 6 April 2020, and a new, valid passport was issued in September 2020.

11. However, the fact that passport restrictions have been lifted in respect of the applicants does not mean that the problem has been completely eliminated, taking into account what is set out below in the General Measures Section.

IV. General Measures

12. Thousands of people in Turkey have been victimised and their freedom of movement has been restricted for years in connection with the practice which is the subject of the Court's judgment of violation. Although the restrictions imposed on the applicants' freedom of movement have been lifted, thousands of people continue to be victimised in this regard, as the legal regulations enabling this restriction are still in force.

13. These practices have been the subject of many international reports. In this regard, according to the US Department of State, 2023 Country Reports on Human Rights Practices, Turkey has imposed travel restrictions on tens of thousands of citizens charged with terrorism for alleged links to the Gülen movement or the failed coup attempt, as well as on their extended family members. Some foreign nationals with dual Turkish citizenship have also been restricted from travelling abroad. Freedom of movement has also been restricted through INTERPOL. Turkey has abused its powers in relation to the INTERPOL Red Bulletin by uploading tens of thousands of requests to INTERPOL for persons identified as linked to the Gülen movement, in particular following the 2016 coup attempt. In the years immediately

following the coup attempt, many people have suffered as a result of false reports of lost or stolen passports filed by the government against suspected supporters of the Gülen movement. Reports to INTERPOL have also led to individuals being detained or prevented from travelling.¹

14. Freedom House 2024 Turkey Report stated that hundreds of thousands of people who were dismissed or suspended after the coup attempt in 2016 were unable to travel abroad due to the cancellation of their passports.²

15. The freedom of movement and residence guaranteed under Article 23 of the Turkish Constitution. According to this Article, everyone has the right to freedom of movement and residence. According to this Article of the Constitution, the freedom of movement may be restricted for the purpose of criminal investigation and prosecution and to prevent the commission of crime. A citizen's freedom to travel abroad may only be restricted by a judge's decision in connection with a criminal investigation or prosecution. In other words, the right to travel cannot be restricted without a criminal investigation or prosecution and without a judge's decision.

16. Furthermore, Article 90 of the Constitution holds that international agreements duly put into effect carry the force of law, and in the event of a conflict between international agreements on fundamental rights and domestic law, the provisions of international agreements shall prevail.

17. Apart from the Constitution, there are also some regulations in special laws regarding the freedom of movement. In this context, according to Article 22 of the Passport Law:

“Passports or travel documents shall not be issued to those who are banned from travelling abroad by the courts, or to those whose departure from the country is determined by the Ministry of Interior to be inconvenient for general security, and those who are founders or managers of or work for all kinds of education, training and health institutions, as well as foundations, associations or companies abroad, which are determined by the Ministry of Interior to be affiliated, associated or connected to terrorist organisations.

The expired passports of those who are prohibited from being issued a passport or who are prohibited from going abroad by the authorities mentioned in the first paragraph, and those whose stay abroad is determined to be detrimental to general security, shall not be renewed, and they shall be issued a travel document for their return to Türkiye.”

¹ <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/turkey/>

² <https://freedomhouse.org/country/turkey/freedom-world/2024>

18. The phrase “*those who are founders or managers of or work for all kinds of education, training and health institutions, as well as foundations, associations or companies abroad, which are determined by the Ministry of Interior to be affiliated, associated or connected to terrorist organisations*” was added to this article with Article 23 of the Decree Law No. 674 dated 15/8/2016, and this provision was later adopted and enacted with Article 23 of the Law No. 6758 dated 10/11/2016.

19. In particular, during the state of emergency declared after the attempted coup d'état of 15 July 2016, some important amendments were made to restrict the freedom of movement. Although some of these amendments have been annulled by the Constitutional Court, Article 22 of Law No. 5682, which is still in force, contains provisions that allow arbitrary restriction of the freedom of movement.

20. In this context, according to Article 22/1 of the Passport Law No. 5682 currently in force, individuals who will not be issued official travel and identity documents allowing Turkish citizens to travel abroad are divided into three categories:

- “those banned by the courts from travelling abroad”,
- “those who are determined by the Ministry of Internal Affairs that their departure from the country is inconvenient in terms of general security”,
- “*those who are founders or managers of or work for all kinds of education, training and health institutions, as well as foundations, associations or companies abroad, which are determined by the Ministry of Interior to be affiliated, associated or connected to terrorist organizations*”

21. The first of these restrictions is subject to judicial decision, while the other two are subject to the determination and discretion of the administration. In particular, Article 22/1 of Law No. 5682, which stipulates that ‘those whose departure from the country is determined by the Ministry of Interior to be inconvenient for general security’, constitutes a basis for practices that are extremely open to abuse and arbitrariness. A reason for restriction not foreseen in the Constitution has been included in the Passport Law. Although the Constitution explicitly recognises the judicial authorities as the ‘sole authority’ with regard to the restriction of the freedom of movement, the administrative decisions of the Ministry of Interior allow the restriction of the freedom of movement of individuals.

22. Article 22 of the Passport Law provides the administration with a very wide margin of appreciation and carries the danger of arbitrary abuse of this margin of appreciation by the administration. The fact that the decisions of the Ministry of Interior are subject to

administrative judicial review does not completely eliminate the problems that may arise in this respect. This is because administrative judicial authorities may examine applications on this issue years later, and often issue decisions contrary to international instruments on freedom of movement and the Constitution. Based on this provision in the passport law, even persons who are not subject to any criminal investigation or prosecution may be considered ‘inconvenienced’ by the Ministry of Interior and their freedom of movement may be arbitrarily restricted.

23. As a matter of fact, based on this justification, the Ministry of Interior can impose restrictions on the freedom of movement without any individualization, based on general and abstract evaluations, even though there is no court or judge decision, and accordingly, the passport requests of the persons concerned are rejected based on Article 22/1 of Law No. 5682.

24. In this context, immediately after the cancellation of the Additional Article 7 of the Law No. 5682 by the Constitutional Court on 03.06.2021 with the Decree No. 2019/114 E. and 2021/36 Decision No. 2019/114 and the entry into force of this cancellation decision, the Ministry of Interior, on 01.08.2022, based on Article 22/1 of the Passport Law, imposed passport restrictions on 59,627 people with a single letter consisting of one page as follows:³

25. The official letter⁴, which is available on social platforms, contains the following statements: “... as a result of the studies, it has been decided to take an administrative decision in accordance with Article 22 of the Passport Law No. 5682 with the approval of the Ministry's Authority sent in the annex regarding 59.627 persons who are considered to have problems in terms of general security.”

26. In other words, without any evaluation or personalization of the persons whose names are written on the list, the freedom of movement of these persons has been restricted disproportionately on the grounds that they are ‘found to be problematic in terms of general security’ with the approval of the ‘Ministerial Authority’ with general and abstract expressions. With this practice, the above-mentioned cancellation decisions of the Constitutional Court have been rendered de facto null and void by the Ministry of Interior on the basis of Article 22/1 of the Law No. 5682. Article 22/1 of Law No. 5682 still does not contain precise criteria permitting the restriction of freedom of movement, it gives unlimited discretionary power to the Ministry of Interior, which is responsible for the implementation of this law, it is still in force and has not been annulled by the Constitutional Court. In this sense, there is a risk that passport restrictions could be imposed on everyone living in Turkey,

³ İçisleri Bakanlığının 01.08.2022 tarihli ve 1906 sayılı yazısı

⁴ The official letter is available in Annex 1.

including the applicants, based solely on the administrative assessment of the Ministry of Interior. In other words, although the individual measures taken in relation to the applicants appear to have lifted the restriction, there is a danger that the Ministry of Interior's re-evaluation could arbitrarily restrict the applicants' right to travel again, without the need for a judicial process.

27. It is also not possible to claim that there are effective remedies under Turkish law for the lifting of restrictions on the right to travel. This is directly related to the principle of proportionality in restrictions on the right to travel. A review of the legislation in force in Turkey on the right to freedom of movement, in particular Article 22 of the Passport Law, and the practices of the Ministry of Interior in relation to the exercise of this right, clearly contradicts the Court's judgment in *Telek and Others* and shows that the restrictions imposed on this right are manifestly disproportionate.

V. Conclusion and Recommendations to the Committee of Ministers

28. Although, following the Court's judgment in *Telek and Others v. Turkey*, the Government indicated in the action plan submitted that it would inform the Committee of Ministers of the changes to be made in domestic law to prevent similar violations and of the developments in practice, it appears that the Turkish Government has no concrete will to prevent similar violations in this regard, taking into account the practices of the Ministry of Interior based on Article 22 of the Passport Law.

29. We will continue to keep the Committee of Ministers informed of developments regarding the implementation of the *Telek and Others* judgement.

30. For these reasons, **ASSEDEL**, kindly invites the Committee of Ministers to examine it under the enhanced procedure and under debated meetings and to keep the follow-up of this case on the agenda of each human rights meeting.

Annex 1

İÇİŞLERİ BAKANLIĞI
Emniyet Genel Müdürlüğü

Sayı : Z-45599763-87035-(41196)- 549 - 84718 - 1906
Konu : Pasaport İdari Karar İşlemleri

01.08.2022


NÜFUS VE VATANDAŞLIK İŞLERİ GENEL MÜDÜRLÜĞÜNE

İlgi : a) 27.07.2022 tarihli ve E-77987029-146.99-292347-4448-(6-60) sayılı yazınız.
b) 31.07.2022 tarihli ve 548 sayılı Bakanlık Oluru

İlgi (a) yazınız ile Genel Müdürlüğümüz Bilgi Teknolojileri ve Haberleşme Daire Başkanlığına gönderilen ve haklarında pasaport idari karar kaydı olan 299.869 kişilik liste, Genel Müdürlüğümüz Terörle Mücadele Daire Başkanlığı ve Kaçakçılık ve Organize Suçlarla Mücadele Daire Başkanlığı ile müştereken incelenmiştir.

İlgi (a) yazınız ekinde adı geçen şahıslarla ilgili yapılan çalışmalar neticesinde genel güvenlik bakımından mahzurlu bulunduğu değerlendirilen 59.627 şahısla ilgili ekte gönderilen Bakanlık Makamının oluru ile haklarında 5682 sayılı Pasaport Kanununun 22'nci maddesi uyarınca idari karar işlemi tesis edilmesine karar verilmiştir.

Gereğini arz ederim.


Mehmet AKTAŞ
Vali
Emniyet Genel Müdürü

Ek:
1- Bakanlık Onayı (2 Sayfa)
2- Liste (59.627) (1 Adet CD)

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