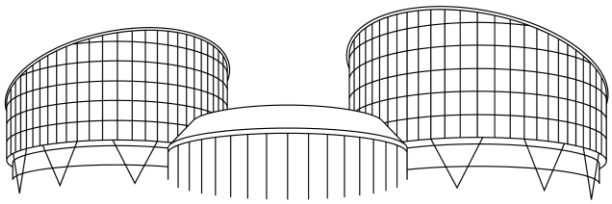

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF COX v. TURKEY

(Application no. 2933/03)

JUDGMENT

STRASBOURG

20 May 2010

FINAL

20/08/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Cox v. Turkey**,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
András Sajó,
Nona Tsotsoria,
Işıl Karakaş, *judges*,
and Sally Dollé, *Section Registrar*,

Having deliberated in private on 29 April 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 2933/03) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a national of the United States of America, Ms Norma Jeanne Cox ("the applicant"), on 28 August 2002.

2. The applicant was represented by Mr Selim Baktıaya, a lawyer practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant alleged, in particular, that she had been deported from Turkey and a ban had been imposed on her re-entry on account of opinions she had expressed.

4. On 8 February 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1944 and lives in Philadelphia, the United States.

6. The applicant lived and studied in Turkey at various times from 1972 onwards. In 1983 she received a postgraduate degree from Boğaziçi

University in Istanbul. Between 1983 and 1984 she worked as a lecturer at Istanbul University. In 1984 she started working as a lecturer at the Middle East Technical University (*Ortadoğu Teknik Üniversitesi*) in the city of Gaziantep in southern Turkey.

7. On 23 September 1985 the deputy governor of Gaziantep sent a letter to the Ministry of the Interior, recommending that the applicant be expelled from Turkey on account of her "harmful activities". According to the deputy governor, the applicant had said to her students and colleagues at the university that the Turks had expelled the Armenians and had massacred them. Moreover, the Turks had assimilated the Kurds and exploited their culture. In January 1986 the applicant's contract of employment was terminated by the university. On 4 April 1986 the National Intelligence Service also recommended that the applicant be expelled from Turkey. On 12 August 1986 the Ministry of the Interior ordered that the applicant be expelled and a ban imposed on her return. The applicant left Turkey in 1986.

8. At some stage the applicant returned to Turkey, where she was arrested in 1989 while distributing leaflets protesting against the film *The Last Temptation of Christ*. The applicant was subsequently expelled from Turkey.

9. At the time, and following the applicant's expulsion from Turkey, the Ministry of the Interior allegedly compiled classified reports about the applicant containing phrases such as "[the applicant, who] works as a missionary in our country" and "[the applicant, who] was put under surveillance following her attendance at a service in a Protestant church in Turkey". The applicant did not submit a copy of these reports to the Court.

10. At some stage in 1996 the applicant entered Turkey again. On 31 August 1996, while she was leaving Turkey, an entry was made in her passport by the authorities, stating that she was banned from entering Turkey. She was urged by the authorities not to return.

11. On 14 October 1996 the applicant, with the assistance of her lawyer in Turkey, brought proceedings against the Ministry of the Interior before the Ankara Administrative Court and asked for the ban to be lifted. She argued that the decision to ban her from entering Turkey had been taken on the basis of a decision adopted by the Ministry of the Interior on 12 August 1986. She maintained that the reason for the decision had been her religion. This, she argued, had been in breach of domestic legislation, the Constitution and international conventions, including Article 9 of the European Convention on Human Rights.

12. The Ministry of the Interior submitted written observations to the Ankara Administrative Court on 25 December 1996, stating that, while she was teaching at the university in Gaziantep, the applicant had had discussions with her students and colleagues about Turks assimilating Kurds and Armenians, and Turks forcing Armenians out of the country and

committing genocide. On account of her separatist activities against the national security of Turkey, her name had been included in the Ministry's list of persons whose entry into Turkey was prohibited. Her contract of employment had subsequently been annulled and she had been expelled on the advice of the National Intelligence Service and in accordance with section 19 of the Foreigners in Turkey (Visits and Travels) Act (no. 5683). She had also been banned from re-entering Turkey, pursuant to section 8(4) and (5) of the Passport Act (no. 5682).

13. The Ministry maintained that the applicant had been expelled and banned from entering Turkey on account of her separatist activities, which were incompatible with national security, and not because of her religious opinions or for disseminating Christian propaganda.

14. The applicant submitted her written observations in response to those of the Ministry of the Interior, arguing that the Ministry's allegations against her had not been proven. Even assuming that she had said those things at the university, she had remained within the permissible limits of criticism. Furthermore, she had never been prosecuted for having expressed those opinions. The action taken against her by the Ministry had therefore been devoid of any legal basis.

15. On 17 October 1997 the Ankara Administrative Court rejected the applicant's claim. It considered that the opinions expressed by the applicant at the university in Gaziantep had been on issues followed closely by society because those issues concerned terrorism, from which the country had been suffering. Such opinions were, without any doubt, incompatible with national security and also with political imperatives. The Ministry's decision had been in accordance with the applicable legislation and the situation complained of by the applicant did not fall within the ambit of any of her fundamental rights and freedoms.

16. The applicant appealed. She referred to the above-mentioned reports allegedly detailing her religious activities, and maintained that she had been subjected to unjust treatment because of her religion.

17. The appeal was dismissed by the Supreme Administrative Court on 20 January 2000.

18. The applicant requested a rectification of the decision of 17 October 1997. She argued, *inter alia*, that the entire case had revolved around her having expressed opinions on certain subjects. The Ministry's action and the courts' decisions had restricted her freedom of expression. She added that she still believed that it was possible to rectify this at the national level before she applied to international courts.

19. Her request for rectification was rejected by the Supreme Administrative Court in a decision of 26 December 2001, which was communicated to the applicant on 5 March 2002.

II. RELEVANT DOMESTIC LAW

20. By section 19 of the Foreigners in Turkey (Visits and Travels) Act (no. 5683), aliens whose presence in Turkey is deemed by the Ministry of the Interior to be contrary to national security and to political and administrative imperatives are required to leave the country within a given period. If they fail to leave the country at the end of that period, they may be deported.

21. By section 8(4) and (5) of the Passport Act (Law no. 5682), persons who have been deported from Turkey and who are refused permission to return, as well as persons who are deemed to have entered the country with the aim of harming, or of assisting those whose aim is to harm the public order and the security of the Turkish Republic, will not be allowed to enter the country.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 9 AND 10 OF THE CONVENTION

22. The applicant alleged that she had been subjected to unjustified treatment on account of her religion, in violation of Article 9 of the Convention. In support of her allegation she submitted that she had been expelled from Turkey after having protested against the film *The Last Temptation of Christ* and after her protests had been given media coverage. Under the same Article, she further alleged that expressing opinions on Kurdish and Armenian issues at a university, where freedom of expression should be unlimited, could not be used as a justification for any sanctions, such as the ban on her re-entry into Turkey.

23. Having regard to the applicant's failure to substantiate her allegations under Article 9 of the Convention by failing to submit to the Court a copy of the reports mentioned by her in her application form (see paragraph 9 above), and having further regard to the reasons for the re-entry ban imposed upon her which she challenged before the national courts, the Court considers it appropriate to examine these complaints solely from the standpoint of Article 10 of the Convention, which insofar as relevant reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, [or] for the prevention of disorder or crime, ...”

24. The Government contested the applicant's arguments.

A. Admissibility

25. The Court considers that it may only examine the applicant's case insofar as it is related to events and procedures from 1996 onwards (see paragraphs 10-19 above). It is prevented from considering earlier incidents, except as background information, by virtue of the operation of the six-month rule laid down in Article 35 § 1 of the Convention.

26. However, the Court finds that the applicant's Article 10 complaint concerning post 1996 events is not manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *Existence of an interference with the applicant's right to freedom of expression*

27. The Court observes that the applicant did not complain that she was not allowed to stay or live in Turkey but rather that her previously expressed opinions had prompted the Turkish authorities to impose a permanent ban on her re-entry. The Court reiterates in this connection that, whereas the right of a foreigner to enter or remain in a country is not as such guaranteed by the Convention, immigration controls must be exercised consistently with Convention obligations (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, §§ 59-60, Series A no. 94). Thus, in the context of freedom of religion, in its judgment in the case of *Perry v. Latvia*, the Court held that the refusal to issue an Evangelical pastor with a permanent residence permit “for religious activities”, a decision which had been grounded on national-security considerations, amounted to an interference with that applicant's right to freedom of religion (no. 30273/03, §§ 10 and 56, 8 November 2007).

28. In its decision in the case of *Omkarananda and the Divine Light Zentrum v. Switzerland*, the Commission found in the context of deportation that “deportation does not ... as such constitute an interference with the rights guaranteed by Article 9, unless it can be established that the measure was designed to repress the exercise of such rights and stifle the spreading of the religion or philosophy of the followers” (no. 8118/77, Commission

decision of 19 March 1981, Decisions and Reports (DR) 25, p. 118). Similarly, in *Nolan and K. v. Russia* the Court examined a denial of re-entry in conjunction with the grounds of expulsion in the context of freedom of religion (no. 2512/04, §§ 58-79, 12 February 2009).

29. The considerations applicable in the context of freedom of religion are also relevant in the context of freedom of expression. For example, in the case of *Piermont v. France* the Court held that the expulsion and ban imposed on a German national's entry to French Polynesia, on account of that applicant's statements attacking French policies, amounted to an interference under Article 10 of the Convention (27 April 1995, §§ 51-53, Series A no. 314). More recently, the Court examined a ban imposed by the Portuguese authorities on a ship whose crew was about to launch a campaign in Portugal in favour of the decriminalisation of abortion. The ban which effectively prevented the ship from entering Portuguese territorial waters was held by the Court to amount to an interference with the applicants' right to freedom of expression (see *Women On Waves and Others v. Portugal*, no. 31276/05, § 30, ECHR 2009-... (extracts)).

30. In the present case the applicant was banned from re-entering Turkey on account of the contents of her previous conversations with students and colleagues. Despite the deportation order issued in 1986, she was able to re-enter Turkey several times after that. However, when she became aware of the existence of the ban, which had been stamped in her passport when leaving Turkey on 31 August 1996, she applied for its revocation. Her request was denied by the administrative courts and the ban is still valid. She has been unable to return to Turkey since then.

31. The Court considers that the ban on the applicant's re-entry is materially related to her right to freedom of expression because it disregards the fact that Article 10 rights are enshrined “regardless of frontiers” and that no distinction can be drawn between the protected freedom of expression of nationals and that of foreigners. This principle implies that the Contracting States may only restrict information received from abroad within the confines of the justifications set out in Article 10 § 2 (*Autronic AG v. Switzerland*, 22 May 1990, §§ 50 and 52, Series A no. 178). The scope of Article 10 of the Convention includes the right to impart information. The applicant is precluded from re-entering on grounds of her past opinions and, as a result, is no longer able to impart information and ideas within that country. In light of the foregoing, the Court concludes that there has been an interference with the applicant's rights guaranteed by Article 10 of the Convention. The Court will thus proceed to examine whether that interference was justified under the second paragraph of that provision.

2. "Prescribed by law"

32. The Government submitted that the applicant had been denied re-entry into Turkey pursuant to section 8(4) and (5) of the Passport Act (Law no. 5682).

33. The Court observes that the applicant was indeed banned from re-entry on the basis of this legislation (see paragraphs 12 and 21 above). In this connection, the Court reiterates that a norm cannot be regarded as a "law" within the meaning of Article 10 § 2 unless it is formulated with sufficient precision to enable the citizen to regulate his or her conduct; the individual must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, *inter alia*, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 41, ECHR 2007-XI). Nevertheless, having regard to its conclusion below (see paragraph 45), the Court does not deem it necessary to ascertain whether this legislation had the quality of "law" within the meaning of this provision.

3. "Legitimate aim"

34. The Government submitted that the interference had been necessary in the interests of national security, territorial integrity, public safety and the prevention of disorder or crime.

35. The Court is prepared to accept that the interference pursued one or more of the legitimate aims cited by the Government.

4. "Necessary in a democratic society"

36. The applicant submitted that freedom to express opinions at a university should be unlimited, and argued that sanctioning her for having discussions on minority related issues had been in breach of the Convention.

37. The Government were of the view that, in placing a ban on the applicant's re-entry, the national authorities had remained within their margin of appreciation. The interference in question had thus been necessary in a democratic society.

38. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to "information" or "ideas" which are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society". As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly. It is also to be reiterated at this juncture that such exceptions and restrictions call for the most careful

scrutiny on the part of the Court (see, *inter alia*, *Editions Plon v. France*, no. 58148/00, § 42, ECHR 2004-IV).

39. Moreover, in order for an interference to be compatible with the Convention, the interference must not only be prescribed by law and pursue one or more of the legitimate aims set out in the second paragraph of Article 10 of the Convention, but it must also be "necessary in a democratic society" to achieve that aim or aims. In this connection the Court has consistently held that Contracting States enjoy a certain margin of appreciation in assessing the need for interference, but this margin goes hand in hand with European supervision, whose extent will vary according to the case. Where, as in the instant case, there has been an interference with the exercise of the rights and freedoms guaranteed in paragraph 1 of Article 10, the supervision must be strict, because of the importance of the rights in question; the importance of these rights has been stressed by the Court many times. The necessity for restricting them must be convincingly established (see *Autronic AG*, cited above, § 61, and the case cited therein).

40. In exercising its supervisory function, the Court has to look at the interference complained of in the light of the case as a whole. In particular, it must determine whether the reasons adduced by the national authorities to justify the interference were relevant and sufficient and whether the measure taken was proportionate to the legitimate aims pursued. In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 of the Convention (*Feldek v. Slovakia*, no. 29032/95, § 73, ECHR 2001-VIII).

41. As noted above, a ban was imposed on the applicant's re-entry into Turkey for having previously expressed controversial opinions concerning, *inter alia*, Kurdish and Armenian issues. The Court observes that there was never any suggestion that she had committed any offence by voicing such opinions and, indeed, no criminal prosecution was ever brought against her.

42. The opinions expressed by the applicant related to topics which continue to be the subject of heated debate, not only within Turkey but also in the international arena, with all those involved voicing their views and counter-views. The Court is aware that the opinions expressed on these issues by one side may sometime offend the other side but, as pointed out above, a democratic society requires tolerance and broadmindedness in the face of controversial expressions.

43. When the interference with a right under the Convention takes the form of a denial of re-entry to a country, the Court is empowered to examine the grounds for that ban (cf. *mutatis mutandis, Nolan and K.*, cited above, §§ 62-63). In the present case the Court is unable to glean from the reasoning of the Ankara Administrative Court (see paragraph 15 above) how and why exactly the applicant's views were deemed harmful to the national security of Turkey. Moreover, given that the sole reason for her

inability to return to Turkey was based on her previously expressed opinions, the Court is unable to agree with the Ankara Administrative Court that "the situation complained of by the applicant did not fall within the ambit of any of her fundamental rights and freedoms". As the Court has already found, the purported national security grounds for the denial of the applicant's re-entry indeed concerned the applicant's freedom of expression.

44. In light of the foregoing, the Court concludes that the reasons adduced by the domestic courts cannot be regarded as a sufficient and relevant justification for the interference with the applicant's right to freedom of expression. Having regard to the fact that the applicant has not been shown to have been engaged in any activities which could clearly be seen as harmful to the State, the Court considers it established that the ban on the applicant's re-entry into Turkey was designed to repress the exercise of her freedom of expression and stifle the spreading of ideas (see, *mutatis mutandis*, *Nolan and K.*, cited above, § 66; and *Omkarananda and the Divine Light Zentrum*, cited above).

45. It thus follows that the interference complained of was not "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention.

There has therefore been a violation of Article 10 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

46. The applicant also complained that the proceedings had not been completed within a reasonable time, contrary to the requirement of Article 6 of the Convention. Relying on Article 7 of the Convention, she complained that she had been expelled and banned from re-entering Turkey on account of her religious activities. Relying on Article 14 of the Convention, the applicant further alleged that she had been discriminated against because, although persons who disseminated Islamic propaganda were not subjected to any sanctions in Turkey but were supported by the State, those who disseminated Christian propaganda were subjected to physical sanctions.

47. She further alleged that the Supreme Administrative Court had interpreted the domestic legislation to mean that expressing opinions which were incompatible with the prevailing political ideas was against national security. Such a restriction on freedom of expression was not compatible with Article 17 of the Convention. Finally, the applicant argued that her expulsion from Turkey had been in violation of Article 1 of Protocol No. 7 to the Convention.

48. The Court has examined these complaints. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as

being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

50. The applicant submitted that, as a result of her deportation, she had had to leave Turkey and had lost her job and income. She claimed 100,000 euros (EUR) in respect of pecuniary damage on that account. She also claimed EUR 100,000 in respect of non-pecuniary damage.

51. The Government considered the sums claimed to be exaggerated and unsupported.

52. The Court observes that it has only examined the merits of the complaint about freedom of expression since 1996, in respect of which the facts relating to the applicant's employment, dismissal and deportation from Turkey were excluded (paragraphs 25-26 above).

53. In these circumstances, the Court does not discern any causal link between the violation found and the pecuniary damage claimed by the applicant on account of her loss of employment in Turkey; it therefore dismisses this claim. However, deciding on an equitable basis, it awards the applicant EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

54. The applicant also claimed EUR 20,000 for costs and expenses, but did not submit any bills or any other information quantifying this claim. In the absence of such information and substantiation, the Court makes no award in this respect.

C. Default interest

55. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 10 of the Convention, as of 1996, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the United States at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Registrar	Françoise Tulkens President