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ECRI REPORT ON TURKEY

(fourth monitoring cycle)

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TABLE OF CONTENTS

FOREWORD

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

The following report was drawn up by ECRI under its own and full responsibility. Except where expressly indicated, it covers the situation as of 30 April 2010 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.

SUMMARY

Since the publication of ECRI's third report on Turkey on 15 February 2005, progress has been made in a number of fields covered by that report.

Since the amendment of Article 90 of the Constitution in 2004, provisions of international agreements, including on human rights, have taken precedence over domestic laws where there is a conflict. New criminal law provisions have strengthened the protection provided against racist acts and racial discrimination, in particular the new Article 122 of the Criminal Code, which criminalises some of the most flagrant forms of racial discrimination, alongside existing provisions of civil or administrative laws that prohibit discrimination. It is no longer compulsory to indicate a person's religion on their identity card. Further efforts in the field of training have moreover been made by the authorities to ensure that Turkey's international obligations, in particular under the European Convention on Human Rights, are understood by judges and prosecutors responsible for applying them, and that the new Criminal Code is properly and uniformly applied.

The authorities are considering the possibility of setting up an Ombudsman institution, and a draft law establishing an independent national human rights institution to review individual human rights complaints and monitor human rights in the country has been drawn up. A draft law on an independent anti-discrimination and equality commission is also being drawn up as part of work on future anti-discrimination provisions.

The authorities have taken welcome steps towards addressing the tensions existing in Turkish society around the situation of the Kurds. In 2009, the government announced a new "democratic initiative" aimed at addressing unresolved issues with respect to Kurds in Turkey through peaceful methods. The authorities have since approved the opening of a university-level Living Languages Institute, at which Kurdish and other languages of minority groups can be taught. These initiatives have helped to begin building a greater willingness and openness in Turkish society to discuss issues of concern to persons belonging to minority groups. Steps have also been taken to improve dialogue with the Alevi and Roma communities. New possibilities have also been introduced for a representative of the non-Muslim minorities recognised in Turkey to participate as a member of the Foundations Council, and for some real property to be returned to non-Muslim foundations.

Steps have been taken to reduce some de facto inequalities in access to health care, including in some regions inhabited by a high proportion of persons belonging to minority groups. Persons on low incomes and without social security who are entitled to free health care are also now reimbursed for prescribed medicines. In the field of education, a catch-up programme directed at children of 10-14 years of age who have never enrolled in school or who have dropped out – mainly Roma children – has been approved.

At the start of the 2009-2010 academic year, an obligatory anti-discrimination class was taught to all pupils as their first class of the school year. Steps have been taken to facilitate the appointment of teachers in Armenian minority schools. Turkey has also carried out a review of school textbooks in order to eliminate discriminatory content, although a subsequent study has highlighted the need for further progress in this field.

Measures have also been taken to prevent misconduct by law enforcement officers, including towards members of minority groups. These include considerable efforts to provide human rights training to members of the security forces and to install audio and video recording equipment in interview rooms in police and gendarmerie stations, as well as to train medical staff, judges and prosecutors on how best to investigate and document cases of torture and ill treatment. Draft legislation has also been prepared to

establish an independent complaints commission entrusted with dealing with complaints against police officers and gendarmes.

ECRI welcomes these positive developments in Turkey. However, despite the progress achieved, some issues continue to give rise to concern.

Turkey has not yet ratified Protocol No. 12 to the European Convention on Human Rights.

There is no definition of racial discrimination in Turkish law, and comprehensive anti-discrimination legislation is not yet in place. Turkish law also does not provide that racist motivations constitute an aggravating circumstance for all ordinary criminal offences. Certain provisions of the Law on Associations and the Law on Political Parties, and the implementation of these, also continue to give rise to concerns.

There is presently no Ombudsman or equivalent institution in Turkey, nor is there an independent national body specialised in fighting racism and racial discrimination.

Certain provisions of the Criminal Code have continued to be used to punish individuals expressing peaceful views and aspirations as members of minority groups within Turkey, and even the peaceful expression of minority identities still seems to be perceived as a threat to the unity of the Turkish state. Fundamental changes in the attitudes and approach of the government on such points do not yet appear to have filtered through to all levels, as shown, for example, by the still high numbers of attempts to bring prosecutions under the amended Article 301 of the Criminal Code. The public use by officials of the Kurdish language lays them open to prosecution, and public defence by individuals of Kurdish or other minority interests also frequently leads to prosecutions under the Criminal Code. The manner in which anti-terror provisions are applied in practice may also expose some groups, in particular Kurdish minors, to a greater risk of breaches of their rights.

Significant disparities continue to exist between the legal situations of minority groups in Turkey – in particular, between citizens recognised under Turkish law as belonging to non-Muslim minorities covered by the Treaty of Lausanne (Armenians, Greeks and Jews) and other minority groups that do not benefit from the provisions of the Treaty. This may in turn lead to discrimination in the enjoyment of fundamental rights and freedoms.

The Armenian and Greek minorities report difficulties regarding minority language education due to a lack of textbooks and of teachers trained in their languages. The training of clergy also remains a major issue for the Greek Orthodox community. Gaps in the law moreover mean that a number of outstanding issues related to the property rights of non-Muslim foundations remain unresolved.

Many Kurds live concentrated in the poorest and most remote provinces of Turkey, in difficult economic and social conditions. While welcome steps have been taken to assist internally displaced persons to return – for example through the Return to Village and Rehabilitation Project (RVRP), the payment of compensation, and provincial action plans developed since November 2008 –, progress remains slow and obstacles to their return remain. In the meantime, IDPs continue to suffer from marginalisation and severe economic and social hardship. The Roma also continue to suffer discrimination in the fields of education, employment, housing, health and access to public places. They remain exposed to poor living and sanitary conditions, as well as disruption of communities and forced evictions. Alevis complain of discriminatory treatment regarding the exercise of their faith.

In the field of education, school attendance figures in parts of Turkey mostly populated by Kurds are lower than the national average, and the schooling rate for Roma children is also reportedly low. While changes have been prepared regarding compulsory

religious education in schools, the curriculum is still reported to focus essentially on instruction in the principles of the Sunni Muslim faith. The requirement that all schoolchildren in Turkey read a daily oath also remains a source of controversy.

There is no comprehensive asylum law in Turkey, although work is under way in this field. Serious failings have been identified in the legal provisions applicable in this area and in the procedures followed in asylum cases, including insufficient protection against arbitrary detention. Several thousand refugees recognised by the UNHCR remain in Turkey but holding only temporary asylum-seeker status. The requirement to pay residence fees moreover fails to take account of the particular vulnerability of these groups.

Incidents of racist violence have occurred in recent years, including a number of fatal attacks and severe assaults on individuals, apparently motivated on religious grounds. Overtly antisemitic statements appearing in ultranationalist or far right wing publications are usually made with impunity.

Deaths of members of minority groups while in police custody have occurred and allegations of ill treatment during the apprehension of suspects have increased. Concerns have also been raised about excessive use of force by the police during demonstrations in areas inhabited in high proportions by persons belonging to minority groups. At the same time, inadequacies in investigations and prosecutions in ill-treatment cases in which the alleged perpetrators were members of the security forces have been reported.

No coherent, comprehensive system of data collection is yet in place to assess the situation of the various minority groups or the scale of racism and racial discrimination in Turkey.

In this report, ECRI recommends that the Turkish authorities take further action in a number of areas.

ECRI urges Turkey to ratify Protocol No. 12 to the ECHR as soon as possible and recommends that it sign and ratify a number of international instruments related to the fight against racism and racial discrimination. It makes a series of recommendations to strengthen the constitutional, criminal, civil and administrative law provisions against racism, racial discrimination and related forms of intolerance. It strongly urges the Turkish authorities to keep under review the manner in which the existing provisions of criminal law prohibiting acts of racism and racial discrimination, as well as anti-terror provisions, are applied in practice. It also strongly encourages the authorities to pursue their efforts to train judges and prosecutors in the application of criminal law provisions against racism and racial discrimination.

ECRI recommends that the Turkish authorities reinforce the criminal law provisions aimed at combating racism along the lines advocated by General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, in particular by providing that racist motivations constitute an aggravating circumstance in respect of all ordinary offences. *

ECRI encourages the authorities in their moves towards setting up an Ombudsman institution. It strongly recommends that, within the overall structure of human rights protection mechanisms, a body specifically entrusted with combating racism and racial discrimination be either set up or clearly identified amongst existing mechanisms as quickly as possible.

* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

ECRI makes a series of recommendations aiming to strengthen teaching of and in languages other than Turkish as well as schooling provided in Turkish to children whose mother tongue is not Turkish. It emphasises the need to ensure that the convictions of members of all religious minority groups are respected in the education system. It makes a series of recommendations aiming to eliminate discrimination in other fields of daily life such as housing and health.

ECRI recommends that a series of measures be taken to improve the situation of non-Muslim ("Lausanne") minorities, notably in the fields of education and training and of access to property. It recommends that appropriate measures be taken to eliminate discrimination against Alevis, Roma, Kurds, internally displaced persons, refugees and asylum-seekers.

Bearing in mind the particular vulnerability of refugees and asylum-seekers, ECRI urges the Turkish authorities rapidly to find a solution, whether through amendments to the relevant legislation or, if these cannot be made rapidly, within its existing terms, to exempt all refugees and asylum-seekers from the payment of residence fees. In this respect ECRI recommends that the authorities keep under review the impact in practice of Circular No. 19 on Refugees and Asylum-Seekers issued by the Ministry of the Interior on 19 March 2010 in order to assess its effectiveness in resolving the issues at stake.*

ECRI urges the authorities to intensify their efforts to combat racist violence and to ensure that the police thoroughly investigate all allegations of racist violence. It recommends that the authorities strengthen their efforts to raise public awareness of the need to fight racism and intolerance, that they take all appropriate steps to combat antisemitism in Turkey, and that they strengthen their efforts to prevent misconduct directed against members of minority groups by members of the security forces.

ECRI recommends that the Turkish authorities enact and implement as soon as possible legislation establishing a body, independent of the police and other security forces and of the prosecution authorities, entrusted with the investigation of alleged cases of misconduct by the members of the police or other security forces, including ill treatment directed against members of minority groups.*

ECRI strongly encourages the authorities to pursue their efforts towards peacefully resolving questions surrounding the situation of Kurds in Turkish society. It recommends that they strengthen their efforts to ensure that school curricula and textbooks promote the fight against racism and xenophobia and the values of tolerance and non-discrimination, and that teachers are trained in relevant human rights and non-discrimination issues.

ECRI recommends that ways of measuring the situation of minority groups in different fields of life be identified, in compliance with relevant requirements on data protection and the protection of privacy, and that they be implemented with due regard for the principles of confidentiality, informed consent and voluntary self-identification.

* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. Existence and Implementation of Legal Provisions

International legal instruments

1. In its third report on Turkey, ECRI recommended that Turkey ratify Protocol No. 12 to the European Convention on Human Rights as soon as possible, that it make the declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and that it consider withdrawing its reservations in respect of Article 27 of the International Covenant on Civil and Political Rights and Article 13 of the International Covenant on Economic, Social and Cultural Rights.

2. ECRI notes that Turkey has not yet ratified Protocol No. 12 (general prohibition of discrimination) to the European Convention on Human Rights or made a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, empowering the Committee for the Elimination of Racial Discrimination to receive individual communications. ECRI welcomes the ratification by Turkey on 24 November 2006 of the Optional Protocol to the ICCPR, thus recognising the competence of the Human Rights Committee to receive and consider individual communications, but regrets its reservation expressly excluding the competence of the Committee with respect to Article 26 of the ICCPR [prohibition of discrimination] in cases concerning rights other than those guaranteed under the ICCPR. As a result, individuals within the jurisdiction of Turkey who are victims of racial discrimination do not have access to a number of the remedies that would potentially be available at international level: they may only seek redress at international level with respect to discrimination in the enjoyment of specific rights and freedoms set forth in the European Convention on Human Rights and its Protocols or in the ICCPR.

3. Turkey has not withdrawn its reservation with respect to Article 27 of the International Covenant on Civil and Political Rights (ICCPR)[1] and the latter is still, according to this reservation, to be interpreted and applied in Turkey in accordance with the relevant provisions and rules of the Constitution and the Treaty of Lausanne of 24 July 1923[2]. Similarly, Turkey has not withdrawn its reservation concerning Article 13 of the International Covenant on Economic, Social and Cultural Rights, according to which Turkey reserves the right to apply paragraphs 3 and 4 of Article 13 (respect for the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions; liberty of individuals and bodies to establish and direct educational institutions) in accordance with the provisions of Articles 3, 14 and 42 of the Turkish Constitution[3].

4. In its third report on Turkey, ECRI recommended that Turkey sign and ratify the UNESCO Convention against Discrimination in Education, the European Charter for Regional or Minority Languages, the Framework Convention for the Protection of National Minorities, the Convention on the Participation of Foreigners in Public Life at Local Level and the European Convention on Nationality. ECRI further recommended that Turkey ratify the Convention on Cybercrime and its Additional Protocol, concerning the criminalisation of acts of a racist and xenophobic nature

[1] Article 27 of the International Covenant on Civil and Political Rights provides that: "In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

[2] See further below, § 9.

[3] See further below, Constitutional provisions and other basic provisions.

committed through computer systems, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

5. ECRI welcomes the ratification by Turkey of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on 27 September 2004. It also notes with interest that Turkey ratified the European Social Charter (Revised) on 27 June 2007, and that it ratified the Convention on the Rights of Persons with Disabilities and signed the Protocol to the latter on 28 September 2009[4]. ECRI regrets, however, that as regards the Convention against Discrimination in Education, the European Charter for Regional or Minority Languages, the Framework Convention for the Protection of National Minorities, the Convention on the Participation of Foreigners in Public Life at Local Level, the European Convention on Nationality and Convention on Cybercrime and its Additional Protocol on the criminalisation of acts of a racist and xenophobic nature committed through computer networks, the situation has not changed since ECRI's third report.

6. ECRI urges Turkey to ratify Protocol No. 12 to the ECHR as soon as possible. It reiterates its recommendation that Turkey make the declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, empowering the Committee for the Elimination of Racial Discrimination to receive individual communications, and that it consider withdrawing its reservations in respect of Article 27 of the International Covenant on Civil and Political Rights and Article 13 of the International Covenant on Economic, Social and Cultural Rights.

7. ECRI again recommends that Turkey sign and ratify the UNESCO Convention against Discrimination in Education, the European Charter for Regional or Minority Languages, the Framework Convention for the Protection of National Minorities, the Convention on the Participation of Foreigners in Public Life at Local Level and the European Convention on Nationality.

8. ECRI again recommends that Turkey ratify the Convention on Cybercrime and its Additional Protocol on the criminalisation of acts of a racist and xenophobic nature committed through computer networks.

9. A key treaty that continues to have an impact on minorities in Turkey today is the 1923 Treaty of Lausanne. Part III covers the situation of non-Muslim minorities in Turkey, and grants reciprocal rights to Muslim minorities in Greece. A number of rights are expressly recognised to Turkish nationals belonging to non-Muslim minorities, such as equality before the law, non-discrimination in the exercise of civil and political rights, and the right to establish and run (at their own expense) charitable, religious and social institutions, schools and other educational establishments, with the right to use their language and to exercise their religion freely therein. Only Turkish citizens belonging to non-Muslim minorities covered by the Treaty of Lausanne as it has been interpreted under Turkish law are considered as "minorities" in Turkey. The restrictive interpretation given to the Treaty under Turkish law means that its provisions are deemed to apply only to the Armenian, Greek and Jewish communities; other minority groups such as Roma, Syriacs or Kurds do not benefit from the provisions of the Treaty. This creates significant disparities between the situations of the various minority groups in Turkey, which are examined in more depth below.[5] ECRI shares the concerns previously voiced by CERD that the application of restrictive criteria to

[4] See further below, Vulnerable Groups – Kurds – Internally displaced persons, for a context in which the Convention on the Rights of Persons with Disabilities and the Protocol thereto may be of relevance to the fight against racial discrimination in Turkey.

[5] See below, for example, the chapters on Discrimination in Various Fields and Vulnerable Groups.

determine the existence of ethnic groups, official recognition of some and refusal to recognise others, may give rise to differing treatment for various ethnic and other groups which may, in turn, lead to discrimination in the enjoyment of fundamental rights and freedoms.[6] It also notes in this context that unrecognised minority groups are not granted any specific rights to help them to preserve their ethnic, linguistic, cultural or religious identity.

Constitutional provisions and other basic provisions

10. In its third report on Turkey, ECRI encouraged the Turkish authorities to implement the new provisions of the Constitution (adopted in 2001) in full conformity with the case-law of the European Court of Human Rights and ensure that the amendments designed to broaden recognition of freedom of expression were reflected in legislation, regulations, court case-law and administrative practice. It also encouraged the Turkish authorities to take account of its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination in any process for revising the Constitution and related legislation, and emphasised that the Constitution must enshrine the principle of equal treatment, the commitment of the state to promote equality and the right of individuals to be free from discrimination on grounds such as "race", colour, language, religion, nationality or national or ethnic origin.

11. Article 10 of the Constitution provides: "All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations". Nationality and national or ethnic origin are not expressly covered by this provision.

12. Article 24 of the Constitution provides, inter alia, that: "Education and instruction in religion and ethics shall be conducted under State supervision and control. Instruction in religious culture and moral education shall be compulsory in the curricula of primary and secondary schools." The impact of this provision in practice is examined in more detail below.[7]

13. Article 42 of the Constitution provides that "[n]o language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education." The only exceptions are for members of the recognised minorities (that is, the Armenian, Greek Orthodox and Jewish minorities recognised under the Treaty of Lausanne), which are entitled to set up their own private educational institutions where their children are able to learn their mother tongue. The teaching of other languages in schools, training and education institutions is regulated by law. The impact of these provisions is dealt with further below.[8]

14. In 2004, Article 90 of the Constitution was amended. It now states that in cases where there is a difference between the provisions of international agreements in the area of fundamental rights and freedoms to which Turkey is a party and domestic laws, the provisions of international agreements shall prevail. This means, for example, that the provisions of the European Convention on Human Rights take precedence over domestic laws where there is a conflict. ECRI welcomes this step, which inter alia aims to give direct effect to the Convention in

[6] UN CERD: Consideration of Reports submitted by State Parties under Article 9 of the Convention: Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/TUR/CO/3, 4 March 2009, § 12.

[7] See below, Vulnerable/Target Groups – Alevis.

[8] See below, Discrimination in Various Fields – Education.

Turkish law, and underlines the importance of ensuring that judges are fully equipped to play the role ascribed to them in this context.[9]

15. ECRI notes with interest the efforts already made by the authorities in order to strengthen the constitutional protection of fundamental rights and freedoms in Turkey, in line with standards guaranteed under the European Convention on Human Rights. It also notes that further amendments to the Constitution may be being considered and stresses that this opportunity should be used to ensure that it is clear that the Turkish Constitution does not prevent the recognition or expression of ethnic diversity in Turkey.

16. ECRI strongly encourages the Turkish authorities to take account of its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination in any process for revising the Constitution and related legislation. It emphasises that the Constitution must enshrine the principle of equal treatment, the commitment of the state to promote equality and the right of individuals to be free from discrimination not only on grounds such as "race", colour and religion, but also on grounds such as language, nationality or national or ethnic origin.

Criminal law provisions against racism and racial discrimination

17. In its third report on Turkey, ECRI urged the Turkish authorities to continue their efforts to ensure that Article 312 of the Criminal Code, prohibiting incitement to hatred, was applied for the purpose of punishing racist statements in compliance with the letter and spirit of this provision. It encouraged the authorities to continue to organise training for public prosecutors, judges and lawyers to enable them to identify the situations in which Article 312 applied, bearing in mind the case-law of the European Court of Human Rights on freedom of expression. ECRI also encouraged the authorities to strengthen the criminal law provisions aimed at combating racism, notably by providing for racist motivations to constitute an aggravating circumstance in respect of all ordinary offences.

- *Contents of the criminal law prohibiting acts of racism and racial discrimination*[10]

18. On 1 June 2005 a new Criminal Code came into force in Turkey. It contains a number of provisions criminalising racist or racially discriminatory acts. Articles 76 and 77 of the new Criminal Code prohibit genocide and crimes against humanity respectively; Article 122 makes it a criminal offence, punishable by imprisonment for a term of six months to one year or a judicial fine, to discriminate against a person on the grounds of language, race, colour, gender, disability, political opinion, philosophical belief, religion, sect or similar reasons where the offender, on these grounds, prevents the sale or transfer of movable or immovable property or the execution of a service or prevents others from benefiting from a service, or employs or does not employ a person; does not provide food or refuses to provide a service meant to be provided for the public; or prevents a person from undertaking a regular economic activity. Under Article 135, any person who unlawfully records personal data is liable to imprisonment for six months to three years; any person who records personal information relating to the political, philosophical or religious opinion of individuals, or to their racial origins, ethical tendencies, sex lives, health conditions or connections to trade unions, is also liable to be sentenced in accordance with the above provision.

[9] See below, Criminal law provisions relevant to the fight against racism and racial discrimination, on questions related to freedom of expression.

[10] As in the text of ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination," "racism" shall mean the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons." See Paragraph 1 a) of the Recommendation.

Article 3(2) of the new Code prohibits discrimination in the application of the Criminal Code itself, on a number of grounds including race, language, religion, sect, nationality, colour and national background.

19. Article 216(1) of the new Criminal Code, which has replaced the former Article 312, makes it a criminal offence, punishable by imprisonment for a term of one to three years, openly to incite groups of the population to breed enmity or hatred towards one another based on social class, race, religion, sect or regional difference in a manner which might constitute a clear and imminent danger to public security. Under Article 216(2), public denigration of part of the population on any of the above grounds or on the basis of gender is an offence subject to six months' to one year's imprisonment. Public denigration of the religious values of a part of the population, where the act committed is likely to disturb the public peace, is also subject to imprisonment for a term of six months to one year, in accordance with Article 216(3).

20. Article 301(1) of the new Criminal Code, as enacted in 2005, provided that "Whoever overtly insults Turkishness, the Republic or the Turkish Grand National Assembly shall be punishable by a term of imprisonment from six months to three years". This provision was heavily criticised, notably for its impact on the freedom of expression of persons belonging to minority groups, and was amended on 30 April 2008 following findings of violations of Article 10 of the European Court of Human Rights. It now provides that "Whoever overtly insults the Turkish nation, the State of the Turkish Republic, the Turkish Grand National Assembly, the Government of the Republic of Turkey or the judiciary organs of the State shall be punishable by a term of imprisonment from six months to two years."[11] Under Article 301(4), as amended on 30 April 2008, the prosecution of offences under Article 301 is now subject to prior authorisation by the Minister of Justice. As with other provisions amended in the new Criminal Code, it has been noted that although the wording of the new provision is slightly different, the substance appears to be the same as that of the previous provisions.[12] Civil society actors have also pointed out that the existence of Article 301 alongside Article 216 appears to create a hierarchy of norms, in which, moreover, the public denigration of a part of the population because of characteristics such as "race" or religious values is subject to lower maximum penalties than insulting the State.

21. ECRI welcomes the new provisions of the Criminal Code that strengthen the protection provided by the criminal law against racist acts and racial discrimination, and in particular welcomes Article 122, which criminalises some of the most flagrant forms of racial discrimination. It notes, however, that Turkish law does not provide that racist motivations constitute an aggravating circumstance for all ordinary criminal offences. It also observes that the exhaustive lists of grounds set out in Article 216 do not expressly prohibit incitement to hatred against or the public denigration of a part of the population on the basis of ethnic origin or language; it draws the authorities' attention to the fact that in ECRI's view, these criteria fall within the grounds on which the law should protect persons or groupings of persons against incitement, insults, defamation and threats.[13] It also notes that an offence will constitute incitement under Article 216(1) only if it involves a "clear and imminent danger" to the public order. It hopes that offences falling short of this high threshold will be covered by paragraphs 2 or 3 of Article 216, although it notes that the sentences that may be

[11] The English translation of this provision is as given in Council of Europe Ministers' Deputies Information Document, CM/Inf/DH(2008)26 of 23 May 2008, Freedom of expression in Turkey: Progress achieved – Outstanding Issues

[12] CM/Inf/DH(2008)26 p5. European Commission, Turkey 2008 Progress Report, 05.11.2008, Chapter 2.2, p15.

[13] See ECRI's General Policy Recommendation No. 7, paragraph 18 a)-c).

imposed in such cases are considerably lower. The application of these and a number of other provisions of the Criminal Code which do not expressly refer to racist acts or racial discrimination, such as its Article 301, is examined further below.[14]

22. ECRI recommends that the Turkish authorities strengthen the criminal law provisions aimed at combating racism by providing that racist motivations constitute an aggravating circumstance in respect of all ordinary offences, in line with ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

23. ECRI recommends that the terms of Article 216 of the Criminal Code be expanded to include incitement or denigration on the grounds of ethnic origin or language. It recommends that the terms of this provision be kept under review, in particular the impact of the requirement that a "clear and imminent danger" be posed to the public order in order for an offence to constitute incitement.

- *Application of the criminal law provisions prohibiting acts of racism and racial discrimination*

24. Little statistical information is available as yet concerning the application in practice of the new provisions of the Criminal Code. The authorities have indicated that to date, only two cases have been brought on the basis of Article 122 of the Criminal Code – one in 2006 and one in 2007 – but that the proceedings have not yet been concluded. There is therefore not yet any case-law on this provision.

25. ECRI remains concerned about the application in practice of Article 216 of the Criminal Code (the slightly modified successor to the former Article 312), has continued to be used to prosecute and convict journalists, writers, publishers, members of human rights NGOs and other personalities advocating rights guaranteed under the International Convention on the Elimination of All Forms of Racial Discrimination or expressing non-violent opinions with respect to issues concerning minority groups, and especially Kurdish issues. Civil society actors stress that Article 216 is rarely, if ever, used to prosecute persons making racist statements against members of minority groups; at present, the prevailing approach in the application of the criminal law appears to target members of minority groups whose expression of their specific identity is perceived as a threat to the unity of the Turkish state, rather than to protect the peaceful expression of all views, including minority views, that do not incite hatred against or denigrate other individuals or groups. Other provisions of the Criminal Code, as well as the press law and anti-terror provisions, have also been used to bring similar proceedings. As regards Article 301 of the Criminal Code, following the amendment of the provision in May 2008 the Ministry of Justice reportedly reviewed 914 cases that were already pending and granted permission to continue the proceedings in a total of 77 cases; of a further 210 investigations initiated after the entry into force of Article 301, permission to proceed was granted in eight cases.[15]

26. While ECRI is doubtful as to the long-term advisability of maintaining a mechanism in which the executive plays a decisive role in determining which cases are prosecuted before the criminal courts, it welcomes the indication that in practice, since the revision of Article 301 of the new Criminal Code, the Ministry of Justice has put a halt to a considerable number of criminal proceedings brought or sought to be brought under this provision, and hopes that these

[14] See Application of the criminal law provisions prohibiting acts of racism and racial discrimination.

[15] European Commission, Turkey 2009 Progress Report, 14.10.2009, Chapter 2.2, p 17.

refusals will also ultimately lead to a diminution in the number of charges laid – to the extent that the authorities may be able to conclude that there is no ongoing need for this provision. The mere fact that high numbers of attempts continue to be made to bring prosecutions under this provision may inhibit free expression around subjects such as minority identities, in which free discussion is vital to building mutual understanding and tolerance. ECRI is moreover concerned that the overall effect of the manner in which a number of provisions of the Criminal Code are applied continues to be damaging to the very individuals they ought to protect, and that some provisions of the Code continue to be used to punish individuals expressing peaceful views and legitimate aspirations as members of minority groups within Turkey. ECRI stresses in this context the importance of continuing to train judges and prosecutors to ensure that international standards are correctly applied.[16]

27. ECRI strongly urges the Turkish authorities to keep under review the manner in which the existing provisions of criminal law prohibiting acts of racism and racial discrimination are applied in practice. In so doing, it should be borne in mind in particular that the prohibition on incitement to hatred and similar offences should be applied in compliance with the letter and spirit of the relevant provisions. This prohibition should not serve as a pretext for punishing individuals who peacefully express minority views; rather, it should enable the diverse range of opinions existing within society to be openly expressed and freely debated in a manner that does not endanger other individuals or groups.

28. ECRI refers to its recommendations made below with respect to training of judges and prosecutors and strongly encourages the authorities to pursue their efforts in this field, in particular as regards the application of criminal law provisions against racism and racial discrimination in conformity with international standards.

- *Contents and application of criminal law provisions prohibiting terrorist acts, as relevant to the fight against racism and racial discrimination*

29. Anti-terror legislation in force in Turkey prior to 2006 had been criticised as including a broad and unclear definition of terrorism, which left considerable leeway for ordinary criminal offences to be charged as terrorist acts subject to much heavier penalties, and which did not provide persons in police custody with sufficient safeguards against ill treatment. On the latter issue, ECRI welcomes the fact that in 2005 an amended Code of Criminal Procedure came into force, which strengthened the procedural safeguards in place for persons in police custody. ECRI understands, however, that as regards the charging of offences, persons considered to have acted on behalf of a terrorist organisation may be prosecuted as members of that organisation, whether or not they are indeed members; this provision is reported to have been interpreted in such a way that participants in demonstrations organised by a terrorist organisation may be charged with terrorist offences by virtue simply of that participation.

30. Since ECRI's third report, amendments introduced under anti-terror legislation to Articles 220 and 314 of the Criminal Code have also introduced a possibility of prosecuting minors aged fifteen to eighteen years as adults. Thus, while a number of provisions of the Criminal Procedure Code, of Law No. 5395 on Juvenile Protection and of the Regulation on Apprehension, Detention and the Taking of Statements set out guarantees regarding the treatment of minors, exceptions were introduced in 2006 to the Anti-Terror Law, No. 3713, regarding the sentencing of minors accused of breaching anti-terror provisions and

[16] See further below, Training of judges and prosecutors relevant to the fight against racism and racial discrimination.

regarding the courts competent to try them in such cases. ECRI is deeply concerned that the number of children against whom proceedings have been brought on the basis of anti-terror provisions has increased considerably since they were amended in 2006. Hundreds of children are reported to be detained on the basis of these provisions, frequently having had no access to a lawyer at the beginning of their detention (although this would be in breach of the provisions mentioned above) and thus having been exposed to a greater risk of ill-treatment at the hands of the police. These reports particularly concern Kurdish minors arrested for having participated in pro-Kurdish demonstrations in south-eastern Turkey, who are then charged with making propaganda for terrorist organisations, and treated as adults.

31. ECRI is concerned at reports that anti-terror provisions, with the heavier penalties they may imply, may be being used to prosecute ordinary offences, and that this practice may in particular be impacting on Kurds. ECRI is also concerned that the detention of minors without access from the outset to a lawyer may be in conflict with international human rights standards;[17] moreover, even though the relevant legislation appears neutral on its face, the manner in which the anti-terror provisions now in force are applied may in practice expose some groups, and in particular Kurdish minors, to a greater risk of breaches of their rights. ECRI recognises that it is the duty of states to fight against terrorism but stresses that the fight against terrorism should not become a means by which racial discrimination, whether direct or indirect, is allowed to prosper. It notes with interest reports that in March 2010, the government introduced a Bill in Parliament that would inter alia reduce penalties for children under 18 accused of terror-related offences and ensure that all minors accused of having committed such offences are tried in juvenile courts.[18]

32. ECRI strongly recommends that the Turkish authorities take all necessary steps to ensure that anti-terrorism legislation is fully in conformity with international human rights standards and is applied in a manner that does not discriminate in practice against persons or groups of persons, notably on grounds of actual or supposed race, colour, language, religion, nationality or national or ethnic origin. It draws the authorities' attention to its General Policy Recommendation No. 8 on combating racism while fighting terrorism, which recommends that states review legislation and regulations adopted in connection with the fight against terrorism to ensure that these do not discriminate directly or indirectly against persons or groups of persons, notably on grounds of "race", colour, language, religion, nationality or national or ethnic origin, and that they abrogate any such discriminatory legislation.

Civil law provisions to combat racial discrimination

33. In its third report on Turkey, ECRI recommended that the Turkish authorities continue to strengthen civil and administrative law to combat racial discrimination. ECRI emphasised in particular that the prohibition of direct and indirect racial discrimination must apply to all public authorities and to all individuals and corporations, whether in the public or private sector, in all areas of daily life.

[17] See in particular CPT standards, VI – Juveniles deprived of their liberty, § 23; Council of Europe Committee of Ministers Recommendation Rec(2003)20, § 15.

[18] The authorities have indicated that a package of measures was adopted on 22 July 2010 (after the reference period for the present report) repealing exceptions regarding sentences in the Anti-Terror Law No. 3713 imposed on children and also regarding the courts competent to try these children; reducing the time period for conditional release from prison of children convicted under anti-terror provisions; reducing the penalties in Article 32 and 33 of Law No. 2911 on Meetings and Demonstration Marches; and ensuring that children will not be sentenced for being members of an illegal organisation in addition to being sentenced for the crime of resisting police officers to prevent them from carrying out their duties or for propaganda crimes committed during meetings and demonstrations.

34. As mentioned above,[19] the new Criminal Code now makes some of the most flagrant forms of racial discrimination, such as refusing to employ a person, or refusing to sell immovable property or movables to a person, on the grounds for example of their skin colour, a criminal offence. Various other laws, such as the Labour Law[20] and the Law on Television and Radio Broadcasting, also contain specific provisions prohibiting discrimination. ECRI welcomes these provisions, which constitute an important tool in the fight against discrimination. However, it notes that there is no definition of racial discrimination in Turkish law and that comprehensive anti-discrimination legislation is not yet in place. While the criminal law described above provides for strongly dissuasive sanctions to be imposed in certain specific cases, convictions may be hard to obtain.

35. ECRI draws the Turkish authorities' attention to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, which contains detailed recommendations on the provisions which ECRI considers should feature in a body of civil and administrative law against racial discrimination. As ECRI pointed out in this recommendation, such legislation should apply not only to direct, but also to indirect discrimination. The recommendation also sets out a range of measures that can facilitate implementation of legislation in this area, including sharing the burden of proof. ECRI draws the authorities' attention to the important role that appropriate legal measures can play both in combating specific cases of racial discrimination effectively and in acting more generally as a deterrent; it furthermore stresses that legislating comprehensively against racism and racial discrimination also plays an educational role within society, transmitting the message that no acts of racism or racial discrimination will be tolerated in a society ruled by law.

36. ECRI again recommends that the Turkish authorities continue to strengthen the civil and administrative law to combat racial discrimination, in particular through the enactment of comprehensive anti-discrimination legislation. In this connection, they should take into account ECRI's General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination.

37. ECRI again emphasises that the prohibition of direct and indirect racial discrimination must apply to all public authorities and to all individuals and corporations, whether in the public or private sector, in all areas including: employment; membership of professional organisations; education; training; housing; health; social protection; goods and services intended for the public and public places; exercise of economic activity; and public services.

Other legal provisions relevant to combating racism and racial discrimination

38. In its third report on Turkey, ECRI recommended that the Turkish authorities pursue their efforts to grant greater freedom to associations. It recommended that they revise the wording of Article 5 of the Law on Associations (Law No. 5253 of 2004) – which prohibits associations whose purpose is to "create forms of discrimination on the grounds of race, religion, sect or region or create minorities on these grounds, and destroy the unitary structure of the Republic of Turkey" – so as to avoid any interpretations contrary to freedom of association as guaranteed by the European Convention on Human Rights. ECRI notes that this provision is still in force, and shares the concern expressed by the Council of Europe's Commissioner for Human Rights[21] that the part of this provision directed

[19] See above, Criminal law provisions relevant to the fight against racism and racial discrimination – Contents of the criminal law prohibiting acts of racism and racial discrimination.

[20] As amended in 2003 and described at § 24 of ECRI's Third Report on Turkey.

[21] CommDH(2009)30

against associations whose purpose is to "create minorities…and destroy the unitary structure of the Republic of Turkey" is at best ambiguous and leaves an excessively broad margin of appreciation to the state to ban the establishment of associations whose purpose is simply to promote or protect the rights of existing minority groups in Turkey. More generally, ECRI refers to the recent report of the Commissioner for Human Rights, the opinion of the Venice Commission and the resolution of the Parliamentary Assembly that deal with this and related issues.[22]

39. Article 81 of the Law on Political Parties provides that political parties shall not (a) assert that there exist within the territory of the Turkish Republic any national minorities based on differences relating to national or religious culture, membership of a religious sect, race or language; or (b) aim to destroy national unity by proposing, on the pretext of protecting, promoting or disseminating a non-Turkish language or culture, to create minorities on the territory of the Turkish Republic or to engage in similar activities. The criteria for imposing penalties on political parties and the proportionality of such penalties are governed by various other provisions of this law. In its third report on Turkey, ECRI noted with approval constitutional and legislative amendments that would make it more difficult to ban a political party in future, and that allowed for less severe sanctions than banning political parties. In 2007, the Council of Europe's Committee of Ministers closed its supervision of the execution of a series of judgments of the European Court of Human Rights, some of which had been based in part on Article 81 of the Law on Political Parties.[23] ECRI notes that in deciding to close the examination of these cases, the Committee of Ministers recalled the importance of the Turkish authorities' continued efforts to ensure the direct effect of the Court's judgments in the interpretation of the Turkish Constitution and law. ECRI is concerned that – even though it cannot be implemented in a manner contrary to the Constitution – the continued existence of Article 81 may inhibit the creation and functioning of parties that peacefully advocate the protection of minorities and the promotion of their rights. It notes that in December 2009 the Constitutional Court ordered the closure of one political party, apparently due to its alleged links with a terrorist organisation; while some party officials are reported to have made some provocative statements around the time when the case was being heard, ECRI notes that according to NGOs, the evidence in the initial indictment consisted mostly of non-violent statements by party officials and members. The reasoning applied by the Constitutional Court in this case does not appear to have been made public as yet. Proceedings have since been set in motion to close the new party created to replace the party closed in December 2009. ECRI is also concerned that criminal proceedings continue to be brought against members of political parties using languages other than Turkish, and in particular Kurdish, at political gatherings. It welcomes the information that in April 2010, Parliament approved a Bill to amend the Law on Basic Provisions on Elections and Voter Registers so as to allow political parties to use languages other than Turkish during election campaigns.

40. In its third report on Turkey, ECRI recommended that the Turkish authorities plan and introduce, as soon as possible, a mechanism ensuring that a person's religion is no longer indicated on their identity card, while safeguarding the rights of persons belonging to the minority religious groups covered by the Lausanne Treaty. Since the enactment of a new Law on the Civil Registry (Law No. 5490 of

[22] CommDH(2009)30; Opinion on the constitutional and legal provisions relevant to the prohibition of political parties in Turkey adopted by the Venice Commission at its 78th plenary session (Venice, 13-14 March 2009), CDL-AD(2009)006; Resolution 1622 (2008) Functioning of democratic institutions in Turkey: recent developments.

[23] Resolution CM/ResDH(2007)100: Execution of the judgments of the European Court of Human Rights United Communist Party of Turkey (judgment of Grand Chamber of 30/01/1998) and 7 other cases against Turkey concerning the dissolution of political parties between 1991 and 1997.

2006), it has no longer been compulsory to indicate a person's religion on their identity card: on the basis of a written individual request, the religion section in identity cards as well as in the births register can be completed, changed, deleted or left blank. However, the European Court of Human Rights found on 2 February 2010 that even the new provisions were in breach of Article 9 of the European Convention on Human Rights.[24]

41. ECRI recommends that the Turkish authorities rapidly implement the recommendations already made by other international bodies, in particular the Council of Europe's Commissioner for Human Rights, Venice Commission and Parliamentary Assembly, with respect to measures that could be taken to ensure that Turkish law and practice are fully in line with Council of Europe standards in the field of freedom of association and the functioning of political parties. It emphasises the particular importance of freedom of association for persons belonging to minority groups in enabling them to express and promote the identity of their minority group and preserve and uphold their rights as members of minority groups.

42. ECRI recommends that the Turkish authorities revise Law No. 5490 on the Civil Registry in order to bring its provisions fully into line with the requirements of the European Convention on Human Rights.

Administration of justice

43. In its third report on Turkey, ECRI strongly encouraged the authorities to ensure that members of minority groups have real access to a lawyer under the conditions provided for by law and that they indeed receive legal aid free of charge if they meet the established criteria. ECRI stressed the importance of access to a professional interpreter, free of charge in all legal proceedings.

44. ECRI refers to its concerns mentioned above regarding provisions introduced to anti-terror legislation that restricted the access of detained persons to a lawyer, in particular leaving them without access to a lawyer during the first 24 hours of their detention, and emphasises its deep concern that these provisions have been applied in particular to Kurdish minors. It stresses again the importance of ensuring that anti-terror legislation does not have a discriminatory impact in practice.

45. The authorities have indicated that interpretation is provided free of charge to non-speakers of Turkish when they are providing their statement or being questioned, but not as a matter of course throughout a trial. Civil society actors stress that this means the accused may often not be in a position to follow the proceedings in full; interpreters appear to be considered as being appointed to allow the court to understand statements made by non-speakers of Turkish, rather than in the broader context of ensuring a fair trial for the accused. ECRI refers in this respect to the case-law of the European Court of Human Rights, according to which Article 6 § 3(e), construed in the context of the right to a fair trial, signifies that an accused who cannot understand or speak the language used in court has the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements in the proceedings instituted against him which it is necessary for him to understand in order to have the benefit of a fair trial.[25]

[24] Sinan Işık v. Turkey, Application no. 21924/05. At the time of writing, this judgment was not yet final.

[25] See Luedicke, Belkacem and Koç v. Germany, Application nos. 6210/73; 6877/75; 7132/75; judgment of 28 November 1978.

46. As regards legal aid, the authorities have indicated that both victims and suspects in criminal cases are entitled to free legal aid provided by the state. In civil cases, the bar association is under an obligation to provide free legal assistance where a party is unable to afford a lawyer. ECRI welcomes these provisions. At the same time, it notes the particular difficulties that may be experienced by victims of racist acts or racial discrimination in gaining access to justice, especially as they are often unaware of their rights or of where to turn in order to exercise them, and emphasises the importance of taking specific measures to ensure that all members of society are fully informed of the mechanisms available to them. ECRI also notes the importance of ensuring that lawyers are fully equipped to handle cases involving complaints of racism or racial discrimination. It emphasises that training lawyers in this field can also serve to strengthen the protection given to victims of such phenomena.

47. ECRI strongly recommends that the Turkish authorities amend the relevant criminal legislation to ensure that minors, including those charged with terrorist offences, benefit in practice from all the procedural safeguards to which they are entitled under international law.

48. ECRI again stresses the importance for persons who do not speak Turkish of ensuring free of charge access in criminal proceedings to a professional interpreter. It recommends that the authorities take all necessary measures to ensure that accused persons who do not speak Turkish are able to participate fully in their trial in accordance with international standards in this field, and in particular with Article 6 § 3(e) of the European Convention on Human Rights.

49. ECRI encourages the authorities to take steps to ensure that all victims of racist acts or racial discrimination are fully informed of the avenues of redress open to them and recommends that in parallel, training in this field also be offered to lawyers.

Training of judges and prosecutors relevant to the fight against racism and racial discrimination

50. The authorities have indicated that within the framework of a joint programme of the European Union and the Council of Europe, 8 500 judges and public prosecutors have received training on the European Convention on Human Rights and the case-law of the European Court of Human Rights. Participants are informed about Turkey's obligations under international treaties, the effects of these instruments in domestic law and the rulings of the European Court of Human Rights with particular relevance to Turkey. Training has also been organised for around 8 500 judges and public prosecutors on the application of the new Criminal Code. Offences against public peace, which include the offence of inciting the population to enmity or hatred or denigration, have been the subject of a specific course as part of such seminars. The Turkish Justice Academy has also integrated the theme of prohibition of discrimination into its initial and in-service human rights training programmes. Eleven week-long human rights training seminars were held for approximately 700 candidate judges and prosecutors in the Turkish Judicial Academy between 2007 and 2009, and there are plans to organise new events and programmes on the prohibition of discrimination for serving judges and prosecutors.

51. ECRI welcomes the steps taken by the authorities to ensure that Turkey's international obligations are understood by judges and prosecutors responsible for applying them, and that the new Criminal Code is properly and uniformly applied. It stresses in this context the importance of the role played by judges and prosecutors in ensuring, on the one hand, that perpetrators of racist or racially discriminatory acts against individual victims or groups of victims are tried and

duly punished, and on the other, that persons peacefully expressing their identity as members of a minority group or advocating rights guaranteed under international instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination are not wrongly subject to criminal proceedings.

52. ECRI strongly encourages the authorities to pursue their efforts to train judges and prosecutors in the application of criminal law provisions against racism and racial discrimination, in order to ensure that these provisions are properly and uniformly applied, that perpetrators of racist or racially discriminatory acts are tried and duly punished, and that persons peacefully expressing their identity as members of a minority group or advocating rights guaranteed under international instruments are not wrongly subject to criminal proceedings.

Anti-discrimination bodies and other institutions

53. A variety of human rights bodies with different remits exist in Turkey, including the Human Rights Inquiry Committee of the Grand National Assembly, and, under the wing of the Prime Minister, the Human Rights Presidency and 931 human rights boards operating at provincial and local level (of which the functioning was described in detail in ECRI's third report). There is presently no Ombudsman or equivalent institution in Turkey, nor is there an independent national body specialised in fighting racism and racial discrimination. In its third report, ECRI made a number of recommendations aimed at ensuring the effective functioning of the current structures, and recommended that an Ombudsman's Office and a body specifically entrusted with combating racism and racial discrimination be set up as quickly as possible.

54. As regards existing institutions, the Human Rights Presidency has gradually become better known and the number of applications it receives has increased. According to the information available to ECRI, in 2008 it received 101 complaints in which the applicant complained of discrimination, the latter ranking as the fourteenth most common ground of complaints. Other applications received from persons belonging to minority groups have concerned issues such as restrictions on the use of one's mother tongue in prisons. ECRI has not, however, received information as to the prevalence of discrimination-related cases lodged with human rights boards at provincial or local level. For its part, the Human Rights Inquiry Committee, which is entitled to act on the basis of individual complaints or of its own motion, has also launched enquiries in some cases concerning persons belonging to minority groups. On the other hand, it does not appear that this body, which is one of several Committees set up within the Turkish Grand National Assembly, is entrusted with systematically examining the human rights implications of proposed legislation; this is a possibility that could usefully be examined. The authorities have also referred to the Minority Issues Assessment Board, which is entrusted with addressing and resolving difficulties that citizens belonging to non-Muslim minorities may encounter in their daily lives. Representatives of these groups have, however, pointed out that the Board is not very active, having met only four times since its establishment in March 2004, the last time being in 2007.

55. In 2006, the Grand National Assembly enacted the Ombudsman Law. However, this Law was struck out of the statute books in 2008 by the Constitutional Court, on the grounds that the parliament did not have the power under the Constitution to establish such a body. ECRI notes with interest that the government is still considering the possibility of setting up an Ombudsman institution, and that in this context, a draft law establishing an independent national human rights institution to review individual human rights complaints and monitor the human rights in the country has been approved by the Council of Ministers and submitted to the

Grand National Assembly for approval.[26] ECRI also understands that a draft law on an independent anti-discrimination and equality commission is being drawn up as part of a review of possible future anti-discrimination provisions.

56. ECRI again emphasises that the general public and the Turkish authorities could benefit from the expertise of a body specifically entrusted with the task of raising awareness of and combating racism and racial discrimination. Racism is a constantly evolving, multifaceted concept and specialist knowledge is essential to fight it effectively. Such expertise could be provided by an independent body whose remit, with the necessary investigation powers, would include assistance to victims of racism and racial discrimination (including on religious grounds); the right to initiate, and participate in, court proceedings; monitoring legislation and advice to legislative and executive authorities; awareness-raising of issues of racism and racial discrimination among society and promotion of policies and practices to ensure equal treatment. ECRI notes that different models of bodies sharing these characteristics exist and that there is no single recipe that must be followed, in particular regarding whether the relevant competencies should be exercised by a body that deals exclusively with racism and racial discrimination or may be exercised as a part of a broader remit. However, all the above elements, coupled with adequate human and financial resources, are key in ECRI's view to strengthening the fight against racism, racial discrimination and related forms of intolerance.

57. ECRI encourages the authorities in their moves towards setting up an Ombudsman institution and again emphasises that such a body, if established, should be endowed with all the powers and responsibilities and all the human and financial resources it needs to function effectively.

58. ECRI strongly recommends that, within the overall structure of human rights protection mechanisms in Turkey, a body specifically entrusted with combating racism and racial discrimination be either set up or clearly identified amongst existing mechanisms as quickly as possible. It again draws attention to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, which advocates the setting up of such bodies, and its General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, which provides guidelines concerning the organisation, responsibilities and functions of such bodies. It stresses the importance for victims of discrimination of having a clear avenue of redress and urges the authorities to ensure that, if a separate anti-discrimination body is set up, the distinct competencies of the various human rights institutions in Turkey are clearly understood. It recommends that an information campaign be carried out to raise public awareness of the various institutions and of their specific roles and responsibilities.

II. Discrimination in Various Fields

Education

- *Teaching in and of languages other than Turkish to persons belonging to minority groups other than those recognised under the Treaty of Lausanne*

59. In its third report on Turkey, ECRI made a series of recommendations regarding tuition in languages and dialects traditionally used in Turkey. Observing that it should be possible for such tuition to be provided alongside tuition in the official language, ECRI encouraged the Turkish authorities to revise the wording of

[26] The authorities have indicated that the constitutional referendum conducted on 12 September 2010 (after the reference period for the present report) lifted constitutional barriers to the creation of an Ombudsman institution.

Article 42 of the Constitution, which prohibits the teaching of non-Turkish mother tongues in schools, except in accordance with international treaties.[27] It also recommended that the authorities pursue their efforts in favour of such tuition, including by removing all barriers to tuition in private institutions arising from administrative obstruction.

60. Law No. 4771, enacted in August 2002 and which amended Law No. 2923 on Foreign Language Education and Teaching and the Learning of Different Languages and Dialects by Turkish Citizens, paved the way for opening private schools to teach "languages and dialects traditionally used by Turkish citizens in their daily lives". In accordance with the Regulation on Learning of different languages and dialects traditionally used by Turkish citizens in their daily lives, which came into effect on 5 December 2003, Kurdish language courses opened in seven towns between December 2003 and October 2004. However, all have since closed, and other attempts to open a Circassian language school in Ankara did not come to fruition as the relevant administrative requirements could not be met. The authorities have indicated that applications to open Adyghe and Abkhazian private courses are still being examined by the relevant Governorships in accordance with the above Regulation. At present, there are thus no private language schools open in Turkey for the teaching of the languages spoken by minority groups. In the case of Kurdish courses, the Turkish authorities attribute this to a lack of demand. Civil society actors point on the other hand to a lack of resources, the fact that fees had to be charged for the courses, and to undue administrative obstacles as the chief reasons for this. They furthermore note that the fact that such courses cannot form part of the ordinary school curriculum makes it difficult for children to follow them, and point to a lack of qualified teachers for these subjects. It has also been noted that such courses were taught as foreign language courses and as such, were of little use to the persons for whom they were intended.

61. Against this background, ECRI welcomes the decision taken by the Turkish authorities in October 2009 to open a Living Languages Institute at Mardin's Artuklu University, at which Kurdish could be taught; courses in Syriac, Farsi and Arabic were also reportedly to be offered at the institute's opening in February 2010. It notes with interest that the Higher Education Council is continuing to work on establishing new institutions and research centres on different languages and dialects within universities, and hopes that these will rapidly bear fruit. At the same time, ECRI notes with regret that in September 2009, the Council rejected a similar application to open a department of Kurdish studies and Kurdish language and literature at the University of Diyarbakır, on the grounds that the application – introduced by the local Bar Association – had been made by a body that supported terrorism.

62. ECRI recommends that the Turkish authorities revise the wording of Article 42 of the Constitution, which prohibits the teaching of non-Turkish mother tongues in schools except in accordance with provisions of international treaties. ECRI again emphasises that it should be possible for such tuition to be provided alongside tuition in the official language.

63. In addition, ECRI strongly recommends that the Turkish authorities pursue their efforts in favour of tuition in languages and dialects traditionally used in Turkey. It recommends that full effect be given to the existing possibility of opening private courses, particularly by removing all undue administrative obstacles.

[27] See above, Constitutional provisions and other basic provisions. In practice, this has meant that only minorities recognised by Turkey under the Treaty of Lausanne have been able to open schools where the language of instruction is a language other than Turkish.

- *Teaching in and of languages other than Turkish to children belonging to minorities recognised under the Treaty of Lausanne*

64. In its third report on Turkey, ECRI urged the Turkish authorities to look into the situation of schools belonging to non-Muslim minority groups. It noted that existing deficiencies in legislation and practice should be identified through dialogue with the main players concerned and the necessary steps should be taken to ensure that these schools function properly, so as to protect the interests of the pupils attending them.

65. ECRI notes with concern that the viability of some minority schools is threatened by the low numbers of potential pupils, who must be Turkish citizens belonging to a non-Muslim minority: thus, Armenians, Greeks or Jews living in Turkey but who are not Turkish citizens cannot send their children to non-Muslim minority schools, although minority representatives indicate that there would be a demand for this. ECRI notes the authorities' indication that, within the framework of the principles of reciprocity set out in Articles 40 and 41 of the Treaty of Lausanne, work is ongoing on the amendment of the relevant legislation to allow foreign national pupils residing in Turkey to attend minority schools. It hopes that this work will rapidly bear fruit and that observance of the principle of reciprocity will not serve to limit progress that could otherwise be made in this field. ECRI also notes that in addition to difficulties still experienced by different groups with respect to access to adequately trained teachers and the provision of adequate teaching materials, which are dealt with further below,[28] minority groups continue to complain of the statutory requirements regarding deputy principals of non-Muslim minority schools, who must in all cases – like all other teachers at minority schools[29] – be Turkish citizens and who previously were also required to be "of Turkish origin". While the latter requirement has now been abolished, minority representatives report that in practice, nothing has changed.

66. ECRI recommends that the Turkish authorities take all necessary steps to facilitate the functioning of non-Muslim minority schools, including through the elimination of all unnecessary legal or administrative obstacles to the enrolment of interested children and the appointment of qualified staff. It underlines the importance of ensuring that existing forms of minority education remain meaningful in practice.

- *Schooling provided in Turkish to children whose mother tongue is not Turkish*

67. In its third report, ECRI recommended that the Turkish authorities make every effort to enable children of non-Turkish mother tongue to learn Turkish, the language of instruction, properly. ECRI is not aware of particular steps taken to this effect since its third report, nor of any improvement in the situation in this respect of children of immigrants and children of Turkish nationality who are of non-Turkish mother tongue.

68. No statistics are available about the school attendance of children belonging to non-recognised ethnic or religious minorities, due to the lack of ethnic data collection. However, the national census shows considerable disparities in school attendance between regions. Attendance figures in southeast and central eastern Turkey, which are mostly populated by Kurds, are lower than the national average. The schooling rate for Roma children is also reportedly low, due to problems of accessibility and financial difficulties; such problems are compounded in cases where families are forcibly evicted. The authorities have

[28] See below, Vulnerable/Target Groups – Non-Muslim minority groups covered by the Treaty of Lausanne.

[29] Except those sent by Greece under the terms of a bilateral agreement.

indicated that the Education Board approved a catch-up education programme in May 2008, directed at children of 10-14 years of age who have never enrolled in school or who have dropped out. The measure targets mainly Roma children. ECRI welcomes this step and stresses in this context the need to ensure that children of all ethnic and linguistic backgrounds have equal opportunities in access to education, which also conditions equal opportunities in employment.

69. ECRI is concerned that the requirement that all schoolchildren in Turkey, including those in private schools, read a daily oath remains a source of controversy: whereas the Turkish authorities emphasise that the final phrase of the oath, "ne mutlu Türküm diyene" ("how happy is a person who calls himself/herself Turk(ish)"), has no ethnic, linguistic or religious connotations but is intended to strengthen children's sense of citizenship of the Republic of Turkey irrespective of their origins,[30] some minority groups point to the ambiguity in the concept of Turkishness as reflected in its application in Turkish law, and stress their discomfort with the manner in which this issue is approached in the school context, vis-à-vis their children. ECRI notes that, in so far as minority groups perceive this oath as tending to deny the added value of diversity in society, imposing such a requirement on children risks being counterproductive, in particular as it may tend to alienate children's parents. ECRI considers that this is an issue on which dialogue between minority groups and the state is vital, and stresses the need to find avenues through which such dialogue can be conducted.

70. ECRI again recommends that the Turkish authorities look into the situation of children of non-Turkish mother tongue and ensure that every effort is made to enable them to learn Turkish, the language of instruction, properly, for example through the provision of additional courses or methods for teaching Turkish as a second language. More broadly, ECRI recommends that the authorities conduct research into the overall situation within the education system of children belonging to minority groups, in order to allow targeted measures to be taken to remedy any inequalities in this field.

71. ECRI recommends that the Turkish authorities engage in dialogue with minority groups on the manner in which the concept of citizenship of the Turkish state is taught in schools, in order to ensure that the desired message of inclusiveness is imparted without leading to a sense that diversity is unwanted.

- *Compulsory religious education*

72. In examining compulsory religious education in schools in its third report on Turkey, ECRI observed that the situation was unclear: it noted that although the syllabus was officially described as covering all religions and designed to give pupils an idea of all religions, several sources described it as essentially providing instruction in the Muslim faith, and underlined that children belonging to recognised non-Muslim minorities could be exempted. ECRI observed that if the course indeed covered different religious cultures, there should be no reason to make it compulsory for Muslim children alone; conversely, if it was essentially designed to teach the Muslim religion, it should not be compulsory, in order to preserve children's and their parents' religious freedom. Accordingly, it urged the Turkish authorities to reconsider their approach and to take steps either to make this instruction optional for everyone or to revise its content so as to ensure that it genuinely covers all religious cultures and is no longer perceived as instruction in the Muslim religion.

[30] Comments of the Republic of Turkey on the Report regarding "Human Rights of Minorities" by Mr T. Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his Visit to Turkey, CommDH(2009)30, Appendix, p 41.

73. No significant changes in practice have been reported since ECRI's third report; numerous sources consider that the compulsory religious education delivered in state schools in accordance with Article 24 of the Constitution and Article 12 of Law No. 1739 on National Education still focuses essentially on instruction in the principles of the Sunni Muslim faith. The authorities have emphasised that school courses on religious culture and morals aim to provide a general insight into all religions while focusing more on the principles of the Muslim faith, and that it is legitimate to focus more on the religion practiced in a specific area, provided that courses on religious principles are given in an objective manner. In the meantime, the European Court of Human Rights has delivered its judgment in a case concerning compulsory religious instruction in schools, in which the applicants were Alevis.[31] ECRI notes that the steps necessary to execute this judgment are currently being examined by the Committee of Ministers of the Council of Europe and that a commission including experts and Alevi representatives has been established in this context.

74. ECRI refers to its recommendations made elsewhere in this report regarding the implementation of the judgment of the European Court of Human Rights in the case of Zengin Hasan and Eylem,[32] and emphasises the need to ensure that the convictions of members of all religious minority groups are respected in the education system, including the convictions of persons who do not want their children to receive any religious instruction at school.

Housing

75. ECRI notes with concern that the Roma population remains exposed to poor living and sanitary conditions, and has faced instances of disruption of communities and forced evictions. One example is the demolition of the historic Roma neighbourhood of Sulukule in Istanbul, and the forced relocation of its inhabitants, around 500 Roma, in the context of an urban renewal project sponsored by the municipality. ECRI is concerned about the impact of such demolitions not only on the access of Roma to decent housing but also on their communities as a whole, and refers to the detailed examination of this case by the Council of Europe's Commissioner of Human Rights in the report on Human rights of minorities published following his visit to Turkey in June-July 2009.[33]

76. ECRI strongly recommends that the Turkish authorities take all necessary measures to ensure that Roma families have access to adequate housing and decent living conditions. It urges them in particular to ensure that no Roma families are evicted without adequate measures being taken for their relocation and without adequate consultation as to the housing needs of their community.

Health

77. In the absence of ethnic data collection,[34] no comprehensive statistics are available regarding the health status or access to health care of persons belonging to different minority groups. However, the authorities have indicated that in accordance with the Implementation Guidelines on Patients' Rights issued by the Ministry of Health in 2005, Patients' Rights Units have since been set up at in-patient institutions. Moreover, analyses of regional differences in the provision of health care services have prompted them to take measures over the past five to six years to improve the facilities and staffing provided in some regions,

[31] Zengin Hasan and Eylem, (application no. 1448/04), judgment of 9 October 2007.

[32] See below, Vulnerable/Target Groups – Alevis.

[33] CommDH(2009)30, §§ 133-146.

[34] On the collection of ethnic data in general, see further below, Monitoring Racism and Racial Discrimination.

particularly in eastern Turkey, an area inhabited by a high proportion of persons belonging to minority groups. Efforts have been made, for example, to ensure that more midwives are available in rural areas and to increase the provision of mobile health care services. Holders of "green cards", which entitle persons on low incomes and without social security to benefit from free health care, are also now reimbursed for prescribed medicines. ECRI welcomes these steps taken to reduce de facto inequalities in the health care system. It is not aware, however, of any new measures taken to overcome linguistic or cultural difficulties that may be encountered in regions where the majority of the population speak a language or dialect other than Turkish. While it notes the authorities' indication that no complaints have been made to the new Patients' Rights Units regarding such difficulties, it points out that a lack of complaints may be due to a number of factors, including not only a lack of problems but also a lack of awareness among citizens of the avenues of redress that exist or a lack of trust in those remedies. Such factors need to be examined in more depth before any meaningful conclusions can be drawn.

78. ECRI encourages the Turkish authorities to pursue their efforts to reduce de facto inequalities in health status and access to health care. To this end, it encourages the authorities to research in more depth the situations of different minority groups with respect to health status and access to health care, and underlines the need to ensure that obstacles that may be experienced by patients due to linguistic or cultural differences are also examined.

Access to public services

79. In its third report on Turkey, ECRI encouraged the Turkish authorities to take comprehensive measures to overcome all barriers to access to public services, and, in areas where persons speaking a language or dialect traditionally used by Turkish citizens are in the majority or very numerous, to find ways of facilitating communication between these persons and the authorities.

80. ECRI is not aware of any specific measures taken since its third report to facilitate access to public services for non-speakers of Turkish. It notes that particular difficulties in communication may arise in areas where minority groups form the majority of the local population, but are significantly underrepresented amongst public servants. While provision is made in legislation for interpretation, ECRI understands that it is not always available in practice.

81. ECRI again encourages the Turkish authorities to find, in areas where persons speaking a language or dialect traditionally used by Turkish citizens are in the majority or very numerous, ways of facilitating communication between these persons and the authorities. Options could include providing easily accessible extra classes in the official language, not only for children[35] but also for adults, as well as measures to encourage officials who speak the local language in the region concerned to communicate in this language with members of the public, where they so request.

III. Vulnerable/Target Groups

82. As mentioned above,[36] as the Turkish legal system presently stands, the term "minorities" is understood to refer only to certain specific non-Muslim minorities covered by the 1923 Treaty of Lausanne. This treaty has been interpreted restrictively in Turkey, having been deemed to apply only to Armenians, Greeks and Jews (sometimes collectively referred to as the "Lausanne minorities").

[35] See above, Discrimination in Various Fields – Education.

[36] See above, § 10.

Persons having other ethnic origins – such as Assyrians, Caferis, Circassians, Ezidis, Kurds, Laz and Roma – are not officially recognised as belonging to a national or ethnic minority, and are not beneficiaries of the rights granted to the Lausanne minorities, although Turkey has, for example, acknowledged that there are "Turkish citizens of Kurdish origin" and "Turkish citizens of Roma origin" on its territory. Nor are Muslim Turkish citizens who are not Sunni Muslims considered to be minorities under Turkish law.[37] In the present report and in keeping with its usual practice, ECRI has generally referred to all groups within Turkish society that have a distinct religion, national or ethnic origin, language or colour – regardless of whether they are recognised as minorities protected by the Treaty of Lausanne – as "minority groups". The rights recognised to persons belonging to the various minority groups vary considerably, however, notably as a function of whether the group is or is not recognised under Turkish law as a minority covered by the Treaty of Lausanne.

83. It is difficult to ascertain the sizes of the various minority groups living in Turkey at present, as the most recent publicly available official estimates date from 2000 and do not cover all relevant groups. Although estimates of their numbers vary considerably, two of the largest minority groups in Turkey are Kurds (estimated at between 12 and 15 million[38]) and Alevis (with estimates ranging between 5.7% and 33% of the population,[39] i.e. between approximately 4 and 24 million). Other sizable minority groups in Turkey include Roma (estimated at 2 750 000), Caucasians (estimated at 3 million) and Laz (between 750 000 and 1.5 million)[40]. According to the above-mentioned official estimates made public in 2000, the Armenian population in Turkey is estimated at between 50 000 and 93 500 persons; the size of the Greek population in Turkey is presently estimated at between 3 270 and 4 000 persons; the Jewish population includes between 25 000 and 26 114 persons; there are 17 194 Syriacs and 5 628 members of other non-Muslim religious minority groups.[41]

Non-Muslim minority groups covered by the Treaty of Lausanne

84. In its third report on Turkey, ECRI recommended that the Turkish authorities continue and step up their efforts to resolve the legal and other problems that still faced minority religious groups in Turkey. It urged the authorities to engage in a constructive dialogue with representatives of these communities in order to speedily resolve these problems. It further noted that the existence of minority religious groups was an aspect of pluralism that needed to be recognised and preserved as an asset to Turkish society, rather than perceived as a threat. ECRI also underlined the need to implement swiftly the legislative changes conferring certain rights on religious foundations by removing any barriers to their activities, and in particular by putting an end to any administrative obstruction. Subsequent studies have noted that while the new legislation covered in ECRI's third report (Laws Nos. 4771 and 4778) introduced more favourable provisions with respect

[37] Amongst many other sources, see Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to Turkey on 28 June-3 July 2009; Issue reviewed: Human rights of minorities; Strasbourg, 1 October 2009, CommDH(2009)30, § 14 and the sources cited therein.

[38] Parliamentary Assembly of the Council of Europe, Report: The cultural situation of the Kurds, 7 July 2006, Doc. 11006

[39] Minority Rights Group, A Quest for Equality: Minorities in Turkey, 2007, p12.

[40] Various sources, cited in CommDH(2009)30 at § 15.

[41] United Nations, Interim Report of the Special Rapporteur of the Commission on Human Rights on the elimination of all forms of intolerance and of discrimination based on religion or belief, Situation in Turkey, 11/08/2000, UN Doc A/55/280/Add.1, at 3-4, cited in CommDH(2009)30 at pp5-6.

to non-Muslim foundations, the latter have encountered difficulties in practice with respect to the implementation of these provisions.[42]

85. ECRI notes with interest that since its third report, a new Law on Foundations (No. 5737) has been enacted, and came into force on 27 February 2008.[43] The Law applies to all foundations that come within the competence of the Directorate General for Foundations, including foundations established by non-Muslim ("Lausanne") minorities, and provides for a representative of non-Muslim community foundations to be appointed to the Foundation Council (the highest body of the Directorate General for Foundations). The Law also governs the registration by foundations of immovable property and sets out a procedure under which non-Muslim foundations were able to apply within specified time-limits for the restitution of some previously seized property meeting specific conditions set out in provisional Article 7 of the Law. Approximately 1 400 applications were received by the deadline of August 2009; at the time of drafting the present report, these applications were still being examined.

86. ECRI welcomes the new possibility for a representative of the non-Muslim ("Lausanne") minorities recognised in Turkey to participate as a member of the Foundations Council, which ECRI sees as an important sign of progress towards increased dialogue between the authorities and these minorities. It also welcomes the opportunity provided by the new Law for some real property that is either still in the possession of non-Muslim foundations but that has been registered in false or fictitious names, or that has been registered in the name of the Treasury or the Directorate General for Foundations, to be returned to non-Muslim foundations. It hopes that this process will be conducted transparently, in order to ensure that the minority groups concerned can have confidence in it. However, ECRI notes with concern that there still appear to be significant gaps in the law, which mean that a number of outstanding issues related to the property rights of non-Muslim foundations remain unresolved. In particular, ECRI understands that the new provisions will not resolve the issues of properties of such foundations that were seized and sold on to third parties or of properties of foundations that were merged before the enactment of the new provisions. Furthermore, religious communities do not have legal personality under Turkish law and therefore cannot themselves own real property, unless they establish an appropriate foundation. New foundations must, however, be established in accordance with the Turkish Civil Code, Article 101(4) of which prohibits the establishment of foundations the aim of which is to support persons of a specific origin or members of a community. This provision is widely understood as preventing the establishment of new religious foundations.[44]

87. ECRI notes that in a number of recent judgments the European Court of Human Rights has found violations of Article 1 of Protocol No. 1 to the European Convention on Human Rights (protection of property) by Turkey with respect to Greek and Armenian community foundations. In one case decided in July 2008

[42] See for example, D. Kurban and K. Hatemi, The Story of an Alien(ation): Real Estate Ownership problems of Non-Muslim Foundations and Communities in Turkey, TESEV, Istanbul, 2009, pp24-27.

[43] The authorities have also referred to a circular issued by the Office of the Prime Minister on 13 May 2010 (after the reference period for the present report) urging the relevant government institutions and offices to protect citizens belonging to non-Muslim minorities from needless impediments in their official dealings and transactions with government institutions and prevent infringements of their rights.

[44] See for example European Commission for Democracy through Law (Venice Commission), Opinion on the Legal Status of Religious Communities in Turkey and the Right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical", Opinion no. 535/2009 adopted at the Venice Commission's 82nd Plenary Session (Venice, 12-13 March 2010), CDL-AD(2010)005 at § 38; Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to Turkey on 28 June-3 July 2009; Issue reviewed: Human rights of minorities; Strasbourg, 1 October 2009, CommDH(2009)30 inter alia at §§ 86-87 and 102.

the Court ruled that the Ecumenical Patriarchate in Istanbul, which had been deprived without compensation of property it had acquired and registered in 1902, had been placed under an individual and excessive burden, in violation of Article 1 of Protocol No. 1; in September 2009, the Committee of Ministers of the Council of Europe was still awaiting information on measures taken by the Turkish authorities to prevent similar violations in future.[45] Other cases have concerned the impossibility for religious foundations of acquiring property after 1936; the Court ordered that specific measures be taken to restore title to the applicant foundations.[46] In December 2008, in a case concerning the restitution of property to an Armenian foundation, the Court furthermore noted that the Turkish authorities had not demonstrated that the Law on Foundations of February 2008 (Law No. 5737) provided an effective remedy for such cases in domestic law.[47] As mentioned above, applications for restitution of property in accordance with that Law had to be lodged by August 2009, and the examination of these applications was pending before the domestic authorities at the time of drafting of this report.

88. A further problem for non-Muslim foundations concerns repairs to real property. Responsibility for such repairs is attributed, under the Treaty of Lausanne, to the state. In the past, this has meant that even minor maintenance work on buildings owned by non-Muslim foundations could not be carried out without a decision of the Directorate General for Foundations to the effect that they were necessary; the latter reportedly rarely found this to be the case, meaning numerous properties fell into a state of disrepair. ECRI notes with interest reports that the authorities have recently indicated a greater willingness to repair non-Muslim foundations' property, and strongly hopes that this trend will grow.

89. ECRI further notes that in its recent Opinion on the Legal Status of Religious Communities in Turkey and the Right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical", the European Commission for Democracy through Law found that as long as religious communities continued to be required to create foundations rather than obtaining legal personality in their own right, further violations of the right to property under Article 1 of Protocol 1 were to be expected. It saw no reason to prevent religious communities from obtaining legal personality in their own right. It recommended that the Turkish authorities introduce legislation to make this possible, and in the meantime, that they interpret and apply the present provisions in such a way as to minimise the restrictions on the exercise of religious freedom of non-Muslim religious communities.[48]

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[45] Fener Rum Patrikliği (Ecumenical Patriarchate) v. Turkey (application no. 14340/05), judgment of 8 July 2008. See information on state of execution of judgments with respect to Turkey available at http://www.coe.int/t/e/human_rights/execution/03_cases/Turkey_en.pdf (at the time of drafting the present report, last updated 16/11/2009) and CM/Del/OJ/DH(2009)1065/4.2.

[46] Fener Rum Erkek Lisesi Vakfı v. Turkey, application no. 34478/97, judgment of 9 January 2007; Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfı v. Turkey, applications nos. 37639/03, 37655/03, 26736/04 and 42670/04, judgment of 3 March 2009; Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfı v. Turkey (n° 2), applications nos. 37646/03, 37665/03, 37992/03, 37993/03, 37996/03, 37998/03, 37999/03 et 38000/03, judgment of 6 October 2009.

[47] Samatya Surp Kevork Ermeni Kilisesi, Mektebi Ve Mezarlığı Vakfı Yönetim Kurulu v. Turkey (application no. 1480/03), 16 December 2008, § 25.

[48] European Commission for Democracy through Law (Venice Commission), Opinion on the Legal Status of Religious Communities in Turkey and the Right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical", Opinion no. 535/2009, CDL-AD(2010)005.

- *Armenians*[49]

90. In addition to issues with respect to the restitution of property of foundations, the Armenian minority reports difficulties in the field of minority language education due to a lack of textbooks in Armenian and of teachers trained in the Armenian language.[50] This situation has contributed to a gradual decline in the numbers of parents deciding to send their children to Armenian schools; some parents also reportedly avoid sending their children to Armenian schools because they are afraid that either they or their children will be threatened in consequence. ECRI notes that in 2008, a propaganda documentary entitled "The Blonde Bride: The Truth behind the Armenian Issue" was distributed by the Ministry of National Education to all primary schools, along with a notice that it should be screened; the documentary showed bloody images of massacres and children were to write a composition about how they felt after watching it. While the Ministry of National Education eventually ceased distribution of the DVD following wide-scale complaints from parents, the DVDs were not collected from schools, and decisions whether or not to screen it were left to individual education authorities. ECRI is of the view that the dissemination and screening of such materials in schools runs directly counter to the objective of building a more open and tolerant society, and considers it especially regrettable that such material has been targeted at children.

91. ECRI notes that on 23 July 2009, the Ministry of National Education approved the appointment to Armenian schools of Armenian language, religious culture and ethics teachers. Such teachers had to be Turkish nationals of Armenian origin and hold the necessary teaching qualifications from a faculty recognised by the Turkish Board of Education. They may receive in-service training. ECRI hopes that improved relations between Turkey and Armenia will provide an additional opportunity to resolve some of the concrete problems mentioned above, such as the training of teachers and provision of textbooks in Armenian minority schools. ECRI notes that at present, and although this situation may be seen as far from ideal, Armenia itself is the only realistic source of an adequate range of textbooks in Armenian.

- *Greeks*

92. The extremely small size of the Greek community in Turkey means that this community has particular difficulty in meeting the requirement that pupils of minority schools belong to the minority recognised in Turkey as being covered by the Treaty of Lausanne. This requirement, combined with a lack of textbooks in Greek and difficulties in finding teachers, mean that children belonging to this minority have especially acute problems in gaining access to education in their mother tongue. Urgent action is needed, as ECRI already noted in its third report on Turkey, if this community is to survive.

93. Greek foundations have experienced similar difficulties to Armenian foundations as regards the protection of property. The training of clergy also remains a major issue for the Greek Orthodox community, due to the requirement that all priests be Turkish nationals; this problem, already serious due to the small size of the Greek minority in Turkey, is aggravated by the fact that the Halki seminary, which was closed by the Turkish authorities in 1971, remains closed to this day. ECRI understands that the authorities are now working more actively towards a solution to this impasse, and hopes that these efforts will soon bear fruit.

[49] As regards racist attacks in recent years against Armenians and persons belonging to other minority groups, see below, Racist Violence.

[50] See above, Discrimination in Various Fields – Education and Vulnerable/Target Groups – Non-Muslim Minorities covered by the Treaty of Lausanne.

94. In cases concerning property inherited from Turkish nationals belonging to the Greek minority, Greek nationals have also suffered violations of their property rights under Article 1 of Protocol No. 1 to the European Convention on Human Rights, due to erroneous interpretations by Turkish courts of the requirement of reciprocity.[51] Compensation has been awarded to individuals having brought such cases to the European Court of Human Rights, but it is not yet clear what general measures are envisaged to prevent similar violations in future.

- *Jewish communities*

95. Property-related issues have also affected Jewish communities in Turkey, which have launched proceedings at domestic level; ECRI understands that one property-related application is pending before the European Court of Human Rights. Antisemitism and attitudes of the majority population generally towards Jewish communities are examined elsewhere in this report.[52]

96. ECRI strongly encourages the Turkish authorities to pursue and intensify their efforts to improve dialogue with non-Muslim minorities recognised under the Treaty of Lausanne, including through the representative of these minorities appointed as a member of the Foundations Council for issues falling within the competence of that body.

97. ECRI urges the Turkish authorities to pursue and intensify their work towards solving issues related to legal personality and property that are of concern to non-Muslim minorities, in order to ensure that the full range of situations as regards ownership and restitution of property are addressed. It draws the authorities' attention in this context to the recent conclusions and recommendations of the Venice Commission regarding the legal status of religious communities in Turkey. It further invites the authorities to take all necessary measures to ensure that all applications submitted for the restitution of property in accordance with the new Law on Foundations (Law No. 5737) are dealt with transparently, fairly and expeditiously. It also recommends that the authorities transfer decision-making powers to minority religious foundations as regards the maintenance of properties belonging to them, and recommends that the authorities continue and intensify their efforts to ensure that such properties are duly maintained in the meantime.

98. ECRI recommends that the authorities take all necessary measures to ensure that non-Muslim minorities are not prevented from exercising their rights as such owing to a lack of priests.

99. ECRI refers to its recommendations made earlier in this report regarding measures to be taken in the field of education.[53] It draws attention in particular to the need for urgent action – in particular with respect to the training of teachers and the preparation and approval of textbooks – to ensure that the survival of small minorities within Turkey is not endangered through a failure to act to support the preservation of their identity.

Alevis

100. The Alevi community has generally good relations with the majority population. However, religious education in primary and secondary schools (which is compulsory under Article 24 of the Constitution and Article 12 of Law No. 1739 on National Education) are of concern to Alevis. In a judgment of 2007,[54] the

[51] See Apostolidi and others v. Turkey, application no. 45628/99, judgment of 27 March 2007, and Nacaryan and Deryan v. Turkey, application no. 19558/02, judgment of 8 January 2008.

[52] See below, Antisemitism.

[53] See above, Discrimination in Various Fields – Education.

[54] Zengin Hasan and Eylem (application no. 1448/04), judgment of 9 October 2007.

European Court of Human Rights found that the failure of the educational system and domestic legislation to meet the requirements of objectivity and pluralism and to provide an appropriate method for ensuring respect for parents' convictions were in breach of Article 2 of Protocol No. 1 to the Convention (right to education). While a certain number of changes have since been prepared for the curriculum, Alevi representatives indicate that these do not appear to have gone far enough yet to provide a neutral learning environment. The execution of this judgment of the Court is still pending before the Council of Europe's Committee of Ministers. More generally, Alevis point out that the Alevi community is largely invisible from school textbooks, a factor which does not help build a fully inclusive society.

101. Alevi representatives also complain of discriminatory treatment in that the state provides funding to certain faiths – for example, funding to cover the electricity bills of places of worship[55] – but not to all. In particular, at present *cemevis* are not recognised as places of worship (although mosques, synagogues and churches are) and have therefore, with only isolated exceptions at local level, been refused state funding; nor are any Alevi high schools supported by state funds. The conduct in late 2009 of the funeral of an Alevi soldier according to Sunni rites also caused distress to some Alevis.

102. ECRI notes with interest that in 2009, the government organised a series of workshops with different groups within the Alevi community, in order to discuss issues of concern to them directly with the Alevi community and begin addressing these issues. It also notes with interest reports that the Turkish government intends to expand its democratic initiative to include Alevis.[56]

103. ECRI recommends that the Turkish authorities take all necessary measures to implement the judgment of the European Court of Human Rights in the case of Zengin Hasan and Eylem[57] fully and expeditiously, so as to align Turkish law and practice in the field of religious education with the requirements of the European Convention on Human Rights.

104. ECRI recommends that the Turkish authorities investigate the concerns of the Alevi community with respect to discriminatory treatment, in particular concerning funding and issues related to places of worship, and take all necessary measures to redress any discrimination found.

105. ECRI strongly encourages the authorities to pursue their efforts to build a constructive dialogue and foster good relations with the Alevi community.

Roma

106. In its third report on Turkey, ECRI reiterated its recommendation that the Turkish authorities look into the situation of the Roma in Turkey, so as to identify the problems facing them, in particular as regards intolerance and discrimination. It noted the importance of taking measures to resolve the problems identified and recommended in particular that Article 4 of the Settlement Act be repealed. It also drew attention to its General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies.

107. ECRI is concerned that the situation of the Roma in Turkey appears to remain largely unchanged. It seems that the authorities have still not carried out any research to bring clearly to light the present situation of the Roma, and official

[55] In accordance with a parliamentary decree adopted on 26 July 2008, state funding is to be accorded to places of worship to which access is free.

[56] See below, Democratic (Kurdish) initiative.

[57] Application no. 1448/04, judgment of 9 October 2007.

information in this field is still lacking. However, non-governmental sources indicate that the Roma continue to be marginalised, suffering discrimination in the fields of education, employment, housing, health and access to public places. School attendance rates of Roma children remain low, and illiteracy rates correspondingly high. Urban renovation projects, such as that in Sulukule, have negatively affected Roma without adequate solutions having been proposed to take account of their needs;[58] this in turn creates further difficulties for the enrolment of Roma children in schools. Roma suffer specific difficulties in the field of health and exclusion from access to employment and from participation in public life. Roma also reportedly make little use of the legal avenues of redress that could be available to them, because they are unaware of their rights and/or reluctant to step outside their perceived place in society. Turkey does not have an overall strategy to advance Roma rights and has not joined the Decade of Roma Inclusion.

108. The authorities have stated that difficulties experienced by the Roma in access to public services are mostly based on poverty and unemployment, which also affect other disadvantaged groups. Such difficulties are addressed within general policies designed to alleviate poverty and social exclusion. The authorities have also indicated that a new Law on Settlement was enacted and came into force in September 2006, and that it does not include discriminatory provisions against the Roma. This step is welcome; however, according to other sources, the Law on the Movement and Residence of Aliens still provides for the expulsion of "stateless or non-Turkish gypsies" who are "not bound to the Turkish culture", thereby promoting discrimination against the Roma.[59] There are concerns that this provision may create particular difficulties for Roma who do not have official identity documents. The law also includes "nomadic Gypsies" among four categories of persons not admissible as immigrants.[60]

109. ECRI welcomes the news that in mid-March 2010 the Prime Minister addressed several thousand members of the Roma community in Istanbul, outlining measures intended to improve Roma housing in a number of provinces and to promote education and employment opportunities. It notes with interest that the Ministry of Culture and Tourism supports various cultural events with a view to preserving and promoting the Roma culture, and welcomes the indication that in order to discourage negative stereotyping, connotations which might have been perceived as discriminatory in the dictionary definition of the term "Gypsy" have been removed. ECRI is also pleased to note that the capacity of civil society to defend and promote the rights of Roma appears gradually to be growing.

110. ECRI again recommends that the Turkish authorities carry out detailed research into the situation of the Roma in Turkey, so as to identify clearly the problems facing them, in particular as regards intolerance and discrimination in all fields of daily life. It again emphasises the importance of taking measures to resolve problems identified and refers in particular to its recommendations made elsewhere in this report with respect to the need to improve the access of Roma to education and housing.[61] It also recommends that specific measures, including awareness-raising measures, be taken to improve the access of Roma to legal advice and assistance.

111. ECRI recommends that the Turkish authorities adopt a comprehensive strategy to address discrimination faced by Roma, in line inter alia with the

[58] See above, Discrimination in Various Fields – Housing.

[59] European Commission, Turkey 2009 Progress Report, 14.10.2009, Chapter 2.2, p 29.

[60] U.S. Department of State 2008 Human Rights Report: Turkey, 25 February 2009, Chapter 5.

[61] See above, Discrimination in Various Fields – Education and – Housing.

recommendations of the Council of Europe's Commissioner for Human Rights.[62] In this context, it further recommends that Turkey join the Decade of Roma Inclusion.

112. ECRI draws the attention of the Turkish authorities to the specific concerns raised above with regard to the Law on the Movement and Residence of Aliens and urges them to repeal any legal provisions that discriminate directly against the Roma.

113. ECRI strongly encourages the Turkish authorities to pursue and strengthen their efforts to combat negative stereotyping of the Roma and to build a constructive dialogue with the Roma community.

Kurds

114. In its third report on Turkey, ECRI encouraged the Turkish authorities to continue their efforts to improve the situation with regard to the freedoms of expression, assembly and association in the Kurdish community. It stressed the importance of swiftly implementing legislative changes reinforcing these freedoms. ECRI further recommended that the Turkish authorities combat the prejudice and stereotyping to which Kurds are subject and emphasised the importance of taking steps to punish any instances of discrimination that might be identified.

115. As mentioned elsewhere in this report, the Turkish government has made welcome overtures in recent months towards addressing the tensions existing in Turkish society around the situation of the Kurds.[63] ECRI is pleased to note that these as well as initiatives taken with respect to other minority groups have helped to begin building a greater willingness and openness in Turkish society to discuss issues of concern to persons belonging to minority groups – a change in climate that is also welcomed by the latters' representatives. The launch in 2009 of a public television channel, TRT-6, broadcasting in Kurdish, was also a landmark.

116. In practice, however, the expression of Kurdish identity still seems to be perceived by many as, by definition, a threat to the unity of the Turkish state. As regards the freedoms of expression, assembly and association, ECRI has examined elsewhere in this report the recent closure of a Kurdish political party; well before its closure, several hundred members of this party were reportedly in detention. The public use by officials of the Kurdish language lays them open to prosecution, and public defence by individuals of Kurdish interests also frequently leads to prosecutions under the Turkish Criminal Code. Moreover, tensions surrounding the activities of the PKK appear to have led to abuses of anti-terror provisions, including with respect to minors.[64] More generally, civil society actors emphasise that public demonstrations in favour of Kurdish interests tend to be subject to harsh repressive measures where similar demonstrations in favour of other causes would not be interfered with to the same extent.[65]

117. Many Kurds live concentrated in the poorest and most remote provinces of Turkey, often in difficult economic and social conditions. Internally displaced Kurds are especially vulnerable in this respect.[66] Kurdish girls are reported to

[62] CommDH(2009)30, § 190.

[63] See below, Democratic Initiative.

[64] See above, Application of criminal law provisions prohibiting acts of racism and racial discrimination.

[65] See above, Contents and application of criminal law provisions prohibiting terrorist acts, as relevant to the fight against racism and racial discrimination.

[66] See below.

have low enrolment rates in schools, especially in isolated rural areas, and Kurdish women to have below average rates of employment.

118. ECRI strongly encourages the Turkish authorities to continue their efforts to improve the situation with regard to freedom of expression, freedom of assembly and freedom of association in the Kurdish community. It recalls its recommendations made elsewhere in this report with respect to the application of legal provisions prohibiting acts of racism and racial discrimination, and underlines their particular relevance in this context.

119. ECRI strongly encourages the Turkish authorities to pursue and strengthen their efforts to redress inequalities in access to social rights experienced by Kurds. In this context it recommends that the authorities carry out research where necessary to build up a clearer picture of the situation of Kurds in Turkey, so as to enable targeted measures to be taken to remedy any inequalities found.

- *Internally displaced persons*

120. As noted in ECRI's third report on Turkey, Kurds in Turkey live mainly in the south-eastern parts of the country, although many have left the region, in particular due to the protracted struggles between the authorities and the PKK. ECRI strongly recommended that the Turkish authorities take action to address the plight of displaced Kurds, and recommended in particular that the authorities find ways of helping those living in severe economic and social hardship. ECRI also recommended that the authorities strengthen voluntary return programmes for displaced persons and resolve the problems arising from the continued presence of armed guards in the South-East. It further emphasised the need for displaced persons to be able to return home, receive compensation and/or recover their property as quickly as possible.

121. As regards compensation for damages, ECRI notes with interest the entry into force in July 2004 of Law No. 5233 on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism. This Law lays down the rules and procedures governing the award of compensation for damages suffered due to terrorist acts or to measures taken by the authorities in combating terrorism. It was amended in 2005 to introduce more flexible rules of evidence, allowing claimants to rely on any information or document in support of their claim. Damage Assessment and Compensation Commissions were set up by virtue of this Law in 76 provinces. On 12 January 2006, the European Court of Human Rights found that the provisions of the Law were "capable of providing adequate redress for the Convention grievances of persons who were denied access to their possessions in their places of residence".[67] ECRI notes with interest that, according to information provided by the authorities, between this Law's enactment and November 2008, approximately 360 000 applications for compensation were lodged. As of that date, compensation commissions had examined 150 000 applications and awarded damages in approximately 97 000 of these cases. As of spring 2010, more than 700 million EUR in compensation had been awarded. ECRI is concerned, however, at reports that a number of shortcomings in the implementation of the law have emerged or re-emerged since the above-mentioned finding of the European Court of Human Rights in 2006. Non-governmental sources have referred to allegedly excessive demands for documents to support claims for damages, for example with regard to livestock or, in areas where property registers are not complete, land; the lack of legal aid; disparities between provinces in compensation awarded; slow procedures; and the lack of an effective appeal procedure.

[67] İçyer v. Turkey (application no. 18888/02), decision of 12 January 2006, declaring the application inadmissible.

122. As regards the return of displaced persons, the authorities have referred to the Return to Village and Rehabilitation Project (RVRP) launched in 1994 and based on the principle of voluntary return of families to their former places of residence, or to other suitable places, while at the same time aiming to establish necessary social and economic infrastructures and provide sustainable living standards. For families who do not wish to return, the project seeks to improve their economic and social conditions at their current places of residence and ease their adjustment to urban life. The RVRP has been implemented in 14 eastern and southeastern provinces. The authorities have indicated that from 1999 to 2009, approximately 50 million EUR was spent on the project, notably in rebuilding or consolidating necessary infrastructures, and 187 861 citizens from 28 384 households had returned to their former places of residence. In addition, a specific action plan was launched in Van province in 2006. ECRI welcomes these steps, but shares the concerns voiced by non-governmental and international actors that progress in this field remains slow: the estimated number of IDPs in Turkey is still approximately 1 million, some having been displaced for up to 24 years.[68] Obstacles to the return of IDPs include poor infrastructure, the continued presence of landmines in relevant areas, and the continued presence – and in some cases obstructive behaviour – of village guards in some areas. A number of actors have stressed the need to strengthen efforts to protect and promote the right of internally displaced persons to return to their homes or to provide them with other viable, durable solutions such as voluntary resettlement or local integration. Against this background, ECRI notes with interest that provincial action plans have been developed since November 2008, with the aim of providing lasting remedies to the problems faced by IDPs; it notes that it will be important to assess the impact in practice of these action plans carefully to ensure that they are effective.

123. ECRI is also concerned that internally displaced persons unable or at present unwilling to return to their villages still often live in conditions of poverty and social exclusion, often living in illegally constructed, substandard housing and having little access to regular employment. Overcrowding in schools and other factors such as poverty mean children's access to education is also undermined. Overall, IDPs continue to suffer from marginalisation and severe economic and social hardship.

124. ECRI strongly recommends that the Turkish authorities keep under review the functioning of Damage Assessment and Compensation Commissions, in order to ensure it is at all times fully compatible with the requirements of the European Convention on Human Rights and that any shortcomings can be rapidly addressed.

125. ECRI strongly recommends that the Turkish authorities step up their efforts to assist the return of internally displaced persons and to provide them, where necessary, with other viable, durable solutions such as voluntary resettlement or local integration.

126. ECRI urges the Turkish authorities to take all necessary measures to ensure that internally displaced persons do not suffer discrimination in daily life, in particular in the fields of access to education, housing and decent living conditions.

Refugees and asylum seekers

127. In its third report on Turkey, ECRI urged the Turkish authorities to withdraw their geographical reservation concerning the origin of asylum-seekers. It

[68] According to a study carried out by Haceteppe University in 2006, there were between 935 700 and 1 201 200 displaced persons in Turkey. (Figures cited in IDMC, Protracted internal displacement in Europe: Current Trends and Ways Forward, May 2009, p9.)

recommended that the authorities provide all personnel in contact with asylum-seekers with human rights and awareness training in the problems encountered by asylum-seekers. It emphasised the need to introduce greater transparency in the processing of asylum applications and improve ways of informing asylum-seekers of their rights and urged the authorities to pursue and strengthen their co-operation with the UNHCR and NGOs working on behalf of asylum-seekers.

128. There is still no comprehensive asylum law in Turkey, although work is under way, in particular through the Development and Implementation Office for Asylum and Migration Legislation and Administrative Capacity established within the Ministry of the Interior following the adoption in 2005 of a national action plan for the implementation of the EU acquis on migration and asylum. The authorities have moreover indicated that consultations with civil society on a draft asylum law are planned in due course. ECRI notes with concern that Turkey has not withdrawn the geographical limitation by which it assumes the obligation to provide protection only to refugees originating from Europe. The authorities have indicated that according to the National Action Plan on Asylum and Migration, the geographical limitation may be lifted in line with the completion of EU accession negotiations, provided that the necessary amendments to legislation and infrastructure are made and that the EU itself engages in burden-sharing. In this context the authorities have moreover referred to several projects under way or already completed to improve the infrastructure in place to handle asylum-seekers and their claims. In the meantime, in accordance with Turkish regulations, non-European asylum-seekers must apply to the Turkish authorities for "temporary asylum-seeker status" while, in parallel, the UNHCR carries out refugee status determination and seeks durable solutions for persons determined to be of concern to the Office. The number of recognised refugees who are able to be resettled each year is considerably lower than the total number of refugees registered by the UNHCR: ECRI is concerned that as a result, several thousand refugees recognised by the UNHCR remain in Turkey but, in accordance with Turkish law, holding only temporary asylum-seeker status. Although this status entitles children to attend primary school, those without legal status may face difficulties with enrolment or in obtaining school certificates; medical care, in particular for serious illnesses requiring more than primary care, is not always guaranteed; and access to legal employment reportedly remains largely theoretical, due to practical difficulties experienced in obtaining work permits.

129. On 22 September 2009, the European Court of Human Rights delivered its judgment in the case of Abdolkhani and Karimnia v. Turkey, concerning the detention and attempted deportation to Iran by the Turkish authorities of the Iranian applicants, whom the UNHCR had previously recognised as refugees.[69] ECRI notes that in finding violations of Articles 13, 5 § 1, 5 § 2 and 5 § 4 of the Convention, the Court pointed to a number of serious failings in the legal provisions applicable and in the procedures followed in their cases, including failures to take into account the risks which they alleged they would face if deported, to provide them with the assistance of a lawyer, and to notify them of their deportation orders; it also found that the national system had failed to protect the applicants from arbitrary detention. The authorities have indicated that since this judgment became final and binding, two circulars have been issued by the Ministry of the Interior with the aim of remedying the problems that arose simply from the manner in which legislation was applied in practice in these cases. Two new draft laws on foreigners, refugees and asylum-seekers have also been prepared. ECRI welcomes this information and notes that all of these measures will be examined in detail by the Committee of Ministers as part of its

[69] Abdolkhani and Karimnia v. Turkey (application no. 30471/08), judgment of 22 September 2009 (second section), final on 1 March 2010.

role in supervising the execution of this judgment under Article 46 of the European Convention on Human Rights.

130. As regards social rights, ECRI welcomes the information that asylum-seekers now have access to "green cards", entitling them to free of charge primary health care. However, in order to gain access to employment, refugees and asylum-seekers must fulfil all the criteria specified by law for legal residence in Turkey; this means that, like all other foreigners, they must pay a residence fee of 150 EUR per person, every six months. Late payments are subject to a 100% penalty, and persons who are not up to date with payments may not leave the country. ECRI understands that some refugees have been prevented from resettling in other countries, although the latter had accepted their resettlement, because they were unable to pay residence fees owing in Turkey. ECRI is deeply concerned that these requirements fail to take account of the particular vulnerability of refugees and asylum-seekers, who in the vast majority of cases arrive with few or no belongings and do not have a support network to help them find their feet. ECRI notes that it is possible under existing law for local governors to exempt vulnerable individuals from the payment of residence fees. Moreover, in accordance with Circular No. 19 on Refugees and Asylum-Seekers issued by the Ministry of the Interior on 19 March 2010, the Foreigners' Department of the relevant Provincial Directorate of Security must assess within 15 working days, on the basis of information provided by each refugee/asylum-seeker, their financial capacity to pay the residency fee. If the refugee/asylum-seeker is considered not to have sufficient financial resources to pay the fee, or if the authorities do not reach a conclusion on this matter, payment of the fee is waived. ECRI welcomes this step, which appears very positive, but notes that it is too soon to assess its impact and the manner in which it is applied in practice.

131. The authorities have indicated, with respect to the training of officials in contact with asylum-seekers, that 8 joint seminars on refugee and asylum issues were organised for 323 officials in 2002-2006 in co-operation with the UNHCR, and training on migration and refugee issues was also provided to 84 officials in Istanbul and Ankara. Additional training activities are planned to take place in future in Muğla, Antalya, Hatay and Izmir. Overall, 1022 officials have been trained by the Ministry of the Interior in co-operation with UNHCR, and advanced training on refugee status determination is ongoing. Training programmes on psychological support and counselling are also conducted jointly with NGOs. As to asylum-seekers themselves, they receive oral and written information regarding their rights and duties; brochures distributed at border points also contain basic information for asylum-seekers; and asylum-seekers may receive interpretation free of charge. As regards attitudes of society more generally to refugees and asylum-seekers, civil society actors state that Turkish society is generally tolerant of refugees and asylum-seekers, although visible minorities have occasionally reported incidents of hostility or aggression or a failure to take account of their specific needs.

132. For all other matters, ECRI refers to the detailed report on the human rights of asylum-seekers and refugees published by the Council of Europe's Commissioner for Human Rights following his visit to Turkey in June-July 2009.[70]

133. ECRI again urges Turkey to withdraw the geographical reservation concerning the origin of asylum-seekers, and urges the authorities, for as long as the reservation remains in place, to take all necessary measures to ensure that non-European nationals holding or having applied for "temporary asylum-seeker"

[70] Commissioner for Human Rights, Report following his visit to Turkey on 28 June-3 July 2009, Issue reviewed: Human rights of asylum-seekers and refugees, CommDH(2009)31, 1 October 2009.

status under Turkish law are not subjected to undue precariousness or to direct or indirect discrimination in Turkey.

134. Bearing in mind the particular vulnerability of refugees and asylum-seekers, ECRI urges the Turkish authorities rapidly to find a solution, whether through amendments to the relevant legislation or, if these cannot be made rapidly, within its existing terms, to exempt all refugees and asylum-seekers from the payment of residence fees. In this respect ECRI recommends that the authorities keep under review the impact in practice of Circular No. 19 on Refugees and Asylum-Seekers issued by the Ministry of the Interior on 19 March 2010 in order to assess its effectiveness in resolving the issues at stake.

135. ECRI urges the authorities to act swiftly to remove the systemic weaknesses in the asylum system in Turkey that led to the European Court of Human Rights' findings of violations of the European Convention on Human Rights in the case of Abdolkhani and Karimnia v. Turkey, and to ensure that other refugees and asylum-seekers are not in future exposed to similar violations.

136. ECRI recommends that the Turkish authorities pursue their efforts to provide all officials and members of the judiciary in contact with asylum-seekers with human rights training and awareness-raising training in the problems encountered by asylum-seekers, so as to facilitate the steps the latter have to take.

IV. Racist Violence

137. No comprehensive figures were available regarding racist violence in Turkey, and it is difficult to build up a reliable overall picture in the absence of statistics relating to the application of the relevant provisions of the Criminal Code and the lack of relevant data disaggregated by ethnicity.[71] Incidents of particularly severe racist violence have, however, been reported by the media and by numerous actors in civil society, including a number of severe assaults and fatal attacks on individuals, apparently motivated on religious grounds.[72] On 29 April 2006 a Roma family in Afyon province was attacked by hundreds of non-Roma, who burned several houses belonging to Roma, apparently in retaliation for the abuse of some female students by two young Roma. Also in 2006, a Catholic priest was killed in Trabzon. In January 2007, the chief editor of the bilingual Armenian-Turkish *Agos* weekly newspaper, Hrant Dink, was assassinated, having previously received death threats of which the authorities were reportedly aware. In April 2007 three people working for a publishing house in Malatya that published materials related to Christianity were killed; the perpetrators stated that they were protecting the Turkish-Islam identity of society against the missionary activities of the company. In December 2007, the editor-in-chief of a Greek language newspaper was beaten outside the newspaper's office in Istanbul by two unknown attackers. A number of mob attacks on Kurds in mostly non-Kurdish populated cities in the west of Turkey have reportedly occurred since 2006, including several such attacks in late 2009. In 2009, two Greek cemeteries in Istanbul and one in Izmir were vandalised. According to the information available to ECRI, criminal proceedings in many of these cases had not yet been concluded at the time of drafting this report. ECRI is, however, encouraged to learn that the perpetrator of the above-mentioned Trabzon murder has been tried and sentenced to 17 years' imprisonment. In addition to specific, high profile acts of violence such as those mentioned above, minority schools, businessmen and religious institutions have reportedly been threatened by emails, letters and phone calls.

[71] On the latter points, see below, Monitoring Racism and Racial Discrimination.

[72] See also below, Conduct of Law Enforcement Officers.

138. ECRI is deeply concerned at these incidents, in which individuals were targeted and subjected to violent racist attacks because they belonged to minority groups, on several occasions with fatal consequences for the victims. It furthermore notes with concern that for the moment, only anecdotal evidence appears to exist in this field. ECRI emphasises the importance of systematically gathering data on alleged and proven racist offences in order to build up a full picture of the prevalence or otherwise of racist violence, identify general trends, take effective preventive action against such violence and combat it adequately when it occurs.

139. ECRI urges the Turkish authorities to intensify their efforts to combat racist violence, and in particular to ensure that the police thoroughly investigate all allegations of racist violence, including by fully taking racist motivations of such offences into account wherever they arise.

140. ECRI recommends that the Turkish authorities take steps to introduce systematic and comprehensive monitoring of all incidents that may constitute racist violence, and draws the authorities' attention in this respect to ECRI's General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, in particular to Part III of the Recommendation, concerning the role of the police in combating racist offences and monitoring racist incidents. It also refers in this context to its recommendations elsewhere in this report concerning both the application of criminal law provisions against racism[73] and the monitoring of racism and racial discrimination[74].

V. Racism in Public Discourse

Climate of opinion and racism in political discourse

141. In its third report on Turkey, ECRI recommended that the Turkish authorities develop their public awareness-raising activities against racism and intolerance, and noted that there was a strong case to be made for alerting the general public to the benefits that a multicultural society could bring to Turkey.

142. ECRI is pleased to note that some important recent initiatives of the authorities appear gradually to be helping to build a climate that is more open to debates on cultural and linguistic pluralism, although much still remains to be done in this field.[75] Fundamental changes in the attitudes and approach of the government on some important points do not yet appear to have filtered down to all levels, as shown, for example, by the still high numbers of attempts to bring prosecutions under the amended Article 301 of the Criminal Code. As a variety of actors emphasise, a key problem in this respect remains the perception that minority groups are primarily a security issue and the view that to assert a minority right is to insult or threaten the state. While for the most part the government's recent initiatives speak for themselves in rejecting this school of thought, such attitudes remain deeply entrenched in some quarters, including within some parts of the judiciary, prosecution services and executive branches of power, as well as in some parts of society. These attitudes also appear to be exploited by some mainstream opposition parties, which at times appear to give priority to distinguishing their position from that of the governing party over seeking constructive solutions to longstanding sources of tension between the majority population and minority groups. Occasional statements by leading politicians, in particular around Armenian claims of genocide, have also shown that mutual

[73] See above, Application of the criminal law provisions prohibiting acts of racism and racial discrimination.

[74] See below, Monitoring Racism and Racial Discrimination.

[75] See further below, Democratic Initiative; see also above, Vulnerable/Target Groups – Alevis and – Kurds.

resentment and mistrust may flourish unless considerable care is taken when addressing sensitive issues in political discourse.

143. Differences in religious beliefs and practices appear to be a source of some suspicion in Turkish society. Two recent studies show that many citizens feel uncomfortable with the idea of having a non-Muslim neighbour, and that many consider non-Muslims should not be allowed to hold meetings where they discuss their ideas or to publish literature that describes their faith.[76] Observers ascribe such attitudes at best to ignorance of other faiths and at worst to ingrained intolerance, underlining that in the Turkish state school system, religious classes are compulsory and cover exclusively or almost exclusively the Sunni Muslim faith, with followers of other religions being portrayed as "the other". ECRI notes that statements by politicians, including members of mainstream parties, have occasionally contributed to this trend, in particular through some statements that have been perceived as antisemitic, regarding recent events in Gaza.

144. ECRI recommends that the Turkish authorities strengthen their efforts to raise public awareness of the need to fight racism and intolerance and again stresses that there is a strong case to be made for alerting the general public to the benefits that multiculturalism can bring to Turkey. It refers to its recommendations made elsewhere in this report with respect to the authorities' democratic initiative and notes that a campaign aimed at the general public and promoting the benefits of diversity could usefully reinforce the efforts made in this field.

Media

145. In its third report on Turkey, ECRI recommended that the Turkish authorities alert media professionals to the dangers of racism and intolerance and stated that the introduction of a code of ethics and awareness-raising measures highlighting the dangers of racism and intolerance in the media would be a welcome move. ECRI strongly encouraged the Turkish authorities, in cases where racist articles had been published, to make every endeavour to prosecute and punish those responsible.

146. As noted in ECRI's previous reports, Turkish law prohibits the publishing or broadcasting of statements inciting to racial hatred both in the press and in electronic media, as well as racial discrimination in this domain. The authorities have also indicated that Turkish Radio and Television (TRT)'s 2006 General Broadcasting Plan states that ridicule on the basis of language, religion and history should be avoided in choosing themes and creating characters for programmes. However, civil society actors indicate that no charge has ever been brought against a national television or radio station for broadcasts in breach of the relevant statutory provisions; radio stations whose target audiences are predominantly minority groups have, on the other hand, been temporarily or permanently closed on the grounds of these provisions, and numerous journalists have been prosecuted under the legislation prohibiting statements that threaten the indivisibility of the state.[77]

147. ECRI notes that various institutions and organisations provide continuous training for media professionals. The authorities have referred to 14 workshops organised in various provinces over a period of ten years to strengthen the capacity of local media to provide human-rights-sensitive coverage, taking into account the principles of professional journalism and media ethics. However, ECRI has not

[76] Frekans, Research on Perception of Different Identities and Jews, September 2009; International Social Survey Programme, 2008 Religion III survey, as reported in Will Morris, "More than half in Turkey oppose non-Muslim religious meetings", Human Rights Without Frontiers Int'l, 6 December 2009. ,

[77] See above, Application of the criminal law provisions prohibiting acts of racism and racial discrimination, and below, Antisemitism.

received information regarding any evaluation made of the impact of such workshops in raising the awareness of media professionals about the dangers of racism and intolerance in the media. Nor is it aware of any individual complaints mechanisms or remedies available under TRT's 2006 General Broadcasting Plan, or of any steps taken towards putting in place a code of ethics applicable to the print and on-line media.

148. ECRI again recommends that the Turkish authorities alert media professionals and their organisations to the dangers of racism and intolerance. It recommends that awareness-raising measures to highlight the dangers of racism and intolerance in the media be stepped up and stresses the importance of ensuring that all media are bound by an effective code of ethics in this respect.

149. ECRI refers to its recommendations made elsewhere in this report regarding the application of criminal law provisions to combat racism and racial discrimination. It strongly encourages the Turkish authorities to prosecute and punish those responsible for the publication or broadcasting of racist material, in accordance with the letter and spirit of the relevant provisions.

VI. Antisemitism

150. In its third report on Turkey, ECRI recommended that the Turkish authorities take all appropriate steps to combat antisemitism in Turkey and to protect members of the Jewish community against physical attacks, including by duly prosecuting those responsible for antisemitic statements and acts.

151. Representatives of the Jewish community indicate that the Turkish authorities provide generally effective protection to the community, in particular against physical attacks against property. On the other hand, and while mainstream publications provide generally balanced coverage, overtly antisemitic statements appear in ultranationalist or far right wing publications, whether in the print and electronic media or on the internet, and are usually made with impunity. Individuals tend to be reluctant to bring proceedings in case they become the target of threats, and the authorities rarely launch proceedings of their own motion due in part to the high threshold inherent in Article 216 of the Criminal Code.[78] Discourse with respect to Palestine also is reported frequently to blur the line between criticising the positions and actions of the Israeli state and stigmatising the Jewish community or faith; some high-ranking politicians, despite having publicly stressed that antisemitism is a crime, have also at times blurred these lines. These phenomena have been especially marked when tensions have flared in and around Israel, for example during the crisis in Gaza in late 2008/early 2009. At that time boycotts of Jewish businesses were organised, and some businesses in Eskişehir displayed signs indicating that Jews, Armenians and dogs were not welcome to enter. It was not until one newspaper published photographs of these signs, along with an article asking what more the Ministry of Justice was waiting for, that the latter took action in that case.

152. While members of the Jewish community indicate that for the most part they feel safe from physical attacks in Turkey, they also underline that the overall climate of opinion towards Jews and other minority groups is not favourable. According to a Turkey-wide survey conducted in 2009, 42% of persons interviewed stated that they would not want a family of the Jewish faith as neighbours, and 48% considered that Jews were not loyal to the Republic of Turkey. At the same time, 90% of respondents indicated that they had no contact whatsoever with Jews.[79]

[78] See above, Contents of the criminal law prohibiting acts of racism and racial discrimination.

[79] Frekans, Research on Perception of Different Identities and Jews, September 2009.

153. ECRI reiterates its recommendation that the Turkish authorities take all appropriate steps to combat antisemitism in Turkey. It again underlines the importance of duly prosecuting those responsible for antisemitic statements and acts and of sending a clear signal to the public that such behaviour will not be tolerated. In this respect, ECRI again draws the attention of the Turkish authorities to its General Policy Recommendation No. 9 on the fight against antisemitism.

VII. Democratic Initiative

154. In 2009, the government announced a new "democratic initiative",[80] aimed at addressing unresolved issues with respect to Kurds in Turkey through peaceful methods. While the details of the package remained unclear at the time of drafting this report and the initiative has been strongly criticised in some quarters, ECRI notes that many civil society actors have welcomed it with, at very least, cautious optimism, and have underlined the new sense of freedom in Turkish society to discuss minority-related questions. Progress has moreover already been made with respect to some problematic issues referred to elsewhere in this report – such as the teaching of the Kurdish language at university – since the initiative was announced. Other areas where steps forward could be taken, such as the use of Kurdish in political life, have also begun to be discussed and debated in civil society.

155. ECRI applauds the Turkish authorities for their decision to tackle these questions openly and through dialogue with Kurdish representatives and with society as a whole. It observes nonetheless that the initiative is at a delicate stage at present: the authorities have begun to move towards an important new vision and understanding of the diversity of Turkish society and of steps that could be taken to ensure that all of its members are able to participate fully irrespective of their culture, language or ethnic origin; however, it seems that this understanding has not yet filtered through to all levels of the various branches of political power, or to society as a whole. The fact that these issues have been at the heart of protracted struggles in Turkey, which still occasionally flare up into violence, also compounds the difficulty of finding common ground for dispassionate and peaceful dialogue. ECRI stresses the need in this context to address the various issues at stake openly and with determination in order to advance towards universally acceptable solutions.

156. ECRI strongly encourages the Turkish authorities to pursue their efforts towards peacefully resolving questions surrounding the situation of Kurds in Turkish society. It emphasises the role of all political parties in taking the lead to make debates constructive and forward-looking, in the interests of building a society free of all forms of racial discrimination and intolerance.

VIII. Education and Awareness-Raising

157. In its third report on Turkey, ECRI encouraged the Turkish authorities to ensure that the issues of mutual respect, racism and racial discrimination were properly covered in school curricula and in teacher-training courses on human rights; that textbooks did not contain any derogatory or insulting references to any minority group; and that school curricula and textbooks, including history books, were revised, in co-operation with civil society, in order to heighten pupils' awareness of the advantages of a multicultural society.

158. ECRI notes with interest that at the start of the 2009-2010 academic year, following a circular issued by the Ministry of Education, an obligatory anti-

[80] Also referred to as the "democratic opening" or the "Kurdish initiative".

discrimination class was taught to all pupils as their first class of the school year. In accordance with Article 6 of a new regulation on school books and educational materials which came into force on 31 December 2009, textbooks should provide content that will help to promote values such as tolerance, respect for differences, equality and pluralism. ECRI also welcomes the information that in 2007, Turkey carried out a review of school textbooks in order to eliminate discriminatory content. However, a study of 139 textbooks carried out in 2008[81] concluded that the majority of books reviewed still contained sections that were nationalist, racist, militarist or sexist, did not help to develop critical perspectives and tended to promote an "us versus them" mentality rather than peaceful co-existence. Anti-discrimination training for teachers is also reportedly inadequate. At the same time, civil society actors are critical of the continued inclusion in the school curriculum of a "national security class" taught by military personnel.

159. ECRI emphasises the highly influential role played by school education in shaping children's views for their adult life. It stresses the long-term importance for the state of ensuring that the education provided to children in schools avoids stereotypes and overly simplistic approaches and instead promotes tolerance and openness to diversity.

160. ECRI recommends that the Turkish authorities pursue and strengthen their efforts to ensure that the school curriculum promotes the fight against racism and xenophobia and the values of tolerance and non-discrimination. At the same time, it recommends that they strengthen their efforts to train teachers in relevant human rights and non-discrimination issues.

161. ECRI recommends that the Turkish authorities pursue and strengthen their efforts to eliminate all discriminatory content from school textbooks, and again recommends that they work together with civil society to achieve this aim.

IX. Conduct of law enforcement officers

162. In its third report on Turkey, ECRI recommended that further action be taken to put an end to any instances of police misconduct, including ill-treatment and torture directed against members of minority groups. In particular, ECRI stressed the importance of setting up an independent investigatory mechanism which can carry out enquiries into allegations of police misconduct and, where necessary, ensure that the alleged perpetrators are brought to justice. ECRI also stressed that cases of police violence that come before the courts must be dealt with as rapidly as possible in order to convey the message to society that such behaviour on the part of the police is unacceptable and will be punished.

163. ECRI notes that while the overall situation as regards the conduct of law enforcement officers was generally considered by ECRI's interlocutors to have improved substantially over the past ten to fifteen years, there are still significant concerns about violations of human rights in places of detention. Deaths of members of minority groups while in police custody have occurred since ECRI's third report. Allegations of ill treatment occurring outside places of detention, such as during the apprehension of suspects, have also increased in recent years. At the same time, concerns have been raised about excessive use of force by the police during demonstrations, in particular in areas inhabited in high proportions by persons belonging to minority groups. ECRI is especially concerned at reports of one case in 2009 in which the Supreme Court of Appeals upheld the acquittal of a police officer who fired his gun into the crowd rather than into the air, killing one person, during a pro-Kurdish demonstration in Siirt at which demonstrators

[81] History Foundation and Turkish Human Rights Foundation, Human Rights in Schoolbooks, Istanbul, 2008.

were throwing stones; the Court emphasised, in finding that the officer's reaction had been within legal bounds, the special circumstances in the region. This judgment has been widely perceived as setting a dangerous precedent of impunity, and at the same time placing persons living in Turkey's southeast – notably Kurds – at greater risk of police excesses than other Turkish citizens.

164. ECRI also notes with concern continued reports of inadequacies in investigations and prosecutions in ill-treatment cases in which the alleged perpetrators were members of the security forces. In January 2009, the Human Rights Investigation Committee of the Grand National Assembly indeed noted that in Istanbul, in 35 such cases involving 431 police officers brought between 2003 and 2008, there had been a number of acquittals and dropped charges, and investigations or trials were still underway in a number of cases. However, no convictions had been secured in the cases that had already been resolved. The failure of the authorities to take measures to protect journalist Hrant Dink, a well known member of the Armenian community, although threats against him were known to the authorities, has also eroded confidence in the police.[82]

165. ECRI notes with interest that in accordance with Article 256 of the Criminal Code enacted in 2004 (Law No. 5237), provisions concerning felonious injury are deemed to apply where a public official uses excessive force in the exercise of their duties. Some additional preventive measures have been taken since ECRI's third report, in particular through extensive efforts to provide human rights training to members of the security forces. Considerable efforts have also been made to install audio and video recording equipment in interview, statement-taking and detention rooms in police and gendarmerie stations and to train medical staff, judges and prosecutors on how best to investigate and document cases of torture and ill treatment. The authorities have also indicated that draft legislation has now been prepared to establish an independent complaints commission entrusted with dealing with complaints against police officers and gendarmes. As of October 2009, the draft legislation had been submitted to the Council of Ministers. However, further progress appears to be needed in order effectively to prevent incidents of ill treatment or torture of members of minority groups at the hands of the security forces, to ensure the effective investigation, prosecution and punishment of the authors of any such acts, and to help build confidence between the security forces and members of minority groups. In the latter respect, ECRI notes that minority groups report that, even in areas of the country where minority groups are concentrated, almost all members of the security forces are members of the majority population. It notes with interest that a project on community support for law enforcement agencies initiated in 2006, covering 10 cities, and aiming to ensure that security services are provided on an equal footing for all, expanded to a further 30 cities as of 1 April 2009.

166. ECRI recommends that the Turkish authorities pursue and strengthen their efforts to prevent misconduct directed against members of minority groups by members of the security forces, including ill-treatment and torture. Measures taken should continue to include human rights training as well continued efforts to ensure that ill treatment in places of detention, but also outside these places, will not go undetected.

167. ECRI recommends that the Turkish authorities enact and implement as soon as possible legislation establishing a body, independent of the police and other security forces and of the prosecution authorities, entrusted with the investigation of alleged cases of misconduct by the members of the police or other security forces, including ill treatment directed against members of minority groups. ECRI again stresses that cases of police violence that come before the courts must be

[82] See above, Racist Violence.

dealt with as rapidly as possible in order to convey the message to society that such behaviour on the part of the police is unacceptable and will be punished.

168. ECRI recommends that the Turkish authorities take measures to improve the diversity and representativity of the security forces. On this point as on those above, ECRI refers to its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, which includes a number of measures that governments can take in these respects.

X. Monitoring Racism and Racial Discrimination

169. In its third report on Turkey, ECRI encouraged the Turkish authorities to think about ways of introducing a coherent, comprehensive system of data collection, in order to assess the situation of the various minority groups living in Turkey and the scale of racism and racial discrimination. ECRI notes that no such system presently exists; as noted several times in this report, the absence of such data makes it difficult to build up a clear picture of the situation of the various minority groups and to take targeted measures to address any inequalities. ECRI emphasises that collection and publication of data broken down according to ethnicity can play an important role in identifying problems of direct or indirect racial discrimination and in devising appropriate solutions. It can thus act as a key element in effectively fighting discrimination, provided that certain fundamental requirements are met – that is, that any data gathered is collected on anonymous, confidential and voluntary basis, and is used only for the purposes for which it is collected.

170. ECRI recommends that ways of measuring the situation of minority groups in different fields of life be identified, stressing that such monitoring is crucial in assessing the impact and success of policies put in place to improve the situation. The data collection system must comply with domestic law and European regulations and recommendations on data protection and the protection of privacy, as indicated in ECRI's General Policy Recommendation No. 1 on combating racism, xenophobia, antisemitism and intolerance. It should in particular be implemented with due regard for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. The system for collecting data on racism and racial discrimination should also take into consideration the possible existence of cases of double or multiple discrimination.

INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the authorities of Turkey are the following:

- ECRI recommends that the Turkish authorities reinforce the criminal law provisions aimed at combating racism along the lines advocated by General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, in particular by providing that racist motivations constitute an aggravating circumstance in respect of all ordinary offences.

- Bearing in mind the particular vulnerability of refugees and asylum-seekers, ECRI urges the Turkish authorities rapidly to find a solution, whether through amendments to the relevant legislation or, if these cannot be made rapidly, within its existing terms, to exempt all refugees and asylum-seekers from the payment of residence fees. In this respect ECRI recommends that the authorities keep under review the impact in practice of Circular No. 19 on Refugees and Asylum-Seekers issued by the Ministry of the Interior on 19 March 2010 in order to assess its effectiveness in resolving the issues at stake.

- ECRI recommends that the Turkish authorities enact and implement as soon as possible legislation establishing a body, independent of the police and other security forces and of the prosecution authorities, entrusted with the investigation of alleged cases of misconduct by the members of the police or other security forces, including ill treatment directed against members of minority groups.

A process of interim follow-up for these three recommendations will be conducted by ECRI no later than two years following the publication of this report.

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APPENDIX: GOVERNMENT'S VIEWPOINT

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Turkey

ECRI, in accordance with its country-by-country procedure, engaged into confidential dialogue with the authorities of Turkey on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, unless otherwise indicated, only takes into account developments up until 30 April 2010, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

3 December 2010

OBSERVATIONS OF THE TURKISH GOVERNMENT ON ECRI'S FOURTH REPORT ON TURKEY

The Government of the Republic of Turkey would like to first and foremost applaud the work that the European Commission against Racism and Intolerance (ECRI) has been undertaking and wishes to express its full support in this respect. Turkey feels that rising intolerance and the emergence of a communitarian approach has a deteriorating effect on the ties that binds our societies. ECRI and the mission it has been mandated with has become all the more relevant and even more important in this respect.

Not all findings, assessments and recommendations of ECRI are in line with how the Turkish Government evaluates the situation and they do not always concur with its longstanding principles, policies. However, rest assured that the Government will always take into consideration ECRI's work and try to implement its recommendations to the extent possible. Turkey believes that the gist of ECRI's work depends on constructive dialogue and it will do its utmost to preserve this spirit.

In this context, please find here-below a series of observations that ECRI may want to consider:

ECRI's fourth monitoring cycle report on Turkey covers the situation as of 30 April 2010 and developments subsequent to this date are not taken into consideration. However, a number of important developments have taken place in the following period and will probably continue to take place even after the submission of this observation. In this respect the Government deems it necessary to put the following developments on record:

On 13 May 2010, the Prime Ministry has issued a circular that confirmed that all Turkish citizens from different religious communities constitute an inseparable part of Turkey, urging all related government institutions and offices to act with utmost diligence for the absolute elimination of problems encountered by the non-Muslim minorities. A translation of this circular is appended herewith.

This Circular of the Prime Ministry was published on the same date in the Official Gazette and was hailed as a major development by all non-Muslim religious communities in Turkey. It reminds public officials that non-Muslim citizens of the Republic must be protected from needless impediments in their official dealings and transactions with the Government institutions and their fundamental rights must be protected not only because it is so required by law, but also in order to make these communities feel that they are part of the Turkish nation and State.

On 27 July 2010, the Counterterrorism Law was amended with a reform package. It basically remedied the situation of minors who were dubbed as "the stone-throwing children" in the Turkish media by taking minors out of the remit of the

Counterterrorism Law. It effectively deals with the concerns expressed in paragraphs 30 and 31 of ECRI's report on Turkey.

With this package, all children will henceforth stand trial in juvenile courts, or adult courts acting as juvenile courts. Child demonstrators who commit propaganda crimes or resist dispersal by the police will not be charged with committing crimes on behalf of a terrorist organization and hence membership in a terrorist organization. Minors will not face aggravated penalties, and may benefit from sentence postponements and similar measures for public order offenses.

The amendments also reduce penalties for both minors and adults for forcibly resisting police dispersal and offering "armed resistance," including with stones, during demonstrations under the Law on Demonstrations and Public Meetings. After the law entered into force, courts in Adana, Diyarbakir, and Van, among other places, immediately released minors who were serving prison sentences or being held in pretrial detention on terrorism-related charges. Further details on this issue are provided further down.

On 12 September 2010, a Constitutional Reform Package was adopted as a result of a referendum. This is an extensive reform package that covered many issues that has been raised by ECRI. A detailed note explaining the extent of the package is appended to this observation.

The adoption of the constitutional reform package in the referendum of September 12 introduced the following changes:

- New rights are granted;
- The scope of the existing constitutional rights is expanded;
- New mechanisms are introduced for the protection of constitutional rights;
- The rule of law is strengthened;
- The Constitutional Court and the HSYK are restructured to align them with their counterparts in the democratic world; and
- Military jurisdiction is restricted.

As a result of the provisions contained in the constitutional amendment package, human rights and fundamental freedoms have been expanded and the Turkish constitutional system is brought in line with its international obligations. The amendments eliminated several shortcomings referred to in the judgments of the European Court of Human Rights (ECtHR), and the fulfilment of a series of findings and recommendations put forward by the Council of Europe (CoE) Commissioner for Human Rights, the Venice Commission, the European Commission against Racism and Intolerance (ECRI), the Monitoring Committee of the Parliamentary Assembly of the CoE, the Committee on the Elimination of Discrimination against Women (CEDAW), the UN Committee on the Elimination of Racial Discrimination (CERD) and several other international supervisory bodies as well as those indicated in progress reports and on other occasions.

Please find here-below further comments of the Turkish Government with regard to the ECRI report of Turkey produced as part of its fourth monitoring cycle:

1. Regarding the observations and recommendations on minority schools brought up in the draft ECRI report, the Government of Turkey would like to emphasize that:

There exists no universally recognized and legally binding definition of the term "minority". It remains the prerogative of the state to confer minority status to persons.

As concluded in the CSCE Meeting of Experts on National Minorities in Geneva in 1991, "not all ethnic, cultural, linguistic or religious differences necessarily lead to the creation of national minorities".

In addition to the OSCE commitments related to the protection and promotion of the rights of persons belonging to national minorities, certain international instruments, inter alia, the International Covenant on Civil and Political Rights (ICCPR, Article 27), refer to the rights of persons belonging to minorities.

Turkey is party to almost all the core instruments pertaining to fundamental rights and freedoms, including the ICCPR.

The Government, fully aware of its obligations, maintains its resolve towards further aligning its legislation with international standards and improving implementation.

Under the Turkish constitutional system, the word "minorities" encompasses only groups of persons defined and recognized as such on the basis of multilateral or bilateral instruments to which Turkey is a party.

Turkish constitutional system is based on the equality of citizens before the law, whose fundamental rights and freedoms are enjoyed and exercised individually in accordance with the relevant law. Turkish nation is not a juxtaposition of communities or groups. It is composed of citizens who are equal before the law regardless of their origin.

In this context, "minority rights" in Turkey are regulated in accordance with the Lausanne Peace Treaty of 1923. According to this Treaty, Turkish citizens belonging to non-Muslim minorities fall within the scope of the term "minority". Turkish legislation which is based on the Lausanne Peace Treaty contains the term "non-Muslim minority" only. The term "minority" cannot be used for Muslim Turkish citizens.

In line with the state philosophy based on the equality of citizens without discrimination, Turkish citizens belonging to non-Muslim minorities enjoy and exercise the same rights and freedoms as the rest of the population. These rights and freedoms are guaranteed in Article 10 of the Constitution. Additionally, they benefit from the exclusive assurances accorded to them deriving from their minority status under Articles 37-45 of the Lausanne Peace Treaty.

Turkish citizens belonging to non-Muslim minorities have their own places of worship, schools, foundations, hospitals, as well as printed media.

2. Courses on Turkish and Turkish culture are taught in Turkish at private minority schools by teachers who are appointed by the Governorship among the staff of public schools. The remaining courses taught at those schools are given in the language of that minority group.

Greek language and science courses are given by teachers appointed by the Government of Greece at Greek minority schools in Turkey. On the other hand, Turkish language and science courses are given by the teachers assigned by the Government of Turkey at Turkish minority schools in Western Thrace/Greece.

Pursuant to the agreement reached through exchange of letters between the Governments of Turkey and Greece in 1952-1955, each government appointed 35 teachers in Western Thrace and Istanbul. In 1990, due to Greek Government's unilateral decision to appoint 16 teachers in Turkey, Turkey reduced the number of Turkish teachers in Greece to 16 as well. At present 16 teachers are being assigned by each country.

In accordance with Articles 40, 41 and 45 of the Treaty of Lausanne, all transactions and procedures in Turkish minority schools in Western Thrace as well as private minority schools in Turkey are conducted on the basis of reciprocity.

Teachers to be employed at minority schools, like every Turkish citizen, have the right to access to and study at the faculties of education in Turkey.

Courses on Turkish language and culture at minority schools are taught by teachers who are assigned and paid by the state. Their employment thus does not become a burden to minority schools. There is no limitation to the appointment of qualified staff to these schools provided that their assignment is in compliance with the decisions of the Board of Education.

3. In Turkey, Law No. 5580 regulates the conditions of opening private international schools by foreign nationals where foreign students can have education. Article 5 (a) of the said Law is as follows;

a) International private education institutions, except higher education institutions, which only students of foreign nationality may attend, can be opened by real and legal persons of foreign nationality or through partnerships with Turkish nationals, within the scope of Law No 4875 on Direct Foreign Investments and with the permission of the Council of Ministers. Turkish nationals who are real persons, legal persons subject to or administered by private law provisions may also open international private education institutions in their own name for the same purpose.

b) Education cannot be carried out at these institutions in violation of the indivisible integrity of the state in terms of its territory and nation, against its security and interests as well as the national, ethical, humane, moral and cultural values of the Turkish Nation.

c) Curriculum programs, education and training activities and transactions related to other issues are conducted in accordance with the principles drawn up by the administration of the institution and approved by the Ministry.

d) The Ministry of National Education has the right to inspect these institutions on these matters.

Accordingly, international private education institutions where only foreign students may enrol can be opened by foreigners with the approval of Council of Ministers.

The private schools operating under the Law on Private Education Institutions (No. 5580) comprise of private Turkish schools, private foreign schools, private minority schools and private international schools.

i. Private Turkish Schools: Apart from the curriculum of public schools, upon the application of the school and approval of the Board of Education, different programmes can be carried out at such schools which are founded by real or legal persons of Turkish nationality.
ii. Private Foreign Schools: These are the schools established by foreigners and recognized through exchange of letters on the basis of the Treaty of Lausanne. Education is held in foreign language at the private foreign secondary schools.
iii. Private Minority Schools: These are the schools established by Greek, Armenian and Jewish minorities and covered by the Treaty of Lausanne. Turkish nationals belonging to Greek, Armenian and Jewish minority groups attend these schools which exist at preschool, primary and high-school level. At the minority schools, the mother tongue of the Turkish citizens belonging to non-Muslim minorities are taught as a compulsory course for the same duration devoted to Turkish course. In these schools, the courses except Turkish and Turkish culture are taught in their own languages. Curriculum and weekly class schedules approved by the Ministry of Education are implemented at such schools. The curriculum includes courses not only on mother tongue but the religion that they belong to as well.
iv. International private education institutions: These institutions operate in compliance with Article 5 of the Law No. 5580. Only foreign nationals can attend to these schools.

In accordance with the Law on Private Education Institutions, there exists no other institution apart from the abovementioned ones in formal education.

The Ministry of National Education has not received any report of threat against minority schools.

4. Regarding paragraph 65, the obligation to appoint a Deputy Director of Turkish nationality is only valid for private foreign schools. According to the Law No. 5580, any teacher of Turkish nationality irrespective of his/her origin can be appointed as Deputy Director.

Since the whole staff at minority schools are of Turkish nationality (irrespective of his/her origin), the obligation of appointing a Deputy Director of Turkish nationality does not create a concern in these institutions.

With the new amendments on "Guidelines on nomination procedures; performance and disciplinary evaluation of the education personnel appointed to private education institutions", Directors of minority schools have become responsible from rating the performance of all personnel at these schools.

5. As stated above, a circular of the Prime Ministry published in 13 May 2010 underscored that Turkish citizens belonging to non-Muslim minorities in the country, like all Turkish citizens, have the right to enjoy and to maintain their own identities and cultures. The Circular of the Prime Ministry also emphasized that these citizens should be protected from needless impediments in their official dealings and transactions with any government institutions.

6. Regarding paragraphs 59, 60 and 63 on Kurdish language courses, it should be taken into consideration that Article 7 of the Regulation on "Learning of different languages and dialects traditionally used by Turkish citizens in their daily lives" (5 December 2003) describes the qualifications and requirements of the personnel of private Kurdish language courses as follows;

> *"A director, a deputy director, a teacher or a master trainer and other personnel are assigned to these courses. If new classes are created by additional programmes at the existing courses, a teacher or a master trainer is assigned for these new courses.*
> *The administrator, teacher, expert instructor, master trainer or other staff who will be issued working permit for teaching different languages and dialects at the courses shall possess the general qualifications and conditions set out at the Law on Private Education Institutions (No. 5580); regulation of the Ministry of National Education on Private Education Institutions as well as the said Ministry's regulation on private courses."*

The Board of Education, in its letter dated 27 August 2004 and no. 8255, states that master trainers of Kurdish language can be appointed primarily among primary school, Turkish language and literature and foreign language teachers who declare that they know Kurdish, if it is not possible to assign teachers of these branches, teachers of other branches or graduates of other faculties whose diplomas are recognized by the High Education Board can be entrusted.

Private Kurdish language courses which do not have "school" status, aim to educate persons and operate in the context of mass education.

Private courses pursuing commercial activity and launched in accordance with the Law No. 5580 do not receive financial assistance from the state. The number of private courses operating under the Ministry of National Education is 2001. In these courses 999 different programmes are being carried out.

7. Regarding compulsory religious education, the Government would like to underline the fact that courses on Religious Culture and Morals in schools are not aimed to give religious education but to provide a general insight about all religions while focusing more on the principles of the Muslim faith, since the great majority of the population in Turkey is Muslim. This practice is in accordance with the principles of Toledo Report of the OSCE which says that education on religions and beliefs conducted in schools may focus more on the religion practiced in that area. Had these were courses been solely based on religious education, then the syllabus would have covered how to practise the Muslim faith by teaching the Quran as well as visiting and praying in mosques.

Courses on Religious Culture and Morals are compulsory in Turkey due to several factors such as the historical and contemporary experience that the country went through, the demands of the society and the responsibility of the state to provide accurate information and knowledge to students on religious culture. The Toledo principles consider compulsory courses on religious principles compatible with the freedom of religion, provided that they are given in an objective way.

Regarding the second sentence of paragraph 73, the Government would like to state that Alevis are not defined as a non-Muslim minority since they bring a different interpretation to the principles of Islam faith, but identify themselves within the Islam religion. The syllabus which covers different religions and sects is still undergoing revision in the light of the ECtHR's judgment in the case of *Hasan and Eylem Zengin v. Turkey*. A commission has been set up upon the demands of Alevi citizens and with the participation of their representatives and experts in order to adjust the syllabus to the requirements of the Court's judgment. Nonetheless, the judgment on Zengin case did not assess the compulsory nature of these courses but its content.

The wording in paragraph 101 about the "Sunni-Muslim religious high schools" does not reflect the reality. In the Turkish education system, there exist no such schools. Education based on or promoting specific beliefs or sects is not allowed in schools. Pupils from all segments of the society belonging to different beliefs and sects come together in public schools and are taught the same syllabus.

8. Regarding the complaints made to the Human Rights Presidency about restrictions on the use of one's mother tongue in prisons (para.54), the Government would like to bring to the attention of ECRI that the Article 41 of the "Regulation on Visits to Convicts and Detainees" which entered into force on 17 June 2005 and published at the official gazette no. 25848, while requires the use of Turkish during prison visits, it also allows the use of another language if prisoner or visitor does not speak Turkish.

9. Regarding paragraph 77, the Government would like to highlight that the provision of health care services are guaranteed by Article 56 of the Constitution. The right to live a healthy life is considered as a fundamental human right and all Turkish citizens have the right to benefit from health services irrespective of their language, religion, race and sex. Therefore statistics on health issues in Turkey are not based on ethnic data.

10. Following the preparation of this report by ECRI, 14th High Penal Court of Bakırköy has issued a judgment on 1 June 2010 concerning the case of Engin Çeber who died on 10 October 2008 due to cerebral haemorrhage in post-custody period. The court convicted four personnel including three prison guards and the director on duty of Metris T-type Closed Prison to aggravated life imprisonment for causing death by torture in accordance with the Article 95 (4) of Turkish Penal Code. Art 95 (4) states that if death occurs as a result of torture a sentence of aggravated life imprisonment be imposed. The aggravated life imprisonments in that case were mitigated to life sentences in accordance with the discretionary discount stipulated in Article 62 of the Penal Code.

Three police officers and two guardians also received prison sentences of seven years and six months each in accordance with the Article 94 (1) of Turkish Penal Code which provides that "Any civil servant who carries out actions against a person that lead to bodily or mental pain incompatible with human dignity, that influences their ability to perceive or their will or is degrading, will be punished by imprisonment of between three and twelve years." The prison doctor is also convicted for having issued forged medical reports to three years, one and a half months imprisonment.

A total of 60 public servants who are believed to have been involved in the acts that led to Çeber's death, were tried in this case. Among the suspects there were police officers and prison officers of different ranks. At the end of the trial, responsible officers received prison sentences from 5 months to life sentence with the charges of negligence, misconduct, failure to report the crime, causing malicious injury due to disproportionate use of force, torture and aggravated torture.

This case sets an example that impunity does not exist and all forms of ill-treatment and torture are subject to severe criminal sanctions.

11. As was duly stated above, a package that amends 14 articles of the Constitution was approved by the Turkish Grand National Assembly on 7 May 2010 and was submitted to referendum on 12 September 2010.

12. Despite the legal framework and the inherited tradition of religious tolerance, Turkey, like other multi-faith societies, is not totally immune to isolated incidents. Such incidents receive prompt and diligent response from relevant authorities and all possible measures are taken to bring those responsible to justice. Perpetrators of these crimes were swiftly captured, judicial investigations were launched and the legal process is either concluded or ongoing.

13. Government continues its efforts to ensure compliance with legal safeguards in the prevention of torture and ill-treatment. Trainings on effective investigation and documentation of cases of torture and ill-treatment have been given to health care personnel as well as to prosecutors and judges since 2008 for better implementation of the İstanbul Protocol. Efforts on equipping the statement taking

rooms with audio and video recording systems at the police and gendarmerie stations are still ongoing.

14. Regarding paragraph 127, Turkey is party to the 1951 Geneva Convention relating to the Status of Refugees and 1967 Additional Protocol with "geographic limitation". Due to this limitation, Turkey grants those who enter from "non-European countries" and lodge asylum application in its territories, "asylum seeker" status, allowing them to reside in Turkey until they are settled in a third country by the UNHCR. The provisions of the Convention apply only to asylum seekers entering Turkey from "European countries".

Turkey, however strictly complies with the principle of "non-refoulement" as laid out in the Geneva Convention.

Asylum-seekers who are not granted the refugee status but are assessed to be under risk of persecution in their countries of origin, are not deported, and are allowed to temporarily stay in Turkey within the concept of ''Subsidiary Protection and Protection with Humanitarian Considerations''.

Turkey is a country extensively affected by mass population movements. Lifting the geographic limitation is an issue which should be overcome without damaging the economic, social and cultural fabric of Turkey.

Lifting the geographic limitation is envisaged to take place in line with the completion of the EU accession negotiations according to the National Action Plan on Asylum and Migration of Turkey, along with the two criteria to be met:

(i) Necessary amendments to the legislation and improvements to infrastructure should be realized.
(ii) EU should engage in burden-sharing.

Following the finalization of the above-mentioned projects, a proposal for lifting the geographic limitation might be submitted to the Turkish Grand National Assembly in line with the progress of Turkey's negotiations for accession to the EU.

15. Regarding paragraph 129, relevant authorities are instructed with the letter of the Ministry of the Interior dated 9 March 2010 to take necessary steps to ensure that the deficiencies which are also addressed by the European Court of Human Rights in the judgment of *Abdolkhani and Karimnia v. Turkey* are remedied.

Consequently, two circulars have been issued by the Ministry of the Interior to fix the problems emanating from the implementation of the current legislation and regulations (see Annex). In the meantime, the Ministry of the Interior has prepared two new draft laws on foreigners, refugees and asylum-seekers that will address all existing problems in this area.

16. Regarding paragraph 136, Turkey continues its efforts to harmonise its practice and legislation with the EU *acquis* in the area of asylum. Especially, within the last seven years significant improvements have been achieved in Turkish Asylum system. Asylum and Migration Action Plan, prepared in the framework of an EU Twinning Project realized in 2003-2005 was approved by the Prime Ministry and came into effect in 2005. In the framework of the Action Plan, a specialized civil unit, "Development and Implementation Office for Asylum and Migration Legislation and Administrative Capacity" was established within the Ministry of the Interior. As it is envisaged in the Action Plan, special attention has been given to the projects to strengthen the physical infrastructure.

In the framework of the 2006 Instrument for pre-Accession Assistance (IPA), 12 million 51 thousand Euro budget twinning project on the "Support to set up an Asylum and Country of Origin Information (COI) System" was initiated in cooperation with Germany on 28 February 2008 and concluded at the end of May 2010.

As part of the investment projects implemented in cooperation with the European Union, another twinning project on "The Establishment of a Reception, Screening and Accommodation System (Centres) for Asylum-Seekers and Refugees" started on 29 February 2010. 62 million 400 thousand Euro budget project which is conducted in partnership with the Netherlands and the United Kingdom, aims to strengthen the institutional capacity to deal with refugees and asylum seekers in a well structured, modern asylum system, including a network of reception centres managed by specialised staff. In this regard, construction of new reception centres in Ankara, İzmir, Kayseri, Gaziantep, Erzurum and Van, each with a capacity of 750 persons, are scheduled to be completed in the last quarter of 2012.

17. Regarding paragraphs 31 and 44, statement taking procedures for minors subject to criminal investigation are stipulated under Article 15 and 16 of the Law No. 5395 on Juvenile Protection; Article 236 of the Code of Criminal Procedure and Section 19 of the Regulation on Apprehension, Detention and the Taking of Statements. Accordingly;

a) Law No. 5395 on Juvenile Protection

Article 15

1. *Investigations related to juveniles pushed to crime shall be carried out personally by the public prosecutor assigned at the juvenile bureau.*
2. *During interrogation and other procedures related to the juvenile, the juvenile may be accompanied by a social worker.*

Article 16

1. *Detained juveniles shall be kept at their juvenile unit of the law enforcement.*
2. *In cases where the law enforcement does not have a juvenile unit, the juveniles shall be kept separate from detained adults.*

b) Code of Criminal Procedure

Article 236

2. *The child or the victim whose psychology has been disturbed as a result of the crime committed can only be listened once as a witness during the investigation or the proceeding being carried out with regard to that crime. Cases whereby this is necessary in order to reveal the concrete truth constitute an exception.*

Article 236

3. *While witnesses of juvenile victims or other victims whose psychologies have been disturbed as a result of the criminal act are being heard, a person who is an expert in psychology, psychiatry, medicine or pedagogy shall be kept present. These psychiatric/medical experts are subject to the same provisions as experts.*

c) For children, authority to detain and taking of statements are limited. (Section 19 of the Regulation on Apprehension, Detention and the Taking of Statements) Children from 12 to 18 years old may be apprehended because of a crime. These children are referred immediately to the public prosecutor while the child's parents/relatives as well as child's lawyer are promptly notified; the investigation regarding these children are conducted personally by the chief public prosecutor or by a public prosecutor he/she entrusted. In this process,

- A lawyer is summoned in all cases regardless of the request of the child. The child's parents or guardian can employ the lawyer.
- The statement of the child suspect is taken only in the presence of a lawyer.
- Unless it is determined that it is against the law or in the best interest of the child, the child's parents or guardian can be present during the taking of the child's statement.
- If the crimes stated in the Law on the Establishment, Duties and Trial Procedures of Juvenile Courts are committed with the adults, the documents of the child are separated during the investigation stage and investigations are carried out separately.

Article 150 of the Criminal Procedure Code provides that if the accused is not in a position to appoint a lawyer, he/she may receive legal counsel free of charge from a lawyer appointed by the bar association. Instruction of a lawyer is mandatory if the suspect is a minor, deaf, mute, person with a disability to an extent that prevents that person from defending himself/herself, or the suspect is accused of an offence carrying a sentence that requires a minimum of five years' imprisonment.

18. The amendments made by Law No. 5532 to the Law on the Prevention of Terrorism (Law No. 3713) are in compliance with the following sections of the "Guidelines on human rights and the fight against terrorism" adopted on 11 July 2002 at the 804th meeting of the Ministers' Deputies.

- Section I on “States’ obligation to protect everyone against terrorism”:

States are under the obligation to take necessary measures to protect the fundamental rights of every person within their jurisdiction against terrorist acts, especially the right to life.

- Section IX, paragraph 3 on “Legal proceedings”:

The imperatives of the fight against terrorism may nevertheless justify certain restrictions to the right of defence, in particular with regard to:

(i) the arrangements for access to and contacts with counsel;
(ii) the arrangements for access to the case-file;
(iii) the use of anonymous testimony.

- Section XI, paragraph 2 on “Detention”:

The imperatives of the fight against terrorism may nevertheless require that a person deprived of his/her liberty for terrorist activities be submitted to more severe restrictions than those applied to other prisoners, in particular with regard to:

(i) the regulations concerning communications and surveillance of correspondence, including that between counsel and his/her client;
(ii) placing persons deprived of their liberty for terrorist activities in specially secured quarters;

According to Article 10 (b) of the Law on the Prevention of Terrorism (Law No. 3713), a detainee’s access to legal counsel can be delayed by 24 hours upon the request of the prosecutor and the decision of the judge; the suspect in detention may not be interrogated during those 24 hours. Moreover, there are no negative implications of the amendments introduced to Law No. 3713 for the Government’s “zero tolerance policy” against ill-treatment and torture which is still being implemented with determination.

19. Recently, an important reform package was enacted which includes major changes basically putting minors outside the remit of the Anti-terror Law.

I. Legal arrangements are made that are in favor of children which repeal exceptions regarding sentences in the Anti-Terror Law, No. 3713 imposed on children and also regarding the courts competent to prosecute these children.

Law No. 5395 on the Protection of Children, which entered into force on July 15 2005, defines in detail the principles and procedures regarding precautions to be taken for children in need of protection and the safety measures to be implemented for children who have been pushed into crime as well as the establishment, duties and competences of Children’s Courts. Accordingly, children who have committed crimes must, without exception, be prosecuted in Children’s Courts.

However, with the amendment to Law No. 3713 on Anti-Terror, enacted with Law No. 5532 in 2006, some exceptions have been made regarding sentences imposed on children and the competent courts.

With the Law No. 6008 adopted on 22 July 2010, the exceptions in Law on Anti-Terror are abolished. In this regard;

1) Sentences will not be increased by half in accordance with the provisions of Article 5 of Law No. 3713 for crimes related to terrorism committed by children,

2) Children suspected of having committed crimes related to terrorism will be prosecuted at Children's Courts.

3) It will be possible to deliver a ruling for the postponement of the announcement of judgments, to convert the sentence to alternative sanctions and for the suspension of the sentence by the court.

II. The time period for conditional release from prison of children who have committed a crime related to terrorism is reduced from 3/4 to 2/3.

Since the severity of the circumstances of execution of the sentence affects the re-socialization of children negatively, aggravating the circumstances of execution of sentences for children on the grounds that a relationship with the child and the criminal organization exists should be prevented.

In that regard, the time period for conditional release from prison of children who have committed a crime related to terrorism is reduced from 3/4 to 2/3.

III. The penalties in Article 32 and 33 of the Law No. 2911 on Meetings and Demonstration Marches are reduced.

Article 32 and Article 33 of Law No. 2911 are being amended to ensure consistency among criminal laws and has introduced appropriate arrangements in line with the new system of sanctions provided in the Penal Code, No. 5237.

With the amendments to Articles 32 and 33 of the Law No. 2911 on Meetings and Demonstration Marches, the penalties are reduced in general for certain offences regulated in the aforementioned articles and the elements of the offences and their sanctions are brought in line with the basic criminal legislation in Turkey.

IV. Children will not be sentenced for being members of an organization in addition to the crime of resistance to prevent police officers from carrying out their duties or for propaganda crimes committed during meetings and demonstrations

In order to prevent severe penalties on children, a new Article 34 (A) to the Law on Meetings and Demonstration Marches has been introduced. This is done to ensure that the children are not sentenced for membership to an illegal organization, in addition to their sentencing for resistance to prevent public officers from performing their duties or propaganda crimes that they commit during a meeting or demonstration. Thus, the five year sentence for membership of a terrorist organization will not be imposed on children.

V. It is ensured that the enforcement judge delivers a judgment on an application for complaint against disciplinary actions following taking the statement of defense of the accused or the convicted

Taking into consideration the scope and nature of the right to a fair trial provided for in Article 6 of European Convention on Human Rights (ECHR) and by inserting the relevant provision into the second paragraph of Article 6 of the Law No 4675 on Enforcement Judges, it is envisaged that the enforcement judge delivers his judgment on an application for complaint against disciplinary actions after the statement of defense of the accused or the convicted. Furthermore, the accused or the convicted may plead in company of his lawyer or by means of his lawyer provided that he appears at the court or submits his proxy.

The enforcement judge, when he deems it necessary, may also take the statement of defense of the accused or the convicted in the penal institution. Thus, in case where accused or convicted persons whose existence in the courthouse would be inconvenient, or where there are several applications of complaint, the enforcement judge will be able to take the statement of the accused or convicted in the penal institution.

Moreover, in line with the provisions inserted into Article 6 of Law No. 4675, the introduction of a provisional article is envisaged with a view to grant equal rights in terms of disciplinary actions which have been previously imposed and examined by enforcement judges. This right shall be applicable for the pending applications before the ECtHR. Thus, the 567 applications currently pending before the ECtHR on this ground shall be dismissed.

On the other hand, owing to the fact that enforcement judges, as a matter of their duty, are in close contact with penal institutions, and with a view to enable those judges to carry out their duty in courthouses and penal institutions, the provision regarding the performance of their duty in the courthouse where they are established shall be abolished.

20. Regarding paragraphs 163 and 164, if the apprehended person is to be taken into custody or if he/she has been apprehended by use of force, his/her health at the time of the apprehension is examined through a medical examination. His/her state of health is also examined by medical authorities in cases of location change, period of custody extension, hand over to judicial authorities or release. It is an obligation to inform the public prosecutor if any evidence of torture or ill-treatment detected during the medical examination. Public prosecutor has the authority to initiate investigation *ex officio* on the crimes related with torture and ill-treatment.

The positive effect of the zero tolerance policy against torture and ill-treatment has been confirmed in the CPT report of 2006 as well as in the EU Progress Reports of 2007 and 2008. These reports reflected the continued downward trend in allegations of torture and ill-treatment especially in the anti-terror departments of police stations.

There exists no one belonging to a minority group (covered by Lausanne Peace Treaty) who have died in police custody. Further information can be provided on the cause of death and ongoing judicial and administrative proceedings if any factual information about the death of the member of minority group is transmitted.

21. **"Law on the Compensation of Losses Resulting from Terrorist Acts and the Measures Taken against Terrorism** (No: 5233)" entered into force on 27 July 2004. It aims to compensate losses of people suffered from terrorist acts as well as the measures taken against terrorism in a prompt, efficient and just manner and displays the Government's political will to provide an effective remedy to this problem.

As of end of May 2010, a total sum of 731 million Euros was awarded as compensation to applicants.

Furthermore, a mechanism has been put in place by the Ministry of the Interior to organise seminars and round tables with persons who take part in the Damage Assessment Commissions to constantly review the working methods and decisions of the Commissions and further train their members to keep these Commissions as an effective domestic remedy as was declared by the European Court of Human Rights in its inadmissibility decision on İçyer application.

22. As all forms of discrimination are prohibited and heavily penalized by law in accordance with the Constitution, acts of discrimination against Turkish citizens of Roma origin are also dealt with under general provisions of non-discrimination in relevant laws.

The constitutional system of Turkey is based on the equality of all individuals without discrimination before the law, irrespective of their descents in terms of language, race, colour, ethnicity, religion or any other such particularity.

In this context, within the ongoing reform process in Turkey, progress has also been achieved as regards the situation of Turkish citizens of Roma origin.

As to the measures against discrimination, for example, negative connotations in Turkish dictionaries with regard to the term "gypsies" were eliminated. Moreover, reference to the Roma people was removed from the new Law on Settlement which was adopted in September 2006.

Difficulties experienced in access to services are mostly related with poverty and unemployment as is the case for other vulnerable groups. These difficulties can be addressed within the general policy of the Government directed at alleviating poverty and social exclusion in the country.

Some observations are stated occasionally that urban transformation projects, initiated after 2005 resulted in the destruction and dislocation of "Roma communities" throughout the country. In this regard Sulukule neighbourhood is specifically mentioned.

Turkey disagrees with any comment on the ongoing urban renewal projects implying that they specifically target certain ethnic group. Sulukule is only a small part of Neslişah District where the urban renewal project has been launched in 2006. Sulukule corresponds to only 20 percent of the whole of the renewal project area. All the right holders in the project area are treated in a fair, transparent and equal manner.

The purpose of the urban renewal project in Neslişah District of Fatih Municipality, is to clear the slum areas formed due to the prevalence of ruined, broken-down and squatter settlements with low urban standards with a view to establishing an urban area with modern standards, while preserving its historical formation. The project envisages a consensual settlement of possible conflicts which may arise with the right holders in the renewal area.

Consultations with local people continued during the development phase of the project, thereby, allowing necessary adjustments and revisions. All the owners and tenants are entitled to housing within the framework of the project.

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13 May 2010

CIRCULAR OF THE OFFICE OF THE PRIME MINISTER

2010/13

In line with the principle of equality enshrined in the Constitution, the Turkish citizens belonging to non-Muslim minorities in the country, like all Turkish citizens, have the right to enjoy and to maintain their own identities and cultures in parallel to the national identity and culture of Turkey of which they constitute an indivisible part.

Protecting these citizens from needless impediments in their official dealings and transactions with any government institutions and preventing any infringement of their rights are not only a legal requirement but also of great importance in order to make them feel that they are part of the Turkish nation and the State.

In spite of the measures taken in recent years in addressing matters related to the non-Muslim minorities in the country within the framework of democratization efforts, it seems that some issues could not have been completely resolved due to problems in implementation.

It is therefore essential to act on the basis of the above-mentioned principles in all official transactions involving the non-Muslim minorities such as paying utmost care in the protection and maintenance of the non-Muslim cemeteries which have been put under municipalities' control, to ensure the strict implementation of court rulings in favor of non-Muslim community foundations by land registry offices (and) to prevent of any injustices in the collection of concession fees, to accord to non-Muslim community leaders who are citizens of the Republic of Turkey their rightful place in order of protocol and to initiate in a timely manner legal action against publications inciting hatred and enmity against non-Muslim communities.

Within this framework, I urge all related government institutions and offices to act with utmost diligence on this matter for the absolute elimination of problems in implementation.

Recep Tayyip Erdoğan

Prime Minister of Turkey

13 September 2010

The Constitutional Reform Package

The Constitutional reform package has been adopted with a majority of 58 percent of votes cast at a referendum where 77 percent of all eligible voters participated.

The constitutional reform package had been presented to a referendum pursuant to the provisions of the Constitution, due to the failure to achieve the required majority (336 votes instead of 376) at the Turkish Grand National Assembly (TGNA) on 6 May 2010.

While the Constitutional Court rejected an application which requested the annulment of the package as a whole claiming unconstitutionality of the structural changes that would be brought to the Constitutional Court and the Supreme Council of Judges and Public Prosecutors (HSYK), it partially annulled certain articles regarding the system of member-selection to the HSYK and the Constitutional Court.

The adoption of the constitutional reform package in the referendum of September 12 introduced the following changes:

- New rights are granted;
- The scope of the existing constitutional rights is expanded;
- New mechanisms are introduced for the protection of constitutional rights;
- The rule of law is strengthened;
- The Constitutional Court and the HSYK are restructured to align them with their counterparts in the democratic world; and
- Military jurisdiction is restricted.

As a result of the provisions contained in the constitutional amendment package, human rights and fundamental freedoms have been expanded and the Turkish constitutional system is brought in line with its international obligations. The amendments eliminated several shortcomings referred to in the judgments of the European Court of Human Rights (ECtHR), and the fulfillment of a series of findings and recommendations put forward by the Council of Europe (CoE) Commissioner for Human Rights, the Venice Commission, the European Commission against Racism and Intolerance, the Monitoring Committee of the Parliamentary Assembly of the CoE, the Committee on the Elimination of Discrimination against Women, the UN Committee on the Elimination of Racial Discrimination and several other international supervisory bodies as well as those indicated in progress reports and on other occasions.

Significant improvements made in this context are summarised as follows:

Positive Discrimination
With the amendment to Article 10 of the Constitution entitled “Equality Before the Law”, positive discrimination gains a constitutional basis for persons who require social protection, such as women, children, the elderly and the disabled. The inclusion of positive discrimination in the Constitution is a significant improvement to strengthen the protection of constitutional rights.

With this amendment, it is guaranteed under the constitutional framework that special measures to be taken by the administration in respect of those who require protection shall not be construed to be “contrary to the principle of equality”. As

such, the State will be free to take special measures for those in need of protection to ensure equality among all sectors of the society.

This amendment will enable Turkey to better fulfill of its obligations stemming from basic conventions on human rights, primarily the UN Convention on the Elimination of all Forms of Discrimination against Women, the UN Convention on the Rights of Persons with Disabilities, Convention on the Rights of the Child, the European Revised Social Charter and the Recommendation CM/Rec(2007)17 of the Committee of Ministers on Gender Equality Standards and Mechanisms.

This amendment will better ensure the implementation of the general measures aimed at preventing possible future violations found in the framework of the Nahide Opuz judgment of the ECtHR (In the case of Opuz *vs* Turkey lodged by Nahide Opuz, the daughter of a murdered woman, who had complained to the Turkish authorities that both she and her mother were facing domestic violence, the ECtHR ruled that Turkish authorities failed to exercise due diligence in protecting them from violence and held that there had been violations of Articles 2, 3 and 14).

Protection of Personal Data
With this amendment to Article 20 of the Constitution entitled "Privacy of Individual Life", protection of personal data now enjoys constitutional guarantees. Everyone shall have the right to the protection of their personal data. This right entitles the individual to be informed of personal data, to access such data, to request their correction or deletion and to learn whether these are being used with the intended purpose.

This amendment comes at a time when improvements in the field of information technology magnified the difficulties and concerns that have emerged in the field of personal data protection. The amendment, which has been prepared in the light of Article 8 of the European Convention on Human Rights and the case-law of the ECtHR (*Marper v. United Kingdom*, decision of 4 December 2008), will align national legislation with international standards concerning the protection of personal data.

There also exists caselaw of the ECtHR (Ahmet Dağtekin judgment) which found that limiting a person's right to access to personal data collected by the Government also limits the right to defend oneself. This amendment will provide an important development in preventing such violations in the future.

Rights of the Child
With the amendment to Article 41 of the Constitution entitled "Protection of the Family" (which now reads "Protection of the Family and Children's Rights"), protection of the rights of the child is provided a constitutional basis, in accordance with universal principles and international conventions to which Turkey is a party. The amendment adds "rights of the child" to the heading of the Article and guarantees children the right to access "adequate protection and care" and to "establish and maintain a personal and direct relationship with his/her parents".

The principle of the best interest of the child, which is considered an umbrella right of the Convention on the Rights of the Child, has been granted a constitutional safeguard for the first time. This concept requires the protection of the rights of the child and that the child will be heard when deemed necessary, in all decision-making processes involving children, including administrative and legal proceedings as well as legislative and policy-making processes.

It is now a constitutional duty of the State to take the necessary measures for the protection of children against all sorts of child abuse. Hence, certain rights contained in the UN Convention on the Rights of the Child, the Council of Europe Convention on

the Exercise of Children's Rights and similar international instruments have become an integral part of the Constitution.

Freedom of Organization

While the amendment made to Article 51 of the Constitution entitled "Right to Organize Labour Unions", Article 53 of the Constitution entitled "Collective Bargaining and Right of Collective Bargaining", Article 54 of the Constitution entitled "Right to Strike and Lockout" and Article 128 of the Constitution entitled "Provisions Relating to Public Servants" restrict the freedom to establish trade unions by business lines, the scope and extent of freedom of organization and especially union rights are broadened by the amendments made such as the abolition of the provision which prohibited becoming a member of more than one union in the same business line; granting of collective bargaining right to civil servants and other public officials in the manner retired civil servants could also enjoy; abolition of unnecessary restrictions imposed on the right to strike and lockout and the ruling that collective bargaining provisions regarding the economic and social rights granted to public servants are reserved.

The provision in Article 51 of the Constitution entitled "Right to Organize Labour Unions", which prohibited holding concurrent memberships in more than one labour union in the same business line, was abolished, and steps are taken so that the principle of "union plurality" could be put into practice. By these amendments, especially the third paragraph of Article 53 relating to collective bargaining is abolished; collective bargaining right of which procedure and substance would be guaranteed by legal arrangements was granted to civil servants and other public officials by the provisions added to this provision.

With a view to guaranteeing civil servants'' and other public officials' enjoyment of the outcomes of the right to collective bargaining that has been granted to them, it is guaranteed by the amendment made to the second paragraph of Article 128 of the Constitution that collective bargaining provisions relating to economic and social rights be reserved in addition to the rule that personal rights of civil servants and other public officials shall be prescribed by law.

The third paragraph of Article 54 of the Constitution entitled "Right to Strike and Lockout" which provided that "the labour union is liable for any material damage caused in a work-place where the strike is being held" is also abolished. By the revocation of the seventh paragraph of Article 54, the prohibitions relating to politically-motivated strike and lockout; sympathetic strike and lockout; general strike and lockout; business place invasion; slowdown; reduction of the output and other resistance are also abolished. Therefore, a considerable restriction regarding the enjoyment of right to strike is abolished. Accordingly, the opportunities for the right to legal remedies in business life on the basis of universal principles required in contemporary democratic societies are increased and a significant step is taken for the development of civil society.

The amendments made in this context have been prepared within the framework of the conventions of ILO (International Labour Organization) regarding the Freedom of Unionization and Protection of the Right to Association and Right to Association and Collective Bargaining and European Social Charter (revised).

Furthermore, the decisions issued by the ECtHR regarding Turkey in 2008 and 2009 (*Demir and Baykara, Enerji Yapı Yol Sen judgments*) required the extensive usage of the right to organize labour unions and collective bargaining right to be guaranteed. Significant progress is achieved regarding the implementation of said decisions by this amendment.

Freedom of Movement
By the amendment made to Article 23 of the Constitution entitled Freedom of Residence and Movement, the reason of restriction for the provision "A citizen's freedom to leave the country may be restricted on account of civic obligations, or criminal investigation or prosecution." was narrowed down and it was amended as "A citizen's freedom to leave the country may only be restricted on account of criminal investigation or prosecution depending on judicial decision". Therefore, the ban placed on leaving the country on account of civic duties was removed and freedom of movement was extended. The obligation to obtain a judicial decision in order to restrict the freedom of movement is another positive improvement. It aims to prohibit arbitrary restrictions.

Right of Petition
Due to the amendment made to Article 74 of the Constitution, the right of petition is, for the first time, expressly defined as a constitutional right. Therefore, a right granted and protected by the standards of European Convention on Human Rights, case-law of the ECtHR and United Nations Covenant on Civil and Political Rights (Article 19) gains a constitutional ground.

The Ombudsman Institution
The amendment made to Article 74 of the Constitution entitled "Right of Petition" (which now reads "the right of petition, the right of knowledge acquisition and appeal to public auditor") forms constitutional basis for Public Auditing system. The unconstitutionality problem that had caused the attempts to form an association of ombudsmen to fail is now overcome with this regulation.

The institution of public auditors which is foreseen to be established contingent to the TGNA will provide a more effective judicial and administrative framework for the preservation of the human rights by investigating the complaints regarding the management of the administration. It is thus enabled to make the administrations acts and actions subject to independent scrutiny.

When considered in conjunction with the entitlement of individual right to appeal to Constitutional Court, this regulation provides an additional means of resolving the matters between an individual and the authorities without having to apply to the European Court of Human Rights.

This amendment conforms to the Committee of Ministers of the Council of Europe decree regarding the "public auditors institution" (R(85)13), dated 23 September 1985.

Establishing an institution of ombudsman was one of the recommendations put forward when Turkey was in the process of being dispensed from the monitoring of the Parliamentary Assembly of the Council of Europe in 2004. Thus, a major step is taken in the way of fulfilling the aforementioned obligation.

Political Parties
By the amendment made to Article 84 of the Constitution, the right to vote and to stand for election is reinforced. The article in question provided that "the membership of a deputy whose statements and acts are cited in a final judgment by the Constitutional Court as having caused the permanent dissolution of his party shall terminate". The amendment to this provision, which was incompatible with the case-law of the ECtHR, eliminates one of the legal consequences of dissolution of political parties. Thereby, the right to vote and to stand for election has been guaranteed in a stronger way.

Judicial Review of Supreme Military Council Decisions
By the amendment made to Article 125 of the Constitution entitled "Recourse to Judicial Review", all decisions by the Supreme Military Council concerning exemption from the Turkish Armed Forces became subject to judicial review.

This amendment goes beyond the Court's case-law and provides the right to an effective remedy. Further, it expands the limits on the scope of the judicial review. This amendment also emphasizes that reviewing the lawfulness of the acts and actions of the administration cannot be exercised by reviewing their expediency. This amendment clearly states that judicial authorities may not exercise the review of expediency and this further puts the emphasis on the separation of powers, which is one of the fundamental elements of the rule of law.

Judicial Review of Disciplinary Decisions
With the amendment introduced to Article 129 of the Constitution, disciplinary decisions against civil servants and other public officials have been subject to judicial review and the exceptions have been lifted. Thus, the legitimacy check for all disciplinary measures has been provided. This constitutional change is important as a requirement of the rule of law principle and in terms of ensuring the right to effective remedy.

Right to Individual Application to the Constitutional Court
The amendment to Article 148 of the Constitution, introduces the right to individual application to the Constitutional Court with regard to the fundamental rights and freedoms enshrined in the Constitution that fall within the scope of the European Convention on Human Rights. The introduction of the individual's right to apply to the Constitutional Court following the exhaustion of usual domestic remedies is one of the most important changes enacted within the Constitutional reform package.

It is not possible to talk about a uniform practice within the European states in this field. However, this right has been introduced taking into consideration the practices of various developed countries particularly many European Union member states. The aforementioned right not only gives the State another chance to remedy the injustice that arise prior to the application to the European Court of Human Rights - which is considered as the last resort against human rights violations - , but also creates another mechanism for the citizens to claim their rights.

This new mechanism, which was devised within the scope of the opinions (CDL-AD(2004)024 & 034) issued by the Venice Commission upon the Constitutional Court's request, is in compliance with the international standards.

Establishment and Membership of the Constitutional Court
The amendments to Articles 146, 147, 148 and 149 of the Constitution regarding the organization of the Constitutional Court, termination of membership, its functions and powers and functioning and trial procedure are of great importance for the objectives of judicial reform strategy and especially for strengthening the effective and impartial functioning of the judiciary.

With these amendments, the organization of the Constitutional Court, election of its members and its functioning are improved in the light of the applications in various countries and in accordance with the needs of our country.

The structure of the Constitutional Court and the method of election are changed and the number of its members is increased. Besides, the TGNA is granted the opportunity to elect members for the Constitutional Court. The sections which

members belong to are diversified, their experiences and qualifications are enhanced and it is ensured that the legislative organ also has a role in the election of members and the membership is limited to a certain period of time. The representation of especially different elements of the justice mechanism and different segments of the society in the Constitutional Court is strengthened.

This amendment is in conformity with the observations of the Venice Commission dated December 1997 headed "The Composition of Constitutional Courts" (CDL-STD(1997)020).

Supreme Council of Judges and Public Prosecutors (HSYK)
By the amendment made to Article 159 of the Constitution entitled "Supreme Council of Judges and Public Prosecutors", the organization of the Supreme Council of Judges and Public Prosecutors and the authorization to arrange its working procedures and principles, and supervise judges and public prosecutors within the body of the Ministry of Justice is handed over to the Supreme Council of Judges and Public Prosecutors.

The structure of the Supreme Council of Judges and Public Prosecutors is rearranged in a manner which enables a wider participation for an effective functioning of the judiciary and strengthens its independence and tenure of judges. The sources from which the members of the Supreme Council of Judges and Public Prosecutors come from are diversified and a wider and more effective operation and control mechanism is organized. The permanent members of the Supreme Council of Judges and Public Prosecutors shall not be assigned in other positions than the ones provided by law during their term of office. In this way, it is aimed that the members are fully independent while taking decisions. With the Constitutional amendment, the Secretariat General of the Supreme Council of Judges and Public Prosecutors is established. In this way, the criticisms that the Council's using the Ministry of Justice as its secretariat is an application which undermines the independence and impartiality of the judges are set aside.

Supervision of Judges and Public Prosecutors
Article 144 of the Constitution entitled "Supervision of Judges and Public Prosecutors" (it is amended as "Supervision of Judicial Services") provides that the supervision of judges and public prosecutors and inquiry and investigations concerning them shall be made by inspectors of the Council. It is provided that the supervision of authorities lying beyond the scope of judicial activities such as execution, notary and prisons and the supervision of administrative acts and procedures of the public prosecutors shall be carried out by the judicial inspectors with the permission of the Ministry of Justice and internal auditors employed as judges or public prosecutors.

In this way, the supervision of judges and public prosecutors which is still under the authority of the Ministry of Justice is handed over to the Supreme Council of Judges and Public Prosecutors and a progress is made with the regard to independence and assurance and the principle of separation of powers is strengthened. Moreover, The Council decisions regarding dismissals from profession shall be subjected to judicial control and an effective appeal mechanism before domestic courts is provided.

Military Jurisdiction
By the amendments made to Articles 145 and 156 of the Constitution regarding military justice, the scope of authority of the military justice is rearranged. Within this framework, the scope of authority of the military justice is limited to the trial of military offences. It is provided that the offences against the state security, constitutional order and its functioning shall be dealt with by the courts of justice. It is also guaranteed by the Constitution that non-military persons, in other words civilians, shall not be tried by military courts except for time of war.

Provisional Article 15

The Provisional Article 15 of the Constitution which prevented prosecution of the members of the Council of National Security during the "12 September period", the governments formed during this period and members of the Consultative Assembly is repealed.

Republic of Turkey
MINISTRY OF THE INTERIOR

Number : B.050.ÖKM.0000.11-12/
19/03/2010
Subject : Combating Illegal Migration

CIRCULAR (2010/18)

Ref:

a. Approval of the Ministry of the Interior dated 07.10.2005 concerning "The Establishment of Guesthouses for Foreigners to be Deported".
b. The letter no. B.05.1.EGM.0.13.07.01.İllegal/7-4619-37508 from the General Directorate of Security dated 19.02.2008, concerning "The meeting of a board under the coordination of Governorships concerning illegal migration and the establishment of refoulement centers in each province to accommodate a minimum of 50 people".
c. Approval of the Ministry of the Interior dated 24.02.2010, relating to the "Coordination Board on Combating Illegal Migration".

In the process of accession negotiations with the European Union, the subject of "Asylum and Migration" holds an important place within the scope of Chapter 24 entitled "Justice, Freedom and Security". In this framework, the enactment of new legislation concerning asylum and migration has been guaranteed in the 2008 National Programme of Turkey for the Adoption of the EU Acquis, in Turkey's Programme for Alignment with the Acquis adopted in 2007, in the 2003 Strategy Papers on Asylum and Migration and in the 2005 Asylum and Migration National Action Plan.

Although the work for new legal arrangements is underway, the measures which are deemed to raise the effectiveness of the successful struggle against illegal migration and to prevent Turkey from becoming a transit route for illegal migration are listed below.

1 – Measures to Be Taken in Combating Illegal Migration:

Illegal migration is considered to be one of the most important trans-border problems today. The geographical location of Turkey, the persistence of war and instability in neighboring countries and factors such as the physical vulnerability of its borders has pushed Turkey into a position of a transit and/or destination country in terms of illegal migration and human trafficking.

Taking into consideration this vulnerable nature of our borders with regard to illegal migration, the entry and exit points and routes frequently used by illegal migrants as well as the techniques used by them and traffickers are to be diligently analyzed by the security forces, and coordination with the relevant bodies shall be achieved.

The personnel working in this field are to receive vocational training. Indications of instances of illegal migration (such as a large amount of purchase of bread from bakeries, leftovers and dense smell emanating from vehicles, an increase in the number of unknown persons in villages, etc.) shall be evaluated. Moreover, bus and other transport companies as well as accommodation facilities shall be continuously warned about illegal migration and human trafficking.

Measures shall focus on intelligence as regards human trafficking and intelligence and data shall be shared between relevant bodies.

Measures such as electronic surveillance, continuous patrol and controls shall be taken at the highest level at borders, border gates, transit routes within the country, and exit points. Thus the entry, movement and exit of illegal migrants in and from our country shall be avoided as best as possible, preventing the country from becoming a transit route for illegal migration.

2 – The Procedure to Be Applied Following the Apprehension of Illegal Immigrants:

Concerning the procedure to be applied following the apprehension of illegal immigrants who have managed to enter Turkey, certain additional measures have been regarded necessary until the adoption of new legislation relating to migration and asylum.

Accordingly:

a – The Procedure to Be Applied Following the Apprehension of Illegal Immigrants:

It is essential that following the legal proceedings concerning them, illegal immigrants are accommodated in refoulement centers pending the completion of the deportation procedure.

Illegal immigrants arrested by units of provincial Security Directorates, the Gendarmerie and the Coast Guard and whose legal procedures are competed shall continue to be handed over to the Foreigners/Passport-Foreigners Departments at Provincial Security Directorates.

It is essential that the legal procedure in respect of arrested illegal immigrants is carried out by the unit that made the arrest. However, taking into consideration the inadequacy of the Coast Guard Command's territorial organization as well as the fact that combating illegal migration requires a concerted struggle by all enforcement units, illegal immigrants apprehended by Coast Guard units, together with the arrest report, a list containing information of the identities of the illegal immigrants that could be identified, as well as photographs and records of private belongings retained, shall be officially handed over to an enforcement unit designated by the public prosecutor in the district where legal procedures will be carried out. Local governors will ensure the highest degree of coordination and cooperation to facilitate the work of the police and gendarmerie related to legal procedures and the transfer of illegal immigrants to judicial authorities, including providing personnel reinforcement, health services, transportation, place and translator.

Illegal immigrants, in respect of whom legal procedures have been completed,

- Shall be immediately taken into refoulement centers provided that there is available space.
- In case there is no space in refoulement centers, illegal immigrants shall, within shortest time possible, be transferred to alternative locations designated beforehand by provincial governors.
- Illegal immigrants shall not be placed in detention facilities.
- Concerning illegal immigrants who suffer from contagious diseases but whose treatment does not require hospitalization, necessary measures shall be taken to accommodate them separately from other immigrants in refoulement centers.

B – Procedure Relating to Illegal Immigrants and Refoulement Centers:

b1- Premises which have been established as "Guesthouses for Foreigners to be Deported" with the relevant approval (ref. a) with a view to accommodating illegal immigrants pending deportation shall hereinafter called "Refoulement Centers".

b2- By the letter from the General Directorate of Security (ref. b), the establishment of centers with at least 50-people capacity in each province has been ordered. However, despite the large number of illegal immigrants arrested in certain provinces, sufficient capacity to accommodate all illegal immigrants pending deportation has not yet been created.

In this respect;

Urgent measures shall be taken to increase the capacity of refoulement centers in the provinces of Ağrı, Balıkesir, Çanakkale, Mersin, Hatay, Muğla, Batman and Gaziantep, which receive an influx of illegal immigrants and fall short of providing space for them. Relevant actions shall be followed in person by provincial governors.

Studies to evaluate the flow of illegal immigrants over time shall be carried out concerning the provinces of Şırnak, Şanlıurfa, Konya, Tekirdağ, Iğdır and Düzce, which do not currently include such facilities. Following these studies, refoulement centers shall be established within six months to shelter at least 100 persons. In other provinces which also lack facilities, at least 50 person capacity refoulement centers shall be established.

Unused public buildings shall be primarily used in the establishment of these centers, employing resources including central budget, local resources and other resources obtained in return for projects. Governorships shall submit periodical reports once every six months concerning the building of refoulement centers and the creation of additional capacity to the Bureau on Development and Implementation of the Legislation on Asylum and Migration and Administrative Capacity. The work carried out in the provinces shall be monitored by the bureau, and evaluated on site if necessary. The results shall be submitted to the Ministry of Interior in the form of annual reports.

b3- In case a province does not contain a refoulement center or the center is fully occupied, illegal immigrants shall be transferred by the Foreigners' Border and Asylum Department of the Directorate General of Security to the closest provinces that have the capacity to shelter them. Thus, the present capacity of refoulement centers throughout Turkey will be used more efficiently.

b4- The Directorate General of Security shall prepare a regulation in accordance with the provisions set out in the "Fundamental Principles Concerning the Physical Conditions of Refoulement Centers and Practices in These Centers" annexed to this Circular, within two months following the publishing of this Circular, and send it to Governorships.

This regulation will include issues such as the establishment of refoulement centers, their management, the regulation of the financial aid or aid in kind made to these centers by public institutions and civil society organizations, relationship with these institutions, records to be kept for illegal immigrants that are to be accommodated in these centers (obligatory records, how immigrants' valuable belongings and belongings that cannot be used in these centers will be kept), other rules and the operation of the system that will be established to transfer illegal immigrants from one province to another for reasons of available capacity.

The regulation shall also include rules governing the collection of statistical data such as the number of illegal immigrants apprehended by the police, the Gendarmerie, and the Coast Guard (by each enforcement unit), the number of illegal immigrants accommodated in refoulement centers, the number of illegal immigrants deported, and their period of stay in these centers.

The refoulement centers shall be inspected, at least once every six months by the Governor (or by a Deputy Governor appointed by the Governor); District Governor and the Provincial Security Director, and at least twice every year by the General Directorate of Security, with or without prior notice. The results of these inspections shall be filed in reports, and be taken into consideration in the inspection of the units.

b5- Fundamental principles concerning the physical conditions of and practices in refoulement centers are annexed to this Circular. The procedures in the centers shall be in accordance with this document until the entry into force of the regulation prepared by the General Directorate of Security.

b6- Allegations of any treatment in the refoulement centers which is contrary to human dignity and honor shall be promptly investigated and upon finding of such violations, the necessary judicial and administrative actions shall be taken.

c – The Deportation Procedure Concerning Illegal Immigrants

One of the most important stages of combating illegal migration efficiently is to ensure the speedy deportation of illegal immigrants. Such efficiency will have a deterrent effect towards possible future waves of illegal migration and will lessen the burden of illegal immigrants on Turkey.

Therefore, the deportation of illegal immigrants by the police following their apprehension shall be carried out with diligence and necessary measures shall be taken. At this stage Governors and other related units shall supervise and ensure the prompt and accurate performance of actions, the facilitating of the related officials' tasks and the provision of resources.

3- Coordination Board to Combat Illegal Migration:

A "Coordination Board to Combat Illegal Migration" has been established with the Approval of the Ministry of Interior (ref c). The Board, under the coordination of the relevant Undersecretary convenes with the participation of representatives of the Turkish General Staff, Land Forces Command, Ministry of Foreign Affairs, General Directorate of Security (Head of the Department Against Smuggling and Organized Crime and the Head of the Department of Foreigners, Borders and Asylum), the General Command of the Gendarmerie (Head of the Department Against Smuggling and Organized Crime), the Coast Guard Command (Head of Intelligence) and representatives of central and/or provincial units of public institutions and related Ministries when necessary.

Decisions taken in meetings by the "Coordination Board to Combat Illegal Migration" established in order to monitor the measures taken, to develop new measures and to monitor the implementation of decisions taken in the fight against illegal migration, shall be announced. The said decisions shall be strictly implemented by relevant units.

4- Among the illegal immigrants accommodated in refoulement centers, those who may wish to contact the United Nations High Commissioner for Refugees (UNHCR) office shall be given the opportunity to do so.

Moreover, at their request, illegal immigrants shall be allowed to receive assistance from a lawyer, provided that they meet any relevant fees themselves.

5- The letter by the Directorate General of Security dated 15.10.2004 (no. B.05.1.EGM.0.13.05.05.İllegal-2-1995-28400-186254) entitled "Illegal Migration", the approval by the Ministry of the Interior dated 07.10.2005 concerning "The Establishment of Guesthouses for Foreigners to be Deported", the letter by the General Directorate of Security dated 19.02.2008 (no. B.05.1.EGM.0.13.07.01.İllegal/7-4619-37508) entitled "With regard to illegal migration, the meeting of a board under the coordination of our Governorships and the establishment of refoulement centers with a minimum capacity to hold 50 people in each province", and the letter by the Coast Guard Command dated 26.11.2009 and (no. 9050-559-09) entitled "The Handing Over of Illegal Immigrants" are hereby abrogated.

6- The issues mentioned above shall be strictly followed by governorships and other relevant units. Governorships shall fill out the Form-1 (Annex 2) once every three months starting from 01.06.2010 and submit it to the Bureau on Development and Implementation of the Legislation on Asylum and Migration and Administrative Capacity.

The activities carried out shall be inspected by inspectors of the Ministry of the Interior and inspection units of related institutions.

I kindly request that the necessary sensitivity is shown towards this issue by Provincial Governors and heads of the related enforcement units and that any obstacles toward implementing this Circular are avoided.

(s i g n e d)
Beşir ATALAY
MINISTER OF THE INTERIOR

Annexes:
1-Fundamental Principles Concerning Refoulement Centers
2-Table of the Number of Illegal Immigrants (Form-1)

ANNEX (1)

FUNDAMENTAL PRINCIPLES CONCERNING THE PHYSICAL CONDITIONS OF REFOULEMENT CENTERS AND THE PRACTICES IN THESE CENTERS

The fundamental principles concerning the physical conditions of refoulement centers in which illegal immigrants are held until their deportation and the practices in these centers are stated below.

In this framework, with regard to the Refoulement Centers:

1- A detailed official record will be kept of illegal immigrants in accordance with the principles set out in the regulation to be published by the Directorate General of Security. The records shall be kept for five years.
2- The opening of the centers is subject to the approval of provincial governorships.
3- Prior to approval, the issue of whether the newly established center meets the conditions set out by the Ministry of the Interior shall be investigated by a commission to be established within the governorship.
4- In case more than one center is in service in a province, each center shall obtain a separate approval, and the approvals shall be communicated to the Ministry of the Interior as soon as possible.
5- A plan containing emergency measures in case illegal immigrants exceeding a center's capacity are received shall be communicated to the Ministry of Interior.
6- Illegal immigrants to be sheltered in the centers shall be notified in writing, in a language they can understand, of their legal status and the legal remedies they are entitled to. A copy of this notification signed by the immigrant shall be kept in his/her file.
7- With regard to women and families;
    a. Separate sections shall be formed for men, women and families.
    b. Necessary physical measures shall be taken to prevent crossings between the men, women, and family sections.
    c. A healthy environment shall be made available where minors can stay with their mothers.
8- Necessary facilitating precautions shall be taken for disabled illegal immigrants.
9- Access to hot water shall be made available 24 hours a day.
10- Each section of the removal center shall include sufficient number of toilets, separately for men and women.
11- A sufficient number of washing machines shall be made available for the use of immigrants. Bed linens, sheets, blankets, etc. used by illegal immigrants shall be washed at regular intervals to provide cleanliness and hygiene.
12- In case tap water is not appropriate for drinking, illegal immigrants shall be provided with drinking water.
13- Regarding food served to illegal immigrants:
    a. Three meals a day shall be given according to a calculation of calories necessary for a healthy diet. Lunch and dinner shall include hot food. In case general budget resources are unable to cover the costs of three meals a day, the resources of the Social Assistance and Solidarity Funds can be used.
    b. Menus shall be determined monthly. Food that is preferred and not preferred shall be identified, and measures shall be taken concerning food that is not preferred.

c. Meals shall be eaten in the dining section of the centers where possible, or in designated areas in the rooms used by illegal immigrants.

14- A sufficient number of public phones shall be made available for the use of illegal immigrants.

15- Regarding health services,

a. The centers shall be well-kept and in hygienic conditions.
b. A medical check-up shall be provided for illegal immigrants when they enter and exit the centers.
c. Medical check-up reports shall be kept for five years.
d. Immediate measures shall be taken in the event of an epidemic outbreak and the Ministry of the Interior shall be notified of the situation.
e. Illegal immigrants with urgent health problems shall be transferred to the closest medical institutions without delay.
f. The medication costs of illegal immigrants staying in the centers shall be primarily met from general budget. It has been observed that provinces have different practices on this matter. Therefore, a uniformity of practice shall be achieved in all provinces. With a view to use general budget resources for medication costs, the General Directorate of Security shall allocate sufficient funds to provinces. In case these funds remain insufficient, medication costs shall be covered through local Social Assistance and Solidarity Funds.
g. Requests by illegal immigrants to be examined by a doctor shall by all means be taken into account. The medical treatment of those in respect of whom deportation orders have been issued shall be provided on the basis of a medical decision taken for each specific event. Such a decision requires that the related person is seen and examined by a doctor. Except for exceptional circumstances that are clearly and precisely defined, medical treatment shall only be provided following the informed consent of the person. Moreover, every stage of the medical treatment made within the deportation procedure shall be duly recorded by relevant bodies.

16- Regarding the personnel:

a. A sufficient number of male and female personnel shall be employed. The personnel working in the centers shall not (to the extent possible) be assigned tasks in sports matches, public meetings and similar events.
b. The personnel employed in the centers shall, at regular intervals, go through health checks and necessary health measures shall be taken in consideration of the risks faced by them.

17- A camera surveillance system shall be set up to allow the monitoring of common areas or rooms of the centers, the records of which can be kept for six months.

18- Measures shall be taken to keep safe the personal belongings of the illegal immigrants staying in the centers.

19- Regarding the centers:

a. An “intervention plan” shall be prepared against undesirable events that may arise in the centers.
b. Notes informing illegal immigrants of their rights shall be prepared in various languages and placed in the centers where they can easily read.
c. The rules applicable in the centers shall be translated into several languages and placed in areas where illegal immigrants can read.
d. The measures that are to be taken against those who violate the rules shall be stated to illegal immigrants when they enter the centers.
e. Measures shall be taken for providing sufficient exposure to sunlight.

f. Illegal immigrants who are held for periods exceeding 24 hours shall be given the opportunity to make outdoor exercises.
g. Measures shall be taken to provide illegal immigrants with more and various activities in the centers.
h. TV sets shall be made available for the use of illegal immigrants.

20- The services provided to illegal immigrants (food, cleaning, etc.) shall be primarily provided through service contracts.

ANNEX (2)

STATISTICS ON ILLEGAL IMMIGRANTS
(ACCORDING TO UNITS)

PROVINCE :.....
PERIOD :.....

	Land Army Units	Coast Guard Units	Gendarmerie Units	Police Units	Province Total	Explanation
Apprehended						
Handed Over to Gendarmerie Units			X	X		
Received by Gendarmerie Units	X	X		X		
Those who have gone to an unidentified province without being handed over to Police or Gendarmerie units				X		
Handed over to Police units				X		
Received by Police units	X	X	X			
Resettled in another location under Article 23 of Law no. 5683	X	X	X			
Those who have gone to an unidentified province	X	X	X			
Those sent to another refoulement center	X	X	X			
Those deported	X	X	X			
Those staying in refoulement centers	X	X	X			
Those staying outside refoulement centers (hospitals, etc.)						
Those remaining						
Total						

Not: At the end of the year separate forms will be filled out for the whole year as well as the last quarter and this situation will be indicated as "…year 4th quarter" or "....year" in front of the "Period" Section. This form will be filled in the first week of every January, April, July and October.

(The name, surname, and title of the official who has filled out the form, date and signature)

UNOFFICIAL TRANSLATION

REPUBLIC OF TURKEY
MINISTRY OF INTERIOR
Private Secretariat

19.03.2010

..../03/2010

Number : B.050.OKM.0000.12/
Subject : Refugees and Asylum-seekers

CIRCULAR (2010/..12..)

Reference:

a) 1951 Geneva Convention Relating to the Status of Refugees and the Law on Ratification of the Convention Relating to the Status of Refugees numbered 359 and dated 29 August 1961.

b) 1967 New York Protocol Relating to the Status of Refugees

c) 1994 Regulation on the Procedures and the Principles Related to Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to seek Asylum from Another Country (as amended on 16.01.2006)

d) Implementation Directive No. 57 issued by the General Directorate for Security in 2006.

The issue of "Asylum and Migration", addressed under Chapter 24 – Justice, Freedom and Security, play an important part in the negotiation process between Turkey and EU.

Basically, refugee and asylum procedures in Turkey are implemented in accordance with the legal provisions of the instruments enumerated in the reference list given above. While the preparatory works are continuing for the new legal regulations required by the EU harmonization process under the framework of the "Turkish National Programme for the adoption of the EU Acquis" approved by the Council of Ministers on 25 March 2005; some problems encountered in practice shall be eliminated in an urgent manner. It is deemed as necessary to regulate some issues, during the time that will pass until the legislative works are completed.

Accordingly:

1- Residence permits issued for the refuge/asylum applicants and refugees or asylum seekers in Turkey are subject to a fee in accordance with the Law No. 492 on Fees. However, some persons who leave their countries under difficult conditions and who do not have a regular income, face serious problems in paying the residence fees. Furthermore, it has been observed that there is no uniformity of practice amongst the provinces of the country.

In accordance with the Implementation Directive listed in ref(d) above; after a preliminary interview conducted in the provinces where the foreigners are transferred to, the foreigners who apply for asylum or refuge are granted "ID document" bearing the statement "Applicant for Asylum and Refuge" and they are ex-officio granted a six (6)-month-residence permit. However, there are also asylum/refuge applicants and refugees or asylum-seekers who cannot obtain a residence permit, because they cannot afford the residence fee.

Since some asylum-seekers who are granted status by our Ministry and who are allowed to exit from Turkey for a third country cannot pay the fee as well as the fine for the delay, problems are encountered during their departure from Turkey.

According to Article 88 of the Law on Fees, *"No residence permit fee shall be charged from the below foreigners: a) Students receiving education in Turkish schools or faculties and... d) The poor who are considered to be in a bad financial situation by the authorities in charge of issuing residence permits, ..."*

Under the framework of that provision, from among the applicants for asylum/refuge and refugees or asylum-seekers, those who are in a bad financial situation and students shall not be charged residence fee.

As known, according to Article 3 of the Law No 5683 on the Travel and Residence of Foreigners Residing in Turkey, and the Articles 17 and 27 of the Regulation Governing the Establishment, Obligations and Duties of the Passport, Foreigners, Passport-Foreigners Sections of the Provincial Security Directorates it is stipulated that, "it is under the mandate and responsibility of the Foreigners/Passport-Foreigners Sections of the Provincial Security Directorates to receive the residence permit applications - for purposes of residence, work, visa, education, marriage, property... or other purposes- lodged by the foreign subjects residing in their province; to grant permit ex-officio under the scope of the legislation, if the application is deemed as eligible, and to issue and hand over the permit to the foreigner."

In line with the statement by the asylum/refuge applicants and refugees or asylum-seekers that their financial situation does not allow them to afford the fee, Foreigners/Passport-Foreigners Sections of the Provincial Security Directorates of the provinces where they are allowed to reside shall make the necessary assessments within 15 work days at the latest; finalize the procedure; issue residence permit free of charge (fee) to those whose financial situation is not good enough to afford the fee, as well as to those about whom no information is available, and enter the relevant data in the PolNet Information System on the same day.

Residence permit fees and fines which had accrued prior to the entry into force of this circular, but which could not be collected, shall be re-assessed and if it is understood that the relevant person is under the scope of Article 88 of the Law No. 492, no residence fee or fine shall be collected.

Furthermore, in case it is ascertained that an asylum and refuge applicant and a refugee or an asylum-seeker who was granted residence permit free of charge, had given misleading information, then fees and fines shall be imposed (accrued) retroactively.

2- Under the Implementation Directive No. 57 and dated 2006, following persons can apply for asylum-refuge:

a- Those who are caught by the security forces for their illegal presence in Turkey,

b- Those who somehow enter Turkey again, after being deported for their involvement in illegal migration or for committing a crime or after being prohibited to enter Turkey,

c- Those who are caught while trying to leave Turkey illegally,

d- From among the persons who were residing in Turkey legally, those who shall leave the country since their purpose of stay had expired (such as expiry of work permit, completion of education, expiry of residence permit, or expiry of visa exemption...and etc.),

e- Those against whom a deportation order is made for having committed a crime as a legally residing foreigner,

In this context, in case illegal migrants wish to lodge an asylum-refuge application, during the time between apprehension and deportation, their application must certainly be accepted and necessary proceedings shall be conducted in a manner as is provided in the provisions the Implementation Directive mentioned in Ref. (d) above.

3- It has been determined that difficulties were experienced in the implementation of giving asylum/refuge applicants a 'foreigner (registration) number in compliance with the 2006 Regulation on Keeping Records of Foreigners Residing in Turkey, and most of them were not able to receive that number. However, during the time of their stay in Turkey it is essential for the foreigners to use that number in their official or personal transactions and proceedings. Not assigning numbers to the concerned people on time, cause the asylum/refuge applicants and refugees or asylum-seekers to face trouble in having access to the services such as education, health and social assistance...and etc.

Therefore, necessary actions shall be taken by the General Directorate for Security (The Department of Data Processing and The Department of Foreigners, Border and Asylum) and the General Directorate for Population and Citizenship Affairs and **as of 01.05.2010** when issuing residence permits to foreigners for six or more months; the numbers assigned to the foreigners (including the number assigned to the main applicant and to his dependants) shall also be written on the residence booklet.

Furthermore, pursuant to the departure of a foreigner who was allowed to leave for third countries as an asylum-seeker or with humanitarian considerations, the foreigner's number which had been assigned by our Ministry shall be deactivated by informing General Directorate for Population and Citizenship Affairs within (1) week at the latest.

4- Protection of data-relating to the asylum/refuge applicants and refugees or asylum seekers shall be ensured by taking into consideration of the principles as well as national and international standards on protection of personal data.

Within this framework, written or electronic data relating to the asylum/refuge applicants and refugees or asylum seekers shall be protected from access by unauthorized persons. Written data on the mentioned persons shall be kept in locked cupboards or in locked rooms, and correspondence relating to those persons shall be classified as 'restricted'.

Owing to the confidentiality of that data; interviewers and translators/interpreters who are to serve during asylum/refuge applications shall be appointed by approval of the Governorship. Those whose asylum/refuge applications are rejected, and those whose applications are under review shall not act as translators/interpreters.

In all provinces where refugees and asylum-seekers reside, in Provincial Security Directorate, Foreigners/Passport and Foreigners Sections, an interview room equipped with a computer, where the interviews are to be conducted with the asylum/refuge applicants, **must certainly be available**. Strict attention shall be paid in conducting the interviews of refugees and asylum-seekers within a framework of confidentiality.

Staff conducting the interview must certainly be dressed in civilian clothes.

5- The above-mentioned issues shall be observed with diligence by the Governorships and the relevant personnel, and its implementation shall be inspected by civil administration inspectors, and inspection and supervision boards of the General Directorate for Security.

I kindly ask and urge from the Governors and Security Units to show the necessary sense of diligence to the issue and prevent any possible mishaps that may occur.

Besir ATALAY
Minister
Ministry of Interior

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