

## Institutional and Legal Framework for Protecting Roma Rights in Turkey

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### I. Compliance with the international and regional human rights protection framework

#### United Nations standards

The Republic of Turkey is party to most of the major human rights treaties. It ratified the International Covenant on Civil and Political Rights (ICCPR) on 23 September 2003, and entered into force on 23 December 2003. Article 26 of the Covenant guarantees equality before the law and equal protection for all. It is a “free-standing” guarantee of non-discrimination as it prohibits discrimination with regard to all rights recognised by the law and there is an “open-ended” list of prohibited grounds of discrimination. The ICCPR is the only global treaty that includes a provision specifically referring to minority rights. Article 27 guarantees the right of minorities to enjoy their culture, to profess and practice their religion, or to use their own language in community with the other members of their group. Upon ratification, Turkey made a reservation to Article 27 limiting its scope seriously. It declared that it will implement the provisions of this Covenant only to the States with which it has diplomatic relations and exclusively with regard to the national territory where the Constitution and the legal and administrative order of the Republic of Turkey are applied. Moreover it reserved the right to interpret and apply the provisions of Article 27 “in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendixes.”<sup>2</sup> Six countries<sup>3</sup> objected to this reservation claiming that it “raises doubt as

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<sup>1</sup> The author thanks Oliver Pahnecke for his contribution to this study.

<sup>2</sup> The text of the reservations is available at:

<http://www2.ohchr.org/english/bodies/ratification/docs/DeclarationsReservationsICCPR.pdf>.

<sup>3</sup> The objecting countries are Cyprus, Finland, Germany, Greece, Portugal and Sweden.

to the commitment of Turkey to the object and purpose of the said Covenant.”

Sweden argued that according to established customary law as codified by the Vienna Convention on the Law of Treaties, reservations incompatible with the object and purpose of a treaty shall not be permitted and Turkey should undertake all legislative changes necessary to comply with its obligations under the ICCPR.<sup>4</sup>

The First Optional Protocol to the ICCPR was ratified by Turkey on 24 October 2006, and entered into force on 24 February 2007. Therefore the Human Rights Committee, which oversees implementation of the ICCPR, is able to consider complaints by individuals claiming to be victims of human rights violations by Turkey. The Second Optional Protocol to the ICCPR on the abolition of the death penalty was ratified on 2 March 2006 and entered into force in June 2006.

Turkey ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 23 September 2003 and it entered into force on 23 December 2003. It again, made a reservation limiting the implementation of the Convention only to the States Parties with which it has diplomatic relations and to the national territory where the Constitution and the legal and administrative order of the Republic of Turkey are applied.<sup>5</sup> Moreover, it reserved the right to interpret and apply the provisions of paragraphs 3 (respect for the liberty of parents to choose their children’s school and to ensure the religious and moral education of their children) and 4 (liberty of individuals and bodies to establish and direct educational institutions) of Article 13 (right to education) in accordance to the provisions under Articles 3, 14 and 42 of the Constitution of the Republic of Turkey. The same countries that objected to Turkey’s reservation to the ICCPR declared their objections again based on the same legal grounds. It is important to emphasise that although the economic and cultural rights entail a “progressive obligation”<sup>6</sup> of

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<sup>4</sup> The objection made by Sweden is the most comprehensive: “It should be recalled that the duty to respect and ensure the rights recognized in the Covenant is mandatory upon State parties in relation to all individuals under their jurisdiction. A limitation to the national territory is contrary to the obligations of State parties in this regard and therefore incompatible with the object and purpose of the Covenant [...] The general reference to the Constitution of the Republic of Turkey, which, in the absence of further clarification, does not clearly specify the extent of the Republic of Turkey’s derogation from the provision in question, raises serious doubts as to the commitment of the Republic of Turkey to the object and purpose of the Covenant [...] the rights of persons belonging to minorities in accordance with article 27 of the Covenant are to be respected without discrimination. As has been laid down by the Human Rights Committee in its General comment 23 on Article 27 of the Covenant, the existence of a minority does not depend upon a decision by the state but requires to be established by objective criteria. The subjugation of the application of article 27 to the rules and provisions of the Constitution of the Republic of Turkey and the Treaty of Lausanne and its Appendixes is, therefore, in the view of the Government of Sweden, incompatible with the object and purpose of the Covenant.” See document available at:

<http://www2.ohchr.org/english/bodies/ratification/docs/ObjectionsICCPR.pdf>, pp.30-31.

<sup>5</sup> See International Covenant on Economic, Social and Cultural Rights, Reservations and Declarations, available at: <http://www2.ohchr.org/english/bodies/ratification/3.htm>.

<sup>6</sup> The United Nations Committee on Economic, Social and Cultural Rights (UNCESCR), specifies that the “concept

signatory states to act “to the maximum of their available resources”, the obligation of non-discrimination under Article 2/2 applies immediately and is not subject to progressive realisation or availability of resources.

The Convention on the Rights of the Child (CRC) sets out rights that are to be enjoyed by children (defined as every human being under 18), without discrimination of any kind. It addresses both public and private actors. Article 3 sets forth the basic principle of the Convention, which is that the “best interests of the child” should be the primary consideration in all actions concerning children. Turkey ratified the Convention on 4 April 1995 and it entered into force on 4 May 1995. It reserved the right to interpret and apply the provisions of Articles 17 (access to information and material), 29 (right to education) and 30 (right to culture, religion and language) according to the letter and the spirit of the Constitution of the Republic of Turkey and those of the Treaty of Lausanne of 24 July 1923.<sup>7</sup> Ireland, the Netherlands and Portugal objected to this reservation stating that “such reservations, which seek to limit the responsibilities of the reserving State under the Convention by invoking general principles of national law, may raise doubts as to the commitment of these States to the object and purpose of the Convention and moreover, contribute to undermining the basis of international treaty law.”<sup>8</sup>

The Committee on the Rights of the Child considered the initial report of Turkey in May and June 2001. It noted with concern the reservations to articles 17, 29 and 30 of the Convention. It concluded, that “in some cases, in particular in the fields of education and, freedom of expression and the right to enjoy their own culture and use their own language, these reservations may have a negative impact on children belonging to ethnic groups which are not recognized as minorities under the Treaty of Lausanne of 1923.”<sup>9</sup> The Committee expressed its concern regarding the absence of an independent mechanism, such as an Ombudsman or a commission for children, to monitor children’s rights and to register and address individual complaints from children concerning violations of their rights under the Convention. The Committee was concerned that “the principle of non-discrimination (Article 2) is not fully implemented for children belonging to minorities not recognized under the Treaty of Lausanne of 1923, in particular children of Kurdish origin; children with disabilities; children born out of wedlock; girls; refugee and asylum-seeking children; children who are internally displaced; and

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of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time...Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content...It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal.” See UN CESCR, General Comment 3, The Nature of States Parties Obligations (Article 2, par.1), paragraph 9, available at: <http://www.cesr.org/generalcomment3>.

<sup>7</sup> Text available at: <http://www2.ohchr.org/english/bodies/ratification/11.htm>.

<sup>8</sup> Ibid.

<sup>9</sup> Convention on the Rights of the Child, “Concluding Observations of the Committee on the Rights of the Child: Turkey. 09/07/2001.” CRC/C/15/Add.152. p. 3. Available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.152.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.152.En?OpenDocument).

children living in the south-eastern region and in rural areas, especially with regard to their access to adequate health and educational facilities.”<sup>10</sup> It recommended that Turkey “take appropriate measures to prevent and combat discrimination. It also recommends the collection of appropriate disaggregated data to enable monitoring of discrimination against all children, in particular those belonging to the above-mentioned vulnerable groups, with a view to developing comprehensive strategies aimed at ending all forms of discrimination.”<sup>11</sup>

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) outlines methods and states’ requirements to ensure the eradication of discrimination based on gender. The rights set down in this document include the right to equal treatment under law; equality in education, political participation, employment, health and the economy; freedom from sexual exploitation; and the possibility of temporary special measures to overcome inequality. Turkey acceded to the Convention on 20 December 1985, and it entered into force on 19 October 1986. A reservation was made to Article 29/1 (disputes between States), Article 15/2 (equal legal capacity of women and men regarding contracts and administration of property) and 4 (equality of men and women regarding freedom of movement and freedom to choose residence), Article 16/1 [c (same rights and responsibility during marriage), d (same rights and responsibilities as parents), f (same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children), and g (same personal rights as husband and wife)] of the Convention.<sup>12</sup> On 20 September 1999, the Government of Turkey partially withdrew the reservations, except with respect to Article 29/1.

In January 2005 the Committee on the Elimination of Discrimination against Women (CEDAW Committee) assessed Turkey’s compliance with the Convention. It noted with concern that Turkey’s legislation does not contain a definition of discrimination against women in accordance with Article 1 of the Convention.<sup>13</sup> Also, that some provisions of the Penal and Civil Codes continue to discriminate against women and girls. In particular, the Committee was concerned that genital examinations of women, or virginity tests, may be carried out under certain circumstances without the consent of the woman; and that the use of the term “custom killing” instead of “honour killing” in the Penal Code may result in less vigorous prosecution of, and less severe sentences for, the perpetrators of such crimes against women. It was also concerned that the penalisation of consensual sexual relations among youth between 15 and 18 years of age may impact young women more severely, especially in light of the persistence of patriarchal attitudes.<sup>14</sup> The Committee urged Turkey that “consent of the woman be made a

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<sup>10</sup> Ibid. p. 6.

<sup>11</sup> Ibid. p. 6.

<sup>12</sup> “In pursuance of article 29, paragraph 2 of the Convention, the Government of the Republic of Turkey declares that it does not consider itself bound by paragraph 1 of this article.”

<sup>13</sup> Committee on the Elimination of Discrimination against Women, Thirty-second session 10-28 January 2005, CEDAW/C/TUR/CC/4-5, p. 4. Available at: <http://www.un.org/womenwatch/daw/cedaw/cedaw32/conclude-comments/Turkey/CEDAW-CC-TUR-0523813E.pdf>.

<sup>14</sup> Ibid. p. 4.

prerequisite for genital examinations under all circumstances; that any crime committed in the name of custom or honour be classified as aggravated homicide and severest penalties provided for by the law; and that the penalization of consensual sexual relations among youth between 15 and 18 years of age be reconsidered.”<sup>15</sup>

The Committee also expressed concern about the persistence of violence against women, including domestic violence and that support services for women victims of violence, including shelters, are inadequate in number. It noted that under the Law on Municipalities the responsibility for establishing shelters has been delegated to municipalities without adequate mechanisms to monitor its implementation and ensure financing.<sup>16</sup> The Committee called upon Turkey “to intensify its efforts to prevent and combat violence against women, including domestic violence, which is a form of discrimination against women and a violation of their human rights.”<sup>17</sup>

The Committee was concerned that “women are significantly underrepresented in all areas of political and public life and that progress towards achieving equality, particularly at decision-making levels, both national and local, has been regrettably slow.”<sup>18</sup> The Committee also noted concern about the high rate of female illiteracy and the lower enrolment and completion rates of girls and women at all levels of education, and that these discrepancies are further aggravated by urban-rural, regional and ethnic differences.<sup>19</sup> It was also concerned that “women and girls whose mother tongue is not Turkish may face multiple forms of discrimination in access to and achievement in education” and about the impact on girls and women of the ban on wearing headscarves in schools and universities. It recommended that Turkey “take proactive measures to decrease the high rate of female illiteracy and to strengthen girls’ and women’s access to all levels of education and teaching and to actively encourage diversification of educational and professional choices for women and men”. It called on Turkey to implement further targeted policies and programmes to overcome educational disadvantages faced by girls and women belonging to diverse ethnic groups and those whose mother tongue is not Turkish, particularly in rural areas, as well as to address regional disparities.<sup>20</sup> The Committee was also concerned about direct and indirect discrimination against women in the labour market, where women earn significantly less than men in both the public and private sector, about the high level of unemployment amongst women, very low participation in the labour force, particularly in urban areas, and their concentration in agriculture as unpaid family workers and in unregistered work with low or no income or wages and lack of social security benefits. It called on the State to take measures to ensure full implementation of Article 11 (freedom from discrimination in access to

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<sup>15</sup> Ibid. p. 4.

<sup>16</sup> Ibid. p. 5.

<sup>17</sup> Ibid. p. 5.

<sup>18</sup> Ibid. p. 6.

<sup>19</sup> Ibid. p.6.

<sup>20</sup> Ibid. p. 7.

employment) of the Convention and it recommended that Turkey eliminate occupational segregation, in particular through education and training.<sup>21</sup>

The country ratified the Optional Protocol to the CEDAW Convention in 2002, and therefore the Committee is authorised to receive individual communications from the country. In August 2004 an individual complaint was initiated against Turkey.<sup>22</sup> The case concerns a teacher of religion and ethics who wore headscarf covering her hair and neck during her studies and in her work in a state high school, respectively. She was dismissed from her position by the Higher Disciplinary Council claiming that her wearing of a headscarf in the classroom was the equivalent of “spoiling the peace, quiet and work harmony” of the institution by political means in accordance with Article 125E/a of the Public Servants Law No. 657. As a result, she permanently lost her status as a civil servant. In her communication to the Committee the Petitioner claimed that she was victim of a violation by the Turkish State of Article 11 of the Convention. She argued that by dismissing her and terminating her status as a civil servant for wearing a headscarf, “a piece of clothing that is unique to women”, Turkey violated her right to work, her right to the same employment opportunities as others, as well as her right to promotion, job security, pension rights and equal treatment.<sup>23</sup>

Turkey ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) on 16 September 2002 and it entered into force on 16 October 2002. This Convention guarantees the right of equality before the law and equal enjoyment of civil, political, economic, social and cultural rights. The Convention applies to citizens and non-citizens alike. “Racial discrimination” is defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”. The obligations of Member States under the Convention extend not only to their own actions and those of other public authorities, but also to those of any private person, group, or organisation.<sup>24</sup> States must act against the dissemination of ideas based on racial superiority or hatred, as well as take measures to combat racial prejudice and to promote tolerance. The Convention specifically allows States to adopt “special measures” to ensure that certain racial or ethnic groups or individuals can enjoy equal rights in practice, provided that such measures do not lead to the permanent maintenance of separate rights for different racial groups. So far Turkey has made no declaration under Article 14 of the Convention on the consideration of individual communications by the Committee for the Elimination of Racial

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<sup>21</sup> Ibid. p.7.

<sup>22</sup> Rahime Kayhan v. Turkey, Communication No. 8/2005.

<sup>23</sup> The Committee eventually decided that the communication is inadmissible for failure to exhaust domestic remedies.

<sup>24</sup> Article 2/1(d).

Discrimination.<sup>25</sup> The government made reservations upon ratification of the Convention limiting its implementation only to the States Parties with which it has diplomatic relations and to the national territory where the Constitution and the legal and administrative order of the Republic of Turkey are applied.

Turkey ratified the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) on 2 August 1988 and it entered into force on 1 September 1988. The Turkish government made a reservation declaring that it does not consider itself bound by the provisions of Article 30/1 (disputes between states). On 2nd August 1988 another declaration was made recognising the competence of the Committee Against Torture under Articles 21 and 22 to receive and consider communications from another state party to the effect that Turkey is not fulfilling its obligations under the Convention and from individuals subject to its jurisdiction who claim to be victims of a violation by Turkey of the provisions of the Convention. However, the Optional Protocol to CAT (establishing the Subcommittee on Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and a system of regular country visits), signed in September 2005, has not been ratified.

In its 2003 review, the Committee overseeing the implementation of the Convention expressed concern about the “numerous and consistent allegations that torture and other cruel, inhuman or degrading treatment of detainees held in police custody”, about the “allegations that persons in police custody have been denied prompt and adequate access to legal and medical assistance and that family members have not been promptly notified of their detention” and that the “despite the number of complaints, the prosecution and punishment of members of security forces for torture and ill-treatment are rare, proceedings are exceedingly long, sentences are not commensurate with the gravity of the crime, and officers accused of torture are rarely suspended from duty during the investigation” among others.<sup>26</sup> The Committee recommended that Turkey ensure “detainees, including those held for offences under the jurisdiction of State Security Courts, benefit fully in practice from the available safeguards against ill-treatment and torture, particularly by guaranteeing their right to medical and legal assistance and to contact with their families”, and “take the necessary measures to guarantee that prompt, impartial and full investigations into the numerous allegations of torture and ill-treatment are carried out, and to ensure in this connection that an efficient and transparent complaint system exists” and “repeal the statute of limitations for crimes involving torture, expedite the trials and appeals of public officials indicted for torture or ill-treatment, and ensure that members of the security forces under investigation or on trial for torture or ill-treatment are suspended from duty during the

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<sup>25</sup> Information available at: <http://www.unhcr.ch/html/menu2/8/stat4.htm> and [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear\\_en\)/C6AA531CB528DA54C12573EF00371532?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/C6AA531CB528DA54C12573EF00371532?OpenDocument).

<sup>26</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “Conclusions and recommendations of the Committee against Torture: Turkey”, 27/05/2003CAT/C/CR/30/5. p. 2. Available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.30.5.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.30.5.En?OpenDocument).

investigation and dismissed if they are convicted”. Furthermore, the Committee called for ensuring “fair and adequate compensation, including financial indemnification, rehabilitation, and medical and psychological treatment are provided to the victims of torture and ill-treatment”.<sup>27</sup>

### European standards

Turkey has been a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) since 18 May 1954 and is bound by the jurisdiction of the European Court of Human Rights (ECtHR). Under Article 14 of the Convention, the rights outlined in the Convention and its Protocols are specifically guaranteed “without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” This, however, is not a free-standing right of non-discrimination but applies only to the enjoyment of rights set out in the Convention. A general prohibition against discrimination is set out in Protocol 12 to the Convention, which prohibits discrimination in the enjoyment of all rights guaranteed by law. Turkey signed Protocol 12 on 18 April 2001 but has not yet ratified it.

In 2006 and 2007, the Court delivered the highest number of judgments against Turkey.<sup>28</sup> Of the 331 judgments against Turkey in 2007, 319 established violations of the Convention, 7 established no violation, 4 cases ended with a friendly settlement and 1 with another judgment.<sup>29</sup> The majority of the cases concerned violation of the right to fair trial and the length of court proceedings (Article 6), the right to liberty and security of the person (Article 5), and the right to property (Protocol 1 Article 1). Of all cases pending with the Court as of 31 December 2007, cases against Turkey make up 12%, which puts Turkey second following Russia (where the pending cases make up 26% of the Court’s cases). Although there have been several cases against Turkey where Article 14 of the Convention was invoked, as of the time of preparing this report there was only one judgment by the European Court in which Turkey was found in violation of the prohibition of discrimination. The case concerned a lawyer who was not allowed to keep her maiden name following her marriage, which had unjustifiably interfered with her right to protection of private life.<sup>30</sup>

Turkey ratified the European Social Charter on 24 November 1989 and the Revised European Social Charter on 27 June 2007, which entered into force on 1 August 2007. The preamble of the Social Charter states that “the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or

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<sup>27</sup> Ibid. p. 4.

<sup>28</sup> In 2006, 334 cases and 331 cases in 2007.

<sup>29</sup> Information is available at: [http://www.coe.int/T/e/Com/about\\_coe/member\\_states/e\\_tu.asp#TopOfPage](http://www.coe.int/T/e/Com/about_coe/member_states/e_tu.asp#TopOfPage). Other judgments equal just satisfaction, revision, preliminary objection or lack of jurisdiction.

<sup>30</sup> Unal Tekeli v. Turkey, Application No. 29865/96.



social origin.” Article E of the Revised European Social Charter declares that the enjoyment of the rights set forth in the Charter should be secured “without discrimination on *any ground* such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status” [emphasis added]. Turkey accepted 91 of the Revised Charter’s 98 paragraphs, with reservations to the provisions of Article 5 (right to organise), Article 6 (right to bargain collectively) as well as on Article 2/3 (minimum annual holidays) and Article 4/1 (remuneration and decent standard of living). Turkey has lifted previous reservations on the European Social Charter’s provisions, namely the right of children and young persons to protection and the right of disabled persons. In the course of its regular reviews of States Parties’ compliance with the Revised European Social Charter, the European Committee of Social Rights (ECSR) has established Turkey’s non-compliance with the Charter in areas such as the right of access to health care,<sup>31</sup> non-discrimination in employment,<sup>32</sup> and social and economic protection.<sup>33</sup> Turkey has neither signed nor ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.<sup>34</sup>

Turkey ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 26 February 1988, and it entered into force on 1 February 1989. In December 2005, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reviewed the situation in the country as regards the treatment of persons held by the law enforcement agencies and assessed the day-to-day operation of the legal safeguards against ill-treatment currently in force. The CPT concluded, amongst other things, that “law enforcement officials still do on occasion delay access to a lawyer, so as to enable the person detained to be informally questioned without the presence of a lawyer, prior to the taking of a formal statement (in the lawyer’s presence.) The CPT must once again recommend that all necessary steps be taken to ensure that the right of access to a lawyer for persons in police/gendarmerie custody, as guaranteed by law, is fully effective in practice as from the outset of custody.”<sup>35</sup> Concerning the issue of the confidentiality of medical examinations, the CPT noted that “most detained persons claimed that they had been examined in the presence of law enforcement officials [...] and similarly, the requirement that the report be

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<sup>31</sup> The manifestly inadequate budget for health care and the inadequacy of health care facilities and staff mean that the public is not guaranteed access to health care nationwide. RecChS(98)4 adopted by the Committee of Ministers on 4 February 1998.

<sup>32</sup> The reasoning was that compensation for discrimination in employment is limited to 4-months wages.

<sup>33</sup> The decision was based on the following: the existing social security schemes do not cover a significant percentage of the population, lack of a general system of family benefits, the age of criminal responsibility is manifestly too low, and the minimum length of certain prison sentences for young minors is excessive.

<sup>34</sup> Information available at:

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=158&CM=7&DF=26/10/2005&CL=ENG>.

<sup>35</sup> CPT. “Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 14 December 2005”, CPT/Inf (2006) 30, para. 23. Available at: <http://www.cpt.coe.int/documents/tur/2006-30-inf-eng.pdf>.

transmitted to the prosecutor in a closed and sealed envelope was often not being compiled with.”<sup>36</sup>

At the time this report was published, Turkey had not ratified either the Framework Convention for the Protection of National Minorities (FCNM), the first treaty to protect the rights of persons belonging to national minorities, or the European Charter for Regional or Minority Languages (ECRML).

### The European Union

The European Charter on Fundamental Rights outlines the prohibition of discrimination based on any ground, such as sex, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. It also stipulates respect for cultural, religious and linguistic diversity, equality between men and women, rights of the child, rights of the elderly and integration of persons with disabilities. European Union (EU) enlargement policy requires all candidate countries to fulfil the Copenhagen political criteria, which include guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities. The principle of non-discrimination is strongly grounded in the EU's *acquis communautaire*. The 1997 Treaty of Amsterdam introduced Article 13, a general anti-discrimination clause. The Council of the European Union, which is the EU's premiere legislative body, used the competence it had been given under Article 13 to adopt the Employment Equality Directive<sup>37</sup>, which prohibits discrimination in employment and occupation on grounds of religion or belief, disability, age or sexual orientation, and the Race Equality Directive,<sup>38</sup> which prohibits discrimination on grounds of racial or ethnic origin unlawful in employment, training, education, and access to social security, health care, social advantages, and goods and services, including housing.

At Article 1, the Race Equality Directive lays down a framework of minimum requirements for “combating discrimination on grounds of racial or ethnic origin, with a view to putting into effect the Member States principle of equal treatment”. It includes provisions that Member States of the European Union must adopt laws, regulations and administrative provisions necessary to comply with the Directive. Member states are to implement the Directive directly into their national laws and practices to strengthen protection against discrimination based on

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<sup>36</sup> 26.

<sup>37</sup> Directive 2000/78/EC of the Council of the European Union “establishing a general framework for equal treatment in employment and occupation.” Available at:

[http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legisl/2000\\_78\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisl/2000_78_en.pdf).

<sup>38</sup> Directive 2000/43/EC of the Council of the European Union on “implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.” Available at:

[http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legisl/2000\\_43\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisl/2000_43_en.pdf).

racial or ethnic origin. Member states must also ensure that the domestic legal order includes the possibility of sanctions for discriminators and compensation for victims. States are additionally required to designate a body or bodies for the promotion of equal treatment. As part of its accession process, Turkey has to adopt a legal framework on anti-discrimination to harmonise its national legal framework with the EU *acquis communautaire*.

## II. Turkey's domestic legal and institutional framework for protection against discrimination

### Legal framework

The international legal principle of non-discrimination prohibits “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”<sup>39</sup> The prohibition of discrimination is an over-arching obligation ensured by all the major human rights instruments, such as ICCPR, ICESCR, CEDAW, CRC, CERD, ECHR, FCNM and ESC. Moreover, it is part of EU law through Article 13 of the EC Treaty, the Employment and Race Equality Directives. Under these standards not only direct, but indirect discrimination is prohibited and EU law also bans harassment and victimization as forms of discrimination as well as the instruction to discriminate. Positive measures are permitted in order to achieve substantive equality and a special body has to be designated for the promotion of equal treatment. In addition, a shared burden of proof and the acceptance of situational testing and statistical evidence help obtain redress for the victim of discrimination.

Due to its history and geographical location, Turkey has been and is today the home of a variety of national, ethnic, religious and linguistic minorities. Although Turkey is party to most of the international and regional human rights instruments prohibiting discrimination and protecting the rights of minorities, Turkey's minority and anti-discrimination policies are determined by and interpreted in line with the Treaty of Lausanne, the peace treaty signed between the Allies of World War I and Turkey.<sup>40</sup> The significance of the Treaty's minority concept in Turkey's policy is apparent also in the reservations the country made to the ICCPR and the CRC, noted earlier. The Treaty of Lausanne refers to minorities as “Turkish nationals belonging to non-Muslim minorities”. The fact that only religious minorities are recognised minority groups is reinforced by the equality clause of the Treaty where the only prohibited ground is religion. Article 39/2 states, “all the inhabitants of Turkey, without distinction of religion, shall be equal before the law.” In addition to this narrow interpretation of minority groups, Turkish administrations have

<sup>39</sup> Article 1/1 of the International Convention on the Elimination of All Forms of Racial Discrimination

<sup>40</sup> See Section III of the Treaty of Lausanne. Available at: <http://www.hri.org/docs/lausanne/part1.html>.

persistently interpreted this protection to apply to only three minority groups: Armenian Orthodox Christians, Greek Orthodox Christians and Jews.<sup>41</sup>

The Constitution of the Republic of Turkey<sup>42</sup> does not refer to minorities. Article 10 provides the basis for equal treatment:

“(1) 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.

(2) Men and women have equal rights. The State shall have the obligation to ensure that this equality exists in practice.

(3) No privilege shall be granted to any individual, family, group or class.

(4) State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.”<sup>43</sup>

Ethnicity is not mentioned specifically as a prohibited ground of unequal treatment.

Article 12/1 declares that everyone possesses inherent fundamental rights and freedoms which are inviolable and inalienable. Article 13 prescribes that restrictions of fundamental rights and freedoms can be made only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence: “These restrictions shall not be in conflict with the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular Republic and the principle of proportionality.” Article 14 prohibits the exercise of fundamental rights and freedoms “with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights.” Based on Article 15 of the Constitution, the exercise of fundamental rights and freedoms can be partially or entirely suspended in times of war, mobilisation, martial law, or state of emergency, or measures may be taken, to the extent required by the exigencies of the situation, which derogate the guarantees embodied in the Constitution provided that obligations under international law are not violated. However, even under these circumstances “the individual’s right to life, and the integrity of his or her material and spiritual entity shall be inviolable except where death occurs through lawful act of warfare; no one may be compelled to reveal his or her religion, conscience, thought or opinion, nor be accused on account of them; offences and penalties may not be made retroactive, nor may anyone be held guilty until so proven by a court judgment.”

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<sup>41</sup> International Helsinki Federation for Human Rights. October 2006. Turkey: A Minority Policy of Systematic Negation, p.1.

<sup>42</sup> The Constitution was adopted in 1982.

<sup>43</sup> Translation in English by International Constitutional Law (ICL) based on the text published by the Office of the Turkish Prime Minister. The status date follows the last amendment mentioned there (Provisional Article 17, Annex 10.05.2007/ Article 5659/1). Available at: [http://www.servat.unibe.ch/icl/tu00000\\_.html](http://www.servat.unibe.ch/icl/tu00000_.html).

Article 90/5 establishes the supremacy of international law over domestic law stating, “in the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.”

Turkey does not have a general anti-discrimination law; equality clauses are, however, included in several laws. The Criminal Code extends its protection to everyone without making “any distinctions on the basis of race, language, religion, sect, nationality, colour, sex, political or other opinion, philosophical belief, national or social origin, birth, economic and other social status and without extending privileges to anyone.” Article 122/1 provides for between 6- to 12-months imprisonment and fine to anyone who discriminates on the grounds of language, race, colour, religion or sect in the areas of sale/transfer of goods or services, employment, provision of food, access to services, or the exercise of an economic activity.<sup>44</sup>

Article 5 of the Labour Code<sup>45</sup> incorporates the general principle of equal treatment as follows:

“In labour relations no discrimination shall occur on the grounds of language, race, sex, political opinion, philosophical belief, religion, membership of a religious sect or other similar grounds.

An employer, unless there are important reasons, shall not treat part-time employees differently than full- time employees, or employees employed for a definite period of time differently than employees employed for an indefinite period of time.

An employer, unless biological reasons and nature of the work require otherwise, shall not treat differently, directly or indirectly, an employee in the formation, implementation and termination of a contract, or determination of conditions, on the grounds of sex and maternity.

Lower wages shall not be paid for the same work or work of equal value.

Special provisions protecting employees on the grounds of sex shall not justify lower wages.

In the case of any treatment in a labour relationship or the termination of a contract that is contrary to the above provisions, an employee may claim compensation amounting to a

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<sup>44</sup> International Helsinki Federation for Human Rights. October 2006. Turkey: A Minority Policy of Systematic Negation.

<sup>45</sup> Labour Act No. 4857 of 22 May 2003. The equality clause was added in 2003. English translation available from the International Labour Organization’s Ankara Office. Available at: <http://www.ilo.org/public/english/region/eurpro/ankara/legislation/law4857.htm>.

maximum of four months worth of wages and other rights of which he deprived. The provisions of Article 31 of the Trade Unions Act shall be reserved / shall be without prejudice.

An employee, on the condition that provisions of Article 20 are reserved, shall prove the fact that the employer has acted against provisions in paragraphs above. However, when an employee puts facts down strongly indicating the possibility of the existence of a violation, the employer shall prove that there is no such a violation.”

The prohibition of discrimination in the Labour Code is limited to employment relations and does not extend to recruitment. Therefore an important area covered by the EU Employment and Race Equality directives ensuring equal access to employment is not guaranteed. Ethnicity is not mentioned as a specific ground for discrimination. According to Article 5 of the Labour Code, the burden of proof may be reversed if the employee puts facts down that strongly indicate the possibility of a violation of the anti-discrimination clause, when the employer would have to prove that there had been no such a violation. In addition to that, Article 20/2 of the Labour Code lays down that the employer must prove that termination is based on valid reasoning. If the employee argues that there is another reason, he or she should prove it. Article 18(c and d) clearly state that in applications made by the employee to administrative and judicial authorities, race, colour, sex, civic status, family responsibilities, pregnancy, religion, political opinion and ethnic and social origin cannot be valid reasons for the termination.

Although the sharing of the burden of proof is introduced into Turkish legislation, its application is unclear. Judges, after reviewing the employee’s plea, decide on whether to shift the burden of proof. At this stage, the employee should convince the judge that there are “facts indicating strongly the possibility of a violation”. This means, that Article 5 accepts the shift of the burden of proof conditionally and the condition itself may force the employee, instead of the employer, to prove the facts.<sup>46</sup> Although Article 20 of the Labour Code clearly states that in case of dismissal the burden of proof is reversed, this provision cannot be implemented in all cases. The employer should justify dismissal with valid reasons only if he/she employs thirty or more employees. Furthermore, the employer has no obligation to justify the dismissal if the employee does not have at least six months seniority. Thus, the reversal of the burden of proof provision in Article 20 will not be implemented in around 80% of all dismissal cases.<sup>47</sup>

Article 4 of National Education Fundamental Act<sup>48</sup> states that, “Educational institutions are open to all, with no distinction of language, race, sex and religion. No privilege shall be granted

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<sup>46</sup> Levent Korkut. May 2003. Report on Measures to Combat Discrimination in the 13 Candidate Countries, Turkey Country Report, p. 34, available at: <http://www.humanconsultancy.com/TURKEY%20Final%20EN.pdf>.

<sup>47</sup> Ibid. p. 35.

<sup>48</sup> Act No. 1739.

to any individual, family, group or class in education.” Article 5 of the Higher Education Act<sup>49</sup> includes a provision on equality of opportunity: “The necessary measures shall be taken to provide equality of opportunity in higher education.”

Article 4 of the Act on the Foundation and Broadcasting of Radio and Television Channels<sup>50</sup> stipulates that radio and television broadcasting shall be made, *inter alia*, in accordance with the principle that “people shall not be offended because of their race, sex, social class or religious belief” and “[...] without leading the community to violence, terror, ethnic discrimination [...].”

There is no legislative framework for the protection of minorities and anti-discrimination in Turkey. As Minority Rights Group International reported in December 2007, millions who belonged to ethnic, linguistic and religious minorities remained unrecognised by the Turkish state, including Alevis, Yezidis, Assyrians, Kurds, Caferis, Caucasians, Laz, and Roma.<sup>51</sup> There are no comprehensive civil and administrative anti-discrimination provisions nor are there any effective mechanisms of enforcement and redress. Definitions of “direct discrimination”, “indirect discrimination”, “harassment” and “instructions to discriminate” do not exist in the Turkish legal system. Apart from the Labour Code, there is no provision for reversal of burden of proof. Although in its second report on Turkey the European Commission against Racism and Intolerance (ECRI) recommended that Turkish authorities provide for an aggravating circumstance in the event of racist motives in respect of all ordinary offences, the Criminal Code remained unchanged.<sup>52</sup> Multiple discrimination is not accepted as an aggravating circumstance either.

### **Turkey’s institutional framework for the promotion and enforcement of human rights**

Based on Article 40 of the Constitution, everyone whose constitutional rights and freedoms have been violated has the right to request prompt access to the competent authorities. Damages incurred by any person through unlawful treatment by the holders of public office shall be compensated by the state.

According to Article 11/2 of the Turkish Constitution, laws shall not be in conflict with the Constitution. The Turkish Constitutional Court is authorised by the Constitution to decide on the unconstitutionality of laws, statutory decrees and the Rules of Procedure of the Turkish Grand National Assembly on the ground of substantive and procedural rules.<sup>53</sup> The

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<sup>49</sup> Act No. 2547.

<sup>50</sup> Act No. 398.

<sup>51</sup> Minority Rights Group International: A Quest for Equality: Minorities in Turkey. December 2007.

<sup>52</sup> European Commission against Racism and intolerance. 15 February 2005. Third report on Turkey. Available at: [http://www.coe.int/t/e/human\\_rights/ecri/1%2Decri/2%2Dcountry%2Dby%2Dcountry\\_approach/Turkey/Turkey\\_CBC\\_3.asp#TopOfPage](http://www.coe.int/t/e/human_rights/ecri/1%2Decri/2%2Dcountry%2Dby%2Dcountry_approach/Turkey/Turkey_CBC_3.asp#TopOfPage).

<sup>53</sup> Article 148/1 of the Constitution.

unconstitutionality of statutory decrees issued during a state of emergency, martial law or in time of war cannot be challenged before the Constitutional Court.<sup>54</sup>

Access to the Constitutional Court can be secured in two ways: principal proceedings (*iptal davası*) and incidental proceedings (*somut norm denetimi*).<sup>55</sup> Principal proceedings for annulment can be instituted within sixty days of the promulgation of the law in question in the Official Gazette by the President of the Republic, the parliamentary groups of the governing party, the main opposition party or at least one fifth of the total number of members of the Grand National Assembly.<sup>56</sup> Incidental proceedings can be initiated by any individual and they are not subject to time limitation. Access to the Constitutional Court in incidental proceedings is dependent upon two conditions. First, a plea of unconstitutionality (*anayasaya aykırılık iddiası*) must be put forward in the course of judicial proceedings. Secondly, the regular court trying the case should determine whether access to the Constitutional Court is justified. If there is a plea and the judge of the court in the case is convinced that the claim is serious, then the consideration of the case is postponed and the file is sent to the Constitutional Court for review of the law, according to Article 152 of the Constitution.<sup>57</sup>

This means that individuals have no direct access to the Constitutional Court in Turkey. They cannot directly challenge the conformity of existing legal norms with constitutionally guaranteed rights and freedoms and their access to the Constitutional Court in a pending proceeding is dependent on the trying judge's assessment.

According to Article 125/1 of the Constitution, all acts of the administration shall be subject to judicial review. Based on Article 125/5, if the implementation of an administrative act should result in damages which are difficult or impossible to compensate for and at the same time this act is clearly unlawful, then a stay of execution may be decided upon. But there are some exceptions of the principle of judicial review in the Turkish legal system. The acts of the President of the Republic on his or her own competence and the decisions of the Supreme Military Council are outside the scope of judicial review.<sup>58</sup>

The main human rights bodies of the state are the Human Rights Inquiry Commission of the Parliament,<sup>59</sup> the Human Rights Presidency of the Prime Ministry and the Human Rights Advisory Council.

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<sup>54</sup> Article 148/1 of the Constitution.

<sup>55</sup> Levent Korkut. May 2003. Report on Measures to Combat Discrimination in the 13 Candidate Countries, Turkey Country Report, p. 41.

<sup>56</sup> Articles 150 and 151 of the Constitution.

<sup>57</sup> Levent Korkut. May 2003. Report on Measures to Combat Discrimination in the 13 Candidate Countries, Turkey Country Report, p. 41.

<sup>58</sup> Article 125/2 of the Constitution.

<sup>59</sup> It was established by Law No: 3686 in 1990.



The Human Rights Inquiry Commission of the Parliament has the authority to conduct fact-finding research on specific subjects, publish the results and investigate alleged abuses. Although the Commission has the mandate to oversee compliance with the human rights provisions of domestic law and international agreements, its purely advisory role limits its efficacy to the extent that it is not consulted on legislation affecting human rights.<sup>60</sup>

The Human Rights Presidency of the Prime Ministry and its 931 provincial human rights councils were established to serve as a forum for human rights consultations among NGOs, professional organisations and the government. They have authority to investigate complaints and refer them to the prosecutor's office. Between January and June 2006, 778 applications were submitted, the vast majority of which were related to health and patients' rights, non-discrimination, the right to property and social security rights.<sup>61</sup> However, many councils failed to hold regular meetings or effectively fulfil their duties owing to the lack of adequate financial and human resources.<sup>62</sup> Human rights NGOs generally refused to participate in the councils, maintaining that they lacked authority and independence from the government.<sup>63</sup>

The Human Rights Advisory Council includes both representatives of governmental and non-governmental organisations. The function of the Advisory Council is to build up dialogue between NGOs and the government and provide advice to relevant institutions on domestic and international matters with respect to human rights. In its 2006 progress report, the European Commission noted that the Council had not been operating since the publication of a report on minority rights in Turkey in October 2004.<sup>64</sup> Legal proceedings were initiated against the two main authors of this report. The initial acquittal has been overruled by the Court of Cassation in September 2007, and an appeal procedure is ongoing. The US State Department reported that, in March 2006, six NGOs withdrew from the Council because of government interference with the body.

There is no independent public body to monitor and conduct research on discrimination on the grounds of race and ethnicity, produce independent reports and recommendations as well as provide assistance to the victims in Turkey.<sup>65</sup> There is no available statistical data concerning race and ethnicity, which hinders the exposure and tackling of discrimination on these grounds. In

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<sup>60</sup> Commission of the European Communities. 8 November 2006. Turkey 2006 Progress Report. Brussels. Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2006/nov/tr\\_sec\\_1390\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/tr_sec_1390_en.pdf).

<sup>61</sup> Ibid.

<sup>62</sup> Ibid. See also Commission of the European Communities. 6 November 2007. Turkey 2007 Progress Report. Brussels. Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2007/nov/turkey\\_progress\\_reports\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf).

<sup>63</sup> Ibid.

<sup>64</sup> Commission of the European Communities. 8 November 2006. Turkey 2006 Progress Report. Brussels. Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2006/nov/tr\\_sec\\_1390\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/tr_sec_1390_en.pdf).

<sup>65</sup> Levent Korkut. May 2003. Report on Measures to Combat Discrimination in the 13 Candidate Countries, Turkey Country Report, p. 40.

addition, Turkey has yet to establish an Ombudsman system, pending the implementation of the Ombudsman Law, suspended by the Constitutional Court in November 2006.<sup>66</sup> In order to comply with the EU Race Equality Directive and implement ECRI's recommendation, Turkey has to establish a specialised body to effectively combat and monitor racism and intolerance.

### **Discriminatory laws**

Several provisions in Turkish legislation single out Roma for discriminatory treatment. Before its revocation in 2006, the Law on Settlement<sup>67</sup> stated at Article 4 that “those that are not bound to the Turkish culture, anarchists, *migrant gypsies*, spies and those that have been deported, are not recognized as migrants” [emphasis added]. It also stipulated that nomads and Roma were to be settled in sites designated by the Ministry of Health and Social Assistance in accordance with the programme to be made by the Council of Ministers with “a view to ensuring their loyalty to Turkish culture and improving the establishment and distribution of the population.”<sup>68</sup> Explicit references to Roma were dropped in the new Law of Settlement No. 5543 dated 19 September 2006. The new Article 48, however, contains vague formulations and is therefore open to discriminatory application: “Those foreigners who are not descendants from Turkish ancestry or not bound to the Turkish culture as well as those who are of Turkish ancestry or bound to Turkish culture that were expelled and those who are deemed to be unsuitable to enter Turkey for security reasons are not accepted to Turkey as migrants.”

Another provision directly discriminating against Roma, however, remained in force. Article 21 of the Law on the Movement and Residence of Aliens<sup>69</sup> states that “the Ministry of Internal Affairs is authorised to expel *stateless and non-Turkish citizen gypsies* and aliens that are not bound to the Turkish culture” [emphasis added].

The impact of these provisions on Roma is difficult to define due to a lack of data about their application. In fact, research carried out by the ERRC/hCa/EDROM in Turkey did not identify cases in which these provisions were enforced against Roma. Such provisions, however, have to be immediately repealed because they are in violation of Turkey's commitments under international human rights law and promote discrimination against Roma.

### **Badly applied laws**

Other laws aimed at protecting minorities have failed to achieve the intended legal effect and due to bad application actually punish those who advocate minority rights.

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<sup>66</sup> Commission of the European Communities. 6 November 2007. Turkey 2007 Progress Report. Brussels. Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2007/nov/turkey\\_progress\\_reports\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf).

<sup>67</sup> Law on Settlement, No 2510.

<sup>68</sup> Article 9 of the Law on Settlement. Unofficial translation.

<sup>69</sup> Law on the Movement and Residence of Aliens No 5683. Unofficial translation.

The Criminal Code criminalises, at Article 216/1, incitement to enmity or hatred on the basis of race, religion, sect or region, where such incitement leads to a clear and imminent threat to national security. Article 216/2 states that a punishment shall be enacted against anyone who openly humiliates one part of the public on the basis of their social class, race, religion or sect. Minority Rights Group International has reported that while prosecutors frequently use Article 216/2 to bring charges against individuals who express non-violent opinions, they do not resort to Article 216/1, which could potentially be used to protect minorities against hate speech, racism and anti-Semitism.<sup>70</sup>

Another concern is the interpretation of 301 of the Criminal Code. Article 301/1 took effect in June 2005 and states, “A person who explicitly insults being a Turk, the Republic or Turkish Grand National Assembly, shall be exposed to a penalty of imprisonment for a term of six months to three years.” Article 301/3 says, “Where insulting being a Turk is committed by a Turkish citizen in a foreign country, the penalty to be imposed shall be increased by one third.” Several well-known writers, including Orhan Pamuk, have stood or are standing trial under these provisions for citing, for example, the genocide of Armenians during the last years of the Ottoman Empire or killings of Kurds during the long-lasting conflict between Turkish forces and Kurdish separatists.<sup>71</sup>

Article 83 of the Political Parties Act<sup>72</sup> stipulates that the right to form a political party shall not be used to discriminate on the grounds of language, race, religion, denomination, difference in region, or establishing, by any means, a system of government based on any such a notion or concept. At the same time, political parties “shall not claim that there are minorities based on national or religious or cultural or confessional or racial or linguistic differences.”<sup>73</sup> The International Helsinki Federation reported that this provision has led to the closure of a number of political parties referring to the Kurdish question. The law also prohibits the promotion, protection or spreading of any culture or language other than the Turkish, which is defined as a threat to the unity of the Turkish nation.<sup>74</sup> The Act also prohibits the use of any language other than Turkish in the activities of political parties (e.g. at their meetings and in their programmes), which has resulted in a large number of prosecutions aimed mostly at Kurdish speakers.<sup>75</sup> The US State Department reported that on 14 February 2007 an Ankara court sentenced 13 administrators of the legal pro-Kurdish Rights and Freedoms Party (Hak-Par) to imprisonment

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<sup>70</sup> Minority Rights Group International. 2007. *A Quest for Equality: Minorities in Turkey*, p. 29. Available at: <http://www.minorityrights.org/?lid=4572>.

<sup>71</sup> Pen American Center. “Novelist Elif Şafak to be tried for ‘Insulting Turkishness,’ Indictments of Major Novelists Signal Erosion of Free Expression Gains in Turkey.” *Turkey Background Briefing 7/06*. Available at: <http://www.pen.org/viewmedia.php/prmMID/694/prmID/172>. Quoted in: International Helsinki Federation for Human Rights. October 2006. *Turkey: A Minority Policy of Systematic Negation*, p. 9.

<sup>72</sup> Act No. 2820.

<sup>73</sup> Article 81/a.

<sup>74</sup> Article 81/b.

<sup>75</sup> Article 81/c.

of between six months to one year for distributing Kurdish-language invitations to a 2005 convention and speaking Kurdish during the convention. The defendants maintained that speaking in Kurdish is legal under the constitution and the European Convention on Human Rights.<sup>76</sup>

The 1991 Law on the Fight against Terrorism<sup>77</sup> was amended on 29 June 2006 providing for new restrictions on the freedom of the press and it is feared that they will be used to further limit freedom of expression by minorities.<sup>78</sup> Article 6/2 of the law provides for a three-year prison sentence for “any dissemination of statements and communiqués by terrorist organisations.” Article 7/2 states, “Whoever makes propaganda for a terrorist organisation will be sentenced to five years in prison. If the crime is committed by means of the press, the penalty may be increased by half. Owners and editors will also be sentenced to a heavy fine.” Yet the law fails to define “terrorism,” a fact which gives rise to concern that it will subject to broad interpretation and misuse, as has been the case already with the old law. A new Article, 8/b, added by parliament, provides for “chain liability” under which all persons in one way or another involved in the production of an article or a programme can be prosecuted and sentenced to heavy fines.<sup>79</sup>

### Conclusion

In order to fight widespread discrimination against Roma in Turkey and guarantee real equality to Roma, the government has to ensure that the principles of non-discrimination and equality as defined in international law prevail. Discriminatory laws need to be urgently repealed, policies need to be developed and legal guarantees provided to ensure Roma the same access to basic rights and services as other citizens. An effective legal and institutional framework aimed at combating racial discrimination is essential to promoting the equality of Roma. Not only does such a framework need to offer redress to individuals who are victims of discrimination, but also act as a deterrent. Article 6 of ICERD provides that, “States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination. Adequate reparation involves not just punishment of perpetrators, but also material and moral compensation of victims.”<sup>80</sup> In February 2003, the European

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<sup>76</sup> US Department of State. 2007. Turkey: Country Reports on Human Rights Practices – 2007. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2007/100589.htm>.

<sup>77</sup> No. 3713

<sup>78</sup> International Helsinki Federation for Human Rights. October 2006. Turkey: A Minority Policy of Systematic Negation, p. 9.

<sup>79</sup> Reporters without Frontiers. 10 July 2006. “Prime Minister warned that terror law changes could impose censorship of Kurdish issues,” Available at: [http://www.rsf.org/article.php3?id\\_article=18243](http://www.rsf.org/article.php3?id_article=18243). Quoted in: International Helsinki Federation for Human Rights. October 2006. Turkey: A Minority Policy of Systematic Negation, p. 9.

<sup>80</sup> Committee on the Elimination of Racial Discrimination. 2000. General Recommendation XXVI “The right to seek

Commission against Racism and Intolerance published a General Policy Recommendation on “National Legislation to Combat Racism and Racial Discrimination.” This recommendation provides further details as to substantive and procedural components that should be included in national legislation addressing racial discrimination.<sup>81</sup> Criminal legislation is inadequate for providing redress for discrimination. In the Explanatory Memorandum to the above-mentioned General Policy recommendation, ECRI stated, “ECRI believes that appropriate legislation to combat racism and racial discrimination should include provisions in all branches of the law, i.e. constitutional, civil, administrative and criminal law. Only such an integrated approach will enable member States to address these problems in a manner which is as exhaustive, effective and satisfactory from the point of view of the victim as possible. In the field of combating racism and racial discrimination, civil and administrative law often provides for flexible legal means, which may facilitate the victims’ recourse to legal action.”<sup>82</sup>

In its 2007 progress report, the European Commission concluded that the approach of Turkish authorities of considering “Turkish citizens as individuals having equal rights before the law rather than as individuals belonging to the majority or to a minority [...] should not prevent Turkey from granting specific rights to certain Turkish citizens on the grounds of their ethnic origin, religion or language, so that they can preserve their identity.”<sup>83</sup> The principle of equality in international law requires similar situations to be treated similarly and dissimilar situations differently. The United Nations Human Rights Committee noted that the enjoyment of rights and freedoms on an equal footing does not mean identical treatment in every instance.<sup>84</sup> Furthermore, the Explanatory Report of Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms states, “It should be noted that the non-discrimination and equality principles are closely intertwined. For example the principle of equality requires that equal situations are treated equally and unequal situations differently. Failure to do so will amount to discrimination unless an objective and reasonable justification exists.”<sup>85</sup> According to international law, positive measures are not discrimination. This is clearly

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just and adequate reparation or satisfaction.” Available at: <http://www1.umn.edu/humanrts/gencomm/genexxvi.htm>.

<sup>81</sup> European Commission against Racism and Intolerance. 13 December 2002. General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination. Available at: [http://www.coe.int/T/E/human\\_rights/Ecri/1-ECRI/3-General\\_themes/1-Policy\\_Recommendations/Recommendation\\_N%07/3-Recommendation\\_7.asp#TopOfPage](http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/3-General_themes/1-Policy_Recommendations/Recommendation_N%07/3-Recommendation_7.asp#TopOfPage).

<sup>82</sup> Ibid. Explanatory Memorandum to ECRI’s General Policy recommendation No 7 on National Legislation to Combat Racism and Racial Discrimination, paragraph 3. Available at: [http://www.coe.int/T/E/human\\_rights/Ecri/1-ECRI/3-General\\_themes/1-Policy\\_Recommendations/Recommendation\\_N%07/3-Recommendation\\_7.asp#P128\\_11460](http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/3-General_themes/1-Policy_Recommendations/Recommendation_N%07/3-Recommendation_7.asp#P128_11460).

<sup>83</sup> Commission of the European Communities. 6 November 2007. Turkey 2007 Progress Report. Brussels. Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2007/nov/turkey\\_progress\\_reports\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf).

<sup>84</sup> United Nations Human Rights Committee. 10 November 1989. General Comment 18, “Non-Discrimination”, paragraphs 1 and 8. Available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3888b0541f8501c9c12563ed004b8d0e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3888b0541f8501c9c12563ed004b8d0e?Opendocument).

<sup>85</sup> Explanatory Report available at: <http://conventions.coe.int/Treaty/EN/Reports/Html/177.htm>. In the case of *Thlimmenos v. Greece*, the European Court of Human Rights stated: “The Court has so far considered that the right

stated in the definition of discrimination provided in the ICERD. Article 1/4 provides, “Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.” The Race Equality Directive also provides in its Article 5 that, “With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.”

The especially vulnerable situation of Roma calls for special measures. In a recent judgment, the European Court of Human Rights held, that “as a result of their history, Roma have become a specific type of disadvantaged and vulnerable minority requiring special protection.”<sup>86</sup>

### **Recommendations**

Withdraw reservations attached to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

Make a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination on consideration of individual communications by the Committee for the Elimination of Racial Discrimination.

Ratify Protocol 12 to the European Convention on Human Rights which provides for the general ban on discrimination.

Ratify the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

Withdraw reservations made to the Revised European Social Charter and ratify the Additional Protocol providing for a system of collective complaints.

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under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification (see the Inze judgment cited above, p. 18, § 41). However, the Court considers that this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.” *Thlimmenos v. Greece*, ECHR, Application no. 34369/97. Judgment of 6 April 2000.

<sup>86</sup> *D.H. and Others v. The Czech Republic*, Application no. 57325/00. Judgment of 13 November 2007.

Reform Turkey's official minority policy so as to reflect the actual existence of minorities in Turkey and to officially recognise all ethnic, religious and linguistic minorities and provide them the support and protection guaranteed by the international human rights instruments to which Turkey is a party.

Adopt a comprehensive anti-discrimination law for the effective transposition of the Race Equality and Employment Directives as part of the EU *acquis communautaire*. Provide detailed protections and procedures against, in particular, discrimination on grounds of race and ethnicity. Establish an effective enforcement body (in accordance with General Policy Recommendation No 2 of the European Commission against Racism and Intolerance) with administrative independence and sufficient resources.

Conduct a comprehensive review of all legislation to ensure that no areas of Turkish law are directly or indirectly discriminatory; any such laws should be amended or annulled immediately. Ensure that Turkish legislation fully conforms to Turkey's international human rights obligations and European standards.

Without delay, repeal discriminatory anti-Romani provisions.

Amend the Political Parties Act so as to remove restrictions on parties advocating minority rights and lift the ban on using minority languages in the activities of political parties.

Extend the prohibition of discrimination to all public authorities, corporations and individuals and in all areas including employment, education and training, housing, health care, social protection, public places and public services.

Ensure effective remedy for cases of discrimination against Roma in the fields of education, employment, housing, health care, social services and access to public accommodation. Withdraw the limit of compensation for discrimination in employment as determined by Article 5 of the Labour Code.

Amend the Criminal Code to provide for an aggravating circumstance in the event of racist motives in respect of all ordinary offences.

Provide free legal aid to members of vulnerable groups, including Roma.

Improve the institutional framework for human rights by implementing the Law on Ombudsman and provide for direct access of individuals to the Constitutional Court.

Develop and adopt a comprehensive government programme addressing the human rights situation of Roma in Turkey.

Remedy the current dearth of statistical data on the situation of Roma in sectoral fields key for

social inclusion, including statistical data comparing the situations of Roma with non-Roma in areas such as education, employment, housing, health care, access to social services and access to justice.



Romani family rendered homeless by the municipal authorities in Küçükbakkalköy, Kadıköy district of Istanbul.  
Photo: Oliver Pahnecke, 27 September 2006.