

WRITTEN COMMENTS

BY THE EUROPEAN ROMA RIGHTS CENTRE CONCERNING TURKEY

Regarding EU Accession Progress for Consideration by the European Commission during its 2013 Review



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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1 ANTI-DISCRIMINATION AND OTHER HUMAN RIGHTS LAW

In 2012, Turkey introduced two new mechanisms for the protection of fundamental rights: Individual applications to the Constitutional Court and the ombudsman body.

The right to individual application to the Constitutional Court was introduced into the legal system in Turkey by a 2010 constitutional amendment. The system entered into force on 23 September 2012 and since this date the Constitutional Court has started to receive and review individual applications. Article 148 establishes that “Everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities. In order to make an application, ordinary legal remedies must be exhausted”.¹ However, individuals have to pay a fee (198.00 Turkish Lira)² in order to apply to the Constitutional Court. Individual applications must be filed within thirty days after the notification of the final proceeding which exhausts legal remedies.

In 2012 Turkey also introduced the Ombudsman (or kamu denetçiliği in Turkish) system. The Parliament adopted the Kamu Denetçiliği Kurumu Kanunu³ (Law on Ombudsman Institution) on 14 June 2012 which came into effect on 29 June 2012. According to the Law, the purpose of introducing the ombudsman system is to establish an independent and effective mechanism to review complaints about the actions of public authorities. The body will examine research and make suggestions about all kinds of operations and activities, attitude and conduct of the administration, determining whether they are in line with the sense of justice based on human rights, as well as determining their accordance with the law and justice.

Turkey signed Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms on 18 April 2001. Since the last reporting on the EU accession progress Turkey has not ratified Protocol No. 12, which provides a framework for a general prohibition of discrimination.

The concept of minorities in Turkey is still officially strictly linked to the Lausanne Treaty of 1924.⁴ The legal system of Turkey does not provide formal recognition to Roma as a minority group, and fails to present rights-based protection. This legal and political shortcoming may lead to de facto discrimination in access to the rights and freedoms guaranteed by the International Convention on the Elimination of All Forms of Racial Discrimination.

The legal system of Turkey does provide for protection against discrimination to a certain degree within the Constitution, the Penal Code and Labour Law. Article 10 of the Constitution includes a general clause prohibiting discrimination before the law on the basis of race.⁵ A similar clause prohibiting discrimination in employment is included in the Turkish labour law in Article 5.⁶ The Penal Code in Article 122 prohibits discrimination on the basis of race in regard to access and provision of several types of private or public service.⁷

Overall, the legal system in Turkey does not include any reference to hate crime. Thus racial motives are not considered as an aggravating factor.

Yet Turkey has not adopted a comprehensive anti-discrimination law, in line with Council Directive 2000/43/EC which deals with racial and ethnic discrimination. A draft proposal entitled Combating Discrimination and Equality⁸ announced by the Government in March 2010 to be transformed into a law proposal has not been submitted since to the Parliament for debates and approval.

1 English version of the Constitution available at: <http://www.byegm.gov.tr/Content.aspx?s=tcotrot>.

2 As of 16 May 2013, approximately 84 €.

3 Turkish version of the law is available at: http://www.kamudenetciligi.gov.tr/custom_page-325-kanun.html.

4 The Lausanne Treaty was signed after the World War I, on 24 July 1923 between Turkey on the one part and the British Empire, France, Italy, Japan, Greece, Romania, and the “Serbo-Croat-Slovene” State on the other. It is considered as the “founding treaty” for the Republic of Turkey. Full text of the Treaty available at: <http://www.lib.byu.edu/~rdh/www/1918p/lausanne.html>.

5 Translation in English by International Constitutional Law (ICL) available at: http://www.servat.unibe.ch/icl/tu00000_.html.

6 Turkish version of the Law is available at: <http://www.tbmm.gov.tr/kanunlar/k4857.html>.

7 Unofficial translation of selected articles of the Criminal Code is available at: http://www.tuerkeforum.net/enw/index.php/Translation_of_selected_Articles_of_the_Turkish_Penal_Code.

8 Turkish version of the proposal available at : http://www.icisleri.gov.tr/default.icisleri_2.aspx?id=5692.

2 POLITICAL DEVELOPMENTS

In 2012, Turkey, for the first time officially attended a meeting of the Decade of Roma Inclusion. A representative from the Turkish Employment Organization made a presentation entitled Improvement of the Living Conditions of the Turkish Roma Citizens at the 23rd International Steering Committee Meeting of the Decade of Roma Inclusion on September 24-25, 2012 in Zagreb, Croatia.⁹ Despite this positive development, Turkey still is not participating in the Decade of Roma Inclusion though several organisations, including the ERRC, have advocated that Turkey joins the Decade of Roma Inclusion. Participating in the Decade of Roma Inclusion would require producing action plans in the areas of education, employment, health and housing and tackling the cross-cutting issues of anti-poverty, anti-discrimination and gender equality.

In 2011, the institutions of the European Union adopted a European Framework for National Roma Integration Policies aimed at better inclusion of Roma through closing the gap in living conditions between Roma and majority populations. The EU Framework calls upon the Member States to develop national policies for the inclusion of Roma. Regarding the countries in the accession process the relevant EC Communication states that “the EU Roma integration goals are equally relevant to these countries” and that they should review their existing policies in line with these goals.¹⁰ In 2012, the Ministry of Family and Social Policies was given the task of developing a national strategy. However, Turkey has not yet adopted a Government Strategy for the inclusion of Roma or a relevant Action Plan.

3 LEGAL THREAT TO HOUSING RIGHTS

A new law, entitled Transformation of Areas under Disaster Risk (Law No: 6306), proposed by the Government was adopted by Parliament on 16 May 2012.¹¹ The law regulates the improvement, settlement and renovation of areas at risk of disaster and other lots with risk-bearing buildings, even if outside a designated disaster risk area.

City and urban planning experts, academics, civil society activists and international organisations have criticised the law proposal since it may severely weaken housing and property rights, with particular reference to emergency expropriation mechanisms included in the law.¹² It is a fact that many settlements in Turkey are highly susceptible to earthquakes. While all measures to reduce attendant risks are welcomed by the public and civil society, one of the chief concerns stemming from the law is that it will result in forced eviction and relocation of persons inhabiting economically attractive areas, as in the case of many Roma living in old settlements in central areas of Turkish cities.

According to experts, Law 6306 does not provide adequate protection mechanisms to individuals and gives immense powers to authorities. The law does not establish adequate and effective consultation mechanisms with the owners and/or tenants of the buildings which may be affected. The language of the law is ambiguous and there are various points in the law which may be open to arbitrary interpretation.

The United Nations Special Rapporteur on Adequate Housing sent a letter on 29 May 2012 to the Turkish Prime Minister to raise concerns regarding the law. The Special Rapporteur stated in the letter that, “Overall, it is alleged that the Bill presents a number of problematic provisions, in particular a lack of legal certainty, accountability mechanisms, administrative or judicial recourses for affected communities, coupled with extensive decision making powers of Government and local authorities with regard to the determination of buildings to be demolished and the actual demolition process.” The Special Rapporteur also emphasized in the letter that the implementation of the law “may lead to mass forced evictions, infringements on the rights to property and housing, and to an increased number of people made homeless or in worse housing and living conditions than they were prior to the

⁹ The agenda of the meeting is available at: http://www.romadecade.org/about/decade_presidency/23rd_international_steering_committee_meeting.

¹⁰ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An EU Framework for National Roma Integration Strategies up to 2020*, Brussels, 5. April 2011, available at: http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf.

¹¹ Law no: 6306. The full text of the law (in Turkish) is available at: <http://www.tbmm.gov.tr/kanunlar/k6306.html>.

¹² The Chamber of City Planners, “Şehir Plancıları Odası’ndan Afet Dönüşüm Yasası’na Dair Basın Açıklaması” press release, 17 May 2012, available at: <http://www.arkitera.com/haber/index/detay/sehir-plancilari-odasindan-afet-donusum-yasasina-dair-basin-aciklamasi/8225>.

Bill's implementation". Furthermore, the Special Rapporteur criticized the process of drafting the law for lacking sufficient consultation with "potentially affected communities and civil society organizations."¹³

Similarly, the Istanbul Branch of the Chamber of Architects criticised Law 6306, stating that it "aims to eliminate any possible obstructions and even disregards the rights secured by national and international legal rules with the purpose of satisfying the legal and financial aspects of 'transformation' and dismisses any other aspects".¹⁴ The Chamber of Architects in its report identified the following issues that would be relevant to Roma: (i) citizens' right to housing is disregarded; (ii) the right to ownership is violated; (iii) the principle of equality has been dismissed; (iv) the right to legal remedies is restricted and (v) even though reference is made to the "voluntary" principle in the justification of the draft, the methods define use of force.¹⁵

Article 4 of the Law states that electricity, water and natural gas supplies will be cut off and all public services will be suspended in the areas declared at risk. This reflects an indirect mechanism of forced eviction and inflicting such sanctions without ensuring the housing rights of the citizens who need special protection both economically and socially is against fundamental human rights and is also irreconcilable with the Constitution and the principles of the social state.

Article 5 declares that property owners who make agreements with the authorities *may* be supplied with temporary housing and their rents *may* be funded, i.e., it does not provide an effective guarantee that the authorities have to adhere to it.

Article 6 restricts the right to legal remedies, i.e., it makes it impossible to file claims against the procedures of the authorities. This article not only violates housing rights but also the right to file against unfair treatment and to obtain an effective remedy within the domestic legal framework (contrary to Article 13 ECHR, *inter alia*). So, when houses are expropriated, demolished and families are evicted unjustly, they will not be able to go to courts to sue for unfair treatments.

Across Turkey, Romani settlements are close to city centres or in areas which show potential for urban development projects. The extent to which Roma will be affected by the new law is of significant concern. This is exacerbated by low levels of education, capacity of defending their rights, and low economic resources among Romani communities.

Roma communities from different neighbourhoods have started opposing urban transformation projects, supported by civil society organisations.¹⁶ The communities accept the need to improve the housing conditions in their settlements; however they demand "on-site" improvement instead of being relocated to new settlements often very far away from the city centre. The relocation often creates problems with regard to accessing schools and employment opportunities, but could also negatively impact the social cohesion of communities.

In recent years, the Turkish authorities initiated several urban renewal projects which in some locations led to the demolition of Romani neighbourhoods and the forced eviction of their inhabitants

The most infamous example of the demolition of a Romani neighbourhood is the Sulukule case. In Sulukule, one of the oldest Romani settlements in Europe, the Fatih Municipality of Istanbul carried out an urban renovation project between 2005 and 2010. The Municipality used a Governmental Decree from October 2006 which allowed "urgent expropriation" of the properties of Roma in Sulukule.¹⁷ Both the municipality and the Government claimed that the renovation of the area was urgently needed due to the risk of earthquakes, despite several expert reports stating that the risk in Sulukule was low compared to other parts of Istanbul.¹⁸ In the end, Roma

13 The letter of the Special Rapporteur is available at: https://spdb.ohchr.org/hrdb/21st/Public_-_AL_Turkey_29.05.12_%284.2012%29.pdf.

14 Chamber of Architects, *Afet Riski Altındaki Alanların Dönüştürülmesi Hakkında Kanun Tasarısı' Değerlendirme Raporu*, 14 March 2012, available at: <http://www.mimarlarodasi.org.tr/index.cfm?sayfa=belge&sub=detail&bid=45&mid=45&recid=14390>.

15 *Ibid.*

16 Romani communities, e.g., in Sakarya (Gazipaşa neighbourhood), İstanbul (Şişli Kuştepe, Gaziosmanpaşa Sarıgöl, Yalova Bağlarbaşı neighbourhoods) or İzmir (Caybaşı and Cırpı neighbourhoods) protested against their displacement. See *inter alia* <http://www.sakaryarehberim.com/others/haber.php?xnumber2=168511>.

17 Hacer Foggo, "The Sulukule Affair: Roma against Expropriation", *ERRC Roma Rights Quarterly*, Number 4, (2007), available at: <http://www.errc.org/cms/upload/media/02/F6/m000002F6.pdf>.

18 Human Rights Council, *Report of the Special Rapporteur on adequate housing*, 17 February 2009, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.7.Add.1.EFS.pdf>, page: 69.

were forced out of Sulukule and new luxury accommodation replaced the settlement, which the former residents could not afford to purchase.

The ERRC and its partners in Turkey initiated a court case aiming to cancel the urban renovation project targeting Sulukule. The complaint was filed on 31 December 2007 at the Istanbul Administrative Court by Sulukule's own residents. In their complaint, the plaintiffs accused the Fatih Municipality implementing the project and the Ministry of Culture and Tourism that approved its implementation of breaching domestic and international laws, including Turkey's Constitution.

On 12 June 2012 the 4th Administrative Court of Istanbul ruled in favour of the cancellation of the urban renovation project targeting Sulukule.¹⁹ The Court established that the Fatih Municipality's Sulukule project is "not in the public interest". The Court found the Municipality's project to be in violation of Law no. 5366 on the Preservation by Renovation and Utilisation by Revitalising of Deteriorated Immovable Historical and Cultural Properties as well as UNESCO's criteria on preservation of historical heritage. Fatih Municipality has appealed the case.

¹⁹ See: <http://www.errc.org/article/turkish-court-halts-disputed-renovation-project-in-historic-sulukule/3999>.