

May 2012

TURKEY: EU Enlargement Programme 2012 ERRC report

1. Anti-Discrimination and Other Human Rights Law

Turkey has not ratified Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, providing for a general prohibition of discrimination. This protocol was signed by Turkey in 2001.

In contemporary Turkey, the concept of minorities is still officially linked strictly to the Lausanne Treaty of 1924.¹ The Lausanne Treaty referred to the “non-Muslim minorities” of Turkey, providing them with a number of rights. Though they are not explicitly named as such in Lausanne, these minorities are generally accepted to be: Armenians, Jews and Greeks, the traditional groups of the Ottoman “millet” system.² Thus, the legal system of Turkey does not provide formal recognition to other minority groups, including Roma, and fails to present rights protection to them as a group. This legal and political shortcoming may lead to de facto discrimination of these groups in access to the rights and freedoms guaranteed by the International Convention on the Elimination of All Forms of Racial Discrimination.

On the other hand, Turkey still has not adopted a comprehensive anti-discrimination law, in line with Council Directive 2000/43/EC which deals with racial and ethnic discrimination. On 13 November 2009 the Government drafted a proposal entitled “Combating Discrimination and Equality”³ and sent this draft to the bar association, academics, experts and NGOs for their opinions. This draft includes race as a prohibited ground for discrimination. Initially, the draft, which introduces progressive measures to combat discrimination, received a positive response from human rights circles. On 17 March 2010 the Government announced that the draft was transformed into a law proposal. However, in the final version of the proposed draft published on the official website of the Ministry of Interior, “sexual orientation and identity” was removed as a prohibited ground for discrimination; human rights and LGBT circles criticised this move. This proposal has not yet been submitted to the parliament.

The legal system of Turkey does provide some protection against discrimination within the Constitution and the Penal Code (Article 122). The 1982 Constitution of the Republic of Turkey provides, at Article 10, 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.”⁴

¹ 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>

² The *millet* system was composed of different religious communities who were autonomous to administer their own affairs under their own communal jurisdiction.

³ Turkish version of the proposal can be accessed here: http://www.icisleri.gov.tr/default.icisleri_2.aspx?id=5692

⁴ 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,

2. Constitutional Reform Process

Turkey's 1982 Constitution, drafted under military rule, prioritises the State's supremacy over the citizen, in opposition to what modern democratic norms would call for. Public debates concerning the drafting of a new Constitution for Turkey have been on the political and public agenda for many years. In the 30 years that have passed since its enactment, one third of the Constitution has been amended, and now, the ruling Justice and Development (AKP) Party has affirmed that a new constitution is being drafted. So far, the Parliamentary Constitutional Committee has met with various civil society organisations, academics and experts. In early May 2012, the Government announced that the process of providing feedback for a re-framed Constitution was closed and that drafting the new Constitution would start.

The new constitution will have a definitive importance and affect over the State-citizen relationship and on fundamental rights. Several restrictive articles of the 1982 Constitution, including the definition of citizenship, language of education and so on, were challenged by rights groups. The new Constitution may provide Turkey with a fresh opportunity to improve its democratic standards and human rights regime. However, it is not clear yet how transparent this process will be and how much of the feedback from rights groups will be reflected in the new draft.

3. Political Developments

Romani groups in Turkey continue to experience exclusion from key human rights including housing, education, employment and health care.

In 2010, the Government recognised Roma as a group deserving attention, with the Prime Minister meeting civil society representatives and announcing a Roma "initiative." However, since that time no comprehensive Governmental programmes addressing the situation of Roma have been developed.

The ERRC and its partners have advocated that Turkey join the Decade of Roma Inclusion, arranging for Turkish representatives to attend a meeting of the International Steering Committee, but Turkey has not yet made a decision to join. Membership in the Decade would require Turkey to produce a concrete action plan to address exclusion in the areas of health, housing, employment and education.

Similarly, the EU Framework for National Roma Integration Strategies⁵ encourages non-EU countries including Turkey to develop a similar strategy and action plan with concrete targets.

The Ministry of Education organised a workshop with the participation of several stakeholders in February 2011 to discuss the problems of Romani children in accessing quality education. The Ministry then announced that it would develop a strategy and action plan for inclusive education for Romani children. However, at the time of writing this submission, no progress had been reported in this work.

4. Legal Threat to Housing Rights

A new law, entitled "Transformation of Areas under Disaster Risk", proposed by the Government was adopted at the Parliament on 16 May 2012⁶. This submission outlines key human rights concerns which may affect Roma on the basis of the law.

The proposed law is intended to regulate the improvement, settlement and renovation of areas at risk of disaster and other lots which support risk-bearing buildings, even if outside of a designated disaster risk area. The law defines a "risk area" as one that poses a risk for life and property loss as a result of its soil structure or the buildings it accommodates; such a determination is to be made by the Council of Ministers upon notice from the Ministry of Environment and Urban Planning. According to the law, "risky buildings" are those buildings either inside or outside of a risk area identified as having completed their economic life or as carrying a risk for collapse or severe damage based on scientific and technical data.

Annex 10.05.2007/Article 5659/1). Available at: http://www.servat.unibe.ch/icl/tu00000_.html.

⁵ See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0173:en:NOT>.

⁶ Law no: 6306. As of 23 May 2012, the law has not been published yet at the Official Gazette yet thus was not in effect. The full text of the law (in Turkish) is available here: <http://www.tbmm.gov.tr/kanunlar/k6306.html>

City and urban planning experts, academics, civil society activists have criticised the law proposal since it was first made public. Most importantly, experts and civil society groups have voiced concern that the law may severely weaken housing and property rights, with particular reference to emergency expropriation mechanisms included in the law.

It is a fact that many of the 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.

Past experience, particularly the process of appropriating properties from the residents of the former longstanding Sulukule Romani neighbourhood provides basis for these concerns. 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.⁷ 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 Istanbul⁸. In the end, Roma were forced out of Sulukule and new luxury accommodations replaced the settlement which the former residents could not afford to purchase.

According to experts, the law as proposed does not provide adequate protection mechanisms to individuals and gives immense powers to authorities. The law proposal 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.

Across Turkey, Romani settlements are close to city centres or in the 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, lack of capacity to defend their rights and limited economic resources among Romani communities.

⁷ Foggo, Hacer. “The Sulukule Affair: Roma against Expropriation”, in Roma Rights Quarterly, ERRC, Number 4, 2007. Available at: <http://www.errc.org/cms/upload/media/02/F6/m000002F6.pdf>.

⁸ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.7.Add.1.EFS.pdf>, page: 58