

TREATY BODY MONITOR

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 74TH SESSION TURKEY, 1 – 3RD REPORT 23 – 24 FEBRUARY 2009

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Key facts¹

Ratification	Reservations	Recognises Committee's competency under Art. 14	Other core treaties ratified
2002	Article 22	No	ICCPR, ICESCR, CAT, CRC, CEDAW, CMW.

Opening remarks by the delegation

The delegation of Turkey was led by Mr Hasan Gogus, Director General of the Ministry of Foreign Affairs. He was supported by a small delegation consisting mainly of representatives of the Ministry of Foreign Affairs and the Permanent Mission in Geneva,² as well as a few representatives of other ministries.

Turkey's opening remarks largely repeated the contents of the written report to the Committee. Turkey acknowledged the existence of discriminations in the country and reiterated its commitment to combating it. Issues highlighted in the opening remarks, included reform of human rights legislation in the country;

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

² Mr Ashgul Ugdul, Mr Ali Onaner, Mr Fatih Ulusoy, Ms Tugba Sarayonlu Etensel (Permanent Mission of Turkey in Geneva), Mr Yonca Ozceri (Ministry of Foreign Affairs).

acknowledgment of minority rights in relation to the 1923 *Treaty of Lausanne*; and equal education offered to all citizens. Turkey stated that Turkey has aligned its domestic laws with international standards and provided trainings for government officials, the judiciary and security forces. Turkey also stated that it has made several amendments to the constitution and also enacted a new penal code in 2005.³

In his short opening remark, Mr Gogus did not touch upon the written questions submitted by the Committee through its list of issues. However, detailed written responses to the questions were submitted to the Committee in advance.⁴ In general, the questions requested Turkey to provide concrete data and examples of measures pertaining to the law reform process, national mechanisms, and its policies related to eradication of discrimination.

Overview of key issues

The dialogue between the Committee and the State delegation was overall constructive with Turkey addressing all issues raised. However, some of Turkey's answers were somewhat defensive. Although most responses were addressed by Mr Gogus, other members of the delegation were also active in supplementing his responses. The constructive dialogue mostly focused on: the legislative framework relating to the implementation of the *Convention on the Elimination of All Forms of Racial Discrimination* (Convention), the absence of data on ethnic composition of the population, the national machinery on discrimination, the rights of minorities, and access to public services.

Implementation of the Convention

In its concluding observations,⁵ the Committee made the following recommendation regarding the full implementation of the Convention:

'The Committee recommends that the State party:

- *consider adopting a clear and comprehensive definition of racial discrimination in its domestic law, including all elements contained in Article 1 of the Convention.*⁶
- *adopt legislation, in the light of the Committee general recommendation No. 15 (1993) to ensure full and adequate implementation of Article 4 of the Convention.*⁷

*The Committee also calls upon the State party to ensure that Articles 216 and 301 of the Penal Code is interpreted and applied in conformity with the Convention.'*⁸

During the dialogue, the Country Rapporteur⁹ drew attention to the absence of a definition of racial discrimination in domestic law.¹⁰ This was considered an obstacle to the adequate application of legislation prohibiting discrimination. Turkey did not agree with this view and stated that the Convention is directly applicable under Turkish law. In the view of the Turkish delegation, ratification of the Convention is therefore sufficient and does not require any legislation to enshrine the Convention's definition of racial discrimination in domestic law. The delegation made reference to the amendment to Article 90 of the Turkish Constitution, which stipulates that all international conventions ratified by Turkey shall directly become an integral part of domestic law. However, the Committee considered that such incorporation is not sufficient for implementing

³ This new penal code defines discrimination as an offence and penalizes acts of discrimination based on race.

⁴ Full text of the written responses is available at www2.ohchr.org/english/bodies/cerd/cerds74.htm.

⁵ CERD/C/TUR/CO/3.

⁶ CERD/C/TUR/CO/3, Paragraph 11.

⁷ CERD/C/TUR/CO/3, Paragraph 14.

⁸ CERD/C/TUR/CO/3, Paragraph 14.

⁹ Mr Patrick Thornberry.

¹⁰ Same concern was also expressed by Mr Linos-Alexandre Sicilianos.

the Convention, and recommended that specific national law be adopted. Turkey retained its position reiterating its views which was also reflected in its comments to the concluding observation.¹¹

The Committee underlined the importance of adopting and implementing specific laws to ensure the effective realisation of Article 4 of the Convention. Even though Article 216 of the Turkish Penal Code includes the issue of hate speech, the Committee considered that the provision is too strict and too limited and does not cover all aspect of Article 4 of the Convention.¹² For example the provision in the Penal Code does not include ethnic origin within its scope,¹³ and it also limits the applicability of the provision to actions by a group that constitutes ‘clear and imminent danger to public order’.¹⁴ In the views of the Committee, these limitations may impair the purpose of the Article itself. Turkey defended the implementation of Article 216 by advocating that the Article was designed to provide a balance between prevention of hate speech and protection of freedom of expression.

In the provisional conclusions of the country rapporteur, Mr Thornberry emphasised the need to draw a line between freedom of expression and hate speech, as hate speech is against the nature of free speech. In its written comments to the concluding observation,¹⁵ Turkey explained that a statement may be prohibited when it constitutes ‘clear and present danger’. It considered that that this criterion was important to provide a concrete assessment in the protection of freedom of expression while upholding the prohibition of hate speech.

Data on ethnic composition of the population

‘The Committee recommends that, in the absence of quantitative data on the issue, the State party provide information on the use of mother tongues, languages commonly spoken, or other indicators of ethnic diversity, together with any information derived from academic research carried out in this field, so as to be able to evaluate the composition of its population and its situation in all fields covered by the Convention.’¹⁶

This recommendation was made due to the unavailability of statistical data regarding ethnic composition of Turkey’s population.¹⁷ Turkey argued that census of ethnic composition is a sensitive issue that may impede the right to privacy and jeopardise unity within the diverse population in Turkey. As a consequence, the Government has prohibited official census of ethnic composition. However, Turkey ensures that data-collection or study by private entities is not restricted and this would not restrict the right to privacy as individuals may self-identify as belonging to a certain ethnic group.

This approach received much criticism from Committee members, who considered statistical data a vital element for assessing Turkey’s compliance with the Convention. Mr Prosper and Mr Thornberry further commented that statistical data is needed to identify the existence of ethnic or minority groups, which is vital in ensuring that such groups are not discriminated against. On the other hand, the Committee also agreed with Turkey that it should preserve unity within its diverse society. Therefore, it was suggested that statistical data can still be obtained by carrying out census or identification on the basis of objective indicators, such as

¹¹ CERD/C/TUR/CO/3/Add.1

¹² Article 4 of the Convention deals with prohibition of hate speech or incitement of hate speech. Full text of Article 216 of the Turkish Penal Code is available in Turkey’s third periodic report, CERD/C/TUR/3, p.14, available at www2.ohchr.org/english/bodies/cerd/cerds74.htm.

¹³ Mr Thornberry.

¹⁴ Mr De Gouttes, Mr Ion Diaconu. Mr Diaconu referred to paragraph 93 of the written report which states that Turkey prohibited incitement of hatred by public or private organizations. Full text of the written report is available at www2.ohchr.org/english/bodies/cerd/cerds74.htm.

¹⁵ CERD/C/TUR/CO/3/Add.1. The document is available at <http://www2.ohchr.org/english/bodies/cerd/cerds74.htm>.

¹⁶ CERD/C/TUR/CO/3, Paragraph 9.

¹⁷ Concern was raised by Mr Thornberry, Mr Pierre-Richard Prosper, Mr De Gouttes, Mr Lahiri, Mr Diaconu.

languages and religions instead of identifying the different ethnic groups.¹⁸ In this way, data may be obtained without impeding the right to privacy.

National Machineries for combating discrimination

*'The Committee, considering that no country is free from racial discrimination, urges the State party to investigate why there have been no complaints of such discrimination. The Committee recommends that the State party verify that the lack of such complaints is not the result of lack of effective remedies enabling victims to seek redress, victim's lack of awareness of their rights, fear of reprisals, lack of confidence in the police and judicial authorities, or the authorities' lack of attention or sensitivity to cases of racial discrimination.'*¹⁹

Turkey announced that it has established a complaint mechanism to manage all cases regarding discrimination. However, no complaints had been submitted. The Committee took note of the annulment of legislation establishing the Ombudsman.²⁰ Turkey responded very briefly and explained that the annulment was due to a technical issue rather than the substantive value of the legislation. It also underlined its commitment to follow-up and to move toward the establishment of the Ombudsman as well as to create an independent national human rights institution (NHRI). Concerned by the absence of a national mechanism, the Committee requested Turkey to include more information on cases and decisions involving discrimination, as well as on the establishment of the Ombudsman and NHRI, in the next report to the Committee.

Rights of minorities

'The Committee recommends that the State party:

- *conduct research with a view to effectively assessing and evaluating the incidence of racial discrimination in the country, with particular focus on discrimination based on national or ethnic origin, and take targeted measures to eliminate such discrimination.*²¹
- *Include in its domestic criminal legislation a specific provision to ensure that the motive of ethnic, racial or religious hatred is taken into account as an aggravating circumstance in proceedings under the criminal law.*²²

*The Committee calls upon the State party to redress such discrimination and to urgently take the necessary measures to reopen the Greek Orthodox theological seminary in the island of Heybeliada, to return confiscated properties and, in this respect, to promptly execute all relevant judgments by the European Court of Human Rights (ECtHR).'*²³

The Committee was of the opinion that the rights of minorities must be fully respected. In this regard, Mr Diaconu underlined that merely providing equality between all ethnic groups would not be sufficient without actively prohibiting racial discrimination. The Committee pointed out several concerns, namely the killing of an Armenian journalist, the closure of Greek seminary school, and the prohibition of using foreign names. Turkey denied that such incidents and practices illustrated institutionalised discrimination, although it admitted that isolated crimes did occur in Turkey, as in the case of the murder of the Armenian journalist. However, it noted that while the killing is being investigated and the perpetrators will be brought to justice racism was not an aggravating factor in the case. With regard to the closure of the Greek Orthodox seminary school, Turkey emphasised that the restrictions apply to all religions. In this context, all religious education can only be taught at public education institutions. The Government is examining solutions to this issue.

¹⁸ Mr Thornberry.

¹⁹ CERD/C/TUR/CO/3, Paragraph 21.

²⁰ Mr Thornberry.

²¹ CERD/C/TUR/CO/3, Paragraph 12.

²² CERD/C/TUR/CO/3, Paragraph 23.

²³ CERD/C/TUR/CO/3, Paragraph 18.

Further, Turkey denied that it prohibits the use of foreign names. Nonetheless, for administrative purposes, all names must be written in the Turkish language. However, the Committee seemed to be of the view that the use of foreign names should be allowed without restrictions.

Further, the Committee also discussed the condition of minorities living in the Anatolia region.

Access of public facilities, including education, employment, and housing

'The Committee recommends the State party, as a part of its ongoing legislative reform, enact comprehensive anti discrimination legislation covering all rights and freedoms protected under Article 5 of the Convention. The Committee, recalling its General Recommendation No 27 (2000) on discrimination against Roma, recommends that the State party take special measures to improve the situation of Roma to overcome the disadvantages brought about by persistent discrimination, in particular in the fields of education, employment, and housing.'²⁴ The Committee is also concerned at the absence of comprehensive anti-discrimination legislation covering all rights protected under Article 5 of the Convention.'²⁵

The Committee welcomed the many reforms of Turkish law. However, the Committee opined that the current legislation is not entirely in line with the Convention. While Committee members saw it as positive that Turkey recognised its diversity, the Committee stated that such recognition must be supplemented with making more efforts to ensure the fulfilment of the rights of the minorities.²⁶ In light of the above, the Committee was concerned about the absence of an anti-discrimination law in Turkey.²⁷ On this matter, Turkey pointed out that the Convention does not require a State party to establish specific legislation on discrimination. Therefore, Turkey deemed it more appropriate to amend its prevailing law, rather than formulating new legislation.

Several other concerns were also raised regarding job recruitment as well as the rights to housing, property, and education. Turkey responded that it does not target any specific ethnic groups. It further stated that all citizens abiding the law are not subjected to any punishment and receive equal treatment. Turkey did not deny the sporadic occurrences of violations of property rights. However, it stated that there is an increase in the property ownership by minorities. Another major concern was the limited access to education. Turkey declared that it is implementing national projects to improve educational facilities and access, including through scholarships and health care subsidies. With regard to job recruitment, Turkey responded that the Government is applying the principle of non-discrimination.

Other issues

The following issues were also discussed: the definition of minorities in relation to the *Treaty of Lausanne* of 1923 and Turkey's cooperation with the Committee.

Turkey and the Committee had different views on the definition of minorities. Turkey insisted that decisions on the classification of certain groups as minorities rest within the discretion of Turkey as a sovereign State as ensured by a number of international instrument.²⁸ Consequently, it argued that the definition of minority groups should be in accordance with the *Treaty of Lausanne*. However, the Committee disagreed and opined that the *Treaty of Lausanne* is outdated and that the Government should clarify its existing minority groups. On the other hand, Turkey considered that identifying such minorities would result in a large number of

²⁴ CERD/C/TUR/CO/3, Paragraph 19.

²⁵ CERD/C/TUR/CO/3, Paragraph 17.

²⁶ Mr De Gouttes, Mr Diaconu.

²⁷ Mr Prosper, Mr Diaconu, Mr Sicilianos.

²⁸ International Covenant on Civil and Political Rights, Convention on the Right of the Child, United Nations Convention on the Rights of Persons Belonging to National, Ethnic, or Religious Groups.

minority groups in Turkey.²⁹ The Committee also questioned the non-participation of Turkey in the Council of Europe treaty on minorities. However, Turkey stated that this did not detract from its commitment to protecting the rights of minorities, especially since several other European countries have not ratified the treaty. Turkey considered it unnecessary to change its understanding of what constitutes a minority, especially since there is no internationally recognised definition of a ‘minority’. The Committee did not make any recommendation on this subject.

In terms of Turkey’s international cooperation, the Committee invited Turkey to reconsider its position under Article 14 and to envisage the possibility of making a declaration under that Article to allow persons under its jurisdiction to submit individual communications. The Committee also recommended that Turkey ratify the amendment to Article 8 paragraph 6 of the Convention and urged Turkey to consult with civil society on human rights issues.

Conclusions and next steps

In the closing statement, Mr Gogus reiterated Turkey’s commitment to promote human rights and eliminate racism, xenophobia, and other forms of intolerance. He further declared Turkey’s willingness to take note of the Committee’s concerns.

Generally, the concluding observations focused on Turkey’s policies towards minorities. The Committee made many recommendations to ensure the fulfilment of the rights of the Greek Orthodox believers, Roman, Kurdish, and non-Moslem. Apart from the recommendations, the Committee also requested several issues to be included in the next report which is due on 15 October 2011. These included data on discrimination cases, measures taken to combat discrimination, and information on studies on discrimination.

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²⁹ Taking into account that Turkey is a nation with various kinds of ethnic or national origin.

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