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**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)**

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EUROPEAN OBSERVATORY OF RESERVATIONS TO INTERNATIONAL TREATIES:

**LIST OF OUTSTANDING RESERVATIONS AND DECLARATIONS
TO INTERNATIONAL TREATIES**

**EXPLANATORY NOTE ON DECLARATIONS AND RESERVATIONS BY TURKEY TO THE
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

Document submitted
by the delegaton of Turkey

1. With regard to the declarations and reservation made by Turkey upon signature and confirmed upon ratification of the International Covenant on Economic, Social and Cultural Rights :

The Government of Turkey is of the view that declarations and reservation are compatible with the object and purpose of the Covenant and are not against international law.

1.1. According to international law, diplomatic relations could be established by mutual consent of the States (Art.2 of the Vienna Convention on Diplomatic Relations). Every sovereign State has the power and discretion as to the recognition of a new State and establishing diplomatic relations with other States. As a consequence of this legal and political order, a State Party to an international legal instrument may deem it necessary and/or useful to inform other State Parties by means of a declaration on the scope of implementation of such instrument. Hence, Turkey's declaration regarding the implementation of the Covenant only to the State Parties with which it has diplomatic relations does not amount to a reservation and should be considered in this context.

1.2. As to the Turkey's reservation regarding the interpretation and application of paragraphs 3 and 4 of the article 14 of the Covenant in accordance to the provisions under article 3, 14 and 42 of the Constitution of the Republic of Turkey, relevant articles of the Constitution are attached here with.

Articles 2 and 3 of the Constitution, provide that Turkey is a secular State with its territory and nation, and it is an indivisible entity. Pursuant to article 14 of the Constitution none of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the State, and endangering the existence of the secular order of the Turkish Republic based upon human rights.

Therefore, paragraph 3 of article 13 of the Covenant which provides the liberty of the parents and, when applicable, legal guardians to choose schools, other than those established by the public authorities, to ensure religious education, and paragraph 4 of the same article which prohibits interference with the liberty of individuals and bodies to establish and direct educational institutions are considered not in compliance with the constitutional order of Turkey.

Given that non-Muslim religious minorities have and fully exercise the right of religious education and establishing educational institutions, Turkey's reservation is compatible with the object and purpose of the Covenant.

2. With regard to the declarations and reservation made by Turkey upon signature and confirmed upon ratification of the International Covenant on Civil and Political Rights:

The Government of Turkey is of the view that declarations and reservation are compatible with the object and purpose of the Covenant and are not against international law.

2.1. According to international law, diplomatic relations could be established by mutual consent of the States (Art.2 of the Vienna Convention on Diplomatic Relations).Every sovereign State has the power and discretion as to the recognition of a new State and establishing diplomatic relations with other States. As a consequence of this legal and political order, a State Party to an international legal instrument may deem it necessary and/or useful to inform other State Parties by means of a declaration on the scope of

implementation of such instrument. Hence, Turkey's declaration regarding the implementation of the Covenant only to the State Parties with which it has diplomatic relations does not amount to a reservation and should be considered in this context.

2.2. The declaration which reads "The Republic of Turkey declares that this Convention is ratified exclusively with regard to the national territory where the Constitution and the legal and administrative order of the Republic of Turkey are applied." does not imply that provisions of the Covenant will be applied to individuals only within its territory but not under its jurisdiction. However taking into consideration some political allegations and their serious consequences in relation to the legitimate existence of TRNC, the Government of Turkey, with a view not to give rise to further political and legal problems, deemed necessary to make such declaration.

2.3. With regard to the reservation concerning article 27 of the Covenant, it should be recalled that the Covenant does not prohibit reservations to article 27 and Turkey is not the first State making reservation to this article, and previous reservation by another state which clearly states that article 27 is not applicable has not been subject to any formal objection.

It should also be recalled that, there is no unequivocally accepted definition of "minority" in international law. Several declarations and reservations concerning the interpretation of "minority" therefore have been made to relevant UN and Council of Europe treaties.

Apendix

PART ONE

GENERAL PRINCIPLES

I. Form of the State

ARTICLE 1. The Turkish state is a Republic.

II. Characteristics of the Republic

ARTICLE 2. The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble.

III. Integrity of the State, Official Language, Flag, National Anthem, and Capital

ARTICLE 3. The Turkish state, with its territory and nation, is an indivisible entity. Its language is Turkish.

Its flag, the form of which is prescribed by the relevant law, is composed of a white crescent and star on a red background.

Its national anthem is the "Independence March".

Its capital is Ankara.

PART TWO

FUNDAMENTAL RIGHTS AND DUTIES

CHAPTER ONE

GENERAL PROVISIONS

I. Nature of Fundamental Rights and Freedoms

ARTICLE 12. Everyone possesses inherent fundamental rights and freedoms which are inviolable and inalienable.

The fundamental rights and freedoms also comprise the duties and responsibilities of the individual to the society, his or her family, and other individuals.

II. Restriction of Fundamental Rights and Freedoms

ARTICLE 13. (As amended on October 17, 2001)

Fundamental rights and freedoms may be restricted 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.

III. Prohibition of Abuse of Fundamental Rights and Freedoms

ARTICLE 14. (As amended on October 17, 2001)

None of the rights and freedoms embodied in the Constitution shall be exercised 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.

No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms embodied in the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution.

The sanctions to be applied against those who perpetrate these activities in conflict with these provisions shall be determined by law.

CHAPTER THREE

SOCIAL AND ECONOMIC RIGHTS AND DUTIES

1. Protection of the Family

ARTICLE 41. (As amended on October 17, 2001)

The family is the foundation of the Turkish society and based on the equality between the spouses.

The state shall take the necessary measures and establish the necessary organisation to ensure the peace and welfare of the family, especially where the protection of the mother and children is involved, and recognizing the need for education in the practical application of family planning.

II. Right and Duty of Training and Education

ARTICLE 42. No one shall be deprived of the right of learning and education.

The scope of the right to education shall be defined and regulated by law.

Training and education shall be conducted along the lines of the principles and reforms of Atatürk, on the basis of contemporary science and educational methods,

under the supervision and control of the state. Institutions of training and education contravening these provisions shall not be established.

The freedom of training and education does not relieve the individual from loyalty to the Constitution.

Primary education is compulsory for all citizens of both sexes and is free of charge in state schools.

The principles governing the functioning of private primary and secondary schools shall be regulated by law in keeping with the standards set for state schools.

The state shall provide scholarships and other means of assistance to enable students of merit lacking financial means to continue their education. The state shall take necessary measures to rehabilitate those in need of special training so as to render such people useful to society.

Training, education, research, and study are the only activities that shall be pursued at institutions of training and education. These activities shall not be obstructed in any way.

No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education. Foreign languages to be taught in institutions of training and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law. The provisions of international treaties are reserved.