

ECRI REPORT ON TURKEY

(fifth monitoring cycle)

Adopted on 29 June 2016

Published on 4 October 2016

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country monitoring deals with all member States of the Council of Europe on an equal footing. The work takes place in 5-year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, and those of the fourth round in the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a visit to the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 17 March 2016; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.

SUMMARY

Since the adoption of ECRI's fourth report on Turkey on 10 December 2010, progress has been made in a number of fields.

In 2013, the Ombudsman Institution was established and has started carrying out investigations into police misconduct. The parliament has helped to promote the implementation of its recommendations. On 6 April 2016, the Law on the Turkish Human Rights and Equality Institution was adopted; it not only provides for the establishment of a human rights and equality body, but also contains, for the first time, comprehensive anti-discrimination legislation. Turkey is also in the process of ratifying the Protocol to the Convention on Cybercrime.

In recent statements, officials have used more conciliatory language towards historical minorities and highlighted the need for friendship and peace between the different groups of the population. The initiation of the Kurdish peace process, which was continued until mid-2015, was an important step forward that could help in tackling violence.

Due to the outstanding gesture of opening the border with Syria, Turkey has become the country hosting the largest number of refugees in the world. By adopting the Law on Foreigners and International Protection in 2013, Turkey has established a new framework for the integration of migrants and refugees. Refugees coming from non-European countries are given access to a considerable range of public services. The new authority responsible for the integration of migrants is tasked with preventing xenophobia and hate speech. Secondary legislation on work permits for refugees was promulgated in January 2016 and the long drafting process of the National Strategy Document for Roma Citizens was completed recently. In the eastern and south eastern regions, where many Kurdish people live, major projects continued to improve living conditions until the resurgence of the security operations in 2015. The legal frameworks for the reintegration of Kurdistan Workers' Party (PKK) militants and the use of minority languages were improved.

Some political parties have taken up LGBT issues and several municipalities have started to provide protection for young LGBT persons. Annual LGBT Pride parades have taken place peacefully until the police forcibly intervened in the 2015 parade in Istanbul.

ECRI welcomes these positive developments in Turkey. However, despite the progress achieved, some issues give rise to concern.

Furthermore, some major positive developments described in the previous section have stopped or reversed before the end of the period covered by this report.

Turkey has not ratified Protocol No. 12 to the European Convention on Human Rights and the grounds of ethnic origin, colour, language, citizenship, sexual orientation and gender identity are missing from several criminal-law provisions. The definition of hate crime is excessively narrow and the Criminal Code does not explicitly provide that racist and homo/transphobic motivation constitutes an aggravating circumstance. Some core elements of the anti-discrimination law are not in line with ECRI's recommendations and it does not provide for the necessary independence of the new Human Rights and Equality Authority, which is however vital. Concerns also persist with regard to the independence of the Ombudsman Institution.

Hate speech is on the rise and its increasing use by officials, including senior representatives of the state, is of major concern. The huge negative impact of such mediated hate speech has damaged social cohesion. There is no strong official reaction to such rhetoric and most hate speech goes unpunished. There is even reason to conclude that hate speech legislation is used to silence vulnerable groups. Numerous media do not comply with ethical standards and also spread hate speech.

Turkey does not collect data on racist and homo/transphobic violence. Civil society reports point to a high number of such hate crimes. Many LGBT, in particular transgender persons, but also members of other minority groups have been killed in recent years and several mob attacks against Roma and Kurds have been recorded. Numerous attacks were directed against the pro-Kurdish Peoples' Democratic Party and the resurgence of the security operations against the PKK has led to another new wave of violence. Very few LGBT victims report hate crime to the authorities and many have suffered violence and sexual abuse from the police. The police have also violently dispersed the 2015 LGBT parade. Concerning many alleged hate crimes there is no information about adequate investigation and sentencing and the number of disciplinary measures and verdicts against law enforcement officers remains limited.

It is difficult to assess the impact of existing integration policies, as Turkey has no system of integration indicators. Despite huge efforts, almost 400 000 refugee children do not have access to formal education. At the end of 2015, only 7 400 refugees had received a work permit. Minority groups are affected by continuing restrictions to freedom of expression including the arrest of journalists. Numerous children from linguistic minority groups do not have sufficient knowledge of the language of instruction. Religious minority groups suffer from structural discrimination and many Roma and Kurds have problems in accessing public services. Among the Roma, the rates of school enrolment and formal employment are low; 80% live in shanty-towns. The regions inhabited by Kurds are still among the ones with the highest rates of poverty and an action plan on displacement and return has not been finalised. With the resurgence of the security operations in 2015, the situation has again deteriorated sharply and many Kurds suffer from severe restrictions to their rights and freedoms.

Prejudice against LGBT persons is widespread and the political mainstream is not sympathetic to them. As a result, LGBT persons tend to stay invisible and neither the Criminal Code nor the draft anti-discrimination law provide them with basic protection. Young LGBT people lack assistance during the difficult phase of their coming out and many LGBT persons suffer from bullying, harassment and discrimination.

In this report, ECRI requests that the authorities take action in a number of areas; in this context, it makes a series of recommendations, including the following.

Turkey should ratify Protocol No. 12 to the European Convention on Human Rights and bring its criminal law into line with ECRI's General Policy Recommendation No. 7. The authorities should quickly enact comprehensive anti-discrimination legislation and ensure that the new Human Rights and Equality Authority is fully independent.¹

Officials and political leaders at all levels should stop using hate speech and adopt codes of conduct prohibiting its use. The law enforcement services should intensify training and establish round tables with vulnerable groups to improve the reporting, investigation and punishment of hate crime. Hate speech legislation should be used to protect all vulnerable groups and self-regulation of the media should be strengthened. The authorities should establish a system for recording all hate motivated incidents and thoroughly investigate violent hate crime. The statistics on disciplinary and judicial investigations concerning law enforcement officials should be published and the authorities should ensure that Kurdish and other civilians are not killed or wounded in the operations against the PKK.

The authorities should swiftly complete the development of a strategy and action plans on integration, develop a set of integration indicators and mobilise all possible resources to ensure the strategy's implementation, in particular with regard to the schooling of refugee children. The Roma strategy should be implemented and the Kurdish peace process with the Kurds be revived. The authorities should ensure that all

¹ This recommendation will be subject to a process of interim follow-up by ECRI not later than two years after the publication of this report.

children from linguistic minority groups have sufficient mastery of the language of instruction and structural discrimination with regard to religious minority groups should be stopped.

A body fully independent of the law enforcement services should be entrusted with the investigation of ill-treatment by police and other security forces^{*}. Law enforcement and disciplinary bodies should also carry out effective investigations into such cases. The authorities should finally adopt and implement an action plan for LGBT persons to make their right to equal treatment a reality.

^{*} This recommendation will be subject to a process of interim follow-up by ECRI not later than two years after the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. Common topics

1. Legislation against racism and racial discrimination¹

- Protocol No. 12 to the European Convention on Human Rights (ECHR)

1. Turkey has signed, but not ratified Protocol No. 12 to the ECHR, adopted on 4 November 2000. According to the authorities, the ratification process is still under way and a Council of Europe campaign to raise awareness of Protocol No. 12 would encourage ratification of this text, which ECRI considers vital for combating racism and racial discrimination.
2. ECRI reiterates its recommendation to the Turkish authorities to ratify Protocol No. 12 to the European Convention on Human Rights.

- Criminal law

3. In its fourth report on Turkey, ECRI addressed an interim follow-up recommendation to the Turkish authorities to reinforce the criminal law provisions aimed at combating racism along the lines of its General Policy Recommendation (GPR) No. 7 on national legislation against racism and racial discrimination. ECRI has already examined on four occasions the extent to which Turkish legislation is in line with this GPR. In this fourth report, therefore, it will only consider the remaining shortcomings.
4. ECRI considers that Article 216.1 of the Criminal Code (CC) is only partly in line with § 18a of GPR No. 7. It criminalises public incitement to hatred on the grounds of “social class, religion, race, sect or other origin”, if the act poses a threat to public order. However, incitement to violence and discrimination are not mentioned and the grounds of ethnic origin, colour, language, citizenship, sexual orientation and gender identity are missing (on the last two grounds see § 100). In addition, the condition of a threat to public order is not in line with GPR No. 7.² Nor is the recommendation that incitement to discrimination be criminalised fully covered by Article 122 CC, the title of which was changed to “hatred and discrimination” in the 6th democratisation package.³ This provision makes it an offence to discriminate because of hatred based on language, race, colour, sex, political opinion, philosophical belief, religion, sect or citizenship.⁴ Together with the general provision of Article 39 CC on instigating an offence, Article 122 CC covers some cases of incitement to discrimination. However, instigating discrimination usually requires a result in the form of actual discrimination, whereas incitement to discrimination is not a result crime. Moreover, the causal link with the result will be difficult to prove and, once again, the grounds of ethnic origin, sexual orientation and gender identity are missing in Article 122 CC.⁵
5. Article 216.2 CC on public humiliation on the grounds of “social class, religion, race, sect or other origin” partly covers § 18b of GPR No. 7 on racist insults and defamation. However, the grounds of colour, language and citizenship are

¹ According to ECRI's General Policy Recommendation (GPR) No.7, “racism” shall mean the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. “Racial discrimination” shall mean any differential treatment based on a ground such as “race”, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

² This concern was also raised by CERD 2009 § 14 and CERD 2015: § 21.

³ Law No. 6529 adopted on 2 March 2014. Cf. Government of Turkey 2014a: § 45 and 2014b: § 29.

⁴ Concerning the new text see European Equality Law Network (EELN) 2014a, 1633-TR-32-Turkish government removes the headscarf ban in select public offices, et al.

⁵ The authorities point out that, according to the explanatory memorandum to Article 122 CC, the motive “race” also covers “ethnic origin.”

missing and Article 125 CC, the provision on defamation, only refers to the additional ground of religion or belief. Moreover, both provisions only cover insults to and defamation of individuals, not groups of persons.

6. The Criminal Code does not explicitly criminalise racially-motivated threats⁶, as recommended in § 18c of GPR No. 7. Nor does the Turkish Criminal Code contain provisions criminalising the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the above-mentioned grounds (§ 18d of GPR No. 7). The public denial of crimes of genocide and similar acts (§ 18e of GPR No. 7) is not punishable in Turkey.
7. Turkish law does not include a general provision criminalising all public dissemination, or the production or storage of written, pictorial or other material containing racist manifestations (§ 18f of GPR No. 7). Only the public distribution of such material is punishable under Articles 216 and 125 CC. With regard to this, and to the gaps identified in the previous paragraphs, ECRI welcomes the fact that the authorities are preparing the ratification of the Additional Protocol to the Council of Europe (CoE) Convention on Cybercrime. This would require the enactment of legislation creating a number of offences, as per the Protocol's relevant provisions. The authorities may wish to avail themselves of this opportunity to fill some of the aforementioned gaps, with regard not only to cybercrime, but equally to all forms of racist offences.
8. Article 220 CC criminalises the creation of organised groups with the intention of committing criminal offences and Article 78.1 CC the creation or leadership of an organisation for the purpose of committing genocide or crimes against humanity. However, this is not fully in line with § 18g of GPR No. 7, under which the creation of or participation in any racist organisation should be criminalised. Amended Article 122.1b CC does make it an offence to discriminate when carrying out a public service, selling goods to the public, offering a service open to the public, recruiting a person or preventing a person from carrying out a regular economic activity. This falls short of § 18h of GPR No. 7, as the Criminal Code does not criminalise all discrimination in the exercise of one's public office or private occupation. For example, the field of employment is not fully covered.
9. The Criminal Code does not explicitly make racist or homo/transphobic motivation an aggravating circumstance (§ 21 of GPR No. 7), even though its Article 61.1.g stipulates that courts should take into consideration the offender's objectives and motivation. In this respect, ECRI regrets that, in response to public debate on hate crime⁷, the authorities have only modified Article 122 CC on discrimination.⁸ However, hate crime encompasses not just discrimination but all hate motivated offences and in particular the most serious crimes of racist and homo/transphobic murder and physical attack. As making racist and homo/transphobic motivation an aggravating circumstance for any ordinary offence is a key element of hate crime legislation and effective protection of vulnerable groups (see §§ 47 et seq.), ECRI strongly encourages the authorities to amend the Criminal Code in this respect.
10. It follows from Article 20 CC that legal persons cannot be held responsible under Turkish criminal law, contrary to what is recommended in § 22 of GPR No. 7.
11. ECRI recommends that the authorities bring their criminal law, in general, into line with its General Policy Recommendation No. 7; in particular they should (i) include the grounds of ethnic origin, colour, language, citizenship, sexual

⁶ Threats in general are punishable under Article 213.1 CC, while Article 115.1 CC makes it an offence to threaten somebody to make him disclose or change, or prevent him from disclosing his religion or belief.

⁷ Nefret Suçları Yasa Kampanyası Platformu 2013.

⁸ Turkey 2014a: §§ 11, 45 and 60.

orientation and gender identity among the prohibited grounds in Articles 122, 125 and 216 and all other Criminal Code provisions aimed at combating racism and homo/transphobia, (ii) abolish the restriction in Article 216 that there has to be a threat to public order and (iii) provide explicitly that racist and homo/transphobic motivation constitutes an aggravating circumstance for any ordinary offence.

- **Constitutional law**

12. In its last report on Turkey, ECRI recommended to enshrine in the Constitution individuals' right to be free from discrimination, particularly on grounds of language, citizenship and national or ethnic origin. ECRI considers that the authorities should use the opportunity of proposed constitutional reforms to include the protection against discrimination explicitly into the Turkish Constitution (TC) and to amend the list of discrimination grounds in Article 10 TC not only to include the grounds listed above, but also sexual orientation and gender identity (see § 2 of GPR No. 7 and § 100 of this report).

- **Civil and administrative law**

13. ECRI further recommended in its last report that the Turkish authorities enact comprehensive anti-discrimination legislation (§§ 2 and 4 to 17 of GPR No. 7). It is pleased to note major progress in this area. After a long drafting process, which already started in 2009⁹, the country's parliament, the Turkish Grand National Assembly (TGNA), adopted on 6 April 2016 Law Nr. 6701 on the Turkish Human Rights and Equality Institution (LTHREI). This law not only provides for the establishment of an equality body (on this aspect see below §§ 24 et seq.), but it also contains, for the first time, comprehensive anti-discrimination legislation.
14. However, some shortcomings persist, on which ECRI will focus in the following paragraphs. While ECRI considers the inclusion of the ground of ethnic origin in the LTHREI to be a positive development, it regrets that the grounds of sexual orientation and gender identity have been removed from the initial draft, and that the ground of citizenship is still missing. The law contains definitions of direct and indirect discrimination (§ 4 of GPR No. 7), and Article 7.1.f LTHREI allows for positive measures for disadvantaged groups (§ 5 of GPR No. 7). According to Articles 3 and 5 LTHREI, the law applies to all natural and legal persons, in both the public and private sectors; it could be interpreted in a way that covers all the areas listed in § 7 of GPR No. 7. However, it does not provide for all the acts listed in § 6 of GPR No. 7 to be considered as forms of discrimination; for example discrimination by association is missing.
15. While Articles 11 and 129.1 TC stipulate that Article 10 TC on the right to equality is binding on all public authorities and that civil servants and other public officials have to carry out their duties in accordance with the Constitution, no other items of legislation place public authorities under the additional positive duty to promote equality as recommended in § 8 of GPR No. 7.¹⁰ In the field of public procurement, this is not remedied by Article 10.9.e to g of Law No. 4734, which provides for the exclusion of tenderers who have been convicted of an offence concerning their professional conduct (for example, under Article 122 CC), have been involved in misconduct contrary to work or professional ethics, or have been prohibited from professional activity by the chamber with which they are registered. Again, this does not place public authorities under a duty to ensure that those parties to whom they award contracts, loans, grants or other benefits positively promote a policy of non-discrimination (§ 9 of GPR No. 7).
16. According to § 10 of GPR No. 7, the law should ensure that all victims of discrimination have ready access to judicial and/or administrative proceedings. In

⁹ Turkish Government 2014b: §§ 13-16 and 33.

¹⁰ Article 3.3 and 4 LTHREI also do not contain such a positive duty to promote equality.

Turkey victims of discrimination however face difficulties in bringing cases to court, as legal aid is subject to strict criteria and legal aid procedures take one to two years.¹¹ Furthermore, until recently only victims of discrimination committed by a public authority could make a complaint to a body specialised in combating racism and discrimination (the Ombudsman Institution (Ombudsperson) or the National Human Rights Institution (NHRI)) with a view to putting an end to the violation of their rights. ECRI therefore considers the creation of the Human Rights and Equality Authority (HREA, see §§ 24 et seq.) under the LTHREI to be a step in the right direction; its President can recommend the payment of compensation in the framework of its mediation powers (see below § 24).

17. Articles 5 and 20.2 of the Labour Law are the only provisions that contain rules on the sharing of the burden of proof in discrimination cases. This is not consistent with § 11 of GPR No. 7, which recommends enacting such a rule for all discrimination cases. This shortcoming is not remedied under Article 21 LTHREI, as this provision seems to be restricted to applications to the HREA and does not apply to court proceedings.
18. Article 5.6 of the Labour Law provides for compensation for victims of discrimination.¹² While discrimination is also outlawed by the LTHREI and other acts, there is no indication that these or the Turkish Law on Obligations have ever been used to award compensation to victims of discrimination in other areas than labour law.¹³ Nor does the LTHREI contain special provisions on compensation that could be relied on in court proceedings (§ 12 of GPR No. 7). As already mentioned in § 16, it only stipulates that the President of the HREA can propose the payment of compensation as part of his or her mediation powers (Article 18.3).
19. According to Article 9.1e LTHREI, the HREA shall monitor and evaluate legislation and make recommendations in this respect to the competent authorities (§ 13 of its GPR No.7). With regard to legal tools for reviewing the conformity of legal texts with the prohibition of discrimination, the authorities also refer to individuals' right to apply to the Constitutional Court, which under Article 148.1 TC can examine the constitutionality of laws and decrees; this enables it to determine whether such provisions violate the constitutional right to equality, which is binding on authorities and individuals (Articles 10, 11.2 TC).¹⁴ However, neither this provision nor Article 5.1 of the Labour Law explicitly provide that discriminatory provisions in individual or collective contracts or other legal acts shall be null and void, as recommended in § 14 of GPR No. 7. According to the authorities Article 23 of the Civil Code could be invoked to obtain this result. However, there is no case-law on this issue.
20. Articles 68.4 TC and 83 of Law No. 2820 on Political Parties stipulate that political parties' statutes, programmes and activities shall not be contrary to the principle of equality and prohibit political parties from pursuing racist goals. If there is a violation of the principles of Article 68.4 TC, the Constitutional Court can decide, as recommended in §§ 16 and 17 of GPR No. 7, that a political party shall be deprived of state aid in whole or in part, or even dissolved. In the case of associations, Article 89 of the Civil Code stipulates that they can be dissolved by court decision on the request of the Public Prosecutor or any other concerned

¹¹ EELN 2014a: in particular p. 143; EU 2015: 68. Accordingly, the case law on anti-discrimination is extremely limited.

¹² In 2015, a football referee was awarded compensation after having been sacked on grounds of his sexual orientation, *Dailysabah.com* 2015a.

¹³ EELN 2014a : 18 et seq. and 156.

¹⁴ However, legal experts note that this procedure has not led to the consideration of the potentially discriminatory character of legal provisions such as the prohibition for political parties to claim that minorities exist and to protect, develop or disseminate languages or cultures other than the Turkish language and culture (Article 81 of Law No. 2820 on Political Parties), EELN 2014a: 167.

person, if their objectives are “not compatible with the legislation and ethics”. As this would presumably include the constitutional right to equality in Article 10 TC, Article 89 of the Civil Code, if properly applied, appears to be compatible with the recommendation in § 17 of GPR No. 7. However there is no indication about any explicit obligation to suppress the public financing of racist associations, as recommended in § 16 of GPR No. 7.

21. As there is still room for substantial improvement of the protection against discrimination afforded by civil and administrative law, ECRI encourages the authorities to bring the LTHREI fully into line with the international standards laid down in ECRI’s GPR No. 7, which are designed to ensure the maximum possible protection for victims of discrimination (see the recommendation below in § 27).¹⁵

- **Specialised national bodies**¹⁶

22. In its last report, ECRI strongly recommended that the authorities set up a body specifically entrusted with combating racism and discrimination in accordance with the recommendations made in GPR No. 2. Since then, several institutions have been established in this field. The Ombudsperson was created by Law No. 6328 of 16 June 2012 and is responsible for dealing with alleged human rights violations by public authorities, including violations of the right to equality. ECRI has pointed out shortcomings with regard to its mandate and independence in its 2013 interim follow-up conclusions on Turkey. For example, it lacks the power to carry out investigations on its own initiative, and there are continuing concerns regarding its impartiality and neutrality.¹⁷

23. In addition, law No. 6332 of 21 June 2012 established the NHRI with responsibility for protecting and promoting human rights. Unlike the Ombudsperson, it can also receive complaints against private individuals. This institution co-operates with the several hundred human rights boards established at provincial and district level since 2000. However, ECRI regrets that this institution enjoys considerably less independence than the Ombudsperson. While the latter is placed under the Office of the Parliament’s Speaker, the NHRI “shall be associated with the Prime Ministry” (Article 3 of law No. 6332). Of the 11 members of its decision-making board, two are appointed by the President of the Republic and seven others by the Council of Ministers.¹⁸

24. As these institutions do not cover discrimination in the field of private law, and as they have received almost no complaints on racism and discrimination, ECRI welcomes the provision of the LTHREI to transform the NHRI into a new Human Rights and Equality Authority (HREA). Article 9 LTHREI stipulates that the HREA shall work towards the elimination of discrimination, carry out awareness raising, organise training and education on equality and discrimination, monitor legislation and investigate applications lodged by victims of discrimination. According to Article 18 LTHREI, the HREA shall adopt opinions on applications within three months. Its President can seek friendly settlements and its Board has the power to take a decision declaring that there has been discrimination and to file criminal complaints.

25. However, Article 19.2 does not explicitly authorise the President and the Board to hear witnesses. Furthermore, the Board can neither initiate nor participate in court proceedings on its own initiative nor take binding and enforceable decisions

¹⁵ On the same line EU 2015: 5.

¹⁶ Independent authorities expressly entrusted with the fight against racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as ethnic origin, colour, citizenship, religion and language (racial discrimination), at national level.

¹⁷ ECRI 2014: 7.

¹⁸ See in this respect the recommendation made by UN CERD 2015: § 16 and Human Rights Foundation of Turkey 2014a: § 5.2.

(Principle 3 d to g of GPR No. 2 and §§ 24 and 50 to 55 of GPR No. 7). Article 11.1.d of the LTHREI only stipulates that the judiciary can, for their part, ask the HREA to express an opinion.

26. Above all, ECRI is strongly concerned about the insufficient level of independence of the HREA. Article 8.1 LTHREI provides that the HREA shall be “associated with the Prime Minister”, whereas specialised bodies should function without interference from the State (Principle 5.2 of GPR No. 2). It is also incompatible with ECRI’s standards on independence, that eight out of the 11 members of the HREA’s decision-making board shall be selected by the Council of Ministers and the three remaining by the President of the Republic (Article 10.2).
27. ECRI strongly recommends that the Turkish authorities ensure that the provisions on the independence and mandate of the new Human Rights and Equality Authority comply with ECRI’s General Policy Recommendations Nos. 2 and 7. This institution should not be a government department and its members should not be appointed by the executive. It should also be given clear authority to hear witnesses in the course of its investigations and the right to initiate and participate in court proceedings. Moreover, the authorities should bring their anti-discrimination legislation fully into line with ECRI’s General Policy Recommendation No. 7; in particular they should include the grounds of citizenship, sexual orientation and gender identity in the list of grounds of prohibited discrimination and insert rules on the compensation of victims and the shared burden of proof in court cases.

2. Hate speech¹⁹

- Extent of the phenomenon

28. Turkey has published little official data on hate speech. In connection with the OSCE/ODIHR hate crime reporting system, Turkey only provides data on incitement to hatred (Article 216 CC), but not on other forms of criminal hate speech, such as for example racist or homo/transphobic insults. Furthermore, Turkey only transmits judicial, and not police data. According to these statistics, 658 cases were prosecuted in 2014 (compared with 535 cases in 2013 and 497 in 2012) and 202 received sentences (compared with 334 cases in 2013 and 158 in 2012). To date, the police and the judiciary do not collect data on the ethnic origin of victims, but the Victims’ Rights Department, recently established in the Ministry of Justice, is working towards including such information in the statistics.
29. Extensive data is available about hate speech in Turkish print media. The Hrant Dink Foundation has published since 2012 regular reports on criminal and non-criminal hate speech appearing in the more than 1 000 national and local print media that it monitors on a daily basis. The number of hate speech items recorded in the last four reports rose from 141 to 313. In the last report covering September to December 2014, 143 items identified were targeted at Jews, 115 at Christians, 60 at Armenians, 59 at Kurds, 29 at LGBTI persons, 19 at the Greeks living in Turkey, 18 at the British, 16 at Syrian refugees, 14 at Greeks in general, 11 at western societies, eight at Alevis and seven at Arabs.²⁰ The reports show that events such as Kurdish protests, the Pope’s visit to Turkey or the attack on the Al-Aqsa Mosque at Jerusalem contribute to waves of hate speech and that the main targets of hate speech change accordingly. From September to December 2013 the largest number of hate speech items concerned Alevis and Jews (57 each), from January to April 2014 Armenians (75) and from May to

¹⁹ This section covers racist and homo/transphobic speech. For a definition of “hate speech” see Recommendation No. R (97) 20 of the Committee of Ministers to the member States on “hate speech”, adopted on 30 October 1997.

²⁰ Hrant Dink Foundation 2014a: 2 et seq. In the same direction EU EC 2014: 61.

September 2014 once more Jews (143). A relatively new target of hate speech is Syrian refugees, who on occasions are accused of being criminals and “stealing jobs” by accepting low wages.²¹ Another study of 5 000 print media items found that hate speech was most frequently based on the grounds of ethnic origin (46.98%), religion (20.92%), national identity (13.2%), sexual orientation (5%), social status (4.69%) and sexual identity (2.87%).²² With regard to other media, Greeks and Roma complain that TV series and movies have portrayed them in a negative way.²³ At the end of 2014, the Press Council’s president summarised the situation by the statement: “This year has been one in which the standards set forward by the ECtHR, such as transparency, equality and tolerance, basic human rights, and journalists, have been battered”.²⁴

30. ECRI is highly concerned about the fact that hate speech is expressed increasingly by officials and other public figures, including senior representatives of the state and some members of the opposition.²⁵ This is not only true for the grounds covered by ECRI, but also for the ones of sex, gender and other grounds. Prominent examples in relation to ECRI’s mandate are the televised statement: “They have said I am Georgian [...] they have said even uglier things - - they have called me - pardon my language - Armenian, but I am a Turk” and the assertion that “Jewish capital” was behind the New York Times.²⁶ On 17 July 2014, after the start of Israel’s military operation against Gaza, the same high official got broad media coverage with the statement that “Israel has surpassed Hitler in barbarism”. On the next day, a ruling party MP, addressing Jews, tweeted “May you never be deprived of a Hitler!”²⁷ The huge impact of such public hate speech is shown by a survey, which found that during the same two days 27 309 Turkish Twitter users had sent 30 926 Turkish-language tweets in support of Hitler’s genocide in just 24 hours.²⁸
31. Other public figures and intellectuals also contributed to spreading this kind of hate speech. The famous pop star Yildiz Tilbe, of Kurdish origin, tweeted in July 2014: “May Allah bless Hitler. What he did to them was too little. How correct the man was.” Also in July 2014, a university professor writing on Twitter proposed the rebuilding of concentration camps to kill “all the Jews”. Shortly after, he was awarded new funds for research.²⁹ The governor of Edirne stated on 21 November 2014: “Those bandit-like [Israeli] people who are blowing the winds of war and doing military drills at the Al-Aqsa Mosque are killing Muslims there, and we are restoring their synagogues here. I am saying all this with a grudge. The synagogue here, whose restoration is about to be completed, will only serve as a museum.”³⁰ In January 2015, Melih Gökçek, mayor of Ankara, accused Israel’s Mossad spy agency of organising the terrorist attacks in Paris.³¹

²¹ Opendemocracy 2015; Hacettepe University 2014: 47 et seq.; The German Marshall Fund of the United States 2015: 12 et seq.; Al-monitor.com 2015.

²² Hrant Dink Foundation 2013, 2014a, 2014b and 2014c; Albanian Media Institute 2014: 183; Opendemocracy 2015; BBC.co.uk 2014.

²³ The Constantinopolitan Society 2014.

²⁴ Todayszaman.com 2014a.

²⁵ See in this respect a 2012 statement of the head of the parliamentary Human Rights Investigation Commission, according to which hate speech is frequently employed by politicians, organisation representatives, celebrities and the media in Turkey, Güler H. 2012.

²⁶ Todayszaman.com 2014d and 2015f.

²⁷ Bekdil B. 2014. Samil Tayyar has not been brought before the disciplinary board of the AKP.

²⁸ The Middle East Media Research Institute 2014. On the impact of hate speech cf. also BBC.co.uk 2014.

²⁹ Todayszaman.com 2014c; Bekdil B. 2014.

³⁰ Cengiz O. 2014.

³¹ Todayszaman 2015a.

32. Hate speech again reached peaks in the 2015 election campaigns, during which top government figures labelled homosexuals “enemies of the nation” and described them as the “Tribe of Lot”. As a result, in July 2015, posters appeared in Ankara repeating this expression and encouraging the murder of LGBT people.³² Even police officers have used this mediated term to describe LGBT persons.³³ Other groups also became targets of hate speech during the election campaigns. A commission set up in the framework of the Kurdish peace process³⁴ blamed the government for the use of hate speech towards Kurds and Kurdish politicians have criticised the practice of likening the PKK (Kurdistan Workers' Party) to the Daesh.³⁵
33. Such public hate speech has deepened existing divisions and damaged social cohesion.³⁶ Research shows the underlying high levels of intolerance: according to recent studies around 70% of the respondents had negative views and attitudes towards Jews and Armenians, 39.1% towards Arabs and 35% towards Europeans.³⁷ 67% responded that fewer refugees should be allowed into the country³⁸ and only 20% of the Muslim population said they would be “at least somewhat comfortable” with the idea of their daughter marrying a Christian.³⁹
34. On the other hand, in recent statements state officials have used more conciliatory language towards historical minorities than in previous years. On the Memorial Day of 24 April the government offered condolences to the Armenian community and described the violence used against that community in 1915 as “inhumane”. It also stated that it was the shared responsibility of both peoples to re-establish their human ties and to continue doing the utmost for friendship and peace. Likewise, the President of the Republic wrote in a Hanukkah message that he wished all Jewish people peace and happiness and pointed out that “we are members of a civilisation which regards diversity as richness and respects freedom of faith and religion”. He emphasised that this tradition had allowed both peoples – regardless of their religion, language or ethnicity – to coexist in peace for centuries. Since 2012, the Presidents of the Republic have also hosted fast-breaking dinners for representatives of Turkey’s Alevi communities at the end of their annual religious fast.⁴⁰

- **Responses to hate speech**

35. As ECRI has recently summarised in its GPR No. 15, various means need to be used to tackle hate speech; they range from awareness raising and self-regulation to the application of civil, administrative and criminal law.
36. If hate speech is to be effectively curtailed in Turkey, ECRI considers first of all that officials and political leaders at all levels must stop using and fomenting such statements. They have, as the Council of Europe’s Committee of Ministers has

³² UN OHCHR 2015; Balkanist.net 2015; LGBTInewsturkey.com 2015b. For other cases of homophobic hate speech see KAOS GL 2014a: 7 et seq.

³³ Concerning a parliamentary question submitted in 2015 see lgbtinewsturkey.com 2015c.

³⁴ The commission is a 63-member Wise Men Commission that was established to serve as an intermediary in the peace process and is made up of intellectuals, academics, artists, and NGO representative, Ensaroglu Y. 2013.

³⁵ Hrant Dink Foundation 2014a: 7 et seq.; BBC.co.uk 2014; Todayszaman.com 2015g.

³⁶ See e.g. Albanian Media Institute 2014: 185 et seq.; The Middle East Media Research Institute 2014; Opendemocracy 2015; concerning discriminatory language towards the Alevi see EU EC 2014: 61.

³⁷ Anti-Defamation League 2015; Küçükcan 2010: 16.

³⁸ PEW Research Centre 2015b: 27, 54. According to PEW Research Centre 2015a: 3, 49% had unfavourable views on the EU, 50% on the NATO, 58% on the U.S., 59% on China, 64% on Iran and 64% on Russia.

³⁹ PEW Research Center 2013a: 124 and 187. 13% responded not being too comfortable and 58% not at all being comfortable with this idea.

⁴⁰ MFA 2014 and 2015; reuters.com 2014; Hurrietarydailynews.com 2015 and 2014a; Dailysabah.com 2015b.

pointed out, a special responsibility to refrain from such rhetoric.⁴¹ ECRI is puzzled about the fact that the same officials, who speak of the need to promote friendship between the country's different ethnic, linguistic and religious groups, also regularly engage in offensive hate speech. Also, ECRI finds it disquieting that there was not a strong reaction by the Ombudsperson, the NHRI or politicians from the opposition to the described instances of public hate speech.⁴² Given the enormous impact of such mediatised hate speech and its clear link to the increasing level of violence in the country, ECRI strongly encourages the authorities to re-establish a solid consensus among all politicians that hate speech is unacceptable even during heated political debates and election campaigns. To this end, the authorities should support self-regulation by political parties, the government and the parliament to ensure that their members stop using hate speech (§ 6 of ECRI's GPR No. 15).⁴³

37. In addition, the bodies responsible for protecting human rights, such as the Ombudsperson and the NHRI, should speak out clearly against public hate speech. The authorities should also use the provisions of the Law on Political Parties to deprive parties, whose representatives use hate speech, of state aid and, if need be, dissolve them (see above § 20). Lastly, Articles 9 and 10 of the civil servant's code of conduct, which prohibits racism and discrimination, should be enforced against public officials who are, at the same time, civil servants.
38. ECRI strongly recommends that officials and political leaders at all levels stop using hate speech. The Parliament and the government should adopt codes of conduct prohibiting hate speech and the authorities should encourage political parties to do likewise. These codes of conduct should provide for complaints mechanisms and adequate sanctions for breach of the codes, including suspension of mandate and unambiguous condemnation of hate speech.
39. Civil society representatives point out that many cases of hate speech are not reported to the authorities due to a lack of confidence in the police and the judiciary⁴⁴; according to recent research, 71.4% of the population do not trust the judicial system.⁴⁵ Furthermore, there is no system in place for systematically screening the web in order to detect and combat criminal online hate speech. The new institutions (the Ombudsperson and the NHRI), which are competent for dealing with hate speech from state representatives and the resulting human rights violations, have not yet received complaints concerning such statements.
40. In addition, most reported hate speech goes unpunished; ECRI has not been made aware of criminal court convictions for hate speech targeted at Kurds, Alevi or non-Muslim communities.⁴⁶ On the contrary, the law enforcement authorities use Article 216 CC on incitement to hatred almost exclusively in cases of offensive speech concerning the majority religion.⁴⁷ One example is the conviction under Article 216.3 CC of the composer and pianist Fazil Say for having criticised Sunni Islam. At the same time, this case and other cases against

⁴¹ CoE, Committee of Ministers 1997: Principle 1.

⁴² ECRI however welcomes the call, in August 2015, by academics from prominent universities upon the government to "stop using discriminatory and hostile language that will provoke conflict", BBC.co.uk 2014; Todayszaman.com 2015e.

⁴³ In this respect, ECRI regrets that initiatives to enact a code of ethics at the TGNA have not yet come to fruition, cf. KAOS GL 2015b. At the same time, it notes with interest that a draft law on political ethics has recently been submitted to Parliament.

⁴⁴ See in this respect KAOS GL 2013: 6 and seq.

⁴⁵ Todayszaman.com 2015h.

⁴⁶ The authorities informed ECRI during the country visit about a conviction following hate speech directed at Syrian refugees.

⁴⁷ EU EC 2015: 68, 2014: 52 and 2013a: 52; Norwegian Helsinki Committee 2015a: 12; Article 19 2013.

journalists⁴⁸ give rise to the concern that freedom of expression is excessively restricted and that criminal law is used to silence vulnerable groups, particularly if they are political opponents.⁴⁹ The independence and quality of the judiciary have additionally suffered from a vast reshuffling of judges and prosecutors and their transfer to new posts since 2013.⁵⁰ As a result, the benefits of many training sessions on human rights law were lost, when the members of the judiciary who had taken part in these sessions were moved away from their posts shortly after.

41. Due to the above, perpetrators of hate speech do not fear punishment and the substantial groups of the population targeted by hate speech are left without protection. To remedy this situation, ECRI considers that the police and prosecution services should, as recommended in §§ 18 and 82 to 86 of ECRI's GPR No. 11, establish sustained contact and mutual confidence with groups that are regularly victims of hate speech, such as Alevis, Armenians, Greeks, Jews, Kurds, LGBT persons, Roma and refugee communities. This should be the starting point to improve the reporting of hate speech to the police and should lead to the thorough investigation and punishment of racist and homo/transphobic offences. Independent bodies specialising in combating racism should be involved in these activities.
42. ECRI recommends that the police and prosecution services designate contact persons for vulnerable groups and establish regular round tables or other forms of dialogue with these groups in order to improve the reporting, investigation and punishment of racist and homo/transphobic offences.
43. In order to ensure proper application of the criminal law provisions on hate speech, ECRI considers that investigating these offences should be included in initial and continuous training for the police, prosecutors and judges.⁵¹ Where hate speech from civil servants does not amount to a criminal offence, disciplinary measures should be taken.
44. ECRI recommends that the Turkish authorities ensure, in particular by initial and regular continuous training, that the hate speech legislation is applied in compliance with the European Court of Human Rights' case law on freedom of expression and that these provisions are properly used to protect all vulnerable groups falling under ECRI's mandate.
45. Responses to hate speech in the media are contained in the 1998 Declaration of Rights and Responsibilities of the journalists' association, the Code of Professional Principles of the Turkish Press Council and Article 8.1.b of Law No. 6112 on radio and television. All these texts prohibit hate speech.⁵² However, most print media are not members of the Press Council, which can receive complaints. Its jurisdiction is restricted to its own members and it has not received any complaint about hate speech during recent years. The same is largely true of the regulatory bodies for television and radio. Only one TV series using discriminatory language was taken off the air following a complaint from a Roma NGO.⁵³ The number of internet sites requesting users to register and approve their terms of use before being able to post comments, is small⁵⁴, but, according to the authorities, increasing. Given these shortcomings, ECRI considers that the authorities should take inspiration from § 7 of its GPR No. 15 and improve the

⁴⁸ Freedom House 2015: 423 et seq.

⁴⁹ For more details see CoE Venice Commission 2016.

⁵⁰ EU EC 2015: 5 et seq.

⁵¹ See in this respect § 11.1. of the Turkish Action Plan on Prevention of ECHR Violations and the CoE-EU Joint Project "Strengthening the Capacity of the Turkish Judiciary in Freedom of Expression".

⁵² Albanian Media Institute 2014: 175 et seq.

⁵³ EU EC 2015: 69.

⁵⁴ Albanian Media Institute 2014 : 175 et seq.

system of (self-) regulation of the media. With regard to the on-going string of unacceptable and undue restrictions of media freedom in Turkey⁵⁵, ECRI underlines, that such measures strictly need to respect freedom of expression and opinion.

46. ECRI recommends that the Turkish authorities promote, without interfering with the independence of the media, (i) compliance of all media and journalists with ethical standards, (ii) accession of more media to the Press council and other self-regulatory bodies, (iii) self-monitoring and removal of hate speech in electronic media and (iv) campaigns to raise vulnerable groups' awareness of the channels for lodging complaints about hate speech in the media.

3. Racist and homo/transphobic violence

47. As a result of the excessively narrow definition of hate crime (see above § 9), Turkey does not collect data on racist and homo/transphobic violence and only reports cases of incitement to hatred to the OSCE.⁵⁶ Alternative sources reveal high levels of racist and homo/transphobic violence. According to the regular hate crime reports by the Human Rights Foundation of Turkey, in 2014 four persons were killed (nine in 2013) and 74 were injured (84 in 2013) in hate-motivated attacks. A considerable number of these attacks were committed by groups of perpetrators and some amounted to mob attacks by several hundreds of persons. Many of these attacks were directed at Kurds and transgender people.⁵⁷ Another NGO reports that 47 LGBT persons have been killed in hate crimes since 2010.⁵⁸
48. ECRI is greatly concerned about the large number of violent attacks against Kurdish people, many of which are committed on grounds of the victim's ethnic origin.⁵⁹ It considers that the initiation of the Kurdish peace process in 2012 was an important step forward that could help in tackling this kind of racist violence, and deeply regrets that the end of the ceasefire with the PKK has led to a terrible new wave of violence. In addition to hate crime against Kurdish individuals, more than 400 attacks were directed at offices of the pro-Kurdish Peoples' Democratic Party (HDP) in 2015. These attacks included armed assaults, bombing and arson, and many of them were carried out during the election campaigns.⁶⁰
49. With regard to the security operations against the PKK, ECRI recalls that the authorities need, even in the case of anti-terror operations, to ensure that they do not discriminate directly or indirectly against persons or groups of persons on grounds such as their ethnic origin (see ECRI's GPR No. 8 on combating racism while fighting terrorism). Therefore, the Turkish authorities should take effective precautions to ensure that no Kurdish or other civilians are killed or wounded and that their human rights in general are respected in these operations. Whenever there are casualties despite this, they should carry out effective investigations. When implementing other security measures such as the long curfews in cities like Diyarbakir and Cizre, they should also ensure that such measures are strictly necessary in a democratic society and make sure that wounded people can be transported to hospitals.

⁵⁵ CommDH 2016.

⁵⁶ The authorities also emphasise that the OSCE has not taken a binding decision on reporting data on homo/transphobic hate crime.

⁵⁷ Human Rights Foundation of Turkey 2013 and 2014b.

⁵⁸ For the time period until June 2014 see KAOS GL 2014a: 2.

⁵⁹ See the references in footnote 57; and AMER, Istanbul-GöçDer 2015: Annexes 2 and 4 to this report list 14 violent attacks on Kurdish people, five of which are described as mob attacks.

⁶⁰ BBC.com 2015a; Işıkara, G., Kayserilioğlu, A. et al. 2015. Some of the incidents are described in AMER, Istanbul-GöçDer 2015: Annex 3.

50. ECRI recommends that the Turkish authorities take effective precautions to ensure, when carrying out operations against the PKK, that Kurdish and other civilians are not killed or wounded and that the wounded receive medical treatment.
51. In the case of hate crimes against LGBT persons, in a detailed study of the year 2013 the NGO KAOS GL recorded five homicides, 15 attempted homicides, 82 cases of physical violence, six of them involving injuries by weapons, 10 cases of rape and 13 other sexual assaults. Very few victims reported these offences to the authorities as they not only lacked trust in the police and judiciary, but were even afraid of them. Over half of the assaults were committed by groups of perpetrators and many victims suffered from severe psychological consequences.⁶¹ According to another study, many violent hate-motivated criminal offences are targeted at transgender people. Between January 2008 and September 2014, 36 transgender persons were killed in Turkey and out of 233 transgender sex workers interviewed, 171 reported that they had suffered violence. Of these, 49.7% said that the violent act had been committed by a police officer and 31.2% that they had been sexually assaulted by members of the police.⁶² According to other reports, the police tend to trivialise hate crime targeted at LGBT persons and are reluctant to open investigations into such cases.
52. The violent dispersal of the 2015 Gay Pride parade in Istanbul by the police is also a cause for concern. Before the start of the parade, the police used tear gas, water cannons and rubber bullets to disperse participants and injured many people. Participants also report that police officers insulted LGBT persons. The police justified their intervention by the fact that the event was taking place during Ramadan, that it had neither been notified nor authorised and that there were risks of clashes with counter-protesters.⁶³ In this respect, ECRI recalls the case law of the European Court of Human Rights (ECtHR), according to which the police must not overreact to a demonstration of which no notification has been provided. Ordering a demonstration to disperse simply because it has not been notified, is likely to constitute a violation of Article 11 ECHR, especially if there is no evidence to suggest that the demonstration presented any real danger to public order.⁶⁴ ECRI notes that the 2014 Pride parade had also taken place during Ramadan and had not posed any real threat to public order.⁶⁵ In the light of all these points, it considers that a new EU funded project on training for the police on the right to free assembly is of the utmost importance.
53. Roma have also repeatedly been victims of mob attacks. After the murder of one person in a dispute, on 9 September 2013 approximately 500 people attacked a whole Roma neighbourhood in Iznik, destroying and burning down houses, workplaces and cars. Other similar attacks have taken place in Selendi (2010), Bursa (2013) and Denizli (2015).⁶⁶ As a result of such attacks and subsequent lack of protection by the police, Roma families have repeatedly been forced to flee their settlements and move to other municipalities.⁶⁷ After the Selendi attack,

⁶¹ KAOS GL 2013: 6 and seq.

⁶² Ördek, K. 2014: 54 et seq.

⁶³ Hurriyetdailynews.com 2015c and d.

⁶⁴ Nurettin Aldemir and others v. Turkey, no. 32124/02 et al., 18 December 2007: §§ 45 et seq.; Bukta and others v. Hungary, no. 25691/04, 17 July 2007: 34 et seq.

⁶⁵ Dw.com 2014.

⁶⁶ European Roma and Travellers Forum (ERTF) 2015; Suçları, N. 2014.

⁶⁷ EELN 2014a: 124.

it was only 22 days later that a police investigation was launched⁶⁸. Although criminal proceedings were instituted against 83 perpetrators, a verdict was not delivered until 2015, when 38 out of the accused persons were sentenced to prison terms from 8 months to 45 years for incitement to hatred, breach of the peace and damage to property.⁶⁹

54. One example of police prejudice against Roma is provided by a street march in July 2015 by around 200 police officers in the aftermath of a police raid on several Roma neighbourhoods in the north western region of Edirne. Accompanied by water cannons and armoured police vehicles, the police officers reportedly chanted discriminatory slogans and the demonstration ended, according to the authorities, with a mob attack. Threats were issued against the Roma community so that they would not complain. A police investigation was started only after the intervention of a Roma MP.⁷⁰
55. Other groups are also victims of hate crime. On 7 August 2015, unknown perpetrators shot at the car of the Alevi-Bektaşî Federation President Baki Düzgün.⁷¹ In the case of the death of Sevag Sahin Balıkcı, a soldier of Armenian descent, the court concluded that the perpetrator, another soldier, had killed him by accident. However, there was evidence of prior racial conflicts between the two. In Istanbul, proceedings concerning the possibly racially-motivated murder of another woman of Armenian descent, Maritsa Küçük, are still under way.⁷² On 29 January 2015 the Council of Europe Parliamentary Assembly again called on Turkey to undertake a full investigation into the violent death of the Armenian writer Hrant Dink. Christian minorities, like the Greek Orthodox and Protestant communities, have recently suffered from attempted arson to churches, burglary and death threats. Fortunately, in recent years, their members have rarely been the victims of violent offences to the person.⁷³ The Jewish community has to spend large amounts on security to prevent violent attacks. Lately, some refugees have also become the targets of racist hate crimes.⁷⁴
56. With regard to this large number of alleged hate-motivated criminal offences, ECRI is greatly concerned about the lack of efficient investigations and persistent impunity. The authorities have informed ECRI that they have not received complaints about many of the aforementioned alleged hate crimes and that they do not have files on cases such as the ones recorded in the Human Rights Foundation's hate crime reporting (§ 47 above). In this connection ECRI again refers to the ECtHR case law, according to which law enforcement authorities have a duty to take all possible steps to investigate whether or not racism or discriminatory motives may have played a role in violent crime; ECRI also emphasises that this duty is independent of any complaint, just like the general duty to investigate hate crime.⁷⁵ Given the high number of alleged hate-motivated offences, for which no information about adequate investigation and sentencing is available, ECRI strongly encourages the police and prosecution services to establish a system for recording and monitoring all racist and homo/transphobic incidents, and the extent to which these incidents are brought before the prosecutors and are eventually qualified as racist or homo/transphobic offences

⁶⁸ Foggo H. 2015; AMER, Istanbul-GöcDer 2015 : Annex 4; Todayszaman.com 2013.

⁶⁹ Cnnturk.com 2015; Todayszaman.com 2014e.

⁷⁰ Hurriyetdailynews.com 2015b.

⁷¹ Todayszaman.com 2015c.

⁷² For this and other potential hate crimes against Armenians see AI 2013.

⁷³ OSCE/ODIHR 2015; Portes Ouvertes 2016: 88; The Constantinopolitan Society 2014: 6.

⁷⁴ Al-monitor.com 2015; Opendemocracy 2015; Hurriyetdailynews 2015e.

⁷⁵ Natchova and others v. Bulgaria [GC], nos. 43577/98 and 43579/98, 6.7.2005, §§ 160 to 168; Dink v. Turkey, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14.9.2010, § 81.

(§ 12 of GPR No. 11). Such a system is essential for monitoring and improving investigations of hate crimes.

57. ECRI strongly recommends that the Turkish authorities establish and operate a system for recording and monitoring all racist and homo/transphobic incidents, and ensure that the police thoroughly investigate all such cases, in particular by taking any racist or homo/transphobic motives in ordinary offences fully into account. The police and prosecution services should also adopt binding guidelines on the recording and investigation of such offences.
58. With regard to racist violence committed by law enforcement officers, in § 9 of GPR No. 11 ECRI recommends that the authorities ensure that effective investigations are carried out and that the perpetrators of these acts are adequately punished.⁷⁶ According to the Turkish authorities' statistics⁷⁷, between 2010 and 3 July 2015 2 975 staff of the national police were the subject of disciplinary and 3 543 of criminal investigations for excessive use of force (Article 256 CC). Disciplinary investigations for torture (Articles 94 and 95 CC) were instigated against 324 and criminal investigations for torture against 688 staff. In 148 cases of excessive use of force disciplinary measures were taken and in 4 cases a judicial fine was imposed. In the field of torture, 3 disciplinary measures were taken.⁷⁸ These figures are not made public and not even the Ombudsperson is informed of these statistics. Since the very limited number of disciplinary measures and judgments again points to continuing impunity, ECRI welcomes the authorities' plan to establish a central registry for all such complaints and investigations, appoint a body to follow up these decisions, provide further training to groups of inspectors specialising in the review of human rights violations (see also §§ 95 and 96), and extend human rights training for police officers. At the same time, ECRI considers that additional activities are needed to re-establish and increase the trust of vulnerable groups in the police.
59. ECRI recommends that the authorities publish the statistics on disciplinary and judicial investigations concerning law enforcement officers, that they give the Ombudsperson access to the underlying files and that they discuss these statistics with vulnerable groups as part of an ongoing dialogue.

4. Integration policies

60. In Turkey the need for comprehensive integration policies has increased in recent years, as it has not only evolved from a country of emigration to a country of immigration, but has also become the country hosting the largest number of refugees in the world. At the beginning of 2016 the total population of Turkey was 78 million⁷⁹, the majority being Sunni Muslim. In the absence of official data about the composition of the population, there are no clear figures demonstrating the size of the minority communities in the country. Estimates differ widely. It is estimated that between 10% and 23% of the population are Kurdish (approximately 8 to 18 million) and that 7-12% belong to other ethnic minorities. Estimates of the number of Alevi even vary between 10% and 40% (8 to 23 million). The size of other minority groups is variously estimated at 500 000 to 5 million Roma, 40 000 to 90 000 Armenians, 20 000 Jews and 3 000 to 4 000 Greeks.⁸⁰ According to the authorities, over 2.7 million Syrian refugees and

⁷⁶ On the same line Turkish government 2014c: 3.1.

⁷⁷ Information provided by the Turkish government on 10 July 2015.

⁷⁸ Unfortunately, the authorities did not provide information about the number of cases related to racism and homo/transphobia.

⁷⁹ Turkish Statistical Institute 2016.

⁸⁰ UNHCR 2016 a and b; CoE 2016; Indexmundi.com 2016; US Department of State 2014; Turkishnews.com 2012.

about 300 000 Iraqis live in Turkey. Of the Syrian refugees, 265 000 live in refugee camps managed by the Disaster and Emergency Management Presidency (AFAD). Not only non-nationals, but also linguistic, religious and ethnic minority groups are in need of integration policies. As such policies cannot be drawn up without reliable estimates of the size of these groups, ECRI encourages the authorities to build up reliable data in this field.

- **Integration policies for non-nationals**

61. By adopting the Law on Foreigners and International Protection (LFIP) in 2013, Turkey has established a new framework for the integration of migrants and refugees and implemented an interim follow-up recommendation from ECRI's fourth report. The law regulates entry into, stay in and exit from Turkey and contains rules on foreign nationals and international protection. Turkey is one of the few countries maintaining a geographical reservation to the International Convention on Refugees and restricts its application to asylum seekers from Council of Europe member states. Persons coming from other countries are recognised as "conditional refugees" until they are resettled to a third country (Article 62 LFIP). No distinction is made in terms of procedures between the two groups (Article 65 LFIP) and all applicants and beneficiaries of international protection have access to primary and secondary education (Article 89.1 LFIP), and social security and general health insurance (Article 89.3a LFIP), and may apply for a work permit six months after lodging their applications for international protection (Article 89.4a). After a long delay, the secondary legislation on work permits was finally adopted on 15 January 2016.⁸¹
62. The LFIP also regulates the establishment and responsibilities of the Directorate General of Migration Management (DGMM) under the Ministry of the Interior⁸², which is now in charge of managing migration affairs. It became operational on 11 April 2014 and took over the provincial administration on 18 May 2015. According to Article 96.1 LFIP, it is responsible for planning integration activities to facilitate the "harmonisation of the society and of foreigners and applicants and beneficiaries of international protection and to equip them with the knowledge and skills they need to facilitate their self-reliance in all spheres of life without dependency". The law stipulates that this task is subject to the limitations imposed by the economic and financial capacities of the country. According to Article 96.1 LFIP, the DGMM shall take into account the recommendations of international organisations. A "Harmonisation and Communication Department" has been set up within the DGMM to carry out duties related to "mutual harmonisation", prevention of xenophobia and hate speech and media and public relations.⁸³
63. According to Article 96.2, foreign nationals may attend introductory courses on the country's political structure, language, legal system, culture and history, and on their rights and obligations. In cooperation with other institutions and NGOs, the DGMM shall expand the number of available courses and develop distance learning systems, implement awareness and information campaigns on foreign nationals' access to public services, education and employment, social and cultural interaction and primary healthcare.⁸⁴ Finally, the law contains provisions on data collection about non-Turkish residents (Article 99).⁸⁵ According to the authorities, in 2014 26 000 people participated in 1 479 language courses.

⁸¹ According to another regulation published on 26 April 2016, refugees and persons being granted subsidiary protection are now allowed to work without a work permit. See also UNHCR 2016d: 81.

⁸² Law on Foreigners and International Protection Article 1.

⁸³ Turkish authorities, 10.7.2015, Information transmitted by the Ministry of Interior: 6.

⁸⁴ Law on Foreigners and International Protection Article 96 (2)

⁸⁵ Kilberg R. 2014.

64. It is difficult to assess the effects of existing integration policies for refugees and other migrants, as Turkey has no system of integration indicators to measure progress in key areas such as education, employment, housing and health. ECRI therefore encourages the authorities to take inspiration from international standards in this field⁸⁶ and develop a set of indicators for monitoring the impact of their integration policies. At the same time, such a system must strictly observe the principles of confidentiality, informed consent and voluntary self-identification. Data should be gathered anonymously, wherever possible, and confidential ethnic codes in population registries or identification documents⁸⁷ must be abolished.
65. ECRI recommends that the Turkish authorities develop, while strictly respecting the principles of confidentiality and voluntary self-identification, statistical data and a set of indicators to evaluate and improve the integration and living conditions of the beneficiaries of integration policies in core areas such as education, employment, health and housing.
66. ECRI understands that the DGMM has had a difficult start, as it has to manage an unprecedented influx of refugees into the country. It also takes positive note of the DGMM's plans to develop a comprehensive integration strategy with an action plan and encourages the DGMM to give high priority to the development of this document and to completing this project in February 2017. At the same time, ECRI emphasizes the importance of translating the strategy into concrete implementation activities and indicators for assessing these activities' impact.
67. A reliable picture of the situation of the Syrian refugees in the country is given in the UNHCR Regional Refugee & Resilience Plan 2016-2017.⁸⁸ In the field of education, ECRI takes positive note that schooling is already provided to 290 000 refugee children. At the same time, it is highly concerned about the large number of refugee children who are not yet able to attend school. The birth rate among Syrian refugees is high: 300 000 children are younger than 3 years and 830 000 children are in school age. As of late 2015, almost 500 000 refugee children (6-17 years) were not enrolled in formal education programmes⁸⁹ and large numbers of young persons required access to skills training, language programmes and higher education. Enrolment rates were highest in the lower school grades, with numbers dropping sharply in the higher grades. UNHCR considers that special interventions are needed to address the factors affecting boys' and girls' enrolment rates in secondary school, including expectations that children and young persons will contribute to family income.
68. In this context, ECRI also emphasises the importance of enrolling children with migration backgrounds in preschool in order to ensure that they learn the language of instruction and acquire sufficient knowledge about the country before entering the school system. With regard to the need of many children with migration backgrounds for specialised support at school, the authorities state that they had successfully started to implement the education ministry circular of 16 August 2010 on measures to help migrant children in the educational system. However, owing to the massive influx of refugees, the guidelines have not been implemented nationwide.⁹⁰

⁸⁶ ECRI 2007c; EU EC 2013b.

⁸⁷ EELN 2014b: 84. Panarmenian.net 2016.

⁸⁸ UNHCR 2016d: 3 et seq. On Syrian Roma and female refugees cf. Yildiz Y. 2015 and Mazlumder 2014.

⁸⁹ The real figures could even be higher as there are estimates that up to 55 % of the Syrian refugees are under 18 years old.

⁹⁰ Migration Integration Policy Index (MIPEX) 2015a.

69. In the field of employment and livelihood the situation of refugee families living outside the refugee camps is a cause for concern. While the great majority of refugees have to earn their own living, at the end of 2015 only 7 400 had received a work permit. As a result, most refugees were forced into self-employment or illegal work, which increased the risks of exploitation and low wages.⁹¹ The resulting pressure on the labour market and on the wages of Turkish citizens has also led to social tensions, hate speech and discrimination against refugees. ECRI therefore welcomes the promulgation of secondary legislation on work permits for refugees in January 2016.⁹² At the same time, a systematic and sustainable approach is needed to provide Turkish language courses and professional training for refugees to facilitate their integration into the regular labour market.
70. Given these unprecedented challenges, ECRI encourages the authorities to seek even more support from the international community to ensure decent living conditions for and the integration of the enormous number of refugees in the country. By mid-May 2016, foreign donors had only agreed to contribute 11 % out of the 806 million USD, which are needed according to the UNHCR plan in Turkey throughout the year 2016.
71. ECRI strongly recommends that the authorities swiftly complete the development of a strategy and action plan for their integration policies for non-nationals. They should also mobilise all possible resources, and in particular those of foreign donors, to ensure that these policies are implemented and in particular that all refugee children receive schooling.
72. ECRI is pleased to recall that Turkey is one of the few Council of Europe member States to have ratified the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. At the same time, it notes that most legal migrant workers only have limited work permits, since there is a long qualifying period (eight years) for entitlement to unlimited work permits. As a result, they are tied to their employer (Articles 5 and 6 of Law No. 4817 on Work Permits for Foreign Nationals), do not have equal rights with nationals and cannot benefit from the services of the public employment agency.⁹³ ECRI therefore encourages the authorities to ease access to unlimited work permits.
- **Integration policies for ethnic, religious and linguistic minority groups**
73. In its fourth report on Turkey, ECR I made a number of recommendations for better integration of the ethnic, religious and linguistic minority groups (minority groups). In this context ECRI recalls that it has generally referred to all groups within Turkish society with a distinct religion, national or ethnic origin, language or colour as “minority groups”, regardless of whether they are recognised as minorities protected by the Treaty of Lausanne.⁹⁴
74. While there is little statistical data on the living conditions of minority groups, reports show that they are affected by the general backslide in the areas of freedom of expression and freedom of assembly and that they cannot express themselves openly.⁹⁵ Minority groups are also affected by the continuing arrests of journalists.⁹⁶ Roma and Kurds also have considerable problems in accessing public services. Roma children suffer from low school enrolment rates,

⁹¹ For more details see World Bank Group 2015.

⁹² UNHCR 2016d.

⁹³ For more details see MIPEX 2015b.

⁹⁴ § 82 of ECRI's 4th report on Turkey.

⁹⁵ On the general backslide see EU 2015: 4 et seq. and on minority groups Sosyalmedyaveazinliklar.com 2016; IBTimes 2015; Dailysabah.com 2016. Other Council of Europe bodies focus on this issue.

⁹⁶ Committee to Protect Journalists 2015.

absenteeism, early drop out and school segregation. The main reasons are their families' inadequate financial resources, prejudice and low expectations in schools. There are also worrying reports of the placement of healthy Roma children in programmes for disabled persons. Roma encounter enormous difficulties in the labour market due to discrimination and social exclusion. As a result, unemployment is high and they mostly work in unqualified, unstable and insecure jobs. Many suffer from poverty and 80% live in shanty-towns and slum neighbourhoods, some of which are also threatened by urban development projects. These adverse living conditions mean that many Roma face health problems, including under-nourishment. A considerable number of children are not registered at birth and some Roma lack ID documents.⁹⁷

75. ECRI welcomes the authorities' recent completion of the long drafting process of their National Strategy Document for Social Integration of Roma Citizens (2016-2021), which was adopted on 26 April 2016. The strategy covers education, employment, health, housing, social assistance and support services and will be implemented through local action plans. The activities shall be funded from the budgets of the participating authorities and include EU-funded projects on employment and social assistance. The authorities have consulted Roma civil society throughout the process and plan to establish a monitoring board, composed of the authorities and NGOs, to ensure strong, indicator-based monitoring. Without waiting for the adoption of the strategy, the authorities have continued to implement concrete actions in areas such as education and employment.⁹⁸ ECRI also takes positive note of the increasing empowerment of Roma, who have set up several hundred associations and are represented by an MP in parliament. Several examples of good practice are provided by civil society, such as the study centre in Mersin, which has improved attendance and success of 300 Roma students.⁹⁹
76. Given the strong prejudice and the resulting violent attacks against Roma, ECRI considers that political leaders need to make a major effort to end the marginalisation of Roma communities and to ensure implementation of this strategy. The action plans for the implementation of the strategy document require proper budgeting and binding financial commitments from the authorities and other stakeholders. Roma should also participate in all stages of implementation and monitoring to ensure that the actions taken are tailor-made to their real needs. Roma mediators could also help with implementing the strategy and facilitating Roma access to services.
77. ECRI recommends that the authorities swiftly implement the National Strategy Document for Social Integration of Roma Citizens (2016-2021). Particular focus should be put on the proper budgeting, target setting and monitoring of all the activities of the action plans forming part of the strategy's implementation. Roma representatives should participate in all stages of implementation.
78. With regards to the Kurds, in its 4th report ECRI recommended that the authorities step up their efforts (i) to assist the return of persons internally displaced (IDPs) as a result of the conflict in the east and south east, (ii) to ensure that they do not suffer discrimination, particularly in the fields of education and housing, and (iii) to keep under review the functioning of the commissions responsible for awarding compensation for damage suffered in the wake of that conflict. ECRI regrets that the planned national action plan on displacement and return covering 13 provinces has not been finalised, even though its adoption had already been announced for 2010. Nevertheless, the

⁹⁷ EU 2015: 69; ERTF 2015; Foggo H. 2014.

⁹⁸ Dailysabah.com 2015b. ECRI also notes that another project on promoting social inclusion in areas with large Roma populations will be implemented in 2016 and 2017.

⁹⁹ Dailysabah.com 2015b and c; Foggo H. 2015.

authorities have continued with a number of major projects to improve living conditions in the eastern and south eastern Anatolian regions, where many Kurdish people live. The South-eastern Anatolia Project for example aims at improving the living standard and the level of income in the region; it is composed of 115 projects and the funding for 2014 to 2018 is estimated at around 8 billion Euros.¹⁰⁰ In addition, the damage assessment and compensations commissions have taken decisions on more than 90% of the 365 000 applications they have received and awarded compensation in more than half of the cases. In June 2014, Law No. 6551 on eliminating terrorism and strengthening social integration was adopted, with the aim of facilitating the reintegration of PKK militants within society. The use of the Kurdish language in official contexts has also been made easier.¹⁰¹

79. Despite the aforementioned efforts, almost 1 million Kurds are still displaced. Many of them continue to live in substandard, illegally built housing and are at risk of eviction. While they benefit from a green card system providing free health care, a lack of broader government support has hampered their local integration. Poverty has forced children of IDPs to work rather than go to school. Against this background the EU has repeatedly called for the adoption of a comprehensive strategy to address all the challenges faced by IDPs.¹⁰²
80. The situation of the Kurds living in the eastern and south-eastern regions also gives rise to concern. These regions continue to be the ones with the lowest average household income and they are among the ones with the highest rates of poverty.¹⁰³ Since 2012, the arrival of about 500 000 Syrian refugees has further increased the need for comprehensive integration policies for all vulnerable groups living there. The situation again deteriorated sharply in the second half of 2015, owing to the renewal of the security operations against the PKK. Inhabitants of this area are not only threatened with death or injury (see above § 49), but also suffer from curfews that are imposed for entire weeks, during which civilians are not even allowed to leave their homes to buy basic food or to receive emergency health care. As a result, many have had to flee their homes again.
81. The sustainable integration of Kurdish people is also hampered by severe restrictions on their freedom of expression.¹⁰⁴ Leading Kurdish politicians have been threatened with dismissal and arrest for allegedly acting as if they were members of a terrorist organisation. These threats followed statements, in which they had requested greater autonomy for the south-east but had not incited to or justified terrorism.¹⁰⁵ The same applies to the arrest of approximately 20 academics and intellectuals who had, together with almost one thousand others, signed a peace petition.¹⁰⁶
82. ECRI considers that such actions undermine the basis for any successful integration policy and again refers to its GPR No. 8, according to which the fight against terrorism has to be carried out in full conformity with international human

¹⁰⁰ The Village Infrastructure Support Project aims to provide basic infrastructure in rural areas. The Return to Village and Rehabilitation Project intends to create the necessary social and economic infrastructures for the return of IDPs to their homes. The SODES project focuses on social inclusion, culture-art-sports and employment; it now covers 34 cities.

¹⁰¹ For more details see Ministry of Interior 2015, 129 et seq.; EU EC 2014: 17.

¹⁰² EU 2015: 25 et seq.

¹⁰³ Turkish Statistical Institute 2015; Todayzaman.com 2015c ; hurriyetdailynews.com 2014c.

¹⁰⁴ See in this respect CoE Venice Commission 2016b.

¹⁰⁵ Todayzaman.com 2016. See in this respect also reports on a police circular of 6 January 2016 on investigation of "insult crimes" against senior state officials and Leroy v. France, no 36109/03, 2 October 2008, §§ 36 et seq.

¹⁰⁶ BBC.com 2016. See also CoE, Secretary General 2016.

rights law and without direct or indirect discrimination. Recalling the relevant case-law of the ECtHR, and in particular the one in relation to freedom of expression¹⁰⁷, it urges the authorities to strictly respect the requirements of proportionality, when taking any action that interferes with fundamental rights and freedoms.

83. ECRI strongly recommends that the authorities ease the severe restrictions imposed by the security operations and the curfews in the south-east of the country, ensure that Kurdish and other civilians have access to food and basic services, revive the Kurdish peace process, respect freedom of expression and resume and intensify their positive action for the integration of the Kurdish minority group.
84. With regard to education, the 6th Democratisation Package has brought some progress for linguistic minority groups. Partially in line with the recommendation in § 63 of ECRI's 4th report on Turkey, private schools are now allowed to teach languages and dialects used by minority groups in their daily life (Article 11 of Law No. 6529). Furthermore, the education ministry has introduced language classes in Kurdish, Abkhaz, Adyghe, Laz and other languages as optional courses in public schools and hired 17 Kurdish language teachers as permanent staff. Several universities have started teaching Kurdish.
85. However, for the minority groups that are not protected by the 1923 Lausanne treaty, the teaching of non-Turkish languages as mother tongues is still prohibited by Article 42.9 of the Turkish Constitution (TC). As many children from the Kurdish and other minority groups do not sufficiently master Turkish, which is the language of instruction, this results in structural discrimination. ECRI therefore encourages the authorities to develop a coherent strategy to ensure that all children entering primary school have sufficient command of the language of instruction to complete primary and, subsequently, secondary education successfully. Appropriate means to achieve this would be (i) to increase the preschool attendance rates among children speaking minority languages, to provide specialised support for such children at school and (ii) to authorise mother tongue teaching for children from all minority groups.
86. ECRI recommends that the Turkish authorities ensure that, when entering primary school, all children from minority groups have sufficient mastery of the language of instruction to complete their schooling successfully. These children should also receive any necessary specialised support during their schooling.
87. Recently, a group of intellectuals pointed out that school textbooks still contained material expressing open hatred and hostility towards Armenians and other vulnerable groups. After protests by Roma, the Ministry of Education (MoE) removed a book from a compulsory reading list that contained many racist statements.¹⁰⁸ In this regard, ECRI refers to its GPR No. 10 on combating racism and discrimination in and through school education.
88. ECRI recommends that the authorities remove from textbooks any racist material or material that encourages stereotypes, intolerance or prejudice against any minority group.
89. With regard to religious minority groups, ECRI recommended in its 4th report that the authorities investigate possible discriminatory treatment, in particular issues relating to funding, places of worship and religious education, and to redress any discrimination found. As ending structural discrimination in these fields and in particular in religious education is important for sustainable integration of minority groups, ECRI notes with regret that the ECtHR has again found serious violations

¹⁰⁷ With respect to Article 10 ECHR see ECtHR 2016a: 22 et seq., Belek et Özkurt v. Turkey (No. 3), no. 28516/08, 17.09.2014 and CoE Venice Commission 2016b.

¹⁰⁸ EU EC 2015: 68; Todayzaman.com 2014b.

in this field. In a judgement of 16 September 2014, the Court held that Turkey had violated the Alevi applicants' rights by obliging their children to attend religious education, which focused on Sunni Islam. The Court invoked the State's duty of neutrality and impartiality in regulating matters of religion and held that - in spite of previous violation decisions - Turkey had still not established a system for ensuring respect for parents' convictions with regard to religious education.¹⁰⁹ Furthermore, the Ombudsperson recently decided that the method used for calculating grades in the "Transition from Primary to Secondary Education Test" led to discrimination against pupils who were exempted from religious education.¹¹⁰ The ECtHR has also found a violation of the ECHR with regard to the discriminatory funding as between mosques and cemevis (Alevi places of worship) and found a violation of Articles 9 and 14 ECHR in another important case on the public recognition of cemevis as places of worship and the recruitment of Alevi clergy as civil servants.¹¹¹

90. These cases show that the authorities still do not respect the state's duty to neutrality and impartiality in religious matters and that this results in various forms of structural discrimination against religious minority groups. Since ending such structural discrimination is important for successful integration, ECRI again urges the authorities to expedite implementation of the ECtHR judgments in this field.¹¹² Likewise, the restitution of property which has been confiscated and remedies for past injustice remain important issues to be addressed in order to create an environment conducive to integration.

91. ECRI recommends that the authorities strictly respect their duty of neutrality and impartiality in regulating matters of religion, abolish discriminatory regulations and practices in this regard and expedite the implementation of the related decisions of the European Court of Human Rights.

II. Topics specific to Turkey

1. Interim follow-up recommendations of the fourth cycle

92. The first interim follow-up recommendation in ECRI's fourth report on Turkey was that the authorities should reinforce the criminal law provisions aimed at combating racism. Its implementation has been examined in §§ 3 to 11 of this report. The other unimplemented interim follow-up recommendation is that the authorities establish an independent body entrusted with the investigation of alleged cases of misconduct by members of the police or other security forces, including ill treatment directed against members of minority groups. In its 2014 conclusions on the implementation of these recommendations, ECRI considered that the proposed establishment of a Law Enforcement Oversight Commission was not in line with its GPR No. 11, as this body would not be independent¹¹³ and would lack the necessary investigation powers. ECRI regrets that these shortcomings have not been remedied before the adoption, on 3 May 2016, of law No. 6713 on the establishment of this commission. Nevertheless, it will monitor with interest the impact of this new institution.

93. In its 2014 conclusions, ECRI also expressed the view that the Ombudsperson could take on the function of investigating cases of misconduct by law enforcement officers. The Ombudsperson has indeed informed ECRI that it has started carrying out investigations into police misconduct. In this context, the Council of Europe Commissioner for Human Rights pointed out in 2013 that the

¹⁰⁹ Mansur Yalçın and Others v. Turkey, no. 21163/11, 16 September 2014.

¹¹⁰ Norwegian Helsinki Committee 2015: 36 et seq.

¹¹¹ Cumhuriyetçi Eğitim Ve Kültür Merkezi Vakfı v. Turkey, no. 32093/10, 2.12.2014; Doğan and others v. Turkey [GC], no. 62649/10, 26.4.2016.

¹¹² For an overview up to 2013 see Norwegian Helsinki Committee 2013.

¹¹³ On the same line CommDH 2013: 2.

report to be prepared by the Ombudsperson on the conduct of the police in suppressing the protest against the redevelopment of Gezi Park in Istanbul was both a crucial test and a unique opportunity for establishing its credibility as a major actor in Turkey's domestic human rights architecture.¹¹⁴ Similar investigations are needed in cases of alleged police misconduct against groups falling within ECRI's mandate, such as the 2015 dispersal of the Istanbul LGBT Pride parade and the police demonstration against Roma in the region of Edirne (see §§ 52 to 53). The Ombudsperson's report on the Gezi Park events, although it supported intervention by the police, was critical of their conduct and made strong recommendations for changes in the law to allow peaceful protests and for better training and accountability of the police. The recommended measures include revising the current legal framework and administrative practice for police interventions, including the use of force and in particular lethal and non-lethal weapons, keeping records during such interventions, increasing pre-service and in-service training, and combating the existing "culture of impunity", in particular by strengthening the independence of the projected Law Enforcement Oversight Committee, or by integrating this new institution into the Ombudsman Institution.¹¹⁵ Implementation of these recommendations will also offer vulnerable groups greater protection against police misconduct.

94. ECRI takes positive note of the fact that the competent parliamentary committee has summoned several authorities to enquire why they have not implemented the Ombudsperson's recommendations. Yet, at the time of ECRI's country visit several recommendations, in particular the ones on legal amendments had still not been implemented. Nor did the Ombudsperson have access to the files and statistics about disciplinary and judicial proceedings against law enforcement officers, according to which 138 investigations had been carried out, resulting in 36 penalties. ECRI considers nevertheless that a promising start has been made to improving the investigation and punishment of police misconduct and encourages all the relevant stakeholders to strengthen the Ombudsperson to enable him to carry out these functions effectively rather than pursuing plans to set up a Law Enforcement Oversight Commission, which would not be independent.
95. ECRI repeats and insists on its recommendation to entrust a body that is fully independent of the police, other security forces and the prosecution services with the investigation of alleged cases of misconduct by members of the police or other security forces, including ill-treatment directed against members of vulnerable groups. To implement this recommendation, the Ombudsperson should be given a clear mandate to deal with this issue.
96. ECRI also recommends that the police, the prosecution and the disciplinary bodies carry out effective investigations into alleged cases of police misconduct and that the perpetrators of such acts are adequately punished.

2. Policies to combat discrimination and intolerance vis-à-vis LGBT¹¹⁶

- Data

97. In Turkey, there are no official data on lesbian, gay, bisexual and transgender (LGBT) persons, their living conditions and the discrimination they suffer. Research shows that prejudice against LGBT persons is widespread. In a survey published in 2013, 78% of Turkish respondents, the highest percentage among the European countries surveyed, said that society should not accept homosexuality.¹¹⁷ In another survey 84% of the Turkish respondents stated that

¹¹⁴ CommDH 2013, Country report on Turkey: 3.

¹¹⁵ Ombud, decision no. 2013/90 of 3 December 2013: §§ 508 et seq.

¹¹⁶ For terminology, see the definitions set out in CoE Commissioner for Human Rights 2011.

¹¹⁷ Pew Research Centre 2013b.

they did not want to have LGBT persons as neighbours.¹¹⁸ As a result of such prejudice, LGBT persons tend to stay invisible in Turkey and only 38.5% have come out to at least one member of their family. Some 6.6% reported that even members of their family had used violence against them on the ground of their sexual orientation or gender identity and 43.2% that they had thought about committing suicide. A total of 67.4% reported that they had been discriminated against during their schooling and 51.7% during their studies at university. 78.9% are not open about their sexual orientation or gender identity at work and 55.7% have seen or heard that a colleague has received negative comments or reactions at work on these grounds. Only 10% of those who had experienced discrimination have filed an official complaint.¹¹⁹

- **Policies and legislation**

98. ECRI has received little information about measures taken by the authorities to address these issues. The few that have been outlined comprise specialised health care for transgender persons, including gender reassignment treatment and training on LGBT issues for the police and the gendarmerie. ECRI takes positive note that some political parties have taken up LGBT issues, resulting in a parliamentary motion on their living conditions and improvements to the legal protection of this vulnerable group.¹²⁰ Moreover, some municipalities have started to provide protection for young LGBT persons and offer them anonymous and free health services.¹²¹ Several LGBT NGOs have been registered and the movie “My Child”, which was produced by an LGBT parent group, can be cited as a good practice for promoting understanding and tolerance for LGBT persons.¹²² LGBT groups have also been established at some universities and annual Pride parades have taken place since 2003.
99. However, the political mainstream is not sympathetic to LGBT issues.¹²³ The majority rejected the above-mentioned motion in the Turkish Parliament and removed provisions for better protection of LGBT persons not only from the 2014 law on constitutional reform, but also from the anti-discrimination law. As can be seen from events such as the heavy police intervention at the 2015 Pride parade in Istanbul, the openness for LGBT persons is declining and LGBT-related keywords are even being used to censor the Internet.¹²⁴
100. In this context, ECRI recalls that each member state has the duty to protect LGBT persons against violence and discrimination. Both, the European Convention on Human Rights and the Turkish Constitution protect everyone’s basic rights such as the right to life, to bodily integrity and to equality. ECRI considers that the authorities should incorporate these principles very explicitly into their criminal code and the anti-discrimination law. Such amendments are indispensable for preventing further serious human rights violations, for avoiding applications to the ECtHR and for making it absolutely clear to every public official and the general public that violating LGBT persons’ human rights is illegal. As the sections of this report on hate speech and violence show, law enforcement officers and other public officials need clear instruction and more training concerning their duty to protect LGBT persons against violence, hate speech and discrimination. Violations of LGBT persons’ rights by civil servants need to be investigated and punished in disciplinary and criminal proceedings. In

¹¹⁸ Yılmaz V., Birdal S. 2012.

¹¹⁹ Yılmaz V. and Göçmen İ. 2015. For the sector of employment see also KAOS GL 2015a.

¹²⁰ Huffingtonpost.com 2013; Globalpost.com 2015b.

¹²¹ ILGA Europe 2015: 163; Hurrietdailynews.com 2014b; Globalpost.com 2015a. pinknews.co.uk 2014.

¹²² Igbtinewsturkey.com 2015a.

¹²³ See in this respect §§ 32 et seq. of the report.

¹²⁴ AI 2012; Freedom House 2012.

this context ECRI refers to the recommendations already made earlier in this report.

101. Given the high level of prejudice towards LGBT persons, and the resulting hate speech, violence and adverse living conditions they suffer, ECRI considers that the authorities should take a systematic approach to these issues and charge a specific authority with developing and implementing policies to combat discrimination against and intolerance towards LGBT persons. At the same time, they should carry out an awareness-raising campaign focussing on LGBT persons, their right to equal treatment and their living conditions. The aim should be to improve understanding of and general attitudes towards this vulnerable group. The authorities should also commission studies to enable them to fully grasp the issues to be tackled, if LGBT person's right to equal treatment is to become a reality. LGBT representatives and experts should be involved in all these activities.
102. Building on this, the authorities should tackle the most burning issues such as establishing support structures for young LGBT persons who, during the already difficult phase of puberty, face the additional existential issue of their coming out. The authorities should make sure that these young adults have easy access to the necessary information, assistance and protection to enable them to live in accordance with their sexual orientation and gender identity. This should include training youth workers and other specialists on LGBT issues, using the tools provided by the Istanbul Convention against domestic violence¹²⁵ and protecting LGBT persons against other forms of violence and discrimination. In this context, a sufficient number of shelters should be established for young LGBT persons. Bullying, harassment and discrimination at school, at university and during military service should also be addressed, for example by means of information and education about different gender roles, but also by initiation of disciplinary proceedings.
103. Finally, action is required regarding gender recognition for transgender people. On 10 March 2015 the ECtHR decided that Turkey had violated a transgender person's right to respect for private and family life (Article 8 ECHR), because the authorities had denied him access to gender reassignment surgery, as long as he was not permanently unable to procreate, even before having such surgery.¹²⁶ ECRI welcomes the fact that the underlying provision, Article 40 of the Turkish Civil Code, has been brought before the Constitutional Court for review.¹²⁷ It also considers that this ECtHR decision will provide the Turkish authorities with an opportunity to align in general their regulations on transgender issues to international standards. This should not only cover access to gender reassignment treatment, but also the ability to change the first name, to obtain full gender recognition and to change the gender marker in documents.
104. The Ombudsperson and the NHRI should promote change and progress in all these areas.
105. ECRI recommends that the Turkish authorities adopt and implement an action plan for LGBT persons, which should include the objectives of protecting LGBT persons against hate speech, violence and discrimination, raising awareness about their living conditions, promoting understanding of LGBT persons and making their right to equal treatment a reality.

¹²⁵ For the killing of a homosexual man by his father and two uncles see ILGA Europe 2015: 162.

¹²⁶ *Y.Y. v. Turkey*, no. 14793/08, 10.3.2015.

¹²⁷ KAOS GL 2016b.

INTERIM FOLLOW-UP RECOMMENDATIONS

The two specific recommendations for which ECRI requests priority implementation from the authorities of Turkey are the following:

- ECRI strongly recommends that the Turkish authorities ensure that the provisions on the independence and mandate of the new Human Rights and Equality Authority comply with ECRI's General Policy Recommendations Nos. 2 and 7. This institution should not be a government department and its members should not be appointed by the executive. It should also be given clear authority to hear witnesses in the course of its investigations and the right to initiate and participate in court proceedings. Moreover, the authorities should bring their anti-discrimination legislation fully into line with ECRI's General Policy Recommendation No. 7; in particular they should include the grounds of citizenship, sexual orientation and gender identity in the list of grounds of prohibited discrimination and insert rules on the compensation of victims and the burden of proof in court cases.
- ECRI repeats and insists on its recommendation to entrust a body that is fully independent of the police, other security forces and the prosecution services with the investigation of alleged cases of misconduct by members of the police or other security forces, including ill-treatment directed against members of vulnerable groups. To implement this recommendation, the Ombudsperson should be given a clear mandate to deal with this issue.

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report

LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 2) ECRI reiterates its recommendation to the Turkish authorities to ratify Protocol No. 12 to the European Convention on Human Rights.
2. (§ 11) ECRI recommends that the authorities bring their criminal law, in general, into line with its General Policy Recommendation No. 7; in particular they should (i) include the grounds of ethnic origin, colour, language, citizenship, sexual orientation and gender identity among the prohibited grounds in Articles 122, 125 and 216 and all other Criminal Code provisions aimed at combating racism and homo/transphobia, (ii) abolish the restriction in Article 216 that there has to be a threat to public order and (iii) provide explicitly that racist and homo/transphobic motivation constitutes an aggravating circumstance for any ordinary offence.
3. (§ 27) ECRI strongly recommends that the Turkish authorities ensure that the provisions on the independence and mandate of the new Human Rights and Equality Authority comply with ECRI's General Policy Recommendations Nos. 2 and 7. This institution should not be a government department and its members should not be appointed by the executive. It should also be given clear authority to hear witnesses in the course of its investigations and the right to initiate and participate in court proceedings. Moreover, the authorities should bring their anti-discrimination legislation fully into line with ECRI's General Policy Recommendation No. 7; in particular they should include the grounds of citizenship, sexual orientation and gender identity in the list of grounds of prohibited discrimination and insert rules on the compensation of victims and the shared burden of proof in court cases.
4. (§ 38) ECRI strongly recommends that officials and political leaders at all levels stop using hate speech. The Parliament and the government should adopt codes of conduct prohibiting hate speech and the authorities should encourage political parties to do likewise. These codes of conduct should provide for complaints mechanisms and adequate sanctions for breach of the codes, including suspension of mandate and unambiguous condemnation of hate speech.
5. (§ 42) ECRI recommends that the police and prosecution services designate contact persons for vulnerable groups and establish regular round tables or other forms of dialogue with these groups in order to improve the reporting, investigation and punishment of racist and homo/transphobic offences.
6. (§ 44) ECRI recommends that the Turkish authorities ensure, in particular by initial and regular continuous training, that the hate speech legislation is applied in compliance with the European Court of Human Rights' case law on freedom of expression and that these provisions are properly used to protect all vulnerable groups falling under ECRI's mandate.
7. (§ 46) ECRI recommends that the Turkish authorities promote, without interfering with the independence of the media, (i) compliance of all media and journalists with ethical standards, (ii) accession of more media to the Press council and other self-regulatory bodies, (iii) self-monitoring and removal of hate speech in electronic media and (iv) campaigns to raise vulnerable groups' awareness of the channels for lodging complaints about hate speech in the media.

8. (§ 50) ECRI recommends that the Turkish authorities take effective precautions to ensure, when carrying out operations against the PKK, that Kurdish and other civilians are not killed or wounded and that the wounded receive medical treatment.
9. (§ 57) ECRI strongly recommends that the Turkish authorities establish and operate a system for recording and monitoring all racist and homo/transphobic incidents, and ensure that the police thoroughly investigate all such cases, in particular by taking any racist or homo/transphobic motives in ordinary offences fully into account. The police and prosecution services should also adopt binding guidelines on the recording and investigation of such offences.
10. (§ 59) ECRI recommends that the authorities publish the statistics on disciplinary and judicial investigations concerning law enforcement officers, that they give the Ombudsperson access to the underlying files and that they discuss these statistics with vulnerable groups as part of an ongoing dialogue.
11. (§ 65) ECRI recommends that the Turkish authorities develop, while strictly respecting the principles of confidentiality and voluntary self-identification, statistical data and a set of indicators to evaluate and improve the integration and living conditions of the beneficiaries of integration policies in core areas such as education, employment, health and housing.
12. (§ 71) ECRI strongly recommends that the authorities swiftly complete the development of a strategy and action plan for their integration policies for non-nationals. They should also mobilise all possible resources, and in particular those of foreign donors, to ensure that these policies are implemented and in particular that all refugee children receive schooling.
13. (§ 77) ECRI recommends that the authorities swiftly implement the National Strategy Document for Social Integration of Roma Citizens (2016-2021). Particular focus should be put on the proper budgeting, target setting and monitoring of all the activities of the action plans forming part of the strategy's implementation. Roma representatives should participate in all stages of implementation.
14. (§ 83) ECRI strongly recommends that the authorities ease the severe restrictions imposed by the security operations and the curfews in the south-east of the country, ensure that Kurdish and other civilians have access to food and basic services, revive the Kurdish peace process, respect freedom of expression and resume and intensify their positive action for the integration of the Kurdish minority group.
15. (§ 86) ECRI recommends that the Turkish authorities ensure that, when entering primary school, all children from minority groups have sufficient mastery of the language of instruction to complete their schooling successfully. These children should also receive any necessary specialised support during their schooling.
16. (§ 88) ECRI recommends that the authorities remove from textbooks any racist material or material that encourages stereotypes, intolerance or prejudice against any minority group.
17. (§ 91) ECRI recommends that the authorities strictly respect their duty of neutrality and impartiality in regulating matters of religion, abolish discriminatory regulations and practices in this regard and expedite the implementation of the related decisions of the European Court of Human Rights.
18. (§ 95) ECRI repeats and insists on its recommendation to entrust a body that is fully independent of the police, other security forces and the prosecution services with the investigation of alleged cases of misconduct by members of the police or other security forces, including ill-treatment directed against

members of vulnerable groups. To implement this recommendation, the Ombudsperson should be given a clear mandate to deal with this issue.

19. (§ 96) ECRI also recommends that the police, the prosecution and the disciplinary bodies carry out effective investigations into alleged cases of police misconduct and that the perpetrators of such acts are adequately punished.
20. (§ 105) ECRI recommends that the Turkish authorities adopt and implement an action plan for LGBT persons, which should include the objectives of protecting LGBT persons against hate speech, violence and discrimination, raising awareness about their living conditions, promoting understanding of LGBT persons and making their right to equal treatment a reality.

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