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European Commission Against Racism and Intolerance

First report on Turkey

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INTRODUCTION

The European Commission against Racism and Intolerance (ECRI) was set up in 1994, at the instigation of the first Summit meeting of Heads of State and Government of the member States of Council of Europe, to combat the growing problems of racism, xenophobia, anti-Semitism and intolerance threatening human rights and democratic values in Europe. The members of ECRI were chosen for their recognised expertise in questions relating to racism and intolerance.

The task given to ECRI was to: review member States' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance and their effectiveness; propose further action at local, national and European level; formulate general policy recommendations to member States; and to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

One aspect of the activities developed by ECRI to fulfil its terms of reference is its country-by-country approach, which involves carrying out an analysis of the situation in each of the member States in order to provide governments with helpful and concrete proposals.

The procedure adopted for the preparation of country-specific reports can be summarised thus:

- a. The preliminary collection of information as well as the preparation of the texts of the preliminary draft reports are carried out in small working groups of ECRI. Preliminary sources of information used are wide-ranging, including, inter alia, replies provided by governments to a questionnaire sent out by ECRI, input from the relevant national members of ECRI, information on national legislation collected for ECRI by the Swiss Institute of Comparative Law¹, information from international and national non-governmental organisations, various publications and the media.
- b. ECRI examines and discusses the preliminary draft report on each country in plenary session and adopts a draft report.
- c. The report is sent to the relevant government for a process of confidential dialogue conducted through a government-appointed national liaison officer. The draft country report is re-examined and possibly revised in the light of the comments provided by the latter.
- d. The report is then adopted in its final form by ECRI in plenary session, and transmitted through the Committee of Ministers of the Council of Europe, to the government of the country in question. Two months after this transmission, the report is made public, unless the government of the country concerned expressly requests that it is not made public.

To date, six series of ECRI's country-specific reports have been made public, in September 1997, in March 1998, in June 1998, in January 1999, in March 1999 and in May 1999 respectively². A seventh series of country-specific reports was transmitted to the governments of the countries concerned in September 1999, and is thus now being made public³.

¹ The report prepared by the Swiss Institute (ref: CRI (98) 80), covering relevant legislation in member States of the Council of Europe is available on the web site www.ecri.coe.int and, in hard copy, from ECRI's Secretariat.

² The first six series comprise reports on Andorra, Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania,

The following report contains ECRI's analysis and proposals concerning Turkey.

It should be noted that ECRI is carrying out its country-by-country procedure by preparing reports for all member States of the Council of Europe. With this seventh series of reports, for which the procedure was completed by September 1999, ECRI has concluded its reports on all member States of the Council of Europe⁴.

The publication of this report represents the start of an on-going and active process of exchange between ECRI and the authorities of each of the member States, in order to identify solutions to the problems of racism and intolerance facing Europe. ECRI will also welcome the input of non-governmental organisations and other parties working in this field to ensure that its work is as constructive and helpful as possible.

As from 1999, ECRI has begun a follow-up procedure to its country reports, examining what action governments may have taken on the proposals they contained, up-dating their contents generally and focusing on specific issues of concern in greater depth. Some 10 countries will be addressed annually in this way, over the period 1999-2002.

Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, "The Former Yugoslav Republic of Macedonia", Ukraine and the United Kingdom.

³ Reports on Albania, Croatia, Cyprus, Moldova and Turkey.

⁴ Given that Georgia joined the Council of Europe recently (April 1999), the first report on this country will be produced later.

REPORT ON TURKEY⁵

Introduction

The Turkish Republic was founded in 1923 in the wake of the first World War and the collapse of the Ottoman Empire. The Lausanne Treaty of 1923 was the hallmark of the newly-emerging Turkey. Turkey was conceived as a secular State, where the concepts of unity and integrity are paramount. With a geographical location spanning two continents, Turkey takes part in all major European institutions. It was one of the founder members of the Council of Europe, is a member of NATO and OECD, and has a Customs Union with the European Union. Since the 1960s, many Turkish citizens have emigrated to Western European countries. These communities are often the victim of severe manifestations of racism and discrimination in their host countries. The Turkish authorities have been active on a European level to identify solutions to these and similar problems which are facing Europe today.

A strong sense of national identity reigns in Turkey, which may largely be explained by its history. The Ottoman Empire was considered a mosaic of different ethnic and religious groups. The identity of the Empire was determined by communal rights based on monotheistic religions and their denomination (the millet system), rather than on the notion of a Turkish nation; the idea of such a nation came to the fore only in the last century. Lost territories and large-scale population movements in the past have resulted in a strong emphasis in modern Turkey on the indivisibility and integrity of the Turkish State and nation.

Although no groups in Turkey have the status of minority groups on the basis of ethnic origin, the ethno-religious identity of non-Muslim groups, in practice Turkish citizens of Greek Orthodox, Armenian, Jewish and Bulgarian origin, is recognised by the Lausanne Treaty of 1923 (Section III, articles 37-44) and the Treaty of Friendship with Bulgaria of 1925. Today, these groups have become tiny communities. Turkish citizens are of many different ethnic origins; notably, a significant number of Turkish citizens are of Kurdish origin (approximately 10-20% of the population⁶). Despite the size of this group, Kurdish identity has no recognised status at the level of the State, and the Kurds, along with all other ethnic groups of Muslim religion, are not recognised as a minority. From the inception of modern Turkey, the question of how to approach the issue of Kurdish identity within the Turkish State has been problematic. For example, restrictions on the use of the Kurdish language still exist in some fields, although progress has been made in this respect in recent years.

Since 1984, a violent struggle has been waged in south-east Turkey between separatist Kurdish militants and the Turkish military forces. This conflict has led to an estimated 20,000-30,000 deaths, massive displacements, human rights violations and abuses, upheavals and grave economic consequences in this area, which is for the most part under a state of emergency.

⁵ Note: Any development subsequent to 5 February 1999 is not covered by the following analysis and is not taken into account in the conclusions and proposals.

⁶ Cf Encyclopaedia Britannica

Turkey does not appear to be the scene of large-scale or overt expressions of racism against individuals in the strictest sense of the term. However, one of the main challenges facing Turkey in the field of ECRI's concerns would appear to be the need to reconcile the strong sense of national identity and the wish to preserve the unity and integrity of the State with the right of different minority groups within Turkey to express their own sense of ethnic identity, for example through the maintenance and development of linguistic and cultural aspects of that identity.

Some of the key issues identified by ECRI as meriting particular attention include:

- the need to further acknowledge the cultural and linguistic diversity of different ethnic groups within the framework of Turkish society, and to allow for the free expression of such diversity by those who wish to define themselves on the basis of a common ethnic or cultural identity;
- the need to sign and ratify international conventions in the field of combating racism and discrimination as listed below;
- the need to monitor the new aspects of the phenomenon of migration into Turkey and to take appropriate measures to deal with the developing situation;
- the need to make appropriate legislative changes and to adopt a wide range of policy, educational and awareness-raising measures to promote tolerance in society as a whole;
- the need to safeguard and uphold human rights in the context of the fight against racism and intolerance, especially in those areas of the country under a state of emergency and with regard to the mainly Kurdish civilians of those areas.

I LEGAL ASPECTS⁷

A. International legal instruments

1. As regards international legal instruments of relevance to combating racism and intolerance, Turkey has ratified the ILO Convention concerning Discrimination in Respect of Employment and Occupation, the European Convention on Human Rights, the European Social Charter, the European Convention on the Legal Status of Migrant Workers, and the 1951 Convention relating to the Status of Refugees and the 1967 Additional Protocol thereto.
2. ECRI feels that Turkey should become Party to the UN Convention on the Elimination of All Forms of Racial Discrimination.
3. ECRI also encourages the Turkish authorities to sign and ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the UNESCO Convention against Discrimination in Education, the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities.

B. Constitutional provisions

4. The current Constitution of the Republic of Turkey dates from 1982 and was amended some years later. New amendments were made very recently (1995). The first three articles of the Constitution, which according to Article 4 cannot be amended, define the characteristics of Turkey as a unitary State. According to Article 2, the Republic of Turkey is a democratic, secular and social State, governed by the rule of law, bearing in mind the concepts of public peace, national solidarity and justice, respecting human rights, loyal to the nationalism of Atatürk and based on the fundamental tenets set forth in the Preamble. The Constitution (Article 3) underlines the indivisibility of the Turkish State with its territory and nation, and in Article 66 a Turk is defined as anyone bound to the Turkish State through the bond of citizenship.
5. Article 10 of the Constitution states that all individuals are equal before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion, group or class. The fundamental rights and freedoms safeguarded by the Constitution make no distinction between Turkish citizens and non-citizens; however, Article 16 provides that the fundamental rights and freedoms of non-citizens may be restricted by law in a manner consistent with international law – ECRI feels that such restrictions should be limited to specific political rights such as are customarily reserved for citizens of a given country, such as political and military appointments.
6. The Constitution makes possible a large number of limitations on the free exercise of fundamental rights which have been introduced with the aim of safeguarding, inter alia, public order, public interest and public morals (Article 13). Article 14 further prohibits what it terms abuses of fundamental rights and freedoms with certain, specified aims (inter alia, violating the indivisible integrity of the State with its territory and nation, creating discrimination on the basis of language, race, religion or sect or of establishing

⁷ A full overview of the legislation existing in Turkey in the field of combating racism and intolerance is provided in the publication CRI (98) 80, prepared for ECRI by the Swiss Institute of Comparative Law (see bibliography).

by any other means a system of government based on these concepts and ideas). One of the aims expressed in Article 14 of the Constitution is to prevent discrimination on ethnic or racial grounds. However, ECRI is concerned that the broad nature of possible limitations to fundamental rights and freedoms contained in the articles mentioned above, particularly taken together, may impose wide restrictions on non-violent action on the part of cultural or ethnic groups wishing to express their own identity.

Articles in the Constitution in which specific limitations are foreseen include Article 24 (religious expression), Article 27 (the dissemination of science and arts), Articles 26-28 (freedom of the press), and Article 31 (receiving of information). The combination of the above-mentioned provisions provides conditions in which a wide range of expressions or actions on the part of, inter alia, ethnic or cultural groups wishing to express their identity, can be legally prohibited by the State. ECRI can see possible dangers in such limitations.

7. As is the case with many other countries, Turkey is a country where several languages are spoken and where there is one official language. However, the Constitution in its Article 42 expressly prohibits the teaching in schools of another mother tongue than Turkish to Turkish citizens, except as provided for in international treaties (in practice, this refers to the Lausanne Treaty). ECRI strongly feels that this provision should be reconsidered and that the teaching and promotion in schools of mother-tongue languages other than Turkish should not be prohibited, although this does not of course imply that the teaching of the official language - Turkish - should not remain obligatory in school curricula.
8. The Constitution contains two relatively broad articles concerning political parties (Articles 68 and 69). More detailed provisions are found in the Act on Political Parties (No 2820, Official Gazette 24.4.1983). The Act contains provisions which are aimed at preventing discrimination on, inter alia, racial grounds and racism: for example, Article 83 prohibits political parties from activities which go against the principle of equality before the law. ECRI is concerned, however, that other provisions seem to restrict the possibility of groups within Turkey to engage in any sort of political formation promoting ethnic identity.

C. Criminal law provisions

9. Article 312 of the Criminal Code penalises “anyone publicly inciting the population to hatred based on differences of class, race, religion, belief or political regime” It also provides that if such incitement jeopardises public security the penalty will be increased. Article 175 provides for prison sentences for persons hampering religious worship or practices. Article 179 concerns the offence of deprivation of individual liberty and considers that deprivation of liberty based on religious or national purposes, or arising from differences in political or ideological or social opinions, as an aggravating circumstance.

- *Anti-Terror Law*

10. The 1991 Anti-Terror Law, amended in 1995, is widely and frequently used by the authorities. Following amendment, the first Section of Article 8 begins as follows: “No-one may engage in written and oral propaganda aimed at disrupting the indivisible integrity of the State of the Turkish Republic, country and nation, and meetings, demonstrations and marches with this aim may not be engaged in”. The definition of

terrorism in this Law is thus sufficiently broad to allow for the suppression of a wide spectrum of non-violent activities - including overt expressions of collective ethnic or cultural identities and expressions of, or support for, plurality - on the grounds that they are considered to constitute propaganda aimed at disrupting the indivisible integrity of the Turkish Republic. ECRI invites the Turkish authorities to consider whether more scope could be given to allowing non-violent expressions of plurality.

D. Civil and administrative law provisions

11. Turkey does not possess civil and administrative law provisions prohibiting discrimination in fields such as housing, employment or access to goods and services. With a view to elaborating a comprehensive legal framework against such discrimination, ECRI encourages the Turkish authorities to consider the introduction of such provisions.

- Law on associations

12. Article 4 of the law on associations prevents persons convicted of express incitement to hatred and enmity by using class, race, language, sect or religious differences, as defined in Article 312 of the Criminal Code, from founding an association.

Article 5 of the law on associations prohibits in its paragraph 2 the formation of an association with the express purpose of endangering or destroying the existence of the Turkish Republic whose characteristics are defined in the Constitution, by discriminating on the basis of language, race, class, religion, or sect. Paragraph 6 prohibits the formation of an association with the express purpose of claiming about the Turkish Republic that there exist in the country minorities on the basis of race, religion, sect, culture and language, or by protecting, developing or spreading languages and cultures other than the Turkish language and culture or by creating minorities or promoting that persons of a region, race, class, religion or sect are better than others. Article 6 contains some prohibition on the use of forbidden languages.

13. While recognising that some of the above-mentioned provisions provide grounds for the prevention of the formation of associations with racist or discriminatory aims, ECRI is concerned that they may also be unduly restrictive of the possibilities for different minority groups within Turkey to express their cultural and linguistic identity through the formation of associations, and feels that this situation should be remedied.
14. As regards Article 6 of the Law on Associations dealing with forbidden languages, ECRI is aware that there may be no formally-forbidden languages in Turkey today, but considers that legislation making possible the prohibition of any language should be removed.

- ***Declaration of religion***

15. All persons are obliged to enter their religion or faith into their family register and to include this information on their identity cards. The Constitutional Court has ruled that such a requirement does not constitute coercing belief. ECRI feels, however, that it would be desirable to discontinue the requirement of referring to religion on identity documents. This practice may, in certain circumstances, invite intolerance and discrimination even when members of minority religions are not recognisable on the basis of their appearance.

E. Specialised bodies

16. There are no specialised bodies in Turkey in the field of combating racism and intolerance. ECRI encourages Turkey to set up such a body in accordance with the principles laid down in ECRI's general policy recommendation N° 2 on specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance.

II POLICY ASPECTS

F. Reception and status of non-citizens

17. Turkey has ratified the 1951 Convention relating to the Status of Refugees, but has not lifted the geographical restriction as regards the granting of refugee status to persons other than those coming from Europe. However, Turkey has over recent years offered humanitarian aid to a large number of persons coming from Iran, to Iraqi Kurds and to other persons coming from Bulgaria, Afganistan and Kosovo. Nevertheless, the Government does not recognise non-European asylum seekers as refugees and requires that they register with the authorities within 10 days of entering the country. The Government then refers those applications which it considers bona fide to the UN High Commissioner for Refugees. Only very limited first asylum opportunities designed to allow non-European applicants time to be processed for onward resettlement are possible, and applicants whose requests are not passed onto the UNHCR may be subject to immediate expulsion. The authorities are apparently taking steps in co-operation with UNHCR to remedy such problems, with some positive results, and ECRI hopes that such efforts will continue in order to ensure that adequate and equal protection and guarantees are provided to all asylum seekers entering Turkey.
18. Turkey has no comprehensive immigration policy. Recent years have seen a rise in the number of illegal immigrants, often coming from Central and Eastern European countries but also originating from other areas. The incidence of illegal employment, including prostitution, is a matter of concern. ECRI feels that, given the rise of this new immigration into Turkey, measures should be taken to introduce an immigration policy and to ensure that immigrants, including illegal immigrants, are sufficiently protected from possible abuses.

G. Police training

19. Members of the police force receive general instruction in human rights and on the status of minorities in Turkey as part of their training at the Police Academy. However, grave problems of human rights abuses perpetrated by members of the police and security forces persist. Numerous cases of torture while in police detention are documented, and disappearances while under detention are still not uncommon.

Persons detained on suspicion of terrorist or separatist activities are particularly vulnerable to such abuses given the wide powers afforded to the security forces under the Anti-Terror Law; as mentioned previously, even non-violent expressions of support for plurality may fall under the scope of this law. For this latter reason in particular ECRI stresses that it is vital to take measures to investigate and punish any abuses, and encourages the Turkish authorities to continue and intensify steps already taken in this direction. ECRI also strongly encourages the Turkish authorities to increase and improve human rights training for police and security officials both during initial training and as an on-going practice.

H. School education

20. The religious minorities recognised by the Treaty of Lausanne have their own schools as well as other religious and social institutions. For example, the Armenian community has 19 schools, the Jewish community has three schools, and the Greek Orthodox community has a total of 26 schools. The curriculum in foreign language schools is closely controlled by the Ministry of Education.
21. Human rights education is compulsory in primary schools but an optional subject in secondary schools. ECRI congratulates the Turkish authorities on this provision and encourages them to extend further human rights education at secondary level, with a particular emphasis on the dangers of racism and intolerance.

I. Employment

22. The recent phenomenon of migrants arriving in Turkey from certain countries of Central and Eastern Europe may have implications for the incidence of discrimination on the labour market. Although little is currently known about the scale and features of this phenomenon, these migrants often find illegal employment and are paid lower rates than their Turkish counterparts. They would therefore seem to be particularly vulnerable to discriminatory practices and unacceptable working conditions. ECRI feels that the situation should be investigated and closely monitored.

J. Media

23. Although printed material in languages other than those of States officially recognised by Turkey is no longer prohibited, broadcasts in such languages remain illegal. ECRI feels that wider rights to use minority languages in the broadcasting media should be allowed.

K. Vulnerable groups

- *Effects of the conflict in South-East Turkey*

24. The continuing violent conflict in the south-east of Turkey has left the mainly Kurdish inhabitants of this area in a very vulnerable situation. The massive displacement of civilians away from their traditional village communities to an often marginal existence on the outskirts of overpopulated cities in other parts of Turkey has left many in a precarious situation. ECRI feels that additional steps should be taken to ensure that measures implemented to combat terrorism do not result in discriminatory treatment against the population of this region.

25. There have been in recent years some suggestions that the long-running conflict in the south-east of Turkey might provoke mistrust and discrimination against Turks of Kurdish origin. There have been some reports that the police in the western provinces chase persons who look or sound Kurdish from some towns, particularly in tourist areas. There are also suggestions that some employers may be unwilling to hire Turks of Kurdish origin, and that a climate of general mutual distrust has led to confrontations in some areas where Kurdish communities are settled. ECRI feels that the authorities should monitor the situation in this respect and take measures to counter any such manifestations of mistrust and discrimination, including in the field of awareness-raising among the general public.

- ***Minorities covered by the Lausanne Treaty***

26. As concerns the Lausanne Treaty, ECRI notes that the minorities affected by these provisions have been decreasing in recent years. For example, the Greek minority now numbers only around 4,000 members, compared to approximately 120,000 in 1927. ECRI suggests that the possible reasons behind such trends should be investigated, and appropriate measures taken if the decline in these groups is found to be connected to any discriminatory practices.

L. Pluralism

27. The Turkish State is based on the principle of equality before the law and constitutional citizenship, and ethnic background is not given any official recognition at the level of the State. Expression of ethnic identification is a subjective process, and individuals may or may not wish to express their ethno-cultural identity. There are indicators that ethnic or religious origin as such is not generally a factor which leads to individual disadvantage or discrimination in Turkey. However, forms of intolerance may also be manifested against groups and against the expression of their ethnic, cultural or religious background. ECRI is concerned that policies which attempt to resolve issues of ethnic differences by denying expressions of difference may be detrimental to members of ethnic groups who wish to express their own language, customs and sense of community publicly while still acknowledging their State citizenship and contributing as citizens to the society of which they are a part.
28. This concern appears to be particularly pertinent as regards expressions of ethnic identity which have been a long-standing point of contention: for example, the issue of Kurdish identity is currently a subject of much public discussion. Generally, the approach taken in the past has been to suppress such expressions. Between 1983 and 1991 publications or communications in languages other than those of States officially recognised by Turkey were prohibited. Mother tongue teaching in schools in a language other than Turkish is still prohibited by law⁸ and broadcasting in minority languages is forbidden. The 1991 repeal of the law prohibiting publications or communications in ethnic languages represents a step in the right direction. However, it is reported that materials dealing with Kurdish history, culture and ethnic identity continue to be subject to confiscation and prosecution under the Anti-Terror Law, and that police intervention in public events relating to the Kurdish culture is not uncommon.

⁸ NB This prohibition does not cover schools for those minorities recognised under the Treaty of Lausanne and the Treaty of Friendship with Bulgaria.

29. ECRI feels that a more open attitude towards cultural and linguistic plurality within Turkey might contribute to resolving some of the problems faced by the country today by allowing more space for a non-violent public as well as private expression of cultural and ethnic identity.

M. Other areas

30. As regards tolerance between religious groups, some incidents of attacks on Christian establishments have occurred in recent years. The perpetrators were found and duly prosecuted. Anti-Semitic sentiments are sometimes expressed by Islamist politicians and in the Islamic media. Such sentiments are usually countered by the mainstream press, and initiatives such as the 1995 Year of Tolerance have been undertaken by the Turkish authorities. ECRI feels that such initiatives should be continued and built upon in order to counter any possible sentiments of anti-Semitism.

General data as supplied by national authorities

For reasons of consistency, ECRI, in its CBC reports, has, in this box, reproduced statistical data only from the replies of Governments to ECRI's questionnaire. The questionnaire was sent to the Turkish government on 13 July 1994.

ECRI accepts no responsibility for the data below.

Non-Muslim minorities: 50 000 Armenian Christians; 27 000 Jews; 4 000 Greek Orthodox

Population of Turkey: 60528,3 thousand (1994). This figure is taken from the Council of Europe publication "Recent demographic developments in Europe (see bibliography)

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