

APPENDIX

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Turkey

ECRI wishes to point out that the analysis contained in its report on Turkey as indicated on page 7, is dated 5 February 1999, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, a national liaison officer was nominated by the authorities of Turkey to engage in a process of confidential dialogue with ECRI on its draft text on Turkey and a number of his comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the national liaison officer expressly requested that the following observations on the part of the authorities of Turkey be reproduced as an appendix to ECRI's report.

OBSERVATIONS PROVIDED BY THE TURKISH AUTHORITIES CONCERNING ECRI'S REPORT ON TURKEY

I received your letter of 27 May 1999 together with the new version of the draft text CRI-CBC(99)1 which bears a few cosmetic alterations only.

I must admit that as an academician I was somewhat frustrated to see that my observations based on historical facts and on sociological analysis of the Turkish society have found no place in the ECRI's text. If this had been done, one could have hoped that the relations between Turkey and ECRI would've perhaps profited from the hope of a better and mutual understanding in the future.

I would therefore request that the observations attached to this present letter be appended in full, together with this letter of mine, to the final report on Turkey.

SECTION I:

A SOCIO-HISTORICAL NOTE ON

THE HUMAN RIGHTS SITUATION IN TURKEY

I - Turkish Republic is the last national state born out of the remnants of the Ottoman Empire at the end of World War I.

This transformation was the outcome of a nationalist movement (1919-22) led by M. Kemal [Atatürk], a bright Ottoman army general raised in Western tradition.

As would be the case some three decades later (the '50s and the '60s) with practically all the Western-educated civilian and military intellectuals of the colonies and/or the lesser developed countries, the primary aim of M. Kemal was to save Turkey from imperialist occupation. He achieved this in August 1922, founded the internationally recognized new state by signing the Lausanne Peace Treaty of 24 July 1923, and he immediately embarked on his ultimate target, a full scale Westernization program, a true prototype of what all the nationalist leaders would eventually baptize "Modernization" after the '50s.

II - In practice, this program¹ consisted of a state and nation building process which aimed at nothing less than building a replica of the contemporary Western society with its infrastructure (private

¹ The main steps of this Westernization program were as follows:

- Opening of the Grand National Assembly (23 April 1920).
 - Art. 1 of the first Constitution declared: "The sovereignty unconditionally belongs to the nation. The system of administration is based on the people administering their own destiny." (20 January 1921).
 - Abolition of the Sultanate by decision of the Grand National Assembly (1 November 1922).
 - Declaration of the Republic (29 October 1923).
 - Three revolutionary laws in one day: a) Abolition of the Caliphate, b) Abolition of the Ministry of Shariah and of Religious Foundations and its replacement by the Directorate of Religious Affairs, c) Closure of the religious schools (medresseh), attachment of all schools to the Ministry of National Education (3 March 1924).
 - Abolition of religious courts, a deadly blow to orthodox Islam (8 April 1924).
 - Closure of tekkes (dervish lodges), a serious blow to heterodox Islam (30 November 1925).
 - Adoption of Swiss Civil Code and 1 July 1926: Adoption of Italian Penal Code. This meant a definite rupture with the Islamic law; the end of the multi-legal Ottoman system; and introduction of the European secular law system based on rationalism, national sovereignty, and liberalism. This legal reform was a major instrument of social transformation used by the Kemalist Revolution From Above (17 February 1926).
 - Abolition of the Arabic alphabet and adoption of Latin alphabet (1 November 1928). This meant a deadly blow to the hodjas' monopoly on reading & writing and its outcome (and its ultimate purpose) was to sever ties with the Ottoman and Islamic cultural past.
 - The provision of the 1924 (second) Constitution that declared "The religion of Turkey is Islam" was deleted (10 April 1928).
- "Secularism" was included in the program of the Republican People's Party as one of the "Six Arrows" (10 May 1931). (The other "arrows" were republicanism, nationalism, populism, statism (etatism) and reformism).
- "Secularism" entered in the Constitution (Art.2) along with the other "arrows" (5 February 1937).

entrepreneurship with a solid state guidance, patronage and partnership) and its superstructure (national sovereignty, secularism, rationalism, democracy, etc.).

The process which aimed to create from scratch what the Western world put some 800 years to build by evolution could not, of course, be realized easily and thoroughly. This required nothing less than the Jacobenist notion of "Revolution From Above", a somewhat naturally (and necessarily) coercive anti-thesis of the basically feudal Turkish society of the '20s and '30s.

Now that we take a retrospective look on the period starting from 1946 (the first multi-party elections in Turkey) and reaching the threshold of the 21st century, we can detect several elements that jeopardize secularization and democratization in Turkey:

III – Firstly, the nation-building process of this Revolution From Above unavoidably triggered a strong reaction with an Islamic showcase from within and from without, which, starting from the adoption of multi-party system, caused in time a dilution of the Kemalist Westernizing reforms.

This reaction is still going very strong some 75 years after the advent of Kemalism. Now that Islamic fundamentalism has reached its climax fortified by an xenophobic anti-Western movement, it influences certain circles in Turkey which try to hinder all efforts to make Turkey an integral part of the Western family of nations by labeling "foreign and Judeo-Christian intervention" many initiatives of democracy and human rights. Any Western style reformist initiative is severely criticized by this movement which appeals to the religious feelings of the masses and to their "nationalist" tendencies and which easily gets meaningful support from these masses.

One of the targets of Kemalism was the building of a new and strong "Turkish"² national identity. However, Atatürk's principle of nationalism did not bear ethnic connotations. His nationalism embraced all peoples of the former Empire, for it was an "umbrella concept" vis-à-vis citizenship and it was independent of racial origins. In effect, it was a uniting element rather than a dividing one. Yet, this neo-nationalism, which was not built upon ethnicities was unavoidably resented by some elements in and out of Turkey.

IV – Secondly, even after the fall of the Soviet Union, "national security" is a very effective concept in a country as delicately situated in this geo-strategic part of the World as Turkey.

The separatist terror (which the draft report seems to totally overlook, since it chose to make not a single reference to such words as "terror"³ and "PKK") that has been going on in southeastern part of

² Stress upon a national identity, sine qua non outcome of any nationalism, had several sources in Turkey:
- First and foremost of all, reaction to the Ottoman identity which openly degraded Turkishness. Atatürk's mottos like "A Turk is worth the whole world", far from being expressions of a racism that Ottoman Empire or Turkey never experienced, should be interpreted as being produced to heal the age-long wounds of this Ottoman degradation and of European slogans like "The Sick Man of Europe", and to build a "positive identity" for the new nation.
- An endeavor to solve the great contradiction between Kemalist revolution's first target (independence from the West) and its second target (Westernization) by again building a positive identity the backbone of which was not a racial contention like ethnic Turkishness but a surprisingly internationalistic concept: "Turkey is a secular and Western country" (of course, the term "Western" was seldom pronounced and was rather expressed as "contemporary civilization" -Muasir Medeniyet). This truly radical approach unseen in colonial revolution especially in the case of Africa was made possible especially by the fact that there was no "color wall" between the Turks and the Western nations.
Kemalism had definitely chosen the territorial (French or Renan type) criterion of nation formation against the blood (German type) criterion. Atatürk's most important motto: "How happy is one who says I'm a Turk" instead of: "... who is born a Turk" or more simply "... who is a Turk" means that Kemalism had openly opted for a "subjective definition" of identity and this was anyway the only feasible thing in Turkey.

³ We find it worthwhile to remind that one of the member countries of the Council of Europe started in late 80s for the first time since 1967 at least, a very fruitful security cooperation with its neighbor having an ethnic terror problem when its own nationals belonging to the same cross-frontier ethnic group effectively set up another terror organization (Iperterra) of the said cross-frontier ethnic group.
Since 1984, the terror acts of the PKK, regarded in many Western countries a terrorist organization and outlawed in France and Germany, and also identified as one of the 30 main terrorist organizations in the world by the US State Department, have brought about the loss of lives of an estimated 30.000 people among which were over 5000 civilians, including women, children, infants and the elderly, most of them of Kurdish origin. PKK's activities are also depicted in detail in the annual reports of the US State Department, "The Patterns of Global Terrorism", and of the German Federal Office for the Preservation of the Constitution, "Bundesverfassungsschutz".

the country for not less than fifteen years has no doubt made a negative contribution to the historical trauma summarized in the Draft Text on Turkey as: "Lost territories and large-scale population movements in the past have resulted in a strong emphasis (...) on the indivisibility and integrity of the Turkish State and nation".

The outcome of the latest (18 April) elections can be cited as a quite significant case in point especially when the recent bombings and the suicide-attacks on the shopping-malls by the PKK militants are considered.

V – Thirdly, external efforts to coerce Turkey in the field of human rights are automatically associated; in the minds of the public opinion and, to a certain degree, of the elite; with the bitter memories of great power interference in the later periods of the Ottoman Empire.

Again, the message brought by the 18 April election results give a lot of food for thought in this matter.

VI – Fourthly, one of the observations of the Draft Text on Turkey is as follows: "... 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 (...)"(page 2). It is clear that the Draft Text on Turkey is thereby referring to Turkish citizens of Kurdish descent.

a) Recognizing the ethnic identity of Kurds in Turkey and especially their status as a minority is no simple matter for a number of reasons.

Historically, the Kurds have never been recognized as an ethnic minority simply because they were Muslim, the religion of the administrators of the Empire⁴, and the impact of the Millet System dating from 1454 is still very strongly prevalent today. Psychologically, the nationalist Kurds today categorically refuse to be recognized as an ethnic minority, because they consider themselves one of the founding peoples of the Turkish Republic.

Finally and legally, the Lausanne Treaty (arts. 38-44), the only international legal instrument on this matter recognizes the religious (in practice, the ethno-religious) minorities of the non-Muslims only, therefore excluding all others, the Kurds included.

b) On the other hand, the assertion of the Draft Text on Turkey about "the strong sense of national identity in Turkey" (page 1, para. 2) needs further analysis.

To be strong, a national identity must enjoy a strong sense of national consciousness. The latter is strong only when the people enjoy positive factors like common prosperity and common characteristics producing a society more or less uniform, etc.

Challenged by an Islamic fundamentalism which tries to bring a Muslim identity to the fore instead of its Turkish and Western identity, drained by a precarious economic situation, and constantly provoked by indiscriminate acts of terror resulting in thousands of dead and wounded, one must rather admit that the situation of the people in the street leaves a lot to be desired.

In this respect, it's worth remembering the well known contradiction between the national consciousness and the ideology of nationalism: Their strengths are inversely proportional; when the former is strong, the latter needs not to be rigid and vice-versa. In such a situation a "separate" Kurdish identity, beside having no historical, psychological, and legal basis, appears more than dangerous to the people in the street and further awakens expressions of Turkish ethnic nationalism as

⁴ The Kurds were placed in the highest echelons of the Sublime Porte from the Presidency of the State and of the Council of State (Seyyid Abdülkadir; executed in 1925 for his participation in the uprising) to the Presidency of the Martial Court ("Nemrut" Mustafa Pasha who pronounced the death sentence in absentia of M. Kemal).

witnessed, again, by the 18 April elections. The claim of the fundamentalist political parties to a "common" Muslim identity is also one of the reasons why they gather significant votes in elections.

c) Finally, the fact that PKK terrorists have been upholding arms for the last fifteen years and sending home approx. 30.000 coffins makes it difficult to place claims for a "separate" Kurdish identity in the context of human, cultural, and linguistic rights only. People strongly and sincerely fear that these rights would only serve as a stepping stone to separatism.

In this atmosphere it will be conceded that the above mentioned reconciliation is not as easy as it looks on human rights documents.

VII - Last, but not the least, Turkey is one of these countries hit by the chaos of globalization while trying to accede, by a Revolution From Above, to a modern structure. In this case, the popular reaction triggered by the incomplete Revolution mentioned above is further adjoined and strengthened by a reaction to globalization and to its destructive effects: unemployment, inflation, exodus to large cities, and the multiple crises resulting thereof and all sorts of identity problems to start with the concept of "upper-identity".

In this inauspicious conjuncture human rights endeavors of the Westernizing elite are perceived by the masses as trivial, if not dangerous, pseudo-problems. Therefore, the said elite is deprived of a most precious popular support. as a result, the Westernizing reforms proposed by the "appointed" are well head of the "elected". We think that this particular point is well overlooked by the critics of Turkey on every level⁵.

SECTION II:

A NOTE ON THE DRAFT TEXT ON TURKEY

The section above ("A Socio-historical Note on Human Rights Situation in Turkey") was intended for the attention of individuals or organizational bodies criticizing Turkey or simply dealing with it in any sense.

On the other hand, we would like to express our firm belief that it does not concern the field of interest of ECRI per se for two obvious reasons:

1) "Racism", the first concern of the ECRI mentioned in its official name, is thoroughly out of question when Turkey is considered. We believe that Turkey could possibly be criticized with practically anything but racism, and that the authors of the Draft Report on Turkey have unfortunately misused their mandate.

The sentence of the Draft Text on Turkey which declares: "Turkey does not appear to be the scene of large or overt expressions of racism against individuals in the strictest sense of the term" (Draft Text on Turkey, p. 2, para. 3) is, in the slightest possible terms, unfair to Turkey, a country that, unlike a number of Western countries, has never experienced racism.

If this were not the case, the authors of the Draft Text on Turkey would have mentioned at least one single current expression of racial discrimination in Turkey defined as "discrimination based on race, color or ethnic origin" in the international convention on the elimination of all forms of racial discrimination.

In any case, we are of the opinion that ECRI, were it convinced that Turkey appears to be the scene of infinitesimal or latent expressions of racism against individuals in the slightest sense of the term, should not refrain from expressing it openly in a confidential text.

⁵ The latest example of this will for further reform is the speech by the President of the Constitutional Court Mr. Ahmet Necdet Sezer on 26 April 1999 on the occasion of the 37th foundation of this institution.

We are of the opinion that the writing of this Draft Report does not constitute for its authors an occasion to scold or even less to punish a member state on human rights matters, but to inquire whether or not racism or related intolerance exists in the said member country.

2) "Intolerance", the second concern of the ECRI mentioned in its official name, does in no way refer to "all forms of intolerance". Intolerance in this instance is limited to racism & related intolerance only.

It goes without saying that Turkey, possibly along with a number of Western countries, could be analyzed from the point of view of intolerance per se. It could even be conceded that the draft report made reference to some points to which Turkey will no doubt pay particular attention in the very near future.

But this would certainly enter in the field of interest of a body other than ECRI. We hope it will be agreed that general problems of human rights do not concern the jurisdiction of this Commission.

On the other hand, in case ECRI decided that Turkey could be held responsible for intolerance related to racism, anti-Semitism, and xenophobia, i.e. human rights violations concerning one particular group only, we would like to kindly suggest that clear cases of this should have been expressed in the Draft Text on Turkey, while none is detectable in the said document which seems to have been written to fill in the vacuum created by a total absence of any evidence to the contrary.

3) There is one further comment that we would like to make on the overall philosophy of the Draft Text on Turkey.

The draft places strong emphasis on the "lower-identities" and their expression in Turkey but does not seem to pay enough attention to the concept of "upper-identity".

Turkish nation consists of different groups, Kurds being one of them. Being "a Turk" does not refer to membership in the largest of these ethnic groups, i.e. the Turkish ethnic group, but to an upper identity otherwise expressed as "Turkish citizenship".

The latter concept in fact refers to an all-embracing legal status encompassing, besides other ethnic origins, those of Kurdish origin, and granting equal rights and freedoms under the guarantee of the Turkish constitution.

We would like to kindly remind that the Draft Text on Turkey should be reconsidered in a spirit that concedes the importance it deserves to the notion of upper identity without which no state, even the strongest, could survive.

SECTION III :

SUGGESTIONS ON THE REDACTION OF CERTAIN HUMAN RIGHTS ALLEGATIONS ON TURKEY

We strongly insist that allegations made in the Draft Text on Turkey in no way concern ECRI's particular mandate.

However, we would like to seize this opportunity to make some corrections to the present text in the hope that this Commission will take note as to avoid the repetition of the same in its future work

Please find below the said corrections and suggestions:

Page 1, third para., last line: "notably, a significant number of Turkish citizens are of Kurdish origin (approximately 10-20% of the population). Despite the size of this group, Kurdish identity has no recognized status at the level of the State, and the Kurds are not recognized as a minority." should read: "including those of the Kurdish origin which, along with all other ethnic groups of Muslim religion, has no legal recognized status at the level of the State according to the Peace Treaty of Lausanne of 1923."

Censuses in Turkey do not count people on the basis of their ethnic or racial origins and no statistical methods are used to categorize the population along ethnic lines. For this reason it is difficult to give accurate estimates on the size of different groups in Turkey.

On the other hand, the present wording of the Draft Text on Turkey gives the erroneous impression that the Kurds are the only group that has no legal recognized status at the level of the State.

Page 2, first para., last sentence: "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" should read: "Notably, the use of the Kurdish language was from time to time restricted in a number of fields; today although the only official language continues to be Turkish, progress has been made in this respect in recent years. Printing material in Kurdish exists and a number of radio and TV channels broadcast music programs in this language."

Page 3, para. no. 5 should be deleted. The contention that restriction of some rights of non-citizens "should be limited to specific political rights such as are customarily reserved for citizens of a given country, such as political and military appointments" has no legal basis in international law.

As a matter of fact, international law does not necessarily foresee equal rights for non-citizens, other than fundamental rights and freedoms, in such fields as ownership of immovable property, employment in certain sectors, professions and arts, entry to and residence in the country, working permit for foreign corporations, etc.

Page 5, para. no. 11 should be deleted. There has never been in Turkey any need for such law provisions because, as already expressed in section I of this document, racial discrimination is nonexistent in Turkey. Promulgation of any such provisions would suggest that there are such discriminations in the country.

In the present setting, this would be tantamount to prohibiting the shooting of kangaroos in Turkey.

Page 6, para. no. 17, line 4: "...offered humanitarian aid... to Iraqi Kurds" should read: "...offered humanitarian aid to 10.302 persons from Iran between 1987 and 1998 and also to Iraqi Kurds whose number amounted to 51.508 in 1988 and to 460.370 in 1991⁶".

Page 6, para. no. 17 line 11: "The authorities are...such problems..." should read: "The authorities are taking steps in co-operation with UNHCR to remedy such problems; only 2.400 among 11.169 non-European refugees that asked for asylum have been refused between 1994 and April 1999, and ECRI hopes..."

We are of the opinion that this picture, especially compared to the number of refugees accepted by Western countries during the same periods, is more than satisfactory.

Page 8, para. no. 24: "The massive displacement of civilians away from..." should read: "The massive displacement of civilians as a consequence of the PKK terrorism away from..."

There was no displacement of civilians prior to 1984, i.e., the beginning of the PKK terror.

On the other hand, a "Return to the Village" project has been installed and until now huge sums have been paid to displaced persons in damages.

⁶ To these figures the following should also be added: From Bulgaria: 310.000 (in 1989), from Afghanistan: 2.863 (1987-1998), and from Kosovo: 15.428 (as at 12 May 1999).