

# Third report on Turkey

Adopted on 25 June 2004

Strasbourg, 15 February 2005



For further information about the work of the European Commission against Racism and Intolerance (ECRI) and about the other activities of the Council of Europe in this field, please contact:

Secretariat of ECRI  
Directorate General of Human Rights – DG II  
Council of Europe  
F - 67075 STRASBOURG Cedex  
Tel.: +33 (0) 3 88 41 29 64  
Fax: +33 (0) 3 88 41 39 87  
E-mail: [combat.racism@coe.int](mailto:combat.racism@coe.int)

Visit our web site: [www.coe.int/ecri](http://www.coe.int/ecri)

## TABLE OF CONTENTS

<b>FOREWORD .....</b>	<b>5</b>
<b>EXECUTIVE SUMMARY.....</b>	<b>6</b>
<b>I. FOLLOW-UP TO ECRI'S SECOND REPORT ON TURKEY .....</b>	<b>7</b>
INTERNATIONAL LEGAL INSTRUMENTS .....	7
CONSTITUTIONAL PROVISIONS AND OTHER BASIC PROVISIONS.....	8
CRIMINAL LAW PROVISIONS .....	9
CIVIL AND ADMINISTRATIVE LAW PROVISIONS.....	11
ADMINISTRATION OF JUSTICE .....	12
SPECIALISED BODIES AND OTHER INSTITUTIONS .....	13
EDUCATION AND AWARENESS-RAISING .....	13
RECEPTION AND STATUS OF NON-CITIZENS .....	14
- Immigration .....	14
- Asylum-seekers and refugees.....	16
- Trafficking in human beings .....	17
ACCESS TO PUBLIC SERVICES .....	18
ACCESS TO EDUCATION .....	18
VULNERABLE GROUPS .....	20
- The Kurds .....	20
- The Roma .....	23
- Minority religious groups .....	23
ANTISEMITISM .....	25
MEDIA .....	26
CLIMATE OF OPINION .....	27
CONDUCT OF LAW ENFORCEMENT OFFICIALS .....	27
MONITORING THE SITUATION .....	28
<b>II. SPECIFIC ISSUES.....</b>	<b>29</b>
THE NEED TO CREATE A SPECIALISED BODY TO COMBAT RACISM AND RACIAL DISCRIMINATION .....	29
THE IMPLEMENTATION OF REFORM PACKAGES IN THE FIELD OF COMBATING RACISM ..	31
<b>BIBLIOGRAPHY .....</b>	<b>33</b>



## **Foreword**

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

*One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.*

*The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4-5 year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.*

*The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.*

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

*ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to propose, if they consider it necessary, amendments to 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 report of ECRI.*

***The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 25 June 2004 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.***

### ***Executive summary***

Since the publication of ECRI's second report on Turkey, progress has been made in a number of the fields covered in the report. Turkey has ratified several human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination. Major constitutional and legislative reforms have been introduced, aimed at reinforcing fundamental rights and freedoms and combating racism and racial discrimination more effectively. There has been some progress as regards freedom of expression, particularly in languages other than Turkish, freedom of assembly and freedom of association for members of ethnic and religious minority groups. Officials have been given training in human rights and local human rights bodies set up. In addition, provisions prohibiting discrimination in employment and introducing a sharing of the burden of proof in this area have been incorporated into the Labour Code.

However, a number of recommendations made in ECRI's second report have been implemented only partially or not at all. Despite the reforms, there are still some gaps in the Constitution and in criminal, civil and administrative law as regards action against racism and racial discrimination. It appears that Article 312 of the Criminal Code prohibiting racial hatred is not always used to proper effect. There is still room for improvement in the matter of religious freedom, in particular as regards removing the reference to religion on identity cards and abolishing compulsory religious education in schools. Although progress has been made in the fight against torture and impunity, some members of minority groups, in particular Kurds and immigrants, are allegedly subjected to ill-treatment by law-enforcement officials. Kurds, in particular those who have been displaced within the country, encounter major problems related to the armed conflict in the South-East. No sanctions have been taken against intolerant expressions and acts directed at minority groups by sections of the media and members of the public. There is still no national specialised body to combat racism and intolerance.

In this report, ECRI recommends that the Turkish authorities take further action in a number of areas. It calls, *inter alia*, for a strengthening of constitutional, criminal, civil and administrative provisions to combat racism and racial discrimination. It emphasises the need to reinforce respect for the rights of immigrants, irrespective of their legal status, asylum seekers, refugees and victims of trafficking in human beings. It calls for action to resolve the problems facing the Kurds, especially those who have been displaced within the country, and also the Roma and minority religious groups. It recommends: alerting officials, the media and the general public to the need to combat racism and racial discrimination; monitoring the situation as regards action against racism; and setting up a national specialised body to combat racism, partly so that it can perform this awareness-raising and monitoring function.

## I. FOLLOW-UP TO ECRI'S SECOND REPORT ON TURKEY

### International legal instruments

1. In its second report on Turkey ECRI recommended that the Turkish authorities sign and ratify Protocol No.12 to the European Convention on Human Rights (ECHR), ratify the International Convention on the Elimination of All Forms of Racial Discrimination and make the declaration under Article 14 of this Convention on consideration of individual communications by the Committee for the Elimination of Racial Discrimination. ECRI recommended ratification of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. It also recommended that the Turkish authorities sign and ratify the UNESCO Convention against Discrimination in Education, the European Charter for Regional or Minority Languages, the Framework Convention for the Protection of National Minorities, the Convention on the Participation of Foreigners in Public Life at Local Level and the European Convention on Nationality.
2. ECRI is pleased to learn that since the adoption of its second report Turkey has signed and ratified a large number of treaties in the area of human rights. Turkey ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 16 September 2002. It has not yet made the declaration under Article 14. It signed Protocol No.12 to the ECHR on 18 April 2001. The Turkish authorities have expressed their intention of ratifying the protocol, although they have not yet set out a timetable for doing so.
3. Turkey ratified the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights on 23 September 2003. However, ECRI notes that Turkey made a reservation in respect of Article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities<sup>1</sup>. Under the terms of the reservation, this provision is to be interpreted and applied in Turkey in accordance with the relevant provisions and rules of the Constitution and the Treaty of Lausanne of 24 July 1923. Turkey also made a reservation in respect of Article 13 of the International Covenant on Economic, Social and Cultural Rights, which provides for the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions and for the liberty of individuals and bodies to establish and direct educational institutions under certain conditions. According to the reservation, these provisions must be applied in conformity with the Constitution.
4. The Turkish authorities have informed ECRI that they are considering ratifying the Revised Social Charter that they signed on 6 October 2004, and accepting the provisions of the European Social Charter that they had initially excluded. They are also considering the possibility of acceding to the Convention on the Participation of Foreigners in Public Life at Local Level and the European Convention on Nationality, but there remain some legal obstacles to overcome. ECRI is not aware of the Turkish authorities' intentions with regard to the other instruments listed above.

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<sup>1</sup> Article 27 of the International Covenant on Civil and Political Rights: "In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

5. To date, Turkey has not signed either the Convention on Cybercrime or its Additional Protocol on the criminalisation of acts of a racist or xenophobic nature committed through computer networks. Turkey signed the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families on 19 January 1999, but has not yet ratified it.

#### **Recommendations:**

6. ECRI recommends that the Turkish authorities ratify Protocol No.12 to the ECHR, which provides for a general prohibition of discrimination, as soon as possible. It recommends that they make the declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, empowering the Committee for the Elimination of Racial Discrimination to receive individual communications. ECRI asks the Turkish authorities to consider withdrawing their reservations in respect of Article 27 of the International Covenant on Civil and Political Rights and Article 13 of the International Covenant on Economic, Social and Cultural Rights.
7. ECRI recommends that the Turkish authorities sign and ratify the UNESCO Convention against Discrimination in Education, the European Charter for Regional or Minority Languages, the Framework Convention for the Protection of National Minorities, the Convention on the Participation of Foreigners in Public Life at Local Level and the European Convention on Nationality.
8. ECRI recommends that the Turkish authorities ratify the Convention on Cybercrime and its Additional Protocol on the criminalisation of acts of a racist or xenophobic nature committed through computer networks. It recommends that the Turkish authorities ratify the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

#### **Constitutional provisions and other basic provisions**

9. In its second report ECRI expressed the fear that the wide scope of limitations on fundamental rights and freedoms provided for in Articles 13, 14, 26, 27 and 28 of the Constitution makes it possible to impose wide restrictions on individuals' non-violent expression of their ethnic and cultural identity.
10. A thorough overhaul of the Turkish Constitution was effected in October 2001, particularly with a view to strengthening fundamental rights and freedoms. A further revision of ten articles took place in 2004. The reform of the Constitution was accompanied by seven packages of legislative reforms chiefly designed to reflect the basic amendments to the Constitution and thus to extend rights and freedoms in Turkey. ECRI is pleased to learn that Articles 13 and 14 on the restriction of fundamental rights and freedoms have been amended to bring them more closely into line with the provisions of the ECHR. Article 26 on freedom of expression no longer prohibits the use of a language other than Turkish to express and disseminate ideas. The provision of Article 28 on the freedom of the press to the effect that nothing may be published in a language prohibited by law has been repealed<sup>2</sup>. These amendments lift a major obstacle

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<sup>2</sup> See below, "Media".



to the expression of the ethnic and cultural identities of everyone living in Turkey, a development that ECRI welcomes.

### **Recommendations:**

11. ECRI encourages the Turkish authorities to implement the new provisions of the Constitution, particularly Articles 13, 14, 26 and 28, in full conformity with the case-law of the European Court of Human Rights and ensure that the amendments designed to broaden recognition of freedom of expression are reflected in legislation, regulations, court case-law and administrative practice.
12. ECRI encourages the Turkish authorities to take account of its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination in any process for revising the Constitution and related legislation. It emphasises that the Constitution must enshrine the principle of equal treatment, the commitment of the state to promote equality and the right of individuals to be free from discrimination on grounds such as "race", colour, language, religion, nationality or national or ethnic origin.

### **Criminal law provisions**

13. In its second report ECRI expressed concern that Article 312 of the Criminal Code, which prohibits incitement to hatred, does not apply in practice to oral, written or other expressions targeting minority groups. It urged the authorities to pursue a more active policy in this respect, notably by raising the awareness of those involved in the application of this criminal law provision of the need to take seriously all instances of incitement to hatred.
14. ECRI notes that Article 312 of the Criminal Code has been amended, restricting the prohibition of incitement to hatred to cases where it jeopardises public order. According to many sources, incitement to racial hatred occurs in public and is even reproduced in the media. Moreover, Article 312 apparently continues to be used without real justification by certain public prosecutors particularly in order to prosecute members of human rights NGOs or personalities expressing "pro-Kurdish views". However, it is true that the courts increasingly acquit persons wrongly prosecuted on the basis of this provision. The Turkish authorities have informed ECRI that in July 2004, the Court of Cassation (8<sup>th</sup> Criminal Chamber) quashed a decision of the Istanbul State Security Court which had interpreted Article 312 in a manner which violated the right to freedom of expression. A few days later, the same Chamber applied Article 312 to a case concerning a person who had made racist comments against Kurds, by holding that this was a case of discrimination and incitement to hatred against "citizens of Kurdish identity". In two other cases, a Prosecutor in Istanbul instituted legal proceedings under Article 312, against two people who had made antisemitic statements. ECRI welcomes these latest developments as they respect the real purpose of Article 312 which is to punish racist remarks so as to show that they cannot be tolerated in a pluralist democratic society.
15. ECRI notes with satisfaction that since Autumn 2003, Turkish Judges and Prosecutors, notably those working in the State Security Courts (which are now abolished) and the Court of Cassation, have been attending training courses on

international and European Human Rights standards, including on the European Convention on Human Rights.

16. ECRI notes that a new criminal code was adopted on 26 September 2004. It notes with satisfaction that this code contains provisions which are relevant to the fight against racism, notably one provision which prohibits genocide and crimes against humanity. Moreover, article 122-1 now provides that a six months to one year sentence and a fine shall be meted out to anyone who discriminates on the grounds of language, race, colour, religion or sect in the following areas: the sale or transfer of goods or services, employment, the provision of food, access to services which are available to the public and the exercise of an economic activity.
17. In its second report, ECRI stated its opinion on Article 5 of the Associations Act, which prohibited associations whose purpose was to “claim that minorities based on class, racial, linguistic, religious, or regional differences exist on the territory of the Republic of Turkey, or create minorities by protecting, promoting, upholding or spreading languages and cultures other than the Turkish language and culture”. ECRI considered that this law excessively restricted the expression of ethnic and cultural identity in Turkey. The Associations Act has been substantially redrafted with a view to greater freedom. In particular, Article 5 has been amended and henceforth prohibits associations whose purpose is to “create forms of discrimination on the grounds of race, religion, sect or region or create minorities on these grounds, and destroy the unitary structure of the Republic of Turkey”. However, it would not seem easy to distinguish between associations which *claim that* minorities *exist* (previous wording) and those whose purpose is to *create* minorities. Furthermore, it is not easy to ascertain what is understood by “forms of discrimination on the grounds of religion or region”, for example.
18. ECRI welcomes the amendment of Article 6, which prohibited associations from using any language other than Turkish, both orally and in writing, including at private meetings of members of the association. The requirement that Turkish be used is now confined to written communications with the authorities. However, ECRI notes with concern that the prohibition on speaking a language other than Turkish at public political meetings is maintained in the Political Parties Act and that criminal proceedings are still brought on that basis. Generally speaking, ECRI welcomes the progress made in terms of freedom of association, such as the fact that Turkish associations are allowed to join international organisations or take part in international activities without having to apply for prior authorisation.
19. In its second report ECRI recommended that the Turkish authorities provide for an aggravating circumstance in the event of racist motives in respect of all ordinary offences. The Criminal Code remains unchanged on this point.

### **Recommendations:**

20. ECRI urges the Turkish authorities to continue their efforts to ensure that Article 312 of the Criminal Code prohibiting incitement to hatred is applied for the purpose of punishing racist statements in compliance with the letter and spirit of this provision. It encourages them to continue to organise training courses for public prosecutors, judges and lawyers to enable them to identify the situations in which Article 312 applies, bearing in mind the case-law of the European Court of Human Rights on freedom of expression.
21. ECRI recommends that the Turkish authorities pursue their efforts to grant greater freedom to associations. It recommends that they revise the wording of Article 5 of the Associations Act so as to avoid any interpretations contrary to freedom of association as guaranteed by the European Convention on Human Rights.
22. ECRI encourages the Turkish authorities to reinforce the criminal law provisions aimed at combating racism along the lines advocated by General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination, notably by providing for an aggravating circumstance in the event of racist motives in respect of all ordinary offences.

### **Civil and administrative law provisions**

23. In its second report ECRI encouraged the Turkish authorities to consider adopting comprehensive civil and administrative law provisions against racial discrimination.
24. There are still no comprehensive civil and administrative law provisions designed to prohibit racial discrimination in Turkey. However, noteworthy progress has been made with regard to legislation on employment. The Labour Code was amended in June 2003 and its Article 5 now provides for the prohibition of discrimination on grounds including language, race, religion and membership of a religious group. National or ethnic origin as such is not mentioned as a ground for discrimination, but the list of grounds is not exhaustive. The prohibition of discrimination applies to labour relations excluding recruitment. Article 5 also provides for the burden of proof to be shared in respect of the end of a contract or reprisals against a person reporting discrimination. Article 18 of the Labour Code prohibits dismissal on discriminatory grounds and applies in the event of racial discrimination. The penalty for discrimination may take pecuniary form or involve reinstatement in the company.
25. ECRI welcomes these new provisions which constitute a step forward in the fight against discrimination in employment. However, they are limited in scope and do not cover all the forms of discrimination that may arise in this area, particularly in recruitment. ECRI also notes that the courts have apparently not yet applied these provisions, including the principle of sharing the burden of proof. Lastly, other areas of life are inadequately protected in terms of the prohibition of racial discrimination.

**Recommendations:**

26. ECRI recommends that the Turkish authorities continue to reinforce civil and administrative law to combat racial discrimination. In this connection, they should take into account ECRI's General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination.
27. ECRI emphasises in particular that the prohibition of direct and indirect racial discrimination must apply to all public authorities and to all individuals and corporations, whether in the public or private sector, in all areas including: employment; membership of professional organisations; education; training; housing; health; social protection; goods and services intended for the public and public places; exercise of economic activity; and public services.
28. In its second report ECRI reiterated its call for the abolition of the requirement that persons indicate their religion on their identity cards. It is still compulsory to indicate a person's religion on their identity card and, furthermore, it is not possible to indicate that a person is an atheist. The authorities have informed ECRI that they are considering the question of the compulsory indication of a person's religion on their identity card, and that on 27 September 2004, at the parents' request, Ankara's Civil Court of First Instance N°3 decided to delete the word "Islam" from two children's identity cards. This insertion had been compulsory for every newborn child. Some have said that this indication is useful, not to say necessary, in order to be able to decide who may or may not attend schools belonging to minority religious groups.

**Recommendations:**

29. ECRI recommends that the Turkish authorities plan and introduce, as soon as possible, a mechanism ensuring that a person's religion is no longer indicated on their identity card, while safeguarding the rights of persons belonging to the minority religious groups covered by the Lausanne Treaty.

**Administration of justice**

30. In its second report ECRI urged the Turkish authorities to investigate complaints concerning problems encountered in practice with regard to access to an interpreter and to legal counsel.
31. ECRI notes that substantial progress has been made in terms of legislation on the administration of justice. For example, the law provides for access to a lawyer from the outset of custody if the person concerned so requests, and free legal aid is also provided for. Interpretation is free of charge and provided by the state. In practice, however, these protective provisions are not always implemented, particularly because the persons concerned are insufficiently informed of their rights regarding access to free legal aid and interpretation, despite efforts by some bar associations to publish and distribute brochures with information on this question.

**Recommendations:**

32. ECRI strongly encourages the authorities to ensure that members of minority groups have real access to a lawyer under the conditions provided for by law and that they indeed receive legal aid free of charge if they meet the established criteria. ECRI stresses the importance of access to a professional interpreter, free of charge in all legal proceedings.

**Specialised bodies and other institutions**

33. ECRI deals with this issue below. See “Specific issues”.

**Education and awareness-raising**

34. In its second report ECRI encouraged the authorities to revise school curricula and ensure that issues of racism, discrimination and intolerance are adequately addressed in these courses. It also stressed the importance of having teachers who specialise in this area. It requested that school curricula be revised in order to delete any material which may be found to perpetuate prejudice and foster stereotypes and excessive nationalism.
35. The Turkish authorities have informed ECRI that they have set up human rights education courses and have improved those already existing at all levels of the education system. These courses are taught as part of civics courses, which also ensure that pupils learn about democracy. ECRI is concerned to learn that school textbooks and official examination subjects may convey negative views of some minority groups, particularly Armenians. The authorities have informed ECRI that they are currently revising textbooks with a view to removing all references which are xenophobic, contrary to human rights or convey negative representations of certain minority groups. ECRI also notes that, alongside this initiative, a civil society group also concerns itself with identifying all prejudices and negative stereotypes in school textbooks.
36. As regards awareness-raising among officials, ECRI notes with approval that the authorities have greatly increased the number of human rights training courses for law enforcement officials, persons working on human rights councils<sup>2</sup>, judges and other officials. These training courses essentially concern the ECHR and its interpretation by the European Court of Human Rights.

**Recommendations:**

37. ECRI encourages the Turkish authorities to ensure that the issues of mutual respect, racism and racial discrimination are properly covered in school curricula and in teacher-training courses on human rights.
38. ECRI recommends that the Turkish authorities supervise the quality of school textbooks, which must not contain any derogatory or insulting references to any minority group whatsoever. The Turkish authorities must pay special attention to references in textbooks made about Armenians and Roma. ECRI also

<sup>2</sup> See below “Specific issues”.

encourages the Turkish authorities to revise school curricula and textbooks, including history books, in order to heighten pupils' awareness of the advantages of a multicultural society. It would be advisable for the authorities to co-operate with civil society in this task, for instance by setting up a joint commission including human rights NGOs and independent experts.

39. ECRI recommends that the authorities pursue and step up their efforts to provide officials with human rights training. It encourages the Turkish authorities to place the accent on respect for human dignity, the principle of equality and the prohibition of discrimination, including racial discrimination. The problem of racism and intolerance must also be addressed, as well as the need to accept and promote cultural diversity.

## Reception and status of non-citizens

### - *Immigration*

40. Turkey is often described as a transit country for people wishing to travel to west European countries. Despite vague statistics, it is apparent that immigration rose steadily in Turkey in the 1990s, when Turkey also became a country of destination for people from east European countries such as Moldova, Ukraine and Russia and people from Iraq and Iran. Recently, too, there appears to have been a significant increase in the number of people arriving from Africa. Initially, the Turkish authorities probably underestimated this migratory trend. However, ECRI notes that they have recently adopted legislation in areas such as work permits for non-citizens and trafficking in human beings. The authorities therefore seem to have realised the importance for Turkish society of looking into the issue of immigration.
41. In its second report, ECRI expressed concern over ill-treatment and use of excessive force by law enforcement officials against immigrants without legal status. It asked the authorities to investigate instances of corruption among officials in respect of immigrants without legal status. ECRI pointed out that the children of immigrants without legal status apparently have difficulty in enrolling at school.
42. The authorities have informed ECRI that about 86,000 immigrants without legal status were arrested in Turkey in 2003. It is hard to say how many immigrants altogether are in Turkey illegally. Between 1995 and 2004, the Turkish authorities counted 481,160 illegal immigrants. They have informed ECRI that immigrants' children are allowed to enrol at school, irrespective of the parents' legal situation, but that parents often fail to enrol them because they regard Turkey merely as a transit country. ECRI notes that arrested persons are often in an uncertain legal situation because, if they are not immediately escorted back to the border or returned to their country of origin, they remain at liberty in Turkey without a status enabling them to work in order to meet their needs and without any assistance from the state. Immigrants from Africa are often in this situation. The Turkish authorities have, however, indicated that out of the 64 Africans who were arrested in Kusadasi on 13 July 2004, 24 of those who had filed an asylum claim were authorised to settle in different provinces. ECRI notes with concern that immigrants who have been deported from Turkey once, especially to Greece, sometimes return to Turkey, particularly due to the involvement of smugglers who make them pay for this return journey.

43. The Ministry of the Interior has not recorded any deaths arising from the use of excessive force or firearms at the border by the police in 2003. However, ECRI is concerned at reports that immigrants without legal status, including Africans, are ill-treated by law enforcement officials at the time of arrest or during detention. According to some allegations, African immigrants are systematically detained even before officials have checked what their legal situation is and particularly whether they are asylum-seekers. Other allegations concern instances in which immigrants are summarily escorted to the border without their right to request asylum or the principle of *non-refoulement* being observed.
44. In its second report ECRI recommended that the Turkish authorities take steps to counter the exploitation of immigrants without legal status, and discrimination against them, in the area of employment. ECRI is pleased to note that on 27 February 2003 the Turkish Grand National Assembly adopted a law which came into force in September 2003, introducing a system of work permits for non-citizens under the sole responsibility of the Ministry of Labour and Social Security. It aims to make it easier for non-citizens to work lawfully in Turkey and is the first law adopted on the employment of immigrant workers. ECRI notes in particular that work permits are henceforth managed by the Ministry of Labour and Social Security, whereas previously several ministries were competent in this matter, including the Ministry of the Interior. For the first time, the law permits the employment of non-citizens in domestic work. ECRI hopes that this new legislation will make it possible to take more effective action against illegal immigration and the exploitation and illegal employment of immigrants in Turkey.

#### **Recommendations:**

45. ECRI recommends that the Turkish authorities look into the problem of illegal immigration with a view to finding humane solutions for persons apprehended while unlawfully present on Turkish territory. The authorities must as a matter of priority ensure that these persons are not subjected to any ill-treatment by law enforcement officials. They should also ensure that the principle of *non-refoulement* is complied with. ECRI encourages the Turkish authorities to find ways of regularising the legal situation of immigrants who have been on Turkish territory for a long time.
46. ECRI recommends that the Turkish authorities pursue their efforts to introduce an immigration policy in Turkey. It emphasises the importance of supplementing and reinforcing the legal framework available to non-citizens in Turkey in order to take more effective action against illegal immigration and the exploitation of illegal immigrant workers. It is also important to frame an integration policy that will enable immigrants to find their proper place in an integrated Turkish society. This policy might include tuition in the Turkish language and information sessions on the country's institutions and laws. ECRI draws attention to the importance of ensuring that immigrant children have access to education regardless of their parents' legal status, which in some cases calls for additional remedial measures, particularly as regards learning the Turkish language.<sup>3</sup>

<sup>3</sup> See also below "access to education".

47. ECRI encourages the authorities to carry out an awareness raising campaign among the majority population and the media in order to avoid prejudices and negative stereotypes that might develop against immigrants, irrespective of their legal situation.

- ***Asylum-seekers and refugees***

48. In its second report ECRI recommended that the Turkish authorities take steps to improve the situation of asylum-seekers in Turkey, especially by ensuring that they are not left destitute pending examination of their asylum applications.
49. There has been no major change in legislation on asylum-seekers since the adoption of ECRI's second report. The reservation concerning the geographical application of the Geneva Convention to nationals of European countries only is therefore still in force. However, the parallel protection secured by agreement between the Turkish authorities and the United Nations High Commissioner for Refugees (UNHCR) provides the persons concerned with rights similar to those enshrined in the Geneva Convention pending their resettlement in a third country. The authorities have informed ECRI that asylum-seekers are entitled to work and are accommodated in private housing throughout Turkey. However, ECRI is concerned to learn from several sources that asylum-seekers are in a very precarious situation and live in poverty pending settlement of their cases. They receive free health care but apparently not enough legal or social assistance.
50. ECRI is particularly concerned to learn that persons arrested for being unlawfully present on Turkish territory apparently do not have access to the procedure for lodging an asylum application, owing to lack of information which, combined with the very short time limit of ten days for lodging an application, makes this virtually impossible. It is hard to establish the number of persons concerned, but it may be substantial in view of the origins of the persons apprehended. It would seem that officials are insufficiently aware of the need to inform people of their right to apply for asylum. ECRI is also concerned at information to the effect that the Turkish authorities tend too easily to classify certain countries through which asylum-seekers have passed among safe countries and to refuse asylum on those grounds.

***Recommendations:***

51. ECRI urges the Turkish authorities to withdraw their geographical reservation concerning the origin of asylum-seekers because it generates discrimination against those who cannot receive this protection on account of their nationality or their country of origin.
52. ECRI recommends that the Turkish authorities provide all personnel in contact with asylum-seekers with human rights training and awareness training in the problems encountered by asylum-seekers, so as to facilitate the steps the latter have to take. ECRI emphasises the need to introduce greater transparency in the processing of asylum applications and improve ways of informing asylum-seekers of their rights. In particular, care should be taken to ensure that the very short time limit for lodging an asylum application and the authorities' policy on safe countries do not in practice constitute insuperable obstacles to the asylum procedure.



53. ECRI urges the Turkish authorities to pursue and strengthen their co-operation with the UNHCR and NGOs working on behalf of asylum-seekers. It encourages them to introduce all the facilities required to improve the living conditions of asylum-seekers and refugees, including those from non-European countries.

- ***Trafficking in human beings***

54. In its second report ECRI recommended that the Turkish authorities take steps to counter trafficking in women and girls for the purpose of prostitution and to provide victims of such trafficking with adequate assistance and support.
55. Turkey is a transit country, but also a country of destination, for trafficking in women for the purpose of prostitution. Many of these women come from central and east European countries. ECRI notes with approval that the authorities have recently started to take steps to counter trafficking in human beings. The Criminal Code was amended in August 2002 and a new Criminal Code was adopted in September 2004, which resulted in a strengthening of the provisions which are aimed at fighting human trafficking. The Criminal Code now includes a definition of trafficking in human beings and provides for heavier penalties for traffickers. A task force has been set up to combat trafficking in human beings and has drawn up a national plan of action in this area. Training courses have also been set up for public prosecutors, judges and law enforcement officials, and the authorities have introduced assistance for victims of such trafficking, especially in terms of housing, health care and temporary residence permits for humanitarian reasons. A shelter centre for the victims of trafficking was opened in Istanbul.
56. However, ECRI notes with concern that trafficking in human beings for the purpose of prostitution remains a problem in Turkey. The steps taken are still too recent to have had an impact. ECRI is particularly concerned to learn that officials have been involved in trafficking. It notes, however, that some of them have been duly punished. ECRI also notes that according to some reports, the media sometimes present the issue in a sensationalist manner, reproducing prejudice against the victims of trafficking and thus encouraging such prejudice among some sections of the general public.

***Recommendations:***

57. ECRI recommends the adoption of further measures to counter trafficking in women for the purpose of prostitution, particularly by taking preventive action and building awareness of this serious problem among all sections of the population concerned. In particular, ECRI encourages the Turkish authorities to concentrate on steps to protect and assist the victims of trafficking in human beings.

### **Access to public services**

58. In its second report, ECRI recommended that the Turkish authorities look into the case of Kurdish language speakers, and in particular women, who have difficulty communicating when it comes to accessing public services, especially health care. It called for the adoption of any remedial measures that might be necessary in the wake of this investigation.
59. The authorities have informed ECRI that, in their view, there are no communication problems between Kurdish language speakers and the administration in South-East Turkey. The authorities always find some way of communicating with the individuals concerned, either because they are accompanied by a Turkish speaker or because the administration itself enlists the help of an interpreter. In the specific case of Kurdish women, the authorities have said that the communication problem stems more from a lack of contact between the administration and some Kurdish women, which allegedly has to do with the traditions and poor education of the women concerned.
60. ECRI notes that the authorities are making efforts to overcome the language barrier in their dealings with non-Turkish speakers. The Ministry of Health has introduced a policy aimed at facilitating these persons' access to health care, by assigning volunteer health care professionals who speak local languages to health centres in South-East and East Anatolia. ECRI feels, however, that in regions where the majority of the population speak a language or dialect other than Turkish, further efforts are needed to ensure that such persons enjoy equal access to public services and in particular health care.

#### ***Recommendations:***

61. ECRI encourages the Turkish authorities to find, in areas where persons speaking a language or dialect traditionally used by Turkish citizens are in the majority or very numerous, ways of facilitating communication between these persons and the authorities. One option might be to provide extra classes in the official language, not only for children<sup>4</sup> but also for adults. Such classes should be easily accessible. Where the communication problem stems more from cultural factors, as is the case, according to the authorities, with Kurdish women living in the South-East, special, comprehensive measures should be taken to overcome all barriers to access to public services. The authorities might also consider taking more measures to encourage officials who speak the local language in the region concerned to communicate in this language with members of the public, where they so request.

### **Access to education**

62. In its second report ECRI recommended that the Turkish authorities lift the constitutional prohibition on mother-tongue teaching in a language other than Turkish.

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<sup>4</sup> On this point, see below "access to education".

63. Article 42 of the Constitution, which provides that no language other than Turkish may be taught to Turkish citizens as their mother tongue in educational and training establishments, has not been amended. However, ECRI notes that substantial progress has been made towards a more open approach to cultural and linguistic diversity. Since the third package of reforms dated 9 August 2002, it has been possible to open private schools to teach “languages and dialects traditionally used by Turkish citizens in their daily lives”<sup>5</sup>. Kurdish language courses opened in the towns of Batman, Sanliurfa and Van in January 2004 and others are expected to open by stages. This is obviously a positive development in spite of numerous reports that persons wishing to offer this type of course come up against major obstacles stemming both from the stringent requirements laid down by the decree and sometimes from administrative obstruction. ECRI also notes that to date no consideration has been given to the possibility of courses in languages and dialects traditionally used by Turkish citizens in their daily lives being taught in state schools.
64. In its second report, ECRI recommended that the Turkish authorities take initiatives to ensure that children of non-Turkish mother tongue can adequately follow classes taught in Turkish. ECRI is not aware of particular steps taken to this effect, though the difficulties encountered by these children appear to persist. The children concerned are both those of immigrants and children of Turkish nationality who are of non-Turkish mother tongue.

#### **Recommendations:**

65. ECRI recommends that the Turkish authorities pursue their efforts in favour of tuition in languages and dialects traditionally used in Turkey. It recommends that they ensure that the authorisation granted for private courses is fully implemented in practice, particularly by removing all barriers arising from administrative obstruction.
66. ECRI encourages the Turkish authorities to revise the wording of Article 42 of the Constitution, which prohibits the teaching of non-Turkish mother tongues in state schools. It should be possible for such tuition to be provided alongside tuition in the official language.
67. ECRI recommends that the Turkish authorities look into the situation of children of non-Turkish mother tongue and ensure that every effort is made to enable them to learn Turkish, the teaching language, properly. Measures such as additional courses or methods for teaching Turkish as a second language could help to improve the situation. Care should be taken to ensure that children of non-Turkish mother tongue have equal opportunities in access to education, since this also conditions equal opportunities in employment.
68. In its second report, ECRI recommended that the Turkish authorities should no longer make religious education compulsory at school. The authorities have informed ECRI that there is currently a compulsory course in religious culture. The syllabus covers all religions and is chiefly designed to give pupils an idea of all existing religions. However, several sources have described these courses

<sup>5</sup> Law N°625 on opening private courses to teach languages and dialects traditionally used by Turkish citizens in their daily lives.

as instruction in the principles of the Muslim faith rather than a course covering several religious cultures. ECRI notes that only Muslim pupils are required to follow these courses, while pupils belonging to minority religious groups can be exempted. ECRI considers the situation unclear: if this is indeed a course on the different religious cultures, there is no reason to make it compulsory for Muslim children alone. Conversely, if the course is essentially designed to teach the Muslim religion, it is a course on a specific religion and should not be compulsory, in order to preserve children's and their parents' religious freedom.

**Recommendations:**

69. ECRI urges the Turkish authorities to reconsider their approach to instruction in religious culture. They should take steps either to make this instruction optional for everyone or to revise its content so as to ensure that it genuinely covers all religious cultures and is no longer perceived as instruction in the Muslim religion.
70. The 1923 Treaty of Lausanne allows the religious groups concerned to have their own schools. However, ECRI notes that minority religious groups have difficulty in finding teachers or procuring a sufficient number of recent school textbooks. It would seem that the regulations governing these schools are particularly complex and make school management very difficult, to the extent of jeopardising the existence of some schools. Attention has been drawn to the strict rules governing the enrolment of pupils in schools on the basis of their religion. For example, the Turkish authorities supervising enrolment procedures in these schools apparently require that the father should be of the religion of the school in which the parents wish to enrol the child, irrespective of the mother's religion.

**Recommendations:**

71. ECRI urges the Turkish authorities to look into the situation of schools belonging to minority religious groups. Existing deficiencies in legislation and practice should be identified through dialogue with the main players concerned and the necessary steps should be taken to ensure that these schools function properly, so as to protect the interests of the pupils attending them.

**Vulnerable groups**

- ***The Kurds***<sup>6</sup>

72. According to estimates, there are between twelve and fifteen million Kurds living in Turkey. There are no official statistics as national censuses do not take account of people's ethnic origins. The Kurds live mainly in the South-East, although many of them have left the region as part of the drift to the towns and also because of the armed conflict that went on for several years between the authorities and the PKK.

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<sup>6</sup> On the subject of the teaching of Kurdish and the Kurdish media, see "Access to education" and "Media".

73. ECRI is concerned to note that the Kurds displaced within the country by the armed conflict now find themselves in a very difficult situation. According to NGO estimates, there are a million or more such people, whereas the authorities put the figure at a few hundred thousand. They live mainly on the outskirts of cities, in particular Istanbul, in conditions of severe economic and social hardship. Even though they have been displaced, they have not received any welfare assistance to enable them to provide for their needs. Since most of them were originally farmers, they have been unable to find satisfactory employment on arriving in the towns and cities. The great majority now live in poverty and social exclusion, which in turn creates problems with health care and also access to education, as parents cannot afford to send their children to school.
74. ECRI is pleased to note that there has been no emergency rule in any part of Turkey since November 2002. Fighting has ceased in the South-East of the country so insecurity should no longer be a barrier to the return of persons displaced by the armed conflict. ECRI deplores, however, that the process of returning internally displaced persons has not yet begun in earnest and that only a very small number of people have returned to their villages or have been able to recover their property. The barriers to return are still too numerous. ECRI notes in particular that, in some cases, the administration is still refusing to allow returns for security reasons. In other cases, the administration has insisted that persons wishing to return sign papers waiving their right to compensation on the ground that the PKK was to blame for their departure and not the authorities. Another major barrier is the behaviour of the armed militia guards who were posted in the villages by the authorities. Some of these guards have now taken up residence in abandoned properties and are refusing to hand them over to the owners. ECRI is particularly concerned by reports that, in some cases, villagers seeking to recover their property have been killed by armed guards.
75. The government has introduced “village return projects” but according to various commentators, these schemes are underfunded. The lack of clear information about the procedure for applying to return has also been a factor in the schemes’ low success rate. Others point to the government’s lack of political commitment to the return of displaced persons. ECRI notes with approval that the law on the compensation of victims of terrorism and action against terrorism was adopted by the Grand National Assembly in July 2004. ECRI hopes that this law will enable all victims of the armed conflict in South-East Turkey to be compensated swiftly and fairly.

#### ***Recommendations:***

76. ECRI strongly recommends that the Turkish authorities take action to address the plight of the Kurds who have been displaced by armed conflict in the South-East of the country. It recommends in particular that the authorities find ways of helping those living in severe economic and social hardship.
77. ECRI recommends that the authorities continue and significantly reinforce the voluntary return programmes for displaced persons. In this respect, ECRI strongly encourages the Turkish authorities to seek international assistance and to co-operate fully with the NGOs. It is important to swiftly remove any administrative or other barriers to return. ECRI urges the authorities to rapidly

resolve the problems arising from the continued presence of armed guards in the South-East. It emphasises the need for displaced persons to be able to return home, receive compensation and/or recover their property as quickly as possible.

78. ECRI is pleased to note that the constitutional and legislative changes in the field of human rights and fundamental freedoms should help to give the Kurds greater freedom of expression, freedom of assembly and freedom of association. It notes, however, that in the case of the Kurds, such freedoms are still severely curtailed, especially in practice. ECRI notes in particular reports that Kurdish students have been arrested and/or expelled from university for having signed petitions or demonstrated in support of the teaching of Kurdish in universities. A number of persons have allegedly been convicted for listening to Kurdish music in private. In some cases, however, persons who have expressed their Kurdish identity by peaceful means have been acquitted. ECRI hopes that the new laws will pave the way for a rapid improvement in this area. It notes that parents are now permitted by law to give their children Kurdish first names, even though a circular prohibits them from choosing names incorporating the letters Q, W or X, which exist in the Kurdish language but not in the Turkish alphabet.
79. On the subject of freedom of association, ECRI notes that the bans on parties representing the interests of the Kurdish community have remained in place despite rulings by the European Court of Human Rights, which has frequently found against the government for violating freedom of association in this area. ECRI notes with approval that, following the constitutional and legislative amendments, it will be more difficult to ban a political party in future. In addition, cautions and ancillary penalties such as the removal of financial support may replace or precede outright bans on political parties.
80. As regards public opinion, ECRI notes with approval that the armed conflict has had only a limited impact on the majority population and the Kurds, who do not appear to harbour any particular animosity towards one another. ECRI notes, however, that the Kurds are still subject to prejudice and stereotyping and, in the absence of any statistics, it wonders to what extent such attitudes translate into discrimination against Kurds in their everyday lives.

### ***Recommendations:***

81. ECRI encourages the Turkish authorities to continue their efforts to improve the situation with regard to freedom of expression, freedom of assembly and freedom of association in the Kurdish community. In particular, it stresses the importance of swiftly implementing the legislative changes reinforcing these freedoms. ECRI further recommends that the Turkish authorities combat the prejudice and stereotyping to which Kurds are subject. It is important to make sure that Kurds do not suffer discrimination and to take steps to punish any instances of discrimination that might be identified.

- **The Roma**

82. In its second report, ECRI recommended that the Turkish authorities urgently carry out research into the actual situation of the Roma population in Turkey and any problems they might face. It also recommended that the authorities endeavour to identify these problems in consultation with the Roma population concerned.
83. ECRI is concerned to learn that the situation of the Roma in Turkey remains largely unchanged. The authorities have not, it appears, carried out any research to determine the actual situation of the Roma in Turkey and official information on this subject is lacking. According to the European Roma Rights Center, however, the Roma communities in Turkey experience major difficulties due to social exclusion. They encounter discrimination in employment, housing and access to public places. They live in difficult conditions in camps from which they are often forcibly evicted without being offered alternative accommodation. There is inequality of opportunity in terms of access to health care, employment and also education, in that parents often cannot afford to send their children to school.
84. The Settlement Act No. 2510 of 1934 deals with the right of foreign nationals to settle in Turkey. Article 4 forbids settlement in Turkey to persons who have no ties with Turkish culture, anarchists, spies, Roma ("itinerant gypsies") and persons deported from Turkey. The law also stipulates that nomads and Roma are to be settled in sites designated by the Ministry of Health and Social Assistance.
85. ECRI notes, however, some encouraging signs such as the decision to drop a pejorative definition of the term "cingene" (Gypsy) from a dictionary published by the Turkish Ministry of Education. The above-mentioned law on settlement is apparently being revised to delete the reference to "itinerant gypsies". The authorities have further informed ECRI that they are looking into the situation with regard to the Roma but they are unable as yet to give details of any measures that might have been taken.

**Recommendations:**

86. ECRI reiterates its recommendation to the Turkish authorities to look into the situation of the Roma in Turkey, so as to identify the problems facing them, in particular as regards intolerance and discrimination in many areas of life. It is important to take all proper measures to resolve the problems thus identified. ECRI recommends in particular that Article 4 of the above-mentioned Settlement Act be repealed. ECRI draws the attention of the Turkish authorities to its General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies.

- **Minority religious groups**

87. In its second report, ECRI addressed a number of problems encountered by minority religious groups in Turkey. Particular mention was made of the fact that religious foundations are not allowed to purchase property or receive donations. Mention was also made of the administrative barriers to building places of

worship, the shortage of priests and the declining membership of certain communities. ECRI called on the Turkish authorities to engage in dialogue with minority religious groups on these and any other problems which minority groups may encounter.

88. Minority religious groups together account for nearly two per cent of the Turkish population. Some, such as the Jewish, Greek Orthodox and Armenian Orthodox communities, fall within the scope of the Treaty of Lausanne. ECRI is pleased to note that the authorities have incorporated the issue of minority religious groups' rights in the recent series of legislative reforms. The law now allows religious foundations to purchase property provided that they are registered and a procedure has been introduced for recovering property that has been lost. The law has also helped to rectify various inequalities, by granting places of worship belonging to minority religious groups the same status as mosques, including as regards the payment of electricity bills, for example. Before, the Directorate of Religious Foundations paid for electricity only in the case of mosques. The law on construction, furthermore, now covers places of worship and not just mosques. In addition, the mufti's permission to build a non-Muslim place of worship is no longer required. These legislative changes all make for greater religious freedom and may be seen as a step in the right direction.
89. ECRI notes with concern, however, that minority religious groups still experience problems in practice. To begin with, the above-mentioned laws, some of which were enacted over a year ago, have not really come into force in the opinion of representatives of the religious communities concerned. According to these representatives, they encounter major resistance whenever they call for the laws to be applied, including notably from the Directorate of Religious Foundations which is attached to the Prime Minister's Office. The Directorate is said to be unduly restrictive in the way it implements the legislative changes, rendering them virtually useless.
90. Other outstanding problems which have not been resolved by the legislative reforms include the decline in the number of priests in the Greek Orthodox Church. The Church is caught in an impasse in that its training college has been closed down by the authorities yet it cannot bring over priests from abroad because the authorities insist that all priests be Turkish nationals. ECRI notes that the Greek Orthodox community is severely depleted and that urgent action is needed if it is to survive. Minority religious groups still do not have a clearly defined legal status and this is obviously holding up implementation of the new legal provisions. ECRI notes with interest that in a letter dated 23 September 2003, several religious communities, the Greek Orthodox Church, the Armenian Church, the Syro-Jacobite Church and the Roman Catholic Church, issued a joint call to the Parliamentary Committee on Human Rights of the Turkish Grand National Assembly, informing it of the various problems still facing them, some of which are mentioned above.
91. ECRI is pleased to note that displays of intolerance towards the Greek Orthodox community are on the decline. Some members of minority religious groups, while conceding that they are less harassed than in the past, nevertheless still complain that they are treated with suspicion by the Turkish authorities and by sections of the majority population.



**Recommendations:**

92. ECRI recommends that the Turkish authorities continue and step up their efforts to resolve the legal and other problems that still face minority religious groups in Turkey. It urges the authorities to engage in a constructive dialogue with representatives of these communities in order to speedily resolve the problems mentioned above. The existence of minority religious groups is an aspect of pluralism that needs to be recognised and preserved as an asset to Turkish society, rather than perceived as a threat to this society.
93. ECRI underlines the need to swiftly implement the legislative changes conferring certain rights on religious foundations by removing any barriers to their activities, and in particular by putting an end to any administrative obstruction.

**Antisemitism**

94. In its second report, ECRI called for action to prevent and punish any incitement to hatred directed against members of the Jewish community.
95. The Jewish community in Turkey is not very large<sup>7</sup>. Until recently, it enjoyed a relatively peaceful existence in Turkey, aside from a few isolated antisemitic incidents. In the opinion of representatives of the Jewish community, the climate has suddenly changed, mainly in the wake of a series of international terrorist attacks in November 2003, targets of which included two synagogues in Istanbul. There is now a feeling of insecurity in the Jewish community because of these and other incidents, such as physical assaults on individuals purely because they are Jewish, at least one of which proved fatal. Antisemitic propaganda continues to appear in certain sections of the media and it is apparently not unusual to come across sweeping statements in the press in which Turkey's Jewish community is equated with the policies of the state of Israel. It also appears that legal proceedings are not always instituted under Article 312 in order to punish those who make antisemitic remarks in public, although this article prohibits incitement to racial hatred. However, ECRI notes with satisfaction that the police are working with the Jewish community to improve security and that antisemitic remarks made by the son of one of the perpetrators of the aforementioned attacks have been condemned by the government and that legal proceedings were instituted against him by the judicial authorities.

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<sup>7</sup> On the subject of the Jewish community, see also "Minority religious groups".

**Recommendations:**

96. ECRI recommends that the Turkish authorities take all appropriate steps to combat antisemitism in Turkey and to protect members of the Jewish community against physical attacks. It is important in particular to duly prosecute those responsible for antisemitic statements and acts and to send a clear signal to the public that such behaviour will not be tolerated. In this respect, ECRI draws the attention of the Turkish authorities to its General Policy Recommendation No. 9 on the fight against antisemitism.

**Media**

97. In its second report ECRI encouraged the Turkish authorities to amend the laws on the press and broadcasting so as to lift the ban on publishing and broadcasting in languages other than Turkish. It also drew attention to the fact that the provisions allowing the prohibition of broadcasts or articles inciting to hatred had so far been used mainly in cases of incitement to separatism or fundamentalist views, but not to prevent hate speech directed against minority groups.
98. As regards the use of languages other than Turkish in the written press and electronic media, ECRI notes with satisfaction that the reforms have helped to improve the situation<sup>8</sup>. Article 28-2 of the Constitution which prohibited the publication of documents written in certain languages prohibited by law has been repealed, as recommended by ECRI in its second report. Publishers can no longer be prosecuted for using a language other than Turkish in the written press. As regards electronic media, the law has been changed, first in the case of state-owned media and later for privately-owned media, to enable them to broadcast in languages and dialects traditionally used by Turkish citizens in their daily lives.
99. As has already been emphasised by ECRI in its second report, the law prohibits racial discrimination and statements inciting to racial hatred both in the press and in electronic media. ECRI deplors, however, that according to various sources, no action is taken to sanction intolerant remarks about minority groups whereas the legislation prohibiting statements that threaten the indivisibility of the state is apparently being abused.

**Recommendations:**

100. ECRI recommends that the Turkish authorities alert media professionals and their organisations to the dangers of racism and intolerance. The introduction of a code of ethics and awareness raising measures highlighting the dangers of racism and intolerance in the media would be a welcome move. In cases where racist articles have been published, ECRI strongly encourages the Turkish authorities to make every endeavour to prosecute and punish those responsible.

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<sup>8</sup> See, among others, above, "Constitutional provisions and other basic provisions".

## Climate of opinion

101. In its second report, ECRI urged the authorities to foster the nascent public debate on cultural and linguistic pluralism, by allowing more room for non-violent expression of ethnic and cultural identity by individuals living in Turkey.
102. ECRI is pleased to note that the various reform packages introduced in Turkey are helping to open up the debate on cultural and linguistic pluralism, even though there is still much to be done in this area. The change in attitudes has not quite kept pace with changes in the law and freedom of expression remains limited, not least because persons seeking to express a cultural or linguistic identity other than Turkish are liable to be prosecuted and harassed by the authorities.
103. As regards the attitude of the public at large, ECRI has already indicated in another section of this report that it welcomes the fact that the conflict in the South-East has created less animosity than might have been supposed between ethnic Turks and the Kurds. ECRI is concerned to note, however, that intolerant remarks are sometimes made in public, including by political leaders and prominent public figures. The targets of these remarks vary according to the circumstances but recently, Armenians, Jews, Greeks and Kurds have attracted intolerant comments which have not always been sanctioned or even prosecuted by the authorities. Among the reasons for the existence of a certain intolerance among the public at large, several sources have pointed to an exaggerated nationalism on the part of some elements, who see anything that is not "Turkish" as posing a threat to the state and the Turkish people.

### ***Recommendations:***

104. ECRI recommends that the Turkish authorities further develop their public awareness-raising activities, for example by organising a national campaign against racism and intolerance. There is a strong case to be made for alerting the general public to the benefits that a multicultural society can bring to Turkey.

## Conduct of law enforcement officials

105. In its second report ECRI recommended that the Turkish authorities improve the mechanisms for dealing with complaints of ill-treatment on the part of law enforcement officials, by setting up, for example, an independent committee to investigate allegations of this kind. It also recommended that the Turkish authorities maintain and step up their efforts in the field of human rights training.
106. Some steps have been taken to tackle the problem of violence and ill-treatment on the part of the police. They include a reduction in the length of time spent in custody and some improvement in conditions of detention. Ministerial circulars have been issued, reminding law enforcement agencies that ill-treatment and the use of torture are strictly forbidden. This prohibition is regularly reiterated in public by the authorities. Allegations of ill-treatment and torture fall into the category of matters that call for urgent and priority legal proceedings. Since 11 January 2003, furthermore, sentences handed down to law enforcement officials for ill-treatment or torture can no longer be commuted to fines or suspended. A centre responsible for examining and assessing human rights

abuses in the gendarmerie was set up on 23 April 2003. ECRI notes that there are several bodies which, alongside prosecutors, can receive complaints of human rights violations, including in cases where the alleged perpetrators are law enforcement officials<sup>9</sup>. These bodies, however, are not independent and have insufficient powers of investigation and sanction. The Turkish authorities have informed ECRI that they have improved training for law enforcement officials in human rights and the case-law of the European Court of Human Rights<sup>10</sup>.

107. ECRI welcomes progress made by Turkey in recent years in combating torture and impunity<sup>11</sup>. It expresses concern however at continuing allegations of ill-treatment and in some cases torture, particularly during custody. According to several sources, the Kurds are particularly vulnerable to ill-treatment, especially Kurdish women who are doubly discriminated against in this area, in that they are subjected to sexual violence firstly because of their ethnic origin and secondly because of their gender<sup>12</sup>. Further progress is therefore needed, in particular when it comes to implementing the new rules to protect human rights and changing the attitudes of law enforcement officials.

#### **Recommendations:**

108. ECRI recommends that further action be taken to put an end to any instances of police misconduct, including ill-treatment and torture directed against members of minority groups. In particular, ECRI stresses the importance of setting up an independent investigatory mechanism which can carry out enquiries into allegations of police misconduct and, where necessary, ensure that the alleged perpetrators are brought to justice.
109. ECRI stresses that cases of police violence which come before the courts must be dealt with as rapidly as possible in order to convey the message to society that such behaviour on the part of the police is unacceptable and will be punished.

#### **Monitoring the situation**

110. ECRI is concerned by the lack of reliable information on the various minority groups living in Turkey. ECRI considers that more detailed information about the actual situation of various minority groups, and in particular minority religious groups, the Kurds, Roma, immigrants and asylum seekers and refugees in a number of areas of social and economic activity would be helpful, as it would serve to highlight any instances of direct and indirect discrimination. ECRI further believes that manifestations of racism and intolerance should be monitored in Turkey. In the second part of this report, therefore, it urges the

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<sup>9</sup> See below, "Specific issues".

<sup>10</sup> On this point, see also "Education and awareness-raising".

<sup>11</sup> See Resolution 1380 (2004) of the Parliamentary Assembly of the Council of Europe, paragraph 14.

<sup>12</sup> See, *inter alia*, Amnesty International, "Turkey, end sexual violence against women in custody!", EUR 44/011/2003, 26 February 2003.

Turkish authorities to set up a specialised body to combat racism and racial discrimination, which could carry out research in these areas.<sup>13</sup>

### **Recommendations:**

111. ECRI encourages the Turkish authorities to think about ways of introducing a coherent, comprehensive system of data collection, in order to assess the situation of the various minority groups living in Turkey and the scale of racism and racial discrimination. The data collection system must comply with domestic law and European regulations and recommendations on data protection and the protection of privacy, as indicated in the ECRI's General Policy Recommendation No. 1 on combating racism, xenophobia, antisemitism and intolerance. When collecting data, the Turkish authorities must take care in particular to respect the anonymity and dignity of the respondents and to obtain their full consent. The system for collecting data on racism and racial discrimination should also take account of the gender equality aspect, particularly in terms of possible double or multiple discrimination.

## **II. SPECIFIC ISSUES**

### **The need to create a specialised body to combat racism and racial discrimination**

112. In its second report ECRI recommended that the Turkish authorities set up a national specialised body to combat racism and racial discrimination. It asked that the staff of the Ombudsman's Office – which the Turkish authorities were then planning to set up – include someone responsible for racism and intolerance issues. It also expressed the hope that the High Council for Human Rights would devote adequate attention to issues of racism and intolerance.
113. Major changes have taken place in Turkey as regards human rights bodies, with various repercussions for the fight against racism and racial discrimination. ECRI notes that there are now a number of bodies in Turkey tasked with reviewing human rights compliance, whether from a general point of view or by monitoring individual applications. The Petitions Committee and the Human Rights Committee of the Grand National Assembly are among these bodies. On the governmental side, Act No. 4643 of 12 April 2001 created a series of human rights bodies, all of which come under the wing of the Prime Minister: the Human Rights Presidency, human rights councils operating at provincial and district level, the Human Rights Advisory Committee, the High Council for Human Rights, the Human Rights Inquiries Committee and the National Committee on the Decade for Human Rights Education.
114. There are 931 local human rights bodies, ie 81 councils operating at provincial level and 850 at district level. These councils are made up of local elected representatives, academics and lawyers together with representatives of political parties, professional bodies, the media, parents, NGOs and trade unions. The law requires that someone with legal knowledge and public relations skills be employed full-time in each council. Each council is required, *inter alia*, to make recommendations to the local authorities with a view to removing any barriers to human rights; to investigate any complaints of human

<sup>13</sup> See below, "Specific issues".

rights abuses brought to its notice and to prevent discrimination. It is also required to submit a monthly report on its activities to the Human Rights Presidency.

115. Where a council receives a complaint about human rights abuses, it must examine it and carry out an investigation. It must then forward its findings to the prosecutor, where it deems necessary. The council is also required to ascertain what action has been taken on a particular complaint. ECRI welcomes the authorities' commitment to setting up accessible bodies to combat human rights violations and which are competent to deal with discrimination issues. It also regards the existence of government bodies with competencies in human rights as a very positive move. It is concerned, however, about the effectiveness of the system in place, which appears to have some major shortcomings. To begin with, the large number of bodies competent to receive complaints stands in stark contrast to their lack of independence and genuine power. Such bodies cannot take effective action to remedy human rights abuses. In particular, ECRI notes that local councils have no statutory independence: they come under the authority of the Human Rights Presidency which in turn reports to the Prime Minister. The composition of the councils can also pose problems, insofar as members are required to deal with human rights violations which have arisen in the territory where they themselves carry out their professional duties. The law does not provide for any special means of investigation, making it extremely difficult to deal with complaints. Given the large number of tasks assigned to the councils, moreover, their human and financial resources do not appear sufficient to ensure proper handling of the complaints brought before them. According to various sources, some NGOs are unwilling to participate in these human rights councils and other bodies because their membership does not reflect the true diversity of Turkish society and because the NGOs in question continue to be the subject of criminal proceedings, unduly impeding their human rights activities.
116. The figures for the month of January 2004 show that in all, 76 people filed complaints with local councils. These complaints concerned 138 instances of human rights abuses. Violation of the principle of discrimination was cited in 8 cases. The Turkish authorities have informed ECRI that since the complaints form was amended in 2004, statistics indicate the grounds for discrimination and that it will now be therefore possible to know if a case concerns racial discrimination.

#### ***Recommendations:***

117. ECRI recommends that the authorities carry out regular reviews of the current system and make any necessary improvements and rectifications which may be identified in order to enable the bodies set up to play their full role in upholding human rights.
118. ECRI notes that not much progress has been made since the second report as regards establishing the office of Ombudsman. A draft law was drawn up in 2002 but it was never followed through. The Council of Europe's Commissioner for Human Rights held a seminar with the Turkish authorities in May 2004 aimed at reactivating the process of establishing an Ombudsman's Office in Turkey. The authorities have informed ECRI that they agree with the idea of

setting up an independent body of this kind and that the issue is back on the agenda.

***Recommendations:***

119. ECRI recommends that the Turkish authorities set up an Ombudsman's Office as quickly as possible. It recommends that the Turkish authorities endow this Office with all the powers and responsibilities and all the human and financial resources it needs to perform its task successfully. In particular, the Ombudsman should be able to deal with issues relating to racism and racial discrimination.

120. ECRI notes that there is still no national independent specialised body in Turkey for combating racism and racial discrimination, and believes that one should be set up soon. Such a body should be able to play a role in raising awareness of the problems of racism and racial discrimination in Turkey. ECRI considers that the general public and the Turkish authorities could benefit from the expertise that such a body would bring. It could highlight instances of racism and/or racial discrimination that currently go unnoticed by civil society and the Turkish authorities. Racism is a constantly evolving, multifaceted concept that needs to be studied if we are to be able to expose it and combat it effectively. Specialist knowledge is therefore essential and could be provided by an independent body whose remit would include: assistance to victims of racism and racial discrimination; investigation powers; the right to initiate, and participate in, court proceedings; monitoring legislation and advice to legislative and executive authorities; awareness-raising of issues of racism and racial discrimination among society and promotion of policies and practices to ensure equal treatment.

***Recommendations:***

121. ECRI recommends that a specialised body to combat racism and racial discrimination be set up as quickly as possible. It calls attention in this context to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, which advocates the setting up of such bodies, and its General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, which provides guidelines concerning the organisation, responsibilities and functions of such bodies.

**The implementation of reform packages in the field of combating racism**

122. Since the radical overhaul of the Constitution in October 2001, Turkey has seen a long series of constitutional, legislative and regulatory reforms. At the time of preparing this report, no less than seven reform packages have been adopted and others are in the process of being adopted. As has been repeatedly stated in this report, ECRI welcomes the positive changes arising from these reforms, which are clearly aimed at easing the situation and improving the protection of individuals' human rights in Turkey. The significance of these reforms for the

areas of interest to ECRI, in particular action against racism and intolerance, is obvious.

123. ECRI notes, however, that there have been delays in implementing the reforms and that it is not unusual to see the administrative and judicial authorities, in particular the public prosecutors' offices, adopt an attitude contrary to that expressed in the new provisions. Various examples of such an attitude are mentioned in this report.
124. ECRI is pleased to note that the Government is aware of the barriers that still need to be overcome in order to implement the new reforms. The Turkish authorities have informed ECRI that they are closely monitoring implementation of the reforms that have been adopted. An interministerial committee has been set up to observe and monitor the reforms. The Minister of Justice has stepped in on several occasions to remind judges that they must make their decisions in keeping with the new provisions, which in some cases calls for a radical change of attitude.

***Recommendations:***

125. Welcoming the Turkish Government's new approach, in which it sees clear signs of progress, ECRI urges the authorities to ensure that the new provisions on action against racism and intolerance are implemented forthwith, complete with a sufficient and steady supply of human and financial resources. It is important to ensure that all sections of the administration – at national, regional and local level – responsible for the different areas covered, are fully committed to implementing the reforms. To this end, it is essential to inform all officials and to provide them with training in the new laws. Public information campaigns should also be conducted to make individuals aware of their rights.
126. Aware that changing attitudes is a much slower process than changing the law, ECRI encourages the authorities to publicly reiterate, as often as necessary, the importance of implementing the reforms as soon as they come into force. ECRI further emphasises the need to evaluate the actual results of the new approach on a regular basis, and to closely involve members of the minority groups affected by the new approach in its further development, fine-tuning and implementation, not least through constructive dialogue initiated by the authorities.



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