



**British Institute of
International and
Comparative Law**

Human Rights and the Rule of Law in Turkey

A Scoping Report

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Executive Summary

This Scoping Report on Human Rights and the Rule of Law in Turkey has been produced by the British Institute of International and Comparative Law (BIICL), the foremost independent research and discussion body in the United Kingdom. BIICL is unaffiliated to any university, and is one of the leading such bodies in the world. It undertakes high quality research, publications, events and training on issues of international and comparative law around the globe.

The content of this Scoping Report covers the current human rights and rule of law situation in Turkey. It first sets the scene by providing a contextual background, which includes some of the major constitutional and political developments since the establishment of the republic. Key domestic facts are also part of this introductory section of the Report, including demographic information, education and literacy, economy, minority groups, domestic security and foreign relations. It also entails some information regarding what is known as the Hizmet (or Cemaat) movement.

The second section of the report focuses on the government structure. It presents the executive power with the role of the President and the Council of Ministers before discussing their relationship with the military. The legislature and the current position of the ruling political party are then explained. This section ends with a presentation of the judiciary, including its structure and key institutions, the way judges are appointed, as well as judicial remedies and judicial review.

The third section considers the application of the rule of law to the Turkish context. In doing so, it considers six key rule of law principles: accessible laws and legislative process; non-discrimination and equality before the laws; prohibition of arbitrariness; access to justice before independent and impartial justice system; human rights within the rule of law; and compliance with international obligations.

The fourth section is dedicated to the current human rights situation in Turkey. It first considers how human rights are protected under the Turkish domestic legal system, including its constitutional framework and other relevant norms, such as criminal law provisions. It also considers the possible limitations and derogations to human rights' obligations under the domestic system. The applicable international legal framework is then explained, presenting the relevant case law before the regional and international human rights system, i.e. the European Court of Human Rights and the United Nations Treaty Bodies.

The Scoping Report concludes by highlighting some of the key outstanding human rights concerns in Turkey, especially with regard to violations of the right to freedom of expression and freedom of assembly, violations of the right to life and the prohibition of torture and ill-treatment, violations of the prohibition of discrimination and minority rights. The report also supports a number of international recommendations, as well as provide additional suggestions in order for the rule of law to be upheld in Turkey and for human rights to be further respected, protected and fulfilled by Turkey in future.

Research Team

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1. INTRODUCTION: CONTEXTUAL BACKGROUND

This introductory section presents the contextual background to this report on human rights and the rule of law in Turkey, including key constitutional and political developments, as well as relevant domestic information. It concludes with some information about Turkey's foreign relations.

1.1. Key Constitutional and Political Developments

The first Constitution was adopted in 1876, during the Ottoman Empire.¹ It provided for new mechanisms to check the absolute powers of the Sultan and a partially elected assembly.² Following the defeat of the Ottoman Empire in World War I, the modern republic was formally established in 1923 by Mustafa Kemal Atatürk, a nationalist leader who then became the first President of Turkey.³ He established the Grand National Assembly of Turkey (GNAT), which then held both legislative and executive powers and which enacted a short, provisional constitution in 1921 that cemented the principle of parliamentary sovereignty.⁴ His government negotiated with the Allies the 1923 Treaty of Lausanne, which defined control of the Bosphorus area and the territorial extent of the new Republic of Turkey. In 1923, Atatürk also established the Republican People's Party (CHP) and was elected its chairman.⁵

In 1924, a new Constitution guaranteed some civil rights and conferred on the Grand National Assembly legislative powers and the right to exercise executive authority through a President elected by it, but did not impose many restraints on legislative power.⁶ The adoption of the 1924 Constitution was followed by an authoritarian, single party rule of the Republican People's Party until after World War II.⁷ During this time, the Republic also became formally secular, with the removal of Islam as state religion from its Constitution in 1928.⁸

¹ This 'Ottoman' Constitution was later amended in 1908.

² Ergun Özbudun, *The Constitutional System of Turkey: 1876 to the Present* (Palgrave Macmillan, 2011), pp 3-4.

³ CIA World Fact Book, Country profile for Turkey, available at:

<https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html>.

⁴ Ibid, 6-7. The 1921 Constitution can be considered as the first Constitution of the Republic of Turkey. With regard to parliamentary sovereignty, some argue that there is no actual parliamentary sovereignty in Turkey and that this has allowed the militaristic elitism to remain, see Fatih Öztürk, *Essays in Turkish and Comparative Law* (Filiz, 2014), pp 57-173.

⁵ Şükrü Karatepe, *Tek Parti Dönemi* (İz, 1997), p 27.

⁶ See Library of Congress – Federal Research Division Country Profile: Turkey, August 2008, available at: <http://lcweb2.loc.gov/frd/cs/profiles/Turkey.pdf>.

For a brief history of constitutionalism in Turkey, see Turkuler Isiksel, 'Between text and context: Turkey's tradition of authoritarian constitutionalism', 11 *Int J Constitutional Law* (2013), pp 702-726.

⁷ Erik Jan Zürcher, *Turkey: A Modern History* (I B Tauris, 2004), p 222.

⁸ BBC's Country Profile on Turkey, last updated 15 December 2014, available at: <http://www.bbc.co.uk/news/world-europe-17988453>.

A multi-party political system has prevailed since 1945, ending a period of single-party rule. However, democracy in Turkey has been interrupted by political instability and a series of military coups, with the army ousting governments on a number of occasions, on the grounds of allegedly challenging secular values.⁹ After each coup, political power was eventually returned to civilians.¹⁰ These times of change led to amendments to the Constitution. When authoritarian measures were taken by the ruling Democrat Party in 1960, creating widespread civil unrest, the Turkish armed forces overthrew the government and created a partly elected Constituent Assembly to re-draft the Constitution. Adopted in 1961 by the Constituent Assembly and ratified by popular vote, this Constitution created a new Constitutional Court and, according to some, more effective guarantees for fundamental rights and liberties, while also weakening civilian control of armed forces.¹¹ It can also be argued that the 1961 Constitution transformed the military's political role from *de facto* to *de jure*, with army generals starting to act as 'mediators' within the civil sphere.¹² Due to further political unrest, the Constitution was again revised in 1971 and 1973 after another military takeover, with amendments that curtailed certain human rights, strengthened the executive's law-making powers, and increased further the institutional autonomy of the military.¹³

The military intervened again in 1980, after violent unrest by extremist groups on the left and right. The ruling military committee created another Constituent Assembly to re-draft the constitution to prevent a recurrence of the political polarisation in the 1970s.¹⁴ Although the 1982 Constitution was adopted by popular referendum, in the lead-up to it, a military decree prohibited the expression of any views intended to influence people to vote against the Constitution. The adoption of the Constitution was accompanied by the election of the leader of the military coup, General Kenan Evren, as President, with Evren standing as the only candidate.¹⁵

The 1982 Constitution enshrines the principles of secularism, democracy, human rights,¹⁶ and the separation of powers.¹⁷ However, it has been criticised from all sides of the political spectrum for being authoritarian, statist, and preserving the power of

⁹ See, for example, 'Timeline: A history of Turkish coups', *Al-Jazeera* (4 February 2012), available at: <http://www.aljazeera.com/news/europe/2012/04/20124472814687973.html>.

¹⁰ Fatih Öztürk, *Essays in Turkish and Comparative Law* (Filiz, 2014), pp 83-84; see also Feroz Ahmad, 'Military Intervention and the Crisis in Turkey' (1981), 93 MERIP Rep. 5, p 7.

¹¹ Ergun Özbudun, *The Constitutional System of Turkey: 1876 to the Present* (Palgrave Macmillan, 2011), pp 11-12.

¹² Fatih Öztürk, *Essays in Turkish and Comparative Law* (Filiz, 2014), pp 95-96.

¹³ Ergun Özbudun, *The Constitutional System of Turkey: 1876 to the Present* (Palgrave Macmillan, 2011), pp 14-15.

¹⁴ Ibid, p 16. Members of this Assembly were not elected, see National Legislative Bodies, 'Constitution of the Republic of Turkey' (7 November 1982), available at:

http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_127495.pdf.

¹⁵ 'Turkish Military Junta Rules Out All Criticism Of Draft Constitution', *New York Times* (22 October 1982), available at: <http://www.nytimes.com/1982/10/22/world/turkish-military-junta-rules-out-all-criticism-of-draft-constitution.html>.

¹⁶ In the 1982 Constitution, human rights are referred to as 'fundamental rights and freedoms' and include for example, the right life, the prohibition of forced labour, the right to liberty and security of the person, the right to privacy, the right to freedom of religion and conscience, the right to freedom of expression and thought, etc.

¹⁷ See the Preamble and Article 2 of the Constitution of Turkey.

the military regime.¹⁸ As originally adopted, the Constitution banned civil society organisations (other than political parties) from engaging in political activities and allowed the Constitutional Court to ban a broad range of political parties. Despite significant amendment (described below), the 1982 Constitution has been criticised for retaining many of the non-liberal and non-democratic elements of its original form.¹⁹

Article 175 of the Constitution prescribes the procedure for its amendment. Proposals for constitutional amendment must be put forward by at least one-third of the total number of members of the GNAT. If a proposal is adopted by over three-fifths but less than two-thirds of the total number of members of the GNAT by secret ballot, it is then submitted to popular referendum. If a proposal is adopted by a two-thirds majority of the total number of members of the GNAT, the President may submit the amendments to referendum. If the President does not do so, these amendments are considered adopted and published in the official gazette. A simple majority of votes is required for the adoption of constitutional amendments submitted to popular referendum.²⁰

Article 4 of the Constitution prohibits amendment of certain provisions of the Constitution, namely Article 1 of the Constitution establishing the form of the state as a Republic, the provisions in Article 2 on the characteristics of the Republic, and Article 3 on the integrity of the State, official language, flag, national anthem, and capital.

The Constitutional Court has the power to examine the constitutionality of constitutional amendments but only with regard to their form.²¹

The 1982 Constitution has already been amended several times,²² often following a military intervention,²³ with key changes including:

- amending the constitutional amendment procedure, to lower the voting age from 21 to 20, to increase the number of GNAT members (in 1987);
- repealing the state monopoly on radio and television broadcasting (in 1993);
- repealing the bans on political activities of trade associations, foundations, cooperatives and professional organisations, and lowering the voting age to 18, further increasing the number of GNAT members, giving the right to vote to Turkish citizens living abroad and recognising the right to unionise for civil servants (in 1995);

¹⁸ Levent Gönenç, 'The 2001 Amendments to the 1982 Constitution of Turkey' (2004) 1 Ankara Law Review 89.

¹⁹ Ergun Özbudun, Turkey's Search for a New Constitution (2012) 14(1) Insight Turkey 39, p 41.

²⁰ Article 175 of the Constitution.

²¹ Article 148 of the Constitution.

²² It has been amended in 1987, 1993, 1995, 1999 (twice), 2001, 2002, 2004, 2007 (twice), 2008, 2010 and 2011.

²³ Most of the coups have included the use of force, except in 1997. As a result, this intervention which directly interfered with politics via the National Security Council is referred to as a 'silent' coup or a 'post-modern' coup, see Fatih Öztürk, *Essays in Turkish and Comparative Law* (Filiz, 2014), p 143. For a brief summary of military coups in Turkey, see 'Timeline: A history of Turkish coups', Al-Jazeera (4 February 2012), available at:

<http://www.aljazeera.com/news/europe/2012/04/20124472814687973.html>.

- removing the military judges in the State Security Courts and allowing the privatisation of public economic enterprises (in 1999);
- limiting the circumstances in which fundamental rights and liberties can be restricted in Article 13, shortening pre-trial detention periods, limiting the death penalty to situations of war or imminent threat of war and terror crimes, making the banning of political parties more difficult, and allowing the Constitutional Court to review laws passed during the National Security Council regime between 1980 and 1983 (in 2001);
- abolishing the death penalty in all circumstances, allowing the state to introduce affirmative action measures in favour of women, abolishing the state security courts, opening the expenditures of the armed forces to the auditing of the Court of Accounts and amending Article 90 to state that international agreements concerning fundamental rights and freedoms shall prevail over domestic laws in case of a conflict (in 2004);
- electing the president by popular vote instead of by parliament, reducing the presidential term from seven years to five, allowing the president to stand for re-election for a second term and holding general elections every four years instead of five (in 2007);
- modifying the structure of the High Council of Judges and Public Prosecutors (HSYK), changing and expanding the composition of the Constitutional Court, establishing an Ombudsman office, and introducing a right of individual application to the Constitutional Court in relation to infringement of rights in the European Convention on Human Rights (ECHR) by a public authority (in 2010).²⁴

Despite the above mentioned amendments, including the latter ones which sought to align it with European Union standards, the Turkish constitutional framework brought by these successive amendments, it is still deemed to restrict the exercise of human rights. A number of recommendations to modify the constitution were been made during the 2010 and 2015 Universal Periodic Reviews (UPRs) but have not yet been acted upon, such as in relation to the protection of personal data, military justice and affirmative action for gender equality.²⁵

Furthermore, there has been some issue with the Constitutional Court overturning constitutional amendments in the past. In 2008, it overturned amendments which had been passed by the GNAT in 2007 to abolish the headscarf ban on female university students by changing Article 10 on equality and Article 42 on the right to education. Although the Constitutional Court has no power to substantively review constitutional amendments, it utilised the prohibition in Article 4 against amendment of certain provisions of the Constitution to find that the 2007 amendments were an attempt to

²⁴ Tuğrul Ansay and Don Wallace, *Introduction to Turkish Law* (Kluwer Law International, 2011); Naim Kapucu and Hamit Palabıyık, *Turkish Public Administration: From Tradition to the Modern Age* (USAK Books, 2008) pp 96-97; see also, Ergun Özbudun, 'Turkey's Constitutional Reform and the 2010 Constitution Referendum', *Mediterranean Politics – Turkey* (2011).

²⁵ Compilation of UN information, 2015 Periodic review, para 4; see also, Human Rights Watch submission to the 2010 UPR, p 1, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/TR/HRW_UPR_TUR_S08_2010_HumanRightsWatch.pdf.

unconstitutionally amend the protection of secularism in Article 2 and 3 of the Constitution.²⁶

With regard to the government, since a landslide election victory in 2002, Turkey has been led by the Islamist-based Justice and Development Party (Adalet ve Kalkınma Partisi, or AKP), which has pledged to maintain secularism. While the AKP has overseen a period of economic growth and relative political stability in Turkey, it has also been widely criticised for compromising constitutional separation of powers and undermining human rights.²⁷

In June 2015, the AKP lost its parliamentary majority, but remained the largest party. Due to the failure of the parties to form a coalition, President Erdoğan called for a new election in August 2015. Reportedly, this is the first snap-election since Turkey became a Republic,²⁸ with the AKP once again winning the election with a landslide victory in November, although the pro-Kurdish People's Democratic Party (HDP) gained sufficient votes to prevent the AKP's ability to unanimously call for a referendum on constitutional changes.²⁹ In the run-up to the elections, restrictions and prohibitions on activities of opposition media were reported, as well as arrests of politicians and activists, attacks on HDP property offices (including a fire in their offices in Ankara), and a ban of their leaflets by several local authorities.³⁰ One local journalist described these events as "the biggest crackdown on press in Turkish history".³¹ Following the AKP's most recent election victory, President Erdoğan, has re-emphasised that parliament should prioritise constitutional changes, which would give greater powers to his office.³²

²⁶ Ergun Özbudun, 'Turkey's Search for a New Constitution' (2012), 14(1) Insight Turkey 39, p 41.

²⁷ This can be exemplified by the adoption in March 2015 of the new 'security package', which was drafted by the AKP. See also, for example, the views of its leader (then Prime Minister) Erdoğan as reported in 'Separation of powers an obstacle, says Erdoğan', Hürriyet Daily News (18 December 2012), available at:

<http://www.hurriyetdailynews.com/separation-of-powers-an-obstacle-says-erdogan.aspx?pageID=238&nid=37052>.

²⁸ Emre Peker, 'Turkey's President Calls Snap Election' Wall Street Journal (24 August 2015), available at: <http://www.wsj.com/articles/turkeys-president-calls-snap-election-1440445939>

²⁹ Jon Henley, Kareem Shaheen and Constanze Letsch, 'Respect Turkey Election Result, says Victorious Erdogan' The Guardian (2 November 2015), available at:

<http://www.theguardian.com/world/2015/nov/02/respect-turkey-election-result-says-victorious-erdogan>.

³⁰ Constanze Letsch, 'Turkish Elections: "This is Still a Success for Us Kurds"' The Guardian (2 November 2015), available at: <http://www.theguardian.com/world/2015/nov/02/turkish-elections-this-is-still-a-success-for-us-kurds>; Richard Spencer, 'Fears of Civil War as Mobs Attack Kurdish Targets in Turkey' The Telegraph (9 September 2015) available at:

<http://www.telegraph.co.uk/active/11854390/Fears-of-civil-war-as-mobs-attack-Kurdish-targets-in-Turkey.html>.

³¹ Kareem Shaheen and Safak Timun, 'Turkish Media Denounce "Biggest Crackdown on Press in Republic's History"', Guardian (29 October 2015), available at:

<http://www.theguardian.com/world/2015/oct/29/turkish-media-denounce-biggest-crackdown-on-press-in-republics-history>.

³² 'Turkey's President Erdogan says New Constitution Should be Priority', Guardian (4 November 2015), available at:

<http://www.theguardian.com/world/2015/nov/04/turkeys-president-erdogan-says-new-constitution-should-be-priority>.

1.2. Key Domestic Facts

Demography

Turkey has a population of about 74.5 million, covering about 779,452 sq km.³³ The main religion is Islam. While Ankara is its capital, Istanbul is the most populated city.³⁴

Turkish is the only official language but Kurmanji (or Northern Kurdish) is also a widely spoken language in Turkey. According to Article 42 of the Turkish Constitution, [N]o language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education. Foreign languages to be taught in institutions of training and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law. The provisions of international treaties are reserved.

However, during the 2012-2013 school year, the Ministry of Education permitted the teaching of the Kurdish, the Abkhaz and the Adige languages as electives in the public school curriculum, with Laz being added as an elective at the beginning of the 2013-2014 school year.³⁵

Education and Literacy

In 2012, Turkey's overall literacy rate was 95 percent.³⁶ By 2012, 15 percent of 25 to 64 year olds in Turkey had attained a tertiary education, an increase from 13 percent in 2010. Although this is far below the OECD average of 33 percent, participation in secondary education has increased in recent years, with 95 percent of children aged 5-14 years old in school compared with the OECD average of 98 percent. Upper secondary education has become compulsory (to 17.5 years of age) since the 2012-2013 school year.³⁷

The Turkish education system went through a reform in 2012, with the adoption of the Law on Amendment of Elementary Education and Training Law and Along with Some Other Laws (Law No. 6287 of 30 March 2012), which was supported by the AKP.³⁸ As

³³ UN Data, Country profile for Turkey, 2012, available at:

<https://data.un.org/CountryProfile.aspx?crName=TURKEY>.

³⁴ Turkey profile – Fact, BBC (23 May 2013), available at: <http://www.bbc.co.uk/news/world-europe-17992009>.

³⁵ 'New education year started with significant gains for the Laz and Greek Orthodox minority in Turkey', European network of legal experts in the non-discrimination field (19 September 2013), available at:

<http://www.non-discrimination.net/content/media/TR-29-New%20education%20year%20in%20Turkey%20started%20with%20significant%20gains%20for%20minorities.pdf>.

³⁶ The World Bank's education indicators are available at:

<http://data.worldbank.org/indicator/SE.ADT.LITR.ZS/countries/TR-7E-X?display=graph>.

³⁷ OECD, 'Country Note on Turkey, Education at a Glance 2014', available at:

<http://www.oecd.org/edu/Turkey-EAG2014-Country-Note.pdf>.

³⁸ Law No. 6287 of 30 March 2012 is available (in Turkish) at:

<https://www.tbmm.gov.tr/kanunlar/k6287.html>.

See also, 'Education reform bill passes in Turkish Parliament', Hürriyet Daily News (30 March 2012), at:

a result of this new legislation, compulsory education, which used to be eight years long, was prolonged to 12 years. Some were critical of this change as it also allows children to attend technical (or vocational) schools, which would lower the quality of education they receive.³⁹ In addition, this reform allowed Islamic schools ('İmam Hatip Lisesi'), which focus on religious education but also include a regular curriculum, to take on children as young as 11 (instead of 15 previously).⁴⁰ The passing of this law was much debated and even led to public protests as it was seen as overly promoting Islamic values, in a manner contrary to the secular constitution.⁴¹

In addition to the possibility to attend these religious schools, followers of Muhammed Fethullah Gülen,⁴² a Turkish Islamic scholar and former imam, who founded his own movement (known as either 'Hizmet' or 'Cemaat'), have also established their own educational facilities in Turkey.⁴³ Some additional information on these schools can be found in the section dedicated to this movement.

Economy

With a Gross Domestic Product (GDP) of \$786 billion, Turkey is the 18th largest economy in the world. In less than a decade, per capita income in the country has nearly tripled and now exceeds \$10,000.⁴⁴ In fact, during the AKP rule, and under the leadership of Prime Minister (now President) Recep Tayyip Erdoğan, the Turkish economy has tripled in dollar terms.⁴⁵

Turkey's main exports are clothing and textiles, fruit and vegetables, iron and steel, motor vehicles and machinery, fuels and oils. It also hosts the Baku–Tbilisi–Ceyhan (BTC) oil pipeline.⁴⁶

<http://www.Hurriyetdailynews.com/education-reform-bill-passes-in-turkish-parliament-.aspx?pageID=238&nid=17318>.

³⁹ This was Simon Cameron-Moore, 'Turkey passes school reform law critics view as Islamic', Reuters (30 March 2012), available at:

<http://uk.reuters.com/article/2012/03/30/uk-turkey-education-idUKBRE82T12D20120330>.

⁴⁰ This amendment reversed the closing of those schools for middle school students by the military in 1997, see Wendy Zeldin, 'Turkey: Controversial Education Reform Legislation Passed', Library of Congress (17 April 2012), available at:

http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403094_text. In Turkey, religious education had first been reduced by Atatürk, who had passed an act to close religious schools ('madrasas').

⁴¹ 'Turkey Police Break Up Education Bill Protest', Al Jazeera (29 March 2012), available at:

<http://www.aljazeera.com/news/europe/2012/03/201232920153676163.html>.

⁴² In December 2014, a court issued an arrest warrant for the cleric.

⁴³ Hizmet, meaning 'service', is used by followers, while cemaat, meaning community or assembly, is used by the general public.

⁴⁴ World Bank, Turkey Overview, available at: <http://www.worldbank.org/en/country/turkey/overview>; The World Bank's World Development Indicators show that Turkey's GNI per capita in 2013 was US\$10,970, available at: <http://data.worldbank.org/country/turkey>.

⁴⁵ 'Turkish president Erdoğan appoints divisive aide as economic adviser', Reuters (30 August 2014), available at:

<http://www.reuters.com/article/2014/08/30/us-turkey-Erdogan-aide-idUSKBN0GU0BK20140830>

⁴⁶ BBC's Country Profile on Turkey, available at: <http://www.bbc.co.uk/news/world-europe-17992009>; See also the Library of Congress – Federal Research Division Country Profile: Turkey, August 2008, pp 12-14, available at: <http://lcweb2.loc.gov/frd/cs/profiles/Turkey.pdf>.

Minority Groups

As of 2008, approximately 70 to 75 percent of the population is Turkish, and an estimated 18 percent is Kurdish.⁴⁷ Smaller minority groups include Arabs, Armenians, Greeks, Jews, and Dönme (a small, separate group of Muslims, concentrated in Edirne and Istanbul, whose forbears converted from Judaism).⁴⁸ According to the 1923 Treaty of Lausanne, Turkey recognises three minority groups: the Greeks, Armenians and Jews.⁴⁹

The Turkish government has not yet recognised the Armenian genocide, although several States, as well as Pope Francis recently, have done so.⁵⁰ This has also led to diplomatic tensions with other States which have recognised the mass killings of Armenians under the Ottoman Empire as genocide, while Turkey maintains it was the result of a civil war where both sides suffered casualties.⁵¹ For example, tension erupted with France after its National Assembly recognised the killings of Armenians as genocide in 2001.⁵² In 2011, relations with France were strained again after French MPs passed a bill making it a criminal offence to deny the Armenian genocide but that bill was eventually struck down by France's Constitutional Court.⁵³ There were similar diplomatic tensions with the United States (see below the sub-section on foreign relations).

With regard to religious groups, 99.8 percent of the population is Muslim, mostly Sunni, while the other 0.2 percent comprises predominantly Christians and Jews, who are the religious minority groups in Turkey.⁵⁴

⁴⁷ CIA World Fact Book, Country profile for Turkey, available at:

<https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html>.

⁴⁸ Federal Research Division of the Library of Congress, 'Country Profile: Turkey' (August 2008), available at: <http://lcweb2.loc.gov/frd/cs/profiles/Turkey.pdf>.

⁴⁹ See Mirhan Yoğun, 'Much for Peace, Little for Minorities: Restraining Effect of the Treaty of Lausanne for "Minority" Concept', paper presented at the Jean Monnet Chair Student Workshop I (27 May 2013), Istanbul Bilgi University, p 5, available at:

<http://eu.bilgi.edu.tr/media/uploads/2014/06/30/mirhan-yogun.pdf>.

⁵⁰ 'Turkey's Erdoğan condemns Pope over Armenia 'genocide'', BBC News (14 April 2015), available at: <http://www.bbc.co.uk/news/world-europe-32309044>.

⁵¹ See, for example, Justin McCarthy, *Death and Exile: the Ethnic Cleansing of Ottoman Muslims, 1821-1922* (Darwin Press, 2012), or Guenter Lewy, *The Armenian Massacres in Ottoman Turkey: A Disputed Genocide* (University of Utah Press, 2007).

⁵² Emil Souleimanov and Maya Ehrmann, 'The Issue Of The Recognition Of The Armenian Genocide As A Political Phenomenon' (April 8, 2014), available at: <http://www.gloria-center.org/2014/04/the-issue-of-the-recognition-of-the-armenian-genocide-as-a-political-phenomenon/>.

⁵³ Angelique Chrisafis Nick Hopkins, 'Turkey Freezes All Political Relations with France over Genocide Row', *The Guardian* (22 December 2011), available at:

<http://www.guardian.co.uk/world/2011/dec/22/turkey-france-freeze-relations-over-genocide>.

⁵⁴ CIA World Fact Book, Country profile for Turkey, available at:

<https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html>.

Domestic Security

Threats to Turkey's domestic security have come from a number of sources. Attacks attributed to the Kurdistan Workers' Party (PKK), a separatist Kurdish movement deemed a terrorist organisation by Turkey, the US and the EU, and other Kurdish insurgents have been common since the 1980s. The PKK launched a guerrilla campaign in 1984 to establish its territory in the southeast of Turkey. This conflict led to thousands of casualties and several thousand displaced persons. Since the 1990s, Turkish troops have conducted periodic offensives against Kurds in northern Iraq to fight the PKK, eventually capturing its leader, Abdullah Öcalan, in 1999.⁵⁵

Clashes relating to the situation of the Kurdish population have also affected the civil population. For example, in 2006, a dozen people were killed in clashes between Kurdish protesters and security forces in the south-east and several people were killed in related unrest in Istanbul.⁵⁶ Bomb attacks have also jeopardized civil security. For example, six persons were killed in a bomb attack on a train in the eastern part of Turkey in 2005, for which officials blamed the PKK. In 2006, resorts and Istanbul were bombed by another separatist group, the Kurdistan Freedom Falcons (TAC).

Between 2009 and 2011, the Turkish government and the PKK conducted negotiations.⁵⁷ These talks collapsed in June 2011 after a clash between Turkish soldiers and the PKK rebels, who killed 24 Turkish troops near the Iraqi border.⁵⁸ In December 2012, Turkey declared a readiness to restart negotiations. After months of negotiations and a call from Abdullah Öcalan, PKK fighters ceased their attacks on Turkey, withdrawing into Iraq from May 2013.⁵⁹ A trial focussing on the Kurdistan Communities Union (KCK) was initiated in October 2010 with the prosecution of 152 high profile Kurdish politicians and rights defenders, accused of being part of the PKK organisation. In December 2014, the case, which now counts 205 Kurdish defendants, has been transferred to the Constitutional Court.⁶⁰

Other incidents have been attributed to radical Islamist groups, such as the killing of a prominent judge in an attack in Turkey's highest court in 2006. Dev Sol and its successor organisation, the Revolutionary People's Liberation Party-Front (DHKP-C) have launched sporadic assassinations and other attacks against Turkish authorities and Western targets. Notably, in February 2013 a suicide bomber targeted the US Embassy in Ankara, responsibility for which was claimed by DHKP-C, following which

⁵⁵ BBC's Country Profile on Turkey, available at: <http://www.bbc.co.uk/news/world-europe-17992009>

⁵⁶ Reuters, 'More Protests in Kurdish Area of Turkey', New York Times (2 April 2006), available at: <http://www.nytimes.com/2006/04/02/world/europe/02turkey.html?fta=y>.

⁵⁷ The PKK leader Murat Karayilan had affirmed a willingness to disarm in return for greater political and cultural rights for Turkey's Kurds. Since 2009, Turkey has pledged to reduce its military presence in the mainly Kurdish region and strengthen their minority rights.

⁵⁸ BBC's Country Profile on Turkey (last updated 15 December 2014), available at: <http://www.bbc.co.uk/news/world-europe-17988453>.

⁵⁹ 'Armed conflict in Turkey in 2013', in Stuart Casey-Maslen (ed), *The War Report: Armed Conflict in 2013*, p 230.

⁶⁰ 'KCK Istanbul case pending in Turkey's Constitutional Court', EKurd Daily (3 December 2014), available at: <http://ekurd.net/mismas/articles/misc2014/12/turkey5259.htm>.

two more attacks by DHKP-C were made against Turkish government targets in Ankara.⁶¹

In May and June 2013, as a result of development plans on one of Istanbul's green spaces, Taksim's Gezi Park, environmental activists held a sit-in in the park. Following their forceful eviction, mass protests against the government developed to voice human rights concerns relating to freedom of expression, freedom of association, as well as concerns about infringements of secularism by the government. The demonstrations, which included strikes, spread to several cities. The police responded with violence and several protestors died.⁶² Fears of a repeat of civil unrest have led to increasing security measures which imposed restrictions on rights in 2013-2014.⁶³ In March 2015, as explained below,⁶⁴ the GNAT passed a new security bill, which includes various restrictions to the right to assembly and demonstrate peacefully, as well as to the right to liberty and security of the person.⁶⁵

Following the December 2013 corruption investigation, in late 2013 – early 2014, approximately 350 police officers were removed from their posts in Ankara because they were deemed to be affiliated with the Gülen / Hizmet movement, which is described briefly below.⁶⁶ It has been alleged that the 2015 Ankara bombings (mentioned below) happen as a result of these dismissals and the consequent lack of security forces.⁶⁷ However, subsequently, more dismissals of senior police officials were made.⁶⁸ 29 police officers were detained in April 2015, including Nazmi Ardic who had earlier announced his bid for a seat in Parliament. They were detained for 8 days despite shorter constitutional limitations. 17 of these officials were subsequently arrested. It has been claimed that there is no legal justification for their arrest,⁶⁹ and

⁶¹ 'DHKP-C group claims US embassy suicide blast in Ankara', BBC News (2 February 2013), available at: <http://www.bbc.co.uk/news/world-europe-21305950>; see generally entry on Dev Sol on GlobalSecurity.org, available at:

http://www.globalsecurity.org/military/world/para/dev_sol.htm.

⁶² It is estimated that six individuals lost their life during the protests, and another three individuals lost their lives following the inhalation of tear-gas; the deaths of two police officers were also reported, see FIDH, 'Turkey: Gezi, One Year On' (April 2014), available at:

https://www.fidh.org/IMG/pdf/turkey_avril_2014_uk_web.pdf.

See also, 'Turkey protests spread after violence in Istanbul over park demolition', The Guardian (1 June 2013), available at:

<http://www.theguardian.com/world/2013/may/31/istanbul-protesters-violent-clashes-police>.

⁶³ 'Another summer of unrest for Turkey?', The Economist (3 May 2014), available at:

www.economist.com/blogs/charlemagne/2014/05/turkeys-may-day-protests.

⁶⁴ See Section 4.1 Domestic Human Rights Framework, Specific Human Rights under Domestic Law, the Right to Freedom of Association and Assembly (Other Relevant Domestic Provisions).

⁶⁵ See, for example, Kadri Gursel, 'Turkey's perilous security package', Al-Monitor (20 February 2015), available at: <http://www.al-monitor.com/pulse/originals/2015/02/turkey-security-package-threatens-security.html#>.

⁶⁶ 'Hundreds of Turkish police officers dismissed', BBC (7 January 2014), available at: <http://www.bbc.co.uk/news/world-europe-25634542>;

⁶⁷ Hannah Lucinda Smith, 'Purge of Police "Left Turkey Vulnerable to Attack"', The Times (13 October 2015), available at: <http://www.thetimes.co.uk/tto/news/world/europe/article4583856.ece>.

⁶⁸ 'Turkey Corruption Inquiry: More Senior Police "Fired"', BBC (20 December 2013), available at: <http://www.bbc.co.uk/news/world-europe-25462121>.

⁶⁹ 'Lawyers of Detained Police Officers Says No Justification for Arrest Demand', Today's Zaman (17 April 2015), available at: http://www.todayzaman.com/anayasa_lawyer-of-detained-police-officers-says-no-justification-for-arrest-demand_378245.html.

allegations have also been made that prison officials deliberately prevent their family from visiting them.⁷⁰

In the lead up to the parliamentary elections of June 2015, there has been a spike in the number of armed attacks in Turkey, with three armed attacks in Istanbul in March targeting the police headquarters, a courthouse and the ruling party's offices. One of the attacks involved two radical leftist militants who took an Istanbul prosecutor hostage in his office. The week of the elections, two explosions hit an HDP rally in the city of Diyarbakir.⁷¹ The AKP government noted that these attacks underscored the need for strict security measures ahead of the elections and the implementation of the security bill.⁷²

Between the two parliamentary elections of 2015, on 10 October 2015, there were two explosions outside a train station in Ankara during a peace rally, which was co-organised by the HDP; 100 people were killed and another 250 wounded. The government stated that this was a terrorist attack. Given that no relevant group claimed responsibility for the attack, HDP party members and others alleged that it was perpetrated by the State. On the same day, the PKK declared a unilateral ceasefire.⁷³ Another explosion in the town of Suruç, which neighbours the Syrian town of Kobani, took place in July 2015, with at least 30 casualties and another 100 wounded. Local Kurdish politicians blamed the Islamic State.⁷⁴ There has also been a general increase in clashes between Turkish State forces and Kurdish rebels, following the view of some Kurdish supporters that the attacks on HDP offices were carried out by the government. Both sides have suffered casualties following the dissolution of a cease-fire in July 2015,⁷⁵ and Turkish authorities have resorted to the imposition of curfews in several areas.⁷⁶ These curfews have led the HDP to file a complaint at the European Court of Human Rights (ECtHR), alleging that they are both unconstitutional and contrary to the right to liberty enshrined in the European Convention on Human Rights.⁷⁷

⁷⁰ 'Court Arrests 17 of 29 Targeted police Officers After 8-day-long Detention', Today's Zaman (20 April 2015), available at: http://www.todayszaman.com/anasayfa_court-arrests-17-of-29-targeted-police-officers-after-8-day-long-detention_378499.html.

⁷¹ 'Turkey Rally Explosions "Caused by Homemade Bombs"', BBC (6 June 2015), available at: <http://www.bbc.co.uk/news/world-europe-33035450>.

⁷² 'Turkey Struck By Attacks on Government and Party Offices', Wall Street Journal (1 April 2015), available at: <http://www.wsj.com/articles/gunmen-attack-istanbuls-police-headquarters-1427906697>.

⁷³ Constanze Letsch and Nadia Khomami, 'Turkey Terror Attack: Mourning After Scores Killed in Ankara Blasts', The Guardian (11 October 2015), available at: <http://www.theguardian.com/world/2015/oct/10/turkey-suicide-bomb-killed-in-ankara>.

⁷⁴ 'Suruç Massacre: At Least 30 Killed in Turkey Border Blast', BBC (20 July 2015), available at: <http://www.bbc.co.uk/news/world-europe-33593615>.

⁷⁵ 'Turkey-PKK Conflict: Why Are Clashes Escalating?', BBC (9 September 2015), available at: <http://www.bbc.co.uk/news/world-europe-34196105>; Lucy Kafanov, 'Turkey and Kurdish Rebel Clashes Intensify', USA Today (8 September 2015), available at: <http://www.usatoday.com/story/news/world/2015/09/08/turkey-kurd-clashes/71865172/>;

'Scores Killed in Clashes Between Turkish Forces and Kurdish Rebels', Al Jazeera (29 September 2015), available at: <http://america.aljazeera.com/articles/2015/9/29/scores-killed-in-clashes-between-turkish-forces-and-kurdish-rebels.html>.

⁷⁶ 'Turkey Restores Curfew in Restive Kurdish City of Cizre' BBC (13 September 2015), available at: <http://www.bbc.co.uk/news/world-europe-34240501>.

⁷⁷ 'Kurdish HDP party files complaint with European Court of Human Rights against Turkey' Ekurd Daily (29 December 2015), available at: <http://ekurd.net/kurds-file-complaint-against-turkey-2015-12-29>.

A controversial homeland security bill was passed into law in March 2015, incorporating changes with regard to police powers (such as allowing for unsupervised ID checks and the use of firearms in extended circumstances such as against protesters), as well as structural changes (by granting more power to provincial governors and placing the Gendarmerie under the control of the Ministry of Interior).⁷⁸

Foreign Relations

Historically, Turkey's foreign affairs policies have focused on its alliances with Western Europe and the United States. Turkey has been a NATO member since 1952.

Turkey is a member of the Council of Europe. With regard to the European Union, it applied for full European Economic Community (EEC) membership in 1987. In 1995, it entered the EU Customs Union. It has been an EU candidate country since 1999. In 2005, following the recognition of Cyprus as an EU member by Turkey, EU membership negotiations were officially launched and were expected to take about 10 years. However, in 2006, the EU partially froze Turkey's membership talks because of its failure to open its ports and airports to Cypriot traffic. In 2010, Wikileaks published confidential cables revealing that France and Austria had been deliberately blocking Turkey's EU membership negotiations.⁷⁹ In 2012, an EU Commission report on its progress towards EU membership contained concerns about democracy and human rights; concerns which were reiterated in 2013 as a result of the government's response to the Gezi Park protests. In 2013, membership talks with Turkey were put on hold by the EU (at the request of Germany). In 2013, the EU stated that membership talks would restart in November.⁸⁰ In November 2014, Turkey launched its 'European Union Strategy', with the adoption of a 'National Action Plan for EU Accession' and a 'European Union Communication Strategy'. The National Action Plan is to be fully implemented by 2019.⁸¹ In November 2015, as a result of the mass flow of refugees into the EU from Turkey, a deal – which is often seen as controversial for various reasons – was struck between the two. This agreement gave Turkey €3 billion, to be used for a refugee facility in exchange for better control of its own borders. It was also agreed that, in December 2015, a further negotiating chapter on

⁷⁸ 'Explained: Turkey's Controversial Security Bill', Hürriyet Daily News (21 February 2015), available at:

<http://www.hurriyetdailynews.com/explained-turkeys-controversial-security-bill.aspx?pageID=238&nlID=78658&NewsCatID=332>;

'Turkey Grants Police & Governors More Power in New Law', RT (4 April 2015), available at: <https://www.rt.com/news/246813-turkey-police-law-reform/>.

⁷⁹ BBC's Country Profile on Turkey (last updated 15 December 2014), Timeline, available at: http://news.bbc.co.uk/1/hi/world/europe/country_profiles/1023189.stm.

⁸⁰ 'EU agrees to restart Turkey membership talks next month', BBC News (22 October 2013), available at: <http://www.bbc.co.uk/news/world-europe-24620463>; See also 'EU enlargement: The next seven', BBC News (2 September 2014), available at: <http://www.bbc.co.uk/news/world-europe-11283616>.

⁸¹ Turkish Ministry for EU Affairs, 'Turkey's European Union Strategy' (September 2014), p 4, available at: http://www.europarl.europa.eu/meetdocs/2014_2019/documents/d-tr/dv/07/07en.pdf.

economic integration would be opened for Turkey's accession process.⁸²

Relations with the United States have been close since the beginning of the Cold War, although this alliance has been tested as a result of the recognition of the Armenian genocide by the United States.⁸³ Following the police operation of 14 December 2014, a letter was sent by 88 members of the US Congress to Secretary of State John Kerry on 2 February 2015, urging him to support freedom of the media in Turkey.

Turkey has tense relations with some of its neighbours.⁸⁴ It has an ongoing dispute with Greece over the divided island of Cyprus, which was invaded by Turkish troops in 1974, leading to a US (trade) embargo, which was lifted in 1978. In 1983 the Turkish-held area declared itself the Turkish Republic of Northern Cyprus. The status of Northern Cyprus as a separate entity is recognised only by Turkey, which keeps around 30,000 troops in the north of the island, despite several United Nations Security Council Resolutions calling for the Turkish forces to withdraw.⁸⁵ It also has a dispute with Greece in the Aegean Sea.

Relations with Armenia have also remained cold due to the Turkish denial of the Armenian genocide and Turkish support for Azerbaijan in its territorial dispute with Armenia in relation to Nagorno-Karabakh. In 2009, Turkey and Armenia agreed to normalise their relations by signing a historic accord establishing diplomatic ties and reopening their shared border, which has been closed since 1993. However, the border has not yet re-opened.⁸⁶ Both parliaments have yet to ratify this accord.⁸⁷ While in 2014 Turkey offered condolences to Armenia over the World War I killings, with Erdoğan recognising that the 1915 events had 'inhumane consequences',⁸⁸

⁸² 'Meeting of the EU heads of state or government with Turkey' Council of the European Union (29 November 2015), available at: <http://www.consilium.europa.eu/en/meetings/international-summit/2015/11/29/>.

⁸³ The United States House Committee on Foreign Affairs approved a bill that categorised and condemned the Ottoman Empire for the Genocide, on 10 October 2007. Passage of the Bill failed due to Turkish opposition: see 'U.S. and Turkey Thwart Armenian Genocide Bill', New York Times (26 October 2007), available at: http://www.nytimes.com/2007/10/26/washington/26cong.html?_r=0.

In 2010, the US House of Representatives' Foreign Affairs Committee passed a resolution describing the killing of Armenians by Turkish forces in World War I as genocide, leading Turkey to briefly recall its ambassador: 'Turkey threatens 'serious consequences' after US vote on Armenian genocide', The Guardian (5 March 2010), available at: <http://www.theguardian.com/world/2010/mar/05/turkey-us-vote-armenian-genocide>.

⁸⁴ Turkey has eight direct neighbours: Bulgaria, Greece, Georgia, Armenia, Iran, Nakhchivan (Azerbaijan), Iraq, and Syria.

⁸⁵ BBC's Country Profile on Cyprus (last updated 11 November 2014), available at: <http://www.bbc.co.uk/news/world-europe-17217956>.

See, for example, UNSCR 353 (20 July 1974).

⁸⁶ Cory Welt, 'Turkish-Armenian Normalisation and the Karabakh Conflict', PERCEPTIONS, Spring 2013, Vol XVIII, Number 1, pp 207-221, available at: http://sam.gov.tr/wp-content/uploads/2013/07/C_Welt.pdf.

⁸⁷ Progress is stalled by the Turkish denial of the Armenian genocide and a territorial dispute between Armenia and Azerbaijan in relation to Nagorno-Karabakh, see 'Is Armenian Leader Serious About Dumping Turkey Accord?', Institute for War and Peace Reporting (16 October 2014), available at: <https://iwpr.net/global-voices/armenian-leader-serious-about-dumping-turkey-accord>.

⁸⁸ 'Turkey offers condolences to Armenia over WWI killings', BBC News (23 April 2014), available at: <http://www.bbc.co.uk/news/world-europe-27131543>.

relations between the two countries have once again become strained in 2015 when Turkey announced it would mark the centenary of the Allied landings at Gallipoli on 24 April, the same day as Armenia marks the centenary of the genocide.⁸⁹

Syrian–Turkish relations have also long been strained, prompted by, among other things, territorial disputes and Syria's support for the PKK.⁹⁰ Although the AKP had cultivated closer relations with Syria in the last decade, tensions significantly worsened after Syrian forces shot down a Turkish fighter jet in June 2012 and border clashes in October 2012.⁹¹ As a result, Turkey stated that Syrian troops will be deemed a military threat to Turkey if they approach the border. In 2014, the Parliament authorised possible Turkish military operations against militants in Iraq and Syria who threaten Turkey, as well as the use of Turkish military bases by foreign forces for the same purpose.⁹² Recent fighting between ISIS fighters and Kurdish forces in Kobanî, close to the Turkish border, keep the situation tense between the two countries.⁹³ As a result of the Syrian conflict, more than a million and a half Syrian refugees have been registered in Turkey.⁹⁴

Relations with Israel have been good since the mid-1990s due primarily to Israeli military and security assistance. However, Israel's 2005 Palestine policy weakened support for this relationship among the Turkish public and in the AKP government.⁹⁵ In 2010, relations were particularly tense after nine Turkish activists were killed in an Israeli commando raid on an aid flotilla attempting to reach blockaded Gaza.

Within the region, Turkey is a member of the Black Sea Economic Cooperation, since its foundation in 1992.

The Gülen / Hizmet Movement

As aforementioned, Muhammed Fethullah Gülen started a religious and social movement also known as the Hizmet (service) movement, which, as described below, the Turkish government considers a 'parallel structure' within the State. Gülen is facing a potential prison sentence of up to 34 years.⁹⁶ Erdoğan has "openly declared

⁸⁹ 'The Armenian genocide – the Guardian briefing', The Guardian (16 April 2015) available at: <http://www.theguardian.com/news/2015/apr/16/the-armenian-genocide-the-guardian-briefing>.

⁹⁰ 'Syria and Turkey: A Complex Relationship', PBS News hour (15 November 2012), available at: <http://www.pbs.org/newshour/rundown/syria-and-turkey/>.

⁹¹ 'Turkey goes to Nato over plane it says Syria downed in international airspace', The Guardian (24 June 2012), available at: <http://www.theguardian.com/world/2012/jun/24/turkey-plane-shot-down-syria>.

⁹² 'Turkey OKs military action in Iraq, Syria', Times Union (2 October 2014), available at: <http://www.timesunion.com/local/article/Turkey-OKs-military-action-in-Iraq-Syria-5797946.php>.

⁹³ ISIS had eventually to withdraw from Kobanî, following US-led air strikes, see 'Isis finally admits defeat in Kobanî after air strikes force its fighters to retreat', The Guardian (31 January 2015), available at: <http://www.theguardian.com/world/2015/jan/31/isis-kobani-islamic-state-syria>.

⁹⁴ As of the end of May 2015, the UNHCR states that there are over 1,700,000 registered Syrian refugees in Turkey, see the data at: <http://data.unhcr.org/syrianrefugees/country.php?id=224>.

⁹⁵ 'Country Profile: Turkey', Federal Research Division of the Library of Congress (August 2008), p 24, available at: <http://lcweb2.loc.gov/frd/cs/profiles/Turkey.pdf>.

⁹⁶ Constanze Letsch, 'Turkey Issues Arrest Warrant for Erdogan Rival Fethullah Gülen', The Guardian (19 December 2014), available at: <http://www.theguardian.com/world/2014/dec/19/turkey-fethullah-gulen-arrest-warrant-erdogan-us>.

[...] that he would not shy from a ‘witch hunt’ against the Gülen movement” and on 14 December 2014, 25 people were detained in a coordinated raid, many of which were media figures, and all of which are affiliated with the Gülen movement.⁹⁷

Gülen-related businesses have also been reportedly subjected to intimidation and oppression. Between January - March 2014, two gold mine operations of a firm which reportedly has links with Gülen were suspended by officials, ; the firm said that their operations were fully in compliance with the law.⁹⁸ The Turkish Confederation of Businessmen and Industrialists (TUSKON) has a strong international presence and is also known to have ties with Gülen. TUSKON’s president has stated that many people who are invited by TUSKON to visit from abroad often fail to obtain a Turkish visa.⁹⁹ In September 2015, seven people (including four officials at Meliksah University and a Turkish Industry and Business Association Executive Board Member) were detained for a few days in relation to a purported Gülen-linked terrorist organisation.

Bank Asya, which was founded by followers of Gülen, was seized by the State’s Savings Deposit insurance Fund (TMSF) in February 2015, following the findings of Turkey’s banking watchdog, for failure to submit certain documents on privileged shareholders. However, others claim that all banks seized in this manner eventually go bankrupt, and that this is just a year-long “smear campaign” against the financial institution.¹⁰⁰ It has been subsequently reported that the bank has suffered financially due to refusal of bond-issuing permission and State-connected businesses withdrawal of funds. President Erdoğan also declared the bank “already bankrupt”, while public trading was also suspended thrice during a time where its share price was recovering.¹⁰¹ The European Commission’s spokeswoman has stated that a State takeover of a bank can be justified only “under clearly and strictly defined conditions which aim at carefully balancing all justified interests of concerned parties. Proportionality and reasoning for such a takeover is key in such cases”.¹⁰²

Several Hizmet-affiliated media have often been and continue to be raided and prosecuted on a variety of allegations.¹⁰³ Most recently, on 28 October 2015, just a

⁹⁷ Mustafa Akyol, ‘Another Turkish Witch Hunt Begins’, Al-Monitor (15 December 2014), available at: <http://www.al-monitor.com/pulse/originals/2014/12/turkey-gulen-movement-media-freedom-crackdown.html#>.

⁹⁸ ‘Gülen-linked Gold Firm’s Operations Halted for Second Time in Two Months’, Hürriyet Daily News (13 March 2014), available at: <http://www.hurriyetdailynews.com/gulen-linked-gold-firms-operations-halted-for-second-time-in-two-months.aspx?pageID=238&nID=63552&NewsCatID=345>.

⁹⁹ ‘Government Oppression of Confederation Hurts Turkish Exports to Africa’, Today’s Zaman (10 March 2015), available at: http://www.todayszaman.com/business_government-oppression-of-confederation-hurts-turkish-exports-to-africa_374850.html.

¹⁰⁰ Bank Asya Seized by Turkish State-Fund, Drawing Reaction’, Hürriyet Daily News (4 February 2015), available at: <http://www.hurriyetdailynews.com/bank-asya-seized-by-turkish-state-fund-drawing-reaction.aspx?pageID=238&nID=77867&NewsCatID=344>.

¹⁰¹ ‘Bank Asya under pressure as Turkey’s state businesses withdraw funds, Financial Times (27 November 2014), available at: <http://www.ft.com/cms/s/0/19c5a3fa-4ef3-11e4-a1ef-00144feab7de.html#axzz3pCDUjvYS>.

¹⁰² ‘European Commission says Bank Asya Takeover Raises Questions’, Today’s Zaman (1 June 2015), available at: http://www.todayszaman.com/anasayfa_european-commission-says-bank-asya-takeover-raises-questions_382323.html.

¹⁰³ Rt. Hon. The Lord Woolf C.H., Professor Sir Jeffrey Jowell KCMG QC, Rt. Hon. Sir Edward Garnier QC MP and Sarah Palin, ‘A Report on the Rule of Law and Respect for Human Rights in Turkey Since

few days prior to the most recent parliamentary election, the offices of a media conglomerate which is owned by Gülen-affiliated Koza Ipek were raided on allegations of financial irregularities.¹⁰⁴ In September-October 2015, Digitürk (the Turkish leading satellite television provider, which is reportedly still controlled by the TMSF) – alongside other similar providers¹⁰⁵ – removed nine broadcasters. Although two of these broadcasters are under investigation for charges of terrorism propaganda from an anonymous complaint, the removals were made without a court ruling to justify its decision on a legal basis. Turkey's media watchdog decided, in relation to some of these removals, that they violated the law, which requires giving service to media service providers on fair and impartial measurements.¹⁰⁶ These broadcasters are all said to be Gülen-affiliated.¹⁰⁷ It has also been reported that between 9 - 10 November 2015, 48 people were detained in several provinces on charges of financial support to members of the movement.¹⁰⁸

The movement is also responsible for the creation of several schools which constitute a source of income and allegedly also constitute recruiting centres for the movement.¹⁰⁹ Those affiliated with the movement often highlight that these educational institutions receive praise and higher rankings compared to other schools.¹¹⁰ Legislation was enacted in 2013 ordering these schools to be shut by September 2015 but, in July 2015, the Constitutional Court found this law to violate the right to education and freedom of labour.¹¹¹

The government has also frequently carried out inspections (considered by some as raids) on these schools, which often include the questioning of students and teachers,

December 2013' (July 2015), para 132; 'Media Distribution Company Target of Police Raid', Today's Zaman, (13 May 2015) available at: http://www.todayszaman.com/national_media-distribution-company-target-of-police-raid_380570.html.

¹⁰⁴ 'Turkish Police Storm Opposition Media Offices as Election Looms', The Guardian (28 October 2015), available at: <http://www.theguardian.com/world/2015/oct/28/turkish-police-storm-opposition-media-offices-as-election-looms>.

¹⁰⁵ 'TMSF Responsible for Digiturk Ban on TV Channels', Cihan (10 October 2015), available at: <https://en.cihan.com.tr/en/tmsf-responsible-for-digiturk-ban-on-tv-channels-1902991.htm>.

¹⁰⁶ 'Turkey's TV Watchdog to Send Warning Letters to Platforms Over Channel Removal', (15 October 2015), available at: <http://www.hurriyetdailynews.com/turkeys-tv-watchdog-to-send-warning-letters-to-platforms-over-channel-removal.aspx?pagerID=238&nID=89935&NewsCatID=341>.

¹⁰⁷ 'Two Turkish Broadcasters Probed for "Terrorism Propaganda"', Hürriyet Daily News (16 October 2015), available at: <http://www.hurriyetdailynews.com/two-turkish-broadcasters-probed-for-terrorism-propaganda.aspx?pagerID=238&nID=89973&NewsCatID=509>.

¹⁰⁸ 'Dozens Detained in Government Witch-Hunt Against Gülen Movement', Today's Zaman (10 November 2015), available at: http://www.todayszaman.com/national_dozens-detained-in-govt-witch-hunt-against-gulen-movement_403880.html.

¹⁰⁹ 'Turkish Court Overturns Order to Close "Gülen Schools"', BBC (14 July 2015), available at: <http://www.bbc.co.uk/news/world-europe-33517780>.

¹¹⁰ 'Turkish Schools in Somalia Won 22 Medals in 2 Years', Today's Zaman (17 February 2014), available at: <http://www.todayszaman.com/news-339716-turkish-schools-in-somalia-won-22-medals-in-2-years.html>; Cemen Polat, 'Success and Recognition of Turkish Schools in Australia', Today's Zaman (22 August 2010), available at: http://www.todayszaman.com/op-ed_advancing-in-education-in-an-advanced-democracy-success-and-recognition-of-turkish-schools-in-australia-by-cemen-polat_219685.html.

¹¹¹ Mustafa Akyol, 'Turkey's Constitutional Court Stands Up to Erdogan', Al-Monitor (22 July 2015), available at: <http://www.al-monitor.com/pulse/originals/2015/07/turkey-constitutional-court-last-stronghold-rule-of-law.html#>.

with recent inspections reported in July and September 2015.¹¹² The legal basis for the warrants used to inspect these schools has been criticised,¹¹³ with the Samanyolu Educational Institutions said to be preparing a criminal complaint on this matter.¹¹⁴ Additionally, it was reported that a law enacted in March 2014 restricts school principals' ability to retain their posts. Despite the Council of State's ruling that demoted principals should be allowed to return, the Ministry of Education requested not to enforce this ruling, leading the educators' union to file criminal complaints against Ministry officials.¹¹⁵ Reportedly, there has been a large drop in admission to these schools, which may result from allegations of these schools' involvement in high-profile scandals,¹¹⁶ but could also be due to the repeated inspections that have been carried out and which have led to the closure of some of those educational centres.¹¹⁷

¹¹² 'Ministry Questions Students, Teachers About Alleged Anti-Government Propaganda', Today's Zaman (14 March 2014), available at: http://www.todayszaman.com/national_ministry-questions-students-teachers-about-alleged-anti-govt-propaganda_342138.html; 'Auditors Inspect Gulen-Inspired Private School in First Week of School', Today's Zaman (30 September 2015), available at: http://www.todayszaman.com/national_auditors-inspect-gulen-inspired-private-school-in-first-week-of-school_400269.html.

¹¹³ 'Governor's Office Leads Raid Against Gülen Inspired School Based on Annulled Law', Today's Zaman (18 October 2015), available at: http://www.todayszaman.com/national_governors-office-leads-raid-against-gulen-inspired-school-based-on-annulled-law_401885.html.

¹¹⁴ 'Samanyolu Schools to Sue 3 Government Officials Over Unlawful Search Warrant', Today's Zaman (24 August 2015), available at: http://www.todayszaman.com/anasayfa_samanyolu-schools-to-sue-3-government-officials-over-unlawful-search-warrant_397349.html.

¹¹⁵ 'Educators' Union Files Criminal Complaint Against Education Minister Avci', Today's Zaman (14 August 2015), available at: http://www.todayszaman.com/national_educators-union-files-criminal-complaint-against-education-minister-avci_396508.html.

¹¹⁶ Yusuf Ziya Durmus, 'Gülenist-run Schools Face Losses After Scandals', Daily Sabah (30 December 2014), available at: <http://www.dailysabah.com/education/2014/12/30/gulenist-run-schools-face-losses-after-scandals>.

¹¹⁷ Rt. Hon. The Lord Woolf C.H., Professor Sir Jeffrey Jowell KCMG QC, Rt. Hon. Sir Edward Garnier QC MP and Sarah Palin, 'A Report on the Rule of Law and Respect for Human Rights in Turkey Since December 2013' (July 2015), paras 184-185, 180.

2. GOVERNMENT STRUCTURE

This section summarises the way each of the three branches of government functions and highlights any existing challenges to the separation of powers.

2.1. Executive

The President and the Council of Ministers

According to the Constitution, executive power rests with the President and the Council of Ministers.¹¹⁸ The President is the head of state and the commander-in-chief of the armed forces.¹¹⁹

Until 2007 the President was elected by the GNAT. That year, the Constitution was amended (by referendum) to provide for direct popular election of the President for a five-year term, with eligibility for one additional term.¹²⁰ The President is required to cease his or her party membership upon election. The President's role is rather ceremonial, with a number of limited powers and responsibilities, such as appointing the Prime Minister and the members of the Constitutional Court, sending laws back to the GNAT to be reconsidered, or the possibility to submit to referendum legislation amending the Constitution.¹²¹ Most of the presidential powers are clearly circumscribed or require the involvement of other executive bodies (usually the Prime Minister).¹²² The powers which the President is able to exercise individually are limited, but decisions made in accordance with those powers are not reviewable by any court.¹²³

The Council of Ministers (or 'Cabinet') is responsible for the execution of general policies. It is led by the Prime Minister, who is generally the leader of the political coalition in the GNAT and is effectively the head of government. While other Council Ministers are appointed by the President, they are nominated by the Prime Minister. Ministers can also be dismissed from their functions by the President, on the proposal of the Prime Minister. When the Council of Ministers is formed, the government's programme is presented before the GNAT and a vote of confidence is taken.¹²⁴

The current President is the former leader of the AKP, Recep Tayyip Erdoğan, a Sunni Muslim. In December 2002, the Constitution was amended, allowing him to run for Parliament and thus become Prime Minister (a public function he had been barred

¹¹⁸ Article 8 of the Constitution.

¹¹⁹ Articles 101-106 of the Constitution.

¹²⁰ Library of Congress – Federal Research Division Country Profile: Turkey (August 2008), p 20, available at: <http://lcweb2.loc.gov/frd/cs/profiles/Turkey.pdf>.

¹²¹ Article 104 of the Turkish Constitution. See also the website of the Presidency of the Republic of Turkey at: <http://www.tccb.gov.tr/pages/presidency/power/>.

¹²² For example, in relation to the appointment and dismissal of other Council Ministers.

¹²³ Article 105 of the Constitution.

¹²⁴ Articles 109-112 of the Constitution.

from because of a previous criminal conviction).¹²⁵ In March 2003, he won a seat in parliament. Within days Abdullah Gül resigned as Prime Minister and Erdoğan took over.¹²⁶ In 2014, Erdoğan became the first directly elected President of Turkey with a small majority of votes, succeeding to Gül, who had been the President since 2007.¹²⁷

President Erdoğan has suggested constitutional changes that would create a US-style executive presidency where greater decision-making power would rest with the President, including, for example, providing the President with quasi-legislative powers, such as the ability to rule by presidential orders. Such changes would require a two-thirds majority in parliament or a popular vote.¹²⁸ He has already transformed the nature of the role in the months since election, including by exercising his constitutional right to chair a cabinet ministers' meeting on 19 January 2015, which is the first time a President has done so in recent years.¹²⁹ Parliamentary elections were held in June 2015, producing a hung parliament. The attempts to form a coalition government failed, resulting in a second election. This was held in November 2015 and the AKP succeeded in regaining a majority.

Relationship between the Executive and the Military

The Turkish military has traditionally had a powerful role in Turkey's domestic, foreign and security policy. Considering themselves the guardians of secularism, the military conducted coups d'état almost every decade, removing administrations which it deemed a threat to the secular nature of Turkey or deviated from its Constitution. However, the rule of the AKP, whose Islamic roots conflict with the secularist views of the military, and EU accession requirements to reduce the political role of the military, has seen a shift in the balance of power.

¹²⁵ 'Erdoğan goes to prison', Hürriyet Daily News (27 March 1999), available at: <http://www.Hurriyetdailynews.com/erdogan-goes-to-prison.aspx?pageID=438&n=erdogan-goes-to-prison-1999-03-27>

¹²⁶ 'Turkish PM quits for Erdoğan', CNN (11 March 2003), available at: <http://edition.cnn.com/2003/WORLD/europe/03/11/turkey.elections/>.

In 2007, supporters of secularism rallied in Ankara to discourage Erdoğan to run for president, given his Islamist background. As a result, the AKP put Foreign Minister Abdullah Gül as candidate, who was then elected as president by the parliament (after the AKP won its majority in elections).

¹²⁷ Gül's election in 2007 led Turkey's General Staff, which presides over the armed forces, to release a controversial statement (e-memorandum) on its website re-affirming its commitment to secularism, which amounted to an interference with government, see, for example, 'EU warns Turkish army over vote', BBC News (28 April 2007, available at: <http://news.bbc.co.uk/1/hi/world/europe/6602661.stm>.

¹²⁸ Erdoğan's presidency and the Constitution, Turkish Review (1 September 2014), available at: http://www.turkishreview.org/tr/newsDetail_getNewsById.action?newsId=223660; "Turkey's Erdoğan signals no let-up in push for stronger presidency", Reuters (14 August 2014), available at: <http://uk.reuters.com/article/2014/08/14/uk-turkey-government-idUKKBN0GE0W120140814>; "The Guardian view on Recep Tayyip Erdoğan: presidential overreach", The Guardian, 17 August 2014, available at: <http://www.theguardian.com/commentisfree/2014/aug/17/guardian-view-recep-tayyip-erdogan-overreach>.

¹²⁹ 'Turkey's Erdoğan to chair first cabinet meeting as president', The Guardian (29 December 2014), available at: <http://www.theguardian.com/world/2014/dec/29/turkey-president-Erdogan-chair-cabinet-meeting>.

A number of legislative reforms were passed in the 2000s to increase civilian control over the military (and thus arguably also increase the chances of EU membership acceptance). For example, in 2009, President Abdullah Gül approved a legislative proposal made by the ruling AKP to give civilian courts the power to try military personnel for threatening national security or involvement in organised crime. In September 2010, the government's plan to amend the Constitution was approved by a national referendum, thus further reducing the powers of the military.¹³⁰

In 2011, President Gül appointed top military leaders after their predecessors resigned *en masse*. This was the first time a civilian government had decided who commands the armed forces.¹³¹

2.2. Legislature

The legislative branch consists of a unicameral system. The Parliament is composed of the Grand National Assembly of Turkey (GNAT),¹³² which is the sole body with legislative power under the Constitution and comprises 550 deputies elected every four years.¹³³ It is led by the Speaker, the Prime Minister and the Leader of the main opposition, which is currently the Republican People's Party (CHP).¹³⁴

The duties and authority of the GNAT include: to pass, amend and abrogate laws, to supervise the Council of Ministers (Cabinet) and ministers, to give authority to the Council of Ministers (Cabinet) to pass decrees with the power of law, to adopt the budget and final account draft laws, to make decisions to declare war, martial law or emergency rule, and to approve the signing of international agreements.¹³⁵

The Rule of the AKP

President Erdoğan co-founded the ruling (Islamist-based) AKP in 2001. The party has had political control since first coming to power in 2002, being re-elected with strong majorities in the 2007, 2011 and November 2015 general elections and gained control of most municipalities in local elections (in 2004 and 2009).¹³⁶ It currently has

¹³⁰ See, for example, 'Turkey's September 12, 2010, Referendum', Sinan Ciddi (22 December 2011), available at:

<http://www.rubincenter.org/2011/12/turkey%E2%80%99s-september-12-2010-referendum/>.

¹³¹ 'Turkey: Military chiefs resign en masse', BBC News (29 July 2011), available at:

<http://www.bbc.co.uk/news/world-europe-14346325>; 'Erdoğan Closer to Civilian Control of Turkish Military After Generals Quit', Bloomberg (30 July 2011), available at:

<http://www.bloomberg.com/news/2011-07-29/turkey-s-top-four-generals-resign-amid-dispute-with-Erdoğan-lira-weakens.html>.

¹³² See the Parliament's website at: <http://global.tbmm.gov.tr/index.php/EN/yd/icerik/43#>.

¹³³ Article 75 of the Constitution.

¹³⁴ For more information on the GNAT, see K Erdem and M Solak, 'Grand National Assembly of Turkey' (2012, Department of Research Services, GNAT), available at:

www.tbmm.gov.tr/yayinlar/arastirma_merkezi.pdf.

¹³⁵ Articles 87 to 92 of the Constitution.

¹³⁶ 'Viewpoint: What now for Turkey's ruling party?', BBC News (31 October 2012), available at: <http://www.bbc.co.uk/news/world-europe-20141894>; 'The AKP years in Turkey: the third stage',

317 seats in Parliament, although this is short of the two-thirds supermajority needed to amend the Constitution unilaterally. In 2008, the Constitutional Court narrowly rejected a petition by the chief prosecutor to ban the AKP and 71 of its officials, including President Gül and Prime Minister Erdoğan, for allegedly seeking to establish an Islamic state.¹³⁷ Oy ve Ötesi (Vote and Beyond) is a civil society initiative which detected fraud in the March 2014 municipal elections, during its first monitoring campaign.¹³⁸ This has led to ballot box monitors being put in trial over election fraud allegations. This organisation has continued to grow and has reportedly been the subject of election fraud allegations by pro-governmental media and accusations of being linked to terrorism.¹³⁹

Concerns have been expressed that there is no effective political opposition in Turkey. A lack of cohesion and internal strife characterises the primary opposition party, the Republican People's Party (Cumhuriyet Halk Partisi, or CHP), which has secular social-democratic roots.¹⁴⁰ The CHP appears to trail far behind the 50 percent popular vote that the AKP commanded in the 2011 elections.¹⁴¹

It has been said that the more serious threats to AKP rule and policies has come not from parliamentary opposition but from extra-parliamentary forces, such as the military, and the judiciary.¹⁴² However, the power of these institutions has been gradually eroded.¹⁴³ There are also concerns over the possible use of the courts by the AKP to diminish the influence of its opponents.

The most high profile cases which have been the object of such concerns are the so-called 'Ergenekon' trials, which followed an investigation into a supposed 'terrorist

openDemocracy (20 September 2011), available at: <https://www.openDemocracy.net/gunes-murat-tezcur/akp-years-in-turkey-third-stage>.

¹³⁷ BBC's Country Profile on Turkey (last updated 15 December 2014), Timeline, available at: http://news.bbc.co.uk/1/hi/world/europe/country_profiles/1023189.stm.

¹³⁸ 'Oy ve Ötesi Kicks Off Preparations for Election with 23,000 Volunteers', Today's Zaman (5 October 2015), available at: http://www.todayszaman.com/national_oy-ve-otesi-kicks-off-preparations-for-election-with-23000-volunteers_400681.html.

¹³⁹ 'Pro-government Media Accuses Oy ve Ötesi of Election Fraud, Seeks to Discredit Vote Monitoring Group', Today's Zaman (25 October 2015), available at: http://www.todayszaman.com/anasayfa_pro-govt-media-accuses-oy-ve-otesi-of-election-fraud-seeks-to-discredit-vote-monitor-group_402476.html.

¹⁴⁰ The roots of the CHP have also been described as elitist, see Fatih Öztürk, *Essays in Turkish and Comparative Law* (Filiz, 2014), p 90.

¹⁴¹ 'Turkey's Main Opposition Party No Threat to Erdoğan', Al Monitor (26 August 2013), available at: <http://www.al-monitor.com/pulse/originals/2013/08/turkish-opposition-no-threat-to-Erdoğan.html#ixzz3PSZWAGNP>.

¹⁴² 'The AKP years in Turkey: the third stage', openDemocracy (20 September 2011), available at: <https://www.openDemocracy.net/gunes-murat-tezcur/akp-years-in-turkey-third-stage>; 'Is there no effective opposition in Turkey?', Hürriyet Daily News (8 October 2013), available at: <http://www.Hurriyetdailynews.com/is-there-no-effective-opposition-in-turkey.aspx?pageID=449&nID=55838&NewsCatID=409>; 'Turkey's Main Opposition Party No Threat to Erdoğan', Al Monitor (26 August 2013), available at: <http://www.al-monitor.com/pulse/originals/2013/08/turkish-opposition-no-threat-to-Erdoğan.html#ixzz3PSZWAGNP>.

¹⁴³ See section on Relationship between the Executive and Military above, and the section on the Judiciary below.

organisation’ said to seek to overthrow the government.¹⁴⁴ An investigation was initiated in 2007, following the discovery of assault grenades hidden in Ümraniye, an Istanbul neighbourhood.¹⁴⁵ This led to the arrest of the organisation’s alleged members, consisting mostly of military officers, journalists and politicians.¹⁴⁶ Case 7 of the Ergenekon trials specifically centres on individuals linked to OdaTV, an online news portal which was deemed to act as the ‘media arm’ of the organisation. Several series of indictments were filed, leading to the trials of 275 individuals for charges including the use of violence to destabilise the government through threats, armed attacks or bombings, and otherwise plotting to overthrow the government.¹⁴⁷ Charges were mostly based on alleged violations of the Penal Code (Law No. 5237),¹⁴⁸ in particular its Fifteenth Section which is concerned with ‘Offences against Constitutional Order and Operation of Constitutional Rules’.¹⁴⁹ The trials were conducted between 2008 and 2013.

After an initial enthusiasm for the investigation,¹⁵⁰ both the investigation and the trial process were criticised. However, voicing concerns over the Ergenekon trials has apparently led to further arrests and imprisonment of media professionals on charges of violating the principle of confidentiality of the ongoing trial.¹⁵¹ The investigation itself was criticised for, among other matters, illegal collection of evidence such as wiretapping, which was in breach of privacy laws. The length of pre-trial detention

¹⁴⁴ The prosecutors in charge of the Ergenekon investigations made several press releases during the trials, see for example, ‘Ergenekon Coup’ Indictment Submitted to the Court’, BIA News (14 July 2008), available at: <http://www.BIA News.org/english/politics/108330-ergenekon-coup-indictment-submitted-to-the-court>.

The indictment was made public through the media, see ‘The Ergenekon Indictment is Ready’, BIA News (3 July 2008), available at: <http://www.BIA News.org/english/politics/108057-the-ergenekon-indictment-is-ready>. See also ‘Prosecutors Charge 64 Life Sentence’, BIA News (19 March 2013), available at: <http://www.BIA News.org/english/other/145199-prosecutors-charge-64-life-sentence>.

¹⁴⁵ *Ahmet Tuncay ÖZKAN contre la Turquie*, ECtHR (Deuxième Section), Décision sur la Recevabilité de la requête No 15869/09 (13 December 2011), Section A.1, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108434>.

¹⁴⁶ ‘Changing Civil Military Relations in Turkey’, the Foreign Military Studies Office (April 2011), available at: <http://fmso.leavenworth.army.mil/documents/Civil-Military-Relations-in-Turkey.pdf>.

¹⁴⁷ It has been reported that the claims included misinformation, see Gareth Jenkins, ‘Fact, Fantasy, and Farce as More are Detained in Ergenekon Probe’, Eurasia Daily Monitor Volume: 5 Issue: 181 (22 September 2008), available at: http://www.jamestown.org/programs/edm/single/?tx_ttnews%5Btt_news%5D=33961&tx_ttnews%5BbackPid%5D=166&no_cache=1#.VOtMpi4_ZtM.

¹⁴⁸ Law No. 5237 was passed on 26 September 2004 (Official Gazette No. 25611 of 12 October 2004), available at: <http://www.legislationline.org/documents/action/popup/id/6872/preview>.

¹⁴⁹ The ECtHR decision cites Articles 311 (1), 312 (1), 314 (1)(2), 327 (1), and 334 (1).

These provisions concern offences against legislative organs (Art 308), offences against government (Art 310), armed organised groups (Art 312), disclosure of confidential information (Art 327), disclosure of restricted information (Art 333).

¹⁵⁰ In 2008, 300 Turkish intellectuals declared their support for the investigation, see ‘300 Aydın: Ergenekon Derinleştirilsin, Kazanan Yurttaşlar Olacak’ [which can be translated as: ‘300 Intellectuals: Ergenekon Shall be Deepened, The Citizens Are the Ones Who will Win’], BIA News (13 August 2008), available (in Turkish) at: <http://www.BIA News.org/BIA News/siyaset/108985-300-aydin-ergenekon-derinlestirilsin-kazanan-yurttaslar-olacak>.

¹⁵¹ House of Commons, Parliamentary Briefing papers, ‘Turkey’s 2011 elections and beyond’ (14 July 2011), available at: www.parliament.uk/briefing-papers/SN06035.pdf. See, for example, ‘Turkey 2010 Progress Report’, European Commission (9 November 2010), p 20, where the Commission clearly expressed its concern over the high number of cases initiated against journalists.

was another reason for concern.¹⁵² In December 2013, the Constitutional Court ruled in favour of two suspects in the case, stating that their detention had exceeded a reasonable amount of time and had violated their right to be elected as members of Parliament.¹⁵³

By the time the trials ended, 254 individuals had been convicted. While many of those convicted were military officers, at least 20 journalists received prison terms.¹⁵⁴ Some of the sentences were particularly heavy, including life imprisonment for İlker Başbuğ, a former chief of Turkey's General Staff, which presides over the armed forces.¹⁵⁵ However, in 2014, the Constitutional Court ruled that his rights had been violated.¹⁵⁶ As a result, other individuals who were convicted as part of the same trial may also seek to be released on similar grounds.

A similar judicial process, known as the 'Sledgehammer trial', also led to prison sentences for about 300 individuals alleged to have attempted a military coup in 2003. Following the 2012 sentencing, the Constitutional Court found that the rights of the accused had been violated, leading to their release pending a re-trial. In 2013, yet another similar trial began, this time with former senior military officers accused of plotting to overthrow an earlier pro-Islamist government led by Necmettin Erbakan in 1997.

A case related to the Ergenekon trial was brought before the ECtHR, in which the applicant complained of violations of Articles 3, 5 (1)(2)(3)(4), and 6(3) with regard to his interrogation and pre-trial detention periods, the length of the criminal process itself, and a lack of independent and impartial tribunal.¹⁵⁷ However, the ECtHR rejected his application on all counts, deeming (among other matters) that the reasons for his arrest and detention were plausible and in accordance with Turkish criminal law and that the length of detention since the arrest (slightly over 3 years at the time of the ECtHR decision) has not been unreasonable given the complexity of the case.

In 2010, the Parliament began debating constitutional changes proposed by the government with the stated aim of making Turkey more democratic. The opposition Republican People's Party says the AKP is seeking more control over the secular judiciary. A 2010 referendum on constitutional reform supported the amendments aimed at increasing parliamentary control over the army and judiciary.

¹⁵² See, for example, 'Turkey 2010 Progress Report', European Commission (9 November 2010), p 7.

¹⁵³ 'Turkey Progress Report', European Commission (October 2014), p 46.

¹⁵⁴ See 'Journalists sentenced in alleged Ergenekon plot', Committee to Protect Journalists (7 August 2013), available at:

<https://cpj.org/2013/08/journalists-sentenced-in-alleged-ergenekon-plot.php#more>.

¹⁵⁵ See, for example, 'Timeline: Turkey's 'Ergenekon' trial', Al Jazeera (5 August 2013), available at: <http://www.aljazeera.com/news/europe/2013/08/20138512358195978.html>.

¹⁵⁶ See 'Turkey Ergenekon: Coup plot general wins court appeal', BBC (6 March 2014), available at: <http://www.bbc.co.uk/news/world-europe-26471660>.

¹⁵⁷ See the case of journalist and activist Tuncay Özkan, who received a life prison sentence in 2013: *Ahmet Tuncay ÖZKAN contre la Turquie*, ECtHR (Deuxieme Section), Decision sur la Recevabilite de la requete No 15869/09 (13 December 2011), available at:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108434>

Ahmet Tuncay Özkan had established Kanaltürk, a tv channel, allegedly to promote the agenda of Ergenekon.

A scandal affected the AKP government in December 2013, when an investigation into corruption allegations was launched by the police, leading to the detention of dozens of individuals, including the sons of three ministers.¹⁵⁸ The government responded by sacking numerous police chiefs and rushing legal changes to the governance of the judicial system through the GNAT.¹⁵⁹ In December 2014, there were also government-orchestrated crackdowns on independent media outlets in Turkey which have been critical of the government for alleged corruption since the major graft probes went public.¹⁶⁰ Furthermore, two judges were suspended by the HSYK for having attempted to release 75 suspects detained as a result of the December 2014 crackdowns, including an executive said to be close to Fethullah Gülen.¹⁶¹

2.3. Judiciary

Judicial power in Turkey is exercised by independent courts and supreme judicial organs. The Constitution states that the legislative and executive organs must comply with the rulings of the courts and may not give orders to courts or judges relating to the exercise of judicial power, or change or delay the application of their rulings.¹⁶² Judges also serve on election boards, independent of the court system, which monitor the elections in Turkey.¹⁶³

There is an ongoing training programme for Turkish judges, organised by the Council of Europe, which covers the ECHR and the case law of the ECtHR, focussing on freedom of expression.¹⁶⁴

¹⁵⁸ 'Turkish opposition calls for Erdoğan to be investigated for corruption', The Guardian (25 February 2014), available at:

<http://www.theguardian.com/world/2014/feb/25/recep-tayyip-erdogan-investigated-corruption-turkey>

¹⁵⁹ See an explanation of the key elements of the legislation here:

<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=6c6da94a-975f-44cf-8da4-ed718f6e61>.

¹⁶⁰ 'Black Sunday: The day Turkey detained its prominent journalists', Today's Zaman (14 December 2014), available at: http://www.todayszaman.com/national_black-sunday-the-day-turkey-detained-its-prominent-journalists_366944.html.

¹⁶¹ 'Top court suspends 2 judges over plot to release Gülen-linked detainees', Yeni Şafak (27 April 2015), available at: <http://english.yenisafak.com/news/top-court-suspends-2-judges-over-plot-to-release-gulen-linked-detainees-2124806>.

¹⁶² Articles 138-160 of the Constitution.

¹⁶³ İsmail Aksel, Turkish Judicial System: Bodies, Duties and Officials, published by the Department for Strategy Development in the Ministry of Justice of Turkey (2013), p 69, available at: www.justice.gov.tr/judicialsystem.pdf.

¹⁶⁴ 'Support to Human Rights National Implementation', Council of Europe, available at:

http://www.coe.int/t/DGI/HR-NATIMPLEMENT/projects/strengthening_capacity_Turkish_Judiciary_Freedom_Expression_en.asp.

This programme runs from 2 September 2014 to 1 December 2016. It seems that for now this programme has concerned judges at the Constitutional Court but will now be extended to judges at local courts, in order to limit the number of cases brought before the Constitutional Court.

Structure and Key Institutions

Functionally, Turkey has a tripartite judicial system, divided into judicial, administrative and military jurisdictions. Judicial courts deal with civil and criminal cases. Administrative and tax courts deal with cases brought against the executive branch of government in relation to implementation of legislation.¹⁶⁵ Military courts have jurisdiction to try military personnel for military offences, offences committed by them against other military personnel or for offences connected with military service and duties.¹⁶⁶ An important constitutional amendment in 2010 removed the jurisdiction of military courts over military offences committed by anyone in military locations, effectively abolishing its competence on civilians except in cases of war.¹⁶⁷

As a result of its multipartite structure, the Turkish judicial system has several different supreme courts rather than a single supreme court. The supreme courts in each jurisdiction are:

- the Court of Cassation (or Supreme Court of Appeals or High Court of Appeals), the final decision maker in judicial jurisdiction;¹⁶⁸
- the Council of State, the superior court for administrative justice;¹⁶⁹
- the Military Court of Cassation (or High Military Court of Appeals), the court of final instance for all rulings and verdicts rendered by military courts;¹⁷⁰
- the Supreme Military Administrative Court (or High Military Administrative Court), the final decision maker in military administrative matters (it serves both as court of first instance and supreme court).¹⁷¹

In the case of disputes concerning verdicts and competencies of the judicial, administrative or military courts, these are resolved by the Court of Jurisdictional Disputes.¹⁷² Separately, the Court of Accounts audits the revenues, expenditures, and assets of the public administrations financed by central government budget.¹⁷³

Additionally, the Constitutional Court, established in 1961, sits above these courts. It reviews the constitutionality of laws and decrees, on application by the President, parliamentary groups of the ruling party or parties and of the main opposition party, or a minimum of one-fifth of the total number of members of the GNAT.¹⁷⁴ It also has

¹⁶⁵ Ergun Ozbudun, 'The Judiciary', in Carmen Rodriguez *et al* (eds), *Turkey's Democratization Process* (2013), p 281.

¹⁶⁶ Article 145 of the Constitution.

¹⁶⁷ Ergun Ozbudun, 'The Judiciary', in Carmen Rodriguez *et al* (eds), *Turkey's Democratization Process* (2013), p 283.

¹⁶⁸ Article 154 of the Constitution.

¹⁶⁹ Article 155 of the Constitution.

¹⁷⁰ Article 156 of the Constitution.

¹⁷¹ Article 157 of the Constitution.

¹⁷² Article 158 of the Constitution.

¹⁷³ Article 160 of the Constitution.

¹⁷⁴ Articles 148 and 150 of the Constitution. However, parliamentary groups of the ruling party or parties do not have the right to request the verification of laws and constitutional amendments as to their forms. According to Article 148 of the Constitution, the review of laws and constitutional amendments as to their forms can only be requested by the President or by one-fifth of the total number of members of the GNAT. Article 150 of the Constitution provides that the application for an annulment action based on unconstitutionality, in form and in substance, of laws and decrees having the forms of law can be made by the President, parliamentary groups of the ruling party or parties and of the main opposition party, or a minimum of one-fifth of the total number of members of the GNAT.

the power to review constitutional amendments, but on the grounds of form only. Following the 2010 constitutional amendment package that came into effect in September 2010, individuals may apply to the Constitutional Court on the grounds that one of the human rights within the scope of the European Convention on Human Rights, which are guaranteed by the Constitution, has been violated by public authorities.¹⁷⁵

A number of bodies have important functions in relation to the judiciary. The High Council of Judges and Prosecutors (HSYK) is an independent board that is established to act in accordance with the principles of independence of courts and tenures of judges and prosecutors.¹⁷⁶ It supervises judges and public prosecutors. Its primary duties are to make decisions on appointments, promotions and assignments and discipline of judges and prosecutors, and has the power to render final decisions about proposals by the Government to abolish or change a court's jurisdiction.¹⁷⁷ The Ministry of Justice is responsible for supervising the administrative functions of courts and prosecutors, and determines policies relating to or affecting the justice system.¹⁷⁸ The Justice Academy of Turkey is an institution providing training for judges, prosecutors and lawyers within the Turkish legal system.¹⁷⁹

Appointment of Judges

Constitutional amendments adopted in 2010 modified the structure of the HSYK and the way its members are appointed. From seven members appointed strictly by the Court of Cassation and the Council of State (the administrative appeal court, whose members are appointed by HSYK), the number of members of the HSYK was raised to 22.¹⁸⁰ Four members are now directly appointed by the President, while the rest are appointed by the Court of Cassation (3 members), the Council of State (2 members), the Justice Academy of Turkey (1 member), and through election by civil and administrative judges and prosecutors (10 members). The remaining two members of the HSYK consist of the Minister of Justice, who serves as President of the Council, and the Undersecretary to the Ministry of Justice.¹⁸¹

The 2010 constitutional amendments addressed some of the concerns regarding judicial independence by attempting to make the judicial appointment process more representative, independent and democratic.¹⁸² For example, the changes sought to

¹⁷⁵ Article 148 of the Constitution. As of July 2014, the number of applications made to the court was 22,677. The court decided in 9,683 cases, while rejected or found inadmissible 149 cases; work continued on 12,845 cases: see European Commission, Turkey's progress report (October 2014), p 45, available at: http://ec.europa.eu/enlargement/.../20141008-turkey-progress-report_en.pdf.

¹⁷⁶ It is also known as the Supreme Board of Judges and Prosecutors.

¹⁷⁷ Article 159 of the Constitution.

¹⁷⁸ See Article 144 of the Constitution.

¹⁷⁹ 'The Judicial System Of Turkey And Organisation Of The Ministry Of Justice', published by the International Law Research Center in the Ministry of Justice, p 46, available at: http://www.uhdigim.adalet.gov.tr/THE_JUDICIAL_SYSTEM_OF_TURKEY_AND_ORGANISATION_OF_THE_MINISTRY_OF_JUSTICE.pdf.

¹⁸⁰ There are also an additional 12 substitute members.

¹⁸¹ For more details on these appointments, see Art 159 of the Constitution.

¹⁸² 'The next battle for the Turkish judiciary', Al Monitor (2 September 2014), available at: <http://www.al-monitor.com/pulse/originals/2014/09/turkey-judiciary-battle-gulen-akp.html#>.

limit the interference of the executive branch into the judiciary by conferring the responsibility of supervising judges and prosecutors on inspectors of the HYSK (rather than the Ministry of Justice),¹⁸³ as well as by removing the right of the Minister of Justice, who holds the office of the President of the Council by default under Article 159 of the Constitution, to be involved with the substantive work of the HYSK.¹⁸⁴ However, the 2010 constitutional amendments also brought new concerns, for example by allowing the President to play a direct role in the appointment of members of the HYSK.¹⁸⁵ Although this process appears to challenge the separation of powers, the ECtHR has stated that the independence of the judiciary is not jeopardised solely because some judicial nominations emanate from the executive branch.¹⁸⁶ Despite the fact that the majority of member of the HYSK is appointed by the judiciary and not executive branch, the Council of Europe's Commission for Democracy through Law ('the Venice Commission') recommended that the four members appointed by the President be elected by Parliament.¹⁸⁷ Another issue brought by those amendments regards the voting system for the elected members of the HYSK, which has been criticised by the Venice Commission for allowing the possibility of informal electoral majority agreements aimed at avoiding the election of candidates who are the expression of minority orientations.¹⁸⁸

In February 2014, the government passed laws that further compromised the independence of the HYSK.¹⁸⁹ These amendments to Law No. 6087 on the HYSK require that the Chairman and the Deputy Chairman of the Inspection Board of the HYSK, which undertakes inspections to determine whether judges and public prosecutors are carrying out their duties in accordance with the laws, be appointed by the Minister of Justice. It also authorised the Minister of Justice to conduct investigations of members of the HYSK on disciplinary matters. Finally, it removed the Secretary-General of the HYSK and his aides, the head of the committee of inspectors, and all inspectors and administrative staff working for the HYSK from their jobs and replaced them with appointments by the Ministry of Justice.¹⁹⁰

¹⁸³ Edizioni Nuova Cultura, 'Global Turkey in Europe: Political, Economic, and Foreign Policy Dimensions of Turkey's Evolving Relationship with the EU' (Political Science, 2013), p 158, available at: <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?lang=en&id=166451>.

¹⁸⁴ See Article 159(7) of the Constitution, stating that although "[t]he administration and the representation of the Council are carried out by the President of the Council", "[t]he President of the Council shall not participate in the work of the chambers".

¹⁸⁵ Servet Sağlam, 'The Turkish High Council of Judges and Prosecutors in the Context of Judicial Independence and Accountability', (2013) 4(2) Law & Justice Review 165, p 168, available at: <http://www.taa.gov.tr/indir/the-turkish-high-council-of-judges-and-puresecutors-in-the-context-of-judicial-independence-and-accountability-bWFrYWxlfDc4YmNjLTAxNzJlLWRhNjlkLTg5MTZkLnBkZnw1ODY/>.

¹⁸⁶ *Case of Campbell and Fell v the United Kingdom*, ECtHR Judgment 28 June 1984, Application No. 7819/77, paras 78-79.

¹⁸⁷ Council of Europe Venice Commission, Interim Opinion on the Draft Law on the High Council for Judges and Prosecutors, CDL-AD(2010)42 (20 December 2010), para 35, available at: <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282010%29042-e>.

¹⁸⁸ Council of Europe Venice Commission, Interim Opinion on the Draft Law on the High Council for Judges and Prosecutors, CDL-AD(2010)42 (20 December 2010), para 36, available at: <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282010%29042-e>.

¹⁸⁹ These amendments were part of the Omnibus Law No. 6524 on the Amendment of Certain Laws, adopted 15 February 2014, available in Turkish at: <http://www.tbmm.gov.tr/kanunlar/k6524.html>.

¹⁹⁰ For an explanation of the key provisions of the Omnibus law, see US Library of Congress, 'Turkey: New Amendments to Laws on Judiciary' (3 October 2014), available at:

In April 2014, the Constitutional Court struck down most of the new provisions, finding that the new powers given to the Minister of Justice “transformed the [HYSK] into a Directorate General factually affiliated and dependent upon the Ministry of Justice” and was contrary to the principle of the independence of the Council set out in Article 159.¹⁹¹ However, as the Court’s decision did not bear any retroactive effect, the staff who had been dismissed could not be re-appointed.¹⁹²

The Court comprises seventeen members, fourteen of which are appointed by the President from candidates nominated by lower courts and the Council of Higher Education, and three of which are elected by the GNAT.¹⁹³

The Court of Cassation (or the High Court of Appeals) comprises 23 civil law chambers and 15 criminal law chambers, each of which has a president and 9 members.¹⁹⁴ Members of the Court are appointed by the HYSK from among first level ordinary judges and public prosecutors of the civil judiciary by secret ballot and by an absolute majority of the total number of members.¹⁹⁵

The Council of State has 15 chambers, 14 of which are judicial chambers and one is an administrative chamber.¹⁹⁶ Two different methods are used to elect the members of the Council of State. A quarter of the members are directly appointed by the President from the senior bureaucrats whose qualifications are identified by law, while three quarters of the members are selected by the HYSK from among the first category administrative judges and public prosecutors.¹⁹⁷

http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403888_text; See also commentary from the International Bar Association, available at:

<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=6c6da94a-975f-44cf-8da4-ed718ffee61>.

¹⁹¹ Constitutional Court Decision No. 2014/81, 10 April 2014, see summary available in English, p 3, available at: <http://www.anayasa.gov.tr/en/News/Detail/judgment/2014-57.pdf>.

¹⁹² Thomas Giegerich, Peer Review Mission on the High Council of Judges and Prosecutors (6 – 8 May 2014) Report on the Reform of the High Council of Judges and Public Prosecutors by Law No. 6524 of February 2014, pp 3, 14:

http://www.avrupa.info.tr/fileadmin/Content/Downloads/PDF/2014_Peer_Review_report_by_Thomas_Giegerich.pdf.

¹⁹³ According to Article 146 of the Constitution, “[T]he President of the Republic shall appoint three members from High Court of Appeals, two members from Council of State, one member from the High Military Court of Appeals, and one member from the High Military Administrative Court from among three candidates to be nominated, for each vacant position, by their respective general assemblies, from among their presidents and members; three members, at least two of whom being law graduates, from among three candidates to be nominated for each vacant position by the Council of Higher Education from among members of the teaching staff who are not members of the Council, in the fields of law, economics and political sciences; four members from among high level executives, self-employed lawyers, first category judges and public prosecutors or rapporteurs of the Constitutional Court.”

¹⁹⁴ İsmail Aksel, ‘Turkish Judicial System: Bodies, Duties and Officials’, published by the Department for Strategy Development in the Ministry of Justice of Turkey (2013), p 35, available at: www.justice.gov.tr/judicialsystem.pdf.

¹⁹⁵ Article 154 of the Constitution.

¹⁹⁶ İsmail Aksel, ‘Turkish Judicial System: Bodies, Duties and Officials’, published by the Department for Strategy Development in the Ministry of Justice of Turkey (2013), p 40, available at: www.justice.gov.tr/judicialsystem.pdf.

¹⁹⁷ Article 155 of the Constitution.

The Military Court of Cassation (MCC) has 5 chambers, with a head and seven members in each chamber.¹⁹⁸ The members of the MCC are appointed by the President from among three candidates nominated by the members of the General Assembly of the MCC.¹⁹⁹

The Supreme Military Administrative Court has two chambers, with a head and six members in each chamber.²⁰⁰ Members of the Court who are military judges are appointed by the President from a list of three candidates nominated by the President and members of the Court, who are also military judges. Members who are not military judges are appointed by the President of the Republic from a list of three candidates nominated for by the Chief of the General Staff of the Court from among officers holding the rank and qualifications prescribed by law.²⁰¹

The Court of Jurisdictional Disputes has two chambers which consist of a president, six regular members and six substitute members each. Members for the Civil Law Chamber are elected by the Assembly of Civil Law Chambers (of the Court of Cassation), the Assembly of the Council of State from and the Assembly of the Supreme Military Administrative Court. Members of the Criminal Law Department are elected by the Assembly of Criminal Law Chambers (of the Court of Cassation) and the Assembly of the Military Court of Cassation.²⁰²

Members of District and First Instance Courts are appointed by the HYSK.²⁰³

Judicial Remedies

According to the above and if military courts are not considered, the Turkish judicial system includes three main types of courts: civil, administrative, and criminal. Each of these categories has courts ranging from the first instance to supreme appellate courts, as mentioned above. Judicial remedies can be split into civil, administrative, and criminal remedies. The below elaborate the procedures and requirements to resort to (and exhaust) domestic judicial remedies in Turkey.

Civil Procedure

The Civil Procedure Law, entered into force in 2011, sets forth legal procedures in civil claims. It provides a three-stage legal remedy mechanism by establishing superior courts to courts of first instance that are already functioning. It establishes a framework for an intermediate appellate court called District Courts of Appeal (istinaf)

¹⁹⁸ İsmail Aksel, 'Turkish Judicial System: Bodies, Duties and Officials', published by the Department for Strategy Development in the Ministry of Justice of Turkey (2013), p 45, available at: www.justice.gov.tr/judicialsystem.pdf.

¹⁹⁹ Article 156 of the Constitution.

²⁰⁰ İsmail Aksel, 'Turkish Judicial System: Bodies, Duties and Officials', published by the Department for Strategy Development in the Ministry of Justice of Turkey (2013), p 48.

²⁰¹ Article 157 of the Constitution.

²⁰² İsmail Aksel, 'Turkish Judicial System: Bodies, Duties and Officials', published by the Department for Strategy Development in the Ministry of Justice of Turkey (2013), pp 52-53.

²⁰³ Ibid, pp 57, 65.

to hear appeals from the first instance courts before they reach the Court of Cassation. This secondary process is in-between the first instance courts and the Court of Cassation. District Courts of Appeal are intended to act as the primary appeal authority.

The first instance court renders a final decision on the merits of a dispute brought before it. After its final decision, a party or both parties of the case may appeal the decision at the District Courts of Appeal. The District Courts of Appeal has the competence to hear both procedural grounds and the merits of the case. After a District Court of Appeal renders its decision, if a party or both of the parties is/are still not satisfied with the decision, this decision may be appealed at the Court of Appeals (Yargıtay), which is the third and final judicial authority in the new three-tier civil procedure system.

According to the Civil Procedure Law, three types of decisions are subject to appeal to the District Courts of Appeal:

- a first instance court's final decisions;
- rejection of a preliminary injunction or a preliminary attachment;
- if a preliminary injunction or a preliminary attachment is accepted by the court, decisions rendered as a result of objections made against the acceptance of the injunction/attachment.

In addition, if the dispute results from pecuniary matters, appeals to the District Court of Appeal can only proceed if the amount of the claim exceeds TRY 2,080. Moreover, an appeal petition must be submitted to the same court that rendered the final decision within two weeks (unless regulated by a special provision otherwise) of the service of the court's final decision on the relevant party.

At the end of its judgment, the District Court of Appeal may proceed as follows:

- reject the appeal and uphold the court's final decision;
- uphold the decision with amendments, if the decision bears an inadvertent minor mistake;
- accept the appeal application and decide to send the case file to: the court which the decision is rendered, a new court of first instance, or a new District Court of Appeal (all three scenarios are applicable in case there is a procedural appeal reason);
- partially or fully accept the appeal, overrule the court's decision, retry and render a new decision.

Parties may appeal the District Court of Appeal's decision within one month following the decision's submission to the parties, before the Court of Cassation (Yargıtay). The Court of Cassation, like the District Court of Appeal, may examine the case on a preliminary basis and then proceed to the inquiry phase. Unlike the District Court of Appeal, the Court of Cassation is not bound by the appeal reasons stated in the appeal petition.

At the end of its judgment, the Court of Cassation may proceed as follows:

- reject the appeal and uphold the District Court of Appeal's decision;
- uphold the District Court of Appeal's decision with amendments;

- accept the appeal application, overrule the decision and decide to send the lawsuit file to the court or to another relevant court of first instance, or send the lawsuit file to the District Court of Appeal or to another relevant District Court of Appeal.

Both the first instance court and Court of Cassation may adhere to the relevant decision or uphold their initial decisions. If they uphold their initial decisions, the decision would be taken to the Court of Cassation Assembly of Civil Chambers (the 'Chamber'). The first instance court and the District Court of Appeal must adhere to the Chamber's final decision.

Administrative Procedure

Law No. 6545, which came into force in 2014, brought a three-tier mechanism to administrative remedies. The decisions of first instance courts can now be appealed to the District Court of Appeals. Accordingly, the jurisdiction of the District Court of Appeal is stated as follows:

- to examine the appeals against the final decisions of the first instance courts that are open to appeal and the decisions regarding requests related to the issue of stay order and conclude them,
- to settle the disputes concerning the jurisdiction and competency between the courts of first instance in its judicial locality,
- to order the transfer of the action to another court which is in the same judicial locality with the relevant regional administrative court or appoint the competent court in case of a factual and legal obstacle with its judicial locality in ruling the action.

Within 30 days of the notification of the first instance administrative court's decision, parties to the dispute may now appeal to the District Court of Appeal. However, the decisions of administrative and tax courts regarding tax actions, full remedy actions and actions for nullity against the administrative acts of which the matter in dispute is not higher than five thousand Turkish Lira are definitive and may not be appealed. Accordingly, if the District Court of Appeal concludes that the decision of the court of first instance is in compliance with the law, it will refuse to hear the appeal. If the appeal is to be heard, it will be decided by considering the basis of the action. The first appeal shall be subject to the same form and procedure as the second appeal. Pursuant to Law No. 6545, the decisions of regional administrative courts are definitive where they are not open to second appeal.

It is possible to lodge an appeal with the Council of State within thirty days from the District Court of Appeal's final decision. This is also possible with regard to final decisions of the judicial chambers of the Council of State.²⁰⁴ The Council of State examines whether the first instance court's decision is in compliance with the law during the second appeal procedure. Following this inquiry, if the Council of State

²⁰⁴ Decision may regard tax actions, full remedy actions, and actions concerning administrative acts of which the matter in dispute is higher than one hundred thousand Turkish Lira, actions for zoning plans, actions arising from subdivision operations, or actions concerning the grant of the operation permit to the coastal facilities.

finds the decision in line with the law, it upholds the decision as definitive. Otherwise, it is reversed and dispatched to the District Court of Appeal that tried the action before, to rehear the action. The District Court of Appeal may adopt the reversed decision of the Council of State or insist on its previous decision. Where it adopts the reversed decision of the Council of State, the appeal examination of this decision shall be limited to its accordance with the reversed decision. If the regional administrative court insists on its own decision by disregarding the reversing decision, it will be examined and concluded in a Council of State plenary session of the chambers for administrative actions or for tax actions, according to the subject of the request. Ultimately, it is compulsory to adopt the decisions of the Council of State plenary sessions of the chambers for administrative actions and for tax actions.

The time limit to appeal to the Court of Cassation or Council of State may change depending on the type of first instance court which rendered its decision. It is 7 days beginning from notification or pronouncement in criminal courts, 15 days beginning from notification in civil courts of first instance (Family, Commercial and Consumer Courts), 8 days beginning from notification in civil courts of peace, 10 days beginning from notification or pronouncement in civil courts of enforcement, 8 days beginning from notification or pronouncement in labour courts, 30 days beginning from notification in administrative and tax courts.

As seen above, the time limit for appeal may start when the judge pronounces the decision or when the notification is made depending on the type of the court. If the decision is rendered in the absence of the party who has a right to appeal, the time limit starts when this party is notified in writing. If no petition is submitted within the designated time limit, the right to appeal is renounced.

Individual Complaints before the Constitutional Court

Article 45(1) of the Law on the Constitutional Court states that

Every person may apply to the Constitutional Court alleging that the public power has violated any one of his/her fundamental rights and freedoms secured under the Constitution which falls into the scope of the European Convention on Human Rights and supplementary protocols thereto, which Turkey is a party to.

'Everybody' can therefore apply to this procedure with regard to right falling within the scope of the ECHR or its protocols (to which Turkey is a party); rights contained in other human rights treaties may not fall within such application. Nonetheless, this does not mean *actio popularis*; Article 46(1) of the Law on the Constitutional Court clearly excludes an abstract application/*actio popularis*, which would cause an enormous docket.²⁰⁵ Article 46(2) does not allow petitions from 'public legal persons'. On the other hand, 'private law legal persons' can bring a claim before the Constitutional Court, if the petition is related to their rights concerning their legal personality in accordance with Article 46(2). Finally, Article 46(3) of the Law of the Constitutional Court indicates that "[F]oreigners may not petition individual applications concerning rights exclusive to Turkish citizens."

²⁰⁵ Opinion on the Draft Law on the Constitutional Court of Montenegro, Venice Commission (17-18 October 2008), CDL-AD(2008)030, para 51.

Moreover, a person may bring a petition personally, or s/he can apply through other courts or representations abroad, and these institutions can just refer the application (Article 47(1)). Another important point is that there is a fee attached to the petition according to Article 47(2). The amount of this fee is 172.50 Turkish Liras.²⁰⁶ Additionally, representation by an attorney is not obligatory in the Turkish individual complaint procedure before the Constitutional Court. In accordance with Article 47(4), if an attorney is assigned by an applicant, the letter (proof) of advocacy has to be shown.

The time limit on the application to the Constitutional Court is 30 days from the notification of last available remedy decision in accordance with Article 47(5). After an applicant is informed about the final proceeding of a remedy, this duration starts. Moreover, if there is no legal remedy, it starts after the violation. When there is an excuse, an applicant may bring a claim in the 15 days that follows by showing evidence proving this excuse. In *Hasan Uzun v Turkey*²⁰⁷, the Court noted that this limit was reasonable and that the possibility of an extension had been welcomed.

The law maker has determined a starting date for the individual applications and the Constitutional Court has started to receive them in 23 September 2012.²⁰⁸

Besides these criteria between Article 45 and 47 on the Law on the Constitutional Court, there are some additional requirements. Firstly, the Constitutional Court can decide inadmissibility of an application which does not bear significance for the enforcement or cause significant damage or include explicit basis in accordance with Article 48(2).

A commission of three judges unanimously decides admissibility. If these three judges do not agree on admissibility, the cases are sent to the Chamber (Article 48(3)).

Once an individual application is accepted as admissible, the examination on the merits phase is conducted by the Chambers of the Constitutional Court and the Ministry of Justice is informed of this application via a copy of it (Article 49(2)). Another important point for the examination on merits is interim measures since the Constitutional Court can apply such measures *ex officio* or upon request.

When the Constitutional Court finds a violation caused by one of the courts' decisions, this case can be referred to the competent court or authority for the re-opening of the proceedings in order to prevent consequences in accordance with Article 50(2). Also, when there is no legal interest in a re-trial, an applicant can be awarded compensation by the Constitutional Court or it may be sent to general courts for compensation.

²⁰⁶ 'Individual Application (Constitutional Complaint)', available at: <http://www.anayasa.gov.tr/index.php?l=content&id=402&lang=1>.

²⁰⁷ *Hasan Uzun v Turkey*, ECtHR Application No. 10755/13, Decision of inadmissibility of 14 May 2013.

²⁰⁸ 'Individual Application (Constitutional Complaint)', available at: <http://www.anayasa.gov.tr/index.php?l=content&id=402&lang=1>.

Judicial Review

Article 125 of the Constitution states that all decisions and actions of the government administration are subject to judicial review, although it specifically excludes acts of the President in his or her competence and the decisions of the Supreme Military Council (excepting certain decisions relating to expulsion from the armed forces) from the scope of review.²⁰⁹ The Constitution also provides expressly for the Government's liability for compensation for damages resulting from its actions.²¹⁰ This means that access to the courts on account of administrative acts or actions cannot be barred by legislation, as was sometimes done before the 1961 Constitution.²¹¹ Judicial review can be sought in the administrative courts by anyone whose interests are involved through suits of annulment or suits of compensation, and in either case review is limited to that of the legality of the decision rather than merits review.²¹²

²⁰⁹ Article 125 of the Constitution.

²¹⁰ Ibid.

²¹¹ Article 125 also prevents courts from refusing to deal with cases involving administrative acts or actions, as the Turkish Council of State sometimes did prior to 1961 on the basis that cases were political in nature: Ergun Özbudun, *The Constitutional System of Turkey: 1876* (2011), p 34.

²¹² Sait Guran, 'Administrative Law' in Tuğrul Ansay and Don Wallace (eds), *Introduction to Turkish Law*, Kluwer Law International, 2011; Ergun Özbudun, *The Constitutional System of Turkey: 1876 to the Present*, (Palgrave Macmillan, 2011), p 100.

3. THE RULE OF LAW IN TURKEY

All persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts.

Tom Bingham.²¹³

This section will consider the application of key rule of law principles to and within the Turkish legal system,²¹⁴ focusing on those which are especially relevant to human rights and to the research brief. Where Bingham describes the essence of the rule of law quoted above, he goes on to argue that there are eight principles that are central to it. There are, of course, other definitions of the rule of law but Bingham's is highly respected, has in large part been adopted by the Council of Europe's Commission on Democracy Through Law ('the Venice Commission'), and has much common ground with other definitions.²¹⁵

A number of key features of the rule of law warrant particular attention in the Turkish context. They are identifiable in all the leading sources on the rule of law. The rule of law features analysed in this section draw from those identified by Tom Bingham: accessible laws and legislative process; non-discrimination and equality before the law; prohibition of arbitrariness; access to justice before independent and impartial courts; human rights within the rule of law; compliance with international obligations.

3.1. Accessible Laws and Legislative Process

According to this principle, laws must be accessible and, so far as possible, intelligible, clear and predictable. At the very least, this requires that laws be published

²¹³ Tom Bingham, *The Rule of Law* (2010). Thomas Henry Bingham, Baron Bingham of Cornhill, KG PC QC FBA, was a particularly well-regarded British judge and jurist. He served in the highest judicial offices of the United Kingdom as Master of the Rolls, Lord Chief Justice and as Senior Law Lord.

²¹⁴ In Turkey, 'state of law' is the preferred terminology.

²¹⁵ For a definition of the rule of law by the Venice Commission (the European Commission for Democracy through Law), see its Report on the Rule of Law, adopted at its 86th plenary session (25-26 March 2011), pp 9-13, available at:

<http://www.venice.coe.int/webforms/documents/CDL-AD%282011%29003rev-e.aspx>.

It identifies the following elements as necessary for the rule of law: (1) legality, including a transparent, accountable and democratic process for enacting law, (2) legal certainty, (3) prohibition of arbitrariness, (4) access to justice before independent and impartial courts, including judicial review of administrative acts, (5) respect for human rights, (6) non-discrimination and equality before the law.

For definitions within the United Nations framework, see UN Secretariat Documents A/57/275 and S/2004/616; HRCComm Res. 2005/32 Democracy and the rule of law; and the Report of the Secretary-General, 'The rule of law and transitional justice in conflict and post-conflict societies', Doc S/2004/616 (23 August 2004), para 6.

For the definition developed by the World Justice Project, see: <http://worldjusticeproject.org/what-rule-law>.

and are thus accessible to everyone. The process by which the laws are enacted and administered must also be accessible, fair, and efficient.

Once laws are published, ignorance of the law may not be an excuse. This is, for example, reflected in Article 4(1) of the Turkish Penal Code, which clearly states that ignorance of the criminal laws may not be an excuse.

Law Making Process

The law making process appears to be transparent. Parliamentary activities are broadcasted by the televised channel of the GNAT. The minutes of parliamentary proceedings have been made available since 1908, and are now accessible online (through various search criteria).²¹⁶

However, in addition to being submitted to accessible debates, the law making process should also be the result of sufficient preparation, including impact assessments and consultations with relevant stakeholders, possibly amounting to civil society at large. This was for example the case of the Law on Foreigners and International Protection, which saw extensive consultation before its adoption in 2013.²¹⁷

While debates within the GNAT, when taking place, are accessible to the public, they are sometimes lacking. Insufficient preparation, impact assessments and consultation outside the GNAT have been reported with regard to the adoption of key policies and legislation.²¹⁸ For example, in 2013, the Law on Metropolitan Municipalities, the draft Law on the Court of Accounts, and legislation restricting the advertisement and sale of alcoholic beverages, were not the object of consultation. In 2014, amendments to the laws governing the internet, the judiciary, the closure of private tutoring schools ('dershanes'), and the National Intelligence Service, were all adopted with a level of parliamentary debate and public consultation which was deemed inadequate by the European Commission.²¹⁹

²¹⁶ For more on the search criteria, available at:

<http://global.tbmm.gov.tr/index.php/EN/yd/icerik/43>

The database is available at: http://www.tbmm.gov.tr/develop/owa/tutanak_sd.sorgu_baslangic

GNAT TV, known as Türkiye Büyük Millet Meclisi (TBMM), available at:

http://www.tbmm.gov.tr/tbmm_tv.htm.

²¹⁷ The Asylum and Migration Bureau was established within the Ministry of Interior and was responsible for the drafting of the legislation. At every stage of the drafting process the drafts were published on the website of the Ministry of Interior. The Bureau has since been dismantled however, the law established the Directorate General of Migration Management, available at:

http://www.goc.gov.tr/icerik/the-directorate-general-of-migration-management_911_925.

For more information on the legislative process see the report by Turkish Migration Studies Group, the authors of which were involved in drafting the legislation:

https://www.compas.ox.ac.uk/fileadmin/files/Publications/Briefings/TurkMiS/Brief_2_Ariner_Acikgoz_2014.pdf.

²¹⁸ 2013 EU Commission Progress Report, pp 7-8, available at:

http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/turkey_2013.pdf.

²¹⁹ See the 'Turkey Progress Report', EU Commission (October 2014), pp 8-9, available at:

http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf.

There do not appear to have been any steps taken recently to improve the preparatory stages of the law making process.²²⁰ An inclusive and consultative approach to law making remains the exception and thus transparency is often not ensured.

Legislation

Once adopted by the GNAT, bills become laws. In order to be binding, they must be published in the Official Gazette. They enter into force 45 days after their publication, unless stated otherwise, with the date of entry into force being clearly stated in the laws.²²¹

Publication must first be approved by the President, who may reject the publication of a bill in whole or in part. In that case, the bill may be sent back to the GNAT to be reconsidered.²²² If the President does not approve the publication of the bill in part, the GNAT may debate only the articles that were not approved or the bill as a whole. The GNAT may adopt the text with or without amendments after this debate. If the GNAT accepts the law without amendment, the President has to publish it in the Official Gazette. If the GNAT accepts the law with amendments, the President has the right to send the law back to the GNAT.

Court Judgments

Court judgments are published and easily accessible through a user-friendly computerised system.²²³ In addition to improving access to justice in general, this computerised system has also accelerated administrative procedures, thus increasing the efficiency and transparency of judicial services.

However, there are reports of capacity-related issues in the judiciary, in particular with regard to excessive caseloads in both lower and higher courts and shortages of judges and public prosecutors. These capacity issues have led to significant backlogs.

3.2. Non-discrimination and Equality before the Laws

According to the Venice Commission,

[n]on-discrimination means that the laws refrain from discriminating against individuals or groups. Any unjustified unequal treatment under the law is prohibited and all persons have guaranteed equal and effective protection against

²²⁰ See, for example, the 2014 EU Commission's Progress report noted a similar pattern, pp 8-9, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf.

²²¹ Different dates may be determined for different articles of the bill.

²²² With the exception of budget bills which cannot be re-considered.

²²³ See Bert van Delden, 'Effectiveness of the Judicial System – Report of a peer based assessment mission to Turkey 17-21 November 2008', European Commission, p 11, available at: <http://www.avrupa.info.tr/fileadmin/Content/Downloads/PDF/EFFECTIVENESS%20OF%20THE%20JUDICIAL%20SYSTEM.pdf>.

discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Equality before the law means that each individual is subject to the same laws, with no individual or group having special legal privileges.²²⁴

Therefore, the laws should apply equally to all, unless objective differences justify a different treatment. Article 10 of the Constitution provides for equality before the law, stating that "[E]veryone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds." As all laws and other regulations must abide by the Constitution, discriminatory laws or regulations may not be enacted.

There is no specific anti-discrimination or equal treatment legislation in Turkey. A draft Law on Combating Discrimination and Establishment of an Equality Council was prepared by the government in 2009 and submitted for public debate in 2010 but it has not yet been adopted. The draft was apparently inspired by European Directives, although both the list of prohibited grounds for discrimination and the material scope of the draft are different to those Directives.²²⁵ References to discrimination on grounds of sexual orientation or gender identity were taken out of the initial draft in 2014.

However, it should be noted that during the 2015 UPR, a process through which the Human Rights Council assesses every four years the human rights situation in each state, the Turkish ambassador specifically noted that the rights of members of the Lesbian, Gay, Bisexual, and Transgender community can also be recognised under the Constitution, even though it does not specifically refer to them.²²⁶

Prohibition of Discrimination on the Basis of Disability

Legislation adopted in February 2014 improved the situation of persons with disabilities.²²⁷ The principle of non-discrimination on the basis of disability is now explicitly mentioned in national laws regarding education and labour.²²⁸ The new provisions implement the Convention on the Rights of Persons with Disabilities, in particular with regard to accessibility and discrimination on the basis of disability. The principle of accessibility in urban environments, public transport services, electronic services and emergency services is now more clearly defined.

²²⁴ Venice Commission, Report on the Rule of Law, adopted at its 86th plenary session (25-26 March 2011), paras 64-65.

²²⁵ See, for example, European Commission, *Developing Anti-Discrimination Law in Europe* (October 2013).

²²⁶ Add reference from 2015 UPR final report.

²²⁷ It also improved the situation of 'socially vulnerable' persons.

²²⁸ See Law on Persons with Disabilities (Law No. 5738), available at: <http://www.ozida.gov.tr/ENG/?menu=legislation&sayfa=act>. Also see subsequent amendments made by the Law on Amendments to Decree with the Force of Law concerning the Organization and Duties of the Ministry of Family and Social Policies and to some Laws and Decrees with the entry into force of Law No. 6518 of 6 February 2014, Official Gazette, No.28918 (19 February 2014), available at: <http://www.resmigazete.gov.tr/main.aspx>.

Disability consultation and coordination centres still need to be established within higher education institutions. The new legislation extended support for protected workplaces for persons with disabilities, and salaries for employees with disabilities working in such workplaces are to be subsidised by the Treasury. Public schools have an obligation to accommodate students with disabilities.

It has been reported that access to educational opportunities could be improved for persons with disabilities and that they could be better integrated within the school system.²²⁹

Prohibition of Discrimination on the Basis of Sexual Orientation or Gender Identity

Explicit prohibition of discrimination on the basis of sexual orientation or gender identity is not present within Turkish legislation.²³⁰ As mentioned above, during the 2015 UPR, the Turkish ambassador specifically noted that the rights of members of the LGBT community can also be recognised under the Constitution, even though it does not contain specific references to them.²³¹

In practice, a number of hate crimes against people of a different sexual orientation or gender identity have remained unpunished.²³² This was due to shortcomings in the investigation process and the prosecution of crimes, as well as reluctance by LGBT persons to file complaints. When prosecuted, court sentences for hate crime offenders were often reduced on the basis of ‘unjust provocation’ by the victim or good behaviour of the offender.²³³

²²⁹ 2014 European Commission Turkey Progress Report, available at:

http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf.

²³⁰ 2014 European Commission Turkey Progress Report, available at:

http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf.

²³¹ Note that LGBT can also be referred to as LGBTI to include not only lesbian, gay, bisexual, and transgender persons, but also intersex persons.

²³² For example, Ramazan Çetin, a 24 year old transgender woman was shot dead by her brother. Her brother confessed to the police that he killed her because she “was engaged in transvestism” and that he “cleansed his honour”, see “Gays and transsexuals in Turkey target in ‘honor killings’”, *Hürriyet Daily News* (10 September 2011), available at:

<http://www.Hurriyetdailynews.com/default.aspx?pageid=438&n=gays-and-transsexuals-in-turkey-target-in-8216honor-killings8217-2011-10-09>.

See also the case of Didem, a 26 year old transgender woman who was murdered by a man who had contacted her via Facebook, see ‘Transphobic murder in Istanbul’, TGEU (1 August 2011), available at:

<http://tgeu.org/trans-woman-murdered-in-istanbul/>.

See also the case of Çağla Joker, a 25 year old transgender woman who was also murdered, see ‘If You’re a Trans Sex Worker, Being Murdered is a Part of It’, BIA News (23 April 2014), available at:

<http://www.BIANews.org/english/gender/155186-if-you-re-a-trans-sex-worker-being-murdered-is-a-part-of-it>.

Finally, see the case of Gaye, a transgender woman working as a flower seller, who was found dead, see ‘Hate Murder in Downtown Istanbul’, BIA News (29 July 2013), available at: <http://www.BIANews.org/english/gender/148817-hate-murder-in-downtown-istanbul>.

²³³ See Yasemin Oz, ‘LGBT Rights in Turkey’, Submission to the Country Report Task Force for the Adoption of Lists of Issues, Initial Report CCPR/C/TUR/1 (2012), available at:

<https://iglhrc.org/sites/default/files/554-1.pdf>.

Prohibition of Discrimination against Minorities

The collective rights of minorities are not recognised under Turkish legislation. Turkish citizens are recognised as individuals with equal rights. Only non-Muslim communities are recognised as minorities, in line with Turkey's interpretation of the Lausanne Treaty. As a result of this interpretation, Turkey does not grant specific rights based on ethnic origin, religion or language, to allow minority groups to preserve their identity.

In practice, some efforts have been made to strengthen the rights of minorities. For example, with regard to cultural rights, the use of native languages, such as the Kurdish language, has been increasingly allowed in the public sphere. However, members of minority groups remain the target of discrimination. They have, for example, been the victims of hate speech.²³⁴

Non-Muslim religious minority communities' lack of legal personality results in adverse effects on their property rights, access to justice, fundraising and the ability of foreign clergy to obtain residence and work permits. With regard to property rights, the implementation of the Law on Foundations, which was adopted in 2008 and revised in 2011, is still under way. This law allows minority community foundations to seek the restitution of their properties. So far, 116 minority community foundations have applied for the restitution of a total of 1,560 properties. The Council of Foundations has already approved the return of 318 properties and the payment of compensation for 21 properties. However, 1,092 applications were found to be ineligible. Other outstanding issues include: the continued confiscation by the State of properties that belonged to the Latin Catholic Church, difficulties in inheriting and registering property for Greek nationals (in particular following the Turkish authorities' application of the amended Land Registry Law which limits the acquisition of property by, among others, Greek nationals), and difficulties with property and land registration for Syrians (especially in the south-east of Turkey as a result of the cadastre registration process).

Religious buildings and worshippers have also been the victims of direct attacks. For example, an attack against a Greek Orthodox church in Istanbul caused material damage to the church and to the priest's house.²³⁵ In addition, a lack of effective investigation or legal action against perpetrators of similar attacks in recent years has been reported.

The Roma population in Turkey faces particular difficulties,²³⁶ with a sizeable portion of this population still unregistered despite a 2014 circular from the Ministry of the

²³⁴ See, for example, the banners carried during the commemoration of the Khojaly massacre, as reported in 'Azeris mark 20th anniversary of Khojaly Massacre in Istanbul', *Hürriyet Daily News* (26 February 2012), available at: <http://www.hurriyetdailynews.com/azeris-mark-20th-anniversary-of-khojaly-massacre-in-istanbul.aspx?pageID=238&nid=14673>.

Language attacking missionaries and minorities is still present in a number of compulsory school textbooks and in the first Diyanet (religious education) five year plan, covering 2010-14.

²³⁵ 2014 European Commission Turkey Progress Report, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf.

²³⁶ These include school drop-outs and absenteeism, child labour, poor housing conditions, urban transformation-related relocation problems and difficulties in accessing health and social security services continue. Roma women faced health risks due to early marriage and early maternity. Roma

Interior aiming at facilitating their registration as citizens. Administrative procedures for registration are claimed to be overly expensive and cumbersome. Although there is a lack of quantitative data on the Roma, there are a number of reports of discrimination, including in the employment sector.²³⁷ A national Roma integration strategy is under preparation, but has not yet been adopted.²³⁸

Prohibition of Discrimination under Criminal Law

Specific provisions regarding anti-discrimination can be found in the Turkish Penal Code, which was recently amended through the adoption of Law No. 6529.²³⁹

Its revised Article 115 makes it a criminal offense to, with the use of force or threat or in any unlawful manner,

- (a) prevent the individual or collective execution of the requirement of a religious belief or exercise of a religious practice or ceremony; and
- (b) intervene in an individual's preferences concerning his/her life style and emanating from his/her belief, thought or convictions or force the individual to change such preferences.

Article 122, which used to refer to 'discrimination', now refers to 'hatred and discrimination'. Its amendment increased the penalty for hate offences including those based on language, race, nationality, colour, gender, disability, political view, philosophical belief, religion or sect. The revision also introduced penalties for discriminatory, hate based practices in economic activities and in employment. However, the amendment did not include hate offences based on ethnic origin or sexual orientation. These grounds remain unregulated. Thus, for example, hate offences against ethnic Roma or Kurds would not amount to an offence under the Turkish Penal Code.

citizens continue to be employed in mostly unregistered, temporary, low-paid jobs requiring low or unskilled manual labour.

²³⁷ According to a European Network against Racism report on 'racism and related discriminatory practices in employment in Turkey' of March 2014, the unemployment rate among Roma people was 85%, the highest of all groups.

²³⁸ Note that Turkey did not join the international 'decade of Roma inclusion' (2005-15) initiative. More information on this initiative is available at: <http://www.romadecade.org/about-the-decade-decade-future>.

Note that the Prime Minister Ahmet Davutoğlu stated in April 2015 that he would establish a new mechanism to prevent discrimination against Roma people and appoint a Roma adviser, see 'Prime Minister Davutoğlu says will assign a Romani adviser', Cihan (19 April 2015), available at: http://en.cihan.com.tr/news/Prime-Minister-Davutoglu-says-will-assign-a-Romani-adviser_9046-CHMTc1OTA0Ng.

²³⁹ On 2 March 2014, the Turkish Parliament adopted Law No. 6529 to implement the reforms that the government had announced through a 'democratization package' on 30 September 2013.

Exemptions and Immunities before the Law

The government and its officials and agents as well as individuals and private entities must be accountable under the law.

However, the law may provide certain individuals with exemptions. For example, in 2011, Turkey introduced the Paid Military Service Law, allowing males 29 years of age and older to avoid compulsory military service for a fee of TL 30,000.²⁴⁰ This law also simplified the military service requirements for Turkish males living abroad so that those living overseas for a minimum of three years could pay EUR 10,000 to avoid any form of military service. At the time, the main opposition party (the Republican People's Party, or CHP) pointed out the unfairness of this law, which favoured the wealthier. In December 2014, the GNAT not only lowered the exemption age to 27 years of age but also lowered the payment to TL 18,000.

Turkish law also provide for certain immunities. Immunities may provide exemptions to certain individuals or entities from a legal penalty or burden.

Systematic Enforcement of the Law

To be equally applied, the law must be systematically applied to all and also be equally enforced in response to like violations. There have been reports of certain human rights violations not being prosecuted. Despite complaints, the prosecution and punishment of members of security forces for torture and ill-treatment have been reported as allegedly rare. Sentences were deemed not commensurate with the gravity of the crime and officers accused of torture rarely suspended from duty during investigation into their wrongdoings.²⁴¹ Turkish courts were reportedly lenient towards members of the security forces charged with abuse or misconduct, contributing to impunity and persistence of torture and resort to lethal force.²⁴² Long delays and a lack of thorough and independent investigations by prosecutors were alleged to contribute to impunity.²⁴³

3.3. Prohibition of Arbitrariness

According to the Venice Commission,

[a]lthough discretionary power is necessary to perform a range of governmental tasks in modern, complex societies, such power should not be exercised in a way that is arbitrary. Such exercise of power permits substantively unfair, unreasonable,

²⁴⁰ In 1987, 1992 and 1999, similar programs permitted about 125,000 men to avoid the barracks and possibly having to fight the Kurdistan Workers' Party (PKK) as well.

²⁴¹ Committee against Torture at 2010 UPR, see the Compilation of UN information, 2010 Periodic review, para 39.

²⁴² 2010 UPR, Submission from Human Rights Watch, p 3.

²⁴³ Ibid.

irrational or oppressive decisions which are inconsistent with the notion of rule of law.²⁴⁴

All civil servants must exercise the powers in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably. According to Article 129 of the Constitution,

Public servants and other public officials are obliged to carry out their duties with loyalty to the Constitution and the laws.

Public servants, other public officials and members of public professional organizations or their higher bodies shall not be subjected to disciplinary penalties without being granted the right of defence.

(As amended on September 12, 2010; Act No. 5982) Disciplinary decisions shall not be exempt from judicial review.

Provisions concerning the members of the armed forces, judges and prosecutors are reserved.

Compensation suits concerning damages arising from faults committed by public servants and other public officials in the exercise of their duties shall be filed only against the administration in accordance with the procedure and conditions prescribed by law, as long as the compensation is resorted [sic] to them.

Prosecution of public servants and other public officials for alleged offences shall be subject, except in cases prescribed by law, to the permission of the administrative authority designated by law

In addition to exercising powers in good faith, there are four key features of government which are relevant to this rule of law principle: means of accountability for the government, the existence of anti-corruption legislation and policy on anti-corruption, the participation of civil society in the exercise of power, and a non-arbitrary electoral process. These are discussed below.

Government Accountability

Government accountability, according to which the actions of the government and its agents (including individuals and private entities performing a public function) are subject to the oversight of another body or individual, has also been identified as an important feature of the rule of law.²⁴⁵ This form of accountability can be conducted through various means, including parliamentary, administrative, and judicial mechanisms. It has been reported that there is insufficient government accountability and that oversight mechanisms are underdeveloped in Turkey.²⁴⁶

According to Article 98 of the Constitution, the GNAT exercises its supervisory power over the government through questions, inquiries, general debates, motions of censure,²⁴⁷ or parliamentary investigations. A question is a request for information

²⁴⁴ Venice Commission, Report on the Rule of Law, adopted at its 86th plenary session (25-26 March 2011), para 52.

²⁴⁵ It is one of the four principles by which the World Justice Project defines the rule of law, see its website at: <http://worldjusticeproject.org/what-rule-law>.

While the other frameworks, such as the one established by the Venice Commission for example, do not include it expressly, it is generally considered important.

²⁴⁶ See the 2014 Sustainable Governance Indicators, available at: http://www.sgi-network.org/2014/Turkey/Executive_Accountability.

²⁴⁷ Censure is a way of parliamentary scrutiny concerning the general policy of the Council of Ministers or the policies and applications a minister follows in his or her ministry. It is an effective way of

which is addressed to the Prime Minister or ministers, and is to be answered verbally or in writing on behalf of the Council of Ministers (Cabinet). According to Article 41 of the Parliamentary Rules of Procedure, parliamentary committees or commissions may ask the ministries to provide any information relevant to their sphere of duty. However, in practice, some parliamentary inquiry committees dealing with security or military issues have not been able to collect information from security forces. Some public officials who have been invited to provide information, mainly military officers, have not attended parliamentary inquiry committee meetings. Parliament's ability to perform its key functions of law-making and oversight of the executive appear hampered by a persistent lack of dialogue and a lack of a will to compromise among political parties.²⁴⁸

According to Article 148,

[T]he Constitutional Court shall examine the constitutionality, in respect of both form and substance, of laws, decrees having the force of law and the Rules of Procedure of the Grand National Assembly of Turkey, and decide on individual applications. Constitutional amendments shall be examined and verified only with regard to their form. However, decrees having the force of law issued during a state of emergency, martial law or in time of war shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance.

Paragraphs added in 2010 state that²⁴⁹

[E]veryone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities. In order to make an application, ordinary legal remedies must be exhausted.

In the individual application, judicial review shall not be made on matters required to be taken into account during the process of legal remedies.

Article 105 specifies that

[N]o appeal shall be made to any judicial authority, including the Constitutional Court, against the decisions and orders signed by the President of the Republic on his/her own initiative. The President of the Republic may be impeached for high treason on the proposal of at least one-third of the total number of members of the Grand National Assembly of Turkey, and by the decision of at least three-fourths of the total number of members.

Judicial review is provided for in Article 125, which states that

[R]ecourse to judicial review shall be available against all actions and acts of administration. (Sentences added on August 13, 1999; Act No. 4446) In concession, conditions and contracts concerning public services and national or international arbitration may be suggested to settle the disputes arising from them. Only those disputes involving an element of foreignness may be submitted to international arbitration.

The acts of the President of the Republic in his/her own competence, and the decisions of the Supreme Military Council are outside the scope of judicial review.

scrutinizing the government, which may result in the removal of the government, its minister or the Prime Minister upon a motion of no-confidence or a motion of confidence requested by the Council of Ministers at the end of debates. See <http://global.tbmm.gov.tr/index.php/EN/yd/icerik/38>.

²⁴⁸ 2014 Progress Report.

²⁴⁹ Paragraphs added on September 12, 2010; Act No. 5982.

(Sentence added on September 12, 2010; Act No. 5982) Nonetheless, recourse to judicial review shall be available against all decisions taken by the Supreme Military Council regarding expulsion from the armed forces except acts regarding promotion and retiring due to lack of tenure.

(As amended on September 12, 2010; Act No. 5982) Judicial power is limited to the review of the legality of administrative actions and acts, and in no case may it be used as a review of expediency. No judicial ruling shall be passed which restricts the exercise of the executive function in accordance with the forms and principles prescribed by law, which has the quality of an administrative action and act, or which removes discretionary powers.

An important and apparently effective additional source of government accountability is the Ombudsman system, which is governed by Chapter VII of the Constitution. Article 74 provides that

[C]itizens and foreigners resident in Turkey, with the condition of observing the principle of reciprocity, have the right to apply in writing to the competent authorities and to the Grand National Assembly of Turkey with regard to the requests and complaints concerning themselves or the public.

[...]

(Paragraph added on September 12, 2010; Act No. 5982) The Institution of the Ombudsperson established under the Grand National Assembly of Turkey examines complaints on the functioning of the administration.

Parliament elected Turkey's first Head Ombudsman in November 2012 and subsequently appointed five Ombudsmen. The Ombudsman Institution became operational and began receiving complaints in April 2013. The regulation establishing the *modus operandi* of the Institution follows the recommendations of the European Ombudsman and provides for final decision-making power to remain with the Head Ombudsman. It also provides for a simple application procedure and the admissibility of applications in languages other than Turkish.²⁵⁰

By September 2014, the Ombudsman Institution had addressed 2170 out of 3502 received complaints, relating mainly to human rights, the rights of people with disabilities, civil service-related matters, social security, property rights, as well as financial, economic and tax issues. Out of all considered applications, approximately 35% were found inadmissible and 35% were referred to a relevant administrative/judicial body. The Ombudsman issued 56 recommendations and 60 complaints were finalised through an arbitration procedure. The administration took action on just 5 of the issued recommendations. Amendments covering the right of own initiative, on-the-spot checks and follow-up to the Ombudsman's recommendations have not been adopted. Notably, with respect to administrative acts of the Turkish Armed Forces, the Ombudsman considered a number of complaints on dismissal and mistreatment during military service to be admissible.²⁵¹ The office of the Ombudsman is further discussed below.

²⁵⁰ 2013 Progress Report, p 10.

²⁵¹ 2014 Progress Report, p 11.

Anticorruption Legislation and Policy

Turkey is a party to the key international anticorruption treaties, including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Convention), which was ratified by Turkey in 2000 through Law No. 4518, as well as the Council of Europe Civil Law Convention on Corruption and the Council of Europe Criminal Law Convention on Corruption. Turkey has signed (but not ratified) the UN Convention against Corruption.

The Turkish Penal Code criminalises active and passive bribery, attempted corruption, extortion, bribing a foreign official, money laundering and abuse of office.

Also, in accordance with Article 160 of the Constitution, the Court of Accounts is charged on behalf of parliament with auditing all accounts related to revenues, expenditures and properties of government departments that are financed by the general or subsidiary budgets. Turkey implements strategic planning (five-year plans) and performance budgeting (on an annual basis) in line with its Framework Law on Public Financial Management and Control. The annual budgeting process is based on 11 transparent rules but sets short deadlines for line ministries. Expenditure from own resources ('revolving funds') is outside the scope of the general budget. A clear cash and debt management policy is in place. However, in some cases, local administration and state-owned enterprises may borrow without Treasury approval.

In 2010, Turkey adopted a National Anti-Corruption Strategy and the government has implemented a comprehensive series of reforms aimed at reducing red tape and related opportunities for corruption and improving the country business environment. In spite of greater civil awareness and participation, the 2010 strategic action plan on reducing corruption was designed with no consultation of non-governmental actors and civil society only has limited oversight over the implementation of national anti-corruption policies.

On the corruption perceptions index,²⁵² Turkey stood at the 64th place in 2014 (out of 175 states/territories surveyed).²⁵³ On a scale running from 0 (highly corrupt) to 100 (very clean), its score was 45.²⁵⁴ In January 2015, Turkey was advised by the Council of Europe to implement the recommendations of the Group of States against Corruption (GRECO), which monitors member states' compliance with the anti-corruption standards of the Council of Europe.²⁵⁵ Those recommendations relate to immunities of public officials and parliamentarians and the financing of political parties, among other matters. There is a definite lack of transparency with regard to political parties as they do not have to indicate their sources of financing.

²⁵² This index, developed by Transparency International, gauges the level of corruption within a state's public sectors and thus includes administrative and political corruption. Low scores indicate widespread bribery, lack of punishment for corruption and public institutions not responding to citizens' needs.

²⁵³ See the table and rankings of the Corruption Perceptions Index of Transparency International, available at: <http://www.transparency.org/cpi2014/results>.

²⁵⁴ It scored 50 in 2013 and 49 in 2012.

²⁵⁵ 'Jagland expresses concern about grants of immunity in Turkey', 8 January 2015, Today's Zaman, available at: http://www.todayszaman.com/diplomacy_jagland-expresses-concern-about-grants-of-immunity-in-turkey_369254.html.

In its 2010 evaluation report, the GRECO also pointed out a number of shortcomings in Turkish criminal law,²⁵⁶ including the narrow definition of bribery offences which excludes corrupt behaviour without an agreement between the parties or without a breach of duty by public officials. Recommendations to improve the legal anti-corruption framework include – among others – ensuring the law fully covers bribery in the private sector, trading in influence, bribery of foreign and international officials, foreign jurors and arbitrators, bribery committed through intermediaries. It also appears that there is inadequate coordination of the various institutions involved in the fight against corruption and no independent body in charge of monitoring the implementation of anti-corruption measures, as well as a lack of a central body in charge of developing adequate policies. Immunities for high ranking public officials are also an obstacle to the fight against corruption. Legislation on the financing and auditing of political parties should also be adopted. On 14 January 2015, the Turkish government announced that it would be launching measures to bring ‘transparency’ to public spending, with provisions aimed at transparency and accountability in funding for political parties and election campaigns.²⁵⁷

With regard to corporate entities, it has been reported that corporate liability for foreign bribery still has shortcomings in Turkey, despite the fact that it is a party to the OECD Anti-Bribery Convention.²⁵⁸ In particular, legal entities cannot be held criminally liable due to the principle of personal liability defined in Article 20 of the Turkish Penal Code, although legal entities can be held liable under other types of liability. Article 60 of the Code provides for some sanctions for legal entities benefiting from the proceeds of a crime, however, this provision is rarely used by prosecutors. Despite recent amendments to definitions of foreign bribery, the difference between a bribe and a gift still needs clarification.

In order to avoid bribery of the judiciary, the judicial system in Turkey appears to be in need of increased resources and stronger regulations on accounting and auditing procedures.²⁵⁹ In addition, some prosecutors were dismissed in relation to the 2013 investigations (as explained below).

²⁵⁶ See the press release, available at:

http://www.coe.int/t/dghl/monitoring/greco/news/News%2820100420%29Eval3_Turkey_en.asp.

²⁵⁷ Turkish government announces new codes for ‘transparency’, Hürriyet Daily News (14 January 2015), available at: <http://www.Hurriyetdailynews.com/turkish-government-announces-new-codes-for-transparency.aspx?pageID=238&nID=76965&NewsCatID=338>.

²⁵⁸ See the 2013 Transparency International Report, p 80.

²⁵⁹ See the 2013 Transparency International report, available at:

http://www.transparency.org/whatwedo/publication/exporting_corruption_progress_report_2013_assessing_enforcement_of_the_oecd.

According to this Report, Turkish officials and investigators need more training and resources to tackle sophisticated economic crimes. There should also be more protection for individuals who come forward to blow the whistle on corruption.

Investigations into Bribery

An investigation into bribery, which was launched in December 2013,²⁶⁰ entailed police raids leading to the arrest and detention of dozens of individuals (including the sons of three cabinet ministers, the CEO of the largest state-owned Turkish bank, a construction tycoon and an AKP mayor). They were accused of bribery to win public tenders. In addition Reza Zerrab (or Sarraf) was accused of circumventing the US-EU embargo on Iran to smuggle gold into Iran. However, it has been stated that the government appears “more inclined to punish the investigators than to root out corruption.”²⁶¹

In response to these investigations, the government alleged that there had been an attempted judicial coup by a ‘parallel structure’ within the state, controlled by the Gülen Movement, and the executive branch therefore interfered with the judiciary.²⁶² Prosecutors and police officers in charge of the investigations were removed from their posts. A significant number of reassignments and dismissals in the police, civil service and the judiciary followed, accompanied along with the introduction of legal measures relating to the judiciary. A significant number of police officers were detained. In September, the Istanbul Chief Prosecutor’s Office decided not to prosecute 96 suspects allegedly involved in the December corruption case. As part of that response, key legislation, including legislation relating to the High Council of Judges and Prosecutors and on the internet, was drafted and adopted in haste and without consultations.

Furthermore, it appears that no concrete steps were taken to address deficiencies in rules governing the financing of political parties and election campaigns or the scope of immunity for MPs.²⁶³ Implementation of the 2010-14 national anti-corruption strategy and action plan continued but no information was given to parliament or civil society on the resulting impact. Civil society organisations have had very limited opportunities to contribute so far.

With regard to the corruption investigations made public in December 2014, four of the prosecutors involved were suspended by the Supreme Board of Judges and Prosecutors (HSYK).²⁶⁴

²⁶⁰ On 17 and 25 December 2013, corruption allegations targeting the Prime Minister, four ministers, their relatives, the head of the biggest public bank, public officials and businessmen. Ten out of twenty-five ministers were replaced in a Cabinet reshuffle on 25 December. There was a significant delay in submitting requests to parliament to lift the immunity of four former ministers implicated in corruption allegations.

²⁶¹ ‘Rule of Law in Turkey’ Today’s Zaman (25 September 2014), available at: http://www.todayszaman.com/columnist/gunal-kursun/rule-of-law-in-turkey_359809.html.

²⁶² See the concerns expressed in the EU Commission Progress Report.

²⁶³ EU Commission Progress Report, p 14.

²⁶⁴ ‘Turkey’s top judicial body suspends graft probe prosecutors’, Today’s Zaman (30 December 2014), available at: http://www.todayszaman.com/national_turkeys-top-judicial-body-suspends-graft-probe-prosecutors_368377.html.

Civil Society Participation in the Exercise of Power

An ‘open government’, allowing the direct engagement of civil society with the government’s work, has also been identified as an important feature of the rule of law as it helps to ensure that government power is not exercised arbitrarily and that its decision-making is not unreasonable or oppressive.²⁶⁵ As already mentioned in the previous section, civil society is not systematically consulted in the law making process in Turkey. With regard to the policy making process, the legal framework governing civil society organisations appears to discourage their participation, through extensive bureaucracy and a lack of participatory mechanisms.²⁶⁶ Participation is on an *ad hoc* basis and is often limited to specific phases of policy design as opposed to the entire policy cycle (including the monitoring of implementation).

Other legislation continues to be interpreted restrictively vis-à-vis civil society organisations. Concentrating functions such as the registration of associations, fiscal supervision and prevention of illegal activities, in a single department of the Ministry of the Interior may lead to restrictive drafting and interpretation of the relevant legislation.

There are no measures, such as tax incentives, to fund civil society organisations. Moreover, their financial management is often submitted to disproportionately cumbersome accountancy requirements. At the same time, public funding for civil society organisations does not appear sufficiently transparent and rule-based. Tax exemption and public benefit status are granted to a very limited number of civil society organisations by the Council of Ministers, using unclear criteria. Furthermore, public funds are allocated to civil society organisations via ministries and through project partnership mechanisms, and rarely through grant allocations or service contracts.

Some civil society activities are regulated by restrictive primary and secondary legislation. For instance, the right to publish press statements is limited and there is a requirement to provide advance notification of demonstrations, which are in turn often confined to a limited number of designated sites and dates. In June 2015, it was reported that police raided the offices of civil society organisations, a charity foundation and the residential premises of the foundation’s officials on “reasonable suspicion” of unpublicised charges.²⁶⁷ It was further reported that in the period May – June 2015, 10 other civil society organisations (as well as two public institutions) were

²⁶⁵ It is one of the four elements of the Open Government Index of the World Justice Project, which measures government openness and describes ‘civic participation’ as “people’s ability to gather with others, comment on government policies, sign petitions, hold peaceful demonstrations, and voice concerns about public policies”, available at: <http://data.worldjusticeproject.org/opengov/>. While the other frameworks, such as the one established by the Venice Commission for example, do not include it expressly, it is generally considered important.

²⁶⁶ See the European Commission 2013 Turkey Progress Report 201, p 10, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/turkey_2013.pdf.

²⁶⁷ ‘Police Raid NGO Offices, Education Centres in New Government-Orchestrated Move’ Today’s Zaman (17 June 2015), available at: http://www.todayszaman.com/national_police-raid-ngo-offices-education-centers-in-new-govt-orchestrated-move_387890.html.

also raided on the basis of “reasonable suspicion” that they had committed crimes.²⁶⁸ Finally, it was again reported that in September 2015, the Ankara Bar Association demanded a stay of execution with regard to a circular sent by the Prime Ministry, which authorises security institutions and the prosecutor’s office to collect, and instructs them to provide, information about non-governmental organisations.²⁶⁹

In general, citizens do not seem sufficiently informed about the development, content, and following-up of government policy, with policy plans often kept away from public scrutiny or subject to last-minute changes. Thus policy making in Turkey does not appear sufficiently transparent or participatory.²⁷⁰ The media is the public’s first source of information, including information on government policies, although it is not perceived to be entirely reliable.²⁷¹

Electoral Process

An effective electoral system is also a key element of the rule of law. Turkey’s electoral processes have been referred to as free and fair,²⁷² with an independent election monitoring agency.²⁷³ There appears nevertheless to be anecdotal evidence of electoral fraud.²⁷⁴

For example, local elections which took place on 30 March 2014, with a turnout of 89%, appear to have been well-organised overall and held in relative peaceful circumstances, despite isolated violent incidents leading to casualties.²⁷⁵ However, the campaign was polarised and tense, and allegations of fraud sparked protests in a number of cities.²⁷⁶ The results of the elections were contested in many municipalities and a high number of appeals were lodged, leading to a recount in certain

²⁶⁸ ‘Police Raid NGO Offices, Education Centres in New Government-Orchestrated Move’ (17 June 2015), available at: http://www.todayszaman.com/national_police-raid-ngo-offices-education-centers-in-new-govt-orchestrated-move_387890.html.

²⁶⁹ ‘Legal Action Taken Against Surveillance of Civil Society in Fight Against Terrorism’ Today’s Zaman (6 September 2015), available at: http://www.todayszaman.com/national_legal-action-taken-against-surveillance-of-civil-society-in-fight-against-terrorism_398432.html.

²⁷⁰ See the 2014 Sustainable Governance Indicators, available at: http://www.sgi-network.org/2014/Turkey/Executive_Accountability.

²⁷¹ ‘Survey reveals that Turkish journalists recognize media censorship’ Hürriyet Daily News (8 October 2011), available at: <http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=survey-reveals-that-journalists-recognize-media-censorship-2011-08-10>.

²⁷² See the 2010 Bertelsmann Transformation Index – Turkey country report (Bertelsmann Foundation).

²⁷³ In 2010, Global Integrity assessed the election integrity to be very strong in Turkey with a score of 100.

²⁷⁴ 2014 Progress Report, pp 6-7.

²⁷⁵ The deaths of eight individuals were reported, see ‘Turkish elections turn deadly in local feuds’, Al-Jazeera (30 March 2014), available at: <http://www.aljazeera.com/news/europe/2014/03/turkish-elections-turn-deadly-local-feuds-201433015017972368.html>.

²⁷⁶ See, for example, ‘As it happened: PM Erdoğan declares local poll victory amid fraud claims’, Hürriyet Daily News (30 March 2014), available at: <http://www.Hurriyetdailynews.com/live-turkish-pm-erdogan-and-his-family-vote-in-istanbul.aspx?pageID=238&nID=64283&NewsCatID=338>. See also, ‘Turkey-Record frau rate in local elections: 1418 cases’ as reported on Sendika.org, available at: <http://www.sendika.org/2014/03/turkey-local-elections-a-peoples-mobilisation-against-cheating-and-fraud-in-ballot-boxes/>.

municipalities and a repeat of the elections in others.²⁷⁷ However, an individual application concerning rigging claims, filed by the Republican People's Party's (CHP) candidate for mayor in Ankara, was rejected by the Constitutional Court.²⁷⁸

The first direct presidential elections took place on 10 August 2014. The candidate of the ruling party and outgoing Prime Minister Recep Tayyip Erdoğan was elected as President in the first round with 51.79% of the votes, with a turnout of 74.13%.²⁷⁹ A joint international observation mission of the OSCE and the Parliamentary Assembly of the Council of Europe found that candidates were generally able to campaign freely and the right to freedom of assembly and association was respected.²⁸⁰ However, it voiced concerns about the use by the Prime Minister-presidential candidate of his official position, and about the over-biased media coverage, giving him a 'distinct advantage' over other candidates. The mission also noted that the legal framework was generally conducive to the conduct of democratic elections, although key areas were in need of improvements, such as campaign finance, comprehensive reporting, and sanctions, which limited the transparency and accountability of the process.

A law adopted as part of the September 2013 democratisation package made changes to the legal framework in relation to elections and political parties.²⁸¹ It allowed political campaigning in languages other than Turkish, legalised party co-chairmanship and eased the rules governing the local organisation of political parties. The extension of funding to political parties that attain more than 3 % of the vote in parliamentary elections (as opposed to the two-tier regime currently in force, with a 7% and 10% threshold) will take effect following the next parliamentary election.²⁸² However, the new rules will not apply where MPs are elected as independents and subsequently form a political group in Parliament, which is currently the case for the pro-Kurdish BDP/HDP.

As already mentioned, concerns remain in relation to transparency and accountability in controlling funding for political parties and election campaigns.

²⁷⁷ See, for example, 'Opposition calls for votes to be recounted in Turkish election' Euronews (1 April 2014), available at: <http://www.euronews.com/2014/04/01/opposition-calls-for-votes-to-be-recounted-in-turkish-election/>.

²⁷⁸ See Today's Zaman, 'Top court rejects CHP's application over rigging in Ankara local poll' (23 July 2014), available at: http://www.todayszaman.com/son-dakika_top-court-rejects-chps-application-over-rigging-in-ankara-local-poll_353809.html.

²⁷⁹ Turkish voters residing abroad were, for the first time, able to vote in the presidential elections at Turkish diplomatic missions in their country of residence. However, their turnout was low (8.31 %).

²⁸⁰ See its preliminary report.

²⁸¹ Government Bill No. 6529 on Amendment to Various Laws In Order To Enhance Fundamental Rights and Liberties was adopted by the Plenary of the Grand National Assembly of Turkey on 1 March 2014. See http://global.tbmm.gov.tr/index.php/EN/yd/haber_detay/407.

The legislation is available in Turkish at: <http://www.tbmm.gov.tr/kanunlar/k6529.html>.

²⁸² The 10% threshold for representation in Parliament is the highest among Council of Europe Member States. A 10% threshold is also still used for elections to municipal and provincial councils.

3.4. Access to Justice before an Independent and Impartial Justice System

According to the Venice Commission,

[I]ndependence means that the judiciary is free from external pressure, and is not controlled by the other branches of government, especially the executive branch. This requirement is an integral part of the fundamental democratic principle of the separation of powers. The judges should not be subject to political influence or manipulation.

Impartial means that the judiciary is not - even in appearance - prejudiced as to the outcome of the case.²⁸³

Therefore, every individual under Turkish jurisdiction must have access to an independent and impartial justice system, which is separate from the executive branch of government.

Independent Justice System

According to Article 138 of the Turkish Constitution,

[J]udges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, laws, and their personal conviction in conformity with the law. No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions. No questions shall be asked, debates held, or statements made in the Legislative Assembly relating to the exercise of judicial power concerning a case under trial. Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution.²⁸⁴

The independence of the judiciary is thus guaranteed under the Turkish Constitution. However, the independence of the Turkish judiciary was questioned as a result of the inquiry into corruption and bribery, which was initiated at the end of 2013.²⁸⁵ The Supreme Council of Judges and Prosecutors (HSYK) had declared a governmental decree as unconstitutional, although the decree had already been taken to the Council of State. The Council of State suspended the execution of the decree, which led to the government stating that the HSYK had violated Article 138. The Speaker of Parliament, Cemil Çiçek, even stated that there is no independent judicial review in Turkey.²⁸⁶ Since the start of the inquiry, more than 1,000 judges and public prosecutors were removed from their positions and many instances of the arbitrary use of executive and judicial power have been uncovered.

²⁸³ Venice Commission, Report on the Rule of Law (2011), para 55.

²⁸⁴ Translation available at: <http://www.Hurriyetdailynews.com/turkish-parliamentary-speaker-cicek-deplores-end-of-court-independence.aspx?pageID=238&nID=60549&NewsCatID=338>.

²⁸⁵ This graft probe was made public on 17 December 2013.

²⁸⁶ 'Turkish Parliamentary Speaker Çiçek deplores end of court independence', Hürriyet Daily News (4 January 2014), available at: <http://www.Hurriyetdailynews.com/turkish-parliamentary-speaker-cicek-deplores-end-of-court-independence.aspx?pageID=238&nID=60549&NewsCatID=338>; see also: http://www.todayszaman.com/columnist/gunal-kursun/rule-of-law-in-turkey_359809.html.

In a submission to the 2015 UPR, it has been suggested that, over the past nine months, the government has sought to curb the independence of the judiciary and thus weakened the rule of law, in order to hamper corruption investigations.²⁸⁷

On 20 June 2015, the Venice Commission issued a 'Declaration on Interference with Judicial Independence in Turkey' as it found a pattern of interference which violated European and universal standards. It also highlighted the amendments of the law on the High Council of Judges and Prosecutors which strengthened the Minister of Justice's powers, and that although several of these amendments were deemed unconstitutional by the Constitutional Court, this decision had no retroactive effect, which is of particular concern since the relevant Minister had already acted upon his powers.²⁸⁸ Similarly, on 8 October 2015, the International Association of Judges adopted a resolution stating that several actions taken within the Turkish judiciary violate "international standards of judicial independence"; these action include the arbitrary transfer of thousands of judges without their consent, their suspension without reason remedy, their arrest and detention on the ground of their professional activities, and the use of disciplinary measures against them without any legal basis.²⁸⁹

In September 2015, a former judge who had been fired by the Supreme Board of Judges and Prosecutors for accepting an indictment in the December 2013 corruption cases was arrested for the second time, following a court's examination of the first warrant which led to his release. He is reported to be charged with "being a member of an illegal organization, attempting to overthrow the Turkish Republic and partially or fully hindering the state from performing its duties by means of force and violence".²⁹⁰ In March 2015, the Supreme Council of Judges and Prosecutors decided that the two prosecutors who undertook the corruption investigations should also be tried.²⁹¹ Additionally, in April 2015, three judges who had ordered the release of almost 80 Gülen-associated suspects were suspended from duty for "causing chaos within the judiciary".²⁹² Two of these judges were arrested and detained, a move with

²⁸⁷ Amnesty International, 'Expanded Submission to the UPR: Turkey: Heightened repression by the authorities – a serious setback for human rights' (June 2014) p 6, available at: <https://www.amnesty.org/download/Documents/.../eur440152014en.pdf>; see also UNCT Submission, Universal Periodic Review of Turkey 2015, available at: <http://www.refworld.org/pdfid/54c109084.pdf>, para 31.

²⁸⁸ Venice Commission, 'Declaration on Interference with Judicial Independence in Turkey' (20 June 2015), available at: <http://venice.coe.int/files/turkish%20declaration%20June%202015.pdf>.

²⁸⁹ International Association of Judges, 'Resolution on the Situation of the Judiciary in Turkey' (8 October 2015), available at: <http://www.iaj-uim.org/iuw/wp-content/uploads/2015/10/ResTurkey2015IAJEN.pdf>.

²⁹⁰ 'Former Judge of Turkey's Biggest Graft Probe Arrested in Istanbul', Hürriyet Daily News (16 September 2015), available at: <http://www.hurriyetdailynews.com/former-judge-of-turkeys-biggest-graft-probe-arrested-in-istanbul-.aspx?pageID=238&nID=88566&NewsCatID=509>.

²⁹¹ 'Prosecutors Commit a Crime by Investigating', Hürriyet Daily News (6 March 2015), available at: <http://www.hurriyetdailynews.com/prosecutors-commit-a-crime-by-investigating--.aspx?pageID=449&nID=79247&NewsCatID=458>.

²⁹² 'Three Judges Suspended for Decisions to Release 79 Suspects', Hürriyet Daily News (27 April 2015), available at: <http://www.hurriyetdailynews.com/three-judges-suspended-for-decisions-to-release-79-suspects.aspx?pageID=238&nID=81622>.

the European Association of Judges found to constitute “a clear breach of principle of judicial independence” and called for their immediate release.²⁹³

It has been reported that a judge who has been previously exposed as an AKP supporter who insulted the CHP’s leader and used derogatory language against AKP critics was reappointed in a manner which appears to differ from normal practice, in that it was reported to have been processed separately to avoid his name being listed in the official announcement.²⁹⁴

Lawyers must also be able to undertake their defence work in an independent manner. However, it was reported that lawyers defending human rights are frequently subjected to judicial harassment as the State wrongly identifies them as accomplices of their clients. A lack of effective guarantees for lawyers to perform their duties without interference and reprisals was also highlighted.²⁹⁵

Impartial Justice System

In addition to being independent, members of the judiciary and others representing justice (quasi-judicial bodies, arbitrators, mediators, *avocats d’office*) must be competent and neutral and reflecting the makeup of the communities they serve.

Article 6 of the ECHR, which provides for the right to a fair trial, is reflected in Article 36 of Turkish Constitution, which states that:

[E]veryone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures.
No court shall refuse to hear a case within its jurisdiction.

While Article 6 of the ECHR provides details as to what constitutes a fair trial, including “a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”, the Constitution sets out those criteria in other articles. Article 138 states that:

[J]udges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, laws, and their personal conviction conforming with the law.

No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions.

No questions shall be asked, debates held, or statements made in the Legislative Assembly relating to the exercise of judicial power concerning a case under trial.

²⁹³ European Association of Judges, ‘Resolution on the Situation of the Judiciary in Turkey’ (16 May 2015), available at: http://www.ekou.ee/doc/2015-05-29_EAJ-pressrelease-Turkey.pdf.

²⁹⁴ ‘News Portal Reveals Secret Reappointment of ‘AK troll’ Judge’, Today’s Zaman (18 October 2015), available at:

http://www.todayszaman.com/national_news-portal-reveals-secret-reappointment-of-ak-troll-judge_401870.html.

²⁹⁵ 2015 UPR, Joint submission by Lawyers for Lawyers Foundation, The Law Society of England and Wales, Lawyers’ Rights Watch Canada and Fair Trial Watch, Amsterdam, (Netherlands), available at: <http://www.advocatenvooradvocaten.nl/wp-content/uploads/UPR-Submission-Turkey-final-draft-1.pdf>.

Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution.

Article 139 provides for the security of tenure of judges and public prosecutors. Article 141 sets out the right to public hearing, limiting closed session to cases “absolutely necessitated by public morals or public security”, and ensuring the written justification of decisions. It also states that trials must be conducted “as quickly as possible and at minimum cost.” According to Article 144, the supervision of judicial services and public prosecutors is carried out by the Ministry of Justice.

Despite these constitutional provisions, the independence of the judiciary appears to be a highly controversial issue in Turkey. The 2010 constitutional amendments modified the structure of the High Council of Judges and Prosecutors (HSYK) and the way its members are appointed.²⁹⁶ Instead of the seven members appointed strictly by the Court of Cassation and the Council of State (which is the Administrative Court of Appeal, whose members are appointed by HSYK), the number of members of the HSYK was raised to 22. They are now appointed by the President, the Court of Cassation, the Council of State, as well as the judges and prosecutors in office for ten of those appointments. While the sources of judicial appointment have been diversified, they now include the executive, with the President playing a role in these nominations. Although this may be a challenge to the separation of powers, according to the ECtHR, the independence of the judiciary is not jeopardised solely by judicial nominations emanating from the executive.²⁹⁷

The Law on the HSYK was amended so that all those working for it were replaced with staff assigned by the Ministry of Justice. While the Constitutional Court revoked this law, its decision did not bear any retroactive effect. Thus the laid-off staff could not be re-appointed.

One of the main grounds for individuals to apply to the Constitutional Court is the right to a fair trial. Individuals convicted as a result of cases such as the ones deriving from the operation sledgehammer (Balyoz), the so-called ‘post-modern coup’, and the Ergenekon trials, were released because the Constitutional Court found that the proceedings had violated their right to fair trial.²⁹⁸ The ECtHR has also noted existing obstacles to the right to a fair trial in Turkey.

In June 2015, within the context of trials of high-level commanders, the Constitutional Court annulled an amendment to military law which allowed the President to make the final decision on the dismissal of military officials. The Court ruled that this presidential power conflicted with Article 36 of the Constitution and provided that the Council of State is to make such final determinations.²⁹⁹ More generally, the Constitutional Court has recently held that certain decisions of the Supreme Court

²⁹⁶ For more on the 2010 constitutional amendments, see *supra* section 2.3.

²⁹⁷ *Campbell and Fell v UK*, ECtHR, Application No. 7819/77, Judgment 28 June 1984, paras 78-79, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57456>.

²⁹⁸ See above 2.2 Legislature, The Rule of the AKP.

²⁹⁹ ‘Turkey’s Constitutional Court limits president’s power over military trials’, *Hürriyet Daily News* (24 June 2015), available at: <http://www.hurriyetdailynews.com/turkeys-constitutional-court-limits-presidents-power-over-military-trials.aspx?PageID=238&NID=84497&NewsCatID=338>.

violated the right to a fair trial, due to the lack of legal justification provided in those decisions. It held that in order to comply with the right to a fair trial, court decisions must outline the relevant material facts, indicate the reasoning and legal basis thereof and to show a rational connection between the facts and the decision.³⁰⁰

Accessible Justice System

Access to civil justice (access to means of dispute resolution) for *bona fide* disputes the parties cannot resolve must also be provided without prohibitive cost or inordinate delay. As mentioned above, Article 141 of the Constitution states that judicial proceedings must be conducted “as quickly as possible and at minimum cost.” In order to deliver justice in a timely manner, the judiciary must have sufficient means in terms of human and material resources.

Justice seems accessible to all throughout Turkey, without any procedural or other barriers based on geographical location. Cases can be appealed to the Court of Cassation (Yargıtay) or the Council of State (as mentioned above, this is the Administrative Court of Appeal, known as Danıştay) from the court of first instance. Thus, there is no need to go to the capital, Ankara, for example, to appeal a case.

With regard to costs, Article 120 of the Code of Civil Procedure (Law No. 6100, which repealed Law No. 1086) states that a plaintiff must prepay a fee (*harç*) and expenses (*gider avansı*), which may be seen as an obstacle to access to justice. However, if a plaintiff proves that s/he cannot afford that fee and advance expenses, Articles 334-340 of the CPP provide for aid to cover these legal costs.

In addition to courts, access to justice may be provided through quasi-judicial (arbitration) or non-judicial (mediation) means of dispute resolution. Several codes provide for alternative dispute resolution in Turkey. For instance, Article 253 of the Turkish Code of Criminal Procedure regulates conciliation. Following amendments made in 2006, conciliation was also introduced with the criminal system for offences prosecuted following a complaint or for negligent offences. There is also a mediation mechanism for civil cases within the Code of Mediation in Civil Disputes (No. 6325). After the parties select a mediator from a list maintained by the Ministry of Justice, the mediator tries to solve their dispute in accordance with the provisions of the Code of Mediation in Civil Disputes.

Individual Access to the Constitutional Court

As already mentioned, individuals have the right to individual application before the Constitutional Court. This mechanism was introduced for the first time through constitutional amendments that were accepted by referendum on 12 September 2010. Article 148 of the Constitution, which covers the functions and powers of the Constitutional Court, was amended as follows:

³⁰⁰ E. Benan Arseven, ‘Turkey’s Constitutional Court Publishes Decision regarding Essential Elements of Court Decisions’, Mondaq (19 August 2015), available at: <http://www.mondaq.com/turkey/x/421218/Civil+Law/Turkeys+Constitutional+Court+Publishes+Decision+Regarding+Essential+Elements+Of+Court+Decisions>.

[E]veryone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities. In order to make an application, ordinary legal remedies must be exhausted.

In the individual application, judicial review shall not be made on matters required to be taken into account during the process of legal remedies.

Procedures and principles concerning the individual application shall be regulated by law.³⁰¹

The new 'Law on the Establishment and Rules of Procedure of the Constitutional Court' of Turkey (the Law of the Constitutional Court), adopted on 30th March 2011, further clarifies the requirements and procedural rules regarding this individual complaint mechanism (among other issues).³⁰² Article 45(1) of the Law on the Constitutional Court states that

[E]very person may apply to the Constitutional Court alleging that the public power has violated any one of his/her fundamental rights and freedoms secured under the Constitution which falls into the scope of the European Convention on Human Rights and supplementary protocols thereto, which Turkey is a party to.

Therefore, anyone who thinks his/her constitutional rights, as set forth in the ECHR and its protocols, have been infringed by a public authority has the right to apply to the Constitutional Court after exhausting other domestic remedies.³⁰³ However, this remedy is not applicable in relation to human rights contained in other treaties to which Turkey is a party.

While 'everybody' can use this procedure, this does not equate to the possibility of bringing 'abstract' application (or *actio popularis*). Article 46(1) of the Law on the Constitutional Court clearly states that abstract applications are excluded.³⁰⁴ Article 46(2) excludes petitions from 'public legal persons' but 'private law legal persons' can bring a claim before the Constitutional Court, if the petition relates to their legal personality. Finally, Article 46(3) indicates that "[F]oreigners may not petition individual applications concerning rights exclusive to Turkish citizens."

A person may bring a petition personally or, if s/he has applied through another court or representation abroad, these institutions can in turn refer this application to the Constitutional Court, in accordance with Article 47(1) of the Law on the Constitutional Court.

There is a fee attached to the petition, as stated Article 47(2) of the Law on the Constitutional Court, which is fixed at 172.50 Turkish Liras.³⁰⁵

³⁰¹ Paragraphs added on September 12, 2010; Act No. 5982.

³⁰² See Chapter Four of the Law of the Constitutional Court, adopted on 30th March 2011.

³⁰³ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, 30 October 2014 ('National Report, 2015 Periodic Review'), paras 14-17.

³⁰⁴ This would lead to an enormous docket, see the Opinion on the Draft Law on the Constitutional Court of Montenegro, Venice Commission, 17-18 October 2008, CDL-AD(2008)030, para 51.

³⁰⁵ 'Individual Application (Constitutional Complaint)', available at:

<http://www.anayasa.gov.tr/index.php?l=content&id=402&lang=1>.

Legal representation is not mandatory for this procedure. In accordance with Article 47(4) of the Law on the Constitutional Court, if the applicant names a legal representative, a written evidence of advocacy has to be presented.

The time limit to apply to the Constitutional Court is 30 days from the notification of the decision of the last available remedy, in accordance with Article 47(5) of the Law on the Constitutional Court. If there is no legal remedy available, this period starts immediately after the violation. An applicant may bring a claim 15 days after that deadline, if s/he proves that there was a legitimate excuse to do so. In *Hasan Uzun v Turkey*,³⁰⁶ the ECtHR noted that this time limit was reasonable and that the possibility of an extension was welcomed.

In accordance with Article 48(2), the Constitutional Court can declare inadmissible an application which does not bear significance for the enforcement or cause significant damage or include explicit basis. A commission of three judges must unanimously decide on admissibility. If they fail to do so, the case is sent to the Chamber as stipulated in Article 48(3).

Once an individual application is deemed admissible, the examination on the merits is conducted by the Chambers of the Constitutional Court. The Ministry of Justice is informed of this process.³⁰⁷ The Constitutional Court can also provide for interim measures *ex officio* or upon a request. When the Constitutional Court finds that a violation resulted from a court's decision, the case can be referred to the relevant court or authority for the re-opening of the proceedings.³⁰⁸ When there is no legal interest in a re-trial, the applicant may be awarded compensation by the Constitutional Court directly, or sent to another court to be awarded compensation.

The Constitutional Court started receiving individual application on 23 September 2012.³⁰⁹ Within two years, 26,641 applications had been brought before it. Most of these claims alleged violations of the right to fair trial (20,336), the right of property (6,950), and equality before law (5,859).³¹⁰

In the above mentioned case of *Hasan Uzun v Turkey*, the ECtHR stated that this new procedure has to be exhausted before being able to apply to the ECtHR.³¹¹

Criminal Justice System

Within the criminal justice system, the length of pre-trial detention must not be excessive and its conditions must not violate human rights. Any deprivation of liberty must be reasonable, i.e. justified by objective reasons, be lawful and only last for the

³⁰⁶ *Hasan Uzun v. Turkey*, Application No. 10755/13, ECtHR Judgment of 14 May 2013.

³⁰⁷ See Art 49 (2) of the Law on the Constitutional Court.

³⁰⁸ Article 50 (2) of the Law on the Constitutional Court.

³⁰⁹ Information on 'Individual Application (Constitutional Complaint)' is available at:

<http://www.anayasa.gov.tr/index.php?l=content&id=402&lang=1>.

³¹⁰ Data is available at:

http://www.anayasa.gov.tr/files/bireyselBasvuru/23_eylul_2012_23_eylul_2014_istatistikleri.pdf.

³¹¹ *Hasan Uzun v Turkey*, ECtHR, Application No. 10755/13, 14 May 2013.

duration that is absolutely necessary in the circumstances.³¹² In Turkey, the total prison population, including pre-trial detainees (or ‘remand prisoners’), is 156,543 individuals.³¹³ Those in pre-trial detention constitute about 14.4% of the total prison population.³¹⁴ This is far below the world’s average percentage which stands at about 33 %. However, there appears to have been instances of abusive use of pre-trial detention in Turkey.³¹⁵

It appears that pre-trial detention time has been reduced, with a limit of five years to spend in pre-trial detention awaiting trial (while individuals have been reported to wait 10 years in detention before their trial in the past).³¹⁶

The domestic security bill, passed by the GNAT in March 2015,³¹⁷ extends the powers of the police to detain persons without charge. Under the current legislation, police officers cannot detain an individual without the permission of a prosecutor. Police officers will now be able to keep a person in custody for 24 hours, without needing the authorization of a prosecutor. However, in cases of mass demonstrations, the detention period will extend to 48 hours.³¹⁸

Judicial Reforms

Over the last decade, the Turkish government introduced reforms to the governance and structure of its judiciary in order to be in line with the European human rights system. However, these reforms were deemed insufficient.³¹⁹ Furthermore, some legal

³¹² See, for example, *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v Iran)*, ICJ Reports 1980, 42 para 91, or *Communication No 458/1991 Albert Womah Mukong v Cameroon* (views adopted on 21 July 1994) UN Doc CCPR/C/51/D/458/1991 (1994), para 9.8. For more on the application of human rights to pre-trial detention, see Kristin Hausler and Robert McCorquodale, ‘Pre-trial Detention and Human Rights in the Commonwealth: Any lessons from Civil Law Systems?’, *Journal of Human Rights in the Commonwealth*, Vol 2 (1), 2014.

³¹³ At 1.12.2014 (national prison administration), available at:

<http://www.prisonstudies.org/country/turkey>.

³¹⁴ At 1.12.2014. This number includes all pre-trial detainees. It does not include those that have been convicted but are awaiting their sentencing.

³¹⁵ See, for example, International Federation of Journalists (IFJ), ‘European Court Slams Turkey on Pre-Trial Detention of Journalists’ (8 July 2014), available at: <http://www.ifj.org/nc/news-single-view/backpid/130/article/european-court-slams-turkey-on-pre-trial-detention-of-journalists/>.

This article refers to the ECtHR preliminary decision (8 July 2014) in the cases of *Nedim Şener v Turkey* (Application No. 38270/11) and *Şik v Turkey* (Application No. 53413/11) of which a press release is available at: <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-4815533-5871641>.

³¹⁶ ‘Jagland expresses concern about grants of immunity in Turkey’, *Today’s Zaman* (8 January 2015), available at:

http://www.todayszaman.com/diplomacy_jagland-expresses-concern-about-grants-of-immunity-in-turkey_369254.html.

³¹⁷ See Section 4.1 Domestic Human Rights Framework, Specific Human Rights under Domestic Law, the Right to Freedom of Association and Assembly (Other Relevant Domestic Provisions).

³¹⁸ ‘Controversial security bill passes, CHP says will appeal to Constitutional Court’, *Today’s Zaman* (7 March 2015), available at: http://www.todayszaman.com/national_controversial-security-bill-passes-chp-says-will-appeal-to-constitutional-court_376425.html.

³¹⁹ See the study conducted by the Turkish Economic and Social Studies Foundation (TESEV), as reported in ‘Turkish government’s judicial packages fail to transform system: Report’, *Hürriyet Daily News* (23 September 2013), available at: <http://www.Hurriyetdailynews.com/turkish-governments-judicial-packages-fail-to-transform-system-report.aspx?pageID=238&nID=55000&NewsCatID=339>.

changes were criticised for compromising judicial independence. In particular, the 2010 referendum increased the membership of the Constitutional Court of Turkey and the High Council of Judges and Prosecutors (HSYK), which is responsible for judicial appointment. These changes increased the influence of the executive branch over the process of judicial appointment.³²⁰

A series of additional judicial reforms (passed in July 2012, April 2013, and February 2014, respectively) introduced some checks on excessive pre-trial detention and removed extraordinary powers from Special Authority Courts and Prosecutors. These reforms also lifted restrictions on lawyers' rights to access investigation dossiers but Law No. 6572 (passed in December 2014) now limits this right, which is provided under Article 153 of the Criminal Procedure Code.³²¹ This may happen upon motion of the public prosecutor or by decision of the judge, if such right may hinder the ongoing investigation. However, this restriction may interfere with the right to a fair trial. Thus, these reforms have still been deemed insufficient and compromised by other reforms. Those changes were also criticised for having been rushed through Parliament, following attempts by the government to block a corruption investigation targeting public officials and business leaders close to the Prime Minister (following the December 2013 revelations).

The Turkish Judicial Reform Act 2014 altered the regulatory powers of the HSYK, transferring control from the HSYK to the Minister of Justice on matters including the appointment of judges, the management of judicial disciplinary investigations and the selection of judicial training personnel and HSYK staff.³²² While the Constitutional Court ruled the most damaging amendments to the HSYK unconstitutional, including the increased powers of appointment granted to the Minister of Justice, such appointments had already been made by the time of the Constitutional Court ruling. These appointments have not been rescinded following the ruling.³²³

Nevertheless, the judicial system in Turkey has in a number of cases acted as an effective check on executive power. In 2014, the Constitutional Court overturned several controversial pieces of legislation undermining human rights. For example, in October 2014, the Constitutional Court annulled an amendment that gave the state-

See also the critics from the European Commission, in its 'Turkey 2012 Progress report', pp 70-71, available at:

http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf.

³²⁰ 'Separation of Powers and Judicial Independence in the Republic of Turkey after the Constitutional Amendments', Law Office of Pekin and Bayar (14 November 2014), available at:

<http://www.pekin.com.tr/publications/separation-of-powers-and-judicial-independence-in-the-republic-of-turkey--after-the-constitutional-amendments.20.aspx>.

³²¹ Joint submission by ARTICLE 19, the Committee to Protect Journalists, English PEN, Freedom House, P24 and PEN International, paras 6-10, available at:

<http://www.article19.org/resources.php/resource/37658/en/article-19-joint-submission-to-the-universal-periodic-review-of-turkey>.

³²² An explanation of the key elements of the legislation is available at:

<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=6c6da94a-975f-44cf-8da4-ede718ffee61>.

See also 'Turkish law 'strikes at judicial independence'', Financial Times (26 February 2014), available at: <http://www.ft.com/cms/s/0/83b3a3d2-9f05-11e3-a48e-00144feab7de.html#axzz3PSol1yhoX>.

This Reform Act was signed into law by President Abdullah Gül on 26 February 2014.

³²³ Submission from Amnesty International to the 2015 UPR, p 2, available at:

http://amnesty.org/en/library/asset/EUR44/015/2014/en/ec49ee04-e6d0-4a81-a97d-5c30bf9dd4a1/_Toc396313269.

controlled Telecommunications Directorate the power to block access to websites within four hours without a court order.³²⁴

3.5. Human Rights within the Rule of Law

The rule of law is not tantamount to ‘rule by law’, which could allow authoritarian actions by governments as long as they are enshrined in the legislation.³²⁵ Therefore, within the rule of law, human rights must be included as the law must afford adequate protection of human rights.³²⁶

While the extent to which substantive human rights are encompassed by the rule of law is a contentious and disputed issue, it is clear that human rights and the rule of law are “interlinked and mutually reinforcing”.³²⁷ As the leading definitions of the rule of law all include some reference to respect for human rights as being a part of the rule of law, it is appropriate to look at Turkey’s protection of rights in that context. Human rights, as they are applicable within the Turkish legal system, are considered in detail in Section 4, which also includes a summary of key human rights issues within Turkey. This sub-section focuses on the monitoring of human rights within Turkey (and their institutionalisation). A number of recent reforms have been taken in order to institutionalise human rights.³²⁸

National Human Rights Institution

A national human rights institution providing an independent monitoring mechanism is key for the promotion and protection of human rights at the country level.³²⁹ Until recently, Turkey did not have such an institution. Following its 2010 report to the

³²⁴ Another piece of controversial legislation that prevented high-level civil servants who were removed from their posts unjustly from returning their posts for two years was found unconstitutional: see ‘The Turkish Constitutional Court’s Struggle for Democracy and The Rule of Law’, the Rethink Institute (October 2014), available at: <http://www.rethinkinstitute.org/turkish-constitutional-courts-struggle-democracy-rule-law/>.

³²⁵ Venice Commission, ‘Report on the Rule of Law’ (Adopted 86th Plenary Session 25-26 March 2011), para 15.

³²⁶ See Tom Bingham, *The Rule of Law* (penguin Books 2010), pp 66-84, where he includes the following human rights: Art 2: right to life; Art 3: prohibition on torture; Art 4: prohibition of slavery and forced labour; Art 5: right to liberty and security; Art 6: right to a fair trial; Art 7: no punishment without law; Art 8: right to respect for private and family life; Art 9: freedom of thought, conscience and religion; Art 10: freedom of expression; Art 11: freedom of assembly and association; Art 12: right to marry; Art 14: all rights – non-discrimination; First protocol, art 1: protection of property; First protocol, art 2: right to education.

³²⁷ See the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, Resolution adopted by the General Assembly on 30 November 2012, A/RES/67/1, available at: www.unrol.org/files/Declaration%20HLM_A%20RES%2067%201.pdf.

³²⁸ See Turkey Report for the 2015 UPR.

Note that, in addition to the institutionalisation at the national level, every city and district have a human rights commission but that the chiefs of such commissions are the governors or district governors, respectively.

³²⁹ See the UN Paris Principles.

Human Rights Council and criticisms raised during the 2010 UPR,³³⁰ Turkey established the Human Rights Institution of Turkey (TIHK) in June 2012.³³¹ It is responsible for the protection and enhancement of human rights, supervising laws and regulations on human rights, investigating allegations of human rights violations, preparing reports, submitting opinions and recommendations, conducting awareness-raising activities and providing training.³³²

However, the TIHK has not yet requested its accreditation with the International Coordinating Committee (ICC) of National Human Rights Institutions. It also appears that the law establishing the TIHK does not abide by the Paris Principles, particularly in relation to its organic and financial independence.³³³ It has also been criticised for not speaking out forcefully about abuses by state officials or not showing a willingness to make recommendations to government or engage in public debate, and for the fact that seven out of eleven members of its board are appointed by the cabinet.³³⁴

Ombudsman

While a law establishing a general Ombudsman office was passed in 2006, it was quashed by the Constitutional Court in 2008 on the grounds that it did not fit into the constitutional framework.³³⁵ The establishment of the Institution of the Ombudsperson eventually followed the 2010 constitutional amendments. The first Head Ombudsman was elected in 2012, and the Office received its first complaints in 2013. The duties attached to the Ombudsman system, as well as the type of complaints it receives, are described in more detail in Section 3.3 above.³³⁶

According to the amended Article 74 of the Constitution,
[E]veryone has the right to obtain information and appeal to the Ombudsperson.

³³⁰ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 7, 22 February 2010 ('National Report, 2010 Periodic Review'), para 20; Report of the Working Group on the Universal Periodic Review, 17 June 2010, paras 100.13-124.

³³¹ It appears to now having been revised, see 'Turkey's Human Rights Institution to be revamped', Hürriyet Daily News (15 December 2014), available at: <http://www.hurriyetdailynews.com/turkeys-human-rights-institution-to-be-revamped-.aspx?pagerID=238&nID=75623&NewsCatID=339>.

³³² National Report, 2015 Periodic Review, para 25.

³³³ See the concern of the UNCT in the Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, 12 November 2014 ('Compilation of UN information, 2015 Periodic review'), para 11.

This criticism has been echoed by other stakeholders, see the Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, 27 October 2014 ('UN Summary of Stakeholder submissions, 2015 Periodic Review'), para 14.

³³⁴ Human Rights Watch, 'Turkey's Human Rights Rollback', 29 September 2014, available at: <http://www.hrw.org/node/129354/section/2>.

³³⁵ Compilation of UN information, 2010 Periodic review, para 12; Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1, 17 February 2010 ('UN Summary of Stakeholder submissions, 2010 Periodic Review'), paras 10-12. See also National Report, 2010 Periodic Review, para 54.

³³⁶ This section refers to Chapter VII of the Constitution, which provides for the Institution of the Ombudsman.

The Institution of the Ombudsperson established under the Grand National Assembly of Turkey examines complaints on the functioning of the administration.

Natural and legal persons whose interests are violated may lodge a complaint to the Institution against any and all kinds of acts, actions, attitudes and behaviours of the administration within the framework of the procedures and principles laid down in the Law on Ombudsman (No 6328) and in the Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution (Official Gazette dated 28/03/2013 No 28601). However, if the complaint concerns human rights or general public matters, the violation of personal interests is not required.³³⁷

The Institution examines, investigates and submits recommendations following complaints concerning the actions of the public administration bodies and private legal entities providing public services.³³⁸ It does not have competence to hear complaints about the acts of the President on his/her own competence and the decisions and orders signed by the President *ex officio*, the acts regarding the use of the legislative power, the acts regarding the use of judicial power, nor the acts of the Turkish Armed Forces, which are purely military in nature. In addition, the Institution cannot hear complaints concerning disputes which are being dealt with or have been resolved by judicial organs. The Institution will also not examine a complaint in which the grounds, content and parties are the same as a claim previously lodged. Complaints must be sufficiently precise in order to be examined.

Complaints were permitted to be lodged since 29 March 2014.³³⁹ They have concerned issues relating to retirement, social security support contribution, seniority indemnity, vacation payment, voluntary insurance, administrative fine, unemployment insurance and coverage, the Gezi Park protests, privacy of personal information, expropriation, assignment, women's headscarf, rights of police officers, penal administration, university and high school entrance exams and payment of faculty, scholarships, and traffic fines.³⁴⁰

For example, in relation to the Soma mine explosion, where 301 miners died on 13 May 2014, which is the object of an ongoing lawsuit, the Ombudsman issued a report which stated that the corporation which provided the mining licence was not operating in a satisfactory manner. It also stated that the mining legislation must be more detailed and that it must be enforced adequately. It added that high ranking

³³⁷ See the website of the Ombudsman Institution at:

http://www.ombudsman.gov.tr/en/custom_page-350-who-may-apply?.html.

³³⁸ Including public administration bodies under central government and social security institutions, local administrations, affiliated administrations of local administrations, local administrative unions, organizations with the circulating capital, the funds established under laws, legal public organizations, public economic enterprises, associated public organizations, and their affiliates and subsidiaries, professional organizations with public institution status. The private legal entities must be providing a public service which satisfies a common, permanent and social need of public and offer public services under administrative regulations, supervisions and monitoring.

³³⁹ See the website of the Ombudsman Institution at:

http://www.ombudsman.gov.tr/en/custom_page-349-which-issues-may-be-adressed-to-ombudsman?.html.

³⁴⁰ See the website of the Ombudsman Institution at: http://www.ombudsman.gov.tr/custom_page-394-2013-yili-kararlari.html; http://www.ombudsman.gov.tr/custom_page-395-2014-yili-kararlari.html; and http://www.ombudsman.gov.tr/custom_page-1397-2015-yili-kararlari.html.

bureaucrats, responsible for the explosion, must resign. The report also mentioned that subcontracting, which is common in the mine sector, must be forbidden. Electronic tagging system must be provided to all mine workers for localisation purposes. Rescue stations must be set up near the mines and there must be rescue chambers in all mines.³⁴¹ As another example, the Ombudsman wrote an advisory opinion about the working hours of agency members, according to which legislative regulations should be adopted as soon as possible, with a limit of 40 weekly working hours and payment of any overtime.³⁴²

The Ombudsman also wrote an advisory opinion aimed at the Student Selection and Placement Centre, in relation to its refusal to allow a student with vision disability to use a magnifying glass, indicating that the student's request should be fulfilled. In general, the Student Selection and Placement Centre provides a reader to the sight-disabled students but this particular student had claimed it difficult to concentrate when another person reads.³⁴³

As members of an independent and impartial entity, the Chief Ombudsman and Ombudsmen may not be given orders or instructions by any authority, body, office or person regarding their duties.³⁴⁴ Despite its independence, the Ombudsman Office has been criticised for not speaking out forcefully about abuses by state officials and for not showing willingness to make recommendations to government or engage in public debate.³⁴⁵ The current Chief Ombudsman, has also expressed concern over the limited authority of the institution, such as its inability to challenge laws before the courts.³⁴⁶

3.6. Compliance with International Obligations

As Tom Bingham stated:

[A]lthough international law comprises a distinct and recognisable body of law with its own rules and institutions, it is a body of law complementary to the national laws of individual states and in no way antagonistic to them; it is not a thing apart; it rests on similar principles and pursues similar ends; and observance of the rule of law is quite as important on the international plane as on the national, perhaps even more so.³⁴⁷

³⁴¹ See the website of the Ombudsman Institution at:

http://www.ombudsman.gov.tr/custom_page-377-raporlar.html.

³⁴² The Ombudsman's advice is available at:

<http://www.memurlar.net/common/news/documents/496931/kamu-basdenetci-kararlari.pdf>; and at: <http://www.memurlar.net/haber/496931/>.

³⁴³ The Ombudsman's advice is available at: <http://www.memurlar.net/haber/483116/>.

³⁴⁴ National Report, 2015 Periodic Review, paras 18-24.

³⁴⁵ Human Rights Watch, "Turkey's Human Rights Rollback", 29 September 2014, available at:

<http://www.hrw.org/node/129354/section/2>.

³⁴⁶ 'Turkish ombudsman complains of insufficient authority', Hürriyet Daily News (17 April 2014), available at:

<http://www.Hurriyetdailynews.com/turkish-ombudsman-complains-of-insufficient-authority.aspx?pageID=238&nID=65157&NewsCatID=338>.

³⁴⁷ Tom Bingham, *The Rule of Law* (2010), p 110.

Thus the rule of law requires compliance by states with their international law, as well as national law, obligations.³⁴⁸

Turkey ratified most of the core human rights treaties,³⁴⁹ including the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), The United Nations Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. Yet, it should be noted that Turkey has neither ratified the Optional Protocol to the Convention on the Rights of the Child nor the additional Protocols 4, 7 and 12 to the European Convention on Human Rights.³⁵⁰ Turkey recognised the compulsory jurisdiction of the ECtHR under Article 46 of the European Convention on Human Rights in 1990. More details regarding Turkey's international human rights obligations can be found in Section 4 of this Report.

Turkey launched an extensive judicial reform process, which has included two constitutional amendments and nine reform packages in addition to the introduction of new Civil and Penal Codes.

According to Article 90 of the Constitution, an international agreement must be adopted by the GNAT through a law approving ratification in order to be binding domestically. The law approving ratification must then be ratified and promulgated by the President for the treaty to come into effect within Turkey.³⁵¹ The effect of international law within the domestic legal order is also stipulated under Article 90, which states international agreements "duly put into effect carry the force of law" and that no appeal to the Constitutional Court shall be made with regard to these agreements. In 2004, Article 90 was amended to add:

[I]n the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.³⁵²

This means that Turkey has a monist system in which international treaties are directly applicable in Turkish law, with international human rights treaties prevailing over domestic laws on the same subject matter. As Article 90 of the Constitution clearly gives international human rights treaties priority over national legislation, a national court should overlook the latter, including the Constitution, if conflicting rules exist between two. However, the laws over which international human rights treaties prevail by virtue of Article 90 have been generally interpreted as limited to domestic statutes,

³⁴⁸ It can also be argued that there needs to be an environment that shapes the legal system on the rule of law from a cultural perspective, see David Pimentel, 'Culture and the Rule of Law: Cautions for Constitution –Making', in Fatih Öztürk, Murat Yanık, Hüseyin Özcan (eds), *A Road Map of A New Constitution for Turkey: Essays in Comparative Constitutional Law*, (Carolina Academic Press, 2014), pp 81-95.

³⁴⁹ The list of treaties ratified by Turkey is available at:

<http://www1.umn.edu/humanrts/research/ratification-turkey.html>.

³⁵⁰ Protocol 4 to the ECHR prohibits the imprisonment of people unable to fulfil a contract, provides for freedom of movement within a country, and prohibits the expulsion of nationals; Protocol 7 provides additional protection with regard to criminal and family matters, such as the right to appeal in criminal matters or the right to equality between spouses; Protocol 12 extends the prohibition of discrimination.

³⁵¹ Article 104(b) of the Constitution.

³⁵² Article 90(5) of the Constitution.

rather than the Constitution itself, which remains the highest legal norm within Turkey.³⁵³ Article 90 has been criticised for leaving unclear which treaties are those that “concern[...] fundamental rights and freedoms”, whether judgments/decisions of international human rights courts or bodies similarly prevail, what happens in the case of conflicting treaties, and leaving open the possibility of international treaties being concluded that are more restrictive of rights and freedoms.³⁵⁴

Also, in practice, Turkish courts make few references to the European Convention of Human Rights and the decisions of the European Court of Human Rights.³⁵⁵ It appears that “from 1963 to 2003, Turkish high courts cited ECHR opinions directly only thirty-eight times and of those jurisprudential hooks invoked a mere five times”.³⁵⁶ There are no formal statistics of such citations after the amendments in 2004, which raises questions about the impact of the amendments to Article 90 on judicial practice.³⁵⁷ For example, despite the decision of the ECtHR decision in *Ünal Tekeli v Turkey*, in which the Court found the provision prohibiting women using their surnames as the family name discriminatory, the Constitutional Court upheld this provision under the Turkish Civil Code. The Constitutional Court noted its commitment to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the ECHR, but considered the case before it as part of family law and thus decided that the contested provision was not to be interpreted in relation to Article 90.³⁵⁸ With regard to an individual claim brought before it on the prohibition of women using their maiden name after marriage, the Constitutional Court decided that it was a violation of Article 17 of the Constitution, which provides for the inviolability of the person.³⁵⁹ The Court considered the “personal inviolability and corporeal and psychological existence of the individual” within the framework of Article 8 of the European Convention on Human Rights. The Constitutional Court also referred to Article 90 of the Constitution, which provides for the priority of international human rights treaties over domestic laws, in case the latter conflicts with the former.

³⁵³ Levent Gönenç and Selin Esen (2006), ‘The Problem of Less Protective International Agreements in Domestic Legal Systems: Article 90 of the Turkish Constitution’ (2006) 8(4) *European Journal of Law Reform* 489, 491, 495; see also William Hale and Ergun Ozbudun, *Islamism, Democracy and Liberalism in Turkey: The Case of the AKP* (Routledge, 2009) p 56.

³⁵⁴ *Ibid.*

³⁵⁵ See Esbrook citing the works of Kaboğlu and Koutnazis: Leslie Esbrook, ‘Who Will Protect Human Rights in Turkey? Why the Birth of the 2013 Constitution May Not Be the Answer?’ (2014) 36 *Loy. L.A. Int’l & Comp. L. Rev.* 1, 28. For more information about the relationships between the Turkish courts and the ECHR jurisprudence, see Başak Çalı, ‘Turkey’s relationship with the European Court of Human Rights shows that human rights courts play a vital role, but one that can often be vastly improved’ (14 June 2012), available at: <http://blogs.lse.ac.uk/euoppblog/2012/03/14/turkey-echr/>.

³⁵⁶ İbrahim Ö Kaboğlu and Stylianos-Ioannis G Koutnazis, ‘The Reception Process in Greece and Turkey’, in Alec Stone Sweet & Helen Keller (eds), *A Europe of Rights: The Impact of the ECHR on National Legal Systems*, 451, 468, as cited in Leslie Esbrook, ‘Who Will Protect Human Rights in Turkey? Why the Birth of the 2013 Constitution May Not Be the Answer’ (2014) 36 *Loy. L.A. Int’l & Comp. L. Rev.* 1, 28, fn. 135.

³⁵⁷ Commissioner for Human Rights of Council of Europe, ‘Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to Turkey from 10 to 14 October 2011’, CommDH(2012)2, Strasbourg (10 January 2012), p 6.

³⁵⁸ AYM Kararı, E. 2009/85, K. 2011/49, decided on 10 March 2011 (published on 21 October 2011), available at: <http://www.resmigazete.gov.tr/eskiler/2011/10/20111021-8.htm>.

³⁵⁹ *Anayasa Mahkemesi*, Constitutional Court, 19 December 2013, Application No. 2013/2187, available at: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140107-8.pdf>.

With regard to the promotion and enforcement of international human rights obligations in Turkey, other pieces of legislation have been taken into consideration. With regard to freedom of expression, 'Amendment of Certain Laws within the context of Human Rights and Freedom of Expression' (known as the 4th Judicial Reform Package in Public) was adapted in 2013, leading to improvement in the protection of freedom of expression. On the other hand, Turkey ranked 154th out of 180 countries in the 2014 Reporters Without Borders press freedom index.³⁶⁰ Since 2010, approximately 80 journalists have been arrested in Turkey.³⁶¹ It was announced by the Deputy Prime Minister that the Radio and Television Supreme Council banned more than 149 broadcasts during the period 2010-2014.³⁶² Turkey also experienced internet censorship with the blocking of sites such as Twitter and YouTube by court orders. The Constitutional Court revoked those bans on the grounds of a violation of human rights, as guaranteed under the Constitution.

With regard to children's rights, the Monitoring and Assessment Board for the rights of the child has been set up to coordinate the implementation and monitoring the UN Convention on the Rights of the Child. However, it appears that coordination among state institutions remains insufficient. With respect to child labour, the number of children working in hazardous workplaces has increased. As the 2014 Soma mining disaster demonstrated, some of the victims were children workers. Turkey ratified the ILO Convention according to which 18 is the minimum age for hazardous work. However the Convention leaves the determination of hazardous workplaces to public and private sector leaders.

Concerning the right to respect to private and family life, although there is a constitutional requirement (as a result of the 2010 amendments) to provide it, there is no general legislation regulating the protection of personal data. However, there are constitutional provisions relating to data protection. According to the Article 20 of the Constitution,

[E]veryone has the right to request the protection of his/her personal data. This right includes being informed of, having access to and requesting the correction and deletion of his/her personal data, and to be informed whether these are used in consistency with envisaged objectives. Personal data can be processed only in cases envisaged by law or by the person's explicit consent. The principles and procedures regarding the protection of personal data shall be laid down in law.³⁶³

As for the right to assemble and demonstrate, the Constitution guarantees the right to assemble and demonstrate without the requirement of being subject to a prior authorisation. Although Turkish Constitution is in line with international conventions, the law on meetings and demonstrations incorporates stricter rules. Whether adoption of the so-called domestic security package (discussed in Section 4 below) may

³⁶⁰ See the website of the World Press Freedom Index 2014, available at: <http://rsf.org/index2014/en-index2014.php>.

³⁶¹ European Federation of Journalist.

³⁶² This announcement is available in Turkish at: <http://www2.tbmm.gov.tr/d24/7/7-46512c.pdf>.

³⁶³ Paragraph added on September 12, 2010; Act No. 5982.

contradict freedom of assembly and demonstration has become an issue of contention.³⁶⁴

³⁶⁴ See 'Parliament discusses security bill aligned to EU standards', Daily Sabah (18 February 2015), available at: <http://www.dailysabah.com/politics/2015/02/17/parliament-discusses-security-bill-aligned-to-eu-standards>.

4. HUMAN RIGHTS IN TURKEY

This section considers the human rights situation in Turkey, starting with an analysis of the domestic human rights framework, including the key enforcement mechanisms available to individuals within Turkey. It then considers the relevant regional and international human rights framework, as well as their respective enforcement mechanisms.

The right to freedom of expression, freedom of assembly (and association), and freedom of religion have been identified as raising particular concerns within Turkey. Therefore, this section focuses on these human rights more specifically but, where relevant, other human rights are also considered.

4.1. Domestic Human Rights Framework

Constitutional Framework

According to Article 11 of the 1982 Constitution of the Republic of Turkey, its provisions are binding upon all governmental organs and laws shall not be contrary to it. The domestic Turkish legal system thus follows the concept of supremacy of the Constitution.

Human rights are enshrined in the Constitution.³⁶⁵ Article 12 states that [E]veryone possesses inherent fundamental rights and freedoms which are inviolable and inalienable. The fundamental rights and freedoms also comprise the duties and responsibilities of the individual to the society, his or her family, and other individuals.

Articles 12 to 16 contain general principles applicable to human rights, regarding their nature, as well as the possible applicable limitations and derogations, which are explained in further details in the sub-sections below.

Human rights guaranteed under the Constitution are divided into 'Rights and Duties of Individuals' (Part Two, Chapter Two), 'Social and Economic Rights and Duties' (Part Two, Chapter Three), and 'Political Rights and Duties' (Part Two, Chapter Four). The principle of equality before the law is expressed in Article 10, which can be found in Part One, which is dedicated to general principles.³⁶⁶ However, Turkey has no specific equality or anti-discrimination legislation.

³⁶⁵ The 1982 Constitution of Republic of Turkey has so far been amended 17 times, modifying 133 articles, see 'Çiçek announces constitutional commission's 15-point roadmap', Today's Zaman (3 November 2011), available at: http://www.todayszaman.com/national/cicek-announces-constitutional-commissions-15-point-roadmap_261831.html. Discussions regarding the drafting of a new Constitution have been ongoing since 2011.

³⁶⁶ Article 10 states that "[A]ll individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. No privilege shall be granted to any individual, family, group or class.

The so-called ‘Rights and Duties of Individuals’ (or civil rights) are enshrined in Articles 17 to 35. They include the right to freedom of religion and conscience (Article 24), the right to freedom of thought and opinion (Article 25), the right to freedom of expression and dissemination of thought (Article 26), the right to freedom of the press (Articles 28 - 32), the right to freedom of association (Article 33), and the right to hold meeting and demonstration marches (Article 34). They also include the right to life (Article 17, which refers to the corporeal and spiritual inviolability of the person), the prohibition of forced labour (Article 18), the right to liberty and security (Article 19), the right to privacy and protection of private life (Articles 20 - 22, including privacy of communication), the right to freedom of residence and movement (Article 23), the right to freedom of science and arts (Article 27), and the right to property (Article 35).

Social and economic rights (and duties) can be found in Articles 41 to 65. They cover the protection of the family and children’s rights (Article 41), the right to (and duty of) education (Article 42), public interest rights including land ownership (Articles 43 to 47), the right to work (Articles 49 - 50, 55), the right to organize unions (Article 51 - 52), the rights to collective labour agreement and the right to strike and lockout (Article 53 -54), the right to health and protection of the environment (Article 56), the right to housing (Article 57), the right to social security (Articles 60-62).

Political rights (and duties) are contained in Articles 66 to 74, including the principles applicable to citizenship (Article 66), the right to vote, to be elected and to engage in political activity (Article 67), provisions relating to political parties including the manner they are formed and operate and membership thereof (Articles 68 and 69), the right to enter public service (Articles 70 and 71), the obligation to perform national service (Article 72), the duty to pay taxes (Article 73), and the right of petition, right to information and appeal to the Ombudsperson which is also applicable to foreigners residing in Turkey if the principle of reciprocity is observed (Article 74).

The manner in which human rights are guaranteed under the Constitution is provided under Articles 36 to 40. These articles cover: the freedom to claim rights (Article 36); the principle of ‘natural judge’, limiting judicial authority to legally designated courts (Article 37); the principles relating to offences and penalties, which must be prescribed by law, respect statutes of limitations, as well as presumption of innocence (Article 38); the right to prove an allegation in libel and defamation suits (Article 39); and the right to prompt access to competent authorities in cases of human rights violations (Article 40).

Limitations

Although Article 12 refers to their inviolability, not all human rights are absolute. The way those human rights can be restricted is stipulated under Article 13 of the Constitution, which states that human rights “may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution

State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.”

without infringing upon their essence.”³⁶⁷ It further provides limits for any restriction of human rights, adding that “[T]hese restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality”.³⁶⁸

Thus certain human rights may be limited under strict conditions. While under international law many human rights can be the object of limitations, those limitations must be proportionate, necessary and have a legal basis. Under Turkish law, limitations must also have a legal basis and be proportionate but it is not clear if they must also serve a legitimate aim.

Prior to the 2001 constitutional amendments,³⁶⁹ Article 13 permitted limitations on general grounds, including for the purposes of safeguarding the Republic, national security public order, general peace, the public interest, public morals and public health.³⁷⁰ Article 13 stipulated that rights guaranteed under the Constitution could be restricted on any of these grounds in addition to specific grounds in related articles, envisaging “a cumulative restriction system”.³⁷¹

Thus, the 2001 amendments were welcomed as a progressive step, in particular with the recognition of the principle of proportionality.³⁷² However, the current Article 13 deviates from the restriction requirements for the protection of human rights allowed under the ECHR in that it subordinates rights to the “letter and spirit of the Constitution” as well as the “secular republic”.³⁷³ In addition, specific grounds for limiting human rights, which are provided for under the relevant articles, were not removed. Thus, for example, the Constitution still allows the right to freedom of expression and association to be restricted “for the purposes of national security, public order, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State”.³⁷⁴ Similar grounds are found in the Constitution to limit the right to freedom of the press,³⁷⁵ the right to freedom of association and assembly.³⁷⁶ These grounds for limiting these human rights have been criticised as being incompatible with the ECHR and falling short of ‘necessary in a democratic society’ requirement.³⁷⁷

³⁶⁷ Article 13(1) of the Constitution.

³⁶⁸ Ibid.

³⁶⁹ For more information on these amendments, see Levent Gönenç, ‘The 2001 Amendments to the 1982 Constitution of Turkey’, (2004) 1 Ankara Law Review 89, at pp 99-109.

³⁷⁰ Levent Gönenç, ‘The 2001 Amendments to the 1982 Constitution of Turkey’ (2004) 1 Ankara Law Review 89, p 99.

³⁷¹ Ibid. See also Saadet Yüksel, ‘[Constitutional Changes in Turkey in 2001 under the Framework of the EU Adaptation Process](#)’, (2007) 56 Annales de la Faculté de Droit d’Istanbul 153, p 157.

³⁷² Levent Gönenç, ‘The 2001 Amendments to the 1982 Constitution of Turkey’ (2004) 1 Ankara Law Review 89, p 99.

³⁷³ Amnesty International, ‘Turkey: Constitutional Amendments: Still a long way to go’ (1 January 2002), available at: <http://www.amnesty.org/pt-br/library/info/EUR44/007/2002/en>.

³⁷⁴ Art 26 of the Constitution.

³⁷⁵ Art 28 Constitution.

³⁷⁶ Arts 33 and 34 of the Constitution.

³⁷⁷ Amnesty International, ‘Turkey: Constitutional Amendments: Still a long way to go’ (1 January 2002), available at: <http://www.amnesty.org/pt-br/library/info/EUR44/007/2002/en>; see also ‘Freedom of expression and media freedom in Turkey’, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe Following his visit to Turkey, from 27 to 29 April 2011, Strasbourg (12 July 2011), CommDH(2011)25, para 11, available at:

In addition, Article 14 of the Constitution states that the human rights contained in the Constitution must not be exercised by the State or individuals to annihilate the human rights contained therein or to limit them in a more extensive manner than permissible under it. This is similar to Article 17 of the ECHR. However, Article 14 also states that these human rights must not “be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights”.³⁷⁸ Thus Article 14 prohibits the exercise of human rights in much broader range of circumstances than does the ECHR.³⁷⁹ Before the 2001 amendments, Article 14 prohibited the exercise of human rights in even more circumstances.³⁸⁰ The list of unconstitutional aims was thus shortened and sanctions for inciting and provoking others to abuse human rights were removed.

Derogations

In exceptional circumstances of state of emergency or martial law, certain human rights may also be limited. Turkey, either entirely or in relation to specific provinces, has regularly been under such extraordinary rule. Recently, a state of emergency was declared in the Kurdish provinces of the South East, following protests against the government’s unwillingness to militarily assist the Kurds defending the Syrian city of Kobanî against radical Islamists.³⁸¹

The Constitution distinguishes between different categories of states of emergency, whether they are due to “natural disaster or serious economic crisis” (Article 119) or “widespread acts of violence and serious deterioration of public order” (Article 120), or whether they amount to “martial law, mobilization and state of war” (Article 122).

The Council of Ministers, meeting under the chairpersonship of the President of the Republic, has the authority to declare states of emergency or martial law in one or more regions or throughout the country for a limited period. In the event of natural disaster or serious economic crisis, the Council of Ministers may declare a state of emergency on its own accord; for any other type of state of emergency, it must consult the National Security Council. A new ‘security package’ has been passed by the GNAT in March 2015.³⁸² As explained below,³⁸³ it provides governors with the authority to

<https://wcd.coe.int/ViewDoc.jsp?id=1814085>.

³⁷⁸ Paragraph 2 of Article 24 states that “[a]cts of worship, religious rites and ceremonies shall be conducted freely, as long as they do not violate the provisions of Article 14”.

³⁷⁹ C Rumpf, ‘Turkish Constitutional Law and the European Union from a European Point of view’, in European Commission for Democracy through Law, *Constitutional Implications of Accession to the European Union* (Council of Europe Publishing, 2002), p 75.

³⁸⁰ Including for the purpose of “placing the government of the state under the control of an individual or a group of people, or establishing the hegemony of one social class over others, or creating discrimination on the basis of language, race, religion or sect, or of establishing by any other means a system of government based on these concepts”.

³⁸¹ ‘Yeni Türkiye’de sokağa çıkılmaz’, Birgün (9 October 2014), available at:

<http://www.birgun.net/news/view/yeni-turkiyede-sokaga-cikmak-yasak/6875>.

³⁸² The bill was put forward after the protests against the government’s unwillingness to assist militarily the Kurds defending the Syrian city of Kobanî against radical Islamists in October 2014.

declare a state of emergency (although it does not seem to be defined as such) in their province (or to the Ministry of the Interior if the emergency rule is required for more than one province).³⁸⁴ This new bill appears to contradict constitutional provisions and, as a result, the main opposition party has manifested its will to appeal to the Constitutional Court.³⁸⁵

Article 15 of the Constitution allows the partial or full suspension of the exercise of certain human rights in such circumstances, stating that,

(1) In times of war, mobilization, martial law, or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated.

The manner in which human rights are restricted or suspended, in line with the principles of Article 15 of the Constitution, are regulated by the Act on State of Emergency.³⁸⁶ In the event of “martial law, mobilization and state of war”, the manner in which human rights are to be restricted or suspended is regulated by law.³⁸⁷ This appears to give the legislature broad discretionary powers to determine the nature and extent of such restrictions. Moreover, during a state of emergency or period of martial law, the Council of Ministers, meeting under the chairpersonship of the President of the Republic, may issue decrees having the force of law on matters required by the state of emergency or martial law.³⁸⁸

According to Article 119 and 120 of the Constitution, a state of emergency may be declared for a period of up to six months. With regard to martial law, Article 122 provides that it can be imposed for a period of six months but that it may then be extended for a maximum of four months at a time, following a decision by the GNAT.³⁸⁹ Protracted periods of martial law have been an issue in the past, even leading to an appeal by the Council of Europe for it to be lifted, as well as to an inter-state complaint before the (now defunct) European Commission of Human Rights.³⁹⁰

³⁸³ See Section 4.1 Domestic Human Rights Framework, Specific Human Rights under Domestic Law, the Right to Freedom of Association and Assembly (Other Relevant Domestic Provisions).

³⁸⁴ ‘Opposition slams security bill that will put Turkey under state of emergency-type regime’, Today’s Zaman (9 January 2015), available at: http://www.todayzaman.com/national_opposition-slams-security-bill-that-will-put-turkey-under-state-of-emergency-type-regime_369387.html.

This ‘security package’ is also reported to be giving broader powers to the police, without sufficient safeguards, including an authorization to take individuals into custody based on reasonable suspicion, without any approval from a prosecutor or a judge.

³⁸⁵ ‘Turkey main opposition CHP to appeal for the annulment of the security package’, Hürriyet Daily News (27 March 2015), available at: <http://www.Hurriyetdailynews.com/turkish-main-opposition-chp-to-appeal-for-the-annulment-of-the-security-package-.aspx?pageID=238&nID=80261&NewsCatID=338>.

³⁸⁶ The 1982 Constitution, m. 121(2).

³⁸⁷ The 1982 Constitution, m. 122 (5).

³⁸⁸ See Arts 121(3) and 122(2) of the Constitution.

³⁸⁹ The limit of four months does not apply for state of war.

³⁹⁰ Parliamentary Assembly of the Council of Europe, Resolution 794 (1983) on the situation in Turkey, para 20 (v), available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta83/ERES794.htm>.

Applications No 9940-44/82 of 1 July 1982 before the European Commission of Human Rights; see the Commission’s ‘Report on the Applications of Denmark, France, Netherlands, Norway and Sweden

In accordance with international human rights law, there are a number of human rights which cannot be derogated from. Paragraph 2 of Article 15 lists non-derogable rights and principles as follows,

(2) Even under the circumstances indicated in the first paragraph, the individual's right to life, the integrity of his/her corporeal and spiritual existence shall be inviolable except where death occurs through acts in conformity with law of war; no one shall be compelled to reveal his/her religion, conscience, thought or opinion, nor be accused on account of them; offences and penalties shall not be made retroactive; nor shall anyone be held guilty until so proven by a court ruling.³⁹¹

However, Article 148 of the Constitution states that “decrees having the force of law issued during a state of emergency, martial law or in time of war shall not be brought before the Constitutional Court alleging their unconstitutionality”. Thus, even if a decree issued during a period of state of emergency or martial law violates Article 15(2), it is not possible to challenge it before the Constitutional Court.³⁹² Article 91 of the Constitution, which regulates the issuance of decrees having the force of law, states that a number of human rights may not be regulated by such decrees. However, this Article does not apply during periods of martial law or state of emergency.

The wording of the provisions on derogations possible under the Turkish Constitution and those under the ECHR or the ICCPR is similar, except for the requirement of ‘strict necessity’ applicable to the measures that may be taken.³⁹³ Both Article 4(1) ICCPR and Article 15(1) ECHR state that their State parties may take “measures derogating from their obligations [...] to the extent *strictly* required by the exigencies of the situation”, while Article 15 of the Turkish Constitution only refers to “the extent required by the exigencies of the situation”. All provisions also state that such measures must be consistent with (other) obligations under international law. In order to abide by this standard, the Turkish government must act in accordance with its international obligations.³⁹⁴

Specific Human Rights under Domestic Law

This section focuses on certain human rights which are considered of primary concern in Turkey, including the right to freedom of thought and opinion, the right to freedom of expression, the right to freedom of association and assembly, the right to freedom of religion and conscience, women's rights, and the right of minorities.

This section does not contain any detail with regard to the right to life under Turkish domestic law. However, it may be of note that the death penalty was abolished in 2004.

against Turkey and the Conclusion of a Friendly Settlement’, 25 International Legal Materials 308 (1986).

³⁹¹ Article 15 of the Constitution.

³⁹² Ergun Özbudun, ‘Constitutional Law’, in Tuğrul Ansay and Don Wallace (eds) *Introduction to Turkish Law* (Kluwer Law International, 2011), p 333.

³⁹³ Both Art 4 (1) ICCPR and Art. 15 ECHR state that a State party “may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation”.

³⁹⁴ See the cases brought under Art 301 of the Penal Code, explained in the following section.

In order to become a candidate country for EU membership, Turkey adopted a series of amendments to strengthen its human rights system. These amendments are noted under each right, where relevant.

The Right to Freedom of Thought and Opinion and the Right to Freedom of Expression

Constitutional Provisions

The right to freedom of thought and opinion is enshrined in Article 25 of the Constitution of Turkey, which states that

[E]veryone has the freedom of thought and opinion.

No one shall be compelled to reveal his/her thoughts and opinions for any reason or purpose; nor shall anyone be blamed or accused because of his/her thoughts and opinions.

The right to freedom of expression is provided by Article 26 of the Constitution:

[E]veryone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, or similar means to a system of licensing.

Article 26 allows freedom of expression to be restricted,

for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.

It also provides that

[R]egulatory provisions concerning the use of means to disseminate information and thoughts shall not be deemed as the restriction of freedom of expression and dissemination of thoughts as long as the transmission of information and thoughts is not prevented", although it requires that the "formalities, conditions and procedures to be applied in exercising the freedom of expression and dissemination of thought shall be prescribed by law.

In addition to Articles 25 and 26, other provisions in the Constitution are relevant to the right to freedom of thought and opinion and the right to freedom of expression. Article 27 provides for the freedom of the sciences and the arts. Article 28 guarantees that the "press is free and shall not be censored", and imposes a positive obligation on the State to "take the necessary measures to ensure freedom of the press and information". However, it also allows for limitations. For example, it expressly allows for the criminalisation of the writing and dissemination of material "which threaten[s] the internal or external security of the State or the indivisible integrity of the State with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified state secrets". In such a case, Article 28 allows for judicially supervised

and time limited prevention of distribution by a decision of a judge. It also permits periodical and non-periodical publications to be

seized by a decision of a judge in cases of ongoing investigation or prosecution of crimes specified by law; or by order of the competent authority explicitly designated by law, in situations where delay may constitute a prejudice with respect to the protection of the indivisible integrity of the State with its territory and nation, national security, public order or public morals and for the prevention of crime.

Article 28 also allows periodicals published in Turkey to be temporarily suspended by court ruling if found to contain material which contravenes the indivisible integrity of the State with its territory and nation, the fundamental principles of the Republic, national security and public morals. Article 28 prevents bans from being placed on the reporting of events, “except by the decision of judge issued within the limits specified by law”.

Other provisions of the Constitution relevant to the right to freedom of expression include Article 29 (relating to the protection of the right to publish periodicals and non-periodicals), Article 30 (protection of printing facilities) and Article 31 (on the right to use media other than the press owned by public corporations).

The constitutional provisions relating to the right to freedom of thought and opinion and the right to freedom of expression have been criticised for imposing broader restrictions than those permissible under international law. Following his visit to Turkey in April 2011, the Commissioner for Human Rights of the Council of Europe, noted that it was widely recognised that “the letter and spirit of the present Turkish Constitution represent a major obstacle to the effective protection of pluralism and freedom of expression” as it “enshrines a state-centrist approach ... and an apparent intolerance towards pluralism”, referencing the limitations on human rights permitted in the Constitution in the name of protecting national security, public order and “the principle of the ‘indivisible integrity of the state’” (as in Articles 25, 28, 33 and 34 of the Constitution).³⁹⁵

Other Relevant Domestic Provisions

Given that Article 26 of the Constitution (and others) allows restrictions in order to protect national security, public order and public safety, certain articles of the Penal Code (or Criminal Code) and other laws (anti-terrorism legislation in particular) limit the right to freedom of expression for such purposes, either directly or through their vague wording and arbitrary application. Examples of such offences include Article

³⁹⁵ “Freedom of expression and media freedom in Turkey”, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe Following his visit to Turkey, from 27 to 29 April 2011, Strasbourg, 12 July 2011, CommDH(2011)25, para 11: <https://wcd.coe.int/ViewDoc.jsp?id=1814085>; For similar critiques, see: Tesev Democratization Program, Making of a New Constitution in Turkey Monitoring Report, Mehmet Uçum, Özge Genç (eds), February 2012-June 2012, p 14, referring to the current Constitution as “state-centric”: <http://www.tesev.org.tr/assets/publications/file/ENGanayasaizleme2WEB.pdf>; Michael M. Gunter, Middle East Policy Council, Journal Essay, “Turkey: The Politics of a New Democratic Constitution”, Spring 2012, Volume XIX, Number 1: <http://www.mepc.org/journal/middle-east-policy-archives/turkey-politics-new-democratic-constitution?print>.

318 of the Penal Code, which criminalises the alienation of the public from the institution of military service, or Article 215 of the Penal Code creates a criminal offence of the mere public mention of certain individuals' names. These provisions were used to prosecute journalists and writers writing on Kurdish independence, communism and other politically sensitive issues. It has been reported that their application has mainly targeted Turkish citizens of Kurdish origin, in particular with references to the leader of the PKK, Abdullah Öcalan, and those who have been commemorating radical left-wing groups and their leaders of the 1960s.³⁹⁶

A key example of a provision which unduly limits freedom of expression is Article 301 of the Penal Code, which criminalises an "insult" to "... the Turkish nation, the State of the Turkish Republic, the Turkish Grand National Assembly, the Government of the Republic of Turkey or the judicial organs of the state."³⁹⁷ This Article formerly criminalised the denigration of 'Turkishness' but this wording was replaced in 2008 with 'Turkish Nation'. Public prosecutors now also have to obtain an authorisation from the Ministry of Justice to open an investigation. Nevertheless, this Article, which is vaguely worded, has been criticised as it allows the prosecution of peaceful protestors or of journalists for criticising the regime in their work, for example.³⁹⁸ Moreover, despite the replacement of the term, criminalisation of the denigration of 'Turkishness' was reintroduced in 2015 in Article 299 of the Penal Code, which certain petitioners claim violates Article 90(5) of the Constitution.³⁹⁹ The introduction of the Anti-Terror Law in 1991 has allowed similar activities to be prosecuted as terrorist acts. Today, writers and journalists commonly face charges under Anti-Terror Law Article 5(1) (membership of a terrorist organisation), Article 6(2) (printing or publishing declarations or statements of terrorist organizations), and Article 7(2) (making propaganda for a terrorist organisation).⁴⁰⁰

In the 2010 UPR, the Special Rapporteurs on the right to freedom of opinion and expression and on the situation of human rights defenders drew attention to charges brought against human rights defenders, journalists, academics and others in relation to written or oral speech considered to constitute or involve offences under Articles 301 and 318 of the Penal Code, as well as "humiliation of jurisdictional power", "insulting the armed forces", or "violation of secrecy".⁴⁰¹ The Turkish government accepted eight recommendations made at the UPR to bring its national legislation and

³⁹⁶ Submission from Amnesty International, p 3.

³⁹⁷ Miklos Haraszti, 'Review of the Draft Turkish Penal Code: Freedom of Media Concerns', The Representative on Freedom of the Media, OSCE, Vienna, May 2005, available at: <http://www.osce.org/fom/14672>.

³⁹⁸ Andrew Southam, 'What difference will the Fourth Package of Reforms make for Turkey in international judicial co-operation?' (Foreign Policy Centre Briefing, September 2013), available at: www.fpc.org.uk/fsblob/1571.pdf.

³⁹⁹ Turkish Penal Code, available at: <http://www.legislationline.org/documents/action/popup/id/6872/preview>; 'Intellectuals Warn Infamous Article 301 Resurrected in Form of Article 299' Cihan (6 October 2015), available at: <https://en.cihan.com.tr/en/intellectuals-warn-infamous-article-301-resurrected-in-form-of-article-299-1902112.htm>.

⁴⁰⁰ Norwegian PEN, *Turkey: Free Expression under a Shadow* (October 2014), p 7, available at: <http://www.norskpen.no/Portals/0/Turkey%20Report%20final%20version.pdf>; See also Peer Review Mission on Freedom of Expression, Istanbul and Ankara (12-16 May 2014), available at: http://avrupa.info.tr/fileadmin/Content/Downloads/PDF/2014_Peer_Review_report_by_Wolfgang_Ben_edek_and_Nyman_Metcalf.pdf.

⁴⁰¹ Compilation of UN information, 2010 Universal Periodic Review, para 47.

practice in line with its international obligations regarding the right to freedom of expression. However, it specifically rejected the recommendation to either revise or abolish Articles 301 and 318.⁴⁰² While it appears that there has been a decrease in the number of cases brought under Article 301 of the Penal Code, prosecutors have been reported to bring more cases under Article 7 of the Anti-Terrorism Law (“making propaganda of an illegal organisation”) instead.⁴⁰³

The right to freedom of expression has also been limited through the application of other provisions. For example, the first paragraph of Article 216 of the Penal Code makes it an offence to incite social, racial, religious or regional enmity or hatred. Criminal defamation laws, such as Article 125 of the Penal Code, provide that defaming a public official for the commission of their duty carries a higher minimum sentence or fine than for defamation of ordinary citizens. This latter provision has been used widely against journalists and broadcasters.⁴⁰⁴

According to the national report submitted for its 2015 UPR, which took place on 27 January, Turkey contended that the third and fourth Judicial Reform Packages adopted in 2012 and 2013 contained major amendments expanding the scope of the right to freedom of expression and freedom of the media, predominantly through improvements to its Penal Code and Anti-Terror Law, which had operated to criminalise activities of the press.⁴⁰⁵ For example, Article 6 has been amended in a way that the printing or publishing of materials of terrorist organizations or praising their methods are now only punished if it relates to methods containing coercion, violence or threat or encourages appealing to these methods.⁴⁰⁶

In recent years, there have been a growing number of prosecutions specifically concerned with disparaging remarks about President Erdoğan himself. Article 297 of the Turkish Penal Code states that anybody who ‘casts aspersion’ upon the President can face a prison term of up to four years. This sentence can be increased by a sixth if committed publicly; and a third if committed by press or media. Between August 2014 and March 2015, 236 individuals were investigated for insulting the Head of State, with 105 indicted and eight formally arrested. More generally, during Mr Erdoğan’s time in office (Prime Minister 2003-14, President from 2014), 63 journalists have been sentenced to a total of 32 years in prison, with collective fines of \$128,000.⁴⁰⁷

⁴⁰² Report of the Working Group on the Universal Periodic Review (17 June 2010), para 102.39; Addendum to the Report of the Working Group on the Universal Periodic Review (15 September 2010), para 78.

⁴⁰³ Submission from the Kurdish Human Rights Project (KHRP) to the 2010 UPR, para 16.

⁴⁰⁴ European Union Peer Review Mission on Freedom of Expression, Istanbul and Ankara (12-16 May 2014), p 6, available at: http://avrupa.info.tr/fileadmin/Content/Downloads/PDF/2014_Peer_Review_report_by_Wolfgang_Ben_edek_and_Nyman_Metcalf.pdf.

⁴⁰⁵ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 (30 October 2014) (‘National Report, 2015 Periodic Review’), para 63, available at: <http://www.upr-info.org/en/all-documents-by/National-report/Session-21---January-2015>.

⁴⁰⁶ European Union Peer Review Mission on Freedom of Expression, Istanbul and Ankara (12-16 May 2014), p 8, available at: http://avrupa.info.tr/fileadmin/Content/Downloads/PDF/2014_Peer_Review_report_by_Wolfgang_Ben_edek_and_Nyman_Metcalf.pdf.

⁴⁰⁷ ‘The problem with insulting Turkey’s President Erdoğan’, BBC News (16 April 2015), available at: <http://www.bbc.co.uk/news/world-europe-32302697>.

Specific Provisions Concerning Freedom of the Press

In addition to Article 28 of the Constitution, the key piece of legislation for the protection and regulation of journalists is the Turkish Press Act. The significant amendments made to the Press Law for printed media (Law No. 5187) have generally been seen by press professionals as a major improvement regarding the regulation of the press, including, for example, protections for journalists' sources, substantial diminution of the penalties for offences committed through press, including complete abolition of penalties such as imprisonment, temporary shutdown, and seizure of press devices.⁴⁰⁸ However, the Press Law is deficient in the protection of journalists' rights in a number of ways. The Commissioner for Human Rights of the Council of Europe was concerned that the Act does not include a strong public interest clause for the protection of journalists. He also notes some concerns regarding a decision by the Turkish Constitutional Court of 2 May 2011 invalidating Article 26 of the Press Law, which imposes time limits for the filing of criminal cases by prosecutors following publication in a periodical (two months for a daily and four months for a weekly).⁴⁰⁹

There is also various other legislation regulating the media sector in Turkey generally, including: the Radio and Television Law of Turkey (Law No. 2954), the Law on the Establishment of Radio and Television Enterprises and Their Media Services (Broadcasting Law) (Law No. 6112), and the Law on Radio and Television Incomes in Turkey (Law. No. 3093). The provisions contained therein both protect the right to freedom of expression and allow for it to be limited. For example, while Article 6 of the Broadcasting Law prohibits any interference with and auditing of the contents and transmission of media services prior to transmission, Article 8 of the same law stipulates that broadcasts cannot, among other things, "violate the existence and independence of the State of the Republic of Turkey" or include humiliating, insulting and libelous statements against persons or entities or organisations.⁴¹⁰

Turkey's broadcast regulator is the Radio and Television Supreme Council (RTÜK) which has broad powers for the regulation of all radio and television broadcasters all across Turkey, including frequency allocations, licensing and content monitoring. Although it is intended to operate independently as an administrative body for policy making and supervision for the radio and television sectors, it is composed of nine members who are directly elected by the GNAT.⁴¹¹ The RTÜK has been heavily criticised for turning into a censoring authority rather than a regulatory one. It frequently intervenes and renders administrative fines to broadcasting companies based on matters which should be considered free flow of information and speech. These interventions mainly stem from misinterpretation and disproportionate

⁴⁰⁸ Turkey's national report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 7 (22 February 2010) ('National Report, 2010 Periodic Review'), para 50, available at:

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WG.6/8/TUR/1&Lang=E>.

⁴⁰⁹ 'Freedom of expression and media freedom in Turkey', Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe Following his visit to Turkey, from 27 to 29 April 2011, Strasbourg (12 July 2011), CommDH(2011)25, para 31, available at:

<https://wcd.coe.int/ViewDoc.jsp?id=1814085>.

⁴¹⁰ The English text of the Broadcasting Law is available at:

http://www.wipo.int/wipolex/en/text.jsp?file_id=241854.

⁴¹¹ Gönenç Gürkaynak and İlay Yılmaz, Media Law International (January 2014), available at:

<http://www.medialawinternational.com/page111.html>.

application of Article 8 of the Broadcasting Law, which prohibits humiliating, insulting and libelous statements against persons or institutions.⁴¹²

The Government has also been criticised for its use of the Savings Deposit Insurance Fund of Turkey (TMSF) to gain control of media assets. The TMSF is a body officially attached to the Prime Minister's office and responsible for the seizure, management and sale of assets belonging to companies in arrears with the Turkish treasury. It has been reported that the newspaper *Akşam* was seized in May 2013 as a result of considerable tax arrears incurred by its parent company, Çukurova Media Group, during the global economic downturn.⁴¹³ A former AKP deputy was then brought in by TMSF to replace the newspaper's long-serving editor-in-chief İsmail Küçükkaya, leading to the dismissal of writers for *Akşam* who were critical of the government. In November 2013, the newspaper was eventually sold to one of the Prime Minister's close associates.

Relevant Case Law of the Constitutional Court

In Turkey, the judiciary has not been systematic in the way it has enforced human rights protections. The Constitutional Court has been criticised for being "selectively activist, protecting social and political members of a particular coalition but not other political groups". It has also, at times, been accused of acting as an obstacle to a more pluralistic democracy by repeatedly closing down political parties that attempted to bring excluded identities, such as those put forward by Kurdish or Islamic groups, into the Turkish political sphere.⁴¹⁴

Historically, the Constitutional Court has not demonstrated a protective approach towards the right to freedom of expression. For example, in 1964, it rejected the argument of the Socialist Workers' Party of Turkey which challenged Article 312 of the Penal Code on incitement to hatred on the basis that this provision had been utilised, over the preceding four decades, to condemn socialist, Islamist, and Kurdish activists for their political views. Although subsequent ECtHR decisions on violation of the right to freedom of expression forced the legislature to amend Article 312, the Constitutional Court did not find it unconstitutional.⁴¹⁵ In the 1960s, the Court also

⁴¹² Ibid; Alev Yaman, PEN International, 'The Gezi Park Protests: The Impact on Freedom of Expression in Turkey' (14 March 2014), p 15, available at: <http://www.englishpen.org/campaigns/the-gezi-park-protests-the-impact-on-freedom-of-expression-in-turkey/>.

See also Rethink Institute, 'Diminishing Press Freedom In Turkey', Paper 18, November 2014, p 11, available at: <http://www.rethinkinstitute.org/wp-content/uploads/2014/11/Diminishing-Press-Freedom-in-Turkey-Turkey-Task-Force.pdf>.

⁴¹³ Alev Yaman, PEN International, 'The Gezi Park Protests: The Impact on Freedom of Expression in Turkey', (14 March 2014), p 16, available at: <http://www.englishpen.org/campaigns/the-gezi-park-protests-the-impact-on-freedom-of-expression-in-turkey/>.

⁴¹⁴ Ceren Belge, 'Friends of the Court: The Republican Alliance and Selective Activism of the Constitutional Court of Turkey' (2006) 40(3) *Law and Society Review* 653, p 7, available at: http://spectrum.library.concordia.ca/974090/1/LSR_author_vers.pdf.

⁴¹⁵ Ceren Belge, 'Friends of the Court: The Republican Alliance and Selective Activism of the Constitutional Court of Turkey' (2006) 40(3) *Law and Society Review* 653, p 30, available at: http://spectrum.library.concordia.ca/974090/1/LSR_author_vers.pdf.

upheld Article 6 of the Police Law, which required police permission for broadcasting films imported from abroad (K.1963/179), as well as Article 31 of the Press Law, which gave the Council of Ministers the power to prohibit the entry of foreign publications into Turkey (K.1963/178).⁴¹⁶

In 1997, the Constitutional Court ruled constitutional a provision of the Press Law obliging distributors of periodical and non-periodical publications to distribute them if the owners of such publications demand their distribution, thus prohibiting distributors from selectively distributing certain publications over others. The Court found that this arrangement was aimed at ensuring individuals the right to receive information, and that there was no contradiction with the requirements of a democratic society. However, it held that a suspension of the activities of the sellers of printed materials is contrary to the Constitution.⁴¹⁷

In 2002 (just one year after its decision that the promotion, protection or dissemination of languages or cultures other than Turkish in a political party's programme runs counter to national unity), the Court considered the constitutionality of Article 8 of Law no. 4771, which, among other things, permitted broadcasting in languages and dialects other than Turkish. The applicants in that case contended that this was contrary to Article 3 of the Constitution, which provides that the State language is Turkish. The Court held that, in light of the expansion of the concept of freedom of expression by various amendments to Articles 26 and 28 of the Constitution since 1982, allowing broadcasting in languages and dialects other than Turkish was in conformity with the overall scheme of protection of rights in the Constitution.⁴¹⁸

In 2004, the Constitutional Court held that it is constitutional to introduce different rules on general criminal liability for editors in chief of periodicals as opposed to journalists who are authors of articles, finding that this did not contravene the principle of equality before the law.⁴¹⁹

Over the past two years, the Constitutional Court has appeared more willing to overturn legislative restrictions on the right to freedom of expression.⁴²⁰ In a notable case decided in 2014, the Court ruled, by majority, that a lower court's decision to seize a book written by Abdullah Öcalan (leader of the PKK) was a violation of his rights under Articles 26 and 28 of the Constitution.⁴²¹ In relation to the freedom of the press, the Court stated that

[T]he freedom of the press covers the right to explain and interpret thoughts and convictions via means such as newspapers, journals and books and the right to publish and distribute information, news and criticisms ...The freedom of the press ensures that the individual and the society are informed by performing the

⁴¹⁶ Ibid, p 31.

⁴¹⁷ Summary of Turkish Constitutional Court, Judgment (5 June 1997), Application no. E.1996/70, K.1997/53: <http://www.anayasa.gov.tr/en/content/detail/207/>.

⁴¹⁸ Summary of Turkish Constitutional Court, Judgment (27 December 2002), Application no. E.2002/146, K.2002/201, available at: <http://www.anayasa.gov.tr/en/content/detail/203/>.

⁴¹⁹ Summary of Turkish Constitutional Court, Judgment (31 March 2004), Application no. E.2002/94, K.2004/45, available at: <http://www.anayasa.gov.tr/en/content/detail/183/>.

⁴²⁰ See the internet censorship cases discussed below.

⁴²¹ Judgment of General Assembly (25 June 2014), Application No. 2013/409 (Judgment on the case of Öcalan), available at: <http://www.anayasa.gov.tr/en/News/Detail/14/>.

transmission and circulation of thoughts. The expression of thoughts, including those which oppose the majority, via all sorts of means, garnering supporters to the thoughts which have been explained, fulfilling and convincing into fulfilling the thoughts are among the requirements of the pluralistic democratic order. Therefore, the freedom of expression and dissemination of thought and the freedom of the press are of vital importance for the functioning of democracy.⁴²²

While noting that this freedom was not absolute and that, in accordance with the ECtHR's case law, the State could impose limitations on human rights if those limitations are necessary and proportionate in a democratic society, the Court also stated that "[W]ithin the scope of articles 26 and 28 of the Constitution [...] the authorities exercising public power have a very narrow margin of discretion in the limitation of political discourses regarding public interest or discussions concerning societal problems".⁴²³ Considering that the book as a whole did not incite or encourage individuals to adopt violent or terrorist methods, the Court found that the seizure of the book did not abide by the principles of necessity and proportionality.⁴²⁴

Recent Case Law of the Constitutional Court on Internet Censorship

In February 2014, amendments to the Internet Law of Turkey (Law No. 5651) came into force,⁴²⁵ allowing the Turkish Telecommunications Authority (TIB) to order the removal of content from websites, in some cases without having first obtained a court order, and requiring Internet Service Providers (ISPs) to implement the blocking of content within four hours after being instructed to do so by the TIB.⁴²⁶ Exercise of these powers resulted in a high profile government ban on access to Twitter and YouTube in March 2014,⁴²⁷ in the run-up to local elections.⁴²⁸ Following that ban, Twitter and YouTube were once again blocked in April 2015, as well as Facebook, following a court decision forbidding the publication of images of Mehmet Selim Kiraz, a prosecutor, held at gunpoint by members of the Revolutionary People's Liberation Front (DHKP-C), considered a terrorist group, which had taken him hostage at an Istanbul courthouse on 31 March 2015.⁴²⁹ These images were deemed to have a

⁴²² Ibid, para 74.

⁴²³ Ibid, para 99.

⁴²⁴ Ibid, paras 108, 111.

⁴²⁵ Law No. 5651 "on regulation of publications on the internet and combating crimes by means of such publications" entered into force on 23 May 2007.

⁴²⁶ For a commentary see 'The internet bill: Is freedom of expression under threat in Turkey?', Al Jazeera (8 February 2014), available at:

<http://www.aljazeera.com/indepth/opinion/2014/02/internet-bill-freedom-expressio-201427122110808964.html>.

⁴²⁷ A reportage on the ban on Twitter is available at:

http://www.nytimes.com/2014/03/25/world/europe/turkeys-ban-on-twitter.html?_r=1;

<https://blog.twitter.com/2014/victory-for-free-expression-in-turkish-court>;

<http://www.mondaq.com/x/375042/IT+internet/Another+Patchwork+Amendment+To+Turkish+Internet+Law>. A reportage on the ban on YouTube is available at:

<http://www.bbc.co.uk/news/technology-27623640>.

⁴²⁸ Note that these websites, along with others, were once again blocked as the consequence of a court order. This latest ban, which took place in April 2015, is described in further detail in the section on current human rights issues (supra).

⁴²⁹ 'Turkey blocks YouTube and Twitter, Al Jazeera (6 April 2015), available at:

<http://www.aljazeera.com/news/2015/04/twitter-youtube-blocked-turkey-150406132356177.html>.

propagandist anti-government nature. The ban, which concerned 166 websites, was eventually lifted with regard to the websites that removed the controversial images.⁴³⁰ Prior to the 2015 general elections, it was feared that there will be more bans of social media platforms in the coming months. This fear, as seen below, turned out to be well-founded as more similar bans were recently imposed. Turkey is indeed particularly active in filing requests to remove content from social media. Twitter reported that Turkey filed more removal requests than any other countries during the period July to December 2014, which amounted to 477 requests (out of the 796 filed worldwide).⁴³¹

On 2 April 2014, the Constitutional Court held that the decision of the TIB to block access to Twitter infringed the right to freedom of expression. The decision to block access was based on alleged judgments rendered by Turkish courts in complaints made by individuals of the violation of personal rights and of privacy on Twitter.⁴³² In its judgment overturning the ban, the court noted the “Internet has an essential instrumental value for exhaustion of fundamental rights and freedoms, especially the freedom of expression in modern democracies” and that states and administrative authorities must therefore “be extremely sensitive in the regulation and practice for internet and social media instruments”.⁴³³

The Court also recalled that the right to freedom of expression and dissemination of thought is not absolute, with Articles 26 and 28 providing for possible restrictions.⁴³⁴ These restrictions should be based on “just reasons, and during the restriction of rights and freedoms, the essences of the rights should not be infringed upon and such restriction should be proportional”.⁴³⁵ Although the TIB based its decision to block access to Twitter on the basis of some court judgments, the Court considered that those judgments only blocked access to certain URL addresses and were not directed at blocking access to Twitter in its entirety. It concluded that the “blockage of access to this social sharing web site without a legal basis and by means of a decision of prohibition whose borders are not definite constitutes a severe intervention on the freedom of expression which is one of the most basic values of democratic

Mehmet Selim Kiraz was eventually killed during an attempted rescue operation.

⁴³⁰ ‘Turkey bans twitter in bid to block ‘propaganda’ pictures of kidnapping’, The Guardian (6 April 2015), available at: <http://www.theguardian.com/world/2015/apr/06/briton-suspects-turkish-militant-raid-hostage>.

The ban on Twitter and YouTube was later lifted, see ‘Turkey Twitter block lifted after image removed’, BBC News (6 April 2015), available at: <http://www.bbc.co.uk/news/technology-32194915>.

The above article reports that Mr Kiraz had been taken hostage because he led an investigation into the death of a boy which happened during the 2013 anti-government protest.

See also ‘Turkey lifts ban on access to Twitter and YouTube’, Financial Times (7 April 2015), available at:

<http://www.ft.com/cms/s/0/12ef52aa-dc52-11e4-a6f7-00144feab7de.html#axzz3WcTXvErm>.

⁴³¹ See the Twitter Transparency Report, available at:

<https://transparency.twitter.com/removal-requests/2014/jul-dec>.

This can also be observed for the previous period running from January to June 2014, when Turkey filed 186 requests out of the 433 filed worldwide.

⁴³² Turkish Constitutional Court, Judgment of Second Section, dated 2 April 2014, the Application no. 2014/3986 (Judgment on Blockage, of a Social Media Website (Twitter)), para 9, available at:

<http://www.anayasa.gov.tr/en/News/Detail/judgment/2014-3986.pdf>.

⁴³³ Ibid, para 39.

⁴³⁴ Ibid, para 40.

⁴³⁵ Ibid, para 42.

societies.”⁴³⁶ Following the Constitutional Court’s judgment, the ban on Twitter was lifted on 3 April 2014.

In May 2014, the Constitutional Court also overturned a ban on access to video-sharing site YouTube. The ban was imposed in late March, soon after recordings alleging official corruption were aired on the site.⁴³⁷ In its judgment, the Constitutional Court noted that, while lower courts had already ruled that the blanket ban was unjustified and ordered that it be lifted, the Government had failed to comply with this order. It also observed more generally that it was not sufficient for an intervention in constitutional rights to be based on a law; this law should also have certain features such as specificity and predictability. The Court stated that the scope and limits of the power with which TIB was granted concerning blockage of access were not predictable, clear, and explicit, and hence did not meet the minimum conditions of the principle of lawfulness.⁴³⁸

These decisions were followed by a judgment in October 2014 which annulled some of the more controversial aspects of the Internet Law. The Constitutional Court ruled that the authority of the TIB to close websites within four hours, without a court decision, on the grounds of protecting national security, public order, or preventing crime, was unconstitutional. There is indeed a risk in giving power to a non-judicial body to block online access on the grounds of protecting national security or public order as these are vague grounds which may be interpreted in a particularly wide manner. The Court also ruled against the TIB’s right to store Internet data for up to two years.⁴³⁹

However, on 20 January 2015, the AKP government brought before Parliament a nearly identical amendment bill to the Internet Law containing the same offending provisions which the Constitutional Court had ruled unconstitutional. As with the overturned law, this Bill would oblige the ISPs to implement the blocking of content within four hours after receiving the order from the TIB, enabling the government to block web sites quickly and without due process of law. This bill was passed by the parliament.⁴⁴⁰ It is unclear if it will be overturned again by the Constitutional Court.⁴⁴¹

⁴³⁶ Ibid, paras 46, 48. A commentary of this decision is available at:

http://www.nytimes.com/2014/03/25/world/europe/turkeys-ban-on-twitter.html?_r=1.

⁴³⁷ <http://www.bbc.co.uk/news/technology-27623640>.

⁴³⁸ See the summary of Turkish Constitutional Court, Judgment of General Assembly, dated 28/5/2014, Application no. 2014/4705 (Judgment on Blockage of a Social Media Website YouTube), available at: www.anayasa.gov.tr/en/News/Detail/judgment/2014-4705.pdf.

⁴³⁹ No translation of this judgment is available, although a summary of the judgment in Turkish is available from the Constitutional Court’s website at:

<http://www.anayasa.gov.tr/Gundem/Detail/632/632.pdf>.

Reports of the judgment are available at:

<http://www.osce.org/fom/125074>; <http://merlin.obs.coe.int/iris/2015/1/article37.en.html>;

<http://www.reuters.com/article/2014/10/02/us-turkey-internet-idUSKCN0HR1ZF20141002>;

<http://english.alarabiya.net/en/media/2014/10/02/Turkey-s-top-court-annuls-part-of-law-tightening-Internet-controls-media.html>.

⁴⁴⁰ EDRI, ‘Yet another internet blocking law in Turkey’ (11 February 2015), available at:

<https://edri.org/yet-another-internet-blocking-law-turkey/>.

⁴⁴¹ ‘Turkey’s government is trying to regulate the use of internet’, The Journal of Turkish Weekly (3 April 2015), available at:

<http://www.turkishweekly.net/news/182765/turkey-s-government-is-trying-to-regulate-the-use-of-internet.html>.

As described below, courts have since put into effect online media bans in the context of the 2015 bombings in Ankara and Suruç mentioned above.

In sum, it is not clear if the recent trend towards greater protection of the right to freedom of expression has permeated into the judiciary as a whole. In May 2014, the European Peer Review Mission to Turkey on Freedom of Expression reported that the judiciary in general does not appear to be supportive of freedom of expression and tends to interpret provisions in a restrictive manner.⁴⁴² This is in spite of the conduct of a project developed by the Council of Europe with Turkish authorities on 'Freedom of Expression and the Media in Turkey' (HRTF 22), which aimed at enhancing the implementation of the Convention by domestic courts in this area.⁴⁴³

During the 2015 UPR, a number of states expressed concern about restrictions on freedom of expression.⁴⁴⁴ Some states also noted an increase in restrictions on media and dissenting voices.⁴⁴⁵ The head of the Turkish delegation stated that

freedom of expression and the media are considered an indispensable part of democratic order. The offence “making propaganda of terrorist organizations” has been redefined and amended to reflect more concrete criteria for conviction. A Working Group has been set up in the Ministry of Justice for the identification of legal provisions which may cause restrictions to the freedom of expression. A complete pluralism exists in Turkey in respect of media organizations.⁴⁴⁶

One of the recommendations accepted by Turkey during the 2015 UPR calls for its continued “efforts to ensure that the national laws protect freedom of expression online and offline.”⁴⁴⁷ Another one asks for Turkey’s renewed “commitment to a comprehensive reform of legislation aimed at guaranteeing the rule of law, the freedom of thought, religion, expression and of the media, in compliance with international standards” and to “ensure the penal code and anti-terror laws are consistent with international obligations.”⁴⁴⁸

With regard to the press and the work of journalists, it also agreed to “[T]ake measures to ensure full enjoyment of freedom of expression, particularly freedom of the press” and “to fully ensure that journalists can pursue their profession without harassment and fear of reprisals”.⁴⁴⁹ However, the head of delegation also affirmed that those reported as ‘detained journalists’ were not in detention because of their journalist activities, adding that “[A]s of 23 January 2015, there are a total of 31 persons, 29 of whom are convicted with the remaining 2 being held on remand on

⁴⁴² European Union Peer Review Mission on Freedom of Expression, Istanbul and Ankara (12-16 May 2014), p 23, available at: http://avrupa.info.tr/fileadmin/Content/Downloads/PDF/2014_Peer_Review_report_by_Wolfgang_Benedek_and_Nyman_Metcalf.pdf.

⁴⁴³ Supervision of the Execution of Judgments and Decisions of the ECtHR, 8th Annual Report of the Committee of Ministers 2013, Detailed statistics by State for 2014, p 22, available at: http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2014_en.pdf.

⁴⁴⁴ Draft Report of the Working Group on the Universal Periodic Review, Turkey, 29 January 2015, A/HRC/WG.6/21/L.12, see, for example, paras 12, 55, 61, etc.

⁴⁴⁵ Ibid, see, for example, paras 58, 70, etc.

⁴⁴⁶ Ibid, para 98.

⁴⁴⁷ Ibid, para 148.14.

⁴⁴⁸ Ibid, paras 148.36 and 148-117.

⁴⁴⁹ Ibid, paras 148-116 and 148-118.

charges such as being a member of an armed terrorist organization, attempting to overthrow the constitutional order, voluntary manslaughter and embezzlement.”⁴⁵⁰

A number of relevant recommendations are currently under examination by Turkey, including one on amending “the provisions on libel and defamation so that they cannot be abused to prosecute human rights defenders and journalists”, a few regarding amendments to “Law No. 5651, widely known as Internet Law, to ensure the right to seek, receive, and impart information in the exercise of freedom of opinion and expression” and to ensure that the TIB cannot block websites without a judicial decision and that Turkish Internet Law is in line with international and European standards.⁴⁵¹ One recommendation that is being considered concerns an amendment to Article 26 of the Constitution “to ensure that the permissible grounds for restricting the right to freedom of expression are consistent with international human rights norms”.⁴⁵² Another similar recommendation that has yet to be examined by Turkey seeks to “[R]epeal those provisions of the Criminal Code which unfairly limit freedom of expression, including Articles 301, 318, 215 and 125, to bring the law in line with international standards on freedom of expression”, including with Article 19 of the ICCPR.⁴⁵³ Finally, Turkey must also consider a recommendation to “[R]eform the law on counter terrorism in order to prevent imprisonment of journalists.”⁴⁵⁴

The Right to Freedom of Association and Assembly

Constitutional Provisions

Articles 33 and 34 of the Constitution provide for the right to freedom of association and assembly. Article 33 states that “[E]veryone has the right to form associations, or become a member of an association, or withdraw from membership without prior permission” and that “[N]o one shall be compelled to become or remain a member of an association”.

In the same manner as for the right to freedom of expression, the Constitution allows freedom of association to be restricted “by law on the grounds of national security, public order, prevention of commission of crime, public morals, public health and protecting the freedoms of other individuals”. It also allows associations to “be dissolved or suspended from activity by the decision of a judge in cases prescribed by law”, and by another authority under the supervision of a judge, if urgent action is required for, “and a delay constitutes a prejudice to, national security, public order, prevention of commission or continuation of a crime, or an arrest, an authority may be vested with power by law to suspend the association from activity.”⁴⁵⁵

⁴⁵⁰ Ibid, para 99.

⁴⁵¹ Ibid, para 150.13, 14, 16, 17, and 20.

⁴⁵² Ibid, para 150.15.

⁴⁵³ Ibid, paras 150.18-19.

⁴⁵⁴ Ibid, para 150.22.

⁴⁵⁵ Paragraph 5 of Article 34 states that “[T]he decision of this authority shall be submitted for the approval of the judge having jurisdiction within twenty-four hours. The judge shall announce his/her decision within forty-eight hours; otherwise, this administrative decision shall be annulled automatically.”

The Constitution also contains provisions for specific associations, i.e. political parties. Article 68 provides for “the right to form political parties and duly join and withdraw from them” while Article 69 lists the principles which must be observed by political parties. The latter also gives power to the Constitutional Court to dissolve political parties; the case law on this particular point is summarised below.

Article 34 provides for the right to freedom of assembly defined as “the right to hold unarmed and peaceful meetings and demonstration marches without prior permission”. Similarly, the Constitution allows this right to be restricted “by law on the grounds of national security, public order, prevention of commission of crime, protection of public health and public morals or the rights and freedoms of others.”

Other Relevant Domestic Provisions

The Law on Meetings and Demonstrations (No. 2911) is the primary statute regulating the conduct of authorities and protestors in the application of the right to freedom of assembly. Civil society organisations have argued that the restrictive nature of this law, as well as its arbitrary and unjustified application, constitute a barrier to guaranteeing the right to peaceful assembly in Turkey.⁴⁵⁶ According to its critics, Law No. 2911 imposes burdensome administrative requirements, such as overly broad restrictions on permissible times and locations for demonstrations.⁴⁵⁷ It also lists many requirements, which automatically render an entire demonstration unlawful if they are not all met.⁴⁵⁸ These requirements include failure of the organisers to notify authorities of the demonstration, failure of the organisers to ensure that the stated topic of the demonstration is kept to, the presence of symbols and emblems belonging to proscribed organisations (or even clothes/uniforms that can be considered to belong to them).⁴⁵⁹

For example, following the 2013 Gezi Park protests, where protestors initially opposed the destruction of a park in central Istanbul before eventually spreading to anti-government demonstrations all over the country, numerous individuals were charged with “participating in an illegal demonstration” and “failing to disperse despite warnings to do so and force being used”, under Article 32 of Law No. 2911.⁴⁶⁰ However, several reports support the view that application of this law in that manner amounted to a violation of the right to peaceful assembly.⁴⁶¹

⁴⁵⁶ For criticisms of the Law on Meetings and Demonstrations, see Alev Yaman, ‘The Gezi Park Protests: The Impact on Freedom of Expression in Turkey’, PEN International (14 March 2014), p 7, available at: <http://www.englishpen.org/campaigns/the-gezi-park-protests-the-impact-on-freedom-of-expression-in-turkey/> Amnesty International, *Gezi Park Protests: Brutal Denial Of The Right To Peaceful Assembly In Turkey* (October 2013), pp 10, 40, available at: <https://www.amnestyusa.org/sites/default/files/eur440222013en.pdf>.

⁴⁵⁷ Articles 6, 7 and 22 of Law No. 2911.

⁴⁵⁸ Article 23 of Law No. 2911.

⁴⁵⁹ Alev Yaman, ‘The Gezi Park Protests: The Impact on Freedom of Expression in Turkey’, PEN International (14 March 2014), p 7, available at: <http://www.englishpen.org/campaigns/the-gezi-park-protests-the-impact-on-freedom-of-expression-in-turkey/>.

⁴⁶⁰ Amnesty International, *Gezi Park Protests: Brutal Denial Of The Right To Peaceful Assembly In Turkey*, October 2013, p 40, available at <https://www.amnestyusa.org/sites/default/files/eur440222013en.pdf>.

⁴⁶¹ Ibid.

As discussed in the section on current human rights issues, the application of Law No. 2911 and excessive use of force by police against demonstrators were among the issues raised during Turkey's 2015 UPR and a recommendation was made to amend Law No. 2911.

During the 2015 UPR, a number of states expressed concern about deterioration with regard to the right of peaceful assembly and association and, in particular, with the application of the Law on Meetings and Demonstrations (Law No. 2911).⁴⁶² However, the head of the Turkish delegation responded to these concerns by saying that

the Law on Assembly and Demonstration Marches has been rearranged to ensure participation in the determination of venues and routes for assemblies. Teargas weapons are only used by certified personnel. Concerning the events which are referred to as Gezi park protests, the head of delegation stated that the law enforcement intervened within the bounds of the law and as necessary in a democratic society. In respect of allegations of excessive use of force by law enforcement officials, those responsible are brought to justice. As a result of administrative investigations, a total of 149 personnel were sanctioned. As to judicial proceedings, a total of 329 investigations were launched, 59 of which resulted in non-prosecution while a number of remaining files resulted in public prosecution. Recently two police officers were sentenced to 10 years of imprisonment each. Other investigations are pending.⁴⁶³

With regard to accusation of excessive use of force by the police against the public, it added that,

with the aim of preventing the riot police from using disproportionate force and controlling the individual mistakes, devices for intra-helmet combat were procured and the helmets were enumerated. Furthermore, "Directive for Procedures and Principles on Actions of Police Forces commissioned to the riot control for Assemblies and Demonstration Marches" and "Circular on Tear Gas Weapons and Ammunition" were issued.

Within the framework of the "zero tolerance policy for torture and ill treatment, all relevant departments, including detention rooms, are being monitored by cameras and the records are being kept for 30 days. The number of judicial and disciplinary decisions on "Overstepping the Use of Force" and "Torture Crimes" has recently decreased as a result of the measures taken and devotion.⁴⁶⁴

Among the recommendations currently being examined by Turkey, one calls to "[E]xplicitly recognise the right to peaceful assembly by redrafting the Law on Meetings and Demonstration to remove provisions that criminalise peaceful participation in demonstrations".⁴⁶⁵ However, Turkey did not support another recommendation made by Cyprus which called for the amendment or revocation of this law.⁴⁶⁶

The domestic security bill, passed (in part) by the GNAT in March 2015, has also attracted criticism for threatening the right to freedom of assembly by expanding the

⁴⁶² Draft Report of the Working Group on the Universal Periodic Review, Turkey, 29 January 2015, A/HRC/WG.6/21/L.12, see, for example, paras 22, 55, 57, 61, etc.

⁴⁶³ Ibid, para 101.

⁴⁶⁴ Ibid paras 103-104.

⁴⁶⁵ Ibid, para 150.23.

⁴⁶⁶ Ibid, para 151.15.

police powers to detain demonstrators, conduct warrantless searches and use deadly force during violent protests.⁴⁶⁷ In particular, the bill:

- allows Turkish police to conduct strip searches or searches in a vehicle without the approval of a judge or prosecutor;
- extends the powers of the police to detain persons without charge for 24 hours without the permission of a prosecutor or judge as currently required. In cases of mass demonstrations the detention period will extend to 48 hours;
- gives the Turkish police authority to physically remove from a location certain categories of people currently defined in the law on the authority of the police, in addition to its existing powers to deal with these groups;
- allows the police to use firearms against those who “use or attempt to use Molotov cocktails, as well explosives, inflammables, incendiaries, suffocating devices, or injurious or similar arms.” Previously, the situations in which the police were legally allowed to use firearms were more restricted;
- increases prison sentences for those who participate in a demonstration with the emblem, sign or uniform of an ‘illegal organisation’;
- imposes prison sentences of up to four years for those who participate in a demonstration with ‘arms’ (defined broadly to include slingshots, iron pellets and fireworks) or with their faces covered fully or partly;
- increases the time permitted for Turkish security forces to conduct intelligence wiretapping without a judge’s permission from 24 to 48 hours.⁴⁶⁸

So far, 69 articles have been approved but the remaining 63 have been sent back to a parliamentary committee for further discussion.⁴⁶⁹

Relevant Case Law of the Constitutional Court

Most of the relevant Constitutional Court’s case law regards the right to freedom of association and, in particular, the dissolution of political parties. Freedom of association has often conflicted with the Constitution’s emphasis on maintaining the “indivisible integrity of the state”. For example, in the 1960s, the Justice Party and the Workers’ Party of Turkey challenged the then Article 143 of the Penal Code, which required individuals to receive permission from the Council of Ministers in order to

⁴⁶⁷ ‘Controversial security bill passes, CHP says will appeal to Constitutional Court’, Today’s Zaman (7 March 2015), available at: http://www.todayszaman.com/national_controversial-security-bill-passes-chp-says-will-appeal-to-constitutional-court_376425.html.

⁴⁶⁸ ‘Explained: Turkey’s controversial security bill’, Hürriyet Daily News (21 February 2015), available at: <http://www.HurriyetaDailyNews.com/explained-turkeys-controversial-security-bill.aspx?pagerID=238&nID=78658&NewsCatID=339>.

See also Oguz Ayanak, ‘No more popular protests? Reflections on Turkey’s Domestic Security Bill’, Open Democracy (14 March 2015), available at: <https://www.openDemocracy.net/oguz-alyanak/no-more-popular-protests-reflections-on-turkey%E2%80%99s-domestic-security-bill>.

⁴⁶⁹ ‘Turkey approves security bill after 16-hour debate’, i24news.org (28 March 2015), available at: <http://www.i24news.tv/en/news/international/middle-east/65842-150328-turkey-approves-security-bill-after-16-hour-debate>.

become a member of an international association or to set up branches of a foreign-based association. The Constitutional Court rejected the petition, evoking the general morality and public order restriction. The judges argued that activities dangerous for public order within the country would easily spread if associations with international connections could be established without prior permission.⁴⁷⁰

The Constitutional Court somewhat modified its view in 2004, when it ruled that giving competence to the executive branch to dissolve associations and their organs, establish temporary committees, amend or repeal the statutes of associations, and reorganise associations, is contrary to the right to freedom of association, and that such a power could only be exercised by a judge. The Court rejected as unconstitutional a legal provision giving the Council of Ministers the competence to dissolve the organs of the Red Crescent of Turkey and the Turkish Aeronautical Association and to establish temporary organs in order to carry out their functions, as well as to amend or repeal their statutes and reorganise them on the basis of reports coming from authorities with powers of inspection.⁴⁷¹

The tension between the freedom of association and possible threats to the secular republic is particularly evident in the Court's jurisprudence regarding the dissolution of political parties. Under Article 69 of the Constitution, the Court is vested with the authority to decide for the permanent dissolution of a political party if it "determines that the party in question has become a centre for the execution of [banned] activities." The banned activities are spelled out in Article 68 which indicates that

[T]he statutes and programs, as well as the activities of political parties shall not be in conflict with the independence of the state, its indivisible integrity with its territory and nation, human rights, the principles of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular republic; they shall not aim to protect or establish class or group dictatorship or dictatorship of any kind, nor shall they incite citizens to crime.

Instead of dissolving a political party, Article 69 also allows the court to "rule the concerned party to be deprived of State aid wholly or in part with respect to the intensity of the actions brought before the court."

Over the 46 years to 2010, the Constitutional Court had reviewed 47 political party dissolution cases.⁴⁷² Such cases may involve a party accused to have been involved in activities which violate the secular character of the state. The Court has also banned two parties supporting Islamic politics. In 1998, the Court ruled to close the Welfare Party (Refah Partisi - RP), an Islamist party, on the grounds that it was violating the

⁴⁷⁰ Constitutional Court Decision No. 1964/08 and 1964/09, discussed in Ceren Belge, 'Friends of the Court: The Republican Alliance and Selective Activism of the Constitutional Court of Turkey' (2006) 40(3) Law and Society Review 653, pp 30-31, available at:

http://spectrum.library.concordia.ca/974090/1/LSR_author_vers.pdf.

⁴⁷¹ Constitutional Court Decision No. 2002/43, 2003/103 (17 March 2004), summary available at:

<http://www.anayasa.gov.tr/en/content/detail/197/>.

⁴⁷² Cenap Çakmak And Cengiz Dinç, 'Constitutional Court: Its Limits to Shape Turkish Politics', Insight Turkey Vol. 12 / No. 4 / 2010, 69, p 7, available at:

http://file.insightturkey.com/Files/Pdf/insight_turkey_vol_12_no_4_2010_cakmak.pdf.

principle of secularism.⁴⁷³ In 2001, the Court also ruled to dissolve the Virtue Party (Fazilet Partisi - FP), the successor to the Welfare Party, although the Court did not base its decision on the FP being the continuation of the RP but on the Islamist policies followed by the party.⁴⁷⁴ Not all of these cases led to the dissolution of the party in question. For example, the ruling AKP survived a closure suit filed by the Chief Prosecutor of the Court of Cassation. In its 2008 decision, the Constitutional Court ruled by a narrow margin that the AKP did not violate the separation between religion and state and thus did not get dissolved, even though the facts were very similar to previous cases which led to the dissolution of the party in question. Nevertheless, the Court noted that the AKP had become “a center for anti-secular activities” and cut the state's funding of the party's activities by 50%. According to some commentators, the Court abstained from proceeding with complete dissolution and banning of the AKP party from politics in consideration of the high level of popular support the party enjoyed at the time.⁴⁷⁵

Cases of political party dissolution may also involve accusations that a political party was undermining the indivisible integrity of the state through the promotion of minority interests or views. For example, in 2001, the Constitutional Court held that including the promotion, protection or dissemination of languages or cultures other than Turkish in a political party's programme, runs counter to national unity and the indivisibility of the state, and is contrary to Article 78/a-b of the Law on Political Parties and the Constitution.⁴⁷⁶ Many of these cases involved decisions to ban parties that supported Kurdish autonomy or called for an open debate on the question. In these cases, the Court justified dissolution on the basis that such parties were “attempting to divide the unity of the state and the nation on a race-based distinction between Turks and Kurds”, arguing that “[i]n democratic societies, the real criterion for basic rights and liberties is the individual. There cannot be a basis for transforming this into a national right and liberty for minorities to divide the nation, territory or the state”.⁴⁷⁷ For example, in 1994, the Court ruled to close the Democracy Party (Demokrasi Partisi - DEP), a pro-Kurdish party, on the grounds that it violated the principle of territorial/national integrity and indivisibility.⁴⁷⁸ More recently, in 2009, the Court decided to ban the Democratic Society Party for its links to the PKK, considered a terrorist group by the United States and the European Union. DTP violated Articles 68 and 69 of the Constitution and the Political Parties Law. Haşim Kılıç, then President of

⁴⁷³ Constitutional Court Decision No. 1998/1 (16 January 1998) – no English translation but the ECtHR decision upholding the dissolution of the Welfare Party (*Case Of Refah Partisi (The Welfare Party) v Turkey*) describes the judgment paras 22-44, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60936#{%22itemid%22:%5B%22001-60936%22%5D%7D}>.

⁴⁷⁴ Constitutional Court Decision No. 2001/2 (22 June 2001), no English translation.

⁴⁷⁵ Cenap Çakmak And Cengiz Dinç, Constitutional Court: Its Limits to Shape Turkish Politics, *Insight Turkey* Vol. 12 / No. 4 / 2010, 69, p 13, available at: http://file.insightturkey.com/Files/Pdf/insight_turkey_vol_12_no_4_2010_cakmak.pdf.

⁴⁷⁶ Constitutional Court Decision No. E.1997/2, K.1999/1 (22 November 2001), a summary is available at: <http://www.anayasa.gov.tr/en/content/detail/221/>.

⁴⁷⁷ Belge and Ceren, ‘Friends of the Court: The Republican Alliance and Selective Activism of the Constitutional Court of Turkey’ (2006) 40(3) *Law and Society Review* 653, pp 33-34, referring to the *Dissolution of Political Party Case*, K.1993/03:

http://spectrum.library.concordia.ca/974090/1/LSR_author_vers.pdf.

⁴⁷⁸ Constitutional Court Decision No. 1994/2 (16 June 1994).

the Court, justified the decision in a later press statement on the basis that “[t]he party became a focal point for terrorism against the indivisible integrity of the state.”⁴⁷⁹

However, there is an indication that the Constitutional Court may have somewhat loosened its view on the dissolution of political parties advocating for a debate on Kurdish-related matters. In 2008, it refused to ban a political party simply because it referred to such matters, proposed solutions or advocated more autonomy for local governments on the basis of pluralism.⁴⁸⁰

The Right to Freedom of Religion and Conscience

Constitutional Provisions

Article 24 of the Constitution provides that “[E]veryone has the freedom of conscience, religious belief and conviction”. It also states that “[N]o one shall be compelled to worship, or to participate in religious rites and ceremonies, or to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions.” Article 24 also prohibits persons from “exploit[ing] or abus[ing] religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political interest or influence or for even partially basing the fundamental, social, economic, political, and legal order of the State on religious tenets”.

Article 10 of the Constitution also guarantees that everyone is equal before the law without distinction of any kind, such as language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations, and that all citizens shall be treated equally by state organs and administrative authorities in all their proceedings.

However, the Constitution contains several clauses that may be used to restrict manifestations of religion or belief. For example, Article 24 expressly allows the freedom of religious belief to be limited by the general prohibition in Article 14 of the Constitution, which states that “[N]one of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights”.⁴⁸¹

Article 24 also makes instruction in religious and moral education compulsory in primary and secondary schools and prescribes that such instruction be under state supervision and control.⁴⁸² As discussed below, the lack of objectivity and pluralism in

⁴⁷⁹ Decision dated 2009/12/11, reported at:

<http://www.Hurriyetdailynews.com/default.aspx?pageid=438&n=constitutional-court-votes-to-xx-turkey-pro-kurdish-part-2009-12-11>.

⁴⁸⁰ Constitutional Court Decision No. E.2002/1, K.2008/1 (1 July 2008), a summary is available at:

<http://www.anayasa.gov.tr/en/content/detail/144/>.

⁴⁸¹ Paragraph 2 of Article 24 states that “[a]cts of worship, religious rites and ceremonies shall be conducted freely, as long as they do not violate the provisions of Article 14”.

⁴⁸² Paragraph 4 of Article 24 states that “[R]eligious and moral education and instruction shall be conducted under state supervision and control. Instruction in religious culture and morals shall be one

the compulsory curricula for religious instruction set by the State has been a serious concern for the exercise of freedom of religion in Turkey.

Other Relevant Domestic Provisions

There is no specific legislation on the right to freedom of religion or belief. However, various laws and regulations include provisions affecting it. For example, Article 115(1) of the Penal Code states that activities which prevent the sharing of religious views will be punished as follows:

Any person who forces another person, by using violence or threat, to disclose or change his religious, political, philosophical beliefs, conceptions and convictions, or prevents disclosure and the spread of the same, is punished with imprisonment from one year to three years.

Law No. 2596 on the Prohibition of Wearing Certain Garments contains restrictions on the wearing of clothing representing a religious status or profession. Also, the bylaws of municipalities regarding the construction of places of worship restrict the types of religious buildings that may be constructed.⁴⁸³

The government also interprets the 1923 Lausanne Treaty, which refers broadly and non-specifically to 'non-Muslim minorities', as granting special legal minority status exclusively to three recognised groups, i.e. Armenian Orthodox Christians, Jews, and Greek Orthodox Christians. As a result, these groups receive particular legal privileges, such as being able to operate separate schools under the supervision of the Ministry of Education.⁴⁸⁴

Administrative Framework

The Diyanet (or Presidency of Religious Affairs), a state body reporting to the Prime Minister's Office, is responsible for providing and regulating Islamic religious services in Turkey. It is provided for in Article 136 of the Constitution, which states that the Diyanet shall "exercise its duties prescribed in its particular law, in accordance with the principles of secularism, removed from all political views and ideas, and aiming at national solidarity and integrity". It has responsibility for the administration of mosques, appointment of imams, and disseminating information about Islam.⁴⁸⁵ However, the Diyanet has been criticised for espousing primarily Sunni Hanafi Islam, acting as an administrative tool of the State to propagate official ideology regarding Islam, and exhibiting biases against certain Muslim and non-Muslim groups.⁴⁸⁶ The

of the compulsory lessons in the curricula of primary and secondary schools. Other religious education and instruction shall be subject to the individual's own desire, and in the case of minors, to the request of their legal representatives."

⁴⁸³ See the Norwegian Helsinki Committee, 'Turkey Freedom of Belief Initiative's (NHC:İÖG) January – June 2013 monitoring report', p 16, available at: <http://nhc.no/?module=Files&action=File.getFile&ID=1695>.

⁴⁸⁴ United States Department of State, *2012 Report on International Religious Freedom – Turkey* (20 May 2013), available at: <http://www.refworld.org/docid/519dd47d95.html>.

⁴⁸⁵ See the official website of the Diyanet, available at: www.diyamet.gov.tr/en/home.

⁴⁸⁶ See Mine Yildirim, 'TURKEY: Religious freedom survey, January 2014', *Forum 18* (16 January 2014), available at: http://www.forum18.org/archive.php?article_id=1916.

Diyanet, however, claims that it complements the principles of secularism and religious freedom as enshrined in the Constitution.⁴⁸⁷

Relevant Case Law of the Constitutional Court

Right to Manifest Religion

A recurrent issue relating to the enjoyment of freedom of religion in Turkey has been the imposition of restrictions on the wearing of clothing associated with religious beliefs, the Islamic headscarf in particular. The first headscarf ban was applied commonly in 1984 but it was not enforced uniformly until 1997.⁴⁸⁸ The Constitutional Court itself had interpreted the headscarf as a political and anti-secular symbol, most notably in 2008, when it ruled that a constitutional amendment passed by the GNAT in February 2008 was unlawful on the grounds that it violated the constitutional principle of secularism.⁴⁸⁹

In recent years, the easing of restrictions on women wearing a headscarf have been more successfully implemented. A 2011 instruction from the Higher Education Council lifted the headscarf ban for university students. In November 2012, the Council of State suspended Bar rules restricting the use of the headscarf by lawyer interns.⁴⁹⁰ An 8 October 2013 amendment to the Regulation setting forth the dress code for civil servants abolished the ban on wearing headscarves by civil servants in public institutions - with the exception of the judiciary, military and police (on the basis that they wore uniforms).⁴⁹¹

Most recently, the Constitutional Court held in June 2014 that the right to religious freedom in Article 24 and the prohibition against discrimination in Article 10 of the

See also İftar B Gözaydın, Religion, 'Politics and the Politics of Religion in Turkey', available at: http://www.ispionline.it/it/documents/Religion/Gozaydin_Religion,%20Politics%20and%20the%20Politics%20of%20Religion%20in%20Turkey.pdf.

⁴⁸⁷ Professor Ali Bardakoglu, President of Religious Affairs, 'The Structure, Mission And Social Function Of The Presidency Of Religious Affairs', Religion And Society New Perspectives From Turkey (2009), pp 9-22, available at:

http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CCgQFjAB&url=http%3A%2F%2Fwww2.diyaret.gov.tr%2FDiniYay%25C4%25B1nlarGenelMudurlugu%2FYabancıDildeYayınlar%2Fingilizce%2Fingilizce_turkey.pdf&ei=6tLIVKYqh-Nqn-CBkAU&usq=AFQjCNHVT651mWvMWIASmUQ_77bDU4Aq3Q&sig2=cjCJdh7bJosBXYGERFGxbw.

⁴⁸⁸ 'Constitutional Court: Headscarf ban against religious freedom', Daily Sabah (7 July 2014), available at:

<http://www.dailysabah.com/nation/2014/07/07/constitutional-court-headscarf-ban-against-religious-freedom>.

⁴⁸⁹ Anayasa Mahkemesi [Constitutional Court], Jun. 5, 2008, Esas No. 2008/16 [Basis Number], Karar No. 2008/116 [Decision Number] (TC Resmi Gazete [Official Gazette of Republic of Turkey], 2008, No. 27032) (Turk.).

⁴⁹⁰ Mine Yildirim, 'TURKEY: Religious freedom survey, January 2014', Forum 18 (16 January 2014), available at: http://www.forum18.org/archive.php?article_id=1916.

⁴⁹¹ Kamu Kurum ve Kuruluşlarında Çalışan Personelin Kılık ve Kıyafetine Dair Yönetmelikte Değişiklik Yapılmasına İlişkin Yönetmelik [The Regulation on Amendment of the Regulation on the Dress of the Personnel of Public Institutions and Organizations], Resmi Gazete [Official Gazette] No. 28789, 8 October 2013; see also 'Turkey lifts headscarf ban in state institutions', BBC News (9 October 2013), available at: <http://www.bbc.co.uk/news/world-europe-24454535>.

Constitution were violated when a lawyer was banned from representing her client in a lower court while wearing the headscarf.⁴⁹² The lower court had relied on the Constitutional Court's own judgments which had found unconstitutional legislative amendments made by the Parliament to allow the headscarf at universities.⁴⁹³ The Constitutional Court held that the principle of secularism enshrined in the Constitution obliged the state to remove the barriers towards freedom of religion and conscience and provide an environment where individuals can live in accordance with their beliefs.⁴⁹⁴ The Court rejected the contention that secularism and religious pluralism could not coexist as it stated that

[O]ne of the main aims of the democratic and secular state is to establish political orders, where the individuals will live together in peace with the faiths they have by protecting the social diversity (§ 135). ... Seeing the pluralism and social diversity as an element that threatens the social unity without considering these opportunities leads to a monolithic society understanding that does not accord with the democracy.⁴⁹⁵

With respect to the discrimination claim, the Constitutional Court held that, in allowing lawyers who do not wear the headscarf to attend the trials and solely barring those whose heads are covered from representing their clients in the courtroom, the lower court discriminated against the applicant on the basis of her religious belief. The Court found that the lower court erred in its reasoning that "the headscarf was a strong religious and political symbol against laicism" in the absence of any material finding showing that the applicant, in wearing a headscarf, posed a threat to the rights and freedoms of others or to the protection of public order.⁴⁹⁶

In September 2014, Turkey also lifted the headscarf ban in schools for girls from grades five through to twelve, amending previous laws that prohibited the wearing of headscarves by all students.⁴⁹⁷

Right to Conscientious Objection

No legislation recognising the right to conscientious objection exists. Among the recommendations that did not find the support of Turkey during its 2015 UPR, there were several recommendations calling for the adoption of a law formally recognising the right to conscientious objection to military service.⁴⁹⁸

Article 72 of the Constitution states that "[N]ational service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the armed forces or in public service, shall be regulated by law." The concept of national service in this provision is read as military service by public

⁴⁹² Anayasa Mahkemesi [Constitutional Court], Application No 2014/256 (25 June 2014), available at: www.anayasa.gov.tr/en/News/Detail/judgment/2014-256.pdf.

⁴⁹³ Ibid, paras 7-13, 19.

⁴⁹⁴ Ibid, para 138.

⁴⁹⁵ Ibid, para 140.

⁴⁹⁶ Ibid, para 153.

⁴⁹⁷ 'Turkey lifts headscarf ban in schools for girls as young as 10', RT (23 September 2014), available at: <http://rt.com/news/190032-turkey-headscarf-schools-ban-amendment/>.

⁴⁹⁸ Draft Report of the Working Group on the Universal Periodic Review, Turkey (29 January 2015), A/HRC/WG.6/21/L.12, paras 151.12-14.

officials, who have interpreted this as a prohibition on the right to conscientious objection.⁴⁹⁹

However, some of Turkey's Military Courts have recognised the right to conscientious objection.⁵⁰⁰ On 13 March 2012, the Isparta Military Court recognised it when it acquitted Jehovah's Witness Baris Görmez, who had spent four years in prison for his refusal to perform military service and had been charged with "rejecting wearing of the uniform" and "rejecting orders". While the Malatya Military Court also found that a right to conscientious objection existed, it denied its application in the case of Serdar Delice, a Muslim, on the grounds that conscientious objection has no place in Islam. The Malatya Military Court interpreted the ECtHR's approach to the right to conscientious objection as one based on the theological position of a religious group, and excluded the beliefs of the individual. It ruled out an individual rejecting military service according to his own views. Instead, the Military Court stated that conscientious objection had to be based on the rejection of military service by an intellectual, religious or political group, as such.⁵⁰¹

Compulsory Religious Teaching

According to Article 24 of the Constitution, "religious and moral education and instruction shall be conducted under state supervision and control".⁵⁰² As a result, the state has the monopoly on both opening religious schools and determining obligatory or optional courses regarding religious education. Private institutions generally cannot open schools to provide religious education.⁵⁰³

The Religious Culture and Knowledge of Ethics course, which is largely based on the Sunni branch of Islam and compulsory in all primary and secondary schools, has been the subject of controversy. Jewish and Christian students have the right to be exempted from it but not those who are non-believers, members of another branch of Islam, or of another faith.⁵⁰⁴ From the 2012-2013 school year onwards, the government has introduced optional lessons in Islam. However, it appears that, in many schools, these lessons have not actually been optional, as families have felt pressured by school administrations to choose the 'optional' Islamic religion lessons.⁵⁰⁵

⁴⁹⁹ The Norwegian Helsinki Committee: Turkey Freedom of Belief Initiative's (NHC:İÖG) January – June 2013 monitoring report, pp 19-21, available at:

<http://nhc.no/?module=Files&action=File.getFile&ID=1695>.

⁵⁰⁰ Serdar Delice, Malatya Military Court Decision (7 March 2012); Barış Görmez, Isparta Military Court Decision (13 March 2012); a commentary is available at: <http://www.wri-irg.org/node/15115>.

⁵⁰¹ Mine Yildirim, 'TURKEY: Religious freedom survey, January 2014', Forum 18 (16 January 2014), available at: http://www.forum18.org/archive.php?article_id=1696.

⁵⁰² Art 24(4) of the Constitution.

⁵⁰³ Under Art 3 of Law No 5580 on Private Educational Institutions, "education institutions identical or similar to ones which provide religious education cannot be opened".

⁵⁰⁴ Mine Yildirim, 'TURKEY: Changes in school religious education fail to resolve fundamental problems', Forum 18 (23 August 2011), available at: http://www.forum18.org/archive.php?article_id=1603.

⁵⁰⁵ See the Norwegian Helsinki Committee's latest monitoring report (July 2013-June 2014): <http://inancozgurlugugirisimi.org/en/our-work/new-report-in-need-of-a-principled-approach-monitoring-report-on-the-right-to-freedom-of-religion-or-belief-in-turkey-july-2013-june-2014/>.

The compulsory Religious Culture and Knowledge of Ethics course has also been subject of scrutiny by the ECtHR on two occasions. In the case of *Hasan and Eylem Zengin v Turkey*, brought by an Alevi parent who objected to the course's content and the lack of exemption, the ECtHR found that the requirement to follow this course represented "a violation of the Convention on account of the inadequacy of the Turkish educational system, which, with regard to religious instruction, does not meet the requirements of objectivity and pluralism and provides no appropriate method for ensuring respect for parents' convictions".⁵⁰⁶ Some changes were made in 2011/12 to the curriculum and textbooks for the compulsory religion and ethics classes to include teachings by minority Islamic faiths.

More recently, in the judgment of *Mansur Yalçın and Others v Turkey*, the ECtHR again found that, despite these changes, Turkey's education system was still not adequately equipped to ensure respect for parents' convictions.⁵⁰⁷ After the judgment, President Recep Tayyip Erdoğan and Prime Minister Ahmet Davutoğlu stated that the government would not comply with the Court's decision urging Turkey to abolish its practice of teaching compulsory courses on religion.⁵⁰⁸ However, in recent years, the provision of education, including religious teaching, has become more flexible. For example, the October 2013 Democratisation Package allowed minority groups (beyond those recognised under the Lausanne Treaty) to establish schools providing lessons in a child's mother tongue.⁵⁰⁹ In 2014, it was also reported that the Turkish public education system was to offer optional classes on Christianity for the first time.⁵¹⁰

The way the Constitutional Court has balanced education and religious freedom has been controversial. In a 2013 decision, it upheld the constitutionality of the 2012 Education Law reforms providing for optional lessons in Islam. Its decision was criticised for justifying the existing preferential treatment of Islam, reportedly holding that "from the beginning in Turkey the principle of secularism, both at the constitutional level and in practice" has not excluded the institutional relationship

See also Mine Yildirim, 'TURKEY: Is it possible to manifest religion or belief in teaching and education', Forum 18 (20 August 2013), available at: http://www.forum18.org/archive.php?article_id=1867.

⁵⁰⁶ *Hasan and Eylem Zengin v Turkey*, Application No 1448/04, 9 January 2008, para 84, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82580>.

⁵⁰⁷ *Mansur Yalçın and Others v Turkey*, Application No 21163/11, 16 September 2014, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-146381>.

See also 'Can religious courses stop Islamist radicalism?', *Hürriyet Daily News* (18 September 2014), available at:

<http://www.Hurriyetdailynews.com/can-religious-courses-stop-islamist-radicalism.aspx?pageID=449&nID=71854&NewsCatID=497>.

See also Tulin Daloglu, 'European court warns Turkey to respect parents' convictions', *Al-Monitor* (18 September 2014), available at:

<http://www.al-monitor.com/pulse/originals/2014/09/turkey-echr-religion-classes-alevi-sunni.html#>.

⁵⁰⁸ Cafer Solgun, 'Freedom of religion, conscience for Turkey's Alevis, too?', *Today's Zaman* (2 October 2014), available at: http://www.todayszaman.com/columnist/cafer-solgun/freedom-of-religion-conscience-for-turkeys-alevis-too_360525.html.

⁵⁰⁹ Mine Yildirim, 'TURKEY: Religious freedom survey, January 2014', *Forum 18* (16 January 2014), available at: http://www.forum18.org/archive.php?article_id=1916.

⁵¹⁰ Damaris Kremida, 'Turkish public education system to offer class in Christianity for first time', *WorldWatch Monitor* (30 October 2014), available at: https://www.worldwatchmonitor.org/2014/10/Article_3449406.html/.

between the state and the Islamic religion.⁵¹¹ It allegedly added that, while the Constitution does not explicitly refer to a particular religion, “it foresees certain mechanisms to meet the needs, such as belief, worship and education, of those belonging to the majority religion”.⁵¹²

Identity Cards

Turkish national identity cards contain a box where individuals are required to indicate their religious belief. The ECtHR found this to be a violation of Article 9 of the ECHR, declaring in the case of *Sinan Işık v Turkey* case that “it considers that the removal of the religion box could constitute an appropriate form of redress to put an end to the breach”.⁵¹³ At present, identity cards still have that religion section but a legislative amendment allowing it to remain empty was passed in 2006.⁵¹⁴

The Rights of Women

Since 2002, men are no longer regarded as heads of the family under Turkish law, with women being thus legally equal to men. The 2010 constitutional amendments introduced a new definition of equality, which allows for positive discrimination with regard to women (but also children, the elderly and persons with disabilities).⁵¹⁵ As already mentioned, the ban on women wearing headscarves in public service and in schools was lifted.

In 2004, the Parliament approved criminal law reforms introducing tougher measures to prevent violence against women and it dropped a controversial proposal criminalising adultery. Turkey also put into force Law 6284 on the Protection of Family and Prevention of Violence against Women and it updated its ‘National Action Plan on Combating Domestic Violence’ for the period 2012-2015.⁵¹⁶ With regard to violence against women, Turkey also ratified the 2011 Council of Europe’s Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).⁵¹⁷

⁵¹¹ Mine Yildirim, ‘TURKEY: Constitutional Court justifies more freedom of religion or belief restrictions’, Forum 18 (9 July 2013), available at: http://www.forum18.org/archive.php?article_id=1855.

⁵¹² Ibid.

⁵¹³ Case of *Sinan Işık v Turkey*, ECtHR, Application No 21924/05, 2 February 2010, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97087#%7B%22itemid%22%3A%22001-97087%22%5D%7D>.

⁵¹⁴ The Norwegian Helsinki Committee: Turkey Freedom of Belief Initiative's (NHC:İÖG) January – June 2013 monitoring report can be found at <http://nhc.no/?module=Files&action=File.getFile&ID=1695>.

⁵¹⁵ Draft Report of the Working Group on the Universal Periodic Review, Turkey (29 January 2015), A/HRC/WG.6/21/L.12, para 6.

Ibid, para 143, the head of delegation stated that, with regard to the rights of persons with disabilities, Turkish law has updated in order to abide with the obligations envisaged by the UN Convention on the Rights of Persons with Disabilities and that improvements have been made in schools for children with disabilities.

⁵¹⁶ Draft Report of the Working Group on the Universal Periodic Review, Turkey (29 January 2015), A/HRC/WG.6/21/L.12, para 142.

⁵¹⁷ The Istanbul Convention is available at:

http://www.coe.int/t/dghl/standardsetting/convention-violence/about_en.asp.

The 'National Strategy Document and Action Plan on the Rights of the Child' for the period 2013-2017 focuses on girls' education in order to prevent early marriages.⁵¹⁸ It has been reported that the illiteracy rate of women and girls has been decreasing over the past decade.⁵¹⁹

As a result of its 2015 UPR, a number of relevant recommendations are currently under examination by Turkey, including on enacting a "comprehensive anti-discrimination legislation, including a clear definition of discrimination against women".⁵²⁰ While this Anti-Discrimination and Equality law has not yet been enacted, it has been drafted.⁵²¹ However, many say that women's rights are not protected enough and that there is no commitment to provide full equality, a criticism which has led to street demonstrations. For example, as a result of the sexual assault and killing of a 20-year-old female student, men wore miniskirts at a protest to fight for women's rights.⁵²²

The Rights of Minority Groups

As already mentioned, the rights of minority groups are regulated in accordance with the 1923 Lausanne Peace Treaty, which defines minorities by their religious beliefs. It only recognises non-Muslim citizens as 'minorities', thus excluding all other non-nationals, including non-Turkish Muslims. The minority groups protected under this Treaty are entitled the same rights as other nationals, including having their own schools, places of worship, foundations, hospitals and media organisations.⁵²³ Although Turkey counts a vast diversity of minority groups which could fall under this 'non-Muslim citizens' category, the definition of 'minorities' has been interpreted as being only applicable to Jews, as well as Armenian and Greek Christians, leaving many minority groups outside its scope.⁵²⁴ The Constitution does not provide for a more expansive understanding of what constitute 'minority' groups and there is no specific legislation applicable to them.

With regard to languages, the Lausanne Treaty also states that "[N]o restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings" and that "adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts."⁵²⁵

⁵¹⁸ Draft Report of the Working Group on the Universal Periodic Review, Turkey (29 January 2015), A/HRC/WG.6/21/L.12, para 145.

⁵¹⁹ Ibid.

⁵²⁰ Draft Report of the Working Group on the Universal Periodic Review, Turkey (29 January 2015), A/HRC/WG.6/21/L.12, para 150.12.

⁵²¹ Ibid, para 7.

⁵²² See, for example, Laura Stampler, 'Turkish Men Are Wearing Miniskirts to Fight for Women's Rights', Time (23 February 2015), available at: <http://time.com/3718618/turkey-men-miniskirts-ozgecan-aslan/>.

⁵²³ Draft Report of the Working Group on the Universal Periodic Review, Turkey, 29 January 2015, A/HRC/WG.6/21/L.12, para 51.

⁵²⁴ These other non-Muslims groups include the Assyrians, Bahais, Georgians, Maronite Christians, Protestants and Ezidis.

⁵²⁵ Article 39(4)-(5) of the Treaty of Lausanne.

However, this obligation has not always been met with respect to minority groups such as the Kurds, for example.⁵²⁶

With regard to Kurdish culture, language, education and broadcasting, the government eased restrictions on the use of the Kurdish language from 2003 onwards.⁵²⁷ In 2004, after years of banning broadcast in Kurdish, the state-owned TV broadcasted its first Kurdish-language programme. However, regulations were still restricting minority-language programming to a very limited amount of hours per day / week on both TV and radio.⁵²⁸ In 2009, the government introduced a number of measures in Parliament as part of a 'democratic initiative', including measures to increase Kurdish language rights.⁵²⁹ Some of the measures were devoted to broadcasting, with one state-owned channel being devoted to 24-hour Kurdish broadcasts (without subtitles or time limits).⁵³⁰ Within the education system, Kurdish language courses may be offered as an optional course since 2012.

With regard to other minority groups, the head of the Turkish delegation, during the 2015 UPR, stated that "consultations are being conducted with representatives of the Alevite community to address their demands" and that the "problems of Roma citizens on education, employment, housing, social policy and health have been discussed and solution-oriented approaches have been adopted."⁵³¹

Among the recommendations that did not find the support of Turkey at the 2015 UPR, there are several regarding minorities, including to "[E]nsure the protection of all components of the right to freedom of religion or belief, as protected under the ICCPR, including by withdrawing its reservations to article 27 on minority rights" and to "[E]nsure the rights of religious minorities, to enhance access to education in the language of minorities, to withdraw the reservation to article 27 of ICCPR regarding minorities and to ratify the Council of Europe Framework Convention for the Protection of National Minorities."⁵³²

⁵²⁶ Law No 2931 of 1983 Prohibiting Languages Other than Turkish, used in conjunction with Article 26 of the Constitution, was used to restrict the use of the Kurdish language until it was abolished in 1991.

⁵²⁷ Note that, in accordance with Art 133 of the Constitution, TV and radio broadcasting was under the control of the State until 1993, when it was amended to allow for private TV and radio stations, see Tarlach McGonagle (IViR), Bethany Davis Noll (PCMLP) and Monroe Price (PCMLP), *Minority-Language Related Broadcasting and Legislation in the OSCE* (April 2003), p 452.

⁵²⁸ See the website of Minority Rights, available at: <http://www.minorityrights.org/4387/turkey/turkey-overview.html>.

⁵²⁹ As already mentioned, in 2009, the Constitutional Court decided to ban a political party because of its links to the Kurdistan Workers Party (PKK), a judgment which could have derailed the initiative. Note that the initiative also included a reduction of the military presence in the mainly-Kurdish southeast region of the country.

⁵³⁰ The same year, the government approved regulations allowing private TV and radio broadcasters in languages other than Turkish.

⁵³¹ Draft Report of the Working Group on the Universal Periodic Review, Turkey (29 January 2015), A/HRC/WG.6/21/L.12, para 50.

⁵³² Draft Report of the Working Group on the Universal Periodic Review, Turkey (29 January 2015), A/HRC/WG.6/21/L.12, paras 151.21-22.

The Rights of the LGBT Community

As far as LGBT individuals are concerned, Turkish law does not contain any specific legislation to guarantee their rights. However, during the 2015 UPR, the head of the Turkish delegation stated that “[T]he absence of specific provisions in respect of the LGBTI does not mean that the rights of this group are not legally guaranteed. The necessary investigations are carried out upon cases of killings and acts of violence towards LGBTI persons and all kinds of hate crimes for the identification of perpetrators and to bring them to justice and the legal process is conducted with diligence by the judicial authorities.”

Criminal Legislation and Human Rights

The Penal Code was substantially amended in 2004, introducing tougher measures to prevent torture. However, there were complaints that the new code restricted media freedom. Thus, in 2005, the Parliament approved a number of amendments to the Penal Code, which were positively noted by the United Nations Country Team (UNCT).⁵³³ These reforms also included an alignment of the Penal Code with the international protocols against smuggling and trafficking of human beings.

According to the EU, while amendments to the Penal Code were deemed an improvement, they were not seen as sufficient to meet all its concerns on human rights. In addition, although the new Penal Code strengthened the prohibition of torture, the new Anti-Terror Law passed in 2006 was criticised as an ‘invitation’ to torture. In its ruling on the *Ürper and others v Turkey* case, the ECtHR ruled that Turkey should revise Article 6(5) of the Anti-Terror Law, which allowed courts and prosecutors to suspend newspapers and magazines which had allegedly committed offenses such as “making terrorist propaganda” for a period of up to 30 days. This contentious provision was repealed with the legal reforms implemented in 2012; however, these reforms did not go far enough according to Human Rights Council, which deems that Turkey’s Anti-Terror Law is not compatible with the ICCPR.⁵³⁴ During its 2015 UPR, Turkey did not support a recommendation made by Cyprus which called to amend further or revoke its ‘Anti-Terror Law’.⁵³⁵

⁵³³ Compilation of UN information, 2010 Periodic review, para 4.

⁵³⁴ See the Concluding Observations on the Initial Report of Turkey, adopted by the Committee at its 106th session.

⁵³⁵ Ibid, para 151.15.

4.2. International Human Rights Framework

This Section considers the regional and international human rights frameworks, as well as their enforcement mechanisms. The most relevant case law concerning Turkey is included.

Regional Human Rights System

Turkey is a member of the Council of Europe and a party to the 1950 ECHR. It ratified the ECHR and its Protocol 1 in 1954.⁵³⁶ Its ratification of Protocol 1 included a reservation to Article 2 on the right to education, providing that it should not affect the validity of a 1924 domestic statute prohibiting the establishment of private religious schools.⁵³⁷ In addition, in the early 1990s, Turkey submitted several declarations that empowered the executive branch to take wide ranging anti-terrorist measures in derogation from the Convention, including banning publications, suspend or require permission for strikes and lockouts and ordering the evacuation of villages or residential areas. However, these declarations were withdrawn in January 2002.⁵³⁸

Turkey is also a party to the ECHR's Protocols 6 and 13 concerning the abolition of the death penalty. It has signed (but not yet ratified) its Protocol 4, Protocol 7, and Protocol 12,⁵³⁹ as well as Protocols 15 and 16 which are not yet in force.

During its 2015 UPR before the Human Rights Council, Turkey did not support a recommendation calling for its ratification of the Council of Europe Framework Convention for the Protection of National Minorities, which was brought forward by Armenia.⁵⁴⁰

⁵³⁶ The chart of signatures and ratifications of the human rights treaties (Convention and Protocols) of the Council of Europe is available at:

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG>.

The list of treaties and the date of their entry into force is available at:

<http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?MA=3&CM=7&CL=ENG>.

⁵³⁷ The reservation states that "[H]aving seen and examined the Convention and the Protocol (First), we have approved the same with the reservation set out in respect of Article 2 of the Protocol by reason of the provisions of Law No. 6366 voted by the National Grand Assembly of Turkey dated 10 March 1954 (Article 3 of the said Law No. 6366 reads: Article 2 of the Protocol shall not affect the provisions of Law No. 430 of 3 March 1924 relating to the unification of education)." The list of declarations made with respect to Protocol 1 is available at:

<http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?CL=ENG&NT=009&VL=1>.

⁵³⁸ See Council of Europe, List of the declarations made by Turkey, Complete chronology as of 28 January 2015, available at:

<http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?CL=ENG&CM=5&NT=005&VL=1&MA=999&PO=TUR>.

⁵³⁹ Protocol 4 to the ECHR prohibits the imprisonment of people unable to fulfil a contract, provides for freedom of movement within a country, and prohibits the expulsion of nationals; Protocol 7 provides additional protection with regard to criminal and family matters, such as the right to appeal in criminal matters or the right to equality between spouses; Protocol 12 extends the prohibition of discrimination.

⁵⁴⁰ Draft Report of the Working Group on the Universal Periodic Review, Turkey, 29 January 2015, A/HRC/WG.6/21/L.12, para 151.8.

The European Court of Human Rights (ECtHR)

Turkey has been consistently found in violation of the ECHR by ECtHR, ranking first in violations during the period 1959-2013.⁵⁴¹ Between 1959 and 2013, the ECtHR found at least one violation in 2,639 judgments, which represents 80 percent of the total number of judgments in cases brought against Turkey.⁵⁴² Over ten percent of the Court's case-load in 2013 – over 10,000 cases – consisted of applications relating to Turkey.⁵⁴³

Of all those cases brought before the Court between 1959 and 2013, over 700 were about violations regarding the right to a fair trial, over 600 were about the right to liberty and security, inhuman or degrading treatment, and more than 500 were about an excessive length of proceedings.⁵⁴⁴ Notably, between 1959 and 2013, Turkey was responsible for the highest number of cases before the Court relating to the right to freedom of expression and to the right to freedom of assembly and association, representing over 40 percent of the total number of cases dealing with these violations. During this time, roughly 19 percent of the cases before the Court concerning the right to a fair trial also came from Turkey.⁵⁴⁵

However, the establishment of the individual's right to petition to the Constitutional Court appears to have reduced the number of new applications to the ECtHR,⁵⁴⁶ as human rights violations can now be remedied domestically at the highest level.⁵⁴⁷ In addition, an 'Action Plan on Prevention of ECHR Violations' entered into force in Turkey on 1 March 2014.⁵⁴⁸ This Action Plan contains a number of aims and goals (to be achieved within 5 years at the most) to address problems leading to human rights violations, including systematic violations, and to ensure the execution of ECtHR judgments. Some of these goals include using force only when necessary and in accordance with the proportionality principle during meeting, demonstrations, arrest, and police custody proceedings (Goal 2.1), improving the efficiency of investigations (Goal 3.1), detaining individuals only when necessary conditions exist (Goal 4.1), addressing the issues preventing the conclusion of proceedings within a reasonable time (Goal 5.1), amending provisions restricting freedom of expression and media (and aligning these provision with the standards found in the case law of the ECtHR)

⁵⁴¹ ECtHR, 'Annual Report 2013', available at:

http://www.echr.coe.int/Documents/Annual_report_2013_ENG.pdf.

⁵⁴² ECtHR, Violations By Article And By States from 1959 to 2013, available at:

http://www.echr.coe.int/Documents/Stats_violation_1959_2013_ENG.pdf.

⁵⁴³ ECtHR, Analysis of Statistics 2013, available at:

http://www.echr.coe.int/Documents/Stats_analysis_2013_ENG.pdf.

In 2014, the ECtHR still had a total of 9,488 applications relating to Turkey in its caseload, see the analysis of statistics for 2014 at:

http://www.echr.coe.int/Documents/Stats_analysis_2014_ENG.pdf.

⁵⁴⁴ European Court of Human Rights, Violations By Article And By States from 1959 to 2013, available at: http://www.echr.coe.int/Documents/Stats_violation_1959_2013_ENG.pdf.

⁵⁴⁵ Calculated from European Court of Human Rights, Violations By Article And By States from 1959 to 2013, available at: http://www.echr.coe.int/Documents/Stats_violation_1959_2013_ENG.pdf.

⁵⁴⁶ Draft Report of the Working Group on the Universal Periodic Review, Turkey (29 January 2015), A/HRC/WG.6/21/L.12, para 7.

⁵⁴⁷ 'Jagland expresses concern about grants of immunity in Turkey', Today's Zaman (8 January 2015), available at: http://www.todayszaman.com/diplomacy_jagland-expresses-concern-about-grants-of-immunity-in-turkey_369254.html.

⁵⁴⁸ This Action Plan was adopted by Council of Ministers' Decree 28928.

(Goal 11.1) and providing training on the ECtHR case law on this area (within Goal 11.2), amending provisions regarding the closure of political parties (to align with ECHR standards) (Goal 12.1) and preventing interference with peaceful meetings and demonstrations marches (Goal 12.2).⁵⁴⁹

A Summary of Key Case Law

The following section summarises some of the key cases in the areas in which violations have been commonly found.

Cases relating to the Right to Life, Liberty and Security

Many of the cases in which the ECtHR has found that Turkey had committed violations of Articles 2 (right to life) and 3 (prohibition of torture) of the Convention stem from actions by security forces against the PKK. For example, in *Oğur v Turkey*, the applicant's son was accidentally killed by bullets from warning shots fired by security forces carrying out an armed operation against the PKK. The ECtHR held that the State authorities' lethal use of force consisted of a violation of Article 2(2) of the Convention, as it had not been absolutely necessary as an act of defence from unlawful violence or to effect an arrest.⁵⁵⁰ In *Kaya v Turkey*, which concerned the killing of the applicant's brother in another armed operation of the PKK, the Court found that Article 2 imposed a positive duty on the State to conduct an effective and independent investigation into deaths arising out of clashes involving the security forces and that no such investigation had been undertaken.⁵⁵¹

In *Öcalan v Turkey*, the ECtHR clarified the extraterritorial application of the ECHR's provisions with regard to the arrest and detention of individuals and the application of Article 5 (right to liberty and security).⁵⁵² In this case, Turkish agents physically abducted Abdullah Öcalan, the leader of the PKK, at Nairobi Airport (Kenya), before flying him to Turkey, bound and hooded. A Turkish court later found him guilty of murder as the leader of the PKK's insurgency and sentenced him to death. Öcalan filed an application against Turkey, claiming that the abduction was illegal because it amounted to a deprivation of his liberty without the due process of law as enshrined in Article 5 of the ECHR. Turkey claimed that Kenya made the arrest and simply handed him over to Turkish custody as a form of interstate police cooperation. The Court found, however, that Turkey made the arrest which brought Öcalan within its jurisdiction at the moment it arrested him. However, the arrest was an exercise of extradition. Thus it found no violation of Article 5(1) (no unlawful deprivation of liberty) with regard to his arrest, although it took place in Kenya. However, the Court

⁵⁴⁹ An unofficial translation of the Action Plan is available at:

<http://www.inhak.adalet.gov.tr/eng/announced/actionplan.html>.

⁵⁵⁰ *Oğur v Turkey*, ECtHR (Grand Chamber), Application No. 21594/93, 20 May 1999, paras 76-84, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58251>.

⁵⁵¹ *Kaya v Turkey*, ECtHR (Chamber), Application No. 22729/93, 19 February 1998, paras 86-92, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58138>.

⁵⁵² *Öcalan v Turkey*, ECtHR (Grand Chamber), Application No 46221/99, 12 May 2005, available at: <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-1340973-1399281>.

found a number of violations of the ECHR in this case, including of Article 5(3) and (4) and Article 6(1).

Cases relating to the Right to a Fair Trial

Cases relating to the right to a fair trial (Article 6 ECHR) are the most common type of cases against Turkey, highlighting systematic deficiencies within its justice system. In *Aksoy v Turkey*, the applicant had been tortured by way of ‘reverse hanging’ while detained incommunicado for 14 days without access to judicial process. The Court in that case emphasised a lack of safeguards within the Turkish legal system, which did not provide for a speedy remedy of *habeas corpus* or legally enforceable rights of access to a lawyer, doctor, friend or relative.⁵⁵³ Similarly, in *Salduz v Turkey*, the Court found that the denial of an minor’s right of access to a lawyer during police interrogation undoubtedly prejudiced the applicant’s fair trial rights, stressing the importance of providing access to a lawyer where the person in custody is a minor.⁵⁵⁴

The excessive length of judicial proceedings has also been a recurrent basis for complaints against Turkey relating to Article 6 of the ECHR. In *Ümmühan Kaplan v Turkey*, which concerned proceedings instituted in 1970 by the applicant’s father (since deceased) in relation to some plots of land, the Court noted that it had found in numerous cases that the length of proceedings in Turkey – in administrative, civil, criminal and commercial cases, and before the employment and land tribunals – was excessive. It thus ordered Turkey to put in place, within one year, an effective remedy affording adequate and sufficient redress.⁵⁵⁵

Cases relating to the Right to Freedom of Expression

Several cases concerning freedom of expression (Article 10 ECHR) before the Court have related to actions pursuant to Turkey’s anti-terrorism legislation.⁵⁵⁶ The Court has repeatedly found violations where the State has used such legislation to target publications simply for making political statements rather than inciting violence. Many of these cases concern actions targeting persons criticising the State’s stance against minorities, in particular the Kurdish minority. For example, *Incal v Turkey* related to the conviction of a party official for disseminating a leaflet criticising discrimination against citizens of Kurdish origin.⁵⁵⁷ *Cox v Turkey* involved an American academic

⁵⁵³ *Aksoy v Turkey*, ECtHR (Chamber), Application No. 21987/93, 18 December 1996, paras 64, 81-84, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58003>.

⁵⁵⁴ *Salduz v Turkey*, ECtHR (Grand Chamber), Application No. 36391/02, 27 November 2008 para 60, available at: <http://www.bailii.org/eu/cases/ECHR/2008/1542.html>.

⁵⁵⁵ *Ümmühan Kaplan v Turkey*, ECtHR (Chamber), Application No. 24240/07, 20 March 2012 para 75, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109778>.

⁵⁵⁶ See, for example, Section 7 (2) of the Prevention of Terrorism Act (Law No 3713 of 12 April 1991) which provides that any person who disseminates propaganda in favour of a terrorist organisation shall be liable to a term of imprisonment of one to five years. See also Article 169 of the former Penal Code.

⁵⁵⁷ *Incal v Turkey*, ECtHR (Grand Chamber), Application No. 22678/93, 9 June 1998, para 59, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58197>.

For other cases regarding violation of the right to freedom of expression by Turkey against newspapers that published stories relating to the PKK, see *Demirel and Ateş v Turkey* (n°2), Application No. 31080/02, 29 November 2007, and *Ürper and Others v Turkey* (Application Nos. 14526/07,

barred from Turkey for voicing her opinions on the situation of Kurds and Armenians.⁵⁵⁸

In *Gözel and Özer v Turkey*, the Grand Chamber noted that it has repeatedly found violations of Article 10 where media professionals had been convicted for publishing statements made by terrorist organisations, without the courts conducting an in-depth analysis. This particular case related to complaints brought by the editors of two magazines published in Turkey, who had been convicted of offences under the Prevention of Terrorism Act which are directed against anyone who “printed or published statements or leaflets of terrorist organisations”. The applicants had published statements from banned organisations, including the Turkish Communist Party. In that case, the Grand Chamber noted that to condemn a text simply on the basis of the identity of the author would entail the automatic exclusion of groups of individuals from the protection afforded by Article 10.⁵⁵⁹

In *Halis Doğan and Others v Turkey*, the ECtHR considered the ban of a newspaper during a state of emergency.⁵⁶⁰ The Court deemed that the application of such a ban, even in a region under state of emergency, amounted to a violation of freedom of expression because it was not “necessary in a democratic society”, which is the requirement provided by Article 10(2) to lawfully restrict this right. There had been no indication that this newspaper was likely to disseminate ideas that would jeopardise the public order and security of the region, even if this region was fragile due to terrorist activities. In addition, as the applicants, who all worked for the newspaper in question, had no judicial route to contest the ban, the Court also held that there had been a violation of Article 13 which provides for the right to an effective remedy.

In *Gül and Others v Turkey*,⁵⁶¹ the ECtHR held that there had been a violation of Article 10 with regard to the arrest of protestors. Although they had who had shouted violent slogans, these did not clearly amount to an apology for terrorism, such as in the case of *Taşdemir v Turkey*.⁵⁶² The Court also underlined that the sentence and lengthy criminal proceedings had been disproportionate.

In *Mustafa Erdoğan and Others v Turkey*, a law professor, an editor, and a publisher, had been ordered to pay defamatory damages to three Constitutional Court judges after publishing an article in a law journal which criticised the Court’s decision to dissolve a political party.⁵⁶³ The ECtHR considered that their right to freedom of

14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07), Chamber Judgment, 20 October 2009, for which a press release is available at:

<http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2899247-3189363>.

⁵⁵⁸ *Cox v Turkey*, ECtHR (Chamber), Application No. 2933/03, 20 May 2010, available at:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-98752>.

⁵⁵⁹ *Gözel et Özer v Turkey*, ECtHR (Grand Chamber), Applications Nos. 43453/04 et 31098/05, 6 July 2010, para 54, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-99780>.

⁵⁶⁰ *Halis Doğan and Others v Turkey*, (Court Second Section), Application No. 50693/99, 10 January 2006 (final 10 April 2006), available (in French) at:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-71982>.

⁵⁶¹ *Gül and Others v Turkey*, Application No. 4870/02, Second Section, 8 June 2010, available at:

<http://www.refworld.org/docid/4c20914e2.html>.

⁵⁶² *Taşdemir v Turkey*, Application No. 38841/07, 23 February 2010.

⁵⁶³ *Mustafa Erdoğan and Others v Turkey*, Applications Nos. 346/04 and 39779/04, Second Section, 27 August 2014, available at:

expression had been violated, noting that the principle of academic freedom is not restricted to research but extends to the freedom of academics to express their views and opinions in areas of their professional expertise.⁵⁶⁴

Cases relating to the Right to Freedom of Association and Assembly

With regard to the right to freedom of association and assembly, the key case against Turkey alleging a violation of Article 11 of the ECHR regards the right of trade unions to engage in collective bargaining, which was recognised as inherent to the right to form and join trade unions.⁵⁶⁵ In *Demir and Baykara v Turkey*, the ECtHR held that there had been an unjustified and disproportionate interference with the right to freedom of association, with the Court of Cassation having twice overturned a lower court's decision which had deemed that a union had the right to enter into collective agreements.

A number of recently decided cases before the ECtHR regarded demonstrations and protests. In *Gün and Others v Turkey*, the applicants had participated in an illegal demonstration to mark the anniversary of the arrest of Öcalan, the leader of the PKK (see above) and had then been fined and handed a prison sentence. The Court held that there had been a violation of Article 11 of the ECHR as a fair balance had not been struck between the right to demonstrate and public security.⁵⁶⁶

Some of the cases concerned the excessive or unnecessary use of force by the police towards demonstrators. In *Yasa and Others v Turkey*, the applicant suffered serious injuries as a result of being struck by a tear gas canister thrown by a police officer during a demonstration.⁵⁶⁷ The ECtHR held that there had been a violation of Article 3 of the ECHR (prohibition of torture and inhuman or degrading treatment) as the gas canister thrown directly at an individual amounted to an excessive use of force. In *Aydan v Turkey*, a woman was killed as the result of shots fired from a military vehicle to disperse a nearby demonstration.⁵⁶⁸ The ECtHR decided that there had been a violation of her right to life as the force used in this instance did not appear absolutely necessary.

Cases relating to the Right to Freedom of Thought, Conscience and Religion

A number of ECtHR cases illustrate the clash between the principle of secularism underpinning the Turkish Constitution and the right to freedom of religion (Article 9

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144129>.

⁵⁶⁴ Ibid, para 40.

⁵⁶⁵ *Demir and Baykara v Turkey* ECtHR (Grand Chamber), Application No 34503/97, 12 November 2008, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-89558>.

⁵⁶⁶ *Gün and Others v Turkey*, ECtHR (Chamber), Application No. 8029/07, 18 June 2013, para 75, available at: <http://hudoc.echr.coe.int/eng?i=001-122062>.

⁵⁶⁷ *Yasa and Others v Turkey*, Application No. 44827/08, 16 July 2013, of which a press release is available at:

www.hudoc.echr.coe.int/web/services/content/pdf/003-4437018-5336577.

⁵⁶⁸ *Aydan v Turkey*, ECtHR (Court Second Section), Application No. 16281/10, 12 June 2013, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117624>.

ECtHR). In *Leyla Sahin v Turkey*, the Court upheld Turkish university regulations which denied a medical student access to lectures, courses and two written exams because she was wearing a headscarf, noting that such a ban pursued the legitimate aims of protecting public order and the rights of others. It thus deemed that such ban did not violate freedom of religion, considering this application of the principle of secularism to be consistent with the values underpinning the Convention and thus could be considered necessary to protect the democratic system in Turkey.⁵⁶⁹ As already mentioned, the headscarf ban in schools and other state institutions has now been lifted in the country.

In the *Welfare Party* case, the Court also found that the dissolution of a party that favoured separate legal systems on the basis of religious affiliation and a sharia-based regime met the proportionality standard under Article 11(2) of the Convention.⁵⁷⁰

In a case relating to the requirement to indicate one's religion on identity cards, the Court held that there was a breach of Article 9.⁵⁷¹ In this case, the applicant had requested that 'Alevi' figured instead of 'Islam', as he deemed (like some Alevi scholars) that it is a separate religion.⁵⁷²

In *Güler and Uğur v Turkey*, the ECtHR also found that the applicants' conviction for propaganda promoting a terrorist organisation on account of their participation in a religious service organised on the premises of a political party in memory of three members of an illegal organisation (the PKK) who had been killed by security forces was a violation of Article 9. It deemed that as it was not possible to foresee that merely taking part in a religious service would fall within the scope of application of Section 7(2) of the Anti-Terrorism Act. Thus the conviction had not been "prescribed by law" in so far as the domestic provision on which it had been based had not met the requirements of clarity and foreseeability.⁵⁷³

⁵⁶⁹ *Leyla Sahin v Turkey*, ECtHR (Grand Chamber), Application No. 44774/98, 10 November 2005, para 115. The Grand Chamber cited the reasoning adopted by the Chamber, which had stated: "[T]he issues at stake include the protection of the rights and freedoms of others and the maintenance of public order in a country in which the majority of the population, while professing a strong attachment to the rights of women and a secular way of life, adhere to the Islamic faith. Imposing limitations on freedom in this sphere may, therefore, be regarded as meeting a pressing social need by seeking to achieve those two legitimate aims, especially since ... this religious symbol has taken on political significance in Turkey in recent years".

⁵⁷⁰ *Refah Partisi (The Welfare Party) And Others v Turkey*, ECtHR (Grand Chamber), Application Nos. 41340/98, 41342/98, 41343/98 and 41344/98, 13 February 2003, paras 132-135, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60936>.

⁵⁷¹ *Sinan Işık v Turkey*, Application No 21924/05, Chamber 2 February 2010, of which a press release is available at: <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-3013376-3325600>.

⁵⁷² Note that there is a pending case before the Grand Chamber regarding the refusal to provide public services in religious matters which was brought by members of the Alevi community, i.e. *Doğan and others v Turkey*. It will be heard on 3 June 2015.

⁵⁷³ *Güler and Uğur v Turkey*, Applications Nos. 31706/10 and 33088/10, Second Section, 2 December 2014, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-148274>.

Cases relating to the Protection of Property

Violations have also arisen due to the inability of religious institutions to hold property, an obstacle which appears to be soon removed as a result of the enactment of new legislation, as explained below. The issue is that these religious institutions are required to be established in the form of foundations, which means that the religious leadership organs of religious minorities (such as the Greek and Armenian Patriarchates and Chief-Rabbinate) do not possess legal personality *per se*. In *Fener Rum Patrikliği (Patriarcat Oecumenique) v Turkey*,⁵⁷⁴ the ECtHR concluded that the right of property in Article 1 of Protocol 1 had been breached due to the confiscation of an orphanage belonging to the Greek Patriarchate.

The property issues faced by non-Muslim community foundations in Turkey, of which there are about 166, was addressed during the 2015 UPR. The head of the Turkish delegation stated that regulations have now been enacted to address these issues, including Provisional Article 11 to the Law on Foundations No 5737.⁵⁷⁵ This has so far allowed the Foundations Council to register 333 immovable properties in the name of the relevant foundations, as well as awarding financial compensation for 21 immovable properties.

Cases relating to the Right to Free Elections

Turkey's electoral laws have also led to complaints of violations of Article 3 of Protocol 1 to the Convention, i.e. the right to hold free elections at reasonable intervals by secret ballot. In *Yumak and Sadak v Turkey*, the ECtHR upheld a Turkish law on the election of members of the GNAT, which states that "parties may not win seats unless they obtain, nationally, more than 10% of the votes validly cast". Although the applicants obtained over 45% of the vote in the province in which they stood for election, the party did not secure 10% of the vote nationally. As a result, the parliamentary seats allotted to the province were filled by candidates winning less than 15% of the vote. Having regard to the specific political context of the elections in question, and to the correctives and other safeguards which had limited its effects in practice, such as the role of the Constitutional Court, the Court was not satisfied that there had been a violation of the applicants' electoral rights.⁵⁷⁶

Implementation of ECtHR Decisions

Turkey has had a poor record of implementing ECtHR decisions. According to the Annual Report of the Committee of Ministers, the inter-governmental organisation responsible for supervising the implementation of judgments, 1,500 cases out of over 2,600 judgments rendered against Turkey are yet to be fully implemented as of the

⁵⁷⁴ *Fener Rum Patrikliği (Patriarcat Oecumenique) v. Turkey*, ECtHR (Chamber), Application No. 14340/05, 8 July 2008, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-87396>.

⁵⁷⁵ Draft Report of the Working Group on the Universal Periodic Review, Turkey, 29 January 2015, A/HRC/WG.6/21/L.12, para 54.

⁵⁷⁶ *Yumak and Sadak v Turkey*, ECtHR (Grand Chamber), Application No. 10226/03, 8 July 2008, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-87363>.

end of 2014 as they remain pending before the Committee of Ministers.⁵⁷⁷ About 8% of the cases under the enhanced supervision of the Committee of Ministers regard Turkey.⁵⁷⁸ Also, for Turkey, the average duration of the implementation in leading cases closed is over 6 years, which is more than the overall average in the Council of Europe, which stands at just over 4 years.⁵⁷⁹

In addition, Turkey has openly refused to implement certain judgments of the ECtHR for political reasons, such as the *Cyprus* and *Loizidou* cases,⁵⁸⁰ relating to Turkish activities in Northern Cyprus.⁵⁸¹ The Committee of Ministers and other Council of Europe institutions have issued various reprimands to Turkey regarding the non-implementation of these decisions.⁵⁸² In other cases, Turkey has argued that the scale of the reforms required to remedy the violations is prohibitive, for example in relation to torture.⁵⁸³ Another obstacle to remedying violations appears to be a widespread impression amongst Turkish authorities that the ECtHR has been manipulated by some countries, leading to biased anti-Turkey decisions.⁵⁸⁴

Nevertheless, some progress has been made in relation to structural reforms intended to improve the implementation of Convention judgements in Turkey. A series of constitutional amendments beginning in 1987 repealed some of the constitutional provisions conflicting with the ECHR, in particular by removing limitations on freedom

⁵⁷⁷ Supervision of the Execution of Judgments and Decisions of the ECtHR, 8th Annual Report of the Committee of Ministers 2014, Detailed statistics by State for 2013, p 39, available at:

http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2015_en.pdf.

⁵⁷⁸ Supervision of the Execution of Judgments and Decisions of the ECtHR, 8th Annual Report of the Committee of Ministers 2014, Detailed statistics by State for 2014, p 40, available at:

http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2014_en.pdf.

⁵⁷⁹ Ibid, p 49.

⁵⁸⁰ See *Cyprus v Turkey*, Application No. 25781/94, 10 May 2000, available at:

[http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-4754196-](http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-4754196-5782800&filename=003-4754196-5782800.pdf)

[5782800&filename=003-4754196-5782800.pdf](http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-4754196-5782800.pdf); *Loizidou v. Turkey*, Application No. 15318/89, 18 December 1996, available at: [http://hudoc.echr.coe.int/web/services/content/pdf/001-](http://hudoc.echr.coe.int/web/services/content/pdf/001-58007?TID=nqbcpcpdfy)

[58007?TID=nqbcpcpdfy](http://hudoc.echr.coe.int/web/services/content/pdf/001-58007?TID=nqbcpcpdfy).

⁵⁸¹ Doc. 8808, 12 July 2000, Execution of judgments of the European Court of Human Rights, paras 41-42, available at:

<http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=9013&Language=en>

See also the Draft Report of the Working Group on the Universal Periodic Review, Turkey, 29 January 2015, A/HRC/WG.6/21/L.12, paras 151.10-11.

⁵⁸² See for example, Committee of Ministers, Interim resolution 'CM/ResDH(2001)80', 26 June 2001; Committee of Ministers, Interim resolution 'CM/ResDH(2003)174', 12 November 2003; see also Parliamentary Assembly of the Council of Europe, Recommendation 1576 (2002) Implementation of decisions of the European Court of Human Rights by Turkey, Assembly debate on 23 September 2002 (25th Sitting). Note that Turkish authorities did pay the sums awarded in the *Loizidou* judgment in December 2003: Committee of Ministers, Interim resolution 'CM/ResDH(2003)190', 2 December 2003.

⁵⁸³ The practice of torture was still reported in Turkey in 2000, despite the legislative reforms of the 1980s and 1990s which attempted to stop it, see Execution of judgments of the European Court of Human Rights, Doc. 8808 (12 July 2000), paras 43-45, available at:

<http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=9013&Language=en>.

⁵⁸⁴ Ece Yilmaz, 'Domestic Implementation of the Judgments of the European Court of Human Rights at the National Level: Turkey', (2009) *Ankara Bar Review*, p 85, available at:

<http://www.ankarabarosus.org.tr/siteler/AnkaraBarReview/tekmakale/2009-1/8.pdf>.

of expression and association, banning the death penalty (Article 38(9)), and providing for the proportionality principle (Article 13).⁵⁸⁵

In connection with the European Union accession process, in May 2004, an amendment was also adopted to Article 90 of the Turkish Constitution which provides that international agreements that have been ratified become an internal part of the national legal system and can be directly enforced, and in the case of any conflict between international human rights treaties and domestic laws, the former would prevail. As already mentioned, since September 2012, individuals have access to the Constitutional Court to complain about alleged human rights violations.⁵⁸⁶ In addition, in 2013, Turkey introduced a law creating a Compensation Commission to afford redress to persons affected by excessive delay in domestic judicial proceedings. This new remedy was Turkey's response to the *Ümmühan Kaplan* judgment (see above). It enabled the Court to redirect over 2,500 pending applications back to the domestic level.⁵⁸⁷ Finally, as mentioned at the beginning of this section, Turkey introduced, in 2014, an 'Action Plan on Prevention of ECHR Violations' containing a number of goals and related activities, some of which are geared at improving the implementation of ECtHR decisions.

International Human Rights System

Turkey is a party to most of the major global human rights treaties, as described in detail below. As a result of its 2015 UPR before the Human Rights Council, Turkey agreed to consider ratifying the international instruments to which it is not yet a party.⁵⁸⁸ However, it did not support a recommendation to consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance or the UNESCO Convention against Discrimination in Education.⁵⁸⁹

Turkey has also supported non-binding instruments. For example, it was one of the states, along with the United Kingdom, the United States, and Pakistan, supporting Human Rights Council resolution 16/18 (March 2011) on *Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief*.

⁵⁸⁵ I O Kaboglu and S G Koutnatzis, "The Reception Process in Greece and Turkey" in Helen Keller and Alec Stone Sweet (eds), *A Europe of Rights: The Impact of the ECHR on National Legal Systems* (Oxford University Press, 2008), p 494.

⁵⁸⁶ ECtHR, *Annual Report 2013*, p 8, available at: http://www.echr.coe.int/Documents/Annual_report_2013_ENG.pdf.

⁵⁸⁷ ECtHR, *Annual Report 2013*, p 8, available at: http://www.echr.coe.int/Documents/Annual_report_2013_ENG.pdf.

⁵⁸⁸ Draft Report of the Working Group on the Universal Periodic Review, Turkey, 29 January 2015, A/HRC/WG.6/21/L.12, para 150.1.

⁵⁸⁹ *Ibid*, paras 151.4 and 151.6.

International Human Rights Treaties

Turkey is a party to most of the core international human rights treaties.⁵⁹⁰ However, it has made a number of reservations to these treaties, as indicated below. Some of these reservations have been questioned as, according to Article 19 of the Vienna Convention on the Law of Treaties (Vienna Convention), reservations should be compatible with the purpose and object of the relevant treaty.⁵⁹¹ Turkey made a number of reservations to provisions providing for referral of disputes to the International Court of Justice, stating that “the explicit consent of the Republic of Turkey is necessary in each individual case before any dispute to which the Republic of Turkey is party concerning the interpretation or application of this Convention may be referred to the International Court of Justice”. This was for example the case with regard to Article 29 CEDAW and Article 22 CERD.⁵⁹²

Turkey has also made a number of declarations when adhering to international treaties. For example, with regard to the ICCPR, the ICESCR, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention on the Rights of the Child (CRC), Turkey declared that it will only implement the provisions of those treaties with regard to the States with which it has diplomatic relations, and that those treaties are ratified exclusively with regard to the national territory where the Constitution and the legal and administrative order of the Republic of Turkey are applied. As a result, Turkey has come under criticism from various States, firstly on the basis that these ‘declarations’ effectively amount to reservations, and secondly that they create uncertainty as to the State parties in respect of which Turkey is undertaking its relevant obligations, and raise doubt as to the commitment of Turkey to the object and purpose of these instruments.⁵⁹³ In response, Turkey has explicitly stated that the declaration restricting implementation to the national territory where the Constitution and the legal and administrative order of the Republic of Turkey are applied, is directed towards the application of the ICCPR and the ICESCR in relation to acts of the Turkish Government in Cyprus.⁵⁹⁴

⁵⁹⁰ For the list of human rights treaties to which Turkey is a party and the full text of reservations, available at: [Turkey and UN Human Rights System.docx](#).

⁵⁹¹ See for example, Norwegian Helsinki Committee, The Right to Freedom of Religion or Belief in Turkey, Monitoring Report, January–June 2013, footnote 15, available at:

www.nhc.no/filestore/Publikasjoner/Rapporter/.../Report_3_13_eng_web.pdf.

See also objections made to Turkey’s reservation by other states, available at:

http://www.bayefsky.com/html/turkey_t2_ccpr.php.

⁵⁹² In its 2010 Universal Periodic Review, the Committee on the Elimination of Racial Discrimination expressed concern that Turkey’s reservation to article 22 of ICERD (and its declarations on the implementation and the territorial applicability thereof) may affect the full implementation of the Convention, see the Compilation of UN information, 2010 Periodic review, para 1. Turkey specifically rejected a recommendation to withdraw these reservations in the 2010 Universal Periodic Review, see the Report of the Working Group on the Universal Periodic Review, 17 June 2010, para 103.1.

⁵⁹³ See, for example, the objections by the Governments of Cyprus, Greece and Portugal to the reservations by Turkey.

⁵⁹⁴ The Turkish delegation’s submission to a meeting of the Council of Europe’s Committee Of Legal Advisers On Public International Law, Lausanne, 13-14 September 2004 (9 September 2004), available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168004bfed>. The Turkish delegation also defended the declaration limiting the application of the convention only to States with which it has diplomatic relations, stating that: “every sovereign State has the power and discretion as to the recognition of a new State and establishing diplomatic relations with other States, a State Party to an international legal instrument may deem it necessary and/or useful to

Among the instruments considered as core international human rights treaties, Turkey is not a party to the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED). In addition, it is also not a party to the following international treaties, which also cover certain human rights: the UNESCO Convention against Discrimination in Education, the 1961 Convention on the Reduction of Statelessness and the 1954 Convention relating to the Status of Stateless Persons (as of late 2014, two relevant draft bills were still pending ratification by Parliament), the 1989 ILO Conventions No. 169 (Indigenous and Tribal Peoples Convention), and the 2011 ILO Convention No. 189 (Domestic Workers Convention). At its 2015 UPR, Turkey rejected recommendations to become party to the ICCPED and to the Convention against Discrimination in Education.⁵⁹⁵

As a party to United Nations human rights treaties, Turkey is also required to submit regular reports on how those treaties are being implemented to their respective committee, i.e. the Human Rights Committee, the CEDAW Committee, the Committee Against Torture, the Committee on the Elimination of Racial Discrimination (CERD), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on Migrant Workers (CMW), the Committee on the Rights of Persons with Disabilities (CRPD) and the Committee on the Rights of the Child (ComRC).

Civil and Political Rights

Turkey is a party to the ICCPR.⁵⁹⁶ Article 2, paragraph 1, ICCPR obliges each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In addition to the principle of non-discrimination, which is applicable to everyone including minority groups, the ICCPR also contains a provision which protects minority groups in particular. Article 27 ICCPR provides for the rights of minority groups to enjoy their own culture, to profess and practise their own religion, and to use their own language. However, Turkey made a specific reservation, according to which it has the right to interpret and apply this provision in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendixes. The reservation made to Article 27 ICCPR also applied to the Optional Protocol to the ICCPR.

As the minority protection provided by the Treaty of Lausanne is applicable only to non-Muslim minorities, this could effectively remove or limit the guarantees that the

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

⁵⁹⁵ Draft Report of the Working Group on the Universal Periodic Review, Turkey, 29 January 2015, A/HRC/WG.6/21/L.12, paras 151.1-4, 151.6-7.

⁵⁹⁶ Signed on 15 Aug 2000 and ratified on 23 Sept 2003.

Convention offers Muslim minorities, such as the majority of Kurds, who are mostly Muslims.⁵⁹⁷ Further, while the Treaty of Lausanne grants minority status to all non-Muslims, in practice, Turkey has restricted the scope of the Treaty to Armenians, Jews and Rûms (the Turkish Greek Orthodox Christians), leaving a number of other non-Muslims communities outside the protection of the Treaty, including Assyrians, Bahais, Georgians, Maronite Christians, Protestants and Ezidis.⁵⁹⁸ There are examples where applications by Syriac communities to establish schools to teach Syriac have been rejected on the ground that they were not a minority group protected under the Lausanne Treaty, while Greek schools have been approved.⁵⁹⁹

Turkey has justified its reservation to Article 27 as compatible with the Vienna Convention by contending that “there is no unequivocally accepted definition of ‘minority’ in international law. Several declarations and reservations concerning the interpretation of ‘minority’ therefore have been made to relevant UN and Council of Europe treaties”.⁶⁰⁰ Although Turkey’s reservation to Article 27 ICCPR, which protects the rights of minorities, continued to be challenged,⁶⁰¹ it specifically rejected recommendations to withdraw this reservation at its 2010 UPR.⁶⁰² These recommendations included: implementing further reforms to ensure full recognition of the rights of the Kurdish and other minorities;⁶⁰³ reviewing the definition of national ‘minorities’ to bring it into line with international standards,⁶⁰⁴ or engaging “in open-ended consultations with the full range of ethnic and religious minority groups on measures to improve respect for all human rights of persons belonging to minorities.”⁶⁰⁵ Again, at its 2015 UPR, Turkey did not support recommendations regarding its reservations to Article 27, which called to withdraw its reservation in order to “ensure the protection of all components of the right to freedom of religions

⁵⁹⁷ Mary Lou O’Neil, ‘Linguistic Rights and the Rights of Kurds’, in Zehra F Kabasakal Arat (ed), *Human Rights in Turkey*, p 82. Turkey negotiated the Treaty of Lausanne, 1923, with the Allies from a position of strength. The Allies pressed for the inclusion of all minorities, for example Kurds, Circassians and Arabs, in the treaty terms, but Turkey refused any distinct status for non-Turkish Muslims.

⁵⁹⁸ See the Turkey Overview compiled by Minority Rights Group International, available at: <http://www.minorityrights.org/4387/turkey/turkey-overview.html>.

⁵⁹⁹ Norwegian Helsinki Committee, The Right to Freedom of Religion or Belief in Turkey, Monitoring Report, January–June 2013, available at: www.nhc.no/filestore/Publikasjoner/Rapporter/.../Report_3_13_eng_web.pdf.

⁶⁰⁰ The Turkish delegation’s submission to a meeting of the Council of Europe’s Committee Of Legal Advisers On Public International Law, Lausanne, 13-14 September 2004, dated 9 September 2004, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168004bfed>.

⁶⁰¹ See in particular submission from the European Centre for Law and Justice to the 2015 UPR, available at: <http://eclj.org/pdf/Turkey%202014.pdf>.

Turkey’s reservation states that it “reserves the right to interpret and apply the provisions of Article 27 of the International Covenant on Civil and Political Rights in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendixes”.

⁶⁰² Addendum to the Report of the Working Group on the Universal Periodic Review, 15 September 2010, para 10; see also Report of the Working Group on the Universal Periodic Review, 17 June 2010, para 103.2.

⁶⁰³ Report of the Working Group on the Universal Periodic Review, 17 June 2010, para 103.5.

⁶⁰⁴ Ibid, para 103.4.

⁶⁰⁵ Ibid, para 103.3.

or belief as protected under the ICCPR” and to “ensure the rights of religious minorities, to enhance access to education in the language of minorities”.⁶⁰⁶

With regard to discrimination, as already mentioned, at its 2015 UPR, Turkey has nevertheless stated its commitment to continue actively preventing discrimination of minorities through the enactment of a comprehensive anti-discrimination legislation, including a prohibition on discrimination on grounds of ethnicity, religion, sexual orientation and gender identity. With regard to racial discrimination, Turkey is a party to the ICERD but it has not made the necessary declaration under Article 14 of the Convention to allow individual complaints.⁶⁰⁷

At its 2015 UPR, Turkey has also agreed to consider to bring its Penal Code in line with Article 19 of the ICCPR in order to ensure freedom of expression and create an environment conducive to free journalism and media.⁶⁰⁸

Turkey is a party to the First Optional Protocol to the ICCPR,⁶⁰⁹ which allows individuals under the jurisdiction of state parties to the ICCPR to make complaints to the UN Human Rights Committee for alleged violations of their rights under the ICCPR. However, Turkey stated that it does not recognise the jurisdiction of the Human Rights Committee to hear complaints resulting from alleged violations of Article 26 ICCPR except insofar as they relate to rights expressly affirmed in the ICCPR. Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Turkey is also a party to the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.⁶¹⁰ It abolished the death penalty for peace time offences in 2002 and at all times in 2004.⁶¹¹

Economic, Social and Cultural Rights

Turkey is a party to the ICESCR but it has not yet signed the Optional Protocol to the Covenant on Economic, Social and Cultural Rights, which allows for individual complaints.⁶¹²

⁶⁰⁶ Draft Report of the Working Group on the Universal Periodic Review, Turkey, 29 January 2015, A/HRC/WG.6/21/L.12, paras 151.21-22.

⁶⁰⁷ Signed on 13 Oct 1972 and ratified on 16 Sep 2002. It made a reservation with regard to Article 22 which provides for the possibility of referring a dispute to the International Court of Justice (ICJ) at the request of one of the parties to the dispute. In accordance with its reservation, Turkey requires its explicit consent to the referral to the ICJ of a dispute it is a party to.

⁶⁰⁸ Draft Report of the Working Group on the Universal Periodic Review, Turkey, 29 January 2015, A/HRC/WG.6/21/L.12, para 150.39.

⁶⁰⁹ Signed on 3 Feb 2004 and ratified on 24 Nov 2006.

⁶¹⁰ Signed on 6 Apr 2004 and ratified on 2 Mar 2006.

⁶¹¹ Law 4771 of 9 August 2002 and Law 5218 of 14 July 2004, respectively.

⁶¹² Signed on 15 Aug 2000 and ratified on 23 Sep 2003.

Turkey has made a reservation to the ICESCR, retaining its right to interpret and apply the provisions contained in Article 13(3) and (4) ICESCR in accordance to the provisions under the Article 3, 14 and 42 of its Constitution, which prohibit the use of languages other than Turkish in state schooling. While Article 13 provides for the right to education in general, its paragraph 3 obliges State parties to respect the liberty of parents (or legal guardians)

to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

Its paragraph 4 states that individuals and bodies retain the liberty “to establish and direct educational institutions”, as long as they abide by minimum educational standards and are in line with the aim of education as set forth in Article 13 (1).⁶¹³

Turkey has stated that its reservation to the right of education follows the principle of nationalism underlying the Turkish Constitution, which provides that Turkey is a secular state and an indivisible entity. It also argued that the reservation is compatible with the object and purpose of the ICESCR, given that non-Muslim religious minorities have (and fully exercise) the right to religious education and to establish educational institutions.⁶¹⁴ In the 2010 UPR, Turkey specifically rejected recommendations to withdraw this reservation.⁶¹⁵ In its 2015 UPR, it did not support recommendations to allow “all religious or belief communities to train their religious instructors in accordance with their own dogma and traditions” and to grant “the Ecumenical Patriarchate an adequate legal personality.”⁶¹⁶

As mentioned below, a similar reservation was made in relation to Article 29 of the Convention of the Rights of the Child (CRC), which also protects the right to education.

Protection against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Turkey is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol (OPCAT).⁶¹⁷ In

⁶¹³ This means that “education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms [...] that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.”

⁶¹⁴ The Turkish delegation’s submission to a meeting of the Council of Europe’s Committee Of Legal Advisers On Public International Law, Lausanne, 13-14 September 2004, dated 9 September 2004, available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168004bfd> .

⁶¹⁵ Addendum to the Report of the Working Group on the Universal Periodic Review, 15 September 2010, para 10.

⁶¹⁶ Draft Report of the Working Group on the Universal Periodic Review, Turkey, 29 January 2015, A/HRC/WG.6/21/L.12, paras 151.19-20.

⁶¹⁷ It signed CAT on 25 Jan 1988 and ratified it on 2 August 1988, while it signed its Optional Protocol on 14 Sep 2005 and ratified it on 27 Sep 2011. With regard to CAT, Turkey made a reservation concerning Article 30 paragraph 1, which provides for the referral of a dispute to arbitration or to the

accordance with Articles 21 and 22 CAT, it declared that it recognizes the competence of the Committee Against Torture to receive and consider communications from other State parties and from (or on behalf of) individuals alleging that it is not fulfilling its obligations under CAT.

Turkey ratified the OPCAT in 2012, following its commitment to do so at its first UPR, which took place in 2010.⁶¹⁸ However, it has not yet been implemented as Turkey has not established a national preventive mechanism.⁶¹⁹

Rights of Women

Turkey is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol.⁶²⁰ In 1999, Turkey withdrew a reservation against the articles of the Convention dealing with family relations not being compatible with the provisions of the Turkish Civil Code.⁶²¹

Turkey is also a party to the UN Convention against Transnational Organised Crime, its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and its Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.⁶²²

Rights of Children

Turkey is a party to the CRC,⁶²³ to which it made a number of reservations, reserving its right to interpret and apply Articles 17, 29 and 30 in accordance with its Constitution (and the 1923 Treaty of Lausanne). Article 17 CRC guarantees children's access to mass media, which are encouraged, for example, to regard the linguistic needs of children belonging to minority groups. Article 29 CRC indicates the aims of education, stating, for example, that it must develop respect for children's cultural identity, language and values. It also affirms the liberty of individuals and bodies to establish and direct educational institutions, as long as the education provided abides by certain requirements and standards. Article 30, which mirrors Article 27 ICCPR, guarantees the right of children belonging to an ethnic, religious or linguistic minority "to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language", along with other members of that group. In the 2010

ICJ. Note that Turkey ratified the Optional Protocol following recommendations by States during the 2010 Universal Periodic Review, see the Report of the Working Group on the Universal Periodic Review, 17 June 2010, paras 100.1-100.6.

⁶¹⁸ Report of the Working Group on the Universal Periodic Review, 17 June 2010, para 100.1-100.6.

⁶¹⁹ Submission from Amnesty International to the 2015 UPR, available at:

http://amnesty.org/en/library/asset/EUR44/015/2014/en/ec49ee04-e6d0-4a81-a97d-5c30bf9dd4a1/_Toc396313269.

⁶²⁰ It acceded to it on 20 Dec 1985. It made a reservation with respect to Article 29 paragraph 1, which provides for the referral of a dispute to arbitration or to the ICJ. With regard to the Optional Protocol, Turkey signed it on 8 Sep 2000 and ratified it on 29 Oct 2002.

⁶²¹ The reservations and declarations of Turkey to CEDAW are available at:

http://www.bayefsky.com/html/turkey_t2_cedaw.php.

⁶²² All three treaties signed on 13 Dec 2000 and ratified on 25 March 2003.

⁶²³ Signed on 14 Sep 1990 and ratified on 4 Apr 1995.

Universal Periodic Review, Turkey specifically rejected recommendations to withdraw these reservations.⁶²⁴

Turkey is a party to the Optional Protocol to the CRC on the involvement of children in armed conflict (CRC OP1).⁶²⁵ While military service is compulsory in Turkey, it is only for those having reached the legal age of maturity. However, students as young as 15 can join military high schools and preparatory non-commissioned officer schools on a voluntary basis. This is in line with the exemption to CRC OP1 provided for in its Article 3(5). However, while they can quit such schools at any time, students must pay a fee to do so. In addition, with regard to this Article, Turkey made the same reservation as for Article 29 CRC on the right to education.

Turkey is also a party to the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (CRC OP2).⁶²⁶

Turkey also signed the 2011 Third Optional Protocol to the CRC on a Communications Procedure (CRC OP3), which entered into force in April 2014.⁶²⁷ However, it has not yet ratified it.

[Rights of Persons with Disabilities](#)

Turkey is a party to the CRPD and it has signed (but not ratified) its Optional Protocol on a communications procedure.⁶²⁸

[Rights of Refugees and Migrant Workers](#)

Turkey is a party to the Convention relating to the Status of Refugees and its Protocol.⁶²⁹ However, it applies the Convention only to persons who have become refugees as a result of events occurring in Europe. In addition, Turkey has stated that no provision of this Convention may be interpreted as granting to refugees greater rights than those accorded to Turkish citizens in Turkey.

Turkey is a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.⁶³⁰ Turkey has stated that it will recognize the competence of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families “at a later time.” With regard to Article 40, Turkey has declared that Turkish law on trade unions allows only Turkish citizens to form trade unions.

⁶²⁴ Addendum to the Report of the Working Group on the Universal Periodic Review, 15 September 2010, para 19.

⁶²⁵ Signed on 8 Sep 2000 and ratified on 4 May 2004.

⁶²⁶ Signed on 8 Sep 2000 and ratified on 19 Aug 2002.

⁶²⁷ Signed on 24 Sep 2012.

⁶²⁸ It signed the Convention on 30 Mar 2007 and ratified it on 28 Sep 2009, while it signed its Optional Protocol on 28 Sep 2009.

⁶²⁹ Turkey signed the Convention on 24 Aug 1951 and ratified it on 30 Mar 1962. It acceded to its Protocol on 31 Jul 1968.

⁶³⁰ Signed on 13 Jan 1999 and ratified on 27 Sep 2004.

Turkey has not signed the Convention on the Reduction of Statelessness or the Convention relating to the Status of Stateless Persons.

Other Relevant Human Rights

Turkey has signed the Slavery Convention and its amending Protocol.⁶³¹ It is a party to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.⁶³² It has not signed the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

Turkey is a party to the International Convention against the Taking of Hostages,⁶³³ the International Convention for the Suppression of Terrorist Bombing,⁶³⁴ the International Convention for the Suppression of the Financing of Terrorism,⁶³⁵ and the Convention for the Suppression of Unlawful Seizure of Aircraft.⁶³⁶

Turkey is a party to the four Geneva Convention but it has not signed either Additional Protocols, i.e. the First Additional Protocol Relating to the Protection of Victims of International Armed Conflicts and the Second Additional Protocol Relating to the Protection of Victims of Non-International Armed Conflicts.⁶³⁷ It did not support a recommendation made by Cyprus during its 2015 UPR to ratify those treaties.⁶³⁸

Turkey is not a party to the Rome Statute of the International Criminal Court. However, it has agreed to consider becoming a party, following a recommendation to do so at its 2015 UPR.⁶³⁹

Individuals Complaints to the UN Treaty Bodies

Out of the ten Treaty Bodies monitoring the implementation of the core international human rights treaties, eight can receive petitions from individuals. These include the Human Rights Committee (for the civil and political rights contained in the ICCPR), the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, the Committee on the Elimination of Discrimination against Women,

⁶³¹ Both signed on 14 Jan 1955.

⁶³² Signed on 28 Jun 1957 and ratified on 17 Jul 1964.

⁶³³ It acceded to it on 15 Aug 1989.

⁶³⁴ Signed on 20 May 1999 and ratified on 30 May 2002.

⁶³⁵ Signed on 20 May 1999 and ratified on 30 May 2002.

⁶³⁶ Signed on 16 Dec 1970 and ratified on 17 Apr 1973.

⁶³⁷ It signed the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, the Geneva Convention relative to the Treatment of Prisoners of War, and the Geneva Convention relative to the Protection of Civilian Persons in Time of War on 12 Aug 1949 and ratified all four Conventions on 10 Feb 1954.

⁶³⁸ Draft Report of the Working Group on the Universal Periodic Review, Turkey, 29 January 2015, A/HRC/WG.6/21/L.12, para 151.9.

⁶³⁹ Draft Report of the Working Group on the Universal Periodic Review, Turkey, 29 January 2015, A/HRC/WG.6/21/L.12, para 150.2.

the Committee on the Rights of Persons with Disabilities, and the Committee on Enforced Disappearances. The exhaustion of available domestic remedies is a requirement to access the UN Treaty Bodies complaint mechanisms. In addition, in order for an individual to be allowed to make a complaint against a state, the state in question must not only be a party to the relevant treaty but must also have allowed individual complaints.

However, Turkey is neither a party to the International Convention for the Protection of All Persons from Enforced Disappearance nor a party to the Optional Protocol to the ICESCR, which establishes complaint and inquiry mechanisms for the ICESCR. Although Turkey is a party to the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, it has so far only signed (and not ratified) their Optional Protocols providing for communications procedures. With regard to the Convention on the Elimination of Racial Discrimination, Turkey has not made the necessary declaration under Article 14 of the Convention to allow individual complaints.

Therefore, at the UN Treaty Bodies level, individual complaints about alleged human rights violations by Turkey are only possible before the:

- Human Rights Committee,⁶⁴⁰
- Committee against Torture,⁶⁴¹ and
- Committee on the Elimination of Discrimination against Women.⁶⁴²

As already mentioned, Turkey has also made a number of reservations to some of the above treaties, limiting the individual complaint procedures. For example, Turkey made a reservation with regard to the First Optional Protocol to the ICCPR, which provides for the individual complaint mechanism. According to this reservation, Turkey does not recognise the jurisdiction of the Human Rights Committee to hear complaints resulting from Article 26 ICCPR, covering discrimination and equality before the law, except insofar as they relate to rights expressly affirmed in the Covenant.

There are a number of individual complaint mechanisms to which Turkey is not subject, even though Turkey is a party to the primary instrument.⁶⁴³

⁶⁴⁰ As Turkey has ratified the First Optional Protocol to the International Covenant on Civil and Political Rights on the individual complaints procedure.

⁶⁴¹ Turkey has made a declaration under Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recognising the competence of the Committee against Torture to receive and consider individual complaint communications.

⁶⁴² Turkey has ratified the Optional Protocol to the Convention on the Elimination of Discrimination against Women on the individual complaints procedure.

⁶⁴³ In relation to the Committee on the Elimination of Racial Discrimination (CERD), Turkey has not made the necessary declaration under article 14 of the Convention; In relation to the Committee on the Rights of Persons with Disabilities (CRPD), Turkey has signed but not ratified the Optional Protocol to the Convention, In relation to the Committee on Economic, Social and Cultural Rights (CESCR), Turkey has not signed the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. In relation to the Committee on Migrant Workers (CMW), Turkey has expressly declared that it "will recognize the competence of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families at a later time." In relation to the Committee on the Rights of the Child, Turkey has signed but not ratified the Optional Protocol (on a communications procedure).

Turkey has also accepted the inquiry procedure under article 20 of the Convention against Torture, pursuant to which the CAT Committee is empowered to carry out a confidential inquiry if it receives reliable information which appears to contain well-founded indications that torture is being systematically practised in a State party. Turkey is also party to the inquiry procedure under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, which enables the Committee to initiate inquiries into situations of grave or systematic violations of women's rights.

Only in very few cases has Turkey been a direct State party to an individual complaint before the UN human rights Treaty Bodies. According to the statistical records of these bodies, there has only been three communications before the Human Rights Committee in which Turkey has been a State respondent, from a total of 2371 registered communications with respect to 89 States. Violations were found in two of these cases, while the third is still pending.⁶⁴⁴ Of the two communications before the CEDAW Committee in which Turkey was a State party (from a total of 67 registered communications with respect to 104 States received by the Committee), one was found to be inadmissible and a violation was found in the other.⁶⁴⁵

There has only been one communication before the CAT Committee in which Turkey has been a State respondent (of a total of 618 registered communications with respect to 66 States received by the Committee), and this communication was found to be inadmissible.⁶⁴⁶ In addition, there are 11 other communications in which the complainant is a Turkish national stating that deportation to Turkey would constitute a violation of another State party's obligation not to expel or return a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture under Article 3 of the Convention ('non-refoulement cases'). Of these 11 communications, the Committee found a breach of Article 3 in three cases.⁶⁴⁷

The CAT Committee conducted one confidential inquiry with respect to Turkey from April 1990 to November 1992, in response to a communication to it by Amnesty

⁶⁴⁴ Human Rights Committee, Statistical survey of individual complaints dealt with by the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights, March 2014, available at:

<http://www.ohchr.org/Documents/HRBodies/CCPR/StatisticalSurvey.xls>.

[Note that the Human Rights Committee's statistical spreadsheet cited in this footnote states that there are two communications where Turkey is the State party respondent and the Committee has found a violation. But the UN jurisprudence database only discloses one communication in which Turkey is the State party. There appears to be no references to any other communication elsewhere].

⁶⁴⁵ CEDAW, Status Of Communications Dealt With By CEDAW Optional Protocol, undated, available at: <http://www.ohchr.org/Documents/HRBodies/CEDAW/StatisticalSurvey.xls>.

⁶⁴⁶ CAT, Status of Communications dealt with by CAT under Article 22 procedure, 14 August 2014, available at: <http://www.ohchr.org/Documents/HRBodies/CAT/StatisticalSurvey.xls>.

⁶⁴⁷ UN Committee Against Torture, Decision of the Committee against Torture under article 22 of the CAT (forty-fifth session) concerning Communication No. 373/2009, adopted 19 November 2010, available at: <http://juris.ohchr.org/Search/Details/61>; UN Committee Against Torture, Decision of the Committee against Torture under article 22 of the CAT (forty-fifth session) concerning Communication No. 349/2008, adopted 11 November 2010, available at: <http://juris.ohchr.org/Search/Details/64>; UN Committee Against Torture, Decision of the Committee against Torture under article 22 of the CAT (Thirty-eighth session) Concerning Communication No. 281/2005, adopted 1 May 2007, available at: <http://juris.ohchr.org/Search/Details/99>.

International.⁶⁴⁸ No inquiries have been conducted by the CEDAW Committee with respect to Turkey.

In relation to meeting its reporting requirements, Turkey has submitted four periodic reports to the Committee against Torture over four reporting cycles, five periodic reports to the Committee on the Elimination of Discrimination against Women over seven reporting cycles, two reports to Committee on the Elimination of Racial Discrimination over six reporting cycles and two reports to the Committee on the Rights of the Child over five reporting cycles. It has only submitted an initial periodic report to the Human Rights Committee in 2012, to the Committee on Economic, Social and Cultural Rights in 2008, to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families in 2014, and to the Committee on the Rights of Persons with Disabilities in 2011, being relatively new signatories to these Conventions.⁶⁴⁹ Turkey's reports to the Committee on Migrant Workers and the Committee on the Rights of Persons with Disabilities have not yet been considered by those committees.

Treaty Bodies Case Law

Human Rights Committee

In *Atasoy and Sarkut v Turkey*,⁶⁵⁰ the only communication in which it has adopted views and is published on the UN jurisprudence database, the Human Rights Committee decided that Turkey's actions in response to Atasoy and Sarkut's refusal to be drafted for compulsory military service on grounds of conscientious objection was incompatible with Article 18 of the ICCPR, which provides for the right to freedom of thought, conscience and religion.

The complainants were both Jehovah's Witnesses and conscientious objectors to military service on the basis of their religious faith. One complainant was served with "Evasion of Enlistment Status Certificates" on each occasion, for failure to attend military dispatch procedures, and was called before the Penal Court. In response to the other complainant's failure to participate, the Military Recruitment Office advised his employer to terminate his employment.

The Committee recalled its General Comment No 22 (1993), affirming that Article 18 cannot be derogated from, even in times of public emergency, as stated in Article 4(2)

⁶⁴⁸ UN Committee Against Torture, Activities of the Committee Against Torture pursuant to Article 20 of the CAT, Summary account of the results of the proceedings concerning the inquiry on Turkey, 15 November 1993, A/48/44/Add.1, para 38, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f48%2f44%2fAdd.1&Lang=en.

⁶⁴⁹ Turkey's reporting status on each of these Conventions is available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx.

⁶⁵⁰ UN Human Rights Committee, 'Views under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (104th session) concerning Communications Nos. 1853/2008 and 1854/2008', adopted 29 March 2012, available at: <http://www.refworld.org/pdfid/4ff5b14c2.pdf>.

of the ICCPR. The Committee clarified its earlier position and considered that, although the right to conscientious objection is not explicitly noted in Article 18, it is a right that derives from this provision. This is justified on the basis that “being involved in the use of lethal force may seriously conflict with the freedom of conscience”. Therefore “the right of conscientious objection to military service is inherent to the right to freedom of thought, conscience and religion”. The Committee stated that State parties cannot coerce actions that would be in breach of this right. It can, however, compel the objector to undertake a civilian alternative which is not of a punitive nature and is “compatible with respect for human rights”.

Thus prosecuting Atasoy and Sarkut for failing to participate in compulsory military service breached their right to religious freedom under Article 18 of the ICCPR. Under Article 2(3)(a) of the ICCPR, the Committee notified Turkey of its obligation to provide the applicants with an effective remedy, including expunging their criminal records and providing them with adequate compensation.

Committee on the Elimination of Discrimination against Women

As noted above, the Committee on the Elimination of Discrimination against Women has only considered two cases with respect to gender discrimination in Turkey. In the case of *R.K.B.*,⁶⁵¹ it considered a communication alleging dismissal of the complainant due to gender-based discrimination at work. The complainant’s employer accused her of having an affair with a male colleague and dismissed her from the position (but did not dismiss the male colleague), and threatened to “spread rumours about her relationships with other men” to pressure her to sign a document, attesting that she had been paid all her benefits upon termination. The complainant had unsuccessfully sued for unlawful termination in Turkish Courts, which did not accept the argument that dismissing her but not her male colleague was discriminatory.

The Committee concluded that the Turkish courts based their decisions on gender stereotypes, tolerating allegations of extramarital relationships by male employees but not by female employees. The Committee decided that there had been a violation of Articles 5(a), 11(1)(a) and 11(1)(d) of CEDAW. The Committee also responded to the State’s argument that laws on women’s rights had been adopted since the 1990s, hence meeting the due diligence standard, by explaining that the State has the obligation to actually improve women’s position in society and to eliminate wrongful stereotypes. The Committee decided that adequate compensation should be paid to the complainant; that the State should take measures to implement laws on gender equality in the work environment; and that the State should provide training to judges, lawyers and law enforcement personnel on women’s rights and gender-based stereotypes.

In the only other communication involving Turkey considered by the Committee, *Rahime Kayhan*, it found that the communication was inadmissible under Article 4(1)

⁶⁵¹ UN Committee for the Elimination of Discrimination against Women, ‘Views adopted by the Committee at its fifty-first session concerning Communication No. 28/2010’, adopted 24 February 2012, available at: http://www.ohchr.org/Documents/HRBodies/CEDAW/Jurisprudence/CEDAW-C-51-D-28-2010_en.pdf.

of the Optional Protocol for failure to exhaust domestic remedies.⁶⁵² In that case, Ms Kayhan, a Turkish national, was terminated from her position as a public school teacher after she refused to stop wearing a headscarf. As a result of her termination, Ms Kayhan lost her status as a civil servant and related benefits. Whilst Ms Kayhan had pursued a variety of domestic remedies, she had not raised the argument of gender discrimination in those proceedings. The Committee concluded that her failure to raise sex discrimination as an issue in domestic proceedings meant that she had not satisfied the exhaustion requirement.

Committee against Torture

As noted above, there has only been one communication before the Committee against Torture, over 20 years ago, in which Turkey has been a State respondent. That communication originated in 1990 from a Turkish citizen of Kurdish ethnic origin residing in France, where he was applying for political asylum, claiming to be a victim of torture allegedly perpetrated by Turkish police in May 1989. The Committee found the communication to be inadmissible under Article 22(5)(b), for failure to exhaust domestic remedies, and rejected the author's argument that the exception under Article 22 applied because the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief. The Committee found it could not conclude on the basis of the information before it, that such remedies would necessarily be ineffective.⁶⁵³

More recently, however, the non-refoulement cases appear to indicate the continued presence of torture in Turkey despite the government's stated policy of eradicating torture.⁶⁵⁴ In 2011, in the case of *Aytulun and Guclu*, the Committee observed that

[...] according to various sources there are serious allegations that the security and police forces continue to use torture, in particular during questioning and in detention centers despite the government's policy of zero tolerance of torture. The Committee also notes that according to the State Party's own submission in 2007 [...] the number of reports of ill-treatment has increased. More than one of the reports submitted by the State party describe that despite the legislative measures taken by the Turkish Government perpetrators often enjoy impunity, and question the effectiveness of the reform. Many of the recent reports quoted by the State party also indicate that there are an increasing number of reports of ill-treatment

⁶⁵² UN Committee for the Elimination of Discrimination against Women, 'Decision of the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (thirty-fourth session), 16 January-3 February 2006, concerning Communication No. --8/2005', adopted 27 January 2006, available at: http://www.ohchr.org/Documents/HRBodies/CEDAW/Jurisprudence/Case8_2005.pdf.

⁶⁵³ UN Committee Against Torture, *R. E. G. v Turkey*, Communication No. 4/1990, 'Decision on Admissibility', adopted on 29 April 1991, available at: http://www.bayefsky.com/html/100_turkeycat04.php.

⁶⁵⁴ UN Committee Against Torture, Third periodic report of Turkey due in 1997; the present report is submitted in response to the list of issues (CAT/C/TUR/Q/3) transmitted to the State party pursuant to the optional reporting procedure, 30 June 2009, para 4, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/470/03/PDF/G0947003.pdf?OpenElement>.

and torture committed by members of the security and police forces outside official premises and thus more difficult to detect and document.⁶⁵⁵

In that case, the Committee found that Sweden's decision to return the complainant and his child to Turkey would constitute a breach of Article 3 of the CAT, given that the complainant was a member of the PKK for 14 years, and that there were strong indications that he was wanted in Turkey to be tried under anti-terror laws.⁶⁵⁶

However, there are also a number of cases in which the Committee did not find a breach of Article 3, considering that while there was evidence indicating that complainants had been subject to torture in Turkey in the past, there was no evidence that they would still face such a risk on return to Turkey.⁶⁵⁷

As noted previously, the Committee conducted one confidential inquiry with respect to Turkey from April 1990 to November 1992. The CAT Committee received numerous allegations of torture in Turkey during the inquiry period and concluded that "the copious testimony gathered is so consistent in its description of torture techniques and the places and circumstances in which torture is perpetrated that the existence of systematic torture in Turkey cannot be denied".⁶⁵⁸

Summary of Latest Treaty Bodies Reports

The below section summarises the latest reports of the committees to which Turkey has been reporting, i.e. the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, the Committee Against Torture Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, and the Committee on the Rights of the Child.

Turkey has not submitted any reports to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, although its initial report was due to the Committee on 1 January 2006, having ratified the Convention on 27 September 2004.⁶⁵⁹ It has not yet submitted any reports to the Committee on the Rights of Persons with Disabilities either, although its initial report was due to the

⁶⁵⁵ UN Committee Against Torture, Decision of the Committee against Torture under Article 22 of the CAT (forty-fifth session) concerning Communication No. 373/2009, adopted 19 November 2010, para 7.6, available at: <http://juris.ohchr.org/Search/Details/61>.

⁶⁵⁶ UN Committee Against Torture, Decision of the Committee against Torture under Article 22 of the CAT (forty-fifth session) concerning Communication No. 373/2009, adopted 19 November 2010, para 7.7, available at: <http://juris.ohchr.org/Search/Details/61>.

⁶⁵⁷ UN Committee Against Torture, 'Decision adopted by the Committee at its fifty-second session, 28 April–23 May 2014 concerning Communication No. 466/2011', adopted 14 May 2014, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/52/D/466/2011&Lang=en.

⁶⁵⁸ UN Committee Against Torture, Activities of the Committee Against Torture pursuant to Article 20 of the Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment, Summary account of the results of the proceedings concerning the inquiry on Turkey, 15 November 1993, A/48/44/Add.1, para 38, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f48%2f44%2fAdd.1&Lang=en.

⁶⁵⁹ States must report initially one year after acceding to the Convention and then every five years, available at: <http://www.ohchr.org/EN/HRBodies/CMW/Pages/CMWIntro.aspx>.

Committee on 28 October 2011, having ratified the Convention on 28 September 2009.⁶⁶⁰

Human Rights Committee

The Human Rights Committee considered the initial and only periodic report of Turkey to date on 17 and 18 October 2012.⁶⁶¹ Its principal matters of concern included:

- Turkey's reservations and declarations to the ICCPR;
- the limited awareness of the provisions of the ICCPR among the judiciary, the legal profession, and the general public, as a result of which there are few cases in which the provisions of the ICCPR have been invoked or applied by national courts;
- the lack of independence of the national human rights institution, as its members are appointed by the Prime Minister's office;
- the lack of comprehensive legislation on discrimination;
- discrimination and restrictions suffered by members of minorities, such as the Kurds and the Roma population, and discrimination and acts of violence against people on the basis of their gender identity, as well as reports of hate crimes against non-Muslim religious communities and other minorities;
- the lack of comprehensive approach to cases of enforced disappearance and exhumations;
- the prevalence of high rates of honour killings;
- that institutions in charge of implementing laws against domestic violence have not been adequately resourced;
- the number of allegations of torture and other inhuman and degrading treatment by law enforcement officers is still high, and the number of prosecution of such cases remains low;
- the number of cases of trafficking in persons and the fact that only a few cases have resulted in investigations, prosecution and sentences;
- the incompatibility of several provisions of the 1991 Anti-Terrorism Law with the ICCPR;
- the widespread use of lengthy pre-trial detention of up to ten years for terrorism related offences and five years for other offences;
- the overcrowding in prisons and the conditions of detention;
- the failure to recognise conscientious objection to military service; and the
- conviction of human rights defenders and media professionals for the exercise of their profession.

Turkey was requested by the Committee to provide specific up-to-date information on these matters in its next report, due on 31 October 2016.

⁶⁶⁰ States must report initially within two years of accepting the Convention and thereafter every four years, available at: www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx.

⁶⁶¹ UN Human Rights Committee, Concluding observations on the initial report of Turkey adopted by the Committee at its 106th session (15 October – 2 November 2012), 13 November 2012, CCPR/C/TUR/CO/1, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fTUR%2fCO%2f1&Lang=en.

Committee on the Elimination of Discrimination against Women

The CEDAW Committee considered the sixth periodic report of Turkey at its 937th and 938th meetings, on 21 July 2010.⁶⁶² Its principal matters of concern included:

- the lack of a specific prohibition of discrimination against women in all areas of life in its national legislation in line with articles 1 and 2 of the Convention and the absence of comprehensive anti-discrimination legislation in Turkey;
- the lack of general awareness of the Convention and therefore its failure to be regularly used as the central legal basis for measures aimed at the elimination of discrimination against women;
- the failure to abolish or amend discriminatory provisions in the Penal and Civil Code;
- the absence of information and statistical data on the impact of the ban on the use of headscarves in the areas of education, employment, health and political and public life;
- the limited application of the temporary special measures provision in article 4, paragraph 1, of the Convention;
- the persistence of patriarchal attitudes and deep-rooted stereotypes concerning women's roles and responsibilities;
- the continuing prevalence of violence against women, including domestic violence, which affects 39 per cent of women in Turkey;
- the persistence of honour killings;
- the continuing prevalence of cross-border trafficking and the insufficient resources for the implementation of the National Action Plan to Combat Trafficking;
- the serious underrepresentation of women in political and public life;
- the continuing disparity between boys and girls in all levels of education;
- the low rate of women's employment, which stood at 22.3 per cent in 2009 and the discrimination faced by women in employment, the persistence of a wide gender pay gap and of occupational segregation;
- the difficulties faced by women, particularly in rural areas, in accessing health services; and the
- vulnerability of disadvantaged groups of women, including Kurdish women and women of ethnic and minority communities, migrant women and women asylum-seekers, elderly women, as well as women with disabilities, to poverty and violence and are at risk of multiple forms of discrimination.

The Committee requested the State party to respond to these concerns in its next periodic report under Article 18 of the Convention, which was due in July 2014. Turkey submitted its seventh periodic report on 26 November 2014.⁶⁶³

⁶⁶² UN Committee for the Elimination of Discrimination against Women, Concluding comments: Turkey, adopted at its Thirty-second session 10-29 January 2005, 15 February 2005, CEDAW/C/TUR/CO/6, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fTUR%2fCO%2f6&Lang=en.

⁶⁶³ UN Committee for the Elimination of Discrimination against Women, Turkey's Seventh periodic report submitted under Article 18 of the Convention, 26 November 2014, CEDAW/C/TUR/7, available at:

Committee against Torture

The Committee against Torture considered the third periodic report of Turkey at its 959th and 960th meetings, held on 3 and 4 November 2010.⁶⁶⁴ Its principal matters of concern included:

- numerous, ongoing and consistent allegations concerning the use of torture, particularly in unofficial places of detention, including in police vehicles, on the street and outside police stations, notwithstanding information provided from the State party that combating torture and ill-treatment has been a “priority item”;
- continuing failure of authorities to conduct effective, prompt and independent investigations into allegations of torture and ill-treatment;
- number of outstanding cases of disappearances identified by the Working Group on Enforced and Involuntary Disappearances (63 cases as of 2009), and the lack of information on progress in investigating disappearances cases;
- failure to undertake impartial, thorough, transparent and prompt investigations and fair trials in relation to the alleged roles of security forces in incidents of extra-judicial killings in Kiziltepe and Semdinli in 2004 and 2005 respectively;
- restrictions on fundamental legal safeguards against torture and ill-treatment as a result of the introduction of new laws and amendments to the 2005 Code of Criminal Procedure, such as the denial of a suspect’s right to contact a lawyer until 24 hours after arrest under the Law on Combating Terrorism (Law No. 3713);
- absence of comprehensive or disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security and prison personnel;
- reports indicating an increase in the excessive use of force and ill-treatment of demonstrators by police outside official detention places;
- lack of comprehensive information and statistical data on reparation and compensation, including rehabilitation, for victims of torture and other cruel, inhuman or degrading treatment or punishment;
- reported cases of deportations and refoulement despite the risk of torture;
- reported overcrowding in places of detention;
- numerous and ongoing reports of rape, sexual violence and other forms of gender-based acts of torture and ill-treatment committed by security agencies, detention officials and law enforcement officers;
- reported extent of physical and sexual violence against women and honour killings;
- reports that children continue to be detained in unrecorded adult pre-charge facilities following arrest during demonstration; and the

http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/TUR/CEDAW_C_TUR_7_6021_E.pdf.

⁶⁶⁴ UN Committee against Torture, Forty-fifth session 1–19 November 2010, Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, 20 January 2011 CAT/C/TUR/CO/3, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTUR%2fCO%2f3&Lang=en.

- lack of an explicit prohibition of corporal punishment in the home and in alternative settings in the domestic legislation;
- that the State party maintains a statute of limitation for the crime of torture.

The Committee against Torture asked Turkey to report again in a year regarding steps taken to address the problems identified specifically in relation to the continuing use of torture in unofficial places of detention, impunity for such allegations and the failure to investigate disappearances cases. Turkey did so in March 2012, noting its ratification of the Optional Protocol to the Convention against Torture in September 2011 and giving assurances that allegations of torture and disappearance cases are being investigated.⁶⁶⁵ Turkey has since submitted its fourth periodic report on 22 October 2014.⁶⁶⁶

Committee on the Elimination of Racial Discrimination

The Committee considered the combined initial to third periodic reports of Turkey submitted as one document at its 1914th and 1915th meetings, held on 23 and 24 February 2009.⁶⁶⁷ Its principal matters of concern included:

- the absence of a definition of racial discrimination in domestic law;
- the failure of article 10 of the Constitution providing for equality before the law of all individuals without discrimination to consistently include 'national or ethnic origin' among the prohibited grounds of discrimination;
- the fact that only Turkish citizens belonging to non-Muslim minorities under the Treaty of Lausanne of 1923 fall within the scope of the term "minority", and that the Treaty is applied restrictively only to the Armenian, Greek and Jewish communities;
- allegations of persisting hostile attitudes on the part of the general public, including attacks and threats, towards Roma, Kurds and persons belonging to non-Muslim minorities;
- legislation prohibiting incitement of racial and religious hatred excludes from its scope of application, inter alia, acts inciting hostility that do not amount to danger to the public order;
- that the amendment made to the Turkish Penal Code, article 301 which now criminalizes public denigration of 'the Turkish nation' instead of

⁶⁶⁵ UN Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention Concluding observations of the Committee against Torture, Addendum: Information received from Turkey on the implementation of the concluding observations of the Committee, 5 March 2012, CAT/C/TUR/CO/3/Add.1, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTUR%2fCO%2f3%2fAdd.1&Lang=en.

⁶⁶⁶ UN Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure, Turkey's Fourth periodic report, 22 October 2014, CAT/C/TUR/4, available at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/010/25/PDF/G1501025.pdf?OpenElement>.

⁶⁶⁷ UN Committee on the Elimination of Racial Discrimination Consideration of reports submitted by States.

parties under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, 24 March 2009, CERD/C/TUR/CO/3, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2fCO%2f3&Lang=en.

‘Turkishness’ may still lead to action being taken against persons advocating their rights under the Convention;

- the absence of comprehensive anti-discrimination legislation; and
- the particularly serious situation of the Greek and Roma minorities.

Turkey has since submitted its combined fourth to sixth periodic reports on 10 February 2014,⁶⁶⁸ which are expected to be considered in November - December 2015 at the eighty-eighth session of the CERD.⁶⁶⁹

Committee on Economic, Social and Cultural Rights

The CESCR considered the initial report of Turkey on the implementation of the International Covenant on Economic, Social and Cultural Rights at its 3rd to 5th meetings, held on 3 and 4 May 2011.⁶⁷⁰ Its principal matters of concern included:

- Turkey’s reservation to the ICESCR to the effect that it will interpret and apply the provisions of article 13, paragraphs 3 and 4, of the Covenant in accordance with its Constitution;
- the absence of court cases on the applicability of the provisions of the Covenant;
- the absence of a basic and general legislation against discrimination;
- the absence of a broad legislative framework for the recognition of all minorities in the State party, including Kurds, Roma and Arameans, and the protection of their rights;
- the difficulties of persons with disabilities in exercising their rights under the Covenant, including with regard to access to employment, housing, education and health care;
- the significant discrepancies between regions, as well as between urban and rural areas, in the enjoyment of economic, social and cultural rights;
- that unemployment in the State party has not decreased despite the economic growth and the implementation, since 2003, of the National Employment Strategy;
- the low level of the minimum wage in the State party, which does not allow for a decent standard of living for the workers and their families;
- that about 20 per cent of the population in the State party does not benefit from any social security coverage;

⁶⁶⁸ UN Committee on the Elimination of Racial Discrimination Consideration of reports submitted by States.

parties under article 9 of the Convention, Turkey’s Combined fourth to sixth periodic reports, 10 February 2014, CERD/C/TUR/4-6, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2f4-6&Lang=en.

⁶⁶⁹ See the calendar of country reviews by UN human rights Treaty Bodies, available at:

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/MasterCalendar.aspx?Type=Session&Lang=en

⁶⁷⁰ UN Committee on Economic, Social and Cultural Rights Forty-sixth session Geneva, 2-20 May 2011, Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights on Turkey’s initial periodic report, 12 July 2011, E/C.12/TUR/CO/1, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fTUR%2fCO%2f1&Lang=en.

- the very high incidence of violence against women in the State party;
- that corporal punishment is not explicitly prohibited in the home and is practiced in schools;
- the acute shortage of housing in the State party, which is currently estimated at three million units; and
- that the maternal mortality remains high despite the progress achieved.

Turkey's second periodic report to the CESCR is due on 30 June 2016.

Committee on the Rights of the Child

The Committee considered the combined second and third periodic report of Turkey at its 1704th and 1705th meetings held on 1 June 2012.⁶⁷¹ Its principal matters of concern included:

- Turkey's reservations to articles 17, 29 and 30 of the Convention in relation to education, freedom of expression and the right to enjoy one's own culture and use one's own language;
- the weak enforcement of legislative and other reforms directed at implementing the Convention;
- the insufficient coordination between the different Government ministries, departments and institutions dealing with children's rights at national, regional and local levels;
- that the minimum age for marriage may not be observed, particularly in rural and remote areas;
- that the principle of non-discrimination is not fully implemented for children belonging to minorities not recognised under the Treaty of Lausanne of 1923;
- the lack of information on the application of the principle of the best interests of the child in cases of domestic violence and family disintegration;
- the continuing practice of honour killings;
- that the State party has put in place extensive restrictions on children's access to information on the Internet;
- reports of ill-treatment and torture of children, especially Kurdish children who have been involved in political assemblies and activities, in prisons, police stations, vehicles and on the streets;
- that corporal punishment is still not explicitly prohibited in the home and in alternative care settings;
- high numbers of children remaining in institutions with inadequate conditions, limited staff capacity, inadequate educational support or recreational activities;
- high rates of violence against children and women in the home, and the lack of data about the incidence of violence as well as about the measures taken to prevent it;

⁶⁷¹ UN Committee on the Rights of the Child, Sixtieth session 29 May–15 June 2012, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations on Turkey's combined second and third periodic report, 20 July 2012, CRC/C/TUR/CO/2-3, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTUR%2fCO%2f2-3&Lang=en.

- the large number of school-age children with disabilities do not enjoy their rights to education;
- the significant disparities in the rates of maternal and infant mortality, malnutrition and stunting, as well neonatal care between the western regions and the socio-economically least developed Eastern regions;
- the prevalence of arranged, early and forced marriages persists among poorer and less educated social groups;
- irregular attendance and high drop-out rates in secondary schools and regional disparities in quality of and attendance in secondary school; and
- the unavailability of education in languages other than Turkish and languages of recognised minorities.

Turkey's fourth and fifth periodic report to the CRC Committee is due on 3 May 2017.

Turkey ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 4 May 2004 and submitted its initial periodic report on 20 November 2007. The Committee considered this report on 14 September 2009 and adopted concluding observations on 2 October 2009.⁶⁷² Its principal matters of concern included:

- Turkey's reservation to the Convention, which was reiterated and referred to in the declaration made upon ratification of the Optional Protocol;
- low awareness of the Optional Protocol among the general public;
- inadequacy of training on the provisions of the Optional Protocol for members of the armed forces and the police;
- the insufficient education on human rights and peace in the school curricula;
- the failure of domestic penal law to specifically include the crimes covered in the Optional Protocol;
- provisions in the Anti-Terrorist Act for the prosecution of children above 15 years of age as adults in "Special Heavy Penal Courts"; and
- the insufficiency of measures to identify refugee and asylum-seeking children who may have been recruited in hostilities.

Turkey ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography on 19 August 2002 and submitted its initial periodic report on 22 June 2004. The Committee considered this report on 17 May 2006 and adopted concluding observations on 2 June 2006.⁶⁷³ Its principal matters of concern included:

⁶⁷² UN Committee on the Rights of the Child, Fifty- second session, 14 September – 2 October 2009, Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the CRC on the involvement of children in armed conflict, Concluding observations: Turkey, 29 October 2009, CRC/C/OPAC/TUR/CO/1, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPAC%2fTUR%2fCO%2f1&Lang=en.

⁶⁷³ UN Committee on the Rights of the Child, Forty-second session Consideration Of Reports Submitted By States Parties under Article 12 (1) Of The Optional Protocol To The CRC On The Sale Of Children, Child Prostitution And Child Pornography, Concluding observations: Turkey, 9 June 2006, CRC/C/OPSC/TUR/CO/1, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPSC%2fTUR%2fCO%2f1&Lang=en.

- that insufficient activities were undertaken for coordination and monitoring of the implementation of the Optional Protocol;
- the National Plan of Action on Combating Trafficking in Human Beings' failure to cover all issues referred to in the Optional Protocol and lack of budgetary allocations for its implementation;
- the failure of National Plan of Action for the use of the internet to deal with measures for the prevention of dissemination of child pornography;
- the insufficiency of measures to raise awareness on the Optional Protocol;
- the lack of information on the actual situation and practical implementation of issues referred to in the Optional Protocol;
- gaps in the national normative framework regarding child pornography;
- increased cases of sexual exploitation of children and lack of systematic monitoring and complaints mechanisms, and lack of systematic services for victims throughout the country; and the
- lack of regional arrangements for prevention, detection, investigation and punishment of those responsible for acts involving offences in the Optional Protocol.

5. CONCLUDING REMARKS

This section contains a summary of some of the most pressing human rights concerns in Turkey, as well as international recommendations, and very notably those made during the Turkey's latest UPR in January 2015.

5.1 Outstanding Human Rights Concerns

The human rights record of Turkey has been reviewed twice by the UN Human Rights Council through its Universal Periodic Review (UPR): in 2010 and in January 2015. In 2010, UN organisations and stakeholder bodies acknowledged recent positive developments in the human rights situation in Turkey in practice as well as in law, particularly through the legal reforms introduced in relation to the EU accession negotiations (between 1999 and 2005).⁶⁷⁴

However, concerns were raised regarding insufficient enforcement of positive rights and new security regulations, such as the Anti-Terror Law, the new Turkish Penal Code or the Law on the Powers and Duties of the Police, which appeared to jeopardise recent constructive developments.⁶⁷⁵ In its response to the UPR, Turkey undertook to implement a number of recommendations to improve this situation.⁶⁷⁶ Nevertheless, stakeholder submissions for the 2015 review suggest that the human rights situation in Turkey has deteriorated markedly in several key areas since 2010.⁶⁷⁷

Violations of the Right to Freedom of Expression and Freedom of Assembly

Freedom of expression has been increasingly denied, in particular for journalists communicating criticism towards the government. There were more journalists in

⁶⁷⁴ Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 (19 February 2010), paras 4, 20, 45, 53. available at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/110/82/PDF/G1011082.pdf?OpenElement>. ("Compilation of UN information, 2010 Periodic review). See also submission from the Human Rights Foundation of Turkey, 2010 Periodic Review, para 2, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/TR/HRFT_UPR_TUR_S08_2010_TheHumanRightsFoundationofTurkey.pdf.

⁶⁷⁵ Submission from the Human Rights Foundation of Turkey, 2010 Periodic Review, para 2.

⁶⁷⁶ Report of the Working Group on the Universal Periodic Review, 17 June 2010.

⁶⁷⁷ Prof. Efraim Inbar, director of the Begin-Sadat Center for Strategic Studies at Bar-Ilan University, was even as quoted stating that "[T]urkey has been on the road to an authoritarian regime for several years as infringements on human rights have gradually increased", see Ariel Ben Solomon, 'Erdoğan's regime becoming more dictatorship than democracy', The Jerusalem Post (17 December 2014), available at:

<http://www.jpost.com/Middle-East/Analysis-Erdogans-regime-becoming-more-dictatorship-than-democracy-384895>.

prison in Turkey than in any other country in the world in both 2012 and 2013.⁶⁷⁸ The number of convictions and instances of pre-trial detention in violation (or alleged violation) of freedom of expression remains high, with at least 3,347 violations reported in 2013 alone. The Anti-Terror Law and the Penal Code have both been used to prosecute journalists, writers, editors, publishers, translators, civil/political rights activists, lawyers, elected officials and students for exercising their right to freedom of expression. Dozens of Kurdish reporters were reportedly held on terrorism-related charges, while other detained journalists were accused of plotting against the government.⁶⁷⁹

Radio and TV stations have had their broadcasts suspended for airing sensitive material. Social media and other internet-based media have also come under increasing pressure. Notably in February 2014, controversial amendment to the Internet Law No. 5651 came into force allowing the TIB to order the removal of content from websites, in some cases without having first obtained a court order.⁶⁸⁰ As noted above, certain media offices have been raided and broadcasting service providers have been discontinued, all of which are affiliated with the Gülen movement. In November 2015, it was reported that state-owned Turkish Satellite Communications Company (Türksat) halted its broadcasting services with regard to 13 TV and radio channels which are known to be critical of the ruling party.⁶⁸¹

After widespread criticism of online media bans in Turkey, with the Constitutional Court finding that the relevant law was unconstitutional, a similar law was re-introduced. In July 2015, several internet service providers temporarily blocked access to Twitter, following a local court's ruling against the distribution of images relating to the aforementioned explosion in Suruç. The ban was issued for Twitter posts, news portal websites, Facebook posts and a YouTube video. The government, citing national security concerns, requested the removal of these materials. The last two companies avoided by a ban by complying with the government's request with a four-hour deadline,⁶⁸² and the Twitter ban was lifted soon after.⁶⁸³

⁶⁷⁸ Joint submission by ARTICLE 19, the Committee to Protect Journalists, English PEN, Freedom House, P24 and PEN International, para 12, available at:

<http://www.article19.org/resources.php/resource/37658/en/article-19-joint-submission-to-the-universal-periodic-review-of-turkey>; see also Submission from Amnesty International to the 2015 UPR, p 2, available at:

http://amnesty.org/en/library/asset/EUR44/015/2014/en/ec49ee04-e6d0-4a81-a97d-5c30bf9dd4a1/_Toc396313269

See also the 2012 Report of the US-based Committee to Protect Journalists.

⁶⁷⁹ In December 2014, the police raided media outlets close to Islamic cleric Fethullah Gülen and arrested 24 journalists on suspicion of plotting to seize power, see 'Turkish police raid media close to cleric rival Gülen, detained 24', Reuters (14 December 2014), available at:

<http://www.reuters.com/article/2014/12/14/us-turkey-media-idUSKBN0JS04V20141214>

⁶⁸⁰ UN Summary of Stakeholder submissions, 2015 Periodic Review, para 47.

⁶⁸¹ 'Critical TV channels stop broadcast in latest blow to media freedom in Turkey', Today's Zaman (15 November 2015), available at: http://www.todayszaman.com/latest-news_critical-tv-channels-stop-broadcast-in-latest-blow-to-media-freedom-in-turkey_404296.html.

⁶⁸² Amar Toor, 'Turkey Blocks Access to Twitter Following deadly Bombing' The Verge (22 July 2015), available at: <http://www.theverge.com/2015/7/22/9013269/turkey-blocks-twitter-suruc-bombing>.

⁶⁸³ Victoria Richards, 'Twitter Temporarily Blocked by Erdogan Government as Turkey Bans Images of Deadly Suicide Bombing in Suruç', Independent (23 July 2015), available at: <http://www.independent.co.uk/news/world/middle-east/twitter-blocked-by-erdogan-government-as-turkey-bans-images-of-deadly-suicide-bombing-in-suruc-10407387.html>; 'Twitter Temporarily Banned in Turkey Once Again, Causing Ire', Today's Zaman (22 July 2015), available at:

Similarly, following the October 2015 explosions in Ankara, on the basis of security reasons, the Prime Minister banned media coverage of the attack, while access to social media was temporarily blocked.⁶⁸⁴ In response to this latter action, the Council of Europe's Commission for Human Rights expressed the view that "the court does not seem to have weighed the public's legitimate need for essential information, which is particularly crucial in times of crisis such as the one provoked by the heinous attack".⁶⁸⁵ More recently, it was reported the Turkish government blocked access to social media site Reddit.⁶⁸⁶

Turkey also continues to refuse to grant the right of conscientious objection to compulsory military service and no civilian alternative is available. Laws allowing conscientious objectors to be repeatedly prosecuted for their refusal to perform military service remain in force.⁶⁸⁷

Concerns have also been expressed at the increasing intolerance exhibited by the government of political opposition and public protest. Excessive use of force has been employed with impunity in response to peaceful street demonstrations deemed unlawful by the authorities.⁶⁸⁸ In 2009, Kurdish politician Ahmet Turk defies Turkish law by giving speech to parliament in his native Kurdish. State TV cuts live broadcasts of the GNAT parliament, as the language is banned in parliament. On 3 February 2015, an op-ed written by Fethullah Gülen was published in the New York Times, and was openly criticised by both the Turkish President and its Prime Minister.⁶⁸⁹ Today's Zaman editor-in-chief was detained on 9 October 2015 following the prosecutor's objection to a court decision requiring his release on probation. He stated that the "Press prosecutor Umut Tepe has sent me to court for arrest for defaming the president ... in my Twitter posts". The head of one of the broadcasting groups whose

http://www.todayszaman.com/anasayfa_twitter-temporarily-banned-in-turkey-once-again-causing-ire_394247.html.

⁶⁸⁴ Constanze Letsch and Nadia Khomami, 'Turkey Terror Attack: Mourning After Scores Killed in Ankara Blasts', Guardian (11 October 2015), available at:

<http://www.theguardian.com/world/2015/oct/10/turkey-suicide-bomb-killed-in-ankara>.

⁶⁸⁵ 'Council of Europe Human Rights Head "Concerned" over Freedom of Expression in Turkey', Hürriyet Daily News (16 October 2015), available at: <http://www.hurriyetdailynews.com/council-of-europe-human-rights-head-concerned-over-freedom-of-expression-in-turkey.aspx?pagerID=238&nID=89955&NewsCatID=339>.

⁶⁸⁶ Dante D'Orazio, 'Turkey blocks access to Reddit under controversial censorship law', The Verge (14 November 2015), available at:

<http://www.theverge.com/2015/11/14/9734910/turkey-reddit-internet-ban>.

⁶⁸⁷ Submission from Amnesty International to the 2010 UPR.

⁶⁸⁸ See 'Turkey: Heightened Repression By The Authorities - A Serious Setback For Human Rights: Expanded Amnesty International Submission To The UN Universal Periodic Review', January 2015 ('Amnesty International's submission to the 2015 UPR'), available at:

<http://amnesty.org/en/library/asset/EUR44/015/2014/en/ec49ee04-e6d0-4a81-a97d-5c30bf9dd4a1/Toc396313269>.

Although its submission to the UPR is not available online, Human Rights Watch has prepared a report on the 'human rights rollback in Turkey': Human Rights Watch, 'Turkey's Human Rights Rollback', 29 September 2014, available at: <http://www.hrw.org/node/129354/section/2>.

⁶⁸⁹ Fethullah Gülen, 'Turkey's Eroding Democracy', New York Times (3 February 2015), available at: http://www.nytimes.com/2015/02/04/opinion/fethullah-gulen-turkeys-eroding-democracy.html?_r=0. See also, 'Gülen, followers targeted after scholar's New York Times article', 9 February 2015, Today's Zaman, available at: http://www.todayszaman.com/national_gulen-followers-targeted-after-scholars-new-york-times-article_372109.html.

broadcasting was discontinued continues to be under arrest since December 2014 on terrorism charges.⁶⁹⁰ Individuals are also often charged with insulting the President under controversial legislation, with the accused often being minors aged between 12-13.⁶⁹¹

The peaceful protestors at Taksim Gezi Park were subject to arbitrary arrest and detention for organising or participating in nonviolent protests. A total of 255 protestors were indicted by an Istanbul court on 24 December 2013 for “producing propaganda for a terrorist organization” and “illegal possession of dangerous substances”.⁶⁹²

Violations of the Right to Religious Freedom

While Turkey’s Constitution does not expressly limit religious freedom, Turkey has adopted several policies that diminish an individual’s ability to practise his or her faith when that individual belongs to a religious minority. For example, denying ‘place of worship’ status to buildings used for worship and denying ‘legal personality’ to faith groups so that they cannot hold title to property, or press claims in court as a community. This has meant that previously confiscated buildings could not be returned to religious organisations because they could not show legal ownership.⁶⁹³ However, as already mentioned, Turkey has taken steps to remedy this situation by enacting legislation to address the property issues of these foundations, registering immovable properties in their name and providing compensation in other cases.

Violations of the Right to Life and the Prohibition of Torture and Ill-Treatment

In 2010, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions sent a number of communications concerning the death of civilians due to attacks or killings and use of excessive force by the security forces or by private forces cooperating with, or tolerated by the State, mostly in the South East and East regions of Turkey.⁶⁹⁴

Although the definitions of torture and ill-treatment in the Penal Code are more extensive than the definition provided by the Convention against Torture, the implementation and enforcement of the law remains deficient. The Committee noted with concern allegations that torture and other cruel, inhuman or degrading treatment of detainees held in police custody are apparently still widespread.⁶⁹⁵ In its submission to the 2010 UPR, the Human Rights Foundation of Turkey (HRFT) observed that, since

⁶⁹⁰ ‘Today’s Zaman Editor-in-Chief Detained After Prosecutor’s Objection’, *Hürriyet Daily News* (9 October 2015), available at: <http://www.hurriyetdailynews.com/todays-zaman-editor-in-chief-detained-after-prosecutors-objection.aspx?pageID=238&nID=89672&NewsCatID=509>

⁶⁹¹ ‘Two More Boys Charged with “Insulting” Erdogan’, *Yahoo! News* (28 October 2015), available at: <http://news.yahoo.com/two-more-boys-charged-insulting-erdogan-103337109.html>

⁶⁹² UN Summary of Stakeholder submissions, 2015 Periodic Review, para 26.

⁶⁹³ Submission of the European Centre for Law and Justice to the 2015 UPR, para 3, available at: <http://ecj.org/pdf/Turkey%202014.pdf>.

⁶⁹⁴ Compilation of UN information, 2010 Periodic Review, para 30.

⁶⁹⁵ *Ibid*, para 32.

2006, torture and ill-treatment practices were more brutal and violent than in previous years resulting in severe physical injuries and psychological trauma.⁶⁹⁶ According to the HRFT, while various safeguards have been introduced to prevent torture in detention centres and prisons, this did not significantly reduce torture as it was increasingly being applied in places other than official detention places.⁶⁹⁷ According to Amnesty International's submission to the 2015 review, this trend has continued. However, since 2010, there have been fewer reports of torture or other ill-treatment in official places of detention.⁶⁹⁸ Nevertheless, there continue to be allegations of inadequate conditions of prisoners in remand in several detention facilities.⁶⁹⁹

Outside official places of detention, ill-treatment by law enforcement officials appears to have increased, particularly during or following street protests, where excessive use of force by police officers against demonstrators has become routine.⁷⁰⁰ In particular, reference was made to the use of force and mass arrests carried out by security forces in response to the protests against the urban development plan for Istanbul's Taksim Gezi Park in May 2013 resulting in killing of eight protestors and one police officer, with more than 8,000 people injured.⁷⁰¹

In addition, while Turkey lifted the time limitation for the investigations of torture in order to combat impunity after the 2010 UPR, the scope of the amendment did not extend to the human rights violations committed after the September 1980 military coup and against the Kurdish civilian population in the 1990s.⁷⁰²

Violations of the Prohibition of Discrimination and Minority Rights

Discrimination against various groups including non-Muslim minority groups, Alevi, Roma, Kurds, refugees and asylum seekers in various fields such as education, housing, and health, has been reported.⁷⁰³ Manifestations of hate against non-Muslim religious communities and other minorities have also been reported.⁷⁰⁴ The general

⁶⁹⁶ Submission from the Human Rights Foundation of Turkey, paras 10-15.

⁶⁹⁷ Ibid.

⁶⁹⁸ Submission by Amnesty International to the 2015 Periodic Review, available at: <http://amnesty.org/en/library/asset/EUR44/015/2014/en/ec49ee04-e6d0-4a81-a97d-5c30bf9dd4a1/Toc396313269>.

⁶⁹⁹ Rt. Hon. The Lord Woolf C.H., Professor Sir Jeffrey Jowell KCMG QC, Rt. Hon. Sir Edward Garnier QC MP and Sarah Palin, 'A Report on the Rule of Law and Respect for Human Rights in Turkey Since December 2013' (July 2015), para 90.

⁷⁰⁰ Submission by Amnesty International to the 2015 Periodic Review, available at: <http://amnesty.org/en/library/asset/EUR44/015/2014/en/ec49ee04-e6d0-4a81-a97d-5c30bf9dd4a1/Toc396313269>.

⁷⁰¹ UN Summary of Stakeholder submissions, 2015 Periodic Review, para 26.

⁷⁰² Ibid, para 27.

⁷⁰³ See the views of the Council of Europe in the Compilation of UN information, 2010 Periodic review, para 12; Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1, 27 October 2010 ('UN Summary of Stakeholder submissions, 2015 Periodic Review'), para 23; Compilation of UN information, 2015 Periodic review, para 30.

⁷⁰⁴ Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1, 27 October 2010 ('UN Summary of Stakeholder submissions, 2015 Periodic Review'), para 23; Compilation of UN information, 2015 Periodic review, para 30.

public has also been criticised for manifesting a hostile attitude towards Roma, Kurds and persons belonging to non-Muslim minorities, such as those belonging to the Greek minority.⁷⁰⁵

Persistent criticism has also been made of the legislative and policy measures to address discrimination.⁷⁰⁶ In particular Turkey does not have yet a specific equality or anti-discrimination legislation, although in the 2010 UPR already, Turkey accepted a recommendation to adopt comprehensive anti-discrimination legislation, to strengthen its anti-discrimination laws and their implementation (specifically rejecting the inclusion of sexual orientation and gender identity as protected characteristics in its support for the recommendation). Such legislation has been planned by the government for several years but to date no draft has been submitted to the Parliament.⁷⁰⁷

Turkey has attracted particular censure from the international community for its failures to take measures to address discrimination on the basis of gender, religion or sexual orientation. Stakeholders have noted that despite agreeing to guarantee non-discrimination on the basis of sexual orientation and gender identity in the 2010 UPR, the government has failed to table Constitutional amendments or domestic legislation to prohibit discrimination on such grounds.⁷⁰⁸ Stakeholders have also commented that the level of violence against women is a serious human rights problem in Turkey with 28,000 reported cases of violence against women in 2013 alone.⁷⁰⁹ Both the UNCT and the CEDAW Committee invited Turkey to adopt a comprehensive anti-discrimination legislation, including a clear definition of discrimination against women, in line with the 2010 UPR recommendations.⁷¹⁰ Killings of individuals allegedly because of their real or imputed sexual orientation or gender identity have also been reported.⁷¹¹ Judges have routinely used Article 29 of the Turkish Penal Code to reduce the sentences of those who have killed LGBT individuals.⁷¹²

⁷⁰⁵ See the concerns of CERD in the Compilation of UN information, 2010 Periodic review, para 26.

⁷⁰⁶ Compilation of UN information, 2010 Periodic review, para 5.

⁷⁰⁷ Submission by the Equal Rights Trust to the 2015 UPR, paras 4-5, available at:

<http://www.equalrightstrust.org/ertdocumentbank/ERT%20Submission%20to%20the%20UPR%20of%20Turkey%20-%20Main%20Submission.pdf>.

See also Human Rights Watch, 'Turkey's Human Rights Rollback', 29 September 2014, p 2, available at: <http://www.hrw.org/node/129354/section/2>.

There is a draft Law on Combating Discrimination and Establishment of an Equality Council prepared by the government in 2009 and submitted to public discussion in 2010, available at:

<http://www.non-discrimination.net/countries/turkey>.

⁷⁰⁸ Submission by Amnesty International to the 2015 Periodic Review, available at:

http://amnesty.org/en/library/asset/EUR44/015/2014/en/ec49ee04-e6d0-4a81-a97d-5c30bf9dd4a1/_Toc396313269.

See also joint submission by Kaos GL Association, LGBTI News Turkey, and the International Gay and Lesbian Human Rights Commission (IGLHRC) to the 2015 Periodic Review, available at:

<https://lgbtinewsturkey.files.wordpress.com/2014/06/upr-submission-on-lgbt-people-in-turkey1.pdf>.

⁷⁰⁹ Submission by the Equal Rights Trust to the 2015 UPR, paras 17-19, available at:

<http://www.equalrightstrust.org/ertdocumentbank/ERT%20Submission%20to%20the%20UPR%20of%20Turkey%20-%20Main%20Submission.pdf>.

⁷¹⁰ Compilation of UN information, 2015 Periodic Review, paras 24-25.

⁷¹¹ UN Summary of Stakeholder submissions, 2015 Periodic Review, para 27.

⁷¹² Ibid.

The Committee on Economic, Social and Cultural Rights expressed concern about the absence of a broad legislative framework for the recognition of minorities, including Kurds, Roma and Arameans, and the protection of their rights.⁷¹³ The UNCT also noted that Turkey had a narrow definition of minorities considering only non-Muslims as minorities in the country and excluding different cultural and ethnic groups, and that this does not comply with the International Covenant on Civil and Political Rights.⁷¹⁴

Cases against Turkey at the International Level

A particularly high number of cases have been brought against Turkey before the ECtHR. Of course, the number of cases brought against Turkey has to be seen in context of its sheer population size and the previous lack of individual petition to the Constitutional Court. Turkey has the second highest population of the States parties to the European Convention, after Germany. However, this does not explain the high proportion of cases in which the ECtHR has found violations, nor does it explain Turkey's clear dominance of violations in cases involving restrictions of freedom of expression and association.

One factor that could justify the high proportion of violations is the claim that Turkey is one of the State parties experiencing prolonged and ongoing terrorism.⁷¹⁵ While most violations of Articles 2 and 3 of the ECHR in Turkey took place against the background of terrorism in the 1990s, the Council of Europe's Committee of Ministers have also found that there are numerous structural problems that need to be addressed for such issues to subside, including the attitude and practices of security forces and the inadequacy of the legal framework governing their activities, ineffectiveness of procedural safeguards in police custody and the lack of sanctions in cases of abuse.⁷¹⁶ Similarly the repeated violations of Article 6 (right to a fair trial) suggest institutional and structural problems.

Another key issue in relation to these violations is the way human rights are regulated by laws. For example, Turkey's record of violations against the rights to freedom of expression and association are, by a vast majority, the result of the repeated application by Turkish courts during the 1990s and 2000s of provisions of the Penal Code or of the Anti-Terror Law, most notoriously Article 299 (formerly Article 301) of the Penal Code, which makes it an offence to insult Turkey, the Turkish nation or

⁷¹³ Compilation of UN information, 2015 Periodic review, para 82.

⁷¹⁴ Ibid; Compilation of UN information, 2010 Periodic review, para 58.

⁷¹⁵ Ece Yilmaz, "Domestic Implementation of the Judgments of the European Court of Human Rights at the National Level: Turkey" (2009) Ankara Bar Review, p 90: <http://www.ankarabaroslu.org.tr/site/AnkaraBarReview/tekmakale/2009-1/8.pdf>.

⁷¹⁶ Council of Europe, Committee of Ministers, Interim Resolution, 18 September 2008, Actions of the security forces in Turkey. Progress achieved and outstanding problems, ResDH (2008) 69, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1344121>.

Council of Europe, Committee of Ministers, Interim Resolution, 7 June 2005, Actions of the security forces in Turkey. Progress achieved and outstanding problems, ResDH(2005)43, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=ResDH\(2005\)43&Language=lanEnglish&Site=COE&BackColorIntranet=DBCFC2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=ResDH(2005)43&Language=lanEnglish&Site=COE&BackColorIntranet=DBCFC2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

Turkish government.⁷¹⁷ The ECtHR has itself identified the need for general measures to review judicial practice and legislation to remedy the Turkey's persistent violations. For example, in *Gözel and Özer v Turkey*, already mentioned, the Court concluded that Section 6 (2) of the Anti-Terror Law, which outlaws the printing or publication of "declarations or leaflets emanating from terrorist organisations" without obliging the domestic judges to examine and analyse such publications textually or contextually, needed to be aligned with the Convention as an appropriate form of reparation.⁷¹⁸

Even though the provisions which were at the basis of violations found in these cases have in some cases been amended or repealed, as the Committee of Ministers have observed, the new provisions, which replaced the old ones, while phrased differently, have retained the same substance.⁷¹⁹

More fundamentally, there is a tension between the secularist, state-centric values of the Kemalist tradition and the adherence to the ECHR, which is reflected in the Constitution. For example, Article 2 of the Constitution states that "[T]he Republic of Turkey is a democratic, secular and social state ... respecting human rights...". By stating that the State respects human rights, rather than being 'based on' human rights, the Constitution subordinates human rights to its secularist and state-centred values and paves the way for restrictions of human rights, particularly those which could be perceived to clash with the unity of the Turkish State and identity, and the principle of secularism. This makes the implementation of the ECHR in relation to the freedom of religion and the rights of minorities particularly sensitive.

With regard to the case law before the UN Treaty Bodies, their relatively limited jurisprudence related to Turkey belies the extensive concerns that these bodies have expressed in relation to Turkey's human rights record. The reason for such few cases being brought before the UN Treaty Bodies is unclear, but may be due to the limited awareness of the procedures amongst the population and the legal community (consistently with the Treaty Bodies' comments on the lack of awareness of Convention provisions generally), the existence of competing remedies (such as those available

⁷¹⁷ See Nicholas Sitaropoulos, 'Implementation of the European Court of Human Rights' judgments concerning national minorities or why declaratory adjudication does not help', European Society of International Law, Conference Paper No. 4/2011, Tallinn Research Forum (26-28 May 2011), p 10, available at: <http://ssrn.com/abstract=1968186>.

⁷¹⁸ *Gözel et Özer v Turkey*, ECtHR (Grand Chamber), Applications No. 43453/04 et 31098/05, 6 July 2010, para 76, available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?{"dmdocnumber":\["870887"\],"itemid":\["001-99780"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?{); See also *Ürper and others v Turkey*, ECtHR, Application Nos. 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07, 20 October 2009, available at: <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2899247-3189363>.

In this case, the ECtHR took the step of pointing out the relevant anti-terrorism provision (Section 6, paragraph 5 of the Anti-Terror Law, allowing the suspension of publications deemed to be propaganda in favour of an illegal organisation) and noting that "the problem at issue is of a systemic nature" (para 51). In a non-operative provision of the judgment, it recommended the revision of the provision.

⁷¹⁹ Freedom of expression in Turkey: progress achieved-Outstanding issues, CM/Inf/DH(2008)26 (23 May 2008), at 5, available at: http://www.coe.int/t/dghl/monitoring/execution/Documents/Doc_ref_en.asp.

through the ECHR) or resource and other barriers to accessibility to these procedures for individuals.⁷²⁰

⁷²⁰ For a discussion of some of these obstacles, see for example, E Evatt, 'Reflecting on the Role of International Communications in Implementing Human Rights' (1999) 5(2) Australian Journal of Human Rights 20, available at: <http://www.austlii.edu.au/au/journals/AJHR/1999/20.html#Heading9>

5.2 Selected International Recommendations

During the 2015 UPR, Turkey accepted a number of recommendations regarding steps to be taken to strengthen the rule of law, such as by “ensuring the effective implementation of legal reforms”.⁷²¹ It also accepted, for example, to:

Increase measures to provide judges with continuous training on the areas of principles, jurisprudence and international human rights principles, in line with the recommendations of the Special Rapporteur on the Independence of Judges and Lawyers;

[P]ursue its work on reforms with a view to ensure the independence and impartiality of the judiciary and provide judges with adequate human rights training;

[F]oster an independent judiciary and consult with civil society, OSCE/ODIHR, and the Venice Commission on any judicial reform.⁷²²

However, there were a number of recommendations made during its 2015 UPR which were rejected but should have been considered as they sought to improve the human rights situation in Turkey. These included calls to ratify more international human rights treaties (such as the UNESCO Convention against Discrimination in Education), to comply with ECtHR judgments, including those concerning violations of human rights in the areas of Cyprus under the effective control of Turkey, and to recognise the right to conscientious objection.

It is also concerning that Turkey did not support recommendations aimed at improving the protection of its numerous minority groups, such as the one seeking withdrawal of its reservation to Article 27 of the ICCPR or the one asking for it to become a party to the Council of Europe Framework Convention for the Protection of National Minorities. However, it agreed to consider adopting comprehensive anti-discrimination legislation.

Turkey also refused to support recommendations requiring it to amend its Anti-Terror Law and its Law on Meetings and Demonstrations. However, it is particularly important, as demonstrated by the case law, that these two pieces of legislation are not misused to restrict the rights of journalists or peaceful protestors, for example. Nevertheless, Turkey did accept to consider exercising restraint when using anti-terrorism legislation in legal proceedings against journalists, as well as to consider ensuring the application of the principle of proportionality when considering measures limiting access to internet.⁷²³ With regard to freedom of expression, it agreed to consider removing restrictions on freedom of expression under Article 26 of its Constitution, as well as to consider bringing its Penal Code in line with Article 19 of the ICCPR and its Internet Law in line with international standards.

Turkey has made a number of efforts towards institutionalisation in the field of human rights, allowing individuals to apply to the Constitutional Court, establishing an Ombudsman Office, and a Human Rights Institution, which has yet to be accredited. It is also working on adopting a Law Enforcement Oversight Commission to examine

⁷²¹ Draft Report of the Working Group on the Universal Periodic Review, Turkey (29 January 2015), A/HRC/WG.6/21/L.12, para 148.107.

⁷²² Ibid, paras 148.104-106.

⁷²³ Ibid, para 150.52.

and investigate allegations of ill-treatment by law enforcement officials. Efforts in this direction need to be pursued to ensure the rule of law and human rights are upheld in Turkey.

In order to improve the human rights situation on its territory, Turkey must also ensure that it follows up with all the recommendations it agreed to consider at its 2015 UPR. It should also consider modifying its stance on the recommendations it rejected, as those would only improve the human rights situation in the country.

Furthermore, Turkey should ensure that any new law does not allow for the rights enshrined in the Constitution, such as the freedom of association and assembly, to be violated. The security bill adopted (in part) in March 2015 is of particular concern as it appears to extend excessively police powers with regard to the detention of demonstrators, the conduct of warrantless searches and the use of force during violent protests.⁷²⁴

Finally, Turkey should consider providing additional training on the rule of law to all government officials, including members of the judiciary.

⁷²⁴ See Section 4.1 Domestic Human Rights Framework, Specific Human Rights under Domestic Law, the Right to Freedom of Association and Assembly (Other Relevant Domestic Provisions).

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