

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	383
Land:	Tyrkiet
Kilde:	Council of Europe
Titel:	Report by Nils Muiznieks Commissioner for Human Rights of the Council of Europe Following his visit to Turkey from 1 to 5 July 2013
Udgivet:	26. november 2013
Optaget på baggrundsmaterialet:	27. august 2014



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 26 November 2013

CommDH(2013)24
Original version

REPORT

by Nils Muižnieks
Commissioner for Human Rights of the Council of Europe

Following his visit to Turkey
from 1 to 5 July 2013

Summary

Commissioner Nils Muižnieks and his delegation visited Turkey from 1 to 5 July 2013. In the course of this visit the Commissioner held discussions with state authorities and non-governmental organisations. The present report draws on the themes of the Commissioner's visit and focuses on the following human rights issues:

I. The conduct of law enforcement officials, with a focus on the policing of demonstrations

Excessive use of force and ill-treatment by and impunity of law enforcement officials is a very serious, long-standing human rights issue in Turkey, which has been subject to numerous findings of violation by the European Court of Human Rights (hereinafter, 'the Court' or 'the ECtHR'). While welcoming the progress made in the framework of the "zero-tolerance policy" against torture, the Commissioner highlights a number of other areas of concern which the Turkish authorities need to address urgently.

The Commissioner considers that the Turkish legal framework concerning assemblies and demonstration marches is more restrictive than necessary in a democratic society, in particular concerning demonstrations which are deemed unlawful but which are peaceful, leading to unnecessary dispersals by force. It therefore needs to be amended in the light of the European Convention on Human Rights (hereinafter, 'the ECHR') and other relevant standards. The Commissioner also considers that the Turkish authorities need to adopt clearer rules about the proportionate use of force by law enforcement officials in the context of demonstrations, in particular with respect to the use of tear gas and projectile-firing weapons, and better safeguards against ill-treatment and violations of the right to freedom of assembly by law enforcement officials.

The Commissioner urges the Turkish authorities to pay specific attention to the problem of ill-treatment committed by law enforcement officials during apprehensions and in non-custodial settings. He highlights areas where the compatibility of the powers of the police with international standards raise concerns, notably with regard to the use of firearms, to the power to stop persons and to the retention of personal data. He also considers that the Turkish authorities need to address the issues of diversity within the police force, as well as the social and economic rights of law enforcement officials.

The Commissioner considers that impunity of law enforcement officials committing human rights violations is an entrenched problem in Turkey, which seriously limits the country's capacity to tackle the root causes of such violations. He urges the Turkish authorities to acknowledge the seriousness of the problem, publicly condemn all instances of misconduct by law enforcement officials, and remove all legislative and administrative obstacles to effective investigations. Such investigations should be prioritised by the judiciary, conducted in full compliance with the principles established in the case-law of the ECtHR, in particular victim involvement and adequacy of proceedings, and result in dissuasive sanctions if appropriate. The Commissioner also calls on the Turkish authorities to establish an effective independent police complaints mechanism. He considers that, notwithstanding some positive elements, the enactment of the Bill on the establishment of a Law Enforcement Oversight Commission, currently before the Turkish Parliament, would not be sufficient to this end.

The Commissioner received numerous, serious and consistent allegations regarding excessive use of force and other human rights violations committed by law enforcement officials during the wave of demonstrations across Turkey which followed the protests in Istanbul's Gezi Park on 28 May 2013 and the police reaction to those protests (hereinafter, 'the Gezi events'), including widespread allegations of excessive and improper use of tear gas and of the use of tear gas canisters as projectiles. He urges the Turkish authorities to ensure that all these allegations are promptly, adequately and effectively investigated, stressing that failure to do so would further shake public confidence in the rule of law. The Commissioner also expresses deep concern about a climate of fear of reprisals by administrative and judicial authorities for non-violent involvement in the Gezi events, in particular among professional groups, urging the Turkish authorities to discontinue and reverse any measure which could contribute to a chilling effect on the exercise of the rights to freedom of assembly and freedom of expression.

II. The legal and institutional frameworks for the protection and promotion of human rights at the national level

Stressing the importance he attaches to the development of a domestic framework for the protection and promotion of human rights, the Commissioner commends the Turkish authorities for important measures taken in recent years in this direction. In particular, the new Ombudsman Institution has the potential to make a major contribution to this process, despite minor adjustments which may be necessary to increase its effectiveness. The report this young institution is intending to draw up on the basis of complaints it received in connection with the Gezi events is both a crucial test and a unique opportunity for establishing its credibility as a major actor in Turkey's domestic human rights architecture. The Commissioner considers that the new Turkish Human Rights Institution, while representing a step forward, requires a more thorough review of its statute in order to ensure its compliance with the Paris Principles. This is all the more necessary if the Turkish authorities intend to entrust this institution with an independent monitoring function in accordance with the relevant international conventions, including the Optional Protocol to the Convention against Torture and the United Nations Convention on the Rights of Persons with Disabilities.

The Commissioner encourages the Turkish authorities to adopt anti-discrimination legislation and establish an equality body. Taking a draft text prepared by the Ministry of the Interior to this end as reference, he urges the authorities to provide for a comprehensive list of prohibited grounds of discrimination including nationality, national origin, as well as sexual orientation and gender identity and to ensure the independence and effectiveness of the future equality body. The Commissioner welcomes the will of the Turkish authorities to adopt their first human rights action plan, while encouraging them to ensure a better involvement of the Parliament, national human rights structures and the civil society for future reiterations of this action plan. He expresses his support for the ongoing constitutional drafting process, encouraging the authorities to maintain the involvement of civil society in future stages of the process. The Commissioner also welcomes the encouraging initial results of the individual petition mechanism to the Constitutional Court. As a general measure, the Commissioner considers that the Turkish authorities need to reinforce their partnership with Turkey's vibrant civil society, by systematically involving NGOs in the development of Turkey's national human rights framework.

The report contains the Commissioner's conclusions and recommendations addressed to the Turkish authorities and is published on the Commissioner's website along with the authorities' comments.

Introduction

1. The present report follows a visit to Istanbul and Ankara by the Council of Europe Commissioner for Human Rights, Nils Muižnieks, (hereinafter 'the Commissioner') from 1 to 5 July 2013.¹ The aim of the visit was to review certain human rights issues in Turkey, in particular the conduct of law enforcement officials, with a focus on the policing of demonstrations, as well as the legal and institutional frameworks for the protection and promotion of human rights.
2. In the course of his visit, the Commissioner held discussions with representatives of the national authorities, including the Minister of Justice, Mr Sadullah Ergin; the Undersecretary of the Ministry of the Interior, Mr Seyfullah Hacımüftüoğlu; the Governor of Istanbul, Mr Hüseyin Avni Mutlu; the President of the Constitutional Court, Mr Haşim Kılıç; the Chair of the Human Rights Inquiry Commission of the Turkish Grand National Assembly, Mr Ayhan Sefer Üstün; the Head of the National Delegation of Turkey to the Parliamentary Assembly of the Council of Europe, Ms Nursuna Memecan, and the President and members of the Constitutional Conciliation Commission. He also met Turkey's Chief Ombudsman, Mr Nihat Ömeroğlu, and members of the Turkish Human Rights Institution. The Commissioner also held discussions with representatives of civil society organisations, including various professional associations and non-governmental organisations active in the field of protecting human rights, as well as academics and lawyers.
3. The Commissioner wishes to thank the Turkish authorities, in particular the Permanent Representation of Turkey and the Directorate General of Multilateral Political Affairs of the Ministry of Foreign Affairs, for the assistance they provided in organising the visit and facilitating its independent and effective execution. He extends his thanks to all interlocutors, from the national authorities and civil society, for their willingness to share with him their knowledge and views.
4. The Commissioner's visit coincided with the immediate aftermath of a wave of demonstrations across Turkey which followed the excessive use of force by the police against a small number of protestors in the Gezi Park in Istanbul on 28 May 2013 (hereinafter, 'the Gezi events'). These events brought to the fore a number of long-standing, serious human rights issues concerning the action of Turkish law enforcement authorities. The Commissioner observes that the conduct of Turkish law enforcement officials has led to numerous findings of violations of the European Convention on Human Rights (hereinafter, 'ECHR') by the European Court of Human Rights (hereinafter, 'the Court' or 'the ECtHR'), notably in connection with Article 3 of the ECHR (prohibition of torture and inhuman or degrading treatment). A major area of concern in recent years has been the heavy-handed police interventions during demonstrations, that the ECtHR has recently recognised as a systemic problem in Turkey.
5. Since the beginning of the 2000s, the Turkish government has taken several measures to tackle torture and ill-treatment, the most notable of which was the so-called "zero-tolerance policy" against torture. In his report on the administration of justice in Turkey, the Commissioner's predecessor welcomed "the significant steps taken by Turkey in recent years [...] leading to an improvement of the human rights situation, in particular regarding torture and ill-treatment".²
6. Notwithstanding these positive developments, the conduct of law enforcement officials remains a source of important human rights concerns in Turkey. Although it approached the question through the narrow prism of effective investigations by the judiciary, the aforementioned report of the Commissioner's predecessor itself referred to several instances of human rights violations committed by Turkish law enforcement officials, as well as the entrenched problem of lack of effective investigations into these violations and the resulting impunity. Indeed, the

¹ During his visit the Commissioner was accompanied by Mr Giancarlo Cardinale, Deputy to the Director of his Office, and Mr Hasan Bermek, Adviser.

² Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey from 10 to 14 October 2011, Issue reviewed: Administration of justice and protection of human rights in Turkey, [CommDH\(2012\)2](#), paragraph 46.

statistics of the ECtHR indicate that the latter found numerous violations by Turkey of Articles 2 (right to life) and 3 of the ECHR owing specifically to the lack of effective investigations (145 and 152 judgments respectively until 2012).³

7. The Commissioner considers that Turkey should urgently tackle a number of outstanding serious shortcomings in the conduct of law enforcement personnel. As many problems came to the attention of the Turkish public regarding the policing of demonstrations and the exercise of the right to freedom of assembly, this is an area which needs particular attention.
8. The Commissioner also attaches particular importance to member states' legal and institutional frameworks for the protection and promotion of human rights, including national human rights structures which contribute to the respect of human rights at the national level in a systematic manner. He notes that Turkey has taken major steps in this direction in the past years, in particular through the establishment of an Ombudsman and a national human rights institution. The Commissioner's visit provided the opportunity to take stock of these developments, as well as of further measures currently being considered.
9. The Commissioner wishes to continue his constructive dialogue with the Turkish authorities on strengthening human rights protection in Turkey. He trusts that this dialogue will be facilitated by the present report which consists of the following chapters: I. The conduct of law enforcement officials, with a focus on the policing of demonstrations; II. The legal and institutional frameworks for the protection and promotion of human rights at the national level.

I. The conduct of law enforcement officials, with a focus on the policing of demonstrations

10. The two major law enforcement authorities in Turkey are the Turkish Police Force and the Gendarmerie. Other bodies include the border police, coast guard, municipal police, and village guards. The Police Force is responsible for law enforcement mainly in cities, under the high command of the General Directorate of Security (*Emniyet Genel Müdürlüğü*) which functions under the Ministry of the Interior. The police force comprises 255 239 staff, of which 242 228 belong to the "security services class" (87% ordinary police officers, 11% police in command positions, and 2% marketplace and neighbourhood guards).⁴ The Gendarmerie (*Jandarma*) is a military force of law enforcement. Gendarmes are trained and supplied by the army but they assume law enforcement duties under the Minister of the Interior. The Gendarmerie's area of jurisdiction is outside city centres, mostly in the countryside where population density is low. It has a staff of around 140 000.
11. The Commissioner attaches particular importance to human rights violations committed by law enforcement officials, as it is their principal task to protect citizens and their human rights. It is therefore essential for member states to combat impunity for police misconduct so that victims receive justice, future misconduct by law enforcement officials is deterred and public trust in and co-operation with law enforcement can be strengthened.
12. In addition to the Commissioner's predecessor, other bodies of the Council of Europe, notably the Committee of Ministers⁵ and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT),⁶ acknowledged the efforts of the Turkish authorities to combat torture and ill-treatment, and the corresponding downward trend in the incidence and severity of ill-treatment by law enforcement officials. Nevertheless, the abovementioned report on the administration of justice contains many examples which demonstrate that there are still a number of outstanding problems concerning law enforcement and human rights. These examples include several cases of torture and ill-treatment, misconduct of police officers in the high-profile case regarding the assassination of the

³ See the ECtHR [statistics by state](#).

⁴ According to the 2012 [Activity Report](#) of the General Directorate of Security.

⁵ Interim Resolution of the Committee of Ministers of the Council of Europe on the execution of ECtHR judgments concerning the actions of the security forces in Turkey, progress achieved and outstanding issues, [ResDH\(2008\)69](#), of 18 September 2008.

⁶ See the CPT Report on its visit to Turkey from 4 to 17 June 2009, [CPT/Inf\(2011\)13](#).

journalist and writer Hrant Dink, the shooting of an asylum-seeker under police custody, as well as the recurrent practice of filing counter-charges against persons bringing complaints about police violence. Other problems included the absence of a specialised judicial police force (despite legislation providing for it) and the connected problem of the lack of oversight by prosecutors over police action, as well as overly police-driven criminal investigations relying mainly on police surveillance operations and wiretaps.

13. In his July 2013 visit to Turkey, the Commissioner concentrated on a number of other human rights issues connected with the conduct of law enforcement authorities, with a particular focus on freedom of assembly and the policing of demonstrations. Following up on that visit, in the present report the Commissioner examines notably the legislative framework and practice concerning the use of force by law enforcement officials during assemblies and demonstration marches, in the light of the case-law of the ECtHR (Section 1). This is followed by a number of other concerns relating to the conduct, powers, diversity and the social rights of law enforcement personnel (Section 2). The Commissioner then concentrates on the lack of independent police oversight, which previous reports of the Commissioner on Turkey highlighted as a major shortcoming contributing to a culture of impunity (Section 3). Finally, the Commissioner addresses the numerous allegations he received of human rights violations committed by law enforcement officials during the Gezi events, which illustrate some of these problems, as well as other actions by the authorities perceived as intimidating demonstrators, which in his view require special attention by the Turkish authorities (Section 4).

1. Freedom of assembly and the use of force in public demonstrations – the Turkish legislation and practice in the light of international standards

14. Allegations of excessive use of force against demonstrators in Turkey need to be examined in accordance with international standards protecting freedom of expression and of peaceful assembly, as prescribed by Articles 10 and 11 of the ECHR and Article 21 of the International Covenant on Civil and Political Rights, but also instruments such as the Guidelines on Freedom of Peaceful Assembly of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the European Commission for Democracy through Law of the Council of Europe (Venice Commission).⁷
15. The Gezi events have put the issue of police violence very firmly on the agenda, owing to numerous, particularly serious allegations of excessive use of force against demonstrators, as well as the fact that police violence itself played a very important role in the escalation of tensions. These events should be seen against the backdrop of a growing number of judgments of the ECtHR, which have highlighted the problem of the use of excessive force against peaceful demonstrators in the past and confirm the systemic nature of this problem in Turkey. As of July 2013, the ECtHR had found in over forty of its judgments that the heavy-handed intervention of law enforcement officials in demonstrations or the initiation of criminal proceedings against peaceful demonstrators were in breach of Articles 3 (prohibition of torture) and/or 11 (freedom of assembly and association) of the ECHR, and 37 such cases were pending before the Committee of Ministers as of September 2013.⁸
16. The Commissioner notes that examples of excessive use of force against demonstrators were documented on numerous occasions prior to the Gezi events. For example, the violent dispersal by the police and the gendarmerie of Newroz (Kurdish new year) celebrations and other demonstrations seen as being connected to the Kurdish question was systematic until the improvements of recent years, with very high numbers of allegations of excessive use of force, including lethal force, in these contexts. Another area of systematic intervention concerned the May 1st celebrations, in particular attempts to commemorate the 1977 Taksim square massacre. The Commissioner was also informed that in recent years, demonstrations by students in favour of free university education have been the stage for particularly violent methods of dispersal by the police.

⁷ OSCE and Venice Commission, [Guidelines on Freedom of Peaceful Assembly](#), second edition, 2010.

⁸ See the [list of cases](#) for the 1179th meeting of the Committee of Ministers, September 2013, the so-called Oya Ataman Group, the leading case being *Oya Ataman v. Turkey*, judgment of 5 December 2006.

17. According to the 2012 report of the Turkish Human Rights Foundation, 135 demonstrations linked to the Kurdish problem were banned in 2012, with 230 injured civilians and one death as a result of the intervention by security forces. An additional 160 events, not related to the Kurdish question, were subject to police intervention, resulting in 260 lightly injured and 70 injured civilians and 11 injured police officers. According to the same report, four persons died and two were injured as a result of the use of tear gas (including direct hits by gas canisters), plastic bullets or water cannons.⁹
18. Immediately prior to the Gezi events, the police intervention on 7 April 2013 in a demonstration against the demolition of a historic movie theatre in Istanbul (in order to build a shopping centre) was criticised as being particularly violent. The police also appears to have intervened in a heavy-handed manner during May 1st demonstrations in Taksim in 2013, contrary to the year before where the demonstrations took place peacefully without police intervention. According to the information provided by the Governor of Istanbul, this was due to the danger posed by the ongoing construction project around the Taksim square.

1.a. Limits to the right to freedom of assembly in the Turkish legal system

19. Article 34 of the Turkish Constitution provides that “everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission”. This right can however be restricted by law, for reasons of “national security, public order, prevention of crime, protection of public health or general morality, or protection of others’ rights and freedoms”.
20. The relevant law which regulates demonstrations is the Assemblies and Marches Act.¹⁰ It provides that assemblies and demonstration marches have to be notified at least 48 hours before the event to the governor’s or district governor’s office (Article 10). Article 22 of the Act prohibits assemblies on public streets, parks, places of worship and public service buildings. Assemblies on public squares have to comply with security instructions in order not to disrupt the passage of the public and means of transport.
21. Article 23 of the Act provides for numerous grounds for declaring an assembly or march unlawful. This is the case, for example, for events which have not been notified or start earlier or later than the notified time, where participants hide their faces, use prohibited emblems, insignia or slogans (Article 23.b), or where the demonstration “exceeds the aims described in the notification” (Article 23.h). In addition, the competent authorities can postpone a demonstration for the reasons enumerated in the Constitution (up to one month), or owing to the inability to provide for protection in case of multiple demonstrations notified for the same period (up to ten days). They can also ban it altogether if there is a clear and present danger of the commission of a crime (Articles 15 to 19).
22. The Commissioner notes in particular restrictions concerning the place and time of demonstrations as set out under Articles 6 and 7 of the Act. Article 6 provides that governors and district governors determine the squares and other spaces in cities and smaller towns where assemblies and demonstrations may be held, as well as routes for assemblies and dispersal. Demonstrations outside these spaces are automatically considered unlawful in accordance with Article 23. The Commissioner is grateful to the Ministry of the Interior for having provided him with the relevant planning documents for four cities. These documents indicate that the number of designated spaces varies very largely from one city to another (3 assembly spaces in Diyarbakir, 4 in Istanbul, 5 in Izmir and 23 in Ankara). As for the times of demonstrations, Article 7 restricts the holding of assemblies and demonstrations to the period from sunrise to one hour before sunset (11 p.m. for assemblies in closed spaces).
23. The Commissioner considers that key provisions in European standards must be taken into account when assessing the compatibility of such sweeping restrictions with human rights. He notably draws the Turkish authorities’ attention to the explanatory note to the aforementioned guidelines of the OSCE and Venice Commission, which provide that “blanket legislative

⁹ Turkish Human Rights Foundation, [2012 Annual Report](#).

¹⁰ Act No. 2911 of 6 October 1983.

provisions, which ban assemblies at specific times or in particular locations, require much greater justification than restriction on individual assemblies” as they do not allow for the specific circumstances of each particular case to be taken into account and may easily be applied in a disproportionate manner. The same document also states that the organisers of an assembly “should not be compelled or coerced either to accept whatever alternative(s) the authorities propose or to negotiate with the authorities about key aspects, particularly the time or place, of a planned assembly. To require otherwise would undermine the very essence of the right to freedom of peaceful assembly”.¹¹

24. Finally, Article 24 of the aforementioned Act provides that demonstrations which do not comply with the Act will be dispersed by force at the order of the government representative (governor or district governor), after the demonstrators have been warned. No warning is necessary in case of aggression or resistance against law enforcement forces.
25. According to the official figures provided by the Turkish authorities, 25 635 assemblies/demonstrations took place in Turkey in 2012 with the participation of around 7.5 million persons. The Ministry of the Interior stated that 6% of these events were unlawful, but were not dispersed, whereas 3% were dispersed due to their violent nature.
26. While these figures show that the authorities do not intervene in all unlawful demonstrations in practice, the Commissioner notes that the Assemblies and Marches Act provides for the dispersal of all unlawful demonstrations regardless of whether they are peaceful or not. The Commissioner reminds the Turkish authorities that the case-law of the ECtHR is very clear on the fact that the unlawfulness of a demonstration (e.g. due to lack of prior notice) is not sufficient in itself to justify an infringement of the demonstrators’ freedom of assembly.
27. The ECtHR reiterated this principle in its judgments concerning violations of Article 11 by Turkey. For example, in the leading case of the group of judgments concerning Article 11 the execution of which is currently being supervised by the Committee of Ministers of the Council of Europe, the ECtHR pointed out that, when demonstrations are peaceful, the public authorities must show a certain degree of tolerance, without which the freedom of assembly guaranteed by Article 11 of the ECHR would be deprived of all substance.¹² This case concerned a march organised in Istanbul in March 2000 for which the 40 to 50 demonstrators had not given prior notification, thus their demonstration was unlawful. The group resisted the call of the police to disperse, and were dispersed by force with the use pepper spray, before they could read out a public statement which they had set out to do.
28. While the interference with the applicants’ right to freedom of assembly had a legal basis (the Assemblies and Marches Act) and pursued a legitimate aim (i.e. the prevention of disorder and the protection of the rights of others, specifically the right to move freely in public without restrictions), it did not satisfy the condition of necessity in a democratic society. In the present case, the Court found no evidence to suggest that the demonstrators “represented a danger to public order, apart from possibly disrupting traffic”.¹³ The Commissioner notes that the Court was particularly “struck by the authorities’ impatience in seeking to end the demonstration”, which was dispersed within half an hour of its commencement. It stated that the public authorities needed to show a certain degree of tolerance, where demonstrators do not engage in acts of violence, if Article 11 is not to be deprived of all substance. The police’s forceful intervention had been neither proportionate nor necessary, leading to a violation of Article 11.
29. The Commissioner understands that the Turkish authorities are currently considering reviewing the Assemblies and Marches Act. Such a review needs to take account of the standards mentioned above.

¹¹ OSCE and Venice Commission, [Guidelines on Freedom of Peaceful Assembly](#), second edition, 2010, explanatory note, paragraphs 102 and 103.

¹² *Oya Ataman v. Turkey*, judgment of 5 December 2006, paragraph 42.

¹³ *Oya Ataman v. Turkey*, *supra*, paragraph 41.

1.b. Use of force during demonstrations

30. Of particular relevance for the use of force during demonstrations is the Regulation concerning the rapid response force (*çevik kuvvet*),¹⁴ which is the police force usually deployed to disperse assemblies or marches deemed unlawful. This regulation assigns the competence to determine the degree of force to be used to the highest ranking police officer on the spot. The use of force is defined as the use of bodily or material force, and the use of weapons - the degree of which is increased in stages in accordance with the nature of the mass event and the degree of resistance and/or violence. The Commissioner notes that the regulation does not set any limits to the degree of force that can be used, such as the prohibition of torture and ill-treatment, or the protection of physical integrity or vital areas of a person's body. Nor does it contain specific guidance concerning the use of tear gas.
31. As regards the accountability of the rapid response force, the Commissioner welcomes the announcement by the General Directorate of Security that, as of 29 June 2009, all helmets used by the rapid response forces had been numbered so as to allow the identification of the officers wearing them.
32. The Commissioner was further informed of various directives and circulars concerning the policing of demonstrations. A directive dated 25 August 2011 on principles and procedures regarding the action of law enforcement officers appointed to police and control demonstrations was notably communicated to the Council of Europe by the Turkish authorities, and regulates the use of arms, including tear gas and water cannons.
33. Article 12 of this directive provides that, if demonstrators do not disperse after having been warned that force will be used, water cannons can be used (1st stage), followed by tear gas/water mixed with tear gas (2nd stage), followed by the use of truncheons (3rd stage). It also specifies that the use of gas is regulated in proportion to the resistance of the group. If protestors resist by throwing stones, or using sticks, Molotov cocktails, slingshots, etc., the first three stages can be bypassed by going directly to the 4th stage, which includes the use of weapons with "impacting effect", such as defence weapons projecting tear gas or paint canisters, etc. In case technicians or the necessary equipment are not available for any one stage, or if the prevailing conditions make their use unpractical, the police can also move to the next stage.
34. The Commissioner draws the attention of the Turkish authorities to the fact that the CPT considers that the criteria for the use of projectile-firing weapons by police officers should at least correspond to those governing the use of firearms, and that the use of such weapons must be thoroughly regulated and monitored. It also recommends that persons against whom these weapons are deployed be subsequently examined by a medical doctor.¹⁵
35. When it comes to the dispersal of demonstrations, the Commissioner observes that the case-law of the ECtHR points to problems concerning, in particular, the excessive use of physical force and the use of tear gas and pepper spray.

Excessive use of physical force

36. The ECtHR found on many occasions that Turkey had violated Article 3 of the ECHR, both in its substantive and procedural aspects (i.e. lack or inadequacy of investigations), owing to the excessive use of physical force.¹⁶ For example, the case of *Güzel Şahin and others v. Turkey* concerned the dispersal of an unlawful meeting in the margins of an authorised demonstration with violent clashes between the police and the demonstrators (with 36 police officers injured and 261 persons arrested), during which the applicants received serious injuries giving rise to 10 days of sick leave. The applicants, including three women aged 50, 56 and 63 respectively, denied having participated in the illegal demonstration or having attacked police officers. The

¹⁴ Regulation published in the Official Gazette No. 17914 of 30 December 1982.

¹⁵ See, for example, the CPT Report on the visit to Spain from 31 May to 13 June 2011, [CPT/Inf\(2013\)6](#), paragraph 107.

¹⁶ See, among others, *Saya and others v. Turkey*, judgment of 7 October 2008, *Güzel Şahin and others v. Turkey*, judgment of 21 December 2006, or more recently, *Özalp Ulusoy v. Turkey*, judgment of 4 June 2013.

authorities even recognised that one applicant had only been present in the area by chance. The Court found that even supposing that they had participated in the illegal meeting, nothing in the case file suggested that they had resisted police during the intervention or that they had showed such a level of aggression as to warrant the use of force of such magnitude. The Court found that the dispersal of a demonstration could not justify the seriousness of their injuries. Despite this state of affairs, the complaints of the applicants had been dismissed by the competent prosecutor without any verification of the proportionality of the force used by the police, which constituted a separate violation of Article 13 of the ECHR (right to an effective remedy).¹⁷

Use of tear gas and pepper spray

37. Similarly to other European countries, Turkey uses gas equipment to police demonstrations and control crowds.¹⁸ The improper or excessive use of such equipment has been of particular concern, not only during the Gezi events but also previously, as reflected in the case-law of the ECtHR concerning Turkey. The Commissioner underlines that, despite its frequent use, such equipment may have very serious consequences for the health of persons exposed to gas, in particular if the use is improper or the persons have pre-existing health conditions, such as heart problems or asthma.
38. A particularly telling example illustrating this fact was the post mortem report following the death of Metin Lokumcu during a demonstration in Hopa in May 2011, which clearly stated that the fatal heart attack of this demonstrator had been triggered by pepper gas. In this context, it is important to bear in mind that the CPT considers that “pepper spray is a potentially dangerous substance and should not be used in confined spaces. Even when used in open spaces the CPT has serious reservations; if exceptionally it needs to be used, there should be clearly defined safeguards in place. For example, persons exposed to pepper spray should be granted immediate access to a medical doctor and be offered an antidote”.¹⁹
39. The Commissioner notes that the case-law of the ECtHR contains important findings concerning the use by Turkish authorities of tear gas and pepper spray. In the case of *Ali Güneş v. Turkey*, the Court found that Turkey had violated Article 3 of the ECHR on account of the spraying of the applicant’s face with tear gas, considering that the “unwarranted spraying of the applicant’s face in the circumstances [...] must have subjected him to intense physical and mental suffering and was such as to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him”.²⁰ In another Turkish case the ECtHR stated that the use of gas bombs against individuals can produce several serious health problems and expressed concern over the use of such gases in law enforcement. Accordingly, it considered that the throwing of a gas bomb in the premises of a hospital, while chasing demonstrators, had been neither necessary nor proportionate.²¹
40. In its judgment in the case of *Abdullah Yaşa v. Turkey*, delivered after the Commissioner’s visit to Turkey, the ECtHR brought more clarification about the use of tear gas in dispersing demonstrations. The case concerned an applicant who, during a non-peaceful demonstration, had been hit on the nose with a gas canister shot by the police on 29 March 2006. The Court affirmed that gas canisters shot with rifles have the potential to injure or even kill, and thus should be distinguished from other uses of tear gas. According to the ECtHR, the danger posed by such material justifies the application of its case-law on the use of potentially lethal force, in connection with Article 2 of the ECHR on the right to life, and should therefore be strictly regulated in national law, within the framework of a system of adequate and effective

¹⁷ See Section 3 below, for further information on the lack of effective investigations into allegations of ill-treatment by law enforcement personnel during demonstrations, and the resulting impunity, as a recurrent feature of the relevant ECtHR judgments on Turkey.

¹⁸ According to the information provided by the Turkish Ministry of the Interior to the Commissioner, gas equipment used in crowd control contains either pepper gas or spray (Oleoresin of Capsicum, or OC) or O-Chlorobenzalmalononitrile (CS).

¹⁹ CPT Report on the visit to Bosnia and Herzegovina from 19 to 30 March 2007, [CPT/Inf\(2009\)25](#), paragraph 79.

²⁰ *Ali Güneş v. Turkey*, judgment of 10 April 2012, paragraph 43. The Court had been presented with a photograph published in a daily newspaper where the applicant was pictured between two police officers holding him by the arms, and one of the officers spraying the applicant’s nose and mouth with gas at close range.

²¹ *Disk and Kesik v. Turkey*, judgment of 27 November 2012.

safeguards against arbitrary use, abuse and avoidable accidents.²² However, this had not been the case in Turkey on the date of the incident according to the Court, who found that the police officers had acted with great autonomy and undue initiative, which would not have been the case if they had been adequately trained. The Court stated in particular that it assumed that the gas canister had been shot directly and horizontally on the applicant, and not in an arc as it should have been, given the injury he had sustained and the fact that the Turkish government had not sufficiently investigated the incident to prove the contrary.

41. The Commissioner is aware that there a number of circulars and instructions of the General Directorate of Security which were addressed to law enforcement personnel after the events having given rise to this judgment, which specify the ways in which gas equipment can be used. The ECtHR noted in particular a circular (E.G.M. Genelge No. 19) and instructions on the use of tear gas arms and equipment of February 2008.
42. The Commissioner is of the view that the effectiveness of these documents in preventing similar human rights violations need to be assessed against the background of persistent reports of excessive or improper use of tear gas since 2008 and in particular during the Gezi events (see below under Section 4). The Commissioner also notes that during and after the Gezi events, the Turkish Ministry of the Interior issued two further circulars (on 26 June 2013 and on 22 July 2013) which contain instructions to the police force on the use of tear gas during unlawful demonstrations addressing some of the major problems reported during the Gezi events. These circulars contain, *inter alia*, the following instructions to security forces:
 - Law enforcement personnel should avoid using tear gas unless there is an actual aggression or resistance against them, and should stop using gas when such resistance ends;
 - Before using tear gas, police officers should intervene with water cannons to disperse the demonstrators and announce with loudspeakers that tear gas will be used, in order to allow persons to move away;
 - When using tear gas, police officers should ensure that there are no schools, hospitals, kindergartens and homes for the elderly in the vicinity and that bystanders not participating in the demonstration are not affected;
 - The police must take account of the profile of the demonstrators (e.g. presence of older persons, persons with disabilities and women);
 - Tear gas shall not be used in closed spaces and in sport venues;
 - The intervention of law enforcement personnel and apprehensions should be recorded by video in order to prevent allegations of excessive use of force and tear gas;
 - Only law enforcement personnel with special training may use tear gas;
 - Gas canisters may only be shot with rifles if the distance between demonstrators and law enforcement personnel is above 40 meters; if the distance is shorter, equipment such as gas grenades or pepper spray projectors should be used; tear gas rifles should never be used targeting demonstrators directly;
 - Plain-clothes police officers intervening in demonstrations must wear a police vest for identification purposes at all times and should not use any weapon other than those strictly defined in the relevant legislation.
43. The Commissioner considers that the recurrence of the problems, which have given rise to these circulars and which are amply reflected in the case-law of the ECtHR, clearly points to a structural problem in the policing of demonstrations in Turkey. In a judgment delivered on 23 July 2013, the ECtHR itself recognised the systemic nature of these problems, on the basis of over forty judgments against Turkey and 130 pending applications.²³ It noted that the common feature of these cases was “the authorities’ failure to show a certain degree of tolerance towards peaceful gatherings and, in some cases, the precipitate use of physical force, including tear gas”. It considered that the situation required general measures to prevent similar violations, including steps to ensure that law enforcement personnel act in accordance with Articles 3 and 11 of the ECHR and that domestic courts conduct effective investigations into allegations of ill-treatment. In this connection, the ECtHR referred specifically to the need to adopt a clearer set of rules concerning the use of tear gas, ensure adequate training of law enforcement personnel as well as control and supervision of that personnel during

²² *Abdullah Yaşa v. Turkey*, judgment of 16 July 2013, paragraph 43.

²³ See *İzci v. Turkey*, judgment of 23 July 2013.

demonstrations, and an effective *ex post facto* review of the necessity, proportionality and reasonableness of force used against demonstrators.²⁴

44. While it does not concern the role of law enforcement, the Commissioner notes that the ECtHR case-law also contains findings of violations by Turkey on account of the prosecution and conviction of demonstrators to disproportionate prison sentences for their participation in a demonstration which is considered unlawful within the meaning of the Assemblies and Marches Act.²⁵

2. Other concerns relating to law enforcement authorities and human rights

2.a. Ill-treatment during apprehensions

45. The Commissioner notes that following its visit to Turkey in 2009, the CPT acknowledged a continuing downward trend in both the incidence and the severity of ill-treatment by law enforcement officials, but raised concerns about excessive use of force at the time of apprehension. It had received a number of consistent allegations of such ill-treatment, some of which were supported by medical and other evidence.
46. These allegations included kicks or blows after the persons concerned had been brought under control, threats or verbal abuse, beatings during transportation in a police vehicle, blows with batons and threats of sodomy in police establishments and, in a few cases, of cigarette burns.²⁶ The CPT accordingly recommended that law enforcement officials be reminded that “no more force than is strictly necessary is to be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them”.
47. The Commissioner notes that in its Fourth Report on Turkey, ECRI also noted an increase in recent years of allegations of ill-treatment occurring outside places of detention, such as during the apprehension of suspects.²⁷ Similarly, the United Nations Committee against Torture (hereinafter, ‘UN CAT’) expressed grave concern about “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”.²⁸
48. Ill-treatment during and immediately after apprehension continues to be regularly reported. The Commissioner received several allegations of such ill-treatment during the Gezi events (see below), even though the relevant circular of the Ministry of the Interior mentioned above prohibits the use of force against apprehended persons offering no resistance.

2.b. Powers of the police in the light of international standards

49. The Commissioner notes that the Powers and Duties of the Police Act²⁹ (hereinafter, ‘the PVSK’ in accordance with its Turkish acronym) was revised in June 2007, substantially broadening some of the powers of the police, with a view to increasing the capacity of the police to take preventive measures against security threats and criminal acts. The Commissioner notes that human rights organisations and several MPs argued that these changes would open the way to the arbitrary exercise of certain police powers, by unduly extending them and by eroding judicial oversight over them. This concerned both existing powers (use of firearms) and new ones (the power to stop and request identification and the establishment of a database of personal information). The Commissioner considers that some of these powers raise concerns as to their compatibility with international standards and the case-law of the ECtHR.

Use of firearms

²⁴ *Izci v. Turkey*, *supra*, paragraph 99.

²⁵ See, for example, *Gün and others v. Turkey*, judgment of 18 June 2013.

²⁶ *Op.cit.*, [CPT/Inf\(2011\)13](#), paragraph 14.

²⁷ ECRI Report on Turkey, fourth monitoring cycle, [CRI\(2011\)5](#) adopted on 10 December 2010, para. 163.

²⁸ Concluding observations of the Committee against Torture, CAT/C/TUR/CO/3, 20 January 2011, paragraph 7.

²⁹ Act No. 2751 (*Polis Vazife ve Salahiyet Kanunu*), of 14 July 1934.

50. The Commissioner draws the attention of the Turkish authorities to the United Nations Basic Principles concerning the use of firearms, which provide that intentional lethal use of firearms by law enforcement officials “may only be made when strictly unavoidable in order to protect life”.³⁰ He also notes that the ECtHR assigns a much stricter and more compelling test of necessity to the use of potentially lethal force by the state and considers that a very high degree of caution in the use of firearms by law enforcement personnel is the sign of a democratic society.³¹
51. Article 16 of the PVSK authorises police to use firearms in the following cases:
- Legitimate self-defence;
 - when resistance cannot be neutralised by bodily or material force, in order to break such resistance and in proportion to what is necessary for that purpose;
 - in order to capture persons for whom there is an arrest warrant, a decision to detain, forcibly capture or apprehend; or in order to apprehend persons caught *in flagrante*, in proportion to what is necessary for that purpose. In this case, before using firearms against a person, the police must warn the person to “freeze” first. If he/she continues fleeing, a shot must be fired in the air, before firearms can be used directly on the person.
52. The Commissioner notes with concern that the two latter cases mentioned in Article 16 of the PVSK do not make the presence of a threat to life a strict pre-condition of the use of firearms. The Commissioner was also informed that the legislation does not specify that, even in authorised situations, vital areas should not be targeted.
53. A similar provision exists in the Turkish Anti-Terrorism Act which allows the use of firearms by law enforcement forces “directly and without hesitation against targets” when the latter do not obey the order to surrender or attempt to use arms.³² It is significant that a previous version of this provision had been struck down by the Constitutional Court in 1999 on the grounds that it could lead to the violation of the right to life, the Constitutional Court expressing particular concern about the vagueness of the term “to attempt”, and the fact that the provision spoke of arms and not firearms. The Commissioner notes that the provision was nevertheless reintroduced in 2006, albeit with the addition that the recourse to firearms must occur in a degree and proportion so as to neutralise the danger.
54. The Commissioner notes with concern reports from human rights NGOs and academics that the 2007 amendments of the PSVK have given rise to an increase in the number of lethal shootings by the police. According to the Turkish Human Rights Foundation, 115 persons were killed by police fire between 2007 and 2011 and the use of firearms or projectile-firing weapons by the police caused 15 deaths and 23 injuries in 2012.³³

The power to stop and request identification in the context of daily policing

55. Another concern raised in connection with the revision of the PSVK is the introduction of Article 4/A, which codified for the first time the power for the Turkish police to stop persons and vehicles, in order to, *inter alia*, prevent the commission of a crime or misdemeanour, or prevent a danger concerning a person’s life, corporal integrity or property.
56. The Act provides that this power is exercised when there are reasonable grounds to do so, “in accordance with the experience of the police officer and the impressions he/she has of the present situation”. While the Act also provides that stops should not be arbitrary or systematic, serious concerns have been expressed that the grounds for stopping are defined in a particularly vague fashion, allowing for an extremely large or even limitless margin of appreciation. Following this amendment to the PVSK, the UN CAT expressed concern at reports of its arbitrary application, alleged to have led to an increase in violent confrontations.³⁴

³⁰ [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, paragraph 9.

³¹ See *McCann and others v. the United Kingdom*, judgment of 27 September 1995.

³² The appended Article 2 to the Anti-Terrorism Act, Act No. 3713 of 12 April 1991.

³³ See [2012 Annual Report](#) of the Turkish Human Rights Foundation.

³⁴ *Op. cit.*, CAT/C/TUR/CO/3, paragraph 13.

57. The Commissioner draws the attention of the Turkish authorities to the case-law of the ECtHR which considered that such stops constitute an interference with the right to respect for private life under Article 8 of the ECHR. Regarding a similar power granted to the police by the Terrorism Act in the United Kingdom, where the discretion conferred on the individual police officer was very broad and the intervention occurred mainly on the basis of the “hunch” or “professional intuition” of the police officer, the ECtHR found a clear risk of arbitrariness, which did not fulfil the requirement that an interference with a right set out in the ECHR be “in accordance with the law”. The Commissioner would like to underline that the ECtHR further found “a risk that such a widely framed power could be misused against demonstrators and protestors in breach of Article 10 and/or 11 of the Convention”.³⁵
58. Furthermore, the Commissioner’s attention has been drawn to Article 11 of the PSVK, which authorises police to stop (even in the absence of complaints) persons whose actions are “incompatible with general morality and mores, shameful or reprehensible from the point of view of public order”, and prohibit such actions. The Commissioner received reports that as a result of the vagueness of this provision, the police intervene unduly in persons’ daily lives, major areas of concern being police contacts with and violence against LGBT persons, as well as cases of public displays of affection.

Surveillance and collection of personal data

59. In his aforementioned report on the administration of justice in Turkey, the Commissioner’s predecessor expressed concerns about the insufficient judicial control in practice over surveillance measures taken by the police, in particular concerning wiretaps, despite safeguards provided for in the legislation.
60. Another problem in this area concerns the possibility for the police to collect personal data (photos and fingerprints) of persons other than suspects and accused persons, including persons applying for gun or driving licenses and passports, or persons who are taken into custody directly by the police, on the basis of Article 5 of the PVSK. The Act allows for the retention of this data for 80 years after collection and 10 years after the death of the person in question. The Commissioner considers that this provision raises clear concerns with regard to the case-law of the ECtHR on retention of personal data and Article 8 of the ECHR. The ECtHR notably found that powers of retention of fingerprints which are blanket, indiscriminate and applying also to persons who have not been convicted fail to strike a fair balance between the competing public and private interests.³⁶

2.c. Issues relating to the diversity of the police force and social rights of the police

Diversity of the police force

61. In accordance with the European Code of Police Ethics, the recruitment policy for the police “shall aim at recruiting men and women from various sections of society, including ethnic minority groups, with the overall objective of making police personnel reflect the society they serve”.³⁷ There is reported to be a serious need to advance towards the achievement of this aim in Turkey. For example, while the Commissioner acknowledges that gender balance within the police is an issue for most member states of the Council of Europe, it is worth noting that only 6% of the Turkish police force consists of women.³⁸ As regards ethnic diversity, the Commissioner observes that in its 2010 report on Turkey ECRI noted that “even in areas of the country where minority groups are concentrated, almost all members of the security forces are members of the majority population”.³⁹
62. The Commissioner also notes sociological studies which suggest that the 1980 military coup has left important legacies in the police force, having received reports that the dominant sub-

³⁵ *Gillan and Quinton v. the United Kingdom*, judgment of 12 January 2010, paragraphs 83-85.

³⁶ See *S. and Marper v. the United Kingdom*, judgment of 4 December 2008.

³⁷ Recommendation of the Committee of Ministers of the Council of Europe to member states on the European Code of Police Ethics, [Rec\(2001\)10](#), adopted on 19 September 2001, Article 25.

³⁸ According to the 2012 [Activity Report](#) of the General Directorate of Security.

³⁹ ECRI Report on Turkey, fourth monitoring cycle, [CRI\(2011\)5](#) adopted on 10 December 2010, paragraph 165.

culture within the police is one of nationalist conservatism, militarism and state-centrism, in particular vis-à-vis groups identified as “internal enemies”, which include ethnic minorities seeking to affirm their cultural identity, left-wing groups and trade unions.⁴⁰ In this respect, parallels could be drawn to the state-centrist attitudes within the judiciary, which had been flagged as an issue of particular concern in previous reports of the Commissioner. It has also been reported that the police often exhibit machismo, homophobia and transphobia.

63. The diversity of the police force has a special significance in the light of the shift towards preventive policing, as also reflected in the recitals of the 2007 Act amending the PVSK, according to which “the police needs new and modern powers in the pre-crime stage” and “the changing security concept puts the emphasis on the prevention of danger”.⁴¹ The Commissioner considers that in the context of preventive policing, diversity within the police force is all the more crucial in order to avert the risk of discriminatory targeting of ethnic and religious minorities, as well as socio-economically marginalised groups.

Social rights of the members of the police force

64. The Commissioner notes that the Turkish legislation prohibits police officers from becoming members of a trade union,⁴² which appears to be an increasing demand within the police force. While acknowledging that Article 5 (right to join trade unions) of the European Social Charter, which Turkey has not ratified, provides for an exception regarding the police, the Commissioner underlines that the European Code of Police Ethics provides that police staff shall “have the right to organise or to participate in representative organisations.”
65. The working conditions of the police, as well as a reportedly high suicide rate within the police force have received media coverage during the Gezi events. The Commissioner received reports that police officers had to work extremely long hours, sleep on streets, could not eat properly, which according to some interlocutors was one of the factors contributing to violent police behaviour during the demonstrations. The Commissioner also notes concerns regarding the adequacy of psychological counselling for police officers, having received reports that the number of psychologists within the force was too low, taking into account the stress involved in policing.

3. The need to combat impunity of members of law enforcement authorities

3.a. Effective investigations in cases concerning human rights violations by law enforcement officials

66. Public confidence in law enforcement authorities is closely related to the latter's attitude and behaviour towards the public, in particular their respect for the human dignity and fundamental rights and freedoms of the individual as enshrined in the ECHR. Accordingly, the Commissioner believes that it is essential for the authorities to ensure that all instances of ill-treatment or other misconduct by law enforcement officials are firmly condemned, adequately investigated and punished by the competent authorities, in order to prevent recurrence and enhance the key role played by law enforcement authorities in safeguarding the rule of law.
67. Of particular relevance to this end are the 2011 Guidelines of the Committee of Ministers on eradicating impunity for serious human rights violations, which provide that “States are to combat impunity as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust in the justice system”.⁴³
68. The Commissioner also recalls the established case-law of the ECtHR according to which the failure of a state to conduct an effective official investigation where “an individual raises an

⁴⁰ See, for example, Biriz Berksoy, “[Türkiye’de Ordu, Polis ve İstihbarat Teşkilatları: Yakın Dönem Gelişmeler ve Reform İhtiyaçları](#)”, Report prepared for TESEV, April 2013.

⁴¹ Available at: <http://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss1437m.htm>

⁴² Article 15 of the Trade Unions and Collective Bargaining for Civil Servants Act, Act No. 4688 of 12 July 2001.

⁴³ Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, [CM\(2011\)13](#), adopted by the Committee of Ministers on 30 March 2011.

arguable claim that he has been seriously ill-treated by the police or other such agents” constitutes a violation of the ECHR.⁴⁴ Such an investigation should be capable of leading to the identification and punishment of those responsible, without which the general prohibition of torture and ill-treatment would be ineffective in practice and lead to abuses with virtual impunity.

69. The aforementioned report of the Commissioner’s predecessor on the administration of justice in Turkey points to impunity of law enforcement personnel as an entrenched structural problem. The Commissioner notes with deep concern that the ineffectiveness of domestic investigations and proceedings relating to serious human rights violations committed by law enforcement forces has been the subject of a large number of ECtHR judgments, the Court considering in many of these cases that the shortcomings of the investigation, coupled with the lack of due promptness and diligence resulted in virtual impunity for the suspected perpetrators of acts of violence. This problem was also highlighted within the UN system, UN CAT expressing concern “about a pattern of delays, inaction and otherwise unsatisfactory handling [...] of investigations, prosecutions and conviction of police, law enforcement and military personnel for violence, ill-treatment and torture offences”.⁴⁵
70. With reference to the specific case of excessive use of force during demonstrations, the Commissioner notes that the ECtHR referred to the fact that in over twenty of its judgments concerning the heavy-handed intervention of law enforcement officials in demonstrations there had also been a “failure of the Turkish investigating authorities to carry out effective investigations into allegations of ill treatment by law enforcement personnel during demonstrations”.⁴⁶ In some of these cases, the prosecutors decided not to pursue the case and justified this decision in stereotypical terms, solely relying on the unlawfulness of the demonstration under the Turkish Assemblies and Marches Act and without assessing the truth behind the allegations. Similarly, the Turkish authorities claimed that the applicants’ injuries were caused by their resistance to police officers relying only on police reports, without any independent verification. Another problem concerned prosecutors failing to secure statements from potential eyewitnesses and not examining video recordings of the incidents other than those submitted by the police.⁴⁷
71. Victims of violations committed by law enforcement officials are also unable to claim compensation. The Commissioner notes that the ECtHR found that the new Turkish Code of Criminal Procedure which entered into force in 2005 provides for compensation for unlawful arrest or detention, but not for damages sustained as a result of the ill-treatment at the hands of police officers.⁴⁸ It is a feature of the Turkish judicial system that civil remedies also remain inoperative in such cases, as civil courts only grant compensation when perpetrators have been convicted by criminal courts.
72. One of the major obstacles to addressing impunity is the need for prior administrative authorisation to investigate and prosecute a number of serious human rights violations by state actors. The Commissioner notes that Act. No. 4483 on judicial proceedings concerning civil servants, including those working for law enforcement authorities, which requires administrative authorisation for such proceedings, continues to apply to offences other than torture (the latter having been exempted from prior authorisation in 2003). In the aforementioned report, the Commissioner’s predecessor expressed concern that the improvements made regarding Article 3 of the ECHR in recent years were not transposable to Article 2 of the ECHR (right to life). The Commissioner noted that even for torture cases, there had been examples where prosecutors preferred to bring charges under other articles of the Turkish Criminal Code, such as “misconduct in public office” or “deliberately causing injury”, which carry relatively lighter sentences and an obligation to obtain prior administrative authorisation.
73. For a law enforcement official, exceeding the proportionate use of force is defined as an offence under Article 256 of the Turkish Criminal Code, which provides that this offence shall

⁴⁴ See, *inter alia*, the case of *Assenov and others v. Bulgaria*, judgment of 28 October 1998.

⁴⁵ *Op.cit.*, CAT/C/TUR/CO/3, 20 January 2011, paragraph 8

⁴⁶ *Izci v. Turkey*, judgment of 23 July 2013, paragraph 96.

⁴⁷ See, for example, the cases of *Taşarsu v. Turkey*, judgment of 18 December 2012 and *Subaşı and Çoban v. Turkey*, judgment of 9 July 2013.

⁴⁸ See *Serdar Güzel v. Turkey*, judgment of 15 March 2011.

be subject to the provisions concerning the offence of “inflicting deliberate injury”, which carries the penalty of a prison sentence between one and three years. The Commissioner notes the information provided by the Turkish authorities to the Committee of Ministers of the Council of Europe that the breach of the various governmental circulars regulating law enforcement interventions to disperse demonstrations might constitute a breach of this article. The Commissioner is concerned, however, that excessive use of force, which may amount to ill-treatment under the ECHR, may still be subject to prior administrative authorisation, thus increasing the risk of impunity.

74. Another problem concerning ill-treatment cases is the fact that independent medical evidence is often ignored by prosecutors,⁴⁹ and is very rarely admitted by courts. The national Forensic Medical Institute remains the only body whose reports are consistently recognised by courts. There have been allegations of partiality concerning this body, and the ECtHR has in the past found violations of the Convention despite the opinion to the contrary of the Institute.⁵⁰ The Commissioner also notes with concern the findings of the CPT in 2011, which described the situation concerning medical examinations of persons in custody as ‘disturbing’, and recommended, *inter alia*, that interviews conducted by law enforcement authorities should be systematically recorded. In this connection, the Commissioner also noted with interest the view shared by the Chair of the Human Rights Inquiry Commission of the Turkish Parliament that cameras in police stations had been installed on the basis of ministerial directives and that a statutory legal basis may be more desirable.
75. The problem of obtaining evidence against law enforcement personnel was illustrated in the case of Festus Okey, a Nigerian asylum seeker who was shot to death while in police custody in 2007. The Commissioner was informed that the Istanbul Human Rights Board found grave deficiencies in the conduct of the Istanbul Police Force in this case, including the apparent loss of the most important pieces of evidence by the police, the fact that Mr Okey was taken into custody without a medical examination, the fact that the interview room for lawyers (where there were no cameras) was used as a place of remand, and that the police had exceeded their power by taking Mr Okey into custody after a simple search without an arrest warrant. Significantly, the Istanbul Human Rights Board stated that official video footage likely to be used as evidence against the police systematically disappears due to ‘technical reasons’, a circumstance which raises grave suspicions and should be urgently remedied.
76. The Commissioner also notes the criticism expressed by human rights organisations about the problems affecting the judicial proceedings in the case of Festus Okey, including the facts that the first instance court took four years simply to establish his identity, did not accept his brother’s request to intervene, and condemned the accused police officer only to four years and two months for negligent manslaughter. The Commissioner understands that the prosecutor appealed this judgment on the grounds that the police officer in question should have been tried for murder, which carries a much heavier prison sentence.
77. Another case illustrating major shortcomings leading to impunity of law enforcement personnel is that of the journalist and writer Hrant Dink, in which the ECtHR found that credible allegations (including by prosecutors and inspectors) of misconduct by public officials, including members of police forces, were not properly investigated. This case also highlighted major shortcomings concerning administrative investigations, including problems relating to independence (investigations conducted by civil servants under the same hierarchical structure as the suspects) and victim involvement (the family of Hrant Dink were not involved in the investigations).⁵¹ As regards the judicial phase, a particular problem concerned the restriction of access to the prosecution file: although the rationale of this measure is to preserve the integrity of the evidence, lawyers of Hrant Dink claimed that this restriction had made it easier to filter, tamper with or destroy evidence against law enforcement personnel.
78. Another shortcoming relates to the suspension of law enforcement officers suspected of offences. The Civil Servants Act essentially entrusts the right to suspend law enforcement

⁴⁹ See, for example, the case of *Subaşı and Çoban v. Turkey*, judgment of 9 July 2013.

⁵⁰ See, for example, the case of two teenagers tortured by the police, *Salmanoğlu and Polattaş v. Turkey*, judgment of 17 March 2009.

⁵¹ *Dink v. Turkey*, judgment of 14 September 2010.

personnel subject to judicial investigations to their administrative hierarchy (superiors responsible for appointment, district governors, governors, or ministerial inspectors).⁵² The Commissioner notes that this has led to many cases where police officers accused of serious crimes have remained on duty during the proceedings, sometimes even being involved in the collection of evidence against their accusers.

79. As examined in greater detail in the aforementioned report, an overarching problem that remains to be fully addressed is the persistence of biased, state-centrist attitudes among prosecutors and judges, which results in often superficial and ineffective investigations, during which very important pieces of evidence against law enforcement officers and statements of victims are not given due importance and which often lead to acquittals. A good indicator of the problem is also the fact that courts tend to deal more rapidly with counter-charges brought by police officers for resistance to public officials, than with human rights violation claims originally brought by plaintiffs against police officers.
80. A particular case relating to impunity of police violence in the context of freedom of assembly was raised, among others by the European Commission against Racism and Intolerance (ECRI), and concerned the acquittal by the Court of Cassation of a police officer who had fired his gun into the crowd rather than into the air during a pro-Kurdish demonstration in Siirt against demonstrators who were throwing stones, killing one person. The Commissioner regrets that in this case, the Court of Cassation concluded that the officer's reaction had been within legal bounds, emphasising the "special circumstances in the region".
81. Finally, the Commissioner draws the attention of the Turkish authorities to the fact that political leadership plays a key role in enforcing respect for human rights within law enforcement authorities: given the hierarchical nature of law enforcement, signals sent by politicians, particularly heads of state or government and ministers of the interior are rarely ignored. The Commissioner stresses that political rhetoric justifying or appearing to justify misconduct by law enforcement personnel or condoning inadequate punishment for such misconduct, sends a signal that bad behaviour will not be punished and compounds a culture of impunity.

3.b. Independent complaints mechanism concerning the actions of law enforcement authorities

82. The Commissioner believes that one of the most effective ways of combating impunity among members of law enforcement forces is to establish an effective and independent complaints mechanism. This is in line with the European Code of Police Ethics, which provide that "public authorities shall ensure effective and impartial procedures for complaints against the police" and that "accountability mechanisms, based on communication and mutual understanding between the public and the police, shall be promoted".⁵³
83. The Commissioner is aware that internal investigation mechanisms already exist in Turkey, such as the internal inspectorates of the General Directorate of Security, the Gendarmerie and the Coast Guard, as well as the inspectors of the Turkish Ministry of the Interior, in order to tackle cases of abuse committed by members of the Turkish law enforcement authorities.
84. However, the Commissioner stresses that such internal mechanisms, although necessary to impose disciplinary sanctions, are not sufficient to satisfy all five principles set out in the case-law of the ECtHR concerning effective investigations, namely: (a) independence: there should be no institutional or hierarchical connections between the investigators and the official concerned and there should be practical independence; (b) adequacy: the investigation should be capable of gathering evidence to determine whether the behaviour in question was unlawful and to identify and punish those responsible; (c) promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law; (d) public scrutiny: procedures and decision-making should be open and transparent in order to ensure accountability; and (e) victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.

⁵² Civil Servants Act, Act No. 657 of 23 July 1965, Articles 138 and 140.

⁵³ Op. cit., [Rec\(2001\)10](#), Articles 61 and 62.

85. For these reasons, the aforementioned report on the administration of justice invited the Turkish authorities to set up an effective police complaints mechanism, which would operate in accordance with these five principles, and in line with the relevant Opinion of the Commissioner.⁵⁴
86. The Commissioner understands that a Bill on the establishment of a Law Enforcement Oversight Commission (*Kolluk Gözetim Komisyonu*) was adopted by the Council of Ministers and is currently before the Turkish Parliament.⁵⁵ However, the Commissioner has concerns on the extent to which the proposed mechanism satisfies the abovementioned criteria.
87. According to Article 4 of the Bill, the tasks of the proposed Commission would be to supervise the police complaints system and advise the Ministry of the Interior on its functioning, facilitating co-ordination between different public bodies involved, requesting them to start investigations concerning allegations of crimes or disciplinary infractions, oversee the establishment of a central database of police complaints, prepare statistics and yearly public reports for the attention of the Parliament and the Prime Ministry. The Commission would also be competent to propose measures concerning the working conditions of law enforcement personnel, follow the application of police ethics, measure the public confidence in law enforcement complaints system, and advise on the in-house training programmes of the police. The Commission would be able to act either *ex officio* or following complaints or denunciations it receives, by requesting the Directorate of civil service inspection council within the Ministry of the Interior (*Mülkiye Teftiş Kurulu Başkanlığı*) to start an inspection within 30 days.
88. However, the Commissioner notes that the Bill does not provide the Commission with any power to carry out inspections itself. Furthermore, the Commission is to be placed within the Ministry of the Interior and would have no separate legal personality, even though the Bill specifies that the Commission would act independently and not receive any instructions from any person or body. Insofar as its composition is concerned, the body will have seven members: the Undersecretary of the Ministry of the Interior (who will chair meetings), the Human Rights Director of the Prime Ministry, the President of the civil service inspection council, the First Legal Advisor of the Ministry of the Interior, the General Director of Criminal Affairs of the Ministry of Justice, as well as one academic and one practicing defence counsel elected by the Council of Ministers.
89. Thus, the Commissioner observes that neither the organic structure, nor the composition of the proposed body would in principle qualify it as independent. Although the recitals of the Bill refer to the case-law of the ECtHR indicating that the investigation mechanisms presently operating in Turkey do not fulfil the procedural requirements of Article 2 and 3 of the ECHR, concerns have been expressed that the Commission in the currently proposed form will not fully resolve this matter. It has also been highlighted that the envisaged Commission does not provide sufficient safeguards for the principles of adequacy, public scrutiny or victim involvement in investigations.
90. While the Bill falls short of establishing an independent police complaints mechanism of the kind envisaged in the Commissioner's Opinion referred to above, the Commissioner observes that it may nonetheless lead to certain improvements over the existing situation, in particular with regard to data collection, the prioritisation of judicial investigations concerning law enforcement personnel, and the possibility of inspections outside the direct hierarchy.
91. As regards data collection, the lack of coherent, reliable statistical information on the number of investigations, prosecutions and convictions concerning serious human rights violations by law enforcement is currently an important deficiency in the Turkish system. The Bill provides for a centralised data collection system for the different law enforcement forces, and harmonised data collection. While it does not concern the work of the Commission as such, the Commissioner notes that the Bill also contains a suggested additional article to the Turkish Code of Criminal Procedure, specifying that allegations of murder, deliberate injury, torture,

⁵⁴ Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, [CommDH\(2009\)4](#), 12 March 2009.

⁵⁵ Available at: http://www.tbmm.gov.tr/develop/owa/tasari_teklif_sd.onerge_bilgileri?kanunlar_sira_no=102780

excessive use of force and organised criminality committed by law enforcement personnel are to be considered urgent matters and dealt with by prosecutors as a matter of priority (Article 9 of the Bill). Finally, even though the Commission's members are not independent of the government, it would have no representatives of law enforcement forces. The Commissioner observes that the proposed mechanism would at least allow the inspectors of the Ministry of the Interior to intervene directly at the request of the Commission, rather than the inspectorates of the General Directorate of Security, Gendarmerie or Coast Guard which serve under the same hierarchical structure as the official in question.

92. Finally, the Commissioner notes the establishment of the Turkish Ombudsman Institution, which will be competent to receive complaints against law enforcement authorities. However, the Ombudsman can only make non-binding recommendations to the administration and cannot impose sanctions. The possibility for the Ombudsman to act effectively as a police complaints mechanism would therefore require a substantial amendment of the institution's mandate.

4. The Gezi events and their aftermath

4.a. Allegations of human rights violations

93. During his visit in July 2013, the Commissioner received a large number of serious and consistent allegations of human rights violations committed by law enforcement forces against demonstrators during the Gezi events. Many of these allegations were supported by witness accounts, reports of reputable national or international NGOs, photos, videos, and forensic evidence, as well as the number of deaths and injuries over the course of the events. According to the information available to the Commissioner, six persons had thus lost their lives as a result of the events, including one police officer and a demonstrator shot to death by a police officer. While the number of injuries is a point of contention, the Turkish Medical Association stated on 15 July 2013 that 8 163 demonstrators in 13 provinces had sought medical attention in the context of the Gezi events, with 63 serious injuries (three of which were in critical condition), 106 cases of head trauma, 11 persons losing an eye, and one splenectomy.⁵⁶
94. The long-standing practice of heavy-handed interventions against participants in demonstrations that are deemed unlawful, combined with the scale of the Gezi events, appear to have brought about this outcome. In effect, the Gezi events were unprecedented both in terms of their geographic scope and the numbers of participants: according to the estimates of the Ministry of the Interior, over the course of the events, 2.5 million persons had participated in demonstrations in 79 of Turkey's 81 provinces (this figure however includes participations of the same person in different events).
95. Among the most serious allegations received by the Commissioner, the following appeared to be particularly recurrent:

Excessive use of tear gas: The Commissioner was informed that the amount of gas used against demonstrators was such that the effects were not limited to those actually taking part in the demonstrations, but that the gas also affected bystanders, nearby buildings and their residents, or even entire neighbourhoods. An example often given to the Commissioner in this respect was the use of gas around the Taksim and Beşiktaş neighbourhoods of Istanbul. The media and civil society representatives reported that a very high number of gas canisters had been used over the course of the events. The Turkish authorities did not provide the Commissioner with the exact figure. A further concern brought to the Commissioner's attention was that in most cases the authorities had not taken sufficient precautions to provide for emergency healthcare to demonstrators and bystanders exposed to tear gas, taking account in particular of the numbers of persons affected.

96. **The improper use of tear gas canisters as projectiles:** A recurrent allegation was the shooting of gas canisters horizontally, from close range and directly targeting protestors,

⁵⁶ The [Health status of demonstrators](#), data collected from medical associations and doctors, press statement of 15 July 2013 (accessed on 1 August 2013).

leading to direct hits on the body, including the head, abdomen, and genital area. The number of cases of head trauma and eye loss, as well as some well-documented cases, such as those of Lobna Allamii or the 17-year old Mustafa Ali Tombul, appear to indicate that these were not isolated incidents.⁵⁷ Another particular example brought to the attention of the Commissioner by some interlocutors was the fact that the journalist Ahmet Şık had been injured twice with gas canisters fired at close range, allegedly indicating that he was targeted specifically.

97. The abovementioned judgment of the ECtHR in the case of *Abdullah Yaşa v. Turkey* clearly indicates that this is not a new problem in Turkey. The Commissioner further observes that Article 12, paragraph 1.d of the Directive of 25 August 2011 mentioned above refers to rifles projecting tear gas canisters as “defence weapons” with “impacting effect” aimed at neutralising attackers. In addition, the Commissioner also received some allegations of the use of plastic bullets during the Gezi events, which were rejected by the Turkish government. The Commissioner draws the attention of the authorities to the fact that such weapons, if they are used by law enforcement forces, must be subject to the safeguards required by the CPT for projectile-firing weapons.
98. **Use of tear gas in confined spaces:** The Commissioner received several reports about tear gas being thrown directly into buildings, as well as makeshift infirmaries around the Gezi Park. Video footage of tear gas being used inside Divan Hotel in Istanbul on 15 June 2013 attracted particular attention, and prompted the Secretary General of the Council of Europe to draw the Turkish authorities’ attention to the case-law of the Court, which clearly indicates that tear gas should not be used in closed spaces. Some eye witnesses of the events alleged that the police had barricaded the exit of the lobby of the hotel, and that people attempting to flee the premises were shot at with plastic bullets. The Commissioner notes that Article 10, paragraph 26 of the directive of 25 August 2011 appears to condone the use of gas in closed spaces, as it states that in interventions with gas in closed spaces, the material must be non-flammable.
99. **Use of tear gas mixed with water on demonstrators:** Press reports, as well as eye witness accounts refer to the adding of liquid pepper gas into the water sprayed on the demonstrators from riot control vehicles (*Toplumsal Olaylara Müdahale Aracı, TOMA*). The Istanbul Medical Association informed the Commissioner that this mixture caused intense pain, as well as burn symptoms, on persons affected, as well as on the hands of doctors examining them. The Commissioner observes that the Directive of 25 August 2011 in its Article 12 provides for the use of water mixed with tear gas. In the written communication that the Ministry of the Interior sent to the Commissioner, the authorities stated that OC pepper concentrate is added to water if necessary.
100. **Use of water cannons:** The Commissioner notes reports that water cannons may have been used at unnecessarily high levels of pressure on demonstrators, exceeding the aim of dispersing crowds and inflicting serious injuries. There were also reports that bystanders, houses and hospitals were affected by water cannons.
101. **Insufficient provision for escape routes:** The Commissioner received several reports that on certain occasions, the police blocked escape routes for demonstrators who were exposed to tear gas, or used gas directly on these escape routes. These allegations were categorically refuted by the Ministry of the Interior.
102. **Excessive use of force during and after apprehensions:** The Commissioner received a number of reports of ill-treatment of persons by police officers during and immediately after apprehension, including beatings with truncheons and other blunt objects. A large number of reports concerned ill-treatment of apprehended persons in police vehicles (such as beatings, or unduly long periods during which persons were kept in heated vehicles without water), and closed spaces such as car parks. In this connection, the Commissioner is particularly concerned about reports that abuses were perpetrated against women on a systematic scale, including verbal and physical harassment, threats of rape and humiliating body searches.

⁵⁷ See also the [report](#) of Human Rights Watch entitled “Turkey: End Incorrect, Unlawful Use of Teargas”, 16 July 2013.

103. **Concealment by police officers of their ranks and identification numbers:** The Commissioner received several reports, backed up by photos and video footage, of rapid response forces hiding their identification numbers on their helmets, by putting tape over them, by rendering them unreadable with felt-tip pens, or using non-marked helmets whilst leaving the numbered helmets in police vehicles. Another very worrying event was the attack against demonstrators by initially unidentified persons holding wooden bats in Izmir, who have later been recognised as plainclothes police officers by the provincial Governor.
104. **Police violence against journalists:** Use of force against journalists covering the events, causing injuries and damages to equipment, was a further concern raised by many of the Commissioner's interlocutors. The Commissioner notes that Reporters Without Borders made several statements concerning this issue, arguing that more than 50 national and international press workers had been subjected to police violence.⁵⁸ In this connection, the Commissioner would like to draw the attention of the Turkish authorities to the case-law of the ECtHR, and notably the fact that, in a case concerning a journalist who had been beaten by the police while covering an unauthorised demonstration, it found not only a violation of Article 3 but also of Article 10 (freedom of expression) of the ECHR. The Court found in particular that the physical ill-treatment by state agents of journalists carrying out their professional duties had seriously hampered the exercise of their right to receive and impart information.⁵⁹
105. The majority of the Commissioner's interlocutors insisted on the fact that the demonstrations, given the number of participants and the length of the events, had been overwhelmingly peaceful. They argued that acts of violence had been very rare and confined to small groups, the demonstrators having been particularly vigilant in policing themselves against such acts.
106. The Commissioner brought these allegations to the attention of the Turkish authorities, who denied that human rights violations had been committed on the scale the allegations by demonstrators and human rights organisations suggested. The authorities' position appeared to be that, while the initial demonstrations might have been peaceful, the events had been very quickly taken over by marginal or terrorist groups, who used violence against the police officers, and damaged public and private property. The authorities' view was that the reaction of the police had been proportionate on the whole, except for very few isolated cases which were under investigation.
107. The Commissioner is of the view that these fundamentally opposing positions can only be reconciled through effective and impartial investigations, which must respect the criteria established by the ECtHR (see the section on impunity above). The Commissioner understands that a number of bodies are examining the human rights implications of the Gezi events, including the Ombudsman Institution, the Turkish Human Rights Institution and a parliamentary investigation commission.
108. One particular area of concern pertains to the statements of high-level officials indiscriminately praising the police for their conduct during the events and appearing to minimise the gravity of the aforementioned allegations. As noted above, the messages sent by political leaders are crucial to ensuring that law enforcement authorities act in full respect of human rights.⁶⁰ Although the difficulty of policing demonstrations must be acknowledged, statements appearing to condone the conduct of law enforcement officials in a blanket fashion, in particular when there are serious allegations of human rights violations which have not yet been fully investigated, can send the wrong signal both to law enforcement personnel and the general public.

4.b. Aftermath of the Gezi protests

109. As regards the number of ongoing investigations into cases of misconduct of police forces, the Ministry of the Interior informed the Commissioner that one police officer and four municipal police officers had been dismissed in Istanbul, as well as two police officers in Izmir. The

⁵⁸ See, for example, statements of 8 July, [19 June](#), [17 June](#), [12 June](#), and [4 June](#) 2013.

⁵⁹ *Najafli v. Azerbaijan*, judgment of 2 October 2012.

⁶⁰ See above, "The need to combat impunity of members of law enforcement authorities".

following information was provided as regards ongoing disciplinary or preliminary investigations at different stages (none of which had been concluded):

- In Istanbul, five police officers, one head of unit, seven municipal police officers, a superintendent and the head of department of rapid response forces;
- In Ankara, one police officer, as well as an unidentified security personnel;
- In Izmir, the Director of Security for Izmir, three deputy directors of security, two district directors of security, and two district governors. The Commissioner also understands that there are requests for a 16-month suspension of one chief inspector and three police officers, for a 4-month suspension of one deputy director of department, one sub-inspector, and for withholding of salaries for three police officers.

110. The authorities further informed the Commissioner that two reports of Ministry inspectors concerning members of the rapid response force and unidentified police officers had been transmitted to the Office of the Chief Prosecutor of Izmir for action.
111. The Commissioner also had the opportunity to discuss the Gezi events with Turkey's Chief Ombudsman, Mr Nihat Ömeroğlu, whose Office had received a number of complaints against law enforcement authorities.⁶¹
112. As regards judicial investigations into the conduct of police officers, no statistical information is available to the Commissioner. Some interlocutors referred to the apparent intention of the Office of the Chief Prosecutor in Istanbul to join all complaints concerning police violence under a single file. The concern was expressed that given the variety and number of complaints the case file would easily become unwieldy and lead to ineffective and lengthy proceedings. In any case, the Commissioner is concerned about reports that only a very small fraction of allegations is being actively investigated.
113. A particularly emblematic prosecution is the one concerning the police officer who allegedly killed the demonstrator Mehmet Ethem Sarısülük, the autopsy report indicating that the latter had been shot in the head with a 9 mm bullet at close range. This case attracted particular attention, initially due to the delay of the Directorate of Security in communicating the name of the officer in question, and afterwards due to the suspension of the proceedings by the 6th Assize Court in Ankara, owing to the absence of prior administrative authorisation. The Commissioner understands that on review, the 7th Assize Court lifted the suspension and that the trial of the police officer is currently ongoing. He is concerned, however, about reports that the charges brought against the police officer concern "legitimate defence" and that the court decided to hold hearings *in camera*. Another crucial case concerns the beating to death of Ali İsmail Korkmaz in Eskişehir, with an ongoing trial against 8 persons, several of whom are police officers.
114. As regards the number of persons detained by courts due to their participation in the Gezi events, according to the figures provided by the Turkish authorities, 159 persons had been detained as of 18 July 2013 (7 in Adana, 37 in Ankara, 8 in Bursa, 7 in Erzincan, 47 in Istanbul, 50 in Izmir, 6 in Kocaeli, and 4 in Malatya). The Commissioner welcomes the fact that, in contrast to the high number of persons apprehended by the police and directed to prosecutors, the number of detentions by courts appear to have been relatively low, which points to the possible positive effects of the Turkish government's reform efforts, in particular contained in the so-called Third Judicial Reform Package, concerning lengthy detention periods. However, the Commissioner is aware that a number of criminal investigations are being conducted against demonstrators who have not been detained, notably for participation in an unlawful demonstration on the basis of the Assemblies and Marches Act.
115. While noting the authorities' position that the police response to demonstrators had been by and large proportionate, the Commissioner welcomes the adoption of two circulars by the Minister of the Interior on 26 June 2013 and on 22 July 2013.⁶² These documents clearly show

⁶¹ See below under Chapter II.

⁶² See above, "Freedom of assembly and the use of force in public demonstrations – the Turkish legislation and practice in the light of international standards".

that the Turkish authorities are willing to recognise some of the problems which became apparent during the demonstrations and rectify them. Despite the fact that the breach of these circulars may constitute the offense of disproportionate use of force, the Commissioner has concerns as to whether they will be sufficient to resolve these problems in the absence of legislative measures, since the effectiveness of previous circulars in preventing human rights violations has been put into question. The Commissioner also notes that the ECtHR considered that it was necessary to reinforce the relevant safeguards through the adoption of more detailed legislation and/or regulations in spite of the existence of previous circulars regulating the use of tear gas.⁶³

116. As a positive development after the Gezi events, the Commissioner welcomes the fact that the annual Istanbul LGBT Pride parade in Taksim square on 30 June 2013, which attracted record participation, took place peacefully.

Fear of intimidation and reprisals

117. While not linked to the conduct of law enforcement authorities, one important concern many of the Commissioner's interlocutors raised during the visit was the possibility of reprisals by administrative and judicial authorities against persons or groups for their non-violent actions during the demonstrations. Particularly alarming for the Commissioner were the concerns expressed in this sense by doctors, lawyers, academics, teachers, and media professionals. The Commissioner drew the attention of the Turkish authorities to these fears and the importance for the authorities to refrain from any measures that could be perceived as reprisals against peaceful demonstrators or their sympathisers, and thereby have a strong chilling effect on the exercise of the rights to freedom of assembly and freedom of expression.

118. The Commissioner notes with serious concern a certain number of developments which have led to these fears or reinforced them. Of particular note are the following:

Investigation of health workers: the Commissioner was informed of an investigation initiated in June by the Ministry of Health against the Turkish Medical Association for voluntary health services provided by the Istanbul Medical Association to "persons injured during unlawful demonstrations" without prior authorisation of the Ministry, asking the medical association notably to disclose the names of the health workers involved and their records.⁶⁴ Prior to this investigation, the Minister of Health reportedly stated that providing health services to the Gezi protestors was illegal and would be the subject of legal proceedings. Representatives of doctors further alleged that the Ministry of Health initiated a policy during the Gezi events whereby public hospitals were required to keep separate records for persons injured during the Gezi events, which reportedly discouraged many injured demonstrators from seeking medical attention (according to the Turkish Medical Association, only 5% of injured demonstrators sought treatment in a hospital).

119. **Fines imposed on TV stations:** The Commissioner notes with particular concern decisions taken by the Radio and Television Supreme Council (RTÜK) on 11 June 2013 to impose fines on four TV channels (Halk TV, Ulusal TV, Cem TV and EM TV) on the grounds that they had violated the Act on the Establishment of Radio and Television Enterprises and their Broadcasts (Act No. 6112).⁶⁵ In particular, these channels were found to have violated the provisions of the Act concerning broadcasts encouraging or trivialising violence, and the principles of impartiality, truth and the obligation not to report news without investigation and verification where this is possible within the framework of journalistic principles.

120. In this context, the Commissioner is especially concerned that these decisions make reference to the Council of Europe guidelines on protecting freedom of expression and information in times of crisis,⁶⁶ in order to justify their assessment that the broadcasts concerned had been

⁶³ *Abdullah Yaşa v. Turkey*, judgment of 16 July 2013, paragraph 61.

⁶⁴ See [information](#) available at the website of the Turkish Medical Association (accessed on 16 September 2013).

⁶⁵ [Decisions](#) adopted on 11 June 2013 by the Radio and Television Supreme Council, Meeting No. 2013/36 (accessed on 16 September 2013).

⁶⁶ [Guidelines](#) of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis, adopted by the Committee of Ministers on 26 September 2007.

one-sided, referred to unverified information, and to conclude that media professionals have a particular obligation to calm the populations at times of crisis whilst avoiding ‘manipulative’ or provocative broadcasts. While the aforementioned guidelines do provide that “media professionals need to adhere, especially in times of crisis, to the highest professional and ethical standards, having regard to their special responsibility in crisis situations to make available to the public timely, factual, accurate and comprehensive information”, the Commissioner emphasises that the same guidelines clearly state that self-regulation is the most appropriate mechanism in this respect, and that the control exercised and fines imposed by RTÜK cannot be considered as self-regulation.

121. **Media professionals:** Self-censorship in the Turkish media is a problem which was raised by the Commissioner’s predecessor in his 2011 report on freedom of expression in Turkey.⁶⁷ The Commissioner is concerned that the perception of biased coverage of the Gezi events, which had prompted the Secretary General of the Council of Europe to urge the Turkish media to provide full and accurate coverage of the protests,⁶⁸ has been compounded by the dismissal of a number of journalists in connection with their coverage of the Gezi events. The Commissioner is particularly worried about the effects of certain high-profile cases which further tarnished the image of independence of the Turkish media, such as the dismissal of Yavuz Baydar from his position as the ombudsperson of the daily *Sabah*, ostensibly because he published readers’ complaints about the newspaper’s coverage of the Gezi events, and of Can Dündar, a prominent columnist of the daily *Milliyet*.
122. **Targeting of professional associations:** The Commissioner notes that on 12 July 2013 the Turkish Parliament passed legislation (Act No. 6495) explicitly removing the competence of the Union of Chambers of Turkish Engineers and Architects to visa certain projects, thus depriving it of an important source of income. He notes with concern that this move was seen by many as a reprisal against the Union, which was very active in the legal proceedings challenging the demolition of the Gezi Park and during the Gezi events themselves.
123. The Commissioner also noted with concern information provided by his interlocutors that police reports concerning the Gezi events referred to organisations such as the Union of Chambers of Turkish Engineers and Architects, Turkish Medical Association, bar associations and certain human rights NGOs as “anti-governmental civil society organisations” who sought public support for “illegal, marginal, left-wing activists” and tried to exert psychological pressure on the judiciary and the law enforcement authorities. Among the acts which were singled out in such reports was the fact that these organisations encouraged individual demonstrators to bring complaints to prosecutors for excessive use of force, as well as legal aid provided by bar associations to demonstrators. The Commissioner finds this information all the more worrying as these police reports often constitute the basis of prosecutors’ indictments.
124. The Commissioner also notes the arrest during a demonstration at Gezi Park on 8 July 2013 of persons, including members of the Istanbul Chambers of Architects and Town Planners, as well as the Secretary General of the Istanbul Medical Association, the subsequent house searches, as well as the information that a number of the persons arrested have been charged under Article 220 of the Turkish Criminal Code concerning criminal organisations.
125. **Academia, teachers and students:** The Commissioner also received numerous allegations that the Turkish Council for Higher Education had contacted rectors of several universities enquiring about actions of their teaching staff which were seen to be encouraging demonstrators (such as changing of examination dates). The Commissioner also heard reports that administrative investigations had been started in certain provinces against teachers (as well as other civil servants) who had peacefully demonstrated during the Gezi events. He is also concerned about reports that there have been attempts by administrative authorities to establish the identity of students who participated in demonstrations, and that a number of students participating in demonstrations have lost their right to university accommodation or

⁶⁷ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey from 27 to 29 April 2011, Issue reviewed: Freedom of expression and media freedom in Turkey, [CommDH\(2011\)25](#), paragraphs 68 to 70.

⁶⁸ See the [news item](#) on the Secretary General’s website, 3 June 2013.

government scholarships. He understands that such reports have led to a parliamentary questions addressed to the Minister of Youth and Sports.

126. **Business interests:** The Commissioner received reports that following official statements that the Gezi events had been encouraged by speculators, the Turkish Capital Markets Board and the Banking Regulation and Supervision Agency started special investigations concerning the Gezi events. Tax fines imposed on a number of businesses in the aftermath of the events were also interpreted as reprisals by some interlocutors.
127. **Social media:** The Commissioner was informed that from the start of the events the demonstrators relied very heavily on social media, in particular Twitter and Facebook. The Commissioner notes that government representatives repeatedly made statements targeting the social media. Around 30 persons were reportedly arrested on the basis of their tweets urging people to demonstrate in Izmir and subsequently released.
128. It was reported that in a statement on 17 June 2013, the Minister of the Interior implied that similar arrests could occur elsewhere, and expressed the government's view that there should be specific legislative regulation of social media considering the serious problems they cause, and stated that this work would be carried out by the Ministry of Justice and other relevant ministries. The Commissioner was informed by the Minister of Justice, however, that no such regulation was on the government's agenda.

Conclusions and recommendations

129. The Commissioner welcomes the progress Turkey has made in recent years in combating torture in the framework of its "zero-tolerance policy" against torture, in particular in custody settings. He urges the Turkish authorities to maintain this momentum and transpose these positive results to a number of other areas of recurrent human rights violations in the framework of law enforcement outlined in this report.
130. The Commissioner considers that the Turkish legislation concerning assemblies and demonstration marches provides the Turkish authorities with excessively broad powers for restricting the right to freedom of assembly. According to the relevant Act, demonstrations become automatically unlawful as a result of any one of the numerous grounds provided for, which may concern aspects as crucial as the time and place of assembly, and government representatives also enjoy a wide discretion to ban demonstrations. In the Commissioner's view, the most significant shortcoming in the Turkish legislation is the fact that it provides for the dispersal of any demonstration which has thus been deemed unlawful, without taking into account whether or not it is peaceful, a crucial distinction according to the case-law of the ECtHR. The legislation also imposes undue or disproportionate punishments for participation in unlawful demonstrations.
131. The Commissioner understands that the Turkish authorities are considering reviewing this legislation, which dates back to the period of the military coup d'état of 1980, and urges them to do so in order to bring it in line with the ECtHR case-law and other international standards, including the Guidelines on Freedom of Peaceful Assembly of the OSCE and Venice Commission. By raising the thresholds, both for considering a demonstration as unlawful and for possible subsequent law enforcement interventions to disperse demonstrations, the Turkish authorities could significantly reduce the number of such interventions and thereby limit violations of human rights due to excessive use of force. The legislation should also be rendered less prescriptive, for example concerning places where demonstrations can be held, and more flexible. To further limit the need for dispersals with use of force, the Commissioner encourages the Turkish authorities to ensure more transparency and dialogue between the police and organisers of demonstrations, for example by having systematic recourse to professional mediators to defuse potential tensions during assemblies.
132. As regards the conduct of law enforcement officials in the context of demonstrations, and in particular the excessive use of force which has been identified as a systemic problem in Turkey by the ECtHR, the Commissioner urges the Turkish authorities to adopt clear and binding rules on the proportionate use of force by law enforcement agents in the context of demonstrations,

including on the use of tear-gas and projectile-firing weapons, in line with the relevant CPT recommendations and recent case-law of the ECtHR. The Commissioner also encourages the Turkish authorities to revise the practice of adding OC pepper concentrate to water sprayed from water cannons, given the intense pain this practice is reported to cause. While noting the directives and circulars of the Minister of the Interior addressing a number of these issues, the Commissioner draws the attention of the Turkish authorities to the fact that the ECtHR considered that Turkey needed to provide clearer guarantees against violations of Articles 3 (prohibition of torture) and 11 (freedom of assembly) of the ECHR through detailed legislation and/or regulations. In any event, given the number of relevant circulars and directives, the Commissioner considers that it would be advisable to review the applicable domestic standards and codify them in a manner which would increase clarity on the powers and responsibilities of law enforcement authorities during demonstrations.

133. Continuous training should be provided to law enforcement personnel on the use of weapons and riot control material, including tear gas, with full respect for the principles of opportunity, proportionality, restraint and minimum damage contained in the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In accordance with the ECtHR's findings, the Turkish authorities should also put in place a better system of control and supervision of law enforcement personnel during demonstrations, as well as an effective *ex post facto* review of the necessity, proportionality and reasonableness of any use of force, in particular against persons who do not put up violent resistance.
134. The Commissioner encourages the Turkish authorities to pay special attention to the problem of ill-treatment committed by law enforcement officials during apprehensions and in non-custodial settings. In the light of numerous allegations of such ill-treatment during the Gezi events, the Commissioner encourages the authorities to publish the preliminary observations of the CPT following its visit to Turkey between 10 and 21 June 2013, as well as the subsequent report of this visit, and urges them to implement any recommendation the CPT may address to the Turkish authorities regarding this issue.
135. The Commissioner draws the attention of the Turkish authorities to certain powers granted to the police under the Powers and Duties of the Police Act, which in his view raise questions of compatibility with international standards and the case-law of the ECtHR. These powers concern, in particular, the use of firearms, stopping of persons in daily policing and retention of personal data. He also invites the Turkish authorities to adopt measures with a view to promoting diversity within the police force. To lessen the likelihood of police misconduct, Turkey should also pay attention to the social and economic rights of law enforcement officials, such as sufficient rest and psychological support.
136. Referring to previous Commissioner's reports on Turkey and the case-law of the ECtHR, both of which point to impunity of law enforcement officials as an entrenched problem, the Commissioner stresses the need for policies and practice to prevent and vigorously combat any institutional culture within or outside of law enforcement authorities which promotes impunity. He draws the Turkish authorities' attention to the relevant Council of Europe standards, including the Committee of Ministers Guidelines on eradicating impunity for serious human rights violations and the section on combating impunity of the CPT's 14th general report.
137. The authorities are urged to undertake measures to raise awareness among judges and prosecutors of their duty to thoroughly investigate all allegations of violations of human rights committed by law enforcement officials, in full compliance with the five principles established by the ECtHR. The Commissioner recommends that special attention be paid to victim involvement (including support and counselling for victims of excessive use of force) and to the adequacy of proceedings, notably by giving due consideration to all relevant evidence (e.g. witness testimonies, interrogation of suspected officers, forensic and medical evidence) as opposed to relying mainly or exclusively on police reports, and ensuring equality of arms between victims and alleged perpetrators of police violence. In this respect, the Commissioner welcomes a provision in the Bill on the establishment of a Law Enforcement Oversight Commission to the effect that allegations of serious misconduct by law enforcement officials should be prioritised by prosecutors and hopes that this provision will be enacted.

138. The Commissioner urges the Turkish authorities to remove all administrative obstacles which currently hamper judicial investigations concerning law enforcement officials, such as the authorisation system, and the suspension of officials who are the subject of credible allegations of human rights violations. The authorities should further ensure that law enforcement authorities comply promptly and fully with any requests by the judiciary to provide information or evidence relating to allegations of human rights violations within their ranks. The Commissioner stresses that it is essential to ensure that all law enforcement officials are easily identifiable so as to facilitate the prosecution of perpetrators of misconduct, and urges the authorities to enforce strict disciplinary measures in cases of violations of self-identification provisions, including any cases of police officers hiding their identification numbers or using force whilst not in uniform. The Commissioner encourages the Turkish authorities to ensure that the obligation to record police interrogations, an important component of the “zero-tolerance policy”, is given a firmer legal basis in legislation, is extended to interventions to disperse demonstrations, and is applied consistently at all times.
139. The Turkish authorities at all levels are urged to firmly and publicly condemn all instances of ill-treatment and other human rights violations committed by law enforcement officials in all contexts, including during demonstrations, and refrain from statements which minimise, or may appear as minimising, the gravity of excessive use of force by the police. This is crucial to combating impunity and strengthening public confidence in the work of the law enforcement authorities.
140. The Commissioner considers that full accountability of law enforcement officials requires, in addition to administrative and judicial investigations, an independent complaints mechanism based on communication and mutual understanding between the public and the police in accordance with the European Code of Police Ethics.
141. While the Bill on the establishment of a Law Enforcement Oversight Commission includes some positive elements, the Commissioner is of the view that the proposed Commission would not fulfil the function of an independent complaints mechanism in the format currently envisaged, and invites the Turkish authorities to review the Bill to ensure that the oversight of law enforcement is ensured by an independent body with no organic links to the law enforcement forces and the Ministry of the Interior, which should preferably be elected by the parliament. Such a body should further have its proper budget, inspectors and powers to investigate the public's complaints in case of allegations of violations of rights enshrined in the ECHR. Any findings of misconduct of such a body should always lead to disciplinary and criminal proceedings. Alternatively, the Turkish authorities could consider entrusting this function to the Ombudsman Institution, although this would require a substantial revision of the Institution's mandate.
142. The Commissioner considers that the way the Turkish authorities handle the numerous allegations of excessive use of force during the Gezi events will be an important test of their will to tackle the issues of police violence and impunity. The Commissioner urges the authorities to pay special attention to the types of allegations he heard most frequently during his visit (as set out in the main body of the present report) when they review legislation and monitor the effectiveness of domestic investigations. While the Commissioner fully agrees with the Turkish authorities that crimes committed by demonstrators must also be prosecuted, human rights violations committed by law enforcement officials pose a direct threat to the rule of law and must be a priority for the justice systems of all member states.
143. In the opinion of the Commissioner, failure to conduct independent, adequate, prompt and effective investigations into all these allegations would not only tarnish the credibility of Turkish law enforcement authorities, but also result in a large number of cases being brought to the ECtHR and add to the already substantial caseload of the Court concerning the respect of the right to freedom of assembly by Turkey. A positive element in this respect is the possibility of bringing individual petitions to the Constitutional Court, and the Commissioner trusts that the Constitutional Court will continue fulfilling its crucial role of ensuring compliance of the Turkish judiciary with the ECHR standards.

144. The Commissioner is deeply concerned about the climate of fear of reprisals for non-violent involvement during the Gezi events, in particular among professional groups, which have unfortunately been reinforced by a number of administrative and legislative measures taken during and after the events. Bearing in mind the chilling effect such perceptions can have on the exercise of the rights to freedom of assembly and freedom of expression, including on the social media, the Commissioner urges the authorities to allay these fears by discontinuing any such measures already taken and clearly stating at the highest political level that this is not a policy of the Turkish government.

II. The legal and institutional frameworks for the protection and promotion of human rights at the national level

145. The Commissioner underlines that the European and international systems of human rights protection cannot act as a substitute for national systems of protection and promotion of human rights, and that all member states need to elaborate a comprehensive strategy for the domestic implementation of international human rights standards, comprising both legal and institutional aspects. National human rights structures established in accordance with the Paris Principles⁶⁹ are key actors in this respect, as well as crucial partners for the Commissioner, who is mandated to “facilitate the activities of national ombudsperson institutions and other human rights structures”.⁷⁰
146. The Commissioner notes that Turkey has taken significant steps in recent years in order to develop its national framework for the protection and promotion of human rights. The most important component of this development has been the drive towards the establishment of independent human rights structures at the national level, whereas the only institutions citizens could previously turn to regarding human rights violations were the Human Rights Presidency under the Prime Ministry and the Human Rights Boards at the provincial and district levels.⁷¹ The Human Rights Boards, established in all 81 provinces and 850 districts, are entrusted with receiving and investigating complaints and allegations of human rights abuses, and thereafter transmitting their findings to competent authorities for administrative and/or legal action. They also take measures for the prevention of all forms of discrimination and launch programmes for human rights education at the local level. Even though they include members from various backgrounds, they are chaired by the governor or district governor, and both their independence and effectiveness has been very often questioned by civil society organisations.
147. In addition, the Human Rights Inquiry Commission of the Turkish Parliament receives petitions and undertakes a number of human rights investigations, but these have mostly been *ad hoc* investigations on allegations of major human rights violations, rather than a systematic treatment of citizens’ complaints.
148. Recent developments have considerably changed this situation, the enactment of legislation establishing both an ombudsman institution and a national human rights institution in 2012 being a particularly significant change. The Commissioner is also aware that the Turkish authorities are considering the creation of an equality body and a police oversight commission.⁷² These measures are fully in line with calls from various Council of Europe bodies on Turkey to establish national human rights structures, in particular an ombudsman institution.⁷³
149. The Commissioner intends the following observations as the first step of a constructive dialogue with the Turkish authorities in order to assist them in reinforcing and fine-tuning these

⁶⁹ Principles appended to the Resolution of the United Nations General Assembly on national institutions for the promotion and protection of human rights, A/RES/48/134 of 1993.

⁷⁰ Resolution of the Committee of Ministers of the Council of Europe on the Council of Europe Commissioner for Human Rights, [Resolution\(99\)50](#), 7 May 1999, Article 3.

⁷¹ Boards established pursuant to the Regulation on the establishment, duties and functioning of provincial and district human rights boards, Official Gazette No. 25298 of 23 November 2003.

⁷² See above, “The need to combat impunity of members of law enforcement authorities”.

⁷³ See, for example, the Resolution of the Parliamentary Assembly of the Council of Europe on the honouring of obligations and commitments by Turkey, [Resolution 1380 \(2004\)](#), 22 June 2004.

new human rights structures and further developing Turkey's human rights architecture. For this purpose, the Commissioner examined the legal framework and initial developments concerning the establishment of two new national human rights structures, i.e. the Ombudsman's institution and the Turkish Human Rights Institution (Section 1). He also looked at other measures which are currently under consideration, in particular a Bill on promoting equality and establishing an equality body, as well as other important measures under consideration or already adopted, which are likely to have an important effect on Turkey's domestic human rights protection system, including individual petitions to the Constitutional Court and a human rights action plan (Section 2).

150. One of the problems hampering the effectiveness of the Turkish domestic system for the protection and promotion of human rights has been an insufficient involvement of civil society, both in terms of consultation when devising legislation and practical measures concerning human rights, and participation in the implementation of such measures. The Commissioner therefore paid special attention to this aspect during his visit in July 2013.

1. Turkey's national human rights structures

1.a. Ombudsman Institution

151. The Commissioner observes that the Turkish government attempted to establish an Ombudsman in 2006, the Turkish Parliament enacting the relevant legislation in September 2006. However, the application of this law was suspended by the Turkish Constitutional Court in November 2006 pending a ruling on its constitutionality. In December 2008, the Constitutional Court rendered its final ruling, declaring the law unconstitutional, on the grounds, notably, that in view of the principle of the separation of powers, the oversight of the executive by a body elected by the Parliament could not be established simply by ordinary legislation, without the corresponding constitutional basis.⁷⁴
152. As a result, the Ombudsman Institution was included in the constitutional reform package, which was approved in a referendum on 12 September 2010, by adding to Article 74 of the Constitution (on citizens' right to petition) the explicit right to petition an ombudsman elected by the Parliament. In July 2011, the Commissioner's predecessor commented on the planned Ombudsman Institution reiterating "the importance of the relevant international standards, and in particular the Paris Principles".⁷⁵
153. In accordance with Article 74 of the Constitution, an act on the establishment of the Ombudsman Institution was adopted in June 2012, and complemented by a regulation.⁷⁶ According to the Ombudsman Institution Act, a Head Ombudsman and five Ombudspersons are elected by the Parliament. Their role is to inspect the legality and equity of administrative acts, "in accordance with a sense of justice based on human rights". The Ombudsman's Office, headed by a Secretary General, is connected to the Presidency of the Parliament and has a separate budget, and approximately 250 staff.
154. The Commissioner observes that any natural or legal person whose interests have been affected by a measure of an administrative authority (except, notably, *ex officio* acts of the President of the Republic and purely military operations) can lodge a complaint with the Ombudsman within six months if their direct complaint to the administrative body is either rejected or remains unanswered for 60 days. The Commissioner notes in particular that, when the complaint concerns human rights, fundamental freedoms, women's and children's rights, or subjects of public interest, there is no requirement that the person be directly affected. During the treatment of the complaint by the Ombudsman, time limits for bringing a court case are suspended. The Commissioner notes that the Ombudsman Institution does not have the power to act *ex officio* which, as he discussed with the Head Ombudsman during his visit in July 2013, is an area where the Act could be improved upon, in particular when it comes to human rights violations.

⁷⁴ Constitutional Court judgment No. 2008/185 of 25 December 2008.

⁷⁵ *Op. cit.*, [CommDH\(2011\)25](#), para. 12.

⁷⁶ Ombudsman Institution Act, Act No. 6328 of 14 June 2012 and the Regulation published in the Official Gazette No. 28601 of 28 March 2013.

155. During the examination of a complaint by the Ombudsman Institution, administrative authorities have to comply with any request for information or documents within 30 days, whereas documents containing state or industrial secrets can be inspected by the Ombudsman on the spot. The Ombudsman Institution can also hear witnesses and retain experts for advice. The Ombudsman Institution has to conclude its inspection within six months of the receipt of the complaint. If it decides to address recommendations to the relevant administrative authority, the latter must inform the Ombudsman of the measures it has taken to comply with them or present the reasons why it will not do so within 30 days. The Institution also presents an annual report to the Parliament, which is published in the Official Gazette.
156. As regards the election process, the Act provides for a two thirds majority of votes in the Parliament for the Head Ombudsman. However, if no ombudsman can be elected in the first two rounds, the requirement is a simple majority in the third round. In the fourth round, the candidate with the highest number of votes gets elected. The other ombudspersons are elected by a joint commission of the parliament, along similar lines. The duration of the mandate of the Head Ombudsman and the ombudspersons is four years.
157. The Commissioner observes that there might be a need for some of these provisions to be reviewed in the light of the opinions of the Venice Commission on Ombudsman institutions.⁷⁷ He notes, in particular, that a term of office of four years was considered too short by the Venice Commission in other contexts. The Commissioner also understands that one of the options being considered in the framework of the elaboration of the new constitution (see below) is the extension of the powers of the President of the Republic, a feature that may require a reassessment of the Ombudsman's mandate which excludes *ex officio* acts by the President. As regards the dismissal of the Ombudsman, the Commissioner draws the attention of the Turkish authorities to the fact that the Venice Commission considers that "it would be preferable to have the ombudsperson appointed and dismissed by a qualified majority in parliament" in order to provide the office with a politically and socially broad base. According to the Turkish Ombudsman Institution Act, the dismissal occurs upon discovery of non-fulfilment of eligibility conditions, following the decision of the relevant parliamentary commission (confirmed by a decision of the general assembly without debate, in case the dismissal concerns the Head Ombudsman).
158. The Commissioner is aware that the election of the Head Ombudsman, in the fourth round, led to some controversy, due to the fact that he was a member of the Chamber of the Court of Cassation which was responsible for the conviction of the journalist Hrant Dink for "insulting Turkishness" (Article 301 of the Criminal Code), an event which is widely seen as having encouraged Dink's subsequent assassination. As regards the other ombudspersons, the main opposition party stated that only candidates who had had ties to the ruling party had been elected, including two former MPs of that party. The Commissioner also heard criticism from a number of civil society organisations that, as a result of the elections, the institution started out lacking the credibility it needed concerning independence and impartiality.
159. The institution started accepting complaints on 29 March 2013, and as of 27 September 2013 it had received 5 716 complaints. A short activity report published on 28 May 2013 indicates that the main issues raised in the 2 072 complaints received by that date concerned the regime applicable to civil servants, financial/tax matters, working conditions and social security, education, municipal services and "the judiciary, national defence and security". The Commissioner notes that about 12% of the complaints concerned issues directly linked to human rights (104 complaints on the right to property, 82 complaints classified as "human rights violations", 29 complaints concerning disability, 23 complaints concerning women's and children's rights, and 10 complaints on citizenship or rights of refugees and asylum seekers).⁷⁸
160. The Commissioner notes with interest a publicity campaign by the Institution entitled "Our state is confident and opens itself to the scrutiny of the nation/For a public service of European

⁷⁷ Venice Commission Vademecum on the Ombudsman Institution, [CDL\(2011\)079](#), 1 December 2011.

⁷⁸ Ombudsman Institution, [Short Activity Report](#) (2 December – 27 May) of 28 May 2013 (available in Turkish only).

Standards” which ran, in addition to Turkish, in English, Arabic and Kurdish, making the Ombudsman Institution arguably the first constitutional body of the Turkish Republic to use Kurdish in official communications (bearing in mind that the Turkish judiciary has in the past considered the use of the letters ‘q’, ‘x’ and ‘w’ illegal in the context of the use of Kurdish).

161. During the Commissioner’s visit in July 2013, the Head Ombudsman informed him that his Institution had received 22 complaints concerning the Gezi events, mainly on excessive use of force, personal liberties and the discourse of the authorities. In the process of the examination of these complaints, the Head Ombudsman held meetings with NGOs and the authorities, made a visit to the Taksim square in Istanbul, and requested information and documents from the administration concerning the events. The Head Ombudsman stated that his Institution was fully aware of its responsibility and the importance of his future report on these complaints, which would be examined in the light of Articles 10 and 11 of the ECHR.

1.b. Turkish Human Rights Institution

162. The Turkish Parliament adopted an Act on the establishment of the Turkish Human Rights Institution (hereinafter, ‘the THRI’) on 21 June 2012.⁷⁹ The tasks entrusted to the THRI by the act include: activities for the protection and promotion of human rights and prevention of violations; fight against torture and ill-treatment; investigation of complaints and applications and follow-up of the results; activities for the resolution of identified human rights problems and education activities for this purpose; research and investigation in order to monitor and assess human rights developments.
163. The executive organ of this institution is the Human Rights Board, composed of 11 members, two of which are appointed by the President of the Republic, seven by the Council of Ministers, one by the Council of Higher Education and one by the Presidents of the Bar Associations.
164. The Commissioner observes that both the establishment process and the statute of this Institution were subject to intense criticism by civil society organisations, in particular on the grounds of non-compatibility with the Paris Principles.⁸⁰ NGOs criticised, in particular, that even the small improvements made to the relevant Bill in the Parliament with input from civil society in the previous legislative period had been ignored, and that the government had reverted to the original version of the Bill when presenting it to the new legislature on 5 March 2012. The Commissioner understands that, while the relevant parliamentary commission again organised consultations with civil society organisations, it submitted the Bill to the General Assembly with only a few amendments (such as an amendment for the mode of election of members: in the Bill proposed by the government all members of the Human Rights Board were elected by the Council of Ministers), which did not satisfy most NGOs.
165. As stated above, the election of the nine out of eleven members of the Human Rights Board is entrusted to the executive. The THRI Act limits itself to indicating that members are to be elected among persons having excelled in the human rights field for a mandate of four years, renewable once. While it states that the election process must observe a pluralistic representation of NGOs, trade unions, professional associations, universities, lawyers, journalists and other experts, there is no independent mechanism to ensure that the provision on pluralism is respected. The act further states that the THRI is “linked with” the Prime Ministry, and does not seem to guarantee the administrative and financial independence of the Institution.
166. Other features that have been severely criticised include: the lack of guarantees for the independence and impartiality of the members of the Human Rights Board; the fact that the personnel of the THRI would be subject to ordinary legislation on personnel and recruitment of civil servants, without the necessary additional guarantees for independence; and the extensive powers of the President and the Vice-President of the Human Rights Board (elected by the Board members directly), as opposed to a more collegial approach favoured by civil society. The Commissioner notes that the President of the Human Rights Board does not only preside

⁷⁹ Human Rights Institution of Turkey Act, No. 6332 of 21 June 2012.

⁸⁰ See, for example, the [joint declaration](#) of 5 leading human rights NGOs, 23 March 2012.

over the Board, but is also the head of the administration of the Institution, and has full control over budgetary and personnel matters. It has been argued that there is no possibility for members of the Board to act against the will of the President.

167. The first members of the Human Rights Board were announced in September 2012, the Board held its first meeting on 24 January 2013 and elected as its President Dr. Hikmet Tülen, judge rapporteur at the Constitutional Court. During his meeting with the members of the Board, the Commissioner was informed that the board intends to meet twice per month. It had not yet started accepting individual complaints, pending the approval of its internal regulations. While it was not clear how the examination of individual complaints would be co-ordinated with the Ombudsman Institution, the Board members emphasised that complaints to the THRI would not be limited to those concerning administrative authorities and that there are no time limits for their introduction. The Commissioner understands that the Board is considering ways of involving provincial and district human rights boards in this process, despite the lack of organic links between these boards and the THRI.
168. The Commissioner notes some controversy surrounding the potential designation of the THRI as Turkey's National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture of the United Nations (OPCAT), which Turkey ratified on 27 September 2011. The law establishing the THRI specifies that the service units of the THRI must include a unit for the fight against torture and ill-treatment (Art. 11, paragraph b), which can organise unannounced visits to places where persons are deprived of their liberty. Civil society organisations voiced concern about initial statements by Turkish authorities indicating that the THRI may be designated as NPM, on the grounds that it does not meet the requisite criteria for independence and that it would not have the operational capacity to fulfil this task. This designation has however not been confirmed subsequently. As of September 2013, Turkey had not yet designated an NPM (although the deadline for doing so expired in September 2012). In his discussions with the members of the Human Rights Board, the Commissioner was informed that existing prison monitoring boards may be linked to the THRI in view of the preparation for the latter to be designated as NPM. In this connection, the Commissioner notes serious concerns that have been raised as to the effective independence of prison monitoring boards, including by the CPT.⁸¹
169. The Commissioner understands that through the establishment of the THRI, the Human Rights Presidency of the Prime Ministry was abolished and its experts started working for the new institution on a temporary basis. It has not been clarified how the THRI is intending to address human rights NGOs' concern about participation, inclusion and transparency. The Commissioner also notes that, as of September 2013, the Institution does not yet have a website and that Turkey has not yet made an accreditation request to the International Co-ordinating Committee of National Human Rights Institutions, neither for the THRI nor for the Ombudsman Institution.⁸²
170. During his visit in July 2013, the members of the Human Rights Board informed the Commissioner that the Board had decided to start an investigation into the Gezi events, emphasising that they would not only concentrate on the violation of demonstrators' human rights, but also on violations of human rights perpetrated by some demonstrators.

2. Other issues of relevance to the Turkish human rights architecture

2.a. Anti-discrimination legislation and equality body

171. Turkey does not currently have comprehensive national anti-discrimination legislation. The only general basis for prohibiting discrimination is Article 10 of the Constitution, which provides that "all 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

⁸¹ See the CPT's report on its visit to Turkey from 16 to 29 March 2004, [CPT/Inf\(2005\)18](#), paragraph 95.

⁸² According to the website of the OHCHR, <http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>

considerations". The Commissioner notes that Turkey signed Protocol No. 12 to the ECHR, which provides for a general prohibition of discrimination, in April 2001 but has not yet ratified it.

172. Civil society organisations have consistently argued that the non-existence of comprehensive anti-discrimination legislation at national level hampers the full implementation of international human rights standards, which was also a finding in the 2012 Progress Report of the European Commission.⁸³
173. The Commissioner was informed that a draft Anti-Discrimination and Equality Bill had been prepared by the Ministry of the Interior and submitted to the Prime Ministry on 12 September 2011.⁸⁴ The following comments concern this text, which has not yet been presented to the Parliament. The Commissioner also notes that the announcement made by the Prime Minister on 30 September 2013 concerning a democratisation package refer to the enactment of anti-discrimination legislation and the establishment of an equality body, and considers that the following comments could assist the Turkish authorities in this connection. In particular, the Commissioner would like to draw the attention of the Turkish authorities to the Opinion of the Commissioner for human rights on national structures for promoting equality, which includes detailed guidance as to both equal treatment legislation and bodies.⁸⁵
174. The aforementioned draft bill concerns all discriminatory acts by public and private bodies and persons on the basis of "sex, race, colour, language, religion, faith, ethnic origin, philosophical and political opinion, social status, marital status, health, disability, age and similar grounds". The Commissioner welcomes the fact that this list contains several important additions to the grounds of discrimination foreseen in the Constitution, including ethnic origin in accordance with calls by ECRI to that effect, while leaving out nationality or national origin, also recommended by ECRI as prohibited grounds of discrimination. The Commissioner also observes that the draft leaves out sexual orientation and gender identity, whereas he was informed that previous versions of the text included them as prohibited grounds of discrimination. The Commissioner is aware that the inclusion of sexual orientation and gender identity among prohibited grounds of discrimination has also proved a difficult issue in the context of the ongoing work regarding the drafting of a new constitution.
175. Insofar as the scope is concerned, the draft bill covers both direct and indirect discrimination, as well as bullying in work settings, refusal to make reasonable accommodation, hate speech, harassment and discrimination on presumed grounds. It covers a wide range of areas, including "education, justice, law enforcement, healthcare, transport, communication, social security, social services, social aid, sports, accommodation, culture, tourism and similar services" provided by public authorities or private persons. A special article is devoted to employment, covering various aspects of working life. The draft also provides that positive action does not constitute discrimination, provided that it is proportionate to the aim pursued.
176. The draft also establishes an Anti-discrimination and Equality Board, with an autonomous legal personality, administration and budget. It provides that the twelve members of the board would be elected for a non-renewable six-year mandate as follows:
 - five members elected by the Council of Ministers (one director general or higher administrator, one practicing lawyer, one doctor, one architect or engineer, and one person proposed by the Economic and Social Council (an advisory board including trade unions));
 - four members appointed by the President of the Republic (two administrators of the grade of director general or higher, and two professors, one of whom is a law professor);
 - three members from civil society organisations active in the anti-discrimination field, proposed by an advisory commission and elected by the Board itself.
177. The Board would elect its own President (who has extensive administrative powers) and Deputy President. The equality body would also include an advisory commission, which would

⁸³ European Commission, [Turkey 2012 Progress Report](#).

⁸⁴ Available on the website of the Ministry of the Interior, http://www.icisleri.gov.tr/default.icisleri_2.aspx?id=5692 (accessed on 2 October 2013).

⁸⁵ Opinion of the Commissioner for Human Rights on national structures for promoting equality, [CommDH\(2011\)2](#), 21 March 2011.

be composed of 29 members representing trade unions, professionals' chambers, associations, foundations, as well as one representative each for social services, the disability directorate and directorate general for gender issues.

178. The tasks of the Board would include taking decisions on allegations of discrimination (following complaints or *ex officio*), co-ordinating a mediation process if necessary, following problems relating to the execution of domestic court judgments relating to discrimination, providing opinions to courts and public authorities, imposing administrative fines where appropriate (the equivalent of around 500 to 2 500 euros against small companies and 1 250 to 7 500 euros against bigger companies), as well as yearly reports.
179. Any person would be able to introduce a complaint to the Board. Associations, foundations, trade unions or professionals' chambers could also introduce complaints on behalf of a person, or in order to denounce patterns of institutionalised discrimination. The Board would have to take a decision on complaints which are declared admissible within six months, during which period the President could initiate a mediation procedure. The Board can seize the prosecutor in relevant cases of discrimination. The draft bill also provides for a shift of the burden of proof on the defendant in civil and administrative anti-discrimination proceedings.
180. While noting certain shortcomings in the institutional independence of the body foreseen in the draft bill (in particular as regards the powers of the President and the election of its members), the Commissioner notes that such a legislation could fill an important void in the Turkish legal framework if enacted.

2.b. Human rights action plan

181. While Turkey does not yet have a comprehensive human rights action plan in place, it has adopted a number of action plans on specific human rights issues, including the national action plan to combat violence against women 2007-2010, the national action plan for gender equality 2008-2013, a national action plan against trafficking in human beings as well as an accessibility strategy and action plan for persons with disabilities.
182. During his visit in July 2013, the Minister of Justice informed the Commissioner that his Ministry prepared a human rights action plan in consultation with other ministries, setting out legislative and practical measures to be taken by each ministry at short, medium and long terms, mainly on the basis of judgments of the ECtHR. This action plan had however not been discussed in the Council of Ministers and approved by the government and the Commissioner is not aware of its contents.
183. The Commissioner emphasises that national action plans play a crucial role in ensuring domestic implementation of human rights, and draws the attention of the Turkish authorities to the relevant Recommendation of the Commissioner.⁸⁶ An important component for the success of such action plans is the carrying out of a baseline study, involving an inclusive dialogue with the participation of public authorities at different levels, national human rights structures, academia and civil society in a broad sense, which also ensures their full involvement in the subsequent implementation stages. The Commissioner would also like to stress the importance of parliamentary ownership of national human rights action plans for ensuring continuity, in particular when the plans stretch over national elections. The Commissioner understands however that civil society organisations, the Ombudsman Institution, the THRI and the Parliament have not been consulted in the framework of the preparation of the aforementioned human rights action plan.

⁸⁶ Recommendation on systematic work for implementing human rights at the national level by Thomas Hammarberg, Commissioner for Human Rights, [CommDH\(2009\)3](#), 18 February 2009.

2.c. Individual petitions to the Constitutional Court

184. The Commissioner notes that the 2010 constitutional referendum introduced important changes to the composition of the Constitutional Court, as well as the right to individual petitions for citizens. The right to individual petition became effective as of 23 September 2012. Persons can apply to the Constitutional Court if they consider that their ECHR rights have been infringed, after having exhausted other domestic remedies.
185. In this connection, the Commissioner highlights the fact that the ECtHR recognised the individual petition to the Constitutional Court as a domestic remedy to be exhausted before applying to the ECtHR.⁸⁷ The Commissioner notes, however, that in accordance with its case-law, the Court reserves the right to examine the consistency of the Constitutional Court's case-law with its own. This decision does not therefore assess the effectiveness of the remedy in question and it is up to Turkey to prove that this remedy is effective, both in theory and in practice.
186. According to the statistics published by the Constitutional Court on individual petitions received between 24 September 2012 and 24 June 2013,⁸⁸ the Constitutional Court had registered 5 694 petitions during this period. The vast majority of petitions concerned the right to a fair trial (4 532), followed by the right to property (1 291), equality before law (1 086), "protection of fundamental rights and freedoms" (509), the state's respect of human rights (415), personal freedom and security (354), electoral rights (264), and other rights (655). During the Commissioner's visit in July 2013, the President of the Constitutional Court informed him that most of these petitions concerned decisions of lower courts which had become final before 23 September 2012 and were therefore inadmissible, and that the number of admissible petitions amounted to only about 200.
187. The Commissioner notes the intensive preparation the Constitutional Court has undergone in order to increase its capacity for dealing with individual petitions, which was closely co-ordinated with the Council of Europe and involved extensive co-operation with the ECtHR. The Commissioner was very pleased to note judgments the Constitutional Court rendered during his visit to Turkey in July 2013, which addressed issues which had been subject to repetitive findings of human rights violations by the ECtHR, namely the excessive lengths of detention and the possibility of having a domestic remedy with respect to the length of detention and trial while the principal trial is ongoing.

2.d. Drawing up of a new constitution

188. The two reports published by the Commissioner's predecessor on freedom of expression in 2011 and administration of justice in 2012 point to the letter and spirit of the 1982 Constitution as a major source of Turkey's persistent human rights problems, as this Constitution, drawn up in the aftermath of the 1980 military coup d'état, enshrines a state-centred approach permeating the legal and institutional culture in Turkey. There is an overwhelming consensus in Turkey about the need for a new constitution, which will set the framework for the future human rights architecture of Turkey.
189. The Commissioner had therefore welcomed the establishment of an *ad hoc* Constitutional Conciliation Commission within the Turkish Parliament. This Commission, composed of three members from each one of the four political parties represented in the Parliament, is currently working on drawing up a new, civilian constitution. As part of the process, a consultation with civil society was planned before adoption by the Parliament of a draft constitution, followed by a referendum. The initial timeline for the conclusion of the whole process was the end of 2012, but was subsequently extended.
190. The Commissioner notes that the Commission received input and contributions from a very high number of civil society organisations, public bodies, universities, as well as individuals

⁸⁷ *Hasan Uzun v. Turkey*, inadmissibility decision of 30 April 2013.

⁸⁸ Available at the [website](#) of the Constitutional Court (accessed on 1 October 2013).

(amounting to more than 20 000 pages according to the information provided by its President). He notes, however, that since January 2012 the Commission conducts its work *in camera*, a feature considered by many to be against the principle of transparency, which was among the priorities announced by the government in setting it up.

191. While the details of the Commission's work are not public, the Commissioner understands that it reached consensus on most articles concerning human rights, while noting reports that the question of including sexual orientation and gender identity under prohibited grounds of discrimination is a contentious issue. The Commissioner also took note of the information provided by its members that there is no consensus within the Commission about seeking assistance from the Council of Europe, and in particular from the Venice Commission.

The "solution process" and Wise Persons

192. The Commissioner notes that in the framework of the so-called "solution process" announced by the Turkish government in December 2012, which aims at ending the violence in South-Eastern Turkey, the Turkish government appointed Wise Persons (eight persons for each of the seven regions of the country), including intellectuals, human rights defenders, artists and other public figures. The role of these wise persons was to hold a series of meetings in the regions they were assigned to, explain the ongoing process to the population and civil society, and collect their views in order to present it to the government. The Commissioner understands that the Wise Persons have concluded their work and presented their reports concerning the different regions of Turkey to the government in June 2013. The Commissioner is not aware, however, to what extent these reports have been taken into account for the purposes of the democratisation package announced by the Turkish government on 30 September 2013.

Conclusions and recommendations

193. The Commissioner commends the Turkish authorities for the important measures taken in recent years in order to reinforce Turkey's national framework for the protection and promotion of human rights, and in particular the establishment of two national human rights structures, namely the Ombudsman Institution and the Turkish Human Rights Institution. The Commissioner thinks that these developments, as well as a number of measures currently under consideration, can play a major role in improving Turkey's compliance with international and European human rights standards.
194. The Commissioner considers that the new Ombudsman Institution has the potential of contributing significantly to the domestic human rights protection framework, despite minor adjustments that the legislation concerning this Institution may require in order to render it more effective. While he notes the controversy surrounding the election of the first ombudspersons, the Commissioner considers that the effectiveness of the Institution should now be assessed on the basis of concrete actions. The Commissioner is convinced that the report it is intending to draw up on the Gezi events is an exceptional opportunity for this young institution to establish its credibility in the eyes of both the Turkish public and international partners. The Commissioner hopes that the Ombudsman Institution will seize this opportunity and quickly start fulfilling its important role in the Turkish domestic human rights architecture. The Commissioner also encourages the Turkish administrative authorities to implement without delay future decisions of the Ombudsman upholding human rights, in order to demonstrate clearly to everyone the effectiveness of this Institution and its complaint mechanism.
195. By contrast, the Commissioner considers that the THRI needs a more thorough review of its statute in order to ensure compliance with the Paris Principles. The Commissioner encourages the Turkish authorities to pay particular attention to the aspects of independence (both statutory and functional), impartiality and the full involvement of civil society in the work of the THRI.
196. The Commissioner notes that Turkey has to designate a national preventive mechanism under OPCAT, as well as a framework including one or more independent mechanisms to promote and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities, in accordance with Article 33, paragraph 2, of that Convention. The Commissioner urges the Turkish authorities to ensure that both functions are entrusted to bodies which fully

comply with the Paris Principles. If the THRI is considered for either one of these functions, the Commissioner encourages the Turkish authorities to accomplish the abovementioned review before the designation.

197. The Commissioner encourages the Turkish authorities to adopt anti-discrimination legislation and establish an equality body. The existing draft text, not yet presented to the Parliament, contains many positive features that the Commissioner encourages the Turkish authorities to maintain. He considers, however, that the Turkish authorities should revise certain aspects of the draft, such as the non-inclusion among the prohibited grounds of discrimination of nationality or national origin, as well as of sexual orientation and gender identity, which would deprive particularly vulnerable groups of the protection provided by this legislation. The Commissioner also encourages the authorities to ensure that the statute of the planned equality body guarantees its full independence and effectiveness, in accordance with the Commissioner's opinion on national structures for promoting equality.
198. The Commissioner welcomes the will to endow the Turkish government with its first human rights action plan. He encourages the authorities to ensure that future reiterations of human rights action plans fully involve all the relevant actors and civil society both in the design and implementation stages, which should follow a thorough baseline study in accordance with the Commissioner's Recommendation on systematic work for implementing human rights at the national level. The Commissioner also recommends that adoption of national human rights action plans by the Turkish Parliament should be considered in the future, in order to ensure parliamentary ownership and follow-up.
199. In the Commissioner's view, an overarching problem for the development of the national human rights framework is the insufficient involvement of Turkish civil society organisations, and in particular of human rights NGOs, which appears to be connected with an administrative culture which does not give sufficient attention to consultation of and partnership with civil society. The Commissioner considers that the Turkish civil society is very vibrant and able, and that the Turkish domestic human rights framework would benefit greatly if the authorities were to tap this potential more consistently. The drawing up of a new constitution, a process which the Commissioner finds very positive and encourages all actors to pursue, set a good example by foreseeing the consultation of civil society from the outset. This involvement needs to be maintained. The Commissioner also encourages the Turkish authorities to take advantage of the expertise of the Council of Europe, and in particular the Venice Commission, should the need arise at any stage of the process.
200. Similarly, the Commissioner welcomes the initiative of the Turkish government to appoint Wise Persons to explain the ongoing solution process to civil society and relay the latter's feedback to the government. He considers that it would be important for the government to show how these consultations affect its policy concerning human rights.
201. Finally, the Commissioner considers that the Turkish Constitutional Court clearly demonstrated the key role it can play in embedding ECHR standards in the Turkish judicial system through the individual petition mechanism. He trusts that this positive drive will be maintained and looks forward to a continuing fruitful partnership between the Turkish judiciary and the Council of Europe.
202. The Commissioner wishes to stress his willingness to pursue his constructive dialogue with the Turkish authorities and to offer his assistance and support to their efforts to improve the protection and promotion of human rights in Turkey.