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REPORT

by Thomas Hammarberg
Commissioner for Human Rights of the Council of Europe

Following his visit to Turkey
on 28 June – 3 July 2009

Issue reviewed:
Human rights of minorities

Executive Summary

Commissioner Thomas Hammarberg and his delegation visited Turkey from 28 June to 3 July 2009. In the course of this visit the Commissioner held discussions on certain human rights issues, including minorities, with national and local authorities, international and non-governmental organizations. The Commissioner held also meetings with institutions and representatives of minority groups.

The present Report focuses on the following major issues:

1. Overview of minorities in Turkey in relation to European and international instruments: Whilst the Commissioner appreciated the positive signs of good will shown by the Turkish authorities for resolving a number of issues concerning human rights of minority groups, he remains concerned by the authorities' refusal to recognize the existence of any other minorities except for the tripartite non-Muslim one (Armenians, Greeks and Jews), following an over-restrictive interpretation of the 1923 Lausanne Peace Treaty. The Commissioner recommends that the authorities create an effective framework of consultations that would ensure a real dialogue with all minority groups in the country and pursue reforms with a view to fully aligning law and practice with the Council of Europe human rights standards concerning minorities. The Commissioner recommends in particular the prompt establishment of an effective national human rights institution, the creation and implementation of a comprehensive anti-discrimination legislation and the ratification of Protocol N° 12 to the European Convention on Human Rights. Accession to the Framework Convention for the Protection of National Minorities and of the European Charter for Regional or Minority Languages is also highly recommended.

2. Minority languages and the right to freedom of expression: Despite certain efforts made in this area, the Commissioner remains very concerned at a number of persisting restrictions imposed upon education of minority members, including teaching and learning of their mother tongues. The Commissioner recommends the adoption of measures in order to enhance minority group members' education and teaching and learning of their mother tongues, a precondition of enjoyment by them of their freedom of expression. The Commissioner is concerned about the high number of the freedom of expression-related judgments against Turkey that have been delivered by the European Court of Human Rights and whose execution is supervised by the Committee of Ministers. He calls upon the authorities to take further measures in order to effectively incorporate the European Court of Human Rights' case law into domestic law and practice. This should include revision of certain provisions of the Criminal Code and of the anti-terrorism law mentioned in the Report, and of their application by prosecutors and courts. It is stressed that hate crimes in general, particularly those committed against persons who have exercised their right to freedom of expression, should be effectively investigated and those responsible should be promptly identified and punished, in line with the established case law of the European Court of Human Rights.

3. Minorities and the right to freedom of association: Recalling the particular importance of the freedom of association, which includes the creation and operation of political parties, for persons belonging to minorities, the Commissioner notes his serious concern about the current Turkish law and practice, especially about the proceedings that were initiated in the near past against two of the major political parties with a view to their dissolution. The Commissioner commends the determination shown by the Minister of Justice to carry on efforts to fully embed the Council of Europe human rights standards in national law and practice. He urges the authorities to follow up on and implement promptly the pertinent recommendations made notably by the Council of Europe Parliamentary Assembly and by the Venice Commission.

4. Minorities, freedom of religion and property rights: The Commissioner commends the readiness to dialogue with minority religious communities that the authorities demonstrated during his visit. He remains nonetheless concerned about the uneasiness and insecurity that seems to surround still religious minority groups. The Commissioner urges the authorities in particular to

develop awareness-raising activities in order to alert the general public of the benefits of a multicultural society and to create an efficient, specialised body to combat, inter alia, racial and religious discrimination. Periodic, open and substantive consultations between the authorities and religious minority groups should be established, thus ensuring dialogue and solutions to major issues affecting religious minorities' human rights, such as the one concerning the recognition of the legal personality of religious minority institutions and communities established in the country. The Commissioner notes with interest the latest legislative measures concerning the protection of property rights of non-Muslim minority foundations. A number of shortcomings however are identified in the present Report, which call for the authorities' attention and necessitate further action in order to fully incorporate the case law of the European Court of Human Rights in the relevant legislation and practice.

5. Forced displacement in and from eastern and southeast Turkey: The Commissioner remains very concerned about the persistent humanitarian and human rights situation of internally displaced persons (IDPs) in and from the eastern and southeast Turkey, the majority of them being of Kurdish origin. The Commissioner recommends the prompt adoption of further measures that would accelerate and make more effective the reparation of the IDP victims, including the facilitation of exercise by IDPs of their right to voluntary return, voluntary resettlement or local integration. Whilst noting with satisfaction the Ministry of Interior's willingness to resolve the persistent, IDP-related problems, including the positive efforts made in the context of the IDP action plan in the Van province, the Commissioner stresses the need for the authorities to promote a comprehensive, national strategy that would include improvement of living and education-related conditions in IDP-source areas. The Commissioner also urges the authorities to examine the possibility of abolishing the system of village guards and to proceed immediately to the completion of clearance of the mined areas, especially those from or near which IDPs originate.

6. Certain issues concerning human rights of Roma: The Commissioner notes with concern the social marginalization of Roma in Turkey, their serious difficulties in enjoying effectively certain social and civil rights, such as those concerning adequate housing, employment, health care and social assistance, and violence by police and non-state actors. The Commissioner recommends that Turkey adopt and implement promptly a coherent, comprehensive and adequately resourced national and regional strategy with short- and long-term action plans for implementing policies that address legal and/or social discrimination against Roma, in accordance with the Council of Europe standards. The Commissioner remains very concerned about the dislocation of Roma people, including families and children, in various parts of Turkey, in particular in the context of urban renovation projects. Of special concern have been the house demolitions, evictions and dislocation of Roma from the historic area of Sulukule, Istanbul. The Commissioner urges national and local authorities to take immediately measures in order to effectively respect and protect cultural heritage, to review urban renovation legislation and practice and to ratify promptly the 2005 Council of Europe Framework Convention on the Value of Cultural Heritage for Society.

The Report ends with the Commissioner's conclusions and recommendations.

The Turkish authorities' comments are appended to the Report.

Introduction

1. The present Report follows a visit to Turkey by the Council of Europe Commissioner for Human Rights (the Commissioner) from 28 June to 3 July 2009.[1]

2. The Commissioner sincerely wishes to thank the Turkish authorities in Strasbourg, Istanbul, Izmir and Ankara for the assistance that they provided in facilitating the independent and effective performance of his visit.

3. In the course of the visit the Commissioner held consultations with a number of state authorities, including the President of the Republic, Mr Abdullah Gül, the Minister of Justice, Mr Sadullah Ergin, the Minister for EU Affairs and Chief Negotiator, Mr Egemen Bağis, the Undersecretary of the Ministry of Foreign Affairs, Ambassador Ertuğrul Apakan and the Undersecretary of the Ministry of Interior, Mr Osman Güneş.

4. The Commissioner met also with other representatives of national and local authorities, international agencies, as well as with the Ecumenical Patriarch Bartholomew, the Armenian Archbishop Aram Ateshian and representatives of the Jewish community of Turkey.

5. The Commissioner held meetings with a number of non-governmental, human rights organizations. He noted with satisfaction the existence in Turkey of a vibrant civil society consisting of non-governmental organizations that work with dedication for the promotion and protection of human rights in the country.

6. Turkey is one of the oldest member states of the Council of Europe, has ratified and is thus bound by the vast majority of the major European and international human rights instruments.

7. The protection and promotion of the human rights of non-dominant, minority groups in Europe has always been at the heart of the Commissioner's work. European history has indeed shown that the protection of minorities is essential to stability, democratic security and peace. Protection afforded by states to non-dominant groups is in fact a litmus test for the former's effective observance of and respect for the fundamental human rights principles that should flourish in every pluralist, democratic society.

8. The Commissioner recalls that protection of the rights and freedoms of persons belonging to minorities is an integral part of the European human rights system, which does not belong to the *domaine réservé* of individual states but constitutes a collective responsibility borne by all member states of the Council of Europe.

9. The Commissioner has taken note of Turkey's active role, as a co-sponsor, in the Alliance of Civilizations (AoC) Initiative which aims at facilitating harmony and dialogue by highlighting the common denominator of different cultures and religions. He is in agreement with the Turkish Prime Minister's statement made during the second forum of the AoC in Istanbul last April, which highlighted the necessity of developing understanding and tolerance and of strengthening dialogue and communication among different cultures that exist in all countries.

10. The Commissioner, in his capacity as an independent and impartial institution of the Council of Europe, wishes to continue his sincere and constructive dialogue with the Turkish authorities and to assist them in their efforts to further enhance the implementation of the Council of Europe human rights standards.

[1] During his visit the Commissioner was accompanied by Mr Nikolaos Sitaropoulos, Deputy to the Director of the Commissioner's Office and by Ms Silvia Grundmann, Adviser.

11. In the present Report, after an overview of minorities in Turkey in relation to European and international instruments (section I), the Commissioner focuses on the following major issues: Minority languages and the right to freedom of expression (section II); Minorities and the right to freedom of association (section III); Minorities, freedom of religion and property rights (section IV); Forced displacement in and from eastern and southeast Turkey (section V); Certain issues concerning human rights of Roma (section VI), followed by conclusions and recommendations (section VII).

I. Overview of minorities in Turkey in relation to European and international instruments

12. The Commissioner has noted that the Republic of Turkey is based upon the 'principle of constitutional/territorial nationalism', expressed in particular by Article 66, paragraph 1, of the Constitution, which provides that '[e]veryone bound to the Turkish state through the bond of citizenship is a Turk'. Even though the Constitution does not provide any definition of a 'Turk', the Turkish authorities have noted that this is 'the reflection of the national identity of all citizens in Turkey irrespective of their origins... No importance is attached to a citizen's racial or ethnic background, since the definition of a common identity on the nationhood and conscience on territorial basis contrary to the one on the basis of blood has been adopted with the establishment of the Republic'.[2]

13. At the same time, the Commissioner is aware of the diversity in the origins of Turkish citizens, which Turkey rightly regards as a 'source of richness in Turkish society'.[3] The term 'minority' though is accepted and used officially by Turkey only with regard to non-Muslims, a term used in Section III of the Lausanne Peace Treaty of 24 July 1923, which echoes in effect the Ottoman *millet* system that categorized non-dominant communities on the basis of their religious affiliation.[4]

14. The Commissioner has noted that even though the Lausanne Peace Treaty did not provide for a definition of the term 'non-Moslem minorities' in Turkey, this term has been interpreted and applied in a restrictive manner covering exclusively three specific minority groups, the 'Armenian, Greek and Jewish'. The Turkish authorities have stressed that the 'term "minority" cannot be used for Muslim Turkish citizens'.[5] On its territory Turkey has also acknowledged the existence of 'Turkish citizens of Roma origin', who have been categorized as members of a 'disadvantaged group' due mainly to poverty and unemployment,[6] as well as of 'Turkish citizens of Kurdish origin'.[7]

15. The Commissioner has noted that there are no recent, official numerical data regarding minority groups in Turkey. Estimates that were made public by Turkey in 2000 regarding

[2] See Report submitted by Turkey to the UN Committee on the Elimination of Racial Discrimination, 13/02/2008, CERD/C/TUR/3, paragraphs 17-18.
[3] See Written replies by the Government of Turkey to the list of issues to be taken up by the UN CERD, 2009, p. 11.
[4] Section III of the Lausanne Peace Treaty provided for the protection of the 'non-Moslem minorities' in Turkey and the protection of the 'Moslem minority' in Greece. This included, inter alia, protection of life and liberty, freedom of exercise, whether in public or private, of any creed, religion or belief, full freedom of movement and of emigration, equality in treatment and security in law and in fact, See text of the 1923 Lausanne Peace Treaty at: http://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne.
[5] See Written replies by the Government of Turkey to the list of issues to be taken up by the UN CERD, 2009, p. 1.
[6] See Report submitted by Turkey to the UN Committee on the Elimination of Racial Discrimination, 13/02/2008, CERD/C/TUR/3, paragraphs 70-73.
[7] See Written replies by the Government of Turkey to the list of issues to be taken up by the UN CERD, 2009, p. 20.

the Armenian, Greek and Jewish minority populations in Turkey were respectively 50 000-93 500, 3 270-4 000 and 25 000-26 114. Syriacs (Assyrians or Syrian Orthodox Christians) were also estimated at 17 194 and other religious, non-Muslim minorities (Assyro-Chaldean, Bulgarian, Catholic and Arab Orthodox) at 5 628.[8] The population of Kurds in Turkey is estimated to be between twelve and fifteen million,[9] while an average estimate of Roma is 2 750 000,[10] Caucasians are estimated at 3 million and Laz between 750 000 and 1.5 million. Finally, the Alevis constitute a major Muslim minority group in the country, whose estimates have ranged from 5.7% to 40% of the total population.[11]

16. Turkey is a party to the European Convention on Human Rights. She has not as yet ratified certain of its Protocols, including Protocol N° 12 containing the general prohibition of discrimination on any grounds including race, national or social origin and association with a national minority. This Protocol was signed by Turkey on 18 April 2001. Turkey is also a party, with certain reservations, to the revised European Social Charter, but she has not as yet accepted the collective complaint system provided for by the Charter.

17. The Commissioner has noted that in 2008 Turkey was the respondent state with the highest number (257) of judgments by which the European Court of Human Rights found at least one violation of the Convention. Also as of 31 December 2008 Turkey was the member state with the second highest percentage (11.4%) of pending cases (11 100) that had been allocated to a judicial formation of the Court[12] and with second highest percentage (15%) of pending cases before the Committee of Ministers which supervises execution by respondent states of the Court's judgments.[13]

18. Turkey has not been as yet a party to the Framework Convention for the Protection of National Minorities or to the European Charter for Regional or Minority Languages, two of the major Council of Europe treaties of particular significance for the effective protection of minority rights in member states.

19. As regards the UN human rights system, Turkey has been a party to core UN human rights treaties: The International Convention on the Elimination of Alls Forms of Racial Discrimination was ratified on 16 September 2002 but Turkey has not as yet recognized the competence of UN CERD to receive and consider individual communications.

20. On 23 September 2003 Turkey ratified the International Covenant on Civil and Political Rights, making a reservation in respect of the Covenant's Article 27 which provides the following: 'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.' According to this reservation, Turkey reserved the right to interpret and apply the provisions of Article 27 'in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendixes'.

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[8] See United Nations, Interim Report of the Special Rapporteur of the Commission on Human Rights on the elimination of al forms of intolerance and of discrimination based on religion or belief, *Situation in Turkey*, 11/08/2000; UN Doc A/55/280/Add.1, at 3-4.

[9] See Council of Europe Parliamentary Assembly Report, *The cultural situation of the Kurds*, 07/07/2006, paragraph 68. The total population of Turkey is now approximately 70 million.

[10] Council of Europe Roma and Travellers Division, *Romani Population in Council of Europe Member States*, July 2008.

[11] See Minority Rights group, *A Quest for Equality: Minorities in Turkey*, London, 2007 at pp. 11-14, where other religious minorities are also mentioned, available at: http://www.minorityrights.org.

[12] European Court of Human Rights, *Annual Report 2008,* Strasbourg, 2009, at pp. 127, 131.

[13] Committee of Ministers, *Supervision of the Execution of Judgments of the European Court of Human Rights, 2nd Annual Report 2008,* April 2009, p. 44, available at: http://www.coe.int/t/cm.

21. On 23 September 2003 Turkey ratified also the International Covenant on Economic, Social and Cultural Rights, depositing a reservation with regard to paragraphs 3 and 4 of Article 13. Paragraph 3 provides inter alia that states parties undertake to have respect for the liberty of parents to choose for their children schools, other than those established by the public authorities and to ensure the religious and moral education of their children in conformity with their own convictions. Paragraph 4 provides inter alia for the liberty of individuals and bodies to establish and direct educational institutions. Turkey has reserved its right to interpret and apply these provisions in accordance with its own Constitution.

22. The earlier ratification by Turkey on 4 April 1995 of the UN Convention on the Rights of the Child had been also accompanied by a reservation to Articles 17, 29 and 30 concerning inter alia minority children's education, culture and the mass media role in this context. Turkey reserved its right to interpret and apply these provisions 'according to the letter and the spirit of the Constitution of the Republic of Turkey and those of the Treaty of Lausanne of 24 July 1923'.

II. Minority languages and the right to freedom of expression

23. Freedom of expression may be best exercised through free use in private and in public of one's mother tongue. Article 3, paragraph 1, of the Turkish Constitution provides that '[t]he Turkish state, with its territory and nation, is an indivisible entity. Its language is Turkish'. Article 3 constitutes in fact in itself Section III of the Constitution entitled 'Integrity of the State, Official Language, Flag, National Anthem, and Capital'.

24. In addition, Article 42 of the Constitution provides, noting also that the 'provisions of international treaties are reserved', that '[n]o language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education'. Exceptions to this rule remain the educational institutions of the 'non-Moslem minorities' (in practice those of the Armenians, Greeks and Jews), by virtue of Article 40 of the 1923 Lausanne Peace Treaty and the Law on Private Education Institutions of 14 February 2007. In the existing minority schools (42 primary and secondary schools) children learn their mother tongue and all subjects, except for Turkish language and Turkish culture, are taught in the pupils' mother tongues.

25. The Commissioner notes that Article 41, paragraph 2, of the 1923 Lausanne Peace Treaty provides that '[i]n towns and districts where there is a considerable proportion of Turkish nationals belonging to non-Moslem minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious, or charitable purposes'.

26. It is with regret that the Commissioner noted a recent expert report showing the non-provision of financial aid by the Turkish state to 'Lausanne minority schools', even though reportedly a number of them face serious financial problems and it is with serious difficulties that they try to keep up their education standards. Also the use by Turkey of the rule of reciprocity with regard to teachers coming to teach in Greek minority schools and reported delays in approving the hiring of teachers or the school books for Greek and Armenian schools, give rise to concerns as to how effective is the access of these minority group children to education in their schools.[14]

27. The Commissioner notes that the 'Lausanne minority schools' may not accept pupils from different, non-Muslim minority groups. This restrictive practice acts in fact to the detriment

[14] Minority Rights Group, *Forgotten or Assimilated? Minorities in the Education System of Turkey*, London, 2009, at pp. 16-17.

of other non-Muslim minorities, such as the Assyrian, who may not establish their own schools, given the restrictive interpretation by Turkey of the term 'non-Moslem minorities' contained in the 1923 Lausanne Peace Treaty. During his visit to Turkey the Commissioner was also informed with concern that a proposal made by the Armenian community to provide education to Armenian children of irregular migrant families has not met with the authorities' approval.

28. The Commissioner has noted the entry into force on 14 February 2007 of the new Law on Private Educational Institutions. Under earlier legislation, in all schools where the language of education was not Turkish it was obligatory to appoint as Deputy Director a Turkish citizen and teacher of the Turkish language or culture. Where it was not possible to find somebody with both these qualifications the Deputy Director had to be a Turkish citizen and of 'Turkish origin'. In the new Law the condition of 'Turkish origin' was lifted. However the Commissioner remains concerned at reports indicating that no regulations have entered as yet into force and the situation remains in fact the same.[15]

29. The Commissioner is concerned by the persistent obligation of pupils in public and private primary schools, including the Lausanne minority schools, to read daily an oath beginning with 'I am a Turk' and ending with 'Happy is the person who says "I am a Turk"'. Reports have indicated that an initiative by school teachers in 2007 to have this practice repealed led to a legal action against them on the ground of 'inciting the public to disobey the law'. The Commissioner would like to be informed about the outcome of this case.

30. On 5 December 2003 the Turkish Ministry of Education, having acknowledged the existence of different languages and dialects that are used by Turkish citizens in their daily lives, issued a Bylaw concerning minority language education. As a consequence, private courses for teaching languages traditionally used in Turkey, such as Kurdish, started to be offered in seven cities as from April 2004 (Batman, Diyarbakir, Şanliurfa, Adana, Istanbul, Van and Mardin). The Commissioner has been informed with regret that all these classes, which were subject to fee payment, were closed in 2005 reportedly due to non-attendance.[16]

31. Reportedly minority group members encountered serious problems by having to pay for such courses and strongly wish to have the possibility of studying their mother tongues in the public schools that they attend. The issue is related, inter alia, to the current non-existence of linguistic departments in Turkish Universities that could train and produce qualified teachers of minority languages such as Kurdish, Assyrian or Romani. As a consequence, at least until early 2009, the language of a number of minority groups, such as the Kurds or the Roma, has been impossible to be learnt either in a public or a private school. It is noted nonetheless that there are a number of private or public schools and Universities in Turkey that teach in European languages, such as English, French, German and Italian.

32. The Commissioner has noted with concern the existence in the near past of a climate of intolerance towards proposals of teaching the Kurdish language in the University. On 3 March 2009 the European Court of Human Rights in the case of *Temel and others* found unanimously against Turkey for the suspension of eighteen students from the Afyon Kocatepe University in 2002 due to a petition that they had addressed to the University Rector requesting that Kurdish language classes be introduced as an optional module. The Court found that the disciplinary sanctions imposed on the students, which were finally annulled in 2004 and in the meantime had led to the students missing one or two university terms, were neither reasonable nor proportionate and thus violated the student applicants'

[15] See Minority Rights Group, *Written Comments* to UN CERD, 2009, at p. 8.
[16] See Written replies by the Government of Turkey to the list of issues to be taken up by the UN CERD, 2009, p. 22, Minority Rights Group, *A Quest for Equality: Minorities in Turkey*, London, 2007 at p. 16.

right to education, as enshrined in Article 2 of Protocol N° 1 to the Convention. Following this judgment by the Court, the Commissioner was informed about the decision of the President of the Higher Education Council (YÖK) to include Kurdish in the language courses offered in universities' curricula and the availability of such a course in the first half of 2009 at Bilgi University, Istanbul.[17]

33. By letter of 13 February 2009 the Turkish authorities informed the Commissioner of the launch in Turkey of a multilingual TV channel (TRT-6) of the Turkish Radio and Television Corporation (TRT), which on 1 January 2009 started to broadcast 24 hours a day, 7 days a week in the Kurmanji dialect. The authorities have also noted that the TRT 'intends to widen the scope of TRT-6 in the course of 2009 with broadcasts in Zaza and Sorani dialects', contributing thus to the 'preservation and promotion of cultural and linguistic diversity in Turkey'. The Commissioner considers this to be a step in the right direction of protecting and promoting the Kurdish language and culture in Turkey, in line with the recommendations contained in Resolution 1519 (2006) on the cultural situation of the Kurds adopted by the Council of Europe Parliamentary Assembly.

34. The Commissioner has noted with grave concern the initiation in October 2007 of criminal proceedings against children members of the Diyarbakir Yenisehir Municipality Children's Choir who sang the Kurdish language anthem at a music festival in San Francisco.[18] The criminal charge related to 'making propaganda for a terrorist organization or its aims' (Article 220, paragraph 8, of the Criminal Code) on the ground that the song was the anthem also used by the illegal organization PKK (Workers' Party of Kurdistan). The charges were finally dropped in July 2008 since the song was reportedly sung upon request and the children had no intention to commit the above criminal offence.

35. During his visit to Turkey, the Commissioner was informed that over the previous nine months approximately 250 children of Kurdish origin, more than 190 of them between 13 and 17 years of age, had been arrested and detained, after having taken part in demonstrations organized by Kurdish groups and thrown stones at police forces. In particular he has been informed that four children aged between 16 and 17 have been detained in the Diyarbakir prison since 14 July 2008, charged with membership of a terrorist organization as a result of participating in a protest in the above town.[19]

36. NGOs that met with the Commissioner during his visit indicated that prosecution in such cases is often based on Article 220, paragraph 6, of the Criminal Code which provides that any person who commits an offence on behalf of an illegal organisation, even though they are not a member of the organization, shall be sentenced for the offence as well as for membership of the organisation. The extensive use of this provision by courts against participants of Kurdish-related demonstrations follows a ruling of the General Criminal Board of the Court of Cassation in March 2008 which indicated that persons participating in demonstrations following public calls by the illegal organization PKK should be brought into the ambit, inter alia, of the above provision of the Criminal Code.

37. At the time of the Commissioner's visit to Turkey it was reported that there were three children who had been convicted on the ground, inter alia, of the above provision, having participated in demonstrations in Adana and Gaziantep, and have been in prison for over a year. The children at the time of their arrest were 16 years old. Many more children have been reportedly arrested in similar circumstances and convicted to imprisonment on the ground of Article 7, paragraph 2, of the Anti-Terrorism Law N° 3713 that proscribes making propaganda of a terrorist organization. Of special concern to the Commissioner have also

[17] Press release of 05/03/2009, available at: http://www.hurriyet.com.tr/english.
[18] See Amnesty International, press release of 18/07/2008.
[19] Kurdish Human Rights Project, *Shadow Report* submitted to the UN CERD, February 2009, paragraph 20.

been Articles 9 and 13 of the Anti-Terrorism Law that allows for trials of children of 15 to 18 years of age to be tried by ordinary criminal courts.

38. In this context, the Commissioner has noted the delivery of a judgment by the European Court of Human Rights on 27 November 2008 in the case of *Salduz*, concerning the arrest and detention in 2001 in Izmir of a minor on suspicion that he had participated in an unlawful PKK-related demonstration. The Court found unanimously that Turkey had violated the Convention on the ground, inter alia, that the right of access to a lawyer could not be enjoyed by the applicant when he was in police custody and made statements.

39. Of particular concern has been the dismissal in June 2007 by the Council of State, upon the Interior Ministry's request, of the mayor of the Sur (Diyarbakir) municipality and the dissolution of the municipal council for having initiated in 2006 the provision of multilingual (Turkish, Kurdish, Armenian, Syriac, Arabic and English) municipal services. The municipality's decision had been taken on the basis of a survey that showed that 72% of the district residents spoke Kurdish in daily life, 24% spoke Turkish and the remainder other languages. The Council of State's decision was grounded in, inter alia, Article 3, paragraph 1, of the Constitution that provides that '[t]he Turkish state, with its territory and nation, is an indivisible entity. Its language is Turkish'. The case has reportedly led to an application before the European Court of Human Rights. The Commissioner is particularly concerned by such repressive state practices that may lead in practice to the exclusion from public services of a significant number of the population that is unfortunately illiterate, as is the case of parts of the Kurdish population in the area of Diyarbakir.[20]

40. The Commissioner is deeply concerned by the fact that this repressive measure against local authorities was not an isolated incident but appears to be part of a generalized practice in the area of Diyarbakir. The Council of Europe Congress of Local and Regional Authorities (CLRA) has reported that other incidents between 2006 and 2007 included criminal proceedings against politicians and others giving speeches (and singing songs) in Kurdish, an investigation against the former Mayor of Sur in relation to the alleged conduct of a marriage ceremony in Kurdish, the prosecution of the Mayor of Diyarbakir for sending new year's greetings cards in Kurdish, the prosecution of 56 Mayors for 'abetting and aiding an armed organisation' on the basis of their letter to the Danish Prime Minister concerning the possible closure of the Kurdish-language Roj TV.[21]

41. The Commissioner recalls that in its Resolution 229 (2007) on *Local Democracy in Turkey* the CLRA highlighted the following major problems concerning the use of minority languages at local level: first, 'the Turkish authorities permit a restrictive interpretation of "Turkish identity" which limits the cultural rights and freedoms of those Turkish citizens who use languages other than Turkish'; secondly, 'the measures taken against local authorities for using languages other than Turkish in the provision of public services are not being applied consistently to all languages'; thirdly, 'the Municipality Law allows courts to prosecute mayors and municipalities and remove them from office for having made "political" decisions'.

42. The Commissioner has been informed that, according to Article 58 of the Law on Basic Provisions on Elections and Voter Registers, the only language that may be used during elections is Turkish. The European Commission against Racism and Intolerance (ECRI) in its Third Report on Turkey noted that criminal proceedings were brought on the above legal

[20] The incident led to a fact-finding mission to Turkey from 8 to 10 August 2007 and Recommendation 229 (2007) on *Local democracy in Turkey* by the Council of Europe Congress of Local and Regional Authorities, available at: http://www.coe.int/T/Congress.

[21] See *Report of the Congress Fact-Finding Mission to Turkey (8-10 August 2007),* Strasbourg, 18/09/2007, at p. 4.

basis.[22] In addition the Commissioner has noted with concern that under Article 81 of the Law on Political Parties the latter 'are not entitled to assert that there exist within the territory of the Republic of Turkey minorities based on race, religion, sect, culture or language'.[23] The law also expressly prohibits the use of minority languages during electoral campaigns. This provision was used as a legal argument by the Turkish Parliament's Speaker for the halting by the state channel TRT on 24 February 2009 of the live broadcasting from the Parliament of a speech made in Kurdish to his own party group by Mr Ahmet Türk, MP, member of the Democratic Society Party (DTP).[24]

43. The Commissioner believes that the above legislation is too restrictive and prevents the effective participation of members of minority groups in the political life of the country that should not only be protected but also promoted by all member states, in accordance with the Council of Europe standards.[25] Indeed, the pluralism of a democratic state's society should be effectively reflected upon all democratic manifestations, in particular those of local and national elections and political party campaigning that provide one of the major means of people's direct participation in a country's political consultations and decision-making.

44. On 3 July, during his meeting in Ankara with the Minister of Justice, Mr Sadullah Ergin, the Commissioner noted with satisfaction the commitment shown by the Minister and his determination to mainstream in Turkish law and enhance the effective application of the European Court of Human Rights' case law, thus preventing further violations of the Convention.

45. The Commissioner has been particularly concerned by a number of freedom of expression cases that have been brought before and judgments against Turkey delivered by the European Court of Human Rights,[26] such as those two cases concerning non authorization of a production of a stage play in Kurdish[27] and the institution of disciplinary proceedings against a judge for reading a newspaper and watching a TV channel related to the illegal armed organization of PKK.[28] In both cases the European Court of Human Rights found unanimously violations of Article 10 of the European Convention on Human Rights and the cases are pending for examination before the Committee of Ministers under Article 46, paragraph 2, of the Convention.

46. Four other judgments were delivered from 2006 to 2009 by the European Court of Human Rights that found unanimously violations by Turkey of Article 10 of the Convention on the ground of unnecessary in a democratic society and disproportionate interferences by the authorities with the right to freedom of expression of certain broadcasting companies in Turkey on the grounds of, inter alia, defamation and incitement to violence and to separatism.[29] The Commissioner has noted with concern that in these cases at the basis of

[22] ECRI, *Third report on Turkey*, 15/02/2005, paragraph 18.
[23] Cited in *Yumak and Sadak v Turkey*, judgment of the Grand Chamber of the European Court of Human Rights, 08/07/2008, paragraph 37.
[24] See press release at http://www.bianet.org, 25/02/2009.
[25] See inter alia Articles 7, 10 and 15 of the Framework Convention for the Protection of National Minorities (FCNM) and FCNM Advisory Committee, *Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs*, 05/05/2008.
[26] In 2008 and 2007 judgments against Turkey concerning violations of freedom of expression (Article 10 ECHR) reached the numbers of 20 and 26 respectively (highest ones among respondent states), European Court of Human Rights, *Annual Report 2008* at 131 and *Annual Report 2007*, at 143.
[27] *Ulusoy and others v Turkey*, judgment of 03/05/2007.
[28] *Albayrak v Turkey*, judgment of 31/01/2008.
[29] *Özgür Radyo-Ses Radyo Televizyon Yayin Yapim Ve Tanitim A.Ş. v. Turquie*, judgment of 30/03/2006, *Özgür Radyo-Ses Radyo Televizyon Yayin Yapim Ve Tanitim A.Ş. v Turquie*, judgment of 04/12/2007, *Nur Radyo Ve Televizyon Yayinciliği A.Ş. v Turquie,* judgment of 02/06/2008, *Özgür Radyo-Ses Radyo Televizyon Yayin Yapim Ve Tanitim A.Ş. v. Turquie*, judgment of 10/03/2009.

the violations found by the Court was the Turkish broadcasting legislation (Law 3984 of 1991 as subsequently amended) and its application by the Turkish broadcasting regulatory authority (Radio and Television Supreme Council - RTÜK) and domestic courts.

47. The Commissioner has noted the existence of more than a hundred judgments that have been issued since 1998 against Turkey by the European Court of Human Rights and the Committee of Ministers due to violations by Turkey of the applicants' right to freedom of expression (Article 10 of the European Convention on Human Rights). As at April 2009 there were more than 90 judgments of the European Court of Human Rights concerning violations of the right to freedom of expression that were pending for examination of their execution by Turkey before the Committee of Ministers.[30] The facts of most of these case concerned convictions following publication of articles, drawings and books or the preparation of messages addressed to a public audience.[31]

48. Since 1998 the Council of Europe Committee of Ministers have invited Turkey to adopt certain legislative and other measures for preventing similar violations of the Convention. These proposals included constitutional and legislative reforms introducing inter alia the assessment by domestic courts of the proportionality of restrictions on freedom of expression, in conformity with the Court's established case law, as well as reform of the Anti-Terrorism Law.[32] On 3 July the Minister of Justice informed the Commissioner of a new judicial reform strategy that is under preparation and is expected to enhance the effective promotion and protection of human rights and fundamental freedoms by courts.

49. Even though provisions of the Criminal Code and of the Anti-Terrorism Law have been amended, a recent Council of Europe information document has stressed that the new provisions, 'while phrased differently, are of the same substance as the previous ones. The mere change of wording introduced by the recent reforms cannot ensure compliance with the ECHR requirements as set out in the ECtHR's judgments. In this context, special responsibility to apply domestic law in conformity with the ECHR and thus preventing new, similar violations lies with Turkish judges and prosecutors'.[33] The Commissioner has noted with satisfaction the continuing cooperation of the Ministry of Justice with the Council of Europe in the context of the ongoing, human rights training programmes targeting in particular judges and prosecutors in the supreme and lower instance courts.

50. The Commissioner has noted in particular the amendment on 30 April 2008 of Article 301, paragraph 1, of the Criminal Code which now reads: 'Whoever overtly insults the Turkish nation, the State of the Turkish Republic, the Turkish Grand National Assembly, the Government of the Republic of Turkey or the judicial organs of the state shall be punishable by a term of imprisonment from six months to two years'. In addition, according to the amended Article 301, paragraph 4, of the Criminal Code, the initiation of a criminal investigation is now subject to an authorization by the Minister of Justice.

51. The Commissioner is aware that the former, similarly worded Article 301, paragraph 1 (it provided for the criminal offence of 'insulting Turkishness' and a maximum sentence of three years' imprisonment) was used for bringing criminal proceedings in 2005 against, among others, the former head of the Prime Minister's Human Rights Advisory Board and the commissioned author of a report on 'the rights of minorities and cultural rights'. The report was presented to the Prime Minister in October 2004 and submitted, inter alia, that

[30] See Department for the execution of judgments of the European Court of Human Rights, 'State of execution' 20/04/2009, cases or group of cases against Turkey, available at: http://www.coe.int/T/E/Human_Rights/execution.
[31] See Council of Europe Committee of Ministers' Deputies, *Freedom of expression in Turkey: Progress achieved – Outstanding issues,* 23/05/2008, CM/Inf/DH(2008)26, p. 1, available at: http://www.coe.int/t/cm.
[32] Ibid. at p. 2.
[33] Ibid. at p. 5.

the definition of minorities used by Turkey was excessively restrictive and that constitutional and statutory amendments were necessary in order to meet European human rights standards.

52. The above criminal proceedings were also based on Article 216 of the Criminal Code concerning incitement of the people to hatred and hostility due to a distinction based on inter alia one's social class, race or region (on this provision see also end of section). This part of the proceedings finally ended in 2008 with the respondents' acquittal by the Supreme Court. In March 2009 the Minister of Justice announced his refusal to permit prosecution to continue under Article 301. The Commissioner has been informed that the Human Rights Advisory Board has not been operational since 2004 and Article 301 and other provisions of the Criminal Code continued to be applied for prosecuting expressions of non-violent opinions.[34]

53. Of equal concern had been the successive prosecutions in 2005 and 2006, on the basis of former Article 301 regarding the crime of 'insulting Turkishness', against the Turkish-Armenian journalist Hrant Dink who had attempted to debate openly issues relating, inter alia, to the Armenians in Turkey. As is well-known this journalist was murdered on 19 January 2007 outside the Istanbul offices of the newspaper of which he was editor.

54. The Commissioner deeply regrets this tragic incident that appears to have been part of a trend of intolerance towards non-dominant groups, despite the commendable efforts made so far by the authorities for enhancing democracy and human rights in Turkey. Hate crimes of this nature should be subject to effective investigations by competent authorities, which should lead promptly to the identification and punishment of those responsible, in accordance with the established case law of the European Court of Human Rights.[35] During his visit to Turkey, the Commissioner was informed that the trial concerning the above murder was still pending.

55. The Commissioner remains very concerned about the wording and application by prosecuting and judicial authorities of the amended Article 301. He noted that in June 2008 a court sentenced a Turkish publisher to five months' imprisonment for having published the internationally circulated book of G. Jerjian, *The Truth will Set us Free: Armenians and Turks Reconciled*, on the ground of 'insulting the Turkish Republic'.[36] The Commissioner has been informed that between April and September 2008, 257 Article 301 cases were referred to the Minister of Justice by domestic courts for prior authorization. The Minister reviewed 163 and refused to authorize criminal investigation in 126 cases.[37] Further information provided to the Commissioner indicated that as at March 2009 the Minister of Justice had authorized more than 80 criminal investigations and prosecutions under Article 301.

56. The Commissioner remains concerned about the continued application of the Law on the Fight against Terrorism and of the Criminal Code with a view to prosecuting and convicting persons who have expressed non-violent opinions on Kurdish issues. Prosecutors and courts appear to keep making a very wide interpretation of the provision on 'incitement to violence' or 'public interest', in particular in cases where the opinions expressed relate to the situation of the Kurdish minority in the country.

57. In this regard, the Commissioner has noted the case of *Sakine Aktan*, a Turkish journalist who was subjected to prosecution in 2000 and subsequently sentenced twice to imprisonment for having published in an article an interview with the president of the

[34] See European Parliament, *Resolution of 12 March 2009 on Turkey's progress report 2008*, paragraph 13.
[35] See inter alia *Finucane v UK*, judgment of 01/07/2003, paragraphs 68-71.
[36] See article in *The Guardian* of 20/06/2008, available at htpp://www.guardian.co.uk.
[37] Commission of the European Community, *Turkey 2008 Progress Report*, 05/11/2008, at p. 13.

association of journalists of Kurdistan and noted the latter's opinions and criticism concerning pressure suffered by journalists working for the Kurdish press. The prosecution was based on former Article 312, paragraph 2, of the Criminal Code concerning incitement of the people 'to hate and hostility due to a distinction based on one's social class, race and religion'.

58. Even though the journalist was acquitted finally in 2007, the prosecutor's office appealed, on the ground of the aforementioned, amended Article 216, paragraph 1, of the Criminal Code, while the journalist was in the meantime recognized as a refugee in Switzerland. On 23 September 2008 the European Court of Human Rights, to which the journalist had lodged an application, found a violation of Article 10 of the European Convention on Human Rights (freedom of expression), having considered the repetitive sentences against the journalist disproportionate and unnecessary in a democratic society.

59. On the other hand, criminal, anti-discrimination legislation, such as that of Article 216, paragraph 1, of the Criminal Code[38] seems not to have been appropriately used on a number of occasions concerning discriminatory action targeting minority groups. The Commissioner has noted with regret an incident in 2006 involving an association in Izmir that carried out a campaign 'to stop the rise in the number of the Kurdish population'. Even though a complaint was lodged by a lawyers' association, the proceedings reportedly did not lead to any criminal charge.[39] In another case which was reported in 2008 and concerned the publication in a local newspaper of an article inciting the public to kill members of the pro-Kurdish Democratic Society Party (DTP) the Bolu criminal court reportedly found that there has been no violation of Article 216.[40]

60. During his visit to Istanbul, representatives of the Jewish community noted during their discussion with the Commissioner that Article 216 of the Criminal Code has not been applied so far effectively, despite the complaints that have been lodged, in order to punish and stop anti-Semitic articles published in the press in the near past. In this context, it was recalled that on 15 November 2003 two of the Jewish synagogues were subject to a bomb attack and a member of the Jewish congregation in Istanbul was murdered.

III. Minorities and the right to freedom of association

61. Members of non-dominant, minority groups in Council of Europe member states should be allowed and enabled to express collectively their culture, identity and political ideas within the democratic political contexts of member states that should always be grounded in pluralism, tolerance and broadmindedness.

62. One of the most effective means used to this effect is the creation and functioning of political parties. As noted on many occasions by the European Court of Human Rights, political parties form an essential role in the proper functioning of democracy. Member states should allow and facilitate their existence even if their programmes or manifestos include ideas that are irksome or call into question the way in which a state is organized, on condition that they do not harm democracy itself.[41]

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[38] 'Whoever overtly incites a group of the population having different characteristics based on social class, race, religion, sect or regions against another group so as to breed enmity and hatred shall be punishable by a term of imprisonment of between one year and three years, if a clear and imminent threat to public order emerges as a result of this act.'

[39] See Minority Rights Group, *Written Comments* to UN CERD, 2009, at p. 13.

[40] Kurdish Human Rights Project, ibid, paragraph 23.

[41] See, inter alia, *Freedom and Democracy Party (Özdep) v Turkey*, Grand Chamber judgment of 08/12/1999, paragraphs 37-48. See also European Commission for Democracy Through Law (Venice Commission), *Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures*, 10/01/2000, available at: http://www.venice.coe.int.

63. For these reasons, restrictions that may be placed on the establishment and operation of political parties, in accordance with Article 11, paragraph 2, of the European Convention on Human Rights, should be accompanied by particular cautiousness. Indeed, in this domain, member states have a limited margin of appreciation, subject to the rigorous supervision of the European Court of Human Rights.

64. The Commissioner is concerned at the persistence in Turkey of the threshold in the general electoral legislation that does not allow political parties to win seats in parliament in case they do not receive at least 10% of the total votes cast. Such parties are, inter alia, ones voted by and representing minority groups such as the Kurds. This provision has been characterized as excessive by the Council of Europe Parliamentary Assembly in 2004.[42] Of the same view has been the Grand Chamber of the European Court of Human Rights in its 2008 judgment in *Yumak and Sadak*, where, even though it did not find a violation of the Convention in the specific circumstances of that case, it noted that 'the threshold's exceptionally high level…compels political parties to make use of stratagems which do not contribute to the transparency of the electoral process'.[43]

65. The Commissioner is aware of eight cases that were brought before the European Court of Human Rights from 1992 to 1998 following dissolution by the Turkish Constitutional Court of political parties, on the ground that the manifestos of these parties or statements made by their leaders were deemed to undermine the territorial integrity and the unity of the nation, mainly though references to the Kurdish people or to Kurdish self-determination. Most of these parties were dissolved before they could even begin their activities. The Court found unanimously in all these cases violations by Turkey of Article 11 of the Convention.

66. The Commissioner has noted that on 20 June 2007 the Committee of Ministers concluded the supervision of execution by Turkey of the above judgments, having taken into account, inter alia, the constitutional changes of 2001 and the 2003 amendments to the Law on Political Parties which reinforced the requirement of proportionality for any state interference in the freedom of association. At the same time the Turkish government submitted to the Committee of Ministers that it 'now expects that all domestic courts, including the constitutional court, will give direct effect to the Convention and the case-law of the European Court, not least when deciding matters relating to the dissolution of parties or the penalties to be imposed on their members'.[44]

67. Despite all these positive developments, the Commissioner has been deeply concerned by the initiation on 14 March 2008 of proceedings by the Chief Prosecutor of the Supreme Court of Turkey, based on Article 69 of the Constitution[45] and the law on political parties, with a view to dissolving the ruling Justice and Development (AK) Party, on the ground that it had become a 'centre of anti-secular activities', and to banning 71 of its members and 39

[42] Parliamentary Assembly Resolution 1380 (2004) on *Honouring of obligations and commitments by Turkey,* 22/06/2004, paragraph 6.
[43] *Yumak and Sadak v Turkey*, Grand Chamber judgment of 08/07/2008, paragraph 147.
[44] See Committee of Ministers Resolution CM/ResDH(2007)100, *Execution of the judgments of the European Court of Human Rights, United Communist Party of Turkey (judgment of the Grand Chamber of 30/01/1998) and 7 other cases against Turkey concerning the dissolution of political parties between 1991 and 1997,* available at: www.coe.int/t/cm.
[45] Article 69 of the Constitution states that: 'the permanent dissolution of a political party shall be decided when it is established that the statute and programme of the political party violate the provisions of the fourth paragraph of Article 68'. According to the latter, 'the statutes and programmes, as well as the activities of political parties shall not be in conflict with the independence of the state, its indivisible integrity with its territory and nation, human rights, the principles of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular republic; they shall not aim to protect or establish class or group dictatorship or dictatorship of any kind, nor shall they incite citizens to crime'.

members of Parliament, from politics for five years.[46] On 30 July 2008 it was reported that the Constitutional Court dismissed the application for closure of the party, as the necessary qualified majority for imposing a ban was not reached but cut the AKP's treasury subsidy by half. Even though these developments do not concern directly minority protection, the Commissioner recalls that freedom of association, which includes the creation and operation of political parties, is particularly important for persons belonging to minorities, the preservation and upholding of their rights.

68. The Parliamentary Assembly of the Council of Europe, in response to these events, adopted a Resolution on 26 June 2008 by which it noted that Turkey has a legacy of political parties closures and that, in view of the above developments, the issue of dissolution of political parties in Turkey is not closed. The Parliamentary Assembly concluded that it 'has become clear that further constitutional and legislative reforms in this respect are necessary', given that the Turkish Constitution 'still bears the marks of the 1980 military *coup d'état'*. Having also noted the government's initiative to draft a new constitution, the Parliamentary Assembly encouraged it to finalise this process in close cooperation with the Venice Commission.[47]

69. The Commissioner remains worried also about another set of proceedings initiated in 2007 by the Chief Prosecutor of the Supreme Court of Turkey, based also on Article 69 of the Constitution and the law on political parties, in order to close down the pro-Kurdish Democratic Society Party (DTP) which entered Parliament after the 2007 general election with 20 candidates elected as independents. This case is currently pending before the Constitutional Court.

70. The Commissioner recalls the Opinion rendered on 13 March 2009 by the Venice Commission concerning the prohibition of political parties in Turkey.[48] The Venice Commission acknowledged the important reforms and steps that have been made by Turkey in recent years 'towards full harmonisation with standards of democracy applied in other European states and [which] reflect the advances made by Turkish society'.[49] However, it stressed that the legal restrictions on political parties are stricter than the European approach, with more material restrictions on party programmes and activities, a lower general threshold, and fewer procedural obstacles for initiating a procedure of prohibition or dissolution. In view of this, the Venice Commission has been of the opinion that it will be necessary for Turkey to change the relevant constitutional and statutory provisions both on substance and procedure.

71. Finally, the Commissioner notes that according to the amended Article 5 of the Law on Associations No 5253 of 2004 it is prohibited to form associations whose purpose is to 'create forms of discrimination on the grounds of race, religion, sect or religion or create minorities on these grounds, and destroy the unitary structure of the Republic of Turkey'. Members of associations who are deemed to act against this legislation are subject to sentences of imprisonment that range from one to three years and a fine.[50] The Commissioner wishes to note that the part of the above provision which relates to associations whose purpose is to 'create minorities…and destroy the unitary structure' of the country are, at least, ambiguous and provide overtly a rather excessive margin of

[46] See paragraph 6 of Council of Europe Parliamentary Assembly Resolution 1622 (2008), *Functioning of democratic institutions in Turkey: recent developments,* 26/06/2008, and relevant report of 24/06/2008 by Mr Luc Van den Brande.
[47] Resolution, ibid. paragraphs 14,15 and 17.
[48] European Commission for Democracy through Law (Venice Commission), *Opinion on the Constitutional and Legal Provisions Relevant to the Prohibition of Political Parties in Turkey, 13/03/2009*.
[49] Ibid. paragraph 104.
[50] Written replies by the Government of Turkey to the list of issues to be taken up by the UN CERD, 2009, p. 10.

appreciation to the state to ban the establishment of associations that aim at the promotion and protection of existing minorities in Turkey.

IV. Minorities, freedom of religion and property rights

72. The Commissioner has been particularly concerned by the murder of three members of a bible publishing company in Malatya, eastern Anatolia, on 18 April 2007. This tragic incident which attracted international attention also led to a communication to the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. In its reply to the Special Rapporteur in June 2007 the Turkish government informed the former that special protection measures were taken after this murder with regard to the victims' families and the above publishing company.

73. The Commissioner remains worried about the reported atmosphere of uneasiness and insecurity that seems to surround and be felt by religious minority groups. Of serious concern to the Commissioner has been the reported creation in September 2008 of a new party named 'The Law and Equality Party' that has publicly targeted Christian missionaries in Turkey. Widely reported threats against religious leaders, such as the Ecumenical Patriarch or the Armenian Patriarch, call for the Turkish authorities' alert and the adoption of measures that will effectively prevent and eliminate the causes of such serious manifestations of intolerance towards minorities.[51]

74. During his discussion with representatives of the Jewish community in Istanbul the Commissioner also noted that even though members of this community appear to encounter no major problem in their daily lives, they are occasionally affected by anti-Semitic manifestations through citizens' demonstrations, including hate speech, or press publications, especially in the context of the political developments in the Middle East.

75. As regards members of the Muslim minority group of Alevis, one of the most widespread faiths in Turkey, the Commissioner notes that Turkey seems not have taken so far appropriate measures to satisfy their right to education in conformity with their own religious convictions. In a case that was brought to the European Court of Human Rights in 2004 the Court found a violation of the Convention on the ground that the Alevi applicant's daughter who attended the seventh grade of a state school in Istanbul was obliged to attend the compulsory 'religious culture and ethics class', even though the Alevi faith differs in numerous areas from the conception of religion presented in school.[52] The Court found in particular that the above school subject did not meet the education criteria of objectivity and pluralism and did not respect the religious and philosophical of the second applicant's Alevi father, as provided for by the Convention. The Court also noted that no appropriate means existed to ensure respect for parents' convictions other than the dominant Sunni Islam.

76. The Commissioner noted with concern that as at June 2009 the authorities had not provided the Council of Europe Committee of Ministers with any information concerning general measures aimed at preventing similar violations.[53] The Commissioner has also noted that, unlike Sunni Muslims, Alevi communitities do not receive financial aid from the state, while their worship places (*Cemevi*) are not recognized as places of worship, a situation that has reportedly led to the initiation of domestic litigation.

[51] See O. Oehring, 'Turkish nationalism, Ergenekon, and denial of religious freedom', 21/10/2008, available at: http://www.forum18.org.
[52] *Hasan and Eylem Zengin v Turkey*, judgment of 09/10/2007.
[53] See Department for the execution of judgments of the European Court of Human Rights, cases or group of cases against Turkey, 24/06/2009.

77. According to the Turkish authorities, 'Turkish citizens belonging to non-Muslim minorities' have at the moment 196 places of worship, 42 primary and secondary schools, 138 foundations, 5 hospitals and 9 newspapers. In the context of various legislative and other reforms, a governmental body, the 'Minority Issues Assessment Board', in operation since 2004, was created with the aim of 'addressing and resolving difficulties which citizens belonging to non-Muslim minorities may encounter in their daily lives'.[54]

78. In its Third Report on Turkey of 2005, ECRI was pleased to note certain legislative and other measures aimed at a better protection of the human rights of religious minorities. For example, legislative modifications in 2003 allowed religious foundations to purchase property if they are registered and a procedure was foreseen for recovering lost property. Also, places of worship of religious minority groups were granted the same status as mosques while the law on construction covered also other places of worship except for mosques.

79. However, ECRI has observed that in practice, representatives of the religious minority communities have encountered 'major resistance whenever they call for the law to be applied, including notably from the Directorate of Religious Foundations which is attached to the Prime Minister's Office. The Directorate is said to be unduly restrictive in the way it implements the legislative changes, rendering them virtually useless.'

80. ECRI has also stressed the severe depletion of the Greek Orthodox community and that 'urgent action is needed if it is to survive'. It noted in particular that the Greek Orthodox Church is 'caught in an impasse in that its training college [in Heybeliada (Halki)] has been closed down by the authorities yet it cannot bring over priests from abroad because the authorities insist that all priests be Turkish nationals'. In addition, ECRI has highlighted the non-existence of a clearly defined legal status of religious minority communities, which seems to make the implementation of new legislation particularly difficult.[55]

81. It is recalled that Article 40, among other provisions, of the 1923 Lausanne Peace Treaty provides that 'non-Moslem minorities…shall have an equal [to other Turkish nationals] right to establish, manage and control at their own expense…any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.'[56]

82. The Commissioner has followed the issue of the Theological Seminary of Heybeliada (Halki) which remains closed since 1971 by decision of the Turkish Ministry of National Education on the ground that the Seminary had too few students to continue to operate. It was thus made impossible for the Greek Orthodox community to have clergymen educated in Turkey. The authorities' insistence that Greek Orthodox priests (and possible future Patriarchs) have the Turkish nationality compounds the situation of the Greek Orthodox community as well as of the institution of the Ecumenical Patriarchate.

83. The Commissioner, following his discussions with the Turkish authorities, feels that a new impetus has emerged with regard to the reopening of the Seminary. Representatives of the Ministry of Foreign Affairs indicated that the Ministry of Education and the Higher Education Council are in search of a workable solution for the reopening of the Seminary. The Commissioner encouraged the authorities to continue their consultations with the Ecumenical Patriarch so that a resolution of this issue is attained promptly.

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[54] See Report submitted by Turkey to the UN Committee on the Elimination of Racial Discrimination, 13/02/2008, CERD/C/TUR/3, paragraphs 31-32.

[55] ECRI, *Third report on Turkey*, 15/02/2005, paragraphs 88-90. Similar concerns had been expressed also by the former Commissioner in his *Report on his visit to Turkey, 11-12 June 2003*, 19/12/2003, paragraphs 94-100.

[56] See text at: http://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne.

84. During his visit to Turkey the Commissioner was also informed of the lack of a proper institution for training the Armenian Orthodox clergy in Turkey, currently trained out of the country. A proposal made by the Armenian Patriarchate two years ago for the establishment of a relevant Chair in a University has not come to fruition to date.

85. The Commissioner has also noted with concern that under Turkish law Greek nationals are not entitled to inherit immovable property situated in Turkey. This practice has been condemned by the European Court of Human Rights in two judgments of 2007 where it found that Turkey had violated, inter alia, Article 1 of Protocol N° 1 to the Convention (protection of property).[57] In both cases Turkish courts in 2001 had refused to recognise the Greek applicants' right to inherit immovable property in Turkey. As at June 2009 the Committee of Ministers had both these judgments on their agenda of supervision of execution by the respondent state. The Commissioner has noted that the Greek minority currently numbers approximately 3 000 persons, mainly in Istanbul, compared with several hundred thousand in early 20th century.[58]

86. As regards the Ecumenical Patriarchate, during the Commissioner's visit to Ankara, representatives of the Ministry of Foreign Affairs noted that 'the "ecumenical" status of the Patriarchate is an issue of the Orthodox Church'. The Commissioner wishes to note that the title 'Ecumenical' used by the Greek Orthodox Patriarch is an honorary, historical title of great spiritual importance to Orthodox Christians around the world.

87. A ground of concern remains the non-recognition in Turkey of the Ecumenical Patriarchate's legal personality, as is also the case with other religious minority institutions or communities which do not have the form of a foundation. The Commissioner has noted a case that was brought in 2005 before the European Court of Human Rights by the Ecumenical Patriarchate concerning the annulment by Turkish courts of the Ecumenical Patriarchate's property entitlement to a large plot of land and buildings on the island of Büyükada (near Istanbul) that had been acquired by it in 1902. The annulment proceedings had been initiated in 1999 by the Directorate General of Foundations and no compensation whatsoever was finally provided to the applicant. The Commissioner has noted in particular that one of the grounds on which these proceedings were initiated by the Directorate General of Foundations was that the 'Greek Patriarch did not have the capacity to acquire immovable property by virtue of the Law on Foundations and the Lausanne Treaty'.[59] In 2008 the European Court of Human Rights found unanimously that there had been a violation of Article 1 of Protocol N°1 to the Convention.

88. The Commissioner recalls the relevant case law of the European Court and former Commission of Human Rights[60] and wishes to underline that the full recognition of the legal personality of the religious minority communities established in Turkey appears necessary for the effective protection of these communities' rights, their preservation and development that are necessary in the inherently pluralistic society of Turkey on which the latter rightly takes pride.

89. On 1 July, during the meeting that the Commissioner had with representatives of the Jewish community of Turkey in Istanbul he was informed about the case of the Izmir Jewish congregation whose legal personality is not recognised by the Directorate General of Foundations and in practice cannot dispose of its property, even though the congregation's

[57] *Apostolidi et autres c Turquie*, arrêt du 27/03/2007, *Nacaryan et Deryan c Turquie*, arrêt du 08/01/2008.
[58] See also Parliamentary Assembly, *Honouring of obligations and commitments by Turkey*, Report by Mrs Mady Delvaux-Stehres and Mr Luc Van den Brande, 17/03/2004, paragraph 202, European Parliament, *Resolution of 12 March 2009 on Turkey's progress report 2008*, paragraph 17.
[59] *Fener Rum Patrikliği (Patriarcat Oecuménique) c Turquie*, arrêt (fond) du 08/07/2008, paragraph 20.
[60] *Canea Catholic Church v Greece*, judgment of 16/12/1997, Report by the Commission of 03/09/1996.

Chief Rabbinate pays taxes for their property in Izmir. Legal proceedings were also reported to be pending before the Supreme Court upon the initiative of the Treasury in order to register by the Izmir Jewish congregation property that it has owned.

90. The Commissioner has noted with concern a number of applications against Turkey that have been brought before the European Court of Human Rights by members of minority groups following serious interferences by the respondent state with the peaceful enjoyment of the former's possessions. During his visit to Turkey the Commissioner was informed that the vast majority of such cases concern the Armenian and the Greek communities.

91. One of the earliest such judgments of the European Court of Human Rights, whose execution is still examined by the Committee of Ministers, concerns a catholic priests' institute in Istanbul.[61] By a judicial decision of 1993 the institute lost its property entitlement to a plot of land on the ground that, by letting part of this land to a private company, the institute, whose legal personality was not recognized by the Court of Cassation, was not any more eligible for special treatment as a non-profit body. The application before the European Court of Human Rights led to the conclusion in 2000 of a friendly settlement, under which, inter alia, the Treasury and the Directorate General of Foundations recognized the institute priests' right to usufruct. This right would comprise the full use and enjoyment of the land and the buildings thereon and the right to let the land for profit-making purposes in order to meet its needs. In June 2008 the institute's representatives informed the Committee of Ministers of an impasse in their negotiations with the Turkish authorities and that they considered lodging a new application with the Court.[62] Negotiations were reportedly resumed in March 2009. As of June 2009 the execution of this judgment was still supervised by the Committee of Ministers.

92. Other property-related applications were brought before the European Court of Human Rights between 1997 and 2004 by a number of 'non-Muslim foundations' (*Vakif (sing.) – Vakiflar (pl.)*), that is, foundations managed by churches, monasteries, schools or hospitals, which had been created during the Ottoman period by imperial decree in order to serve the interests of 'religious minorities', also covered by the 1923 Lausanne Peace Treaty.

93. The above cases before the Court in particular concerned an Armenian hospital foundation, a foundation in charge of an Armenian church, school and cemetery, a Greek high school foundation and a Greek Orthodox Church foundation in or near Istanbul.[63] They concerned complaints of violations by Turkey of the applicant foundations' property rights due to annulment or non-recognition by Turkish courts in the 1990s and early 2000s of these foundations' property titles and rights regarding certain immovable properties that they had acquired (through donation, inheritance or purchase) and registered in the 1950s and 1960s. The property title or right annulment proceedings had been initiated by the Treasury or the Regional Directorate for Foundations in Istanbul.

94. The main legal ground for the annulment or non recognition of these property titles or rights has been the 1974 case law of the Court of Cassation that did not recognise the right of such 'religious minority foundations' to acquire immovable property after 1936 when the above foundations were officially registered indicating also their existing properties, as provided by domestic law. According to the Court of Cassation, the foundations should

[61] *Institut des prêtres français et autres c Turquie*, arrêt (radiation) du 14/12/2000.
[62] Department for the execution of judgments of the European Court of Human Rights, 'State of execution', cases or group of cases against Turkey, 20/04/2009.
[63] *Yedikule Surp Pirgiç Ermeni Hastanesi Vakfi c Turquie*, arrêt (Règlement amiable), 26/06/2007, *Yedikule Surp Pirgiç Ermeni Hastanesi Vakfi c Turquie,* arrêt du 16/12/2008, *Samatya Surp Kevork Ermeni Kilisesi, Mektebi Ve Mezarliği Vakfi Yönetim Kurulu c Turquie,* arrêt du 16/12/2008, *Fener Rum Erkek Lisesi Vakfi c Turquie*, arrêt du 09/01/2007, *Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfi c Turquie (N°2)* , arrêt du 03/03/2009.

have expressly noted their capacity to acquire additional immovable property when they were registered in 1936. As noted by the European Court of Human Rights, the Court of Cassation in 1974 seemed to consider as a 'threat to national security' the acquisition by such foundations of additional immovable property.[64]

95. One of these cases before the Court led to a friendly settlement with undertakings by Turkey and all the others to judgments that found unanimously violations by Turkey of Article 1 of Protocol N° 1 to the European Convention on Human Rights (protection of property). In the latter cases the Court found unlawful the annulment or non recognition of the applicant foundations' titles or rights to immovable property that had been acquired, possessed, registered or declared lawfully for decades.

96. The Commissioner has been informed and concerned about judicial proceedings that are reportedly pending in Turkey concerning the expropriation of land of the Mor Gabriel monastery in Tur Abdin, southeast Turkey, as well as proceedings against representatives of the monastery which forms part of the Syrian Orthodox Church and was founded in 397 AD.[65] Reportedly the land dispute arose in the context of the redrawing of the national land registry and, inter alia, the allocation of 244 (out of 1 227) hectares to the Treasury although the monastery had been paying taxes for all this land since 1938. The Commissioner has noted with satisfaction the Turkish Prime Minister's particular interest in this question and the determination he has shown to resolve it.[66]

97. The Commissioner has noted that legislation adopted in 2002 (Law N° 4771) and 2003 (Law N° 4778) has expressly recognized the capacity of non-Muslim group foundations, such as the ones mentioned above, to acquire, dispose and register in their name immovable property, upon authorization of the administration (the 2002 legislation provided for the Cabinet's authorization and the 2003 legislation provided for the authorization of the Directorate General of Foundations).[67]

98. The Commissioner has noted with concern an expert report indicating that a 2003 Regulation which was issued to implement the above-mentioned legislation required non-Muslim foundations to follow 'laborious bureaucratic procedures' concerning their real rights' transactions. Acquisition by these foundations of property was also made possible only to 'meet their religious, charitable, social, educational, health-related and cultural needs', [68] an echo of the terminology used in Section III of the 1923 Lausanne Peace Treaty. The Commissioner has noted with concern that as of November 2008 only 29% of all applications filed with the Directorate General of Foundations by non-Muslim foundations to register their immovable property in their own name were accepted.[69]

99. On 27 February 2008 a new Law on foundations (N° 5737) was promulgated and provided for the first time the right of the non-Muslim community foundations to be represented in the Foundations' Council, the highest decision-making body of the Directorate General of Foundations. The Commissioner during his visit to Istanbul met with the current representative of the non-Muslim community foundations in Istanbul, Mr Laki Vingas, and is convinced that such a participatory organ is a step in the right direction of enhancing

[64] *Fener Rum Erkek Lisesi Vakfi c Turquie*, arrêt du 09/01/2007, paragraph 28.
[65] Written Question N° 563 to the Council of Europe Committee of Ministers, 'Expropriation of the lands of the Mor Bagriel Monastery in Tur Abdin, Turkey', CM/AS(2008)Quest563, 17/02/2009, *European Parliament resolution of 12 March 2009 on Turkey's progress report 2008*, paragraph 17.
[66] Press release of 27/04/2009, http://www.hurriyet.com.tr/english/domestic/11517723.asp?gid=243.
[67] See D. Kurban, K. Hatemi, *The Story of an Alien(ation): Real Estate Ownership Problems of Non-Muslim Foundations and Communities in Turkey*, Turkish Economic and Social Studies Foundation (TESEV), Istanbul, March 2009 at p. 24.
[68] Ibid. at pp. 24-27.
[69] Ibid. at p. 26.

dialogue, synergy and confidence-building among the minorities concerned and the authorities.

100. Provisional Article 7 of the above Law provided for the entitlement of non-Muslim foundations to deeds regarding immovable property that was included in the foundations' '1936 declarations' if this property is 'still in the possession of the non-Muslim foundation in question'. The same provision provided that these foundations may reclaim from the Treasury or from the Directorate General of Foundations their titles to property that the former had acquired through purchase, donation or inheritance after the '1936 declarations'. Both cases are conditioned on the agreement from the foundations' general assemblies and on the lodging of an application with the land registry within eighteen months after the entry into force of this Law.[70]

101. The Commissioner is aware that the European Court of Human Rights in one of its relevant judgments of December 2008 noted that the Turkish government had not produced any evidence showing the effectiveness of Law 5737, in a case of an Armenian foundation that reclaimed its right to property concerning an immovable that it had acquired by donation in 1955.[71]

102. The Commissioner notes with concern the continuation under this new Law of the practice of 'fused foundations', under which the Directorate General of Foundations has a discretion to decide which foundations are not engaged any more in charitable activities de facto or de iure and thus to put them under the former's exclusive management. Moreover, no form of redress has been provided for by legislation as yet with regard to non-Muslim foundations' immovable property that has been fused and transferred or sold by state authorities to third parties. Of concern has also been the fact that under the new law, new foundations may be established in accordance with the Turkish Civil Code whose Article 101, paragraph 4, proscribes the establishment of foundations aimed at supporting a group of a specific origin or a community.

103. Finally, the Commissioner has noted with concern the development of the Turkish islands of Gökçeada (Imbros) and Bozcaada (Tenedos). Under Article 14 of the Lausanne Peace Treaty of 24 July 1923, the 'islands of Imbros and Tenedos, remaining under Turkish sovereignty, shall enjoy a special administrative organisation composed of local elements and furnishing every guarantee for the native non-Moslem population in so far as concerns local administration and the protection of persons and property.' The islanders were also expressly excluded by the same provision from the exchange of populations that was earlier agreed upon between Greece and Turkey.[72] The numbers of ethnic Greek populations on the two islands dropped from 9 357 and 5 420 respectively in 1912 to about 250 and 25 nowadays.[73]

104. The Commissioner supports fully the efforts made by the Council of Europe Parliamentary Assembly aimed at promoting the preservation of the bicultural character of the two aforementioned islands as a model for co-operation between Greece and Turkey in the interest of the people concerned. The Commissioner is aware of the fact that the vast majority of the ethnic Greeks who have left the islands did so as a consequence of various

[70] Ibid at pp. 27-28 and *Yedikule Surp Pirgiç Ermeni Hastanesi Vakfi c Turquie,* arrêt du CrEDH du 16/12/2008, paragraphs 16-20.
[71] *Samatya Surp Kevork Ermeni Kilisesi, Mektebi Ve Mezarliği Vakfi Yönetim Kurulu c Turquie,* arrêt du 16/12/2008, paragraphs 23-25.
[72] The 'Greek inhabitants of Constantinople' (along with the 'Moslem inhabitants of Western Thrace') had also been expressly excluded from the compulsory exchange of populations between Greece and Turkey under the Lausanne Convention of 30 January 1923.
[73] See Parliamentary Assembly, *Gökçeada (Imbros) and Bozcaada (Tenedos): preserving the bicultural character of the two Turkish islands as a model for co-operation between Turkey and Greece in the interest of the people concerned,* Report by Mr Andreas Gross, 06/06/2008, paragraphs 10-28.

measures that were taken in the past, such as the closure of the Greek community schools on the islands and large-scale expropriations to the detriment of the ethnic Greek population. However some positive measures taken recently by Turkey, such as the refurbishment of certain churches on the islands, show that it is always possible to initiate a constructive dialogue between the Turkish and the respective minority members and to provide reparation to the latter in accordance with the general principles of international law.[74]

V. Forced displacement in and from eastern and southeast Turkey

105. Turkey is one of the eleven Council of Europe member states where the situation of internally displaced persons (IDPs) remains unfortunately unresolved for decades, as a result of various conflicts. The Commissioner has noted with serious concern the situation relating to the forced displacement of persons in and from the eastern and southeast Turkey, in particular from 1984 until 1999, due to the armed conflict in those areas inhabited mainly by members of the Kurdish minority. The government's measures vis-à-vis this internal conflict included the decreeing of a state of emergency in a number of provinces from July 1987 until November 2002.[75] The Commissioner remains worried at reports indicating the continuation of incidents of armed conflict and violence both by state and non-state forces in these areas.[76]

106. People became IDPs not only out of fear of this violent armed conflict that has regrettably ravaged the country but also due to 'evacuations' that were carried out by state security forces as well as by non-state armed forces.[77] According to a 2006 survey that was commissioned by the government, the estimates of IDPs in Turkey ranged from 953 680 to 1 201 200.[78] It has been reported that while almost half of the IDPs remained in the rural areas of the provinces of their origin, the other half of them have migrated to provinces elsewhere in Turkey, including cities like Istanbul, Ankara and Izmir.[79]

107. A number of IDPs have lodged successful applications against Turkey with the former European Commission of Human Rights and the European Court of Human Rights, especially in the course of the 1990s. In most of these complaints which concerned mainly forced evacuation and destruction of the applicants' homes by state security forces, the former Commission and the Court have found violations by the respondent state of the applicants' right to peaceful enjoyment of their possessions and their right to respect for their family lives and homes.

108. For example, in the case of *Doğan and others* the Court found such violations on the ground that the fifteen applicants had been hindered from enjoying their possessions in the Boydaş village for almost ten years since 1994 when they were evicted by security forces and their houses were destroyed, without the provision of any alternative housing. The Court has noted that during this period of time the applicants were living elsewhere in the country 'in conditions of extreme poverty, with inadequate heating, sanitation and infrastructure…Their situation was compounded by a lack of financial assets, having

[74] See also relevant recommendations contained in Parliamentary Assembly Resolution 1625 (2008), 27/06/2008.
[75] See also Council of Europe Commissioner for Human Rights, *Report on his visit to Turkey, 11-12 June 2003*, 19/12/2003, paragraphs 215-235.
[76] See International Crisis Group, *Turkey and Europe: The Decisive Year Ahead*, 15/12/2008, at p. 9.
[77] See UN Secretary-General Representative on internally displaced persons, Report, 27/11/2002, UN Doc E/CN.4/2003/86/Add.2, esp. paragraphs 6-13.
[78] Internal Displacement Monitoring Centre, *Global Overview of Trends and Developments in 2007*, April 2008, available at: http://www.internal-displacement.org.
[79] D. Yükseker, D. Kurban, *Permanent Solution to Internal Displacement? An Assessment of the Van Action Plan for IDPs,* Istanbul, TESEV, May 2009 at 8.

received no compensation for deprivation of their possessions, and the need to seek employment and shelter in overcrowded cities and towns, where unemployment levels and housing facilities have been described as disastrous'.[80]

109. In certain cases the European Court of Human Rights has also found violations by Turkey of Article 3 of the Convention due to inhuman treatment of the IDP applicants by the authorities. One such case is that of *Dulaş*, where the applicant was aged over 70 at the time of the events (1993). The Court found a violation of Article 3 having noted that the applicant's 'home and property were destroyed before her eyes, depriving her of means of shelter and support, and obliging her to leave the village and community, where she had lived all her life. No steps were taken by the authorities to give assistance to her in her plight'.[81]

110. Drawing upon the 1998 UN Guiding Principles on Internal Displacement,[82] which reflect international law and restate state obligations and responsibilities emerging from international law and human rights law, the Court has also stressed that the authorities 'have the primary duty and responsibility to establish conditions, as well as provide the means, which allow [IDPs] to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country'.[83]

111. The Commissioner has noted the information submitted by the Turkish government to the Council of Europe Committee of Ministers concerning the 2004 'Law on Compensation of the Losses Resulting from Terrorism and from the Measures Taken against Terrorism' (as amended in 2005) and relevant regulations.[84] This legislation was adopted the month following the European Court of Human Rights' judgment in the case of *Doğan and others*. Under the law, IDPs had the possibility until 31 May 2008 to apply in order to obtain directly from the administration 'compensation for pecuniary damages caused to natural or legal persons as a result of terrorist activities and operations carried out in combating terrorism during the period from 1987 to 2005', with a possibility of judicial review of these administrative decisions.[85]

112. There have been 76 'Damage Assessment and Compensation Commissions' in 76 provinces. As of February 2008 there had been 298 879 applications lodged with the above Commissions, 121 395 applications had been concluded and 79 718 applications had been declared admissible. As a result, a total of 225 088 666 EUR had been paid as compensation to applicants. In 2006 the European Court by a decision acknowledged the existence of an effective remedy in Turkey for IDPs who have been victims of the armed conflict in eastern and south-east Turkey, having taken into account the operation and results of the work of the Compensation Commissions, as well as the fact that the Compensation Law appears to open an avenue to the possibility of seeking also non-pecuniary damages in the administrative courts.[86]

113. The Commissioner has taken note of reports according to which the implementation of the compensation law has noticeably deteriorated since the above-mentioned European

[80] See *Doğan and others v Turkey*, judgment of 29/06/2004, paragraph 153.
[81] *Dulaş v Turkey*, judgment of 30/01/2001, paragraphs 49-56; see also *Bilgin v Turkey*, judgment of 16/11/2000, *Yöyler v Turkey*, judgment of 24/07/2003, *Ipek v Turkey*, judgment of 17/02/2004, where the Court found also violations of Articles 2 and 3 of the Convention on the ground of the disappearance of the applicant's two sons who had been arrested by soldiers and the state's seriously inadequate investigation into the incident and response to the applicant father.
[82] http://www.unhchr.ch/html/menu2/7/b/principles.htm.
[83] See *Doğan and others v Turkey*, judgment of 29/06/2004, paragraph 154.
[84] See Appendix to Committee of Ministers' Final Resolution CM/ResDH(2008)60 of 25/06/2008 concerning the case of *Doğan and others v Turkey*, available at http://www.coe.int/t/cm.
[85] Idem.
[86] See Admissibility Decision in the case of *Aydin Içyer v Turkey*, 12/01/2006, paragraphs 73-87.

Court's decision of 2006. A recent expert report has indicated the following major shortcomings of practice regarding remedies for lost or destroyed property of IDPs in Turkey: unreasonable burden of proof on IDPs; inconsistent calculation of compensation between provinces; slow assessment and payments; lack of an effective appeal procedure.[87]

114. In September 2008 the Council of Europe Committee of Ministers, in the context of examination of execution by Turkey of a group of judgments of the Court concerning actions of security forces, has taken note of the Turkish authorities' assurances with regard to 'the continuing practice of the administrative courts of ensuring reparation by the state for damages caused as a consequence of actions of security forces'.[88] The Commissioner has noted that the Committee of Ministers has also decided to pursue its supervision of the above judgments until it 'has satisfied itself that all outstanding general measures [regarding inter alia prosecution against members of security forces] have been adopted and their effectiveness in preventing new, similar violations has been established'.

115. The Commissioner has noted that the Turkish government seemed to be until the end of the 1990s sensitive and avoided to discuss the issue of IDPs with competent international organizations. The Return to Village and Rehabilitation Project (RVRP) that was launched by the government in 1994, and started to be implemented at the end of the 1990s, proceeded at a very low pace. The RVRP aimed at settling families wishing to return on a voluntary basis to their former places of residence or to other places suitable for settlement. The UN Special Representative on IDPs reported that during his visit to Turkey in 2002 the project's feasibility study 'was still not publicly available and it was unclear when its findings would be converted into practical steps to facilitate return'.[89]

116. The Commissioner remains worried by the fact that a large number of IDPs, most of them of Kurdish origin, remain trapped today in a protracted displacement situation.[90] International experts have made clear that Turkey should deploy more and strenuous efforts in order to effectively protect and promote the IDPs' right to return to their homes or provide them with other durable solutions such as voluntary resettlement and local integration.[91]

117. The provincial action plan for IDPs in the Van province, which was launched in September 2006, supported by UNDP and owned by the Van governorship, seems to have been a step, even if limited, in the right direction.[92] The Van action plan aims at improving the living conditions of IDPs in that area, highlighting inter alia IDPs' choice regarding return, resettlement and integration of urban IDPs and IDPs' participation in shaping the process of provision of services to them.

118. During the visit to Ankara, Mr Osman Güneş, Undersecretary of the Ministry of Interior, informed the Commissioner that construction of homes for IDPs in Van took into account these persons' special life and working style needs; thus, 70% of the homes built therein are now reportedly occupied by IDPs. The Commissioner noted with satisfaction the authorities' willingness to resolve the persistent issue of IDPs. For this, it is necessary to accelerate the implementation of all relevant action plans already concluded or about to be prepared.

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[87] See inter alia IDMC, *Protracted Displacement in Europe*, Geneva, May 2009 pp. 16-18.

[88] Interim Resolution CM/ResDH(2008)69*, Execution of the judgments of the European Court of Human Rights - Actions of the security forces in Turkey - Progress achieved and outstanding issues*, 18/09/2008.

[89] See UN Secretary-General Representative on internally displaced persons, Report, 27/11/2002, UN Doc E/CN.4/2003/86/Add.2, esp. paragraphs 12-13 and 19-24.

[90] See UN Secretary-General Representative on the human rights of internally displaced persons, Report, 09/02/2009, UN Doc A/HRC/10/13, paragraph 91.

[91] See Commissioner's Viewpoint, 'Persons displaced during conflicts have the right to return', 15/09/2008.

[92] D. Yükseker, D. Kurban, idem.

119. Overall, the return of IDPs to their homes has been so far reported to be very limited. Data of research carried out in 2006 indicated that by then the number of returnees covered by the RVRP (that covered 14 provinces of eastern and south-eastern Anatolia) ranged between 112 000 and 124 000, that is, approximately 10% of the estimated total number of IDPs.[93] Turkish authorities have reported that as of October 2008 there were 151 469 IDP returnees, while on the RVRP there was spent more than 47 million EUR, covering infrastructure investments, reparation and rebuilding of public, education and health-related, buildings, implementation of social projects and organization of employment-related workshops.[94]

120. National experts have stressed the limited number of the IDPs who have returned to their homes or areas of origin noting that it appears that many IDPs remain unaware of the special return programme while some who applied received little or no aid.[95] Also, international expert reports have highlighted cases where the compensation awarded by the excessively burdened Damage Assessment and Compensation Commissions have been uneven and proceedings therein have been inequitable.[96] People who managed to return to areas bordering northern Iraq also appeared to face insecurity since Turkey deployed troops in that region in 2007 and some of these areas were 'temporary security zones'.

121. The Commissioner has noted and remains deeply concerned at reports indicating that the eastern and south-eastern parts of Turkey, from which the majority of the IDPs originate, remain in a serious state of economic and social underdevelopment, a fact that constitutes one more, serious stumbling block to the voluntary return of the IDPs, especially of those who now find themselves established with families in areas far away from their original home. In late 2008 the Commissioner was informed of the publication of a report by the Union of Southeastern Municipalities (GABB) indicating, inter alia, that the gross national product per person in 21 provinces in the above areas was 12% of the EU average while 46% of the holders of green cards, provided to persons with low income to benefit from free health and social services, lived in the 21 provinces of eastern and south-eastern Turkey that were covered by the GABB report.[97]

122. Serious human rights challenges regarding especially children and women are posed in these areas. In 2000 the literacy rate was reported to be 73.3% in the southeast and 76.1% in the central-eastern region, while the national average had been reported to be 87.4%. Women's literacy rates in the aforementioned areas were reported to be considerably lower: 60.3% and 63.6% respectively.[98] The Commissioner is worried by data of the International Labour Organisation (ILO) showing that in 2006 there were 945 000 children in Turkey aged 6 to 14 who did not study for financial reasons and by a recent special report noting that many of these children, coming in particular from southeast and central-eastern Turkey, work as seasonal workers in the south or in the north of the country. The Commissioner has noted with satisfaction the authorities' efforts aimed at increasing these children's enrolment at schools.[99]

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[93] T. Ünalan et al, 'Internal displacement in Turkey: the issue, policies and implementation', in D. Kurban et al (ed), *Coming to Terms with Forced Migration*, Istanbul, Turkish Economic and Social Sciences Foundation (TESEV), 2007, 79-105 at p. 85.

[94] See Written replies by the Government of Turkey to the list of issues to be taken up by the UN CERD, 2009, at pp. 12-13.

[95] T. Ünalan et al, 'Internal displacement in Turkey: the issue, policies and implementation', ibid. at 80.

[96] Commission of the European Community, *Turkey 2008 Progress Report*, 05/11/2008, at p. 27, Minority Rights Group et al, *The Problem of Turkey's Displaced Persons*, Istanbul, November 2006 at pp. 12-13.

[97] See press release of 29/12/2008 available at: http://www.hurriyet.com.tr/english/home/.

[98] Minority Rights Group, *Forgotten or Assimilated? Minorities in the Education System of Turkey*, London, 2009, at pp. 11-12.

[99] Ibid. at p. 12.

123. Educational levels in the southeast are also reported to be 'far below the national average'; classrooms are reported as the most crowded in Turkey, while the system of appointing contracted instead of permanent teachers is reported to reduce the quality of education.[100] The extremely limited access of women to the labour market in the southeast raises also very serious concerns as to the enjoyment by them of the fundamental social right to work. According to the same expert report only 65 of every 1 000 women in Southeastern Anatolia have access to labour markets, whereas the remaining 935 are excluded from the labour force.[101]

124. Another widely reported obstacle to IDPs' return seems to be the village guard system, established in March 1985, according to which local militia are trained, appointed and armed by the state (gendarmerie) to protect the population from attacks by non-state armed forces. Some of this militia reportedly has been involved in various human rights violations, including IDPs' land confiscation. In 2006 in the case of *Ihsan Bilgin* the European Court of Human Rights found inter alia a violation by Turkey of Article 2 of the Convention on the ground of the national authorities' failure to protect the right to life of the applicant's father in the planning and execution of an armed operation by village guards in the south-east of Turkey in 1994, as well as due to the inadequacy of the investigation. As at June 2009 the execution of this judgment was under examination by the Council of Europe Committee of Ministers.[102]

125. Finally, the Commissioner has noted with deep concern reports by competent international and national organizations indicating that one of the serious obstacles to the safe return of IDPs are the mined areas containing anti-personnel mines which were reportedly widely used in the south-east by non-state armed forces and by security forces.[103] Turkey has been a party to the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction ('Ottawa Convention') as from 1 March 2004. Reports have indicated that landmines have been placed in the eastern and south-eastern regions of Turkey in border areas as well as near evacuated villages.[104]

126. According to Landmine Monitor, a specialist international organization, while the estimated area contaminated by mines in Turkey was 'unquantified' by the authorities as at 2008, the mine stockpile to be destroyed as of May 2008 amounted to 2.5 million, even though the Ottawa Convention deadline for the destruction of antipersonnel mine stockpile was 1 March 2008. According to Landmine Monitor, Turkey reported in 2008 that a total of 982 777 (antipersonnel and antivehicle) mines remained emplaced on its territory as of end 2007. It has also indicated that it was retaining 15 150 antipersonnel mines for training purposes, the highest total among states parties to the Ottawa Convention as of July 2008.[105]

127. Turkey has carried out demining operations, given that the demining deadline under the Ottawa Convention is that of 1 March 2014. However, the Commissioner remains seriously concerned by the grave dangers that the remaining landmines still pose to human lives, in particular to IDPs who wish to exercise their right to return back to their homes. According to the 2008 Landmine Monitor Report, Turkey has reported that from 1993 to 2003

[100] Turkish Economic and Social Studies Foundation (TESEV), *A Roadmap for a Solution to the Kurdish Question,* Istanbul, 2008, at p. 27.
[101] Ibid. at p. 30.
[102] Judgment of 27/07/2006, see Department for the execution of judgments of the European Court of Human Rights, 'State of execution' 24/06/2009, cases or group of cases against Turkey.
[103] See UN Secretary-General Representative on internally displaced persons, Report, 27/11/2002, UN Doc E/CN.4/2003/86/Add.2, esp. paragraphs 32 and 43, T. Ünalan et al, 'Internal displacement in Turkey: the issue, policies and implementation', ibid. at 88.
[104] T. Ünalan et al, 'Internal displacement in Turkey: the issue, policies and implementation', idem.
[105] See *Landmine Monitor Report 2008,* entry on Turkey, available at: http://www.icbl.org/lm.

landmines caused 2 905 casualties, including 588 people killed and 2 317 injured. The Landmine Monitor has reported 53 more victims of mines and 'improvised explosive devices' in 2006 and 93 in 2007.

128. It is regrettable that, despite the efforts made to establish a national mine action centre under the Prime Minister's Office, the Landmine Monitor has reported that as of June 2008 there was no such centre or authority in Turkey. Of particular concern to the Commissioner are reports indicating the existence of scarce resources and opportunities available to mine victims or other persons with physical disabilities in Turkey, the insufficiency of rehabilitation facilities and a limited capacity for psychological support in mine-affected regions.[106] Turkey signed on 30 March 2007 the UN Convention on the Rights of Persons with Disabilities. During his visit the Commissioner noted with regret that Turkey had not as yet signed the Convention's Optional Protocol that provides for the competence of the Committee on the Rights of Persons with Disabilities to receive communications from or on behalf of individuals or groups of individuals who claim to be victims of a violation by a state party of the provisions of the Convention.

VI. Certain issues concerning human rights of Roma

129. The average estimate of Roma in Turkey is 2 750 000.[107] They constitute a sizeable part of the Turkish population. The Turkish authorities consider Roma as a 'disadvantaged group' which 'although increasingly integrated within the communities they live in, in certain localities they face difficulties stemming from general problems such as poverty and unemployment'. According to the authorities, this situation is caused by 'inadequate living conditions, low levels of education, early marriages and irregular temporary employment, none of which is specific to [Roma]…These difficulties are addressed within the general policy of the Government directed at alleviating poverty and social exclusion'.[108]

130. The Commissioner agrees with the authorities that the Roma continue to constitute a group of the population facing hardships and serious problems of discrimination, as is the case in many Council of Europe member states. Recent reports by Roma expert organizations have highlighted a worrying marginalization of Roma in Turkey, their serious difficulties in enjoying effectively certain social and civil rights, such as those concerning adequate housing, employment, health care and social assistance, and violence by police and non-state actors.[109]

131. Of particular concern remains the existence of legislation that contains obviously discriminatory provisions against stateless and alien Roma in Turkey. This is the case of Article 21 of the 'Law on the Movement and Residence of Aliens' (Law 5683) providing that 'the Ministry of Internal Affairs is authorized to expel stateless and non-Turkish citizen gypsies and aliens that are not bound to the Turkish culture'. The Commissioner wishes to note that the discriminatory character of this provision is detrimental to the human rights of Roma migrants and (Roma) stateless persons in the country and should thus be rescinded.[110]

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[106] Idem.

[107] Council of Europe Roma and Travellers Division, *Romani Population in Council of Europe Member States*, July 2008.

[108] See Report submitted by Turkey to the UN Committee on the Elimination of Racial Discrimination, 13/02/2008, CERD/C/TUR/3, paragraphs 71-72.

[109] See, inter alia, A Marsh, 'Unequal citizenship: Human Rights violations against Turkish Gypsies' in Edirne Roma Association et al (eds), *We Are Here – Discriminatory Exclusion and Struggle for Rights of Roma in Turkey,* Istanbul, April 2008, pp. 55-112.

[110] See relevant standards and recommendations in Council of Europe Commissioner for Human Rights and OSCE High Commissioner on National Minorities, *Study on Recent Migration of Roma in Europe*, 10/12/2008, http://www.coe.int/t/commissioner/Activities/themes/RomaMigration_2009_en.pdf.

132. Of an equally discriminatory nature is Article 134 of the Regulations concerning the organization and responsibility of the police where 'gypsies without a good job' are expressly included in the category of residents who 'present an aptitude to violate security and involve in crime', vis-à-vis whom each head of police stations should take appropriate measures. Provisions of this kind reflect the persistence of an institutional prejudice with regard to Roma. The authorities should look into the issue seriously and take measures for its elimination by legislative amendments and by promoting further human rights education and awareness among the law enforcement agencies, as well as among the general public.

133. One of the issues that the Commissioner has been following with particular interest and concern is the effect of the application of the 2005 urban renovation legislation (Law 5366 for 'the sustainable use of downgraded historical real estate through protection by renewal') notably on the Roma people's right to adequate housing in a number of areas in the country and on their cultural heritage, especially in Istanbul.

134. Reports by Roma expert organizations have noted that the urban transformation plans enacted under the above Law have 'resulted in massive destruction and dislocation of Romani neighbourhoods throughout Turkey'.[111] Serious concerns about the implementation of Law 5366 in Istanbul's historic area (that includes the historic Roma neighbourhood of Sulukule which reportedly used to be inhabited by approximately 3 000 Roma) have been expressed also by the UNESCO World Heritage Committee. In 2008 it noted that areas that Law 5366 removed from those designated by the Council of Ministers as protected, and were thus excluded from the conventional planning system, 'lie in the Historic Peninsula [of Istanbul] and proposals appear to prioritise land development over conservation'.[112]

135. The Commissioner has been particularly concerned by reports indicating that forced evictions of Roma residents and demolitions of their homes with the participation of police forces occurred in August and July 2006 in early morning hours in the Kağithane and Küçükbakkalköy neighbourhoods of Istanbul, in the former case also without any prior notification before demolition.[113]

136. On 21 February 2007 a demolition of a family house in Sulukule was reported. The demolition took place when the family residing therein was absent and without notification. The Fatih municipality reportedly apologized to the residents after the event.[114] The Commissioner has been also informed of and worried by the demolition on 13 March 2008 by the Fatih municipal authorities of seven houses in the Sulukule neighbourhood of Istanbul. Two of these houses were reportedly still inhabited by Romani tenants since they had been given a 31 March deadline for evacuating the houses. Consequently, three Romani families comprising approximately 15 adults and 7 children were reportedly made homeless, as no alternative accommodation had been foreseen.[115]

137. On 28 June while in Istanbul the Commissioner was informed of another case of eviction of 20 Roma families in the same area which had taken place on 25 May. Roma representatives indicated that the authorities had given the families a notice of evacuation within 12 hours. The families, including a 7-day old baby and aged persons, were evicted with the aid of the police. Many of them allegedly remained homeless for one week. One of the Roma that the Commissioner met was a 58-year old man who was reportedly left

[111] See ERRC, Edirne Roma Association, *Written Comments to the UN CERD*, 2009, at p. 14.
[112] UNESCO World Heritage Committee, *Mission report, Historic Areas of Istanbul, 8-13/05/2008*, at p. 4.
[113] See A Marsh, ibid at pp. 72-75.
[114] H. Foggo, 'The Sulukule affair: Roma against expropriation', ERRC, *Roma Rights Quarterly*, no 4, 2007 at 44, available at: http://www.errc.org/db/02/F6/m000002F6.pdf.
[115] Letter by ERRC of 18/03/2008, addressed to the Mayor of Fatih, notified to the Commissioner.

homeless after the demolitions in Sulukule. It was claimed that the authorities had provided a financial aid of 500 TL once to each family, while no agreement had as yet been reached as to the allocation of accommodation by the authorities.

138. The Commissioner notes that this kind of forced evictions raise very serious issues of compatibility notably with Article 3 of the European Convention on Human Rights that proscribes inter alia degrading treatment offending human dignity, as well as with Article 8 of the Convention providing for every person's right to respect for private and family life. It is recalled that the Convention does not merely compel the state to abstain from arbitrary interferences with individual rights but involves also the need for states to adopt measures designed to secure effective respect for these rights.[116]

139. The Commissioner has been particularly concerned about the house demolitions that have taken place in Sulukule, a neighbourhood that is considered to be the first Romani settlement in Europe dating back to late 11th century. It lies adjacent to the Theodosian Land Walls, an area considered as historic and supervised by UNESCO, inscribed as from 1985 in the list of World Heritage (cultural and natural heritage of outstanding universal value).

140. On 28 June, when the Commissioner visited Sulukule, the neighbourhood was in ruins. On the same date the Commissioner held a meeting with the Mayor of the Fatih municipality Mr Mustafa Demir. The Mayor made an extensive audio-visual presentation to the Commissioner explaining the principles and method of the urban renewal project undertaken in his municipality that includes Sulukule. The Mayor stressed that renovation in certain areas of Fatih, such as Sulukule, had been considered necessary given that the majority of the buildings had completed their 'economic life-cycle' while other buildings had been abandoned and/or occupied. It was additionally mentioned that there was a problem of irregular and uncontrolled buildings and an earthquake risk, while historic buildings and 'cultural assets' in the area were faced with the threat of destruction. The Fatih municipality kindly sent to the Commissioner a cd-rom containing details about the renovation project of the area of the Neşlisah (including Sulukule) and the Hatice Sultan districts.

141. During his visit to Sulukule, the Commissioner was informed that the vast majority of the houses had been demolished, while approximately 30 families continued to reside therein. Most of them are tenants who had not been granted entitlements to houses in Taşoluk (see below). Roma representatives stressed that the destruction of this historic area has been a dramatic blow to Roma's social cohesion and that if not changed, the building plans will inevitably lead to a complete loss of the culture and heritage of Roma who resided there since the 11th century. They all stressed also that it is still possible for the authorities to revise the urban renewal project, attaching priority to the particular heritage and protection of the lifestyle of the Roma former and current residents.

142. In 2008 the UNESCO World Heritage Committee (WHC) noted that the project of the 'Sulukule Urban Renewal Area' involved the 'gentrification of the area and displacement of the long-established Roma population'. This would lead to the replacement of the single-storey Romany courtyard houses with taller buildings, including a new hotel and underground car parking which will radically alter the existing urban tissue of the area. The issue was characterized by WHC as 'very sensitive' and the WHC mission last year recommended to the Turkish authorities that 'a balance must be found between conservation, social needs and identity of local communities'.[117]

143. The Commissioner has received a copy of a 2009 report of WHC on the historic area of Istanbul where it is noted with regard to the Sulukule area that 'there had been

[116] See inter alia *Moldovan and others v Romania*, judgment N°2, 12/07/2005, esp. paragraphs 93-114 .
[117] UNESCO World Heritage Committee, ibid. at 17.

unacceptable loss of tangible and intangible attributes through the destruction of listed buildings and the dispersal of communities through a programme of gentrification by local authorities…the [WHC] mission considered that economic factors had been a dominant factor in the relocation of inhabitants'.

144. The Commissioner wishes to underline that historic areas such as the one of Sulukule that form part of the European cultural heritage should have been effectively respected and protected by all competent authorities through sustainable management, in accordance with the principles enshrined in the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage and the 2005 Council of Europe Framework Convention on the Value of Cultural Heritage for Society.[118]

145. According to the Turkish authorities 'one of the purposes of the project is to preserve the registered and qualified historical and cultural properties in the area' while as at early 2009 there were agreements reached between the authorities and 520 owners (out of 620) and with all the tenants (340 persons in total) in Sulukule. Consultative meetings between the Sulukule 'right holders' and the Fatih municipality were reportedly organized in June and July 2006 while contacts continued from September 2006 to September 2007. Roma expert NGOs have reported that as of September 2007 'only 7.5% of the local residents affirmed that their opinion was asked, while 56% of them said that they have had not been contacted by the municipality'.[119] The Turkish authorities recently reported that the prices of the demolished houses have been paid to the owners while as regards tenants, contracts have been concluded with almost all of them for the allocation of apartments in Taşoluk[120] (a district located about 40 kilometres away from Sulukule).

146. The Commissioner has been concerned by information indicating that a number of dislocated Romani tenants in Sulukule had not been entitled to compensation, while given the very low incomes (reportedly an average of less than 220 EUR per month) of the majority of them, it would be too difficult for these persons to rent accommodation in other neighbourhoods in Istanbul where prices are significantly higher. The Commissioner has been informed that the apartments in Taşoluk allocated to former Sulukule tenants may be bought by monthly instalments ranging from 138 to 238 EUR.[121] NGOs have also indicated that of the 300 tenant families granted entitlements in Taşoluk approximately 20 have finally resided or remained there. The Commissioner remains particularly concerned about the short and long-term effects of these evictions and dislocations upon the lives of Roma children.

VII. Conclusions and recommendations

General

147. The Commissioner believes strongly that effective protection by states of minority groups and their members on their territories is a necessary condition for the establishment and

[118] Text available at: http://conventions.coe.int/Treaty/EN/Treaties/Html/199.htm.
[119] H. Foggo, idem.
[120] Written replies by the Government of Turkey to the list of issues to be taken up by the UN CERD, 2009, pp. 15-19.
[121] See ERRC, Edirne Roma Association, ibid at pp. 14-15.

preservation of domestic social cohesion and international peaceful relations and cooperation of all Council of Europe member states, as provided for by the Council of Europe Statute.

148. During his visit to Turkey the Commissioner received positive signs of good will by the Turkish authorities aimed at resolving persistent issues pertaining to the protection of human rights of minorities.

149. The Commissioner commends the authorities' efforts and encourages further reflection, flexibility and adoption of measures in order to fully and effectively execute the judgments of the European Court of Human Rights relating to minorities' human rights and fundamental freedoms. He also regards positively the launching in January 2009 of a Kurdish language-state TV channel and the efforts made for increasing the school enrolment of children in southeast and central-eastern Turkey.

150. Nonetheless, the Commissioner remains deeply concerned about the Turkish authorities' persistent refusal to recognise officially on Turkey's territory minorities other than the tripartite 'non-Moslem' one, that is, Armenians, Greeks and Jews, thus interpreting in an excessively restrictive manner the 1923 Lausanne Peace Treaty.

151. The Commissioner notes that Turkey, like many other Council of Europe member states, is an inherently pluralistic, diverse society. The existence in it of minority groups, be they national, religious or linguistic, should be considered as a major factor, not of division, but of enrichment for Turkish society.

152. The Commissioner wishes to underline in this context that any obligations vis-à-vis minorities that arise out of the 1923 Lausanne Peace Treaty should be interpreted and applied in accordance with the principles of international law and be in full and effective compliance with the subsequent obligations undertaken by the ratification of European and international human rights instruments.

153. The Commissioner recalls that freedom of ethnic self-identification is a major principle in which democratic, pluralistic societies should be grounded and should be effectively applied to all minority groups.[122]

154. The Commissioner would like to urge the Turkish authorities to show greater receptiveness in practice to diversity in their society and take appropriate measures that would allow members of the existing, minority groups to be effectively self-identified and express without any undue hindrances their identities.

155. The Commissioner wishes to underline that these fundamental, democratic principles should be faithfully reflected in the letter and spirit of Turkey's Constitution whose amendment has been envisaged, and, above all, in the ordinary legislation and practice of all authorities. To this effect, the Commissioner recommends that Turkey continue to cooperate closely with the European Commission for Democracy Through Law (Venice Commission).

156. The existence of tensions among members and groups of a democratic society is an inherent element of its pluralism. The answer to tensions, though, should not be the adoption of repressive measures but dialogue. As noted by the European Court of Human

[122] See also UN CERD General Recommendation No 8: *Identification with a particular racial or ethnic group,* 22/08/90: 'The Committee…[i]s of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned', available at: www.ohchr.org.

Rights, '[t]he role of the authorities is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other'.[123]

157. Tolerance and open, sincere dialogue between authorities and all minority groups should be nurtured and promoted as widely as possible by the national, as well as the regional and local authorities. In this regard, the Commissioner believes that the creation by the Turkish government of a national human rights action plan would be highly beneficial, one in which the protection of minorities should be integrated and based notably on the relevant Council of Europe principles. To this effect, the Commissioner draws the authorities' attention to the guidelines contained in his *Recommendation on systematic work for implementing human rights at the national level* of 18 February 2009.

158. The Commissioner calls upon the Turkish government to create a framework of consultations, at national, regional and local levels, which would ensure an institutionalised, open, sincere and continuous dialogue with representatives of different minorities and/or representatives of individual minority groups. These consultative bodies should have a clear legal status and be inclusive and representative.[124] In this context, the collection and availability of updated, official data on the existing minorities, in accordance with the Council of Europe standards, would be beneficial.

159. Recalling the Council of Europe Committee of Ministers' Recommendation R (97) 14 *on the establishment of independent national institutions for the promotion and protection of human rights,* the Commissioner urges the Turkish authorities to proceed promptly to the establishment of an effective national human rights institution, such as a national human rights commission or an Ombudsman, which may certainly enhance the ongoing efforts of promoting and protecting human rights and fundamental freedoms in Turkey.

160. The Commissioner believes that such an institution may also contribute to the creation and effective implementation of a comprehensive anti-discrimination legislation that is necessary. In this regard, the Commissioner calls upon the authorities to give effect to ECRI's General Policy Recommendation N° 7 *on National Legislation to combat Racism and Racial Discrimination* (13/12/2002) and to ratify promptly Protocol N° 12 to the European Convention on Human Rights. In this context, the Commissioner urges the Turkish authorities to review legislation so that provisions such as the aforementioned Article 21 of Law 5693 and Article 134 of the police regulations be amended or repealed.

161. The Commissioner urges the Turkish authorities to proceed rapidly to the accession by Turkey to the Framework Convention for the Protection of National Minorities and to the European Charter for Regional or Minority Languages. The Commissioner is in no doubt that the incorporation of these important Council of Europe treaties will be a major step towards the advancement of minority protection in Turkey.

Minority languages and the right to freedom of expression

162. The Commissioner places particular emphasis on one's inalienable right to use their own regional or minority language in private and public life, in accordance with the principles

[123] See *Serif v Greece*, judgment of 14/12/1999, paragraph 53, *Freedom and Democracy Party (Özdep) v Turkey*, Grand Chamber judgment of 08/12/1999, paragraphs 37-48.
[124] See Advisory Committee of the FCNM, *Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs*, 05/05/2008, paragraphs 106-119, available at:
http://www.coe.int/t/dghl/monitorings/minorities/3_FCNMdocs/PDF_CommentaryParticipation_en.pdf.

enshrined in the European Charter for Regional or Minority Languages. Protection and promotion of regional or minority languages in the Council of Europe member states are necessary conditions for building a Europe based on the principles of democracy and cultural diversity.

163. In accordance with the above principles, the Commissioner urges the Turkish authorities to adopt promptly all necessary, legislative and administrative, measures in order to enhance the teaching of existing minority groups' languages in the country, which is a precondition for the enjoyment by these group members of their rights to freedom of expression and assembly, enshrined in the European Convention on Human Rights.

164. The Commissioner recommends in particular the establishment in the universities of minority language departments that could train and produce qualified teachers of minority languages. The existing 'Lausanne minority schools' should be promptly provided with financial and other necessary aid in order to be able to ensure the continuous teaching of the respective minority languages therein. The authorities are urged to liberalise these schools' regime so that they are able to accept interested pupils from other minority groups.

165. The authorities are called upon to effectively protect and promote the use of minority languages in municipalities or regions where these are used by significant numbers of their populations, as well as in the course of election or other political campaigns and in the media. All relevant, including criminal, legislation should be reviewed and amended accordingly. All competent authorities should ensure its effective implementation in accordance with the Council of Europe human rights standards.

166. The Commissioner calls upon the Turkish authorities to take further action in order to protect fully minority members' freedom of expression and effectively align legislation and practice with the case law of the European Court of Human Rights. The high number of applications and judgments against Turkey delivered by the Court, and especially their execution in a manner that prevents new similar violations, remain a matter of serious concern.

167. It appears necessary to revisit certain over-restrictive provisions of the legislation concerning elections, political parties and broadcasting, as well as criminal law provisions, such as the Criminal Code Articles 301 and 220 which have been used in a number of occasions in a manner that has unjustifiably suppressed freedom of expression.

168. Recalling the Committee of Ministers Recommendation Rec(2004)4 *on the European Convention on Human Rights in university education and professional training*, the Commissioner wishes to underline the importance of initial and continuous professional training, especially of judges and prosecutors, for a Convention-compliant interpretation and application of domestic legislation. To this end, the Commissioner fully encourages the continuation and reinforcement by the Ministry of Justice of the relevant legal and human rights capacity building programmes which are carried out in cooperation with the Council of Europe.

169. Particular attention should be paid to the treatment of children arrested or imprisoned in this context. The Commissioner recalls Article 40 of the Convention on the Rights of the Child (1990) and stresses that children in criminal proceedings should be treated in a manner that takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. Children below the age of 18 years should be subject to special, child-sensitive procedures, authorities and institutions.[125]

[125] See also Commissioner's Issue Paper, *Children and juvenile justice: proposals for improvements*, 19/06/2009.

170. The Commissioner wishes to stress that hate crimes, including those committed against persons who have exercised their right to freedom of expression should be subject to effective investigations by competent authorities, which should lead promptly to the identification and punishment of those responsible, in accordance with the established case law of the European Court of Human Rights.[126] The authorities are called upon to review relevant Article 216 of the Criminal Code in order to enhance its effectiveness. Its application by prosecutors and courts should be fully and effectively aligned with the case law of the European Court of Human Rights.

Minorities and the right to freedom of association

171. As regards freedom of association, which includes the creation and operation of political parties, the great importance for democracy of this freedom for persons 'seeking an ethnic identity or asserting a minority consciousness' has been emphasised by the European Court of Human Rights.[127]

172. The Commissioner recalls the European Court of Human Rights' guiding principles, according to which '[t]he harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively… freedom of association is particularly important for persons belonging to minorities, including national and ethnic minorities… Indeed, forming an association in order to express and promote its identity may be instrumental in helping a minority to preserve and uphold its rights'.[128]

173. Needless to say that there exists always a possibility for states to impose restrictions upon the right to freedom of association, in accordance with Article 11, paragraph 2, of the European Convention on Human Rights. However, it has to be stressed that this power must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom.

174. The Commissioner remains deeply concerned about the current Turkish law and practice concerning the right to freedom of association, including the functioning of political parties. Constitutional and statutory amendments appear necessary in order to fully align domestic law and practice with the Council of Europe standards.

175. The Commissioner urges the Turkish authorities to follow up to and implement promptly the pertinent recommendations and guidelines, especially those concerning the advisability of constitutional and statutory amendments, that have been provided notably by the Council of Europe Parliamentary Assembly and its Monitoring Committee (see in particular Resolution 1622 (2008) on the functioning of democratic institutions in Turkey) as well as by the Venice Commission (see in particular its Opinion of 13 March 2009 on political parties in Turkey).

176. The Commissioner commends the determination of the Turkish authorities and encourages them to continue the programmes for democratic citizenship and human rights education, in cooperation with the Council of Europe, aimed at integrating the Council of Europe standards fully into national curricula. Furthermore, he underlines the importance of the exchange of experience within the judiciary regarding the application of the European

[126] See inter alia *Finucane v UK*, judgment of 01/07/2003, paragraphs 68-71.
[127] See Grand Chamber judgment in the case of *Gorzelik and others v Poland*, 17/02/2004, paragraph 92.
[128] Ibid. paragraphs 92-93.

Convention on Human Rights and the Court's case law. The Commissioner encourages the Ministry of Justice to enhance such programmes and to provide for ample opportunity for judges and prosecutors on all levels in order to secure a coherent and effective application of these standards.

Minorities, freedom of religion and property rights

177. The Commissioner urges the authorities to establish and implement a national action plan for promoting tolerance and more understanding among the various religious (Muslim and non-Muslim) groups of which Turkey is comprised. The Commissioner considers the relevant recommendations contained in ECRI's latest Report on Turkey (15 February 2005) of an utmost value and urges the authorities to proceed to the prompt implementation of those recommendations that have not as yet been implemented. Of particular importance are the recommendations concerning the development of awareness-raising activities to alert the general public to the benefits that a multicultural society brings to a country, and the creation of an efficient and effective, specialised body to combat, inter alia, racial and religious discrimination.

178. The Commissioner recommends that the Turkish authorities establish and pursue periodic, open and substantive consultations with the representatives of all religious minorities concerning all major issues that affect their human rights and daily lives, in accordance with the Council of Europe standards.

179. One such major issue is the recognition of the legal personality of the religious minority institutions and communities established in Turkey, which is necessary for the effective protection of the human rights, especially property rights, of all minority communities, and for their preservation and development that are necessary in the inherently pluralistic society of Turkey on which the latter rightly takes pride.

180. The Commissioner calls upon the authorities to adopt immediately measures that would lead to the recognition of the legal personality of established, religious minority institutions and communities, allow the reopening of the Theological Seminary of Heybeliada (Halki) and ensure the possibility of education of the Armenian Orthodox clergy in Turkey.

181. Turkish authorities are urged to adopt and implement legislative and all other necessary measures in order to ensure the effective enjoyment by members of all religious (Muslim and non-Muslim) minority groups of their freedom of religion and of their property rights, in full and effective compliance with the case law of the European Court of Human Rights.

182. The Commissioner commends the efforts made by Turkey, especially by the new Law on Foundations introduced in 2008, to guarantee the religious, association and property rights of members of minority foundations. However the shortcomings identified in this report need to be urgently addressed by the authorities in full and effective compliance with the Council of Europe human rights standards. In particular, minority members who have lost their property unlawfully should be provided with reparation in accordance with the established principles of international law.

Forced displacement in and from eastern and southeast Turkey

183. The Commissioner remains deeply concerned about the persistent humanitarian and human rights situation of IDPs in and from the eastern and southeast Turkey, the majority of them being of Kurdish origin. The Commissioner recommends the prompt adoption of further measures that would accelerate and make more effective the reparation of the IDP victims, including the facilitation of exercise by IDPs of their right to voluntary return. In cases where this is not possible, voluntary resettlement or local integration should be facilitated by the authorities, in accordance with the 1998 UN Guiding Principles on Internal

Displacement and the Council of Europe Committee of Ministers Recommendation (2006)6 on internally displaced persons.[129]

184. The Commissioner is aware that viable solutions to the plight of IDPs in Turkey, like in all other Council of Europe member states concerned, may not be thought of without due consideration of the relevant complex, socio-political context. Thus, IDP-related measures should be based on a comprehensive, national strategy that would include the improvement of the living and education-related conditions in the areas from where IDPs originate and which are characterised by serious economic and social underdevelopment, compounded by the long armed conflict therein. Such a holistic, national IDP strategy should also look attentively into the plight of IDPs who have not remained in the rural areas of their origin but were forced to migrate to urban areas around Turkey. In this regard, the creation of a specialised, adequately resourced agency in the Ministry of Interior would be highly advisable.

185. Recalling the aforementioned UN Guiding Principles, the Committee of Ministers' Recommendation Rec(2006)6 on internally displaced persons and the relevant Parliamentary Assembly's Recommendation 1877 (2009), the Commissioner wishes to underline that in the context of the necessary strenuous efforts and determination required on the part of the state, the competent authorities should not forget to ensure the full participation of the displaced persons themselves in the planning and management of the required measures.

186. The Commissioner urges the Turkish authorities to examine the possibility of abolishing the system of village guards and to proceed immediately to the completion of clearance of the mined areas in Turkey, especially in the areas from or near which IDPs originate, that have led to date to the tragic deaths and serious injuries of a significant number of persons. The Commissioner wishes to emphasise that the state obligation to protect human lives emanates not only from the Ottawa Convention, which has been ratified by Turkey, but also from the fundamental provision of Article 2 of the European Convention on Human Rights where *everyone's* right to life has been enshrined and corresponds to positive obligations on the part of all states parties, including measures to prevent the avoidable losses of life.[130]

187. In addition, the Commissioner urges the Turkish authorities to improve national action coordination and provide promptly and generously assistance for the care and rehabilitation of all mine victims. In this context, the Commissioner calls upon Turkey to sign and ratify promptly the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities, which provides for the competence of the Committee on the Rights of Persons with Disabilities to receive communications from or on behalf of individuals or groups of individuals who claim to be victims of a violation by a state party of the provisions of the Convention.

Certain issues concerning human rights of Roma

188. The Commissioner recalls that the vast majority of Roma in most of the Council of Europe member states, including Turkey, remain in urgent need of effective protection of their

[129] See also Commissioner's Viewpoint, 'Persons displaced during armed conflicts have the right to return', 15/09/2008.
[130] See e.g. European Court of Human Rights, judgments in the cases of *Osman v United Kingdom*, judgment of 28/10/1998, *Öneryildiz v Turkey*, Grand Chamber judgment of 30/11/2004.

human rights, especially their social rights, such as the right to adequate housing and to education, by national, regional and local authorities.

189. The Commissioner recalls Recommendation 1557 (2002) of the Council of Europe Parliamentary Assembly on the legal situation of Roma in Europe, according to which Roma form a special minority group, in the sense that they are an ethnic community and, at the same time, most of them belong to the socially disadvantaged groups of society. Thus the standards contained in the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, along with the standards of the European Social Charter (revised), should be effectively applied to Roma.

190. The Commissioner recommends that Turkey adopt and implement promptly a coherent, comprehensive and adequately resourced national and regional strategy with short- and long-term action plans, targets and indicators for implementing policies that address legal and/or social discrimination against Roma, in accordance with the Council of Europe Committee of Ministers Recommendation CM/Rec(2008)5 *on Policies for Roma and/or Travellers in Europe* (20/02/2008). In this context, discriminatory, anti-Roma provisions contained in law or regulations, such as those mentioned earlier, should be immediately abolished. The authorities are urged in particular to effectively monitor and publish regular evaluation reports on the implementation and impact of the above action plans, in line with the above Recommendation.

191. The Commissioner recommends that priority be given by the authorities to the establishment of a legal aid system, possibly in cooperation with competent non-governmental organizations, able to provide effective legal aid to Roma in need of it.

192. As regards the issue of evictions and dislocation of Roma, especially in the context of urban renovation projects, the Commissioner stresses that these should never take place if the authorities are not in a position to provide for alternative, adequate accommodation for which the persons affected should be consulted with. If evictions are deemed justified they should be carried out in a manner that fully respects the safety and dignity of the persons concerned. Effective legal remedies should also be available to those affected by eviction orders.

193. The authorities' attention is drawn to the pertinent case law of the European Committee of Social Rights,[131] to the 2007 guidelines on access to housing for vulnerable groups of the European Committee for Social Cohesion (CDCS),[132] as well as to the specific guidelines on forced evictions provided by the United Nations Committee on Economic, Social and Cultural Rights in 1997[133] and by the United Nations Special Rapporteur on Adequate Housing in 2007.[134]

194. The Commissioner calls upon national and local authorities to pay special attention to the effective protection of the human rights of Roma children, as enshrined notably in the UN Convention of the Rights of the Child. In particular, in cases of evictions or agreed removals, authorities should adopt measures with a view to ensuring the continuation of Roma children's schooling that is unavoidably disrupted in such circumstances.

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[131] See Case Law Digest of the European Committee of Social Rights, available at: www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestIndex_en.asp.
[132] Doc. CM(2007)35, 06/03/2007, available at http://www.coe.int/t/cm.
[133] UN CESCR, *The right to adequate housing: forced evictions,* General Comment 7, 20/05/1997.
[134] UN Special Rapporteur on Adequate Housing, *Basic Principles and Guidelines on Development-Based Evictions and Displacement,* 05/02/2007.

195. With regard to urban renovation projects affecting inter alia long-standing Romani settlements, such as the one of Sulukule, Istanbul, the Commissioner urges all competent authorities to adopt immediately measures aimed at preventing further destruction of Romani historic sites, at the effective respect and protection of cultural heritage, including the Roma people's lifestyle and social cohesion.

196. To this end, an urgent review of Law 5366 and of its implementation by the local authorities appears to be necessary so that emphasis is put on historic areas' conservation and not on land development. Turkey should give effect to the 2008 recommendations of the UNESCO World Heritage Committee and is invited to ratify promptly and abide fully by the 2005 Council of Europe Framework Convention on the Value of Cultural Heritage for Society.

197. The Commissioner wishes to conclude by stressing that he will continue to follow closely developments concerning minorities and intends to take all necessary measures, in accordance with his mandate as an independent and impartial institution of the Council of Europe, in order to promote the effective implementation of the Council of Europe standards relating to minority and human rights protection. The Commissioner stands ready to continue a sincere, constructive dialogue with and assist the Turkish authorities in their efforts to remedy the shortcomings that were outlined in the present Report.

Appendix

COMMENTS OF THE REPUBLIC OF TURKEY ON THE REPORT REGARDING "HUMAN RIGHTS OF MINORITIES" BY MR. T. HAMMARBERG, COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE FOLLOWING HIS VISIT TO TURKEY (28 JUNE- 3 JULY 2009)

General Comments and Observations:

1) Under the Turkish constitutional system, the word **"minorities"** encompasses only groups of persons defined and recognized as such on the basis of multilateral or bilateral instruments to which Turkey is party to.

In this context, **"minority rights"** in Turkey are regulated in accordance with the **Lausanne Peace Treaty** of 1923 which constitutes the legal basis of modern Turkish Republic. According to this Treaty, Turkish citizens belonging to non-Muslim minorities fall within the scope of the term "minority". Turkish legislation, which is based on the Lausanne Peace Treaty, contains the term **"non-Muslim minority"** only. Hence, the term "minority" cannot be used for Muslim Turkish citizens.

Turkey has opted to recognise the non-Muslim minorities in line with its obligations under the Lausanne Peace Treaty. However, the state philosophy is based on the equality of citizens without discrimination.

At international level, there exists no universally recognized and legally binding definition of the term "minority". The Framework Convention for the Protection of National Minorities does not include any definition of minority and thus leaves states a power of discretion to determine the groups which it shall consider as national minorities.

Turkey recognizes that every individual is free to assert that s/he belongs to a distinct ethnic, religious, linguistic, national or cultural grouping. However, individual's claim belonging to a certain group neither determines the existence of a minority group nor impose on States an obligation to officially recognize a group as a "minority". It remains the prerogative of the state to confer minority status to persons.

Turkish citizens belonging to non-Muslim minorities enjoy and exercise the same rights and freedoms as the rest of the population. Turkey applies the principle of equality among its citizens to provide the necessary protection for all, including equal treatment, the right to security of person, the right to freedom of opinion and expression, and the right to freedom of thought, conscience and religion. Additionally, they benefit from the exclusive assurances accorded to them deriving from their minority status under the Lausanne Peace Treaty.

2) The Turkish Government does not officially collect, maintain or use neither quantitative nor qualitative data on ethnicity. Like some other countries it is considered as a sensitive issue, especially for those nations living in diverse multicultural societies for a long period of time. Diversity has deep roots in Turkey. Thus, our focus in legislative and policy framework has always been on commonalities and common aspirations rather than measuring differences and

making policies thereon. Some historical events are also a reminder of dangers and threats involved in such practices.

There may be groups that define their identity solely on the basis of their ethnic origins. It may also be the case that some individuals who do not prefer to define their identity as such. So, when collecting official data on ethnicity for good governance and due diligence purposes, there is always a risk of interfering with the right to privacy. It can be even added the element of causing distrust, fear and suspicion on the part of some individuals towards such a practice.

3) The obligation of pupils in public and private primary schools, including the Lausanne minority schools, **to read daily an oath** is questioned in paragraph 29. The phrase in the oath is not accurately translated in to English to reflect its full meaning. The phrase "ne mutlu Türküm diyene" literally reads as: "how happy is a person who calls himself/herself Turk(ish)". As such, it is not a dictum to glorify one ethnic group. This oath is intended to contribute to forming and improving the sense of citizenship of the Republic of Turkey. The term "Turk(ish)" here connotes the bond of citizenship without any reference to ethnic, linguistic or religious origin. It is the reflection of the national identity inclusive of all citizens irrespective of their origins. This understanding is clearly defined in Article 66 of the Constitution which stipulates that "everyone bound to the Turkish State through the bond of citizenship is a Turkish". Like the Constitution, this oath does not have or imply any racial or ethnic connotation for being "Turk(ish)".

On the other hand, regarding the legal action against the school teachers who took part in an initiative in 2007 to have this practice repealed, the Magistrate Criminal Court of Şanlıurfa ruled a verdict of acquittal on 15 January 2009. It is understood that the case has been brought to the appeal.

4) Turkey does not deny **cultural and religious rights** of its citizens. Turkey has shown with its recent reform program that it has the political will to safeguard cultural rights. 24 hours uninterrupted nation-wide television broadcasting in Kurdish-Kirmanchi and Zaza, constitutes an example.

Furthermore, the Government is currently working on an initiative including reforms for further consolidation of democracy and expansion of cultural rights. With a view to achieving public and parliamentary consensus on the content and extent of this initiative the Government has launched a comprehensive and inclusive consultation process with the all relevant stakeholders. This process is underway.

In Turkey there exist numerous languages and dialects, which are traditionally used in private sphere. There are Turkish citizens of *inter alia*, Greek, Armenian, Jewish, Assyrian, Celdanean, Bosnian, Circassian, Roma, Abkhazian, Albanian, Bulgarian, Arabic, Georgian, Azeri and Kurdish origin. The number of languages traditionally used in Turkey may reach hundreds if not thousands. Given this diversity it is beyond the means and capacity of a state to offer teaching of all languages traditionally used in this country in public education system.

Furthermore, Turkey needs to observe non-discrimination principle in teaching all traditional languages other than Turkish. Any act in favor of one or two languages traditionally used in Turkey can be interpreted as discrimination against other languages and their respective speakers. A delicate balance needs to be stroke on this matter.

5) **Reform Monitoring Group** (RMG), which was formed in 2003, is an ad hoc working group composed of Minister for EU Affairs and Chief Negotiator, Minister of Justice, Minister of

Interior and Minister of Foreign Affairs. Secretariat General for EU Affairs (EUSG) is in charge of the secretariat work.

RMG closely monitors the legal harmonization and implementation processes of the reforms, discusses the needs and formulates future steps with regard to Copenhagen political criteria. RMG is also in charge of the work on Chapters 23 and 24, namely "Fundamental Rights and Judiciary" and "Justice, Freedom, Security" in Turkey's EU accession negotiations.

Reform Monitoring Group also ensures contacts with the minority leaders and high-level bureaucrats. Hence, visits/consultations by Reform Monitoring Group should be seen as examples of periodic, open and substantive **consultations between the authorities and the minorities** in Turkey.

6) Turkey strongly **denounces all hate crimes** regardless of on which ground that they are committed. Despite the legal framework and the inherited tradition of tolerance, Turkey, like other multi-faith societies, is not totally immune to isolated incidents against some members of the Turkish society. In this vein the murder of Hrant Dink**,** who was a prominent Armenian journalist, has prompted a great reaction in all segments of the society in Turkey. The perpetrators of this heinous crime were captured within 36 hours after the incident. Judicial investigations were immediately launched in connection with the murder and the legal process is ongoing. Although the racist motive is not considered as an aggravating factor, it was regarded as an act of intentional killing with premeditation, which is punishable by aggravated life imprisonment under Article 82 of the Turkish Penal Code.

Such incidents receive prompt and diligent response from relevant authorities and all possible measures are taken to bring those responsible to justice. In this vein, the Ministry of the Interior, in its Circular issued in June 2007, instructed all relevant authorities to pay utmost attention in order to prevent the reoccurrence of similar incidents.

7) As an important part of the ongoing process of reforms conducted in recent years, there has been progress also in improving the legislation concerning citizens belonging to non-Muslim minorities in Turkey. Within this framework, since 2004 a new governmental body, **"the Minority Issues Assessment Board"**, is in operation with a view to addressing and finding solution to difficulties which citizens belonging to non-Muslim minorities may encounter in their daily lives. In this process, regular contacts are held with the non-Muslim minorities.

8) The Turkish Parliament passed the **Ombudsman Law**, No: 5548 on 28 September 2006. The former President of the Republic of Turkey and some members of the Parliament had lodged a file at the Constitutional Court for the annulment of some articles of the Law. On 25 December 2008 the Court unanimously decided to abrogate the Law on grounds that it was not in conformity with the Constitution. The Court has issued the reasoning of its judgment in April 2009. The Government is determined to establish the Ombudsman institution. On the other hand, a preparatory work on the legal framework for a **National Human Rights Institution** is carried out in parallel with the developments related to the Ombudsman Law.

9) There exist a reference in the report to the **judgments by the European Court of Human Rights** that have been issued since 1998 against Turkey with respect to **freedom of expression.** It should be noted that, those applications date back before the reform process that has been initiated in Turkey since 2001. It is worth mentioning that the **new Penal Code** was enacted with a view to aligning its legal framework with the European standards and principles, which also included a more liberal approach to the freedom of expression issues.

10) The **secular nature of the Turkish Constitution** does not allow either Muslim or non-Muslim religious communities to acquire legal personality. Similarly, religious communities do not enjoy legal personality also in some other European countries.

The Greek Orthodox Minority can use foundations for conducting all its transactions that require legal personality. Thus, making reference to Greek Orthodox Patriarchate in this regard is misleading.

At the Lausanne Peace Conference, Turkey allowed Patriarchate to continue to reside in Istanbul, on the condition that it provides service for only the religious and spiritual needs of the Greek Orthodox Minority in Istanbul and that the Patriarch himself is a Turkish citizen. Mr. Venizelos, in his capacity as the head of the Greek delegation also willfully accepted this decision, as stated in the minutes of the Lausanne Peace Conference.

In other words, the Patriarchate accepted to shed all the political and administrative privileges granted by the Ottoman authorities in order to continue to reside in Istanbul. In fact, this was a basic condition to be met, given the secular nature of the Turkish Republic.

This also largely explains why the title “ecumenical” is incompatible with the Agreement and why the Patriarch himself must be a Turkish citizen.

As is known, the title “ecumenical” is also a matter of controversy within the Orthodox Church itself. It is in fact the responsibility of the Orthodox Church to overcome this controversy.

In its ruling dated 25 June 2007, the Supreme Court of Appeal, made a reference to the status of the Patriarchate.

According to this ruling, there is no legal basis for the Greek Orthodox Patriarchate to claim religious superiority over other national Orthodox churches, through using the title “ecumenical”. Therefore, there is no legal ground to uphold any decision taken by the Patriarch, emanating from the title of “ecumenical.”

In other words, this title cannot be used as a pretext to hinder or intervene with the religious freedoms of others, which are under the protection of the Turkish constitution and other laws. After all, Turkey is a country with a secular constitutional order.

11) **The rule of reciprocity with regard to teachers** coming to teach in Greek minority schools is endorsed both by Turkey and Greece, on the basis of the exchange of letters in 1952, following the spirit of 1951 “Agreement Between the Republic of Turkey and the Hellenic Republic on Cultural Cooperation.” However, Greece reduced the previously agreed number of 35 teachers to 16, which is an insufficient figure for the 150.000 strong Turkish Minority in Western Thrace.

As for the schoolbooks, “Turkish-Greek Joint Experts Committee on Rewriting of Textbooks” is one of the mechanisms established in the course of the Dialogue and Cooperation Process between Turkey and Greece.

Turkey undertakes every possible action in order to accelerate the approval of hiring of teachers for Minority schools and the publishing of schoolbooks.

12) The **Theological School in Heybeliada** is not operational since 1971 as a result of a court case interpreting the relevant provisions of the Constitution. This court case had nothing to do with the Theological School in Heybeliada, but it was indirectly affected.

Heybeliada Theological School operated between 1951 and 1971 as both an institution of secondary and higher education. In 1971, as a result of the abovementioned court case, the higher education activities of the school ended. However, it's high-school still remains open. It stands idle due to lack of students.

According to the Turkish Constitution and relevant legislation, religious instruction at higher, intermediary and elementary levels is possible only under the supervision of the State. This Constitutional restriction applies to all religious communities in Turkey. Turkish authorities have proposed various formulae to restart educational activities of the Heybeliada Theological School. The Patriarchate has not welcomed the proposal on the opening of the School under the aegis of one of the Turkish universities.

At the moment, Turkish Ministry of Education and Higher Education Council are working on a viable solution for Heybeliada Theological School to commence educational activities.

There is no interference by the Turkish authorities in the composition of cadres within the Greek Orthodox Patriarchate.

13) The improvements in the legal framework regarding the rights of the minorities since 2002 and the content of the **new Law on Foundations** (No: 5737) needs to be highlighted to portray a better picture of the situation, which is not reflected in the report. As a matter of fact, the new Law on Foundations, renders many of the criticisms as obsolete.

Since 2002, Turkey has been updating its legal framework and expanding minority rights, where possible. In accordance with the amendments introduced in the relevant legislation in 2002, the Greek Orthodox community foundations have lodged applications which resulted in the registration of 190 real estates in their names.

Certain practical limitations on non-Muslim community foundations were abolished with an amendment in 2003. This provided them with the right to acquire new immovable property.

A regulation which was adopted in September 2004 enables the non-Muslim community foundations to hold their elections freely and enlarge the election area of their constituency, if need be. In this vein, free elections were made for three Greek Orthodox foundations, upon their application.

The new "Law on Foundations" aims at providing further flexibility to the non-Muslim community foundations in their operations. The new Law, inter alia, provides the non-Muslim Community foundations with;

- the opportunity to enjoy full control over their property;
- the right to be represented in the Foundation Assembly (the main body established within the Directorate General of Foundations);
- to update the founding purposes of foundations;
- to involve in international cooperation and activities on the condition that this is mentioned in their founding acts;

- to give and receive donations;
- to establish business to facilitate the realization of the goals of the foundation;
- to register the properties, which were previously registered on non-fictitious and pseudo names, on the name of their respective foundations;
- to register the properties donated to the foundations/purchased by the foundations after 1936, but returned to their donators, or the Treasury, Ministry of Finance and General Directorate of Foundations upon the decision of the Higher Court of Appeal in 1974, on the names of the relevant foundations.

14) On the other hand, some paragraphs (Para.92, 93, 94) in the report draw **unnecessary examples from past practices** that are annulled under the new Law on Foundations, in which religious minority communities can register the properties on the names of the relevant foundations. This includes the properties donated to/ purchased by the foundations after 1936, but returned to their donators, or the Treasury / Ministry of Finance / General Directorate of Foundations, upon the decision of the Higher Court of Appeal in 1974.

So far, foundations are declared defunct (*mazbut*) when their electoral constituencies cease to exist or their founding purposes cannot be served any longer. In this respect, there have been almost 40.000 defunct foundations in Turkey. This being the case, only 59 of them belong to non-Muslim minorities and 24 out of 59 belong to the Greek Orthodox Minority.

However, the regulation of 2004 which enlarged the election area of a foundation's constituency and the newly adopted legislation which enables foundations to modify their purposes according to the contemporary needs, practically put an end to the practice of declaring foundations defunct.

15) Several **property related applications** before the European Court of Human Rigths are mentioned in the above mentioned section of the report (para.91-93). Relevant up-to-date information regarding those cases is below:

Concerning the catholic priests' institute in Istanbul, on March 2009 negotiations between the relevant parties in order for the application of the right to usufruct were resumed within the framework of the friendly settlement dated December 2000. The process towards the finalization of the negotiation document is currently under way. In fact, the catholic priests' institute enjoys the right of property for the immovables in question.

With regard to the Armenian church and school and cemetery, the Court ruled either the registration of the immovable property in their name or payment of compensation. Turkish Government executed the ruling by way of registering the immovable in the name of the aforementioned foundations.

Concerning the Greek Orthodox Church Foundation, the Foundation had placed 24 applications before the Court. 9 of these applications were manifestly ill-founded by the Court. 11 of these applications are under review by the Court. In 4 of these applications, the Court ruled either the registration of the immovable property in their name or payment of compensation. The Government executed the judgment by way of paying the due compensation for these 4 cases.

In the case of Greek High School Foundation, the Government executed the judgment by way of paying the due compensation ruled by the Court.

16) The **Greek Orthodox Minority** population living in **Gökçeada and Bozcaada** is 200 and 20 respectively. The closure of the Greek community schools on the islands is merely because of the lack of students, due to the fact that the Greek Orthodox inhabitants of Gökçeada and Bozcaada are elderly people. In fact, there is no minority population in the age of school living in the Islands, and thus there is no application to open a school for the minority children. The members of the Greek minority in Turkey were never denied the right to be educated in their own language.

The gradual decrease of the Greek Orthodox population in the islands over the years stemmed mainly from economic reasons. Difficulties of the daily life in the islands also coupled this trend. Consequently, during 1960's and 1970's, a large number of Turkish citizens of Greek Orthodox faith emigrated to Greece and some other countries. This immigration of workers were not only limited to those two islands. In fact huge Turkish communities in Europe are created as a result of those economic oriented immigration flows.

The inhabitants of the islands are in full use of their rights, including that of the property rights as Turkish citizens. Relevant authorities have taken several administrative and legal measures to meet the demands regarding land ownership of the minority members in the islands.

The process of establishing land registry in Bozcaada was completed in 1994. The land registry work in Gökçeada has been largely completed.

According to the Law on the Land Registry, the registration process is carried out within the framework of the Civil Code. The documents like title deeds which prove ownership is enough for the registration. If there is no such document, the claimant has to prove ownership or usage of the property over the years. The claimant has the right to object to the decision of the authorities and bring his/her case to the registry commission. If the decision of the Commission is not found satisfactory, the claimant can also file a court case.

It is also possible for those who do not have the title deeds but have claims on properties to file court cases.

The relevant courts ruled more than 37 cases in favor of the Greek Orthodox citizens in Bozcaada and 230 cases in favor of those in Gökçeada. Accordingly, 90% of the cases resulted in favor of the minority members.

On the other hand, Prime Minister of Turkey personally gave instructions for the improvement of the religious sites on the islands.

17) The phenomenon of **internal displacement in Turkey** has been a **result of terrorism**. In order to arrive at an accurate diagnosis of the situation, it is essential to note that virtually no IDP cases existed in Turkey before the PKK launched its terrorist campaign in the mid-1980's. The phenomenon that has brought about IDP's in Turkey should be correctly termed, without resorting to the employment of such terms as "armed conflict"/"internal conflict" etc. between state and non-state forces. It is evident that internal displacement in Turkey exhibits fundamentally different and more complex traits when compared to IDP situations in other countries or regions of the world. Moreover, it is sometimes difficult to distinguish internal displacement due to security conditions from migration due solely to socio-economic reasons. This renders an accurate estimation of the number of Turkey's internally displaced persons somewhat difficult.

18) The Turkish Government attaches great importance to the successful return of the displaced citizens on a voluntary basis. In this regard, the **"Return to Village and Rehabilitation Project" (RVRP)** was launched in 1994.

The RVRP was launched for the families who had to leave their villages in Eastern and South-Eastern regions mainly for security and various other reasons. The project aims at settling the families wishing to return on a voluntary basis to their former places of residence or to other places suitable for settlement. In order to ensure a smooth and effective return, the project takes a holistic approach and aims to establish the necessary social and economic infrastructure and provide sustainable living standards. As for the families who do not wish to return, the project seeks to improve their economic and social conditions at their current places of residence and ease their adjustment to urban life.

The RVRP has been implemented in 14 Eastern and Southeastern provinces, namely Adıyaman, Ağrı, Batman, Bingöl, Bitlis, Diyarbakır, Elazığ, Hakkari, Mardin, Muş, Siirt, Şırnak, Tunceli, Van.

As of July 2009, the governorates in these 14 provinces reported that 151.469 citizens from 25.001 households had returned to their villages. Between 1999 and 2008, 79.122.000 TL has been spent for this project from the government budget. Starting from 2009, there has been a switch to project based allocation style and 11.764.000 TL from the general budget has been sent to provinces within the scope of RVRP as project based contribution. The total budget allocated for the RVRP from the general budget in 2009 is 16.578.000 TL.

The allocation within the RVRP are used for:

- Infrastructure investments such as road, water, electricity and sewer system.
- Repairing and rebuilding schools and village clinics.
- Donating construction materials to citizens returning to their villages to assist them to rebuild their homes.
- Implementation of social projects.
- Organization of work and labour related workshops.

19) RVRP is implemented in tandem with another project that emanates from the **2004 Law on the Compensation of Losses Resulting from Terrorist Acts and the Measures Taken against Terrorism (Law no. 5233)**. In a June 2004 judgment (*Doğan v. Turkey*), the European Court on Human Rights (ECtHR) had decided that villagers should be able to return to their villages evacuated for security reasons during the anti-terror effort of early 1990s. The 2004 Law on Compensation is a direct result of the Turkish Government's effort to find a general and efficient remedy to the problem indicated in the ECtHR judgment. Once the Law was enacted and the Damage Assessment Commissions were in place, the effective domestic mechanism started working in line with the guidelines provided by the ECtHR.

Upon observing this development, the ECtHR evaluated the domestic mechanism as an efficient remedy and in its ***İçyer*** **judgement** of January 2006, the ECtHR formally issued this evaluation and asked the applicant to apply to the domestic mechanism created by the Turkish Government. As such, the Court clearly confirmed the efficiency of the Turkish domestic remedy introduced within the context of the implementation of the 2004 Law on the Compensation of Losses Resulting from Terrorist Acts and the Measures Taken against Terrorism.

It should be noted that the *İçyer* inadmissibility decision is the first of many such that helped clear a waiting list of at least 1,500 similar applications pending before the Court.

The **domestic remedy** introduced by the **Turkish authorities** in cooperation with the Court on return-to-village applications is a clear demonstration of **how the Court and States can operate in synergy** to prevent human rights violations and lighten the workload of the Court.

The Committee of Ministers of the Council of Europe during its meeting on 17-18 September 2008, adopted a final resolution stating that Turkey has taken all necessary measures in relation to the implementation of the *Doğan* case and decided to close the examination of this issue. It is important to note that the *Doğan* is a milestone judgment that led to the *İçyer* decision.

Currently a total of 105 **Damage Assessment Commissions** are working to process the claims for compensation. From 2004, up until the end of August 2009, 361 238 applications have been made to the commissions, 190 306 of which have been finalized. 120 557 of these applications have been awarded compensation while 69 750 of them have been rejected. The deadline for finalizing the applications about the damages incurred in the past has been extended for one more year by the decision of the Council of Ministers dated 3rd September 2009.

20) On the other hand, the major shortcomings, referred to in paragraph 113 of the report, regarding remedies for lost and destroyed property of IDPs in Turkey, are taken from IDMC's Report on "Protracted Displacement in Europe" dated May 2009. It is worth noting that the IDMC report in question refers to these shortcomings as **criticisms raised by some unnamed national and international NGO's.**

Furthermore, the most recent data from the Ministry of Interior indicates that the number of Damage Assessment Commissions has increased from 76 to 105 and that the number of applications submitted to those commissions since 2004 has risen to 361 238 as of August 2009. The total amount of compensation awarded so far is 1.717.659.323 TL, of which 1.068.137.805 TL have already been paid, while work towards the payment of the remaining 649.521.518 TL is continuing.

21) "**The IDP Support Programme**", which was implemented in cooperation with the UNDP, aimed at providing lasting solutions for the problems faced by citizens who have migrated. In this vein, the "Van Provincial Action Plan" was prepared and implemented as a pilot project, starting in September 2006. Hacettepe University completed and published a comprehensive scientific survey about migration caused by terror and security reasons, entitled "Migration and Internally Displaced Population Study in Turkey- MIDPST" in December 2006.

As a follow-up to the previous project implemented in cooperation with the UNDP, "A Complementary Project for the Extension and Sustainability of the Pilot Project in Van" commenced in November 2008. The current project, based on the "Van Provincial Action Plan", will also cover the other 13 provinces within the RVRP. During the course of the project, the inputs from the respective Provincial Action Plans will be merged and a comprehensive "**National Action Plan**" for IDP's will be drafted by December 2009. The estimated time period for the completion of the project is one year and once completed, the outcome of the project will provide extensive insight and thus facilitate a more comprehensive approach for solving the problems of citizens who have migrated.

22) As an indication of Turkey's commitment to international cooperation, Prof. Walter Kälin, **Special Representative of the UN Secretary-General** on the Human Rights of IDPs, visited

Turkey four times in a period of 19 months, in May 2005, February 2006, September 2006 and December 2006. These visits enabled Prof. Kälin to meet the representatives of the relevant public institutions, observe the issue in the field and exchange opinions with a wide range of Turkish NGOs, as well as Governors and Deputy Governors of Eastern and Southeastern regions.

During and after these visits, **Prof. Kälin** announced that he was pleased with the steps that are being taken and with the overall approach of the Turkish Government vis-à-vis the IDPs. He also **named Turkey as an example** for all the countries bearing IDPs.

23) **Anti-Personnel Land Mines** unfortunately continue to pose a major threat in the region. However, the report falls short of underlining the fact that these landmines have been laid by the terrorist organization PKK. As a matter of fact, even before becoming a party to the Ottawa Convention in 2004, Turkey has taken many steps and engaged in many initiatives with a view to subsequently bringing about a mine ban. In 1996, Turkey ceased the production of anti-personnel mines (APMs) and unilaterally declared a comprehensive moratorium on all APMs exports and transfers and in 2002 extended the moratorium indefinitely. Likewise, the use of APMs by the Turkish Armed forces was already banned with a directive in 1998.

On the other hand, almost every day, innocent civilians and personnel of the Turkish Armed Forces continue to fall victims to landmines laid by the terrorist organization.

The report does not also reflect the recent developments concerning the efforts to clear all laid anti-personnel land mines in the southeastern region of Turkey. According to the Ottawa Convention, Turkey is under commitment to clear all laid anti-personnel land mines on its territory by 2014. In fulfilling this commitment, priority is given to the Turkish-Syrian border where bulk of antipersonnel landmines are laid.

The law on the **"Tender and Mine Cleaning Activities along the land border between Turkey and Syria"** is adopted by the Turkish Grand National Assembly on June 2009. The President approved the law on 16 June 2009.

The law will provide the necessary legal basis for mine cleaning activities along the border between Turkey and Syria. It enumerates several options, which include the possibility of requesting the services of NATO Maintenance and Supply Agency" (NAMSA).

With regard to para. 125, the reference to "by non-state armed forces and by security forces" should be replaced with "by the terrorist organization" as it is the latter which widely uses anti-personnel mines.

Some figures in this report are not consistent with the annual APM report of Turkey, hence should be corrected. In this regard, the following requisite **corrections** should be made:

- In para. 126, the total of mines remaining emplaced on the Turkish territory as of end 2007 and as reported by Turkey in 2008 should be corrected as "981.778".

- The last three sentences of para. 127 should be rephrased as follows: "Turkey has reported that from 1984 to 2004 landmines caused 1.616 casualties. Turkey also reported 24 more victims of mines and 'improvised explosive devices' in 2006 and 53 in 2007".

As a point of principle, Turkey prefers to use the word “affected” instead of “contaminated” for the laid mine areas. Therefore, it is proposed that the word “affected” in the first line of para. 126 be replaced with “contaminated”.

“Physical rehabilitation facilities work very effectively in Turkey to help the mine victims. Turkish Armed Forces Rehabilitation Center reserves 30% of its quota for civilian patients and accepts applications for additional injured civilians in cases where regional hospitals suffer from insufficient capacity to address patients’ needs.

On the other hand, **Convention on the Rights of the Persons with Disabilities** (CRPD) was approved by the Council of Ministers of the Republic of Turkey on 27 May 2009 and published on the Official Gazette on 14 July 2009. The Document of Ratification signed by the President of the Republic of Turkey was delivered to the UN officials by the Minister of Foreign Affairs, H.E. Ahmet Davutoğlu during the Treaty Event organized on the margins of the 64th Session of the UN General Assembly on 28 September 2009.

Furthermore, Minister Davutoğlu also signed on 28 September 2009 the **Optional Protocol of the Convention** on the Rights of Persons with Disabilities on the occasion of the said event.

In light of these recent developments, the second half of para. 128 should be reviewed.

24) The constitutional system of Turkey is based on the equality of all individuals without discrimination before the law. Since 2001 the ongoing reform process has been carried out on the basis of the principle of equality and as all segments of the society, the situation of the **Turkish citizens of Roma origin** has also improved.

Lately, within the framework of the Reform Monitoring Group, has launched a comprehensive work in the field of “fight against discrimination” with the participation of all relevant institutions. A a comprehensive legislative review will be carried out with a view to harmonize the national legislation with international commitments.

Some observations are stated that urban transformation projects, initiated after 2005 resulted in the destruction and dislocation of “Roma communities” throughout the country. In this regard Sulukule neighbourhood is specifically mentioned. Turkey disagrees with any comment on the ongoing urban renewal projects implying that they specifically target certain ethnic group. Sulukule is only a small part of Neslişah District where the urban renewal project has been launched in 2006. Sulukule corresponds to only 20 percent of the whole of the renewal project area, which is approximately 90 thousand square meters in total. All the right holders in the project area are treated in a fair, transparent and equal manner.

The whole district of Fatih is situated in an earthquake risk area of first grade. The region is particularly vulnerable since almost all the buildings are old, ruined and shabby. The purpose of the **urban renewal projec**t in Neslişah District of Fatih, is to clear the slum areas formed due to the prevalence of ruined, broken-down and squatter settlements with low urban standards with a view to establishing an urban area with modern standards, while preserving its historical formation. The project envisages a consensual settlement of possible conflicts which may arise with the right holders in the renewal area.

After the region was declared as “renewal area”, consultations with the concerned population in the region were organized regularly. During the process, the expectations, requests, suggestions and claims of the right holders were duly identified and the project was developed accordingly.

Consultations with local people continued during the development phase of the project, thereby, allowing necessary adjustments and revisions.

This project is designed to meet the expectations of the local people for better living standards and will contribute to their physical, socio-economic and cultural development. The project aims to preserve the historical street silhouette and is consistent with the local living traditions. The Romani community constitutes only a part of the population living as tenants in the renewal area. Most of the tenants come from different parts of the country to work in textile and service sectors with low income. However, the special situation of the Roma origin citizens has been given due attention at all stages of the project.

None of the registered, listed or qualified property has been demolished in the area. On the contrary, one of the purposes of the project is to preserve the registered and qualified historical and cultural properties. All the owners and tenants are entitled to housing within the framework of the project.

The project does not reflect the needs and expectations of only one specific group. It was developed particularly on the basis of the general expectations and preferences of the local people. The project houses are two-storey buildings with open internal courtyards paved with stones. This style of construction is based on the preference of the Turkish citizens of Roma origin.