Screening report

Turkey

Chapter 23 – Judiciary and fundamental rights

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I. CHAPTER CONTENT

According to Article 6 (1) of the EU Treaty, the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. These principles are common to the Member States and need to be complied with by candidate countries.

The rule of law principle and the right to a fair trial, as enshrined in Article 6 of the European Convention on Human Rights (ECHR) and Article 47 of the Charter of Fundamental Rights of the European Union, provide that the **judiciary** must be independent and impartial. The content of these notions has been clarified in the jurisprudence of the European Court of Human Rights (ECtHR), which is an accepted reference for the EU *acquis* under Article 6 (2) of the EU Treaty. In particular, Courts must be established by law; there shall be no discrimination in the appointment procedures of judges; the judiciary must not be influenced in its decision-making by either the executive or the legislature; judges must act impartially and be seen to do so; their conditions of tenure must be adequately ensured by law; the grounds for disciplinary action or removal from the post must be limited and laid down in the law.

Furthermore, it is a general principle of EU law that the judiciary must have sufficient means to work efficiently; judges are expected to respect high ethical standards in the performance of their duties in accordance with the law. The Council of Europe (COE) Committee of Ministers Recommendation N° R (94) 12 on the Independence, Efficiency and the Role of Judges provides further clarifications. Similarly, the European Guidelines on Ethics and Conduct for Public Prosecutors (the Budapest guidelines) offer useful guidelines about a common European standard in the field.

Article 29 of the EU Treaty mentions that preventing and combating **corruption** contributes to the establishment of an area of freedom, security and justice. The 1995 Convention on the Protection of the EC's Financial Interests and the 1997 Convention on the Fight against Corruption involving Officials of the EC or the Member States imply that "effective, proportionate and dissuasive" criminal law penalties are required to fight corruption. The Council Framework Decision on Combating Corruption in the Private Sector of 2003 defines active and passive corruption in the private sector as a criminal offence and prescribes the responsibility of legal persons for both active and passive corruption. Candidate countries are expected under the Communication from the Commission on a Comprehensive EU Policy against Corruption of 2003 to maintain strong political commitment at the highest level, develop and improve investigative tools and allocate more specialised staff to the fight against corruption, pursue training and specialisation, implement strategies and legislation in an effective manner and become fully aligned with the relevant international instruments.

According to Article 6 (2) of the EU Treaty and the case-law of the Court of Justice, the Union respects **fundamental rights**, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, as general principles of Community law. Thus, they are binding on the Union institutions in the exercise of their powers and on the Member States when they implement Community law (Article 51 of the Charter of Fundamental Rights of the EU). In the interpretation of fundamental rights, the Court of Justice has mainly drawn on the provisions of the ECHR and, occasionally, on several other international sources such as the UN International Covenant on Civil and Political Rights. In its judgement of 27 June 2006 on the "family reunification" Directive¹, the Court of Justice also relied on the Charter of Fundamental Rights of the EU in order to clarify the scope of the EU fundamental rights *acquis*.

The list of fundamental rights covers traditional civil rights, such as the right to life, the prohibition of torture and degrading treatment, the right to security and liberty imposing strict limits on pre-trial detention, the freedom of religion, freedom of speech and freedom of association and assembly. The Union also protects the fundamental right to privacy and guarantees the protection of personal data. Directive 95/46/EC of the European Parliament and of the Council on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of Such Data is the basic instrument at the EC level. The Directive gives substance to, and amplifies the principles of the protection of the rights and freedoms of individuals contained in other data protection agreements, in particular the COE Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and its Additional Protocol 181. It provides for the free movement of such data within the EU/EEA for both the public and the private sectors under certain conditions such as legitimacy, good data quality, and observance of the finality principle.

The EU’s human rights list also contains a number of guarantees to secure equality. There is a general prohibition of discrimination on a variety of grounds; equality between men and women must be ensured; cultural, religious and linguistic diversity is to be respected. Furthermore, the rights of the child need special protection; the contents of these rights may be drawn from the UN Convention on the Rights of the Child ratified by all Member States. Children have, in particular, the right to survival; development; protection from harmful influences, abuse and exploitation; and full participation in family, cultural and social life. Moreover, the EU Framework Decision on Combating the Sexual Exploitation of Children and Child Pornography of 2003 calls upon Member States to ensure that in their legal systems certain conduct is punishable; relevant sanctions need to be effective, proportionate and dissuasive.

According to Article 21 of the Charter of Fundamental Rights of the EU, members of national minorities shall not be discriminated against. Article 1 of the Framework Convention for the Protection of National Minorities confirms that human rights include minority rights. The latter include the right to non-discrimination of a person belonging to a national minority; the freedom of association, to assembly, of expression; the freedom of religion; the right to use one's language; and the effective participation in public affairs. Measures against racism and xenophobia cover areas such as anti-Semitism, Islamophobia, anti-gypsism. The importance of preventing and combating these phenomena is stressed in Article 29 of the EU Treaty. The Council adopted, in 1996, a Joint Action to combat racism and xenophobia.

Finally, the Union acquis in the field of fundamental rights contains a number of important judicial guarantees. Everybody has the right to a fair trial and the right to an effective remedy. Legal aid should be given if the person charged does not have sufficient means; this initially concerned criminal cases but has been extended, under certain conditions, to civil ones when the interest of justice so requires. Furthermore, the principles of legality and proportionality of criminal offences and penalties need to be observed. The accused must also benefit from a presumption of innocence and enjoy defence rights.

The EU citizens' rights regard the right to vote and stand as a candidate in elections to the European Parliament and in municipal elections; the right to move and reside freely within the European Union; and diplomatic and consular protection.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Turkey and the discussion at the screening meeting.
Turkey indicated that it can accept the *acquis* regarding Judiciary and Fundamental Rights. Turkey indicated that it does not expect any difficulties with implementing the *acquis* by accession.

**II.a  JUDICIARY**

**Independence**

According to Article 2 of the Turkish Constitution Turkey is a democratic, secular and social state governed by the rule of law. Article 9 mentions that judicial power is exercised by independent courts. Article 138 provides for the independence of the judiciary and, in particular, that judges should consider legal cases on the basis of the Constitution, the law, and their personal convictions conforming to the law. Article 138 also provides that the executive and legislative bodies should comply with court decisions. Similar provisions to those of the Constitution on the independence of judges are included in the Law on Judges and Prosecutors 2802 of 1983.

The establishment of the courts, their functions and competence are regulated only by law (Article 142 of the Constitution). Law 5235 on the Establishment of First Instance Courts and Courts of Appeal regulates the establishment of all civil and criminal courts and courts of appeal. Article 37 of the Constitution states that no one may be tried by judicial authority other than the legally designated court. Article 37 also provides that extraordinary tribunals with jurisdiction that would in effect remove a person from the jurisdiction of his legally designated court should not be established. Under Article 145 of the Constitution military justice is exercised by military courts; these have jurisdiction to try military personnel for military offences, for offences committed by them against other military personnel or in military places, or for offences connected with military service and duties. Law 353 on the Establishment and Proceedings of Military Courts defines the functions and jurisdiction of these Courts.

The above-mentioned law 2802 together with secondary legislation define the procedure for the selection of judges and prosecutors. Law school graduates may sit for the competition to enter the Judicial Academy and, eventually, become judges or prosecutors. The Student Selection and Placement Centre, an institution that organises tests for the Turkish civil service, conducts the written test. The successful candidates have to then sit an interview with a five member panel composed of senior judges seconded to the Ministry of Justice. The Undersecretary of the Ministry (or his deputy) is one of the five members. The candidates who are also successful at the interview enter the Judicial Academy. At the expiry of a two year training period, the trainees sit a graduation test. The High Council of Judges and Public Prosecutors takes the final decision on the nomination of the successful trainees as judges or prosecutors. This body is composed of three regular and three substitute members of the Court of Cassation, two regular and two substitute members of the Council of State, the Minister of Justice (chairman) and the Under-secretary of the Ministry of Justice. It is responsible for the appointment of members of the Court of Cassation and of the Council of State, admission of judges and prosecutors to the profession, appointments, transfers, removal from office and disciplinary sanctions.

The Constitution (Article 139) and Law 2802 (Article 44) provide guarantees for judges and prosecutors including that they should not be dismissed or forced to retire early, and that they should not be deprived of their salaries, allowances or rights relating to their status, even as a result of abolition of a court or a post. Article 140 of the Constitution provides that promotions of judges and prosecutors are regulated by law. Law 2802 (Article 18) provides that the competent authority for promotions is the High Council of Judges and Prosecutors. Criteria for promotion are
mainly the assessment of the work of each member of the judiciary by high courts, their efficiency in treating incoming cases, and appraisal files by judicial inspectors².

Investigations against judges or prosecutors can take place in cases where they have allegedly committed offences in the course of their duties or their attitude is not in conformity with their status (Constitution). The initiation of such investigations is subject to permission of the Ministry of Justice (Article 82 of Law 2802). In case of disciplinary sanctions, the Ministry of Justice submits a file to the High Council for Judges and Prosecutors. If it is decided that a criminal investigation is opened, the file is sent to the prosecutor. Judges and prosecutors may appeal the decisions of the Ministry of Justice before an Administrative Court or the Council of State.

**Impartiality**

The Civil and Criminal Procedure Codes, together with the Law on Judges and Prosecutors, provide for the exclusion of judges and prosecutors from cases where there might be either a conflict of interest or a reasonable doubt about the impartiality of the judge or prosecutor.

As regards anti-corruption provisions for the judiciary, the Turkish Criminal Code contains provisions to counter attempts to unduly influence judicial bodies, misconduct in office, counterfeiting of official documents, embezzlement, extortion and bribery. Under the law on Declaration of Assets, Fight against Bribery and Corruption (Law 3628 of 1990), all judges and prosecutors should declare their own and their family's property every year. The Law on Judges and Prosecutors provides for measures against specific acts of corruption.

According to the Constitution (Articles 10 and 138) and the Criminal Code (Article 3), there should be no discrimination before the law on the basis of language, race, colour, gender, political opinion, philosophical belief, religion or sect, and judges should exercise their duties on the basis of their personal conviction, in conformity with the law.

With respect to judicial ethics, the Bangalore principles³ were adopted through a decision of the High Council of Judges and Prosecutors in 2006. These principles have been published in the Justice Journal, their translation into Turkish is published on the web-site of the Ministry of Justice, and they are included in the curriculum of the Judicial Academy. The High Council also agreed to recognise the Budapest Principles adopted by the Conference of Prosecutors General of Europe.

**Professionalism/Competence**

The Judicial Academy plays a central role in the provision of training to the judiciary. It was established by law in October 2003 and its main task is provision of pre-service and in-service training programmes to judges, prosecutors, notaries and auxiliary court staff.

Pre-service training normally extends over a two-year period. However, the two-year term has been reduced to one year taking into account the existing and expected vacancies further to the introduction of the regional courts of appeal initially planned for 1 June 2007. The normal two-year period will be re-introduced in five years time. Pre-service training covers both practical and theoretical matters. Courses are delivered by academics, members of high courts, judges and prosecutors. The Academy organises courses also on human rights, EU law and judicial ethics.

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² Judicial inspectors are judges seconded to the Ministry of Justice. A new Regulation on judicial inspectors entered into force on 24 January 2007. This new Regulation needs to be reviewed and assessed.
³ Bangalore Principles of Judicial Conduct adopted by the Judicial Group on Strengthening Judicial Integrity, as revised by the Round Table of Chief Justices held in The Hague, November 2002.
In-service training is organised by the Judicial Academy, the Ministry of Justice and the High Courts of Appeal. The Judicial Academy will ultimately take over the training responsibilities from the Training Department of the Ministry of Justice; in the meantime, they work in parallel. The High Council for Judges and Prosecutors has to give its consent to the training programmes developed by the Ministry of Justice. The latter organises courses on EU law, anti-corruption, human rights and foreign languages. In addition, the Ministry cooperates with third parties (EU Member States, COE, etc.) to provide training to judges and prosecutors on human rights and foreign languages. It also provides financial support to judges and prosecutors for language training in the form of private courses.

Efficiency

The Constitutional Court, the Court of Cassation, the Council of State and the Ministry of Justice have their own budgets. The Ministry's budget includes the budget for the remainder of the judiciary (including prisons) other than the courts mentioned above. There has been a steady overall increase in the budget allocated for the judiciary over the period 2004 to 2006. Thus, in 2005 for the first time ever the total budget allocated for the judiciary exceeded 1% of the total state budget.

The National Judiciary Network Project (UYAP) is an information system, an e-justice system. It covers the whole judiciary and is planned to be completed by the end of 2007. Apart from allowing members of the judiciary to communicate amongst themselves, it allows them to send and receive information to and from other departments of the civil service, the Notaries’ Unions and Bar Associations. In terms of premises, 66 Court houses have been constructed since 2003 while 26 more are under construction.

The approximate total number of judges and prosecutors is 9,500 whereas that of candidate judges and prosecutors is 1,800. Vacancies for both professions are approximately 5,500. In addition, there are approximately 30,000 judicial personnel. According to available statistical data over the four-year period 2002 to 2005, both the workload and the average duration of trials have increased. Although the situation is not the same for every category of courts, it could be said that, as regards the workload, both the new cases and the cases transferred from the year before have increased. Measures taken by the authorities to decrease the number of pending cases and the average trial period include the recruitment of judges, prosecutors and judicial personnel, the completion of the National Judiciary Network Project (UYAP), the introduction of Regional Courts of Appeal and the construction of new Court houses and training.

Enforcement officials must be law school (or equivalent) graduates and are recruited following an examination. They receive initial training and sign a contract providing for, among other things, that they shall work for the benefit of the public without discriminating on the basis of language, religion, gender, etc.

Judicial reform

As regards new legislation, the Turkish Grand National Assembly adopted a number of laws including the Law on the Establishment of Courts of Appeal and First Instance Civil and Criminal Courts, the Criminal Code, the Criminal Procedure Code, the Civil Code, the Law on the Public Inspection Authority, etc. Draft legislation submitted to the National Assembly includes a Commercial Code and an International Private and Procedural Law. Other pieces of draft legislation have been sent to public institutions for their views (e.g. draft Civil Procedure Code) whereas the Ministry of Justice is in the process of finalising draft legislation on issues such as the Law on the Union of Judges and Prosecutors.

4 This was the state of play on 12-13 October 2006.
A number of projects for the modernisation of the judiciary have been launched or are in the process of being prepared. The former includes the National Judiciary Network Project (UYAP) described above; the latter, projects to construct new Court houses.

In terms of enhancing the capacity of judges and prosecutors, the authorities conduct training activities in cooperation with international organisations. Areas they try to focus on include human rights, the ECHR and the jurisprudence of the ECtHR.

There is no overall National Reform Strategy for the Judiciary or any plan to implement such a Strategy.

II.b ANTI-CORRUPTION

Policy and domestic institutions

The Turkish authorities have stated that corruption is a significant issue that has to be dealt with and that they have the political will and commitment to fight it. Turkey adopted an Action Plan on Enhancing Transparency and Improving Governance in the Public Sector in 2002. This Plan aimed at improving effectiveness in the civil service, judiciary, health care, fight against money laundering, campaign financing and asset disclosure. A Parliamentary Investigation Committee on Causes and Dimensions of Corruption issued its report in 2003 portraying aspects of corruption and suggesting remedies.

There is a wide range of bodies responsible for anti-corruption activities. The Parliament has the power to set up special investigation commissions. Parliamentary committees have looked into corruption matters and produced reports including recommendations on measures to be taken by public institutions. The Presidency (State Supervisory Council) is empowered to conduct audits in all public institutions. The Ministry of Interior acts through the police in the urban areas and the gendarmerie in the rural areas. There are inspectorates at the Prime Minister's Office, line Ministries and major Agencies. Public prosecutors are organised in provinces, each headed by a Chief Prosecutor.

There is no overall National Anti-corruption Strategy or any plan to implement such a Strategy.

Domestic legal framework

The Law on Declaration of Assets and the Fight against Corruption of 1990 provides for disclosure of assets by a range of elected officials, Ministers, civil servants and owners of media. It also empowers the authorities to review such declarations. The Law on Access to Information of 2003 gives institutions 15 days within which they have to provide information to the public, upon demand. This law was amended in 2006 to allow citizens to dispute decisions of the administration refusing to provide information. In 2005, 87% of a total of 600,000 applications was responded to positively. The Law on the Establishment of the Civil Servants Ethics Board of 2004 provides that the Board is responsible for setting the Code of Ethics and overseeing its implementation. In this context, the Regulation on Principles of Ethical Behaviour for Civil Servants was published in 2005. To increase awareness, Turkish authorities established 25 May as the Day of Ethics and conducted training programmes. Legislation on public procurement of 2003, on public financial management and control of 2006, on banking of 2004 and on local government of 2004 includes provisions against corruption. The Law on the Press of 2004 abolished penalties such as imprisonment, temporary shutdown, seizure of press devices, etc. for offences committed through the press. According to the Turkish authorities, legislation reducing red tape and recruitment of civil servants through a test organised nation-wide reduce possibilities for corruption. Law 2820 on political parties requires them to hold accounts of income and expenditure and prohibits them from conducting business activities.
The Criminal Code provides for the offences of extortion (through coercion or persuasion); bribery (active and passive); fraud; embezzlement; fraud in public tenders; fraudulent bankruptcy; misinformation about companies; counterfeiting; abuse of official power; trading in influence; illicit enrichment; smuggling; embezzlement in banks. All these offences lead to imprisonment and, possibly, to fines. In the case of commission of these offences in an organised manner, the offence as such is punished in addition to that of establishing a criminal organisation. Public officers who either intentionally ignore embezzlement or extortion, or fail to perform their control duty, facilitating thus the commission of embezzlement or extortion, are sentenced to imprisonment. Legal persons can also be held responsible for offences of corruption. The Criminal Code also includes provisions against the bribery of foreign public officials. As regards corruption in the private sector, the Criminal Code's provisions on active and passive bribery are applicable to persons acting on behalf of professional organisations (chambers, bar associations, trade unions), companies and foundations owned by public institutions, associations serving the public interest, cooperatives, and joint stock companies whose shares are traded on the Stock Exchange. Breach of trust and failure to inform authorities of offences that have been committed lead to imprisonment. Turkish courts have jurisdiction over all the offences defined in the Criminal Code committed within the Turkish territory by Turkish nationals and foreigners. Confiscation and deprivation of instruments and proceeds of crime are dealt with by the Code.

The law on civil servants provides that those members of the public who have been sentenced to at least 6 months imprisonment and those who have committed the crimes of embezzlement, bribery, extortion, robbery, fraud, breach of trust, smuggling, fraud in public tenders and revealing classified information are not eligible to be recruited into the civil service. These crimes also constitute reasons for the dismissal of a civil servant from service. Disciplinary sanctions range from warning to termination of employment. A disciplinary procedure does not prevent the initiation of criminal proceedings.

**International legal framework and institutions**

Under Article 90 of the Turkish Constitution international agreements duly put into effect bear the force of law.

The UN Convention against Corruption became binding on Turkey, further to ratification, in 2006; the COE Criminal Law Convention on Corruption and the Civil Law Convention on Corruption in 2004; and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 2000.

Turkey participates in the CoE's Group of States against Corruption (GRECO) and INTERPOL; it became a member of INTERPOL in 1930. The Ministry of Interior assigned the INTERPOL Department as the National Bureau to ensure communication, exchange of information and cooperation between the Turkish authorities and INTERPOL and OLAF.

Aspects related to money laundering are dealt with in chapter 4 – Free Movement of Capital; aspects related to public procurement are dealt with in chapter 5 – Public Procurement; aspects related to the fight against organised crime are dealt with in chapter 24 – Justice, Freedom and Security.

**II.c FUNDAMENTAL RIGHTS**

**General**

Fundamental rights are guaranteed in the Turkish Constitution. The latter provides that everyone possesses inviolable and inalienable fundamental rights and freedoms (Article 12). These may be restricted only by law and in conformity with reasons included in the Constitution without
infringing upon their essence (Article 13). Article 14 mentions that none of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible territorial and national integrity, or of endangering the existence of the democratic and secular order of the Turkish Republic. According to Article 90 (4) of the Constitution, in case of contradictions arising from different provisions on the same issue regarding basic rights and freedoms between, on the one hand, approved international agreements and, on the other, domestic laws, the provisions of international agreements take precedence.

Turkey has ratified UN human rights conventions such as the ICCPR, the First and Second Optional Protocols to the ICCPR, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is also party to a number of COE Conventions and Protocols such as the ECHR together with a large number of its Protocols. Turkey has signed but not ratified the Optional Protocol to the UN Convention against Torture (OPCAT). Three Additional Protocols to the ECHR have been signed but not ratified, including Protocol No 12 on the general prohibition of discrimination by public authorities, signed in 2001.

The institutional structure established for monitoring the human rights situation in general includes the Human Rights Presidency at the Office of the Prime Minister; the Human Rights Provincial and Sub-provincial Boards (931 in total) in which civil society representatives participate (both the Presidency and the Boards carry out investigations on allegations of human rights violations); the Human Rights Advisory Board under the Office of the Prime Minister, composed of NGOs, experts, and representatives from Ministries; and the Human Rights Inquiry Commission of the Parliament.

Aspects related to the fight against terrorism are dealt with in chapter 24 – Justice, Freedom and Security; this chapter deals with the possible impact of anti-terrorist legislation on human rights.

Human rights

- **Right to life and to the integrity of the person**

Article 38 of the Constitution provides that no one shall be sentenced to death. Turkey is party to Additional Protocols 6 and 13 of the ECHR. According to Article 17 of the Constitution, everyone has the right to life and the right to develop, physically and spiritually. The Criminal Code states that intentional homicide is punished with life imprisonment and that qualified intentional homicide is punished with aggravated life imprisonment. Examples of qualified intentional homicides are homicides against pregnant women, homicides by means of fire, biological or chemical weapons or moral/custom homicides. A person who encourages, assists or empowers the decision of another person to commit suicide is sentenced to 2 to 8 years of imprisonment. Euthanasia is not regulated in Turkish legislation. The Criminal Code, further, prohibits abortion after the tenth week of pregnancy, or the twentieth week of pregnancy where the woman is a victim of rape. Perpetrators of genocide are sentenced to aggravated life imprisonment and there is no statute of limitations, while perpetrators of crimes against humanity are sentenced to 8 years to aggravated life imprisonment. Article 90 of the Turkish Criminal Code includes provisions regarding experiments on humans, Article 91 on organ or tissue trading and Article 101 on sterilisation. Article 287 of the same Code covers unauthorised genital examinations and Article

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5 The First Protocol was ratified in November 2006; it became binding on Turkey in February 2007. The Second Protocol was ratified in March 2006 and became binding on Turkey in June 2006.
6 The other two Protocols are N° 4 (signed in 1992) and N° 7 (signed in 1985).
7 Human dignity is a horizontal principle that characterises the entire chapter and is, thus, not developed separately.
75 of the Criminal Procedure Code deals with the physical examination of the suspect or the accused and the extraction of biological material from his/her body.

- **Prohibition of torture and inhuman or degrading treatment or punishment**

Under Article 17 of the Constitution no one shall be subjected to torture, or to penalties or treatment incompatible with human dignity. According to Article 94 of the Criminal Code any public officer who causes severe bodily or mental pain, or loss of consciousness or the ability to act, or humiliation shall be sentenced to imprisonment. Article 95 of the same Code provides for penalties for torture aggravated by its consequences, and Article 256 for use of force by a public officer exceeding the limits of competence. Article 92 of the Criminal Procedure Code mentions that the chief public prosecutors shall inspect and/or review detention premises, interrogation rooms, the situation of persons in detention, the reasons for and duration of detention. Article 148 of this Code deals with prohibited methods in statement taking and interrogation and clarifies that any physical or psychological intervention that would hamper free will – such as ill-treatment, torture, the administration of medicines or drugs, and the infliction of fatigue, deception, the use of compulsion or threat, and the use of certain equipment is prohibited; also, that statements taken through the prohibited methods shall not be used as evidence notwithstanding that they were given with the person's consent.

Turkey has adopted a "zero tolerance" policy on torture. The institutional structure established for monitoring the human rights situation in general is also applicable to torture in particular. The Turkish authorities have indicated that the Ministry of Justice and the Ministry of Interior have issued circulars aiming at ensuring consistency of implementation of the legislation and that they have organised training for the judiciary and the police respectively.

Turkey is party to a number of international agreements both in UN, and COE⁸ and OSCE fora. It has signed but not ratified the Optional Protocol to the UN Convention against Torture (OPCAT).

- **Prohibition of slavery, servitude, and forced or compulsory labour**

Article 18 of the Constitution provides that no one shall be forced to work and that forced labour is prohibited. According to Article 117 of the Criminal Code any person who employs defenceless persons without payment or with low wage or forces him/her to work and live under inhuman conditions shall be sentenced to imprisonment.

Aspects related to labour law are dealt with in chapter 19 – Social Policy and Employment.

- **Respect for private and family life and communications**

Article 20 of the Constitution guarantees an individual's right to a private and family life. Article 21 provides for the inviolability of the domicile of an individual and Article 22 for the right to freedom and secrecy of communications. Article 41 states that family is based on the equality of spouses. The Criminal Code prescribes prison sentences in case of violation of the immunity of private dwellings and of their unlawful search. It also provides for prison sentences in cases of prevention of communications, violation of the secrecy of communications, unlawful publication or disclosure of the contents of communication between persons, taping and recording of conversations between persons; and recording of conversations in meetings closed to the public without the consent of the participants.

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⁸ Turkey became party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in February 1989 thereby recognising the competence of CPT, the Convention's monitoring body.
• **Right to marry and right to found a family**

Article 41 of the Constitution states that family is the foundation of the Turkish society and that it is based on the equality of spouses. The Civil Code, which sets the legal framework regarding marriage and divorce, provides for the legal age of marriage. Under the same Code, in case a married person is married a second time, the second marriage is null and void; spouses manage the household together; both men and women are given equal status within the marriage and are both able to represent the family on legal matters. Other provisions of the Civil Code ensure that children born outside the marriage have the same legal status as children born within the marriage. The Criminal Code provides that married persons who conclude a second marriage or persons who conduct a religious marriage before a legal marriage has taken place are sentenced to prison.

Family Courts are established by law and are competent to decide on matters related to family law. They are first instance courts with a single judge, to which the Ministry of Justice has assigned psychologists, pedagogues and social workers. The institutional structure that ensures monitoring of the implementation of Article 41 of the Constitution includes the Directorate General for Family and Social Research, the Directorate General on the Status of Women and the Agency for Social Services and Child Protection.

• **Freedom of thought, conscience and religion**

Article 24 of the Constitution guarantees the freedom of religion and conscience; Article 25 guarantees freedom of thought and opinion. Article 24 provides that everyone has the right to freedom of conscience, religious belief and conviction and that acts of worship are conducted freely provided they do not violate the provisions of Article 149 of the Constitution. Article 24 further provides that religious culture and moral education classes are compulsory in the curricula of primary and secondary education and conducted under state supervision. There is no legislation on conscientious objection.

According to the Civil Code, adults are free to choose their religion. The Criminal Code states that discrimination on grounds of, among other things, political ideas, philosophical beliefs and religion is punishable by imprisonment. Forcing an individual to express or change, or preventing him/her from expressing or disseminating his/her religious thoughts and beliefs constitutes an offence. There is a religion section in the registry and on identity cards. This is completed, changed or left blank in conformity with the person's written statement. As regards construction of places of worship, first the land must be reserved for such use according to construction law; second, permission has to be granted by the head of the provincial authority; third, construction and use permits have to be issued by the local administration. Places of worship may be constructed by individuals, associations or foundations. The property rights of places of worship are with the persons, natural or legal, that have supported their construction. Mosques are managed by the Presidency of Religious Affairs whereas non-Muslim places of worship by their associations or foundations.

Article 136 of the Constitution provides that the Presidency of Religious Affairs is part of the central administration. Law 633 of 1965 clarifies that the Presidency is established under the Prime Ministry and oversees matters related to belief, worship and ethics in Islam, including the

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9 "None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights.

No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms embodied in the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution …"
administration of places of worship. More specifically, the law confirms that the Presidency does not represent any sect or school of Islam and that it is expected to provide opinions on the history of the Muslim religious experience in the light of reason and science, and views on current religious issues taking into account modern life. The Presidency is thus, according to the Turkish authorities, not a religious organisation like a Church, does not have a religious hierarchy, and its civil servants do not represent a spiritual authority.

- Freedom of expression including freedom and pluralism of the media

Article 26 of the Constitution provides for the right to express and disseminate thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This does not preclude subjecting transmission by radio, television, cinema and similar means to a system of licensing. In addition, the exercise of these freedoms may be restricted in order to protect national security, public order and safety, to safeguard the territorial and national integrity of the country, to protect the reputation, rights and private and family life of others, or to ensure the proper functioning of the judiciary. Under Article 28 the press is free and shall not be censored and the establishment of a printing house is not subject to prior permission.

The Criminal Code includes restrictions on the exercise of the right to freedom of expression. As regards offences against dignity, Article 125 provides that defamation is punishable by either a prison sentence or a fine. With respect to offences against public peace, prison sentences and fines are foreseen under Article 215 for praising of an offence or an offender; under Article 216 for inciting a section of the population to hostility and hatred that causes a clear and imminent danger to public safety, or for humiliating a section of the population; under Article 217 for inciting to disobey the law if the incitement disturbs public peace; under Article 220 for making propaganda either for an organisation that has been established in order to commit crimes or for its objectives. With respect to offences against public morals, prison sentences and fines are foreseen under Article 226 for displaying obscene material to children; for broadcasting or publishing obscene material or acting as an intermediary for this purpose; and for using children in the production of obscene material. As regards offences against the judiciary, prison sentences are foreseen under Article 277 for influencing judicial officials; under Article 285 for breaching the confidentiality of an investigation and the confidentiality of statements or images; for publishing during prosecution or trial images that label persons as guilty; under Article 288 for public statements to influence the judiciary before the conclusion of a trial. With respect to offences against symbols of state sovereignty and reputation of its administrative organs, prisons sentences and fines are foreseen under Article 299 for insulting the President of the Republic; under Article 300 for insulting the Turkish flag or the national anthem; under 301 for insulting Turkishness, the Republic, the Grand National Assembly; for public denigration of the Government, the judiciary, the military or the security services. Paragraph 4 of Article 301 states that expressions of thought intended to criticise shall not constitute a crime. As regards the offences against state security, prison sentences and fines are foreseen under Article 304 for inciting foreign states to wage war against Turkey or for supporting organisations established to commit crimes against the Turkish state; under Article 305 for Turkish citizens or foreign residents in Turkey for gaining material advantage from foreigners or foreign organisations for acts contrary to the independence, territorial integrity and national security of Turkey. With regard to the offences against national defence, prison sentences are foreseen under Article 318 for discouraging people from performing their military service. The anti-terror law provides for prison sentences for persons that reveal the names of civil servants or informers in charge of combating terrorism or for disseminating propaganda for terrorist organisations.

The press law (5187 of 2004) provides that the press is free and that this freedom includes the right to acquire and disseminate information, to criticise, interpret and create works. Restrictions to this freedom may result on grounds of protecting the reputation and rights of others, national
security, public order and safety, safeguarding the indivisible integrity of national territory, preventing crimes, protecting information classified as a state secret, and ensuring the authority and impartial functioning of the judiciary. Amendments to the anti-terror law were adopted in June 2006. They allow the suspension of periodicals whose contents openly encourage the commission of crimes within the framework of the activities of a terrorist organisation, praise the crimes committed and its offenders or make propaganda for the terrorist organisation. They also introduce the liability of chief editors and of press and media owners for publishing terrorist propaganda or praise in press or media, and establish aggravated penalties for propaganda and praise of terrorism. In August 2006 President Sezer applied to the Constitutional Court for the cancellation of Articles 5 and 6 providing for such restrictions. These Articles are currently in force since no suspension of their execution has been requested from the Court. Last, some other pieces of legislation contain provisions restricting freedom of expression.

In October 2006 there were 23 national TV channels, 16 regional and 214 local, and 36 national radio stations, 101 regional and 954 local. There were a total of 4,252 periodical publications.

A number of training activities have been undertaken regarding the enforcement of these provisions and the incorporation of the ECtHR case law into the Turkish legal system.

Aspects related to broadcasting and audio-visual policy including regulatory bodies in these areas are dealt with in chapter 10 – Information Society and Media.

- **Freedom of assembly and association, including freedom to form political parties, the right to establish trade unions**

Under Article 34 of the Constitution everyone has the right to hold peaceful meetings and demonstration marches; this right can only be restricted by law on grounds of national security, public order and prevention of crime, protection of public health and morals or protection of the rights and freedoms of others.

Law 2911 on Assemblies and Demonstration Marches provides for the same right and that public authorities must be notified by the organisers for all assemblies and demonstration marches. A notification has to be submitted to the authorities by a committee of seven individuals 48 hours before the beginning of the assembly or the demonstration. A Government representative is assigned to confirm that the event is conducted in accordance with the law. The law provides for time limits and unauthorised places (e.g. motorways, places of worship, public buildings, etc.) for holding meetings and demonstrations. It also enumerates the cases in which an assembly or a demonstration march could be considered unlawful. These include attending a meeting with material that can be used for violence and when no permission has been obtained for the organisation of a meeting with foreign participants. Assemblies organised by political parties, occupational institutions, trade unions, foundations, associations, corporations, assemblies held according to traditions and customs, assemblies with a sporting or scientific character or those held for commercial purposes, fall outside the scope of law 2911. Comparable rules apply during electoral campaigns where the High Board for Elections is in charge of regulating political meetings.

According to Article 33 of the Constitution everyone has the right to form associations, become a member of an association or withdraw from membership; this freedom may only be restricted by law on grounds of national security, public order and prevention of crime, or protection of public health and morals. Restrictions may be imposed on members of the armed and security forces, and on civil servants to the extent that their duties so require. Associations may be dissolved or suspended from activity by a decision of a judge as prescribed by law. The same provisions apply for foundations.
Articles 56 – 100 of the Civil Code on associations provide that a court may decide to dissolve an association if its objectives are not compatible with the legislation and public morals. Foreign nationals that reside in Turkey may establish or join an association. The Law on Associations of 2004 reiterates the provision of the Constitution that natural or legal persons with capacity to act have the right to establish associations without permission; also, that restrictions may be imposed by special laws on members of the armed and security forces or on civil servants. Further, Article 30 of the law stipulates that associations shall not, among other things, engage in education and training activities preparing for the military service or national security and law enforcement services, or establish camping sites or training premises towards that objective, or use uniforms for their members. Article 5 provides that associations may engage in international cooperation, establish branches or join associations abroad. Foreign associations, upon permission of the Ministry of Interior and the Ministry of Foreign Affairs, may engage in cooperation and establish branches or associations in Turkey.

Article 68 of the Constitution grants citizens over the age of 18 years the right to form, without prior permission, political parties, and to join or withdraw from them. The Article further stipulates that the statutes and programmes of the parties shall not be in conflict with the independence of the state, its territorial and national integrity, human rights, equality before the law and the rule of law, sovereignty of the nation, and the principles of a democratic and secular republic. Political parties shall not aim to protect a class or to establish a dictatorship. Members of the judiciary, civil servants, public servants who are not considered to be workers by virtue of the services they perform, and members of the armed forces may not join political parties. The Law on Establishment of Political Parties of 1983 provides that only Turkish citizens may form parties and that every Turkish citizen may become a member of, or withdraw from, a party. Citizens cannot be members of more than one political party at the same time and it takes at least thirty citizens to form a party. Parties must have their Headquarters in Ankara. In October 2006, there were 51 political parties in Turkey.

Aspects related to Trade Union rights are dealt with in chapter 19 – Social Policy and Employment.

- **Treatment of socially vulnerable and disabled persons and the principle of non-discrimination**

Under Article 10 of the Constitution all individuals are equal without any discrimination before the law, irrespective of language, race, colour, gender, political opinion, philosophical belief, religion and sect, or any similar considerations; also, that no privilege may be granted to any individual, family, group or class. There are no specific provisions on anti-discrimination on grounds of age or sexual orientation. State institutions are expected to act in compliance with the principle of equality before the law in all their proceedings. The Criminal Code provides for prison sentences or fines for those practicing discrimination on the grounds mentioned in the Constitution.

The Law on the Agency for Social Services and Child Protection of 1983 governs protection and care services for, among others, the socially vulnerable. Elders are considered those individuals that are at least 60 years old. The Agency runs 67 Homes for the Elderly, and Care and Rehabilitation Centres for the Elderly providing boarding for 5,702 people. The Agency has issued permits for a further 10,737 beds in 141 Homes for the Elderly belonging to private and public institutions.

Aspects related to people with disabilities and to EU anti-discrimination legislation are dealt with in chapter 19 – Social Policy and Employment.

- **Right to education**
Article 42 of the Constitution provides that no one may be deprived of the right to education and that primary education is compulsory for boys and girls and free of charge in state schools. Article 130 provides for the establishment of universities and their autonomy in teaching.

The Basic Law of National Education of 1973 foresees that educational institutions are open to all regardless of language, race, gender or religion and that men and women have equal opportunities and means of education. The Law on Primary Education of 1961 provides that parents preventing their children from attending schools are subject to fines and, in cases of prolonged absence, to imprisonment. Education is considered to be national, republican, secular, having a scientific foundation, and being functional and modern.

According to information provided by the Turkish Ministry of National Education, every year approximately 1.3 million students start school in Turkey. They are almost equally split between boys and girls. Education statistics indicate that approximately 10% of the Turkish children in the compulsory education age group (6 to 14) are not enrolled in school. Nearly three-fourths of these children are girls. The schooling rate is the lowest in the Eastern and South-eastern regions of Anatolia.

The authorities have implemented a number of programmes to deal with the situation. These include the 1997 Basic Education Programme and the "Support to Basic Education" projects financed in part by the WB and the EU; the "100% Support to Education Programme" providing tax incentives to the private sector for investments in education; and the campaigns "Child Friendly Schools" and "Girls, Let's Go to School" together with UNICEF. The latter started in 2003 and targeted girls of the 6-14 age group who either never started primary school or left school or had not been attending regularly. Further to home visits by the campaign teams, approximately 273,500 girls were identified as falling under these categories. Of these, approximately 223,000 have been schooled by the academic year 2006-2007.

As of 2006 disabled persons up to 18 years of age are entitled to special education. In this context, the state meets their educational expenses in special public schools; € 210 are paid per child per month when these children attend special private schools.

New primary education curricula have been developed for up to the 8th grade. The 1st through to 6th grade programmes are being implemented in the academic year 2006-2007. The 7th and 8th grade programmes are piloted and their implementation is planned by 2009. The Turkish authorities have indicated that in the process of revision of the textbooks, discriminatory language is being eliminated.

Aspects related to cooperation in the field of education policies, Community programmes and access to education of EU citizens are dealt with in chapter 26 – Education and Culture.

- **Right to property**

The right to own property is enshrined in Article 35 of the Constitution. It may be limited by law only in view of the public interest. Expropriation is possible in accordance with the law provided compensation is paid. Private enterprises performing public services may be nationalised when this is in the public interest and compensation is paid on the basis of actual value. The coast is under the sovereignty of the state. The Civil Code provides that everyone has the right to own, use, manage and bequeath movable and immovable property.

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10 January 2007.
Under the (draft) Law on Foundations\textsuperscript{11} the latter can own and manage their property without prior permission. A court decision should be issued when foundations sell immovable property or rights acquired at their establishment whereas only the decision of the competent body of the foundation is needed to sell immovable property or rights acquired at a later stage. Foundations can establish companies and commercial bodies and can participate in existing companies with a view to realising their objectives and generate income for themselves. The draft Law allows non-Muslim community foundations to register under their names in the Land Registry Records immovable property which is either stated in their 1936 Declarations under figurative or fictitious names or purchased by or bequeathed or donated to community foundations after their 1936 Declarations but registered under the name of the testator or of the donator or of the Treasury or of the Directorate General for the Foundations because of restrictions in owning property. Donations of immovable property to foundations cannot be seized or mortgaged\textsuperscript{12}. Properties which are no longer used, partly or in whole, for their original purpose, can be transferred to another foundation of the same community or leased. These issues, and pending the adoption of the law, remain open. The issue of properties seized and sold to third parties is not covered under the draft law.

Under the Land Registry Law 2644, citizens of third countries can inherit real estate in Turkey provided Turkish citizens can inherit real estate in these countries (principle of reciprocity). When there is no reciprocity, properties are liquidated after their transfer transaction is performed. Special legislation governs the acquisition of property by foreign companies incorporated outside Turkey.

• **Gender equality and women's rights**

Article 10 of the Constitution provides for equal rights between men and women and Article 41 for the equality of spouses. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) became binding on Turkey in 1986 and its Optional Protocol in 2003. The Penal Code provides for prison sentences or fines for sexual assault or harassment; for deprivation of freedom; for prevention of education and training; for discrimination on grounds of, amongst other things, gender; for encouragement or facilitation of prostitution; for maltreatment; for violations of obligations derived from family law; and for unauthorised genital examination. The Law on Enforcement of Penalties and Security Measures of 2004 foresees the establishment of separate detention institutions for female convicts or, if this is not feasible, for separate locations from male convicts; delays of imprisonment due to pregnancy or giving birth; and the sheltering of dependant children (up to six years of age) of female convicts. Under the Law on the Protection of Family of 1998\textsuperscript{13} a spouse may not act violently against the other

\textsuperscript{11} Law 5555 was adopted by the Turkish Grand National Assembly on 9 November 2006. Nine (9) Articles of the law were vetoed by the President of the Republic later in the month on the grounds that certain rights granted to foundations were contrary to the Turkish Civil Code, the Constitution and the Lausanne Treaty. Until its adoption, Law 2762 of 3 June 1935 governs these matters.

\textsuperscript{12} On 9 January 2007 the ECtHR held unanimously that there had been a violation of Article 1 of Protocol N° 1 (protection of property) to the ECHR in the case of the foundation *Fener Rum Erkek Lisesi Vakfı vs. Turkey* (application N° 34478/97). In 1952 the foundation received a gift of part of a building in Istanbul and purchased another part of that building in 1958. These properties were registered at a later stage with the Land Registry. The Istanbul High Court had granted in 1996 a request of the Turkish Treasury that this registration be cancelled on the basis of a Court of Cassation decision of 1974 that foundations whose membership is made up of religious minorities as defined by the Treaty of Lausanne and whose constitutive documents did not contain a statement that they had the capacity to acquire immovable property were precluded from purchasing or accepting a gift of such property. The Court of Cassation had confirmed the decision of the Istanbul High Court in the same year.

\textsuperscript{13} This law was amended in May 2007 through Law 5636. The latter covers all individuals in the family including those living separately (note: in order for the previous law to be enforced in cases of domestic violence, the couple had to live under the same roof); enforcement of court decisions is monitored by the law enforcement bodies including the police, gendarmerie and the village guards; and fees required for applying to courts and for enforcing court decisions are abolished.
spouse; may not approach the house or the work place of the other spouse after being banned from the common house; and, may not disturb the other spouse by insisting on communicating with him/her. According to the Civil Code married women may keep their maiden name; a spouse does not need the consent of the other spouse when selecting a job; single persons can adopt provided they are at least thirty years of age; custody of children of a married couple is shared equally between husband and wife and, if they are not married, the custody belongs to the mother. The Municipality Law of 2005 provides for the establishment of shelters for women in metropolitan municipalities and in municipalities with a population of 50,000 people or more. The by-law on the Principles and Procedures of Radio and Television Broadcasts of 2003 does not allow broadcasts that portray individuals as sexual objects or legitimise violence inside the family, sexual harassment, rape, or ignore the rights of women. In July 2006 a Prime Ministry Circular was issued on “The Measures to be Taken on the Prevention of Violence against Women and Children, and Honour and Custom-Motivated Crimes” further to the report of an ad hoc parliamentary commission established to investigate the issue in 2005. A Protocol was signed between the Ministry of Interior and the State Ministry in charge of women and family issues to train police on violence against women.

A number of activities and projects have been undertaken to promote gender equality. These are aimed at, among other things, institutional capacity building, combating domestic violence against women, providing shelters for women subjected to violence, raising awareness to change traditional societal attitudes including within the Army, and providing in-service training to judges, public prosecutors and the police.

The Directorate General on the Status of Women, affiliated to the Office of the Prime Minister, was established in 1990 and reorganised in 2004. Its remit is to protect women’s rights and to strengthen their social, economic and political status; it has 40 staff. Its responsibilities include the development of strategies, plans and programmes; contributions to policy making; the assessment of laws and administrative regulations from a gender equality perspective; the prevention of all forms of violence; promotion of gender equality; and the contribution to the development of gender statistics. The Consultative Committee on Women’s Status was established in late 2004, includes public institutions, NGOs and universities, and aims at furthering gender equality. There is a total of 30 shelters for women subjected to violence of which 19 are affiliated to the Agency for Social Services and Child Protection (capacity: 368), 9 foundations/units/departments belong to private and public institutions, and 2 shelters in Ankara and Istanbul are established by NGOs for victims of human trafficking.

Employment aspects of gender equality are dealt with in chapter 19 – Social Policy and Employment.

- **Rights of the child**

The UN Convention on the Rights of the Child became binding on Turkey in 1995. Turkey is party to the two optional Protocols to this Convention, the Protocols on the Sale of Children, Child Prostitution and Child Pornography (since 2002), and on the Involvement of Children in Armed Conflict (since 2004).

Further to amendments to the Criminal Code, every person below 18 years of age is a child; this is in line with the UN Convention. The Criminal Code defines sexual exploitation of the child as a separate crime. It also stipulates aggravated sentences for sexual crimes committed against

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14 The Protocol on the Role of the Police in Eliminating Violence against Women and Procedures to be Pursued was signed on 26 December 2006 in line with the Prime Ministry Circular of July 2006. A total of 40,400 policemen and policewomen are to receive in-service training on domestic violence, gender issues, assistance to victims and legislation.
children and outlines cyber crimes against children. The Criminal Procedure Code foresees the appointment of legal counsel for children that are victims of crime. The Child Protection Law of 2005 aims at integrating international standards into the procedures and principles regarding children in need of protection. In particular, it establishes a legal framework aimed at safeguarding the rights and well-being of both children with particular problems and children under legal investigation or who have been convicted of crimes.

The Agency for Social Services and Child Protection is the coordinating institution responsible for monitoring the implementation of the UN Convention on the Rights of the Child. The Ministries of Interior, Justice, Education and Foreign Affairs are the main institutions involved in the protection of the rights of the child while an Inter-sectoral Child Committee has been established in the framework of cooperation of the Turkish Government with UNICEF. Child Right Committees and Centres have been constituted within 55 Bar Associations within the country.

Efforts have been made through projects, symposia, and other fora to promote the rights of child, to fight against violence in schools and substance addiction, to remove street children exploited through forced labour and place them in proper training programmes, and to promote family-rather than institutional care. Turkish authorities estimate that economic reasons lead approximately 60% of children in institutional care to children’s homes, orphanages, care and rehabilitation centres. Of these, 1,839 children returned to their families and 5,990 children avoided being put in institutional care in 2005 further to the support provided to their families by the authorities. Services for rehabilitation of girls of 11-18 years of age exposed to sexual exploitation are provided at two Istanbul Child and Youth Centres and the number of girls reached to date is 421.

Aspects related to child labour are dealt with in chapter 19 – Social Policy and Employment.

**Procedural safeguards**

- **Liberty and security**

  Article 19 of the Constitution enshrines the right to personal liberty and security. Deprivation of liberty can only take place in cases, and under conditions, defined by law. The Article further provides that information to the person arrested and detained about arrest and detention should be provided; that the arrested or detained person should be brought before a judge at the latest within 48 hours (in cases of offences committed collectively at the latest within 4 days); and that a next of kin of the arrested or detained person should be notified immediately.

  As regards arrest, the Criminal Procedure Code foresees that law enforcement officials are authorised to arrest a person as provided under the law; and that anyone may temporarily arrest a person if the offence is committed in his/her presence, there is a possibility that the offender may escape and it is not possible to establish the offender’s identity. Further, that law enforcement officials immediately inform the arrested person of his/her rights. More specifically, under the By-law on Arrest, Detention and Statement Taking of 2005 the arrested person shall be informed of the reason for his/her arrest, the allegations against him/her, his/her right to remain silent and to refer to the services of a defence lawyer, the right to object to the arrest and the right to appeal. The arrest may be appealed and the appeal should be communicated to the competent judge in the fastest way. The Criminal Procedure Code stipulates that if the person arrested upon warrant of arrest cannot be brought to the competent court within 24 hours, he/she will be brought before the closest judge of the criminal court of peace. All aspects of the arrest procedure are recorded in writing. The By-law on Arrest, Detention and Statement Taking of 2005 stipulates that when force is used, the arrested person is examined by a physician and his/her health at the moment of arrest is documented.
As regards detention, Article 91 of the Criminal Procedure Code provides that the detention period shall not exceed 24 hours, excluding the time necessary for transfer to the judge or court closest to the place of arrest; the latter shall not exceed 12 hours. The By-law on Arrest, Detention and Statement Taking of 2005 foresees that if the matter is under the competence of the courts that have jurisdiction over the crimes specified in paragraph 1 of Article 250 of the Criminal Procedure Code, the detention period shall be up to 48 hours. A person is taken into custody only if this is necessary for the investigation and there is circumstantial evidence suggesting that he/she has committed an offence. In the case of a collective offence, when there are difficulties in collecting evidence or where there is a large number of suspects, the prosecutor may give a written order extending the detention period for up to 3 days provided that each time the extension does not exceed 1 day. The By-law on Arrest, Detention and Statement Taking of 2005 foresees that if the matter is under the competence of the courts that have jurisdiction over the crimes specified in paragraph 1 of Article 250 of the Criminal Procedure Code, the detention period for the persons arrested in regions under a state of emergency  may be extended by up to 7 days upon request of the prosecutor and with a court decision. The detained person may challenge his detention and the judge shall decide within 24 hours from submission of the appeal. The prosecutor inspects the detention and interrogation premises, the situation of detainees, the reasons for, and duration of, the custody, and all records and procedures related to custody. Relatives of, or persons designated by, the detainees are notified of the detention or extension of the detention period without delay by order of the public prosecutor. The By-law on Arrest, Detention and Statement Taking of 2005 stipulates that in case of health controls of the detainees, the law enforcement officers carrying out the investigation and those taking the detainee to medical examination should be different officers. Further, that if the physician finds indications of torture, he/she reports immediately to the prosecutor. During the medical examination, the physician and the detainee are alone within the context of the doctor-patient relationship. If the physician evokes personal security concerns, a law enforcement officer may be present. In such a case, a defence lawyer may also be present upon the request of the detainee. The Detention Room Record Book includes information about the suspect’s identity, entry transactions, procedures related to the suspect, and exit procedures. Amendments to the anti-terror law adopted in July 2006 provide that during detention period, the suspect's right to meet a defence lawyer may be restricted for a period of 24 hours upon the prosecutor's request and judge's decision; however, his statement cannot be taken during this period. The amendments also foresee that, in case of findings and documents that the defence lawyer liaises with members of a terrorist organisation, and upon the prosecutor's request and judge's decision, security officers may attend meetings between suspects and their lawyers or check the documents the defence lawyer exchanges with the suspect.

The Criminal Procedure Code describes the grounds for pre-trial detention; these are (a) evidence that the accused may abscond; (b) behaviour of the suspect or accused that cause strong suspicion for the possible eradication, hiding or changing of evidence, and (c) attempt to apply pressure on witnesses, victims or other persons related to the offence. Further, the Code lists offences such as genocide, intentional homicide, sexual assault, torture, etc. that may lead to pre-trial detention. During the prosecution phase, the decision for pre-trial detention of the suspect is taken by the judge of the criminal peace court upon request of the prosecution. During trial, the decision to detain the accused is taken by the court upon request of the prosecution. The reasons for pre-trial detention, extension of periods of such detention or rejection of requests for release should be documented. The pre-trial detention can last for a period of up to 6 months. This may be extended for a period of up to 4 months, when adequately justified. In cases falling within the jurisdiction of the heavy criminal courts, pre-trial detention can last for a period of up to 2 years. Where there are compelling reasons, this period may be extended for up to 1 year. The prosecutor or the suspect may appeal decisions for judicial supervision. All orders for pre-trial detention or for

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15 Currently, there are no regions under a state of emergency in Turkey.
extension of such periods should be notified without delay, by order of a judge, to a relative of, or a person designated by, the person under pre-trial detention. The Ministries of Justice, Interior and the General Directorate for Security have issued Circulars to facilitate the implementation of the new legislation.

- **Right to a fair trial**

Article 36 of the Constitution safeguards the right to a fair trial. Article 37 stipulates that no one may be tried by any judicial authority other than the legally designated court. Article 38 sets out principles related to offences and penalties and, in particular, that the latter shall be prescribed by law, that no one shall be considered guilty until proven guilty in a court of law, that findings obtained through illegal methods shall not be considered as evidence in court, and that criminal responsibility is personal. Article 138 deals with the independence of the courts; Article 139 with the security of tenure of judges and public prosecutors; Article 140 with the profession of judges and public prosecutors and, in particular, defines that all matters related to their career are regulated by law in accordance with the principles of the independence of the courts and the security of tenure of judges; Article 141 with the publicity of hearings and the justification of verdicts and provides, in particular, that it is the duty of the judiciary to conclude trials as quickly as possible and at minimum cost; and Article 142 provides that the establishment, functions and jurisdiction of the courts, their functioning and trial procedures are prescribed by law.

The Civil Procedure Code includes provisions regarding the right to a fair trial in civil law. Among others, that judges cannot reach a judgement without hearing both sides of a case; that trials are held publicly except when decided otherwise in the interest of social morals or national security; and that copies of the trial records are available to both sides and their lawyers. Article 465 of the Code defines that those who cannot afford court expenses without jeopardising their families’ livelihood, and submit adequate evidence to support their case, benefit from legal aid. Article 466 enumerates what this legal aid might include: temporary exemption from court expenses; advance payment by the state of expenditures of witnesses and experts; exemption from the deposit of court expenses; postponement of notification expenses; in case of need of a lawyer, provision of a lawyer whose fees would be paid later; postponement of the fees and advance payment of compulsory expenses by the state; temporary exemption from all stamp duties; and temporary exemption from the fees and taxes for the documents that are issued by notaries. The court decides on the granting of legal aid and can also review its decision on the basis of new information. It is not possible for the party receiving legal aid to choose his or her lawyer. The fees which are paid to the lawyers for legal assistance are based on minimum fee tariffs which are lower than the fees a lawyer could charge otherwise. Foreign nationals applying for legal aid have to prove that legal aid is provided to Turkish citizens in their countries of origin (principle of reciprocity). Similar provisions apply for commercial and administrative law with respect to legal aid.

In the framework of criminal law, as regards the fair and public hearing within a reasonable time, the Criminal Procedure Code provides that hearings are open to the public except when decided otherwise in the interest of social morals or national security. The Criminal Code provides for prison sentences for attempting to unduly influence judicial bodies or a fair trial. Further, the Criminal Procedure Code provides for the return of the indictment to the prosecutor when the trial court, after having examined the indictment within 7 days from its submission, finds it incomplete. The court, on this occasion, points to the omissions and errors of the indictment and the investigation file. In this way, delays at the trial stage are avoided. Persons who consider that they have suffered damage because they were not brought before the trial court or did not receive a judgement within a reasonable period of time may claim compensation. As regards the independent and impartial tribunals established by the law, the Law on the Establishment, Duties and Jurisdiction of First Instance and Appeal Courts of Justice of 2004 provides for all such
criminal and civil courts. The establishment, duties and jurisdiction of high courts (Constitutional Court, Court of Cassation, Council of State, Court of Disputes) and administrative courts are arranged by their special laws. As regards presumption of innocence, under the Criminal Code prison sentences are foreseen for broadcasting images of persons causing them to be perceived as guilty before a decision is reached by the court. As regards the prompt provision of information in a language that the person understands, the Criminal Procedure Code provides that if the accused or the victim does not speak Turkish adequately, during the hearing the essential points of the prosecution and defence are interpreted to the accused or the victim by an interpreter appointed by the court. These provisions also apply (a) during the investigation phase with the difference that, in this case, the interpreter is appointed by the judge or the prosecutor and (b) in cases where the accused or victim is handicapped. As regards the defence, the Criminal Procedure Code provides, among other things, that the defence lawyer may, in principle, examine the full content of the file during the investigation phase; and that the suspect or accused may meet or correspond with the defence lawyer. With respect to trials in absentia the Criminal Procedure Code specifies that, without prejudice to exceptional conditions prescribed by law, trials are not conducted in the absence of the accused. In general, all criminal procedure and court expenses are met by the state budget; however, court costs are covered by the accused if he or she is sentenced to a penalty or security measure. The only legal aid matter in this field is providing lawyers (legal assistance) for the suspect, accused, victim or the complainant. The Criminal Procedure Code stipulates that during statement taking or interrogation of the suspect or the accused, the latter is informed that he/she has the right to appoint a lawyer and that the lawyer may be present during statement taking or interrogation. A defence lawyer is appointed for the suspect or the accused if the latter declares that he/she would wish to benefit from the services of a lawyer but is not in a position to appoint one.

**Minority rights and cultural rights**

Under Article 10 of the Constitution all individuals are equal without any discrimination before the law, irrespective of language, race, colour, gender, political opinion, philosophical belief, religion and sect, or any such considerations; the state shall ensure that this equality exists in practice. As per Article 67 of the Constitution, all Turkish citizens participate in the political process on an equal footing. The Law on Political Parties prohibits discrimination on, inter alia, religious and racial grounds and safeguards the principle of equality before the law. Section III: Protection of Minorities, Articles 38-45 of the Lausanne Treaty of 1923 contains the term non-Muslim minority. Without prejudice to the provisions of this Treaty, Turkish authorities consider Turkish citizens as individuals having equal rights before the law rather than individuals belonging to the majority or minorities.

There are 196 places of worship, 42 maternal, primary and secondary schools, 5 hospitals and 9 newspapers belonging to non-Muslim minorities. Children learn their language and religion in their minority schools. A Minority Issues Assessment Board, chaired by the Ministry of Interior and composed of the representatives of the Ministries of Foreign Affairs, National Education and other related institutions has been set up.

Without prejudice to the provisions of international treaties concerning the organisation of the education of certain minorities, Article 42 of the Constitution provides that no language other than Turkish shall be taught as mother tongue to Turkish citizens at educational institutions. The rules to be followed by institutions conducting education in a foreign language are determined by law.\[^{16}\]

\[^{16}\] Under Law 5580 of 2007 both foreign and Turkish citizens can attend foreign schools. These existed at the time of the signature of the Lausanne Treaty in 1923 and have since continued their operation. Courses are taught in languages other than Turkish. International private educational institutions provide education exclusively to foreigners. They can be opened by foreign natural or legal persons or through a partnership of such persons with Turkish natural or legal persons. The opening of such schools is free. Minority schools are those schools of maternal,
According to Article 63 of the Constitution, the state ensures the conservation of the historical, cultural and natural assets and wealth.

The Law on the Establishment of Radio and Television Corporations and their Broadcasts (Broadcasting Law) of 1994 provides that there may be broadcasts in languages and dialects used traditionally by Turkish citizens in their daily lives and that such broadcasts shall not contradict the territorial or national integrity of the country. The Radio and Television Supreme Council (RTUK) determines, and supervises the implementation of, the principles and procedures for such broadcasts. The By-law on Radio and Television Broadcasts in Different Languages and Dialects traditionally used by Turkish citizens in their daily lives of 2004 stipulates that broadcasts shall be for 5 hours per week without exceeding 60 minutes per day for radio channels, and 4 hours per week without exceeding 45 minutes per day for television channels. RTUK decided on 30 May 2006 that broadcasts of music and cinematographic works can be made without any time limits during the whole day. News, music, culture, public health, environment, economy, sport, agriculture, etc. can be the subject of these broadcasts; on TV, programmes should be broadcast with Turkish subtitles or followed by their translation into Turkish, and on radio programmes should be followed by their translation into Turkish. This does not apply to music broadcasts.

The public broadcaster, Turkish Radio and Television Corporation (TRT), started on 7 June 2004 television and radio programmes on weekdays in Bosnian, Arabic, Circassian, Zaza and Kirmanchi. To date, two private TV channels (Diyarbakir Gun TV and Diyarbakir Soz TV) and one radio channel (Urfa Medya FM Radio) have obtained broadcasting authorisation and started broadcasting on 26 March 2006.17

The By-law on the learning of different languages and dialects traditionally used by Turkish citizens in their daily lives of 2003 defines the conditions for learning such languages and dialects. These can be learned only in private courses.

**Measures against racism and xenophobia**

Under Article 10 of the Constitution all individuals are equal without any discrimination before the law irrespective of, among other things, race; the state has the obligation to ensure that this equality exists in practice and that the administration acts in compliance with the principle of equality before the law in all its proceedings. Article 122 of the Criminal Code provides for prison sentences or fines for persons practising discrimination on grounds of, among other things, race. According to Article 216 prison sentences are foreseen for persons that openly incite groups of the population to breed enmity towards one another on grounds of, amongst other things, race, when this might constitute a clear and imminent threat to public order; that openly denigrate part of the population on grounds of, among other things, race; that openly denigrate the religious values of part of the population and this act is likely to distort public peace. The above-mentioned Broadcasting Law of 1994 provides that broadcasts shall not, in any manner, humiliate or insult people for, among other things, their race and shall not encourage the use of violence or incite feelings of racial hatred.

In addition to the judiciary, the Human Rights Presidency at the Office of the Prime Minister, the Human Rights Provincial and Sub-provincial Boards, and the Human Rights Inquiry Commission of the Parliament receive and review complaints of alleged racism; if sufficient ground is found, they refer the cases for further processing.

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17 Diyarbakir Cagri FM obtained authorisation on 23 March and started broadcasting on 17 April 2007.
Turkey is involved in the work of the OSCE in the field of promoting tolerance and non-discrimination. A Turkish Ambassador nominated by the Turkish Government was appointed in December 2004 as one of the three Personal Representatives of the OSCE Chairman-in-Office on Combating Intolerance and Discrimination. Turkey also participates in the relevant work of the COE. The Turkish authorities have stated that the country is supportive of the work of the European Committee against Racism and Intolerance (ECRI) in its efforts to combat racism, xenophobia, anti-Semitism and intolerance across Europe.

Aspects related to anti-discrimination on the grounds of race are dealt with in chapter 19 – Social Policy and Employment.

**The EU Fundamental Rights Agency**


The Agency will also be open for participation of candidate countries – including Turkey – as observers, after a decision of the relevant Association Council, which will indicate in particular the nature, extent and manner of this country's participation in the Agency's work, taking into account the specific status of each country.

**Protection of personal data**

Under Article 20 of the Constitution everyone has the right to demand respect for his/her private and family life and that the privacy of the individual or family life cannot be violated. Article 22 provides that everyone has the right to freedom of communication and that the secrecy of communication is fundamental. Exceptions common to both Articles are foreseen on the basis of a decision duly passed by a judge on the grounds of national security; public order; prevention of crime; protection of public health and public morals; and, protection of the rights and freedoms of the others. The Criminal Code stipulates prison sentences for any person who (a) unlawfully records data relating to political, philosophical or religious beliefs of an individual, his/her racial origin, ethical tendencies or health conditions; (b) delivers unlawfully data to another person, publishes or acquires the same through illegal means; and (c) keeps within a defined system data after the expiry of the legally prescribed period for its storage. The Criminal Procedure Code stipulates that only the authorised judge is entitled to decide on whether or not a molecular genetic examination will be conducted; the results thereof are qualified as personal data. The Law on the Right of Access to Information provides for restrictions of this right when the information concerns, among other things, privacy, private life or communication. The By-law on processing of personal data and the protection of confidentiality in the telecommunication sector has been adopted in order to, according to the Turkish authorities, harmonise the Turkish legal framework with Directive 2002/58/EC.

Turkey has ratified the ECHR, signed in 1981 the Convention 108/81 for the Protection of Individuals with regard to Automatic Processing of Personal Data, and in 2001 the Additional Protocol to the Convention regarding supervisory authorities and trans-border data flows. The Turkish authorities have stated that ratification of the last two instruments is under consideration.

**II.d EU CITIZENS RIGHTS**

**Right to vote and stand as a candidate in elections to the European Parliament**
Under current arrangements, foreigners may vote in polling stations set up in the resident embassies and consulates in Turkey for the elections in their home countries provided public order is not violated, election campaigns are not conducted and voting takes place in the confines of designated places. These conditions would apply with regard to participation of EU citizens in elections to the European Parliament in the event a request is made. Implementation of this right requires alignment of the current legislation.

**Right to vote and stand as a candidate in municipal elections**

The current Turkish legal framework provides that only Turkish citizens are eligible to vote and stand as candidates in local elections. Implementation of this right requires alignment of the current legislation.

**Right to move and reside freely within the European Union**

Citizens of Germany, France, Denmark, Sweden, Czech Republic, Greece, Finland, and Luxembourg are exempt from obtaining a visa on their tourist visits to Turkey of up to 90 days. There are no visa requirements for Latvian citizens for transit and for stay of up to 30 days per semester. Citizens of other EU Member States travelling to Turkey may receive visas at the Turkish border gates.

Passport Law (No 5682) and the Law on Residence and Travel of Aliens in Turkey (No 5683) govern the movement and residence of aliens in the country. EU citizens may initially obtain a three-year residence permit upon their arrival. These permits may be extended for five-year periods and are issued on the following grounds: employment; studies; scientific research; business contacts; family reunification; tourism and settlement; and, medical care. As of 2005, 180,000 foreigners were legal residents in Turkey. According to the above-mentioned law 5638, the following professions are reserved for Turkish citizens: lawyer; security staff; customs broker; customs counselor assistant; stock exchange broker; professional tourist guide; manager of travel agency; public notary; independent accountant, financial advisor, certified public accountant; captain and seaman; board member of cooperative society; nurse; doctor; dentist; midwife; patient care taker in hospital; pharmacist; private hospital manager; and veterinarian. EU citizens benefit from the provisions of the Turkey-EU Association Council instruments on the basis of reciprocity. Implementation of this right requires alignment of the current legislation.

**Diplomatic and consular protection**

Turkey is party to the Vienna Convention on Diplomatic Relations of 1961 and Vienna Convention on Consular Relations of 1963. EU Member States may invoke provisions of these two instruments to provide diplomatic and/or consular protection for their citizens. Foreign diplomatic missions in Turkey may also request consular cooperation on the basis of bilateral agreements concluded in this field. Implementation of this right requires alignment of the current legislation.

### III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

#### III.a JUDICIARY

**Independence**

Articles 2, 9, 37, 138, 139, 140 and 142 of the Turkish Constitution, Law 2802 on Judges and Prosecutors and Law 5235 on the Establishment of First Instance Courts and Courts of Appeal provide for the independence of the judiciary.
The composition of the High Council, described in part II of the report, is, however, not representative of the judiciary as a whole: only senior members of the judiciary from the Court of Cassation and the Council of State are members of this Council. While the presence of members of the executive branch of government may be understandable for financial and administrative matters, it is less clear why they have a right to vote on decisions relating to the careers of, or disciplinary action against judges. Further to the publication in March 2006 of the indictment on the Semdinli bombing, which included accusations against the Land Forces Commander and other high-ranking military commanders, the General Staff issued a statement criticising the indictment and urging those bearing constitutional responsibility to take action. In April of the same year the High Council dismissed the Semdinli prosecutor from office applying the highest disciplinary sanction. The disproportionate character of this decision raised questions on the independence of the High Council from other state institutions.

Finally, the judicial inspectors, who are responsible for evaluating the performance of judges and prosecutors, are attached to the Ministry rather than the High Council. This is questionable to the extent that the executive branch of government may thereby influence the factual basis of the High Council decisions regarding the career of the members of the judiciary.

Impartiality

Articles 10 and 138 of the Turkish Constitution and a number of pieces of legislation (Law 2802 on Judges and Prosecutors, Law 3628 on Declaration of Assets, Fight against Bribery and Corruption, the Criminal Code and the Civil and Criminal Procedure Codes) provide for the impartiality of the judiciary. The adoption by the High Council of Judges and Public Prosecutors of the Bangalore Principles of Judicial Conduct, together with the recognition of the Budapest Principles adopted by the Conference of Prosecutors General of Europe, contributes to the enhancement of judicial ethics.

Two Circulars issued in January 2006 by the Ministry of Justice on the Investigation and Prosecution Procedures regarding Corruption Cases and on the Investigation and Prosecution Procedures about Judges and Public Prosecutors facilitate the implementation of the above-mentioned legislation. Efforts should be intensified in this direction.

Professionalism/Competence

The Judicial Academy and the Ministry of Justice provide extensive training on the new Penal Code and the Criminal Procedure Code, on prevention of torture and ill-treatment, freedom of expression and effectiveness of the judicial process. Training is also provided on foreign languages and on EU and Human Rights law. This includes opportunities for training abroad.

The Judicial Academy should develop into a strong and independent training provider for the whole of the judiciary, including at regional level. Emphasis should continue to be put on training judges and prosecutors on Human Rights law and the law of the EU.

Efficiency

Considerable efforts have been made to ensure the efficiency of the judiciary. These concern the budget available for the judiciary as a whole, the physical infrastructure both in terms of premises and use of IT, and the enforcement of Court decisions. In addition, the Ministry has issued a number of interpretative circulars in an effort to facilitate the implementation of the new Criminal Procedure Code and of the Law on Enforcement of Sentences.

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18 This bombing of November 2005 killed one person and injured others in the town of Semdinli in Southeast Turkey.
These efforts should be sustained in particular in order to ensure consistent interpretation of legal provisions related to human rights and fundamental freedoms by all judiciary authorities in line with the ECHR and the case-law of the ECtHR; also, in order to complete criminal investigations before the application of the statute of limitations, to decrease the number of pending cases and to ensure a reasonable average trial period. Delays in filling the approximately 5,500 vacancies for judges and prosecutors would have a negative impact on the efficiency of the judiciary in particular given that both the workload and the average duration of trials have increased. Efforts are also needed to complete the establishment of the regional intermediate courts of appeal.

**Judicial reform**

A large volume of legislation has been introduced and projects have been launched relating to the reform of the judiciary. All these efforts go in the right direction.

However, there is no overall National Reform Strategy for the Judiciary or a plan to implement such a Strategy.

**III.b Anti-corruption policy**

**Policy and domestic institutions**

Overall, corruption remains a serious problem in Turkey. The Turkish authorities have acknowledged that corruption is a significant issue that has to be tackled. They have also declared their readiness and commitment to combat it. However, anti-corruption policies are weak and the country has no comprehensive anti-corruption strategy or a plan to implement such a strategy.

The administrative set-up dealing with corruption is fragmented and the authorities responsible are weak. There is a need for better coordination and, preferably, for designation of a single body with sufficient independence responsible for designing and monitoring the implementation of strategies and measures by all relevant state institutions. This body should have the full political support at the highest level of the Government.

The Parliament established two Inquiry Committees on gasoline smuggling and on illegal public offerings that completed their work in 2006. Both cases showed a wide range of corruption activities. Five Investigation Committees were also established at the end of 2003/beginning 2004 to look into corruption allegations and possible criminal responsibility of a former Prime Minister and seven former Ministers. On the basis of the recommendations of these Investigation Committees, Parliament approved that they be brought to justice.

**Domestic legal framework**

The legislative framework against corruption includes the Law on Declaration of Assets and the Fight against Corruption, the Law on Access to Information, the Law on the Establishment of the Civil Servants Ethics Board together with the Regulation on Principles of Ethical Behaviour of Civil Servants. Legislation on financing and auditing of political parties needs to be improved. The wide scope of parliamentary immunity is also a matter that has to be dealt with. Turkey should ensure that the application of parliamentary immunity does not unduly restrict the application of Turkey's criminal law on corruption in a way that the country cannot meet the requirements of the 1997 Convention. Public awareness of corruption as a serious criminal offence should be enhanced.

Efforts are needed to ensure consistent implementation of the legislation and its monitoring.

**International legal framework and institutions**
Turkey has aligned itself with the major international instruments against corruption in the course of the last few years.

Turkey should ensure consistent implementation of these instruments.

III.c FUNDAMENTAL RIGHTS

General

Overall, the Turkish legal framework includes a comprehensive set of guarantees of fundamental rights. This legal framework should be further improved including in areas such as freedom of expression, freedom of religion, right to property, and minority and cultural rights. Turkey is encouraged to continue ratifying international human rights agreements.

Turkey has a considerable number of cases pending before the COE Committee of Ministers for execution control regarding, among other things, actions of security forces and cases of freedom of expression. Many of these cases are related to the events that took place against the background of the fight against terrorism in the 1990s. Turkey has already taken a number of steps such as introducing Article 90 of the Constitution acknowledging the precedence of international human rights agreements over national legislation, new Criminal and Criminal Procedure Codes and the Law on Compensation for those who sustained damage to their property in the Southeast of the country. Despite difficulties faced by the State in the fight against terrorism, the means used in this regard must respect Turkish obligations under the ECHR as clarified by the ECtHR. Full execution of judgements of the ECtHR with regard to all provisions of the ECHR needs to be ensured.

Implementation of legislation adopted is a key issue: overall, significant efforts need to be made and Turkey needs to ensure a track record of continuous progress. These efforts should have political support at the highest level. Turkey also needs to upgrade the human rights institutional framework described in Part II of this report. The Human Rights Presidency combines a number of functions: it provides human rights training to public officials, carries out research on human rights issues, contributes to raising awareness and receives, examines and investigates allegations of human rights violations. With respect to the latter function, which seems to be comparable to that of an Ombudsman, it lacks independence from the Government. In addition, it is not clear how the Presidency and the Provincial and Sub-provincial Boards interface with the responsible departments of the administration and of the prosecution in case of enquiries that might involve disciplinary or penal consequences respectively. The Human Rights Advisory Board has not been operating since the publication of a report on minority rights in Turkey in October 2004. This report led to criminal proceedings being launched against the president and the vice-president of the Board. The Parliamentary Human Rights Committee plays an active role in collecting complaints on human rights violations and conducting fact-finding visits to the regions. It has no legislative role and is, thus, not consulted on legislation affecting human rights.

Overall, the institutional framework is fragmented, has limited resources available and has had no significant impact to date. Turkey needs to establish an independent, adequately resourced national human rights institution in accordance with relevant UN principles, to monitor human rights cases, including on the basis of sound statistical data, and to train law enforcement bodies on human rights issues and investigation techniques.

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19 Further to the adoption by the Parliament of the Law on Ombudsman on second reading after it was vetoed by the President of the Republic, the latter applied to the Constitutional Court. The Court suspended the implementation of the law on 1 November 2006 pending the Court's final decision on the appeal of the President. Under this draft law, the Ombudsman handles petitions from natural and legal persons in relation to administrative acts.
Finally, in addition to legal provisions and institutional structures, Turkish authorities need to work in order to establish in the country an atmosphere of tolerance conducive to full respect of fundamental rights. Whereas statements of high officials, in particular on the occasion of tragic events such as those witnessed in the beginning of 2007\textsuperscript{20}, go in the right direction, there are others relating, for instance, to minorities or religion, that do not. The education system also plays a crucial role. If no action is taken to change the current atmosphere, the country runs the risk of a repetition of the tragic events of early 2007 and of the ensuing \textit{de facto} restriction of fundamental rights.

**Human rights**

- **Right to life and to the integrity of the person**

Articles 17 and 38 of the Constitution and the Criminal Code provide for the right to life. Articles 90, 91, 101 and 287 of the Turkish Criminal Code together with Article 75 of the Criminal Procedure Code provide for the integrity of the person.

Although this right is generally respected, in some instances such as (a) extrajudicial killings not properly investigated, (b) impunity from torture, and (c) crimes in the name of honour and suicides committed by women that are not always properly investigated, Turkey falls short of its positive obligation to investigate promptly and bring to justice perpetrators of acts, violating, thus, the right to life and to the integrity of the person.

- **Prohibition of torture and inhuman or degrading treatment or punishment**

Article 17 of the Constitution, Articles 94, 95 and 256 of the Criminal Code, and Articles 92 and 148 of the Criminal Procedure Code provide for the prohibition of torture and inhuman or degrading treatment or punishment. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has acknowledged the good level of the country's legislation. However, Turkey is expected to ratify the Optional Protocol to the UN Convention against Torture (OPCAT) which provides for the establishment of independent national mechanisms for the prevention of torture.

CPT has also acknowledged progress in practice. However, cases of ill-treatment continue to be reported regularly especially outside detention centres. Further, there are reported cases of impunity: the number of those brought to justice is insufficient and the trials of the alleged perpetrators are often lengthy. This has led on occasions to dropping the cases due to the statute of limitations.

As regards prison facilities, conditions have improved but progress should continue. Cases of ill-treatment by prison staff have been reported. CPT has found that material conditions of detention in F-type prisons are of a good standard but that communal activity programmes should be developed and health care resources should be increased. A welcome development in this context is that the Ministry of Justice through a Circular\textsuperscript{21} doubled from 5 to 10 hours a week the time prisoners can meet and increased the number of prisoners interacting from 4 to 10 persons in prison social facilities. Turkey needs to continue the implementation of its "zero-tolerance" policy on torture, guarantee the independence of the Forensic Medicine Institute, strengthen the efforts to implement the Istanbul Protocol\textsuperscript{22} throughout the country and continue efforts aimed at improving prison conditions.

\textsuperscript{20} These include the killing of Hrant Dink in January 2007 and of three Protestant Christians in April 2007.

\textsuperscript{21} Dated 22 January 2007.

\textsuperscript{22} Istanbul Protocol: Manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment, submitted to the UN Commissioner for Human Rights, August 1999.
• **Prohibition of slavery, servitude, and forced or compulsory labour**

Article 18 of the Constitution and Article 117 of the Criminal Code provide for the prohibition of slavery, servitude, and forced or compulsory labour.

No significant problems in relation to the prohibition of slavery, servitude, and forced or compulsory labour have been reported in practice.

• **Respect for private and family life and communications**

Articles 20, 21, 22 and 41 of the Constitution together with the Criminal Code provide for the respect for private and family life and communications.

No significant problems in relation to the respect for private and family life and communications have been reported in practice.

• **Right to marry and right to found a family**

The Constitution and the Civil Code provide for the right of a man and a woman to marry and the right to found a family.

No significant problems in relation to the right to marry and the right to found a family have been reported in practice.

• **Freedom of thought, conscience and religion**

Articles 24 and 25 of the Constitution together with the Civil Code provide for the freedom of thought, conscience and religion. However, the current Turkish legal framework does not regulate adequately the issue of conscientious objection and exposes those who refuse to perform their military service on conscientious or religious grounds to the risk of repetitive and unlimited penal sanctions. The cumulative effect of these sanctions has been found by the ECtHR\(^{23}\) to constitute degrading treatment (violation of Article 3 of the Convention). Turkey should consider the adoption of the necessary legislation\(^{24}\).

The mandatory indication of religious affiliation in some personal documents, such as ID-cards, was abolished in April 2006; nevertheless, such documents still include an entry on religion, leaving potential for discriminatory practices. Under ECtHR case-law, ID cards cannot be considered a means to manifest one's religion and the removal of the entry on religion from these cards complies with the ECHR.

Freedom of worship in Turkey is generally respected. However, non-Muslim religious communities encounter difficulties in practice and Alevis face difficulties in opening their places of worship (Cem houses). These are not recognised as places of worship and, thus, do not benefit the way recognised places of worship do in terms of either financial benefits or authorisation of their construction.

As outlined in Part II of this report, religious culture and moral education classes are compulsory in the curricula of primary and secondary education and conducted under state supervision. This

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\(^{23}\) See paragraphs 61 and 62 of final judgement \(Ülke v. Turkey\) of 24 April 2006, application n° 39437/98.

\(^{24}\) The COE Committee of Ministers at its 997th (DH) meeting of June 2007, with regard to the \(Ülke v. Turkey\) judgement of the ECtHR, noted that a draft law is being prepared, which, once adopted, would prevent repetitive prosecutions and convictions of those who refuse to perform military service for conscientious or religious reasons on grounds of persistent disobedience of military orders. The Committee plans to examine the issue at its October 2007 meeting in the light of the information to be provided on the adoption of the draft law.
religious instruction fails to acknowledge the specificity of the Alevi children. Children belonging to the non-Muslim religious communities receive religious education in the framework of the minority schools (for detail see text under Minority Rights in Part II of this report). However, currently, there is no religious higher education in the country for the non-Muslim minorities: there are no such possibilities within universities and Turkish legislation does not provide for private higher religious education. As a consequence, non-Muslim religious communities cannot train their clergy in Turkey. The Greek Orthodox Halki (Heybeliada) seminary has remained closed since 1971. Turkey needs to ensure that, within the country's education system, appropriate and adequate religious education and training can be provided to the non-Muslim religious communities including training of their clergy; this would also help sustain these communities beyond the current generation. In this context, the re-opening of the Halki seminary would lead to Turkey meeting this obligation as regards the Greek Orthodox community.

According to the Turkish authorities, foreign clergy can work in the country and facilitated procedures are applied for the award of work visas to clergy from EU Member States; hundred and twenty two (122) foreign clergy worked in Turkey in 200625. However, administrative difficulties have been reported with respect to the ability of foreign clergy to work in the country or to be elected as heads of their religious communities. Turkey needs to treat equally Turkish and foreign nationals as regards their ability to exercise the right to freedom of religion through participation in the life of organised religious communities in accordance with the ECHR and the case-law of the ECtHR26.

Turkey does not recognise religious communities as organised structures of religious groups. The Ecumenical and the Armenian Patriarchates, together with other non-Muslim religious communities, continue to seek granting of legal personality. Turkey needs to ensure that non-Muslim religious communities can acquire legal personality and exercise their rights in accordance with the ECHR and the case-law of the ECtHR (for further detail see text under Freedom of Association in Part III of this report). The Greek Orthodox Patriarchate continues to request the public use of the ecclesiastical title of Ecumenical. Although there is no Turkish legal provision banning the use of the title, Turkish officials and the media do not use it. The Patriarchate uses the title Fener Rum Patrikhanesi for correspondence with the Turkish authorities and Ecumenical Patriarchate for other purposes. This situation must not result in practical interference with the rights guaranteed under the ECHR and in particular freedom of religion and freedom of association and the Patriarchate should be free to use the ecclesiastical title Ecumenical.

- Freedom of expression including freedom and pluralism of the media

Article 26 of the Constitution provides for freedom of expression and Article 28 for freedom of the media. Overall, despite the intensification of the debate in recent years in Turkish society on a wide range of issues, freedom of expression is not fully guaranteed by the present legal framework as described in Part II of this Report and its implementation. Turkey needs to ensure the exercise of the freedom of expression, including the freedom of the press, in line with the ECHR and the case-law of the ECtHR.

There have been a number of prosecutions and convictions for the expression of non-violent opinions under provisions restricting freedom of expression of the Penal Code but also of the press law, the anti-terror law and other pieces of legislation. Indictments raised in 2006 are almost

25 According to information provided by Turkish authorities in January 2007, the breakdown of the 122 foreign clergy is as follows: 56 from Italy, 18 from France, 16 from the USA, 6 from Austria, 4 from Romania, Sweden and Iraq each, 3 from Germany, 1 from Greece, etc.
26 ECtHR judgement, The Moscow Branch of the Salvation Army v. Russia, Application N° 72881/01, 5 October 2006.
double those raised in 2005. More than half of these indictments were raised under the Criminal Code; Article 301 of the Code which penalises insulting Turkishness, the Republic as well as the organs and institutions of the state has been used as the legal basis for almost two thirds of the indictments raised under the Criminal Code. Although this Article includes a provision that expression of thought intended to criticise should not constitute a crime, it is used to prosecute non-violent opinions; this, together with threats received by journalists, writers, publishers, academics and human rights activists creates an atmosphere which is not conducive to exercising freedom of expression and may contribute to self-censorship. The General Assemblies of the Civil and Penal Chambers of the Court of Cassation established restrictive jurisprudence on Article 301 by confirming a six-month suspended prison sentence for journalist Hrant Dink\footnote{Hrant Dink was assassinated in January 2007.} for insulting Turkishness on a series of articles he wrote on Armenian issues. Article 301 has been used to prosecute expression of opinion on, among other things, Armenian and Kurdish issues and the role of the military. Articles 215, 216, 217 and 220 criminalising offences against public peace have been used in relation to Kurdish issues. Given that under the new anti-terror legislation the list of what constitutes a terrorist offence has been extended and a wide definition of terrorism maintained, there is a risk of a negative impact of this new law on freedom of expression.

Legislation limiting the freedom of expression needs to be brought into line with European standards. Turkey needs to ensure the follow-up and improvement of the situation in both legislation and practice.

- **Freedom of assembly and association, including freedom to form political parties, the right to establish trade unions**

As regards freedom of assembly, Article 34 of the Constitution provides for the right to hold peaceful meetings and demonstration marches. Law 2911 on Assemblies and Demonstration Marches reiterates the right to freedom of assembly and provides for prior notification requirements.

In practice, public demonstrations are subject to fewer restrictions than in the past. Nevertheless, there are cases when security forces use excessive force, especially when the demonstrations were carried out without permission. Following such incidents, there have been cases where administrative investigations have been completed and penalties imposed. However, this is still not the standard pattern and there are cases of investigations which are not completed in a reasonable period of time. This reinforces the feeling of impunity. Turkish authorities need to ensure that all such reported cases are investigated and tried properly.

As regards freedom of association, Article 33 of the Constitution provides for the right to form an association.

Civil society organisations have become more vocal and better organised. There is an increased variety of organisations in Turkey including approximately 80,000 registered associations, and several hundred unions and chambers. This includes vocational and professional associations such as YARSAV, an association of judges and prosecutors. However, the requirement to notify the authorities in each case of receipt of funds from abroad results in difficulties and cumbersome procedures for NGOs. Furthermore, unlike associations, foundations still need permission before applying for projects outside Turkey which are funded by international organisations. Some difficulties related to the registration of associations remain. A Court in Diyarbakır ordered the closure of a Kurdish association on the grounds that its statute included the objectives of setting up a Kurdish archive, museum and library and that its activities would be carried out also in Kurdish language; these were found to violate provisions of the Law on Associations and of the
Constitution. As regards gay and lesbian associations, these have encountered fewer difficulties than in the past but are occasionally subject to court proceedings.

Foundations and associations are of importance to religious communities. Foundations can be established under Article 101 of the Civil Code as propertied communities with legal personality. Paragraph 4 of the Article prohibits, among other things, the establishment of religious foundations, i.e. foundations aiming at meeting religious needs of communities. This prohibition has been confirmed by Turkish Courts. In practice, foundations are usually limited to managing property of religious communities. As outlined in Part II of this report, associations can be established under the Law on Associations of 2004 and their establishment may be restricted by law on grounds of protecting national security and public order, public morals and public health or preventing the commission of crimes. These restrictions are included in Article 30 of the Law on Associations of 2004. Article 30 has replaced Article 5 of the previous law on associations which prohibited explicitly the establishment of religious associations. This has been a positive development. Five religious associations have been established to date. Further to disagreement on its statute with the Turkish administration, the registration of another association with openly religious purpose in its statute is currently being examined by the Courts. This case might be a test case on whether religious communities can establish associations under the current legal framework and have, thus, legal personality.

As regards political parties, despite some alignment of the Turkish Law on Establishment of Political Parties with EU standards, parties are not allowed to use languages other than Turkish. Turkey needs to amend further the Law on Political Parties to ensure that these are permitted to operate in line with the standards established by Article 11 of the ECHR and the case law of the ECtHR.28

- **Treatment of socially vulnerable and disabled persons and the principle of non-discrimination**

Article 10 of the Constitution together with the Criminal Code provide for the prohibition of discrimination. Turkey has not ratified Protocol No 12 to the ECHR on the general prohibition of discrimination by public authorities.

Efforts to revise curricula and textbooks (described in Part II of this report under Right to Education) such that, among other things, discriminatory language is eliminated, should be continued and strengthened.

- **Right to education**

Article 42 of the Constitution and the Basic Law on National Education of 1973 provide for the right to education for all regardless of language, race, religion or gender.

However, in practice access to education of children, particularly girls, remains a problem despite progress achieved to date. Efforts should be sustained to improve access to education in particular for girls and in the areas of the East and Southeast of the country where schooling rates are the lowest.

- **Right to property**

28 On 3 May 2007, in the case *DKP and Elçi v. Turkey*, the ECtHR concluded unanimously that there had been a violation of Article 11 of the ECHR (freedom of association) noting that DKP's programme contained an analysis of the Kurdish question in Turkey and criticism of the manner in which the Government was fighting against separatist activities. The Court accepted that the principles defended by the DKP were not, as such, contrary to the fundamental principles of democracy as the DKP did not seek to justify the use of force for political ends.
Article 35 of the Constitution together with the Civil Code provides for the right to property. The draft Law on Foundations, once adopted and enforced, would provide solutions to a number of problems - outlined in part II of this report - involving non-Muslim communities. In any case, the current draft does not provide for, among other things, compensation for properties confiscated since 1974 and which were then sold to third parties. Turkey needs to adopt legislation on foundations in line with the ECHR and the case law of the ECtHR.

Under Article 35 of the Land Registry Law, foreigners can inherit property in Turkey provided the condition of reciprocity is met. In order to comply with the principle of legality under Article 1 of the First Additional Protocol to ECHR, the application of this law should be based on the substantiated existence (or otherwise) of the right of Turkish citizens to inherit property in EU Member States.

- **Gender equality and women's rights**

Article 10 of the Constitution, the Penal and Civil Codes, the Law on the Protection of Family of 1998 and the Municipality Law of 2005 provide for gender equality.

However, despite this satisfactory legal framework, the efforts undertaken by the authorities to deal with the situation (outlined in Part II of this report and including the Prime Minister's Circular on measures for the prevention of violence against women, training of police, etc.) and the growing public attention to women's rights, the latter are not fully respected in practice, particularly in the poorest areas of the country. The level of participation of women in the parliament and in local representative bodies remains very low. Despite the provisions in the new Penal Code that lists moral/custom killings as an aggravating circumstance for the crime of murder, sentences issued by courts reflect a mixed picture. Crimes in the name of honour and suicides committed by women due to the influence of the family continue to occur, especially in the regions of the East and the Southeast of the country. These crimes are not always properly investigated. There is still a lack of reliable data, in particular of data further to the adoption of the new Penal Code, on such crimes as well as domestic violence more generally. The provisions of the Law on Municipalities, in particular on shelters, are not yet fully implemented and municipalities do not have the necessary financial resources. In parts of the East and the Southeast, girls are not always registered at birth. This hampers the fight against under-age and forced marriages and crimes in the name of honour since these girls and women cannot be properly traced. Women remain vulnerable to discriminatory practices, due largely to a lack of education and a high illiteracy rate despite the positive results achieved through the campaigns organised by the authorities, UNICEF and the private sector. Turkey needs to tackle these problems and implement existing legislation effectively. Enforcement of existing provisions on gender equality should be assisted by sound gender-segregated statistical indicators.

As regards institutional capacity, the Directorate General for the Status of Women suffers from a lack of staff. The Consultative Committee on Women's Status has not convened for a long period of time. The institutional framework needs to be strengthened and given a higher profile such that it can perform its tasks and the gender mainstreaming approach becomes effective.

- **Rights of the child**

The Turkish Criminal Code, the Criminal Procedure Code and the Child Protection Law of 2005 provide for the rights of the child. The Child Protection Law extended the competence of juvenile courts to cases relating to offences committed by children under the age of 18 years whereas

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29 This law has been amended by Law 5444 of 29 December 2005; reciprocity is kept also under the amendments.

30 ECtHR Case *Apostolidis and others v. Turkey*, Judgement, Application No 45628/99, 27 March 2007, paragraphs 72-78.
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previously the age limit was set at 15 years of age. This is in line with the UN Convention on the Rights of the Child. However, the Anti-Terror Law extends the scope of High Penal Courts to terrorist offences committed by minors.31

Despite efforts to implement existing legislation described in part II of the report, the issue of street children and child poverty remain significant. In 2005, ill-treatment of children in an orphanage of the Social Services and Child Protection Institution (SHCEK) in Malatya revealed the shortcomings of the child protection system in the country. Allocation of adequate resources remains critical for the successful implementation of Juvenile Courts throughout the country. The specialisation of judicial personnel needs to be pursued as well as that of personnel assigned to juvenile detention centres. Turkey needs to implement fully the UN Convention on the Rights of the Child and the Child Protection Law of 2005.

Procedural safeguards

• **Liberty and security**

Article 19 of the Constitution, the Criminal Procedure Code and the By-law on Arrest, Detention and Statement Taking provide for the right to liberty and security. It is welcome that Turkey respects the right of those arrested or detained to be brought promptly before a judge by providing strict time limits (48 hours / four days) at the constitutional level. Turkey has also provided for the right of habeas corpus during pre-trial detention and limited the period to a reasonable level of up to six months. In that context it is of utmost importance that extensions of pre-trial detention are carefully justified and can never be extended beyond the maximum period of two years. Furthermore, the health controls on detainees need to be conducted properly and the right to access to a lawyer safeguarded. The 2006 amendments to the anti-terror law reduce procedural safeguards for suspects of terrorist offences.

In terms of implementation of the legal framework, the notification to a relative of a detained person and the right of access to a lawyer are generally guaranteed in practice although not applied uniformly. Medical examinations of persons in police or gendarmerie custody comply with previous recommendations of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). However, their confidentiality and quality are not always ensured. Turkey needs to further work on the consistent implementation of the legal framework on liberty and security throughout the country.

• **Right to a fair trial**

Articles 36, 37, 38, 138, 139, 140, 141 and 142 of the Constitution and the relevant Codes regulating the establishment and functioning of the Courts provide for the right to a fair trial in Turkey. Trials are to be conducted in a reasonable time before independent and impartial tribunals established by law. Turkey has provided good precautions to uphold the presumption of innocence in criminal cases. It is positive that the accused is notified promptly of charges against him/her, can choose a lawyer and may examine witnesses against him/her; also, that free of charge interpretation is provided between Turkish and languages used by non-Turkish speaking citizens. Legal assistance is provided; however, parties are not able to choose their lawyer and the low level of fees paid by the state to lawyers might lead to a low quality of such assistance. It is difficult to assess the functioning of the Turkish legislation in practice due to the lack of statistical information about the number of cases in which legal assistance has been granted or its outcome.

31 Article 9 – Offences within the scope of this law shall be tried in Heavy Penal Courts mentioned in Article 250/1 of Law 5271 of December 2004 regarding the Criminal Procedure Code. Cases filed against minors above 15 years of age on account of such crimes shall be tried in these courts as well.
As regards implementation, a number of issues discussed under the Efficiency of the Judiciary may also have an impact on the individual right to fair trial. Furthermore, the rather new possibility to cross-examine witnesses of the prosecution is sometimes met by resistance from judges. Turkey needs to ensure that the right to defence is well accepted in its court-practice as an essential element of the right to a fair trial.

**Minority rights and cultural rights**

Article 10 of the Turkish Constitution guarantees the equality of all individuals irrespective of language, race, colour, gender, political opinion, philosophical belief, religion and sect, or any such considerations; it provides that the state shall ensure this equality in practice. According to the Turkish authorities, under the 1923 Treaty of Lausanne, minorities in Turkey consist exclusively of the non-Muslim religious communities of Jews, Armenians and Greeks. Without prejudice to this Treaty, the Turkish authorities consider Turkish citizens as individuals having equal rights before the law rather than individuals belonging to the majority or minorities. However, this approach that provides for full equality of all citizens should not prevent Turkey from granting specific rights to certain Turkish citizens on the basis of their ethnic origin, religion, language, so that they can preserve their identity. Turkey needs to ensure respect for and protection of the language, culture, freedom of association, assembly and expression, freedom of religion and effective participation in public life for all its citizens, irrespective of their background or origin, in accordance with European standards.

Turkey is party to the International Covenant on Civil and Political Rights (ICCPR) whose Article 27 provides that persons belonging to ethnic, religious or linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practise their own religion or to use their own language. However, Turkey has put a reservation to the Covenant which, among other things, aims to reduce the scope of Article 27 to the minorities recognised by the 1923 Treaty of Lausanne. Lastly, Turkey has not signed the COE Framework Convention for the Protection of National Minorities or the European Charter for Regional and Minority Languages.

The work of the OSCE High Commissioner on National Minorities (HCNM) has not been followed up yet despite a number of visits. This follow-up should include language issues, participation in public life and education for all citizens in the country irrespective of their background or origin. This would facilitate Turkey’s further alignment with international standards and best practice in EU Member States.

There are discriminatory provisions against Roma in the Law on Movements and Residence of Aliens. Roma experience discriminatory treatment in access to adequate housing, education, health and employment. There are forced evictions in the context of urban regeneration projects that have led to their displacement. The Greek minority continues to encounter problems related to education and property rights. The management of minority schools including the dual presidency is an open issue. With respect to the islands of Gökceada (Imvros) and Bozcaada (Tenedos), Turkey needs to provide detailed information on the protection of the rights of the Greek minority, in particular the right to property and the right to education, and ensure that these rights are respected according to European standards.

The permission granted to the two local TV and one radio channels in Diyarbakir and to one radio in Sanliurfa to broadcast in Kurdish is accompanied with time restrictions with the exception of

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32 Part of the reservation reads “The Republic of Turkey reserves the right to interpret and apply the provisions of Article 27 of the ICCPR in accordance with the relevant provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 1923 and its Appendices.” This reservation has been objected to by a number of EU Member States which considered that Turkey is under the international obligation to apply minority rights not only to the Lausanne minorities but to all its minorities.
films and music programmes. Public educational programmes teaching Kurdish languages are not allowed. The duration and scope of the Turkish Public Television TRT’s national broadcasts in locally used languages are limited. Currently, there are no possibilities in practice to learn Kurdish languages spoken in Turkey, because there are no private educational institutions providing such courses and children whose mother tongue is not Turkish cannot learn their mother tongue in the Turkish public school system. Furthermore, with the exception of the justice system, there are no measures taken to facilitate access to public services for those who do not speak Turkish.

**Measures against racism and xenophobia**

Article 10 of the Constitution, Articles 122 and 216 of the Criminal Code, and the Broadcasting Law of 1994 provide for a legal framework against racism and xenophobia. Apart from the above-mentioned legislation, there are no specific legal measures prohibiting discrimination on grounds of racial or ethnic origin outside the employment field. As regards implementation of legislation and in order to prepare for accession, Turkey should monitor and evaluate the implementation of its laws, including through the collection of data.

**The EU Fundamental Rights Agency**

The nature, extent and manner of Turkey's participation in the Agency's work will be decided by the EU-Turkey Association Council.

**Protection of personal data**

Turkey needs to ratify the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and its Additional Protocol. Also, Turkey needs to adopt a general law on the protection of personal data and, in that context, Turkey needs to set up a fully independent data-protection supervisory authority as a key component of the institutional framework for the enforcement of personal data protection rules.

### III.d EU CITIZENS RIGHTS

**Right to vote and stand as a candidate in elections to the European Parliament**

Upon accession Turkey needs to have adopted legislation that would allow EU citizens to vote and stand as candidates in elections to the European Parliament.

**Right to vote and stand as a candidate in municipal elections**

Upon accession Turkey needs to have adopted legislation that would allow EU citizens to vote and stand as candidates in municipal elections.

**Right to move and reside freely within the European Union**

Upon accession Turkey needs to have adopted legislation that would allow EU citizens to move and reside freely within Turkey.

**Diplomatic and consular protection**

Upon accession Turkey needs to have adopted legislation that would ensure for EU citizens access to diplomatic and consular protection as foreseen by the *acquis*.
IV. CONCLUSIONS AND RECOMMENDATIONS

In view of the above, in particular the findings presented in Part III, Turkey cannot be considered to be sufficiently prepared for negotiations on this chapter. Therefore, the Commission does not recommend at this stage the opening of accession negotiations with Turkey on chapter 23 – Judiciary and Fundamental Rights.

Specific gaps remain to be addressed in relation to the judiciary, anti-corruption and fundamental rights. In view of the current situation as assessed above, it is recommended that this chapter be opened for negotiations once the following benchmarks are met:

- Turkey provides the Commission with a Judicial Reform Strategy with a view to further strengthening the independence, impartiality and efficiency of the judiciary. The Strategy should outline concrete measures for ensuring the achievement of the objectives set. It should also include the timeframe for implementation of the measures together with the resources necessary and specify the bodies responsible for follow up and how their effective coordination will be ensured.

- Turkey provides the Commission with an Anti-corruption Strategy with a view to establishing an effective legal and institutional framework for further fighting corruption. The Strategy should outline concrete measures for ensuring the achievement of the objectives set and should include an analysis of the effectiveness of legislation on financing of political parties and election campaigns in addressing corruption. It should also include the timeframe for implementation of the measures together with the resources necessary and specify the bodies responsible for follow up and how their effective coordination will be ensured.

- Turkey provides the Commission with an Action Plan for the further implementation of legislation on fundamental rights with a view to achieving full observance of these rights in practice. The Action Plan should include measures that would ultimately secure the full respect of the rights and freedoms guaranteed under the ECHR and the case-law of the ECtHR including legislative measures, as necessary. Turkey should also provide evidence of a track record of progress on fundamental rights.

- Turkey establishes both an Ombudsman system and an independent, adequately resourced national human rights institution in accordance with relevant UN principles.

- Turkey revises its legislation on freedom of expression and on foundations in line with the ECHR and the case-law of the ECtHR.

- Turkey ratifies the Optional Protocol to the UN Convention against Torture (OPCAT).