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REPORT
BY MR ALVARO GIL-ROBLES, COMMISSIONER FOR HUMAN RIGHTS,

ON HIS VISIT TO TURKEY

11 - 12 June 2003

for the attention of the Committee of Ministers and the Parliamentary Assembly

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I. INTRODUCTION

In pursuance of Article 3 e) of Committee of Ministers Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, I visited the Republic of Turkey on 11 and 12 June 2003. I was accompanied by Mr Christos Giakoumopoulos, Director of my Office, Mr Markus Jaeger, Deputy to the Director, and Messrs Alexandre Guessel, John Dalhuisen and Gregory Mathieu, members of the Office.

During my visit I met, in addition to the Deputy Prime Minister and the Foreign Minister, the Minister of Justice, the President of the Constitutional Court, the Undersecretary of State for Foreign Affairs, the Chair of the National Assembly's Committee on Human Rights, the President of the Radio and Television Broadcasting Board (RTÜK) and the Representative of the United Nations High Commissioner for Refugees. I was also able to hold discussions with dignitaries and representatives of religious minorities, notably HH the Patriarch Bartholomeu I and the President of the Jewish community of Turkey. I should also like to thank the governmental and local authorities of the region of Diyarbakir for organising my visit to the city and enabling me to meet everyone I had asked to see. I should like to thank the Governor of the Region, the city's Mayor, the Chief of Police and the management of the prison service.

In addition to these contacts, I went to Istanbul where I met representatives of civil society and NGOs. I met the Chair of the Bar of Istanbul and also visited the premises of the Istanbul Centre for the Rehabilitation of Victims of Torture. Moreover, during my visit to Diyarbakir, I met representatives of civil society and NGOs in the region and the Chair of the city's Bar.

I should like to thank the authorities, and all those with whom I spoke, for agreeing to meet me, and for their cooperation and the spirit of openness in which our discussions took place.

II. GENERAL OBSERVATIONS

1. Turkey became a member of the Council of Europe on 9 August 1949, ratified the European Convention on Human Rights on 18 May 1954 and recognised the individual right of appeal on 28 January 1987 and the compulsory jurisdiction of the Court on 22 January 1990.

2. My official visit to Turkey in June 2003 was the third time I had travelled to the country since the beginning of my period in office as Commissioner. This visit was preceded by a first visit from 3 to 6 December 2001 on the invitation of the Turkish authorities.

3. That first contact, which took place just after the constitutional reform of 3 October 2001, enabled me to take note of the authorities' strong political commitment to improving respect for human rights in the country. However, the representatives of the many NGOs I met said they were very concerned about the difficult situation in

the country, in particular the continuing existence of significant restrictions on the effective exercise of certain civil, political and cultural rights. Those with whom I spoke also said that their relations with the state authorities were not ideal and that this made their activity still more difficult.

4. It was then that I suggested both to the authorities and the NGOs that a seminar should be organised as soon as possible to bring us together to discuss ways of improving their cooperation. This seminar on *The Role of Civil Society in the Consolidation of Modern Democracy* was held in Ankara on 6 and 7 May 2002 with the participation of representatives of the Government, government departments and NGOs.

5. The seminar underlined the progress that had recently been made in Turkey and the efforts the authorities had made to open constructive dialogue. It was further emphasised in the conclusions of the seminar[1] that "The widening of fundamental freedoms in the Constitution, the recent legislation on the press and political parties, the draft legislation on associations and demonstrations, and the creation of local Human Rights Councils and a central Advisory Council testify to this".

6. At the same time, it was clear that the reforms that had already been made and future reforms had above all to be properly applied, something which would require a great effort by society as a whole.

7. Since the new Government took office, the reform process has been speeded up and this encouraged me to visit Turkey again in order to assess the progress of the reforms and draft this report on the human rights issues I consider to be most significant in the country at present.

8. This report will deal, among other things, with the application of legislative reforms, the action of the law enforcement authorities, the situation of minorities and vulnerable groups, as well as cultural and social rights and trafficking in human beings.

III. PRINCIPAL REFORMS IN TURKEY AND THEIR IMPACT ON FUNDAMENTAL FREEDOMS

9. Since 2001 Turkey has undertaken a series of legislative reforms. At the time of my visit, five Acts amending various Acts had been passed and brought into force. These Acts, which are generally referred to as "harmonisation packages", contain amendments to both old and new legislation.

10. It is important to stress the scale of the legislative reforms in Turkey which have affected a high proportion of legislative texts, beginning with the Constitution. The reforms have been a response to a number of criticisms the Council of Europe has been making for many years and the authorities' will to act on those recommendations can only be welcomed. At the same time, those with whom I spoke in Turkey assured

[1] See CommDH (2002) 4

me of their determination to pursue the reforms, saying that Parliament would soon be passing the sixth and probably seventh packages, as it has recently done, in fact. I was informed that there would be further reform packages in the coming months. One cannot but welcome such commitment shown by the authorities. However, I consider the legislative amendments made, inspired by the wish to deepen the process of democratisation, to be only the very first steps in this direction since the most difficult part is still to come, namely the implementation of those reforms, and for this the Government cannot do without the assistance of civil society as a whole.

1. Freedom of expression and freedom of the press

a. Amendments to the Constitution

11. In this context, I should like to begin by dealing with the question of freedom of expression, since I believe it to be one of the main areas affected by the reforms. As was stressed by the European Court of Human Rights, freedom of expression constitutes one of the pillars of democratic societies and covers not only ideas that are welcomed or considered inoffensive but also those that are upsetting, shocking or worrying. Pluralism, tolerance and openness - necessary to democratic societies - demand it. (European Court of Human Rights, Handyside decision of 7 December 1976, A N° 24, par. 49).

12. Prior to the beginning of the reforms, the issue of freedom of expression gave rise to a great deal of criticism of the Turkish authorities by their European partners and international NGOs, as well as Turkish civil society. Indeed, prior to 2001, Turkish legislation placed severe restrictions on the possibilities for Turkish citizens to express themselves in the press and elsewhere on certain sensitive issues. This situation began to change in 2001 with the reform of the Constitution.

13. The reform of the Constitution, the significance of which cannot be overstated, came into force on 17 October 2001 and includes or amends 34 articles and the Preamble of the Constitution.

14. It is important to emphasise that the authors of the reform set the tone by amending the Constitution's Preamble. The fifth paragraph of the Preamble had included the stipulation that "no protection shall be afforded to thoughts or opinions contrary to Turkish national interests". It is true that this could be interpreted as limiting freedom of expression in general since it concerned such broad notions as thoughts and opinions. Furthermore the reference to Turkish national interests was very general and could simply be used as a pretext for introducing prohibitions. It is therefore in principle positive to see that this stipulation has been amended and that the reference to "thoughts and opinions" has been deleted and replaced by "activity" contrary to Turkish national interests. An activity is obviously more easily identifiable than an idea or opinion and this should inevitably strengthen the objectivity factor in assessing compliance with this part of the Constitution. However, the notion of "activity" still seems very broad, even taking into account the amended wording of Article 26.

15. The new wording of Article 26 of the Constitution expressly dealing with freedom of expression and thought amends the list of situations in which freedom of expression may be restricted. These changes can be interpreted in different ways. For example, according to some of the comments emanating from the authorities, the changes made to the list of such situations in Article 26 represent greater freedom of expression. In fact, such liberalisation is not entirely certain.

16. Prior to 17 October 2001, the wording stated that freedom of expression could be restricted for the purposes of preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting professional confidentiality or protecting the private and family life of private citizens and some other categories of persons. The new, amended Constitution reformulates some of the reasons in such a way as to make them more general. Freedom of expression may be restricted for the purposes of protecting national security and public order and safety, in addition to the previous reasons.

17. In itself, this amendment, which to a great extent takes up the terms of Article 10, paragraph 2, of the European Convention on Human Rights (ECHR), is unobjectionable. Nonetheless, it is essential that the legislature's implementation of these provisions should be directly inspired by and entirely compatible with the ECHR and the case-law of the European Court of Human Rights. In particular, the new stipulations in these provisions must not be understood as being more restrictive than those they have replaced; were this not the case, it would be regrettable for a reform whose principal aim was to introduce more democracy and more freedom in the exercise of fundamental rights.

18. Similarly, another amendment to Article 26 needs to be emphasised since it has led to other significant legislative amendments. The previous Article 3 prohibiting the use of languages proscribed by law has been deleted and this has opened the way towards the freer use of the languages traditionally spoken by Turkish populations in the exercise of freedom of expression and ideas. This is an extremely positive step. It is clear that this constitutional amendment has to be taken into account together with that of Article 28 of the Constitution, which has also abandoned any reference to proscribed languages with respect to freedom of the press.

19. Act No. 4777, which came into force on 31 December 2002, also significantly amended the Constitution. This reform has also contributed to strengthening freedom of expression since Article 76 of the Constitution has been amended. This article, on the conditions of eligibility of members of Parliament, had previously prohibited the election of anyone who had been involved in "ideological or anarchic acts". This latter reference has been replaced by "involvement in acts of terrorism", which changes the scope of the provision fundamentally.

b. Reform of the Criminal Code and the Anti-terrorism Act

20. Since the constitutional reform was passed, various reform packages have dealt with the issue of freedom of expression. The legislature has in particular sought to amend two articles of the Criminal Code and two articles of the Anti-terrorism Act which had been much criticised for having been used in the past to prosecute or imprison political opponents or people who had simply criticised government policy.

21. Some of these provisions have certainly been "softened" but the reforms may in some cases prove rather ambiguous and this contributes to the continuing feeling that the criminal-law provisions surrounding freedom of expression are still too repressive.

22. The first article that needs to be mentioned is Article 159 of the Criminal Code on offences against the state and threats to the indivisible unity of the Republic of Turkey. Much criticised by NGOs, as well as relevant professionals, this article has been amended by several of the reform packages. Thus the Act of 19 February 2002 (first reform package) reduced prison sentences (for example, the maximum sentence was reduced from six to three years) and abolished fines for criticising Turkish legislation.

23. The Act of 3 August 2002 (third reform package) amended the scope of the provision as follows: criticism of institutions no longer carries a penalty unless there is intent to "insult" or "denigrate" state institutions. Furthermore, by virtue of Act 4963 (seventh reform package) Article 159 was modified again. The new paragraph brings the precision that there will be no infraction when the insult or the denigration is committed without a criminal intent and is meant as a criticism.

24. This development is positive. It should be stressed that the very notion of "intent" in the Criminal Code, like the concepts "insult" and "denigration" are subject to interpretation and only practice will make it possible to assess the impact of this amendment. **This brings us to the crucial importance of the practical application and interpretation of this article – and, indeed, of all the reforms.**

25. The same considerations apply to Article 312 of the Criminal Code on incitement to hostility and hatred on the grounds of religious, ethnic, social or regional differences. The new Act (first reform package) has reduced the scope of this article by introducing the condition "that the incitement is of a kind likely to endanger public order". Here again, the effects of the provision will depend entirely on the interpretation the prosecuting authorities and the courts give to the concept of "public order".

26. This will also be the case for the Act introducing a new type of offence, namely insults which are "degrading for a section of the population and which are such that they constitute a violation of human dignity".

27. In addition to the Criminal Code, one Act in particular played an important role in the exercise of freedom of expression, namely the Anti-terrorism Act, certain provisions of which have frequently been invoked to restrict the exercise of freedom of expression, beginning with Section 8 on "separatist propaganda without incitement to violence". At the time this report was being drafted, we received confirmation of the complete repeal of Section 8 in the sixth reform package[2]. In accordance with Act 4928 (sixth reform package), the abrogation of Article 8 was accompanied by measures removing all penal consequences and restoring to the concerned parties the totality of their rights, as if they were never convicted. This is without any doubt an extremely positive development.

[2] Act No. 4928, Section 19, OG, 19 July 2003

28. The scope of Section 7 of the Anti-terrorism Act on "assistance to or propaganda on behalf of illegal organisations" has been reduced to acts of propaganda committed "in a form that encourages the use of terrorist methods".

29. This amendment is certainly very positive, although for some time it was not easy to implement in view of the very broad definition of terrorism. This situation has recently changed somewhat as the sixth reform package, which came into force on 19 July 2003, amended Section 1 of the Anti-terrorism Act which defines terrorism[3]. The definition of terrorism is still very broad and its interpretation will depend especially on the courts. Nevertheless, the importance of the spirit of the amended version of the Act should be stressed since it emphasises that terrorism comprises above all the use of force and violence.

c. Reform of the law on the press

30. It is also important to note that almost all of the successive reforms since October 2001 have amended the law on the press, with the intention, in principle, of liberalising the work of journalists. One advance in particular which we consider very significant will be cited here. This is Section 15 of the Act introducing provisions which now enable the press not to disclose sources of information, something that was impossible before. This reform reflecting the Turkish authorities' will to conform with the case-law of the European Court of Human Rights (Goodwin v. UK decision, 27 March 1996) is certainly a positive step. Here again, however, much will depend on how the new provisions are implemented.

d. Reform of radio and television broadcasting

31. I received many complaints about radio and television broadcasting in Turkey. I had the opportunity to raise a number of significant problems during my meeting with the members of the Radio and Television Broadcasting Board (RTÜK). The discussion mainly concerned the Board itself and the application of the recent reforms on broadcasting in Kurdish.

32. Until recently, the criticism of the RTÜK concentrated mainly on its broad interpretation of Article 4 of its terms of reference (under the 1994 Radio and Television Act). This article enabled it to impose fines and suspend broadcasting by companies which had transmitted programmes that violated the existence and independence of the Republic of Turkey or that constituted incitement to violence and hatred for racial, social or linguistic reasons. The number of warnings and suspensions imposed is indeed impressive: between the time when it was set up in 1994 and 2001 the RTÜK issued a total of 454 official warnings and imposed 272 days' suspension on national television channels, 49 warnings and 256 days' suspension on regional channels, 477 warnings and 2,766 days' suspension on local channels and 756 warnings and 12,904 days' suspension on radio stations.

[3] Act No. 4928, Section 20, OG, 19 July 2003

33. An initial reform of the 1994 Radio and Television Act introduced in 2001, despite being passed by Parliament, was not implemented because it was vetoed by the President. The same Bill was passed without amendment when it was submitted for the second time in May 2002 (Act No. 4786). The President then referred it to the Constitutional Court. The Court suspended two Sections of the Act pending final judgment, which has still not been handed down. The two Sections concern respectively the composition of the RTÜK and the holding of shares in private broadcasting companies.

34. The question of the composition of the RTÜK is an important one since it is to a great extent decisive for the Board's independence. Act No. 4796 provides for a total of nine members, five appointed by Parliament and four by the Cabinet on the proposal of the Administrative Board for Higher Education (2), the journalists' association (1) and the National Security Council (1). This composition has been criticised both for the control it gives the Government and the presence of a National Security Council candidate. Furthermore, it gives very little place to representatives of the media. It is, in any case, important for this problem to be resolved as quickly as possible, taking into account Council of Europe rules, since the present situation is producing considerable uncertainty and blocking important decisions, as the RTÜK members I met conceded.

35. The new legislation has not changed the conditions for imposing fines and suspensions. Some changes have, however, been introduced to increase the level of fines the RTÜK may impose by a factor of up to a thousand. The application of such fines may, moreover, have serious implications for the economic survival of the smaller broadcasting companies. This has not, however, prevented the RTÜK itself from welcoming the change, stressing the fact that the fines were previously too light to be effective and that, consequently, too many suspensions were ordered. During my meeting I was informed that the RTÜK had ordered penalties in only five cases since the reform (three for violation of the Constitution and two for technical reasons). All these penalties were subsequently upheld by the Administrative Court on appeal. In the first six months of 2003 there were 59 warnings and 11 suspensions. This does not represent a significant reduction in the number of penalties ordered. At least disproportionate fines do not seem to have been imposed. Nevertheless, it is important that the RTÜK's supervisory powers should be exercised in conformity with the recent reforms.

36. The other worrying issue was the implementation of reforms on radio broadcasting in languages other than Turkish. The fourth reform package had already introduced changes to enable the broadcasting of programmes in Kurdish on public television. Consequently, in November 2002 an RTÜK order was issued requiring the national radio and television company (TRT) to broadcast such programmes for four hours a week on television and two hours a week on radio. For the moment, no programme of this kind has as yet been produced. The RTÜK members I met insisted that this was mainly the result of inertia and the temporary lack of a director of the TRT. However, the TRT's decision to contest the lawfulness of the RTÜK order in court is evidence of serious reluctance to comply with this obligation.

37. Although compliance with the commitments of the state broadcasting companies should remain a priority, the changes submitted this summer in the sixth reform package are potentially more far-reaching. These reforms allow, subject to compliance with a number of strict conditions, the broadcasting of programmes in a language other than Turkish by private radio broadcasting companies. Monitoring of the broadcasting of programmes in "non-Turkish" languages is the responsibility of the RTÜK which now has to draw up regulations on the subject. Here again, it is imperative that the resultant RTÜK regulations on the monitoring of radio broadcasting in "non-Turkish" languages should reflect the spirit of these reforms.

e. Assessment of the impact of the reforms

38. As has already been noted, the authorities' commitment to carrying out reforms so important and necessary for bringing Turkey into line with the principles set forth and upheld by the Council of Europe, and by the European Union, is to be welcomed. Nonetheless, throughout my visit to Turkey, during meetings with the authorities and with representatives of civil society, I constantly repeated the fact that a good law is one that not only completely satisfies major principles, but above all one that is followed up and applied to the letter by everyone.

39. From this point of view, it has to be stated that it is still too early to assess the impact of the reforms on the exercise of freedom of expression and freedom of the press since the most important reforms have only just been passed and now need to be implemented. Implementation will in particular depend on effective action by the courts, the civil service, lawyers and, above all, prosecutors. It was for this reason that during my meeting with the Minister of Justice I emphasised the need for civil servants in his Ministry, as well as prosecutors, to implement the new legislative texts in accordance with their liberal, democratic spirit.

40. It is clear that Turkish prosecutors and judges enjoy independence in the performance of their duties, something that the Minister has stressed on numerous occasions. Nonetheless, during our discussions I emphasised the fact that there was absolutely no question of influencing or, still worse, directing representatives of the judiciary. On the contrary, it was important to explain the spirit of the new legislation clearly, providing advice and technical assistance to facilitate its broad and uniform implementation. I regard the Minister's role as crucial here. I also believe the role of training needs to be strengthened (see below).

41. Returning to the question of application of the reforms, it should be noted that, according to the information received, a number of legal proceedings have been brought on the basis of the revised legislation since the entry into force of the first legislative amendments. The case-law seems to suggest that there has been little consistency in the implementation of the changes. A number of cases have ended in acquittal, while other, similar cases have resulted in very heavy sentences.

42. In this context, even though, according to those with whom I spoke in Turkey, it is rather soon to assess the statistics relating to the reforms, it would seem that fewer offences have been reported under Articles 159 and 312 of the Criminal Code. Nevertheless, it would seem that a number of cases concerning freedom of expression are now being brought under Article 169 of the Criminal Code ("support for illegal

organisations"). During my meeting with NGO representatives in Istanbul, the latter informed me with considerable anxiety of a statement made a few days previously by a member of the Government, reassuring those with whom he was speaking that the repeal of Section 8 of the Anti-terrorism Act did not leave a legal vacuum since there remained other legal means of prosecuting trouble-makers, namely Articles 312 or 168 and 169 of the Criminal Code.

43. For my part, I noted the presence of a clear, precise and restrictive definition of Article 169 – helping members of armed bands by giving them shelter, provisions, ammunition, weapons and clothes – there also is a well established jurisprudence on the matter. Furthermore, with the recent amendment to Article 169 (seventh reform package), the part of the clause "and support by any other way their actions" was repealed. Article 169 cannot be used to restrict freedom of expression, all the more, the distinction between "act" and "opinion" is strictly maintained and was used again in the Anti-terrorism Act of which the "opinion" section disappeared with the repeal of Article 8. Indeed, I believe the reforms can be successful only if the authorities make clear and firm commitments as to the impossibility, when bringing charges, of replacing some amended articles by others that enable the prosecution of persons for practically the same acts and with the same force as before. The result of such "replacement" could, moreover, be intensified repression.

44. I must emphasise here that effective implementation of the legislative reforms does not depend only on the case-law of the higher courts or on the absence of final convictions. If prosecutors initiate proceedings leading to investigatory measures, searches or even temporary detention, freedom of expression will be affected even if there are no convictions.

45. The Minister of Justice should therefore see that the action of the prosecuting authorities does not result in judicial harassment that would compromise the effects of the legislative reforms in citizens' day-to-day lives.

46. Having spent a great deal of time listening to what the NGOs had to say about these problems, I expressed my fears on this matter directly to the Minister of Justice. He said the Government was determined to apply the reform. However, according to the Minister, it is more difficult to change attitudes than legislation; in other words, time and patience were required before the reforms could be entirely operational. There are at present more than 9,000 judges and prosecutors in Turkey, which means it will take some time for them to familiarise themselves with the new legislation. In this context, note should be taken of the Minister's assurance of his personal involvement in making the civil servants in his ministry aware of the full impact of the reform, including by sending explanatory circulars to judicial officials. The Minister also said he hoped civil society would give its backing to implementation of the reforms which, in his opinion, would require a responsible, measured attitude during the whole process which necessitates a period of learning.

47. In order to do this, civil society must be allowed to take free, organised action.

2. Freedom of association and peaceful assembly

48. The question of freedom of association is of crucial importance since it is absolutely essential to allow civil society to perform its role fully. Only by involving the representatives of Turkish civil society in an open, constructive dialogue will the government authorities be able to overcome the continuing distrust of the Government still felt by some associations. In view of the country's history and the difficulty associations still very recently had in conducting their activities normally, it is very important for the state to work towards establishing a spirit of co-operation and confidence with associations.

49. It is true that the legislative reforms comprising the "reform packages" in the last two years have had a considerable impact on freedom of association and assembly. According to some of the NGO representatives the Commissioner met during his visits to both Istanbul and Diyarbakir, the resulting progress seems for the time being to have been rather limited and does not yet fully guarantee this right as it should exist in a democratic society. At the same time, those with whom we spoke believe some progress is being made, and the beginnings of a positive trend are gradually being established, although many uncertainties remain.

50. First, therefore, the scope of the main reforms the Turkish authorities have introduced in this area will be reviewed. This will be followed by an initial assessment of current practice.

a. The law on associations

51. The main Act on the subject is undoubtedly the Associations Act (No. 2908). Although it has been very substantially amended, it clearly still contains numerous restrictions and is far from guaranteeing that the great many associations in Turkey will be able to conduct their activities without problem.

- Restrictions on the purpose of associations

52. Section 5 of the Act limits the purpose of associations considerably; the purposes they are not permitted to have include "to promote the idea that there are minorities in Turkey based on differences of class, race, language, religion or region or to create minorities by protecting, promoting, defending or propagating languages or cultures other than the Turkish language or culture". This means that, in principle, no association may be formed with the aim of protecting a culture other than Turkish culture or a language other than Turkish.

53. Until recently Section 6 also prohibited the use of any language other than Turkish, not only in writing - in statutes and written documents -, but also orally during private meetings of members of an association. Some of these restrictions were lifted in 2002 through amendment of Section 6 under which associations are now required to use Turkish only in their official work. This is a significant step forward that will facilitate the day-to-day work of many associations, especially in regions where traditional regional languages are still widely spoken, particularly in the south-east of the country.

54. Nevertheless, some restrictions on freedom of association remain. For example, Section 38 on student associations, although slightly amended by the second package, continues to limit the activities of student associations to a few narrowly defined areas (education, teaching, employment, physical and psychological health, etc). It is a pity that by setting out in detail the activities students are permitted to engage in, the authorities give the impression of wishing to restrict the activities of groups that are traditionally very active. As I noted during one of my discussions in Istanbul, it seems to me that any hint of prohibition simply provokes a contrary reaction, above all where young people with their eternal rebelliousness are concerned, whereas even the implicit elimination of all prohibitions would definitely create more confidence.

55. Furthermore, at the same time I cannot fail to stress that there is also a positive trend here, since Section 39 of the same Act has been amended to lift the ban on civil servants forming associations outside the strict field of their activity.

56. However, apart from the liberalisation with respect to the actual purpose of associations called for by Turkey's European partners for many years, serious criticisms have repeatedly been made of the obstacles that used to prevent the participation of Turkish associations in international activities, as well as the work of so-called international NGOs in Turkey. These criticisms have been taken into account and amendments made to Turkish legislation which had been very restrictive in this respect.

- Reforms liberalising associations' international activities

57. Until very recently, Turkish associations were not able to be members of other international organisations or take part in international activities without obtaining prior authorisation from the Cabinet upon referral by the Minister of the Interior and after the Foreign Minister had given his or her opinion. If permission was not granted, the association could be dissolved immediately. Such severity was surprising, alarming even.

58. European societies have for decades understood that associations are an asset and a benefit to government and to every citizen. The diversity of the fields in which they are active and their accessibility to the great majority of the population whether at national, regional or local level have become an important factor in community life, which is constantly developing across geographic and linguistic borders, every day bringing us closer together in a new, free, welcoming European society enriched by differences and particularities. To require in this day and age that the international co-operation of associations should be subject to cabinet authorisation, following the involvement of two senior government ministers was, to say the least, unreasonable. This is why reform was essential here.

59. The Act of 11 January 2003 lifted a number of restrictions and Turkish associations may now take part in international activities and be members of international organisations in order to achieve the aims set out in their statutes without the need for authorisation.

60. The same prior permission procedure was imposed on associations with a headquarters abroad that wanted to open an office in Turkey. Amnesty International, for example, only obtained permission to establish a section in Turkey in March 2002 after having been refused permission many times. However, this field has been only partially liberalised, as the Act of 11 January 2003, while eliminating the need for Cabinet permission, has left untouched the need to obtain the authorisation of the Minister of the Interior, after consultation of the Foreign Minister.

61. It should also be noted that, although amended, Section 11 of Act No. 2908 contains provisions which can be interpreted as restricting freedom of contact with foreign associations. Paragraph 3 of this Section as amended states: "if the foreign associations or the organisations of which Turkish associations are members or in the activities of which they take part are contrary to our laws or national interests, the relations between the association established in Turkey and such associations or organisations shall be ended by decision of the Cabinet on the proposal of the Ministry of the Interior, after consulting the Foreign Ministry". Here again, while it is perfectly legitimate to dissolve an association whose activity is contrary to the law or to prohibit contact with such associations, the reference to activities "contrary to … our interests" is open to dispute since it is purely subjective and therefore open to abuse. Furthermore, the fact that the prohibition is imposed by a political rather than a judicial body is equally open to criticism. For this reason, it would be desirable for this legislation to be further liberalised.

62. Moreover, a number of human rights-related NGOs told me that the statutory prohibition on receiving funds from abroad without the prior authorisation of the Minister of the Interior remained in force. We all know that the defence of human rights is an activity that unfortunately often requires a degree of international financial solidarity, and that there must be complete transparency as to the source and the use of such funds. While it is understandable that the authorities should have a duty to protect the security of their fellow-citizens, including by monitoring funds coming into the country, there are ways of doing this that limit as far as possible the inconvenience that may result for the parties concerned, which leads the Commissioner to call on the Turkish authorities to demonstrate greater receptiveness, openness and understanding in their work with associations, including in the financial field.

- Restrictions on the right to form an association

63. The first paragraph of Article 33 of the Turkish Constitution guarantees the right to form an association in the following way: "Every person is free to found an association without prior permission, and to join or to leave it"

64. My conversations with the representatives of Turkish NGOs gave me the impression that, despite the absence of prior permission, there was still a very cumbersome system of registration. For example, under Section 10 of the Act, the statutes of associations applying for registration have to be examined either by the local governor within 30 days (in the case of local associations), or by the Minister of the Interior within 90 days (in the case of associations that are national in scope). Being familiar with the registration system for associations in the great majority of European countries, it has to be said that these periods are too long. Furthermore,

what seems most problematic is that the Act makes no provision for any appeal in the event of failure to comply with those periods and in practice the authorities may be tempted to take advantage of this by not replying for several months and carrying out investigations, thus putting pressure on the members of the associations. Here again, the way in which the reform is implemented will be decisive and we can only encourage the relevant authorities to follow the spirit of the new legislation to the letter.

65. The last remark leads us to the issue of the competent authorities with respect to associations and their work.

- Supervision of associations by the authorities

66. First, it is important to note a positive change in the perception of associations by the Turkish authorities which has been reflected in the establishment of an Associations Department in the Ministry of the Interior responsible, not only for keeping the Register of Associations, but also for being the principal contact for associations, whereas previously the Security Directorate was responsible for these issues. These legislative amendments were contained in the third package of reforms in respect of Section 15 of the Associations Act.

67. Nevertheless, the general feeling of many of those with whom I spoke was that, despite the importance of the Act of 11 January 2003 which introduced a legal guarantee vis-à-vis associations' activities, the Government still had excessive powers of control over them; these powers went some way to explaining civil society's general distrust of the authorities and the difficulties encountered in developing a genuine spirit of co-operation.

68. For example, until very recently the authorities had a veritable power of censorship since associations were required to submit their public pronouncements, pamphlets and any other publications to the local prosecutor and to the Governor's representative before they were disseminated, something which could only be done in the press after 24 hours had elapsed.

69. The Act of 11 January 2003 radically changed this situation by providing that in the future, monitoring by local authorities of association activities would take place retrospectively and not beforehand, and that such monitoring would be done under the authority of the judiciary. If an association's statements or publications which had already been made public prove to be contrary to the fundamental principles of the Republic or of a kind to threaten the internal or external security of the state, its territorial or national unity, or if they denigrate the person, principles or work of Atatürk, they may be confiscated on the order of the highest local representatives of the Government. The latter are then required to inform the judge of the court of first instance of their decision within 24 hours. The judge will examine the measure and take a decision within a maximum of 48 hours. If the judge has not made a decision by the time 48 hours have elapsed, the decision of the administrative authorities must be considered null and void.

70. While such regrettable acts are clearly on the decline, the seizure of editions of newspapers and other written works has been and remains quite frequent. Supervision of the administrative decision by the judiciary is therefore an important guarantee of respect for associations' freedom of expression. But, here again, we have to repeat ourselves for the nth time since we have already said with respect to other reforms and will surely say again more than once in this report, that the impact of this amendment will depend entirely on how the new legislation is implemented in practice and, above all, on the attitude and commitment of judges and prosecutors.

71. At the same time, other provisions of the Act, which have not been amended, remain very harsh and demonstrate that freedom of expression is still one that is precarious and controlled in Turkey. The authorities still have significant discretionary powers to monitor and inspect associations.

72. For example, all administrative premises, buildings and annexes, all books, accounts and activities of associations are subject to inspection by the Ministry of the Interior at any time. In the course of such inspections, the president or any member of the board may be relieved of his or her duties if he or she refuses to allow a safe or cashbox to be checked, to reply to questions or allow access to the head office, or falsifies a document.

73. Furthermore, the police have the right to intervene and search an association suspected of possessing propaganda, whether written or visual, proscribed by law, at any time and without the prior authorisation of a judge.

74. Lastly, under Section 54, the Governor has very broad powers to suspend the activity of an association by invoking public order, a concept that could be open to various interpretations.

75. It must be stressed that Article 9 of Act 2559 on the Duties and Competences of the Police, amended by Act 4771, presently foresees an *ex ante* judiciary control and that, even during emergencies, when the delay could lead to serious consequences, a written order by relevant authorities would be needed beforehand. Moreover, this measure is in perfect accordance with Article 97 of the Penal Procedure's Code that states *expressis verbis* that the competent authority for searches is the judge.

b. *The situation of human rights organisation in Turkey*

76. Since becoming Commissioner, I have met representatives of Turkish NGOs on many occasions, in Turkey and Strasbourg and at international forums. I have always felt that the NGOs had a profound commitment to supporting the reforms and the people introducing them. I was therefore very pleased this time, a year on from our Ankara seminar, to hear from those with whom I spoke in Istanbul that a slight breeze of change was blowing through their country. Such a statement is obviously significant bearing in mind our extremely meticulous and demanding standards. However, I had the impression that many problems remained, despite the fact that the trend was positive.

77. It seems, for example, that many human rights associations are encountering difficulties in conducting their activities and that this is the case in Istanbul, Ankara and other regions of this large country.

78. Furthermore, some civil society organisations working on sensitive issues complain of veritable harassment by the authorities in the form of close surveillance, confiscation of materials, illegal searches and smear campaigns in the official media. According to those with whom we spoke, it is still common practice to use the judicial system to punish defenders of human rights.

79. One example of this is the sentencing by the Criminal Court on 6 June 2002 of two members of the Human Rights Foundation of Turkey to a year's imprisonment for having criticised the living conditions of detainees in type F prisons. Mr Sezgin Tanrikulu, a representative of the Centre for the Treatment and Rehabilitation of the Victims of Torture in Diyarbakir, whom I had the pleasure of meeting personally during my visit to the city, has been prosecuted for the possession of illegal documents and opening a centre without prior permission[4]. Mr Osman Baydemir, former Vice-President of the Human Rights Association (IHD), has been the subject of 144 prosecutions, 36 of which are still being investigated. These are only a few examples of the cases reported to me. I believe that the time has come for the Government's general attitude to NGOs to change, something that is advocated by the reforms under way. Such a change in the relations between state and civil society should be reflected in more confidence, more thorough co-operation and mutual respect. All this would mean the reforms – which all sections of society want and hope for – had been truly successful.

c. The status of political parties

80. The recent democratic reforms in Turkey have also concerned the liberalisation of the specific regulations governing the functioning of political parties. This area, which has often been criticised by Turkish civil society and Turkey's European partners, required legislation because the Political Parties Act (No. 2820) currently in force dates from 1983 and was therefore passed during the period when freedoms were restricted. This legislation, the spirit and letter of which reflected a wish to limit political activity in Turkey, needed to be amended in order to keep up with the democratisation of political life that began some years ago.

81. One of the most important issues requiring attention was undoubtedly the banning and dissolution of political parties, something that has not been uncommon in Turkish political life. In fact, the dissolution by the Constitutional Court of political parties considered dangerous on the grounds of the opinions they expressed used to be common practice in Turkey. This measure is provided for in Section 101 of Act No. 2820 on political parties.

[4] Mr Tankrikulu was found not guilty of the charge of opening a centre without permission in a decision of the Criminal Court of Peace on 19 April 2002, but proceedings concerning the charge of possessing illegal documents are still pending before the First Instance Criminal Court

82. Generally speaking, most of the parties banned were either religious parties that challenged the secular nature of the Republic, pro-Kurdish parties accused of threatening the unity of the nation and the integrity of the territory or parties advocating Marxist ideology.

83. For example, the Unified Communist Party and the ÖZDEP were dissolved in the 1990s shortly after being set up simply on the grounds of their political programmes. The Socialist Party was dissolved because of certain statements made by its Chair.

84. The DEP, the leaders of which are still in prison but whose trial has just been reopened following a judgment of the European Court of Human Rights, was dissolved because of its pro-Kurdish links. Recently too, the Kurdish HADEP party was dissolved by a decision of the Constitutional Court dated 13 March 2003 for alleged relations with an illegal organisation.

85. In principle, the dissolution of a political party resulted in its leaders being banned from holding similar positions in any political party for five years and the transfer of all the party's property to the Treasury.

86. The European Court of Human Rights has in several cases found against Turkey for violation of Article 11 of the Convention, considering that such measures constituted disproportionate interference and were not in response to a pressing social need necessary in a democratic society. It should however be noted that in the judgment in *Refah Partisi*[5] *(the Welfare Party) v. Turkey*, 13 February 2003, the Court concluded that there had been no violation of the Convention, considering the dissolution of this party justified on the grounds of the threat it posed to democracy by advocating the establishment of a system based on the Sharia and not excluding the use of force in order to achieve it.

87. New amendments to the Constitution that entered into force on 17 October 2001 introduced, among other things, a principle of proportionality and the possibility of imposing penalties less harsh than dissolution in the event of violation of the permitted limits to political activity under Article 68, paragraph 4, of the Constitution[6]. The aim of this amendment is to avoid the automatic dissolution of a political party solely on the basis of non-violent speeches or political programmes.

88. Section 101 of the Political Parties Act has therefore been amended so that the Constitutional Court may now deprive a political party of financial assistance rather than dissolve it.

89. The Act of 11 January 2003 supplemented this mechanism. It enables the Constitutional Court to issue a warning to a political party which is exceeding the limits placed on political activity. If the violation does not end within six months of the warning being issued, the Principal State Prosecutor may then apply to the

[5] *Refah Partisi (the Welfare Party) and Others v. Turkey*, 13 February 2003

[6] "The statutes and programmes, as well as the activities of political parties shall not be in conflict with the independence of the state, its indivisible integrity with its territory and nation, human rights, the principles of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular republic …"

Constitutional Court *ex officio* to deprive the party of part or all of state assistance. The Act also makes provision for the representatives of the party concerned to appeal against the Prosecutor's decision.

90. The Act also lays down that a three-fifths majority is now required in order for the judges of the Constitutional Court to order the dissolution of a political party.

91. All these changes are of course very positive and are further steps along the path towards democratisation. Here again, however, it is very important that they should now be implemented. In this connection, my meeting with the President of the Constitutional Court of Turkey, Mr Mustafa Bumine, was very informative. The Constitutional Court is the supreme authority that may decide whether or not to dissolve a political party, which is why the information provided by its President is particularly important.

92. During our conversation we discussed the criteria that might lead to the dissolution of a political party. I was able to take this opportunity to share some of my concerns with Mr Bumine. For example, I told him that while it has to be possible in a democratic society to dissolve a political party that has become the instrument of a terrorist group, such a measure should be used to punish acts and not ideas[7]. The legislation currently in force in Turkey allows dissolution for the ideas expressed and promoted.

93. The President of the Court replied that the present Act dated from 1983, that the situation in Turkey had changed completely since then and that it was this that had led the Act to be reformed, but that the work was far from over since the Act still lagged behind the Constitution and this situation needed to be remedied either by Parliament or by the Constitutional Court itself. Indeed a case was now pending before the Constitutional Court in which a party had invoked the unconstitutionality of certain Sections of Act No. 2820, in particular Sections 101, 102 and 103[8]. Although the Court had yet to hand down its judgment, there was a significant indication that the attitude of the Turkish legal profession had changed. It seems that the Principal State Prosecutor took the same line as the applicant, which is highly significant and may signal a very important decision by the Court. We shall await this decision in the hope of seeing the pace of democratic reform quickened.

3. Religious freedom

94. Freedom of conscience and religious belief are guaranteed under Article 24 of the Turkish Constitution. The Preamble and Article 174 of the Constitution set out the principle of the secular nature of the Republic.

95. The religious homogeneity of the Turkish population is remarkable, 98% being Muslim. The rest of the population is composed of Armenians, Greek Orthodox and Jews (religious minorities protected by the Lausanne Treaty of 1923), as well as

[7] In the same line of thought, see the European Commission for Democracy through Law's (Venice Commission) guidelines on banning and dissolution of political parties, (CDL-INF (2000)1)

[8] Sections 101, 102 and 103 of Act No. 2820 set out the conditions for suspension of state financial aid to a political party as well as the conditions under which the Principal State Prosecutor may ask the Constitutional Court for dissolution of a political party

Catholics, Protestants, Syriacs, Bulgarian and Arab Orthodox and Assyro-Chaldeans. According to the Special Rapporteur of the United Nations Commission of Human Rights on the elimination of all forms of intolerance and discrimination based on religious beliefs (Abdelfattah Amor Report of 11 August 2000, A/55/280 Add. 1), there are at present 93,500 Armenians, 26,114 Jews, 3,270 Greek Orthodox, 17,200 Syriacs and 5,628 others (Catholics, Protestants and Arab and Bulgarian Orthodox) in Turkey.

96. While religious freedom is broadly recognised in the basic laws of the Republic and international treaties, a number of problems remain, in particular in relation to the property of religious institutions. These institutions, most of which acquired legal personality in 1936, have encountered problems in managing and freely disposing of their property and in acquiring new real estate. Furthermore, a large number of properties belonging to parishes, which do not have legal personality, have been recorded in the land registry without indicating the owner, while others formerly belonged to minority religious associations which have been dissolved for lack of sufficient numbers. These properties have been regarded as abandoned and have passed to the State. With respect to the Greek Orthodox minority in particular, whose numbers have fallen from more than 100,000 in the early 20th century to fewer than 4,000 today, the fact that the Patriarchate of Istanbul does not have legal personality and that members of the clergy may not be members of minority associations or their boards has resulted in the community being dispossessed of a large number of properties in Istanbul and elsewhere.

97. The authorities are aware of this situation and have tried to resolve the problem. The Act of 2 August 2002 recognised the right of religious foundations (vakifs) to acquire and manage property used for religious, philanthropic, community, educational or hospital purposes, with the permission of the Council of Ministers after opinion of the General Directorate of Vakifs. The Act also enables the foundations in question to register the property they possess within six months in order to acquire the right to dispose of it and acquire other property. As this period proved to be too short, it was extended first of all for a further six months on 11 January 2003 and again, this time by 18 months (as of the 9th August 2002), on 19 July 2003. It should however be pointed out that this mechanism is not retroactive and does not cover property which belonged to religious establishments or parishes and passed into state ownership before 2002 as abandoned property.

98. Furthermore, implementation of the new Act seems to pose certain problems. I was told that, in many cases, the authorities were refusing to register property still in the possession of religious establishments and that decisions were therefore being taken resulting in the definitive dispossession of the parties concerned. This seems, among other things, to be due to the fact that the implementing regulations provide, firstly, for an exhaustive list of the foundations able to benefit from the new legislation and, secondly, that only property strictly connected with the religious or social duties of those foundations may be registered, any other property being excluded. It would seem to run counter to the wish of the legislature if these establishments were to be deprived of their property by too formalistic an implementation of the Act whose purpose is precisely to recognise their rights.

99. The issue of the legal personality of religious communities remains worrying, in particular with respect to communities which are not protected by the Treaty of Lausanne. The situation of the Catholic community is still especially precarious, despite the establishment of diplomatic relations with the Holy See in 1960. With respect to the Protestant communities, problems concerning the functioning of places of worship are referred to in the above-mentioned report of the United Nations Special Rapporteur. It is to be hoped that the recent legislative amendment of July 2003 (sixth package), which allows for the construction of places of worship other than mosques and abolishes the requirement for prior authorisation by the local mufti, will enable these difficulties to be resolved.

100. Lastly, the issue of the training of clergy in general and the Greek Orthodox clergy in particular remains problematic since the theological college of Heybeliada (Halki) has been closed since 1971. It is crucial to find a solution to this problem by allowing the college to function with an appropriate status. Quite apart from the issues of religious freedom and educational freedom raised by the prolonged closure of the college, by preventing the training of Orthodox clergy of Turkish nationality the very survival of this religious minority is at stake.

4. Trade union freedom

101. Trade union freedom is very important for a democratic society in that it enables the collective expression of the interests of workers in an on-going peaceful dialogue with employers and government. It is true that union freedom was severely limited for many years, something which must change to bring Turkey into line with European standards.

102. This process has begun, albeit tentatively. For example, an Act passed in August 2002 repealed the provisions that had for ten years banned strikes, lock-outs and mediation in the free zones.

103. Nevertheless, it is not yet possible to speak of fully acquired trade union freedom, and social dialogue remains extremely limited.

104. In the private sector, this situation is apparently explained by the fact that a certain threshold is required for the formation of a trade union section and the requirement to reach a representational threshold of 10% in order to engage in collective bargaining at company level. Thus, as yet, only a very small proportion of the work force is covered by collective agreements (estimated at less than 15%).

105. In the public sector, the regular 2002 European Union report considered that the Act on civil service unions passed in 2001 did not comply with Community standards or with the ILO conventions ratified by Turkey. The Act contains a number of restrictions on the right to organise in the public sector and restrictive provisions excluding the right to strike and the right to collective bargaining.

106. Furthermore, during our meeting with the representatives of civil society we were informed that the civil servants who in December 2000 took part in an unauthorised strike in order to obtain the right to strike and organise collective bargaining had been prosecuted. This is extremely worrying.

107. The progress that has been made in this field should be noted, however. For example, the Economic and Social Council was established by a 2001 Act in order to involve all social partners in planning employment policy. But, according to the information at our disposal, this Council has yet to meet at national level, which is an indication of the difficulty of consulting the various social partners. The composition of the Council suggests that it suffers from a number of structural flaws - the most serious of which is the dominant position of the Government - which compromise its usefulness. Everything must be done to see that the Council actually functions.

IV. THE ACTION OF THE LAW ENFORCEMENT AGENCIES AND THE FUNCTIONING OF THE PRISON SYSTEM

108. Since 1996 more than 40 judgments of the European Court of Human Rights have been referred to the Committee of Ministers of the Council of Europe concerning violations of Articles 2, 3, 5, 6 and 8 of the Convention and Article 1 of the First Protocol. The facts giving rise to these violations and referred to in the judgments resulted, *inter alia*, from the unjustified destruction of houses by the security forces, disappearances, torture and ill-treatment in police custody and unlawful killings.

109. A positive trend was, however, noted in Interim Resolution ResDH(2002)98 of the Committee of Ministers[9] which noted that Turkey had pursued and enhanced its reform process with a view to ensuring that its security forces and other law enforcement authorities respect the Convention in all circumstances and thus prevent new violations.

110. As part of these efforts, it is very important to emphasise that the state of emergency declared many years ago in the south-east of the country, which gave the security forces great powers at the same time as suspending the exercise of certain fundamental freedoms in those areas, was lifted on 30 July 2002 in the districts of Tunceli and Hakkâri and on 30 November 2002 in the districts of Diyarbakir and Sirnak. As a consequence of this, Turkey has withdrawn its exception to Article 5 of the Convention in those districts.

111. An event quite rare in administrative practice should be mentioned: on 16 January 2003 the Minister of the Interior sent a circular to all provincial Governors and the Central Command of the Gendarmerie calling for compliance in practice with the Convention and Turkish legislation as recently amended in order that the right to life and the proscription of torture and ill-treatment should effectively be guaranteed in daily practice. Such speedy and direct action undoubtedly bears witness to the importance the present Government attaches to normalising the situation concerning respect for human rights.

112. However, despite the undoubted advances that have been made, serious problems remain that require speedy resolution.

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[9] IntRes DH(2002)98 Action of the security forces in Turkey: progress achieved and outstanding problems

1. Ill treatment and torture in police custody

113. The constitutional and legislative reforms which began two years ago in Turkey have introduced many changes in the area of police action and particularly with regard to the procedure on police custody. Previously, such issues were the subject of numerous criticisms addressed to the authorities by representatives of the international community, the Council of Europe and non-governmental organisations. The scope of the recent reforms therefore needs to be analysed, particularly since their implementation was one of the central subjects of discussion during the Commissioner's visit.

a. Duration of police custody and the conditions of being taken into police custody

114. On 17 October 2001 an amendment to the Constitution reduced the maximum period during which a person could be kept in police custody without appearing before a judge. An important restriction was, however, maintained: *"These periods may be extended during a state of emergency, under martial law or in time of war"*. It is interesting to note that this constitutional reform seemed so important to the authorities that two circulars, one from the Ministry of the Interior, the other from the Ministry of Justice, were issued to notify the persons concerned that the constitutional provisions were to be applied without waiting for the transposing legislation to be passed, which is significant.

115. From the outset of the harmonisation reforms concrete steps were taken to amend the conditions of police custody. Act No. 4744, which came into force on 19 February 2002, provides that persons suspected of group offences that fall within the jurisdiction of the State Security Courts may be held for a maximum of four days instead of the previous seven. In regions where a state of emergency has been declared the period may be extended to seven days (instead of ten previously) where applied for by a public prosecutor and ordered by a judge[10]. The person in custody must appear before the judge before the latter hands down his or her decision.

116. The major problem with regard to the excessive length of police custody remained, however, inherent in the provisions of Article 3 (c) of the Decree of 15 December 1990. Under this article, in regions where a state of emergency had been declared the public prosecutor could (on the proposal of the Governor of the region) ask a judge to order a person already on remand or imprisoned to be returned to police or gendarme custody for a maximum period of ten days, renewable several times. Police custody could therefore last for as long as 30 or 40 days.

117. The Act of 11 January 2003 amended this Article. The maximum period of police custody in these circumstances has been reduced to seven days. Furthermore, the prisoner must appear before a judge before any decision is made. The Act also provides that the person shall continue to enjoy all the rights connected with his or her status as a prisoner and that a medical certificate on his or her state of health shall be issued every time he or she leaves or returns to prison. However, it seems that the Act

[10] It should be noted that under ordinary law a suspect may be kept in police custody for a maximum of 48 hours

does not limit the possibility of renewing periods in police custody. Is there not therefore a danger that periods in police custody will be renewed indefinitely? Even if, in practice, it is not a topical question because the State of emergency has been lifted, ideally, the legislature should provide a clear and definite answer to this question in order to prevent endless renewals.

118. Another important issue was dealt with as part of the reforms. At the outset of the harmonisation reforms, Section 16-4 of the Act governing procedure before the State Security Courts (SSC Act) was amended to allow persons access to a lawyer after they had been in custody for 48 hours. This represented some progress, although 48 hours was still far too long and was a departure from common European standards. The situation remained unsatisfactory. It was only when the fourth harmonisation package was passed that the situation really began to improve as Section 16 of the SSC Act was then amended to allow detained persons immediate access to a lawyer, thus transforming Article 135 of the Turkish Code of Criminal Procedure into an ordinary law article no longer subject to any exceptions. Furthermore, Act 4928 of 15 July 2003 (sixth reform package) removed restrictions of the procedural rights that existed by virtue of Article 31 of Act 3842, pertaining to procedures relevant to Courts and State Security.

119. These legislative progresses nonetheless need to be reflected in actual practice. During my visit to Diyarbakir I met detainees in a prison for so-called political prisoners and visited two police stations, including the Central Police Station and its remand centre. I understood from my conversations with the detainees during my visit to the prison and with staff that, despite the new possibilities offered by the law, far too many people do not obtain the assistance of a lawyer. There are a number of reasons for this – some simply do not know that they have the right, others fear a possibly violent reaction on the part of the police if they ask to see a lawyer. Furthermore, there seem to be too few lawyers, while legal aid seems to be virtually non-existent. One of the people I met during my visit to the prison who had received a very long custodial sentence and, despite his youth, had already spent more than ten years in prison, complained of the lack of proper legal assistance during his trial which meant he had been unable to defend himself. This simply underlines the importance of the role of lawyers and means that their presence and action need to be enhanced, something that requires massive state intervention to increase aid to the Bar.

120. Another issue intimately connected with police custody procedure needs to be raised here, namely the need to inform the family or friends of people in police custody that they have been detained. In the past, there were many reports of cases where people arrested by the security forces had disappeared. This situation could not be allowed to continue in a country governed by the rule of law.

121. Furthermore, the European Court of Human Rights has on numerous occasions found Turkey responsible for violations of human rights in connection with the disappearance of persons following their arrest by the security forces[11]. Generally in this type of unacceptable situation the Court finds there has been a violation of Article 3 (inhuman or degrading treatment) in that the silence of the Turkish authorities in the

[11] Cf. the most recent judgment, *H.K. and Others v. Turkey*, 14 January 2003

face of the genuine concerns of the families of disappeared persons constitutes treatment of the families of such gravity as to be qualified inhuman, as well as a violation of Article 2 (the right to life) in that the authorities have conducted no effective investigation into the fate of persons who have disappeared in circumstances that placed their lives at risk.

122. The authorities wished to put a stop to this very serious situation. Since the Act of 19 February 2002 amending the Code of Criminal Procedure the restrictions on informing the families of detainees have been lifted. The relatives of a person in custody or any other person he or she names now have to be informed of the arrest or continuing remand in custody "without delay" and "by decision of the public prosecutor".

123. However, this provision is still not always complied with. It is therefore necessary to ensure effective implementation of the reform. Furthermore, we were told by some of the people representing civil society with whom we spoke that there was a need to ensure that the detention registers required by the regulations governing arrest, police custody and questioning were more scrupulously kept. In particular, the detention register should take the form of a bound volume with numbered pages in order to avoid their being tampered with. This would undoubtedly be a positive step for the success of the reform.

b. What happens during police custody

124. What happens during police custody remains worrying, according to the NGO representatives the Commissioner met in Istanbul, Diyarbakir and Ankara. Indeed it would seem that it is above all during this period that there have been serious problems with respect to degrading treatment of detainees and even torture. Such behaviour is unacceptable and must be eradicated.

125. It should be noted that since the beginning of the reforms the highest authorities in the country have on several occasions declared their firm intention to take action against any form of torture. Several pieces of legislation have amended existing legislation in order to provide strong barriers to any excesses. Some problems seem to remain, however. Firstly, the legislation and regulations still require fine-tuning and, secondly, what seems by far the more important aspect, the attitude and behaviour of police officers have to change in order for the legal prohibition of torture to be reflected in practice.

126. Such change is essential and requires resolute action by the Government to influence the behaviour of its officials. They have to be educated, made aware and, if necessary, punished, because torture is inhuman and degrading for the victim, but also for the person who inflicts it, not to say the torturer.

127. It is true that the authorities have worked to improve the situation. For example, various circulars sent by the Prime Minister[12] and the Minister of the Interior[13] have reminded all members of the security forces that torture and ill-treatment are prohibited, as are any abuse of power or disproportionate use of force.

[12] Circular from the Prime Minister to Governors and Sub-governors, 25 June 1999
[13] Circulars from the Minister of the Interior, 20 December 1999 and 24 July 2001

These circulars also drew the attention of Governors and Sub-governors to the possibility of inspections of police or gendarmerie stations without notice at any time.

128. In the meantime, there is a need to examine what can be done to help eliminate such behaviour. From this point of view, it has to be observed that in order to combat all acts of torture in police custody the system for the medical examination of detainees must first of all be improved.

129. Medical examination is required by law during police custody but the procedure has been the subject of much criticism because of the way in which it takes place, one of the most criticised aspects being the virtually obligatory presence of security officers during medical examinations. During its visit to Diyarbakir, the CPT questioned a great many prisoners about this[14]. Some of them said they had been advised not to make any complaint to the doctor about the way they had been treated in police custody and that in any case the systematic presence of an officer discouraged them from doing so. The doctors themselves mentioned cases in which reports they had written on the ill-treatment of prisoners had been torn up by members of the law-enforcement authorities.

130. During my visit I asked several people about this. The replies I received varied. In the opinion of some, including lawyers familiar with the problem, medical examination and the ensuing report could be a real obstacle to torture, but, for that to be the case, a number of conditions had to be fulfilled.

131. According to the people with whom I spoke, the procedure on medical examination had yet to be set out in detail in a regulatory text. Only if that procedure were very strictly regulated would the desired result be achieved. The place where such examinations should take place has apparently not been specified; this gives the law-enforcement agencies the right to take the prisoner anywhere for this purpose. This is extremely dangerous. Quite apart from the fact that it enables the prisoner to be taken out of the police station and outside any form of supervision, any doctor may clearly be asked to carry out the examination.

132. The medical examination of a person for the purposes of establishing his or her condition in order to ascertain, among other things, whether or not that person has been subjected to ill-treatment, should be carried out by a specialised doctor, i.e. one who has been trained specifically to recognise with certainty the results of torture. Such a diagnosis cannot always be made by general practitioners since, fortunately, doctors learn little about the classification of torture or degrading treatment during their training. It would seem that at present there are not enough specialised doctors in Turkey. During my meeting with NGOs in Diyarbakir I was told that there was only one pathologist in the entire region. Clearly this is inadequate in relation to actual needs.

133. I also discussed another issue with the NGOs, namely the confidentiality of medical visits. Before the reform process began all medical visits took place in the presence of a police officer, a situation which might prevent the person examined making a complaint to the doctor or drawing the doctor's attention to a particular

[14] See CPT Report CPT/Inf (2003) 28

injury. The criticisms of this situation have led the authorities to act. Accordingly, when the second harmonisation package was passed, the "Regulations on arrest, police custody and questioning" were amended to give detainees the right to be alone with the doctor during medical examination. The same article now requires that any express request from a party for a police officer to be present during the examination shall be put in writing. This is a step forward but care has to be taken that no pressure is exerted either on the doctor or the person to be examined in order to make them request the presence of a police officer, as some NGOs fear will happen.

134. Another problem that has given rise to much criticism is the report the doctor makes following examination of a detainee. A great many NGO representatives drew the Commissioner's attention to the fact that after the medical examination the doctor's report is handed to a police officer, which could be a means of putting pressure on the doctor. I was alarmed by this and raised the issue during my meeting with the Minister of Justice in order to clarify the situation.

135. According to the Minister, in accordance with current practice three copies of the medical report are made, one of which is given to the person who has been examined, the second kept by the doctor and the third indeed given to the police officer who has accompanied the detainee to the doctor or who is responsible for guarding him or her if the examination takes place in the police station. However, the copy handed to the police officer is certainly not addressed to him or her, but to the public prosecutor to whom it is sent via a police officer. Turkish law makes no distinction between "judicial" and "administrative" police and whenever an investigation begins the police are placed under the supervision of the public prosecutor for the conduct of the investigation. Therefore, according to the Minister of Justice, there is no contradiction in the reports being handed to a police officer and the fact that a copy is given to the person examined is a safeguard against abuse.

136. At this stage, having received complaints from NGOs and lawyers about this problem and the explanations of the authorities, I can only observe that a number of problems remain and that action needs to be taken to remove any ambiguity on this subject. **For this reason, I recommend that the authorities examine the possibility of setting up a procedure under which reports will be delivered directly to public prosecutors**. Changes should also be made to enable medical examinations to be conducted in places designed for the purpose and by specialists whose safety and independence are guaranteed by an ad hoc status.

137. In addition to the guarantees provided by medical examinations, the behaviour of some police offers has to change, and those in charge of the police and gendarmerie, to mention only those sectors, must see that this happens. According to the information I received during my visit, ill-treatment continues.

138. At the same time, I must acknowledge that the authorities have done much to improve the situation. During my visit to Diyarbakir Central Police Station, the Director-General of Police showed me the work that had recently been done in the station's detention centre. I visited the cells where questioning takes place, as well as the cells in which detainees are held.

139. These premises were certainly clean and brightly painted and therefore in line with a circular sent by the Director-General on 28 June 2002. I was, however, amazed to find no detainees present, although there were some forty renovated cells whereas, according to the statistics the NGOs gave me on the same day, in the first four months of 2003, 93 investigations had been opened into offences of opinion, without taking into account other investigations in a city the size of Diyarbakir. Nor did I find any detainees in a police station I visited in the centre of the city, whose premises were also in good condition. If my visit contributed to a reduction in crime, however, I can only rejoice in the fact.

140. Furthermore, I understood that lawyers do not have the right to be present during the questioning of their clients and that a special office is placed at their disposal. According to my hosts, at the detainee's request, he or she is taken to speak to his or her lawyer whenever he or she wishes. I consider this system to be far too complicated and believe it would be more appropriate to allow lawyers to be present when their clients are being questioned.

141. Lastly, the situation of women in police custody is a subject of serious concern and I was given a great deal of information about this.

142. The problems reported frequently include the virginity tests to which female detainees are subjected. In January 1999 the Minister of Justice published a decree prohibiting subjecting women in custody to virginity tests without their express consent. The decree stipulates that such tests may only be used to confirm suspicions of sexual assault, sexual acts committed on minors and prostitution. Only a judge may order such an examination without the woman's consent and then only if it is the sole means of gathering evidence that an offence has been committed.

143. There also appears to be a Bill that would introduce fines and prison sentences for persons who do not belong to the forensic medicine service and carry out virginity tests. This Bill was submitted to Parliament on 20 July 2002 and has apparently yet to be passed. I believe it to be a necessary piece of legislation.

c. Violence other than in police stations

144. I was also told that in some cases violence had been perpetrated in places other than police stations. If this proved to be the case, it would indicate an attempt to circumvent the regulations put in place under the recent reforms to eradicate torture. I believe it is essential that the authorities examine the accuracy of this information and, if necessary, put an end to such practices.

2. The need to ensure effective criminal prosecution in the event of abuses by the security forces

145. The judgments handed down by the European Court of Human Rights finding Turkey responsible for violations committed by the security forces in most cases also involve violation of Article 13 of the Convention on the right to an effective remedy.

146. The victims of violations of human rights committed by the Turkish security forces have complained to the Court of problems encountered in having their complaints properly looked into by investigators who were impartial and independent vis-à-vis the presumed offenders. For various reasons, members of the security forces who had committed offences had until then seldom been convicted by the Turkish authorities and the few trials there had been resulted in light sentences that were often transformed into fines or not enforced.

147. The Turkish authorities nevertheless seem to have become aware of the problem and have taken various measures to remedy it[15].

148. For example, the Act of 26 August 1999 amended Articles 243 and 245 of the Criminal Code in order to increase the sentences that may be imposed on officers found guilty of torture or ill-treatment (five to eight years for torture, three to five years for ill-treatment). Furthermore, with the seventh reform package, judiciary procedures under Articles 243 and 245 are, from now on, considered to be urgent and having priority, the maximum length of postponements being 30 days and procedures must continue even during judiciary holidays.

149. What needs to be stressed above all, however, is the will of the present Government to respond clearly and unequivocally to the criticism of its European partners on this matter. Issues concerning the responsibility of the security forces for any violations committed by their members in the exercise of their duties have been dealt with in successive harmonisation reforms.

150. The Act of 11 January 2003 stipulates that sentences imposed on public servants for involvement in torture or ill-treatment may no longer be converted into fines or other measures or suspended. A new provision also makes it possible to claim fair compensation, paid in accordance with the Court's judgements, from public servants found guilty of torture or ill-treatment.

151. Act No. 4483 on the prosecution of public servants has also been amended to enable public prosecutors to investigate accusations of torture and ill-treatment without requesting the authorisation of the provincial governor, a practice which had often been an obstacle to prosecution. In addition, on 16 January 2003 the Minister of the Interior issued a circular calling on the persons responsible for implementing this new legislation to apply it immediately.

152. I also encourage the authorities to see that these measures, which will help to change attitudes in the law-enforcement agencies, are effectively applied since only complete compliance with the law on the part of public servants will give them a true moral right to use the powers their duties confer upon them.

[15] See CM/Inf (2003) of 9 April 2003, Action of the security forces in Turkey: progress achieved and outstanding problems.

3. Changing the behaviour and working methods of the security forces: the need for education and training

153. During my conversations with the authorities in both Ankara and Diyarbakir I was told that a great deal had been done to remedy structural problems in the security forces, including special programmes on general and practical behaviour, the education and training system, and the legal framework of their activities. Accordingly, since 25 April 2001, the period of basic training in police colleges has been increased from nine months to two years, a very positive change since violations are usually committed by people who have not been properly trained.

154. I was informed that in April 2002 the Police Academy started disseminating a collection of European Court of Human Rights judgments against Turkey translated into Turkish and accompanied by comments by two police officers. This is an extremely important advance that will help to end police officers' ignorance of the subject. During my conversation with the Director of Police in Diyarbakir, I also stressed that officers who attend training programmes should pass on what they have learned to their subordinates.

155. Furthermore, I believe it would be very useful for training and co-operation programmes to be set up so that representatives of the Turkish security forces can benefit from the experience of their European colleagues, some of whom have been through periods of transition with the accompanying changes in practices. I am sure that such exchange programmes between EU member countries and other countries that are members of the Council of Europe could be of very great assistance to Turkey. Moreover, cooperation with colleagues and open, friendly dialogue among professionals are invariably very fruitful since they foster understanding and speedy progress.

4. Compensation for harm caused by the security forces during anti-terrorism operations

156. I should also like to emphasise the importance I attach to the declared commitment of the Turkish authorities to compensating the population for harm suffered during anti-terrorism operations. I fully understood the need for this during my conversations with representatives of civil society as well as with the representatives of the local authorities in Diyarbakir since it is local authorities that carry the heavy burden of caring for those who have had to leave their villages or lost their property during the state of emergency. I should like to encourage the authorities to redouble their efforts to enable displaced populations to return to their homes and to speed up the compensation process.

157. Moreover, we were informed that in spring 2000 the Government had submitted to the Cabinet a Bill on compensation for harm caused by the security forces during anti-terrorism operations which provides for the possibility of compensation without bringing judicial proceedings. Compensation would be awarded on the basis of assessments made by multilateral commissions with the

participation of government civil servants and members of chambers of commerce and industry. The Bill provides that compensation will be awarded from a fund derived from various taxes. Compensation will be awarded for pecuniary loss, bodily harm or death resulting from anti-terrorism operations.

158. This Bill has not yet been passed by Parliament but Mr Gül said in his address to the Parliamentary Assembly of the Council of Europe on 27 January 2003 that the Government was putting the final touches to it.

159. I consider it equally essential for the Government to care for the victims of terrorist acts and their families, including by paying them compensation where necessary. The Council of Europe is studying the question of compensating victims of terrorism as part of an initiative at European level and I hope that this work will be completed as soon as possible for the benefit of everyone.

V. THE JUDICIARY AND ITS ROLE IN IMPLEMENTING THE REFORMS

160. As in all European countries, the judiciary is the prime guarantor of human rights, national judges being the authorities responsible for applying the Convention on Human Rights and other Council of Europe instruments. The conversations I have had with the Turkish authorities since I took up my duties have enabled me to become more familiar with the problems of the Turkish judiciary. The latter has done a great deal, as has the whole of Turkish society, to work towards democratisation.

161. Nevertheless, a number of areas remain open to criticism. For example, the recent case-law of the European Court of Human Rights brings out two recurrent problems concerning the Turkish judicial system: the fairness of trials before the State Security Courts, a problem which has to some extent been resolved by the recent reforms, and the excessive length of criminal and civil proceedings.

1. The fairness of trials before the State Security Courts

162. Under Article 143 of the Constitution, State Security Courts have jurisdiction for offences committed against the Republic, the territorial integrity of the state or the indivisible unity of the nation. The action taken by these courts has often been criticised by non-governmental organisations and in recent times, the Turkish authorities have to a certain extent been receptive to this criticism, even to the point where Mr Gül, in his address to the Parliamentary Assembly of the Council of Europe, said that a bill was being drafted which would transform the State Security Courts into specialised courts responsible for the fight against organised crime.

a. Guarantees of the impartiality and independence of the State Security Courts

163. Until a 1999 constitutional reform, the State Security Courts were composed of three judges, one of whom was from the military. The presence of this judge raised doubts as to the independence and impartiality of the court, as the European Court of Human Rights said in the leading cases *Incal v. Turkey*, 9 June 1998, and *Ciraklarc v. Turkey*, 28 October 1998[16].

[16] This problem is to be linked with the one the Court had to deal with in the 1990s concerning civilians being tried by military courts, resolved by the Act of 27 December 1993 abolishing those courts

164. After the European Court had found against Turkey in numerous cases on this very point, the Turkish Government passed a constitutional reform on 18 June 1999[17] in order to bring the country into line with the Convention. The new Article 143 of the Constitution now provides that the State Security Courts shall be composed only of civilian judges appointed by the Supreme Council of Judges and Prosecutors. The duties of military judges in these courts ended on 22 June 1999.

b. Respect of the rights of the defence in State Security Courts: the problem of access to a lawyer

165. Former Section 16 of the Act on the Establishment and Criminal Procedure of State Security Courts limited the right of access to a lawyer to detainees being prosecuted for collective crimes before those courts and required a third party, usually a civil servant, to be present at meetings between a prisoner and his or her lawyer. The European Court found Turkey responsible for violation of Article 6 of the Convention on numerous occasions[18].

166. Section 16 was amended initially by the Act of 26 March 2002 to allow persons being prosecuted before a State Security Court to see a lawyer after a maximum of 48 hours in police custody. An Act of 11 January 2003 abolished "secret detention" and anyone detained for alleged offences falling within the jurisdiction of the State Security Courts may now in principle have the services of a lawyer from the moment they are taken into custody[19].

167. The strict application of this principle and the conditions in which people have access to their lawyers require special attention, however.

168. It would seem that detainees may waive their right to see a lawyer and that pressure may therefore be exerted upon them to do so. The latest CPT report on Turkey[20] notes that almost all those detained in the previous nine months by the Diyarbakir anti-terrorism and drug squads had allegedly refused to see a lawyer, something which is hardly credible. In such conditions, the right to see a lawyer becomes non-existent.

164. It is also necessary to ensure that the right to see a lawyer in private, without the presence of an official, now becomes possible. As I emphasised above, during my visit to Diyarbakir Central Police Station I visited the places provided for meetings with lawyers. In this connection, I believe it is very important for meetings between lawyers and their clients to take place in a calm atmosphere which it is the responsibility of the authorities to provide.

2. Excessive length of proceedings

170. In 2002, the European Court of Human Rights handed down 11 judgments on the excessive length of proceedings. In the great majority of cases the court at issue was the Military Court with respect to cases predating the Act of 27 December 1993

[17] Act No. 4388
[18] For a recent judgment, see *Algür v. Turkey*, 22 October 2002
[19] See IV-1-a above
[20] Report on the Visit to Turkey by the CPT from 21 to 27 March 2002

which abolished it[21]. Proceedings in the Turkish judicial system are nonetheless generally slow and excessively long. In September 2002[22] 1,153,000 criminal cases and 348,000 civil cases were still pending. The average length of proceedings was 406 days before a general criminal court, 241 days before a general civil court and 755 days before a juvenile court.

171. Efforts have been made with respect to juvenile courts since two new such courts have been established in Diyarbakir and Istanbul, which brings the total number of these courts to eight. Work is under way to establish juvenile courts in eight further provinces.

172. The authorities must, however, do more to relieve the workload of the courts. I am still convinced that a judicial system which works too slowly can often be as bad as no judicial system at all. Solutions must, therefore, be found. One way of resolving the problem might be to establish Courts of Appeal which could take over the duties of a court of second instance at present performed by the Supreme Court. The establishment of such courts would increase the speed and effectiveness of judicial proceedings.

173. I should also like to mention here a proposal put forward by our Parliamentary Assembly which suggested that, faced with this situation and in line with measures taken in other countries, the Turkish courts should consider the excessive length of proceedings as an important factor such as to reduce the severity of sentences.

3. Training of judges and prosecutors

174. During my visit I was constantly being told during conversations with senior representatives of the Turkish authorities that the Government favoured the adoption of the highest standards and principles with respect to democracy, protection of human rights and respect for the rule of law. In this context, in parallel to the work done to bring the legislative and constitutional systems into line with those standards through the implementation of the harmonisation reforms, targeted training programmes have also been set up to make aware and keep informed the main bodies responsible for applying those reforms, namely civil servants in the Ministry of the Interior and the Ministry of Justice. One of the training programmes is the result of a trilateral effort on the part of the Council of Europe, the European Union and the Turkish Government. This is an essential part of the process of introducing reform.

175. In February 2003, a consultative group of experts met in Istanbul and adopted a training programme. The purpose of the joint initiative is to train 225 judges and prosecutors who will then, in their turn, train the rest of the judiciary. The programme does not, however, seem to be progressing at the speed all the parties initially hoped.

176. The Turkish authorities assured me that they wanted the programme to succeed and even continue. Indeed, it was explained that the training programme for judges and prosecutors could not be finalised before the end of 2004 since the "training the trainers" programme is planned to last 18 months. From this point of

[21] Leading case *Sahiner v. Turkey*, 25 September 2001

[22] According to the European Commission Regular Report on Turkey's progress toward membership

view I consider it important for the implementation of this programme to be speeded up in order to enable the Turkish Government to begin training all the 9,200 judges and public prosecutors now working in the country.

177. The Commissioner would also like to encourage the Committee of Ministers to continue with the second phase of the joint initiative which will enable all members of the Turkish judicial system to be trained by the instructors who have previously been trained.

VII. PROTECTION OF VULNERABLE GROUPS

1. Refugees and asylum seekers

178. The situation of refugees and asylum seekers in Turkey as well as the question of illegal immigration are matters of concern to the Turkish authorities, just as they are for the European Union and the Council of Europe. In its latest report the ECRI even described the situation as particularly worrying. For this reason, I was anxious to see for myself what the situation was during my visit by meeting the people most involved in dealing with this problem.

179. I am referring first and foremost to the Permanent Representative of the United Nations High Commissioner for Refugees, Ms Gesche Karrenbrock, whom I met in Ankara on the last day of my visit. I should like to thank her and her staff for taking the time to see me and for the spirit of cooperation in which our discussions took place. I should also like to stress that such openness, willingness and co-operation have always typified the Commissioner's relations with the UNHCR.

180. Turkey is a Party to the 1951 Geneva Convention relating to the Status of Refugees but has made a "geographical reservation" under which refugee status is granted only to persons persecuted as a result of events in Europe and therefore only to Europeans or stateless persons who have been domiciled in Europe. This reservation limits considerably the number of people who can have any real hope of obtaining refugee status in Turkey. People from non-European countries may, however, obtain permission to stay in the country temporarily until the UNHCR has found a third host country but they have no chance of being accorded refugee status in Turkey under the 1951 Geneva Convention.

181. All persons entering Turkey are required to submit an asylum application within ten days. Those who have entered the country illegally (without a passport or travel document) must submit their application to the Governor's office. In my opinion, this period is too short, as failure to respect the 10-day deadline or lack of valid identity documents render applications inadmissible and they are simply not examined by the authorities as to the merits, a situation which opens the way to various forms of abuse.

182. "Temporary asylum seekers" are not detained by the authorities and remain at liberty while attempts are made to find them a host country. The great majority are required to "sign on", i.e. they are required to present themselves once a week or at some other regular interval to the relevant authorities, usually the Security Directorate of the town or province concerned. It is important to stress the fact that temporary

applicants have freedom of movement within the administrative boundaries of the town or province where they are registered. The situation is very different for those regarded as illegal immigrants.

183. One of the most important problems asylum seekers encounter is housing since Turkey has virtually no special reception centres. According to our colleagues in the UNHCR, asylum seekers usually move into poor neighbourhoods where they rent rooms in small dwellings. They do not have permission to work which makes their situation very complicated. Quite apart from their need for financial assistance, asylum seekers receive no social or medical assistance, although the UNHCR and the Turkish authorities try to give them some support.

184. I should like to draw the attention of the authorities to the very worrying situation of particularly vulnerable groups, especially women and children trying to escape ill-treatment, sexual abuse or exploitation.

185. There is also another very sensitive issue: a great many foreigners enter Turkey with no intention of staying there but of crossing the country in order to reach the countries of Western Europe. The authorities admit to arresting 92,364 immigrants in 2001 and expelling 77,515 persons for entering the country illegally.

186. A number of initiatives have apparently been taken with respect to illegal immigration but, according to those with whom I spoke, the facts demonstrate that the authorities essentially perceive the issue as being more an internal security problem than one of respect for human rights. Although the persons arrested have the right to appeal to an administrative court against a decision to expel them, such appeals do not suspend implementation of that decision. The European Court of Human Rights considers that if an appeal against a decision to expel a person to a country where he or she may risk torture or death does not have the effect of suspending the decision, this constitutes a violation of Article 13 of the Convention.

187. All this leads me to recommend that the Turkish authorities should make progress on this subject. It is important to pursue their policy of tolerance, trying to take greater account of asylum seekers' material and social needs. I consider that the very first steps that need to be taken should be reflected in a policy of building reception centres for asylum seekers. Special efforts should be made for vulnerable groups, especially women and children.

188. I believe Turkey should work towards reaching European standards with respect to the reception of asylum seekers and that this should be reflected by lifting the territorial reservation and amending current legislation, particularly as regards the far too short deadline for applying for asylum and the fact that appeals do not suspend implementation of a decision to expel.

2. Situation of women

189. Turkey ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1985 and its Optional Protocol on 29 October 2002. Turkey has therefore authorised the Committee on the Elimination of All Forms of Discrimination Against Women to examine complaints from individuals or groups

who allege violations of the Convention. The Committee is also able to open a confidential investigation if it receives reliable information concerning grave or systematic violations by a State Party.

a. Situation of women in the family

190. As a result of an amendment passed in October 2001, protection of the family became a stated goal of the Turkish Constitution. The new Article 41 of the Constitution thus provides that *"The family is the foundation of Turkish society (...). The state shall take the necessary measures (...) to ensure the peace and welfare of the family, especially where the protection of the mother and children is involved (...)."*

191. In order to reflect the constitutional amendments, the drafters of the new Civil Code, which came into force on 1 January 2002, made essential improvements to the situation of women along the lines of the standards prevailing in Europe.

192. For example, the notion of "head of the family" has been dropped, giving women the right to take part in decisions concerning the children and the family home. The husband no longer has the right to decide unilaterally where the family will live and is no longer able to forbid his wife to work, which is a significant advance in the law and follows changes in behaviour. Women are now able to ask for a divorce if their husband commits adultery.

193. The financial status of women in the event of divorce has been improved since the law now provides that all the property accumulated during the marriage will be divided equally. However, this provision applies only to marriages contracted after the adoption of the new Civil Code. In the event of a father's refusal to recognize a child, the mother's rights to pregnancy and birth allowances have been extended. All this is evidence of a positive change in women's personal status and augurs well for a general change in the status of women in society, something that can only happen if the situation of women at work is transformed.

b. Situation of women at work

194. My meetings with representatives of civil society led me to believe that, despite some positive changes, the situation of women at work remained problematic. According to the statistics I was given, the rate of female employment is still far lower than that of men, being only 25% as against 68.4%. In 1998 only 8.9% of women between 21 and 24 were in education, as against 14.7% of men.

195. There still appear to be legislative barriers to women's access to certain types of jobs. In addition, on average women's salaries are lower than those of men for the same jobs and with equal qualifications. This situation is, of course, to be regretted but is far from being unique to Turkey since it is still the case in some other European countries. This must change.

196. We were informed that the authorities are aware of the need for rapid change in this regard. Moreover, some measures have already begun to be taken to combat the inequality and discrimination to which women are subject at work. For example,

the Security of Employment Act passed in August 2002 provides that employment contracts may not be terminated on grounds of gender, matrimonial status, family obligations, pregnancy or social background. Parliament has also repealed a 1982 regulation banning the wearing of trousers by female civil servants at work. The regulation requiring students at state nursing schools to be subjected to virginity tests was abolished in February 2002.

197. These are all signs of the beginnings of real change, but much remains to be done if there is to be true equality between women and men at work. Moreover, during our conversations in Turkey we were informed that a scientific committee had been formed to revise the Employment Code. In this context, I believe the drafters of the new Code should take gender equality issues into account and see that legislation in this area moves forward.

c. Domestic violence, sexual violence and honour crimes

198. The problems connected with domestic violence, sexual violence and honour crimes are both difficult and sensitive. Unfortunately, these problems have not disappeared from European societies, indeed more and more are being uncovered, often as a result of more active and committed work by associations, a firmer stand by the media and greater courage on the part of victims who feel they have increasing support from society to report criminal behaviour. In my capacity as Commissioner for Human Rights I consider it necessary to work to put an end to such acts by denouncing them and making state authorities, as well as every citizen, every member of society, aware that such behaviour is unacceptable. No country can truly consider itself a democratic nation while its citizens are able to accept the existence of violence in the family or honour crimes. No civilised society can accept its members taking justice into their own hands, to the detriment of the national courts which alone have authority to dispense justice.

- Domestic violence

199. Turkey passed an Act on the prevention of domestic violence in 1998 and a number of interesting initiatives have been taken[23]. Act No. 4320 of 17 January 2002 gave women exposed to violence the possibility of applying to the courts for a protection order, failure to comply with the order being punishable by three to six months' imprisonment. In addition, the Ministry of Women's Rights and the Family published and distributed 15,000 pamphlets to mayors, judges, prosecutors and Bar associations in order to raise public awareness of these problems. A programme entitled "Our friend at the police station" has also been implemented with the aim of changing attitudes in the police and police stations that might dissuade victims from approaching the police. In 1998 a training course was organised for police officers in Ankara in order to make them aware of subjects such as women's rights and the concepts of equality and violence against women.

[23] Cf Report of the Parliamentary Assembly of the Council of Europe on Domestic Violence, 17 July 2002.

200. Despite these different measures, problems remain. Old attitudes persist and, according to some reports, most people working in the health and other sectors (police and judiciary) admit to considering domestic violence a private matter concerning only the spouses, thus providing evidence of a sort of *de facto* impunity which discourages women from talking about it or lodging a complaint. Turkey is also seriously lacking in emergency accommodation, having only between seven and nine "family boarding houses" although a European Union report estimates Turkish needs in this area at 7000 (i.e. one hostel per 10,000 inhabitants).

- Sexual violence

201. The legislation on sexual violence (sex attacks and rape) is not in line with the international standards in force and does not make it possible to take effective action against such acts or to give the women who are its victims the necessary support.

202. In the Turkish Criminal Code, offences relating to sexual violence are defined as "*offences against public morality and family order*", while other types of offences against the person are classified as "*offences against private individuals*". The definition of rape under Turkish law is very restrictive. Furthermore, rape within marriage is not punishable since the Criminal Code does not contain the concept of marital rape. Although we were informed that the authorities intended to repeal a legal provision that allows a man who has raped a woman to be given a suspended sentence if he marries his victim, the very existence of such a provision is shocking.

203. With respect to other sexual offences not included in the scope of the present definition of rape, the Criminal Code only provides for light sentences. I hope that the draft of the new Criminal Code presently in preparation will substantially amend the legislation on the subject in such a way as to bring it into line with international standards.

- Honour crimes

204. It is well-known that the notion of honour is particularly strong in Turkish culture. When I was preparing my visit I learned that the Turkish language has a great many terms denoting honour, the most commonly used being *namus* and *şeref*. Both men and women are endowed with *namus*. Their *namus* is pure if their behaviour – and particularly in the case of women, with regard to their physical appearance and purity – is considered appropriate. Only men are endowed with *şeref*, which denotes the honour conferred by social consideration and renown in the public sphere. A man's honour is largely determined by his own behaviour, but is also affected by the behaviour and reputation of the women of his family – his mother, sisters and daughters.

205. The duty to "restore family honour" therefore explains the importance of honour crimes in Turkish society and the lack of reaction to this practice on the part of the authorities.

206. The Parliamentary Assembly of the Council of Europe has recently expressed its concern about this practice, still current in Europe, and adopted a Resolution[24] for action to be taken against it by urging states to take the necessary measures. Turkish legislation is particularly worrying in this respect, exhibiting a degree of indulgence towards the practice[25]: the Criminal Code allows sentences to be reduced where a murder has been committed to restore family honour; Article 453 provides for a reduction in the sentence where an illegitimate child has been killed at birth; Article 463 reduces the prison sentence by one-eighth where a murder has been committed immediately before, during or after a case or presumed adultery or fornication.

207. During my visit I had several conversations about these problems with representatives of civil society working in this field. I was very touched by the story I was told by the members of the Kamer association in Diyarbakir. All I can do here is to recommend that the Turkish authorities amend the Criminal Code in such a way as to remove all legal provisions reflecting a degree of indulgence towards crimes motivated by honour. They should also strive to create the conditions that will enable people to report such crimes confidentially and in complete safety and see that they are investigated and prosecuted effectively. Lastly, it is important to launch awareness-raising campaigns with the assistance of the media at national level and in schools and universities in order to discourage and prevent so-called honour crimes.

3. Situation of children

208. The situation of children is often a good indication of the general state of respect for human rights in a country, so much do they constitute one of the most vulnerable groups in society. During my conversations I was therefore able to appreciate the great efforts the authorities have made to improve child protection in both legislative and practical terms.

209. For example, the new Civil Code includes a number of amendments on the protection of children's rights. In particular, the new Article 182 has introduced the notion of "the interests of the child" in the event of the separation or divorce of the parents, while the amended Article 282 eliminates all discrimination between the status of legitimate and illegitimate children. This progress can only be welcomed.

210. At the same time, one of the major scourges of our age is the problem of child labour. This is still a reality in Turkey, although there have been significant changes. Whereas various Council of Europe and EU documents used to speak in terms of more than a million children working in the home or in various sectors of the economy instead of going to school, mainly in rural areas, this situation has improved. Turkey's efforts to prohibit child labour have been recognised by the International Labour Organization (ILO). The fact that child labour has decreased despite the economic situation is extremely encouraging.

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[24] So-called "honour crimes", Resolution 1327 (2003) of 4 April 2003

[25] Cf Report of the Committee on Equal Opportunities for Men and Women, So-called "honour crimes", 7 March 2003, doc. 9720

211. Nevertheless, the number of children working is still estimated at 893,000 and Turkey should continue to intensify its work of reform. In this context, the institutional and administrative capacity of the office for children should be enhanced in order to enable it to fulfil its role.

- Education system

212. Through an Act of June 2001, Turkey undertook a major programme of reforms of the education and training system. The Government has started to implement measures to increase the number of years of compulsory schooling from eight to twelve and the length of secondary education to four years, which is to be welcomed.

213. There continue to be significant gaps in the education system, however. For example, there are great disparities in both the provision of education and performance in different regions. Furthermore, girls' education is far shorter than boys', 50% of girls leaving the system before completing the fifth grade.

214. Particular efforts need to be made, among other things, for the less developed regions. Turkey could, for example, continue and intensify its efforts to improve educational provision in the most disadvantaged areas, particularly the south-east of the country, and raise the school attendance rate, among girls in particular. Such progress will only be achieved if there is a general improvement in the economic situation of the country.

VII. PROTECTION OF CULTURAL RIGHTS

215. Turkey is not only a large country, but also an ancient civilisation proud of its rich, complex history, both ancient and modern. No one who visits the country can fail to be impressed by its cultural treasures and – what is still more important – such treasures continue to be created today by the Turks, who are a hard-working, creative people, a united nation, enriched by its diversity. United in a republic founded by Atatürk, Turkish citizens, while they identify with the fundamental principles governing the society, are the product of several cultural traditions linked with different regions of their large country.

216. It is well-known that the nation includes a number of groups with differing cultural traditions. This issue has for some time presented a number of problems, the gravity of which should not be underestimated. One of the most complex problems is undoubtedly that of the south-eastern regions of Turkey where the population is predominantly Kurd. We shall not revisit here the very sad, still vividly remembered, events of the last two decades during which there was virtual civil war in the region which seriously affected the population's living conditions. It is certainly very encouraging that the situation is being settled, demonstrated above all by the complete lifting of the state of emergency throughout Turkish territory.

217. The south-eastern region is still greatly affected by its recent past, however, as I was able to observe when I went to Diyarbakir. During my meetings at the Town Hall and with NGOs I was told of the work that had been done to democratise and

return the region to normal life. Nevertheless, there are still a great many problems to be resolved. In this context, I was pleased to note the commitment of the national and local authorities to working towards speedy normalisation which should first and foremost be reflected in a speedy and substantial improvement in the population's standard of living and by enabling displaced populations to return to their villages.

218. During my meetings with the Mayor and representatives of civil society I heard a great deal about the need for an amnesty to open the way towards true civil peace and genuine economic, political and cultural reconstruction of the region. I raised these issues in Ankara when I met senior government officials who reassured me as to their sincere wish to normalise the situation and informed me of their intention to pass an amnesty bill in the near future. I was very satisfied to learn over the summer that Act No. 4959 on the Reintegration of Society had been passed and came into force on 29 July 2003. I hope that, as its title suggests, it will enable those who took part in the painful events of recent years to again take their place in society.

219. I was recently informed that more than 2,000 people had already been released from prison under the terms of the Act. If this information proved to be correct, it would be very good news and I could only encourage a continuation of the process. I hope that the great majority of the prisoners I met during my visit to Diyarbakir Prison will be covered by the above-mentioned Act.

220. At the same time, I am convinced that the Government should continue to take concrete steps to improve and calm the general situation, beginning with the very sensitive issue of the use of languages other than the official language.

221. Turkish has been the country's official language since 1923. Until very recently it was the only language tolerated for public use. The Constitution contained numerous restrictions. For example, Article 26 stipulated that "No language prohibited by the law shall be used to express and disseminate opinions", Article 28 that "No publication shall be made in a language prohibited by the law" and Article 42 that "No language other than Turkish may be taught to Turkish citizens or used as a mother tongue in educational and teaching establishments".

222. These provisions were accompanied by concrete measures. Public use of a language other than Turkish, and particularly Kurdish, was severely punished. Application of this legislation was reflected in practice. In 1996 the Kurdish Member of Parliament Leyla Zana was sentenced to ten years' imprisonment simply for having spoken in Kurdish on the floor of the National Assembly.

223. All this could not fail to affect the population's day-to-day lives since it is public knowledge that in some parts of the country the regional languages - particularly Kurdish - are still the mother tongue and therefore used every day by large numbers of people.

224. This meant that banning the use of a language other than Turkish, as well as denying some minorities their means of ethno-cultural expression, also had the effect of depriving a section of the population of access to public services. According to

those with whom we spoke, in the south-east of the country, where a great many Turkish nationals live whose mother tongue is not Turkish, inability to communicate with the national authorities makes access to services such as health, social assistance and housing particularly difficult.

225. Furthermore, outlawing the teaching of Turkish pupils in a mother tongue other than Turkish clearly puts children who do not have a good command of that language at a disadvantage, something which is difficult to accept.

226. The above-mentioned problems do not concern the teaching of minorities recognised under the Treaty of Lausanne. There are still, for example, several primary schools and three secondary schools in Turkey where Greek is the language of instruction. Here too, though, the authorities' approach is typified by excessive formalism: the teachers are civil servants sent by the Greek Government rather than from the minority community itself, although there are qualified teachers who are members of that community.

- The various reforms

227. The authors of the recent reforms have not neglected cultural rights. Article 26 of the Constitution has been amended and, following on from this, a number of harmonisation Acts have sought to improve respect for the cultural rights of minorities, and pluralism. These reforms are a major advance but now need to be implemented.

228. In the field of broadcasting policy, the Act of 3 August 2002 provides that it is now possible to broadcast programmes in the various languages and dialects Turkish citizens traditionally use in everyday life. The Act provides that two hours of programmes in Kurdish, sub-titled in Turkish, are to be broadcast every week by public television, and four hours of radio programmes, respecting "the indivisible unity of Turkey and the principles of the Republic".

229. The Act also lifted the ban on broadcasting foreign programmes which particularly affected BBC and Deutsche Welle programmes.

230. With respect to education, it is now possible to learn several languages and dialects traditionally used by Turkish citizens in their everyday lives and to organise private lessons for this purpose, so long as this is not in contradiction with the "indivisible integrity of the state". The implementing regulations for this Act were passed on 19 September 2002.

231. Furthermore, the sixth and seventh harmonisation packages passed during the summer after my visit had ended have gone further in the promotion of cultural rights. The sixth package, for example, stipulates more explicitly something that had already been introduced, namely amendment of Act No. 3984 on the Production of Programmes by Radio Stations and Television Channels, allowing programmes in a language other than Turkish to be provided for citizens speaking a traditional language other than Turkish on a daily basis, something which goes much further than the two hours of programmes previously authorised.

232. The seventh package amended Section 2 of the Act on education in foreign languages and the teaching of the various languages and dialects of Turkish citizens. Whereas previously classes for traditional languages could only be organised in newly created structures, this may now be done in existing structures, something that should facilitate the task of those who want to learn their mother tongue.

233. However, according to the information I received during my visit from representatives of civil society, it appears that the possibility of education in Kurdish was subject to strict conditions since the Act laid down that private Kurdish lessons may only take place on Saturdays and Sundays and may not exceed six hours. Only pupils who have already obtained their primary education diploma are to be admitted to them.

234. In view of all this, I believe it necessary to encourage the authorities to continue their work in this field and, here again, to do what is necessary to see that the amendments passed do not remain dead letters and are effectively implemented. I hope that this will be done.

235. I was also told that the spirit of these reforms seemed to have started to spread and that there were many signs of an easing of attitudes towards the Kurdish community. For example, on Turkish Victory Day, on 30 August 2002, there was a public concert sponsored by the Ministry of Culture at Ephesus during which a famous Turkish singer sang in several languages, including Kurdish. Again, an exhibition of photographs about the Syriac minority was shown in Diyarbakir in early November 2002 and a previously banned European film festival was also held. This should continue and be developed.

VIII. NON-JUDICIAL MECHANISMS FOR THE PROTECTION OF HUMAN RIGHTS

236. Under Act No. 4643 of 12 April 2001, Turkey established a network of non-judicial institutions for the protection of human rights placed under the authority of the Prime Minister and the Minister for Human Rights. The Act provided for the setting up of a Supreme Council for Human Rights composed of representatives of the Government responsible for making reports and giving opinions on human rights to all authorities concerning legislative and administrative measures.

237. An Investigative Council, chaired by a representative of the Prime Minister, was also set up to investigate allegations of human rights violations.

238. An Advisory Council, composed of representatives of civil society, has been set up at the national level to assist the Minister for Human Rights and Foundations in the fields falling within his jurisdiction. The Council meets three times a year and the Minister may call extraordinary meetings. Local Human Rights Councils have also been set up at provincial government level to submit reports on the human rights situation at local level.

239. A National Human Rights Commission has also been set up with the main objective of raising awareness of human rights.

240. I have already had the opportunity to note the efforts the authorities have made to open up constructive dialogue with NGOs in the framework of the local Human Rights Councils and the Advisory Council at national level (see the conclusions of the Ankara seminar, 6-7 May 2002, CommDH (2002)4). I said at that time that there was a need to overcome inertia, become proactive instead of reactive, and move from declarations of intent to a real determination to take action. While the Human Rights Councils already provide a forum for co-operation – and this is very positive –, the way they function varies from place to place and not infrequently a degree of distrust remains.

241. The National Assembly's Human Rights Committee is another important mechanism for the protection of human rights. I had a long discussion with its Chair, Mr Elkatmis, and was able to familiarise myself with its work and means of action. Together, we were able to see that the impressive network of institutions described above required, firstly, a better allocation of their respective tasks and responsibilities, something that might also improve its effectiveness. The experience of the institution of the Ombudsman was also discussed in this connection. The Ombudsman has proved to be an institution that facilitates the implementation of reforms, particularly in European countries that have recently gone through a period of major legislative change, as is the case in Turkey at the moment. Discussion on this has been under way for some considerable time in Turkey and when the National Assembly considers it appropriate the Commissioner for Human Rights will be ready to contribute to the examination of the issue.

IX. CONCLUSIONS AND RECOMMENDATIONS

242. The Commissioner feels that the constitutional reforms and the legislative harmonisation to have occurred in Turkey for over the last two years are of major importance to the country. They are to be welcomed and encouraged.

243. As stated in the report, priority should be given to the application of these reforms at all levels of the state. It is true that, to date and according to general assessments, major reforms, although they have come into force, are not well known by the public at large. There are also problems as to their full and complete application.

244. The Commissioner hopes that the spirit of the reforms initiated by the government and by the legislator will reach all parts of society, starting by the judiciary and by the state administration at all levels.

245. From now on, it must be assured that the new measures are applied in judicial decisions and administrative practices. It would be a setback for the reforms to fail because of the persistent application of general provisions remaining in force and which continue to permit the prosecution of people for the same acts, often more harshly.

246. The application of the reforms will demand the definitive abandonment of certain older habits, among which, the tendency by the prosecuting authorities to open procedures against a number of associations' activists. These cases are often dismissed or result in an acquittal, but are used as a means of intimidation. The Commissioner insists that judicial harassment that can hinder fundamental liberties be avoided.

247. The Commissioner encourages state authorities to engage in a dialogue and to co-operate with representatives from non-governmental organisations, and through them with civil society. This dialogue is necessary to achieve true changes in mentalities that must accompany the recent normative reforms.

248. In this context, the Commissioner stresses the importance of training programmes to familiarise public sector agents - starting with members of the judiciary and the prosecution service - with the new reforms and with European standards promoted by the Council of Europe. It is necessary to continue and to expand these programmes.

249. The Commissioner welcomes the authorities' commitment in combating all acts of torture and ill-treatment by law-enforcement officials. Succeeding in this task would require the reinforcement of medical controls in sensitive areas - starting in prisons, detention centres and police stations. The Commissioner suggests that the controls be made by specialised doctors, endowed with a special status, and protected against all types of pressures from wherever they may come. Controls performed by these doctors should be done in designated and protected places, and without the presence of a police officer. The doctor should give his report directly to the prosecutor, rather than through the intermediary of a police officer.

250. Protection of human rights must remain a top priority of the authorities. To this end, mechanisms to protect human rights must be improved and reinforced. The creation of an Ombudsman institution is important in this context.

251. The Commissioner is pleased to note that the defence of cultural rights is of major preoccupation for the authorities. He can but encourage them to continue in this way. Wider access for all Turkish citizens to the use of traditional languages, side by side with the state language, can only bring comfort and personal fulfilment.

252. Turkey is only at the start of its path of applying substantial and courageous reforms. It is understandable that all cannot be done in one day, but if the authorities keep on following the politic it has engaged in to the letter, while associating all of the civil society to the process, the results will exceed expectations and prove that only democracy and the respect for human rights can bring fulfilment and well being to all citizens.

A N N E X

The Commissioner for Human Rights decided to append to his report the following comments of the Governmnet of Turkey, submitted during the presentation of the report to the Committee of Ministres of the Council of Europe, on 17 December 2003.

COMMENTS AND OBSERVATIONS BY THE TURKISH AUTHORITIES ON THE REPORT BY THE COMMISSIONER FOR HUMAN RIGHTS ON HIS VISIT TO TURKEY ON 11 AND 12 JUNE 2003

Paragraph 10:

The Turkish Government attaches very great importance to the Commissioner's positive and constructive observations on the scale of the recent legislative reforms.

It wishes to point out that it is fully aware of the need for scrupulous implementation of these reforms. That is why, in September 2003, it set up a Monitoring Committee formed of representatives of the various ministries and chaired by the Minister for Foreign Affairs and Deputy Prime Minister, Mr Abdullah Gül.

The committee's task is to speedily identify and resolve the difficulties encountered in implementing the reforms, in the light of the information and assessments received by the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of the Interior, the Secretariat General for the European Union, the President of the Human Rights Office and the President of the Advisory Council on Human Rights.

Reinforcing civil society as a whole is also one of the Turkish Government's priority aims.

Various bodies have been set up over the past few years to involve civil society in the decision-making process. Examples include a number of joint advisory bodies such as the Advisory Council on Human Rights, which comprises civil servants and representatives of civil society.

The provincial human rights councils are empowered to conduct investigations into alleged human rights violations and to transmit their conclusions to the administrative and/or judicial authorities.

They perform their tasks in active co-operation with academic institutions, the bar associations, the medical associations and other professional associations (such as trade unions and employers' organisations).

The Turkish Grand National Assembly's Human Rights Commission is also an effective supervisory body which maintains a regular dialogue with NGOs, taking account of their grievances and forwarding them to the competent public authorities for the requisite action.

The legislative work preparatory to the establishment of the Ombudsman institution is being done by the Ministry of Justice.

The recent Access to Information Act adopted by the Grand National Assembly on 9 October 2003 is a significant step towards ensuring transparency of the data held by the public authorities.

The detailed comments set out under the heading "Freedom of association" must also be borne in mind as part of the discussion on how to consolidate the freedoms granted to associations in Turkish civil society.

Paragraph 37:

The Radio and Television Broadcasting Board (RTÜK) has drawn up new regulations on broadcasting in languages traditionally used by Turkish citizens in their day-to-day lives, with a view to lifting the restrictions contained in the previous regulations and authorising private radio and television companies to broadcast programmes in languages other than Turkish. The draft regulations were discussed and adopted by the RTÜK at its meeting on 8 November 2003 and transmitted to the Cabinet for approval.

Paragraph 40:

The Turkish authorities attach great importance to the vocational training of judges and public prosecutors. Many national and international programmes have been set up to provide all members of the judicial service (9,162 judges) with appropriate training on the European Convention on Human Rights and the Court's case-law.

The Council of Europe is co-ordinating implementation of a substantial proportion of these programmes. Numerous study sessions (nine altogether up to the end of 2003) have been held in various cities in Turkey with the participation of European experts and judges of the Court.

A special programme has also been set up for judges and prosecutors of the State Security Courts in co-operation with the Raoul Wallenberg Institute in Lund, the European Court of Human Rights and Bilgi University in Istanbul. The programme is intended to help increase these judges' and prosecutors' awareness of the recent legislative reforms and of human rights standards.

The recent establishment of the Judicial Academy under Act No.4954, which came into force on publication in the Official Gazette of 31 July 2003, will certainly contribute to the provision of more thorough training in human rights for all categories of judicial service personnel.

Paragraph 41:

In the absence of details of court decisions, it is difficult to assess the allegations made to the Commissioner regarding so-called lack of "consistency" in court decisions based on the latest legislative amendments. The judicial process is not a matter of automatic application and each judgment must be interpreted in its own context.

Paragraphs 48-75 (Freedom of association):

I. Reinforcing civil society by promoting and encouraging freedom of association is one of the priority short- and medium-term objectives of the political criteria set out in Turkey's National Programme for 2002.

Accordingly, Act No.4970 of 31 July 2003 (seventh harmonisation package) set up a new section in the Ministry of the Interior, the "Associations Department", which combines the powers and responsibilities concerning associations that were previously wielded by the Security Directorate and its provincial network. The regulations governing this department have also come into force.

The reorganisation of the ministerial machinery dealing with freedom of association was preceded and accompanied by significant legislative amendments to the Associations Act, repealing a series of restrictions placed on freedom of association, which is clearly defined in the Constitution: "Everyone has the right to form associations without prior permission".

In practical terms, these amendments may be summarised as follows:

a) A number of prohibitions and restrictions on the setting up, objectives and activities of associations have been abolished.

b) Legal entities have also been given the right to set up and join associations.

c) The permanent ban on setting up an association has been reduced to two years and the temporary ban from five years to one year.

d) Permanent and temporary bans on joining an association as a result of certain types of criminal conviction have been abolished.

e) Supervision by the Ministry of the Interior of the notification concerning the setting up of an association has been streamlined and speeded up.

f) The right to set up federations of associations, which was previously restricted to public-interest associations, has been granted to all associations.

g) Associations are empowered to set up branches in provinces, districts and rural communities.

h) The requirement of at least six months' residence in the place where the branch is to be established has been abolished.

i) The requirement of prior authorisation by the Cabinet for the conduct of international activities has been abolished.

j) Foreign associations may engage in activities in Turkey with the authorisation of the Ministry of the Interior instead of the Cabinet as was previously the case.

k) Associations may send representatives or members to associations located abroad and may also receive representatives or members of foreign associations without prior authorisation.

l) Associations are free to issue announcements and declarations without notifying the authorities.

m) Annual supervision has been replaced by a declaration filled in by the association itself.

n) A number of penalties concerning associations have been reduced and some penalties in the form of fines have been commuted to administrative fines.

In addition, the priority aims of the new Associations Department are to:

- look into the difficulties encountered by associations in practice, with a view to revising the current legislation and regulations as necessary, with the participation of associations;
- set up advisory centres for NGOs and a database to inventory their needs;
- design and implement training programmes to broaden NGOs' operational capacities;
- encourage NGOs' various activities;
- strengthen liaison networks between NGOs;
- inform NGOs about ways of obtaining funding;
- set up a website to provide information that NGOs might need;
- set up a direct on-line link between NGOs and the Department to facilitate the flow of information and speed up annual supervisory procedures;
- increase the impact of civil society;
- ensure that NGOs play an active part in decision-making processes.

II. As regards paragraph 52 in particular, the reason for Section 5 of the Act is not to prohibit the founding of an association. Parliament simply intended to prevent activities which, under cover of an association, might generate discrimination and racist discourse.

Paragraph 79:

The criminal proceedings (2002/33) brought against Mr Sezgin Tanrıkulu for founding a health care establishment without authorisation ended with an acquittal by the Second Division of the Diyarbakır Criminal Court.

Following an appeal on points of law, the case is currently before the Court of Cassation.

Paragraph 84:

The DEP was not dissolved because of its "pro-Kurdish links" but because of its activities undermining Turkey's territorial integrity and national unity. In the pursuit of these activities it colluded with the PKK, which has been recognised as a terrorist organisation by the European Court of Human Rights.

Paragraphs 94-99 (Freedom of religion):

I. In order to clarify the recent legislative measures concerning the acquisition of real estate by foundations belonging to religious communities, it is important to summarise the latest amendments, as below. This will give a better overall picture of the current legal situation:

1. a. The third harmonisation package adds new sub-paragraphs to Section 1 of the Foundations Act (No.2762) and thus allows foundations belonging to religious communities to acquire real estate and freely dispose of it in order to meet their religious, philanthropic, community, educational, cultural and hospital needs with the Cabinet's authorisation.

   b. The same amendment provides that in order to meet the above-mentioned needs, foundations belonging to religious communities are entitled to request that the real estate in their possession be registered in their name within six months of the entry into force of the Act. The fact of possession can be proved by various deeds drawn up in proper form, such as tax registers and rental contracts. Donations and legacies of real estate in favour of these foundations have been made subject to the same provisions.

2. The fourth harmonisation package again amended Section 1 of the Foundations Act, replacing the requirement of authorisation by the Cabinet with that of authorisation by the Directorate General of Foundations, which of course substantially simplified the procedure.

3. The sixth harmonisation package again amended Section 1 of the Foundations Act, extending the period for appeals from six months to 18 months.

4. Likewise, the Town Planning Act has been amended to enable all religious communities to apply for building permits. Further to these measures, the Ministry of the Interior has instructed local authorities to indicate locations

intended for religious worship when drawing up municipal town plans and to issue building permits in the provinces and districts with the authorisation of the most senior territorial authority in the place in question.

5. Another amendment to the same section confers a suspensive effect on appeals filed with the Directorate General of Foundations in relation to judicial proceedings pending with regard to real estate about which an application has been made to the Directorate. These proceedings will thus be stayed until the procedure with the Directorate is completed.

6. Following these legislative amendments a large number of requests for registration have been made. At 10 November 2003, 242 items of real estate have been registered on behalf of 80 foundations.

II. Furthermore, the various harmonisation packages have also lifted some restrictions that previously affected foundations' activities.

1. The third harmonisation package added a new article to Legislative Decree No.227 on the Organisation and Duties of the Directorate General of Foundations, providing that foundations set up in Turkey with the authorisation of the Cabinet may become members of foundations or other associations founded abroad and pursuing the same aims. Likewise, they are entitled to open branches abroad and engage in co-operation with similar foundations. Foreign foundations may, subject to the requirement of reciprocity, engage in activities and open branches in Turkey.

2. The seventh harmonisation package again amended the above-mentioned legislative decree, replacing the requirement of authorisation by the Cabinet with that of authorisation by the Ministry of the Interior; this also streamlines and shortens the procedure concerning foundations' activities abroad.

III. As regards paragraph 95 of the report in particular, the Treaty of Lausanne protects not only Armenians, Greek Orthodox and Jews, but all non-Muslim citizens. Thus, the list of foundations appended to the "Regulations governing the acquisition, management and registration of real estate by foundations belonging to religious communities in the name of the foundation concerned" is not confined to foundations belonging only to those three categories.

Paragraph 100:

Section 3, paragraph 3 of Act No.265 of 1965 does not allow private university-level colleges to be set up for the purposes of religious or military education or tuition in public security matters. As regards the reopening of the theological college of Heybeliada, the legal provisions in force are applied without discrimination to all Turkish establishments irrespective of religious affiliation. All private schools in the same legal position, including the theological college of Heybeliada, ceased their activities as a result of a judgment given by the Constitutional Court in 1971. The 1982 Constitution provides that higher religious education, including the teaching of Islam, is regulated and supervised by the state. That is why there are no university-level religious schools in Turkey. However, the issues raised by the Greek Orthodox Patriarch (of

Fener, Bartholomeos I) during his interview with Mr Abdullah Gül, Minister for Foreign Affairs and Deputy Prime Minister, are currently under consideration with a view to finding a solution.

Paragraphs 101-107 (Trade union freedom):

1. The Civil Service Unions Act of 2001 came into force on publication in the Official Gazette of 13 August 2001. In drafting it, account was taken of ILO Conventions 87 and 151 in connection with the establishment, organisation and activities of trade unions.

The Act recognised civil servants' right to form trade unions and the unions' right to take part in collective bargaining.

Over the past two years the application of this Act has enabled collective bargaining to take place between public sector employers and trade unions entitled to represent civil servants.

The Ministry of Labour and Social Security and the trade union confederations are attempting to overcome the difficulties encountered in implementing the act by setting up permanent dialogue.

The circular issued by the Prime Minister, Mr Recep Tayyip Erdoğan, and published in the Official Gazette of 12 June 2003 also clarifies some details concerning implementation of the Act.

In addition, bearing in mind the trade unions' various grievances and expectations with regard to the Act, the Ministry of Labour and Social Security has decided to start work on amending it.

A new law on civil servants' right to organise, entitled "Civil Service Trade Unions Act" (No.4688) came into force on publication in the Official Gazette of 13 August 2003.

2. It should also be pointed out that according to the information received from the Ministry of the Interior, the ministry has not introduced any judicial proceedings with regard to the civil servants' strike in December 2000.

3. As regards paragraph 104 in particular, it must be emphasised that the criterion of a representational threshold of 10% of a sector of activity satisfies an important requirement of Turkey's trade union and collective bargaining system. The dual criterion of the company and sector representation rates is designed to ensure that the trade unions taking part in collective bargaining are stronger. Otherwise, trade unions might well be at the mercy of employers who are in a position of strength. In addition, the new draft law prepared by the Ministry of Labour and Social Security, which has been transmitted to the parties concerned for comment, provides for lower representational thresholds for the purposes of collective bargaining rights.

Paragraph 111:

The Turkish Government is determined to pursue its policy of combating all forms of torture and ill-treatment and all attempts to secure impunity.

In spite of a very impressive and comprehensive body of legislation covering all the stages in the security forces' involvement, from apprehension and custody rules to the lifting of the administrative authorisation required for judicial proceedings (which, under the former system, was also subject to judicial review by the Supreme Administrative Court and the administrative courts), the Turkish authorities are aware of the need for effective implementation of these measures and continue to issue numerous circulars calling for meticulous compliance with the rules.

Recently, in his circular of 20 October 2003, the Minister of Justice, Cemil Çiçek, reminded officials of all the international, constitutional and legal provisions prohibiting torture and ill-treatment and stressed the need for effective prosecution with regard to allegations concerning these provisions. He specified that:

"In this respect, bearing in mind that the slightest delay in investigations conducted into offences will not only undermine public confidence in the judicial system, but also encourage criminal tendencies, and in view of the above-mentioned provisions of the Constitution, international conventions and domestic legislation, investigations concerning torture and ill-treatment must not be left to the security forces, but be conducted by the principal state prosecutor or by the prosecutor appointed by him in order to take the statutory measures and ensure that justice is done as soon as possible …"

In this context the Turkish authorities are pursuing excellent co-operation with the CPT, all of whose recommendations and suggestions are given serious consideration.

Paragraph 112:

Examination of the CPT's latest reports shows that allegations of torture and ill-treatment are few and far between, with no reference to widespread practice, not to mention systematic practice. In addition, the CPT's annual report for the period from 1 January 2002 to 31 July 2003 welcomes the fact that Turkey has been engaged in "a vast programme of legislative reform" and states that "this programme has included numerous positive changes in areas related to the CPT's mandate, in particular as regards custody by law enforcement agencies".

Paragraph 116-117:

It will be useful to clarify a few points in these paragraphs so as to avoid any misunderstanding over custody periods.

Firstly, as paragraph 116 rightly suggests, Legislative Decree 430 is not currently in force because the state of emergency has been lifted.

Secondly, no custody period of 30 to 40 days is possible. Even the maximum period of seven days applies only to collective offences (offences committed by three or more persons) subject to the jurisdiction of the State Security Courts under the state of emergency. In this case, the custody period can be extended to seven days only at the prosecutor's request and by decision of a judge on the fourth day of custody.

Thirdly, under the current system, the custody period is 24 hours for offences subject to the jurisdiction of the criminal courts and 48 hours for offences subject to the jurisdiction of the State Security Courts.

As regards collective offences, the custody period both for offences dealt with by the criminal courts and for offences dealt with by the State Security Courts may be extended to four days by the public prosecutor because of the difficulty of collecting evidence or the large number of suspects.

Paragraphs 124-137 (What happens during custody - medical examination):

The Turkish authorities share the Commissioner's views on the importance of medical examinations.

In this connection, they wish to make a few comments on the forensic medical system and the conditions in which forensic medical examinations take place:

a) The Institute of Forensic Medicine, set up under Act No.2659, is responsible both for providing reports on forensic medical issues submitted to it by the courts and the prosecuting authorities and for teaching forensic medicine and organising seminars, symposia, conferences and similar activities to co-ordinate the performance of its tasks.

   The Institute is organised in groups and departments located in the main cities. Turkey currently has 250 specialists in forensic medicine, but the figure is steadily rising. Most forensic medical tasks are currently performed by the Institute (about 120,000 cases per year). In addition, agreements concluded with universities in various provinces provide for the latter to perform forensic medical duties.

   The holding of annual conferences and seminars helps to ensure that the latest international scientific knowledge is effectively disseminated.

b) The Turkish authorities are determined to ensure the confidentiality of medical examinations. Article 10 of the Regulations on Apprehension, Custody and Taking of Statements reiterates this requirement, as part of a series of regulations underscoring the necessity of confidentiality. The Ministry of Justice circulars of 28 May and 22 August 2002 and circular No.13243:2000/93 of 20 September 2000 emphasise the obligation to respect the fundamental rights of the persons examined and to preserve confidentiality. This last circular lays down the conditions for medical examinations as follows:

   "Medical examinations shall be conducted under suitable conditions out of the hearing and sight of members of the judicial law enforcement agencies. The

person to be examined shall be placed in an examination room in which only health care staff are present and, after being provided with the necessary information, shall be examined entirely unclothed".

The importance attached to this point by the authorities was stressed yet again in a recent circular issued by the Ministry of Health (No.15168 of 10 October 2003), reflecting the standards of the CPT. The circular emphasises the following points:

- During examinations and auscultations, human rights and fundamental freedoms, including respect for privacy, must be observed without fail.

- Medical examinations must take place under appropriate conditions and out of the hearing and sight of members of the law enforcement agencies; the person to be examined must be received in an examination room where only medical personnel are present and the examination must take place after the person has been duly informed.

- The first copy of the medical certificate drawn up must be signed with the statement "I have received a copy of the medical certificate", and after the name of the law enforcement agency's representative has been taken, must be given, in a sealed envelope stamped across the flap, to the person acting on behalf of the institution that requested the medical certificate. The second copy is to be transmitted to the public prosecutor, in a sealed envelope and through official channels, by the establishment drawing up the medical certificate. The third copy is to be transmitted, with maximum care as regards confidentiality, to the Public Health Directorate of the province in which the establishment that drew up the medical certificate is located, with a view to monthly assessments at provincial level. The fourth copy is kept by the establishment that drew up the medical certificate.

Paragraph 139:

The NGOs' allegations concerning "93 investigations" for "offences of opinion" have nothing to do with the empty premises of the two police stations. This is a mere coincidence. It must also be borne in mind that not all offences require custody and that in addition to the lifting of the state of emergency, the very substantial shortening of custody periods in line with the case-law of the European Court of Human Rights largely explains why there are sometimes empty premises.

Paragraphs 153-155:

As regards police training, a very large number of national and international projects have been set up to provide members of the security forces with awareness-raising and training in human rights from both the ethical, the personal and the professional points of view. Some of these projects also cover the gendarmerie. One of the most ambitious projects is the training programme in progress under the aegis of the Council of Europe. All these programmes are co-ordinated by the National Committee for the Human Rights Decade set up in 1998.

The programme being carried out in co-operation with the Council of Europe and the European Commission provides for an assessment of the police and gendarmerie training programme. It also includes the translation of training material and the provision of training courses for trainers.

Paragraph 161:

In the absence of details of court decisions, it is difficult to assess the comments made in this paragraph. It should simply be pointed out that criminal proceedings before the State Security Courts are at present subject to the same procedure as criminal proceedings before the criminal courts. It should also be pointed out that none of the judgments of the European Court of Human Rights include any criticism of civil court judges, not to mention of the status of such courts. In its pilot judgments on the subject, the Court has simply noted that the presence of a professional military judge might raise doubts as to the court's independence. It was therefore a question of visibility rather than of established lack of independence, whether objective or subjective.

Paragraphs 163-164:

In amending Section 11 of the Act on the Establishment and Procedures of Military Tribunals, the seventh harmonisation package made it impossible for a civilian to be tried in peacetime by a military tribunal for the offences of incitement to revolt, to disobedience, to conscientious objection and to criticism of national resistance.

Paragraphs 178-188 (Asylum-seekers and refugees):

1. The issues of harmonisation in asylum matters, reinforcement of the framework for consideration of asylum applications, accommodation and social assistance for asylum seekers are more specifically dealt with in the context of Turkey's application for membership of the European Union.

2. As regards Turkey's geographical reservation to the Geneva Convention (page 36, fourth paragraph), the National Programme of July 2003 states that the possibility of lifting this reservation will be considered as part of, firstly, the introduction of the necessary legislative measures and infrastructure to discourage migration flows across the country's eastern borders and, secondly, a positive approach by the European Union to the matter of burden sharing. Co-operation in this respect is in progress with the EU authorities.

   Point 24.1 of the National Programme of July 2003 entitled "Working towards harmonisation with European regulations and reinforcing capacity in asylum matters" sets the objective of providing accommodation centres and introducing social support measures for asylum seekers by reinforcing the administrative and logistical framework.

   In August 2003, in the light of its consultations with the authorities concerned, the Ministry of the Interior published the "Document on the strategy for asylum-related activities planned as part of the process of joining the European Union".

This document provides for a special body to examine and process asylum applications.

Implementation of all these objectives is underpinned by the Twinnings Project (a project designed to support the introduction of the Action Plan for implementation of Turkey's migration and asylum strategy).

Preparatory work is in progress on draft legislation on the subject.

3. Turkey scrupulously observes the principle of *non-refoulement*. Thus, bearing in mind the opinions of the United Nations High Commissioner for Refugees, Turkey has suspended the return of Iranians and Iraqis who did not meet the requirements for refugee status, in the light of the political situation prevailing in their respective countries.

4. The Foundation for Solidarity and Mutual Assistance (under the aegis of the provincial governors' offices), local authorities, public hospitals and the Red Crescent provide food aid, heating allowances, free medical assistance and financial support.

Paragraph 197:

Great importance is attached to promoting women's rights in the general framework of the reforms. A great deal of progress has been made over the past few years in recognising and securing equality of rights between women and men.

In the light of Articles 15 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women, the new Civil Code, which came into force on 1 January 2002, repeals discriminatory provisions. In addition, the Turkish Criminal Code is currently being revised with a view to introducing improvements in terms of equality between women and men.

The Directorate General for Women's Affairs and Status, set up in 1990, aims to provide women with access to education and training, promote their contribution in various economic spheres, offer them social security and help them improve their status and achieve equality. In 1997, under the aegis of the Directorate General, specialist committees on health, education, employment and legislation were set up with a view to initiating institutional dialogue on equality issues with NGOs and incorporating civil society's views into government policy.

In 1998 an advisory committee was set up at the Ankara Court to provide legal aid and psychological support to women subjected to violence.

As of 1 September 2000 a new multi-institutional project was set up to prevent child labour, abolish the most dangerous forms of work and those most conducive to exploitation and introduce a transitional phase in which working conditions are to be improved with the ultimate aim of completely eliminating child labour.

This project also deals with issues relating to children's lack of schooling due to their parents' precarious social and economic situation. It therefore seeks to devise solutions that will encompass the family as a whole by giving the parents the wherewithal to set up their own businesses.

The project is of course supervised by provincial bodies dealing with research, co-ordination and company auditing.

The specific, priority objective is to ensure that all these children attend school.

Paragraph 200:

Women's hostels, set up under the regulations of 12 July 1998 published in the Official Gazette, are chiefly designed to provide women, and their children if any, with temporary accommodation to help them overcome psychological, social and economic difficulties.

The highly diverse situations dealt with in these hostels range from serious marital conflict to violence, sexual exploitation, alcoholism, drug dependency and financial insecurity due to the spouse's death or to divorce.

Women who have been subjected to domestic violence receive help with their applications to the public prosecutors.

At the end of September 2003 there were eight such hostels. What is important, however, is the number of people who have benefited from these new hostels: a total of 3,842 women and 3,198 children. The decisive factor is the speed with which problems are resolved, because this will ensure greater mobility.

The Directorate General of Social Services plans to substantially expand the provision of family hostels, subject of course to available financial resources.

Other welfare services are also available to women and children in distress, such as the 183 helpline which operates in 20 provinces.

It is also planned to increase co-ordination and synergy with family hostels set up by private and public institutions under the regulations adopted to that effect on 8 May 2001 and published in issue No.24396 of the Official Gazette.

Paragraph 206:

Under the amendment to Article 453 of the Turkish Criminal Code introduced by Act No.4928 of 15 July 2003, the penalty of four to eight years' strict imprisonment has been increased from eight to twelve years in the case of infanticide as an honour killing.

Paragraphs 208-214:

The Ministry of Labour and Social Security is setting up various projects to combat child labour.

Most of these projects are run in co-operation with the ILO, particularly as part of the Project on the Elimination of Child Labour (IPEC Project), which has been in operation since 1992. Seven projects were put into operation from 1993 to 2000.

Paragraph 217:

Internal displacement in Turkey is due to terrorism, to which Turkey was exposed for two decades. Many of our citizens were obliged to abandon their homes as a result of intimidation and attacks by the terrorist organisation PKK/KADEK. As a precautionary measure, the competent Turkish authorities had to evacuate a limited number of inhabitants to ensure their safety.

The Turkish Government sets great store by citizens returning home successfully on a voluntary basis. The "Village Return and Rehabilitation Project" was launched in 1994 as part of the "South-East Anatolia Project" (GAP). The purpose of the project is to ensure that people return, to rehouse them, to set up social and economic infrastructure and to introduce sustainable living standards. It includes measures to promote activities such as agriculture, stockbreeding and craft trades. Over and above people's return to their original homes, the aim is to build more suitable and better balanced housing with a view to ensuring that investment and services are distributed in a more rational and efficient manner through housing concentration.

In a more general context, the government is considering co-operation projects with the World Bank to promote social and economic development in east and south-east Anatolia.

From June 2000 to the end of July 2003, 91,829 people returned to their villages.

The "Village Return Project" is co-ordinated by the governors of the provinces concerned. However, as it is a complex multi-dimensional process, close co-ordination and co-operation are essential between the various ministries and public authorities, as is the allocation of the necessary financial resources.

Paragraph 222:

Ms Leyla Zana was not sentenced for speaking in Kurdish, but for belonging to an armed gang under Article 168/2 of the Turkish Criminal Code. The use of a language other than Turkish is not banned and is therefore not punished in Turkey.

Paragraph 230:

The information set out in this paragraph is out of date. The seventh harmonisation package amended sub-paragraphs a. and c. of Section 2 of the Act on the Teaching of Foreign Languages and Learning of Different Languages and Dialects by Turkish Citizens:

"Section 2 a.: No language other than Turkish shall be taught to Turkish citizens as their mother tongue in educational establishments. However, private structures may be opened under Act No.625 on Private Education and Establishments with a view to teaching the different languages and dialects used by Turkish citizens in their day-to-day

lives. In these structures and as part of other language courses, language courses may be taught for the same purpose. These structures and courses may not provide any tuition contrary to the basic characteristics of the Republic as defined in the Constitution or to the indivisible territorial integrity of the State and national unity. The principles and procedure governing the opening and supervision of such structures and courses shall be determined by regulations issued by the Ministry of Education".

"c. The foreign languages included in education and taught in Turkey shall be determined by decision of the Cabinet".

Paragraphs 233-234:

In the light of the comments made under paragraph 230, paragraphs 233 and 234 are likewise out of date.

The relevant provisions are those of the recent regulations issued by the Ministry of Education in the Official Gazette of 5 December 2003. Language schools have opened, such as that in Batman, which, after meeting a few technical requirements (safety standards of the premises), received about 150 requests for enrolment in the first two days following its opening.

In day-to-day life, various events also take place in the Kurdish language, such as plays, municipal announcements and conferences (such as that of 4 November 2003 on Middle Eastern literature and multiculturalism).