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Summary record (partial)* of the 2929th meeting

Held at the Palais Wilson, Geneva, on Thursday, 18 October 2012, at 10 a.m.

Chairperson: Ms. Majodina

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant
(*continued*)

Initial report of Turkey (continued)

* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Initial report of Turkey (continued) (CCPR/C/TUR/1; CCPR/C/TUR/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Turkey took places at the Committee table.*
2. **Mr. Kälin** said that, while the Covenant was not a refugee convention, it did provide for protection for refugees, particularly against being sent back to countries where they faced the risk of being killed, tortured or otherwise ill-treated. He welcomed the introduction of the bill on foreigners and international protection and urged the State party to adopt it in the near future. However, the Committee was concerned that the geographical limitation to the 1951 Convention relating to the Status of Refugees, which excluded non-European asylum seekers from protection under the Convention, might have contributed to a number of reported cases of refoulement in the past. He asked whether it was necessary to maintain that limitation until European Union accession negotiations had been finalized. It would be useful to learn whether the bill on foreigners and international protection fully acknowledged the applicability of the principle of non-refoulement, regardless of the foreigners' countries of origin. He also wished to know what safeguards were provided in the bill and in practice to ensure that everyone had access to asylum proceedings at all border posts and in all airport transit zones. It would appear that applications for asylum sometimes took a long time to be processed.
3. He commended the State party for admitting large numbers of refugees from the Syrian Arab Republic and providing them with protection and assistance. Such a huge influx posed a significant challenge to the State party. The Committee would welcome assurances that it was not planned to close the border with the Syrian Arab Republic, given that there was currently no prospect of establishing a security zone inside that country.
4. **Ms. Waterval** drew the State party's attention to the Committee's general comment No. 22, particularly paragraph 11 on conscientious objection. Some of the arguments in that paragraph had been used in the case of *Atasoy and Sarkut v. Turkey* (communications Nos. 1853/2008 and 1854/2008). Mr. Sarkut had lost his job as a university lecturer owing to his refusal to perform military service, and the Committee had received reports that other conscientious objectors had met with the same fate, while some had been refused the right to leave the State party. The Committee would appreciate more details of the action plan the State party was preparing in order to address those issues, especially an indication of when it would be implemented. Would conscientious objectors who had refused to perform military service prior to the implementation of the action plan receive compensation?
5. She urged the State party to expedite its reform in order to recognize minorities other than the non-Muslim minority and to guarantee their rights, particularly the right to instruction in one's mother tongue and to places of worship.
6. **Ms. Motoc** requested an update on the State party's implementation of the Committee's Views in the case of *Atasoy and Sarkut v. Turkey*. That had not been an isolated case; the Committee had received reports of conscientious objectors being imprisoned, some of them on numerous occasions. The European Court of Human Rights had ruled on numerous cases of conscientious objection in Turkey, such as the case of *Ülke v. Turkey* (Application No. 39437/98) in which it had found that the State party had violated article 3 of the European Convention on Human Rights. She urged the Government to expedite the implementation of its action plan in order to prevent more such cases, and to release all conscientious objectors who were currently in prison. She asked whether Mr.

Halil Savda faced a real risk of imprisonment under article 318 of the Turkish Criminal Code for freely expressing his support for conscientious objectors.

7. The Committee had received several reports concerning prosecutions of individuals for having exercised their freedom of expression on issues including Armenians, Kurds, conscientious objection, sexual orientation and gender identity. Many articles of the Criminal Code appeared to be incompatible with the provisions of the Covenant, particularly in the light of the Committee's general comment No. 34 on freedom of expression. She would welcome the delegation's comments on that issue. It would appear that many of those who had been imprisoned for offences relating to the exercise of freedom of expression were victims of ill-treatment in prison. In particular, she enquired about the fate of Ms. Hediye Aksoy who had apparently been denied medical treatment in a prison in Istanbul, despite her extremely poor state of health.

8. **Sir Nigel Rodley** said that it was somewhat confusing to receive such a different, more constructive message from the delegation than that conveyed by the written replies. The delegation had said that the State party recognized its obligations concerning conscientious objection under article 9 of the European Convention on Human Rights, which was equivalent to article 18 of the Covenant, yet the written replies to paragraphs 2 and 22 of the list of issues indicated that article 18 of the Covenant did not apply to conscientious objection. The refusal in the reply to paragraph 22 to provide the names of individuals convicted for not undertaking military service was laudable in that it demonstrated respect for privacy. However, it would be interesting to know what efforts the State party had made to secure the consent of the individuals concerned. He failed to understand why the courts continued to imprison people for conscientious objection, particularly as it was clear from existing decisions of the European Court of Human Rights that such imprisonment was incompatible with the European Convention, and by extension, with the Covenant. That was even more surprising in the light of the delegation's statement that the High Council of Judges and Prosecutors had made reliance on international instruments and international case law a positive career incentive.

9. While the State party's reservation to the Covenant with regard to minorities might protect it from direct scrutiny, he remained perplexed by the insistence that it was essentially up to the State to decide what constituted a minority, given that there was no universal definition of the term minority. Indeed, there was no universal definition of terrorism, but the United Nations Security Council still expected certain kinds of actions from States, and human rights bodies expected certain limits to those kinds of actions. The absence of a universal definition did not mean that terrorism was purely a question of subjective appreciation on the part of States. The insistence that all persons of one particular faith could not constitute a minority, even if they spoke a different language, was unreasonable. On the issue of minorities, the delegation had again appeared to adopt a much more positive tone, particularly concerning the possibility of reviewing the relevant reservation to the Covenant, than that reflected in the written replies. The written replies were much more easily accessible to the general public on the Internet.

The meeting was suspended at 10.35 a.m. and resumed at 10.50 a.m.

10. **Mr. İşcan** (Turkey), replying to a question raised the previous day, said that a bill was currently before Parliament concerning oversight of the actions of law enforcement agencies. Under the bill, a committee would be established to investigate and punish any law enforcement officers who were found guilty of involvement in criminal acts or unlawful actions. The committee would be headed by the undersecretary of the Ministry of the Interior and composed of independent experts, including lawyers appointed by the bar associations, representatives of the National Human Rights Institute and academics.

11. The Government was aware of the requirement to involve NGOs in the preparation of reports to the treaty bodies. A number of NGOs and other stakeholders had contributed to the preparation of the initial report to the Committee. However, the Government would strive to encourage NGOs to take a more active role in that process in the future.

12. The Government expected the bill on foreigners and international protection to be adopted in the near future. It had been drawn up in full consultation with the relevant international bodies, especially the Office of the United Nations High Commissioner for Refugees (UNHCR), which had indicated that the bill was in line with international norms concerning the provision of protection to foreigners. Turkey was already a party to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol. While Turkey maintained its geographical limitation to the 1951 Convention, the Government always extended protection to non-European refugees and asylum seekers in accordance with the relevant decisions of the Executive Committee of UNHCR. The Government maintained that limitation because of the risk of being subject to massive influxes of foreigners, given Turkey's geographical location. He drew the Committee's attention to the significant changes that had been made in his country over the last 20 years. It now complied with international mechanisms to a much greater degree, and continued to strive to bring its legislation and practice into line with international standards.

13. The assertion regarding numerous cases of refoulement was untrue. UNHCR records showed that, despite having adopted a geographical limitation to the 1951 Refugee Convention, Turkey practised an open-border policy. Since the beginning of the Syrian crisis, it had given temporary protection to over 100,000 Syrian refugees, who were being accommodated in camps where the conditions surpassed international standards. During the Iraqi crisis, Turkey had sheltered half a million refugees. When it had asked the international community to share the burden, the response had been ignoble. The temporary protection status accorded to refugees rested on three pillars: non-denial of entry, non-refoulement, or non-return to the country of origin unless that return was voluntary, and provision of essential needs such as food, accommodation, education and health care. Each refugee camp cost 10 million dollars to build and 2.5 million dollars a month to run. The only assistance provided by the international community was aid in kind.

14. Turkey also received numerous applications from asylum seekers, especially at Istanbul airport. The deadline for processing those applications was 30 days, but the average time taken to deal with them at Istanbul airport was 2 to 3 days. Asylum seekers whose applications had been denied had 72 hours to appeal against the decision. If, after that period of time, the appeal was rejected, the person was expelled. Some 30,000 persons to whom asylum had been granted were currently being accommodated in temporary shelters pending resettlement in third countries by UNHCR. The purpose of the above-mentioned geographical limitation was not to prevent Turkey from extending protection to refugees and asylum seekers. It had no intention of closing its borders and would continue to fulfil its obligations under international humanitarian law. His Government would, however, urge the international community to improve its efforts to share the financial burden of looking after such large numbers of refugees and asylum seekers.

15. The complicated issue of the property rights of non-Muslim community foundations was a legacy of the Ottoman Empire. Although in 1936 minority foundations had been asked to declare their property in accordance with the 1935 Law on Foundations, some property disputes had arisen before and after the Second World War and some property had been expropriated. An effort was currently under way to reform both legislation and practice to bring them into line with international norms. As a result, the Law on Foundations had been amended in 2008 and 2011 in the manner described in the written replies. Since 2011, 181 properties had been returned to the foundations of the communities which had previously owned them. As at June 2012, an additional 38 immovable properties

had been registered on behalf of the relevant community foundations and a number of further applications were being considered by the Directorate General for Foundations. According to the latter's records, 165 non-Muslim community foundations belonging to 8 different religious groups had been registered. The reopening of two monasteries demonstrated the Government's determination to improve the rights of non-Muslim communities. In addition, long-standing applications to refurbish buildings belonging to those minorities had been granted and consultations were being held with the Greek Orthodox Patriarchate in Istanbul in order to resolve the issue of the Halki seminary. He wished to emphasize that the non-recognition of a group as a minority would not necessarily deprive it of its rights.

16. The Turkish Government viewed secularism as an important pillar of democracy. Its ongoing commitment to the principle of secularism as the basis of the political and constitutional system would not, however, deprive anyone of their right to freedom of conscience or freedom of religion. Religion and politics were two separate matters. He drew attention to the information contained in paragraph 417 of the initial report. The Turkish Government was trying to remedy any deficiencies with respect to the rights of non-Muslim minorities. In accordance with the requirements of the Covenant, it respected the rights of its citizens regardless of their religious, linguistic, ethnic or cultural background.

17. Ms. Hediye Aksoy had been sentenced to 18 years' imprisonment for the possession and production of explosives. Her state of health required medical treatment which she was receiving in prison. Under the Constitution, the President could grant an amnesty to a prisoner in poor health. Amnesty International's application on behalf of Ms. Aksoy was being considered.

18. More time was needed for a compromise to be reached among decision makers on the question of conscientious objection, owing to the volatile security situation on the country's borders. Turkey had no legislation on the subject, but as it was bound to comply with the judgment of the European Court of Human Rights in the case of *Erçep v. Turkey*, the Ministry of Justice had formulated a plan of action to give effect to the Court's decision, which it would submit to the Committee of Ministers of the Council of Europe. His Government would also take account of the Committee's concerns and recommendations regarding conscientious objection.

19. Turkey accorded due importance to freedom of expression. The Ministry of Justice was cooperating with international mechanisms to make further improvements in that area and to bring Turkish legislation and practice into line with the binding judgments of the European Court of Human Rights. It was untrue that certain people had been detained or imprisoned for expressing their opinions. The mere fact of being a journalist or an academic did not entitle anyone to breach the law. If there was evidence that someone had violated the law it was the responsibility of the Public Prosecutor to initiate court action against them and it was the responsibility of the courts to adjudicate the case. His Government was prepared to provide the Committee with details of the charges laid against any detainee and of the crimes of which a particular prisoner had been found guilty. If there had been any miscarriages of justice, the Turkish authorities were ready to remedy the situation. Furthermore, no one had been imprisoned simply because they were a member of the lesbian, gay, bisexual or transgender community. The persons who had been mentioned by members of the Committee were often visited by foreign delegations and almost all requests for prison visits were granted. The Ministry of Justice and the Ministry of the Interior cooperated fully with international mechanisms and with their representatives, special rapporteurs and commissioners for human rights. The Turkish authorities would take account of their recommendations and would strive to eliminate any deficiencies. Turkey was a transparent country whose Government was determined to make

improvements in the human rights situation and which would closely heed the Committee's general comments and concluding observations.

20. **Mr. Kälin** wished to make it clear that he had not asserted that there had been numerous recent cases of refoulement from Turkey. On a more technical point, he asked to what extent it was possible, under the Civil Code, for religious groups, other than those mentioned by the delegation, to set up associations or foundations.

21. **Mr. Flinterman** commended the State party on the current process of realignment of its legislation on freedom of expression with the European Convention on Human Rights, and suggested that the Committee's general comment No. 34 on article 19 might also be used in that process.

22. Referring to issues raised by Mr. O'Flaherty the day before, he requested information on the protective measures for victims of trafficking envisaged in the second National Action Plan on Combating Trafficking in Human Beings. He also asked for a reply to the questions on discrimination and patterns of abuse against gay men in the context of compulsory military service, and on the protection measures the Government had adopted or planned to adopt to address hate crimes against gay men and the lesbian, gay, bisexual and transgender (LGBT) community in general.

23. **Mr. Bouzid** requested clarification on the confidential investigations conducted following receipt of information from anonymous sources.

24. **Sir Nigel Rodley**, referring to the issue of conscientious objection, stressed that the time had certainly not passed for implementation of the Committee's Views on the *Atasoy and Sarkut v. Turkey* case.

25. On the issue of freedom of expression, he noted that many of the charges laid under the relevant legislation were related in one way or another to terrorism. He expressed concern at the rather broad and vague language used in the Anti-Terror Law, drawing particular attention to some of the wording in the definition of terror cited in the replies to the list of issues: "Terror is a criminal act ... damaging the indivisible unity of the State with its territory and nation ... by means of pressure ...". Such language could be used as justification for designating as criminal, and hence subject to the Anti-Terror Law, an organization which, for example, advocated some form of secession of part of a State's territory.

26. Non-governmental organizations (NGOs) had drawn the Committee's attention to a number of cases, in particular the arrest in November 2011 of 44 people, including publisher Ragıp Zarakolu and professor Büşra Ersanlı, on the grounds of their alleged membership of the Kurdistan Communities Union. The detention of those two individuals had raised particular concerns, as it appeared that they had been arrested solely due to speeches they had made to the politics academy of the Peace and Democracy Party, a recognized political party. Others had been questioned about notes they had made at academic meetings and unpublished manuscripts they had written, and in one case repeatedly prosecuted under the Criminal Code for "denigrating Turkishness". He expressed concern at such a concept being used in the context of freedom of expression.

27. The terms of article 318 of the Criminal Code on alienating the public from the institution of military service, which was apparently used to prosecute conscientious objectors, seemed incompatible with freedom of expression.

28. The increasing incidence of cases of that kind was particularly worrying, and he asked the delegation to comment on the matter.

29. **Ms. Motoc** requested clarification of the status of the *Erçep v. Turkey* case. Noting that in the *Ülke v. Turkey* case the European Court of Human Rights had found in 2006 that

there had been a violation of article 3 of the European Convention on Human Rights, as the applicant had been repeatedly imprisoned for refusing to perform military service, she asked how often a person could be convicted and imprisoned for being a conscientious objector. She also wished to know the status of implementation of that judgment of the European Court of Human Rights.

30. She invited the delegation to comment on the writers who had been convicted under legislation curtailing their freedom of expression. In that regard, she pointed out that in 2011 a Turkish judge at the European Court of Human Rights had made a statement on the record number of Turkish persons who brought cases before the Court for violation of their right to freedom of expression. Finally, she expressed concern that certain articles of the Criminal Code might not be compatible with the Committee's general comment No. 34 on freedom of expression.

31. **Mr. İşcan** (Turkey), responding to the question on the establishment of foundations by non-Muslim religious groups other than the minorities covered by the 1923 Treaty of Lausanne, said that in order to protect and maintain the principle of secularism, the establishment of foundations on the basis of religion was not permitted in Turkey, regardless of the religion concerned. Further information on that matter would be provided in writing.

32. On the issue of human trafficking, he said that the Ministry of the Interior was working with various international mechanisms, in particular the European Union, to develop projects to address that problem. In the last 12 years, 768 illegal immigrants had been caught at the Turkish borders and prevented from continuing their journey, while 12,400 traffickers had been arrested and prosecuted. The action plan on human trafficking defined the institutional framework for the provision of support to victims, including strengthening psychological and social assistance as well as information and consultancy services, return and rehabilitation of victims and civil society involvement in the protection process.

33. On the question of military service in relation to gay men, he said that, for their own protection, the practice was for gay men not to have to perform military service. They were simply qualified as "not appropriate for military service", without any stipulation as to why. The same applied to persons with disabilities. In that area, the Government focused not only on LGBT rights, but on improving legislation and practice to curb hate crime against any and all vulnerable groups.

34. While acknowledging that in certain circumstances individuals were prosecuted in contravention of provisions of the Covenant and the Committee's Views, he said that as long as a law was in force, it must be implemented, which could result in prosecution. With that in mind, the focus was now on improving, amending and repealing legislation that was incompatible with the Covenant and the Committee's Views. For example, the fourth judicial reform package would include a revision of article 318 of the Criminal Code on alienating the public from military service.

35. With regard to the arrest of Ragıp Zarakolu and Büşra Ersanlı, he said that 16 suspects had been remanded in custody on suspicion of being members of an armed terrorist organization. The court had later decided to release some of them in April and others in July 2012.

36. On the question of rulings of the European Court of Human Rights on conscientious objectors, he said that *Erçep v. Turkey* had set a new precedent, inasmuch as the Court had found a violation of article 9 of the European Convention on Human Rights, whereas the earlier *Ülke v. Turkey* ruling had been related only to article 3. Work was under way on an action plan to implement the ruling and to comply with the earlier opinions of the Committee. Ülke, who had been repeatedly detained for refusing military service, was now

free and would not face further prosecution, as specific measures had been taken to execute the court ruling in his case. Due consideration would be given to the Committee's general comment on freedom of expression.

37. In response to Mr. Bouzid's question, he said that any information from anonymous sources would be examined by the prosecutor, who had the discretion to decide whether to proceed with a prosecution if the information was material. In accordance with customary practice, the preparatory investigation would be confidential.

38. In closing, he said that his delegation had taken note of all of the Committee's comments and would share them with the relevant authorities on its return to Turkey. The constructive dialogue with the Committee had been very beneficial and would contribute to further reform efforts. Turkey remained committed to further upgrading standards of democracy, human rights and the rule of law, and he expressed confidence that his country would have continuous progress to report in the future.

39. **The Chairperson** said that the Committee welcomed the submission of the initial report of Turkey, which it had awaited since 2004. The delegation's presence was the practical expression of the importance Turkey attached to its reporting obligations. She commended the constructive dialogue and the recent steps taken in Turkey to ensure the protection and promotion of the human rights guaranteed under the Covenant. Those included the reform process to align domestic laws with international norms, amendments to the Constitution, the abolition of the death penalty and the judicial reform package.

40. Nonetheless, the Committee had a number of concerns, the first of which was the issue of declarations and reservations to the Covenant and Optional Protocol. The Committee did not agree with the delegation that they were compatible with the object and purpose of the Covenant.

41. The Committee had taken note of article 90 of the Turkish Constitution, but had raised questions about the scope of the amendment to that provision. It was also concerned about the law establishing the National Human Rights Institute of Turkey, and was not convinced that the Institute was fully compliant with the Paris Principles and sufficiently independent. The Committee was therefore encouraged to learn that it was planned to review the functions of the Institute.

42. The Committee also had concerns about the comprehensiveness of the State party's anti-discrimination legislation, especially as it applied to members of the LGBT community. Likewise, the Committee considered the counter-terrorism laws to be extremely broad and vague, which had led to disproportionate use of counter-terrorism measures. While the Committee had taken note of the State party's ratification of the Convention against Torture, brutality and excessive use of force by law enforcement agencies should be addressed.

43. The Committee looked forward to receiving additional information on the charges laid against persons prosecuted in cases relating to their freedom of expression. The Committee recommended that the controversial definition of minorities should be reconsidered from the standpoint of compliance with the Covenant. Lastly, the Committee did not believe that the principle of geographical limitation was in keeping with the spirit of the 1951 Refugee Convention and therefore some amendments needed to be made to the legislation on refugees in that regard.

44. The Committee hoped to see significant progress in the State party, given the latter's high level of commitment to honouring its obligations under international law.

The discussion covered in the summary record ended at 12.40 p.m.