



International Convention on the Elimination of All Forms of Racial Discrimination

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Summary record of the 2408th meeting

Held at the Palais Wilson, Geneva, on Thursday, 3 December 2015, at 3 p.m.

Chair: Mr. Calí Tzay

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The meeting was called to order at 3.05 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Combined fourth to sixth periodic reports of Turkey (CERD/C/TUR/4-6 and CERD/C/TUR/Q/4-6)

1. *At the invitation of the Chair, the delegation of Turkey took places at the Committee table.*

2. **Mr. Ulusoy** (Turkey) said that, on the occasion of the fiftieth anniversary of the adoption of the Convention, Turkey reiterated its commitment to the aims set out in that instrument. The Government was engaged in an ongoing process of reform addressing all aspects of human rights, including non-discrimination. The Turkish Constitution enshrined the idea of equality for all, irrespective of language, race, colour, gender, political opinion, philosophical belief, religion or sect, even going so far as to include “any such consideration” in the list of factors that must not be exploited with the aim of undermining equality of treatment. It thus endowed the judiciary with broad discretion and much flexibility in its handling of any cases that arose. Under the Constitution, citizenship was defined in terms of a legal bond with the State, not on the basis of origin. The nation was not a juxtaposition of groups but an amalgamation of people from different backgrounds who had found their home in Turkey: each of them was an integral part of the national identity. It was for the State to respond to their democratic needs and live up to their aspirations in the sphere of human rights.

3. Since 2000, several reforms had been adopted, including constitutional amendments, in order to bring Turkish law into line with the country’s international human rights obligations. Civil society had been included in that process, which aimed to revise existing laws, perfect national remedies and establish new legal and institutional frameworks.

4. Constitutional amendments adopted in 2010 had introduced positive discrimination for various vulnerable groups as a constitutional right and, since 2010, the Turkish Penal Code, the Code of Criminal Procedure and laws on terrorism and press freedoms had been the subject of substantial amendments. In 2013, a new law on foreigners and international protection had been adopted and hate crime had been introduced as an offence in the Penal Code. In 2014, an action plan had been adopted for the prevention of violations of the European Convention on Human Rights. The drafting of an anti-discrimination and equality law had been influenced by the concluding observations issued by the Committee after its consideration of the previous State party report in 2009 (CERD/C/TUR/CO/3).

5. National remedies for human rights violations had been improved. In 2012, the right of individuals to apply directly to the Constitutional Court for redress had been established and the Turkish National Human Rights Institution and the Ombudsman’s Office had been set up. Work was currently under way on a bill to establish a law enforcement oversight commission that would be empowered to investigate allegations of ill-treatment by law enforcement officers, and there were plans for an anti-discrimination and equality board to be set up under the new law on anti-discrimination and equality.

6. Training and awareness-raising activities had been expanded for law enforcement officers, members of the judiciary and students at all levels of education, and bilateral human rights education programmes were carried out with other countries, the Council of Europe and the European Union.

7. The Lausanne Peace Treaty of 1923 had established the concept of minorities in Turkey. The Treaty was still recognized as regulating the rights and obligations of non-Muslim Turkish citizens, who enjoyed the same rights and freedoms as the rest of the population and also benefited from the minority status given to them under its provisions. In 2010, a circular issued by the Office of the Prime Minister had emphasized that citizens of different faiths were all an inseparable part of the Turkish nation. A number of non-Muslim places of worship had recently been renovated, including the Grand Synagogue of Edirne, and an application to build an Assyrian Orthodox church in Istanbul had recently been approved. New schools had opened for non-Muslims, and the course materials published by the Ministry of National Education were regularly reviewed to remove any references or connotations that might be perceived by minority groups as discriminatory. Some of the issues relating to property rights of such communities had been resolved with the adoption of a new law in 2008. The Mor Gabriel Monastery had been returned to the Syriac community in 2013.

8. The Government had undertaken to identify the difficulties faced by the Roma community and to seek solutions, in particular by setting up the Institute of Roma Language and Culture and by drawing up a draft national strategy for the social integration of Roma citizens for the period 2015-2020.

9. The Constitution established that no distinction was allowed between Turkish citizens and foreigners except as explicitly provided therein, in accordance with the country's international treaty obligations. Turkey had a long history of taking in people who had fled their countries in despair. The conflict in the Syrian Arab Republic had triggered the largest and longest humanitarian crisis yet seen in the modern era, and Turkey had become the world's principal host of refugees. Some 260,000 Syrian refugees were currently living in 25 camps, and nearly 2 million more were spread among the country's cities and towns. There were also some 300,000 Iraqi refugees currently in Turkey. In observance of its obligations under international humanitarian law, Turkey maintained an open border for Syrians fleeing from the violence in their country and placed them under temporary protection, providing free food, shelter, health-care services and schooling, along with psychological assistance, vocational training and social activities in the camps. The nearly 2 million Syrians not living in camps were likewise provided with free medical services. The Law on Foreigners and International Protection had been adopted in 2013 following a participatory process with all national and international stakeholders. It gave a legal basis for the principle of non-refoulement of persons facing the possibility of torture or ill-treatment, which had already been applied in practice. In addition, provisions relating to temporary protection, subsidiary protection mechanisms and the issuance of humanitarian residence permits had recently been codified in the law.

10. Turkey had long ago acceded to all the international human rights instruments aimed at combating discrimination, and it maintained constructive cooperation with the relevant special mechanisms and procedures of the United Nations, the Council of Europe and the Organization for Security and Cooperation in Europe. The Government considered that the mandate and mission of the Committee was of the utmost importance, especially in the light of the challenges currently facing the world.

11. **Ms. January-Bardill** (Country Rapporteur) said that Turkey had shown a great deal of cooperation with the various United Nations special procedures for human rights and had consistently submitted reports and replied to communications in a timely manner. Turkey was a pluralistic democracy with a vibrant market economy and a social State governed by the rule of law. The State had very clear separation of powers among the three branches of government, and locally elected governments had well-defined powers and responsibilities. The economy was growing and the gap

between the wealthiest and poorest segments of society had been narrowing, which was commendable. The Committee was well aware that economic conditions often affected race relations and discrimination. The Committee commended the Government for the way in which it had responded to the humanitarian crisis created by the influx of refugees.

12. The world had changed since the Convention had been adopted in 1965, and the concept of racial discrimination had evolved accordingly, as had the Committee's interpretation of the groups that required protection. The definition of racial discrimination in article 1 of the Convention was sufficiently broad to allow for such a development. The Committee was pleased that, by using general recommendations to extend the concepts covered by the Convention, it had been able to maintain the treaty's relevance over the years.

13. In its previous concluding observations, the Committee had drawn the attention of the State party to the need for disaggregated statistical information on the linguistic and ethnic diversity of the population. At the time, the Government had indicated to the Committee that it refrained from gathering such data because it considered the Turkish nation to be a collection of individuals and not groups. The concluding observations had thus specifically mentioned that the information could come from academic sources and could relate to the mother tongues or languages used by the population or other indicators of ethnic diversity.

14. Noting that the State party did not collect data on ethnicity because it was a sensitive issue, she stressed that that difference should not be viewed as a problem but rather as a fact of life that needed to be adequately addressed. The position of Turkey was not uncommon among the States parties to the Convention. The Committee believed that the collection of such data helped States to better understand how certain groups of the population could be discriminated against and, on that basis, to design focused policies. She asked the State party to provide any available data on ethnic origin, based on the nationality or country of origin of persons living in Turkey or derived from academic studies and surveys.

15. It was regrettable that, despite the recommendation in the Committee's previous concluding observations, the State party had not yet withdrawn its reservation to article 22 of the Convention and the two declarations on the implementation and territorial applicability of the Convention. The Committee was concerned that the draft law on anti-discrimination and equality did not cover all of the grounds for discrimination set forth in article 1 of the Convention, such as descent and national origin, and wondered what the obstacles were to mentioning those two elements. She would be interested to know more about the main provisions in the draft legislation pertaining to the Equality Board and the Consultation Board, in particular concerning their independence and the appointment of members to the two bodies. Noting that the Committee and the European Commission against Racism and Intolerance had previously expressed concern about the absence of a definition of racial discrimination in Turkish legislation, she asked when the State party intended to adopt a clear and comprehensive definition of racial discrimination that was fully compliant with article 1.

16. She would be interested to hear an update on the adoption of the national human rights action plan, including the main provisions of the plan, the funding allocated and whether civil society had been involved in its preparation. She commended the State party on the range of human rights bodies that had been set up, but said that civil society organizations had expressed concerns about the independence of the members of the National Human Rights Institution and the process for their appointment. The Committee would welcome an update on the Law on the Turkish National Human Rights Institution, on the measures taken to provide the Institution with sufficient

resources and financial autonomy and ensure that it was fully compliant with the Paris Principles, and on the status granted to the Institution by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. She also requested information on the role, activities, independence and financial resources of the Ombudsman. Regarding article 4 of the Convention, concerns had been expressed that article 216 of the Penal Code did not expressly prohibit incitement to hatred based on ethnic origin or language. She invited the delegation to comment on the adoption of the proposed legislative amendments referred to in paragraph 72 of the report to fight hate crime and discrimination more effectively (CERD/C/TUR/4-6) and the possible introduction of racial motivation as an aggravating circumstance.

17. **Mr. Amir** said that Turkey was to be commended on its response to what was the largest refugee crisis since the Second World War. The State party had taken in huge numbers of refugees in a very short space of time, but he wondered for how long such a situation would be sustainable. The time had perhaps come for Turkey to address the root causes of the refugee crisis and rising international insecurity and join other countries in launching a military intervention in areas controlled by Islamic State in Iraq and the Levant (ISIL). Action must be taken to combat the odious crimes being committed by terrorists, which had already claimed so many lives, first and foremost among fellow Muslims.

18. **Mr. Bossuyt**, noting that the Constitution stipulated that the fundamental rights and freedoms of foreigners could only be limited by law in accordance with international law, said that while political rights could be restricted for foreigners, the same was not true of civil rights. Observing that defendants who could better express themselves in a language other than Turkish were allowed to present their defence statements in a language of their choosing, he wondered whether the choice of language was unrestricted and who bore responsibility for translation costs. The 10 per cent election threshold for parties to enter the parliament was very high and difficult to justify; he hoped that the proposal to lower it to 5 per cent would come into effect soon. While he agreed with most of the legal reasoning in paragraph 146 of the report, he did not see why the term “minority” could not be applied to Muslim Turkish citizens if, for example, they spoke a different language, were of a different ethnic origin or belonged to a different branch of Islam. The expression “positive discrimination”, used in paragraph 167 of the report, should be avoided, as it was a contradiction in terms.

19. While he admired the progress that had been made in Turkey over the past decades based on the principles of the father of the nation, Atatürk, he expressed concern at worrying recent developments and the Government’s highly ambiguous policy in areas of relevance to the application of the Convention. In March 2013, the Government had decided to work towards peace with the Kurdish community, but the armed conflict had started up again by July 2015. Turkish legislation defined terrorism in overly broad terms. The Committee had received reports of many human rights violations against journalists and spokespersons from the Kurdish community. There also seemed to be a gulf between words and deeds when it came to the fight against ISIL, which cast doubt on the Government’s determination to combat the barbarism of that group. The fight against ISIL did not seem to be a policy priority for Turkey, despite the recent terrible attack in the country. Nor was the Government’s immigration policy clear. It had certainly not contributed to alleviating the problems faced by the European Union; in recent months, illegal immigrants entering the European Union from Turkey had outnumbered those travelling from Libya. The Turkish authorities were not concerned by unscrupulous smugglers who put innocent people’s lives at risk. The situation in Turkey was not an example of the principle of

good neighbourliness in action, and more might have been expected of a member State of the Council of Europe and a candidate for European Union membership.

20. **Mr. Diaconu** said that he commended the State party on a number of positive steps taken to recognize the country's cultural and linguistic diversity, including the establishment of the Institute of Roma Language and Culture at Trakya University. Noting that there was no comprehensive definition of racial discrimination in line with the Convention in the Turkish legal order, he wondered why no reference was made to ethnic origin. Referring to the various complaints mechanisms that existed for reporting human rights violations committed by law enforcement officers and public officials, he asked what mechanisms were in place for complaints concerning discrimination in the private sector. He would welcome further information on the National Human Rights Institution's investigation of human rights violations. He would welcome clarification of the size of the Roma minority in Turkey, an update on steps taken to ensure that all Roma had identity cards and an estimate of how many still did not have one.

21. Article 216 of the Penal Code should be reviewed as it was not in line with article 4 of the Convention: it referred to inciting hatred among groups of the population towards others, rather than incitement in general; it made no reference to ethnic origin; and it seemed to provide for the protection of public order and State security rather than of the persons and groups of persons that faced discrimination. The Committee would welcome data on the languages spoken in Turkey, which were vehicles for transmitting ethnicity and identity. The determining factor in defining minorities in Turkey was religion, rather than ethnic and national origin, descent or colour, as set forth in the Convention. Although the Treaty of Lausanne referred to Muslims and non-Muslim minorities, much had changed since 1923 in the recognition of minorities and it was now necessary to apply criteria other than religion. Noting that special measures were taken in respect of certain groups, such as women, children and persons with disabilities, he wondered whether there were also special measures for groups characterized by different languages and cultures. He asked the delegation to comment on reports about the closure of schools offering education in Kurdish over disagreements concerning the curriculum.

22. **Ms. Dah**, after expressing her surprise that Turkey had signed the Convention in 1974 but only ratified it in 2002, said that Turkey had a long and glorious history. The establishment of a secular State after centuries of Ottoman rule had resulted in the formation of a great nation. She was confident that Turkey had a brilliant future. She also wished to draw attention to the fact that Turkey was positioned between Europe and Asia and she wondered why it had opted to align itself with Europe rather than Asia. Indeed, it could align itself with both continents.

23. The range of institutions that had been established to promote and protect human rights was impressive. In addition to the National Human Rights Institution, Turkey had an Ombudsman and an active parliamentary commission inquiring into human rights situations, as well as professional training courses for the police and other bodies. She noted that the Ombudsman had a mandate to investigate racial discrimination only in relation to breaches by the Government, whereas the parliamentary commission had broader powers. The 2010 Constitution had been amended to allow individuals to appeal to the commission if they suffered discrimination; she asked how many cases were heard annually by the commission and how many of those related to racial discrimination. She also wished to know how many women there were in the parliament and how many of those women belonged to minority groups.

24. **Mr. Vázquez** said that he wished to raise a number of points. He found it regrettable that ethnic origin was not included as a prohibited ground for racial

discrimination under articles 122 and 216 of the Penal Code; a provision to that effect should be added to both articles. He supported the statements by Mr. Bossuyt concerning Muslim minorities, such as the Kurds. Some NGOs had affirmed that Kurds undeniably constituted a separate ethnic group, although the Government, supported by a ruling of the Supreme Court, appeared to deny that. He would be grateful for further information from the delegation in that regard. A number of aspects of Turkish legislation, particularly in the labour and immigration spheres, were based on the concept of “Turkish origin”, such as Law No. 2527, and he asked how Turkish origin was defined. It appeared that the Government adopted an assimilationist approach to Kurdish ethnicity.

25. He would be interested to learn the current status of various initiatives by the Government. He understood that Turkey had said that it would withdraw its geographical reservation to the Convention relating to the Status of Refugees, but he had not seen whether that withdrawal had taken place. He wondered whether the recent bill on discrimination under which racial discrimination would be an aggravating circumstance had been adopted. He further noted that, according to a judgement by the European Court of Human Rights, there was possible discrimination regarding religious education in schools and he asked what steps the Government had taken to comply with the Court’s ruling.

26. NGOs had expressed fears that article 216 of the Penal Code, on incitement to hatred, could be used against racial and ethnic minorities seeking to assert and defend their rights. It had since come out that those concerns were well founded: the article had in fact been used in that way. He drew the delegation’s attention to the Committee’s general recommendation No. 35, which stated that action to combat racist speech should not be used as a pretext to curtail expressions of protest or discontent. Article 301 of the Code, on denigrating the Turkish nation or Turkish government institutions, had also been used to curtail rights. Indeed, the late Hrant Dink had been imprisoned several times for criticizing the Government’s failure to recognize the Armenian genocide. It was a matter of concern, in that connection, that the man accused of Mr. Dink’s murder had been released, apparently on a technicality; he understood, however, that the trial was due to start again shortly. He asked whether it was true that police officers had celebrated the murder and expressed solidarity with the murderer.

27. **Mr. Khalaf** said that the Ottoman Empire had been one of the pillars that had underpinned, or even brought about, the region’s diversity. He feared, however, that Turkey had moved away from that celebration of diversity and had turned inwards. The very name “Turkey” derived from the name of an ethnic grouping. Although the religious component was undoubtedly important, so was ethnicity. Some groups clearly did not feel confident that their concerns were treated with respect.

28. Turkey had shown great generosity in taking in 2.2 million Syrian and 300,000 Iraqi refugees, but he was concerned that many refugee children lacked access to education. The absence of education for a whole generation would provoke a still more serious situation in the future. Moreover, schooling was conducted in Turkish, but the newcomers spoke Arabic and could therefore not benefit. He wondered whether there were any Arabic-speaking schools. He would be interested to learn more about programmes to address regional disparities within the country, with a particular focus on Antalya, and about whether assessments had been made. Lastly, he found it regrettable that article 216 of the Penal Code sanctioned hate crimes committed “in a manner which might constitute a clear and imminent danger to the public order”. Hate crimes should be sanctioned whatever the circumstances. That phrase should be deleted.

29. **Ms. Crickley** said that the State party's rich history was undoubtedly pertinent to the current challenges that it faced. Turkey was indeed very diverse. That diversity was not, however, adequately reflected in the country's legislation. She asked what was meant by the statement that "racial discrimination is alien to Turkish society" in paragraph 64 of the report. In that connection, she wished to know how the draft law on anti-discrimination and equality would affect the legislation on racial discrimination. The delegation claimed that data on minorities were not collected, but the Government seemed to have information on the Armenian and Roma communities. Social services or employment authorities could provide information in many cases, for instance on the participation of Roma women in the work force. She asked what was meant by "intercultural dialogue" and how such dialogue was expressed in the educational curriculum in such a way that every group in the country felt that its views were reflected. According to information received by the Committee, education tended to be monocultural.

30. She understood that the National Human Rights Institution was applying for accreditation with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). She asked the delegation what the outcome of the recent ICC meeting had been. Lastly, with regard to the issue of geographical limitation, she asked what anti-discrimination legislation would apply in northern Cyprus.

31. **Mr. Kemal** recalled that, in its previous concluding observations, the Committee had requested the State party to establish a clear and comprehensive definition of racial discrimination. The State party had replied that such a definition was not needed, because, under article 90 of the Constitution, international agreements directly became part of the national legal order and because the Convention did not oblige Turkey to enact a separate law insofar as racial discrimination was prohibited under a number of individual laws. In the Committee's experience, however, it was always a benefit to a country to establish a clear definition.

32. The last time the Turkish delegation had come before the Committee, the delegation had said that Turkey lay on a major migration route and that 700,000 illegal migrants had passed through the country between 1995 and 2007. It had added that finding a solution was beyond the means of any one country. Yet the State party had now accepted 2.2 million Syrian refugees and spent millions of dollars. He wondered how the State party would deal with the enormity of its humanitarian burden.

33. **Mr. Lindgren Alves** asked what was meant by the term "martyrs" in paragraphs 19 and 32 of the report and whether the "democratic opening process" mentioned in paragraph 22 had been launched in response to recommendations made by the Committee in its previous concluding observations.

34. **Mr. Yeung Sik Yuen**, referring to paragraph 37 of the report, asked why there were five institutions to investigate suspected human rights violations and whether one of them performed a supervisory and coordinating role.

35. He said that he would appreciate information on the planned composition of the law enforcement monitoring commission mentioned in paragraph 38 of the report. In particular, the delegation should indicate how many members would be civilians.

36. With regard to bringing the definition of racial discrimination in article 10 of the Constitution fully into line with that contained in article 1 of the Convention, he noted that, in addition to ethnic origin, descent and national origin were missing from the list of prohibited grounds.

37. He agreed with Mr. Khalaf that the requirement of a "clear and imminent danger to the public order" stipulated in article 216 (1) of the Penal Code might make it

difficult to secure convictions. In article 216 (3) of the Code, the reference to disturbing the public peace was also unnecessary and was likely to have a similar effect.

38. Turning to the table in paragraph 74 of the report, which concerned cases of alleged racial discrimination, he asked why, in some years, there had been more judgements than accusations. He wished to know whether complaints filed under articles 216 and 218 of the Penal Code could be time-barred and what was meant by the term “conditionality” in the footnote, given that, presumably, offences had already been investigated and prosecuted by the time courts delivered their judgements.

39. **Ms. Hohoueto** said that it would be useful to know the number of women members in the Turkish Grand National Assembly. She supported the call for the State party to bring the definition of racial discrimination contained in its domestic law into line with that set out in article 1 of the Convention.

40. The delegation should clarify the roles and responsibilities of the Court of Jurisdictional Disputes and explain how the activities of the various national human rights bodies were coordinated so as to ensure that effective protection was provided. It should also comment on the fact that, owing to their lack of independence, none of the bodies mentioned in the report complied with the Paris Principles. She wished to know the extent to which decisions rendered by the bodies were enforceable, particularly with regard to the granting of compensation.

41. **Ms. January-Bardill**, noting that, in the State party, minority rights were regulated in accordance with the Lausanne Peace Treaty of 1923 and that all Turkish governments since that time had understood the Treaty to protect only a limited number of minorities, asked whether the current Government had considered drawing on more recent international standards. She also asked whether thought had been given to replacing the term “non-Muslim”, which appeared frequently in the report, with a more positive descriptor.

42. She invited the delegation to elaborate on the extent to which NGOs had participated in the drafting of the report, to explain how the Committee’s findings would be shared with civil society, to provide information on the monitoring and implementation of the action plan that had been drawn up in 2006 to facilitate the return of internally displaced persons in the province of Van and to state whether compensation had been awarded in that regard.

43. **Mr. Diaconu** asked whether there were still internally displaced persons in the State party and, if so, where they were living and what steps were being taken to rectify the situation. Noting that the fight against terrorism could never be used to justify serious human rights violations, he invited the delegation to comment on reports of racially motivated attacks against certain ethnic groups that had not been investigated.

44. He recalled the importance of gathering comprehensive data on minorities and, in response to an assertion made by the head of delegation in his opening statement, said that he saw no problem with Turkey being a juxtaposition of groups. Human beings were social animals and it was thus natural for individuals with common cultures, languages and traditions to associate with one another.

45. **Ms. Dah**, referring to paragraph 64 of the report, drew the delegation’s attention to the Committee’s general recommendation No. 19, in which it provided guidance on the interpretation of article 3 of the Convention. Turning to article 4 of the Convention, she asked whether any unacceptable remarks had been made prior to or during the general elections held in 2015 and, if so, whether judicial or other sanctions had been imposed. Lastly, with regard to asylum seekers and refugees, she invited the

delegation to provide further details on the difficulties that the Government was facing in implementing the relevant international treaties to which Turkey was a party.

46. **Mr. Khalaf**, referring to the table in paragraph 74 of the report, requested additional information, for example on the nature of the charges brought and on the nationality and ethnic origin of the complainants.

The meeting rose at 5.55 p.m.