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SECOND REPORT ON TURKEY

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Foreword

The European Commission against Racism and Intolerance (ECRI) is a body of the Council of Europe, composed of independent members. Its aim is to combat racism, xenophobia, antisemitism and intolerance at a pan-European level and from the angle of the protection of human rights.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

At the end of 1998, ECRI finished the first round of its country-by-country reports for all member States. ECRI's first report on Turkey is dated 5 February 1999 (published in November 1999). The second stage of the country-by-country work, initiated in January 1999, involves the preparation of a second report on each member State. The aim of these second reports is to follow-up the proposals made in the first reports, to update the information contained therein, and to provide a more in-depth analysis of certain issues of particular interest in the country in question.

An important stage in ECRI's country-by-country work is a process of confidential dialogue with the national authorities of the country in question before the final adoption of the report. A new procedure in the second round of country reports is the organisation of a contact visit for the ECRI rapporteurs prior to the drafting of the second report.

The contact visit to Turkey took place on 1-4 November 2000. During this visit, the rapporteurs met with representatives of various ministries and public administrations responsible for issues relating to ECRI's mandate. ECRI warmly thanks the Turkish national authorities for their wholehearted co-operation in the organisation of the contact visit, and in particular would like to thank all the persons who met its delegation each of whom provided much valuable information on their own field of competence. ECRI would also like to thank the Turkish national liaison officer whose efficiency and collaboration were much appreciated by ECRI's rapporteurs.

Furthermore, ECRI would like to thank all the representatives of non-governmental organisations with whom its rapporteurs met during the contact visit for the very useful contribution they made to the exercise.

The following report was drawn up by ECRI under its own responsibility. It covers the situation as of 15 December 2000 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.

Executive summary

Over recent years, Turkey has taken some positive steps which are relevant to combating racism and intolerance, including steps towards signature and ratification of international legal instruments relevant in this field, and steps towards the establishment of an Office of the Ombudsman. The Turkish authorities have also taken initiatives in the field of teaching of human rights in schools as well as a number of measures aimed at improving initial and in-service training of law enforcement officials in human rights.

Problems in the areas covered by ECRI's work persist, however, and are particularly acute *vis-à-vis* immigrants without legal status and asylum-seekers but also other minority groups. The situation of immigrants without legal status and asylum seekers is of particular concern to ECRI, notably as concerns the treatment of these persons on the part of the police and border control officials, but also as regards immigrants' vulnerability to exploitation and the lack of means of assistance of asylum seekers. Of concern are also the serious limitations of the right of members of all minority groups publicly to express and cultivate their ethnic, cultural, linguistic or religious background. ECRI is furthermore concerned at the non-application of the existing legislation prohibiting incitement to racial hatred in cases of hate speech directed against members of minority groups.

In the following report, ECRI recommends to the Turkish authorities that further action be taken to combat racism and intolerance in a number of areas. These recommendations cover, *inter alia*: the need to ensure that the legal framework aimed at combating these phenomena is adequate and effective, including through the introduction of the necessary changes; the need to ensure that adequate protection and assistance are available to asylum seekers and that all immigrants, including those without legal status, are sufficiently protected from abuses, including on the part of law enforcement officials; the need to allow more space for expression of ethnic, cultural, linguistic or religious identity for the benefit of members of all groups who form part of Turkish society, in particular through action in specified areas; and the need to ensure that the existing legislation prohibiting incitement to racial hatred is applied in cases of hate speech directed against members of all minority groups.

SECTION I: OVERVIEW OF THE SITUATION

A. International legal instruments

1. Turkey is party to some of the international legal instruments relevant in the field of combating racism and intolerance. ECRI is pleased to learn that signature of Additional Protocol N° 12 to the European Convention on Human Rights -- which widens in a general fashion the scope of application of Article 14 of the Convention and contains a non-exhaustive list of grounds of discrimination -- is currently being considered. It urges the Turkish authorities to sign and ratify this Protocol as soon as possible. In its first report, ECRI suggested that Turkey should become party to the International Convention on the Elimination of All Forms of Racial Discrimination, which Turkey signed in 1972. ECRI welcomes the fact that the preparatory work for ratification of this instrument has now started and hopes that this process will be swiftly finalised. ECRI strongly encourages the Turkish authorities to make the declaration under Article 14 of the Convention, which allows individual communications to be considered by the Committee for the Elimination of Racial Discrimination.
2. ECRI also notes with interest that, since the preparation of its first report, Turkey signed, in August 2000, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It urges the Turkish authorities to ratify these instruments as soon as possible.
3. As already suggested in its first report, ECRI strongly encourages the Turkish authorities to sign and ratify the UNESCO Convention against Discrimination in Education, the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities. It furthermore encourages the Turkish authorities to consider signature and ratification of the Revised Social Charter, the Convention on the Participation of Foreigners in Public Life at Local Level and the European Convention on Nationality.

B. Constitutional provisions and other basic provisions

4. The principle of equality before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion, group or class is contained in Article 10 of the Constitution.
5. As already noted in ECRI's first report, the Turkish Constitution makes possible wide limitations on the free exercise of fundamental rights in general in order to safeguard, inter alia, public order, public interest and public morals (Article 13). In addition, specific restrictions are set forth in relation to specific fundamental rights and freedoms, including freedom of expression and dissemination of thought (Article 26), the dissemination of science and arts (Article 27) and freedom of the press (Article 28). Article 14 further prohibits the abuse of fundamental rights and freedoms, i.e. the exercise of such rights and freedoms with specified aims, including violating the indivisible integrity of the State with its territory and nation, creating discrimination on the basis of language, race, religion or sect or establishing by any other means a system of government based on these concepts and ideas. ECRI notes

that one of the expressed aims of Article 14 of the Constitution is to prevent discrimination on ethnic or racial grounds. However, it reiterates its concern that the wide scope of limitations to fundamental rights and freedoms contained in the provisions mentioned above, particularly taken together, make possible the imposition of wide restrictions on non-violent expression of ethno-cultural identity on the part of individuals wishing to express such identity. ECRI considers that this situation impacts negatively on the possibility to guarantee more pluralism in Turkish society, an aspect which is addressed in Section II of this report.

C. Criminal law provisions

6. Article 312 of the Criminal Code penalises the public incitement of the population to hatred based on differences of class, race, religion, belief or political regime. The Article provides for more severe penalties if such incitement jeopardises public security. Article 311 stipulates that the penalties provided for by Article 312 are doubled when the incitement is committed through mass media of all kinds, audio tapes, records, films, newspapers, periodicals or other printed documents, photocopied hand-written documents or the display of notices or posters in public places. In its General Policy Recommendation N°1 on "combating racism, xenophobia, antisemitism and intolerance", ECRI underlines the importance of criminal law provisions against incitement to racial hatred. ECRI notes that Article 312 has so far been used in cases of incitement to separatism or fundamentalist views. It is concerned, however, that there are frequent reported instances of oral, written and other expressions, notably of antisemitic character, targeting minority groups in Turkey, which may fall under the scope of the provisions prohibiting incitement to hatred, and that Article 312 does not appear to be used in such cases. It therefore strongly urges the Turkish authorities to pursue a more active policy in this respect, including through measures aimed at raising the awareness of those involved in the application of the criminal law of the need to take seriously all instances of incitement to hatred.
7. ECRI notes that there is no provision in Turkish criminal law penalising common offences - but with a racist nature - as specific offences, or explicitly enabling the racist motives of the offender to be taken into account as an aggravating factor in sentencing. ECRI is aware that the Turkish authorities are considering the introduction of amendments to the Criminal Code and encourages them to consider, in this framework, the adoption of provisions to this effect, in line with ECRI's General Policy Recommendation N°1 on combating racism, xenophobia, antisemitism and intolerance.
8. Articles 5 and 76 of the Act 2908/1983 on Associations stipulate that it is forbidden to form associations which: work against the unity of the Turkish State; involve in activities based on the principle of region, race, social class, religion or sect; claim that there are minorities based on the same principles; or "create" minorities by promoting languages and cultures other than Turkish. Although some of these provisions provide grounds for the prevention of the establishment of associations with racist or discriminatory aims, ECRI is concerned that they also excessively restrict the possibilities for individuals belonging to different groups within Turkey to express their ethno-cultural and linguistic identity through the establishment of associations. As will be mentioned below¹, ECRI

¹ Section II

regards this as one of the areas where action is needed in order to stimulate and guarantee more pluralism in Turkish society.

D. Civil and administrative law provisions

9. Although a few civil and administrative law provisions relevant in the field of ECRI's work exist in Turkey - notably in the field of education², access to the civil service³ and in the electronic media⁴ - there are no comprehensive civil or administrative law provisions against discrimination. ECRI strongly encourages the Turkish authorities to consider the adoption of such provisions. As will be discussed below⁵, ECRI stresses the fundamental role that a specialised body on combating racism and intolerance could play in supervising the implementation of such anti-discrimination legislation. Although the proportion of the immigrant population legally present on the territory of Turkey as part of the total population is currently smaller than that registered in other European countries, ECRI notes that the number of immigrants coming to Turkey, in many cases illegally and in some cases in transit to other countries, is steadily on the rise. In this context, ECRI believes that the timely adoption of comprehensive anti-discrimination provisions could also be an effective preventive tool against discrimination. Consideration of these issues would also be in line with current developments taking place in the European Union (to which Turkey is a candidate country) concerning the application of Article 13 of the Amsterdam Treaty. ECRI furthermore believes that the debate around the adoption of such legislation would stimulate research into the phenomenon of direct and indirect discrimination and the extent to which this may be present in Turkey, as ECRI believes that there is at present a general lack of awareness of these issues.
10. Turkish primary legislation requires all persons to indicate their religion on their identity cards. Although, as already noted in ECRI's first report, this requirement has been found by the Constitutional Court not to be in contrast with the Constitution, ECRI reiterates its call for the abolishment of this requirement, as it may, in certain circumstances, invite intolerance and discrimination.

E. Administration of justice

11. Legal proceedings are conducted in Turkish. There have been complaints that some defendants whose mother tongue is not Turkish may be disadvantaged, as professional interpretation -- and sometimes immediate access to legal counsel -- are not always available in practice. ECRI urges the Turkish authorities to investigate these complaints and to take the necessary measures to redress the situation if needed.

² Article 4 of the National Education Fundamental Act (1739/1973) provides that educational institutions are open to all, with no distinctions of language, race, gender and religion.

³ Article 48 of the Civil Servants Act (657/1965) establishes that no criteria other than the qualification for the office concerned shall be taken into consideration for recruitment in the public service.

⁴ Article 4 of the Act on the foundation and Broadcasting of Radio and Television (3984/1994) sets out the principles according to which radio and television broadcasting shall take place: see Media, below

⁵ Specialised bodies and other institutions

F. Specialised bodies and other institutions

12. ECRI attaches importance to the existence and functioning of specialised bodies which can effectively and independently monitor the situation in a particular country whether as regards human rights generally or specifically in relation to racism, racial discrimination, xenophobia, antisemitism and related intolerance, and offer means of redress. As already suggested in its first report, ECRI encourages the Turkish authorities to establish a specialised institution which could deal with these problems. ECRI draws once more the attention of the Turkish authorities to its General Policy Recommendation N° 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, which contains detailed suggestions on the forms that such bodies might take. As mentioned above⁶, ECRI considers that the establishment of such an institution should also be examined within the context of the adoption of anti-discrimination legislation, in view of the central role this institution could play in supervising the implementation of such legislation.
13. ECRI notes that a draft law establishing an Office of the Ombudsman is currently pending before the Parliament and understands that, according to this draft law, the Ombudsperson will be assisted by a number of deputies with responsibilities in specific areas. ECRI encourages the Turkish authorities to ensure that issues of racism, racial discrimination, xenophobia, antisemitism and related intolerance constitute the specific responsibility of one of these deputies.
14. A High Council for Human Rights chaired by the State Minister for Human Rights and composed of representatives of the Ministries of Justice, Interior, Education, Health and Foreign Affairs and representatives of the security forces, is entrusted with reviewing the human rights situation, advising the Government on steps for improvement, and drafting appropriate legislation. ECRI hopes that the Council will devote adequate attention to the questions of racism, racial discrimination, xenophobia, antisemitism and related intolerance.

G. Education and awareness raising

15. A course in "Civic and Human Rights Education" is compulsory for pupils in the 7th and 8th grades of primary schools. In addition, an elective course on "Democracy and Human Rights" is available for high school students. ECRI welcomes the efforts made by the Turkish authorities in the area of provision of human rights education. It encourages them, however, to monitor the effectiveness of these courses through free exchange of views, followed by possible revision of the relative curricula, and to ensure that issues of racism, discrimination and intolerance are adequately addressed in these courses. It furthermore stresses the need to ensure that specialised teachers are available to teach these subjects.

⁶ *Civil and administrative law provisions*

16. ECRI also considers that curricula and textbooks of other subjects taught in primary and secondary education could also be reviewed from the standpoint of human rights, and that any material which may be found to perpetuate prejudice, foster stereotypes and excessive nationalism should be replaced.

H. Access to public services

- ***Access to social services such as health care, welfare and housing***

17. There have been reports that in South East Turkey, where many Turkish citizens of non-Turkish mother-tongue live, the inability to communicate when dealing with State authorities has resulted in difficulties for some of these persons, particularly women, in accessing services like health care. ECRI urges the Turkish authorities to investigate this situation and to take any necessary corrective action.

- ***Access to education***

18. The religious minorities recognised by the Treaty of Lausanne have their own schools as well as other religious and social institutions. For example, the Armenian community has 19 schools, the Jewish community has three schools, and the Greek Orthodox community has a total of 26 schools.
19. Apart from pupils belonging to these groups, however, mother tongue teaching in languages other than Turkish to Turkish pupils is prohibited by the Constitution (Article 42). ECRI strongly feels that such teaching should not be prohibited, although this does of course not imply that the teaching of the official language - Turkish - should not remain compulsory in school curricula.
20. ECRI notes reports of serious difficulties for some children of non-Turkish mother-tongue to follow courses in Turkish in schools, and urges the Turkish authorities to undertake initiatives aimed to ensure that these children can adequately follow the classes in Turkish. Such measures could include, for example, specialist training of teachers in teaching Turkish as a second language or programmes to ensure attendance of children of non-Turkish mother tongue in kindergartens.
21. As will be mentioned in Section II of this report, ECRI is also concerned at reports that children of immigrants without legal status in Turkey are sometimes not admitted to schools and urges the Turkish authorities to ensure that children's fundamental right to education is respected in all cases and practical circumstances.
22. According to the Constitution, instruction in religious culture and moral education is compulsory in the curricula of primary and secondary schools. But, in practice, all pupils in Turkish schools, except for non-Muslim pupils, are obliged to follow courses in the majority religion. ECRI notes that the compulsory nature of religious education is currently the subject of public debate in Turkey and considers that, in order to guarantee the respect of personal choice in matters of religion, thereby contributing to the respect of genuine plurality⁷, religious education should not be compulsory.

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See below, Pluralism

I. Employment

23. Immigrants are reported to be increasingly present in Turkey and on its labour market, although in many cases illegally. Partly in consideration of this situation, the Turkish authorities have prepared legislation, currently pending before the Parliament, in order to centralise within the Ministry of Labour the issuing of work permits for foreigners.
24. Apart from the general safeguards contained in the Constitution, there are currently no legal provisions in Turkey specifically prohibiting racial discrimination in employment. However, ECRI considers that in Turkey, as in most other European countries, there are groups whose members are vulnerable to discrimination on the labour market. ECRI urges the Turkish authorities to promote research in the phenomenon of direct and indirect discrimination in employment and, in line with the remarks made above⁸, encourages them to consider the adoption of anti-discrimination legislation covering employment.

J. Vulnerable groups

This section covers certain minority groups which may be vulnerable to particular problems of racism, discrimination and intolerance in the country in question. It is not intended to provide an exhaustive overview of the situation of all minority groups in the country, nor to imply that groups not mentioned face no problems of racism and discrimination

- ***Minorities covered by the Lausanne Treaty and the Treaty of Friendship with Bulgaria***

25. Although there are no groups in Turkey which have the status of minority groups on the basis of ethnic origin, the ethno-religious identity of non-Muslim groups, in practice Turkish citizens of Greek Orthodox, Armenian, Jewish and Bulgarian origin, is recognised by Turkey in accordance with the Lausanne Treaty of 1923 (Section III, articles 37-44) and the Treaty of Friendship with Bulgaria of 1925.
26. Turkish citizens belonging to these groups do not appear, generally, to encounter problems as concerns the exercise of their religious, cultural and economic rights and freedoms. However, there are indications that they face difficulties in some other areas, especially connected with the establishment and functioning of the institutional basis of these communities. Of particular concern to the minority communities is the lacking ability for their foundations to purchase property or receive donations. This is based on a 1974 Court of Cassation ruling which forbids the buying or selling of real estate acquired by such foundations after 1936. On the basis of this ruling, property belonging to these foundations and acquired since that time has reportedly been reverted to the State without remuneration. The Greek and the Armenian

⁸ Civil and administrative law provisions

communities appear to have been particularly affected by this situation. There have also been complaints on the existence of legal restrictions affecting the functioning of these foundations as well as of administrative obstacles to the construction of new Greek Orthodox churches and interference in the operation of the Advisory Council of the Armenian Church. Members of the Greek Orthodox community are also concerned that the number of Greek Orthodox priests is insufficient to meet the needs of this community. ECRI urges the Turkish authorities to engage in an open dialogue with the representatives of these communities in order to reach solutions addressing their concerns. In particular, it should be ensured that the collective dimension of the life of these communities is made possible, including by granting the possibility for these communities to buy, sell or acquire property through their foundations.

27. ECRI also expresses concern at instances of hostile actions, including the desecration of graves in certain Christian cemeteries and the placing of a bomb on the outer wall of a Greek minority high school, in 1999. It urges the Turkish authorities to remain vigilant in dealing with these situations.
28. ECRI furthermore deplores reported instances of use of derogatory and racially inflammatory speech recently made by some politicians concerning the Armenian community.
29. As concerns the Jewish community, manifestations of antisemitism are reportedly not prevalent within mainstream media and society. However, ECRI is concerned at the widespread presence of antisemitic speech and material in the press and radio stations connected with Islamic fundamentalist or extreme-nationalist groups. Recent years have also witnessed an increase in the number of antisemitic books and publications such as *Mein Kampf*, *The Protocols of the Elders of Zion* and general Holocaust denial material. As mentioned in other parts of this report⁹, ECRI is particularly concerned that the legislation in force prohibiting incitement to hatred, generally and in the broadcast media, is not used to sanction manifestations of antisemitism. It therefore reiterates its call for measures to ensure that such legislation is applied to all cases of hate speech directed against members of any minority group.

- ***Other vulnerable groups***

30. There appears to be a general lack of awareness of the situation as concerns the Roma/Gypsy communities in Turkey. Many Roma/Gypsies live in the Thrace region. The authorities have stated that they have received no complaints from Roma/Gypsies pointing at problems of unfavourable treatment vis-à-vis members of these communities, and that, since most Roma/Gypsies are Turkish citizens, they enjoy exactly the same rights as the rest of the Turkish population. In practice, however, ECRI notes reports of disadvantaged position of members of these communities in such vital areas as education and employment, but also reports of problems in the areas of housing and relations with the police. ECRI believes that research is urgently needed in the concrete situation of the Roma/Gypsy population

⁹ See *Criminal law provisions and Media*

in Turkey and the problems they may face. In line with its General Policy Recommendation N°3 on combating racism and intolerance against Roma/Gypsies – to which the attention of the Turkish authorities is drawn generally – ECRI particularly encourages the Turkish authorities to develop arrangements at the national and local level which would provide an opportunity for dialogue with the members of the Roma/Gypsy communities in order to identify problems, and for decision-making processes aimed at solving the problems identified, while ensuring thorough participation and involvement of the communities concerned.

31. There are reports that the Syrian Orthodox Christian community has decreased dramatically in the last decades. ECRI considers that the reasons behind this trend should be investigated and appropriate measures taken if the decline in this group is found to be connected with discriminatory or intolerant practices.

K. Effects of the conflict in South-East Turkey

32. It had been noted in ECRI's first report that the conflict in South-East Turkey has left the inhabitants of this area - mainly Turkish citizens of Kurdish origin - in a very vulnerable situation. This situation has impacted in a very negative way on the social and economic development of the South-East, and considerably increased regional disparities in Turkey.
33. In addition, as already noted in ECRI's first report, even in other parts of the territory of Turkey -- where civilians were massively displaced from their villages located in the South-East – the risk that this long-running conflict may result in mistrust and discrimination against Turkish citizens of Kurdish origin is considerable.
34. Since the preparation of ECRI's first report, however, the situation as concerns this conflict has changed considerably and the tension in South-East Turkey decreased. In Section II of this report, ECRI will discuss how the new situation constitutes an ideal opportunity for allowing more pluralism in Turkey for the benefit of the whole of its population. Here, ECRI notes that the situation of lessened tension also provides a favourable context for the adoption of measures aimed at expediting the process of social and economic reconstruction in the South-East. In this respect, ECRI strongly encourages the Turkish authorities to further strengthen their efforts to allow displaced persons to return to their villages in the South-East. It also notes with interest that plans for the economic reconstruction of the region are underway and urges the Turkish authorities to carry them out as swiftly as possible.

L. Conduct of law enforcement officials

35. Despite welcome efforts on the part of the Turkish authorities, notably as concerns provision of training in human rights for the members of the police, instances of violations of human rights on the part of law enforcement officials and security forces persist. Although this is a general phenomenon, certain groups of persons appear to be more vulnerable to possible human rights violations. For example, as will be discussed in Section II of this report¹⁰, the behaviour of the police *vis-à-vis* immigrants without legal

¹⁰ *Situation of certain categories of non-citizens*

status is a cause for concern. Given the wide powers afforded to the security forces under the Anti-Terror Law¹¹, persons detained in the framework of the application of this law may also be particularly vulnerable to unlawful behaviour on the part of such forces. ECRI's specific concern stems from the fact that a wide range of non-violent activities – spanning from overt expressions of collective ethnic or cultural identities and expressions of, or support for, plurality - may fall under the scope of this law.

- 36. ECRI considers that, in order to address this situation, action should be taken to improve the mechanisms to process complaints of unlawful behaviour on the part of law enforcement officials. To this end, ECRI supports the establishment of an independent commission to investigate all allegations of human rights violations by the police. As noted above¹², draft legislation establishing an Office of the Ombudsman is currently being discussed in Parliament. ECRI hopes that this institution will play an active role in this area.
- 37. As concerns training, ECRI notes with interest the various initiatives undertaken, also in collaboration with international organisations, to raise the awareness of law enforcement officials of human rights and the need to respect them. It encourages the Turkish authorities to continue and strengthen their efforts in this field.

M. Media

- 38. As noted above¹³, Article 4 of the Act on the foundation and Broadcasting of Radio and Television (3984/1994) sets out the principles according to which radio and television broadcasting shall take place. These include the principle that people shall not be discriminated against because of their race, sex, social class or religious beliefs (Article 4 (f)) and the principle that broadcasts shall not instigate the community to violence, terror and ethnic discrimination or give rise to feelings of hatred in the community (Article 4 (g)). A Supreme Council for Radio and Television is responsible for granting radio and television licenses and for monitoring that licencees respect relevant broadcasting laws and regulations. ECRI notes that the provisions referred to above are only used mainly in cases of incitement to separatism or promotion of fundamentalist views, although as mentioned in other parts of this report, instances of hate speech, particularly on the radio, targeting minority groups in Turkey are not unfrequent¹⁴. It therefore stresses once again that these provisions should be applied to all cases of hate speech directed against members of any minority group. It notes, however, that the decision on the adoption of sanctions should be taken by the courts. ECRI notes that the Turkish authorities are planning to review the Broadcasting law and encourages them to take these concerns into account.

¹¹ In its first report, ECRI noted that the 1991 Anti-Terror Law, amended in 1995, is widely and frequently used by the authorities. Following amendment, the first Section of Article 8 begins as follows: "No-one may engage in written and oral propaganda aimed at disrupting the indivisible integrity of the State of the Turkish Republic, country and nation, and meetings, demonstrations and marches with this aim may not be engaged in".

¹² Specialised bodies and other institutions

¹³ Civil and administrative law provisions

¹⁴ Criminal law provisions, Vulnerable groups - Minorities covered by the Lausanne Treaty and the Treaty of Friendship with Bulgaria

39. Although the Constitutional basis (Article 28, 2) for possible prohibition by law of printed material in certain languages still exists, a number of newspapers, journals and periodicals publish entirely or partly in various languages other than Turkish, including Kurdish. ECRI is concerned, however, at reports of harassment by the police of persons who publish printed material in Kurdish. ECRI encourages the Turkish authorities to repeal Article 28, 2 of the Constitution.
40. As concerns electronic media, broadcasts in languages other than those of States officially recognised by Turkey remain prohibited. However, some limited radio broadcasting in such languages is taking place. ECRI notes that public debate is ongoing on these questions and that some State officials are in favour of allowing broadcasting in languages other than those of States officially recognised by Turkey. ECRI strongly supports the lifting of all limitations in this respect.

N. The situation in northern Cyprus

41. The situation in northern Cyprus prevents ECRI from covering the position of populations living in that part of the island, since it is not under the effective control of the government of the Republic of Cyprus. In the framework of its mission, ECRI is nevertheless concerned at reports of discrimination in northern Cyprus. ECRI notes in this respect the conclusions contained in the June 1999 Report of the European Commission of Human Rights on Application N° 25781/94 (Cyprus v. Turkey). ECRI raises this matter in the present report having taken into account the judgment of the European Court of Human Rights in the case of Loizidou v. Turkey (40/1993/435/514)¹⁵.

SECTION II: ISSUES OF PARTICULAR CONCERN

42. In this section of its country-by-country reports, ECRI wishes to draw attention to a limited number of issues which in its opinion merit particular and urgent attention in the country in question. In the case of Turkey, ECRI would like to draw attention to the situation of certain categories of non-citizens and to the need to allow more pluralism.

¹⁵ «The Court recalls its finding in paragraph 57 of its principal judgment on the merits in the present case "that the continuous denial of the applicant's access to her property in northern Cyprus and the ensuing loss of all control over the property is a matter which falls within Turkey's 'jurisdiction' within the meaning of Article 1 and is thus imputable to Turkey" (the principal judgment, Reports of Judgments and Decisions 1996-VI, p. 2236)» (paragraph 25)

O. Situation of certain categories of non-citizens

- *Asylum seekers and refugees*

43. Turkey is party to the 1951 Geneva Convention relating to the Status of Refugees. However, in conformity with Article 1 B of this Convention, Turkey has opted for maintaining the restriction limiting recognition of refugee status only to persons coming from Europe. Over the last years, however, Turkey has opened its borders and offered humanitarian aid to large numbers of persons from different countries and regions including Iran, Iraq, Afghanistan, Bosnia and Herzegovina and Kosovo. Due to the restriction mentioned above, non-European asylum seekers cannot be recognised as refugees and are required to register with the police within 10 days of entering the country. Those of them who are considered by the authorities to have genuine cases are granted residence permits and their applications are referred to the United Nations High Commissioner for Refugees (UNHCR). Applicants whose requests are not passed onto the UNHCR are subject to deportation. UNHCR is responsible for determining these cases and for resettling those who have been recognised as refugees. However, only limited first asylum opportunities designed to allow non-European applicants time to be processed for onward resettlement are possible.
44. ECRI is concerned at the very short time limit for registration which must be met to lodge an asylum claim. It is concerned that the strict and mechanical application of this time limit may deprive some persons of the protection they are entitled to under international law. It therefore urges the Turkish authorities to take immediate steps to ensure that such protection is available in practice.
45. ECRI is furthermore seriously concerned at the precarious situation of asylum seekers pending determination of their cases. ECRI notes that these persons are not allowed to work nor are they entitled to any form of social assistance, although asylum seekers' health and childrens' education expenses are covered. Reception centres are also not available as a last resort. Those asylum seekers who do not have family or other ties in Turkey may therefore become more easily involved in illegal activities, which in turn makes them more vulnerable to prejudice on the part of the society in general, but also on the part of law enforcement officials. ECRI encourages the Turkish authorities to take steps to address this situation and avoid that asylum seekers are left in destitution pending examination of their asylum cases.
46. ECRI stresses the fundamental role that civil society can play to help improving the situation of asylum seekers and immigrants, both through provision of material assistance, but also in bringing about legal and policy changes through active and constructive participation in public debate on these issues. ECRI notes that, although some associations exist providing material assistance to asylum seekers and immigrants, their number, field of activity and contribution to public debate are very limited. ECRI encourages the Turkish authorities to support the development of civil society associations including by ensuring that no legal or other obstacles exist to their organisation and work.

- ***Immigrants in Turkey without legal status***

47. As already noted in other parts of this report, recent years have seen a rise in the number of immigrants coming to Turkey without legal status. Many of these people come from Central and Eastern European countries but some also originate from other areas. Turkey has not yet established a comprehensive immigration policy, and the issue of illegal immigration appears to be perceived almost exclusively as one of security and as a potential threat to the economy, to the detriment of the human rights implications of it. In its first report ECRI considered that, given the rise of new immigration into Turkey, steps should be taken to introduce an immigration policy and to ensure that immigrants, including immigrants who are in Turkey without legal status, are sufficiently protected from possible abuses.
48. ECRI expresses concern at reports of instances of use of excessive force by law enforcement officials against aliens who are in Turkey without legal status. There have been reports that immigrants, including Black Africans, rounded up by the authorities during crackdowns on illegal immigration, were subject to harsh and degrading conditions of detention. Apart from the question of ill-treatment, ECRI stresses that immigrants and asylum seekers, even if they are considered to be or to enter illegally in Turkey, should not be treated as criminals, and that any measures taken with regard to such persons should reflect this approach. In this respect, ECRI also expresses deep concern at reports of shootings – resulting in deaths -- on the part of border police of people trying to cross the border illegally. ECRI reiterates here its observations as concerns the need to improve the mechanisms to process complaints of unlawful behaviour on the part of law enforcement officials and the need to ensure that all such incidents are thoroughly investigated by an independent body¹⁶. ECRI furthermore considers that any such incidents should be publicly and unequivocally condemned.
49. The strengthening of the mechanisms aimed at monitoring the action of law enforcement officials would also be beneficial to address reported instances of corruption particularly directed towards immigrants without legal or secure status. Some law enforcement officials reportedly take advantage of the precarious situation of these immigrants. ECRI urges the Turkish authorities to investigate this problem and take the necessary corrective action.
50. As mentioned above, ECRI is also concerned at reports of problems of access to education for children of immigrants without legal status¹⁷.
51. Immigrants without legal status are also particularly vulnerable to exploitation on the labour market. As is the case in other countries, the risk of being exploited is particularly high for those persons who work as domestic aids. ECRI is concerned that, due to their status, immigrants illegally employed are generally reluctant to avail themselves of the possibilities of legal recourse, with the consequent perpetuation of situations of exploitation. ECRI believes, however, that the adoption of antidiscrimination legislation covering employment, as suggested above, could also

¹⁶ See *Conduct of law enforcement officials*

¹⁷ Access to public services – Access to education

be a powerful educational tool to help preventing such situations¹⁸. ECRI furthermore notes that in many cases unscrupulous employers prefer, for economic reasons, to exploit foreign labour rather than employing members of the local community. ECRI is concerned that this situation may create feelings of resentment *vis-à-vis* foreigners among the local population.

52. Turkey is also a destination and transit country for trafficking in women and girls for the purpose of prostitution. There have been complaints that victims of trafficking remain without assistance: no formal protection, aid or education to victims of trafficking is provided. ECRI encourages the Turkish authorities to take steps to counter the phenomenon of trafficking in women and girls and to provide those who are found to be victims of such trafficking with adequate assistance and support.

P. Pluralism

53. Turkey approaches ethno-cultural diversity from within the Republican model, which is based on the principle of equality before the law and constitutional citizenship, and does not give any official recognition to ethnic background at the level of the State. Ethno-cultural identification and expression of ethno-cultural identity are regarded as matters of personal choice, which are relevant only in the private sphere of the individual and must not bear relevance in the relations between the individual and the State. ECRI notes that discrimination or disadvantage may not only follow from ethnic, cultural, linguistic or religious background *per se*; forms of intolerance may also be manifested against individuals or groups of individuals who publicly express their ethnic, cultural, linguistic or religious background. ECRI is concerned that the right of members of such groups to express and cultivate this background is seriously limited in Turkey.
54. ECRI has addressed this concern throughout Section I of this report, in those areas where it considered that action is most urgently needed to remedy the situation. Such areas include : mother tongue teaching in schools in languages other than Turkish; possibility of broadcasting in languages other than Turkish; freedom of association; and religious education.
55. These concerns must be seen against the background of the long-running armed conflict in South-East Turkey¹⁹. In this context, the Turkish authorities in the past have, generally, tended to counter expressions of ethno-cultural identity. In this respect, in its first report ECRI expressed the concern that such an approach is detrimental to members of ethnic groups who wish to express their own language, customs and sense of community publicly while still acknowledging their State citizenship and contributing as citizens to the society of which they are a part. Since the preparation of ECRI's first report, however, the situation as concerns this conflict has changed considerably and the tension decreased.

¹⁸ See Civil and administrative law provisions and Employment

¹⁹ See above, Effects of the conflict in South-East Turkey

56. ECRI believes that this new context of reduced tension constitutes an ideal opportunity for a more open attitude towards cultural and linguistic plurality within Turkey, allowing more space for non-violent public as well as private expression of cultural and ethnic identity to the benefit of members of all groups who are part of the Turkish society. ECRI regards those mentioned above as priority areas of action in order to stimulate and guarantee pluralism. ECRI notes that public debate is ongoing on these questions within Turkish society. ECRI encourages the Turkish authorities to promote such public debate involving as broad a cross-section of interested organisations and institutions as possible.

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The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Turkey.

APPENDIX

ECRI wishes to point out that the analysis contained in its second report on Turkey, is dated 15 December 2000, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, a national liaison officer was nominated by the authorities of Turkey to engage in a process of confidential dialogue with ECRI on its draft text on Turkey and a number of her comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Turkish governmental authorities expressly requested that the following observations on the part of the authorities of Turkey be reproduced as an appendix to ECRI's report.

OBSERVATIONS PROVIDED BY THE TURKISH AUTHORITIES CONCERNING ECRI'S REPORT ON TURKEY

"1) The expression "intolerance" contained in line 3 of the first paragraph of Foreword (p.2) should be qualified since it is not any kind of *intolerance* that ECRI aims to combat; it's "Racism, xenophobia, antisemitism and **related** intolerance...", as is already made clear within ECRI on various occasions.

Therefore, I believe that the first para. of the Foreword should read (line three) "... antisemitism and **related** intolerance at..."

2) Concerning para. 26, there seems to be a misinformation due to lack of time of the ECRI delegation during its rather short visit to Turkey. 1) The contention that there are administrative obstacles to the construction of new Greek Orthodox churches is not logical, since this community counts only 1500-2000 members now, mostly senior citizens, while the number of its churches amounts to 70 in Istanbul; 2) The contention that there is interference in the work of the Advisory Council of the Armenian Church probably stems from the discussions prevalent in the atmosphere of competition between candidates to the office of Patriarch in March 1998, after which Mr. Mutafyan has become Mesrob II by the unanimous vote of the Armenian community of Turkey; 3) The contention that the Greek Orthodox community is also concerned that the number of Greek Orthodox priests is insufficient to meet the needs of this community also is a factual error, already explained in (1) above. The truth lies elsewhere: a- The aging Greek Orthodox community in Turkey is unable to produce youngsters willing to become priests in a globalizing world; b- The Seminar of Theology in Istanbul has been closed by the ruling of the Constitutional Court in 1971 along with all

other private institutions of higher education. It is true that private universities are now permitted, but only state higher education institutions are permitted in the fields of religious and military education. This grievance of the Greek Orthodox community (also shared by the Armenian community) is now under consideration by the authorities and a solution is being searched for the re-opening of those non-Muslim theology seminars in the institutional framework of Istanbul University. A solution acceptable both to these communities and to prevailing laws should not be too far.

To avoid these factual errors therefore, I believe that the sentence of para. 26 which read: "*There have also been complaints on the existence of legal restrictions affecting the functioning of these foundations as well as of administrative obstacles to the construction of new Greek Orthodox churches and interference in the operation of the Advisory Council of the Armenian Church. Members of the Greek Orthodox community are also concerned that the number of Greek Orthodox priests is insufficient to meet the needs of this community.*" should be deleted.

3) Concerning para. 29: Some discourses of the Islamic fundamentalist and/or extreme-nationalist groups are in fact the concern of the Turkish State and nation. However, apart from the fact that Turkey, in contradistinction with the situation prevalent in certain European countries, is very far from being a fertile soil for anti-Semitism, this country is now trying hard to liberalize its publication laws on the lines of the European Community; it would therefore be rather contradictory to penalize the publication of ideological material and this would do more harm than good in this particular transitory and reformatory period.

I therefore believe that the content of this para. 29 should be amended by deleting the sentences after: "*Recent years have...*".

4) Concerning para. 41: There is no doubt that the content of this paragraph is clearly and totally out of ECRI's mandate. Furthermore, this is purely a political question and has nothing to do with discrimination, etc. I therefore strongly believe that this paragraph should in no way be included in this Draft Report.

5) Concerning paras: 43-52: In this particular field which constitutes a grave point of concern for Turkey I believe that some facts should be born in mind: 1) This is a developing country with a multitude of serious problems of various kind, and the State already has tremendous difficulties to create work for its own citizens; 2) A substantial influx of asylum seekers and refugees to the areas newly emerged from the destruction of terror is a new phenomenon in this country; this phenomenon is coupled by over 1.000.000 illegal workers from eastern Europe mostly; 3) In humanitarian matters involving both the citizens and people illegally coming from abroad, new legislation is a painstaking process that can only be deployed after a certain amount of experience has been accumulated.

6) Concerning para. 43: It is a sheer fact that Turkey is not very eager to welcome an influx of refugees; which is even more true for wealthier nations of Europe. But her geographical limitation for non-European refugees does not prevent this country to provide the necessary protection for refugees/asylum seekers coming from non-European countries. Full protection is provided until they are settled into a third country by UNHCR. Even in the case their applications are rejected by this international body, Turkey firmly complies with the "non-refoulement" principle of the 1951 Convention.

7) Concerning para. 44: A time limit of 10 days for registration is essential for separating genuine refugees/asylum seekers from those looking for a better life in Western countries. One can only expect that those belonging to the first category will immediately apply to the relevant authorities. On the other hand, Turkey's relevant authorities have been showing tolerance for those who applied after the time limit due to health or transportation problems, and all are granted access to the asylum procedure, regardless of whether their entry to the country was legal or not.

Therefore, I believe that this para. 44 should be deleted.

8) Concerning para. 45: Refugees or asylum seekers in Turkey can stay in hotels or houses or they are allowed to stay with Turkish people they know. Those who need special care due to security or social reasons are settled in special guest houses run by the Ministry of Interior. In most countries, reception centers are actually some kind of prison where living conditions are not better.

On the other hand, during this waiting time these people are able to receive allowances from UNHCR and their health and children's education expenses are met as well. One refugee's monthly allowance is around 100 US Dollars. In Turkey under limit of a worker's revenue is hardly 150 US Dollars. Therefore, it would hardly be fair to accuse this country for not providing employment for these people. Actually, for humanitarian reasons, Turkish authorities are closing their eyes on those working without permission, not counting considerable amount of charity funds spent by the Turkish people, charity organizations and province authorities.

Therefore, I believe that this para. 45 should be amended to read, after its first sentence, "**ECRI encourages the Turkish authorities to improve the situation of the asylum seekers in the limits of her possibilities so that they are not involved in illegal activities, which would also make them vulnerable to prejudice.**" "