

## NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

### TURKEY, Situation as of 31 December 2003

#### General Overview

*Preliminary Note: this table is accompanied by an explanatory note*

<b>COUNTRY: TURKEY</b>	<b>Constitutional Provisions</b>	<b>Specific legislation</b>	<b>Criminal Law</b>	<b>Civil and Administrative Law</b>
<b>Norms concerning discrimination in general</b>	No.	No.	No.	No.
<b>Norms concerning racism</b>	Yes, Art. 10 and 14 of the Constitution	No.	Yes, Art. 312/II Penal code.	Yes.
<b>Relevant jurisprudence</b>	No case-law found on this subject	No.		No case-law found on this subject

#### EXPLANATORY NOTE

##### TURKEY / GENERAL OVERVIEW

The main sources of anti-discriminatory law in the Turkish legal order are the Constitution (and the related legislation like the Act on Political Parties and the Act on Associations) and the Criminal Code which contains a special provision punishing racial antagonism.

Article 37 to 45 of the Lausanne Peace Treaty of 1923 oblige Turkey to treat the remaining non-Muslim (mainly Greek-Orthodox-Christian, Armenian-Christian and Jewish) citizens of the former Ottoman Empire without discrimination compared to other Turkish citizens.

Moreover, Turkey has ratified the International Convention on the Elimination of All Forms of Racial Discrimination.

## Constitutional Law: Turkey

*Preliminary Note: this table is accompanied by an explanatory note*

Constitutional provisions	Scope	Relevant jurisprudence	Remarks
Constitution of the Turkish Republic of 1982: Art. 10 Equality before the Law	All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations.		The (1965) Act on Civil Servants No. 657 Art. 7: In the exercise of their duties, civil servants cannot differentiate by considerations of language, race, gender, political opinion, philosophical belief, religion, sect and the like (...).
Art. 14 Prohibition of Abuse of Fundamental Rights and Freedoms	None of the rights and freedoms embodied in the Constitution shall be exercised for activities aiming to violate the indivisible integrity of the State with its territory and nation, and abolishing the democratic and secular Republic which is based on human rights. (...)		See Art. 68 (below).
Art. 24 Freedom of Religion	Everyone has the right to freedom of conscience, religious belief and conviction. Acts of worship, religious services and ceremonies shall be conducted freely, provided that they do not infringe the provisions of Article 14 of the Constitution. No one shall be compelled to participate in religious ceremonies or to reveal religious convictions or be accused of his religious beliefs and convictions [Even in times of war, mobilisation, martial law, or state of		

	emergency (Art. 15)].		
Art. 68 Founding Political Parties, Joining Political Parties and Leaving Political Parties	The statutes, programs and activities of political parties cannot be contrary to the independence, indivisible integrity of the State with its territory and its nation, human rights, principles of equality and State under the rule of law, sovereignty of the nation, principles of the democratic secular State, cannot aim to (...) stand for or establish any kind of dictatorship (...). [Otherwise, they shall be tried before and eventually dissolved by the Constitutional Court, under Art. 69 of the Constitution.]	The Constitutional (Supreme) Court (Anayasa Mahkemesi): K. 1993/1, 14.7.1993 “(...) Ataturk’s nationalism is based on the principle of an indivisible homeland with distinct borders. It rejects racism. (...)” K. 1997/1, 14.2.1997 (...) ethnic heritage can neither harm the characteristics of citizenship nor can it be made a basis for a claim to being a separate nation. (...) The country’s ethical varieties and languages and cultures of these are not banned. Citizens of various origins have their own languages and cultures, they ensure their progression (...)	Detailed provisions are to be found in the 1983 Act on Political Parties 2820 (Later partially amended, See the attached explanatory note).
Art. 70	States that every Turk		

Entry into the Public Service [= citizen] has the right to enter the public service. No criteria other than the qualifications for the office concerned shall be taken into consideration for recruitment into the public service.

## **EXPLANATORY NOTE**

### **TURKEY / CONSTITUTIONAL LAW**

The Constitution of Turkey contains two relatively broad articles concerning the political parties (Arts. 68 and 69). More detailed provisions are to be found in the Act on Political Parties (no. 2820, Official Gazette: 24.4.1983). The following articles concern directly or indirectly discrimination on racial grounds:

#### **Conditions for admittance as member:**

Art. 12: (...) [Party] statutes cannot contain provisions observing language, race, sex, religion, sect, family, group, social class and professional differences between those who apply for membership.

#### **Prohibitions regarding the protection of democratic state order:**

Art. 78: Political parties may not aim, or be involved in any activity aiming, to change:

a. (...) the provisions as prescribed by Article 3 of the Constitution, concerning the indivisible unity of the Turkish State with its country and nation, its language, its flag, its national anthem and its capital, (...),

(...) to create language, race, colour, religion and sect discrimination or, by any other means, to establish a state order based on these concepts and views;

they cannot provoke and encourage others to this end.

b. [Political parties] may not be based on principles of region, race, particular person, group, or community, religion, sect or religious group or use the names of these.

#### **Prevention of creation of minorities:**

Art. 81: Political parties may not

a. claim that there are minorities within the territory of the Turkish Republic, based on differences of race, religion, sect, culture and language,

#### **Prohibition of regionalism and racism:**

Art. 82: Political parties may not have as an aim, in the country which is an indivisible unity, regionalism or racism, and involve in activities to this end.

**Protection of equality principle:**

Art. 83: Political parties may not pursue or participate in activities which offend against the principle that everyone is equal before the law, regardless of language, race, colour, sex, political opinion, philosophical belief, religion, sect, and similar grounds.

**Party names and signs not to be used:**

Art. 96: (...) No party can be founded with or use in its name, the names communist, anarchist, fascist, theocratic, national socialist, religion, language, race, sect, and region or also names with similar meaning.

**Criminal Law: Turkey**

*Preliminary Note: this table is self-sufficient and is not accompanied by an explanatory note*

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Demolishing religious objects	Art. 176 Turkish Penal Code of 1926 (referred to as "TCK").	Punishes those who demolish or cause damage to temples, burial sites, graves or similar objects with the purpose of insulting the corresponding religion.	Imprisonment from 1 to 3 years and heavy fine.		
Depriving of individual liberty	Art. 179 TCK		If the convict acted for a religious or national purpose, or for a purpose arising from differences in political or ideological or social opinions, his punishment may be increased up to 8 years' imprisonment.		

Inciting to hatred and antagonism	Art. 312/II TCK.	Punishes those who candidly incite the masses to hatred and antagonism in a way which could jeopardize public order, by considerations of social class, race, religion, sect or regional differences. The imprisonment term to be determined is doubled when the incitement is exercised by mass media of all kinds, audio tapes, records, films, newspapers, magazines or other press instruments or by scripts written by hand, reproduced and distributed or, by hanging in places open to public, placards or notices (Art. 311 TCK).	Imprisonment up to 3 years.	The present Prime Minister of Turkey, Mr. Recep Tayyip Erdogan had previously been convicted (by majority vote) of incitement to antagonism based on religious grounds: basically between secular Muslims and fundamentalist Muslims. Mr. Erdogan served his prison term and was temporarily banned from active politics pursuant to the Act on Political Parties until the relevant part of the Article (11) was abolished by the Turkish Grand National Assembly after his Party (AKP) won the national elections.
Forming forbidden	Arts. 5 and 76 of the	It is forbidden to form	Imprisonment and	

associations	Act 2908/1983 on Associations	associations aiming: (...) to create in the Republic of Turkey differences of race, religion, sect and region, or minorities based on these, and to demolish the unitary State structure of the Turkish Republic (...)	termination of the association
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### Civil and Administrative Law: Turkey

*Preliminary Note: this table is self-sufficient and is not accompanied by an explanatory note*

Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
Art. 68 of the [New] Turkish Civil Code No. 4721 (2001)	Associations can neither observe between members distinctions of language, race, color, gender, religion, sect, family, faction and [social] class; nor can they act in a manner, which impairs equality or grants privileges to certain members on these grounds.			
Art. 101 of the [New] Turkish Civil Code No. 4721 (2001)	No foundation can be founded with the aim to [...] support the members of a certain race of [religious] community.			
Provisional Art.	Acquired			

<p>2 of the Act on Foundations No. 2762, as amended by Law No. 4928 (2003)</p>	<p>immovable property controlled by a [religious] community foundation [of the officially recognised minorities under the Lausanne Peace Treaty of 1923] shall be registered in the name of the foundation, provided that the foundation lodges a request [...]</p>			
<p>Art. 5 of the [New] Labor Act No. 4857 (2003)</p>	<p>Outlaws discrimination in labour relations based on language, race, gender, political opinion, philosophical belief, religion, sect and similar grounds.</p>			
<p>Art. 48 of Civil Servants Act No. 657 (1965)</p>	<p>No criteria other than the qualification for the office concerned shall be taken into consideration for recruitment into the public service.</p>			
<p>Art. 4 of the National Education Fundamental Act No. 1739 (1973)</p>	<p>Provides that educational institutions are open to all, with no distinction of language, race, gender and religion.</p>			
<p>Art. 2 of the Act on Education and Teaching of Foreign Languages and the Learning of Various Languages and Dialects of Turkish Citizens</p>	<p>a.) No language other than Turkish can be instructed and taught in education and teaching institutions to Turkish citizens as their mother-tongue. However, private courses may</p>			



<p>No. 2923, as amended in 2003</p>	<p>be opened for the purpose of learning various languages and dialects traditionally used by Turkish citizens in their daily lives, provided that the provisions of the Act on Private Teaching Institutions No. 625 are observed. Language lessons may be offered either in these [new] courses or, for the same purpose, in other [already established] language courses. [...]</p>			
<p>Art. 8 of the Regulation of the Ministry of National Education on Learning of Various Languages and Dialects of Turkish Citizens Traditionally Used in Their Daily Lives (Official Gazette of 05.12.2003)</p>	<p>Provides as a prerequisite for admission to such a course that the candidate is at least a student who is presently attending a compulsory primary school [and naturally old enough for the latter school].</p>			
<p>Communiqué of the Minister of National Education Mr. Metin Bostancioglu (2003)</p>	<p>Abolishing the negative sub-definitions for the Turkish word “gypsy” (<i>cingene</i>) in a Turkish Dictionary previously published by the Ministry of National Education.</p>			
<p>General amendment (2003) to the Act</p>	<p>The terms “mosque” [...] are changed to “place of prayer”.</p>			

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Art. 4 of the Act on the Foundation and Broadcasting of Radio and Television [Stations] No. 3984 (1994), as amended

Radio and television broadcasting shall be made, within the concept of a public utility, in Turkish. [...] Moreover, public and private radio and television institutions may broadcast in various languages and dialects traditionally used by Turkish citizens in their daily lives.

The following principles shall be observed:

b.) No broadcasting which leads the society to violence, terror, ethic discrimination; or incites masses to hatred and antagonism based on class, race, language, religion; or brings about feelings of hatred in the society.

d.) Masses shall not be accused and offended on grounds of language, race, color, gender, political opinion, philosophical belief, religion, sect and the like.

s.) All elements of program services shall respect the dignity of the human being and fundamental human rights.

Art. 33: The High Board [of Radio and Television, as an independent and unprejudiced public legal entity] shall warn a private radio or television corporation which broadcasts against (...) the broadcasting principles. (...), or order it to eventually broadcast a clear apology.

Should the infringement be reiterated, administrative sanctions depending upon the severity of the infringement:

Inter alia, temporary suspension of the program, fines, temporary suspension of broadcasting, permanent banning of broadcasting and cancellation of broadcasting license.

v.) Broadcasts shall neither encourage the use of violence, nor shall they be of a nature, which provokes feelings of racist hatred.