



**International Convention on
the Elimination of all Forms
of Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Seventy-fourth session
16 February – 6 March 2009

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

TURKEY

1. The Committee considered the combined initial to third periodic reports of Turkey submitted as one document (CERD/C/TUR/3), at its 1914th and 1915th meetings (CERD/C/SR.1914 and CERD/C/SR.1915), held on 23 and 24 February 2009. At its 1927th meeting (CERD/C/SR.1927) held on 4 March 2009, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the report which was elaborated in conformity with the Committee's reporting guidelines. It expresses appreciation for the written replies to the list of issues, provided in a timely manner prior to the session, and welcomes the opportunity to be able to initiate an open and constructive dialogue with the State party.

B. Positive aspects

3. The Committee welcomes the extensive legislative reform carried out by the State party with a view to integrating human rights standards into national legislation, including through amendments to the Constitution and the adoption of the Civil Code, the Penal Code, the Law on

Associations and several other laws which are of relevance to the implementation of the Convention.

4. The Committee notes with satisfaction the many training programmes and projects aimed at raising the awareness of judges, prosecutors and other public officials on human rights.

5. The Committee welcomes the initial sponsorship and the subsequent active involvement of the State party in the United Nations Alliance of Civilizations initiative, demonstrating its commitment to combating racial discrimination globally.

6. The Committee notes with satisfaction the initiatives taken by the State party to facilitate the voluntary return of internally displaced persons, consisting mainly of Kurds from south-eastern Turkey, in particular through the launching of several return and development projects, and the substantial funds allocated to facilitating returns.

7. The Committee welcomes the ratification by the State party of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in September 2004.

C. Concerns and recommendations

8. The Committee notes the reservation to article 22 and the two declarations on the implementation and the territorial applicability of the Convention made by the State party upon ratification, which may affect the full implementation of the Convention.

The Committee encourages the State party to consider withdrawing its reservation and declarations, including removal of the territorial limitation to the application of the Convention.

9. While taking note of the explanations given by the State party with regard to constitutional provisions preventing it from identifying ethnic groups in a census or otherwise gathering information on the ethnic composition of the population, the Committee regrets the lack of statistical data in the report of the State party on the ethnic composition of its population. In this respect, the Committee takes note of the State party's indication that academic institutions are not prohibited from carrying out research on this issue.

In the Committee's view, information on the ethnic composition of the population of a country is a prerequisite for identifying the specific needs of different ethnic groups and possible gaps in their protection against racial discrimination. The Committee recommends that, in accordance with paragraphs 10 and 12 of its revised reporting guidelines (CERD/C/2007/1), in the absence of quantitative data on the issue, the State party provide information on the use of mother tongues, languages commonly spoken, or other indicators of ethnic diversity, together with any information derived from academic research carried out in this field, so as to be able to evaluate the composition of its population and its situation in all fields covered by the Convention.

10. The Committee regrets the lack of information relating to the representation of the various ethnic groups in the Parliament and other elected bodies, as well as their participation in public bodies.

The Committee invites the State party to promote adequate representation of the various ethnic groups in the Parliament and other elected bodies, as well as their participation in public bodies, and requests the State party to include such information in the next periodic report.

11. While welcoming the fact that the Convention is directly applicable in the State party, the Committee regrets the absence of a definition of racial discrimination in domestic law, which may, in turn, impede the adequate application of relevant legislation prohibiting such discrimination. The Committee notes that this is particularly important due to the fact that the relevant legislation, including article 10 of the Constitution providing for equality before the law of all individuals without discrimination, inter alia, on the grounds of race, does not consistently include “national or ethnic origin” among the prohibited grounds of discrimination (article 1).

The Committee recommends that the State party consider adopting a clear and comprehensive definition of racial discrimination in its domestic law, including all elements contained in article 1 of the Convention.

12. The Committee notes that according to Turkish law, only Turkish citizens belonging to non-Muslim minorities under the Treaty of Lausanne of 1923 fall within the scope of the term “minority”, and that the Treaty is applied restrictively only to the Armenian, Greek and Jewish communities. The Committee also notes that some groups, such as the Roma and the Kurds, face a more difficult socio-economic situation than the rest of the population. The Committee is concerned that the application of restrictive criteria to determine the existence of ethnic groups, official recognition of some and refusal to recognize others, may give rise to differing treatment for various ethnic and other groups which may, in turn, lead to de facto discrimination in the enjoyment of the rights and freedoms referred to in article 5 of the Convention (articles 2 and 5).

The Committee, referring to its general recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention, and recalling its general recommendation No. 20 (1996) on article 5 of the Convention, calls upon the State party to ensure the non-discriminatory implementation of each of the rights and freedoms referred to in article 5 of the Convention for all groups within the scope of the Convention. Furthermore, the Committee recommends that the State party conduct research with a view to effectively assessing and evaluating the incidence of racial discrimination in the country, with particular focus on discrimination based on national or ethnic origin, and take targeted measures to eliminate such discrimination. The Committee requests the State party to provide information on the result of such studies and measures taken in the next periodic report.

13. The Committee is concerned by allegations of persisting hostile attitudes on the part of the general public, including attacks and threats, towards Roma, Kurds and persons belonging to non-Muslim minorities (article 2 and 3).

The Committee recommends that the State party take steps to prevent and combat such attitudes, including through information campaigns and education of the general public. Furthermore, in the light of its general recommendation No. 19 (1995) on article 3 of the Convention, the Committee encourages the State party to monitor all tendencies which may give rise to racial or ethnic de facto segregation and endeavour to combat the negative consequences of such tendencies.

14. The Committee observes that article 4 of the Convention is not self-executing but requires the adoption of specific legislation. The Committee also notes that article 216 of the Penal Code prohibiting incitement of enmity or hatred on the grounds of social class, race, religion, sect, or regional difference is limited to acts constituting a clear and imminent danger to public order and therefore excludes from its scope of application, inter alia, acts inciting hostility that do not amount to danger to the public order. The Committee remains concerned that national legislation does not fully cover all aspects of article 4 of the Convention. The Committee is also concerned at reports that article 216 of the Penal Code has been applied against persons advocating their rights under the Convention (article 4).

The Committee recommends that the State party adopt legislation, in the light of its general recommendation No. 15 (1993) on article 4 of the Convention, to ensure full and adequate implementation of article 4. The Committee also calls upon the State party to ensure that article 216 of the Penal Code is interpreted and applied in conformity with the Convention.

15. The Committee expresses concern over the fact that the State party maintains the geographical limitation to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, which, in turn, reduces the protection offered to refugees from non-European States and may subject them to discrimination. The Committee is also concerned at reports on deportation and *refoulement* of refugees recognized under the mandate of the Office of the High Commissioner for Refugees (UNHCR), as well as of persons registered with UNHCR as asylum-seekers (article 5).

The Committee welcomes the stated intention of the State party to withdraw the above geographical limitation, and encourages it to give high priority to this process. The Committee calls upon the State party to refrain from deporting refugees or persons registered with UNHCR as asylum-seekers.

16. While noting that following an amendment made to the Turkish Penal Code, article 301 now criminalizes public denigration of “the Turkish nation” instead of “Turkishness” and that prosecution of this offence is made conditional on the prior authorization of the Minister of Justice, the Committee remains concerned at the possibility that the new article may lead to action being taken against persons advocating their rights under the Convention.

The Committee calls upon the State party to ensure that the new article 301 of the Penal Code is interpreted and applied in conformity with the Convention.

17. While noting that the Penal Code includes a specific provision (article 3) prohibiting discrimination in its application, and that also some other laws, such as the Labour Law and the law on TV and radio broadcasting contain a specific provision prohibiting discrimination, the Committee is concerned at the absence of comprehensive anti-discrimination legislation covering all rights protected under article 5 of the Convention (articles 1 and 5).

The Committee recommends that the State party, as a part of its ongoing legislative reform, enact comprehensive anti-discrimination legislation covering all rights and freedoms protected under article 5 of the Convention.

18. The Committee is concerned at the particularly serious situation of the Greek minority, including the training of religious personnel and unresolved questions of restitution of property (article 5 (d)).

The Committee calls upon the State party to redress such discrimination and to urgently take the necessary measures to reopen the Greek Orthodox theological seminary on the island of Heybeliada, to return confiscated properties and, in this respect, to promptly execute all relevant judgements by the European Court of Human Rights.

19. The Committee is concerned that many persons of Roma origin continue to experience discrimination, particularly in the fields of education, employment and housing (art. 5 (e)).

The Committee, recalling its general recommendation No. 27 (2000) on discrimination against Roma, recommends that the State party take special measures to improve the situation of Roma to overcome the disadvantages brought about by persistent discrimination, in particular in the fields of education, employment and housing.

20. While noting the adoption of the “Law on Foreign Language Education and Teaching, and the Learning of Different Languages and Dialects by Turkish Citizens” and its “By-law on Education in Different Languages and Dialects traditionally used by Turkish Citizens” of 2003, the Committee remains concerned at the inadequate possibilities for children belonging to ethnic groups to learn their mother tongue, in particular having regard to the information given by the State party that schools offering private language courses have been “all been closed down by their founders and owners due to lack of interest and non-attendance” (article 5 (e) (v)).

The Committee recommends that the State party ensure effective implementation of the above-mentioned laws. The Committee also recommends the State party to consider further amendments to the legislation to allow teaching of languages traditionally used in Turkey in the general public education system and encourages it to establish a public school network offering

teaching of these languages, and consider means of strengthening the involvement of the members of the local communities in decision-making in this field.

21. The Committee notes the lack of information on the practical application of criminal and other legislation aimed at eliminating racial discrimination, and that according to the State party's report and the replies to the list of issues and questions, there have been no complaints or court decisions in civil or administrative proceedings concerning acts of racial discrimination during the reporting period (article 2 (1) (d) and 6).

The Committee, considering that no country is free from racial discrimination, urges the State party to investigate why there have been no complaints of such discrimination. Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party verify that the lack of such complaints is not the result of lack of effective remedies enabling victims to seek redress, victims' lack of awareness of their rights, fear of reprisals, lack of confidence in the police and judicial authorities, or lack of attention or sensitivity to cases of racial discrimination on the part of the authorities. The Committee requests the State party to provide in its next report updated information on complaints about acts of racial discrimination and on decisions taken in civil or administrative court proceedings. Such information should include the number and nature of cases brought, convictions obtained and sentences imposed, and any restitution or other remedies provided to victims of such acts.

22. While welcoming the extensive training provided for judges, prosecutors and police officers on human rights in general, the Committee regrets the comparatively limited attention given in training programmes to the specific issues covered by the Convention (article 6).

The Committee encourages the State party to strengthen its efforts to provide training for judges, prosecutors, lawyers and police officers to increase their awareness of the content and importance of the Convention at the national level.

23. The Committee notes that the Penal Code does not include any general provision stipulating that racist motivation should be taken into account as a specific aggravating circumstance for the purpose of sentencing in relevant crimes (article 6).

The Committee recommends that the State party include in its domestic criminal legislation a specific provision to ensure that the motive of ethnic, racial or religious hatred is taken into account as an aggravating circumstance in proceedings under the criminal law.

24. The Committee notes that the State party provided only a brief response to the question on the activities, methods of work and challenges faced by the Minority Issues Assessment Board established to address and resolve difficulties encountered by Turkish citizens belonging

to non-Muslim minorities. The Committee also notes the process of establishment of the office of ombudsman and a national human rights institution (NHRI) in accordance with the Paris Principles (article 6).

The Committee requests the State party to include in its next periodic report detailed information regarding the work of the Minority Issues Assessment Board, as well as updated information on the status of establishment of the office of ombudsman and the NHRI.

25. The Committee notes the State party's view that the remedies provided by the European Court of Human Rights are sufficient, and that making the declaration provided for in article 14 of the Convention is thus not necessary. The Committee believes that article 14 of the Convention has independent value specific to the question of racial discrimination across the whole spectrum of human rights, and therefore invites the State party to reconsider its position and to envisage the possibility of making the declaration.

26. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 63/243 of 22 January 2009, in which the Assembly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

27. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12, chap. I), when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report specific information on measures taken to implement the Durban Declaration and Programme of Action at the national level. The Committee also encourages the State party to continue to actively participate in the Preparatory Committee of the Durban Review Conference, as well as in the Durban Review Conference in 2009.

28. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission in the official language and in other languages traditionally used in Turkey, and that the observations of the Committee with respect to these reports be similarly publicized.

29. The Committee recommends that the State party consult widely with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

30. In accordance with article 9, paragraph 1, of the Convention and rule 65 of the its amended rules of procedure, the Committee requests the State party to provide, within one year,

information on the way it has followed up on the recommendations contained in paragraphs 8, 13, 18 and 20 above.

31. The Committee invites the State party to regularly update its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4)

32. The Committee recommends that the State party submit its combined fourth and fifth periodic reports in a single document, due on 15 October 2011 taking into account the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1). That report should be an update document and address all points raised in the present concluding observations.
