



**Permanent Representation
of Turkey
to the Council of Europe
Ambassador**

2013/33766324/1156831

Strasbourg, 21 November 2013

Dear Commissioner, *Dear Mr. Muižnieks,*

We would like to thank you for the efforts in preparation to and writing of the report following your visit to Turkey from 1 to 5 July 2013.

We have carefully studied its content and we welcome the acknowledgment of the efforts undertaken and the progress achieved by Turkey, in particular regarding the substantial constitutional, legislative, institutional and practical reforms on administration of justice and protection of human rights in Turkey.

Moreover, in line with our constructive cooperation, we took note of some important observations that you have included in the report. Below are some points that we would like to bring to your attention, with regard to the main recommendations of your report.

1. Freedom of assembly and association:

In the year 2012, 25,635 meetings and demonstrations were organised under various names and about 7,500,000 people participated in these activities. 70% of these activities were organised as spontaneous press statements for which no notification is required to the administrative authorities.

Mr. Nils Muižnieks
Commissioner for Human Rights
Council of Europe
Strasbourg

In order to further expand freedom of association in Turkey, Law No. 2911 on Meetings and Demonstrations will be amended, as announced within the “Democratization Package” by Prime Minister Recep Tayyip Erdoğan on 30 September 2013, as follows:

-The civilian authority will consult the non-governmental organizations in determining the location and route of meetings and demonstrations; as such participation in decision-making will be ensured.

-The meetings in open areas will be able to continue until sunset and in closed areas until 12:00 am.

-Office of “Government Commissioner” will cease to exist; instead, a regulatory board will be entrusted with the authority over implementation. The board will take a decision of dissolution in case the meeting or demonstration expands beyond its objectives and will report the situation to the chief of police; it will announce the conclusion of the meeting in case the meeting or demonstration transforms contrary to the law on meetings and demonstrations. If the regulatory board fails to perform this duty, the highest local civilian authority will take the decision.

-With regard to monitoring and controlling social movements, intervention tactics and use of tear gas, Police Action Force Branch Office is continuing its efforts to study the equipment and intervention tactics used by law enforcement agencies of other countries during social movements, in order to improve Police Action Force Regulation and the other relevant legislation.

Moreover, “Procedural and Substantial Directive Regarding the Assignment of Negotiators in Social Incidents”, entered into force on 29.03.2013 with the aim of tasking “negotiators” with maintaining public order and security, preventing crimes and possible spinning out of control of any social incident (such as demonstrations or sporting events). The Directive sets out the procedure and substance of negotiators’ authority, responsibilities and training and its implementation is underway.

“The Project on Raising Awareness within the Civil Administrative Authorities and Law Enforcement Officers, about the Enjoyment of the Right to Association, Demonstration and Statement as part of Freedom of Expression” was launched on 8 October 2013 in cooperation with the Government of the United Kingdom, which will enable the reviewing of the legislation currently in force.

In addition to legislative amendments, a major project on “Development of Institutional Capacity Regarding Public Order Management and Crowd Control” is being carried out, with a view to eliminating the shortcomings in the implementation of the legislative structure. Due to the substantial rise in social incidents during the recent years, comprehensive training of the law enforcement officers is given utmost importance. This project aims to provide training; to maintain international standards nationwide, in terms of

technical devices that are used in the identification of crimes and criminals; to review the techniques and tactics applied in European countries; to improve the service and training capacity of the Turkish Police and to establish a training center.

2. Use of force by security authorities:

i. Standards (paragraphs 49-54 of the report)

Article 16 of Law No. 2559 on Duties and Powers of the Police (PVSK) regarding use of force and some other articles were reviewed and amended by Law No. 5681 that came into force on 14 June 2007. Law no 5681 is not only a legal document that was prepared pursuant to Constitutional principles but it also took into account during the preparation phase the codification and implementation in the European countries. The draft law has been submitted following a thorough study of 14 months with the participation of local and foreign scientists and practitioners. By Law no 5681, preventive powers of the police have been rearranged with a view to increasing the effectiveness of the preventive security measures. The new text makes use of comparative law and includes a clear reference to safeguard fundamental rights and freedoms.

The “authority of police to use force and arms” was not enhanced, but rather rearranged in a systematic way. The main objective in the use of force and arms is to ensure public order, prevent instantaneous and/or potential crimes, arrest the perpetrators or remove a danger that threatens public or individual security. In this context, police has been entrusted with authority to use force and firearms, the use of which is defined within the principles laid out in the Law on the Duties and Powers of the Police. The authority to use firearms is considered as the last resort, and “principle of proportionality” which is a criterion enshrined by the Constitution for lawful restriction of rights and “gradualness and proportionality” have been given due regard. In addition, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were also taken into consideration in the preparation of the said Law.

ii. Implementation:

Due to some shortcomings in the implementation of the above standards in the course of the Gezi Parkı events, the Minister of the Interior issued Circular No. 2013/33 to all governors’, instructing them as follows:

- All civilian personnel who are tasked during social incidents and carry truncheons should at all times wear their police vests indicating their identity and use equipment in compliance with the regulation,
- The individuals reacting to protesting groups should not be permitted to intervene with materials such as sticks and blades; the perimeter should be secured with adequate

troops; the individuals making such attempts should immediately be intercepted and turned in for legal action,

- All personnel should pay utmost attention in cases where groups need to be intervened with tear gas are at a distance of less than 40 meters. They should primarily use gas grenades, OC gas flushing tubes, muzzle torpedoes and hand sprays; strict attention should be paid not to use gas torpedoes at the specified distances (Type 1-Type 2); individuals should not be directly targeted in the usage of tear gas torpedoes and the interventions should be recorded by cameras .

Thus, the shortcomings, caused by practices of security institutions have been identified and the staff has been instructed accordingly.

At this point, a highly-relevant decision of the Office of the Ombudsman (KDK) as recent as 5 November 2013, regarding the 1 May demonstrations in Taksim Square should be mentioned. Upon the application of several non-governmental organizations regarding allegations of excessive use of force by the security authorities and the consequent injury of a minor, the Office of the Ombudsman has concluded *inter alia* that the fact that the security authorities acted wrongfully should be admitted; security officials should be subjected to continuous training regarding the application of the international human rights standards with a view to preventing the reoccurrence of such violations; the efforts for the establishment of an independent monitoring mechanism for security forces should be accelerated; and necessary measures should be taken to eliminate the factors that prevent or delay effective investigation of allegations of excessive use of force.

iii. Basic pillars of intervention

As a general rule, security forces display the necessary tolerance in social events. They pay utmost attention to intervene gradually and proportionately and only when the events threaten public order and security of participants, irrelevant of the movements' original legal status.

Force is gradually and compulsorily used as a *last* resort, in case of repeated and aggressive violations despite clear warnings by the security forces, for protests that become contrary to law, disturb public order, harm people and the environment, involve attacks on other people's fundamental rights and freedoms and do not pursue a peaceful goal.

In the year 2012, only 6% of the activities (1534 activities) were conducted contrary to law and only half of these (802 activities) were intervened by the security forces.

All personnel are duly instructed to follow the law to its letter. In cases where omissions occur, judicial and administrative actions are initiated against the personnel who are identified to use disproportionate force going beyond its purpose by crossing the boundaries of authority granted by law.

Paragraph 142 of the report states that the investigation initiated against the law enforcement personnel after the Gezi events “will be an important test of the will to tackle the issues of police violence and impunity”. The investigations into the incidents and the acts performed by the law enforcement personnel during the Gezi events are being conducted scrupulously by the independent judicial bodies. The total number of pending judiciary and disciplinary actions taken against the security personnel during and in the immediate aftermath of Gezi Parkı events is 118.

Furthermore, in the circulars, “Investigation Procedures and Principles (No.10)” and “Private Investigation Procedures (No.11)” issued by the High Council of Judges and Prosecutors, the following matters have been mentioned: conducting of investigations more efficiently by the public prosecutors, the timely and full collection of evidence, ensuring timely preparation of bills of indictments through the substantial legal analysis and ensuring unity among the practices in regard of this matter.

3. Other issues:

In addition to the above-mentioned main points, please find below some additional comments:

- Paragraph 71 of the report states that victims of acts committed by the law enforcement officials have no right to effective compensation. There is no legal impediment preventing those who claim to be victims of the acts of the law enforcement officials from bringing compensation proceedings before administrative courts for pecuniary and non-pecuniary damages. Pursuant to Article 125 of the Turkish Constitution, recourse to judicial review is available against all actions and acts of administration. There have been several court decisions which, in the proceedings initiated with such allegations, have awarded compensation to those victims.
- Paragraph 74 of the report points out the concerns on the impartiality of the national Forensic Medical Institute (“FMI”), and notes that the ECtHR has found violations of the Convention in respect of this institute. A rigorous work is in progress with due regard to the points mentioned in the ECtHR decisions in respect of the functioning of the FMI. The FMI is a member of the European Network of Forensic Science Institutes (ENFSI) and accredited by several international organisations. The FMI experts, paying a visit to the ECtHR in October, had the opportunity to convey the current developments in the institute and to learn, from the first hand, the expectations of the ECtHR.

- Paragraph 80 of the report criticises the decision of acquittal which, on the basis of the “special circumstances of the region”, was rendered in respect of a police officer who, having opened fire into the crowd in Siirt, caused the death of a person. In the event of human rights violations, it is out of question, in the case-law of the Court of Cassation, that light sentences be given in favour of perpetrators. On the contrary, quite severe sanctions are prescribed for such situations. In its judgment in the case of Engin Çeber who lost his life as a result of torture that he had been subjected to in prison, the Court of Cassation, upholding the life sentence imposed on the director of the penitentiary institution who had tolerated the act in question, set out the principles to be respected during the investigation and judgment of torture and ill-treatment offences (The decision of 8th Penal Chamber of the Court of Cassation, dated 06.11.2013 with merits no. 2013/13411 and decision no. 2013/26551).

- Paragraph 137 of the report urges the authorities to undertake measures with a view to raising awareness among judges and prosecutors of their duty to thoroughly investigate all allegations of violations of human rights committed by law enforcement officials, in full compliance with the five principles established by the ECtHR. In its circular no. 8 published on 18 October 2011, the High Council of Judges and Prosecutors (“HSYK”) explained in detail the issues to be taken into account in the light of the ECtHR’s judgments during the investigations regarding allegations of torture and ill-treatment. Currently, the HSYK is carrying out training activities in order to raise the awareness of the judges and prosecutors on human rights issues either itself as the High Council or in cooperation with the Justice Academy of Turkey and other relevant institutions and organisations. The training activities planned by the HSYK for judges and prosecutors are published on its web site beforehand and thus announced throughout the organisation; requests are received from those concerned in accordance with the conditions specified therein; and a further announcement is made on the web site once the training activities are revised in line with the requests received. Meanwhile, 11 visits was paid to the European Court of Human Rights with the participation of 400 judges and prosecutors, during which seminars were given by the experts from the Court on the applications lodged as well as their reasons and the actions to be taken. The HSYK has been conducting works in order to generalize, among judges and prosecutors, the use of HELP Programme implemented by the Council of Europe.

- Paragraph 198 of the report points out that in order to establish dialogue with the civil society organizations in the preparation phase of the Human Rights Action Plan and for effective implementation of the Action Plan, the Turkish Grand National Assembly should adopt national human rights action plans. In the

preparation phase of the Human Rights Action Plan, opinions of the relevant Government institutions are sought and in particular, the reports prepared by the NGOs operating in the field of human rights have been taken into consideration. It is considered that following the ratification of the Action Plan by the Council of Ministers, the Turkish Grand National Assembly will fulfil its task scrupulously in the areas which require legal regulation.

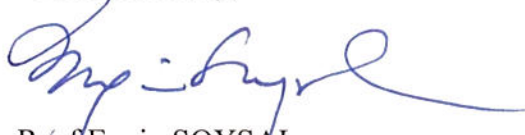
- The updated statistics on individual applications to the Constitutional Court between the period of 24 September 2012 – 23 September 2013 are as follows:
 - o Total number of applications (allegations of multiple violations in a single application are counted separately) :8486
 - o Fair trial :6679
 - o Property right :2345
 - o Right to equality :2106
 - o Protection of fundamental rights and freedoms :745
 - o State's respect for human rights :998

- Last but not least, we would like to express that the allegations raised in the section entitled "Fear of intimidation and reprisals" (paragraphs 117-128) in which it is stated that the actions of some Turkish institutions constitute a threat and menace are unacceptable. As in any country where law rules, state institutions operate and exercise within the scope of their authorities defined by law, in line with international standards. In any event, citizens, associations and non-governmental organizations, fearing such reprisals, have available to themselves, the protection of the Turkish judicial system.

Dear Commissioner,

In concluding, I would like thank you for the efficient cooperation you have maintained with the Turkish authorities, marking a valuable contribution to the ongoing transformation and reform process and likewise reiterate our willingness to continue our constructive dialogue.

Yours sincerely,



Rauf Engin SOYSAL