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Directorate General External Policies of the Union

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Turkey Human rights

NOTE

Abstract:

This note reviews the European Commission's assessment of Turkey's fulfilment of the 'Copenhagen political criteria', in particular as regards human rights and the relevant priorities in the Accession Partnership for Turkey as adopted by the Council on 17 January 2006. The full text of the Commission progress reports and the Accession Partnership can be consulted on the Commission and Council websites (*). This note further gives an overview on the most recent summary report on Turkey by Human Rights Watch(**).

(*) http://europa.eu.int/comm/enlargement/report_2005/pdf/package/sec_1426_final_en_progress_report_tr.pdf; <http://register.consilium.eu.int/pdf/en/05/st15/st15671.en05.pdf>

(**) <http://hrw.org/english/docs/2006/01/18/turkey12220.htm>

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1. European Commission Progress Reports 2004 and 2005

In its *October 2004 Progress Report on Turkey*¹, the Commission found that:

“Turkey has achieved significant legislative progress in many areas, through further reform packages, constitutional changes and the adoption of a new Penal Code, and in particular in those identified as priorities in last year’s report and in the Accession Partnership.

Important progress was made in the implementation of political reforms, but these need to be further consolidated and broadened. This applies to the strengthening and full implementation of provisions related to the respect of fundamental freedoms and protection of human rights, including women’s rights, trade union rights, minority rights and problems faced by non-Muslim religious communities.

Civilian control over the military needs to be asserted, and law enforcement and judicial practice aligned with the spirit of the reforms. The fight against corruption should be pursued. The policy of zero tolerance towards torture should be reinforced through determined efforts at all levels of the Turkish state.

The normalisation of the situation in the Southeast should be pursued through the return of displaced persons, a strategy for socio-economic development and the establishment of conditions for the full enjoyment of rights and freedoms by the Kurds.

The changes to the Turkish political and legal system over the past years are part of a longer process and it will take time before the spirit of the reforms is fully reflected in the attitudes of executive and judicial bodies, at all levels and throughout the country. A steady determination will be required in order to tackle outstanding challenges and overcome bureaucratic hurdles. Political reform will continue to be closely monitored.”

In its *November 2005 Progress Report* (COM (2005) 561 final)² the European Commission comes to the conclusion that Political transition is ongoing in Turkey and the country ***continues to sufficiently fulfil the Copenhagen political criteria***:

Important legislative reforms have now entered into force and should lead to structural changes in the legal system, particularly in the judiciary.

However, the pace of change has slowed in 2005 and implementation of the reforms remains uneven. Although human rights violations are diminishing, they continue to occur and there is an ***urgent need both to implement legislation already in force*** and, with respect to certain areas, to ***take further legislative initiatives***.

Significant further efforts are required as regards fundamental freedoms and human rights, particularly ***freedom of expression, women’s rights, religious freedoms, trade union rights, cultural rights*** and the further strengthening of the ***fight against torture*** and ill-treatment. In particular, Turkey should integrate better the reform process into the work of all public authorities. Turkey’s commitment to further political reforms should be translated into more concrete achievements for the benefit of all Turkish citizens regardless of their origin.

Concerning the protection of human rights and minorities in Turkey, despite some progress, overall the ***picture remains mixed***.

¹ http://europa.eu.int/comm/enlargement/report_2004/pdf/rr_tr_2004_en.pdf

² http://europa.eu.int/comm/enlargement/report_2005/pdf/package/sec_1426_final_en_progress_report_tr.pdf

As regards the *fight against torture and ill-treatment* further provisions have entered into force, adding to the comprehensive legislative framework already in place, and the incidence of such practice is diminishing. Nevertheless, reports of torture and ill-treatment remain frequent and those perpetrating such crimes still often enjoy impunity.

Legislative progress has been achieved with regard to the exercise of fundamental freedoms, notably through the entry into force of a *new Penal Code* and a *new Law on Associations*, and in practice both *individuals* and *civil society organisations* enjoy *greater freedom* than in the past. *Nevertheless*, *individuals* continue to be *prosecuted* and convicted *for the expression of non-violent opinion* and certain associations continue to face constraints on their activities. In this context court proceedings based on *Article 301* will need to be further closely monitored (See reports of the EP ad hoc delegation to the trial against Orhan Pamuk in December 2005.).

There are still reports of the *security* forces using *disproportionate force* in the context of *demonstrations*.

As regards *freedom of religion*, despite some ad hoc measures, religious minorities and communities still *lack legal personality*. There is an urgent need to address their problems through the adoption of a comprehensive legislative framework in line with European standards.

Greater attention is being paid to *women's rights*, but violence against women remains a matter of serious concern.

Notwithstanding a greater tolerance for the use of *languages other than Turkish*, the exercise of *cultural rights* is still precarious. No local broadcasting in Kurdish has yet been authorised, Kurdish language courses have closed down and politicians continue to be convicted for using the Kurdish language in certain contexts. Turkey continues to adopt a restrictive approach to minorities and cultural rights. Although there is a growing consensus on the need to address the economic, cultural and social development of the Southeast, little concrete progress has been made and the security situation has worsened since the resumption of PKK violence. Internally displaced persons continue to face a number of difficulties.

For the details of the European Commission assessment, the Progress Report of 9 November 2005 can be consulted on the Commission's website¹.

2. EU Accession Partnership for Turkey - human rights priorities

Based on the assessment by the European Commission in its Progress Report of 9 November 2005 and a relevant Commission proposal for a revised Accession Partnership, the Council, on the basis of the political agreement reached on 12 December 2005, adopted on 17 January 2006 a Decision on the principles, priorities and conditions contained in the revised accession partnership with Turkey (15671/05)².

The revised Accession Partnership is an important document to focus Turkey's preparations for accession and to adapt priorities to the evolving needs. The revised Accession Partnership includes a set of priorities which relate to Turkey's capacity to meet the criteria defined by the Copenhagen European Council of 1993 and the requirements of the negotiating framework adopted by the Council on 3 October 2005.

¹ http://europa.eu.int/comm/enlargement/report_2005/pdf/package/sec_1426_final_en_progress_report_tr.pdf

² <http://register.consilium.eu.int/pdf/en/05/st15/st15671.en05.pdf>

This third Accession Partnership (after 2001 and 2003) is based on the provisions of Council Regulation (EC) No 390/2001 which provides that the Council is to decide, by a qualified majority and following a proposal from the Commission, on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership, as it will be submitted to Turkey, as well as on subsequent significant adjustments applicable to it.

It lists short and medium-term priorities for the country's preparations for further integration with the European Union. The country is expected to respond to the Accession Partnership by preparing a plan, including a timetable and specific measures to address the Accession Partnership's priorities. The progress in implementing the priorities will be monitored through the framework of the mechanisms established under the Association Agreement (i.e. including for example the EU-Turkey Joint Parliamentary Committee) and through the Commission's Progress Reports.

The priorities listed in the Accession Partnership have been explicitly selected on the basis that it is realistic to expect that the country can complete them or take them substantially forward over the next few years. A distinction is made between short-term priorities, which are expected to be accomplished within one to two years, and medium-term priorities, which are expected to be accomplished within three to four years. The priorities concern both legislation and the implementation thereof. The revised Accession Partnership indicates the priority areas for Turkey's membership preparations.

Priorities in the area of human rights are regarded in any event as short term priorities.

Turkey will, in the end, nevertheless have to address all issues identified in the Progress Report.

The following *actions* have been included in the *revised Accession Partnership* as short term *priorities for Turkey in the area of human rights and rights of minorities*:

Observance of International Human Rights Law

- Promote human rights with the active support of an independent, adequately resourced National Human Rights Institution in accordance with the relevant UN principles. Monitor human rights cases, including sound statistical data.
- Extend the training of law enforcement agencies on human rights issues and investigation techniques, in particular in order to strengthen the fight against torture and ill-treatment.
- Ratify the optional protocols to the International Covenant on Civil and Political Rights. Comply with the European Convention for the Protection of Human Rights and Fundamental Freedoms, including full execution of the judgments of the European Court of Human Rights.
- Implement legal provisions on the right to retrial in line with the relevant judgments of the European Court of Human Rights.
- Guarantee in law and in practice the full enjoyment of human rights and fundamental freedoms by all individuals without discrimination and irrespective of language, political opinion, race, sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
- Ratify Protocol No 12 to the European Convention on Human Rights on the general prohibition of discrimination by public authorities.

Civil and Political Rights

Prevention of torture and ill treatment

- Ensure implementation of the measures adopted in the context of the “zero tolerance” policy against torture and ill-treatment in line with the European Convention on Human Rights and the recommendations of the European Committee for the Prevention of Torture.
- Intensify the fight against impunity. Ensure that prosecutors conduct timely and effective investigations of alleged cases leading to identification and punishment of perpetrators by the courts.
- Ensure implementation of the Istanbul Protocol throughout the country, in particular by increasing medical expertise.
- Ratify the optional Protocol to the UN Convention against Torture which provides for the establishment of a system of independent monitoring of detention facilities.

Access to justice

- Enhance the opportunities for effective defence such as access to legal aid and qualified interpretation services.
- Ensure that citizens are aware of and in a position to exercise their right to have access in private to a lawyer and to have relatives notified from the outset of their custody.

Freedom of expression, association and peaceful assembly

- Ensure the exercise of freedom of expression, including freedom of the press, in line with the European Convention on Human Rights and in accordance with the case law of the European Court of Human Rights.
- Continue to remedy the situation of those persons prosecuted or sentenced for non-violent expression of opinion.
- Implement all reforms concerning freedom of association and peaceful assembly in accordance with the European Convention on Human Rights and its related case law. Implement measures to prevent the excessive use of force by security forces.
- Align the relevant provisions applying to political parties with European practice.
- Align financing and auditing of political parties with European practice.
- Facilitate the domestic development of civil society and its involvement in the shaping of public policies.
- Facilitate and encourage open communication and cooperation between all sectors of Turkish civil society and European partners.

Freedom of religion

- Adopt a law comprehensively addressing all the difficulties faced by non-Muslim religious minorities and communities in line with the relevant European standards. Suspend all sales or confiscation of properties which belong or belonged to non-Muslim religious community foundations by the competent authorities pending the adoption of the above law.
- Adopt and implement provisions concerning the exercise of freedom of thought, conscience and religion by all individuals and religious communities in line with the

European Convention on Human Rights and taking into account the relevant recommendations of the Council of Europe's Commission against Racism and Intolerance.

- Establish conditions for the functioning of these communities, in line with the practice of Member States. This includes legal and judicial protection of the communities, their members and their assets, teaching, appointing and training of clergy, and the enjoyment of property rights in line with Protocol No 1 to the European Convention on Human Rights.

Economic and Social Rights

Women's rights

- Implement legislation relating to women's rights, particularly the Civil Code, the new Penal Code and the law on the protection of the family.
- Pursue measures against all forms of violence against women, including crimes committed in the name of honour. Ensure specialised training for judges and prosecutors, law enforcement agencies, municipalities and other responsible institutions and establish shelters for women at risk of violence in all larger municipalities, in line with current legislation.
- Further promote the role of women in society, including their education and participation in the labour market and in political and social life, and support the development of women's organisations to fulfil these goals.

Trade Union rights

- Ensure that full trade union rights are respected in line with EU standards and the relevant ILO Conventions, in particular as regards the right to organise, the right to strike and the right to bargain collectively.
- Reinforce social dialogue, and facilitate and encourage cooperation with EU partners

Minority Rights, Cultural Rights and the Protection of Minorities

- Ensure cultural diversity and promote respect for and protection of minorities in accordance with the European Convention on Human Rights and the principles laid down in the Council of Europe's Framework Convention for the Protection of National Minorities and in line with best practice in Member States.
- Guarantee legal protection of minorities, in particular as regards the enjoyment of property rights in line with Protocol No 1 to the European Convention on Human Rights.
- Ensure effective access to radio/TV broadcasting in languages other than Turkish. Remove outstanding obstacles, particularly with regard to local and regional private broadcasters.
- Adopt appropriate measures to support the teaching of languages other than Turkish.

Situation in the East and Southeast

- Abolish the village guard system in the Southeast. Clear the area from landmines.

- Develop a comprehensive approach to reducing regional disparities, and in particular to improve the situation in Southeast Turkey, with a view to enhancing economic, social and cultural opportunities for all citizens.
- Pursue measures to facilitate the return of internally displaced persons to their original settlements in line with the recommendations of the UN Secretary General’s Special Representative for Displaced Persons.
- Ensure fair and speedy compensation to those that have suffered loss and damage as a result of the security situation in the Southeast.

3. Human Rights Watch Summary Report January 2006

A *Human Rights Watch Country Summary of January 2006*¹ provided another overview and perspective on the main recent developments in Turkey in the area of human rights.

Like the European Commission in November 2005, the HRW report concludes that *human rights developments in Turkey were mixed during 2005*. According to Human Rights Watch, the Turkish government shows some commitment to reform, but is at the same time inhibited by anti-reform elements within the judiciary, police, and army. The main achievement of the year, according to HRW, was sustained *progress in combating torture*, with the number of reports of ill-treatment in police stations continuing to fall. *Little progress* was made, however, toward *guaranteeing language freedoms and freedom of expression*. In an alarming development, there were episodes of police using unwarranted lethal violence during street disturbances. Political violence by the Kurdish Workers’ Party (PKK) flared during the year, increasing tension and provoking heavy-handed responses, including human rights violations, by state forces.

<p>These are the main observations from Human Rights Watch:</p>

Freedom of Expression and Religion

As of November 2005 no individuals were known by Human Rights Watch to be serving prison sentences for the non-violent expression of their opinions. However, scores of people were charged with speech-related offences and threatened with imprisonment, most being indicted under provisions criminalizing insults to the president, the flag, and state institutions. The government failed to eliminate these provisions from the revised criminal code, introduced in June.

In October 2005 writer Cemal Tokpinar was sentenced to a year’s imprisonment for an article suggesting that Turkey’s 1999 earthquake was a divine punishment inflicted upon the military. The newspaper article contained no advocacy of violence, but Tokpinar was convicted under criminal code article 216 for “incitement to religious hatred ... in a manner liable to threaten public order.” Novelist Orhan Pamuk faced charges for “insulting Turkishness.” His supposed

¹ <http://hrw.org/english/docs/2006/01/18/turkey12220.htm>

crime was his statement in a magazine interview, that “thirty-thousand Kurds and one million Armenians were killed in these lands.”

Women who wear the headscarf for religious reasons continue to be excluded from higher education, the civil service, and political life. Female lawyers who wear the headscarf are not permitted to enter courtrooms, and in July the Ankara Bar took disciplinary action against a lawyer who wore a headscarf while carrying out her duty to a client in a bailiff’s office.

Respect for Minorities

Turkey’s courts and state officials repeatedly obstruct language freedoms. As of November 2005 not a single private broadcaster had been given permission to broadcast in Kurdish. In March 2005 state television channel TRT stated that “regulations” did not permit it to show musician Birol Topaloğlu singing in the Laz language. In June the Ankara governor refused to authorize the Kurdish Democracy Culture and Solidarity Association (Kürt-Der), claiming that the organization’s program “to secure the social and individual rights of Kurds” was unconstitutional. In July the Bingöl governor imposed a U.S.\$800 “administrative fine” on local Human Rights Association (HRA) President Rıdvan Kızgın for printing the association’s letterhead in Kurdish as well as Turkish, supposedly a breach of the Associations Law requirement that correspondence be exclusively in Turkish.

Extrajudicial Execution

In November 2005, grenades thrown into a bookshop in Şemdinli, Hakkari province, killed one man and wounded eight. Local people captured two gendarmes and a “confessor” (a former PKK member now working for the security forces) in the vicinity, together with a grenade and a map showing the bookshop. Gendarmes in an armoured vehicle fired on a crowd gathered at the scene of the crime, killing another man. The “confessor” and the armoured vehicle commander were arrested but the other two gendarmes were released.

Freedom of Assembly

Police repeatedly used unwarranted force to break up peaceful demonstrations in 2005. In March 2005, Istanbul police assaulted demonstrators who had gathered for International Women’s Day. Male and female demonstrators were beaten and sprayed with pepper gas. Prime Minister Recep Tayyip Erdoğan briefly condemned the police violence, but upbraided the press for bringing the incident to public notice.

Still more alarming, the police frequently used lethal force when public gatherings gave way to disturbances. In various incidents, eight demonstrators were shot dead by police. For example, in November, police shot and killed five demonstrators in Hakkari province who were protesting the Şemdinli attack.

Torture and Ill-treatment in Police Stations and Psychiatric Hospitals

Reports of ill-treatment continue to decline thanks to improved safeguards for detainees, including the right to see a lawyer from the first moments of detention. Police compliance with laws and regulations is generally good, even in remoter areas of the southeast. In some provinces, delegations from local human rights boards, including bar association and medical chamber representatives, made unannounced monitoring visits to police stations and

gendarmeries. There were, however, still some reports of beating and torture in police stations. For example, in October 2005, four minors reported they had been tortured at police headquarters in Ordu, where no monitoring visits had been conducted. The boys said police officers had stripped and beaten them, squeezed their testicles, and threatened them with rape. The medical reports showed that the boys, released without charge, suffered extensive bruising.

Notwithstanding great improvements in combating torture and ill-treatment, the Turkish government has acknowledged the need for and the usefulness of police station monitoring by signing the Optional Protocol to the United Nations Convention against Torture (OPCAT) in September 2005. The OPCAT sets forth a detailed and rigorous system of independent international and national monitoring of prisons with the aim of preventing torture or cruel, inhuman or degrading treatment. A most recent *Human Rights Watch Briefing Paper of 6 March 2006¹ on Independent Monitoring of Police Stations* describes the current situation and suggests interim measure before systems based on the OPCAT are established. Such interim independent monitoring system could be based on the existing network of provincial human rights boards (coordinated by the Human Rights Presidency of the Prime Minister's Office). This could ensure that the high standards observed already in some police units are applied consistently throughout the country.

In January 2005, the Turkish parliamentary human rights commission reported that, during a visit to Saray Rehabilitation Center, a psychiatric institution in Ankara, it had discovered children tied to their beds and imprisoned naked in cold rooms. Mental Disability Rights International reported in September that psychiatric hospitals in Istanbul and Izmir were inflicting electroconvulsive treatment (ECT) on patients without muscle relaxants and anesthesia. The Council of Europe's Committee for the Prevention of Torture had already condemned this painful and dangerous practice in a 1997 visit to Turkey. The report also described how children were subjected to ECT, and had their hands and feet bound to their beds for long periods.

Internal Displacement

Most of the 378,335 Kurdish villagers forcibly displaced by security forces during the conflict of the 1980s and 1990s are still unable to return to their homes in the southeast. The government's Return to Village and Rehabilitation Project has failed to provide even the most basic infrastructure, and villagers are unwilling to return to settlements that do not have electricity, telephone service, or a school. Implementation of a 2004 law to compensate the displaced has been uneven, with some villagers receiving appropriate sums while others' claims were unfairly dismissed.

The threat of violence from village guards - paramilitaries armed and paid by the government to fight the PKK - remains an important obstacle to return. Some returning villagers were attacked by village guards during the year. In March 2005, a village guard shot and killed thirteen-year-old Selahattin Günbay, near Nusaybin in Mardin province, because he was allegedly grazing animals on the guard's pasture.

Human Rights Defenders

¹ <http://hrw.org/backgrounder/eca/turkey0306/>

The government took some steps to recognize the value of human rights organizations, and invited them, together with other Turkish civil society groups, to a consultation about reform and the E.U. process in September 2005. Nevertheless, human rights defenders were once again threatened with physical violence and subjected to numerous criminal prosecutions as well as efforts to discredit them as unpatriotic or treacherous. In May 2005, speaking at the funeral of a soldier killed by a mine, Gen. Hürşit Tolon reproved human rights organizations for their absence. The widely reported comment alarmed defenders, as similar statements by the military preceded the near-fatal shooting of HRA President Akin Birdal in 1998. In June 2005, Istanbul HRA President Eren Keskin and two board members, who had narrowly survived an attack by a lone gunman in 2001, received death threats from the Turkish Revenge Brigade, the extreme right-wing group that had assumed responsibility for the Birdal attack.