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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
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Enlargement Strategy and Main Challenges 2011-2012

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Extract

1.1. Human rights and the protection of minorities (see also chapter 23 - Judiciary & fundamental rights)

Observance of international human rights law

As for ratification of **international human rights instruments**, parliament passed legislation to ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse in November 2010. Turkey ratified the Optional Protocol to the UN Convention against Torture (OPCAT) in September 2011. Ratification of three additional Protocols to the European Convention on Human Rights (ECHR)¹ is still pending.

During the reporting period, the **European Court of Human Rights** (ECtHR) delivered a total of 418 judgments finding that Turkey had violated rights guaranteed by the ECHR. The number of new applications to the ECtHR went up for the fifth consecutive year. Since October 2010, a total of 7,764 new applications have been made to the ECtHR. Most of them concern the right to a fair trial and protection of property rights. In September 2011, 18,432 applications regarding Turkey were pending before the ECtHR. Turkey has abided by the majority of ECtHR rulings, including payment of compensation totalling € 24.5 million in 2010. Some rulings have not been followed up by Turkey for several years². The government's announcement that it would address these issues was not followed through.

In the *Cyprus v. Turkey* case, the issues of missing persons and restrictions on the property rights of Greek Cypriots displaced or living permanently in the northern part of Cyprus remain pending. In a number of other cases, including the *Xenides-Arestis v. Turkey*, the *Demades v. Turkey*, the *Varnava and Others v. Turkey* cases, Turkey has yet to fully execute the decision, including paying the just satisfaction awarded by the ECtHR to the applicants. Following the Grand Chamber Decision of 5 March 2010 on the *Demopoulos v. Turkey* case, around 1500 applications from Greek Cypriot owners have been lodged with the Immovable Property Commission (IPC). So far, overall around 200 cases have been concluded, mainly by friendly settlements.

Regarding **promotion and enforcement of human rights**, the government has submitted draft legislation on the Ombudsman to parliament (*See section on public administration*).

Public officials, judges, public prosecutors and police officers received training on human rights. A Department of Human Rights has been established within the Ministry of Justice to follow up ongoing cases before the ECtHR and the execution of judgements.

The Human Rights Investigation Committee of parliament received nearly 1500 petitions since October 2010, most of which concerned judicial review and problems related to prisons. It adopted 7 reports since October 2010 and established a sub-committee to probe into the fate of people allegedly disappeared under detention, mainly in the Southeast of the country and in the aftermath of the 1980 military coup.

However, human rights institutions in line with the UN Paris principles, in particular as regards their independence and functional autonomy, have yet to be established. The draft Law establishing the Turkish National Human Rights Institution (NHRI) submitted to

¹ Protocols 4, 7 and 12.

² Non-implementation of the *Hulki Güneş*, *Göçmen* and *Söylemez* judgments has resulted in the defendants being deprived of liberty for several years without due process of law. A legislative amendment is required to remedy this situation. Furthermore, Turkey has not adopted legal measures to prevent repetitive prosecution and conviction of conscientious objectors. Other issues awaiting legislative measures by Turkey concern control of the activities of security forces, effective remedies against abuse, restrictions on freedom of expression and excessive length of pre-trial detention.

parliament in February 2010 does not comply fully with these principles. It is important that the provisions on the mandate, core functions, membership, staffing and funding of the NHRI cannot be amended by implementing legislation, but are set out in law. The NHRI's accountability to the Prime Minister and appointment of its members by the Council of Ministers are not in line with the Paris principles. The funding provisions in the draft law do not ensure that the budget comes from an autonomous source. Requirements for pluralism and gender balance are not explicitly included in the rules on recruitment of staff. The draft law does not specify that there is no restriction on the powers of the NHRI to examine issues arising from any part of the State or the private sector. Greater cooperation with, and involvement of, civil society has yet to be reflected in the draft.

Criminal proceedings were launched against many *human rights defenders*, with much use made of terrorism-related articles of Turkish legislation. The wide definition of terrorism under the Anti-Terror Law (*See the sections on the situation in the south-east and on freedom of expression*) was not revised and remains a cause for serious concern.

Overall, some progress was made on observance of international human rights law, notably through the ratification of the OPCAT. However, a number of reforms have been outstanding for several years. Legislation on human rights institutions needs to be brought fully into line with UN principles.

Civil and political rights

The government pursued its efforts to ensure compliance with legal safeguards to prevent **torture and ill-treatment** and ratified the OPCAT in September 2011. The latter provides for establishment of a national mechanism to prevent torture within one year and regular reports on measures to implement the Protocol (*See the section on observance of international human rights law*).

The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its fifth periodic visit to Turkey³. The CPT noted a downward trend in both the incidence and severity of ill-treatment by law enforcement officials.

Training courses were given to health personnel, judges and prosecutors on effective investigation and documentation of torture and ill-treatment cases with a view to effective implementation of the Istanbul Protocol on the investigation of torture and ill-treatment in Turkey.

However, law enforcement bodies continued in some cases to apply disproportionate force. Civil society organisations reported disproportionate use of firearms by security forces, resulting in deaths. The CPT's report on its fifth periodic visit to Turkey states that a number of credible allegations of physical ill-treatment were received, which concerned mainly excessive use of force during arrest. With regard to the conditions of immigration detainees, major shortcomings were found in several of the detention centres visited, including severe overcrowding, dilapidated conditions, limited access to natural light, poor hygiene and lack of outdoor exercise.

Law enforcement bodies frequently launched counter-cases against persons who alleged torture or ill-treatment. Such proceedings may deter complaints. In many instances such cases launched by security forces are given priority by the courts.

³ <http://www.cpt.coe.int/documents/tur/2011-13-inf-eng.htm>.

Under a tripartite protocol which is still in force between the Ministries of Health, Justice and the Interior, law enforcement officers are sometimes present during medical examinations on prisoners.

Efforts to *fight impunity* for human rights violations have not been sufficient. As noted by the ECtHR, criminal proceedings have still not been finalised against members of the security forces who took part in an operation at Diyarbakir prison on 24 September 1996, which led to the death of ten prisoners and injury of six. Consistent lack of thorough independent investigations into alleged extrajudicial killings by security and law enforcement officers persists. The case against an Istanbul police officer regarding the killing of a Nigerian asylum seeker has not advanced. There is still no independent police complaints mechanism. Administrative investigations into allegations of torture or ill-treatment continue to be carried out by fellow police officers, putting at risk the impartiality of the investigation.

Law enforcement officers found guilty of torture, ill-treatment or fatal shootings received short or suspended sentences. Prosecutions of allegations of torture are often conducted under penal code provisions⁴ allowing lighter sentences or the possibility of imposing a suspended sentence.

Cases of ill-treatment, unexplained deaths, torture and the lack of fair trials within the military during military service have been reported. In April, the ECtHR found Turkey in violation of the ECHR with regard to the right to a fair trial in one case before the supreme military administrative court.⁵ Several trials are in progress concerning allegations of ill-treatment of conscientious objectors in military prisons.

Overall, there has been little progress in practice, although ratification of the OPCAT is a significant step. The positive trend on prevention of torture and ill-treatment continued. However, disproportionate use of force by law enforcement officials continued to be a concern, particularly outside official places of detention. Reports of torture or ill-treatment in prisons increased, especially in south-eastern provinces. There has been no progress on tackling impunity. There is a significant backlog of judicial proceedings.

Implementation of the **prison** reform programme continued.

The case management model developed by the Ministry of Justice to improve rehabilitation services is in operation in 4 juvenile prisons.

An amendment to the Code on Criminal Procedures (CPC) entered into force at the end of 2010, limiting the period which can be spent in custody before the final sentencing. This could reduce the prison population.

Architectural changes to some high-security prisons enabled more communal activities.

In terms of access to healthcare, a commission has been established by the Ministry of Justice to improve conditions in prison wards at certain hospitals in line with human and patient rights. By February 2011 the number of rehabilitation centres for convicts and detainees had increased to five.

⁴ Articles 256 (“excessive use of force”) or 86 (“intentional injury”) of the Turkish Penal Code are often used to issue lighter sentences instead of Articles 94 (“torture”) or 95 (“aggravated torture due to circumstances”) which stipulate heavier sentences.

⁵ In April the ECtHR found Turkey in violation of Article 5.1 of the ECHR in the *Pulatlı vs. Turkey* case. The ECtHR held, unanimously, that there had been a violation of Article 5 § 1 of the ECHR and that these incidents are systemic problems deriving from disciplinary sanctions imposed by higher-ranking officers for breaches of military discipline, which are not subject to judicial review.

The number of judgments including probation sentences increased⁶.

However, the prison population continued to increase⁷. This leads to overcrowding, puts pressure on staff and other resources and limits the possibility of using newly built prisons to improve conditions for the inmates. One major factor continuing to contribute to overpopulation in prisons is the length of time it can take to complete a trial and impose a sentence in criminal cases. Some 47% of the prison population has not received a final sentence (*See section on the judiciary*).

The prison system does not have adequate resources, notably with regard to the number of prison staff and their qualifications, despite the appointment of an additional 4,929 staff in 2010 and the existence of four training centres.

The number of juvenile correctional facilities is insufficient, notwithstanding the launch of juvenile prison-building work by the Ministry of Justice. Children are not fully separated from adults in all prisons. This is especially the case with girls⁸ (*See section on children's rights*).

The standards for monitoring national prisons are still not in line with those of the UN. Prison monitoring boards are not effective and there is not a board for each individual prison. They have neither the right nor the resources to carry out unannounced visits. In some provinces provincial human rights boards carry out random visits, but their reports have not led to changes in practice.

Delays in the work of the Forensic Medicine Institute can lead to damaging delays in trials of sick prisoners. There are serious problems with transferring prisoners to hospitals for treatment. Hospitals regularly used by prisons often have no secure rooms. Complaints were received about medical examinations conducted in the presence of security staff and of prisoners being handcuffed during medical consultations in civilian hospitals.

The authorities have yet to adopt a general statement of principles on restrictions that can be imposed on prisoners' rights, incorporating the principles of the ECHR. Newspapers, magazines and books continue to be forbidden in prisons. The practice adopted in prisons in relation to open and closed visits is a concern. There are still reports of restrictions on use of the Kurdish language in prisons, during visits and exchanges of letters. Practice varies between prison administrations. A complete overhaul of the complaints system in prisons to make it genuinely available to all prisoners should be carried out, in accordance with the OPCAT.

The judicial case focusing on the incidents at Bayrampaşa prison during the "Return to Life" Operation in 2000, when the police violently ended the hunger strike of prisoners who had protested against their transfer to F-type prisons and during which twelve prisoners died, is still pending. In the meantime the ECtHR admitted a case about this operation.

Overall, the increasing prison population is leading to serious overcrowding, which is hampering attempts to improve detention conditions. A complete overhaul of the complaints system in prisons is needed. Implementation of the OPCAT should help tackle some problems. Close attention should be paid to making sure that new arrangements for medical services meet the requirements of the prison environment. An urgent review of the system for

⁶ The probation system dealt with 104,622 persons nationwide in 2010 and the number of judgments including probation sentences increased by 33% from 63,449 in April 2010 to 84,526 in April 2011.

⁷ In April, there were 123,916 prisoners in penitentiaries; 69,648 of them had been convicted but there were 35,084 inmates whose cases were pending.

⁸ The number of children in prison is 506.

dealing with juveniles is needed to minimise the number in prison and the time they spend there and make sure that detention conditions meet the needs of children.

There have been limited improvements in **access to justice**. The efforts of Bar associations improved citizens' awareness of their rights in terms of access to justice.

However, problems remained in rural areas and for disadvantaged groups. A large proportion of prison inmates, including women and juveniles, have had only limited access to legal aid. Prison inmates are not always aware that legal aid is available. In domestic violence cases, the documentation requested in order to benefit from legal aid has, in practice, delayed protection of victims.

Financial resources allocated for legal aid are not adequate. Lawyer's fees are very low and, in any case, not comparable with the fees paid by defendants in ordinary cases.

Public awareness of legal aid is limited. The Ministry of Justice, the High Council of Judges and Prosecutors and the courts do not publish information relating to judicial proceedings. The courts do not provide parties with forms or models to file petitions and have no information desks. Defendants continue misguidedly to believe that requesting a lawyer implies guilt.

Overall, limited progress has been made on access to justice. The legal aid provided is of inadequate scope and quality. There is no effective monitoring mechanism that would remedy long-standing problems.

As regards **freedom of expression**, the media and public continued debating openly and freely a wide range of topics perceived as sensitive, such as the Kurdish issue, minority rights, the Armenian issue and the role of the military. Opposition views are regularly expressed.

Following the review of the legal framework on freedom of expression by the Ministry of Justice, a draft law has been submitted to parliament with the aim of changing a limited number of articles of the Turkish Criminal Code, including Articles 285 and 288, which are often used to start procedures against journalists. Few cases have been initiated on the basis of Article 301 of the Turkish Criminal Code (TCC), after it was amended in May 2008.

However, the high number of violations of freedom of expression raises serious concerns. Freedom of the media was restricted in practice. The imprisonment of journalists, and the confiscation of an unpublished manuscript in connection with the Ergenekon investigation, fuelled these concerns. A large number of journalists remain in detention.

A large number of cases were launched against writers and journalists writing on the Kurdish issue. Pressure on newspapers which report on the Kurdish question or publish in Kurdish has continued. Several left-wing and Kurdish journalists were convicted of terrorism propaganda (*See section on the situation in the south-east*).

A large number of violations of freedom of expression by Turkey were submitted to the ECtHR. In order to comply with the rulings of the ECtHR, legal amendments need to be introduced.⁹

Turkey's criminal legislation remains highly problematic; it is open to disproportionate use to limit freedom of expression. The Press Law and the Law on the protection of Atatürk are also used to restrict freedom of expression. A number of articles of the TCC require revision, such as Article 125 which criminalises defamation, Articles 214, 215, 216 and 220 on protection of

⁹ One example is the *Ürper and others v. Turkey* case, where the ECtHR ruled that Turkey should revise Article 6(5) of the Anti-Terror Law.

public order, Article 226 which outlaws publication or broadcasting of obscene material, Article 285 which protects the confidentiality of investigations, Article 288 which outlaws attempts to influence the judiciary, Article 314 on membership of an armed organisation and Article 318 which makes it an offence to discourage people from performing military service. Restrictions on freedom of expression stemming from a wide definition of terrorism under the Anti-Terror Law continue to be a cause for concern. In particular, Articles 6 and 7 of this law need to be revised.

Another important problem is the lack of proportionality in the interpretation and application of the existing legal provisions by courts and prosecutors, which leads to violations of freedom of expression. The role of prosecutors, including special "press prosecutors", in initiating criminal proceedings affecting freedom of expression without due restraint is particularly important and raises concerns. A large number of draft indictments on grounds of article 301 of the TCC are still submitted by prosecutors to the Minister of Justice for examination, for most of which permission to prosecute is denied.

As highlighted in a report of the Council of Europe published in July 2011, the interpretation of the concept of "incitement to violence" is not compliant with the case-law of the European Court of Human Rights. No defences of truth and public interest exist in the Turkish legal system. Other issues hampering the right to freedom of expression are the excessive length of criminal proceedings and remands in custody and problems concerning defendants' access to evidence against them pending trial. All of this has a chilling effect on freedom of expression in Turkey and has led to wide self-censorship in Turkish media, as do the recurring court cases launched against the press by high-level government and State officials and by the military.

A decision by the Turkish Constitutional Court of 2 May 2011 invalidated Article 26 of the Press Act. Once this decision will have entered into force in July 2012, prosecutors will no longer be bound to certain time restraints if they want to file a case following a publication in a periodical. Currently, the maximum period for filing a case is two months after publication for dailies and four months for weeklies.

The court case on the tax fine imposed in 2009 against the Dogan Media Group, a well-known critic the government, continued. In general, numerous and high fines were imposed on the media. The satiric Harakiri magazine was forced to cease publication after its second issue, following a fine of TL 150,000 imposed by the Prime Ministerial Board for the Protection of Children from Harmful Publications. The Board, which reads books at the request of prosecutors and follows periodicals in Turkey to evaluate them for possible obscenity, has been heavily criticised as regards its composition and the scope of its mandate.

In March 2011, a first-instance court agreed with the Court of Cassation and fined writer Orhan Pamuk in a civil procedure on the grounds that his 2005 remarks on the killing of Armenians and Kurds had insulted the plaintiffs as Turkish citizens.

Regarding hate speech, the Council of Europe recommendation encouraging Turkey and the media to adopt a code of ethics on respect for religious minorities has not been implemented. There is a need for new legislation which would allow effective prosecution of incitement to hatred, including by the media.

The new Law on the establishment and broadcasting principles of radio and TV stations brings only partial improvement as regards the interpretation of certain rules on broadcasting bans and sanctions imposed on broadcasters. The potential fines have been substantially increased. At the beginning of 2011, based on the previous law, the Supreme Board of Radio and Television (RTÜK) issued warnings to television stations and imposed fines on them for

failing to respect the privacy of historical characters¹⁰, discussions on homosexuality¹¹ or homosexual scenes in films or series¹² (*See Chapter 10 – Information society and media*).

There are still frequent website bans of disproportionate scope and duration. Since May 2009 the Telecommunications Communication Presidency (TİB) has published no statistics on banned sites. A case has been brought against the TİB for not supplying statistics on the banned sites, as this is not in line with the Law on the right to information. Court cases are also ongoing against the You Tube video-sharing website and other web portals. The Law on the Internet, which limits freedom of expression and restricts citizens' right to access to information, needs to be revised. In April 2011 TİB, basing itself on the Internet Law, sent a letter to hosting companies asking them to cancel websites which included certain potentially provocative words. This raised heavy criticism, to which TIB responded that the list of words was intended to assist hosting companies identify allegedly illicit web content.

Reacting to strong criticism, the Information and Communication Technologies Authority (ICTA) amended its February 2011 regulation on the principles and procedures for safe usage of the Internet. The revised version, which was adopted in August 2011, responds to a number of concerns, in particular by making the Internet filters explicitly optional. After a testing phase ending in November 2011 the system will be available to all users. Implementation in line with European standards will be essential.

Overall, open debate, including on issues perceived as sensitive, continued. However, in practice, freedom of expression is undermined by the high number of legal cases and investigations against journalists, writers, academics and human rights defenders and undue pressure on the media, which raises serious concerns. The present legislation does not sufficiently guarantee freedom of expression in line with the ECHR and ECtHR case law and permits restrictive interpretation by the judiciary. Frequent website bans are another cause for serious concern. Turkey's legal and judicial practices, legislation, criminal procedures and political responses are obstacles to the free exchange of information and ideas.

As regards **freedom of assembly**, there were positive developments. *Newroz* (New Year) ceremonies in the South East and 1 May demonstrations took place in a generally peaceful atmosphere. This was also the case for demonstrations, *inter alia* against restrictions on alcohol advertising and consumption, on judicial reform and on the detention of suspects in the alleged coup trials. Several activities, including *Armenian Genocide Commemoration Day*, organised by intellectuals and civil society representatives to commemorate the 1915 events also proceeded peacefully.

However, demonstrations in the south-east of the country and in other provinces related to the Kurdish issue, students' rights, the activities of the Higher Education Board (YÖK) and trade union rights were marred by violence, including incidents of excessive force used by the security forces. Allegations against members of the security forces for use of excessive force were rarely prosecuted or investigated properly (*See section on impunity*).

¹⁰ In January 2011, the RTÜK warned Show TV for portraying the country's Ottoman-era sultans as drinkers and womanisers in the popular TV series the “Magnificent Century”.

¹¹ In January 2011, Habertürk was fined for “showing homosexuality as normal, thus violating the Turkish family structure”.

¹² In January 2011, ATV was warned for showing two men in bed in a TV series, thus violating the Turkish family structure. In March, the RTÜK launched an administrative procedure against Digitürk, which aired “Sex and the City 2” on one of its coded channels, for showing a homosexual wedding scene.

Turkey still needs to apply constitutional provisions guaranteeing the right to hold demonstrations. Many court cases are in progress on charges of opposing the Law on meetings and demonstrations. This law is currently being revised by the Ministry of the Interior. Problems persist with implementation of the Law on the duties and legal powers of the police, especially in the south-east. Civil society organisations and human rights defenders often face prosecution and legal proceedings on charges of terrorist propaganda during demonstrations and protest meetings.

Turkey's legislation on **freedom of association** is broadly in line with EU standards. However, no moves have been launched to meet the need for changes to the legal framework, including the Constitution, with regard to the closure of political parties. There are many instances of restrictive interpretation of the existing legislation.

The inclusion of civil society organisations (CSOs) in policy processes, while still in a nascent stage, has advanced. CSOs continued to face closure cases plus disproportionate administrative checks and fines. Membership in associations continues to require a Turkish residency permit and foreign CSOs are subject to specific regulations.

Legislative and bureaucratic obstacles impeding the financial sustainability of CSOs persist, e.g. with respect to the collection of domestic and international aid, to obtaining public benefit status for associations and tax exemptions for foundations, etc. The lack of simplified rules creates difficulties for small or medium-sized associations.

The judicial investigation into the Istanbul branch of the Human Rights Association has been pending for two years. The Labour Court ordered the closure of Yargı Sen (the trade union of judges and public prosecutors), established in early 2011, based on the argument that its establishment is contrary to domestic legislation. However, this legal basis needs to be updated in line with the 2010 constitutional amendments and the international obligations of Turkey. The trade union appealed to the Court of Cassation.

More restrictive legislation applied to foreign associations, with the Ministry of the Interior (MoI) having to consult the Ministry of Foreign Affairs (MFA) to allow the opening of a representation. Some foreign civil society organisations were rejected by or received no reply from the MoI without being given specific reasons.

The case against the party leaders and executive members of the Socialist Democracy Party and the Social Freedom Platform is pending. Some of them are still detained for alleged links to the Revolutionary HQ, an illegal organisation.

In December 2010, the ECtHR found Turkey in violation of the rights to freedom of assembly and association in connection with the closure of the HADEP party by the Constitutional Court in March 2003¹³.

Overall, as regards freedom of assembly, there has been progress on the ground. However, demonstrations in the south-east of the country and in other provinces related to the Kurdish issue, students' rights, the activities of the higher education supervisory board (YÖK) and trade union rights were marred by disproportionate use of force. Legislation on freedom of association is broadly in line with EU standards. However, disproportionate controls and restrictive interpretation of the law remain; funding rules for CSOs remain restrictive. There

¹³ Under Article 69(9) of the Constitution, the Constitutional Court banned 46 HADEP members and leaders from becoming founder members, ordinary members, leaders or auditors of any other political party for a period of five years. The Constitutional Court also ordered the transfer of HADEP's property to the Treasury. The decision of the Constitutional Court became final following its publication in the Official Gazette on 19 July 2003.

were no developments as regards amendment of the legislation on the closure of political parties.

Concerning **freedom of thought, conscience and religion**, freedom of worship continues to be generally respected. Ecumenical Patriarch Bartholomew celebrated in August, for the second time after almost nine decades, the Divine Liturgy of the Dormition of Theotokos at the Soumela monastery in the Black Sea province of Trabzon. In September the second religious service since 1915 was held at the Armenian Holy Cross church on the Akhdamar island in lake Van. A Protestant church was officially opened in June in the city of Van in Eastern Turkey. The Turkish authorities, including a Deputy Prime Minister, held a number of meetings with the religious leaders of non-Muslim communities, including a visit to the Ecumenical Patriarchate, the first visit by a high-ranking official of the Patriarchate since the 1950s.

Following seven workshops held in the context of the 2009 Alevi opening, a final report was issued in March 2011. The Ministry of National Education has prepared new religious education textbooks containing information on the Alevi faith, too. These are to be used as of the 2011-2012 school year. A small number of municipal councils have recognised *de facto* Cem houses as places of worship. The government expropriated Madimak Hotel¹⁴ in Sivas. Alevis have demanded that the hotel be turned into a museum.

The 2010 ECtHR judgment in the *Özbek and others v. Turkey* case about the establishment of the Kurtuluş Protestant Church Foundation in Ankara (violation of Article 11) was implemented.

Legislation amending the February 2008 Law on foundations was adopted in August 2011. The current legal framework broadly provides for the return of properties entered in the 1936 declarations of the non-Muslim community foundations widening, thus, the scope of the 2008 Law. (See section on property rights).

However, under Article 24 of the Turkish Constitution and Article 12 of the Basic Law on national education, religious culture and ethics classes remain compulsory in primary and secondary schools. A 2007 ECtHR judgment¹⁵ regarding compulsory religious education has yet to be implemented. Exemptions from attending such classes are rare and difficult to obtain, particularly if the identity card of the applicant does not list a religion other than Islam or if the religion entry on the card is blank. No alternative classes are provided for students exempted from these classes, and there are reports that students not attending these classes have been given lower marks.

Non-Muslim communities – as organised structures of religious groups – still face problems due to their lack of legal personality. This has implications at least for their property rights,

¹⁴ On 2 July 1993 a mob besieged the Madimak Hotel in Sivas that was hosting a Pir Sultan Abdal culture festival. The hotel was set on fire, resulting in the death of 37 people – mostly Alevi writers, poets and artists participating in the festival. In a symbolic gesture, in 2009 the Ministry of Culture started discussions to establish a cultural centre in the Madimak Hotel in memory of the victims of the 1993 events.

¹⁵ In October 2007 the ECtHR found that these classes did not just give a general overview of religions but provided specific instruction in the guiding principles of the Muslim faith, including its rites. The Court requested Turkey to bring its education system and domestic legislation into line with Article 2 of Protocol 1 to the ECHR.

their access to justice and their ability to raise funds. The 2010 Council of Europe Venice Commission recommendations¹⁶ in this regard have yet to be implemented.

Restrictions on the training of clergy remain. Turkish legislation does not provide for private higher religious education for individual communities and there are no such opportunities in the public education system. The Halki (Heybeliada) Greek Orthodox seminary is still closed. The Armenian Patriarchate's proposal to open a university department for the Armenian language and clergy has been pending for four years now. Syriacs can provide only informal training, outside any officially established schools.

The Ecumenical Patriarch is not free to use the ecclesiastical title 'Ecumenical' on all occasions. The Venice Commission's 2010 conclusion that any interference with this right would constitute a violation of the autonomy of the Orthodox Church under Article 9 of the ECHR has yet to be implemented. As regards participation in religious elections held in the patriarchate, Turkish and foreign nationals should be treated equally in terms of their ability to exercise their right to freedom of religion by participating in the life of organised religious communities in accordance with the ECHR and the case law of the ECtHR.

Personal documents, such as identity cards, include information on religion, leaving potential for discriminatory practices. There have been reports of harassment by local officials of persons who converted from Islam to another religion and sought to amend their ID cards. Some non-Muslims maintained that listing religious affiliation on their identity cards exposed them to discrimination. The 2010 *Sinan Isik v. Turkey* ECtHR judgment, which ruled that indication of religious affiliation on identity cards is in breach of the Convention, has yet to be implemented.

Alevi places of worship are not recognised and Alevis often experience difficulties in opening them. Two refusals by the administration to approve places of worship were taken to courts, which upheld the decisions. One case is now pending before the ECtHR, after exhausting all domestic remedies.

Non-Muslim religious communities report frequent discrimination, administrative uncertainty and numerous obstacles to establishing or continuing to use places of worship. Implementation of zoning legislation by local authorities differs from province to province. This results in often arbitrary refusals to issue construction permits for places of worship. Since the relevant legislation was amended in 2003¹⁷, there has been no construction or designation of a plot for a new Protestant church or a Jehovah's Witness Kingdom Hall. In Mersin a court ordered the closure of a Kingdom Hall that was considered to have violated the zoning law. The case has been taken to the ECtHR.

Jehovah's witnesses have been refused exemption from property taxes in Istanbul and Ankara. A number of court cases are pending on taxation issues. Alevis and non-Muslim religious communities have to pay electricity and water bills, whereas the State budget covers such expenses for mosques.

Missionaries are widely perceived as a threat to the integrity of the country and to the Muslim religion. A court in Silivri found two missionaries not guilty of inciting hatred or insulting

¹⁶ In March 2010, the Venice Commission of the Council of Europe concluded that the fundamental right to freedom of religion, as protected by Article 9 read in conjunction with Article 11 of the ECHR, includes the possibility for religious communities to obtain legal personality.

¹⁷ The Law on public works was amended as part of the sixth reform package, followed by a circular in September 2003 replacing the word "mosque" with the phrase "places of worship".

Turkishness but guilty of registering personal data¹⁸. The court case concerning the killing of three Protestants in Malatya in April 2007 continued. No clear conclusion has been reached regarding the killing of Father Santoro, a Catholic priest, in Trabzon in 2006. As regards the killing of Bishop Padovese in Iskenderun in 2010, the indictment was finalised in June 2011. The case is continuing.

The May 2010 Prime Ministerial circular instructing all relevant authorities to pay due attention to the problems of non-Muslim Turkish citizens has yet to produce tangible results. Non-Muslim religious communities reported that hate crimes continued. There have been reports of attacks against churches, synagogues and cemeteries. Anti-Semitism and hate speech in the media, including in TV series and films, have not been sanctioned.

ECtHR judgments regarding *conscientious objectors* refusing to serve in the military on religious or other grounds have yet to be implemented. No progress has been made on tackling the issue of repeated prosecution and conviction or towards introducing a civilian alternative to military service. Members of the Jehovah's Witness community in particular faced court cases for conscientious objection. On several occasions public statements on the right to object led to judicial investigations and proceedings on the grounds of discouraging the public from fulfilling military service.

Overall, there has been limited progress on freedom of thought, conscience and religion. The dialogue with the Alevi and with the non-Muslim religious communities continued. Members of minority religions continued to be subject to threats from extremists. A legal framework in line with the ECHR has yet to be established, so that all non-Muslim religious communities and the Alevi community can function without undue constraints.

Economic and social rights (see also Chapter 19 – Social policy and employment)

Limited progress can be noted on **women's rights and gender equality**. Efforts have been made to strike a better balance between professional and private life for civil servants, notably in the form of introducing parental benefits. The Parliamentary Committee on Equal Opportunities for Women and Men has issued a number of reports¹⁹ on women's issues and improved its institutional capacity, including with the aid of training. Legislation was adopted in January 2011 (Law on obligations) to address the problem of bullying at work, followed by a Prime Ministerial circular in March 2011. The female participation rate in the labour market increased from 26% in 2009 to 27.6% in 2010. The gender gap in primary education at national level continued to narrow and was virtually closed. The 2011 elections increased women's participation in parliament approximately from 9% to 14% of its membership.

The dialogue with women's NGOs developed since the appointment of the new minister of family and social policies.

However, gender equality, combating violence against women, including honour killings, and early and forced marriages remain major challenges for Turkey. The constitutional amendment providing for positive discrimination in favour of women has yet to produce results.

¹⁸ Originally filed in October 2006, this case under Article 301 of the Turkish Criminal Code accused two former Muslims who converted to Christianity, of insulting Turkishness and the Muslim religion while involved in evangelistic activities in Silivri, west of Istanbul.

¹⁹ The reports issued to date cover early marriages, violence against women, bullying at work, pressure on women due to the gender of the child and traditional forms of marriage. The TGNA Committee's report on early marriages establishes a direct correlation between poverty, lack of education and early marriages. It also addresses the role of tradition and religious misperceptions.

Women's representation in politics, managerial positions in the public administration, including education²⁰, at governor level, in political parties or in trade unions remains generally limited, even though polls indicate wide public support for greater participation by women in politics. Research has concluded that women's low political participation cannot be attributed to voter choice or women's traditional family roles alone, but also to the insufficient support given to women in politics.

Women often work in poor conditions in unregistered and unpaid family work. Funds available to encourage women to become self-employed have been inadequate. Existing labour market measures, including training courses, need to be designed with a view to avoiding gender-based segregation of employment. Discrimination in recruitment has been reported, while, according to research, unemployment among white-collar women increased over the last year

The gender gap in secondary education has widened (*See section on children's rights*). The sustainability of girls' attendance at higher levels of education has been a challenge. Efforts to eliminate gender bias from school textbooks at all levels of education and training have yet to produce the desired results. Gender stereotyping has been perpetuated by the media.

There has been evidence that incidents of violence against women, including killings, are increasing²¹. This has been widely reported and debated. A number of women have reported that police officers tried to convince them to return home to their alleged abusers rather than help them receive protection orders, and that prosecutors and judges were slow to act on requests for protection orders or requested unnecessary evidence. Use of standard forms by the police needs to become normal practice in domestic violence cases. Further awareness-raising and training for members of the judiciary, health staff and, in particular, law enforcement officers is needed. Family courts have insufficient capacity and have been unable to assist victims in a number of cases. Court cases have usually been lengthy and preparation of forensic reports has caused delays in the judicial process. As regards domestic violence, the ECtHR judgment in the *Opuz v. Turkey* case²² has yet to be implemented.

The Law on municipalities provides for establishing shelters for women in municipalities with a population of 50,000 or more. This provision is not being fully implemented and the number of shelters and other protective and preventive mechanisms falls well short of needs. This puts victims at risk. There is still no effective oversight of the work of shelters and of municipalities and no sanctions are laid down for municipalities which fail to provide shelters. There is no follow-up for women who are discharged from shelters or similar social services. Local services and support mechanisms for women who are victims of violence need to be strengthened.

Implementation of the national action plan on gender equality and violence against women is suffering from the lack of sufficient human and financial resources. Implementation of Prime Ministerial circulars also needs to be improved. Action plans and circulars are not binding and

²⁰ According to the report by the DG on Women's Status on the education sector, where the female employment rate is relatively high, only around 9% of the 58,835 managerial positions in schools are occupied by women. In higher education institutions, only around 5% of rectors and 15% of deans are women.

²¹ Official figures indicate that 83 women were killed in 2003, 164 in 2004, 317 in 2005, 663 in 2006, 1,011 in 2007, 806 in 2008 and 953 during the first seven months of 2009. Although this increase might also reflect improved collection of information, it nevertheless illustrates the challenge Turkey is facing.

²² Application No 33401/02 concerning the Turkish authorities' failure to protect the applicant and her mother from domestic violence.

are not applied evenly throughout the country. Gender issues need to be mainstreamed in law-making and in public administration.

Several statements by public figures and judicial decisions have portrayed women as partly responsible for harassment, rape or violence due to their behaviour or dress.

Independent women's NGOs have reported that public institutions discriminate in favour of NGOs promoting conservative values. Like other NGOs, women's NGOs face financial difficulties.

Overall, protecting women's rights, promoting gender equality and combating violence against women remain major challenges. The legal framework guaranteeing women's rights and gender equality is broadly in place. However, further substantial efforts are needed to turn the legal framework into political, social and economic reality. Legislation needs to be implemented consistently across the country. Honour killings, early and forced marriages and domestic violence against women remain serious problems. Further training and awareness-raising on women's rights and gender equality are needed, particularly for the police.

With respect to **children's rights**, the proportion of children in pre-school education increased in 2010-2011 compared to the previous school year. The number of teachers also increased. The primary school enrolment rates (grades 1-8) increased and the gender gap has virtually closed. In secondary education (grades 9-12), the enrolment rates increased for boys from 67.5% to 72.3% and for girls from 62.2 % to 66.1 %, widening thus slightly the gender gap. Turkey signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

However, school drop-outs were a concern, especially among seasonal migrant workers' families and Roma children. There is a need to support and use fully the early warning system for children at risk of dropping out. Regional disparities remained wide for both primary and secondary school enrolment. Turkey has adopted legislation on education of children with special needs; however, there is a need to provide the resources necessary to implement this legislation fully and establish a system to oversee this implementation.

The poverty rate among children is disproportionately high. For those under the age of six, the rate stood at around 24% of all cases of poverty and at around 49% of all cases of rural poverty.

There is no effective mechanism in place to tackle domestic violence against children. Further awareness-raising is needed on children's rights, including on fighting violence against children. There are initiatives regarding children placed in institutions to support de-institutionalisation towards a community based approach; however, community based care services still remain limited and needs to be enhanced in terms of coverage and content. Conditions in full-time child-care institutions need to improve, staff trained and alternative care models promoted.

No measurable progress has been made yet in the fight against child labour. Field work is in progress on seasonal agriculture and migrant child labour. Administrative capacity in this field has been weak and there has been no nationwide monitoring and inspection system. There is a lack of up-to-date data on the number and situation of children at work, and there is no integrated system to eradicate child labour.

As regards juvenile justice, since the June 2010 amendments to the Anti-Terror Law, the Criminal Procedure Code and other legal provisions, Turkish legislation provides that children will not be penalised on charges of committing a terror crime or being a member of a terror organisation, in the case of resisting law enforcement officials or for committing a

propaganda crime by participating in demonstrations supporting terror organisations. The law also provides that the 'aggravating circumstances' provided for by the Anti-Terror Law will not apply to children and that they will be tried only in children's courts or juvenile serious crime courts. Implementation of this law is not complete.

By May 2011 a total of 20 juvenile heavy criminal courts had been established by law, of which only 11 were in operation. The total number of juvenile courts established by law was 75, of which 60 were in operation. The Child Protection Law requires that courts should be established in all 81 provinces. In provinces where no such courts exist, children are tried in courts for adults.

In most provinces, there are not yet adequate facilities for children's pre-trial detention or to make sure that children are detained separately from adults and receive proper psychological support.

Trials in juvenile courts are often long. In some cases the juvenile courts decided to postpone their judgment, to convert a prison sentence to alternative sanctions or to suspend sentences for terror-related crimes. In practice, these options were not considered if the child was re-arrested.

Some 2,500 children aged between 12 and 18 were in prison. However, imprisonment for children should be used only as a measure of last resort and for the shortest appropriate period of time. Efforts are needed to reduce the number of juveniles detained, both on remand and under sentence. There was not a closed correctional centre for juveniles in every region of the country.

Overall, efforts need to be stepped up in all areas, including education, combating child labour, health, administrative capacity and coordination. In general, more preventive and rehabilitation measures need to be taken for juveniles. Moreover, there is a need to establish more juvenile courts, in line with the legislation in force, and to minimise detention for children which, if strictly necessary, should take place in appropriate conditions.

As regards **socially vulnerable persons and/or persons with disabilities**, a strategy paper on accessibility and the related national action plan were adopted. However, constitutional changes allowing positive discrimination in favour of the disabled were not turned into specific measures. A national mechanism for monitoring implementation of the UN Convention on the rights of disabled persons and its optional protocol has still not been established.

Efforts to increase employment of persons with disabilities brought some success in the public sector. However, further measures are needed in both the public and private sectors, including on creating new jobs and encouraging working from home.

Lack of data and research on persons with disabilities and the mentally ill remain a barrier against informed policy-making.

Persons with disabilities faced difficulties in access to education, health, social and public services. Physical barriers to access to public buildings continued to be a problem, despite legislation in force. Further awareness-raising efforts are needed to fight prejudice against people with disabilities and to increase their participation in social and economic life. Legislation on inclusive education needs to be fully implemented. Mental health is still an area of concern. Efforts are needed to safeguard the rights of mentally ill patients and to improve conditions in certain care institutions. An independent body to monitor and inspect mental health institutions has not been established.

The principle of **anti-discrimination** is enshrined in the Constitution and in several laws. However, comprehensive anti-discrimination legislation is lacking, the current legal framework is not adequately aligned with the EU *acquis* and, in practice, discrimination is taking place against various categories of persons. Legislation establishing an anti-discrimination and equality board has not been adopted.

The government removed all references to discrimination on grounds of "sexual identity" or "sexual orientation" from the draft Law establishing an anti-discrimination and equality board. Turkey did not support a European Union-sponsored amendment to the UN Resolution on extra-judicial executions and other unlawful killings calling on all States to decriminalise homosexuality, despite the fact that homosexuality is not a criminal offence in Turkey.

Lesbian, gay, bisexual and transgender persons (LGBT) continued to suffer discrimination, intimidation and violent crimes.

There have been several cases of discrimination in the workplace, where LGBT employees and civil servants have been fired on the grounds of their sexual orientation. A number of court cases and judicial proceedings are in progress. Charges under the provisions of the Turkish Criminal Code on 'public exhibitionism' and 'offences against public morality' were still used to discriminate against LGBT people. The Law on misdemeanours was often used to impose fines on transgender persons.

Courts continued to apply the principle of 'unjust provocation' in favour of perpetrators of crimes against transsexuals and transvestites. LGBT persons and human rights defenders continued to face court cases brought by the police in response to allegations of police brutality in Ankara in May 2010. Judicial proceedings are also continuing against transgender human rights defenders who accused the police of arbitrary arrests and violence in Ankara in June 2010. In neither case have complaints brought against the police by LGBT persons resulted in court cases.

Negative stereotyping by political figures and the conservative media against LGBT persons continued.

In November 2010, an international conference organised by the Foundations of Journalists and Writers focused on the concept of the "virtuous family" as an institution based on religion and tradition and put homosexuality and incest in the same category as 'diseases' that threaten society. High-level government officials attended the final declaration by the conference.

The Turkish armed forces maintained an internal regulation which defines homosexuality as a 'psychosexual' illness and declares homosexuals unfit for military service. Conscripts who declared their homosexuality were forced to provide photographic proof. Some have undergone humiliating medical examinations.

Overall, efforts to improve the situation of socially vulnerable persons and/or persons with disabilities continued. However, further measures are required to increase their participation in social and economic life. Many challenges remain in the areas of labour and trade union rights and the fight against discrimination.

As regards **labour and trade union rights**, the current legal framework is not in line with EU standards and ILO conventions. Major obstacles remain for private-sector workers and public servants on the rights to organise, bargain collectively and on the right to strike. Constitutional amendments lifting some restrictions on labour rights have not yet been turned into implementing legislation. Trade union legislation has not been amended, partly because of disagreement between social partners on some key issues, such as the right to organise at the workplace and the high thresholds for entering into collective bargaining

Social dialogue mechanisms were not effectively used during the reporting period. The Economic and Social Council, which gained constitutional status following the September 2010 referendum, has not yet convened. Social partners' involvement in designing policies and legislation in the employment and social fields needs to be improved.

Problems with implementation of labour rights persisted: several cases of dismissal of workers due to trade union membership and activity were reported. Such cases have not been dealt with efficiently by the courts. The right to organise is still not recognised for groups such as students, the retired, farmers and judicial employees, whose trade unions have been sued for closure. Trade union demonstrations were often negatively perceived by the authorities and subject to restrictions and excessive use of force.

As regards **property rights**, legislation amending the 2008 Law on foundations was adopted in August 2011. This is the fourth attempt of the Turkish authorities since 2002 to restore the property rights of non-Muslim communities. The new legislation provides that non-Muslim community foundations can register in the Land Registry, under their names, immovable property entered in their 1936 declarations for which either the owner entry was left blank, or which are registered in the name of the Treasury, the Directorate-General for Foundations, municipalities and special provincial administrations, or cemeteries and fountains registered in the name of public institutions. Interested parties will have to apply for the return of properties within a twelve-month period from the entry into force of the new legislation. Finally, the market value of foundation properties currently registered with third parties will be paid. This covers properties seized and sold to third parties, and which cannot be returned to the foundations. A regulation will define implementation modalities of the new legislation.

Implementation of the 2008 Law on foundations²³ continued throughout the reporting period. By mid-July 2010, the end of the additional period granted to foundations for providing complete information, 61 of them had re-applied for registration of properties. Overall, the February 2008 Law enabled the registration of 181 properties in the name of non-Muslim community foundations.

In November 2010 the Ecumenical Patriarchate received the deeds of the Büyükada orphanage from the deeds office in Istanbul, following the ECtHR ruling in the *Ecumenical Patriarchate v. Turkey*²⁴ case.

In March 2011, Turkey implemented the ECtHR judgment of March 2009 on the property rights of the Kimisis Theodokou Greek Orthodox church on the island of Bozcaada (Tenedos), by transferring the property titles to the Bishop of Imvros and Tenedos.

However, implementation of the 2008 Law on foundations has suffered from delays and procedural problems. The property of merged foundations remains outside the scope of the August 2011 amendments to the Law.

The Syriac community continued to face difficulties with property and land registration. A number of court cases continued concerning both individuals and religious institutions. The Mor Gabriel Syriac Orthodox monastery court cases regarding land ownership continued

²³ The February 2008 Law on foundations set an initial deadline of 27 August 2009 for non-Muslim foundations to submit applications for the restitution of properties registered under figurative or fictitious names, or in the name of the Treasury or of the Directorate-General for Foundations. A total of 108 foundations submitted 1,410 applications for restitution of properties. The 27 August 2009 deadline was extended to give foundations time to submit all the documents required.

²⁴ As regards this case and the issue of just satisfaction, the ECtHR judgment of 15 June 2010 found that Turkey had to re-register the property in question in the land register in the applicant's name.

throughout the reporting period. Litigation launched in parallel by State institutions and neighbouring villages raised concerns. Among other cases, following positive rulings by the local courts, the Turkish Forestry Department appealed to the Court of Cassation, which decided against the monastery and reversed the decision of the first-instance court. Judicial proceedings are continuing.

A large number of properties of the Catholic Church across the country have been confiscated by the State. The Catholic Church, like the other non-Muslim religious communities, has no legal personality. It does not have community foundations to register property and it can not establish new foundations. All the Church's properties are registered in the names of Catholic priests.

Implementation of the March 2010 recommendations of the Council of Europe Venice Commission on the protection of property rights is pending.

Problems encountered by Greek nationals when inheriting and registering property are still being reported, in particular following application by the Turkish authorities of the amended Land Registry Law, including their interpretation of the provisions on reciprocity. As regards reciprocity, the ECtHR held that there had been a violation of Article 1 of Protocol 1 (peaceful enjoyment of possessions) to the ECHR and ordered either the return of property or financial compensation for the applicants.

Overall, there has been progress on the ground, with the adoption of legislation amending the 2008 Law on foundations. The current legal framework broadly provides for the return of properties entered in the 1936 declarations of the non-Muslim community foundations widening, thus, the scope of the February 2008 legislation. The Turkish authorities and the Foundations Council need to ensure the swift implementation of the new legislation. The deeds of the Büyükada orphanage and of properties on the island of Bozcaada (Tenedos) were transferred to the Ecumenical Patriarchate and to the Bishop of Imvros and Tenedos, respectively. The Law on foundations continued to be implemented, albeit with delays and procedural problems, enabling the return of 181 properties to community foundations. The property of merged foundations remains outside the scope of the August 2011 amendments to the Law on foundations. The ongoing cases against the Mor Gabriel Syriac Orthodox monastery continue to raise concerns. Turkey needs to ensure full respect of the property rights of all non-Muslim religious communities.

Respect for and protection of minorities, cultural rights

Efforts were made in favour of minority schools. In parallel to the practice in public schools, the Ministry of National Education has extended support to the minority schools in the form of new textbooks. In the 2010-2011 academic year, mathematics and introduction to science textbooks were translated into Armenian and distributed free of charge.

However, Turkey's approach to minority rights remained restrictive. Turkey maintained its reservations on the UN International Covenant on civil and political rights regarding the rights of minorities and the UN Covenant on economic, social and cultural rights regarding the right to education, which remained causes for concern. Turkey has not signed the Council of Europe Framework Convention for the protection of national minorities.

There are no mechanisms or specific bodies in Turkey to combat racism, xenophobia, anti-Semitism and intolerance. No specific legislation exists and, where legislation does address discrimination issues, it is often interpreted in a restrictive manner by the courts.

The situation of the Greek minority has not changed. It continues to encounter problems with access to education and property rights, including on the islands of Gökçeada (Imvros) and Bozcaada (Tenedos). The decision to reopen a school in Gökçeada (Imvros) is still pending.

The management of minority schools, including accountability to both minority Heads and non-minority Deputy Heads²⁵, remained an issue, pending an implementing regulation. Minority schools faced procedural and bureaucratic difficulties with registration, budget problems and sustainability issues due to the number of students enrolled (restricted by law to those Turkish nationals from the same minority). In March the Human Rights Commissioner of the Council of Europe encouraged Turkish authorities to remove the legal obstacles and allow non-Muslim communities to provide education, in their schools, to children of these minorities irrespective of the legal status of these children, or the status of their parents or legal guardians. Armenian children will, as of the school year 2011-2012, be allowed to attend Armenian minority schools as guest students.

Anti-Semitism and hate speech in the media targeting missionaries or Christians in general remain an issue and have not been punished by the judiciary or media institutions. Some anti-missionary rhetoric remains in compulsory school textbooks.

The court case on the murder of Armenian journalist Hrant Dink in 2007 is continuing, separately from the Trabzon case, with only minor progress since the ECtHR judgment of 14 September 2010. In January, President Gül initiated an inquiry by the State Supervisory Council into the murder. An Administrative Court in Istanbul fined²⁶ the Ministry of the Interior for not taking protective measures. The lawyers of the Dink family requested that, in response to the ECtHR ruling, an investigation about the potential implication of high-ranking officers in the murder be launched directly by the prosecution and focus on unearthing links between the accused and these officers. Two ministers spoke out against any such investigation. This was criticised as putting the judiciary under political pressure. There were no developments in this investigation. Following a change in the law regarding juveniles, the case of prime suspect Samast was transferred to the juvenile courts.

Overall, Turkey's approach to minorities remained restrictive. Full respect for and protection of language, culture and fundamental rights, in accordance with European standards, has yet to be achieved. Turkey needs to make further efforts to enhance tolerance and promote inclusiveness vis-à-vis minorities. There is a need for comprehensive revision of the existing legislation, the introduction of comprehensive legislation to combat discrimination and to establish protection mechanisms or specific bodies to combat racism, xenophobia, anti-Semitism and intolerance.

As regards **cultural rights**, the Law on the establishment and broadcasting principles of radio and TV stations entered into force in March 2011. It permits broadcasts in languages other than Turkish by all nationwide radio and television stations. Temporary suspension of broadcasting remains possible by Prime Ministerial or Ministerial decision, in cases of threats to national security and public order, but can now be appealed against in court (*See also Chapter 10 - Information society and media*).

Mardin Artuklu University continued post-graduate education in Kurdish. The Higher Education Board (YÖK) authorised the opening of a Kurdish Language and Literature

²⁵ The Deputy Head of these schools represents the Turkish Ministry of Education and has more powers than the Head.

²⁶ The Administrative Court emphasised that "protective measures remained on paper and precautionary measures for [Dink's] protection had not been put into action".

Department in Muş Alparslan University in 2011. Since there was not enough teaching staff, the university offered a Kurdish language elective course at undergraduate level only. The course was completed at the end of July.

The legal amendments adopted in April 2010 and March 2011 allow election advertising in languages other than Turkish and open the door for public or private radio or television channels to broadcast in languages or dialects other than Turkish. However, there are still laws that restrict the use of languages other than Turkish, including the Constitution and the Political Party Law. Diverse Kurdish groups, NGOs and trade unions submitted a one million signature petition to parliament demanding the lifting of all restrictions on use of the mother tongue in daily life.

The courts took a number of positive decisions regarding the use of languages other than Turkish, including Kurdish. The Mayor of Sur and the municipal council in Diyarbakır were acquitted in January 2011 in a case brought against them for offering municipal services in multiple languages.

A law provides for interpretation free of charge for non-Turkish speakers during their defence or statement-taking, the investigation phase and court hearings for suspects, victims or witnesses. In March 2011, a court in İzmir permitted a Kurdish local politician to make his defence statement in Kurdish and decided that a Kurdish interpreter would be present at the next session.

However, such practice is not consistently followed. The judiciary issued contradictory decisions in court cases against Kurdish politicians and human rights defenders. In May 2011, the Doğubayazıt Criminal Court sentenced the former Mayor of Doğubayazıt and members of the municipal council for violating the Law on the use of Turkish letters by naming a park in Kurdish back in 2007.

Restrictions are still reported on the use of Kurdish in prisons, during visits and exchanges of letters.

Referring to the principle of "national unity" the Constitutional Court upheld the 1934 law on surnames and rejected the request of a Syriac Turkish citizen to use a Syriac surname.

In April 2011, the unfinished statue of humanity by Mehmet Aksoy in Kars was demolished. The demolition was finalized in July.

As regards **Roma**, some steps were taken to address long-standing problems. A discriminatory clause in the Law on the movement and residence of aliens, which authorised the Ministry of the Interior to 'expel stateless and non-Turkish gypsies and aliens that are not bound to the Turkish culture' was amended in January 2011.

In March 2011, the Minister in charge of the Roma opening announced the construction of nearly 9,000 housing units by the TOKİ administration to address the problem of "housing in a healthy environment".

A Roma Research and Implementation Centre was established within Adnan Menderes University in Aydın province.

However, the Roma opening has not led to a comprehensive strategy to address the problems of the Roma population, who still face social exclusion, marginalisation and discrimination in access to education and health services due to their lack of identity cards, and also to housing, employment and participation in public life. School drop-out rates for Roma children remained higher than those of other children. Access for Roma children to pre-school education should be improved.

Turkey has rejected calls from the Roma community to participate in the 2005-2015 "Decade of Roma Inclusion".

The urban transformation scheme carried out in the Sulukule district of Istanbul and the accompanying resettlement of many Roma caused dislocation and disruption. Some could not adapt to their new housing but returned to Sulukule to live in much poorer conditions. In late June, Roma houses in Küçükbakkalköy were also demolished in the context of urban transformation.

Overall, Turkey has made progress on cultural rights, especially on use of languages other than Turkish by all nationwide radio and television stations and on use of multiple languages by municipalities. The opening of a Kurdish Language and Literature Department in Muş Alparslan University has been authorised. However, restrictions remain on use of languages other than Turkish in political life, in contacts with public services and in prisons. The legal framework on use of languages other than Turkish is open to restrictive interpretations and implementation remains inconsistent. There has been some progress as regards the Roma, in particular on amending discriminatory legislation. However, a comprehensive policy to address the situation of the Roma is missing.

Situation in the east and south-east

The government continued to implement the South-East Anatolia project (GAP), aimed at socio-economic development of the region, with a view to completing it by 2012. Investments in irrigation, road transport, health and education continued, along with special programmes on business development, human resources and empowerment of women. Big dam projects are being criticised for threatening sustainable development of the region by destroying the living conditions of the local population, including historical heritage, natural habitats, species and fertile agricultural land along rivers.

The Kurdish issue was widely discussed, notably during the run-up to the elections in June.

In February 2011, a sub-committee to investigate the circumstances of missing persons Tolga Baykal Ceylan and Cemal Kırbayır was established under the TGNA Human Rights Investigation Committee. The JİTEM (Intelligence Gendarmerie) and Colonel Temizöz cases regarding extrajudicial killings and persons missing since the 1990s are continuing before the Diyarbakır Serious Crimes Court.

Criminal complaints were filed against the systematic torture and killing of Kurds in Diyarbakır military prison between 1981 and 1984, on the initiative of the NGO Diyarbakır Prison Commission on Facts Research and Justice. The Diyarbakır Prosecutor with Special Authority launched a judicial investigation, although no formal prosecution has been brought yet.

However, terrorist attacks by the PKK, which is on the EU list of terrorist organisations, intensified after April 2011, despite its twice-extended unilateral ceasefire to 15 June.

A clash with the PKK in Diyarbakır's Silvan sub-province changed the entire political climate in Turkey adversely. 13 soldiers were killed and seven others were wounded in a reported PKK ambush in mid July 2011, while the military had been carrying out operations to rescue two soldiers and a health worker kidnapped by the PKK a week earlier. Both the military and the Ministry of Interior (MoI) opened investigations on the Silvan clashes. Since the General Staff investigation results were similar to that of the MoI, the government saw no need to unveil the findings of MoI inspection results.

Tensions escalated further when the PKK killed eight Turkish soldiers and a village guard in mid-August in an ambush in province of Hakkari. On the same day the Turkish Air Force

started cross border operations against many PKK targets on Qandil Mountain, Hakourk, Avashin - Basyan, Zap and Metina Regions.

Concrete measures announced as part of the democratic opening fell short of expectations and were not followed through. Dialogue was hampered by the arrest or detention of BDP-affiliated Kurdish politicians, locally elected mayors and members of municipal councils and some human rights defenders in connection with the KCK²⁷ trial. The trial of 152 defendants for alleged membership of KCK (104 of whom are in prison) started before the 6th Serious Crimes Court in Diyarbakır on 18 October 2010 and continued throughout the year. Lawyers involved and human rights organisations' observers reported many procedural wrongdoings in the investigation, arrest, detention and trial procedures, and also during the initial collection of evidence. Demands for the release of the defendants and for the defence to be made in Kurdish were refused by the court.

Many other court cases ended in convictions against Kurdish political figures and BDP officials; others are continuing. The Diyarbakır prosecutor launched an investigation into the proposal made by the Democratic Society Congress (DTK) in December 2010 for a democratic autonomous Kurdistan. The BDP's general congress in September was also subject to a new judicial investigation.

A campaign of civil disobedience was launched by the DTK and BDP.

Landmines remained a security concern for military personnel and civilians in the south-east, with continued reports of death and injury. The government reported continuing use of anti-personnel mines by the PKK. Turkey reported that a total of 979,417 mines remained on its territory at the end of 2009, 2,361 fewer than in 2008. Under the 'Ottawa Convention' on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction, Turkey has undertaken to destroy all anti-personnel mines as soon as possible, but not later than 1 March 2014. However, the process has not been launched. An agreement was signed with NATO's Maintenance and Supply Agency (NAMSA) in November 2010 for destruction of approximately 22,000 Area Denial Artillery Munitions (ADAM). Destruction has started.

Clearance of anti-personnel landmines from an area of 212 million square metres along the Turkish-Syrian border has not yet started. The tender should be awarded in 2011, with a view to completing the work in 2014.

5,114 anti-personnel landmines have been cleared by the Gendarmerie General Command in areas under its responsibility. In October 2010, destruction of all stored anti-personnel landmines (approximately 3 million) was completed.

No steps have been taken to address the problem of village guards, who are paid and armed by the State. According to official figures, throughout Turkey, the total number of village guards exceeds 45,000.

Overall, the 2009 democratic opening, aimed at addressing the Kurdish issue in particular, was not followed through. Terrorist attacks intensified and have been/are consistently condemned by the EU. The detention of elected politicians and human rights defenders raises concerns. The truth about extra-judicial killings and torture in the south-east in the 1980s and 1990s has yet to be established following the due process of law. Landmines and the village guard system are still causes for concern.

Refugees and internally displaced persons (IDPs)

²⁷ KCK stands for Koma Komalen Kurdistan, which means Kurdistan Communities Union.

Some deficiencies remained in the process of compensating for losses due to terrorism and the fight against terrorism. Since the law entered into force in March 2008, up to December 2010 a total of 358,506 applications had been made to the Damage Assessment Commissions. Of these, 259,462 were assessed, with compensation paid in 146,441 cases and 113,021 applications rejected.

By April 2011, the Commissions had allocated compensation totalling € 900,302,745 to applicants who signed negotiated/amicable settlement declarations. However, delays in payments have been reported. The implementation period by the government of the Law on the compensation of losses resulting from terrorism and the fight against terrorism has been extended by another year.

Numerous cases have been brought in the administrative courts by rejected applicants. Several applied to the ECtHR. There is a need to assess the overall effectiveness of the compensation process in terms of implementation and legislation.

The situation of internally displaced persons (IDPs) in urban areas remains a cause for concern. IDPs often cannot return to their previous place of residence for a wide range of reasons, including security, the continuing village guard system, the presence of landmines, lack of basic infrastructure or capital and limited job opportunities. IDPs often live in sub-standard conditions, including camps.

Concerning **refugees and asylum-seekers**, circulars issued in 2010 produced some positive results in terms of improving practices on the part of law enforcement officials and central and local administrations.

However, the lack of a comprehensive legal framework for refugees and asylum-seekers prevented further improvement. A draft revised Foreigners and International Protection Law has been prepared. Meanwhile, continuing gaps in legislation, particularly in immigration-related detention and deportation practices, remain a concern. Unaccompanied minors found themselves at risk of detention together with adults and with no access to State child protection services.

Overall, the process of compensating IDPs has continued. There is a need to assess its overall effectiveness. An overall national strategy to address IDPs' needs better has not been developed yet. Despite some improvements, the lack of a comprehensive legal framework for refugees and asylum-seekers is an impediment to providing adequate treatment. Further improvements are needed in the general conditions at detention centres for foreigners.