
ADVANCE UNEDITED VERSION

Human Rights Committee

Concluding observations on the initial report of Turkey adopted by the Committee at its 106th session, 15 October to 2 November

1. The Human Rights Committee considered the initial periodic report of Turkey (CCPR/C/TUR/1) at its 2927th, 2928th and 2929th meetings (CCPR/C/SR/2927, CCPR/C/SR/2928 and CCPR/C/SR/2929), held on 17 and 18 October 2012. The Committee adopted the following concluding observations at its 2944th meeting (CCPR/C/SR/2944), held on 30 October 2012.

A. Introduction

2. The Committee welcomes the submission of the initial report of Turkey and the information presented therein while regretting that it was submitted late. The Committee is grateful to the State party for its written replies (CCPR/TUR/Q/1/Add.1) to the list of issues which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

- (a) The 2010 Constitutional reform;
- (b) The abolition of the death penalty in 2002 and the abolition of the death penalty in all circumstances in 2004;
- (c) The 2003 new Labour Law No. 4857, that introduced new improvements to eliminate inequalities between men and women in the field of work.

4. The Committee welcomes the ratification by the State party of:

- (a) The Optional Protocol to the Convention on the Rights of the Child in 2004;
- (b) The Optional Protocols I and II to the Covenant on Civil and Political Rights, in 2006;
- (c) The Convention on the Rights of Persons with Disabilities and the signature of its Optional Protocol, in 2009;
- (d) The Optional Protocol to the Convention against Torture and other Inhuman and Degrading Treatment or Punishment, in 2011.

C. Principal matters of concern and recommendations

5. The Committee is concerned that the State party maintains its declarations and reservation made at the time of ratification of the Covenant and its Optional Protocol. In particular, the Committee is concerned that one of these declarations appears in fact to be a reservation limiting the effect of the Covenant to the national territory of the State party, which could result in the complete non-applicability of the Covenant to persons subject to its jurisdiction in situations where its troops or police forces operate abroad.

The State party should consider withdrawing its reservation and declarations. In accordance with the Committee's general comment No. 31, the State party should ensure that all persons under its jurisdiction and effective control are afforded the full enjoyment of the rights enshrined in the Covenant.

6. The Committee is concerned at the apparently limited level of awareness of the provisions of the Covenant among the judiciary, the legal profession and the general public, as a result of which there are few cases in which the provisions of the Covenant have been invoked or applied by national courts. (art. 2)

The State party should take measures to raise awareness among judges, legal profession and the general public of the rights set out in the Covenant and their applicability under domestic law. In its next periodic report, the State party should include detailed information on the application of the Covenant by national courts.

7. The Committee is concerned that the law for the establishment of the national human rights institution adopted by the Parliament in June 2012 provides for the appointment of its members by the Prime Minister's office, thereby jeopardizing the independence of the Institution from the Executive Power in violation of the Paris Principle (General Assembly resolution 48/134). (art. 2)

The State party should amend the 2012 law for the establishment of the national human rights institution, guaranteeing the organic and financial independence of the National Human Rights Institution in full compliance with the Paris Principles (General Assembly resolution 48/134).

8. The Committee is concerned that the current legislation of the State party on discrimination is not comprehensive, thus failing to protect against discrimination on all the grounds enumerated in the Covenant. In particular, the Committee is concerned about the lack of specific reference to the prohibition of discrimination on the basis of gender identity and sexual orientation. (art. 2(1))

The State party should enact legislation on anti-discrimination and equality, ensuring that it includes a comprehensive prohibition of discrimination on all the grounds as set out in the Covenant, as well as the prohibition of discrimination on the basis of gender identity and sexual orientation. The State party should also ensure that reliable and public data is systematically collected on cases of discrimination and their treatment by the competent judicial authorities.

9. The Committee is concerned about the discrimination and the restrictions suffered by members of minorities, such as the Kurds and the Roma, affecting their right to enjoy their own culture and use their own language. (arts. 2 and 27)

The State party should ensure that all persons belonging to ethnic, religious or linguistic minorities are effectively protected against any form of

discrimination, and can fully enjoy their rights. To this regard, the State party should consider withdrawing its reservation with respect to article 27 of the Covenant.

10. The Committee is concerned about the discrimination and alleged acts of violence against people on the basis of their gender identity and sexual orientation, and about the social stigmatization and social exclusion of LGBT persons in terms of their access to health services, education, or to their treatment in the context of the regulations concerning compulsory military service and while serving in the military. (arts. 2 and 26)

While acknowledging the diversity of morality and cultures internationally, the Committee recalls that all cultures are always subject to the principles of universality of human rights and non-discrimination (General Comment No. 34, para. 32). The State party should therefore state clearly and officially that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transsexuality, or harassment of or discrimination or violence against persons because of their sexual orientation or gender identity. It should ensure the investigation, prosecution and punishment of any act of discrimination or violence motivated by the victim's sexual orientation or gender identity.

11. The Committee is concerned that families of victims of enforced disappearance in the 1980's and 1990's still do not know the whereabouts of their loved ones, and that no comprehensive approach to cases of enforced disappearance and exhumations has been adopted, including in those cited by the European Court of Human Rights (*Cyprus v. Turkey* and numerous other individual cases) and those identified by the Working Group on Enforced and Involuntary Disappearances. (arts. 6 and 14)

The State party should ensure the effective, transparent and independent investigations into all outstanding cases of alleged disappearances. In all such cases, the State party should prosecute and punish the perpetrators and grant effective reparation, including appropriate compensation, to victims or their families. Additionally, it should ensure that all mass graves are thoroughly investigated.

12. The Committee welcomes the adoption of the Law no. 6284 on Protecting Woman and Family Members from Violence that entered into force on 20 March 2012. Nonetheless, the Committee remains concerned that the institutions in charge of the implementation of the law have not yet been provided with the necessary financial and human resources to guarantee its efficient functioning. (arts. 6 and 7)

The State party should adopt a strict time line to protect women and family members from violence; through the organization of periodic and compulsory trainings for the professionals in charge, and through the development of awareness raising programmes to inform the population on their rights and available procedures.

13. While noting the abolition of the de facto reduction of sentences for perpetrators of "honour killings", the Committee is concerned at the prevalence of high rates of such crimes. (arts. 6 and 7)

The State party should under no circumstances tolerate "honour killings". In this perspective, the State party should ensure the inclusion of such killings within the scope of article 82 of the Penal Code to classify them as aggravated

homicides. It should pursue its efforts to guarantee the effective investigation and sanction of all allegations of “honour killings” and widely disseminate information on the gravity of such crimes.

14. The Committee is concerned that despite progress made, the number of allegations of torture and other inhuman and degrading treatment at the hands of law enforcement officers is still high. The Committee is also concerned that a genuinely independent complaints mechanism to deal with cases of alleged torture or ill-treatment by public officials is absent, that the number of prosecutions of such cases remains low. Additionally, the Committee is concerned that no information is provided by the State party on the remedies that have been provided to the victims of such acts. (arts. 7, 9 and 14)

The State party should eradicate all forms of torture, and inhuman and degrading treatment by law enforcement officers, including through prompt and independent investigations, the prosecution of perpetrators and the adoption of provisions for effective protection and remedies to the victims. The State party should ensure the creation and implementation of an independent oversight mechanism with respect to complaints against criminal conduct by members of the police. It should also ensure that all cases of torture and other forms of inhuman and degrading treatment are properly investigated and prosecuted, and that victims of such acts receive adequate reparation and compensation.

15. While taking note of the adoption of the “Second National Action Plan on Combatting Trafficking in Human Beings”, the Committee is concerned at the number of cases of trafficking in persons, and at the fact that only a few cases have resulted in investigations, prosecution and sentences. The Committee is also concerned that victims of trafficking are not protected from being prosecuted, detained or punished for the illegality of their entry or residence, or for the activities in which they are involved as a direct consequence of their situation as trafficked persons. (arts. 7 and 8)

The State party should continue its efforts to prevent, suppress and punish trafficking in persons, including at the regional level and in cooperation with neighbouring countries, and through the organization of training for police officers, border personnel, judges, lawyers and other relevant personnel in order to raise awareness of this phenomenon and the rights of victims. The State party should take measures to protect victims of trafficking from prosecution, detention or punishment for activities they were involved in as a direct consequence of their situation as trafficked persons. The State party should ensure that assistance and protection schemes for victims of trafficking of persons are not applied in a selective manner.

16. The Committee is concerned that several provisions of the 1991 Anti-Terrorism Law (Law 3713) are incompatible with the Covenant rights. The Committee is particularly concerned at: (a) the vagueness of the definition of a terrorist act; (b) the far-reaching restrictions imposed on the right to due process; (c) the high number of cases in which human rights defenders, lawyers, journalists and even children are charged under the Anti-Terrorism Law for the free expression of their opinions and ideas, in particular in the context of non-violent discussions of the Kurdish issue. (arts. 2, 14 and 19)

The State party should ensure that its counter-terrorism legislation and practices are in full conformity with the Covenant. The State party should

address the vagueness of the definition of a terrorist act in the 1991 Anti-Terrorism Law to ensure that its application is limited to offences that are indisputably terrorist offences. In this context, the State party should guarantee that the prosecution of terrorist acts is carried out in full respect of all the legal safeguards enshrined in article 14 of the Covenant, and ensure the consistent application of the transitional legal provisions, even in the case of offenses allegedly committed by journalists before November 2011.

17. The Committee is concerned about the widespread use of lengthy pre-trial detention of up to ten years for terrorism-related offenses and five years for other offenses, including three one-year extensions, largely contributing to the problem of overcrowding of prisons. The Committee is also concerned that detainees do not have access to an effective mechanism to challenge the lawfulness of their pre-trial detention, and do not always in practice have prompt access to a lawyer. (art. 9)

The State party should reduce the legal period of pre-trial detention in compliance with article 9 of the Covenant, and ensure that it is only used as an exceptional measure. The State party should guarantee the access of detainees to a lawyer, and to an effective and independent mechanism to challenge the lawfulness of their pre-trial detention. The State party should also enhance the use of alternative measures to pre-trial detention, such as electronic monitoring and conditional release.

18. The Committee is concerned about the overcrowding in prisons and about the conditions of detention. The Committee is also concerned that prisoners are frequently deprived from timely access to adequate health services. (art. 10)

The State party should take concrete steps to improve the treatment of prisoners and conditions in prisons and detention facilities in line with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners, including with regard to their timely access to adequate health services. In this regard, the State party should consider not only the construction of new prison facilities but also the wider application of alternative non-custodial sentences, such as electronic monitoring, parole and community service.

19. The Committee is concerned about the vagueness and lack of clarity of the definition of “illegal organisations”, which has the effect of restricting the right to freedom of association under article 22 of the Covenant. (art. 22)

The State party should strictly limit the notion of “illegal organisations” to ensure its full compliance with article 22 of the Covenant.

20. While welcoming the large support provided by the State party to Syrian refugees through consistent implementation of the Temporary Protection regime and assurances of the delegation to continue to do so, and taking note of the ongoing process of legal reform, the Committee is concerned that present law insufficiently protects refugees, in particular as a consequence of the geographical limitation adopted by Turkey under the 1951 Refugee Convention. (arts. 7, 9 and 13)

The State party should ensure that all persons applying for international protection are given access to a fair and effective refugee determination procedure, regardless of their region of origin, and receive appropriate and fair treatment at all stages in compliance with human right standards. In that

perspective, the State party should also promptly enact legislation in line with the Covenant and with the 1951 Convention.

21. The Committee, while recognizing the secular character of the Turkish state and welcoming amendments made to the Law on Foundations, No. 5737, in 2011 and their implementation allowing non-Muslim religious communities to have their property registered, is concerned about the restrictions imposed on Muslim communities, as well as non-Muslim religious communities, that are not covered by the 1935 Law on Foundations. (arts. 18 and 26)

The State party should guarantee the right of all persons to manifest their religion or belief in community with others through the recognition of their right to organize themselves in the form of associations or foundations, as provided for example by the Turkish Civil Code.

22. The Committee is concerned about reports of hate crimes against non-Muslim religious communities and other minorities, and about the on-going and unpunished hate speech in the media, including in TV series and films. (arts. 18, 20 and 27)

The State party should intensify its efforts to effectively prohibit hate speech violating article 20 of the Covenant, and to ensure that relevant criminal law provisions and policy directives are effectively implemented.

23. The Committee is concerned that conscientious objection to military service has not been recognized by the State party. The Committee regrets that conscientious objectors or persons supporting conscientious objection are still at risk of being sentenced to imprisonment and that, as they maintain their refusal to undertake military service, they are practically deprived of some of their civil and political rights such as freedom of movement and right to vote.. (arts. 12, 18 and 25)

The State party should adopt legislation recognizing and regulating conscientious objection to military service, so as to provide the option of alternative service, without the choice of that option entailing punitive or discriminatory effects and, in the meantime, suspend all proceedings against conscientious objectors and suspend all sentences already imposed.

24. The Committee is concerned that human rights defenders and media professionals continue to be subjected to convictions for the exercise of their profession, in particular through the criminalization of defamation in article 125, and through the excessive application of articles 214, 215, 216 and 220 (protection of public order), or articles 226 (publication or broadcasting of obscene materials), 285 (confidentiality of investigations), 228 (judiciary), 314 (membership of an armed organization), 318 (prohibiting criticism of the military) of the Criminal Code, thereby discouraging the expression of critical positions or critical media reporting on matters of valid public interest, adversely affecting freedom of expression in the State party. In addition, while welcoming the information provided by the State party on the partial amnesty concerning some offences allegedly committed by journalists before November 2011, the Committee is concerned about the inconsistent application of the transitional legal provisions and by the continued prosecution of other journalists not covered by the political amnesty. (arts. 9, 14 and 19)

The State party should ensure that human rights defenders and journalists can pursue their profession without fear of being subjected to prosecution and

libel suits, having in mind the Committee's General Comment No. 34. In doing so, the State party should:

- (a) Consider decriminalising defamation and**, in any case, it should countenance the application of the criminal law in the most serious of cases taking into account that imprisonment is never an appropriate penalty.
- (b) Provide redress to journalists and human rights activists who are subjected to criminal prosecution and imprisonment in contravention of articles 9 and 19 of the Covenant;**
- (c) Bring relevant provisions of the Criminal Code into line with article 19 of the Covenant and apply any restrictions within the strict terms of this provision.**

25. The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, the text of the initial report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations, so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also suggests that the report and the concluding observations be translated into the official language of the State party. The Committee also requests the State party, when preparing its second periodic report, to broadly consult with civil society and non-governmental organizations.

26. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in **paragraphs 10, 13 and 23** above.

27. The Committee requests the State party, in its next periodic report, due to be submitted on **31 October 2016**, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.
