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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Initial reports of States parties**

**Turkey\***

[17 March 2011]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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**List of abbreviations**

ACEP	Mother-Child Education Programme
AIDS	Acquired immunodeficiency syndrome
BAG-KUR	Social Security Organisation for Craftsmen and Artisans and the Self-Employed
CAHTEH	Ad Hoc Committee on Action against Trafficking in Human Beings
CD	Compact Disk
CDNL	Conference of Directors of National Libraries
COMLIS	Congress of Muslim Librarians and Information Scientists
COST Research	European Cooperation in the field of Scientific and Technical
DALY	Disability Adjusted Life Year
DVD	Digital Versatile Disc
ECRI	European Committee against Racism and Intolerance
EU	European Union
FAO	Food and Agriculture Organization
FID	International Federation for Information and Documentation
GAP	Southeast Anatolian Project
GDP	Gross Domestic Product
GNP	Gross National Product
HIV	Human Immunodeficiency Virus
ICMPD	International Centre for Migration Policy Development
ICPD	International Conference on Population and Development
IEA	International Energy Agency
IFAD	International Fund for Agricultural Development
IFLA	International Federation of Library Associations
ILO	International Labour Organization
INWRDAM	Inter-Islamic Network on Water Resources Development and Management
IOM	International Organization for Migration
IPEC	International Programme on the Elimination of Child Labour
ISKUR	Turkish Employment Organization
KIHEP	Women's Human Rights Education Programme
MEDA	European Union Mediterranean Programme
METU	Middle East Technical University
MOH	Ministry of Health
NATO	North Atlantic Treaty Organization

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NGO	Non-governmental organization
ODA	Official Development Assistance
OECD	Organization for Economic Cooperation and Development
OECD-DAC	Development Assistance Committee of the Organization for Economic Cooperation and Development
OIC	Organization of Islamic Conference
OSCE	Organization for Security and Cooperation in Europe
RTUK	Radio and Television Supreme Council
SBEP	Support to Basic Education Programme
SEP	Secondary Education Project
SHCEK	General Directorate of Social Services and Child Protection Agency
SPO	State Planning Organisation
SSK	Social Security Organisation
SYDGM	Directorate General of Social Assistance and Solidarity
TDHS	Turkish Demographic and Health Survey
TIKA	Turkish International Cooperation and Development Agency
TL	Turkish Lira
TOBB	Turkish Union of Chambers and Stock Exchanges
TOKI	Housing Development Administration
TRT	Turkish Radio Television
TSE	Turkish Standards Institution
TUBITAK	Scientific and Technological Research Council of Turkey
TURKSOY	Joint Administration of Turkic Culture and Art
TURKSTAT	Turkish Statistical Institute
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
USD	United States Dollar
VCD	Video Compact Disk
WTO	World Trade Organization

## **I. Introduction**

1. Turkey ratified the International Covenant on Civil and Political Rights on 4 June 2003. The instrument of ratification was deposited on 23 September 2003, and in accordance with its article 49, the Covenant entered into force for Turkey on 24 December 2003. In its instrument of ratification, Turkey conditioned its ratification upon three declarations and one reservation.

2. According to article 90 of the Turkish Constitution, international agreements duly put into effect bear the force of law and no appeal to the Constitutional Court can be made with regard to these agreements on the grounds that they are unconstitutional. Once the ratification process is completed, international agreements become part of the domestic legislation and applicable in national law. As such, the Covenant has direct effect in Turkish law and its provisions may be directly invoked before national courts. Besides, in case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and domestic law due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

3. This report, the data of which mainly range from the 1990s till 2010, has been prepared under the coordination of the Ministry of Foreign Affairs with the contribution of the relevant ministries and public institutions, namely the Ministry of Justice, the Ministry of Interior, the Ministry of National Education, the Ministry of Labour and Social Security, the Prime Ministry Human Rights Presidency, the Prime Ministry General Directorate on the Status of Women, the Prime Ministry General Directorate of Social Services and Child Protection Agency, the Prime Ministry General Directorate of Family and Social Research, the Prime Ministry General Directorate of Foundations, the Prime Ministry General Directorate of Press and Information, the Prime Ministry Presidency of Religious Affairs, the Higher Education Council, the Supreme Council of Elections, the Radio and Television Supreme Council and the Turkish Statistical Institute.

4. Consultations with the civil society were held as part of the reporting process. The contributions of the civil society have provided decisive input in establishing priority issues in the report. Turkish authorities have extensively benefited from the consultation process. They are determined to continue this collaboration with the civil society.

5. For general factual information and statistics concerning Turkey, as well as the general framework for the protection and promotion of human rights, the common core document of Turkey can be referred.

## **II. Information on the implementation of the articles of the Covenant**

### **Article 1**

6. The Republic of Turkey, established on 29 October 1923 is a democratic, secular and social state governed by the rule of law, respecting human rights, loyal to the nationalism of Atatürk, founder of modern Turkey, in the spirit of public peace, national solidarity and justice.

7. The Republic of Turkey is an indivisible entity with its territory and nation. Sovereignty is vested fully and unconditionally in the nation. This sovereignty is exercised by the Turkish nation through the authorized organs as set forth in the Constitution.

8. The Turkish nation is composed of citizens equal before the law irrespective of their origins. In the context of the Turkish nation, common denominator is citizenship. Every citizen has the right and power to lead an honourable life and to enhance his/her material and spiritual well-being in national culture, civilization and law order, by benefiting fundamental rights and freedoms set forth in the Constitution, in line with the principle of equality and social justice. Every Turkish citizen has effective access to government to pursue their political, economic, cultural and social development.

9. The political life in Turkey is run by the system of pluralistic democracy based on the rule of law and respect for human rights. The Turkish electoral system based on universal suffrage is open to all adult citizens, the requirements of which are determined by the Constitution and the relevant legislation.

#### **Articles 2 and 26**

10. Turkey is fully committed to the fight against all kinds of discrimination. Recognizing the fact that the main responsibility lies with governments for safeguarding and protecting the rights of individuals against discriminative actions and activities, Turkey incorporated sound and effective measures into its legislation concerning non-discrimination. Turkey is party to fundamental international conventions that contain provisions on the prohibition of discrimination, such as the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the European Social Charter, and the European Convention on Human Rights and its Protocols.

#### **Legal framework**

11. In Turkey, all individuals are equal before the law and enjoy the same rights and have the same obligations without discrimination of any kind. Acts of discrimination are prohibited and penalized by law.

12. Article 10 of the Constitution of the Republic of Turkey guarantees equality before the law.

*All individuals are equal without any discrimination before the law, irrespective of language, race, colour, gender, political opinion, philosophical belief, religion and sect, or any such considerations.*

*Men and women have equal rights. The State shall have the obligation to ensure that this equality exists in practice.*

*No privilege shall be granted to any individual, family, group or class.*

*State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.*

13. The Constitution, by referring to “or any such considerations”, empowers the judiciary with a wide discretion on its judgment of cases of inequality.

14. The State system is based on the principle of constitutional/territorial nationalism. The concept of citizenship is defined in article 66 of the Constitution on the ground of legal bond without any reference to ethnic, linguistic or religious origin. According to this article, “everyone bound to the Turkish State through the bond of citizenship is a Turk”. The Constitution does not provide any definition of racial or ethnic connotation for being a “Turk”. On the contrary, article 66 depicts a purely legal definition and does not provide for a kinship based on “blood”. The term “Turk” is the reflection of the national identity of all

citizens in Turkey irrespective of their origins. The idea conveyed in article 66 of the Constitution fully reflects the main philosophy of the Republic. This philosophy makes no discrimination between the citizens of the Republic on the grounds of ethnicity, religion or race. No importance is attached to a citizen's racial or ethnic background since the definition of a common identity on the nationhood and conscience on territorial (and not on blood) basis in line with the principle of citizenship has been adopted with the establishment of the Republic.

15. The Turkish nation is not a juxtaposition of communities or groups. It is composed of citizens, who are equal before the law irrespective of their origins in terms of language, race, colour, ethnicity, religion or any other such particularity, and whose fundamental rights and freedoms are enjoyed and exercised individually in accordance with the relevant law.

16. Similarly, fundamental rights and freedoms set forth in the Constitution do not lead to any distinction between Turkish citizens and foreigners. Fundamental rights and freedoms are in principle recognized for everybody regardless of citizenship in line with article 10 of the Constitution. Article 16 of the Constitution stipulates that the fundamental rights and freedoms of foreigners can only be limited by law in accordance with international law. Political rights (right to vote and to be elected, right to form political parties and to become their members) and the right to enter into public service are solely vested with Turkish citizens.

17. Article 16 of the Constitution stipulates that the fundamental rights and freedoms of foreigners may be restricted by law in a manner consistent with international law. These restrictions concern in particular the political rights. Article 67 of the Constitution reserves the right to vote and to be elected only to Turkish citizens. The same also applies for the right to form political parties and to become a member of them (art. 68). Moreover, only citizens have the right to join public services.

18. In September 2010, with the amendment to article 10 of the Constitution entitled "Equality Before the Law", positive discrimination gained a constitutional basis for women and men who require social protection, such children, the elderly and the disabled. The inclusion of positive discrimination in the Constitution is a significant improvement to strengthen the protection of constitutional rights. With this amendment, it is guaranteed under the constitutional framework that special measures to be taken by the administration in respect of those who require protection shall not be construed to be "contrary to the principle of equality". As such, the State will be free to take special measures for those in need of protection to ensure equality among all sectors of the society.

19. The principle of equality is enshrined in various other laws regulating specific areas of political, social and economic life. There are specific laws such as the Civil Code (Article 8 - principle of equality in capacity of persons as subject to rights), the Law on Social Services and Child Protection (Article 4 - non-discrimination in eligibility to receive social benefits), the Political Parties Law (Article 82 - prohibition of racism, Article 83 - protection of the principle of equality), the Basic Law on National Education (Article 4 - principle of equality in education, Article 8 - gender equality-affirmative action), the Labour Law (Article 5 - principle of non-discrimination, equal treatment), the Law on Disabled People (Article 4 - non-discrimination against people with disabilities).

20. Article 122 of the Penal Code criminalizes economic discrimination on the basis of language, race, colour, sex, political thought, philosophical belief, religion, denomination and other reasons.

21. Article 216 of the Penal Code covers penal sanctions against inciting the population to breed enmity or hatred or denigration. It reads as follows:



(1) *A person who openly incites groups of the population to breed enmity or hatred towards one another based on social class, race, religion, sect or regional difference in a manner which might constitute a clear and imminent danger to public order shall be sentenced to imprisonment for a term of one to three years.*

(2) *A person who openly denigrates part of the population on grounds of social class, race, religion, sect, gender or regional differences shall be sentenced to imprisonment for a term of six months to one year.*

(3) *A person who openly denigrates the religious values of a part of the population shall be sentenced to imprisonment for a term of six months to one year in case the act is likely to distort public peace.*

22. Similarly, broadcasting standards as determined by article 4 of the Law on the Establishment of Radio and Television Enterprises and Their Broadcasts include the following provisions:

(1) *Broadcasts shall not, in any manner, humiliate or insult people for their language, race, colour, sex, political opinion, philosophical belief, religion, sect, and any such considerations.*

(2) *The broadcasts shall not encourage the use of violence or incite feelings of racial hatred.*

23. In addition to judicial remedies, there are also governmental, administrative and parliamentary remedies for individuals who claim to be subjected to discrimination. These remedies are utilized through the Human Rights Presidency at the Office of the Prime Minister and numerous Human Rights Boards at provincial and sub-provincial levels on the one hand, and the Human Rights Inquiry Commission of the Parliament on the other. These bodies are tasked with investigating complaints and allegations of human rights abuses and submitting their findings to relevant authorities for necessary action.

24. The Human Rights Presidency, which was established in April 2001 as an affiliate body of the Prime Ministry, and 931 Provincial and Sub-Provincial Human Rights Boards carry out extensive supervision work on human rights, particularly at local level. Human Rights Boards include almost 14.000 non-governmental members.

25. Both the Human Rights Presidency and the Human Rights Boards are entrusted with the task of receiving, examining and investigating allegations of human rights violations, including claims of racial discrimination, assessing the results of their examinations and investigations, referring the results to the offices of the public prosecutors or relevant administrative authorities and following up the results.

### **International cooperation**

26. Turkey believes that a successful fight against all forms and manifestations of discrimination and intolerance requires combined efforts at national and international levels.

27. In this respect, Turkey has become party to all relevant international instruments both at global (United Nations) and regional (Council of Europe and OSCE) fora, and duly maintains a close and constructive cooperation within the special mechanisms of these organizations tasked with the fight against intolerance and discrimination. In this context, Turkey is actively involved in the work of the OSCE in the field of promoting tolerance and non-discrimination. As a testimony to its efforts in this regard, Turkish Ambassador Ömür Orhun, served as one of the three Personal Representatives of the OSCE Chairman-in-Office on Combating Intolerance and Discrimination.

28. Turkey participated in the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance which was held in Durban, Republic of South Africa, in 2001. Turkey, who, from the outset, was a firm believer and supporter of the Conference took an active part in all phases of the preparatory process and played a major role in the Conference itself. In doing so, Turkey spared no effort in facilitating negotiations and bridging differences among various groups of countries. Turkey also contributed to the success of the Durban Review Conference held in 2009, through its membership in the Bureau of the Preparatory Committee for the Conference and its action as one of the five facilitators for the outcome document of the Conference.

29. Within the framework of the Council of Europe, Turkey has always taken part in the elaboration of policies and recommendations aimed at elimination and prevention of contemporary forms of racial discrimination. The Turkish Government actively participated in and contributed to the elaboration process of the Plan of Action and the Declaration against Racism, Xenophobia, Anti-Semitism and Intolerance adopted on 8-9 October 1993 at the Vienna Summit of Heads of States and Governments.

30. Turkey has been supporting the activities of the European Committee against Racism and Intolerance (ECRI) which is one of the most important monitoring mechanisms in Europe in its efforts to combat racism, xenophobia, anti-Semitism and intolerance across Europe from the perspective of the protection of human rights and fundamental freedoms.

31. Turkey has long been among the co-sponsors of the United Nations resolutions and declarations related to non-discrimination and tolerance, xenophobia, racism and anti-Semitism.

32. With their deep-rooted traditions of mutual understanding, tolerance, dialogue and respect for other cultures and religions, Spain and Turkey launched the “Alliance of Civilizations” in 2005, which has since become a full-fledged United Nations Initiative.

### **Article 3**

#### **Legislative framework**

##### *Constitution*

33. As amended on 17 October 2001, article 41 of the Constitution established the principle of equality between spouses as a basis for the family.

34. Article 66 of the Constitution on the acquisition of Turkish citizenship which previously stated that the citizenship of a child born to a foreign father and a Turkish mother would be defined by law was amended in October 2001 to eliminate discrimination on the basis of sex in cases where a foreign parent is involved.

35. Although the principle of equality between men and women had been explicitly placed in the Constitution, through the addition, on 17 May 2004, of a provision to article 10 of the Constitution, the State has been obligated not only to ensure non-discrimination between men and women, but also to take necessary measures to provide women with equal rights and opportunities with men in every walks of life. By the adoption of this amendment, Turkey has become one of the very few countries that have similar provisions in their legal systems.

36. On September 2010, with the amendment to article 10 of the Constitution entitled “Equality Before the Law”, positive discrimination, inter alia, for women. This constitutes a significant improvement strengthening the protection of constitutional rights of women.

*Law for the protection of the family*

37. Having entered into force in 1998, the Law No.4320 for the Protection of the Family introduced some protection orders which will be determined by family courts upon complaints of abused women and children or third parties as well as the public prosecutor. This law has been prepared in cooperation with universities, civil society organizations and related public organizations

38. The main objective of the Law on the Protection of Family is to prevent domestic violence and protect women and children particularly. Relying on this Law, persons who are subject to domestic violence can lodge their complaints in person at police headquarters, offices of public prosecutor as well as family courts. Also, any person who has witnessed a domestic violence case can report the matter at police headquarters.

39. Law No. 4320 on the Protection of Family was amended with a view to remedying the deficiencies concerning its application and was put into effect on 4 May 2007. The Law provides a wide interpretation of the concept of violence and ensures protection to family members who are married but live separately, separated by the decision of court and who are entitled to the right to live separately, as well as the children. The use of the expression “faulty spouse or the other family member” allows precautionary decision concerning other family members living under the same roof and makes it possible for the Family Court judge to decide for “the application of the member resorting to violence to a medical institution for examination or treatment”. It is also stated that the applications to benefit from the Law and the proceedings carried out for its execution shall not be subject to fees.

*Civil Code*

40. The new Turkish Civil Code No. 4721, which entered into force on 1 January 2002, strengthened gender equality and equality between the spouses by declaring women totally equal to men in the family and society. The improved regulations introduced by the new Civil Code are as follows:

- There is no longer a head of the family. The spouses are to care jointly for the proper maintenance of the family.
- Each spouse represents the conjugal union.
- The conjugal home has to be determined jointly by the spouses.
- Women have the right to use their former surname before the husband’s surname.
- Regarding the parent-child relationship, both spouses have parental authority over children. Cases of disagreement will be resolved by the judge.
- Spouses are free to choose their job and profession. They do not require each other’s permission as opposed to article 159 of the former Civil Code which stated that a wife has to take her husband’s permission to take up a job or profession (The said article of the former law was declared void by the Constitutional Court in 1990).
- “Participation in acquisitions” has become the new regular matrimonial property regime. Under this regime, unless the spouses agree upon a different regime, properties acquired in the course of marriage by both spouses is to be shared equally should the marriage is ended.
- The minimum age of marriage for women was raised from 15 to 17. Boys and girls under the age of 17 are not allowed to get married. However, under extraordinary conditions and in the existence of an important cause, the judge may

permit a boy or a girl over the age of 16 to get married provided that his or her family consents.

- After divorce, the competent authority for maintenance allowance claims shall now be the court where the claimant resides, not the defendant.

#### *Labour Law*

41. The new Labour Law No. 4857, which was adopted in 2003, introduced new improvements in the field of labour with a view to eliminating inequality between men and women in this field. Some of these improvements are as follows:

- No discrimination on the basis of language, race, sex, political thought, philosophical belief, religion or similar grounds may be allowed in business relations.
- Employers may not differentiate their treatment vis-à-vis part-time workers and full-time worker or definite-term workers and indefinite-term workers.
- Employers may not treat one worker different than another in concluding labour contracts, establishing the conditions thereof and implementing or terminating these contracts due to sex or pregnancy unless biological reasons or those pertaining to work qualifications oblige.
- No lower wage may be paid for an equal or equivalent job on grounds of sex.
- Implementation of special protective provisions due to the sex of the worker does not justify the application of a lower wage.

#### *Penal Code*

42. Adopted on 26 September 2004 and having entered into force on 1 June 2005, the new Penal Code No. 5237 offers an important legal basis in terms of gender equality and combating violence against women. The major provisions introduced by the new Penal Code concerning violence against women are enumerated below:

- The distinction between “woman” and “girl” in the previous law was excluded from the new law.
- Sexual crimes have been classified as crimes against the inviolability of sexual integrity.
- The terms “rape” and “attempt to rape” have been replaced with “sexual assault” and “sexual abuse of children”.
- The crimes of “sexual assault” and “sexual harassment in workplace” have been defined and the qualified conditions of the commission of these crimes have been determined.
- Perpetrators of customary killings shall be given the highest sentences.
- Genital examination has been regulated as a separate article according to which those who orders the subjection of a person to genital examination or who performs such examination without the authorisation of a judge or prosecutor shall be sentenced to imprisonment from three months to one year.

#### *Family courts*

43. Upon the enactment of the new Civil Code, it became a necessity to establish specialised courts to settle conflicts related to family law. To this end, family courts were created with the adoption the Act on the Establishment, Jurisdiction and Trial Procedures of Family Courts which entered into force on 18 January 2003.

*Municipality Law*

44. The Municipality Law No. 5393 assigned important duties to municipalities concerning services related to women. According to the said law, municipalities with populations over 50.000 and metropolitan municipalities are responsible for opening shelters for women and children.

45. The same law which also includes provisions on city councils stipulates that women and youth assemblies shall be formed within the framework of city councils.

*Basic indicators related to women**Women and economy*

46. In Turkey the employment of women continues to be an issue. As a consequence of globalisation, during the last twenty years the female labour force in Turkey has shifted to the unregistered economy. The continuous decline of women's share in the workforce seems to confirm this shift. While women's share in the labour force was around 34,1 per cent in 1990, it declined to 26,9 per cent in 2002 and 25,1 per cent in 2004 and became 26 per cent in 2009.

47. The 9th Development Programme (2007 – 2013) envisages that the ratio of women involved in workforce will have reached 29,6 per cent by 2013. In the context of the said Development Programme, under the coordination of the General Directorate on the Status of Women, various projects aiming at improving women's involvement in workforce and their employment have been launched.

48. Within the framework of 2007 Turkey-EU Pre-Accession Financial Cooperation Programme, the Project on "Empowerment of Women and Women NGOs in the Least Developed Regions of Turkey" was launched. The Project aims at upgrading women's status in the least developed regions of Turkey with a view to reducing regional disparities. Total budget of the Project is 5 million Euros.

49. Among the significant developments improving the participation of women in the labour force, the following can be stated:

- In order to ensure a more fair distribution of child care responsibility between the mother, the father and the State, a Draft Law on Parental Leave for Birth or Adoption of a Child has been prepared.
- The Circular No. 2004/7 of the Office of the Prime Minister titled "Acting According to the Principle of Equality in Recruitment" took effect on 15 January 2004 to ensure gender equality during the recruitment of new staff.
- The new Labour Law of 2003 stipulates that the employee may immediately annul the contract in case of sexual harassment by the employer or if the employer does not take the necessary measures although he is aware that the concerned employee is subject to sexual harassment by other employees.
- The new Civil Code introduced the provision that neither of the spouses has to obtain the permission of the other in choosing a job or a profession.
- As a result of the amendments in taxation laws in 1998, married women may now submit tax statements independent from their spouses.
- Private sector employers were asked to raise awareness concerning non-discrimination based on gender unless stipulated by biological or other job-related reasons through a circular submitted to the Provincial Directorates of the Turkish Employment Organisation in 2006.

*Women and education*

50. The increase in the duration of compulsory education to eight years in 1997 has constituted a significant step in the education of women. During the last decade a rise has been observed in the average education level of women. While the illiteracy rate of women was 28 per cent in 1990, this rate decreased to 20 per cent according to the 2009 census results, as opposed to 4 per cent in the case of men. 7,52 per cent of literate women have not graduated from any educational institution. While 51 per cent of women are primary school graduates, 41 per cent are high school or vocational school graduates, and 39 per cent are university education graduates according to 2009 of TURKSAT.

51. Turkey's target in education is to ensure that the schooling rate reach 100 per cent for both girls and boys. To this end, many projects have been initiated with the support of international organizations, NGOs and private sector institutions. The campaign "Let's go to School, Girls!" supported by the UNICEF has been put into effect in the year 2003 in 10 provinces where schooling rates of girls are the lowest. Its scope was expanded to cover 23 more provinces in 2004, and further 20 more provinces in 2005. In 2006, the campaign was extended to cover all the 81 provinces in Turkey.

52. The aim of the campaign, which started with the motto "Let's go to School, Girls!" is to increase schooling rates of girls who belong to the primary education age group (6-14 years), and with the participation and contribution of concerned public agencies and institutions, NGOs and local administrations, to ensure the return to primary education of students who remained outside the educational system or left school or did not regularly attend school. To achieve the goals of the campaign, economic assistance was regularly used in order to support the families which could not send their children to school or which had forced their children to drop out of school due to poverty. During the implementation of this scheme, as a special temporary measure applied for the first time, girls received 21 per cent more monetary assistance in primary education and 40 per cent more in secondary education than boys in primary and secondary education, respectively.

**Table 1****New registration rates among girls through the campaign "Let's go to School, Girls"**

2003 (10 Provinces)	2004 (33 Provinces)	2005 (53 Provinces)	2006 (All over Turkey)	Total	Girls who have not enrolled in school yet
40.000	73.200	62.251	47.349	222.800	50.647

53. Throughout the campaign, it has been ascertained that 273.447 girls at the school age were not enrolled in school. As it can be seen in table 1, of these girls, 222.800 (81 per cent) have been made to attend schools. Activities continue to have those, who have not enrolled in schools, registered in the period ahead.

54. Another project carried out within this framework is the "Support Programme for Primary Education" which has been put into force as a result of the cooperation between the Government and the European Union. The project was initiated in September 2002 for five years.

55. To increase girls' attendance to school in Southeast and East Anatolia provinces, nine Primary Education Regional Boarding Schools for Girls and 14 Primary Education Schools with Pension for Girls were set up.

*Women and health*

56. In 2009, life expectancy at birth was 69 years for men and 74 for women.

57. The spread of reproductive health services and the rise in the quality of these services have constituted an important progress regarding women's health in Turkey. According to the 2003 results of Turkey Demographic and Health Survey (TDHS), the total fertility rate is declining while the rate of the use of contraceptive methods is on the rise. While the total fertility rate was 4,3 per woman in 1978, it decreased to 2,1 in 2009.

58. The International Conference on Population and Development (ICPD) and the 4th World Conference on Women converted the consideration of mother health to women health. In line with this change, a National Action Plan was prepared in 1998 which was followed by the preparation in 2004 of the National Strategy and Action Plan covering the 2005-2015 period.

#### *Violence against women*

59. Violence against women is an important issue which affects, directly or indirectly, large segments of the society and urgent measures are required to eliminate it. The persistence of violence can be attributed to many factors, including difficulties in the implementation of laws and regulations which prohibit such acts, the lack of awareness and of knowledge on existing regulations and mechanisms, the lack of effective measures to deal with the underlying causes of the problem and the provocative role the media continues to display in covering acts of violence.

60. Various studies show that violence against women in the family is common in most homes. During the last decade, several laws aiming at combating violence against women have been adopted. One of such laws is the Law on Protection of the Family, which aims at protecting family members who are subject to violence. Another major step has been the entry into force of the Turkish Penal Code on 1 June 2005, which, for the first time, has introduced the concepts of sexual harassment at the workplace and of sexual assault against the spouse.

61. As mentioned earlier, the new Penal Code of 2005, abolished the de facto reductions of sentences for perpetrators involved in "honour killings" and ensured that they shall be given the highest sentences.

62. The Municipality Law introduced the obligation on the part of municipalities with a population of more than 50.000 to provide service for women subjected to violence by opening guesthouses for women and children. In addition to 16 municipal guesthouses, there are 22 guesthouses for women affiliated with the General Directorate of Social Services and Child Protection Agency (SHCEK). Also the 71 society centres and 39 family counselling centres affiliated with the aforementioned agency provide services for women subject to domestic violence through psychological and legal counselling and economic assistance.

63. Spot and short films on violence against women and on centres for women subject to violence have been produced by the General Directorate on the Status of Women. Furthermore, various training and in-service training programmes have been implemented for security forces having direct contact with women and children who have been victims of violence.

64. A research commission was established at the TGNA on 11 October 2005 on "Examining the Causes of Custom and Honour Killings and Violence against Women and Children and Determining the Measures to be taken". The Commission finalized its studies on February 2006 and prepared a comprehensive report.

65. Following this report, relevant measures and responsible bodies were specified with the Circular issued by the Office of the Prime Minister (2006/17). In line with the recommendations of the Circular, the task of coordination regarding violence against women as well as honour killings was given to the General Directorate on the Status of

Women. In the framework of the said coordination task, the General Directorate on the Status of Women follows activities of responsible/cooperating bodies and other related bodies in three-month-periods, and reports to the Office of the Prime Minister.

66. In accordance with the above-mentioned Circular, the General Directorate on the Status of Women was also tasked with the establishment of “Monitoring Committee for Violence against Women” and the preparation of “National Action Plan”. In this context, “National Action Plan for Combating Domestic Violence against Women” covering the period 2007 – 2010 was prepared with the participation of the parties and was put into force upon the approval by the State Minister Responsible for Women and Family.

67. Monitoring Committee for Violence against Women held its first meeting on 14 March 2007. The Committee is made up of the representatives of related public institutions and organizations, NGOs specialized in the field, and research centres of universities.

68. Moreover, under Turkey-EU Pre-Accession Financial Programme of 2006, the project titled “Shelters for Women Subject to Violence” was initiated with a total budget of 8.110.000 Euro. Its main aim is to ensure that women subjected to violence are provided with sufficient protection through establishing and managing shelters.

#### *Combating trafficking in human beings*

69. Turkey has made significant progress in the fight against trafficking in human beings, in particular women and girls. In this context, Turkey signed and ratified the major international instruments, such as the United Nations Convention Against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; the Protocol Against Smuggling of Migrants by Land, Air and Sea; the United Nations Convention on the Rights of the Child and the Protocol thereto; the United Nations Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the ILO Forced Labour Convention No. 29; the ILO Abolition of Forced Labour Convention No. 105; and the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. 182.

70. Turkey has supported the international efforts of the OSCE, NATO, EU, the Council of Europe and the Stability Pact in the field of fight against human trafficking. Turkey has actively participated in the work of the Ad Hoc Committee on Action against Trafficking in Human Beings (CAHTEH) of the Council of Europe established for the task of preparing a European convention on fight against human trafficking.

71. Turkey also signed a collaboration protocol with the International Centre for Migration Policy Development (ICMPD) and became a member of the International Organization for Migration (IOM) on 30 November 2004.

72. Having ratified the relevant United Nations instruments, having amended the Penal Code and the Citizenship Law and having enacted the Law on Working Permits for Foreigners, which regulates work conditions of foreigners, Turkey has established the necessary legal framework and started its implementation both in the administrative and justice system.

73. In accordance with the amendment of the Citizenship Law, a probation period of three years is required for acquiring Turkish citizenship through marriage. Those who have a job incompatible with the marriage and do not share the same house with the spouse will not be able to acquire Turkish citizenship.

74. Article 80 of the new Penal Code provides the definition of human trafficking; penalizes human trafficking with 8 to 12 years of imprisonment and 10.000-day fine; and



provides security measures concerning legal persons regarding human trafficking. With an amendment introduced in 2006 in the said article, the expression “forced prostitution” was added into definition of human trafficking and thus harmony with the United Nations Convention against Transnational Organized Crime Additional Protocol on Human Trafficking was achieved.

75. Victims of human trafficking are provided with free medical care. The humanitarian visa and short-term residence permit practice has been launched in order to give residence permit to stay in Turkey to victims of human trafficking for a certain period of time during their medical treatment, care or legal proceedings. Victims of human trafficking may now obtain residence permit valid for 6 months which may be extended if necessary. The entry and exit transactions of victims of human trafficking are carried out free of charge and no penalties or permanent prohibition of entry to Turkey are imposed on them.

76. Upon the initiative of the Ministry of Foreign Affairs, acting as the national coordinator on issues of human trafficking and with the participation of all the related ministries and organizations, the “Task Force to Combat Human Trafficking” was established in 2002. The Ministry of Foreign Affairs acts as Chair of the Task Force. The “Action Plan” prepared by the Task Force and approved by the Office of the Prime Minister in 2003, calls for the protection of victims of trafficking, the provision of psychological assistance for their reintegration into the society and their families, the organization of information and awareness-raising campaigns to inform the society as well as potential victims and to train law enforcement officials on the prevention of trafficking in persons. According to the Action Plan, shelter houses where victims of human trafficking can receive legal and psychological counselling and medical care have been opened. Shelters were established in 2004 in Istanbul and in 2005 in Ankara for the victims of the trafficking in human beings. In addition, as provided in the Action Plan, necessary measures have been taken by the Social Solidarity and Assistance Incentive Fund to allow victims of human trafficking to benefit from assistance provided to needy people. This Action Plan has been successfully implemented. The new National Action Plan on Combating Trafficking in Human Beings has been prepared within the framework of the Project of Strengthening Institutions in the Fight against Trafficking in Human Beings. This Project was executed by the Ministry of Interior since January 2006 under the EU-Turkey Financial Assistance Programme of 2003. The new Action Plan will soon be approved.

77. Within the context of the Project, implemented with the contributions of the IOM and targeted at assisting victims of the trafficking in human beings, informative leaflets were prepared and distributed at the ports of entry to Turkey, especially in Istanbul, Ankara, Trabzon air and sea ports. The aim was to inform the foreigners visiting Turkey about the 157 helpline. Informative spot TV programmes were carried out. First public awareness campaign with the title “Have you seen my mother?” was launched on 2 February 2006 with the contribution of the IOM under the coordination of the Turkish Government. Also, law enforcement officials were given training.

78. A Circular on the investigation of the crime of human trafficking, the identification of the victims and the process applied for victims, and a guideline on the fight against trafficking in human beings were distributed by the Directorate General for Security of the Ministry of Interior to the relevant organizations, institutions and governorships.

79. A brochure on fight against human trafficking was prepared by the General Command of Gendarmerie and distributed to police stations throughout Turkey and to the public in provinces where incidents of human trafficking occur. The General Command of Gendarmerie also established a specialized team to perform as a general coordinator on issues of trafficking in persons and migrant smuggling. Another ministerial coordination committee was established within the framework of the Ministry of Interior in addition to the “Bureau on Human Trafficking”.

80. A free emergency help hotline (157) for victims of human trafficking has been put into service and incoming calls are answered by operators speaking various languages. The helpline can be reached throughout Turkey free of charge including mobile phones. It can also be reached from abroad (+90-312-157 11 22).

*International Cooperation and action on Women*

*Implementation of the Beijing Platform for Action*

81. As an active participant in the Fourth United Nations World Conference on Women held in 1995, Turkey is among the countries that have signed the Beijing Declaration and the Action Plan without reservations. Turkey has adopted three basic targets in the context of this conference and has made commitments to the international community to achieve these goals.

82. Parallel to the general understanding adopted following the Fourth World Conference on Women, during the Beijing Conference process Turkey prepared a National Action Plan in 1996 by a commission with the participation of the General Directorate on the Status of Women, representatives of women associations, academicians and representatives of related government bodies.

83. In the context of Strengthening Institutional Capacity which is the first component of Promoting Gender Equality project launched in 2007 in the framework of Turkey – EU Pre-Accession Financial Cooperation Program, of which General Directorate on the Status of Woman is the beneficiary, new studies were conducted concerning 10 issues determined at the Beijing Platform for Action (education and instruction of women, girls, women and health, women and economy, women in power and decision making process, institutional mechanisms in the development of women, women and poverty, women and media, women’s human rights, and women and environment) and related policy documents were prepared. The said plan will be finalized by the end of 2008. In the second component of the said project which is “Combating Domestic Violence against Women”, “National Action Plan for Combating Domestic Violence against Women in 2007-2010” was drawn up and put into force with the approval of the State Minister Responsible for Women and Family.

84. In consideration of the conditions and priorities of the country and the commitments of Turkey during the Fourth World Conference on Women, eight of the twelve critical areas in the Beijing Platform for Action (women’s education and training, girl child, women and health, violence against women, women and economy, women in power and decision making, institutional mechanisms for the advancement of women, women and media) have been identified as critical areas in Turkey’s National Action Plan.

85. Within the ten years following the Beijing Declaration and the Beijing Platform for Action, Turkey has realized most of its commitments made in Beijing by implementing policies in line with the Platform and achieved important progress in the area of gender equality and women’s rights.

86. Turkey has been a party to the United Nations Convention on the Elimination of All Forms of Discrimination against Women since 1985. Furthermore, Turkey ratified the Optional Protocol of the Convention in 2002. The ratification of the Optional Protocol constituted an important step as it opens the way for personal application to the Committee on the Elimination of Discrimination against Women.

87. On 29 January 2008, Turkey withdrew her declaration about article 9 of Convention on the Elimination of All Forms of Discrimination against Women. The fact that Turkey has already withdrawn her reservations regarding article 15 and 16 of the said Convention in 1999 points out to the achievements in Turkey with respect to women’s rights and

certifies our country's adherence to her international commitments, especially in the context of the Beijing Platform for Action adopted by the Fourth World Conference on Women and the OSCE Action Plan 2004 as well.

88. Moreover, with the amendment brought to article 90 of the Turkish Constitution on 17 May 2004, international conventions concerning basic rights and freedoms were accorded supremacy over national laws. This amendment placed the Convention on the Elimination of All Forms of Discrimination against Women above all other national legal arrangements which may be in conflict with its provisions.

*Contributions of Turkey to the promotion of gender equality in the international fora*

89. Turkey has made substantial contribution to the promotion of gender equality in the international fora, particularly to the efforts of fight against honour crimes. Turkey ensured that early and forced marriages and honour crimes are to be considered among the forms of violence against women identified in the outcome document of the Beijing + 5 Special Session of the UN General Assembly. Turkey co-authored, together with Britain, the United Nations resolution "Working towards the Elimination of Crimes against Women Committed in the Name of Honour" submitted to the 59th session of the General Assembly in 2004.

90. The international conferences hosted by Turkey are also clear embodiment of the importance that our country attaches to the issue of women's rights.

91. The Euro-Mediterranean Ministerial Conference on "Strengthening the Role of Women in Society" was held on 14 – 15 November 2006, in Istanbul. In the Conference, convened in accordance with the Barcelona Declaration and the Five Year Work Programme agreed upon during the 10th Anniversary Euro-Mediterranean Summit in Barcelona 2005, the participants reaffirmed that equal participation of women in all spheres of life is a crucial element of democracy and that achievement of a "common area of peace, stability and shared prosperity" relies upon, inter alia, making women fulfil their ambitions and aspirations.

92. The critical role that the improvement of women's status in society plays in the path towards sustainable development was re-emphasized in the Ministerial Conference on the Role of Women in the Development of Organization of Islamic Conference (OIC) Member States, held on 20 – 21 December 2006 in Istanbul. This meeting, organized in line with the Ten-Year Programme of Action of the OIC, embodies special significance since it is the first Ministerial Meeting of the OIC on issues related to women.

**Article 4**

93. In the Turkish Constitutional and legal system, derogation to rights in emergency situations, which is set by specific articles of the Constitution and other relevant legislation, represents an exception to the enjoyment of fundamental human rights.

94. According to article 13 of the Constitution, amended on 17 October "*Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be in conflict with the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular Republic and the principle of proportionality,*" which ensures that derogation from fundamental human rights can be made,

*Only by law,*

*In conformity with*

*The letter and spirit of the Constitution,*

*The requirements of the democratic order of the society and the secular Republic*

*The principle of proportionality*

95. Furthermore, as amended on 22 May 2004, article 15 of the Constitution guarantees that:

*In times of war, mobilization, martial law, or state of emergency, the exercise of fundamental rights and freedoms can be partially or entirely suspended, or measures may be taken, to the extent required by the exigencies of the situation, which derogate the guarantees embodied in the Constitution, provided that obligations under international law are not violated.*

*Even under the circumstances indicated in the first paragraph, the individual's right to life, and the integrity of his or her material and spiritual entity shall be inviolable except where death occurs through lawful act of warfare; no one may be compelled to reveal his or her religion, conscience, thought or opinion, nor be accused on account of them; offences and penalties may not be made retroactive, nor may anyone be held guilty until so proven by a court judgment.*

Thus, in times of war, mobilization, martial law, or state of emergency, partial or entire suspension of fundamental rights and freedoms cannot violate,

- Obligations under international law
- Non-derogable rights (such as freedom of religion, conscience, thought and opinion, non-retroactivity of offences and penalties and presumption of innocence)

96. State of emergency that brings about derogation from fundamental human rights, was put into effect in the periods when terrorist activities erupted and in the regions where those activities were widespread. However, state of emergency was totally abrogated in November 2002.

#### **Article 6**

97. Right to life is one of the most prominent rights guaranteed by, primarily, the Universal Declaration of Human Rights and basic human rights conventions under the United Nations and the Council of Europe, to which Turkey is a party.

98. The Constitution of the Republic of Turkey guarantees the right to life. Death penalty in all circumstances was abolished in Turkey in 2004 and necessary amendments were carried out in the Constitution, Turkish Penal Code and other laws which contained provisions referring to death penalty. Turkey became party to Protocol No.6 and No.13 of European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in 2003 and 2006 respectively. In March 2006 Turkey ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of death penalty.

99. Turkey exerts its active support to international initiatives towards the abolition of death penalty.

100. According to demographic indicators for 2004, life expectancy is 73,6 years for women and 68,8 years for men. The death rate is 71‰. The infant mortality rate per 1.000 live births is 24,6. The average age of marriage has increased to 19,5 years for women and 23,6 years for men.

101. Maternal mortality due to pregnancy and delivery in Turkey has declined remarkably. While “Mortality rate concerning Pregnancy” was 208 in 100.000 live births in 1974, this figure was found to be 18.2 in 100.000 in the “National Maternal Mortality Study” conducted in 2009. This declining trend is expected to increase further with the expanding reproductive health programmes.

102. Throughout the years, the rates of ante-natal care have increased significantly. While the rate of those who receive antenatal care was 63 per cent according to the 1993 Turkey Population Health Survey, it reached 81 per cent in 2003. Likewise, there is also an increase in the rate of deliveries carried out in healthy conditions. While the rate of those who gave birth in healthy conditions was 76 per cent in 1993, it reached 83 per cent in 2003 and 92 per cent in 2008.

103. Before 1983, since voluntary interruption of pregnancy was allowed only with medical indications, the inclusion of voluntary interruptions of pregnancy to maternal mortality statistics was increasing the figures. In 1983, voluntary termination of unwanted pregnancies of more than 10 weeks (including 10th week) was allowed with legal arrangements. Thereafter, voluntary interruptions of pregnancy were either not recorded as a reason for maternal mortality in Turkey, or occurred rarely; and after 1990, voluntary interruption rate fell down gradually.

104. Furthermore, the previously high infant mortality rate (IMR) indicated a declining trend. While IMR was 53 per cent in the Turkey Population Health Survey in 1993; it fell down to 29 per cent in 2003 and to 17 per cent in 2008. While child mortality rate for children under five years of age was 37 per cent in 2003, it fell down to 24 per cent in 2008. This constitutes tangible improvement in addressing infant mortality.

#### Article 7

105. The fight against torture and ill-treatment remains among priority items in the ongoing reform process in Turkey. The “zero tolerance policy” adopted by Turkey against torture and ill-treatment is indeed the reflection of the Turkish Government’s resolve in this direction.

106. Article 17 of the Constitution provides that:

*Everyone has the right to life and the right to protect and develop his material and spiritual entity.*

*The physical integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; and shall not be subjected to scientific or medical experiments without his or her consent.*

*No one shall be subjected to torture or ill-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.*

107. In addition to the Constitutional safeguard prohibiting torture and relevant articles of international conventions that bear the force of law as provided by article 90 of the Constitution, perpetrators of acts of torture and ill-treatment are prosecuted in accordance with the following articles of the new Penal Code:

Article 94 of the Penal Code titled “Torture” (no. 5237) provides that:

(1) *Public official who performs any acts towards a person that is incompatible with the human dignity, and which causes that person physical or mental suffering, effect the person’s perception or ability to act on one’s will, insult him/her shall be imprisoned for a term of three to twelve years.*

(2) *If the offence is committed against*

(a) *A child, a person who is physically or mentally incapable of defending him/herself, or a pregnant woman,*

(b) *A public official or a lawyer due to his/her service,*

*The perpetrator shall be imprisoned for a term of eight to fifteen years.*

(3) *If the acts take the form of sexual harassment, the perpetrator shall be imprisoned for a term of ten to fifteen years,*

(4) *Those other individuals participating in the commission of this offence shall be punished like the public official.*

(5) *If this crime is committed by way of negligence, there shall not be reduction in the sentence.*

Article 95 titled "Aggravated torture due to consequences" provides that:

(1) *where the act of torture results in*

(a) *Permanent impairment of one of the senses or functions of an organ,*

(b) *A permanent speech defect,*

(c) *A permanent scar on the face,*

(d) *A risk for the victim's life*

*or,*

(e) *If the act has been committed against a pregnant woman and has caused her to give birth prematurely,*

*the penalty determined in accordance with the article above shall be increased by half.*

(2) *Where the act of torture results in*

(a) *An incurable illness or if it has caused the victim to enter a vegetative state,*

(b) *The loss of one of the senses or functions of an organ,*

(c) *The loss of speech or the ability to have children,*

(d) *Permanent disfigurement of the face*

*or,*

(e) *If the act has been committed against a pregnant woman and has caused her to miscarry,*

*The penalty determined in accordance with the article above shall be increased by one.*

(3) *If the acts of torture results in fracture of victim's bones, the perpetrator shall be imprisoned for a term from eight to fifteen years in proportion to the severity of the damage in respect to vital functions.*

(4) *Where the acts of torture cause the death of the victim, the penalty shall be strict life imprisonment.*

Article 96 titled "Tormenting" provides that:

(1) *A person who performs any acts which result with the torment of another person is imprisoned for a term of two to five years.*

(2) *Where the acts falling under the above paragraph are committed against;*

(a) *A child, a person physically or mentally impaired so that s/he cannot defend her/himself,*

*or,*

(b) *An ascendant or descendant, an adoptive parent or the spouse,*

*The perpetrator shall be imprisoned for a term of three to eight years.*

Article 256 titled “Exceeding the limit concerning the power to use force” provides that

*Where a public official who is entitled with the power to use force, exercises, during the performance of his/her duty, use of force against people outside the limits required by his/her duty, the provisions concerning felonious injury shall apply.*

Article 90 titled “Experiments on Humans” provides that:

(1) *A person who carries out a scientific experiment on a human being shall be sentenced to imprisonment for a term of one to three years.*

(2) *The following conditions have to be met in order to avoid criminal liability for the experiment on a human being which is conducted upon the latter’s consent:*

(a) *Authorization from relevant councils or bodies should be received,*

(b) *The experiment should be conducted in an experimental environment other than the human body or on a sufficient number of animals,*

(c) *The scientific data obtained through the experiment conducted in an experimental environment other than the human body or on animals should necessitate its performance on human beings due to its objectives,*

(d) *The experiment should not leave an anticipated damage and a permanent effect on human health,*

(e) *No methods that may make the test subject suffer to a degree unacceptable for human dignity should be practiced,*

(f) *The objective of the experiment should outweigh the burden and the danger imposed on the person’s health*

(g) *The consent of the test subject should be in writing and based on sufficient information about the content and consequences of the experiment, and should not be linked with obtaining any advantages.*

(3) *Experiment on children shall be prohibited in all circumstances.*

(4) *A person who conducts a test on a patient for purposes of medical treatment without receiving the patient’s consent shall be sentenced to an imprisonment of up to one year. However, such a conduct, based on scientific methods, shall not necessitate criminal liability if the recognized treatment methods are inadequate and the consent of the patient is received. The consent should be in writing and be based on sufficient information about the content and consequence of the experiment, and the medical treatment should be conducted by a professional physician expert in a hospital.*

(5) *The provisions pertaining to deliberate wounding or deliberate killing shall be applicable if the victim is wounded or killed due to the offence described in paragraph one.*

(6) *If the offences defined in this article are committed within the framework of activities of a legal person, the security measures pertaining to them shall be applicable.*

108. In line with the “zero tolerance policy”, substantial progress has been achieved in the implementation of the measures taken in the field of prevention of torture. The Ministry of Justice and Ministry of Interior of Turkey have issued circulars in order to prevent torture and ill treatment during investigations and prosecution. As regards the measures to avoid disproportionate use of force by the police in Turkey, circulars and written orders have been issued by the relevant authorities and sent to all Police Departments in provinces since 2001. Finally, human rights courses have become compulsory at Police Academies since 2003.

109. Turkey became party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 1 February 1989, thereby recognizing the competence of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Convention’s monitoring body, which to date represents the most advanced system in the field. According to the provisions of the Convention, CPT delegations have unlimited access to places of detention and the right to enter such places without restriction. In principle, CPT reports are confidential unless the country in question authorizes their publication. Turkey, for the sake of transparency, decided in 2001 to authorize publication of all CPT reports on Turkey, which are available on the Committee’s website. The CPT made a total of 22 visits to Turkey and issued 21 reports. 19 of those reports were made public. The authorization process for the publication of report of CPT’s latest visit is ongoing.

110. Within the United Nations framework, Turkey honours its treaty obligations as a party to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The third periodic report, submitted to the Committee against Torture by Turkey, has been examined on 3-4 November 2010. Turkey also signed the Optional Protocol to the Convention against Torture on 14 September 2005 in New York, during the United Nations Summit, as testimony to its commitment to strengthening its national and international human rights machinery. On 23 February 2011, Turkish Grand National Assembly adopted the Optional Protocol to the Convention against Torture. Ratification process of the Optional Protocol is currently underway.

111. Turkey’s determination in that respect has also found its reflection in her close cooperation with the United Nations special mechanisms in the field of human rights. Accordingly, Turkey has extended a standing invitation to the thematic special procedures. Visits, recommendations and appeals of the special procedures, including the Special Rapporteur on torture, are given serious consideration. In 2006, the Working Group on Arbitrary Detention as well as the Special Rapporteur on the promotion and protection of human rights while countering terrorism visited Turkey.

112. Furthermore, many arrangements have been carried out in the legislation for the prevention of domestic violence. The most outstanding arrangement in this respect is the Law on the Protection of Family (No. 4320), which came into force on 17 January 1998.

113. The aim of Law No. 4320 is to prevent domestic violence by removing the person, who causes domestic violence from the common living space, and by implementing certain measures. The Law arranges the measures to be taken ex-officio by the Family Court judge, taking into consideration the characteristics of the event as well as the penalty to be inflicted if that particular measure is not observed, upon application by the spouse who is subjected to domestic violence, or one of the family members, or a third person who is witness to the situation, or upon notification by the Office of the Public Prosecutor.

114. Moreover, article 102 of Turkish Penal Code provides that demands towards the satisfaction of sexual desires which are beyond medical and legal limits in the union of marriage shall be considered as acts carried out on the spouse, aggravating the offense of sexual assault, and that it shall require penal sanctions upon complaint. Thus, rape in



marriage has, for the first time, been assessed as an act constituting the aggravated offense of sexual assault in a legal text, which requires penal sanctions.

115. Another important development is the establishment of TGNA Inquiry Commission in 2005 with a view to “Examining the Causes of Custom and Honour Killings and Violence against Women and Children and Determining the Measures to be taken”. As a result of Commission studies, a comprehensive report has been drawn up, in which measures which can be taken are specified.

116. Following this report, a Circular by the Office of the Prime Minister was issued on 4 July 2006 which is a clear indication of protecting and improving gender equality and women’s human rights, strengthening women’s status in every sphere of social life, and rendering the prevention of violence against women as state policy.

117. In the studies to be conducted concerning the recommendations in the Circular, the duty of coordination regarding violence against women as well as custom and honour killings was assigned to the General Directorate on the Status of Women. In the framework of the said coordination duty, the General Directorate on the Status of Women follows activities of the responsible/cooperating bodies and other related bodies in three-month-periods, and reports to the Office of the Prime Minister.

#### **Article 8**

118. Article 18 of the Constitution of the Republic of Turkey titled “Prohibition of Forced Labour” assures that:

*No one shall be forced to work. Forced labour is prohibited.*

*Work required of an individual while serving a prison sentence or under detention, services required from citizens during a state of emergency, and physical or intellectual work necessitated by the requirements of the country as a civic obligation do not come under the description of forced labour, provided that the form and conditions of such labour are prescribed by law.*

*Article 72 titled “National Service” provides that “National service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the Armed Forces or in public service shall be regulated by law.*

119. Article 49 of the Constitution provides that:

*Everyone has the right and duty to work.*

*The State shall take the necessary measures to raise the standard of living of workers, and to protect workers and the unemployed in order to improve the general conditions of labour, to promote labour, to create suitable economic conditions for prevention of unemployment and to secure labour peace.*

120. Article 2 of the Labour Law (No. 4857) defines certain concepts regarding labour. According to aforementioned article,

*The employee is a real person working under an employment contract; the employer is a real or corporate person or a non-corporate institution or organization employing employees; and the relationship established between the employee and employer shall be referred to as the employment relationship. The unit wherein the employees and material and immaterial elements are organised with a view to ensure the production of goods and services by the employer is called the establishment.*

121. Furthermore, article 32 of the Labour Law guarantees, inter alia, that:

*Wage is, in general terms, the amount of money to be paid in cash by an employer or by a third party to a person in return for work performed by him.*

*As a rule the wage shall be paid in Turkish money (legal tender) at the establishment or shall be deposited into a specially opened bank account. If the wage has been decided in terms of a foreign currency, it may be paid in Turkish money according to the currency rate on the date of payment.*

*Wage payment must not be made in bonds, coupons or another paper claimed to represent the national currency valid in the country or by any other means whatsoever.*

*Wage may be paid on a monthly basis at the latest. The time of remuneration may be reduced down to one week by employment contract or by collective agreement*

*Upon the expiration of the employment contract, employee's wage claims as well as all the benefits based on the employment contract and law must be paid in full.*

*No wage payments may be made to employees in bars and similar entertainment areas where alcoholic beverages are served as well as in retail stores, with the exception of employees working in such establishments.*

*Statutory limitation on wage claims is five years.*

122. Article 80 of Turkish Penal Code (No. 5237) titled "Human trafficking" provides that:

*(1) A person who procures or kidnaps persons or who takes or transports persons from one place to another or who harbours persons with a view to forcing them to work or providing a service or subjecting them to slavery or similar practices or donating their organs by exerting threats, pressure, force or violence, by abusing his authority, by deceit or by obtaining their consent through taking advantage of the opportunities they have to control them or of their helplessness shall be sentenced to imprisonment for a term of eight to twelve years and to a judicial fine of up to ten thousand days.*

*(2) In the event of actions which are undertaken for the purposes referred to in the first paragraph and which constitute an offence, the consent of the injured party shall be deemed void.*

*(3) Where juveniles under eighteen years of age are procured, kidnapped, taken or transported from one place to another or harboured for the purposes referred to in the first paragraph, the perpetrator shall be sentenced to the penalties referred to in the first paragraph, notwithstanding that none of the acts instrumental to the offence has been resorted to.*

*(4) Security measures shall be taken for legal entities on account of the above-mentioned crimes."*

123. Turkey signed and ratified the major international instruments, such as the ILO Forced Labour Convention No. 29; the ILO Abolition of Forced Labour Convention No. 105; and the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. 182; the United Nations Convention Against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; the Protocol Against Smuggling of Migrants by Land, Air and Sea; the United Nations Convention on the Rights of the Child and the Protocol thereto; the United Nations Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

124. Turkey has supported the international efforts in the field of fight against human trafficking. At regional level, Turkey has actively participated in the preparation of a

European convention on fight against human trafficking in the framework of the Council of Europe.

125. Turkey has established the necessary legal framework for the fight against trafficking in human beings, through the ratification of the relevant United Nations instruments, the amendment of the Penal Code and the Citizenship Law and the enactment of the Law on Working Permits for Foreigners. This legal framework is being implemented.

126. Article 80 of the new Penal Code provides the definition of human trafficking; penalizes human trafficking with 8 to 12 years of imprisonment and 10.000-day fine and provides security measures concerning legal persons regarding human trafficking. With an amendment introduced in 2006 in the said article, the expression “forced prostitution” was added into definition of human trafficking and thus the harmony with the United Nations Convention against Transnational Organized Crime Additional Protocol on Human Trafficking was achieved.

127. Victims of human trafficking are provided with free medical care. They may also obtain residence permit valid for 6 months which may be extended if necessary. The entry and exit transactions of victims of human trafficking are carried out free of charge and no penalties or permanent prohibition of entry to Turkey are imposed on them. Within the framework of the “Task Force to Combat Human Trafficking” which was initiated in 2003, necessary measures have been taken concerning the protection of victims of trafficking, provision of psychological assistance for their reintegration into the society, organization of awareness-raising campaigns to inform the society and to train law enforcement officials on the prevention of trafficking in persons. Moreover, as part of the Project of Strengthening Institutions in the Fight against Trafficking in Human Beings, a new Action Plan was initiated in 2006 by the Ministry of the Interior.

128. Within the context of the Project, informative leaflets were prepared and distributed at the ports of entry to Turkey, especially in Istanbul, Ankara, Trabzon air and sea ports. Furthermore, a Circular on the investigation of the crime of human trafficking, the identification of the victims and the process applied for victims, and a guideline on the fight against trafficking in human beings were distributed by the Directorate General for Security of the Ministry of Interior to the relevant organizations, institutions and governorships. Moreover, a brochure on fight against human trafficking was prepared by the General Command of Gendarmerie and distributed to police stations throughout Turkey and to the public in provinces where incidents of human trafficking occur. Also, a ministerial coordination committee was established within the framework of the Ministry of Interior in addition to the “Bureau on Human Trafficking”. Finally, a free emergency help hotline (157) for victims of human trafficking has been put into service and incoming calls are answered by operators speaking various languages.

129. Turkey is not among the countries, referred to in article 8 paragraph 3 (a) (ii), where conscientious objection to military service is recognized.

#### **Article 9**

130. The right of everyone to liberty and security is guaranteed by article 19 of the Constitution which includes the first sentence of article 9 of the International Covenant on Civil and Political Rights as its first paragraph.

131. Article 19 of the Constitution reads as follows:

*Everyone has the right to liberty and security of person.*

*No one shall be deprived of his or her liberty except in the following cases where procedure and conditions are prescribed by law: Execution of sentences restricting liberty and the implementation of security measures decided by court order; apprehension or*

*detention of an individual in line with a court ruling or an obligation upon him designated by law; execution of an order for the purpose of the educational supervision of a minor or for bringing him or her before the competent authority; execution of measures taken in conformity with the relevant legal provision for the treatment, education or correction in institutions of a person of unsound mind, an alcoholic or drug addict or vagrant or a person spreading contagious diseases, when such persons constitute a danger to the public, apprehension or detention of a person who enters or attempts to enter illegally into the country or for whom a deportation or extradition order has been issued.*

*Individuals against whom there is strong evidence of having committed an offence can be arrested by the decision of judge solely for the purposes of preventing escape, or preventing the destruction or alteration of evidence as well as in similar other circumstances which necessitate detention and are prescribed by law. Apprehension of a person without a decision by judge shall be resorted to only in cases when a person is caught in the act of committing an offence or in cases where delay is likely to thwart the course of justice; the conditions for such acts shall be defined by law.*

*Individuals arrested or detained shall be promptly notified, and in all cases in writing, or orally, when the former is not possible, of the grounds for their arrest or detention and the charges against them; in cases of offences committed collectively this notification shall be made, at the latest, before the individual is brought before a judge.*

*The person arrested or detained shall be brought before a judge within at latest forty-eight hours and in the case of offences committed collectively within at most four days, excluding the time taken to send the individual to the court nearest to the place of arrest. No one can be deprived of his or her liberty without the decision of a judge after the expiry of the above periods. These periods may be extended during a state of emergency, under martial law or in time of war.*

*The arrest or detention of a person shall be notified to next of kin immediately.*

*Persons under detention shall have the right to request trial within a reasonable time or to be released during investigation or prosecution. Release may be made conditional to the presentation of an appropriate guarantee with a view to securing the presence of the person at the trial proceedings and the execution of the court sentence.*

*Persons deprived of their liberty under any circumstances are entitled to apply to the appropriate judicial authority for speedy conclusion of proceedings regarding their situation and for their release if the restriction placed upon them is not lawful.*

*Damage suffered by persons subjected to treatment contrary to the above provisions shall be compensated by the State with respect to the general principles of the law on compensation.*

132. Article 90 of the Code of Criminal Procedure (No. 5271) titled “Authorizing seizures”,

(1) *In the instances listed below, any individual is entitled to make an arrest of another person temporarily without a warrant:*

(a) *If the other person was seen committing an offense,*

(b) *If the other person was under pursuit after committing an offense, if there is the possibility of escape of the person under pursuit after committing an offense or, if the establishment of his identity right away is not possible.*

(2) *In cases where an arrest warrant issued by the judge or issuance of an apprehension order is required, and there would be peril in delay; if there is no immediate*

possibility to ask permission from the public prosecutor or their superiors, the officers of the security forces shall be entitled to arrest the individual without a warrant.

(3) *Although the crime would only be investigated and prosecuted by a claim of the victim, such crimes detected in the act that are committed against children, or individuals, who are not capable of making determination about themselves because of a bodily or mental illness, are handicapped, or have limited physical strength, shall be arrested without a warrant and the claim is not required.*

(4) *The officers of the security forces shall inform the individual arrested without a warrant promptly about his legal rights, after taking measures to prevent him from escaping, and harming himself and others.*

(5) *In cases where an individual was arrested without a warrant according to paragraph one above and handed over to the security forces, or where an individual was arrested without a warrant in accordance to paragraph two above, the public prosecutor shall be informed immediately; further interactions shall be conducted upon the orders of the public prosecutor.*

(6) *In cases, where the arrest is based on an apprehension order and this order has been enforced, thus the apprehension order is no longer needed, the court, judge or the public prosecutor shall ask for the immediate return of the apprehension order.*

133. Article 91 titled “Custody” provides that:

*If the individual, who has been arrested without a warrant is not released by the public prosecutor in accordance with the above mentioned Article, then it may be ordered that he be taken into custody with the aim of completing the related investigation. The duration of the custody shall not exceed 24 hours, beginning from the moment of the arrest; the necessary time for transporting the suspect to the nearest judge or court of the place where the arrest had occurred, shall not be included. The necessary time for transportation to the nearest judge or court where the arrest had occurred, shall not exceed 12 hours.*

134. Article 94 titled “Bringing the arrested to the court” provides that:

*If it is not possible to arraign the individual who has been apprehended during the investigation phase or prosecution phase upon an apprehension order issued by the judge or the court the latest within 24 hours in front of the competent judge or court, he shall be arraigned in front of the nearest justice of the peace within the same period of time; if he is not released, he shall be put in arrest with a warrant in order to be transported within the shortest time to the competent judge or court.*

135. Article 102 titled “The period during detention” provides that:

(1) *Where the crimes not within the jurisdiction of the court of assizes, the maximum period of detention shall be one year. However, if necessary, this period may be extended, for six more months, by explaining the reasons.*

(2) *Where the crime is under the jurisdiction of the court of assize, the maximum period of detention is two years. This period may be extended by explaining the reasons in necessary cases, but the extension shall not exceed 3 years.*

(3) *The decisions of extension, which in accordance with this article, shall be rendered only after the opinions of the public prosecutor, the suspect or accused and their defence counsel have been obtained.*

136. Article 109 of Turkish Penal Code, titled “Deprivation of Liberty” guarantees that:

(1) *Any person who unlawfully restricts the freedom of a person by preventing him from travelling or living in a place is sentenced to imprisonment from one year to five years.*

(2) *If a person uses physical power or threat or deception to perform an act or during commission of offense, then he is sentenced to imprisonment from two years to seven years.*

(3) *In case of commission of this offense;*

(a) *By use of a weapon,*

(b) *Jointly by a group of persons,*

(c) *By virtue of a public office,*

(d) *By undue influence based on public office,*

(e) *Against antecedents, descendents or spouse,*

(f) *Against a child or a person who cannot protect himself due to corporal or spiritual disability, the punishment to be imposed according to above subsections is increased by one fold.*

(4) *If this offense results in gross economical loss of the victim, the offender additionally is imposed punitive fine up to one thousand days.*

(5) *In case of commission of offense with sexual intent, the punishments to be imposed according to above subsections are increased by one half.*

(6) *The provisions relating to felonious injury are additionally applied in case of commission of aggravated form of this offense which creates the consequences of felonious injury.*

#### **Article 10**

137. Turkey is committed to prevent and eradicate torture and other inhuman or degrading treatment or punishment, while viewing them as acts which can never be justified under any circumstances.

138. Article 2 of the Law on the Execution of Sentences and Security Measures (no. 5275), titled "Fundamental principle concerning execution" provides that:

(1) *The rules concerning sentences and security measures of convicts shall be implemented regardless of race, language, religion, sect, nationality, colour, sex, birth, philosophical belief, national or social origin, political or other opinion or views, economic standing, or other social status, and with no privileges.*

(2) *The provision "No cruel, inhumane, degrading and discreditable behaviour shall be committed in the execution of sentences and security measures" was added to the said Law, rendering the provision in Article 10 § 1 of the Covenant fundamental.*

139. Article 63, paragraph 3 of the Law on the Execution of Sentences and Security Measures (No. 5275) provides that:

*Women and men; convicts and detainees; children and adults; convicts of organized crime, benefit-oriented organized crime and terror convicts shall be separated from each other and shall not be allowed to contact each other, unless otherwise provided by the Law.*

140. Moreover, paragraph (c) of article 69 of Statute on Prison Management and the Execution of Sentences and Security Measures provides that "*Convicts shall be kept segregated from detainees in different institutions and sections*", making it a legal obligation to keep convicts and detainees in separate sections.

141. Article 3 of the Law on the Execution of Sentences and Security Measures (no. 5275) provides that “*the fundamental purpose of the Law is to provide general and personal prevention; therefore, to strengthen the factors which would prevent the convict from re-committing a crime; to protect society against crime; to encourage the convict to re-socialize; to facilitate his/her adoption of a life style that is productive, respectful to laws, rules and social norms, and responsible*”, stating that the main purpose in execution is to correct and regain the convict into the society. To this end, an execution policy which is based on the correction and regaining of the convicts is implemented in all prisons. Necessary explanation concerning the segregation of young offenders and the adults is provided in subparagraph (b).

142. A new Law was adopted on 27 July 2010, amending the Counterterrorism Law. According to the new Law:

- All children will henceforth stand trial in juvenile courts, or adult courts acting as juvenile courts,
- Child demonstrators who commit propaganda crimes or resist dispersal by the police will not be charged with committing crimes on behalf of a terrorist organization and hence membership in a terrorist organization,
- Children will not face aggravated penalties, and may benefit from sentence postponements and similar measures for public order offenses.

143. Administrative and judicial inspections of prisons are conducted by inspectors and other relevant officials of the Ministry of Justice and public prosecutors. Regular as well as unannounced visits conducted by public prosecutors serve as a deterrent factor, thus provide an additional safeguard for all convicts against any misconduct by prison personnel. The Government aims to establish a new mechanism which can function as the National Prevention Mechanism of Turkey which is required by the Optional Protocol to the Convention against Torture.

144. Turkey is a party to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. At regional level Turkey is also a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and recognizes the competence of the CPT acting as the Convention’s monitoring body.

#### **Article 11**

145. Turkey adheres to the principle of not depriving individuals of their liberty as a result of contractual obligations they may have.

146. As part of the reform process, the constitutional amendment package adopted in October 2001 included a new paragraph (8) to be added to article 38 of the Constitution. This new paragraph has been drafted in order to be in conformity with article 1 (titled “Prohibition of imprisonment for debt”) of the Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and with article 11 of the International Covenant on Civil and Political Rights.

147. Paragraph 8 added to article 38 titled “Principles Relating to Offences and Penalties” reads as follows:

*No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.*

148. The prohibition of imprisonment for debt is therefore constitutionally guaranteed in Turkey.

**Article 12**

149. The right to liberty of movement and freedom to choose his residence are guaranteed by the Constitution. These freedoms can only be limited by law in order to prevent offences; to promote social and economic development; to ensure sound and orderly urban growth; and to protect public property.

150. As amended on 12 September 2010, article 23 of the Constitution, titled Freedom of Residence and Settlement, guarantees that

*Everyone has the right to freedom of residence and movement.*

*Freedom of residence may be restricted by law for the purpose of preventing offences, promoting social and economic development, ensuring sound and orderly urban growth, and protecting public property; freedom of movement may be restricted by law for the purpose of investigation and prosecution of an offence, and prevention of offences. A citizen's freedom to leave the country may only be restricted on account of criminal investigation or prosecution depending on judicial decision.*

*Citizens may not be deported, or deprived of their right of entry to their homeland.*

151. By the amendment made to article 23 in September 2010, the restrictions to the freedom to leave the country were limited to cases where a judicial decision is given to that effect.

152. The previous provision (*A citizen's freedom to leave the country may be restricted on account of civic obligations, or criminal investigation or prosecution*) was modified accordingly (*A citizen's freedom to leave the country may only be restricted on account of criminal investigation or prosecution depending on judicial decision*).

153. Therefore, the ban placed on leaving the country on account of civic duties was removed and freedom of movement was extended. The obligation to obtain a judicial decision in order to restrict the freedom of movement is another positive improvement. It aims to prohibit arbitrary restrictions.

**Article 13**

154. Throughout the history, Turkey has welcomed, extended helping hand and provided safe haven to people who fled oppression and violence.

155. The remarkable example from the recent past for this is the case of 500.000 Iraqis who escaped from military regime during First Gulf War. Turkey provided shelter to these people and did her utmost to cater to their needs without sufficient international support until their voluntary and safe return back to their country in mid 90s.

156. The Constitution guarantees the fundamental rights and freedoms of aliens providing that any restriction to these rights and freedoms should be consistent with international law.

157. Article 16 of the Constitution titled "Status of aliens" reads as follows:

*The fundamental rights and freedoms of aliens may be restricted by law in a manner consistent with international law.*

158. Turkey is party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Turkey has therefore undertaken, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within its territory, the rights provided for in the said Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.



159. Migrant workers and members of their families cannot be expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfilment of that obligation constitutes a condition for such authorization or permit. An expulsion can only take place in pursuance of a decision taken by the competent authority in accordance with law.

160. Procedures regarding asylum applications are fulfilled in accordance with the provisions of 1951 Geneva Convention regarding the status of Refugees and its Protocol dated 1967 (Turkey is party to both Convention and its Protocol, albeit with a geographical limitation).

161. The expulsion of individuals whose asylum applications have been rejected are guided by article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which states that "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*" and article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which provides that "*No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture*".

162. Turkey's asylum procedures are based on the 1994 Regulation on Asylum prepared in order to reflect the provisions of 1951 Geneva Convention and amended in 2006 in line with EU Acquis on asylum and migration.

163. Article 6 of the Regulation states that demands of those who seek asylum in Turkey or seek residence permit in Turkey in order to seek asylum from another country are assessed according to the 1951 Geneva Convention and its Protocol dated 31 January 1967 and by the Ministry of the Interior in compliance with this Regulation.

164. Article 7 of the Regulation provides that:

*The Ministry of the Interior cooperates with other ministries, governmental bodies and organizations and with international organizations such as the United Nations High Commissioner for Refugees (UNHCR), International Organization for Migration (IOM) and NGOs in the matters relating to the procedures regarding the demands of the foreigners who seek asylum from Turkey or seek residence permit from Turkey in order to seek asylum from another country and procedures regarding sheltering, catering, transport, admission by a third country, voluntary return, supply of the passport and visa.*

165. In compliance with this Regulation, statistics regarding the asylum applications and the foreigners who have been given refugee or asylum seeker status by the Ministry of the Interior are shared simultaneously with the UNHCR. Meanwhile, Turkey continues harmonization of its legislation with the EU *acquis* in the field of asylum and migration.

166. Turkey, geographically being on a major migration route is facing ever-increasing numbers of illegal migrants from economically and politically unstable regions trying to cross its territory towards Europe.

167. The number of illegal migrants apprehended while attempting to cross our territory during 1995-2008 has exceeded 760,000, 300,000 of them being in the last 5 years period.

168. Given the magnitude of the problem, the solutions are beyond the means of a single country, requiring shared responsibility, international solidarity and burden sharing.

169. Providing shelter, food, medical treatment as well as bearing the return costs of such high number of illegal migrants puts heavy financial burden on the already strained resources of Turkey.

170. A new “Bureau for the Development of Asylum and Migration Legislation and Strengthening Administrative Capacity” has been established under the Ministry of Interior in October 2008. The task of the Bureau is to carry out all necessary activities towards preparing the required legislation and capacity building for the institutional structure in the sphere of asylum and migration, as well as to coordinate the EU projects.

171. The Regulation on “Refugees and Asylum Seekers” of the Ministry of Interior, dated March 2010 instructs governors’ offices to grant residence permits free of charge to refugees or asylum seekers who cannot afford it.

172. The Bureau for the Development of Asylum and Migration Legislation and Strengthening Administrative Capacity has also initiated efforts, based on the 1951 Geneva Convention, to prepare a new Refugee Law which will further align Turkish legislation with European Union *acquis*. The drafting process of the new Refugee Law is under way.

#### **Article 14**

173. Article 36 of the Constitution of the Republic of Turkey titled “Freedom to claim rights” provides that:

*Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through lawful means and procedures.*

*No court shall refuse to hear a case within its jurisdiction.*

174. Article 37 titled “Guarantee of lawful judgment” provides that:

*No one may be tried by any judicial authority other than the legally designated court.*

*Extraordinary tribunals with jurisdiction that would in effect remove a person from the jurisdiction of his legally designated court shall not be established.*

175. Third and fourth paragraphs of article 37 titled “Principles relating to offences and penalties” provide that:

*No one shall be considered guilty until proven guilty in a court of law.*

*No one shall be compelled to make a statement that would incriminate himself/herself or his/her legal next of kin, or to present such incriminating evidence.*

176. Article 141 titled “Publicity of hearings and verdict justification” provides that:

*Court hearings shall be open to the public. It may be decided to conduct all or part of the hearings in closed session only in cases where absolutely required for reasons of public morality or public security.*

*Special provisions shall be provided in the law with respect to the trial of minors.*

*The decisions of all courts shall be made in writing with a statement of justification.*

It is the duty of the judiciary to conclude trials as quickly as possible and at minimum cost.

177. Article 3 of Turkish Penal Code (No. 5237) titled “Equality principle before the justice and law provides that:

(1) *The punishments and the safety measures shall be proportionate with the gravity of the conduct committed.*

(2) *For the purposes of this act, no one could be granted privileges nor be subject to discrimination depending upon their race, language, religion, sect, nationality, political or any other thoughts, philosophical belief, national or social origin, birth and economical or social statuses.*

178. Article 147 of the Code of Criminal Procedure (No. 5271) titled “Method of statement taking and interrogation” provides that:

*The following subjects are followed in respect to taking the suspect’s or the accused individual’s statement or interrogation:*

(a) *The identity of the suspect or the accused is determined. The suspect or the accused is bound to answer questions regarding his/her identity accurately by law.*

(b) *He/she is explained what he/she has been accused of.*

(c) *He/she informed that he/she has the right to choose a counsel for defence and he/she can benefit from his/her legal advice, and that the counsellor may be present during the statement or interrogation. If he/she is in no condition to choose a defence counsel and wishes to use the services of one, a defence counsel is appointed by the bar.*

(d) *Article provision no.95 reserved, the relatives of the seized person’s choice are informed immediately of his/her situation.*

(e) *He/she is informed that he/she has the right to remain silent on the crime he/she has been accused of.*

(f) *He/she is reminded that he/she may request solid evidence to be gathered to be relieved from suspicion and is provided the opportunity to clear suspicions against his/her and declare those in his/her favour.*

(g) *Information on personal and economical status of the person giving the statement or being interrogated is gathered.*

(h) *Technical resources are utilized to record statement and interrogation procedures.*

(I) *The statement or the interrogation is concluded with an official report. The following subjects are included in the report:*

1. *The location and date of the statement or interrogation.*

2. *Names and titles of attendants during the statement or interrogation and identification of the person giving the statement or being interrogated.*

3. *Whether the mentioned procedures were fulfilled during the statement or interrogation. If not, the reasons.*

4. *That the content of the report was read and signed by the person who gave the statement or was interrogated, and by the defence counsel.*

5. *The reasons in case abstention from signing occur.*

179. Article 148 titled “Prohibited methods of statement taking and questioning” provides that:

(1) *The declaration of the suspect or the accused must be given by free will. Physical or mental intervention such as maltreatment, torture, drugging, tiring, cheating, use of force or threatening is impracticable.*

(2) *Promises against laws cannot be made.*

(3) *Statements gathered via forbidden methods, even by consent, cannot be evaluated as evidence.*

(4) *If the statement taken by juridical security forces without the attendance of the defence counsel is not approved by the suspect or the accused before the judge or the court, it constitutes no basis for the verdict.*

(5) *If the need to re-take the suspect's statement on the same case arises, this can only be initiated by the Republic Prosecutor.*

180. Article 149 titled "Selection of the defence counsel of the suspect or the defendant" provides that:

(1) *The suspect or the defendant can utilize the help of one or more defence counsel in every phase of the investigation and trial; if the suspect or the defendant has a legal representative, he may select a defence counsel in his place.*

(2) *During statement taking in the investigation phase, a maximum of three attorneys can be present.*

(3) *In every stage of the investigation and trial phases, the right of the attorney to accompany and provide counsel to the suspect or the defendant cannot be prevented or limited, during the taking of the statement and interrogation.*

181. Article 150 titled "Appointment of the defence counsel" provides that:

(1) *If the suspect or the defendant declares that he is not in possession of the conditions to select a defence counsel, a defence counsel is appointed in his place following his official request.*

(2) *In case the suspect or the defendant is underage (has not attained the age of eighteen), or deaf, or mute, or is handicapped to the degree of failing to defend himself and a defence counsel cannot be arranged; a defence counsel is appointed without the requirement of his official request.*

(3) *For the investigations and trials for crimes requiring a minimum of a five-year sentence as the upper limit, the provision of the second paragraph is applied.*

(4) *Other particularities of compulsory defence lawyers are regulated by by-laws issued following the Turkey Bars Association's opinion is obtained.*

182. Article 176 titled "Notification of the indictment to the accused and summoning of the accused" provides that:

(1) *The indictment and summons shall be notified to the accused all together.*

(2) *The summons that shall be notified to the accused who is not under arrest with a warrant, shall contain a notice stating that if he does not appear without an excuse, he shall be subpoenaed.*

(3) *The accused under arrest with a warrant shall be summoned through notification of the date of the main trial. The accused shall be asked, whether he has any motion in order to make his defence during the main trial and told to mention them if there are any; his defence counsel shall also be summoned together with the accused. This interaction shall be conducted in the correctional facility and the arrestee shall be arraigned in front of the clerk of the facility or of a personnel who is appointed to do this duty; a record of this interaction shall be produced.*

(4) *According to the subparagraphs listed above, it is required that between the notification of the summons and trial day, there must be at least a period of one week.*

183. Article 177 titled "The request of the accused to have defence evidence collected" provides that:

(1) *When the accused wants to summon a witness or an expert or when s/he wants defence evidence to be collected, s/he shall submit a petition to this effect to the presiding judge or the judge, at least five days in advance of the hearing, by also indicating the incidents to which they are connected.*

(2) *The decision to be taken upon this petition shall immediately be notified to him/her.*

(3) *From the requests made by the accused, the ones that are accepted shall also be notified to the public prosecutor.*

184. Article 202 titled “Cases where the presence of an interpreter is required” provides that:

(1) *If the accused or the victim does not know sufficient Turkish to explain his plight, during the hearing the essential points of the prosecution and defence shall be interpreted by an interpreter to be appointed by the court.*

(2) *In the hearing of a handicapped accused or victim, the essential points of the prosecution and defence shall be explained to him/her in a way that s/he is able to comprehend.*

(3) *The provisions of this article shall also apply in respect of suspects, victims or witnesses heard during the investigation phase. During that stage, the interpreter shall be appointed by the judge or the public prosecutor.*

185. Article 272 titled “Appeal” provides that:

(1) *An appeal may be lodged against the judgments given by courts of first instance. However, judgments relating to custodial penalties of fifteen years or more shall be reviewed by the regional court of appeal with its own motion.*

(2) *Decisions given by the court prior to the judgment and which provide the basis for the judgment or decisions against which there is no other legal remedy, may also be appealed together with the judgment.*

(3) *However, no appeal shall lie against the following judgments;*

(a) *Judgments imposing an administrative fine including two thousand liras determined as final,*

(b) *Judgments acquitting the accused of offences which carry a fine with an upper limit of no more than five hundred days,*

(c) *Judgments which are defined by law as final.*

186. Article 273 titled “Notice of appeal and time-limit for appeal” provides that:

(1) *Notice of appeal shall be filed within seven days of the delivery of the judgment by filing an application with the court which gave the judgment or by making a statement to the court clerk; this statement shall be placed on record and the record shall be approved by the judge. The provisions of Article 263 shall apply in respect of an accused who is detained on remand.*

(2) *If the judgment was delivered in the absence of the persons entitled to appeal, time shall start running on the date of notification.*

(3) *Public prosecutors attached to the criminal courts with general jurisdiction may appeal against the judgments of the district courts dealing with criminal matters in their judicial district; public prosecutors attached to the assize courts may appeal against the judgments of the criminal courts with general jurisdiction and the district (peace criminal) courts dealing with criminal matters in their judicial district; the above-*

mentioned public prosecutors may file a notice of appeal within seven days of the judgment reaching the local chief public prosecutor's office.

(4) *If the accused and persons who have acquired the status of intervening party according to this Code, as well as parties whose requests to intervene have not been decided or have been denied and parties who would be entitled to status as an intervening party because of the damage they have suffered as a result of the offence do not state their grounds of appeal in their application or statement, this shall not prevent the application being ruled admissible.*

(5) *The public prosecutor shall clearly state the grounds of appeal in his written application together with the reasons. The public prosecutor's request shall be notified to the parties. The parties may submit their replies on this matter within seven days of the date of notification.*

187. Article 286 titled "Appeal on points of law" provides that:

(1) *With the exception of judgments reversing a court decision, judgments given by the criminal divisions of the regional courts of appeal may be appealed on points of law.*

(2) *However, the following decisions shall not be subject to appeal on points of law:*

(a) *Decisions of regional courts of appeal dismissing appeals against custodial penalties of up to and including five years and against any administrative fine imposed by the courts of first instance,*

(b) *Decisions given by the regional courts of appeal relating to custodial penalties of up to and including five years that do not increase the amount of the custodial penalties imposed by the court of first instance,*

(c) *All types of decisions of the regional courts of appeal that are related to the judgment of the court of first instance as regards the nature of the offence which fall under the mandate of the district courts dealing with criminal matters,*

(d) *Decisions of the regional courts of appeal which do not alter the nature of the offence in connection with the judgment given by the court of first instance, in the case of offences requiring an judicial fine,*

(e) *Decisions given by regional courts of appeal which do not alter the decision of the court of first instance imposing the penalty of confiscation of only good or income or ruling that neither penalty is necessary,*

(f) *Decisions of the regional courts of appeal acquitting the accused or rejecting an appeal in connection with the decisions of acquittal given by the court of first instance in the case of offences carrying a custodial penalty of up to and including ten years or imposing any type of judicial fine,*

(g) *Decisions of the regional courts of appeal to dismiss a case, not to impose a penalty or order a security measure, or reject the application for appeal that are relevant to the decisions of the court of first instance on dismissing a case or not imposing a penalty or ordering a security measure,*

(h) *Decisions of the regional courts of appeal which contain more than one of these penalties and decisions in a single judgment provided that they remain within the limits of the above-mentioned articles.*

188. Article 287 titled "Appeal of the judgments given before the sentence" provides that:

*Decisions given prior to the judgment which form the basis for the judgment, or decisions against which no other legal remedy has been provided for, may be appealed on points of law together with the judgment.*

189. Article 291 titled “Notice of appeal on points of law and time-limit” provides that:

*(1) Notice of appeal on points of law shall be filed within seven days of the delivery of the judgment by filing an application with the court which gave the judgment or by making a statement to the court clerk; this statement shall be placed on record and the record shall be approved by the judge. The provisions of Article 263 shall apply in respect of an accused who is detained on remand.*

*(2) If the judgment was delivered in the absence of the persons entitled to appeal on points of law, time shall start to run on the date of notification.*

190. Article 311 titled “Grounds for a retrial in favour of a convicted person” provides that:

*(1) A case which has ended with a final judgment shall be repeated in favour of the convicted person under the following circumstances:*

*(a) If a document used in the hearing and which affected the judgment is found to be a forgery,*

*(b) If it is discovered that a witness or expert who was heard under oath testified or used his vote untruthfully against the convicted person, either deliberately or through negligence, in a way that affected the judgment,*

*(c) Except in the case of a fault caused by the convicted person himself, if any of the judges who participated in the judgment committed a fault in the performance of his duties which would require a criminal prosecution against him or a conviction and a penalty,*

*(d) If the judgment was based upon a judgment given by a civil court and this judgment was reversed by another judgment which became final,*

*(e) If new facts or new evidence are produced which when taken into consideration alone or together with the evidence previously adduced, are such as to require the acquittal of the accused or the conviction of the accused under a provision of the law that provides for a lighter penalty.*

*(f) If the European Court of Human Rights (ECHR) issues a final judgment stating that the penal judgment is in violation of the Convention on the Protection of Human Rights and Fundamental Freedoms or its additional protocols. In such a case, retrial can be requested within one year as of the finalization of the judgment of the ECHR.*

*(2) Provisions specified in subparagraph (f) of paragraph 1 shall be applicable to the judgments of the ECHR that were finalized on 4.2.2003 and to the judgments on applications made to the ECHR after 4.2.2003.*

191. Article 313 titled “Situations which do not prevent retrial” provides that:

*(1) The execution of the judgment or the death of the convicted individual does not bar a motion for a new trial.*

*(2) The spouse of the deceased, his ascendants, descendants, his siblings are entitled to file a motion of a new trial.*

*(3) If there are no such individuals as listed in the second paragraph, the Minister of Justice is also entitled to file a motion for a new trial.*

192. Article 8 of Law on Functioning and Implementation of the Code of Criminal Procedure (No. 5320) titled “Appeal and rectification” provides that:

*(1) Concerning the judgments appealed against before the date of regional courts’ taking office to be published in the Gazette in accordance with the provisional Article 2 of the Law on the Establishment, Duties, and Powers of Judicial First Instance Courts and Regional General Courts dated 26.09.2004 (no. 5235), Article 305 – 326 shall be implemented, excluding fourth, fifth, and sixth paragraphs of Article 322 of Code of Criminal Procedure, until finalization. The chief public prosecutor at the Court of Appeals can refer to the relevant criminal chamber or General Board of Criminal Chambers for the correction of errors in the spelling of criminal chambers and General Board of Criminal Chambers of the Court of Appeals.*

*(2) Concerning the sentences examined and finalized by the Court of Appeals before the Code of Criminal Procedure came into force, rectification can be requested on the condition that the time-limit for application has not expired.*

193. The right to individual application to the Constitutional Court has been provided by the constitutional amendment of September 2010.

194. The amendment made to article 148 of the Constitution, provides the right to individual application to the Constitutional Court with regard to the fundamental rights and freedoms enshrined in the Constitution that fall within the scope of the European Convention on Human Rights. The introduction of the individual’s right to apply to the Constitutional Court following the exhaustion of usual domestic remedies is one of the most important changes enacted within the Constitutional reform package of September 2010.

195. This right has been introduced taking into consideration the practices of various developed countries particularly many European Union member states. The aforementioned right not only gives the State another chance to remedy the injustice that arise prior to the application to the European Court of Human Rights - which is considered as the last resort against human rights violations - , but also creates another mechanism for the citizens to claim their rights.

196. This new mechanism, which was devised within the scope of the opinions (CDL-AD (2004)024 & 034) issued by the Venice Commission upon the Constitutional Court’s request, is in compliance with the international standards.

197. The rights of juvenile persons before the courts are guaranteed by relevant legislation taking account of their age and the desirability of promoting their rehabilitation.

198. Article 4 of the Law on the Protection of Children (No. 5395) titled “Fundamental principles” reads as follows:

*For the purposes of this Law, in order to protect the rights of juveniles, the following fundamental principles shall be observed:*

*(a) Safeguarding juveniles’ right to life, development, protection and participation,*

*(b) Safeguarding the interest and well-being of juveniles,*

*(c) No discrimination towards the juvenile or his/her family for any reason whatsoever,*

*(d) Ensuring the participation of the juvenile and his/her family in the process via keeping them informed,*



- (e) *Cooperation between the juvenile, his/her family, the related authorities, public institutions and non-governmental organizations,*
- (f) *Following a procedure that is based on human rights, fair, effective and swift,*
- (g) *Employing special care appropriate to the situation of the juvenile throughout the investigation or prosecution process,*
- (h) *Supporting the juvenile in developing his/her personality, social responsibility and education as appropriate for his/her age and development, when taking and implementing the decisions,*
- (i) *Penalty of imprisonment and measures that restrict liberty shall be the last resort for juveniles,*
- (j) *When deciding measures, caring at institution and keeping at institution shall be considered as the last resort; when taking and implementing the decisions, ensuring that social responsibility is shared,*
- (k) *Keeping juveniles separate from adults at the institutions where they are cared for and looked after and where the court decisions are implemented,*
- (l) *Taking measures to prevent others from detecting the identity of the juvenile in transactions related to juveniles, trials and when carrying out the decisions.*

199. Article 13 of Regulation on Rules and procedures concerning the Implementation of Law on the Protection of Children” published in the Official Gazette on 23/12/2006 (No. 26386), titled “Prosecution” provides that:

(1) *Hearings of children shall be held in camera; the sentence shall be explained in hearing in camera. The child, his/her guardian, curator, the social worker assigned by the court, the family who undertakes the care of the child; and if s/he stays in an institution, the representative of the institution, can be present at the hearing.”*

(2) *The trial shall be public concerning the children who are over 18 during prosecution, and the sentence shall be explained openly. However, where the conditions stated in paragraph two of Article 182 of Code of Criminal Procedure (no. 5271) exist, the court may decide to hold the hearing in camera.” Article 1 of the Regulation on the Implementation of Decisions of Preventive and Supportive Measures Given in Accordance With the Law on the Protection of Children” published in the Official Gazette on 23/12/2006 (no. 26386), titled “Purpose” provides that (1)The purpose of this Regulation is to arrange rules and procedures concerning the protection of children who need to be protected and who are swayed into crime, and securing their rights and well-being.*

200. Article 5 titled “Preventive and supportive measures” provides that:

*Preventive and supportive measures are those*

- (a) *Consultancy,*
- (b) *Education,*
- (c) *Care,*
- (d) *Health*
- (e) *Accommodation*

*measures which aim at ensuring his/her protection in the family environment, supporting education and instruction appropriate for his/her age and development,*

*improving his/her personality and social responsibility, taking into consideration the interests of the child.*

201. Article 5 of the “Regulation on Assignment of Defence Lawyers and Representatives as well as Rules and Procedures concerning the Payments” published in the Official Gazette (No. 26450) on 2 March 2007, titled “Assignment of defence lawyers and representatives” provides that:

(1) *The suspect or accused shall be asked to designate a defence lawyer. If s/he states that s/he is not in a position to choose a defence lawyer, s/he shall be reminded that the payment to be made to the defence lawyer shall be considered within costs and expenses and that they will be taken from him/her in case s/he is convicted at the end of the trial; and in case s/he demands, s/he shall be asked to assign a defence lawyer from the bar.*

(2) *If the suspect or accused is a child, handicapped, deaf and mute so much as to be unable to defend him/herself, or if a prosecution or investigation is carried out concerning him/her regarding an offense which requires an imprisonment of more than five years, s/he shall be asked to assign a defence lawyer from the bar without his demand. However, in such a case, it is imperative that the suspect or accused does not have a defence lawyer.*

(3) *The summons issued for serving the accused the indictment during prosecution in cases mentioned in paragraph two shall bear the comment “that s/he must inform within seven days following the notification date on whether a defence lawyer has been found; that the bar shall be asked to assign a defence lawyer in case s/he does not inform; that the payment to be made to the defence lawyer shall be considered as costs and expenses and shall be taken from him/her in case s/he is convicted.” If the accused is detained, the said comment shall be reminded to him/her during the procedures carried out in accordance with the third paragraph of Article 176 of Code of Criminal Procedure. If the accused does not give relevant information, if no notification is made, or if the detained accused informs that there is no defence lawyer, the bar shall be asked to assign a defence lawyer without waiting for the hearing day.*

(4) *If the victim, complainant, or intervening party who do not have a representative request, the bar shall be asked to assign a representative.*

(5) *In accordance with Code of Criminal Procedure, where a representative must be assigned for the victim, or the party who has suffered a damage from the offense, the bar shall be asked to assign a representative without seeking his/her request. However, in such a case, it is imperative that the victim or the party who has suffered damage from the offense does not have a representative.*

(6) *The assignment of defence lawyer or representative shall be demanded from the authority who took the statement during investigation or the investigating judge; and during prosecution, it shall be demanded by the court from the bar.*

#### **Article 15**

202. The Constitution and the relevant legislation guarantee that no one is held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed. A heavier penalty than the one that was applicable at the time when the criminal offence was committed cannot be imposed.

203. The first paragraph of article 38 of the Constitution of the Republic of Turkey titled “Principles Relating to Offences and Penalties” provides that:

*No one shall be punished for any act which does not constitute a criminal offence under the law in force at the time committed; no one shall be given a heavier penalty for an offence other than the penalty applicable at the time when the offence was committed.*

204. Article 2 of Turkish Penal Code titled “Legitimacy Principle in crime and punishment” provides that:

*(1) Nobody can receive any penalty for any action that is not being considered explicitly a crime by the Law and cannot be subject to any security measures. Only those penalties and security measures that are in the Law could be sentenced in jurisdiction.*

*(2) Crime and penalty cannot be imposed through administrative regulations.*

*(3) Application of the articles of the law which include crime and penalty cannot be subject to analogy. Those articles including crime and penalty provisions cannot be interpreted in such a way so that will cause any analogy.*

#### **Article 16**

205. The Constitution and the relevant provisions of the Civil Code guarantee the right to recognition as a person before the law to everyone.

206. Article 12 of the Constitution of the Republic of Turkey titled “Nature of Fundamental Rights and Freedoms” provides that:

*Everyone possesses inherent fundamental rights and freedoms which are inviolable and inalienable.*

*The fundamental rights and freedoms also comprise the duties and responsibilities of the individual to the society, his or her family, and other individuals.”*

207. Article 13 provides that:

*Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be in conflict with the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular Republic and the principle of proportionality.*

208. Article 8 of Turkish Civil Code (No. 4721) provides that:

*Everyone has the capacity to acquire rights, and accordingly, everyone is equal in having capacity to acquire rights and obligations in the limits of legal order.*

209. Article 28 provides that:

*Personality begins at the very moment the child is full born and ends by death. The child possesses the right of capacity at the very moment he/she enters mother’s womb (as foetus) provided that he/she is born alive.*

210. Article 11 provides that:

*According to the Law, the age of majority is eighteen (full). A person becomes sui juris by marriage.*

211. Article 12 provides that:

*Infant completing the age of fifteen may become adult by his/her own will and under his/her parent’s consent subject to court decision.*

#### **Article 17**

212. Articles 20 and 22 of the Constitution under the title “Privacy and protection of private life” provide that everyone has the right to demand respect for his/her privacy, family life and secrecy of communication.

213. As amended on 12 September 2010, article 20 of the Constitution guarantees that “Everyone shall have the right to the protection of their personal data. This right entitles

*the individual to be informed of personal data, to access such data, to request their correction or deletion and to learn whether these are being used with the intended purpose.”*

214. This amendment comes at a time when improvements in the field of information technology magnified the difficulties and concerns that have emerged in the field of personal data protection. The amendment, which has been prepared in the light of article 8 of the European Convention on Human Rights and the case-law of the European Court of Human Rights (*Marper v. United Kingdom*, decision of 4 December 2008), will align national legislation with international standards concerning the protection of personal data.

215. Article 116 of the Turkish Penal Code, titled “Violation of the Immunity of Residence” guarantees that:

*(1) A person who enters an individual’s residence or its associated buildings without consent, or person who refuses to leave such after having entered with consent, shall be sentenced to a penalty of imprisonment for a term of six months to two years, upon the complaint of the victim.*

*(2) Where the acts defined in section one are committed in a work-place or its associated buildings (excluding places where it is habitual to enter without consent), then a penalty of imprisonment for a term of six months to one year or a judicial fine shall be imposed.*

*(3) The provisions of the above section are not to be applied where a family member of a household or, where a residence or workplace is shared, one of the sharers, gives his consent. The giving of consent should be for a legitimate purpose.*

*(4) Where the act is carried out by using force, threats or is committed at night, then a penalty of imprisonment for a term of one to three years shall be imposed.*

216. Article 132 of the Turkish Penal Code, titled “Violation of Confidentiality of Communication” defines the violation of the confidentiality of communication between persons as an offence. The article reads as follows:

*(1) Any person who violates the confidentiality of communication between persons shall be sentenced to a penalty of imprisonment of a term of six months to two years, or judicial fine.*

*(2) If the violation of confidentiality occurs through the recording of the content of the communication, a penalty of imprisonment for a term of one to three years shall be imposed.*

*(3) Any person who unlawfully publicizes the contents of a communication between persons shall be sentenced to a penalty of imprisonment for a term of one to three years.*

*(4) Where this offence is committed through the disclosure of the contents of any communication between individuals through the press and broadcasting, the penalty to be imposed shall be increased by one half.*

217. The right to respect a person’s communication is the right to communicate with others without disruption and censorship.

218. The said offence is committed by learning the content of the communication between certain people. The way of communication between people does not bear any significance in respect of the formation of the offence. For instance, it can be done through a letter, telephone, telegraph, and e-mail. What is important in respect of the offence is that communication is made between two people. A person who is not a party to the communication can commit the said offence.

219. The violation of the confidentiality of the communication only through listening and reading constitutes the basis of this offence. However, the violation of confidentiality by way of recording the content of communication is described as the aggravated type of this offence; for instance, recording the telephone conversations with a sound recording device.

220. The second paragraph of article 2 defines unlawful disclosure of the content of the communication between people as a separate offence. The offence occurs when the content of communication is disclosed, spread, that is when unauthorized people learn about it.

221. The third paragraph of article 3 defines violation of the confidentiality of communication by publicly disclosing the content of communication without the consent of the other party as a separate offence.

222. In order for the offence to take place, the disclosure must be made publicly. In this respect, if a person shows the content of a letter sent to him/her, without the consent of the sender, to another person, this does not constitute an offence. On the other hand, if the letter is read publicly, is posted on the wall so that others can read, or is published or broadcast through media without the sender's knowledge and consent, it shall constitute an offence.

### **Article 18**

223. Turkish land has traditionally been home to those in need fleeing religious persecution throughout history.

224. Turkey adheres with great dedication to the legacy of multi-faith tolerance and cultural pluralism. Based on this legacy and the secular system of the Republic, freedom of religious belief, conscience and conviction in Turkey is firmly guaranteed by the Constitution and relevant legislation.

225. In addition to the regulations with regard to Turkish citizens belonging to non-Muslim minorities as stipulated in the Lausanne Peace Treaty (1923), legislative and administrative revision has been carried out as to the freedom of religion of all citizens and foreigners residing in Turkey.

226. The Constitution guarantees freedom of religion and conscience, and provides the right to freedom of conscience, religious belief and conviction for everyone.

227. Article 24 of the Constitution titled "Freedom of Religion and Conscience" reads as follows:

*Everyone has the right to freedom of conscience, religious belief and conviction.*

*Acts of worship, religious services, and ceremonies shall be conducted freely, provided that they do not violate the provisions of Article 14.*

*No one shall be compelled to worship, or to participate in religious ceremonies and rites, to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions.*

*Education and instruction in religion and ethics shall be conducted under state supervision and control. Instruction in religious culture and moral education shall be compulsory in the curricula of primary and secondary schools. Other religious education and instruction shall be subject to the individual's own desire, and in the case of minors, to the request of their legal representatives.*

*No one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political influence, or for even partially basing the fundamental, social, economic, political, and legal order of the state on religious tenets.*

228. As regards the criminal legislative framework, obstructing the exercise of the freedom of religion, belief and conviction constitutes an offence according to article 115 of the Turkish Penal Code.
229. Furthermore, incitements to religious hatred, public denigration of any group on the basis of their religion or sect as well as denigration of religious values are penalized under article 216 of the Turkish Penal Code.
230. Non-Muslim places of worship are administered by their own associations or foundations. The property rights on places of worship rest with the real or legal persons that have founded them. There are more than 300 places of worship belonging to non-Muslim communities, including 53 churches run by foreigners residing in Turkey.
231. Issues related to the training of clergy in Turkey are dealt in line with the provisions of the Constitution and the relevant legislation. Article 24 of the Constitution stipulates that education and instruction in religion and ethics shall be conducted under state supervision and control.
232. Moreover, foreign clergymen can serve in places of worship in Turkey. More than 100 foreign clergymen have been registered in Turkey to serve in places of worship with the relevant working permit.
233. Turkey strongly denounces all hate crimes regardless of the grounds they are committed. Despite the legal framework and the inherited tradition of tolerance, Turkey, like other multi-faith societies, is not totally immune to isolated incidents against some members of the Turkish society.
234. Although racist motive is not considered as an aggravating factor, it was regarded as an act of intentional killing with premeditation, which is punishable by aggravated life imprisonment under article 82 of the Turkish Penal Code. Such incidents receive prompt and diligent response from relevant authorities and all possible measures are taken to bring those responsible to justice. In this vein, the Ministry of Interior, in its Circular issued in June 2007, instructed all relevant authorities to pay utmost attention in order to prevent the occurrence of such incidents.
235. On 13 May 2010, the Prime Ministry has issued a circular that confirmed that all Turkish citizens from different religious communities constitute an inseparable part of Turkey, urging all related government institutions and offices to act with utmost diligence for the absolute elimination of problems encountered by the non-Muslim minorities.
236. Since 2006, Governmental officials have held periodic meetings with the representatives of several religious communities in Turkey with a view to addressing the problems faced by these communities.
237. In 2010, as part of the Government's action aiming at further improving the condition of non-Muslim minorities, authorization was given for holding religious service at the Greek-Orthodox Church at the Sümela Monastery and at the church situated on Akdamar Island.
238. Another positive step was the former orphanage on Büyükada that was returned to the Greek Orthodox Patriarchate following a decision by the European Court of Human Rights.
239. The Department of Religious Affairs, under the Office of the Prime Minister, *“conducts affairs concerning the belief, worship and ethical fundamentals of the religion of Islam, informs society on religion, administers places of worship (Law no. 633, Article 1)”*, *“in line with the principle of secularism, removed from all political views and opinions, and aiming at national solidarity and integrity (Article 136 of the Constitution).”*

240. The Department of Religious Affairs;
- Provides guidance on society's worships and gives information on belief and ethics of Islam;
  - Informs society;
  - Produces information in the light of reason and science and shares this knowledge with the society, taking into consideration 14 ages-old religious experience of the Muslims;
  - Provides due and timely statements on contemporary religious problems without disregarding modern life and common possessions;
  - Provides service in line with the common denominator of Islam and the principle of citizenship, without any discrimination on sect, understanding, interpretation or practice;
  - Does not represent any sect or any Islamic belief group;
  - Is a public institution as it is within a State organization; an independent organization as its acts on its own scientific capacity and initiative while providing service; and a civil organization as it takes into account Islamic experiences, demands, and sensitivities of the population about religiousness.
241. The Department of Religious Affairs conducted and is currently conducting the following activities:
- (a) Pioneered by the Department of Religious Affairs, "Religions in an Era of Faith and Tolerance" meeting was held in Tarsus on 10 – 11 May 2000 with the participation of Christian and Jewish community leaders in our country, and "Tarsus Declaration" was issued with the signatures of all participants;
  - (b) Pioneered by the Department, a meeting was held on 11 April 2002 in Istanbul with Christian and Jewish community leaders in Turkey in order to discuss issues on the world agenda and particularly the human tragedy in the Middle East. The meeting produced the declaration titled "Istanbul Invitation";
  - (c) "Faith Tourism Days" activities were carried out on 25 – 27 October 2002, 16 – 18 April 2004, and 12 -14 May 2006 in Kuşadası, Izmir and Istanbul, respectively with the joint efforts of the Department of Religious Affairs and the Association of Turkish Travel Agencies (TÜRSAB). The activities were attended by the leaders of all religious minorities in Turkey. The presentations in the three activities were compiled and published by TÜRSAB as a book;
  - (d) Department of Religious Affairs participated, along with representatives of other religions in our country, in the symposium of the "First Meeting of Civilizations in Hatay" on 22 – 30 September 2005, held by Hatay Association for the protection of Universal Values;
  - (e) The Department of Religious Affairs sends representatives to the meetings on dialogue and it also accepts visitors at the Department for exchange of views. On the occasion of his visit to Turkey Pope Benedict XVI visited the Department of Religious Affairs on 28 November 2006;
  - (f) Dialogue efforts continue with the attendance of representatives of other religions in meetings, panels, open door days and visits abroad which are carried out with the guidance of our offices of attachés.

**Article 19**

242. Freedom of expression is safeguarded by the Constitution and other relevant legislation in Turkey.

243. Article 25 of the Constitution states that everyone has the right to freedom of thought and opinion. No one shall be compelled to reveal his thoughts and opinions for any reason or purpose, nor shall anyone be blamed or accused on account of his thoughts and opinions.

244. Article 26 of the Constitution provides that

*Everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, and similar means to a system of licensing.*

*The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.*

*Provisions regulating the use of means of disseminating information and ideas shall not be interpreted as a restriction of freedom of expression and dissemination unless they prevent the dissemination of information and thought. The formalities, conditions and procedures to be applied in exercising the right to expression and dissemination of thought shall be prescribed by law.*

245. Article 28 of the Constitution states that the press is free, and shall not be censored. The establishment of a printing house shall not be subject to prior permission or the deposit of a financial guarantee. Publication of periodicals or non-periodicals shall not be subject to prior authorization or the deposit of a financial guarantee. Protection of printing houses is also guaranteed by the Constitution.

246. The new Press Law (2004) diminishes substantially the penalties for offences committed through press. Within the new system, penalties such as imprisonment, temporary shutdown, seizure of press devices, etc. are completely abolished. Only limited fines can be imposed for the committers.

247. The Ministry of Justice issued a Circular on “implementations regarding mass media” in 2006. In this Circular, public prosecutors are requested to “...give due care while assessing whether an expression of thought is within the limits of criticism as under the framework of the case-law of the ECtHR.”

248. The new Turkish Penal Code, which was enacted in 2005, includes a more liberal approach to the freedom of expression. However certain difficulties arose in the implementation of article 301 of the new TPC. To overcome these difficulties, the said article which regulates issues concerning degrading speeches against the Turkish nation, the State, the Government, the judiciary, the Parliament, the military or security organizations was amended in May 2008.



**Table 2: Rate of authorization within the framework of article 301 of the Turkish Penal Code**

Year	Application	Authorized	Not Authorized	Authorization percentage
2008	559	69	366	15,87
2009	518	9	536	1,65
2010	352	10	345	2,84
Total	1429	88	1245	6,60

249. The recent amendment to article 301 of the Penal Code has introduced the system of twofold guarantee with regard to its implementation. Accordingly, a criminal investigation can only be launched upon the permission of the Minister of Justice. Even if such permission is granted, the prosecutor still has discretionary power to decide not to prosecute.

250. On freedom of expression, a number of seminars have been held since 2004 for judges and prosecutors and in cooperation with the EU and the Council of Europe in-depth training courses are organized concerning the implementation of the TPC in the context of the ECHR.

251. The amended “Law on Foreign Language Education and Teaching, and the Learning of Different Languages and Dialects by Turkish Citizens” permits the establishment of private courses to teach different languages and dialects traditionally used by Turkish citizens since 2002. Private courses for teaching languages and dialects traditionally used by the Turkish citizens in their daily lives were opened in seven provinces. Yet, they all have later been closed by their founders and owners due to the lack of interest.

252. The amended “Law on the Establishment of and Broadcasting by Radio and Television Corporations” allows broadcasting in different languages and dialects traditionally used by Turkish citizens. Turkish Radio and Television (TRT) and private TV and radio channels broadcast in languages and dialects used traditionally by Turkish citizens in their daily lives.

253. In 2006 the High Council for Radio and Television (RTÜK) has granted permission for several private radio and TV stations upon their applications to broadcast in Kirmanchi and Zaza. The radio and TV stations had started their broadcast in these with certain time limitations. By a new Bylaw (2009), time limits for private television channels to broadcast in different languages and dialects traditionally used by Turkish citizens in their daily lives were lifted. By the beginning of January 2010 more than ten private companies have already applied for acquiring regional and local broadcasting licenses in Kirmanchi, Zaza and Arabic. As of January 2009, a new multilingual state-run TV channel, TRT-6, has started to broadcast in Kurdish.

254. “Law on Regulation of Information Dissemination via Internet and Prevention of Crimes Committed through such Dissemination” was issued in 2007. To monitor the implementation of this legislation an “Internet Department” is set up within the Information Technologies and Communication Institution in Turkey. The law regulates on eight categories of crimes, seven of which are catalogue crimes.

255. The basic purpose of the Law is to fight against certain and limited categories of crimes. “Notice and takedown” principle applies in the removal procedure of the harmful content from the Internet. Concerning breaches of personal rights in the Internet,

individuals can apply in accordance with the article 9 of the said Law. The applicants can ask for the removal of the undesirable content and seek a right of reply.

256. The law regulating the enjoyment of the “right to information” entered into force in April 2004. Article 5 regulates the obligation of the public institutions to provide information to the applicants within 15 business days.

257. Turkey is determined to expand the scope of the freedom of expression. It is firmly believed that guaranteeing fundamental freedoms is a must to further strengthen democracy.

#### **Article 20**

258. Turkish nation is composed of citizens, who are equal before the law irrespective of their origins in terms of language, race, colour, ethnicity, religion or any other such particularity, and whose fundamental rights and freedoms are enjoyed and exercised individually in accordance with the relevant law.

259. In Turkish legal system, intolerance, with all its forms, is seen as an element which harms social peace and an origin of violation of rights. For this reason, all types of intolerance and primarily racism, racial discrimination, xenophobia, religious defamation, and religious intolerance are prohibited and related acts are defined as offense and imposed upon penal sanctions.

260. The themes of brotherhood and peace which form the basis of tolerance are stated in the preamble of the Constitution of the Republic of Turkey which explain the fundamental views and principles of the Constitution itself, whereby it is also mentioned that all the people living in the world are brothers and have equal rights, emphasizing peace at home and peace in the world.

261. Article 10 of the Constitution titled “Equality before the Law” provides that *“all individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. Men and women have equal rights. The State shall have the obligation to ensure that this equality exists in practice. No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.”*

262. Turkish Penal Code (No. 5237) codifies hatred crimes, incitement to violence, and war propaganda as well as relevant crimes and sentences.

263. Article 76 of Turkish Penal Code provides that the commission of any of the acts against the members of any national, ethnic, racial, religious or other group determined by any features other than those with intent to destroy it in whole or in part through the execution of a plan shall constitute genocide and there shall be no limitation period pertaining to these offences.

264. Article 77 of Turkish Penal Code provides that the performance of the acts mentioned in the provision systematically against a civilian group of the population in line with a plan with political, philosophical, racial or religious motives shall constitute the crimes against humanity and there shall be no limitation period pertaining to these offences.

265. Article 115 of Turkish Penal Code provides that a person who forces another person to declare or to change his religious, political, social, philosophical belief, thoughts and convictions or who prevents him to declare or to spread them shall be sentenced to imprisonment from one year to three years. In the event that carrying out mass religious worshipping and ceremonies is prevented by force or by threatening or by means of any other illegal action, a punishment in accordance with the preceding paragraph shall be given.

266. Article 122 of Turkish Penal Code provides that a person who discriminates among people due to difference of language, race, colour, sex, political view, philosophical belief, religion, religious sect etc. shall be considered a crime and imposed upon penal sanctions.

267. Article 125 of Turkish Penal Code which codifies the crimes and penalties concerning defamation provides (para. 3) that if the insult is committed (a) against a public officer due to the performance of his public duty (b) because of declaring, altering or disseminating his religious, political, social beliefs, thoughts or convictions, or practising in accordance with the requirements and prohibitions of a religion he belongs to; or (c) if the subject matter is deemed sacred to the religion, the person belongs to the penalty to be imposed shall not be less than one year.

268. Article 135 of Turkish Penal Code provides that illegal recording of personal information data on others' political, philosophical or religious opinions, their racial origins; their illegal moral tendencies, sexual lives, health conditions and relations to trade unions shall constitute a crime and imposed upon a penalty.

269. Article 153 of Turkish Penal Code which arranges offenses and penalties concerning damaging places of worship and cemeteries provides that where the offenses are committed with the aim of defaming a related religious group, the penalty to be imposed shall be heavier.

270. Article 214 of Turkish Penal Code titled "Provocation to Commit an Offense" provides that getting a part of the public armed against another part, and inciting them to murder shall constitute an offense and imposed upon a penalty.

271. Article 216 of Turkish Penal Code arranges the offense of inciting the population to breed enmity or hatred or denigration. In accordance with the article, a person who openly incites groups of the population to breed enmity or hatred towards one another based on social class, race, religion, sect or regional difference in a manner which might constitute a clear and imminent danger to public order shall be sentenced to imprisonment for a term of one to three years. A person who openly denigrates part of the population on grounds of social class, race, religion, sect, gender or regional differences shall be sentenced to imprisonment for a term of six months to one year. A person who openly denigrates the religious values of a part of the population shall be sentenced to imprisonment for a term of six months to one year in case the act is likely to distort public peace.

272. Article 304 of Turkish Penal Code titled "Incitement to War against the State" provides that inciting the authorities of a foreign state to wage war against the State of Republic of Turkey or conducting hostile movements or cooperating with the authorities of a foreign State to that end shall constitute an offense and imposed upon a penalty.

273. Article 306 of Turkish Penal Code titled "To Assemble Troops against Another Country" provides that assembling troops against another country without any authority to do so and in a way to put the Turkish State in danger of war, or being involved in other types of hostile action, shall constitute an offense and imposed upon a penalty.

274. Article 323 titled "Dissemination of false information in wartime" provides that:

*(1) A person who in wartime disseminates or broadcasts unfounded or exaggerated news or information or information which is intended for a specific purpose in a manner which can cause public concern and alarm or shake the morale of the people or reduce the country's resistance to the enemy or who carries out any activity which could damage fundamental national interests shall be sentenced to imprisonment for a term of five to ten years.*

*(2) If the act*

*1. has been committed through propaganda,*

2. *has been aimed at military personnel,*
3. *has been the result of an agreement with a foreigner,*

*the penalty shall be imprisonment for a term of ten to twenty years.*

*(3) If the act has been committed as the result of a conspiracy with the enemy, the perpetrator shall be sentenced to life imprisonment.*

*(4) A person who in wartime carries out actions aiming to bring about the depreciation of foreign exchange or to influence the value of public bonds in a manner which will jeopardize national resistance to the enemy shall be sentenced to imprisonment for a term of five to ten years and to a judicial fine of up to three thousand days.*

*(5) If the act referred to in the fourth paragraph has been committed as the result of a conspiracy with a foreigner, the penalty shall be increased by half, and if it is the result of a conspiracy with the enemy the penalty shall be increased by one.”*

275. All judicial remedies are available against violations of fundamental rights and freedoms including acts of discrimination. Decisions ruled by first instance courts are open to appeal before, at the national level, the Court of Appeals or the Council of State, and, at the international level, the European Court of Human Rights, the compulsory jurisdiction of which was recognized by Turkey in 1990.

276. No violation has been found by the European Court of Human Rights on the complaints lodged against Turkey on the grounds of discrimination concerning individuals' origins.

277. In addition to the judicial ones, there are governmental/administrative and parliamentary remedies. Administrative remedies are utilized through the Human Rights Presidency and Human Rights Boards established in all the 81 provinces and 850 sub-provinces throughout the country. The Human Rights Inquiry Commission of the Parliament acts as another remedy body at the parliamentary level. These bodies are tasked with investigating complaints and allegations of human rights abuses, and submitting their findings to relevant authorities for necessary action.

278. Within the framework of recent constitutional amendments, positive discrimination has been granted as a constitutional right for persons who require social protection, such as children, the elderly and the disabled, as well as women in order to achieve de facto equality between men and women.

279. Turkey believes that a successful fight against all forms and manifestations of discrimination and intolerance requires combined efforts at national and international levels.

280. With this understanding, Turkey is party to all relevant international instruments both at global (United Nations) and regional (Council of Europe and OSCE) fora, and duly maintains a close and constructive cooperation with the special mechanisms of these organizations tasked with the fight against intolerance and discrimination.

#### **Article 21**

281. Article 34 of the Constitution titled “Right to hold meetings and demonstration marches” provides that:

*Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission.*

*The right to hold meetings and demonstration marches shall only be restricted by law on the grounds of national security, and public order, or prevention of crime*

*commitment, public health and public morals or for the protection of the rights and freedoms of others.*

*The formalities, conditions, and procedures governing the exercise of the right to hold meetings and demonstration marches shall be prescribed by law.*

282. Article 13 titled “Restriction of fundamental rights and freedoms” provides that:

*Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be in conflict with the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular Republic and the principle of proportionality.*

283. Article 15 of the Constitution titled “Suspension of the exercise of fundamental rights and freedoms” provides that:

*In times of war, mobilization, martial law, or state of emergency, the exercise of fundamental rights and freedoms can be partially or entirely suspended, or measures may be taken, to the extent required by the exigencies of the situation, which derogate the guarantees embodied in the Constitution, provided that obligations under international law are not violated.*

*Even under the circumstances indicated in the first paragraph, the individual’s right to life, and the integrity of his or her material and spiritual entity shall be inviolable except where death occurs through lawful act of warfare; no one may be compelled to reveal his or her religion, conscience, thought or opinion, nor be accused on account of them; offences and penalties may not be made retroactive, nor may anyone be held guilty until so proven by a court judgment.*

284. Article 3 of Law on Assemblies and Demonstration Marches (No. 2911) titled “Right to assembly and demonstration marches” provides that:

*Everyone has the right to have assembly and demonstration marches without prior authorization, for purposes not defined as offence by laws, unarmed and non-violent, in accordance with the provisions of this Law.*

*Assembly and demonstration marches by foreign nationals shall depend on permission by the Ministry of Interior in accordance with the provisions of this Law. In the assemblies and demonstration marches of foreigners; addressing the crowd and carrying posters, banners, pictures, pennons, tablets, and other material shall be possible upon notification to the civilian authority of the venue of assembly, at least 48 hours prior to the assembly.*

285. Article 4 titled “Exceptions” provides that “Assemblies and activities stated below shall not be subject to the provisions of the provisions of this Law:

(a) *Closed assemblies to be held by political parties, professional institutions which are public, trade unions, foundations, associations, commercial partnership, and other corporate legal persons, which shall be held according to their private laws and regulations,*

(b) *Assemblies, ceremonies, festivals, welcome and farewell assemblies to be held according to law and traditions, on the condition of observing laws and, keeping these assemblies within their own rules and limits,*

(c) *Sports activities and scientific, commercial, and economic assemblies,*

(d) *Assemblies and speeches of the President, Prime Minister, and ministers concerning state and government affairs; and meetings of conversation of members of the Turkish Grand National Assembly with the public.*

286. Article 5 titled “Provisions concerning the election period” provides that:

*Legal provisions concerning propaganda assemblies to be held in election periods are reserved.*

287. Article 6 titled “Venue and route of assembly and demonstration march” provides that:

*Assemblies and demonstration marches can be held everywhere in all provinces and districts on the condition of acting in accordance with the provisions stated below:*

*The issue of in which spaces and open places or roads, in provinces and towns, and other places deemed necessary, the assemblies and demonstration marches can be held; points of meeting and dispersal for assembly and demonstration march, as well as the method to be followed shall be specified by governors and district governors, and be announced in advance through usual means. The changes made later concerning such places shall be valid fifteen days after the announcement. In the determination of assembly venues, places which are usually used for assemblies, which do not disrupt traffic and security, or prevent open bazaars; and which have wiring shall be preferred.*

288. Article 7 titled “Assembly and demonstration march time” provides that:

*Assemblies and demonstration marches and meetings for this purpose shall not begin before sunrise.*

*Assemblies and demonstration marches in open places can last until one hour before sunset, while those in closed places can last until 11.00 pm.*

289. Article 10 titled “Notification” provides that:

*In order for an assembly to take place, the notification to be signed by all members of the organizing committee shall be forwarded to governorship or district governorship to which the venue of assembly belong, 48 hours before the assembly is held and within working hours.*

*The notification shall state;*

(a) *The purpose of the assembly,*

(b) *The venue, date, start and end hours of the assembly,*

(c) *Identities, professions, addresses and if any, work addresses of the head and members of the organizing committee.*

*The documents stated in the regulation shall be annexed to the notification.*

*A document of receipt indicating time and date shall be given upon receiving this notification. If this notification is not accepted by governorship or district governorship or if a document of receipt is not given, the situation shall be stated in a record. In such a case, a notice shall be made through a notary. The time of notice shall be considered as that of notification.*

*Where more than one organizing committees submit notification for assembling in the same place and same time, the first notification given shall be valid. The other organizing committees shall be immediately notified thereof.*

290. Article 11 titled “Holding an assembly” provides that:

*The assembly shall be held at the venue stated in the notification by observing the provisions of Article 6. The organizing committee is obliged to keep at least seven people from among its members, including its head, at the assembly venue. This shall be written in a record by the government commissioner by stating the participants' identities.*

## **Article 22**

291. The right to organize is defined as a fundamental right which covers not only the individual freedom of association of the workers and the employers, but also the collective freedom of association that guarantees the existence of trade unions and their particular activities.

292. Articles 51 and 53 of the Turkish Constitution safeguard the right to organize labour unions and collective bargaining.

Article 51 (as amended on 17 October 2001) provides that:

*Employees and employers have the right to form labour unions employers' associations and higher organizations, without obtaining permission, and they also possess the right to become a member of a union and to freely withdraw from membership, in order to safeguard and develop their economic and social rights and the interests of their members in their labour relations. No one shall be forced to become a member of a union or to withdraw from membership.*

*The right to form a union shall solely be restricted by law and with the purposes of safeguarding national security and public order and to prevention of crime commitment, protection of public health and public morals and the rights and freedoms of others.*

*The formalities, conditions and procedures to be applied in exercising the right to form union shall be prescribed by law.*

*Membership in more than one labour union cannot be obtained at the same time and in the same work branch.*

*The scope, exceptions and limits of the rights of civil servants who do not have a worker status are prescribed by law in line with the characteristics of their job.*

*The regulations, administration and functioning of labour unions and their higher bodies should not be inconsistent with the fundamental characteristics of the Republic and principles of democracy.*

Article 53 (as amended on 23 July 1995) provides that:

*Workers and employers have the right to conclude collective bargaining agreements in order to regulate reciprocally their economic and social position and conditions of work.*

*The procedure to be followed in concluding collective bargaining agreements shall be regulated by law.*

*The unions and their higher organizations, which are to be established by the public employees mentioned in the first paragraph of Article 128 and which do not fall under the scope of the first and second paragraphs of the same article and also Article 54, may appeal to judicial authorities on behalf of their members and may hold collective bargaining meetings with the administration in accordance with their aims. If an agreement is reached as a result of collective bargaining, a text of the agreement will be signed by the parties. Such text shall be presented to the Council of Ministers so that administrative or judicial arrangements can be made. If such a text cannot be concluded by collective bargaining, the agreed and disagreed points will also be submitted for the consideration of the Council of Ministers by the relevant parties. The regulations for the execution of this article are stipulated by law.*

*More than one collective bargaining agreement at the same place of work for the same period shall not be concluded or put into effect.*

293. In Article 2 of the Trade Unions Act, trade unions are defined as “organizations with corporate status constituted by workers or employers in order to protect and promote their common economic and social rights and interests in labour relations”.

294. According to article 3 of the Trade Unions Act, workers’ and employers’ trade unions may be constituted on an industrial basis by workers employed in establishments in the same branch of activity and by employers with the purpose of their activity widespread throughout Turkey. In compliance with the same article, more than one trade union may be constituted in the same branch of activity and workers’ trade unions shall not be constituted on an occupational or workplace basis.

295. Article 4 of the said Act states that the branch of activity covering an establishment shall be determined by the Ministry of Labour and Social Security. Within 15 days starting from the publication of the said Ministry’s decision in the Official Gazette, the parties concerned may lodge an appeal against this decision to the local court having jurisdiction in labour matters. The court shall give a ruling on the appeal within two months. Where this ruling is appealed, a final ruling shall be given by the Court of Appeals within two months.

296. Requirements for the founding members wishing to establish a trade union are listed in article 4 of the Trade Unions Act. Accordingly, founding members of a trade union must be Turkish citizens; be in full possession of their civic rights; be actively employed within the branch of activity in which the trade union is to be constituted; not be debarred from public service; be able to read and write Turkish; not have been found guilty of felonies listed in the said article.

297. In cases where any founding member of an employers’ trade union is a corporate body, the real person representing this body shall fulfil all the above conditions except for active employment within the branch of activity.

298. Founders of any trade union shall submit a petition to the Governor of the province where the registered office of the trade union is to be located. According to article 6 of the Trade Unions Act, trade unions may be established without prior authorization.

299. According to article 22 of the Trade Unions Act, acquisition of membership in a trade union shall be optional. No one shall be forced to join or not to join a trade union. Within the meaning of the same article, no worker or employer shall be a member of more than one trade union in the same branch of activity at the same time. In the case of membership in more than one trade union, any later membership shall be void. In compliance with the said article, workers may only join the trade union constituted in the branch of activity they are working in.

300. Article 25 of the Act stipulates that no worker or employer shall be forced to maintain or resign from his membership in a trade union. Any member may resign from a trade union by giving prior notice. The decision of expulsion of any member from a trade union or confederation shall be taken by the general congress.

301. Requirements for becoming a trade union member are provided in article 20 of the Trade Unions Act. Any person who is a worker within the meaning of the Act and is over 16 years of age may join a workers’ trade union. Persons under 16 years of age may join trade unions with the written consent of their parents or guardians. Any employer within the meaning of the Act may join an employers’ trade union.

302. According to article 22 of the Trade Unions Act, the military personnel –except for the workers employed in undertakings attached to the Ministry of National Defence, the



General Command of Gendarmerie and the Command of Coast Guard - are forbidden to become founders or members of trade unions.

303. Since article 5 of the Trade Unions Act stipulates that only Turkish citizens can become founding member of a trade union, it is not possible for foreign nationals to establish trade unions. However, those foreign nationals working in Turkey can become trade union members though they are not allowed to take positions in the main organs of the union.

304. Confederations may be established without obtaining prior authorization, just like trade unions.

305. Affiliation to a confederation shall be conditional upon the decision of the general assembly of the trade union. Such a decision shall be taken by the absolute majority of the total number of members or delegates of the general assembly of the trade union. Trade unions shall not be affiliated to more than one confederation. In the case of affiliation to more than one confederation, all shall be void. The same shall also apply in constituting confederations or to withdrawals from any confederation.

306. The statute of the international organization shall be forwarded by the relevant organization to the Ministry of Labour and Social Security within 15 days following the date of its acquisition of membership. Where an international organization to which trade unions or confederations are affiliated has a position or carries out activities contrary to the principles set out above, the Ministry of Labour and Social Security shall file a complaint to the labour court for the withdrawal of membership.

307. Article 29 of Trade Unions Act provides protection for workers' trade union and confederation officials. In accordance with the said article, in cases when a worker leaves his/her job with his/her freewill after being elected as member or chairman of the administration board of a workers' trade union or confederation and wishes to be reinstated in his/her prior employment afterwards, the employer shall be bound to reinstate him in his/her previous post or in a post fitting his/her prior employment within one month after the worker's request. In this case, the worker's all previous seniority rights and wage level will be retained.

308. Article 30 of the Trade Unions Act regulates the protection provided for trade union representatives in the workplaces. Accordingly, no employer shall terminate the employment contracts of trade union representatives working in his enterprise without a just reason stated clearly and precisely. The trade union representative has the right to lodge an appeal to the competent labour court within one month of the date of notice. The judgment of the court shall be final. If the court decides that the trade union representative is to be reinstated in his/her employment, the termination shall be annulled and the employer shall pay his/her full wage and all other benefits to which s/he is entitled with effect from the date on which his/her employment was terminated.

309. In accordance with article 31 of the Trade Unions Act, the recruitment of workers is not subject to any condition as to their membership of a trade union. Obliging them to join or refrain from joining a given trade union or to remain a member of or resign from a given trade union is unlawful.

310. Employers shall not make any discrimination between workers who are members of a trade union and those who are not, or those who are members of another trade union, with respect to recruitment, arrangement and distribution of work, promotion, wages, bonuses, premiums, social benefits, discipline rules or provisions respecting other issues, including termination of employment.

311. No worker shall be dismissed on the account of his/her participation in the activities of trade unions or confederations outside the working hours or during working hours with

the employer's permission, and no worker shall be subjected to discrimination for any reason in this regard.

312. If an employer fails to observe the above provisions, he/she shall be liable to pay compensation and reinstatement.

313. The Trade Unions Law for Civil Servants defines trade unions as organizations with legal personality established by civil servants to protect and improve their common economic, social and professional rights and interests.

314. Article 5 of the Trade Unions Law for Civil Servants states that civil servants' trade unions shall be established in accordance with the branch of service and for the purpose of operating throughout Turkey. It is possible to establish more than one trade union in one branch of service. However, establishment of civil servants' trade unions on the basis of occupation or workplace is forbidden.

315. The branches in which civil servants' trade unions can be established are determined by article 5 of the said Law: bureau services; banking and insurance services; educational and scientific services; medical and social services; local administration services; media, publication and communication services; cultural and art services; construction and village services; transportation services; agricultural and forestry services; energy, industry and mining services; religious affairs and foundation services.

316. In accordance with article 6 of the said Law, civil servants can freely establish trade unions and confederations without prior authorization. To this end, they shall submit the statute of the trade union or the confederation as well as other documents stipulated by the Law to the governorship in the province where the centre of the trade union or the confederation is located.

317. In order to become a founding member of a civil servants' trade union, it is necessary to have been working as a civil servant for at least two years.

318. According to article 14, civil servants can become members of the civil servants' trade unions which are established in the branch of service of the workplace they work. Multiple membership of more than one trade union is invalid.

319. Any member may resign from membership freely, as article 16 stipulates.

320. In the Trade Unions Law for Civil Servants No. 4688, there is a broader limitation on the personnel who cannot be members of trade unions than in the Trade Unions Act No. 2821. Under article 15 of the Trade Unions Law for Civil Servants, the civil servants noted below cannot be a member of and establish trade unions:

- Public officials who work in the Secretariat General of the Turkish Grand National Assembly, the General Secretariat of the Office of President, the Secretariat General of the National Security Council,
- Chairpersons and members of higher judicial organs, judges, public prosecutors and those considered to be members of this profession,
- With respect to the establishments and institutions included in the scope of this Law, those who are undersecretaries, chairpersons, general directors, heads of department and their deputies, members of board of directors, directors of the supervisory units of central organization and chairpersons of the boards, legal consultants, top directors of regions, districts and sub-district organizations and other civil servants with equal or higher ranking, top directors of the workplaces employing 100 or more civil servants and their deputies, mayors and their deputies,

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- Chairperson and members of the Higher Education Council, chairperson and members of the Higher Education Supervisory Council, rectors of universities and higher technology institutes, deans of faculties, principals of institutes and colleges and their deputies,
  - Directors of civil administration,
  - Members of the Armed Forces,
  - Civilian officials and civil servants employed as the permanent staff of the Ministry of National Defence and the Turkish Armed Forces (the General Command of Gendarmerie and the Command of Coast Guard included),
  - Employees of the National Intelligence Organization,
  - Central supervision staff of the establishments and institutions included in the scope of this Law,
  - Security services personnel and other personnel included in other services working in the security organization and private security personnel of the public establishments and institutions,
  - Civil servants employed in the penitentiary institutions.

321. Under article 17 of the Trade Unions Law for Civil Servants, a trade union can become member to only one confederation. In case of multiple memberships, the following membership will be invalidated.

322. It is free for a trade union to become a member of or resign from any international trade union organization relevant with its objectives.

323. Article 37 provides that trade unions and confederations inconsistent with the fundamental characteristics of the Republic and the principles of democracy will be closed down by the decision of the local labour court upon the request of the chief public prosecutor in charge charged at the location of the head office of the said trade union or confederation.

324. With the Trade Unions Law for Civil Servants No. 4688, which entered into force on 13 August 2001, the civil servants outside the scope of the Trade Unions Act No. 2821 were granted the right of establishing and being members of trade unions and collective bargain. This Law was put into practice in accordance with civil servants' right to organize, which was brought into the public agenda as a result of the amendment made in the Constitution on 23 July 1995, and ensured for the first time to start a social dialogue between civil servants and the State.

325. With the said Law, civil servants' right to organize, together with the right to collective bargaining, was ensured. In this context, the Public Employer Board representing the Government is entrusted to make collective bargaining with the authorized trade unions determined by the Ministry of Labour and Social Security.

326. Difficulties arising from the said Law have been tackled through the circulars issued, and the dialogue between the civil servants' trade unions and confederations and the Ministry of Labour and Social Security.

327. In order to resolve the problems in the implementation of the Trade Unions Law for Civil Servants, a commission was established under the presidency of the Director General of Labour of the Ministry of Labour and Social Security. With the contribution of the members of the commission, a "Law Amendment Draft", which was agreed by the confederations, was drawn.

328. Moreover, the “Tripartite Advisory Board”, which is to function in accordance with the “Regulation on the Working Procedure and Merits of the Tripartite Advisory Board on Working Life” dated 4 April 2004, held its first meeting with the participation of the representatives of the civil servants’ trade unions confederations in May 2004. In this meeting, it was decided that article 6 of the Trade Unions Law for Civil Servants would be amended in order to alleviate the problems encountered during the implementation of the said Law. Following this decision, the Law Amendment Draft was adopted by the Parliament and entered into force in July 2004.

329. On the other hand, a public administration reform process has been in general underway in Turkey.

330. As of July 2006, the number of workers’ trade unions is 94. There are also 51 employers’ trade unions. The number of civil servants’ trade unions is 61.

331. The unionization rate in Turkey is 58,21 per cent for workers, and 49,70 per cent for civil servants.

**Table 3**

**Trade union confederations**

	<i>Number of Members</i>
<b>WORKERS’ TRADE UNION CONFEDERATIONS</b>	
TÜRK-İŞ (Türkiye İşçi Sendikaları Konfederasyonu)	35
DİSK (Türkiye Devrimci İşçi Sendikaları Konfederasyonu)	17
HAK-İŞ (Türkiye Hak İşçi Sendikaları Konfederasyonu)	8
Unaffiliated	34
<b>EMPLOYERS’ TRADE UNION CONFEDERATION</b>	
TİSK (Türkiye İşveren Sendikaları Konfederasyonu)	22
Unaffiliated	29
<b>CIVIL SERVANTS’ TRADE UNION CONFEDERATIONS</b>	
KESK (Kamu Emekçileri Sendikaları Konfederasyonu)	11
TÜRKİYE KAMU-SEN (Türkiye Kamu Çalışanları Sendikaları Konfederasyonu)	11
MEMUR-SEN (Memur Sendikaları Konfederasyonu)	11
BASK (Bağımsız Kamu Görevlileri Konfederasyonu)	9
HÜRRIYETÇİ KAMU-SEN (Hürriyetçi Kamu Çalışanları Sendikaları Konfederasyonu)	3
ANADOLU KAMU-SEN (Anadolu Kamu Çalışanları Sendikaları Konfederasyonu)	3
Unaffiliated	13

*Source: Ministry of Labour and Social Security*

332. The right to strike and lockout is safeguarded both by the Constitution and other legislation, mainly the Collective Labour Agreement, Strike and Lockout Act No. 2822, dated 5 May 1983.

333. The right to freedom of association has been broadened with the constitutional reform package of September 2010.

334. Article 51 of the Constitution entitled “Right to Organize Labour Unions”; article 53 of the Constitution entitled “Collective Bargaining and Right of Collective Bargaining”; article 54 of the Constitution entitled “Right to Strike and Lockout” and article 128 of the Constitution entitled “Provisions Relating to Public Servants” have been amended.

335. The scope and extent of freedom of organization and especially union rights are broadened by the amendments made such as the abolition of the provision which prohibited becoming a member of more than one union in the same business line; granting of collective bargaining right to civil servants and other public officials in the manner retired civil servants could also enjoy; abolition of unnecessary restrictions imposed on the right to strike and lockout and the ruling that collective bargaining provisions regarding the economic and social rights granted to public servants are reserved.

336. The provision in article 51 of the Constitution entitled “Right to Organize Labour Unions”, which prohibited holding concurrent memberships in more than one labour union in the same business line, was abolished, and steps are taken so that the principle of “union plurality” could be put into practice. By these amendments, especially the third paragraph of article 53 relating to collective bargaining is abolished; collective bargaining right of which procedure and substance would be guaranteed by legal arrangements was granted to civil servants and other public officials by the provisions added to this provision.

337. With a view to guaranteeing civil servants’ and other public officials’ enjoyment of the outcomes of the right to collective bargaining that has been granted to them, it is guaranteed by the amendment made to the second paragraph of article 128 of the Constitution that collective bargaining provisions relating to economic and social rights be reserved in addition to the rule that personal rights of civil servants and other public officials shall be prescribed by law.

338. The third paragraph of article 54 of the Constitution entitled “Right to Strike and Lockout” which provided that “the labour union is liable for any material damage caused in a work-place where the strike is being held” is also abolished. By the revocation of the seventh paragraph of article 54, the prohibitions relating to politically-motivated strike and lockout; sympathetic strike and lockout; general strike and lockout; business place invasion; slowdown; reduction of the output and other resistance are also abolished. Therefore, a considerable restriction regarding the enjoyment of right to strike is abolished. Accordingly, the opportunities for the right to legal remedies in business life on the basis of universal principles required in contemporary democratic societies are increased and a significant step is taken for the development of civil society.

339. The amendments made in this context have been prepared within the framework of ILO Conventions regarding the Freedom of Unionization and Protection of the Right to Association and Right to Association and Collective Bargaining and European Social Charter (revised).

340. Furthermore, the decisions issued by the ECtHR regarding Turkey in 2008 and 2009 (Demir and Baykara, Enerji Yapı Yol Sen judgments) required the extensive usage of the right to organize labour unions and collective bargaining right to be guaranteed. Significant progress is achieved regarding the implementation of said decisions by this amendment.

341. In articles 25 and 26 of the Collective Labour Agreement, Strike and Lockout Act, definitions of legal and unlawful “strike” and “lockout” are provided. It is also stipulated that no strike and lockout shall be called for any purpose contrary to the indivisible integrity of the State with its territory and the nation, national sovereignty, the Republic and national security.

342. Article 29 of the Collective Labour Agreement, Strike and Lockout Act regulates the activities where strikes and lockouts are prohibited:

- Rescuing life and property,
- Funeral and mortuary,
- Production of coal for water, electricity, gas and coal power plants; exploration, production, refining and distribution of natural gas and petroleum; petrochemical works, production of which starts from naphtha or natural gas,
- Banking and public notaries,
- Fire fighting, land, sea, railway urban transportation and other public transportation on rail.

343. According to article 30 of the said Act, any strike or lockout in the following establishments shall be unlawful.

- Any health institution, such as a hospital, clinic, sanatorium, health centre, dispensary, chemist's shop or pharmacy, or establishment for the preparation of vaccine or serum: Provided that the foregoing shall not be deemed to include any establishment manufacturing medicines,
- Educational and training institutions or day nursery and old-age retirement homes,
- Cemeteries,
- Any establishment run directly by the Ministry of National Defence, the General Command of Gendarmerie or the Command of Coast Guard.

344. Article 31 states that it shall not be permissible to call a strike or order a lockout in time of war or during a general or partial mobilization. Where the life of the community is paralyzed by a disaster caused by fire, flood, landslide, avalanche or earthquake, the Council of Ministers may issue an order prohibiting strikes and lockouts in respect of such areas and branches of employment as it may deem necessary, in view of the situation and for such time as the situation requires. The lifting of the prohibition shall be subject to the same provisions. It shall not be permissible to call a strike or order a lock-out in any land, sea or air transportation vehicle which has not yet reached its final destination within Turkish territory.

345. In article 39 of the Collective Labour Agreement, Strike and Lockout Act provides the conditions and procedures for the exclusion of workers from taking part in a lawful strike or lockout.

*Provided that their activities are unrelated to the production or sale of goods, a sufficient number of workers shall be required to work and the employer shall be required to employ them, with the object of ensuring the continuity of work in processes which have to be maintained for technical reasons; ensuring the safety of the establishment and preventing damage to machinery, installations, equipment, raw materials and finished and semi-finished products; and ensuring the protection of animals and plants.*

*The type and number of workers, including substitutes, to be excluded from a strike or lockout shall be announced in writing within the establishment by the employer or his representative during the six working days following the commencement of collective bargaining, a copy of the announcement being sent to the workers' union that is party to the bargaining. If no appeal against this notice is lodged by the workers' union with the local court of law having jurisdiction in labour matters within six working days, the notice shall become final. Where an appeal is lodged, the local court shall take a decision within six working days. This decision shall be final.*

*If the workers to be excluded from a strike or lock-out have not been determined for any reason during the time limit fixed by this Act, the workers' or employers' union may request the regional directorate of the Ministry of Labour and Social Security to determine such workers even after the expiry of the time limit. The regional directorate shall take a decision as soon as possible and notify the parties. Where necessary, the regional directorate may take a decision at its own initiative. Any of the parties may lodge an appeal with the local competent court against such decision. In disputes concerning an enterprise agreement, the competent court shall be determined according to where the headquarters of the enterprise are located and the regional directorate of the Ministry of Labour and Social Security according to the region where each of the establishments is located.*

### **Article 23**

346. Article 41 of the Constitution provides that:

*The family is the foundation of the Turkish society and based on the equality between the spouses. The state shall take the necessary measures and establish the necessary organisation to ensure the peace and welfare of the family, especially where the protection of the mother and children is involved, and recognizing the need for education in the practical application of family planning.*

347. Article 20 of the Constitution provides, inter alia, that “family life cannot be violated”.

348. Article 62 of the Constitution provides that:

*The state shall take the necessary measures to ensure family unity, education of children, cultural needs, and social security of Turkish nationals working abroad, and shall take the necessary measures to safeguard their ties with the home country and to help them on their return home.*

349. Regulations concerning Family Law are enshrined in Book Two of the Turkish Civil Code.

350. Article 124 of the said Law provides that men and women shall not get married until they pass the age of 17; however the judge can permit men and women who have passed the age of 16 to get married in extraordinary situations and for a very important reason; and s/he shall listen to the parent or the guardian before giving a decision.

351. Article 125 provides that those who do not have judicial faculty cannot get married.

352. Article 128 provides that after listening to the legal representative who does not permit marriage without any just reason, the judge may permit the minor or the incapacitated who applied, to get married.

353. Article 142 provides that the marriage officer shall ask both persons to marry whether they want to marry or not; that the marriage shall take place once the parties give positive replies; that the marriage officer shall announce the marriage has taken place with the consent of both parties and in accordance with law.

354. Article 185 provides that the spouses are obliged to ensure happiness of marriage union together; and to care of children, their education, and supervision collectively; as well as to live together, to be faithful to each other and assist each other.

355. Article 186 provides that the spouses shall choose their domicile together; they shall manage the union together; participate in the expenses of the union with their effort and assets as their standing allows.

356. Article 188 provides that both spouses shall represent the union of marriage for the permanent needs of the family as long as common life continues.

357. Article 189 provides that where the power of representing the union is used, spouses shall have joint and several liabilities in respect of third persons.

358. Article 193 provides that unless otherwise stated in the Law, each spouse can carry out legal procedures concerning the other or third persons.

359. Articles 195 to 201 of the Law regulate the measures for protecting the union of marriage in detail.

360. It is provided that when giving a decision of divorce or separation, the court shall arrange parents' rights and their personal relationship with the child after listening to the parents when possible, and if the child is under guardianship, after taking the opinions of the guardian and the authority of curatorship. It is stated that in arranging the relationship of the spouse to whom the guardianship is not granted and the child, the interests of the child in terms of health, education, and morals shall be prioritized; and that this spouse shall be obliged to contribute to the child's care and education expenses as his/her standing allows. It is envisaged that the judge may, upon request, fix the amount of these expenses decided to be paid as income according to the social and economic conditions of the parties, in the ensuing years.

361. Article 183 provides that where mother or father marries someone else, leaves the place where s/he leaves or passes away, the judge shall take necessary measures ex officio or upon request by either spouse.

#### **Article 24**

362. According to article 41 of the Constitution, the State is obliged to take necessary measures for the protection of the mother and children.

363. The new Penal Code defines sexual abuse of children as an offense against humanity, which is not subject to time limitation. Although the term "sexual assault" is used for the acts committed against adults, for children, the term "sexual abuse" is used. Although the existence of consent in respect of sexual behaviour carried out against adults removes criminal liability, it does not in respect of sexual behaviours carried out against children under fifteen years of age or children who are over fifteen years of age but have not developed the ability to understand the legal meaning and consequences of the act. In other words, the statement of consent by the child concerning the sexual acts against him/her shall not make the act considered out of the scope of offense or remove criminal liability.

364. In order for the sexual behaviours - which are carried out against children over fifteen years of age whose ability to understand the legal meaning and consequences of the act has developed - to be defined as sexual abuse, they have to take place with the use of force, threat, deception or by any other reason affecting the will.

365. If sexual abuse is committed by those who have kinship ties, a guardian, trainer, educator, nurse or any other person responsible for the protection and supervision of the child; or by those who misuse the influence derived from their positions, the penalty to be imposed shall be heavier.

366. If the offense causes that person to physically or mentally suffer, the penalty to be imposed shall be heavier.

367. The Law on the Protection of Children which came into force on 15 July 2007 provides that those who have children but no accommodation and those pregnant women whose life is at risk, shall be provided appropriate accommodation and their addresses shall be kept confidential if they request so.



368. Children's educational rights are guaranteed in line with the provisions of the Convention of the Rights of the Child.

369. Article 42 of the Constitution provides that "Primary education is compulsory for all citizens of both sexes and is free of charge in state schools." Accordingly, all laws, regulations and statutes have been arranged with a view to covering all citizens without any gender discrimination.

370. Parallel to the arrangements in the Constitution, the Fundamental Law on National Education has been drafted respecting the principle of "generality and equality" and provides that primary education is compulsory for all citizens without any gender discrimination and free at public schools, as well as that every Turkish child shall benefit from primary education services.

371. The Ninth Development Plan Strategy, which covers 2007 – 2013, envisages that "necessary measures shall be taken in order to reduce the rate of school drop-outs primarily in rural areas and concerning girls, and the rate of enrolment in secondary school shall be increased". As such, the issue of education of girls has taken its place as one of the primary issues handled by the Government.

372. With the "Conditional Cash Transfer" implemented in the context of "Social Risk Elimination Project", unconditional education assistance is extended to every region in the country in order to establish a social aid network targeting full access to education services by the children of the neediest families.

373. Articles 335 to 351 of Turkish Civil Law regulate curatorship; while articles 352 to 363 arrange child property; and articles 396 to 494 arrange guardianship.

374. Article 11 of the Population Services Law (No: 5490) provides that anyone who is a citizen of the Republic of Turkey is obliged to apply and get registered in the population registries at birth registration offices in Turkey; and at the representations in foreign countries, if abroad; and obtain identity cards. The tutors, curators and administrators are entitled to have recorded the birth information of those who are not legally of age, and to obtain identity cards for them; if they do not exist, those who keep children with them and agency authorities entitled by Law on Social Services and Child Protection Agency (dated 24 May 1983, No. 2828), shall be entitled to do the same.

375. Article 15 provides that notifying the live birth of every child to birth registration office in 30 days as of birth in Turkey; and to the representation of Turkey in a foreign country, is compulsory. Birth notifications in a foreign country can also be made by submitting the official document or report obtained from foreign authorities to the foreign representations; or sending the petition which states the name given to the child together with full identity information of parents and documents indicating their birth registry place to the foreign representation.

376. Article 19 provides that the registry of those children who cannot express themselves due to age shall be done by law enforcement officers; or by the birth registry office of the place they reside, based on the record by relevant institutions stating the situation of the child or statements by the concerned. If date of birth, name, surname, mother's and father's name are not stated in the records prepared concerning these persons, name, surname, mother's and father's name shall be given by the birth registry office. If date of birth is not fixed, it shall be fixed by the official health institution.

377. Article 4 of Nationality Law (No: 403) provides that the children who are born in Turkey and who cannot acquire citizenship through their mother and father, shall be Turkish citizens starting as of their birth. It is also provided that children found in Turkey, shall be considered as having been born in Turkey, unless otherwise established.

378. Turkey is a party to the Convention on the Rights of the Child (1995) as well as the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2002) and the Optional Protocol on the Involvement of Children in Armed Conflicts (2004).

379. The Agency for Social Services and Children Protection, (SHÇEK), is responsible for the implementation of the Convention on the Rights of the Child. A Parliamentary Commission, “TGNA Rights of the Child Monitoring Committee” was set up in November 2009 to oversee the implementation of the Convention.

380. The principle of the best interests of the child is brought in the law (art. 4). As a result of the adoption of the European Convention on the Exercise of Children’s Rights, court decisions which do not take into account the best interests of the child are annulled by the Court of Cassation.

381. Relevant provisions of the Turkish Civil Code, Labour Code, Criminal Code, Child Protection Law and Law on Persons with Disabilities were amended in line with the provisions of the Convention on the Rights of the Child.

382. The Turkish Civil Code (2001) stipulates that regarding the matters of guardianship and adoption, the opinion of the concerned child shall be respected. The new Labour Code (2003) establishes the minimum working age as 15. The Law on Disabled Persons (2005) contains supplementary added provisions for education, rehabilitation, care and social security of disabled children and coordination of services related to their re-integration into society.

383. The new Penal Code (2004) increased criminal liability age from 11 to 12. Juvenile delinquency protective measures are enhanced with the Law on Child Protection and new Law of Criminal Procedures. In cases where the child is suspect or defendant assignment of an attorney is made obligatory. Decision of arrest is rendered as a last resort.

384. Special units of the law enforcement agencies for minors in all towns were transformed into “Child Sections”. Children under custody are kept in children’s unit of the police station. In stations where there is not special place, children are kept separate from the adults under custody.

385. Imprisoned juveniles are put in “Child Prisons”. In places where no child prisons exist children are kept in “Child Sections” of adult prisons. For convicted children there are also three Houses of Education for Children which operate on the basis of the principle of “education instead of punishment”.

386. The Child Protection Law also stipulates that juvenile courts to be established in all 81 provinces of the country. The number of such courts increased to 77 in total, thirteen of which are Juvenile Assize Courts.

387. The new Counterterrorism Law adopted on 27 July 2010, brings the following new guarantees that all children will henceforth stand trial in juvenile courts, or adult courts acting as juvenile courts, that child demonstrators who commit propaganda crimes or resist dispersal by the police will not be charged with committing crimes on behalf of a terrorist organization and hence membership in a terrorist organization, and that children will not face aggravated penalties, and may benefit from sentence postponements and similar measures for public order offenses.

388. Children without parental care are put under protection and care of children’s homes and nurseries. Economic and social destitution is the main cause leading children to be put under protection.

389. Turkey, in cooperation with ILO, undertook IPEC Projects to combat child labour during 1992-2006. Through IPEC (International Program on the Elimination of Child Labour) projects approximately 50.000 children have been reached and 60 per cent of

whom were withdrawn from work and placed in schools. The remaining 40 per cent have benefited improved working conditions, health services, nutrition and vocational training.

390. Since 1997, a remarkable decline is witnessed in child labour with the introduction of eight-year compulsory education system. In 2006 Turkey was chosen one of three countries which combat most effectively with child labour, at the special session of the ILO's General Assembly.

391. Turkey aims at preventing the worst forms of child labour in a 10-year time period (2005-2015) by making use of comprehensive measures such as eliminating poverty, increasing the quality of and access to education and launching awareness raising campaigns. The projects have played an instrumental role in directing them to education.

392. Several initiatives are underway with many international organizations, including the European Union, the UNICEF, the UNDP and the ILO, on matters relating to child welfare.

393. Finally, in September 2010, with the amendment to article 10 of the Constitution entitled "Equality before the Law", positive discrimination gains a constitutional basis for persons who require social protection including children.

This amendment guarantees that special measures to be taken by the administration in respect of those who require protection shall not be construed to be "contrary to the principle of equality" enshrined in the Constitution.

394. Turkey endeavours to do its utmost to continue promoting the rights of children and to improve their living conditions. Juvenile justice system and child labour are prioritized for further improvement.

#### **Article 25**

395. As amended on October 17, 2001, article 67 of the Constitution assures that:

*In conformity with the conditions set forth in the law, citizens have the right to vote, to be elected, and to engage in political activities independently or in a political party, and to take part in a referendum.*

*Elections and referenda shall be held under the direction and supervision of the judiciary, in accordance with the principles of free, equal, secret, and direct, universal suffrage, and public counting of the votes. However, the conditions under which the Turkish citizens who are abroad shall be able to exercise their right to vote, are regulated by law.*

*All Turkish citizens over 18 years of age shall have the right to vote in elections and to take part in referenda.*

*The exercise of these rights shall be regulated by law.*

*Privates and corporals serving in the armed services, students in military schools, and convicts in penal execution excluding those convicted of negligent offences cannot vote. The Supreme Election Council shall determine the measures to be taken to ensure the safety of the counting of votes when detainees in penal institutions or prisons vote; such voting is done under the on-site direction and supervision of authorized judge. The electoral laws shall be drawn up in such a way as to reconcile the principles of fair representation and consistency in administration.*

*The amendments made in the electoral laws shall not be applied to the elections to be held within the year from when the amendments go into force.*

396. In accordance with article 67, "citizens have the right to vote, to be elected, and to engage in political activities independently or in a political party, and to take part in a referendum" and "elections and referenda shall be held under the direction and supervision

of the judiciary, in accordance with the principles of free, equal, secret, and direct, universal suffrage, and public counting of the votes.”

397. Furthermore, article 68 provides that “citizens have the right to form political parties and in accordance with the established procedure to join and withdraw from them. One must be over 18 years of age to become a member of a party.”

398. These articles guarantee participation of all citizens in political life, without any gender discrimination.

399. Article 70 of the Constitution provided that:

*Every Turk has the right to enter public service.*

*No criteria other than the qualifications for the office concerned shall be taken into consideration for recruitment into public service.*

400. The right to vote and to be elected, by means of honest elections based on general, equal and secret voting which secures the voters to express their will freely, is codified by article 2 and article 6 of the Law on Basic Rules of Elections and Voter Registration.

401. Article 2 provides that “Elections are hold free, equal and in single round according to general voting principles. Voters use their own votes. Voting is secret. Vote count and reporting is open.”

402. Article 6 provides that “Every Turkish citizen over the age of eighteen has the right to vote and to participate in referendum.”

#### **Participation of women in the conduct of public affairs**

403. The rate of women in the Turkish parliament was 4,6 per cent after the 1935 general elections, which was held one year after Turkish women gained the right to vote and be voted. This rate preserved its characteristic of being the highest until 2007 elections. The number of female MPs increased by 100 per cent and reached 9 per cent with the 2007 elections. Moreover, currently, two of the deputy speakers of the TGNA are women. The rate of women in local administrations is around 2 per cent.

404. Although there is no legal arrangement or one which is binding on all parties, it is observed that some political parties exercise quota in respect of women and that they take less application fees from female candidates during candidacy process.

**Table 4: Rate of female members of Parliament in the elections between 1935 - 2007**

<i>Election year</i>	<i>Total</i>	<i>Women</i>	<i>Men</i>	<i>Rate of women (%)</i>
1935	399	18	381	4,5
1939	424	16	408	3,8
1943	455	16	439	3,5
1946	465	9	456	1,9
1950	487	3	484	0,6
1954	541	4	537	0,7
1957	610	8	602	1,3
1961	450	3	447	0,7
1965	450	8	442	1,8

<i>Election year</i>	<i>Total</i>	<i>Women</i>	<i>Men</i>	<i>Rate of women (%)</i>
1969	450	5	445	1,1
1973	450	6	444	1,3
1977	450	4	446	0,9
1983	400	12	387	3,0
1987	450	6	444	1,3
1991	450	8	442	1,3
1995	450	13	437	2,9
1999	550	22	528	4,0
2002	550	24	526	4,4
2007	550	50	500	9

**Table 5: Rate of women in local administration**

<i>Women in Local Administration</i>			
	<i>Women</i>	<i>Total</i>	<i>Women (%)</i>
2009			
Mayor	27	2948	0,9
Municipality Assembly Member	1340	31790	4,2
Provincial General Assembly Member	110	3379	3,2
2004			
Mayor	18	3225	0,56
Municipality Assembly Member	817	34477	2,3
Provincial General Assembly Member	57	3208	1,8

Source: Ministry of Interior – General Directorate of Local Administrations

405. As far as the rate of women in bureaucratic decision making mechanisms is taken into account, it is observed to be low in educational institutions, relatively higher in justice, and high in academia and some other occupations. When it comes to title distribution among medium and high level managers in public institutions, the rate of women is 5.1 per cent for the positions of Deputy Head of Department and those above this position; 14.9 per cent for Head of Department; 9.8 per cent for rectors; and 15.3 per cent for deans. On the other hand, while the rate of women in higher justice organs is 33 per cent, it is 42 per cent for public prosecutors, which is viewed as a men's profession in society. However, the same cannot be observed as regards the situation of public prosecutors who work at courts; while the rate of female judges was 28.19 per cent in 2007, the rate of female public

prosecutors was 5.62 per cent in the same year. The total female judge and public prosecutor rate is 20.27 per cent.

**Table 6: Female personnel at the Council of State (March 2010)**

<i>Title</i>	<i>Women</i>	<i>Total</i>	<i>Rate in total (%)</i>
President	-	1	0
Chief Public Prosecutor	-	1	0
Deputy President	1	2	50
Chamber President	3	13	23.1
Member	36	74	48.6
Prosecutor	26	55	47.2
Investigating Judge	95	250	38
TOTAL	162	399	40.6

*Source: Council of State*

**Table 7: Female personnel at the Court of Appeals (March 2010)**

<i>Title</i>	<i>Women</i>	<i>Total</i>	<i>Rate in total (%)</i>
President	0	1	0
Chief Public Prosecutor	0	1	0
Deputy President	0	2	0
Chamber President	4	35	11.4
Member	53	245	21.6
Investigating Judge	201	528	38
Court of Appeals Public Prosecutor	23	173	13.2
TOTAL	281	985	28.5

*Source: Court of Appeals*

**Table 8: Female personnel at the Constitutional Court (March 2010)**

<i>TITLE</i>	<i>WOMEN</i>	<i>TOTAL</i>	<i>RATE IN TOTAL (%)</i>
President	0	1	0
Deputy President	0	1	0
Members	2	12	16.6
Rapporteurs	5	25	20
Directors	4	11	36.3
TOTAL	11	50	22

*Source: Constitutional Court*

**Table 9: Judges and public prosecutors in Turkey as of 6 September 2005 and October 2007**

	2005			2007		
	Overall	Women	Rate	Overall	Women	Rate
Judges	5972	1690	%28,29	7076	1995	%28,19
Prosecutors	3211	134	%4,17	3822	215	%5,62
Total	9183	1824	%19,86	10898	2210	%20,27

*Source: Ministry of Justice, General Directorate of European Union, 2007.*

406. Furthermore, 26 female seniors are employed at civilian administrations, whose rate is 1.43 per cent. Among these, there are no district governors and deputy district governors. There is no female governor.

#### **Article 27**

407. Located at the crossroads of numerous cultures and religions, Turkey has always valued non-Muslim minorities as a vital source of cultural diversity and richness.

408. Under the Turkish constitutional system, the word “minorities” encompasses only groups of persons defined and recognized as such on the basis of multilateral or bilateral instruments to which Turkey is party. In this context, “minority rights” in Turkey are regulated in accordance with the Lausanne Peace Treaty (1923).

409. According to this Treaty, Turkish citizens belonging to non-Muslim minorities fall within the scope of the term “minority”. Turkish legislation which is based on the Lausanne Peace Treaty contains the term “non-Muslim minority” only. Articles 37-45 of the Treaty regulate the rights and obligations concerning individuals belonging to non-Muslim minorities in Turkey. These provisions are recognized as fundamental laws of Turkey.

410. In line with the State philosophy based on equality of citizens assuring non-discrimination, Turkish citizens belonging to non-Muslim minorities enjoy and exercise the same rights and freedoms as the rest of the population. Additionally, they benefit from their minority status in accordance with the Lausanne Peace Treaty.

411. Turkish citizens belonging to non-Muslim minorities have their own places of worship, schools, foundations, hospitals, as well as printed media. There exists, 199 places of worship, 47 primary and secondary schools, 145 foundations, five hospitals and nine newspapers.

412. There is no restriction for Turkish citizens belonging to non-Muslim minorities as regards the use of their language in private and in public. Turkish, as the official language, is used before administrative authorities and in criminal proceedings. However, if a person does not speak Turkish, interpretation is provided.

413. Turkish citizens belonging to non-Muslim minorities benefit from positive discrimination inter alia as to their education. The education institutions of Turkish citizens belonging to non-Muslim minorities are regulated by the Law on Private Education Institutions (2007).

414. At the minority schools, the mother tongue of the Turkish citizens belonging to non-Muslim minorities are taught as a must course for the same duration devoted to Turkish course. In these schools, the courses except Turkish and Turkish culture are taught in their own languages. Students belonging to non-Muslim minorities can also freely attend any other public or private school that is not run by their respective minorities, without any restriction.

415. According to article 67 of the Constitution, all Turkish citizens participate in political process on an equal footing. The Law on Political Parties prohibits discrimination on, inter alia, religious and racial grounds and safeguards the principle of equality before the law.<sup>416</sup> The issues related to the training of clergy in Turkey are dealt in line with the provisions of the Constitution and the relevant legislation. Article 24 of the Constitution on the freedom of religion and conscience stipulates, inter alia, that education and instruction in religion and ethics shall be conducted under state supervision and control.

417. The Law amending the Law on Private Education Institutions underlines that no private education institution identical or similar to the public institutions conducting religious education–instruction can be set up (art. 3). On the other hand, there is no restriction on foreign clergy to work in Turkey.

418. The property rights of non-Muslims have been further strengthened within the framework of the ongoing reform process. Non-Muslim places of worship are administered by their own associations or foundations. The property rights on places of worship rest with the real or legal persons that have founded them.

419. A new Law on Foundations was enacted by the Turkish Parliament and entered into force as of 27 February 2008. As regards the non-Muslim community foundations, the Law further improves their situations in relation to their international activities, including the system of financial and/or material donation and assistance from abroad, registration of their immovable properties, as well as their representation at the Foundation Council, which is the ruling body of the Directorate General for Foundations.

420. Elections for the Foundations Council, the highest decision body of the General Directorate of Foundations, took place on 28 December 2008. The Council has 15 members representing the foundations based on numerical ratios. Accordingly, one member was elected by the representatives of the non-Muslim community foundations. The Foundations Council started to gather in January 2009.

421. Within the ongoing reform process in Turkey, there has also been major progress in improving the legislation concerning citizens belonging to non-Muslim minorities in Turkey. In this context, since 2004 a new governmental body, namely the Minority Issues Assessment Board, is in operation with a view to addressing and finding solutions to difficulties which citizens belonging to non-Muslim minorities may encounter in their daily lives. An ad-hoc group of officials, reporting to the Ministerial Reform Monitoring Group holds periodic consultations with the high ranking representatives of the minorities in Turkey.

422. On 13 May 2010, the Prime Ministry has issued a circular confirming that all Turkish citizens from different religious communities constitute an inseparable part of Turkey, and urging all related government institutions and offices to act with utmost diligence for the absolute elimination of problems encountered by the non-Muslim minorities.

423. As part of the Government's action aiming at further improving the condition of non-Muslim minorities, authorization was given for a religious service held in August 2010 by the Greek – Orthodox Church at the Sümela Monastery, where no religious service was held since 1922.

424. In September 2010, another religious service was organized by the Armenians for the first time since World War I, at the church situated on Akdamar Island.

425. In November 2010, Turkish authorities re-registered the former orphanage on Büyükada under the Greek Orthodox Patriarchate following a decision by the European Court of Human Rights.



