

ANNEX 2

Commission of the European Communities

Brussels, 6.10.2004 SEC(2004) 1201

2004 Regular Report on Turkey's progress towards accession

{COM(2004) 656 final}

1.3 Human rights and the protection of minorities

Since 1999 Turkey adopted two constitutional reforms and eight legislative reform packages. The most recent May 2004 constitutional reform addresses a number of issues related to human rights. These include: eradicating all remaining death penalty provisions; strengthening gender equality; broadening freedom of the press; aligning the judiciary with European standards; and establishing the supremacy of international agreements in the area of fundamental freedoms over internal legislation. In September 2004 Turkey adopted a new Penal Code, which will have positive effects on a number of areas related to human rights, particularly women's rights, discrimination and torture.

Furthermore, a new Press Law was adopted in June 2004 and in July 2004 a new Law on Associations and a Law on Compensation of Losses Resulting from Terrorist Acts were adopted. A number of regulations and circulars have also been issued by the authorities in order to enable the implementation of legislation.

Turkey has acceded to a significant number of **international human rights instruments** since 1999, both within the UN framework and within the framework of the Council of Europe, of which it has been a member since 1949: the UN Covenant on Civil and Political Rights and the UN International Covenant on Social and Economic Rights (although with reservations); Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) on the abolition of

the death penalty; UN Convention on the Elimination of All Forms of Racial Discrimination; the European Convention on the Exercise of Children's Rights and the Optional Protocol to the UN Convention on the Elimination of Discrimination against Women. Moreover, a constitutional amendment has established the supremacy of international agreements in the area of fundamental freedoms over internal legislation.

Turkey has made further progress with regard to international conventions on human rights since the last Regular Report. Protocol No. 13 to the ECHR, concerning the abolition of the death penalty in all circumstances, was signed in January 2004. The First Optional Protocol to the International Covenant on Civil and Political Rights, providing for recourse procedures that extend the right of petition to individuals, was signed in February 2004. In April 2004 Turkey signed the Second Optional Protocol on the abolition of the death penalty. Turkey ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in October 2003.

Turkey has not signed the Framework Convention for the Protection of National Minorities or the Revised European Social Charter. The Constitution now enables Turkey to accede to the Statute of the International Criminal Court, but it has not yet done so.

Acknowledging the progress achieved by Turkey since 2001 in the area of constitutional and legislative reforms, in June 2004 the Parliamentary Assembly of the Council of Europe lifted the monitoring procedure on Turkey which had been applied since 1996. Turkey will be subject to a post-monitoring procedure, which will focus on a number of areas pertaining to Turkey's obligations under the ECHR.

Turkey has made progress since 1999 in relation to the execution of **judgements of the European Court of Human Rights** (ECtHR), particularly over the last year. The payment of just satisfaction was made in the Loizidou case and provisions enabling retrial of cases following judgements of the ECtHR have been introduced. This allowed for the retrial of Leyla Zana and the other former DEP parliamentarians. Turkey must nevertheless still implement a significant number of other decisions of the Court.

Since October 2003, the European Court of Human Rights (ECtHR) has delivered 161 judgements concerning Turkey. On 132 occasions the Court found that Turkey had violated the ECHR, and 23 friendly settlements were concluded. In 2 cases, it was found that Turkey was not in violation of the ECHR. During this period, 2 934 new applications regarding Turkey were made to the ECtHR⁶.

The constitutional amendment of May 2004 establishing the supremacy of international agreements in the area of human rights reinforces the Turkish judiciary's capacity to give direct effect to the ECHR. The impact of this change on the judiciary will need to be monitored. According to official sources, since January 2004 over 100 judgements made reference to the ECHR and the case-law of the ECtHR and resulted mainly in acquittals.

As regards the *Loizidou* case⁷, in December 2003 Turkey paid the just satisfaction awarded by the Court in 1998. Other aspects of this judgement, such as the restoration of rights and property, remain unresolved. The friendly settlement in the case of the *Institut de Pretres francais*⁸ dating from 2000 has yet to be executed. Efforts are currently underway to establish an association in whose name the right to usufruct may be registered on behalf of the Institut. Although considerable improvements have been made, Turkey has not yet taken all the measures necessary to comply with a group of 34 judgements related to violations of the right to freedom of expression (*see section on freedom of expression*). Turkey has also made further progress in executing 55 judgements relating to abuses committed by the security forces, although some measures remain outstanding (*see section on torture and ill-treatment below*). As regards the execution of five judgements relating to the dissolution of political parties, no new developments can be reported.

In the case of Cyprus against Turkey⁹ the Council of Europe pursued its supervision of Turkey's execution of the numerous issues raised by the judgement of the Court, recently focusing on the issue of Greek Cypriot missing persons and the right to education of Greek Cypriots living in the north.

As regards provisions enabling retrial in the light of ECtHR decisions, the Turkish courts have received nineteen applications to start retrial procedures. In four cases, the crimes in respect of which the original charges were brought no longer exist and the consequences of the convictions were erased,

thus precluding the need for a retrial. Of the remaining fifteen cases, seven have resulted in an acquittal, one in a conviction which was subsequently reversed on appeal, and one in a partial acquittal and partial conviction. Six cases are pending before the courts.

In its judgement delivered on 14 July 2004 relating to the retrial of the former Democratic Party (DEP) members of Parliament (Sadak, Zana, Dicle and DoganIO), the Court of Cassation overruled the 30 March 2004 judgement of the State Security Court, which had upheld the original conviction. Prior to this, in June 2004, the Court of Cassation had suspended the execution of the applicants' sentence and ordered their release upon the request of the Chief Prosecutor. A further retrial will commence in October 2004.

Provisions enabling retrial still do not apply to cases that were pending before the ECtHR prior to 4 February 2003, which includes the case of Ocalan¹¹. As the Court has indicated, the most appropriate form of redress would be to ensure that, where applicable, the applicants are given a retrial by an independent court.

In June 2004 the Parliamentary Assembly of the Council of Europe noted that notwithstanding the progress made, there remained a significant number of cases where the ECtHR decisions had not been implemented and adopted a resolution encouraging Turkey to comply with these judgements.

With respect to freedom of religion, although freedom of religious belief is guaranteed in the Constitution and freedom to worship is largely unhampered, non-Muslim religious communities¹³ continue to encounter obstacles. They lack legal personality, face restricted property rights and interference in the management of their foundations, and are not allowed to train clergy. Appropriate legislation should be adopted in order to remedy these difficulties.

Following the September 2003 joint appeal of four major Christian communities to solve outstanding problems, a dialogue was initiated by the authorities in early 2004. However, this has so far not produced practical results.

A circular was adopted in December 2003 allowing for the recognition of a change of religious identity on the basis of a simple declaration.

A Regulation on the Methods and Principles of the Boards of Non-Muslim Religious Foundations was adopted in June 2004. This Regulation seeks to address the problems with respect to elections to the boards of foundations, which if not held, or not held on time, can threaten their existence and lead to the confiscation of their properties. Due to the scarcity of religious minorities in certain areas, the new Regulation provides, in principle, for the enlargement of the geographical area within which elections may be held, but only to the adjacent province. Such a restriction, coupled with the fact that this limited enlargement is granted only at the discretion of the local authorities, means that in practice a number of foundations will still not be able to hold elections.

Religious foundations continue to be subject to the interference of the Directorate General for Foundations, which is able to dissolve the foundations, seize their properties, dismiss their trustees without a judicial decision and intervene in the management of their assets and accountancy.

As regards property rights, of the 2 234 applications for registration of property in line with the January 2003 Regulation, 287 have been accepted. Applications could only be made by the 160 minority foundations listed in the Regulation. Given the religious communities' lack of a legal status, their existing properties are permanently at risk of being confiscated and attempts to recover property by judicial means encounter numerous obstacles. For example, the authorities have initiated legal proceedings aimed at confiscating the Greek Orthodox orphanage on the island of Biiyukada near Istanbul. A number of non-Muslim religious communities are not entitled to establish foundations, including the Catholic and Protestant communities, and are thus deprived of the right to register, acquire and dispose of property.

Efforts have been made to ensure that places of worship other than mosques are granted permission to open. However, technical requirements have been invoked to prevent a number of churches from registering. The longstanding application of the Protestant church in Diyarbakir to register as a place of worship was refused in May 2004. Requests to restore churches continue to be subject to slow and cumbersome authorisation procedures. For example, the Panagia Greek Orthodox Church, which was affected by the bombing of the British consulate in November 2003, has still not been granted authorisation to carry out repairs.

A procedure for the reversal of the expropriation of a Bahai place of worship in Edirne was successfully finalised in December 2003, although the community has since reported administrative obstacles when seeking permission to make renovations to their property.

The ban on the training of clergy remains. Non-Muslim religious minorities are thus likely to encounter difficulties in sustaining their communities beyond the current generation. The Greek Orthodox Halki (Heybeliada) seminary, which has been closed since 1971, has still not been reopened. Nationality criteria restrict the ability of non-Turkish clergy to work for certain churches, such as the Syriac or Chaldean. Public use of the ecclesiastical title of Ecumenical Patriarch is still banned and the election of the heads of some religious minority churches is still subject to strict conditions. Non-Turkish Christian clergy continue to experience difficulties with respect to the granting and renewal of visas and residence and work permits.

Religious textbooks have been redrafted in order to address the concerns of Christian minorities. However, clergymen and graduates from theological colleges continue to be prevented from teaching religion in existing schools run by minorities.

Christians are still sometimes subject to police surveillance in Turkey, as illustrated by the presence of policemen during Protestant religious services who, in some instances, check the congregation's identity cards. However, the possibility for legal redress is increasing. For instance, in April 2004 the presenter of a local television news was convicted for inciting hostility towards Turkish Protestants in Ankara and his case is currently before the Court of Cassation.

In November 2003, the office of the Directorate General for Religious Affairs (Diyanet) in Antakya (Southeast) established a multi-religious committee aimed at developing a harmonious relationship between Muslims, Christians and Jews.

As far as the situation of non-Sunni Muslim minorities is concerned, there has been no change in their status. Alevi⁴ are not officially recognised as a religious community, they often experience difficulties in opening places of worship and compulsory religious instruction in schools fails to acknowledge

non-Sunni identities. The parents of an Alevi child have a case regarding compulsory religious education pending before the ECtHR. Most Alevis claim that as a secular state Turkey should treat all religions equally and should not directly support one particular religion (the Sounnis) as it currently does through Diyanet.

NOTES

6. During the same period the number of applications from larger member states of the European Union ranged from 547 to 3 054, the number of judgements ranged from 7 to 98 and the number of violations ranged from 7 to 73.

7. Case of *Loizidou vs. Turkey* (Application no 15318/89).

8. Case of *Institut de PrStres francais vs. Turkey* (Application no 26308/95).

9. Case of *Cyprus vs. Turkey* (Application no 25781/94).

10. Case of *Sadak, Zana, Dicle, Dogan vs. Turkey* (Applications no 29900/96 to 29903/96).

11. Case of *Ocalan vs. Turkey* (Application no 46221/99).

13. The unofficial estimated populations are: 60 000 Armenian Orthodox Christians; 20 000 Jews; 20000 Roman Catholics; 20 000 Syriac Orthodox Christians; 3000 Greek Orthodox Christians; 2500 Protestants; 2000 Syriac Catholics; 2000 Armenian Catholics; 500 Armenian Protestants; and 300 Chaldean Catholics.

14. Estimated population of 12-20 million.