



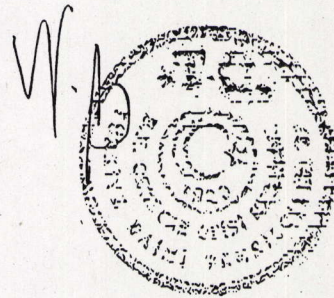
PERMANENT MISSION OF TURKEY
TO THE UNITED NATIONS
GENEVA

2011/BMCO/8031401

The Permanent Mission of the Republic of Turkey to the United Nations Office at Geneva and other international organisations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and referring to the Latter's Note dated 24 June 2011, concerning the request to submit information "on the relevant legislation, good practices and reports related to child protection against racism, racial discrimination, xenophobia and related intolerance", has the honour to enclose herewith an information note on Turkey's efforts and practices in the said field.

The Permanent Mission of the Republic of Turkey avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 31 August 2011



Enc. 1.

High Commissioner for Human Rights,
Palais des Nations
CH-1211 GENEVE 10

OHCHR REGISTRY

- 1 SEP 2011

Recipients :ADU.....

.....
.....

**INFORMATION NOTE ON THE EFFORTS AND PRACTICES OF
THE REPUBLIC OF TURKEY FOR CHILD PROTECTION
AGAINST RACISM AND RELATED INTOLERANCE**

The Republic of Turkey wishes to submit the following information on "relevant legislation, good practices related to child protection against racism, racial discrimination, xenophobia and related intolerance" requested by the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action:

1. Turkey is fully committed to the fight against all kinds of discrimination and especially to child protection against racism, and related intolerance. 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, that also contributed to the implementation of the Durban Declaration and Programme of Action. Turkey is party to fundamental international conventions that contain provisions on the prohibition of discrimination, such as International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of Child, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, European Social Charter, and European Convention on Human Rights and its protocols.

2. As stated above, Turkey is a party to Convention on the Rights of 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). Along the same line, Turkey supported the efforts of the Working Group to have another Optional Protocol to the Convention to provide a communications procedure. In 2010, Turkey ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, namely the "Lanzarote Convention".

While the Turkish Constitution was amended by referendum, in September 2010, the Rights of the Child were prescribed under a separate article for the first time.

Recently in February, the First Congress on the Rights of the Child convened in Istanbul and attended by the Prime Minister of Turkey. The Rights of the Child Strategy Paper of Turkey for the next 5 years was discussed through the involvement of all segments of the sector. It should be mentioned that the provisions of the conventions that are duly put into force are incorporated into the national legislation. As stated in Article 90 of the Constitution "International agreements duly put into effect bear the force of law".

On the other hand, the Agency for Social Services and Children Protection, is responsible for the implementation of the Convention on the Rights of Child. Law No. 2828 on Social Services and Child Protection Agency reiterates the principle of equality by stating in Article 4 (d) that "Differences in class, race, religion, sect or region may not be considered in the

provision of social services, in the event of over demand for services than supply of services priorities are assigned to the degree of need, request or set sequence”.

3. 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. In September 2010, with the amendment brought to Article 10 of the Constitution under the title “Equality Before the Law”; positive discrimination gained a constitutional basis for women and men who require social protection. The same applies for children, the elderly and disabled persons. 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 necessary to be taken by the administration in respect of those who require protection shall not be construed as “contrary to the principle of equality”. Likewise, the State will be free to take special measures for those in need of protection to ensure equality among all sectors of the society. Article 10 of the Constitution of the Republic of Turkey guarantees equality before the law and prescribes as follows:

“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. Measures taken for this purpose may not be commented as contrary to the principle of equality.

Measures favouring children, the elderly, the disabled, widows and orphans of martyrs and veterans do not violate the principle of equality.

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.”

4. As mentioned above in 2010, Article 41 of the Constitution which previously was titled as the “Protection of the family” was amended as “Protection of the family and child rights” and the Article reads as follows:

“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 educating the practical application of family planning.

Every child, has the right to be protected and fostered, unless explicitly contrary to the high interest, every child has the right to personally and directly establish and sustain relations with the mother and father.

The state shall take the necessary measures to protect children against all kinds of abuse and violence acts."

5. In Turkey 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.

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.

6. 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 to Turkish citizens.

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. In particular, these restrictions are related to political rights. Article 67 of the Constitution grants 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 (Article 68). Moreover, only citizens have the right to join public services.

7. 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).

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. Moreover, 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.

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:

(d) 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.

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

8. 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 have the task to investigate complaints and allegations of human rights abuses and in cases where the grounds of the complaints are substantiated to submit their findings to relevant authorities for necessary action.

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.

The Human Rights Presidency and the Human Rights Boards are both 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.

9. Turkey endeavours to do its utmost to continue promoting the rights of children and to improve their living conditions. With this objective at the national level Turkey has carried out the following initiatives:

-Relevant parts of the Turkish Civil Code, Labor Code, Criminal Code, Criminal Protection Code and the Law on Persons with Disabilities, have been amended in line with the provisions of the Convention on the Rights of the Child.

- The Law on Child Protection was adopted in 2005. Article 3 of the said Law defines "child" as those below the age of eighteen years, even if (s)he attains maturity earlier. Thus the concept of the child is expounded so as to entail a broader concept than that adopted in the Convention. Furthermore, the principle of the best interests of the child (Art.4) is brought in the law. With 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.

-Article 4/c of the Juvenile Protection Law No:5395 stating that "No discrimination towards the juvenile or his/her family for any reason whatsoever" has been set as a fundamental principle to protect the rights of the child. Services are given at Childrens' Home, Affection Homes, Training Homes , Protection, Care and Rehabilitation Centers for children who have been involved in crime; Care and Social Rehabilitation Centers for children who are victims of crime and Child Homes that are all affiliated to the General Directorate. Without any discrimination, the necessary services for children and parents are carried out within the framework of relevant legislation. Moreover care, education, housing, nutrition and health care services are provided in institutions as temporary to unaccompanied asylum seekers / refugee minors in the transition period to the third country and / or their country of origin.

-The Turkish Civil Code (2001) stipulates that regarding the matters of guardianship

and adoption, the opinion of related child be respected. Minimum age for marriage is increased to 17 for both sexes. The Law on Disabled Persons (2005) contains supplementary added provisions for the education, rehabilitation, care and social security of disabled children and coordination of services related to their re-integration into society.

-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.

-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.

-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".

-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.

-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.

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

-Turkey aims at preventing the worst forms of child labor 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.

10. Turkey believes that a successful fight against all forms and manifestations of discrimination and intolerance requires combined efforts at national and international levels. In this respect;

-Turkey has become party to all relevant international instruments both at global (UN) 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.

-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.

-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.

-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.

-Turkey has long been among the co-sponsors of the UN Resolutions and Declarations related to non-discrimination and tolerance, xenophobia, racism and anti-Semitism.

-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 UN Initiative.

11. At the national level the General Command of Gendarmerie's projects and activities regarding the protection of children are as follows:

-Establishment of the Children and Women Chief Section at the Provincial gendarmerie headquarters (İstanbul, Ankara, İzmir, Aydın, Erzurum, Antalya, Diyarbakır, Bursa, Adana, Konya, Balıkesir, Şanlıurfa, Muğla and Samsun) to protect children against and from committing crime.

-Establishment of the "Child Protection Non Commissioned Officer" position in Hatay, Kayseri and Denizli for the children that need protection who have been dragged into crime and "Child Protection Staff" in Afyon, Edirne, Kastamonu, Kütahya, Kars, Gaziantep and Denizli.

-Personnel working for the these positions take vocational training courses for the "prevention of child crime".

-The General Command of Gendarmerie along with seventeen governmental authorities such as the Ministry of Education and Primary School General Management signed the "Protocol on the Cooperation of Institutions for Access and Monitoring the Continuance of Primary Education".

-In cooperation with the Ministry of Education the General Command of Gendarmerie, determines and persuades the families that do not send their children to mandatory primary education.

-On 9 November 2010 the General Command of Gendarmerie and the Agency for Social Services and Children Protection signed a protocol for cooperation on the protection of children and elimination of domestic violence. Accordingly, in order to protect the victims of domestic violence, enhance the capacity to analyze and consider the risks that maybe directed to the victims a form is filled and sent to Provincial Social Service Directorship's to registered on domestic violence cases.

- With the coordination of the General Command of Gendarmerie; participation of the Ministry of Justice, Ministry of Education, Agency for Social Services and Children Protection and the Turkish Bars Association; financial support of the European Union and technical assistance of UNICEF a Project named "Good Governing and Protection For Children in Turkey and Strengthening Justice" has been carried out between 17 August 2005-15 may 2008.

With this project:

The General Command of Gendarmerie and the Agency for Social Services and Children Protection collectively gave "My Family Courses" to 75.000 mother and fathers;

Education activities has been given to children between 7-19 years of age;

Vocational training of the personnel the General Directorship of Detention Homes and jails have been completed by the Ministry of Justice has been completed and

250 personnel from 8 provinces, comprising of judges and prosecutors working at juvenile courts, other court officials and polices forces have been trained on the Child Protection Law, criminal responsibility and pertaining international conventions.