

TURKEY

Follow-up - State Reporting

i) Action by Treaty Bodies, including reports on missions

CERD, A/64/18 (2009)

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Chapter IV. Follow-up to the consideration of reports submitted by States parties under article 9 of the Convention

48. In 2009, Mr. Amir served as coordinator and Mr. Prosper as alternate coordinator for follow-up to the consideration of reports submitted by States parties.

49. Terms of reference for the work of the coordinator on follow-up¹ and guidelines on follow-up to be sent to each State party together with the concluding observations of the Committee² were adopted by the Committee at its sixty-sixth and sixty-eighth sessions, respectively.

50. At the 1923rd meeting (seventy-fourth session) and the 1897th meeting (seventy-fifth session), held on 2 March and 17 August 2009 respectively, the coordinator on follow-up presented a report on his activities to the Committee.

51. Since the closing of the seventy-third session, follow-up reports on the implementation of recommendations regarding which the Committee had requested information were received from the following States parties: Austria (CERD/C/AUT/CO/17/Add.1), Belgium (CERD/C/BEL/CO/15/Add.1), Bosnia and Herzegovina (CERD/C/BIH/CO/6/Add.2), Canada (CERD/C/CAN/CO/18/Add. 1), Italy (CERD/C/ITA/CO/15/Add.1), New Zealand (CERD/C/NZL/CO/17/Add.1), Republic of Korea (CERD/C/KOR/CO/14/Add.1), Republic of Moldova (CERD/C/MDA/CO/7/Add.1), Turkey (CERD/C/TUR/CO/3/Add.1) and United States of America (CERD/C/USA/CO/6/Add.1).

52. At its seventy-fourth and seventy-fifth sessions, the Committee considered the follow-up reports of Belgium, Bosnia and Herzegovina, Israel, Italy, New Zealand, the Republic of Korea and the United States of America and continued the constructive dialogue with these States parties by transmitting comments and requesting further information.

¹ For the terms of reference of the work of the coordinator on follow-up, see *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV.

² For the text of the guidelines, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 18 (A/61/18)*, annex VI.

Follow-up - State Reporting

ii) Action by State Party

CERD, CERD/C/TUR/CO/3/Add.1 (2009)

Comments by the Government of Turkey on the concluding observations of the Committee on the Elimination of Racial Discrimination*

[17 March 2009]

INITIAL COMMENTS BY TURKEY ON SOME OF THE CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

1. Turkey welcomes the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD) and takes note of the positive aspects as well as the concerns and recommendations provided therein within the consideration of its initial to third periodic reports. It should be noted that Turkey will sustain its full cooperation with CERD and take its comments and recommendations into consideration with a genuine commitment to combating racial discrimination, wherever it is seen.

2. Turkey will continue to duly prepare its periodic reports, taking into account the points raised in the present concluding observations (CERD/C/TUR/CO/3) and respond in more detail to the concerns and recommendations. Before submitting its upcoming periodic reports, Turkey would like to provide CERD with the following initial comments on some of the concluding observations.

3. The Committee has recommended that Turkey consider adopting a clear and comprehensive definition of racial discrimination in its domestic law and enact comprehensive anti discrimination legislation covering all rights and freedoms protected under Article 5 of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). Article 90 of the Turkish Constitution states that international agreements duly put into effect bear the force of law. In this vein, international agreements ratified as such directly become a part of domestic legislation. When approved by the Turkish Parliament on 16 October 2002 ICERD has become an integral part of our national legislation and the definition of racial discrimination laid down in the Convention is directly applicable in Turkey.

Concerning the anti-discrimination legislation, since ICERD does not oblige States Parties to enact a stand-alone piece of legislation concerning the prohibition of racial discrimination, Turkey has introduced several amendments to different laws with a view to prohibiting discrimination, instead of enacting a framework law in this regard. There are several provisions in Turkish legislation, which prohibit racial discrimination, such as the Constitution (Art 10), the Penal Code (Art 3, 122,216), the Labour Law (Art 5), the Civil Code (Art 8), the Basic Law on National Education (Art 4,8), the Law on Social Services and Child Protection (Art 4) and others.

4. The Committee has also called upon Turkey to ensure that article 216 of the Penal Code is interpreted and applied in conformity with the article 4 of the Convention.

The first paragraph of article 216 of the Turkish Penal Code regulates the limits of the freedom of expression with a view to preventing incitement to social, racial, religious or regional enmity or hatred. This article aims to strike a balance between high standards of freedom of expression, while effectively addressing the problem of incitement to hatred on the above-mentioned grounds.

Turkey upholds that ability to express thoughts in a free environment is a sine qua non for a democratic society. The definition of the offence described is made in the light of this approach. In order for an act to be considered within the scope of the Art 216 (1), it must be conducted in a manner such that it endangers public security in concrete terms. The danger of disruption of public safety should be based on concrete elements. Speeches delivered and thoughts expressed can be prohibited, so long as they constitute a "clear and present danger" to the society. Unless the existence of such a danger is established on a concrete and explicit basis, no punishment can be enforced in order to protect the freedom of expression.

5. The Committee regrets the lack of statistical data in the report of Turkey on the ethnic composition of its population.

The Turkish Government does not collect, maintain or use either qualitative or quantitative data on ethnicity. Although acknowledging that disaggregated data on ethnicity may facilitate devising policies for special measures targeting a specific group, as is the case in some other countries, it is believed that this is a sensitive issue, especially for those nations living in diverse multicultural societies for a long period of time. Diversity has deep roots in Turkey. Hence, Turkey has rather focused on commonalities and common aspirations in the legislative and policy framework, rather than measuring differences and making policies thereon. Some historical events particularly in recent European history are also a reminder of dangers and threats involved in such practices.

6. The Committee has recommended Turkey to consider further amendments to the legislation to allow teaching of languages traditionally used in Turkey in the general public education system.

In Turkey, there exist numerous languages, which are traditionally used in the private sphere. There are Turkish citizens of inter alia, Greek, Armenian, Jewish, Assyrian, Celdanian, Bosnian, Circassian, Abkhazian, Albanian, Bulgarian, Arabic, Georgian, Azeri and Kurdish origin. The number of languages traditionally used in Turkey may reach hundreds if not thousands. Given this diversity, it is beyond the means and capacity of a State to offer teaching of all languages traditionally used in this country in the public education system.

Furthermore, Turkey needs to observe non-discrimination principle in teaching all traditional languages other than Turkish. Any act in favor of one or two languages traditionally used in Turkey can be interpreted as discrimination against other languages and their respective speakers.

7. The Committee calls upon Turkey to reopen the Greek Orthodox theological seminary in the island of Heybeliada, to return confiscated properties and, in this respect, to promptly execute all relevant judgments with the European Court of Human Rights.

According to Turkish legislation, religious education at all levels is possible only in public education institutions. Thus, we proposed the reopening of the School under the aegis of the State Universities in Istanbul. So far, we haven't received a positive signal in this regard. At the moment, Turkish Ministry of Education and Higher Education Council are in search of a workable solution for the reopening of the Heybeliada Theological School.

Concerning the property claims of the non-Muslim minority foundations, it should have been noted that the Turkish Government has addressed these claims and has made the necessary amendments in its Foundations Law to remedy the situation.

As regards the execution of relevant judgments of the European Court of Human Rights pertaining to the property claims, one must note that Turkey fully cooperates with the Court, and there is no Court decision that Turkey has not implemented.

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