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COMMITTEE ON THE RIGHTS OF THE CHILD

Fifty-second session

SUMMARY RECORD OF THE 1427th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 14 September 2009, at 3 p.m.

Chairperson: Mr. ZERMATTEN

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES

Initial report of Turkey under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC/C/OPAC/TUR/1)

1. At the invitation of the Chairperson, the members of the delegation of Turkey took their places at the Committee table.
2. Mr. GÖĞÜŞ (Turkey) said that his delegation was especially pleased to take part in the 52nd session of the Committee on the Rights of the Child because of the value it attached to the Convention on the Rights of the Child and to its Optional Protocol on the involvement of children in armed conflict. Turkey, the first country in the world to have dedicated a national holiday to children, and one of the first signatories of the Optional Protocol, firmly believed that children's rights held a special place within the realm of human rights. The Turkish delegation also attached great importance to dialogue with the Committee, as both parties shared a common goal: building a better and safer future for children.
3. The answers submitted to the Committee were the compilation of statistics and information on relevant Turkish domestic legislation and practices gathered from numerous governmental institutions. He stressed that Turkey's reservations to the Convention stemmed from basic documents such as the Turkish Constitution and the Lausanne Treaty. Conscription began at the age of 20, which effectively prevented the admission of children in the armed forces, while only persons above 22 could be enrolled as Village Guards. Progress had been made in several areas: plans had been made to include matters relating to the Optional Protocol within the curriculum of the training courses offered to members of the judiciary; the Turkish police and military forces received substantial training in human rights, including children's rights; steps had been taken to ensure that children in military schools had effective access to complaint mechanisms and the schools were rigorously monitored.
4. The Agency for Social Services and Protection of Children under the Prime Minister had raised awareness of the Optional Protocol in all public offices and pertinent sectors, and had posted relevant information on its website. Arms exports were subject to a number of safeguards. Large strides had been made in protecting, advancing and raising awareness of children's rights, including the incorporation of the definition of the word "child" in the Turkish Penal Code, the provision of health services to all children, regardless of status, and the establishment of children's rights committees in all 81 Turkish provinces and a children's rights monitoring committee in the Turkish Parliament in 2008. Although such reforms had started to make a positive impact on the day-to-day lives of children, the Turkish delegation was fully aware that much more remained to be done.
5. Mr. KOTRANE (Country Rapporteur) said that the Committee had closely followed the State party's progress in terms of its compliance with the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, as reflected in its initial report (CRC/C/OPAC/TUR/1) and particularly in its written responses to the list of issues. The written responses provided much more detail than the report, which had many gaps and was only one third as long as the former.

6. He thanked the Turkish delegation for having replied expeditiously to the questions posed by the Committee. The State party had set up constitutional and legal systems that for the most part met the requirements of the Optional Protocol, such as the age of voluntary conscription to the armed forces, which could not be below 18. He wished to know what measures the State party had taken to meet the requirements of article 4 of the Optional Protocol, particularly with respect to the recruitment of persons under 18 by armed groups that were distinct from the armed forces of a State. The only reference to compliance with article 4 in the State party's report was that it did not pose any difficulties in Turkey's case. Were there any sanctions in Turkish legislation other than anti-terrorist legislation for offences in violation of the Optional Protocol, and in particular, of article 4? He also wished to know what steps had been taken by the State party to ensure that children under 18 were not enlisted by the 60,000-strong Village Guards and what legal measures had been implemented to prevent the existence of child soldiers, for example, serving in the Kurdistan Workers Party.

7. While the written responses to the list of issues contained a few general statistics, the State party's data collection system appeared to be inadequate. What steps did the State party envisage taking in order to improve that system? Although Turkey had not signed the Rome Statute of the International Criminal Court, the State party's report had indicated that some provisions of the Statute had been included in Turkish legislation. He wished to know what those provisions were. Further, in relation to question 5 of the list of issues, did Turkish courts have jurisdiction over war crimes committed against children by Turkish citizens or residents in cases where children were used in hostilities outside Turkey?

8. Ms. KHATTAB asked whether the State party had set up mechanisms to identify child asylum-seekers who might be in need of international protection and whether peace education was part of the Turkish school curriculum. In particular, she wished to know what measures had been taken to raise awareness of the Optional Protocol among children who did not speak Turkish. Had measures been taken to heighten awareness among society of the fact that children who had been involved in hostilities were victims and should not be regarded in a negative light? Did professionals receive training in issues covered by the Optional Protocol, such as the administration of juvenile justice?

9. Mr. PURAS, referring to article 6, paragraph 3, of the Optional Protocol, wished to know whether children involved in hostilities benefited from specific assistance for their physical and psychological recovery and their social reintegration, as it appeared that Turkish legislation solely mentioned compensation for damages arising from terrorist activities.

10. Mr. FILALI, referring to paragraphs 24 and 28 of the State party's report (CRC/C/OPAC/TUR/1), wished to know whether students enrolled in preparatory schools for non-commissioned officers were considered to be reservists, especially in the light of National Defence Service Act No. 3634 prohibiting the enlistment of children under 15 in situations of national emergency or national mobilization. That created the impression that youngsters from 15 to 18 were liable to enlistment. With regard to paragraphs 24 and 26 of the report, it was not clear whether the military schools were under civil or military jurisdiction. For example, were crimes or offences committed in military schools tried by military or civil courts?

11. Mr. POLLAR wished to receive information about armed groups operating on the State party's territory and the status of negotiations between the State party and those armed groups.

12. Mr. CITARELLA asked about the level of knowledge of the Optional Protocol among professionals, in particular in military schools, and whether such knowledge was incorporated in the school curricula?

13. The CHAIRPERSON wished to know whether Turkey exported arms, whether there were any children in Turkey involved in armed conflict and, if so, whether rehabilitation measures could be taken.

14. Ms. MAURÁS PÉREZ said, according to paragraph 25 of the State party's written responses to the list of issues, some children under 18 who had been captured by or had given themselves up to the Turkish Armed Forces were members of terrorist organizations. She wished to know what action the Turkish Government had taken with regard to those children. Referring to paragraphs 31 and 32 of the State party's written replies, she wished to know the difference between the juvenile high criminal courts and regular juvenile courts, in particular with regard to children between the ages of 12 and 15; she had understood that children in that age bracket could not be tried in criminal proceedings. She wished to know whether that was correct, or whether the report contained an error in that respect.

15. Mr. KOTRANE (Country Rapporteur) requested additional information on the teaching of children's rights, particularly the provisions of the Convention and the Optional Protocol, in schools, including military schools. He asked what steps the Government was taking to ensure that all children learned important values such as the need for peace and understanding between peoples. In the context of education, he asked whether there had been any debate in the State party on withdrawing its reservation to article 29 of the Convention and the resulting reservation to the Optional Protocol.

16. The CHAIRPERSON noted the importance of withdrawing that reservation, as recommended in its concluding observations of 2001 (CRC/C/15/Add.152, para. 12).

17. Ms. AIDOO commended the State party for its significant contribution to United Nations peacekeeping efforts. She asked whether the persons who joined United Nations peacekeeping missions were instructed in the provisions of the Optional Protocol and whether efforts were made to raise their awareness on how to deal with children who had been involved in armed conflict.

18. The CHAIRPERSON asked what measures the State party had taken to ban the stockpiling of anti-personnel mines and to safely destroy them.

The meeting was suspended at 3.50 p.m. and resumed at 4.15 p.m.

19. Mr. GÖĞÜŞ (Turkey) said that the question of anti-personnel mines pertained to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (the Ottawa Convention), not the Optional Protocol.

20. The regulation of arms exports was explained in the reply to question 14 of the list of issues (CRC/C/OPAC/TUR/Q/1/Add.1, paras. 90 to 92). The Ministry of National Defence refused applications to export arms to countries where there were serious violations of human rights, including children's rights, or where some regions were involved in armed conflict.

21. In 2005, the Prime Minister had announced Turkey's intention to become a party to the Rome Statute of the International Criminal Court. A multiagency committee had been working to that end, as a result of which reference had been added to the International Criminal Court in the Constitution. Definitions of genocide and crimes against humanity were already included in the Criminal Code.
22. There were no members of Village Guards under the age of 22, since one of the conditions for membership was the completion of military service. All police and military personnel involved in international peacekeeping were given extensive training covering rules of engagement, human rights and humanitarian law, including the Optional Protocol. There had been no complaints against any Turkish peacekeepers.
23. Mr. YEŞİLKAYA (Turkey) said that, under Act No. 1111, men could not be enlisted in the army under the age of 19, even in times of general mobilization and emergency situations. There were no exceptions for students of military high schools. Boys under the age of 18 could not be called for military service.
24. Students of military high schools kept their civilian status; they had no military duties and military legislation was not applicable to them. They could therefore not be tried by military courts. The curriculum in those schools had been approved by the Ministry of Education.
25. Mr. FILALI requested further clarification of the status of students of military high schools. He also wished to know whether the schools were considered military premises, and whether offences committed by students of the schools were tried under a military or civil jurisdiction.
26. Mr. YEŞİLKAYA (Turkey) said that the law on Turkish Armed Forces Personnel could apply to students of military high schools only insofar as it conferred rights on them. They incurred no liability under that law. Offences committed by students of military high schools were heard by civil courts. Only military personnel working in those schools could be tried by military courts.
27. Students in military high schools received education in human rights and basic training in the law of armed conflict, including the provisions of the Optional Protocol. A handbook on the law of armed conflict was currently being prepared. It incorporated Turkish translations of some 85 relevant international instruments, including the Convention on the Rights of the Child and the Optional Protocol on the involvement of children in armed conflict. It would be distributed to all ministries, universities and armed forces units.
28. Mr. FILALI asked whether Act No. 3634 on national defence remained in force, as it reportedly allowed for the mobilization of 15 to 18 year olds in civil defence forces during national emergencies.
29. Mr. ÇAYCI (Turkey), replying to the question asked earlier by Ms. Khattab, said that information was disseminated both on the websites and in official publications of bodies working to prevent the involvement of children in armed conflict. The Ministry of Justice and several bar associations were actively involved in raising awareness of the issues involved among the public

and professionals. The national education system was based on the philosophy of fostering domestic and international peace. Moreover, a national forum of children's commissions contributed to raising the children's own awareness of their rights.

30. Ms. ORTIZ asked what the audio-visual media were doing to raise awareness of protective measures taken to ensure implementation of the Optional Protocol, such as the minimum age of recruitment. It would also be useful to know how the media were contributing to the State's efforts to foster a culture of peace.

31. Mr. ÇAYCI (Turkey) said that, because Turkey was a member of the Council of Europe and a State party to the European Convention on Human Rights, it was subject to many monitoring mechanisms relating to children's rights. A number of government programmes were therefore already under way to raise awareness of the rights of the child. As for the media, they acted on their own initiative, for example on special occasions or commemorative days. Since the founding of modern Turkey, 23 April had been celebrated every year as Children's Day; during the week of 23 April, the press and media turned their attention to a range of activities and issues relating to children, both domestically and internationally.

32. The CHAIRPERSON asked whether the material used to raise awareness of children's rights was available in languages other than Turkish.

33. Mr. ÇAYCI (Turkey) said that there were no language communication problems in Turkey, as everyone understood the official language. All children were obliged to take part in compulsory education in Turkish, and parents who did not permit their children to learn the official language were subject to prosecution. Because of its past as the centre of the Ottoman Empire, Turkey was home to a large number of linguistic minorities, each of which was free to use its own language in the private sphere, but in public administration Turkish was the sole official language.

34. Mr. GÖĞÜŞ (Turkey) said that Turkey, unlike Switzerland for instance, had such a large number of linguistic minorities that it would be impossible to maintain multilingualism at the State level. All told, there were some 25 linguistic minorities. While the State did not discourage the use of their languages in the private sphere, providing government services in all the languages would be a considerable burden.

35. Mr. ÇAYCI (Turkey) said that no specific mechanism existed for the detection or protection of children who were in Turkey because their families were seeking asylum after fleeing countries affected by armed conflict. When such cases were reported or came to light, the authorities took steps to protect the children concerned within the general legal context of child protection. For example, children who came from countries affected by armed conflict were separated from other children who did not have the same experience, and were given special attention addressing their specific needs.

36. Children who were captured and suspected of membership in terrorist organizations were given special treatment, and were assumed to be innocent. As for the categorization of suspects, if an act was committed in violation of Turkish criminal law, the State was of course responsible for taking action. If the suspects were children, experts would assess their psychological status and level of awareness. In some instances the suspect would simply be given humanitarian

treatment through administrative channels, but in others the assessment might lead to criminal proceedings. Different types of courts dealt with such cases, depending on the age of the suspect and the experts' opinions.

37. Generally the cases were heard by a children's court consisting of a single judge assisted by social workers, but in cases where the suspects were deemed to be aware of the consequences of their acts, the law enforcement agencies and the justice system had to take appropriate action. Children between 12 and 15 years of age were tried by a panel of judges. The cases of those over 15 were heard by a special court in the general court system, established pursuant to the Fight against Terrorism Act.

38. Mr. KOTRANE (Country Rapporteur) said that while the Protocol called for the demobilization and social reintegration of children recruited or used in hostilities, it in no way stipulated that they should be released. However, the Protocol did require that they be given special treatment. The trial of persons between the ages of 15 and 18 by courts in the general court system was apparently at odds both with the Protocol's provisions and with those of the Convention. The Committee had received information according to which Turkey accepted asylum-seekers from countries affected by armed conflict only if they came from Europe. The lack of a specific mechanism to ensure that all asylum-seekers were treated in accordance with international humanitarian law was problematic. While Turkey had ratified the Geneva Conventions relating to the protection of victims of armed conflict of 1949, it had not acceded to the Additional Protocols to the Geneva Conventions of 1977. Did the Government intend to rectify that situation?

39. Noting that international law took precedence over domestic law in Turkey, he asked whether the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict could be invoked directly, and whether a complaint mechanism existed for children who considered that their rights had been violated by the authorities. The Committee had received information according to which some 40 Kurdish children had been arrested during their participation in a funeral procession. What recourse did they have? Could the police face charges if their treatment was deemed to have been abusive?

40. Ms. ORTIZ, returning to the issue of languages, said that it was the most vulnerable groups who were most likely to speak languages other than Turkish. While the Committee did not expect Turkey to translate the Protocol into all languages, the Government should provide translations into the languages that were most widely spoken. Even if children generally understood Turkish, that was not necessarily the case for their family members.

41. Ms. VILLARÁN DE LA PUENTE, noting that article 4 of the Protocol called for the State to prevent the recruitment of children by armed groups distinct from the armed forces of a State, asked what Turkey had done specifically to find out whether such recruitment was taking place, and, if so, what it was doing to prevent it. Did Turkey have any specific programmes for the social reintegration of children who had been recruited by armed groups? The delegation should clarify why children who were aware of the consequences of their acts should have their cases heard by special anti-terrorism courts. Lastly, what steps had Turkey taken to ensure that disproportionate force was not used against children who demonstrated in support of armed groups?

42. Mr. ÇAYCI (Turkey), while recognizing the constructive contribution made by non-governmental organizations (NGOs) to the discussion between the Government and the Committee, pointed out that some NGOs had stated that no person under 18 should be detained, even if suspected of terrorism. It was unclear whether the NGOs in question objected to certain provisions of Turkish law or to their implementation in practice.

43. In fact, the cases in question had not been limited to participation in funeral processions. The law enforcement bodies and the judicial authorities had video recordings of some children starting fires and committing assault and battery. When such cases arose, the Government was obliged to trust the conclusions of the judicial authorities rather than those of NGOs or the press, however respectable they might be. It was for psychological and social experts acting on the authority of the courts, not for the press or NGOs, to assess the criminal liability of children, and when they were found to be responsible for their acts, nothing in the Convention or the Protocol prevented the State from prosecuting them.

44. While Turkish laws and regulations were in keeping with the Protocol, mistakes did occur in practice, but the State ensured criminal prosecution of any public servants, both civilian and military, who violated the law. The Government was aware of the need to do so in the interest of maintaining a healthy relationship between the State and society. The Government maintained discipline in law enforcement agencies by regularly carrying out dissemination activities and by ensuring that whenever a law enforcement operation was carried out, the security forces were given mission-specific rules of engagement and a code of conduct providing instructions on the treatment of people and property during the mission. Even in those circumstances, errors could arise and, depending on the nature of the mistake committed, the Government would then take all necessary corrective, disciplinary and criminal measures.

45. Mr. GÖĞÜŞ (Turkey) said that a social service advisory line had been set up in 2002 for children, women and the disabled. It served 20 provinces and provided psychological, legal and financial counselling and guidance to women and children exposed to violence or at risk.

46. Mr. ÇAYCI (Turkey) said that if the Turkish authorities were informed of the presence in Turkey of a person charged with a crime under international criminal law, and specifically under a treaty to which Turkey had acceded, an investigation was initiated. However, if the crime in question was merely an offence under a country's domestic law, then Turkey would have only limited jurisdiction.

47. The CHAIRPERSON asked what care was given to children who had been involved in armed conflict prior to arrival in Turkey, besides that for which the Child Protection Act provided. He also asked how such children were identified, cared for and, if necessary, returned to their country of origin.

48. Mr. YEŞILKAYA (Turkey) said that, under the Child Protection Act, the children's courts could take measures for the protection, care and education of children who had been involved in armed conflict at the State's expense if necessary. Children could be found places in boarding schools or special schools, and in some cases the State would relocate the child if no appropriate school could be found in the child's vicinity. Under the Probation Act, probation officers had to give psychological assistance to victims of crime, including those involved in armed conflict.

49. While data gathering was still a problem in Turkey, the Ministry of Justice was developing a new system, called the National Judicial Network, which would provide detailed information on judicial regulations and statistics. Therefore, information on children who had been the victims of crime would in future be recorded by the National Judicial Network, while statistics on other children would continue to be compiled by the Turkish Statistical Institute.

50. The CHAIRPERSON asked whether the reservation that Turkey had submitted to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict would be withdrawn.

51. Mr. GÖĞÜŞ (Turkey) said that reservations, by their very nature, were not permanent and could be reconsidered under the right conditions. Under the reform plan undertaken with the aim of joining the European Union, Turkey had already withdrawn some of its reservations to international conventions, including certain reservations to the Convention on the Elimination of Discrimination against Women.

52. Mr. YEŞİLKAYA (Turkey), replying to Mr. Filali's question on Act No. 3634, said that the Act dated from 1939 and, although it was still in existence, it had been superseded by Military Act No. 1111 with regard to the procedure for recruitment to the Armed Forces. The Constitution also provided that where domestic law was in conflict with the international treaties ratified by Turkey, the international instrument prevailed, which was the case for the Convention on the Rights of the Child and the Optional Protocol. The recent Mobilization and Emergency Act also superseded Act No. 3634, which was thus annulled by the more recent legislation that made its application impossible.

53. Mr. FILALI noted that a State party would have to make a specific legislative provision in order for a law to be annulled.

54. Mr. KOTRANE (Country Rapporteur) asked whether any law in Turkey provided penalties for involving children in armed conflict, other than domestic laws on terrorism and the international instruments that the country had ratified.

55. Mr. ÇAYCI (Turkey) said that, in the past, Turkey had not issued legislation reiterating the provisions of newly ratified international instruments. Therefore, Turkish law had no specific provision criminalizing and punishing the involvement of children in armed conflict, but existing law instead already contained sufficient provisions to deter such crimes. For example, articles 220 and 314 of the Criminal Code prohibited the strategic development of any armed group, including conspiracy, arming a group, terrorism and insurgency. Since specific provisions in the country's law criminalized each of those phases, technically there was no gap in legislation. There was no specific provision, however, on the implementation of the Optional Protocol.

56. Mr. GÖĞÜŞ (Turkey) recalled that, under article 90 of the Constitution, the Convention on the Rights of the Child and the Optional Protocol had become national law once ratified by Turkey. Both of those instruments contained penalties for the involvement of children in armed conflict.

57. Mr. KOTRANE (Country Rapporteur) noted that a specific provision should nevertheless be introduced by the legislature. He welcomed Turkey's declared intention to sign the Rome Statute of the International Criminal Court and to complete its ratification of other international instruments. He noted the State party's readiness to take whatever penal and disciplinary measures were necessary to rectify any outstanding issues related to the Optional Protocol, and encouraged the State party to consider establishing an independent human rights institution and a mediator to consider complaints of abuses of children's rights. In its concluding observations, the Committee would call on the State party to include specific references to offences mentioned in the Optional Protocol in domestic legislation and would request that children who had committed such offences should be systematically treated separately from adults.

58. Mr. GÖĞÜŞ (Turkey) reemphasized his country's strong commitment to raising standards in the area of children's rights. That resolve stemmed chiefly from a desire to see children enjoy the highest standards in all aspects of their daily lives. The current meeting had provided additional insight into which areas the country should focus on and prioritize when taking further steps to promote children's rights. Undoubtedly, the areas of children's rights where Turkey was most open to criticism were those connected with the degree of efficiency and effectiveness with which the country's rules and regulations were translated into practice. Turkey could improve its implementation of human rights, and consultation and cooperation among all interested parties would help the country overcome implementation-related issues. The discussions with the Committee would be an important part of any future debate on children's rights at the national level.

The meeting rose at 5.55 p.m.