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大会 2006 年 3 月 15 日题为“人权理事会”的第 60/251 号决议的执行情况

2006 年 5 月 26 日土耳其常驻联合国日内瓦办事处代表团致人权事务高级专员办事处的普通照会

土耳其共和国常驻联合国日内瓦办事处和瑞士其他国际组织代表团向人权事务高级专员办事处致意，并谨随照转交一份说明，其中载有土耳其共和国政府针对在打击恐怖主义的同时增进和保护人权及基本自由问题特别报告员马丁·舍伊宁先生就他 2006 年 2 月 16 日至 23 日访问土耳其一事提交人权委员会第六十二届会议的初步说明(E/CN.4/2006/98/Add.2)提出的意见。

土耳其共和国常驻代表团谨请将所附说明 * 作为人权委员会第六十二届会议转交人权理事会的正式文件分发。

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* 附件不译，原文照发。

Annex

The observations of the Government of the Republic of Turkey regarding the Preliminary Note on the visit to Turkey (16-23 February 2006) of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr. Martin Scheinin (E/CN.4/2006/98/Add.2)

Paragraphs 6 (page 2) and 8 (page 3) :

It is stated in the Preliminary Note that the Anti-Terror Act of 1991 does not meet the requirements of today.

The Anti-Terror Act has been amended, when deemed necessary, since its adoption in 1991. To date, counter-terrorism in our country was carried out within the framework of this Act and success has been achieved. There is no deficiency in respect of the provisions regarding the definition, the punishment and prevention of terrorist acts in the Anti-Terror Act. However, provisions are needed to regulate certain issues such as extending protection for those who provide information to the law enforcement authorities regarding terrorist organizations. The new Turkish Criminal Code and the Code of Criminal Procedure have been drafted on the basis of the international treaties to which Turkey is party as well as the universal human rights instruments. According to Article 90 of the Constitution, international treaties which enter into force in accordance with due procedures carry the force of law. The incompatibility of treaties with the Constitution can not be claimed, even though the compatibility of laws with the Constitution can be challenged. Furthermore, the Constitution stipulates that the fundamental human rights treaties shall take precedence over the laws in case of contradiction between these norms. In the framework of the comprehensive reforms which have been pursued in the field of human rights, international human rights standards and modern day practices have been achieved and due diligence has been afforded to ensure respect for human rights which is an indispensable element of the principle of the rule of law.

Paragraph 7 (page 3)

It is suggested in the Preliminary Note that the term “terrorist” is being broadly used and there is lack of transparency as to which organizations are classified as terrorist.

In practice, there is no proscription or designation procedure for terrorist organizations in Turkey. However, if charges relating to terrorist offences are brought against an organization and during the trial the court establishes that the accused organization is of terrorist nature, the organization in question is regarded as such. The recognition of the terrorist nature of organizations through judicial process is a more advanced practice than the declaration of proscribed organizations, particularly in terms of judicial scrutiny. In countries where the terrorist organizations are declared as proscribed organizations, the judicial appeal is generally granted after the

proscription by the administration. Therefore, establishing the terrorist nature of organizations through judicial proceedings is more compatible with the principle of presumption of innocence. As regards the international terrorist organizations, the list of the organization, entities and persons declared as terrorists by the Security Council Committee established pursuant to Security Council Resolution 1267(1999) (1267 Committee) has been incorporated within the Turkish legal system. With a view to implementing the relevant Security Council Resolutions, the Council of Ministers have promulgated decrees, to freeze all funds, financial assets, economic resources of these terrorist organizations, persons and entities. Turkey regularly submits updated reports on steps taken to implement the measures envisaged in the relevant Security Council resolutions with regard to the 1267 Committee's terrorist organization list.

As for the definition of "terrorist offender", it is in line with the international instruments in many aspects. According to paragraph 1 of Article 2 of the Anti-Terror Act, a member of a terrorist organization who commits an offence alone or with others for the purposes set forth in Article 1 or even if the member who does not commit the contemplated offence, is a "terrorist offender". If a person who commits an offence in the name of a terrorist organization, even if he/she is not a member of that organization, is regarded as a "terrorist offender**"**.

1. Anti-Terror Act No. 3713:

As the terrorist attacks were on the rise particularly in the late 1980s, the Turkish Penal Code in force at that period was considered insufficient, thus, "the Anti-Terror Act" No. 3713 was adopted on 12 April 1991 in order to effectively struggle against terrorism in legal terms. In stead of creating new terrorist offences, this Act has classified certain offences set forth in the Turkish Penal Code (many of which are offences committed against the institution of State) as "terrorist offences" in Article 3 and categorizes certain offences as "offences committed for the purpose of terrorism" which are listed in Article 4. The offences referred to in Article 4, when committed to attain the aims stated in the definition of "terrorism" in paragraph 1 of article 1, shall be regarded as terrorist offences. The punishments for the offences in Articles 3 and 4 have not been determined in the Anti-Terror Act, however, the article 5 envisages that the punishments to be fixed for these offences shall be increased by half. Furthermore, offences such as founding a terrorist organisation, directing its activities, being its member, aiding and abetting the members of terrorist organisations, disclosing the identities of informants or the public officials who have participated in counter-terrorism activities have also been articulated in the Anti-Terror Act.

1.1 Definition of terrorism:
As is known, so far it has not been possible to reach an international consensus over the definition of terrorism. In the case of Turkey, the Anti-Terror Act of 12 April 1991, No. 3713 defines terrorism as follows:

"Any kind of act committed by a person or persons who are members of an organization, for the purpose of altering the fundamentals of the Republic stated in the Constitution, its political, legal, social, secular and economic system, impairing the inseparable unity of the State with its territory and nation, endangering the existence of the Turkish State and its Republic, weakening or destroying or taking over the authority of the State, destroying the fundamental rights and freedoms, impairing the public order, public health or internal and external security of the state, by resorting

to terror, force or violence and employing any of the tactics of coercion, intimidation, oppression, suppression or threat."

According to this definition, the key elements of terrorism are "force and violence", "membership" and "ideology".

1.1.1 Force and violence:

Article 1 of the Anti-Terror Act No. 3713, prior to its amendment by Article 20 of the Act No.4928 dated 15 July 2003, had envisaged the use as a tactic of coercion, force and violence, intimidation, oppression, suppression or threat as a requirement for an organization to be regarded as terrorist. With the amendment made in 2003 to article 1 defining terrorism, it was acknowledged that methods of coercion, intimidation, oppression, suppression or threat are essentially a part of force and violence, and without the precondition of force and violence (the methods of which are coercion, intimidation, suppression, oppression or threat) an organization cannot qualify for a terrorist organization. In brief, the use of force and violence has been made a precondition for the tactics of coercion, intimidation, suppression, oppression or threat.

In this regard, in light of the above-mentioned elements, criticisms such as the definition of terrorism is broad and vague and that it is focused on the aims of the offence rather than defining the acts that constitute the offence, as well as the suggestion that individuals who are not directly linked to terrorist offences may be prosecuted and convicted of such offences are not justifiable.

1.1.2 Ideology:

According to the definition of terrorism, one or more of the following purposes should be aimed in order for the offence to be constituted:

1) to alter any of the principals of the "democratic, secular and social State respectful of the rule of law and human rights and committed to nationalism of Atatürk" which are envisaged as the fundamentals of the Republic in Article 2 of the Constitution,

2) to change the political, legal, social, secular and economic system of the State,

3) to impair the inseparable unity of the State with its territory and nation,

4) to endanger the existence of the Turkish State and its Republic,

5) to weaken, destroy or take over the authority of the State,

6) to destroy the fundamental rights and freedoms,

7) to impair the internal and external security, public order and public health of the State.

In view of the above, the acts solely against the security and constitutional order of the State of the Republic of Turkey are considered within the framework of the definition of terrorism.

1.1.3 Organization:

As regards terrorist organization in terms of Anti-Terror Act No. 3713, a separate definition of such organizations exist. According to this definition, the union and foundation of an organization by two or more persons to attain one or more of the aims set forth in Article 1 of the Act. In this framework, the requirement for a union to be regarded as a terrorist organization is to have the capacity, secrecy and hierarchal structure to accomplish the contemplated offences. Furthermore, the foundation of this union is required before it begins committing the offences to attain the aims on the basis of which it is formed. Therefore, crime groups, in particular, spontaneously formed as a reaction to social incidents are not considered as terrorist organizations. According to paragraphs 2 and 3 of Article 1, the organization referred to in the definition shall be regarded as established upon the union of two or more persons gathered around the same purpose and it also includes the terms "formation, group, armed group, gang or armed gang" referred to in the Turkish Penal Code or other special laws having criminal provisions.

In this framework, an "organization" within the scope of Article 1 of the Anti-Terror Act should carry the three elements simultaneously to be considered as a terrorist organization.

Article 7 of the Anti-Terror Act No. 3713 reads, "Without prejudice to Articles 3 and 4 as well as Articles 168, 169, 171, 313, 314 and 315, the founders or leaders or persons who direct the activities of…. members of …. organizations that fall under the scope of Article 1 of this Act regardless of their names,…. shall be punished."

In this regard, a new concept of the "offence of the terrorist organization" was introduced in Article 7 of the Anti-Terror Act No. 3713. This offence is a separate type than the "organized crimes" defined in Articles 168, 169, 171, 313, 314 and 315 (Articles 220 and 314 of the new Turkish Penal Code No. 5237). In the same way, the "unions" formed for the purpose of committing certain types of crimes defined in the Turkish Penal Code and listed in Article 3 and 4 of the Anti-Terror Act No. 3713 are also excluded from the "offence of the terrorist organization" created in Article 7 of the Act No. 3713. Consequently, the organized crimes referred to in the Articles of the Turkish Penal Code listed in Article 3 and 4 of the Anti-Terror Act as well as Articles 168, 169, 171, 313, 314 and 315 of the Turkish Penal Code can not be considered within the scope of Article 7 of the Anti-Terror Act.

"The offence of terrorist organization" is accomplished upon the union of two or more persons in order to attain the aims set forth in Article 1 of the Anti-Terror Act and founding, directing and being a member of such an organization constitute an offence according to Article 7 of this Act. In other words, the definition in Article 1 constitute the "rule of order/ban" of the offence of the terrorist organization set forth in Article 7. Therefore, in accordance with the Anti-Terror Act, an organization formed by two or more persons for the purposes of terrorism, even though they are not considered as the "organizations" within the scope of the Turkish Penal Code No. 5237, shall be regarded as a terrorist organization pursuant to Article 1 of this Anti-Terror Act and the founders, members, directors of and persons who aid and abet such organizations shall be punished according to Article 7 of this Act. If an organization is considered as an organization within the framework of the Turkish Penal Code No. 5237, Article 7

of the Anti-Terror Act No. 3713 shall not be applicable, however, the punishments to be fixed shall be increased by half in accordance with Article 5 of the Anti-Terror Act.

In view of the explanations above, as the terrorism is perpetrated within the framework of an organization the suggestion that the "terrorist" is broadly used to refer to a large number of number of individuals, their organizations and activities is not appropriate.

2. "Organization" in the Turkish Penal Code No. 5237

In Article 314 of the Turkish Penal Code No. 5237, founding an organization for the purpose of committing the offences set forth in Parts 4 and 5 of the Section 4 concerning the security of State and the protection of the Constitutional system, as well as directing and being a member of such organizations have been penalized.

The organization within the scope of this Article should be armed. In other words, being armed constitutes an essential element of this offence. In addition, the structure of the organization, the number of its members as well as its logistical capacity should be available for committing the contemplated offences. In this respect, only the union of three persons may not pose a concrete risk in terms of committing offences aimed at impairing the territorial unity of the State, however, it may be considered capable of committing offences aimed at gaining economic benefits. Yet, the minimum number of members required for the existence of such an organization is three.

Paragraph 3 of Article 314 of the Turkish Penal Code, envisages that the provisions regarding the offence of "founding an organization with aim of committing offence" in Article 220 of the Turkish Penal Code shall apply to this offence.

Consequently, the following can be concluded with regard to the application of Article 314 of the Turkish Penal Code, in light of the provisions of its Article 220.

i) If a separate offence is committed within the framework of the activities of the organization, the punishment shall be imposed for both the offence defined in paragraph 1 and 2 and the other offence committed separately, in accordance with the rules of the consolidation of punishments (pursuant to paragraph 4 of Article 220 of the Turkish Penal Code),

ii) the leaders of the organization shall be separately punished as perpetrators for all the acts committed within the framework of the activities of the organization (pursuant to paragraph 5 of Article 220 of the Turkish Penal Code)

iii) the person who commits an offence in the name of the organization, (pursuant to paragraph 6 of Article 220 of the Turkish Penal Code) as well as the person who knowingly and wilfully serves the aims of the organization (pursuant to paragraph 7 of Article 220 of the Turkish Penal Code) shall be regarded as members of the organization and punished accordingly, even if such persons are not in the hierarchal structure of the organization.

Therefore, a seperate crime under the name of "aiding and abetting an organization" has not been defined. The nature of the acts in question that fall under this term, entails liability by reason of membership of the organization.

Paragraph 13 (page 4)

It is stated in the Preliminary Note that "*A further issue complicating the return of internally displaced persons to their villages is related to the continued existence of the institution of village guards, who cooperate with the Jandarma and, according to many reports, may hamper the right to return*." The reference to the "who cooperate with Gendarmerie" thereof is misplaced. Provisional Village Guards are appointed for the purpose of assist the law enforcement authorities in countering terrorist and violent acts pursuant to Article 74 of the Village Law No. 442. According to Article 16 of Provisional Village Guards Regulation, village guards are under the instruction and command of the Commander of the Gendarmerie Headquarters, to whom they are affiliated in terms of their occupation. Provincial Gendarmerie Captain has been authorized and responsible for, on behalf of the Governor, conducting the training and personnel matters of the institution of provisional village guards as well as supervising and ensuring that village guards carry out their functions efficiently. In this framework, the term "who cooperate with the Gendarmerie" can be misconceived as an unusual or illegal practice and may lead to misinterpretations.

Paragraph 15, Recommendation (a) (page 5)

It is stated in Recommendation (a) that "*the definition of terrorist crimes should be brought in line with the international norms and standards, notably the principle of legality*."

"Terrorism" has been defined in Article 1 of the Anti-Terror Act. This definition is in line with the international standards in terms of its methods. International organizations and foreign states have been added to the targets aimed at by terrorist acts with the adoption of the new Turkish Penal Code, thus, conformity with international standarts has also been accomplished in this respect. Since Article 314 paragraph 3 of the Turkish Penal Code No. 5237 has made a reference to the principle of availability in Article 220 paragraph 1, a new concrete criteria has been introduced to the definition of terrorism. In Article 1 of the European Convention on the Suppression of Terrorism the definition of terrorism has been made and the acts which constitute terrorist acts have been listed. Turkey has ratified this Convention with the Act No. 2327. Therefore, this Convention has been transformed into a domestic legislation.

Paragraph 15, Recommendation (g) (page 5)

In Recommendation (g) of the Preliminary Note, it is stated that "*the Special Rapporteur recommends the creation of an independent and impartial investigation*

mechanism with the power promptly to investigate allegations of torture or other ill-treatment".

The judiciary is independent in Turkey, which is safeguarded in Articles 138 and 139 of the Constitution. The independent judiciary is effectively dealing with the allegations of torture and ill-treatment. The offences of torture and ill-treatment and their punishments are governed by articles 94, 95 and 96 of the Turkish Penal Code. The Code of Criminal Procedure No. 5271 also contains provisions (Articles 91, 150, 161, 169) concerning the prevention of ill-treatment with regard to criminal proceedings. The provisions of the Act No. 4483 envisaging the pre-condition of permission for the prosecution of public officials are not applicable for the offences of torture and ill-treatment (Article 2/last paragraph of the Act No. 4483). A circular has been issued by the Ministry of Justice to ensure that the prosecutions of such offenders are conducted by the Public Prosecutors personally. In light of these legal safeguards, the judiciary are effectively investigating the allegations of torture and ill-treatment. A new independent investigation mechanism will only prolong this process. Furthermore, it may result in the transfer of judicial powers.

The Act on the Prosecution of Civil Servants and other Public Officials do not apply to the investigations or prosecutions initiated against the civil servants or public officials who are suspected or accused of torture and ill-treatment and the Public Prosecutors commence such investigations ex officio. The legal prosecutions and prosecutions concerning the allegations of torture and ill-treatment are regarded as "urgent proceedings" and dealt with promptly and expeditiously. In the absence of compelling circumstances, the adjournment of the hearings of trials concerning the allegations of torture and ill-treatment can not exceed 30 days. The judicial recess do not apply to such trials.

The new Turkish Penal Code No. 5237, has extended the definition of torture and has increased its punishment. The role of the Public Prosecutors in the prosecution of these offences has been expanded by the Code of Criminal Procedure No. 5271.

The observation that an independent investigation mechanism located outside the institution that is alleged to have committed the acts of torture and ill-treatment does not exist is true. However, this may be misperceived as there is no monitoring of the penal or detention centers in place to address the allegations of torture and ill-treatment.

Besides the legal investigation mechanisms, the citizens who claim that their rights have been violated may apply to investigation and inquiry mechanisms such as the Human Rights Inquiry Commission of the Turkish Grand National Assembly (TGNA), Human Rights Directorate of the Office of the Prime Minister and Human Rights Boards in provinces and districts.

Regarding the in situ investigations of the allegations of torture and ill-treatment, Human Rights Boards have been set up in 81 provinces and 850 districts since 2000 to investigate allegations of torture and ill-treatment. These boards are independent and consist of respected members of the society including the representatives of legal and medical professional organisations possessing the necessary expertise to effectively investigate allegations of torture and ill-treatment. Furthermore, "the Penal Enforcement Institutions and Detention Centers Monitoring Boards" briefly known as

the “Prison Monitoring Boards” were established in 2001. The Human Rights Inquiry Commission of TGNA, may conduct inquiries and investigations in detention centers or prisons, when deems necessary.

On the other hand, Turkey attaches great importance to international cooperation in the field of the struggle against torture and ill-treatment. In this framework, Turkey maintains close cooperation with the Committe Against Torture of the United Nations as well as with the European Committee for the Prevention of Torture (CPT) within the Council of Europe. CPT’s reports concerning its visits to Turkey and the responses of our Government are being made public upon the permission of our Government. The conditions of detention an the detention centers have been improved in full conformity with the recommendations of CPT.

Turkey signed the Optional Protocol to the Convention against Torture on 14 September 2005 during the 2005 UN World Summit. As is known, this Protocol, which is not yet in force, aims at establishing a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment, which has not been envisaged in the main Convention. In this framework, at the international level a Subcommittee on Prevention of the Committee against Torture shall be established and at the national level the foundation of one or more national independent prevention mechanisms by the State Parties have been envisaged. The implementation of this Protocol will also contribute significantly to Turkey's zero tolerance policy against torture.

Paragraph 15, Recommendation (h) (page 5)

As regards the Recommendation (h) suggesting an amnesty or retrial for persons convicted of or charged with terrorist crimes in cases where the evidence used againts them does not meet the current standard of zero tolerance in respect of torture, Article 38 of the Constitution and Articles 135 and 135/a envisage that evidence obtained through prohibited methods can not be considered as evidence even if it is based on consent. Consequently, despite the existence of a conviction based on an evidence obtained through prohibited methods, this is by all means corrected during the judicial scrutiny process. Likewise, in practice the Court of Cessation rules the removal of the evidence obtained through such means from the case file. Both the previous Turkish Penal Code No. 765 (Articles 243, 245) which had been in force since 1926 and the new Turkish Penal Code No. 5237 (Articles 94, 95, 96) which entered into force on 1 June 2005 penalizes torture and as explained above envisages the direct prosecution of this offence, without requiring a prior administrative permission. In light of the above-made explanations, there is no ground necessitating a retrial in such circumstances.

On the other hand, according to Article 311/f of the Code of Criminal Procedure, incompatibility of a provision with the European Convention for the Protection of Human Rights and Fundamental Freedoms is held by a ruling of the European Court of Human Rights, retrial can be claimed in Turkish law.

Paragraph 15, Recommendation (i) (page 6)

It is stated in Recommendation (i) that it is trusted that impartial, through, transparent and prompt investigations and fair trials are carried out in relation to the incidents in Şemdinli and Kızıltepe.

The Turkish judiciary conducts impartial, through and transparent trials and complies with the principle of fair trial. The judicial supervisory mechanisms are in place to address the contrary practices. However, any statement or explanation concerning a specific incident which is the subject of a pending trial infringes upon the principles of the independence of judiciary and the conduct of trials in an impartial environment.

Furthermore, a Commission is in place, entrusted with powers to investigate such allegations within the framework of the Law on the Human Rights Inquiry Commission No. 3686 and this investigation mechanism currently operates.

Paragraph 15, Recommendation (l) (page 6)

The institution of the Provisional Village Guards has been set up for the purpose of countering terrorist and violent acts and to assist the law enforcement authorities. Village guards carry out their functions in accordance with law. In cases where the law is violated necessary legal and administrative proceedings are initiated. Since terrorism continues to pose a potential threat, the system of PVG has not been phased out yet. Forming a strategy concerning village guards is among the targets of Turkey during the EU harmonization process. As of 9 September 2005, the number of PVG was freezed at 57,601.

Paragraph 15, Recommendation (m) (page 6)

The mandate entrusted to the Special Rapporteur on the protection of human rights and fundamental freedoms while encountering terrorism by Resolution 2005/80 of the Commission on Human Rights, is limited to the promotion and protection of human rights and fundamental freedoms while countering terrorism, alleged violations of human rights and fundamental freedoms while countering terrorism with special attention to areas not covered by existing mandate holders, compatibility of measures to counter terrorism with international standards on human rights and fundamental freedoms. Therefore, Turkey is of the opinion that questioning the effectiveness of the measures taken by the Government to counter terrorism, making recommendations that suggest a direct link between terrorism and the promotion of economic, social and cultural rights in order to “eliminate the risk that individuals make morally inexusable decision to resort to acts of terrorism” as well as guiding as to how these recommendations will be implemented are issues beyond the boundaries of the mandate of the Special Rapporteur.

Paragraph 15, Recommendation (n) (page 6)

There is no discrimination against different ethnic populations in Turkey in the exercise of cultural rights regarding the legislation and practices, in accordance with the principle of equality safeguarded in our Constitution.

Education in mother tongue

Article 3 of the Constitution states that the language of the State of the Republic of Turkey is Turkish. Article 42 of the Constitution envisages that "No language other than Turkish shall be taught to Turkish citizens as their mother tongue at educational or training institutions. Foreign languages to be taught in educational or training institutions as well as the rules to followed by the schools giving education or teaching in foreign languages shall be determined by law. The provisions of international treaties are reserved. "

The status of minorities in Turkey has been internationally defined by the Lausanne Treaty, which recognizes non-Muslim minorities in Turkey. The rights of the Turkish nationals belonging to non-Muslim minorities are set forth in Articles 38 to 44 under the section titled "Protection of Minorities" in the Lausanne Treaty.

Article 40 of the Lausanne Treaty reads: "Turkish nationals belonging to non-Muslim minorities shall enjoy the same treatment and protection in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein."

Articles 41 of the Lausanne Treaty states that "As regards public instruction, the Turkish Government will grant in those towns and districts, where a considerable proportion of non-Muslim nationals are resident, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of then-own language. In towns and districts where there is considerable proportion of Turkish nationals belonging to non-Muslim minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious, or charitable purposes…"

The Lausanne Treaty does not contain special provisions regarding the citizens whose mother tongue is not Turkish. Today there are currently 19 Armenian, 28 Greek and 3 Jewish minority schools in Turkey.

The European Convention on Human Rights and the International Covenant on Civil and Political Rights, to which Turkey is party, do not bring any positive obligation regarding education in mother tongue to States Parties and consider the right to education at the individual level and in terms of fundamental rights and freedoms. International obligations regarding education in mother tongue are set forth in two of the Conventions of the Council of Europe, to which Turkey is not a party.

European Charter for Regional and Minority Languages of 5 November 1992, defines the "regional or minority languages" as traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population and different from the official language(s) of that State. Article 8 of the Charter contains a clause which envisage that obligations undertaken by the Parties should be without prejudice to the teaching of the official language(s) of the State and also has a provision envisaging that the specific situation of the regional and minority language spoken in specific regions needs to be taken into account. The obligations concerning education set forth in detail therein covers various stages such as pre-school education, primary education, secondary education, technical and vocational education, higher education and adult and continuing education courses. Since it was drafted as a Charter, the States are given the opportunity to choose between the various regulation models offered in the Charter.

Framework Convention for the Protection of National Minorities of 1 February 1995 does not introduce collective rights in terms of granting national minority status to ethnic, religious or linguistic populations in respect of the rights and freedoms set forth therein. The Convention allows the persons belonging to a national minority to set up and manage their own private educational and training establishments, provided that this shall not entail any financial obligation for the Parties and envisages, where appropriate, the States to take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority. Article 14 stipulates that in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.

The European Charter for Regional and Minority Languages and the Framework Convention for the Protection of National Minorities allow States to determine the minorities, groups or communities in their countries which they will grant the protection status articulated in these instruments.

In the last couple of years several regulations have been introduced in the field of cultural rights within the framework of a comprehensive reform process to enhance the individual fundamental rights and freedoms of all our citizens in Turkey. The Law No. 4771 dated 3 August 2002, also known as the “third harmonization package”, amended the “Law on Foreign Language Education and Teaching, and the Learning of Different Languages and Dialects by Turkish Citizens” to allow private courses to enable learning of different languages and dialects traditionally used by Turkish citizens. In this framework, private courses for teaching Kurdish were established in Şanlıurfa (04.12.2003), Batman (10.12.2003), Van (22.12.2003), Adana (18.05.2004), Diyarbakır (29.07.2004), İstanbul (23.08.2004) and Kızıltepe/Mardin (15.10.2004). Almost all these courses have been closed by their founders and owners due to low number of attendants.

Broadcasting in languages and dialects traditionally used by Turkish citizens in their daily lives

The third harmonization package has brought amendments to the "Law on the Establishment of Radio and Television Enterprises and Their Broadcasts" which provide for broadcasting in languages and dialects traditionally used by Turkish citizens in their daily lives. In order to regulate the implementation of this legislative amendment, "The Regulation on Radio and Television Broadcasts in Languages and Dialects Traditionally Used by Turkish Citizens in Their Daily Lives" was drafted by the Supreme Board of Radio and Television and entered into force upon its publishment in the Official Gazette of 25 January 2004, No. 25357.

Broadcasts in different languages and dialects was commenced by TRT on 7 June 2004. In this framework, TRT Radio-1 broadcasts 60 minutes maximum per day a total of 5 hours per week, TRT-3 television channel broadcasts 45 minutes maximum per day a total of 4 hours per week in Arabic, Bosnian, Circassian, Kirmanchi and Zaza.

On the other hand, on 7 March 2004 the Supreme Board of Radio and Television gave permission to some private radio and television channels (Gün TV and Söz TV in Diyarbakır and Medya FM in Şanlıurfa) which had applied for permit in broadcasting in Kirmanchi and Zaza dialects. These radio and television channels began broadcasting in Kirmanchi and Zaza dialects on 23 March 2006.

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