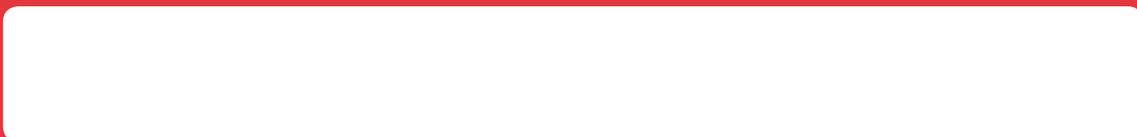


WRITTEN COMMENTS

BY THE EUROPEAN ROMA RIGHTS CENTRE CONCERNING TURKEY

Regarding EU Accession Progress for Consideration by the European Commission during its 2014 Review



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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1 ANTI-DISCRIMINATION AND OTHER HUMAN RIGHTS LAW

The legal system of Turkey provides for protection against discrimination to a certain degree within the Constitution, the Penal Code and Labour Law. Article 10 of the Constitution includes a general clause prohibiting discrimination before the law on the basis of race.¹ A similar clause prohibiting discrimination in employment is included in Article 5 of the Turkish labour law.²

Article 122 of the Penal Code criminalises discrimination on the basis of race in regard to access and provision of several types of private or public service.

Until March 2014, the Article entitled “Discrimination” established that, “anyone who practices discrimination on grounds of language, race, colour, gender, disability, political ideas, philosophical beliefs, religion, sect or other reasons; by a) preventing the sale or transfer of personal property or real estate or the performance or enjoyment of a service or who makes the employment of a person contingent on one of the conditions listed above, b) withholds foodstuffs or refuses to provide a service supplied to the public, c) prevents a person from carrying out ordinary economic activity, shall be sentenced to imprisonment for a term of from six months to one year or a judicial fine.”³

On 2 March 2014, the Grand National Assembly amended Article 122, changing its title to “Hatred and Discrimination”. The general clause of the article has also been amended to say: “Due to hatred stemming from differences based on language, race, nationality, colour, gender, disability, political view, philosophical belief, religion or sect ...”. The amendment also increased the imprisonment penalty from “six months to one year” to “from one year to three years”.⁴

According to some lawyers, with this amendment, the protection provided by Article 122 has not been improved. Ulaş Karan, Assistant Professor at İstanbul Bilgi University, emphasises that the new article also covers very limited areas listed in the previous version and still excludes major offences which might be motivated by discrimination/hate, such as murder, intentional assault, or intentional destruction of property, which are the most common forms of hate crimes in Turkey.⁵ Furthermore, by deleting “or any similar reasons” from the text, the new article also limits its scope. Prof. Karan also underlines that despite its title, the new article does not include the word discrimination and thus no longer provides protection against discrimination.

He also adds that the article does not regulate hate and discrimination crimes separately as the title would suggest, but combines these two separate types of offence in one. As a result, “discrimination based on hate” is criminalised but this leaves a legal vacuum for discrimination which is not based on hate.

The right of individual application to the Constitutional Court was introduced into the legal system in Turkey by a 2010 constitutional amendment. The system entered into force on 23 September 2012 and since this date the Constitutional Court has started to receive and review individual applications. Article 148 establishes that “Everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities. In order to make an application, ordinary legal remedies must be exhausted”.⁶ Individuals have to pay a fee (216.10 Turkish Lira)⁷ in order to apply to the Constitutional Court.⁸

Those who cannot pay that fee may apply for legal aid with a document obtained either from a *muhtar* (elected village or neighbourhood head) or Social Security Institution.

1 Translation in English by International Constitutional Law (ICL) available at: http://www.servat.unibe.ch/icl/tu00000_.html.

2 Turkish version of the Law is available at: <http://www.tbmm.gov.tr/kanunlar/k4857.html>.

3 An unofficial translation of the Article is available at: http://www.tuerkeiforum.net/enw/index.php/Translation_of_selected_Articles_of_the_Turkish_Penal_Code (Please note that, the English version of the Article 122 published at the English language version of the official website of the Ministry of Justice is different than the Turkish version. In the English version, “and on similar grounds” have been omitted).

4 The official Turkish version of the amendments is available at: <http://www.tbmm.gov.tr/kanunlar/k6529.html>.

5 Phone interview with Prof. Karan on 15 April 2014.

6 English version of the Constitution available at: <http://www.byegm.gov.tr/Content.aspx?s=tcotrot>.

7 As of 15 April 2014, approximately 60 €.

8 See: <http://www.anayasa.gov.tr/en/IndividualApplication/>.

Individual applications must be filed within thirty days after the notification of the final proceeding which exhausts legal remedies. In the period between 1 January 2013 and 31 December 2013, the Constitutional Court registered 9,897 individual applications.⁹ However, since disaggregated data is not available, it is not known whether any Romani citizen has used this legal avenue.

Turkey signed Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms on 18 April 2001, which provides a framework for a general prohibition of discrimination. Since the last reporting on the EU accession progress Turkey has not ratified Protocol No. 12.

The concept of minorities in Turkey is still officially and strictly linked to the Lausanne Treaty of 1924.¹⁰ The legal system of Turkey does not provide formal recognition of Roma or other ethnic groups as a minority; only certain religious minorities are recognized.

Turkey has not adopted a comprehensive anti-discrimination law, in line with Council Directive 2000/43/EC which deals with racial and ethnic discrimination. A draft proposal entitled Combating Discrimination and Equality¹¹ announced by the Government in March 2010 and designed to be transformed into a bill has not yet been submitted to the Parliament for debate and approval.

2 POLITICAL DEVELOPMENTS

Turkey officially attended a meeting of the Decade of Roma Inclusion in 2012 for the first time. A representative from the Turkish Employment Organisation made a presentation entitled “Improvement of the Living Conditions of the Turkish Roma Citizens” at the 23rd International Steering Committee Meeting of the Decade of Roma Inclusion on 24-25 September 2012 in Zagreb, Croatia.¹² Despite this positive development, Turkey is still not participating in the Decade of Roma Inclusion, even though several organisations, including the ERRC, have advocated for Turkey joining the Decade. Participating in the Decade of Roma Inclusion would require producing action plans in the areas of education, employment, health and housing and tackling the cross-cutting issues of poverty, discrimination and gender equality.

In 2011, the institutions of the European Union adopted a European Framework for National Roma Integration Strategies aimed at better inclusion of Roma through closing the gap in living conditions between Roma and majority populations. The EU Framework calls upon Member States to develop national policies for the inclusion of Roma. Regarding the countries in the accession process the relevant EC Communication states that “the EU Roma integration goals are equally relevant to these countries” and that they should review their existing policies in line with these goals.¹³ The Communication also added that, “Turkey has yet to adopt a national framework to address Roma inclusion”.¹⁴

In 2012, the Ministry of Family and Social Policies was given the task of developing a national strategy. In 2013, officials of the Ministry met with representatives of Romani civil society on an ad hoc basis on several occasions. However, a structured, transparent, well-functioning mechanism of communication and consultation has not been introduced.

On 1 October 2013, Prime Minister Erdoğan officially announced a programme, entitled the Democratisation Package, which introduced a number of legal and policy changes. The package also included provisions for

⁹ Figures provided by the Constitutional Court available at: http://www.anayasa.gov.tr/files/bireyselBasvuru/2013_istatistikler.pdf.

¹⁰ The Lausanne Treaty was signed after the World War I, on 24 July 1923 between Turkey on the one part and the British Empire, France, Italy, Japan, Greece, Romania, and the “Serbo-Croat-Slovene” State on the other. It is considered as the “founding treaty” for the Republic of Turkey. Full text of the Treaty available at: <http://www.lib.byu.edu/~rdh/www/1918p/lausanne.html>.

¹¹ Turkish version of the proposal available at : http://www.icisleri.gov.tr/default.icisleri_2.aspx?id=5692.

¹² The agenda of the meeting is available at: http://www.romadecade.org/about/decade_presidency/23rd_international_steering_committee_meeting.

¹³ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An EU Framework for National Roma Integration Strategies up to 2020, Brussels, 5. April 2011, available at: http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf.

¹⁴ *Ibid.*

Turkey's Roma communities. PM Erdoğan said a Romani Institute would be established at a university in one of the provinces densely populated with Romani citizens in order to conduct scientific studies on the language and culture of Romani citizens, as well as to research the problems they have encountered and to develop solutions. He also noted that the efforts initiated by the relevant ministries and institutions would be accelerated.

On 30 October 2013, the government organised a gathering in Edirne attended by Deputy Prime Minister Bekir Bozdağ, Minister of Health Mehmet Müezzinoğlu, and Minister of Family and Social Policies Fatma Şahin. The meeting was promoted as being the moment “where the Roma Package would be announced”. However, neither the National strategy nor a National Action Plan was announced in Edirne.

At the meeting, Minister of Health Müezzinoğlu stated that a mentor-midwife system would be introduced for Roma women during their pregnancy period, while Minister of Family and Social Policies Şahin underlined the problem of child brides and emphasised the legal power of civil marriage. Deputy Prime Minister Bozdağ stated that, “In cases where a person is not employed on grounds that he is a Roma, that workplace will be penalised from one year up to three years. Hate crimes have been included in the law and aggravated penalties will be imposed against racism. A Roma Language and Culture Institute will be established in Edirne.” As discussed in the first section of this report, Article 122 of the Penal Code has been amended but these amendments are far from comprehensively combating hate crimes, racism and discrimination.

On 6 March 2014, the government announced that the Institute for Research on Romani Language and Culture was established within Trakya University in Edirne¹⁵.

Turkey held local elections on 30 March 2014. There were no Romani candidates for mayor from any of the political parties participating in elections. Some parties nominated Romani candidates for municipal council. However, in most cases they were placed in low, unelectable ranks in the lists. There is only one known Romani individual who has been elected to a municipal council in Turkey.

3 ATTACKS ON ROMA

In 2013, there were two major attacks targeting Roma in Turkey.

The first incident took place on 21 July 2013, when a neighbourhood argument between Roma and others suddenly turned into an attempted lynching of Roma in the Güneştepe and Yunuseli neighbourhoods of Bursa, a north-western province. Turmoil broke out after a man with a Roma background fired in the air and wounded a young woman who was looking out from a nearby balcony. In the late evening hundreds marched towards Roma populated shanties, throwing stones, shouting slogans such as “we don't want you here” and setting Roma-owned horse carriages on fire. Some protestors also burnt down two shanties and a cab owned by Roma in the neighbourhood. Police intervened, detaining 20 individuals and arresting four including the father of the young woman who was injured by gunfire. In the following days 19 of the attackers, identified through police camera recordings, were detained but were soon released. It is not clear whether any investigation or prosecution of perpetrators is under way.

On 8 September 2013, in the city of İznik in Bursa province, a non-Roma person was murdered by a Roma in a dispute. The Roma person involved in the incident and his son were arrested. On the night of the incident, approximately 2,000 people, including the victim's relatives, gathered and marched towards the three *mahalle* (neighbourhoods) inhabited by Roma. The mob attacked and destroyed several houses and shops in the settlements. Riot police arrived in the neighbourhood and dispersed the attackers with tear gas. One person was shot and injured during the incident. The Bursa Provincial Police Department dispatched police officers to create a security cordon around several Roma neighbourhoods. On the night of 9 September, the mob gathered again and marched towards Roma settlements but security forces prevented them from entering. However, around midnight two Molotov cocktails were thrown into the settlement. After this incident, several Roma families sent their children to their relatives in other cities. The situation calmed down in İznik within one week thanks to the efforts of NGO representatives. It is not clear if any investigation or prosecution of perpetrators is under way.

15 See: <http://www.trakya.edu.tr/news/roman-dili-ve-kulturu-arastirmalari-enstitusu-kuruldu>.

According to press reports dated 25 September 2013, the Parliamentary Commission for Petitions received a petition from a person from Bursa complaining about Roma people living in some of the neighbourhoods in Bursa and asked the Bursa Governor's Office to send information about the Roma population in the city. In the answer sent to the Parliamentary Commission, the following statement was made: "As a result of both comprehensive studies carried out [in this field] and the complaints submitted by citizens, it has been observed that ... Roma citizens in general lacked any profession or occupation to generate a lawful income, and for this reason they earn their living through drug-trafficking and criminal activities they find suitable for making income such as theft, pick-pocketing, purse-snatching, and robbery."

Human rights organisations were quick to object. Although the document of the Governor's Office, which reflects a discriminatory and racist approach towards Roma people, was clearly in conflict with national and international human rights law and standards, including Article 10 of the Constitution of Turkey which requires equality before the law, Article 122 of the Penal Code, and the International Convention on the Elimination of All Forms of Racial Discrimination to which Turkey is a party, no investigation was initiated against any officials by the government.

4 LEGAL THREAT TO HOUSING RIGHTS

The Law on the Transformation of Areas under Disaster Risk (Law No: 6306) was adopted by Parliament on 16 May 2012.¹⁶ The law regulates the improvement, settlement and renovation of areas at risk of disaster and other lots with risk-bearing buildings, even if outside a designated disaster risk area.

City and urban planning experts, academics, civil society activists and international organisations have criticised the law since it may severely weaken housing and property rights, with particular reference to emergency expropriation mechanisms included in the law.¹⁷ It is a fact that many settlements in Turkey are highly susceptible to earthquakes. While all measures to reduce attendant risks are welcomed by the public and civil society, one of the chief concerns stemming from the law is that it will legitimise the forced eviction and relocation of persons inhabiting economically attractive areas, as in the case of many Roma living in old settlements in central areas of Turkish cities.

Article 4 of the law states that electricity, water and natural gas supplies will be cut off and all public services will be suspended in the areas declared at risk. Implementation of this provision can lead to forced eviction: cutting off basic utilities can be a very effective way to force people out of their homes. Article 5 declares that affected property owners who make agreements with the authorities *may* be supplied with temporary housing and their rents *may* be funded, but it does not provide an effective guarantee that the authorities have to provide this kind of assistance.

On 27 February 2014, the Constitutional Court declared certain articles of the law unconstitutional, but left article 4 and 5 intact.¹⁸ Though this decision strengthened certain protection of individuals against the administration, according to experts, Law 6306 still does not provide adequate protection mechanisms to individuals and gives immense powers to authorities. The law does not establish adequate and effective consultation mechanisms with the owners and/or tenants of the buildings which may be affected. The language of the law is ambiguous and there are various points in the law which may be open to arbitrary interpretation.

Across Turkey, Romani settlements are close to city centres or in areas which show potential for urban development projects; the destruction of the oldest Roma settlement in Europe, the Sulukule neighbourhood in Istanbul, shows the danger faced by Roma in these urban centres. The extent to which Roma will be affected by the new law is therefore of significant concern. This is exacerbated by low levels of education, low capacity of defending their rights, and low economic resources among Romani communities.

¹⁶ Law no: 6306. The full text of the law (in Turkish) is available at: <http://www.tbmm.gov.tr/kanunlar/k6306.html>.

¹⁷ The Chamber of City Planners, "Şehir Plancıları Odası'ndan Afet Dönüşüm Yasası'na Dair Basın Açıklaması" press release, 17 May 2012, available at: <http://www.arkitera.com/haber/index/detay/sehir-plancilari-odasindan-afet-donusum-yasasina-dair-basin-aciklamasi/8225>.

¹⁸ The full text of the Constitutional Court ruling (in Turkish) is available at: <http://www.kararlaryeni.anayasa.gov.tr/Karar/Content/89aa067f-408a-4ad6-87e1-3ce846933ec6?excludeGerekce=False&wordsOnly=False>.