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## **Turkey:**

### **A Minority Policy of Systematic Negation**

**International Helsinki Federation for Human Rights (IHF)**

**October 2006**

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The IHF has consultative status with the United Nations and the Council of Europe.

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## 1. EXECUTIVE SUMMARY

Despite some positive developments in the past few years, Turkey's protection of minority groups continues to fall seriously short of European and other international standards.

Since the early 20<sup>th</sup> century, Turkey has practiced a policy of "Turkification," a form of cultural assimilation that fails to recognize individuals' rights to ethnic, national, and religious self-identification and that aims at forced assimilation with a Turkish identity. It encompasses several strategies whose rationale violates, in one way or another, internationally guaranteed standards for minority rights. These strategies still include: denying formal recognition of minority groups; hindering their access to the media; limiting their political participation; violating their freedom of expression (especially in their own language); impeding their freedom of religion; refraining from facilitating their freedom of movement and to choose their place of residence; and practicing or tolerating various other forms of direct and indirect discrimination.

Turkey bases its minority policies on the Treaty of Lausanne of 1923 and claims to be bound only by this treaty, which itself is entirely obsolete in light of current international standards for minority rights and protection. Moreover, while the treaty provides for protection for all non-Muslim minorities, all Turkish governments since 1923 have persistently interpreted the treaty to guarantee protection only to three minority groups: the Armenian Orthodox Christians, the Greek Orthodox Christians, and the Jews. What is more, these groups are recognized only as religious minorities – not as ethnic. Other minority groups – including, for example, the Kurds, the Alevi, the Laz, the Circassians, and the Roma – have been granted no formal recognition and thereby deprived of protection of their rights as communities, despite *de facto* tolerance of some of their communal activities.

While Turkey has no laws in place specifically addressing minority issues, it has an abundance of laws that do not directly deal with minorities but have been used against individuals who have sought to promote their right, or even to address the existence of minorities. These include *inter alia* the Turkish penal code, the 1991 Law on the Fight against Terrorism (amended in June 2006), the Law of Political Parties, and the Law of Associations.

For example, addressing the issue of discrimination against minorities, or considering that Armenians in Turkey were victims of genocide, has been prosecuted under the penal code for "inciting enmity or hatred among the population" or "denigration of Turkishness." Further, in 2005, Turkey's largest teachers' union, *Egitim Sen*, was closed down for defending the right to education in children's mother tongues. In addition, the formal closure of the pro-Kurdish DEHAP and HAK-PAR parties are pending in the Constitutional Court for "creating minorities" and using prohibited languages in election activities.

Police continue to interfere in demonstrations and open-air meetings organized by Kurdish activists many of whom have stood trial for participating in them. Recent reforms that have lifted some language restrictions in broadcasting and education of minority languages have been clearly insufficient. By law, it is prohibited to use any other language but Turkish in political activities.

Legislation regulating the operation of religious minorities treats Muslim and non-Muslim religious communities in different ways and therefore amounts to a serious challenge to freedom of religion and religious tolerance. In practice, non-Muslim minorities enjoy restricted property rights, face interference in the management of their "foundations," and a ban on training their own clergy. But also Muslim minorities, such as the Alevi, for example, experience difficulties in having their places of worship recognized because authorities regard them as a cultural group, not religious. Only non-Muslim school children are exempt from Islamic classes on "religious, culture, and knowledge of morality," which are Sunni-oriented and sometimes amount to incitement against religious minorities. In addition, reports persist that all religious minority leaders remain under government surveillance.

While, under the Lausanne Treaty, non-Muslim religious minorities have the right to give language education in their own language, in practice the proper functioning of minority schools is hindered in several ways.

The Settlement Act No. 2510 of 1934 explicitly discriminates against Roma (“itinerant gypsies”) by forbidding their settlement in Turkey. In addition, Roma are frequently treated as second-class citizens and therefore discriminated against in employment, housing, and in access to medical care.

In the 1980s and 1990s, more than 378,000 Kurds were displaced and more than 3,000 villages completely destroyed under the pretext of combating the PKK insurgency. Despite some legal steps and projects to ensure the return of IDPs, the measures taken so far are clearly insufficient and partially discriminatory.

Homosexuality is not illegal in Turkey but sexual minorities are exposed to various forms of discrimination and harassment. For example, groups promoting lesbian, gay, bisexual and transgender (LGBT) rights have faced difficulties in trying to register officially; they have been under the threat of closure; gay marches have been banned and police have failed to protect their participants against angry mobs; and a whole print run of a gay magazine was recently confiscated.

## **2. PREFACE**

Because of its status as the crossroads of Eurasia and as a region that has been dominated by many empires in the course of the centuries, Turkey has experienced momentous ethnic, linguistic, cultural, and religious entangling throughout history. As a result, Turkey is, today, home to a variety of minorities.

The purpose of this report is to examine the situation of the country’s national, ethnic, and religious minorities and to bring to light some problems they experience. In addition, while the focus of the report is clearly on the status of ethnic, religious and linguistic minorities in the light of international standards regulating minority rights and protection, this report also briefly addresses the situation of sexual minorities. By doing so the International Helsinki Federation for Human Rights (IHF) wishes to underscore the necessity to also deal with the situation of these largely forgotten groups when discussing minority protection in Turkey. Whereas only a handful of interest groups have, in the past decade, actively addressed minority issues in the context of Turkey, the current events leading Turkey on to negotiations with the European Union (EU) is attracting increasing attention to the situation of the candidate state’s minorities.

This report is intended as a contribution to an effort to raise awareness of the situation of minorities in Turkey and to encourage constructive policy change by national and international bodies, in particular encouraging the EU to pay due attention to minority issues as a part of the accession process. It should not be understood as an attempt to a comprehensive analysis, but rather as an intention to examine, from the perspective of international human rights standards and principles, some current problems of a selection of Turkey’s largest minorities.

This report is based on information from IHF member and cooperating committees, other NGOs and independent experts, and official publications by intergovernmental organizations.

This report addresses equally the situation of several of Turkey’s ethnic, religious and linguistic minorities. Under each thematic section, a series of problems will be illustrated with a case study that concerns one or more specific minorities.

### 3. INTRODUCTION

Unquestionably, Turkey's ability to handle its minority issues will greatly influence its future, especially, but not exclusively, in terms of its future relations with the EU. When, in December 2004, the EU gave a green light for and scheduled the launching of Turkey's accession negotiations with the EU for October 2005, it was on the assumption that Turkey sufficiently fulfilled the so-called Copenhagen political criteria, which include "stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities."<sup>1</sup>

As of today, however, the protection of Turkey's minority groups still falls seriously short of European and other international standards. Indeed, since the early 20<sup>th</sup> century, Turkey has practiced a policy that is very much in incongruity with international standards. This policy of "Turkification" is a form of cultural assimilation that fails to recognize individuals' rights to ethnic, national, and religious self-identification and that aims at forced assimilation with a Turkish identity. It encompasses several strategies whose rationale violates, in one way or another, internationally guaranteed standards for minority rights. Despite some improvements in the past few years, these strategies still include: denying formal recognition of minority groups; hindering their access to the media; limiting their political participation; violating their freedom of expression (especially in their own language); impeding their freedom of religion; refraining from facilitating their freedom of movement and to choose their place of residence; and practicing or tolerating various other forms of direct and indirect discrimination.

The complicating factors in addressing and assessing the situation of minorities in Turkey include the facts that national censuses do not take into account people's ethnic origins and that the definition of what constitutes a "minority" is contested.<sup>2</sup> While there is no universally agreed definition of the term "minority," minorities who are subject to special protection are generally understood as groups who share a common identity and who are characterized by their own ethnic, linguistic, or religious identity, which differs from that of the majority population of the territory on which they reside.<sup>3</sup> Thus, even though it is difficult to clearly distinguish between the ethnic, religious, and linguistic minority groups, this classification will be used in this report to the extent that it espouses how the group chooses to define itself.

This report will address the following, non-exhaustive list of problems challenging minorities in Turkey: peaceful assembly and freedom of association, freedom of expression, freedom of religion and religious tolerance, language rights, economic and social rights, forced displacement, and the rights of sexual minorities. Case studies will look into the following, non-exhaustive group of minorities: the Kurds, the Armenian Orthodox Christians, the Greek Orthodox Christians, the Jews, the Alevis, the Laz, the Circassians, the Roma, and sexual minorities.

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<sup>1</sup> EU, Europa Glossary, "Accession Criteria (Copenhagen Criteria)," [http://europa.eu/scadplus/glossary/accession\\_criteria\\_copenhagen\\_en.htm](http://europa.eu/scadplus/glossary/accession_criteria_copenhagen_en.htm)

<sup>2</sup> Minority Rights Group International, Nurcan Kaya and Clive Baldwin, *Minorities in Turkey: Submission to the European Union and the Government of Turkey*, 1 July 2004, [www.minorityrights.org/admin/download/pdf/MRG-TurkeySub.pdf](http://www.minorityrights.org/admin/download/pdf/MRG-TurkeySub.pdf)

<sup>3</sup> The perhaps most widely recognized "minority" definition is the one proposed by UN Special Rapporteur Francesco Capotorti in his study, *On the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, which was submitted to the UN Subcommission on Prevention of Discrimination and Protection of Minorities in 1979. According to this definition, a minority is "[a] group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language."

#### **4. INTERNATIONAL STANDARDS ON MINORITY PROTECTION RELEVANT TO TURKEY<sup>4</sup>**

There exists a set of international law, standards, principles, and mechanisms adopted by the United Nation (UN), the Organization for Security and Cooperation in Europe (OSCE), and the Council of Europe (CoE) designed for the protection of minority rights, which are legally or politically binding on Turkey. In addition, EU membership, which Turkey is striving for, would require abidance by EU standards concerning the treatment of minorities.

The principle of non-discrimination is of fundamental importance for the protection of minorities. The principle prohibits any distinction, exclusion, restriction or preferences based on sex, race, color, language, ethnicity, religion or any other status which nullifies or impairs the recognition, enjoyment or exercise by all persons, on an equal footing, of human rights and fundamental freedoms. States have an obligation to prevent both direct and indirect discrimination. As regards members of ethnic and national minorities, the non-discrimination requirement is particularly essential in terms of rights such as freedom of expression and media, freedom of assembly and association, the rights to participate in public affairs, the rights to education and economic, social and cultural rights.

As a complement to the non-discrimination principle, special minority rights have gradually developed at the international level in past decades. The purpose of minority rights is to enable members of minorities to participate in society on equal terms with members of the majority while preserving their particular identities, characteristics, and traditions. Minority rights provisions also recognize the need for affirmative action to remedy disadvantages suffered by members of minorities and to promote effective equality in a society.

##### **4.1. United Nations**

According to the Universal Declaration of Human Rights “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law” (article 7). Article 2 of the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR) oblige state parties to respect the rights set forth in these documents “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Turkey ratified both the ICCPR and the ICESCR in 2003.

Article 27 of the ICCPR is the most widely accepted legally binding provision on minorities in international law. According to this article, persons belonging to ethnic, religious or linguistic minorities “shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” The Human Rights Committee has pointed out that although the rights protected under this article are individual rights, they depend on the ability of the minority group to maintain its culture, language or religion. Therefore, a state may need to take affirmative measures to ensure protection of the rights of the members of a minority. Provided that such measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27, and are based on reasonable and objective criteria, they constitute legitimate differentiation under the convention.<sup>5</sup>

The ICESCR also contains a provision indicating the importance of affirmative action to protect minorities. Article 2(2) of this convention requires states “when the circumstances so warrant” to take

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<sup>4</sup> Sections 3.1, 3.2, and 3.3 are primarily based on the section on international standards included in the report: IHF and Moscow Helsinki Group, *Russian Federation: The Human Rights Situation of the Mari Minority of the Republic of Mari El*, February 2006, [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=4185](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4185)

<sup>5</sup> UN Human Rights Committee, *General Comment 23: The rights of minorities* (Art. 27), April 1994.

“in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.” Article 1(4) of the convention states that special measures taken for the purpose of advancing the rights of certain racial and ethnic groups or individuals “shall not be deemed racial discrimination,” provided that they do not lead to “the maintenance of separate rights” for different groups and are discontinued “after the objectives for which they were taken have been achieved.”

Article 30 of the Convention on the Rights of the Child states that a child who belongs to an ethnic, religious or linguistic minority or who is of indigenous origin “shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.”

Article 1 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief reaffirms “that freedom of thought, conscience, religion and belief is a human right derived from the inherent dignity of the human person and guaranteed to all without discrimination” while article 2 urges states “to ensure that their constitutional and legal systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without discrimination, including the provision of effective remedies in cases where the right to freedom of religion or belief is violated.”

The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which was adopted by the UN General Assembly in 1992, is the only UN document that specifically addresses minority rights. It is not a legally binding instrument, but expresses the political commitment of states to the protection of minorities. The declaration calls on states to protect the “existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories” (article 1). It also calls on states to safeguard the right of minority members to enjoy their culture, freely practice their religion and language, establish and maintain their own associations, uphold contacts to other members of their group and related groups in other countries, participate effectively in cultural, religious, social, economic and public life as well as to be effectively involved in decision-making affecting them (article 2). The declaration further requires states to take special measures to help minority members to “express their characteristics and to develop their culture, language, religion, traditions and customs” and to ensure, “wherever possible,” that they “have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.” The declaration also requires states, “where appropriate” to take measures to “encourage knowledge of the history, traditions, language and culture of minorities” (article 4).

#### **4.2. Council of Europe**

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which Turkey ratified in 1954, requires states to secure enjoyment of the rights and freedoms laid down in the convention “without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status “ (article 14). The European Court of Human Rights (ECtHR) has clearly stated that differentiated treatment can be deemed to violate this article if it does not have any objective and reasonable justification.<sup>6</sup>

Whereas the ECHR does not contain any specific minority rights provisions, the Framework Convention for the Protection of National Minorities,<sup>7</sup> which entered into force in 1998, regulates the

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<sup>6</sup> ECtHR, *Belgian Linguistics Case* (No. 1474/62), 23 July 1968, par. 10.

<sup>7</sup> For details on this instrument, see section 2.3 in the report: IHF and Moscow Helsinki Group, *Russian Federation: The Human Rights Situation of the Mari Minority of the Republic of Mari El*, February 2006, [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=4185](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4185)

rights of minorities in a comprehensive manner. The Framework Convention, which is the first legally binding multilateral treaty devoted to the protection of national minorities in general, establishes a number of objectives and principles to be pursued at the national level through legislation and government policy. Unfortunately, Turkey has failed to take serious steps to become party to this convention, which would considerably further formal protection of minority rights in that country.

The European Charter for Regional or Minority Languages,<sup>8</sup> which entered into force in 1998, specifies states' obligations in terms of the protection of minority languages. Turkey has failed to sign and ratify this instrument too.

### ***4.3. Organization for Security and Co-operation in Europe (OSCE)***

The OSCE participating states have repeatedly undertaken to respect the human rights and fundamental freedoms of all without any distinction and to ensure equal protection of the law.<sup>9</sup> The participating states have, further, committed themselves to combating “all forms of racial and ethnic hatred” and to taking “appropriate and proportionate measures to protect persons or groups who may be threatened or subjected to discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic or religious identity.”<sup>10</sup> They have also recognized the right of the individual to effective remedies against racist and xenophobic acts.<sup>11</sup> On several occasions, they have agreed to take effective measures to promote tolerance and understanding.

The most important OSCE obligations with respect to minority rights were decided at the 1990 meeting in Copenhagen. At this meeting, the participating states agreed to “adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms” (par. 31). They also recognized the right of members of national minorities “freely to express, preserve and develop their ethnic, cultural, linguistic and religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will” (par. 31). Furthermore, the participating states undertook to respect the right of minority members to use their mother tongue in private and public; to disseminate, have access to and exchange information in their language; to establish and maintain their own educational, cultural, religious and other institutions, organizations and associations; to participate in international NGOs; and to engage in unimpeded contacts with citizens of other countries with whom they share common origins or heritage (par. 32). They, likewise, affirmed that they will respect the right of minority members to participate effectively in public affairs, including affairs relating to the protection and promotion of their minority identity (par. 35) and that they will endeavor to ensure that minority members have “adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, when possible and necessary, for its use before public authorities” (par. 34).

The Office of the OSCE High Commissioner on National Minorities, which was established in 1992 to serve as a conflict prevention mechanism, has repeatedly commissioned expert groups to elaborate recommendations on specific aspects of minority protection. These recommendations offer important

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<sup>8</sup> Ibid.

<sup>9</sup> See, for example, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation (CSCE) in Europe, 29 June 1990 (hereafter referred to as “Copenhagen 1990”), par. 5.9; “Declaration on Principles Guiding Relations between Participating States,” included in the Final Act of the CSCE in Europe, Helsinki, 1 August 1975, principle VII, par. 1; “Questions Relating to Security in Europe” included in the Concluding Document of Vienna – The Third Follow-up Meeting, 15 January 1989, par. 13.7.

<sup>10</sup> OSCE Copenhagen 1990, par. 40.2; Charter of Paris for a New Europe/Supplementary Document to Give Effect to Certain Provisions Contained in the Charter of Paris for a New Europe, Paris, 21 November 1990, par. 4.

<sup>11</sup> OSCE Copenhagen 1990, par. 40.5

guidance to OSCE participating states a propos education rights of minorities, linguistic rights, and political participation.

#### **4.4. European Union**

EU standards are also relevant to Turkey in light of its aspirations to become a member of this community: in order to gain membership in the EU, it will have to show it is able to abide by EU provisions outlined in the consolidated EU treaties and in the Declaration of the June 1993 European Council in Copenhagen, the so-called Copenhagen Criteria.

The principle of non-discrimination was first included in the Treaty on the European Union (“Treaty of Maastricht”) in 1993. Its article 6 states that “the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States” and refers to “the fundamental rights,” as guaranteed by the ECHR.

The Treaty of Amsterdam, which came into force in 1999, was a major step forward in establishing procedures intended to secure the protection of fundamental rights. It amended article 6 of the Treaty on the European Union making it even more explicit that the EU is founded on the principles of liberty, democracy, human rights, fundamental freedoms and the rule of law. In article 7, it established a formal political mechanism for preventing violations of the principles mentioned in article 6.

The Charter of Fundamental Rights of the European Union, adopted by the European Council in Nice in December 2000, is the most extensive EU document on human rights. It includes provisions on civil, political, economic and social rights and affirms equality before the law of everyone (article 20), prohibits discrimination on any ground (article 21) and requests member states to protect cultural, religious, and linguistic diversity /article 22).<sup>12</sup> Moreover, article 7 reinforces the aforementioned mechanism of the Treaty of Amsterdam by giving greater role to the European Parliament.

Article 13 of the Consolidated Version of the Treaty Establishing the European Community of 2002 states that “the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

Issues concerning minority protection feature most prominently in the context of EU enlargement. A declaration adopted by European Council in Copenhagen in 1993 established a number of criteria – the so-called Copenhagen criteria – to which any country seeking membership in the EU must conform. According to the declaration, “membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities.” The European Parliament has emphasized that applicant countries’ commitment to minorities is crucial for membership and has called on the European Commission and Council to make particular efforts to “enhance the ability of these countries to pass and implement laws aimed at countering discrimination against minorities.”<sup>13</sup>

## **5. THE LAUSANNE PEACE TREATY**

For Turkey, the Lausanne Peace Treaty, which was signed on 24 July 1923 by Turkey and the Entente Powers, is the only source for the protection of minority groups; Turkey claims to be bound only by this treaty, which itself no longer complies with modern international standards for minority

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<sup>12</sup> “The EU’s Human Rights and Democratization Policies: Protecting and Promoting the Rights of Minorities,” [http://ec.europa.eu/enlargement/turkey/key\\_documents\\_en.htm](http://ec.europa.eu/enlargement/turkey/key_documents_en.htm)

<sup>13</sup> Ibid.

protection. Moreover, while section III of the treaty provides for protection for all non-Muslim minorities,<sup>14</sup> all subsequent Turkish governments since 1923 have persistently interpreted the treaty to guarantee protection to three minority groups only: the Armenian Orthodox Christians, the Greek Orthodox Christians, and the Jews. In addition, these groups are recognized only as religious – not ethnic – minorities. All other minorities have been granted no formal recognition as minority groups and deprived protection of their rights as communities, despite *de facto* tolerance of some of their communal activities.

## **6. TURKISH LEGISLATION AFFECTING MINORITY RIGHTS AND PROTECTION**

Whereas international standards reflect a tangible effort to protect and promote the rights of minority groups, Turkish legislation, by contrast, is highly restrictive in terms of the protection of minorities.

### ***6.1. Reservations to International Treaties***

In the context of the UN's international instruments for the protection of minorities, Turkey has insisted on some reservations. Thus, the Republic of Turkey reserved the right to interpret and apply the provision of article 27 of the ICCPR, which provides for the rights of minorities, in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne and its Appendices. Similar reservations were made with regard to paragraphs 3 and 4 of the article 13 of the ICESCR, regarding the right to education, in accordance to the provisions under the articles 3, 14 and 42 of the Turkish constitution.<sup>15</sup>

### ***6.2. The Constitution***

The Constitution of the Republic of Turkey, adopted in 1982, does not refer to minorities. Only article 10 of the constitution guarantees all individuals “equality before the law,” without any discrimination, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or other such considerations.

In fact, the constitution itself provides contradictory guidance on the rights of minority groups within the state.<sup>16</sup> Indeed, while article 2 states that the “Republic of Turkey is a democratic, secular, and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice, respecting human rights...” the preamble of the constitution informs that “no protection shall be accorded to an activity contrary to Turkish national interests, the principle of the indivisibility of the existence of Turkey with its state and territory, Turkish historical and moral values or the nationalism, principles, reforms and modernism of Atatürk and that, as required by the principle of secularism, there shall be no interference whatsoever by sacred religious feelings in state affairs and politics.” In other words, the preamble of the constitution clearly warns against any effort to promote cultures, languages, or any other characteristics other than Turkish and condemns any such initiative or behavior as anti-Turkish, secessionist, and contrary to Turkish interests. In conformity with these constitutional provisions, “creating minorities,” by referring to their existence, was criminalized in the Turkish law.

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<sup>14</sup> Apart from article 39 which refers to minorities more generally.

<sup>15</sup> European Commission, *Turkey 2005 Progress Report*, November 2005, [http://ec.europa.eu/enlargement/key\\_documents/pdf/2005/package/sec\\_1426\\_final\\_en\\_progress\\_report\\_tr.pdf](http://ec.europa.eu/enlargement/key_documents/pdf/2005/package/sec_1426_final_en_progress_report_tr.pdf)

<sup>16</sup> Kurdish Human Rights Project, *Human Rights Violations Against Kurds in Turkey*, September 2005, <http://www.khrp.org/publish/p2005/ODIHR%20submission%202005.pdf>

### 6.3. Other Turkish Legislation

While there are no laws specifically on the protection of minorities, Turkey has an abundance of laws that do not directly address minority issues but have been used against minority members who have sought to promote minority rights or to address the issue of minorities in general.

For example, the Turkish penal code has been used to silence voices promoting minority rights – and even discussion on minorities – despite the fact that in the past few years some key provisions of the code were discarded or amended in ways that nominally protect freedom of expression. Article 216 of the penal code still deals with “inciting enmity or hatred among the population” and article 301 with “denigration of Turkishness, the Republic, and the foundation and institutions of the State.”<sup>17</sup> Article 301(1) took effect in June 2005 and states: “A person who explicitly insults being a Turk, the Republic or Turkish Grand National Assembly, shall be imposed to a penalty of imprisonment for a term of six months to three years.” Article 301(3) says: “Where insulting being a Turk is committed by a Turkish citizen in a foreign country, the penalty to be imposed shall be increased by one third.” Moreover, the interpretation of these provisions by prosecutors and courts has been broad. Several well-known writers, including Orhan Pamuk, have stood and are standing trial under these provisions for citing, for example, the genocide of Armenians during the last years of the Ottoman Empire, or killings of Kurds during the long-lasting conflict between Turkish forces and Kurdish separatists.<sup>18</sup>

Other laws also criminalize reference to minorities. Under the Law of Political Parties, political parties “shall not claim that there are minorities based on national or religious or cultural or confessional or racial or linguistic differences” (article 81(a)). This provision has led to the closure of a number of political parties referring to the Kurdish question. The law also criminalizes the promotion of any culture or language other than the Turkish, which is defined as a threat to the integrity of the Turkish nation (article 81(b)). Another prohibition of the use of any language other than Turkish in the activities of political parties (article 82) has resulted in a large number of prosecutions aiming mostly at Kurdish speakers. On the other hand, the law also stipulates that political parties cannot engage in activities contrary to the principle of equality before law, regardless of racial, ethnic, religious or linguistic differences of the citizens (article 83).

The ban on associations under the 2004 Law of Associations to engage in “prohibited activities” (article 30) is interpreted in a similar spirit in the Turkish jurisprudence. While the law largely removed many of the restrictions on the registration and functioning of NGOs, it turned out not to be very much in favor of minority NGOs when, in March 2005, regulations were added to hinder the existence of associations with “prohibited objectives” (article 30) “in contravention of law and morality”(article 56).<sup>19</sup>

The recent amendments to the 1991 Law on the Fight against Terrorism (Act 3713) that were passed by parliament on 29 June 2006 provide for new restrictions on press freedom and it is feared that they will be used to further limit freedom of expression by minorities, especially by pro-Kurdish media. Article 6(2) of the law provides for a three-year prison sentence for “any dissemination of statements and communiques by terrorist organisations.” The owners and editors of news organisations risk a heavy fine. Article 7 (2) states: “Whoever makes propaganda for a terrorist organisation will be sentenced to five years in prison. If the crime is committed by means of the press, the penalty may be increased by half. Owners and editors will also be sentenced to a heavy fine.” Yet, the law fails to define “terrorism,” a fact which gives rise to concern that it will subject to broad interpretation can and

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<sup>17</sup> Amnesty International, “Turkey: Article 301: How the law on ‘denigrating Turkishness’ is an insult to free expression,” March 1, 2006, <http://web.amnesty.org/library/Index/ENGEUR440032006?open&of=ENG-TUR>

<sup>18</sup> Pen American Center, “Novelist Elif Shafak to be tried for ‘Insulting Turkishness,’ Indictments of Major Novelists Signal Erosion of Free Expression Gains in Turkey,” Turkey Background Briefing 7/06, <http://www.pen.org/viewmedia.php/prmMID/694/prmID/172>

<sup>19</sup> IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America: Report 2006 (Events of 2005)*, 2006, p. 439, [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=4258](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4258)

misuse, as has been the case already with the old law. A new article (article 8(b)) added by parliament provides for “chain liability,” under which all persons in one way or another involved in the production of an article of a program can be prosecuted and sentenced to heavy fines.<sup>20</sup>

The age of consent for sexual relations in Turkey is eighteen. National legislation does not include provisions on sexual orientation or minorities, and homosexuality or lesbianism have not been defined as crimes or as misdemeanours in the Turkish penal code. Nevertheless, sexual orientations others than heterosexuality are commonly considered to be an act that violates “public decency” or “moral values” and there are several vaguely worded provisions in Turkish legislation referring to them. For example, article 10 of the Law of Associations can be used to label organizations promoting lesbian, gay, bisexual and transgender (LGBT) rights as illegal and contrary to Turkey’s “tradition and moral values,” and as disturbing the peace, and it can be invoked to ban their publications. In addition, provisions on “general morality” in the Turkish civil code have been used against sexual minorities.

Turkish legislation does not recognise crimes of discrimination based on sexual orientation or gender identity nor same-sex marriages, civil unions or domestic partnership benefits.

## **7. OVERVIEW OF MINORITIES IN TURKEY**

### ***7.1. Recognized Minorities***

As mentioned above, the Jews, the Greek Orthodox Christians, and the Armenian Orthodox Christians are the only recognized minorities in Turkey. Since the ratification of the Lausanne Treaty, Turkey has rigidly adhered to the treaty and formally mentions minority rights only in favor of these three minorities, which are moreover recognized only as religious and not also as ethnic minorities.

#### The Jews

The history of the Jews in Anatolia can be traced back to the 4<sup>th</sup> century BCE in the Aegean region. Synagogue ruins dating back from the 3<sup>rd</sup> century BCE have been discovered near Sardis and Bursa and along the Aegean, Mediterranean, and Black Sea. When the Ottomans captured Bursa in 1324 and drove the Byzantines away, the Jewish community was liberated from centuries of Byzantine oppression and prospered through the Turkish conquest. As Jews from Europe were being persecuted and expelled from Hungary, France, Sicily, and Bavaria in the early 14<sup>th</sup> century, many found a safe haven in Turkey. In 1492, the Sephardic Jewry expelled from Spain and Portugal experienced a cordial reception in the Ottoman Empire. This trend continued in the 15<sup>th</sup> century as more Jews who were expelled from Italy and Bohemia also settled in the empire.

From the 16<sup>th</sup> to the 18<sup>th</sup> centuries, the Jews prospered in Turkey and enjoyed the relatively tolerant Ottoman attitude towards them. During the Second World War, as the Third Reich and its accomplices persecuted and exterminated Jews, Turkey became, once again, a safe haven for persecuted Jews.

Today, there are around 26,000 Jews in Turkey. The majority of them live in Istanbul, but there also are important Jewish communities in Adana, Ankara, Bursa, Çanakkale, Iskenderun, and Kirklareli. Ninety-six percent of Turkey's Jewish population are Sephardic Jews, while the other 4% are Ashkenazic Jews.

#### The Greek Orthodox Christians

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<sup>20</sup> Reporters Without Frontiers, “Prime Minister warned that terror law changes could impose censorship of Kurdish issues,” 10 July 2006, [http://www.rsf.org/article.php3?id\\_article=18243](http://www.rsf.org/article.php3?id_article=18243)

For ages, Greek has been the lingua franca of all people living on both coasts of the Aegean Archipelago. Greek culture and later the Greek Orthodox Church were prominent in all Byzantine Empire for more than a thousand years. Yet, with the Turkish conquest, the Greeks in Anatolia (as the Turks in Thrace) became doomed to face centuries of ethnic cleansing and forcible conversion to Islam. During the First World War and the subsequent Greco-Turkish war of 1922, the Greeks in Anatolia became victims of systematic extermination. The Treaty of Lausanne, which marked the end of the Greco-Turkish war, resulted in population exchanges between Greece and Turkey in 1923, after which only 110,000 Greeks remained in Turkey. During the Second World War, systematic persecutions restarted and in 1955, a pogrom and other persecutions cut the Greek population of Turkey to a small community of a few thousand individuals.

As of 2006, it is estimated that around 5,000 Greeks live in Istanbul and on the two islands of Gökçeada (Imroz) and Bozca Ada (Tenedos), off the western entrance to the Dardanelles. They are recognized only as Greek Orthodox (*Rum*) and not as ethnic Greeks (*Ynanli*).

### The Armenian Orthodox Christians

The Armenians are an ethnic group that originated in and populated the southern Caucasus and eastern Anatolia for over 3,500 years and whose history consists of phases of independence interrupted by conquests by the Persians, the Byzantines, the Arabs, the Mongols, the Ottoman Turks, and the Russians. Until the late 19<sup>th</sup> century, the Armenians lived in relative harmony with other ethnic groups in the Ottoman Empire. When the Russians took control over a large part of the Armenian settlement areas at the end of the War of 1877-78, the persecution of Armenians by the Ottomans began on the pretext that the Armenians were allying with Imperial Russia and that they would gain independence from Russia. This happened in spite of the fact that traditionally many Armenians held high positions in the administration of the Ottoman empire. This suspicion degenerated into a campaign of ethnic cleansing during the reign of Young-Turks. From 1915 to 1916, a minimum of 1.5 million Armenians were exterminated, or perished in camps during their relocation. Many were forced to migrate or move to the small territory of rump-Armenia held by Russia.

Today, there are around 60,000 Armenian Orthodox Christians living in Turkey. The majority of Armenians are of Apostolic faith, but there are also Armenian Catholics and Protestants.

### **7.2. Non-Recognized Minorities**

While the Jews, the Greeks, and the Armenians are recognized by Turkish authorities as religious minorities, the myriad of other ethnic, national, linguistic and religious minority groups in Turkey are not formally recognized. These include (but are not limited to) the Bosnians, Bulgarians, Georgians, Arabs, Africans, Yazidis, Assyro-Chaldeans, Bahais, Protestant and Catholic Christians, Shia Muslims, and Jacobite (Syrian Church of Antioch) community.

For the purpose of the case examples provided later in this report, only the following minorities are described briefly below: the Kurds, the Roma, the Alevis, the Laz, and the Circassians.

### The Kurds

The Kurds are an ethno-linguistic group inhabiting a mountainous region of the northern Middle East (including northern Iraq, northwestern Iran, northeastern Syria, and southeastern Turkey), collectively referred to as “Kurdistan.” The Kurds consider themselves the descendants of the Hurrians who inhabited these mountains in the third, second, and first millenniums BCE as well as of the Indo-Europeans who flooded the area in the first millennium BCE. From the fourth century BCE until the fourth century CE, the Kurds passed under the sway of the Macedonians, the Parthians, the Sassanids,

and the Romans. The last major Kurdish dynasty fell in 380 CE while smaller Kurdish principalities survived to become medieval Kurdish dynasties well into the flourishing period of the 12<sup>th</sup> century. The invasion of the Mongols followed by that of the Safavid and Ottoman empires led to waves of destruction of Kurdish settlements and deportations. The very last autonomous Kurdish principalities disappeared in 1867. It was in response to these systematic and ongoing devastations that Kurdish nationalism in Turkey was born. The Treaty of Sèvres, signed on 10 August 1921, anticipated an independent Kurdish state to cover large portions of the former Ottoman Kurdistan, yet was abandoned when France and Britain divided up Ottoman Kurdistan between Turkey, Syria and Iraq and formalized this division in the Treaty of Lausanne in 1923.

Today, nearly half of the Kurds live in Turkey where, numbering ca. 15 million, they represent about 20% of the country's total population. They are predominantly found in southeastern Turkey, but there is also a prominent Kurdish population in central Anatolia, to the west of Lake Tuz and in districts like Allaca, Çiçekdağı, Yerköy, Emirdağ, Çankırı, and Zile. Many Kurds also live in big cities such as Istanbul, Izmir, Mersin, and Adana. The Kurds speak the Kurdish language, which is comprised of two major dialects and several sub-dialects. The majority of Kurds are Sunni Muslims, while a significant minority are Alevi and other Shia Muslims.

### The Roma

It was in 1475 that Roma were registered for the first time on Ottoman territories. They were registered primarily for taxation purposes. The civil status of the Roma in the Ottoman Empire was rather complicated as they were differentiated not on religious, like the rest of the population, but rather on ethnic criteria. Nonetheless, it seemed that the status of the Roma in the Ottoman Empire was overall superior to the one of the Roma in Western Europe in the same time period.

Research and statistics about the Roma in Turkey are still limited. According to official records, there are over 500,000 Roma people living throughout Turkey. Most are sedentary and found in settlements in larger cities and towns but some are still nomads who follow pre-established itineraries across the country. The Roma in Turkey speak Romani that is strongly influenced by Turkish, Kurdish, and Greek words and expressions. The Roma in Turkey are either Muslims or Christians.

### The Alevi

The Alevi are a religious community whose heartland is East Central Turkey. Alevism took shape in 9<sup>th</sup> century Anatolia thanks to influences from Central Asian faiths such as Shamanism, Zoroastrianism, and Manichaeism. It was later also shaped by the emergence of Judaism and Christianity before being most strongly marked by Islam and becoming part of different Shia traditions.

In the 16<sup>th</sup> century, the Ottoman Empire took control of the Anatolian peninsula and persecuted the Alevi, who became victims of pogroms and accusations of heresy and were driven underground as a religious community. Having been forced to practice their faith in secret for many centuries, Alevi do not worship in mosques, but usually gather for religious ceremony in *cemevis*. The Alevi have no codified doctrine, accepted clergy, nor schools to communicate Alevi customs.

There are an estimated 12 to 15 million Alevi in Turkey, many of them Kurds, representing approximately 20% of the country's total population. Most Alevi live in Central Anatolia, and, whereas they lived in mountainous and barren rural residences for centuries, they are heavily urbanized today. Ethnically speaking, followers of Alevism in Turkey are usually either Kurd, Turkmen, Turk, Zaza, or Azeri.

## The Laz

There are at least 500,000 Laz in Turkey. Most live in Northeast Turkey, in a strip of land along the shore of the Black Sea east of Trabzon. There are also Laz communities in northwestern Anatolia and in Istanbul and Ankara. Most Laz are Sunni Muslims and speak a language related to the South Caucasian languages of Georgian and Migrelian.

## The Circassians

The Circassians are considered a very old indigenous people in the North Caucasus. They formed a coherent identity in the 10<sup>th</sup> century but, in the course of the centuries, were influenced by the Persian, Roman, Byzantine, and Georgian empires and, later, by the Ottoman Empire, where many held posts in the military. The series of clashes against Russian attempts to conquer the Circassians in the late 18<sup>th</sup> century and early to mid 19<sup>th</sup> century culminated in the mass deportation of the Circassian people in 1864, during which many of them perished, and the flight of others to various parts of the Ottoman empire. A significant number of Circassians thus ended up in Turkey.

Today, there are an estimated 2 million Circassians living throughout Turkey. A minority of them still speaks the Circassian language, which belongs to the family of the northwestern Caucasian languages. Most are Sunni Muslims.

## **8. STATUS OF IMPLEMENTATION OF MINORITY RIGHTS AND PROTECTION: CASE EXAMPLES**

### ***8.1. Peaceful Assembly and Freedom of Association***

The various laws and provisions relating to freedom of association, assembly, and to political participation are often the cause for discrimination against Turkey's minorities, in particular because they violate minority groups' civil and political rights.

## The Kurds

Assembly in Turkey is regulated by the Law on Assemblies, Meetings, and Demonstrations, which was amended in August 2003 to decrease various restrictions on public demonstrations. Yet, in 2006, the concern remains that police continues to intervene in many of the demonstrations and open-air meetings organized by Kurdish activists, students, trade unionists, human rights groups or left-wing groups. Excessive security measures and the negative attitudes of the police toward demonstrators have led to tensions, which not unusually end up with the prosecution of activists for peaceful assembly.

Under the 2004 Law on Association,<sup>21</sup> many minority associations are unable to register as NGOs because objectives such as promoting a certain cultural identity or a particular religion are considered contrary to the Turkish constitution.<sup>22</sup>

- For example, in May 2005, the Turkish Court of Cassation ruled to close Turkey's largest teachers' union, Egitim Sen, for defending the right to education in children's mother tongues. While it first ruled in favor of the union, arguing that the Turkish constitution should be interpreted in accordance with the ECHR and that a decision to close down the

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<sup>21</sup> See also section 6.3. on national legislation.

<sup>22</sup> European Commission, *Turkey 2005 Progress Report*, November 2005, p.27, [http://ec.europa.eu/enlargement/key\\_documents/pdf/2005/package/sec\\_1426\\_final\\_en\\_progress\\_report\\_tr.pdf](http://ec.europa.eu/enlargement/key_documents/pdf/2005/package/sec_1426_final_en_progress_report_tr.pdf)

union was not in compliance with articles 10 (freedom of expression) and 11 (freedom of association) of the ECHR, the court then reversed its ruling, stipulating that “freedom of association can be limited for the protection of national security, integrity of the country and public order” and that “Turkish citizens cannot be provided education in a language other than Turkish.”<sup>23</sup> This ruling adds to the many other attempts by Turkish authorities to jeopardize the survival of the Kurdish language, one that is spoken by a noteworthy 20 million Kurds in Turkey.

- Similarly, in July 2005, the Kurdish Democracy, Culture, and Solidarity Association was closed pending prosecution in connection with its statute containing an objective relating to education and broadcasting in Kurdish,<sup>24</sup> one that the authorities condemned as being in contravention with the Turkish constitution.

Despite serious hindrances set up by Turkish authorities, especially under provisions of the constitution and the Law of Political Parties,<sup>25</sup> the Kurds are politically organized and active. The People’s Democratic Party (*Demokratik Halk Partisi* – DEHAP) was established in 1994 and was represented in parliament. The Rights and Freedoms Party (*Hak ve Özgürlükler Partisi* – HAK-PAR) is another important party with a pro-Kurdish agenda. The Kurdistan Workers’ Party (*Karkerên Kurdistan* – PKK), founded in 1973 by Abdullah Öcalan, is an outlawed organization because of its use of terrorist force and threat of such force against both civilian and military targets for the purpose of achieving its political goals, including the creation of an independent Kurdish state.

- DEHAP, foreseeing a closure as in the case of several similar parties in the past, dissolved itself in August 2005, and its members joined the successor Democratic Society Movement.<sup>26</sup> Nevertheless, cases for a formal closure against the DEHAP and HAK-PAR are pending with the Constitutional Court under provisions of the constitution and the Law on Political Parties concerning the targeted parties’ suspected prohibited objectives of “creating minorities,” supporting illegal organizations, and the use of prohibited languages in election activities.<sup>27</sup>

## **8.2. Freedom of Expression**

Turkey has in recent years amended several provisions under the penal code or other laws that used to lead to numerous prosecutions in the 1990s and nominally brought most of them inline with international standards on freedom of expression – an effort which led to a significant decrease in prosecutions under legislation restricting freedom of expression. Nevertheless, persons and groups expressing their views publicly on controversial issues such as minorities, the Kurdish question, Islam and other religions, the genocide of Armenians, and human rights violations continue to be prosecuted and are under threat of conviction.

Judicial harassment of outspoken individuals has increased dramatically in the past year: according to PEN American Center, recent developments are increasingly reminiscent of the 1990s when hundreds of writers and journalists were imprisoned for what they had written. In many cases new provisions

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<sup>23</sup> Ibid., p. 28.

<sup>24</sup> IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America: Report 2006 (Events of 2005)*, 2006, p. 439, [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=4258](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4258)

<sup>25</sup> See also section 6.3. on national legislation.

<sup>26</sup> Anatolian News Agency, “DEHAP to join Democratic Society Movement (DTH),” 17 August 2005, [http://haber.tnn.net/haber\\_detay.asp?ID=1244470&Cat=ENG](http://haber.tnn.net/haber_detay.asp?ID=1244470&Cat=ENG).

<sup>27</sup> IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America: Report 2006 (Events of 2005)*, 2006 p. 440, [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=4258](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4258)

such as article 301 of the penal code (“denigration of Turkishness, the Republic, and the foundation and institutions of the State”) have come to serve the same purpose as the laws that were eliminated.<sup>28</sup>

According to PEN American Center, at least 15 journalists, editors, and publishers were standing trial as of July 2006, or have recently stood trial, under the insulting or denigrating Turkishness provision.<sup>29</sup>

In addition, the freedom of expression of minority groups is impeded with the Anti-Terror Law, a controversial law that was initially established in 1991. Following an increase in violence by the PKK in the past two years, an additional bill was passed by parliament (amendments to the 1991 Law on the Fight against Terrorism (Act 3713) on 29 June 2006. Among other things, it provides prison sentences for the dissemination of statements and propaganda by “terrorist organisations.” It is feared that vague wordings of the new provisions may lead to arbitrary prosecutions of journalists covering issues related to Kurdish organizations and against pro-Kurdish media, and further hinder discussion on minority issues.<sup>30</sup>

### The Kurds and the Armenians

While it is undeniable that the PKK and similar armed opposition groups have been increasingly active in carrying out indiscriminate or targeted attacks on civilians, the Anti-Terror Law often punishes arbitrarily and not necessarily the violent perpetrators.

- On 2 May 2006, three Kurdish activists, Ibrahim Guclu, Zeynel Ozalp, and Sedat Ogur, were arrested as they prepared to walk to the border of Iraq to peacefully protest the recent killings of civilians by security forces in southeastern Turkey and express their concern about tensions between the Turkish government and the Kurdish-led administration in northern Iraq. The men were charged under the Anti-Terror Law for “making propaganda for the PKK,” a charge that is all the more ironic in light of the fact that Guclu has repeatedly and publicly condemned violence by the PKK.<sup>31</sup>

Other recent cases have been filed under penal code provisions.

- Professor Ibrahim Kabaoglu, the former head of the Human Rights Advisory Board, and board member Professor Baskin Oran initially faced five years in prison for the Minority Rights and Cultural Rights Working Group report released in October 2004, discussing legal and administrative discrimination against minorities in Turkey. After a six-month trial, they were acquitted in May 2006.<sup>32</sup> The charges were brought under article 216 of the penal code (on “inciting enmity or hatred among the population”) and 301 (on the “denigration of Turkishness, the Republic, and the foundation and institutions of the State”).<sup>33</sup>

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<sup>28</sup> Pen American Center, “Novelist Elif Shafak to be tried for ‘Insulting Turkishness,’ Indictments of Major Novelists Signal Erosion of Free Expression Gains in Turkey,” Turkey Background Briefing 7/06, <http://www.pen.org/viewmedia.php/prmMID/694/prmID/172>

<sup>29</sup> Ibid.

<sup>30</sup> Reporters Without Frontiers, “Prime Minister warned that terror law changes could impose censorship of Kurdish issues,” 10 July 2006, [http://www.rsf.org/article.php3?id\\_article=18243](http://www.rsf.org/article.php3?id_article=18243)

<sup>31</sup> Human Rights Watch, “Turkey: Anti-Terror Law Used Against Peaceful Activists: Turkey’s Reform Process at Risk as Three Kurdish Activists Go on Trial,” 7 June 2006, <http://hrw.org/english/docs/2006/06/07/turkey13521.htm>

<sup>32</sup> IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America: Report 2006 (Events of 2005)*, 2006, p. 437, [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=4258](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4258)

<sup>33</sup> Amnesty International, “Turkey: Article 301: How the law on ‘denigrating Turkishness’ is an insult to free expression,” March 1, 2006, <http://web.amnesty.org/library/Index/ENGEUR440032006?open&of=ENG-TUR>. See also Kurdish Human Rights Project and Bar Human Rights Committee, “Suppressing Academic Debate: The Turkish penal code,” Trial Observation Report, June 2006, <http://www.khrp.org/publish/p2006/Suppressing%20Academic%20Debate%20ONLINE.pdf#search=%22DEHAP%20HAKPAR%22>

- Five journalists have been charged for their criticism of official attempts to ban a conference focusing on the Armenian massacres in November 2005.<sup>34</sup>
- Abdullah Yilmaz, editor in chief of a publishing house, was charged for issuing a Turkish edition of Greek writer Mara Meimaridi's best-selling novel *The Witches of Smyrna*.
- Elif Shafak, a best-selling author dividing her time between Istanbul and the United States, faced trial but was acquitted of charges of "insult" in the Beyoglu Court of First Instance in Istanbul, on 21 September 2006. She was charged under article 301 of the penal code with "insulting Turkishness" and was the third prominent novelist standing trial in Turkey in just over a year for such charges. The charges stemmed from a passage in her novel *The Bastard of Istanbul* in which one of the characters refers to the deaths of Armenians during the First World War as "genocide."

Until recently, there had been no convictions under article 301 of the penal code. In January, prosecutors announced they would not proceed with the case against Orhan Pamuk, a well-known writer charged with "insulting Turkishness" for stating in an interview in Germany that "thirty thousand Kurds and a million Armenians were killed in these lands and nobody but me dares to talk about it." However, in a troubling development, the Turkish Court of Cassation in July 2006 upheld a guilty verdict and six-month suspended sentence against Hrant Dink, editor of the Armenian language newspaper *Agos*. Dink received the sentence in May 2006 for articles published in 2004 entitled "The Armenian Identity."<sup>35</sup>

### **8.3. Freedom of Religion and Religious Tolerance**

#### *The Law on Foundations*

In Turkey, all religious institutions are subject to the formal Law on Foundations. Under this Foundations system, the law designates the Directorate General for Foundations (Vakiflar Genel Mudurlugu) as responsible for the 160 recognized non-Muslim "community foundations" of which about half are Greek Orthodox foundations and the rest Armenian Orthodox and Jewish, and their churches, monasteries, synagogues, and related religious property, while the overseeing of the 75,000 mosque "foundations" is the shared responsibility of the Directorate General for Foundations and the Directorate of Religious Affairs (*Diyanet*), a governmental body which oversees Muslim religious facilities.

The Law on Foundations reserves differential treatment to the non-Muslim "community foundations" and to the Muslim "foundations" and therefore amounts to a serious challenge to freedom of religion and religious tolerance in Turkey. Under this foundation system, non-Muslim minorities face restricted property rights and interference in the management of their foundations as well as a ban on training their own clergy while non-Sunni Muslim communities experience difficulties *inter alia* in terms of recognizing places of worship and with participation in compulsory religious education in schools.

At this writing, a new Law on Foundations is pending in Turkish parliament (see Property Rights, below).

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<sup>34</sup> This, and the two following case examples were reported by Pen American Center, "Novelist Elif Shafak to be tried for 'Insulting Turkishness,' Indictments of Major Novelists Signal Erosion of Free Expression Gains in Turkey," Turkey Background Briefing 7/06, <http://www.pen.org/viewmedia.php/prmMID/694/prmID/172>; and Pen American Center, "Author Elif Shafak acquitted in Turkey," 21 September 2006, <http://www.pen.org/viewmedia.php/prmMID/819/prmID/1331>

<sup>35</sup> Ibid.

### *Minority Assessment Board and the Directorate General for Foundations*

In January 2004, the Secondary Committee for Minorities established by a secret decree in 1962 in order to carry out security surveillance of minorities was abolished and replaced with the Minority Assessment Board responsible for the problems of non-Muslim minorities. The Directorate General for Foundations is the most decisive body on the Minority Assessment Board. Yet, whereas it has succeeded in incorporating the issue of minority religious groups' rights in recent series of legislative reforms, the European Commission against Racism and Intolerance (ECRI) has noted that the directorate is said to be "unduly restrictive in the way it implements the legislative changes, rendering them virtually useless."<sup>36</sup>

### The Jews, the Armenian Orthodox Christians, and the Greek Orthodox Christians

Despite the fact that the Jews, the Armenian Orthodox Christians, and the Greek Orthodox Christians are the only three officially recognized minorities in Turkey, the situation with regard to religious activities of these minorities is far from favorable.

In fact, since the establishment of the Minority Assessment Board and despite attempts at reforms, Forum 18 recently reported that all religious minority leaders appear to remain under government surveillance, forcing them to be very cautious in everything they say, convinced that their telephones and mail are occasionally intercepted. Minority representatives have also reported that secretive officials – believed to be members of MIT secret police – occasionally come to visit them to ask questions.<sup>37</sup>

### *Property Rights*

On the basis of a 1974 Council of State ruling, Turkish authorities have been able to seize the property that was not declared by the minority foundations in a 1936 registration. All acquisitions since, through donations or purchases, have been considered illegal, as Greek, Armenian, and Jewish minority foundations were considered "foreign."<sup>38</sup>

The Directorate General for Foundations enjoys formal and direct administration of foundations' properties and can remove property from non-Muslim minority groups. This has been happening also recently, just as in the past. It is not unusual for the directorate to take over property on the pretext that the foundation is not using the property for its original purpose or does not have a legally constituted board.<sup>39</sup> Similarly, it is known to have expropriated properties that had been held in the name of individual community members after the community members had emigrated or died without heirs. In addition, non-Muslim minority groups have encountered particularly lengthy and burdensome processes of application to acquire property<sup>40</sup> despite the fact that article 39 of the Lausanne Treaty established them the right to property.

In the spring of 2006, the Turkish Parliament was meant to review and approve a new Law on Foundations, which would regulate how "community foundations" own and recover property. At the time of writing, the status of the law remains unclear. It appears though, that both the government and

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<sup>36</sup> ECRI, *Third Report on Turkey*, February 2005, p. 24, [http://www.coe.int/t/e/human\\_rights/ecri/1-ecri/2-country-by-country\\_approach/turkey/turkey\\_cbc\\_3.asp#P335\\_49331](http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/turkey/turkey_cbc_3.asp#P335_49331)

<sup>37</sup> Forum 18 News Service, Otmar Oehring, "Turkey: Little Progress on Religious Freedom," 26 July 2006, <http://www.forum18.org>

<sup>38</sup> Greek Helsinki Monitor, Panayote Dimitras, "'Dwindling, Elderly and Frightened' – The Greek Minority in Turkey Revisited," AIM Athens, 31 January 2000.

<sup>39</sup> Nurcan Kaya and Clive Baldwin, *Minorities in Turkey: Submission to the European Union and the Government of Turkey*, 1 July 2004, <http://www.rightsagenda.org/main.php?id=30&lg=en>

<sup>40</sup> US Department of State, *Turkey: International Religious Freedom Report 2005*, November 2005, <http://www.state.gov/g/drl/rls/irf/2005/51586.htm>

most parliamentarians are unwilling to solve the problem promptly and adequately, including by offering compensation for the lost property in case its recovery itself is not made possible, as required by the European Commission.<sup>41</sup>

### *Training of Clergy*

Despite the fact that article 40 of the Lausanne Treaty provides for the recognized minorities the right to establish, manage and control at their own expense “any establishments for instruction and education,” the Greek Orthodox Church in Turkey is unable to train its own clergy in Turkey.

- The traditional theological seminary for training of Greek Orthodox clergy, the Theological School of Halki at Heybeliada, was forced to close in 1971 under a law that prohibited private institutes of higher education. It has not been allowed to reopen as a private seminary. In May 2006, the Turkish government offered to reopen the seminary as part of the Istanbul University, but the Patriarchate turned the offer down<sup>42</sup> fearing that the church would lose control over the training of its own clergy.

### *Other Forms of Discrimination and Harassment*

There are everyday instances of popular disdain towards non-Muslim minorities. For example, as mentioned above, it is still nearly impossible to openly and freely discuss the genocide of 1.5 million Armenians and Assyrians in the last years of the Ottoman Empire, a fact that is officially denied. This denial reflects a general reluctance to grant a minority some kind of a recognition that would differentiate them from the Turkish oneness.

There have also been instances of violence that reflect anti-Christian motives.

- For instance, in early 2006, the Armenian Church of St. Gregor was fired at by non-identified individuals shouting anti-Christian slogans. Similarly, by mid-2006, there have already been four attacks on Catholic priests and two on Protestant church leaders, with two resulting in deaths. In one case, the perpetrator had been known to divulgate to the press false and ominous information about the priest and his church in an attempt to feed anti-Christian mentality in Turkey.<sup>43</sup>

### Non-Recognized Religious Minorities: The Alevis

The Alevis are not recognized as a minority by Turkish authorities, a fact that partly explains why they often fall victim to discrimination in Turkey. Even worse, in the view of the Directorate of Religious Affairs, the minister of education and Prime Minister Erdogan, Alevis are a cultural rather than religious group. Therefore, *Cem* houses, where Alevis worship, are officially regarded as “culture houses” rather than places of worship.<sup>44</sup>

By way of defining Alevis as a cultural group, Alevis have been hindered from exercising their right to establish their own religious institutions, or *cemevis*, which currently do not enjoy a legal status as places of worship. Although the law does not specify the type of places of worships, applications for

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<sup>41</sup> Forum 18 News Service, Otmar Oehring, “Turkey: Little Progress on Religious Freedom,” 26 July 2006, <http://www.forum18.org>

<sup>42</sup> See, for example, *Turkish Daily News*, 3 May 2006.

<sup>43</sup> *Compass* (Barbara G. Baker)/HRWF, “Catholic Priest Knifed in Northern Turkey,” 5 July 2006, [http://www.hrwf.net/html/2006PDF/Turkey\\_2006.pdf](http://www.hrwf.net/html/2006PDF/Turkey_2006.pdf)

<sup>44</sup> US Department of State, *Turkey: International Religious Freedom Report 2005*, November 2005, <http://www.state.gov/g/drl/rls/irf/2005/51586.htm>

establishing *cemevis* have been rejected on the basis that they are cultural centers rather than places of worship<sup>45</sup> – an excuse which is also lame in light of international human rights standards on the right to enjoy one’s culture. According to *Diyanet* leader Ali Bardakoglu, authorities are “not opposed to *cemevis*, but they are not an alternative to mosques.” Despite declared secularism, the Turkish state keeps funding Sunni mosques and preachers but not places of worship and clergy of other religions.<sup>46</sup>

In Turkey, “Religious, Culture, and Knowledge of Morality” Islamic classes are compulsory for all school pupils except for non-Muslim minorities. Yet, the classes focus on knowledge from and about the Sunni religion, with no or at times even discriminatory statements about non-Sunni branches of Islam and about religions other than Islam.<sup>47</sup> The compulsory participation in these classes is clearly a form of discrimination against, for example, the Alevi children who have no option but to attend state schools with such classes, as opposed to the children of recognized non-Muslim minorities who are exempt from the class. In 2004, Alevis had warned that if the government does not introduce separate religious education for Alevi children, they will lodge a case against it at the ECtHR in Strasbourg.<sup>48</sup> According to media reports, the ECtHR ruled in the summer of 2006 that to make religion courses in schools obligatory for all Muslims, including Alevis, is a violation of the ECHR on the freedom of religion and conscience. In response to this recent criticism, the Education Ministry has announced that Alevism will be included in the curriculum of “Religious, Culture, and Knowledge of Morality” classes by 2007.<sup>49</sup>

Many Alevis also report about other forms of discrimination against them in everyday life and suffer from rumors and prejudices spread by some politicians and other individuals.

#### **8.4. Language Rights**

Both recognized and non-recognized minorities face serious problems with respect to the right to education in one’s own language or of them.

The legal reforms of the past few years have lifted some restrictions on instruction of minority languages, and the ban on broadcasting in some minority languages, but under many conditions and only in a few languages. The instruction of minority language is legal only in private educational institutions and under strict conditions.

#### Recognized Minorities

Non-Muslim religious minorities have encountered problems in applying the principles of article 40 of the Lausanne Treaty regarding language education, which states that non-Muslim minorities should have the “equal right to establish, manage and control at their own expense [...] any schools and other establishments for instruction and education, with the rights to use their own language.”

In reality, however, the proper functioning of minority schools is hindered in several ways. Firstly, minorities still encounter problems obtaining teaching materials or in getting those teaching materials approved. Secondly, minorities are suffering from state restrictions on minority teachers.

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<sup>45</sup> Nurcan Kaya and Clive Baldwin, *Minorities in Turkey: Submission to the European Union and the Government of Turkey*, 1 July 2004, <http://www.rightsagenda.org/main.php?id=30&lg=en>

<sup>46</sup> *Washington Times*, Nicholas Birch, 24 May 2006, posted at <http://www.wwrn.org/article.php?idd=21638&sec=33&con=54>

<sup>47</sup> *Ibid.*

<sup>48</sup> Forum 18 News Service, Otmar Oehring, “Turkey: Little Progress on Religious Freedom,” 26 July 2006, <http://www.forum18.org>

<sup>49</sup> The final ECtHR verdict is expected in the fall of 2006. *New Anatolian/HRWF*, “No Obligatory Classes Means Religious Illiteracy,” 6 July 2006, [http://www.hrwf.net/html/2006PDF/Turkey\\_2006.pdf](http://www.hrwf.net/html/2006PDF/Turkey_2006.pdf)

Thus, for example, Greek minority teachers are restricted in the schools where they can teach and must be of Turkish citizenship. Similarly, the training of Armenian language teachers is very limited possibly pending acceptance by the Turkish authorities of an Armenian department within an Istanbul university for the study of the Armenian language.<sup>50</sup>

### The Circassians

The Circassians appear to have lost – among other bits of cultural identity – their language, and the younger generations no longer speak it. Yet, because of Turkey’s policies on hindering minority languages, it is most difficult for Turkey’s Circassians to rescue their language. Circassians themselves insist that permission to give private language courses is not sufficient to save the language – it would be crucial that the Turkish government supports the opening of Circassian language schools.<sup>51</sup>

### The Laz

The Laz are also suffering from Turkey’s policies of assimilation in terms of language restrictions. Whereas Turkey approved the broadcasting of programs in minority languages in 2002 – a move which resembled more a symbolic gesture toward the EU than a genuine reform in favor of its minorities – it only authorized the broadcasting of the programs in five minority languages: the two Kurdish dialects of Zaza and Kurmanci, Arabic, Bosnian, and Circassian. The Laz language was not authorized. Then, in 2004, the state sanctioned a daily program called “Our Cultural Richness” on TRT-INT, the national television, but still excluded the Laz language. This practice is in violation of Section III, article 39 of the Lausanne Treaty which “guarantees all citizens of Turkey the right to use any language in press and publications of any kind.”<sup>52</sup>

### The Kurds

The limitation in the use of the Kurdish language amounts to a limitation of the Kurds’ freedom of expression. While some progress has been made in language rights – for example, letters that appear in the Kurdish alphabet but not in the Turkish one are no longer banned from print – Turkish authorities still continue to hinder the Kurds from using their language when it may reflect some ethnic pride. For example, a specific law prevents the use of minority language in politics. The Law on Political Parties prohibits using a language other than Turkish “in writing and printing party statutes or programs; at congresses, at meetings in open air or indoor gatherings; at meetings and in propaganda; in placards, picture, phonograph records, voice and visual tapes, brochures and statements.”

- On 20 April 2006, *Kürt-Der* (the Kurdish Association) was closed under the Association Law on the grounds that it was working for an extension of broadcasting and education in Kurdish, and had conducted its internal business in the Kurdish language.<sup>53</sup>
- On 8 June 2006, a trial against leaders of HAK-PAR started under the Political Parties Law for speaking Kurdish at their party congress.<sup>54</sup>

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<sup>50</sup> European Commission Against Racism and Intolerance, *Third Report on Turkey*, February 2005, p. 37, [http://www.coe.int/t/e/human\\_rights/ecri/1-ecri/2-country-by-country\\_approach/turkey/turkey\\_cbc\\_3.asp#P335\\_49331](http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/turkey/turkey_cbc_3.asp#P335_49331)

<sup>51</sup> ADN Kronos International, “Turkey: Circassian Minority Asserts its Identity,” 29 May 2006, [http://www.adnki.com/index\\_2Level\\_English.php?cat=Trends&loid=8.0.303906484&par=0](http://www.adnki.com/index_2Level_English.php?cat=Trends&loid=8.0.303906484&par=0)

<sup>52</sup> Nurcan Kaya and Clive Baldwin, *Minorities in Turkey: Submission to the European Union and the Government of Turkey*, 1 July 2004, <http://www.rightsagenda.org/main.php?id=30&lg=en>

<sup>53</sup> Human Rights Watch, “Letter calling for release of Kurdish activists Ibrahim Guclu, Zeynel Abidin Ozalp and Ahmet Sedat Ogur, and expressing alarm at gathering threats to reform process,” 7 June 2006, <http://hrw.org/english/docs/2006/06/07/turkey13519.htm>

<sup>54</sup> Ibid.

## 8.5. Economic and Social Rights

### The Roma<sup>55</sup>

The fate of the Roma in Turkey is first and foremost jeopardized by the fact that the Roma are not formally recognized as a minority by Turkish authorities. This means that any of their attempts to organize culturally can be interpreted as acts against the Turkish state and punished accordingly. Similarly, this means that a Roma cannot legally claim they have been targeted on the basis of their ethnicity, meaning that “discrimination” can, in legal terms, not exist in Turkey with regard to Roma.

Despite the fact that Roma are not recognized as a minority, existing provisions in Turkish legislation do discriminate against Roma. The Settlement Act No. 2510 of 1934 deals with the right of foreign nations to settle in Turkey. Article 4 forbids settlement in Turkey to persons who have no ties with Turkish culture, anarchists, spies, Roma (“itinerant gypsies”) and persons deported from Turkey. Moreover, other Turkish legislation stipulates that nomads and Roma are to be settled in sites designated by the Ministry of Health and Social Assistance. This legislation that explicitly prevents Roma from entering Turkey as immigrants is an unambiguous form of discrimination on the part of the authorities.

In addition, Roma are subject to other forms of discrimination by both authorities and the public. While non-Roma typically do not outwardly display hostile discriminatory attitudes towards Roma, the European Roma Rights Center (ERRC) notes that “there is a definite divide between Roma and non-Roma” and many Turks regard Roma as second-class citizens. Thus, in some locations Roma are not welcome in public places, can often not find employment, have problems renting or buying accommodation, and have restricted access to medical care.

The miserable housing conditions in which many Romani communities live further illustrate the degree of social exclusion of Roma people in Turkey. Roma live in both registered and unregistered housing, the latter being in dramatically worse condition than the former. In many Roma communities across Turkey, the conditions are far from adequate: windows and doors are missing, hardly any homes have running water, indoor sanitary facilities and electricity, trash is littering the area, and makeshift shafts often replace real houses.

What is more, Romani inhabitants of informal settlements are repeatedly being forcibly evicted by local authorities and by the police without adequate legal proceedings and without being provided alternative accommodations. According to the ERRC, some families have been evicted four or five times every year with a few days notice, meaning that they have to move every one or two months.

It is not unusual for these forced evictions to be accompanied by physical abuse by officials. The local authorities and the police are known to curse and to beat inhabitants of the housing blocks they are evacuating.

- On 9 February 2006, police undertook raids targeting Roma who were subsisting on scarp-iron collection in Kemikçiler quarter of the city of Edirne, northwest of Istanbul. The raids reportedly occurred after residents of Kiyık quarter in Edirne lodged a complaint about the Roma of Kemikçiler quarter, claiming that they were involved in burglary. Under the instruction of Security Director Hanefi Avcı, police raided the Kemikçiler quarter and also stopped two carriages leading towards the quarter. Police fired shots after Roma in the carriage ran away out of fear, killing one horse and heavily wounding the other as well as

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<sup>55</sup> Unless otherwise noted, based on European Roma Rights Center, *Issues Brief: Roma Rights in Turkey*, <http://www.errc.org/cikk.php?cikk=2254&archiv=1> and *Field Report: Roma in Turkey*, <http://www.errc.org/cikk.php?cikk=1345&archiv=1>

shooting someone on the foot. Police forces later surrounded the Kemikçiler quarter in anti-riot vehicles, firing shots in the air. During the raid, six Roma men, who allegedly took scrap-iron from Trakya University, were taken into custody and referred to the Edirne Public Prosecutor's Office, questioned and arrested by court order for allegations of "qualified extortion, resistance to police authorities, and damaging state property." Subsequently, six scrap-iron shops operating without a license were closed down by some thirty police officers.<sup>56</sup>

Unfortunately, almost no cases of violence are been reported to authorities by Roma due to the fear of victims of reprisals for reporting such cases.

Further instances of acute social exclusion, which amount to a variety of violations of economic, social and cultural rights of the Roma, include having difficulties accessing personal documents, which subsequently affects their ability to access social welfare, to medical care, and to legal marriage.

## **8.6. Forced Displacement**

### The Kurds

In the 1980s and 1990s, more than 378,000 Kurds were displaced and more than 3,000 villages completely destroyed as Turkish security forces forcibly evacuated Kurdish rural communities on the pretext of combating the PKK insurgency. However, the Turkish security forces did not distinguish the armed militants they were pursuing from the civilian population they were supposed to be protecting, partly due to their cooperation with insurgents. A so-called village guard system was established ostensibly to protect villagers from militants. In practice, villagers were, however, faced with a frightening dilemma: they could become village guards and risk being attacked by the PKK or refuse and be forcibly evacuated from their communities.<sup>57</sup>

These measures were taken under the State of Emergency Legislation, which also allowed for "temporary or permanent evacuations of villages."<sup>58</sup> This happened in a most brutal manner: Turkish security forces and the gendarmerie burned down villages, abused their inhabitants, and forced them away from their former homes. The operations were characterized by scores of "disappearances" and extrajudicial executions, torture, and other abuses.<sup>59</sup>

Upon arriving in towns and cities after being evacuated from their villages, most were unable to find employment which soon hindered them from gaining access to health care and education and, in the long term, precipitated them in poverty and social exclusion.

In 1994, the Turkish government launched the "Return to Village and Rehabilitation Project" to facilitate the return of IDPs, yet, for over a decade, the project remained under-funded, abstract, slow, and arbitrary. In 2004, there were signs that the government was beginning to realize that its policy on returns was in need of improvement and thus undertook to invigorate it. It formulated three promising initiatives, namely establishing a new government agency with special responsibility for IDPs, cooperating with the United Nations Development Program (UNDP) to help IDPs, and passing a law

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<sup>56</sup> European Roma Rights Center, *Police Raid Romani Community*, <http://www.errc.org/cikk.php?cikk=2581&archiv=1>

<sup>57</sup> Human Rights Watch, *'Still Critical' Prospects in 2005 for Internally Displaced Kurds in Turkey*, March 2005, p.5, <http://www.hrw.org/reports/2005/turkey0305/>

<sup>58</sup> Kurdish Human Rights Project, *Human Rights Violations Against Kurds in Turkey*, September 2005, p.25, <http://www.khrp.org/publish/p2005/ODIHR%20submission%202005.pdf>

<sup>59</sup> Human Rights Watch, *'Still Critical' Prospects in 2005 for Internally Displaced Kurds in Turkey*, March 2005, p.5, <http://www.hrw.org/reports/2005/turkey0305/>

on providing compensation for the displaced (Law no. 5233 on Compensation for Damage Arising from Terror and Combatting Terror).<sup>60</sup>

While the new government agency never came about, the UNDP program, however, was concretized when the UN agency launched the “Support to the Development of an IDP Program in Turkey” project at the “Internally Displaced Persons (IDP) Conference” in Ankara on 23 February 2006. The conference, co-organized with the Ministry of Interior as UNDP’s main partner in the IDP project, involved more than 80 participants from the Turkish government, national and international civil society organizations and international organizations.<sup>61</sup>

Despite its promising and positive contents, the Compensation Law is still not being implemented to successfully retribute the rights violated in the context of forced migration.<sup>62</sup> First and foremost, shortcoming in the scope of the Compensation Law create discrimination among IDPs, for example between those who suffered damages of property as opposed to those who suffered damages on life and body of a person, pain, or suffering. Second, the law requires a discouragingly lengthy and difficult judicial process, which is in part caused by a lack of independence and composition of the assessment commissions, criteria for excluding applications, limits on acceptable forms of evidence to support claims, the lack of legal support to help people make claims, and inadequate mechanisms to appeal against decisions by the commissions.<sup>63</sup>

The “Return to Village and Rehabilitation Project” also faces obstacles specifically relating to returns. For example, IDPs are often not able to return to their own villages, but resettled in a different rural area in the same region, aid is restricted to villagers, and the infrastructure is inadequate. In addition, dire economic conditions hinder returnees from regaining their livelihoods, and the village guard system still causes security threats to returnees.<sup>64</sup>

### **8.7. Sexual Minorities**

Whereas homosexuality is not illegal in Turkey and organizations defending lesbian, gay, bisexual and transgender (LGBT) rights have been able to become more visible in Turkish society in the past ten years, Turkish authorities have nonetheless refused to grant particular rights to sexual minorities in order to protect them from discrimination both by the authorities and other groups. The attitude of many Turkish officials toward homosexuals was characterized in the May 2006 Military Court of Appeals decision that ruled in a case of a homosexual conscientious objector that homosexuality is an “advanced psychological disorder.”<sup>65</sup>

In 2004, gay and lesbian activists were for the first time received in the Turkish Parliament to convey their appeals for legal protection. Their main demand – to make discrimination “on the basis of sexual orientation” an offence carrying a prison sentence – was first included in the draft of a major reform overhauling Turkey’s penal code sought by the EU, but it was not adopted in the final version of the code.<sup>66</sup>

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<sup>60</sup> Ibid.

<sup>61</sup> United Nations Development Programme, *New Horizons: UNDP Turkey Monthly Newsletter*, “Internally Displaced Persons Conference in Ankara,” March 2006, <http://tsc.unfpa.org/UNDP/eng/idp.htm>

<sup>62</sup> Turkish Economic and Social Studies Foundation, *The Problem of Internally Displacement in Turkey: Assessment and Policy Proposals*, June 2006, [http://www.tesev.org.tr/eng/events/ndemoc\\_intenal\\_disp.php](http://www.tesev.org.tr/eng/events/ndemoc_intenal_disp.php)

<sup>63</sup> Human Rights Watch, ‘Still Critical’ Prospects in 2005 for Internally Displaced Kurds in Turkey, March 2005, p.28, <http://www.hrw.org/reports/2005/turkey0305/>

<sup>64</sup> Turkish Economic and Social Studies Foundation, *The Problem of Internally Displacement in Turkey: Assessment and Policy Proposals*, June 2006, [http://www.tesev.org.tr/eng/events/ndemoc\\_intenal\\_disp.php](http://www.tesev.org.tr/eng/events/ndemoc_intenal_disp.php)

<sup>65</sup> BIA News Center, “Military Court Defies ECHR Rulings, 10 May 2006, <http://news.kaosgl.com/item/112>

<sup>66</sup> *Daily Star*, “Turkey’s Homosexuals Come Out for Their Rights,” 6 October 2004, <http://www.sodomylaws.org/world/turkey/tknews001.htm>.

Several recent events reflect the discrimination that sexual minorities are exposed to in Turkey. For example, gay rights groups have faced difficulties when trying to register as official organizations; gay organizations have been under the threat of closure; gay marches have been banned and police have failed to protect the participants of such events against angry mobs; and one whole issue of a gay magazine was confiscated. In all cases, prosecutors have cited provisions dealing with, for example, public decency, moral values, Turkey's traditions, and protection of the family. LGBT activists also say that most of them risk their jobs if they disclose their sexual identity.

- In July 2005, Kaos GL (in existence since 1994) applied for NGO status with the Ministry of the Interior. In September 2005, the deputy governor of Ankara reacted by saying that official registration of this LGBT organization is against the laws and morality rules and therefore the organization should be closed down. In October 2005, however, the prosecutor allowed Kaos GL to continue to operate.
- In 2006, the second legally registered LGBT organization in Turkey, Rainbow Solidarity and Research Cultural Association for Transgenders, Gays, and Lesbians, has been facing the similar process. At the time of writing, the risk of closure is still pending, reportedly on the grounds that the association's objectives are against the laws and morality rules, and under constitutional clauses relating to "protection of the family."<sup>67</sup>
- A gay march planned for early August 2006 was cancelled by the police because anti-gay protestors took to the streets to hinder the planned demonstration. The anti-gay protestors blocked the street and threw stones at the office of Rainbow, which was organizing the march, and the police ordered the LGBT demonstrators to stay indoor until the protestors had dispersed. As the marchers refused to do so, the police cancelled the march – instead of taking necessary measures to facilitate the march.<sup>68</sup>
- In July 2006, a whole print run of Kaos GL's magazine was confiscated by court order on the grounds that the issue constituted pornography. The issue's special section was entitled "Vision of Sexuality, Sexuality of Vision: Pornography," with contributions by writers, academics, feminists, painters, and photographers discussing "cultural and artistic criticism of pornography via gay-lesbian sexuality," according to the Kaos GL's editors, who insisted the magazine was "criticising and questioning pornography."<sup>69</sup>

## 9. RECOMMENDATIONS

Minority issues are a fundamental part of any analysis of the human rights situation in Turkey, in particular when it comes to assessing the overall human rights situation with regard to EU accession negotiations.

In light of the many violations of internationally accepted standards for minority rights and protection, some of which have been highlighted in this report, the IHF recommends to the government of Turkey to:

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<sup>67</sup> International Lesbian and Gay Association, "Another Turkish gay rights group risks closure in the city of Bursa," 24 May 2006, [http://www.ilga.org/news\\_results.asp?LanguageID=1&FileCategory=1&ZoneID=4&FileID=807](http://www.ilga.org/news_results.asp?LanguageID=1&FileCategory=1&ZoneID=4&FileID=807); GCN.ie, "Turkey's Gays Attacked by Government As Well As Mobs," 10 August 2006, <http://www.gcn.ie/content/templates/newsupdate.aspx?articleid=1134&zoneid=4>

<sup>68</sup> International Lesbian and Gay Association, "Gay March Cancelled in Bursa," 9 August 2006, [http://www.ilga.org/news\\_results.asp?LanguageID=1&FileCategory=1&ZoneID=4&FileID=876](http://www.ilga.org/news_results.asp?LanguageID=1&FileCategory=1&ZoneID=4&FileID=876)

<sup>69</sup> BIA News Center, "Ban on Gay Publication is Going to ECHR," 4 August 2006, <http://news.kaosgl.com/item/127>

1. Promptly reform its official minority policy so as to reflect the actual existence of minorities in Turkey, and to officially recognize all ethnic and religious minorities and provide them the support and protection guaranteed by the international human rights instruments Turkey is party to;
2. In the meantime, actively implement legislation in force aimed at promoting the education, language, property and other rights of the three now formally recognized minority groups;
3. Ensure that all religious minority groups are able, without bureaucratic and other hindrances placed by authorities, to exercise their freedom of religion, and - in accordance with the principle of secularism pledged by the Turkish state - treat all religious communities in an equal manner.
4. Withdraw Turkey's reservations with regard to article 27 of the ICCPR, and paragraphs 3 and 4 of article 13 of the ICESCR.
5. Take steps to sign and ratify the Framework Convention for the Protection of National Minorities so as to improve formal protection of minority rights;
6. Engage in a legal reform to ensure that Turkish legislation fully conforms to Turkey's international human rights obligations and European standards. As the first step to this end, the government should
  - a. propose amendments to any openly discriminatory piece of legislation such as article 4 of Settlement Act No. 2510 of 1934 against the settling of "itinerant Gypsies"; and
  - b. encourage the adoption of a new law which would guarantee religious foundations adequate rights, including rights to property and training;
7. Eliminate the "village guard" system, actively undertake the restoring of the infrastructure of the villages that were destroyed in southeastern regions in the two past decades, and compensate the displaced individuals adequately so that they can escape the vicious circle of economic and social exclusion;
8. In close cooperation with representatives of Roma communities, elaborate and implement comprehensive integration programs aimed at ending the economic, social, and cultural exclusion currently experienced by the Roma and find a solution to the housing problem by providing alternative housing options to those Roma that are evicted from unregistered housing;
9. Commit to devising and implementing programs and strategies to combat homophobia, homophobia-related violence and hate-speech, with special attention given to training of the police forces and the judiciary, as well as investigate all cases of violence toward members of the LGBTI community and bring the perpetrators to justice.

The IHF recommends to the European Union to:

1. Regard the formal recognition of the religious and ethnic minorities in Turkey as a central criterion to assess Turkey's progress with its minority policies and practices in light of EU standards;
2. Establish the safe return of IDPs to the southeastern Turkey as an integral part of successful minority policy and to launch cooperative programs with Turkey to facilitate the safe and sustainable return of IDPs;
3. Establish religious freedom as a fundamental criteria to assess the progress of Turkey's vis-à-vis its minorities;

4. Demand efficient measures to promote the rights of sexual minorities and enhance their protection.
5. Monitor that the reforms in favor of the minorities are genuine and also implemented in practice.