

**ECRI CONCLUSIONS
ON THE IMPLEMENTATION OF THE RECOMMENDATIONS
IN RESPECT OF TURKEY SUBJECT TO INTERIM FOLLOW-UP**

Adopted on 5 December 2013¹

¹ Any developments which occurred after 25 March 2013, date on which the response of the Turkish authorities to ECRI's request for information on measures taken to implement the recommendations chosen for interim follow-up was received, are not taken into account in this analysis.

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FOREWORD

As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

Accordingly and in line with the guidelines for the fourth round of ECRI's country-by-country work brought to the attention of the Ministers' Deputies on 7 February 2007¹, not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

¹ CM/Del/Dec(2007)986/4.1.

1. In its report on Turkey (fourth monitoring cycle) published on 8 February 2011, ECRI strongly recommended that the Turkish authorities reinforce the criminal law provisions aimed at combating racism along the lines advocated by General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, in particular by providing that racist motivations constitute an aggravating circumstance in respect of all ordinary offences.

The authorities have informed ECRI that several bills aiming to combat racism¹ and racial discrimination² have been brought before the Turkish Grand National Assembly (TGNA), but that no amendment to the Criminal Code provisions on combating racism has been adopted since the publication of ECRI's fourth report. Therefore ECRI considers that this recommendation has not been implemented.

2. Bearing in mind the particular vulnerability of refugees and asylum-seekers, ECRI urged the authorities in its report on Turkey (fourth monitoring cycle) to find rapidly a solution, whether through amendments to the relevant legislation or, if these cannot be made rapidly, within its existing terms, to exempt all refugees and asylum-seekers from the payment of residence fees. In this respect ECRI recommends that the authorities keep under review the impact in practice of Circular No. 19 on Refugees and Asylum-Seekers issued by the Ministry of the Interior on 19 March 2010 in order to assess its effectiveness in resolving the issues at stake.

The authorities have informed ECRI that Article 88d of Law No. 492 on Administrative Fees provides that residence permits shall be given free of charge to persons in need. Governors' offices have been instructed to apply the above mentioned Circular No. 2010/19, which exempts indigent refugees and asylum seekers from the payment of residence fees. An evaluation carried out on 12 March 2012 at Sakarya has shown that the authorities applied the circular effectively. ECRI has also been informed by non-governmental sources that the competent authorities comply with this circular.

Furthermore, the Law on Foreigners and International Protection No. 6458 was enacted on 4 April 2013. Its Articles 76 (4) and 83 (3) provide that persons who apply for or who are granted international protection receive an identification document free of charge, which replaces residence permits.

ECRI therefore considers that this recommendation has been fully implemented.

3. In its report on Turkey (fourth monitoring cycle) ECRI recommended that the Turkish authorities enact and implement as soon as possible legislation establishing a body, independent of the police and other security forces and of the prosecution authorities, entrusted with the investigation of alleged cases of misconduct by the members of the police or other security forces, including ill treatment directed against members of minority groups.

The authorities have informed ECRI that the Turkish Gendarmerie Human Rights Violations Investigation and Evaluation Centre was established on 26 April 2003. Moreover, the Civil Service Inspection Board under the Ministry of Interior and the Human Rights Inquiry Committee of the TGNA investigate alleged cases of ill-treatment by police officers and other security forces. The latter inspects periodically prisons and police stations. On 12 March 2012, a bill on the establishment of a Law Enforcement

¹ According to General Policy Recommendation (GPR) No. 7 racism means the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons or the notion of superiority of a person or a group of persons.

² According to GPR No. 7 racial discrimination is any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

Oversight Commission was submitted to the TGNA. It aims to set up a more efficient complaints system and a centralised registry system for all complaints.³

ECRI recommends, in § 10 of its General Policy Recommendation (GPR) No. 11 on combating racism and racial discrimination in policing, to establish a body, independent of the police and prosecution authorities, which should exist alongside other structures competent for receiving complaints against police misconduct, such as the internal disciplinary mechanisms. The European Court for Human Rights rules that the persons responsible for and carrying out such investigation need to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence.⁴ Investigations carried out by administrative entities cannot be regarded as independent if they are chaired by persons who are themselves responsible for the security forces and if the investigations are carried out by security forces linked hierarchically to the units concerned.⁵ For ECRI it is necessary to create a system whereby a victim can bring a complaint in full confidence to an independent body whose main task is to control the activities of the police. When the facts brought to its knowledge are of a criminal nature, this body must be required to bring the case before the prosecuting authorities. The body might be a national institution for the protection and promotion of human rights, a specialised police ombudsman, a civilian oversight commission on police activities or the specialised body which ECRI recommends setting up in its GPR No. 2 on specialised bodies to combat racism.

In contrast, according to Article 3 (1) of the bill, the Law Enforcement Oversight Commission would act under the Ministry of Interior. The Commission would be headed by the Under Secretary of the Ministry of Interior and be composed of senior ministry officials and members chosen by the government among candidates proposed by the Ministries of Interior and Justice (Article 3 (2) of the bill). Even if Article 3 (1) and (5) of the bill states that the Commission shall perform independently under its own responsibility and that no authority can give orders or instructions, ECRI considers that such a commission which is essentially composed of ministry officials and members chosen by the Ministries of Interior and of Justice would not be in line with GPR No. 11, as the connection with the police and prosecution services would be far too close.⁶ Such a commission would not provide victims of racism or racial discrimination with the possibility of bringing a complaint in full confidence. Furthermore, Article 4 (1) b of the bill only gives the Commission the power to request the competent body to conduct a disciplinary investigation, but not the power to conduct an investigation itself or to bring a case before the prosecuting authorities.

ECRI therefore considers that this proposal would not be in line with its GPR No. 11 on combating racism and racial discrimination in policing, as the Law Enforcement Oversight Commission would not be independent and would lack the necessary investigation powers.

³ Concerning the obligation to investigate on possible racist motives cf. ECHR, Natchova and others v. Bulgaria [GC], nos. 43577/98 and 43579/98, 6.7.2005, §§ 160 to 168; Dink v. Turkey, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14.9.2010, § 81.

⁴ Concerning the requirement of independence, but also the other requirements concerning such investigation cf. Kelly and others v. The United Kingdom, no. 30054/96, 4.5.2001, §§ 95 to 98; Natchova and others v. Bulgaria [GS], nos. 43577/98 and 43579/98, 6.7.2005, § 112; Güleç v. Turkey, no. 54/1997/838/1044, 27.7.1998, §§ 81-82; Ergi v. Turkey, no. 66/1997/850/1057, 28.7.1998, §§ 83 to 84; ECHR Right to life factsheet, June 2013, pp. 4 et seq.

⁵ See, among other authorities, ECHR, Döndü Erdoğan v. Turkey, no. 32505/02, 23 March 2010, § 55, and the cases referred to therein.

⁶ See § 58 of the Explanatory Memorandum to ECRI's GPR No. 11.

The Turkish authorities also informed ECRI that a public monitoring institution (Ombudsman's Office) was established by Law No. 6328 adopted on 16 June 2012. The Ombudsman's Office can, upon receipt of a complaint, examine, investigate and make recommendations to public authorities (Articles 7 and 17 to 21 of the Law). Being part of the TGNA Speaker's Office, the Ombudsman's Office is only accountable to the TGNA, cannot receive instructions from anybody and has a separate budget which is approved by the TGNA.

ECRI welcomes the creation of the Ombudsman's institution in Turkey as an important milestone towards better protection against racism and racial discrimination. It considers that the Ombudsman's Office might also take on the function of the independent body entrusted with the investigation of alleged cases of racial discrimination and racially motivated misconduct by the police, as described in § 10 of GPR No. 11. However, to date, it lacks the power to carry out investigations on its own initiative. If it brings cases against police officers before the public prosecution services, the effectiveness of the investigation will be affected by the well-known obstacle that the prosecution services need, in most cases, the permission of the highest administrative authority to be allowed to prosecute (Articles 2 to 4 of Law No. 4483).⁷ ECRI has also been informed about concerns regarding the impartiality and neutrality of the Ombudsmen.⁸ During the ongoing development phase of the Ombudsman's Office, its independence is affected by the need to employ staff from other public institutions via temporary assignment.⁹ Authorities do not easily grant such secondments. Finally, there is no information available on whether the Ombudsman's Office investigates cases of police misconduct and whether it does it in an efficient and independent way.

ECRI therefore considers that this recommendation has not yet been implemented.

⁷ See e.g. Izgi v. Turkey, no. 44861/04, 15.11.2011.

⁸ The Institution is composed by the Chief Ombudsman and up to 10 other ombudsmen.

⁹ Cf. § 2.4 of the General Observations of the ICC Subcommittee on Accreditation (2009), available as Annex III at

<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20MARCH%202012%20FINAL%20REPORT%20ENG%20WITH%20ANNEXURES.pdf>, site accessed on 24.09.2013.

