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Honouring of obligations and commitments by Turkey

Report
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe
Co-Rapporteurs: Mrs Mady Delvaux-Stehres, Luxembourg, Socialist group and Mr Luc Van den Brande, Belgium, Group of the European People's Party

Summary

The Co-Rapporteurs consider that Turkey has achieved more reforms in a little over two years than in the previous decade. They welcome the adoption in October 2001 of important changes to the Constitution, seven reform packages approved by parliament between February 2002 and August 2003 and numerous other laws, decrees and circulars to implement these reforms.

In particular they congratulate the authorities on abolishing the death penalty, instituting "zero tolerance" towards torture and impunity, lifting many restrictions to freedom of expression, association and religion and granting certain cultural rights to the Turkish citizens of Kurdish origin. They also congratulate the authorities on transforming the National Security Council into a consultative body.

Given the progress achieved since 2001, the Co-Rapporteurs consider that Turkey has clearly demonstrated its commitment and ability to fulfil its statutory obligations as a Council of Europe member state. They are confident that the Turkish authorities will apply and consolidate the reforms in question. The Co-Rapporteurs therefore propose to close the monitoring procedure under way since 1996.

The Co-Rapporteurs suggest entering into a post-monitoring dialogue with Turkey on a twelve-point list of outstanding issues, including a major reform of the 1982 Constitution, amendments to the electoral code, recognition of national minorities, continued efforts to combat violence against women, the fight against corruption and the right to conscientious objection and alternative civil service.

I Draft resolution

1. Turkey has been a member of the Council of Europe since 1949 and as such has undertaken to honour the obligations concerning pluralist democracy, the rule of law and human rights arising from Article 3 of the Statute. It has been the subject of a monitoring procedure since the adoption, in 1996, of Recommendation 1298 on Turkey's respect of commitments to constitutional and legislative reforms.

2. On 28 June 2001, in Resolution 1256 (2001), the Parliamentary Assembly welcomed the progress made by Turkey but decided to continue the monitoring process and review progress, pending a further decision to close the procedure.

3. The Assembly notes that, despite a serious economic crisis in 2001, the political instability that led to early elections in November 2002 and the uncertainties caused by the war in Iraq, the Turkish authorities have not deviated from their efforts to implement the reforms necessary for the country's modernisation. Turkey has achieved more reforms in little more than two years than in the previous ten.

4. The Assembly welcomes the adoption in October 2001 of important changes to the Constitution, seven reform packages approved by parliament between February 2002 and August 2003 and numerous other laws, decrees and circulars to implement these reforms.

5. It notes with satisfaction that, despite initial concern in November 2002 about the accession to power of the Justice and Development Party, led by Mr Erdogan, the new government, with the unstinting support of the only opposition party, the Republican People's Party (CHP), has so far made good use of its absolute majority in parliament to expedite and intensify the reform process.

6. With regard to pluralist democracy, the Assembly recognises that Turkey is a functioning democracy with a multi-party system, free elections and separation of powers. The frequency with which political parties are dissolved is nevertheless a real source of concern and the Assembly hopes that in future the constitutional changes of October 2001 and those introduced by the March 2002 legislation on political parties will limit the use of such an extreme measure as dissolution. The Assembly also considers that requiring parties to win at least 10% of the votes cast nationally before they can be represented in parliament is excessive and that the voting arrangements for Turkish citizens living abroad should be changed.

7. With regard to institutional arrangements, the Assembly congratulates Turkey on reducing the role of the National Security Council to what it should never have ceased to be, namely a purely consultative body concerned with defence and national security. The amendment to Article 118 of the Constitution and those to the legislation governing the National Security Council and its secretariat represent fundamental progress that is to be welcomed. Turkey must now complete this reform by taking the necessary steps to exclude army representatives from civil bodies such as the Higher Education Council (YÖK) or the supreme public broadcasting council (RTÜK) and to establish parliamentary oversight of military activities, particularly from a financial standpoint. Despite Turkey's geostrategic position, the Assembly also demands that Turkey recognise the right of conscientious objection and introduce an alternative civilian service.

8. The Assembly welcomes the fact that procedure in the state security courts, particularly regarding the rights of the defence, has been brought into line with ordinary criminal law, that the maximum period of police custody for collective offences has been reduced from fifteen to four days and that all detained persons, including those suspected of offences dealt with by the state security courts, are entitled to see a lawyer from the first hour of police custody.

9. The Assembly also welcomes the Turkish authorities' proposals to abolish the state security courts, which will require a further revision of the Constitution. It strongly urges Turkey, as it did in 2001, to draw on the experience of the Venice Commission for any further constitutional revisions. It believes that the 1982 Constitution, which has already been frequently modified, would gain in coherence and clarity from a complete overhaul. The Assembly also recommends that the Turkish authorities consider granting individuals direct access to the Constitutional Court.

10. The Assembly also calls on the Turkish authorities as soon as possible to implement their proposals to appoint an Ombudsman and congratulates Turkey on the steps taken to improve dialogue with NGOs, particularly via the new composition of regional human rights councils and the more flexible legislation on associations. NGOs' freedom of action nevertheless needs to be strengthened.

11. The Assembly welcomes Turkey's determination to fight corruption, particularly through the establishment of several parliamentary committees of inquiry, its approval in January 2003 of an emergency anti-corruption plan and its ratification of the Council of Europe's Civil Law Convention on Corruption. It hopes that Turkey will also ratify the Criminal Law Convention on Corruption and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

12. The Assembly welcomes the significant advances in women's rights resulting from the constitutional revision of October 2001, the entry into force in January 2002 of the new Civil Code and the August 2002 Job Security Act. Modern states must provide for equality between all their citizens, particularly as it affects access to employment, public and elective offices, health and education. It calls on the Turkish authorities to introduce programmes to eradicate female illiteracy, which is essential for women to be able to exercise their rights. The Assembly has noted with satisfaction that the Criminal Code was amended in July 2003 to make it impossible to plead mitigating circumstances for honour crimes. It calls on the authorities to take a clear stand against honour crimes and domestic violence and to offer women support, particularly by increasing the number of refuges.

13. Regarding fundamental freedoms, the Assembly congratulates Turkey for finally abolishing the death penalty, ratifying Protocol No. 6 in November 2003 and signing Protocol No. 13 in January 2004.

14. It also congratulates Turkey for its commitment to combating torture and impunity - the authorities' zero tolerance policy is starting to bear fruit. Improvements to conditions in police custody, greater safeguards for the rights of the defence and entitlement to medical examinations have been welcomed by the CPT, whose recommendations, including those relating to detention conditions, have been systematically implemented. The Assembly regrets that, despite these efforts, cases of treatment incompatible with Article 3 of the ECHR have been reported. It therefore urges the Turkish authorities to remain vigilant and ensure that their instructions are followed throughout the country.

15. The Assembly considers that, as part of the fight against impunity, abolishing the requirement to secure prior administrative approval to prosecute officials charged with torture or inhuman or degrading treatment, removing the power to suspend prison sentences or commute them into fines, making it obligatory to investigate complaints from victims as a priority and requiring prosecutors to conduct investigations personally all represent considerable progress. It also notes that considerable efforts have been made to improve police and gendarmerie training, with Council of Europe assistance.

16. The Assembly takes note of important measures to liberalise the legislation on freedom of expression: section 8 of the Anti-Terrorism Act has simply been repealed, articles 312, 159, 169 of the Criminal Code and section 7 of the Anti-Terrorism Act have been amended to make them more compatible with the case-law of the European Court of Human Rights and the legislation on press-related offences has been amended. However, the Assembly still awaits progress on the offences of defaming or insulting the principal organs of state, which should no longer be liable to imprisonment.

17. The Assembly notes that important progress has been made regarding freedom of association. Under the amended article 33 of the Constitution, only the courts may refuse to register associations' statutes or dissolve or suspend their activities. The 1983 Associations Act has been considerably revised, particularly as regards prior scrutiny of associations' activities. Concerning freedom of assembly, meetings can now only be banned if they pose a clear threat to public order.

18. Turning to freedom of religion and the treatment of religious minorities, the Assembly congratulates the Turkish authorities for amending the legislation on religious foundations and on constructions, which will now allow the bodies concerned to buy and sell property and build new places of worship.

19. Turkey is a secular Muslim state. This unique state of affairs is evidence of its attachment to European democratic values, based on tolerance and mutual respect. Turkey must ensure that the state's neutrality continues to be respected and that the religious sphere does not interfere with the principles of governance of a modern society.

20. The Assembly welcomes the lifting of the state of emergency in the remaining four south-eastern provinces where it was still in force, and the passing of the Reintegration Act in July 2003, which has permitted the release, among others, of several thousand Turkish citizens of Kurdish origin and a return to normal life for hundreds of other persons who have given themselves up to the authorities. The Assembly also hopes that parliament will shortly approve the draft legislation to compensate the victims of terrorism or of measures taken by the government to combat terrorism. Nearly five years after the end of hostilities, the Assembly believes that the time has come to invest more in the region's economic and social reconstruction. It notes the Turkish authorities' commitment to developing the "village return" programme, with the assistance of the World Bank and the UN. The Assembly also welcomes the recent adoption of the law encouraging investments in provinces with low per capita income.

21. The Assembly regrets that Turkey has still not ratified the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. Nevertheless, it considers that the first steps have been taken towards recognising the cultural rights of members of different ethnic groups and notably of persons of Kurdish origin. The Constitution has been revised and no longer bans the use of languages other than Turkish, it is now possible to open language schools for studying the Kurdish language or languages, radio and television broadcasts are now authorised in Kurdish and parents may choose Kurdish first names for their children. The Assembly strongly encourages the Turkish authorities to continue promoting cultural and linguistic diversity and hopes that the measures will have a real impact on the daily lives of those concerned, particularly their access to the judicial and administrative authorities and the organisation of health care.

22. The Assembly notes that the points it made in Resolution 1256 (2001) concerning the implementation of judgments of the European Court of Human Rights have been dealt with satisfactorily:

i. it congratulates the Turkish authorities for introducing the necessary changes to domestic legislation in 2002 and 2003 to permit the retrial of cases following findings by the Court of a violation of the Convention, which in particular has permitted the reopening of the trial of Leyla Zana and three other members of parliament in the Ankara security court. The Assembly regrets that, pending the outcome of the proceedings, the security court has rejected the four former parliamentarians' applications for release on bail, even though they have been in custody for more than ten years;

ii. it also notes that more than five years after the judgment awarding Mrs Loizidou just satisfaction, and in accordance with Article 46 by which, like all the other parties, it is bound, Turkey has finally agreed unconditionally to make the required payment. It reminds the Turkish authorities that they must still execute the judgment on the merits in the same case, delivered in 1996, and in particular adopt general measures to avoid repetition or continuation of the violations found by the Court. It asks Turkey to continue to co-operate fully with the Committee of Ministers in its difficult task of securing the proper implementation of judgments, particularly in the *Cyprus v. Turkey* inter-state case.

23. The Assembly therefore invites Turkey, as part of its authorities' current reform process, to:

i. carry out a major reform of the 1982 Constitution, with the assistance of the Venice Commission, to bring it into line with current European standards and in the meantime repeal or modify articles 131.1 and 127 and those relating to the state security courts;

ii. amend the electoral code to lower the 10% threshold and enable Turkish citizens living abroad to vote without having to present themselves at the frontiers;

- iii. recognise the right of conscientious objection and establish an alternative civilian service;
 - iv. establish the institution of Ombudsman;
 - v. ratify the Criminal Law Convention on Corruption, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages and the Revised Social Charter and accept the Social Charter provisions that it has not accepted;
 - vi. complete the revision of the Criminal Code, with the Council of Europe's assistance, bearing in mind the Assembly's observations on the definitions of the offences of insulting language and defamation, rape and honour crimes and more generally the need for proportionality arising from the European Court of Human Rights' case-law on freedom of expression and association;
 - vii. undertake, with the Council of Europe's assistance, a comprehensive examination of the legislation dating from the period of the state of emergency, particularly that relating to associations, trade unions, political parties and the press, to ensure that as far as possible it reflects the spirit of recent reforms;
 - viii. reform local and regional government and introduce de-centralisation in accordance with the principles of the Charter of Local Self-Government. As part of the reform, give the relevant authorities the necessary institutional and human resources and arrange a redistribution of resources to compensate for the under-development of certain regions, particularly south-east Turkey;
 - ix. continue the training of judges and prosecutors and police and gendarmerie, with the Council of Europe's assistance;
 - x. lift the geographical reservation to the 1951 Geneva Convention relating to the Status of Refugees and implement the recommendations of the Council of Europe Commissioner for Human Rights on the treatment of refugees and asylum seekers;
 - xi. pursue the policy of recognising the existence of national minorities living in Turkey and grant the persons belonging to these minorities the right to maintain, develop and express their identity and to apply it in practice;
 - xii. continue efforts to combat female illiteracy and all forms of violence against women.
24. The Assembly considers that over the last three years Turkey has clearly demonstrated its commitment and ability to fulfil its statutory obligations as a Council of Europe member state. Given the progress achieved since 2001, the Assembly is confident that the Turkish authorities will apply and consolidate the reforms in question, the implementation of which will require considerable changes to its legislation and regulations, extending beyond 2004. The Assembly therefore decides to close the monitoring procedure under way since 1996.
25. The Assembly will continue, through its Monitoring Committee, the post-monitoring dialogue with the Turkish authorities on the issues raised in paragraph 23 and on any other matter that might arise in connection with Turkey's obligations as a Council of Europe member state.

II. Draft recommendation

1. The Parliamentary Assembly considers that over the last three years Turkey has clearly demonstrated its commitment and ability to fulfil its statutory obligations as a Council of Europe member state. Given the progress achieved since 2001, the Assembly is confident that the Turkish authorities will apply and consolidate the reforms in question, the implementation of which will require considerable changes to its legislation and regulations, extending beyond 2004. The Assembly therefore decides to close the monitoring procedure under way since 1996.
2. Referring to Resolution ... (2004) on honouring of obligations and commitments by Turkey, the Assembly considers that Turkey must continue to benefit from the Council of Europe's assistance and co-operation programmes in order to complete and implement the reforms it has undertaken to strengthen the rule of law and the respect for human rights and fundamental freedoms.
3. The Assembly therefore recommends that the Committee of Ministers:
 - i. continue, in co-operation with the Turkish authorities, the training programmes for police officers, judges and prosecutors and the programmes aimed at reforming the prison system;
 - ii. assist the Turkish authorities with their constitutional reform projects and ask them to request an opinion from the European Commission for Democracy through Law (the Venice Commission) on any draft revising the Constitution before adoption by the parliament;
 - iii. continue to offer expert legal advice on draft legislation under preparation or planned, particularly on the Criminal Code and Code of Criminal Procedure, and legislation on associations, the press, political parties, trade unions and decentralisation;
 - iv. introduce a programme of assistance and co-operation aimed at fighting corruption;
 - v. prepare and implement an action plan for equality between women and men in Turkey, with particular emphasis on violence against women, in accordance with Committee of Ministers Recommendation (2002)5 of 30 April 2002 on the protection of women against violence.

III. Explanatory memorandum by the co-rapporteurs

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A. INTRODUCTION

1. Turkey has been a Council of Europe member state since 1949. Its honouring of obligations and commitments have been monitored since 1996, when the Assembly adopted Recommendation 1298 (1996) on Turkey's respect of commitments to constitutional and legislative reforms. Since then the Assembly has twice assessed the situation in Turkey, when it examined the reports presented by its Monitoring Committee in January 1999¹ and June 2001².

2. Resolution 1256 in response to the 2001 report states that the Assembly "welcomes the progress Turkey has made in the honouring of its obligations as a member state of the Council of Europe since the start of the monitoring procedure, and in particular the open and sincere dialogue that has developed on still outstanding issues. The Assembly therefore encourages the Turkish authorities to implement the National Programme and to continue taking the legislative and administrative measures necessary to comply with the outstanding obligations ...".

3. In 2002 the Monitoring Committee appointed two new rapporteurs. They carried out the first fact-finding visit to the country from 17-21 February 2003 and their second from 25-28 May 2003.

4. The rapporteurs are grateful to the Turkish parliamentary delegation for the excellent organisation of the visits. They are also grateful to all those they spoke to for the warmth and openness of their discussions.

5. In the first place something needs to be said about events in the country since the adoption of Resolution 1256 more than two years ago.

B. POLITICAL DEVELOPMENTS SINCE JUNE 2001

6. There have been four major events in Turkish political life since June 2001: the country's serious economic crisis in 2001, early elections in November 2002, the European Union's decision at the December 2002 Copenhagen Summit to postpone consideration of Turkey's membership application until late 2004 and the Iraq crisis.

i The economic crisis

7. Turkey was affected by serious financial crises in November 2000 and February 2001, with a fall of more than 50% in the value of the Turkish lira (TRL), a 9.4% decline in GDP, more than 80% inflation and the loss of two million jobs in two years. In 2002 the official unemployment rate was 9.9%, with another 2.37 million under-employed. The situation improved slightly in 2002, with inflation down to 32% per annum and growth of 7.8%, but the IMF had to lend the country about 19 billion dollars (USD) over three years to keep it afloat, and 16 billion of this has already been drawn. In 2003 the Government's objective was to reduce inflation to 20%, achieve a 5% growth target and restore the national finances through USD 4 billion worth of privatisations. Although the economic situation improved markedly in 2003, with inflation in particular down to 19.3%, debt servicing continued to pose major problems and privatisations only brought in USD 893 million. The proposed budget for 2004 is based on a growth forecast of 5% and inflation at 12%, but there will be a further deficit of USD 32 billion. Forty-two percent of expenditure will still have to go on repayment of the national debt, which now stands at USD 187 billion.

8. Turkey's per capita GDP of USD 2584 in 2002 is a long way below that of the European Union. Moreover 21 of the country's 81 provinces have a per capita income of less than USD 1 500³. Poverty is particularly rife in the eastern and south-eastern provinces. Greece in contrast, considered to be one of the poorest countries in the Union, has a per capita GDP of USD 12 700. Comparisons

¹ Honouring of obligations and commitments by Turkey: Doc. 8300 (rapporteurs: MM Bársony and Schwimmer).

² Honouring of obligations and commitments by Turkey: Doc. 9120 (rapporteurs: MM Bársony and Zierer), presented to the Assembly on 28 June 2001.

³ Law n° 5084, which entered into force on 6 February 2004, aims at encouraging and subsidising investment and employment in provinces with a per capita income of less than USD 1500. It provides for the lowering of certain taxes, subsidies on social security payments, free land for investors and preferential energy tariffs.

with other applicant countries are more favourable though, with income per head of USD 1 870 in Romania and 1 960 in Bulgaria.

ii. The early elections in November 2002

9. The economic crisis led to Turkey's worst recession since 1945 and undoubtedly destabilised the government, which was forced to impose an unprecedented dose of austerity. The ruling coalition, composed of the ANAP (Motherland Party) and the MHP (Nationalist Movement Party) and led by the 77 year old Bülent Ecevit (DSP, Democratic Left Party), who had been ill since May, fell apart fairly rapidly in 2002. A governmental crisis broke out in July 2002 when the MHP vehemently opposed certain reforms⁴ sought by the government to satisfy the so-called Copenhagen criteria imposed by the Union in advance of any discussions on an opening date for accession negotiations.

10. In the end, the Turkish National Grand Assembly passed a resolution on 31 July to bring forward the parliamentary elections originally scheduled for April 2004. The date was set for 3 November.

11. On 20 September 2002, the supreme electoral council declared Recep Tayyip Erdogan, mayor of Istanbul from 1994 to 1998 and one of the country's most popular politicians, ineligible on account of a criminal conviction in 1998 for incitement to racial hatred under article 312 of the Criminal Code, for which he served four months of a ten month sentence in 1999 before being released as a result of an amnesty.

12. Mr Erdogan was banned from political activities as a result of this conviction but nevertheless in 2001 founded the Justice and Development Party⁵ (AKP), which is significantly more moderate⁶ than the Refah (Welfare Party), led by Necmettin Erbakan and dissolved in 1998, and the two parties that followed, the Virtue Party (Fazilet, dissolved in June 2001) and the Happiness Party⁷ (Saadet). In October, following a Constitutional Court injunction, Mr Erdogan resigned from his party's founding board but remained its chairman.

13. Since Mr Erdogan could not stand at the elections he lost all chance of being appointed prime minister should his party end up as winner, as the Constitution Court provides that ministers must be members of parliament. Moreover, on 24 October 2002, less than a fortnight before the election, the state prosecutor asked the Constitutional Court to dissolve the Justice and Development Party (AKP)⁸, particularly as Mr Erdogan had remained chairman of the party despite the April 2002 injunction.

⁴ In particular abolition of the death penalty and the granting of cultural rights to Kurds.

⁵ The Turkish abbreviation used by the Justice and Development Party is AK Party, the word ak meaning "white", and by extension "clean".

⁶ Mr Erdogan told the rapporteurs that his party described itself as Islamic-conservative and took the German Christian Democratic party (CDU) as a model.

⁷ Mr Necmettin Erbakan, who is 77, was prohibited from political activity for five years following the dissolution of the Refah Party but resurfaced on 12 May 2003 following his election as chairman of the Happiness Party, which is not represented in parliament after failing to reach the 10% threshold at the November 2002 elections. However he was finally convicted of misappropriation of his party's funds in December 2003 and will soon have to relinquish the party chair.

⁸ On 25 March 2003, the state prosecutor said that he would now only seek the partial or total withdrawal of public financing for the AKP and not its dissolution.

14. Nevertheless the AKP achieved a massive advance at the November elections, with 34.2% of the votes cast and an absolute majority in parliament⁹, with 363 seats out of 550. All the other traditional parties were swept away.

15. The runners up were the Republican People's Party (CHP), which had not been represented in parliament since 1999 and won 19.3% of the votes and 178 seats. The other nine seats were occupied by independents. The CHP is the only opposition party in Turkey's National Grand Assembly, the single chamber of the Turkish parliament, which has 550 members, 500 of whom are sitting for the first time. None of the other sixteen parties that stood received the 10% of votes necessary to be represented in parliament. The outgoing prime minister's DSP did not even get 2% of the vote.

16. The elections were observed by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), which is a first. Following a decision of the Assembly's Bureau, a small delegation, including Mrs Durrieu, Chair of the Monitoring Committee, and Mrs Delvaux-Stehres, rapporteur, also observed the elections, which were conducted in a fully satisfactory manner¹⁰.

17. The co-rapporteurs note that the government that emerged from the elections has so far made good use of its absolute parliamentary majority, particularly for the rapid enactment of necessary reforms. They note with satisfaction that at their meeting in February 2003 with the vice-chair of the CHP the latter expressed his commitment to constructive opposition and support for the new government's reform programme, and that so far this support has not been lacking.

18. Nevertheless the current electoral legislation, which requires parties to achieve 10% of the national vote to enter parliament, means that 45% of the 31 million voters will not be represented in the Turkish National Grand Assembly, whereas the winning party has two-thirds of the seats but only received 35% of the vote.

19. The co-rapporteurs find this 10% threshold abnormally high compared with other European countries. The aim is to increase political stability but 2002 was the fourth time in a row that early elections had been called. Besides as the OSCE notes in its report on the elections¹¹, the five parties that crossed the 10% hurdle at the 1999 parliamentary elections subsequently fragmented, so that on the eve of the 2002 elections there were eleven parties in parliament.

20. The co-rapporteurs hope that the debate on the revision of the electoral legislation announced by the authorities will result in a fairer representation of the popular will in the National Grand Assembly.

21. They strongly urge the Turkish authorities to bear in mind the OSCE recommendations, particularly by lowering the 10% threshold and relaxing the rule that to be eligible to take part in elections parties must be organised in at least half of the country's 81 provinces and at least a third of each province's districts. The aim of these two rules is to avoid the emergence of purely regionally-based parties.

22. For example, the pro-Kurd HADEP, which had been facing dissolution proceedings in the Constitutional Court since 1999¹², did not present candidates under its own banner but chose to join forces with the DEHAP (Democratic People's Party), which was set up in 1999 in anticipation of HADEP's possible dissolution. DEHAP received 6.5% of the national vote and will therefore not be represented in parliament, even though it obtained more than 40% of the vote in the main south-east Anatolian towns.

⁹ On 15 August 2003 certain independents and CHP members joined the AKP, which gave it 368 seats and the two-thirds majority needed to vote constitutional amendments.

¹⁰ See As/Bur/ah Turkey (2002) 1 of 15 November 2002.

¹¹ See OSCE report of 4 December 2002.

¹² HADEP was finally dissolved by a unanimous Constitutional Court decision of 13 March 2003 for violation of articles 68 and 69 of the Constitution and sections 101 and 103 of the Political Parties Act, for support and assistance to the PKK. Its Chair, Murat Bozlak, and 45 other persons were banned from political activity for five years and all the party's assets were transferred to the national exchequer.

23. The co-rapporteurs consider that adjustments must be made to Turkey's current proportional representation system to avoid a situation where more than 50% of the voters feel excluded and cannot make their voice heard in parliament, which is unhealthy in a democracy.

24. They also recommend that the Turkish authorities review the voting arrangements for Turkish citizens living abroad: 3.5 million Turks live outside the country and can only vote by presenting themselves at the frontiers, as there are no facilities for voting by correspondence or at consulates.

iii. Urgent issues facing the new government

25. The 58th Turkish government, composed of 23 Ministers¹³, all from the AKP and led by Mr Erdogan's right-hand man, Abdullah Gül, had hardly been formed in November 2003 when it was faced by three major issues: the Copenhagen summit of 12-13 December, the negotiations on the Annan plan on the future of Cyprus and the Iraq crisis.

26. Moreover, following the entry into force on 31 December 2002 of a mini-constitutional revision relaxing the eligibility conditions for members of parliament¹⁴, on 23 February 2003 the supreme electoral council authorised Mr Erdogan to stand in the Siirt (south-east) by-election. He was triumphantly elected on 9 March 2003, following which the government resigned. Mr Erdogan was then appointed prime minister on 14 March¹⁵ and the 59th government, with Mr Gül now in the post of minister for foreign affairs, obtained a parliamentary vote of confidence on 23 March.

a. *The Copenhagen summit, December 2002*

27. The previous government had made great efforts to satisfy the Copenhagen criteria and secure a firm date for the opening of negotiations. After the October 2001 constitutional revision and the adoption of a new civil code in November, three reform packages were approved in February, March and August 2002. However the Commission's annual report on Turkey's progress towards admission, published on 9 October 2002, had a dampening effect. Despite the progress achieved the Commission concluded that Turkey still did not fully satisfy the so-called Copenhagen political criteria.

28. Following the November elections, despite his lack of ministerial or parliamentary office the country's new strong man, Mr Erdogan, visited practically all the European capitals in a marathon effort to convince them of his party's commitment to Europe and to continuing the reform process, and to plead Turkey's case in advance of the following month's Copenhagen summit.

29. Despite these efforts the European Union's Council of Ministers decided on 12 and 13 December 2002 not to set a date for the opening of negotiations on Turkish admission and to review the matter in 2004 on the basis of a Commission report. In contrast ten other countries, including Cyprus, received the green light to become members on 1 May 2004.

¹³ Compared with 38 in the previous government.

¹⁴ Article 76 of the Constitution ruled ineligible anyone convicted of involvement in or incitement or encouragement of "ideological or anarchist" activities, even if the conviction had been amnestied. The words "ideological or anarchist" were deleted and replaced by "terrorist". However ineligibility was retained for any citizen sentenced to at least one year's imprisonment, which continued to deprive many citizens of their right to stand for election. The President of the Republic initially refused to sign the legislation passed by parliament on 13 December 2002 on the grounds that it was an *ad personam* constitutional revision, but relented when parliament adopted it unaltered on 27 January 2003.

¹⁵ On 25 March he withdrew three applications he had lodged with the European Court of Human Rights.

30. During their first visit in February 2003 the co-rapporteurs were struck by the extent to which the Copenhagen summit decision was perceived by both the authorities and civil society as an injustice. Several of those they met spoke of their discouragement and argued that whatever Turkey did to promote democracy and human rights she was always asked for more, without ever finally receiving a mark of approval. It was also pointed out that Turkey had been an associate member since 1963, that its first accession application went back to 1987, that the customs union was established in January 1996 and that its candidature had been officially accepted in Helsinki in 1999. Fears were also expressed that with 25 member states in 2004 it would be even harder for the Union to reach a decision in its favour.

31. There was also a feeling that the country had been discriminated against, particularly in comparison with the former communist bloc countries. Finally the statement by Mr Valéry Giscard d'Estaing of 8 November 2002 that Turkey was not a European country and that its accession would signify the end of the Union caused a great stir, which the co-rapporteurs tried to dissipate by pointing out that Turkey had unquestionably been part of the European family¹⁶ since it joined the Council of Europe in 1949.

32. Despite this disappointment the new government has continued to emphasise its commitment to reform, not only with the 2004 appraisal in mind but also to modernise the country in the interests of all its citizens. It passed two further reform packages in January 2003, the sixth package was being drawn up at the time of the co-rapporteurs' second visit, in May 2003, and the seventh had already been announced for July 2003.

33. On 26 March 2003, the Brussels Commission proposed a doubling of the Union's pre-accession aid to Turkey, raising it from EUR 177 million per annum to EUR 1.05 billion between 2004 and 2006¹⁷ and Mr Verheugen recently declared that accession was possible around 2010-2011. On 15 April 2003¹⁸ a new accession partnership proposed by the Commission was adopted and the new national programme was adopted in late July.

34. The co-rapporteurs recall that according to the political criteria for applicant countries agreed at the 1993 Copenhagen European Council, these countries must have achieved "stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities". They have only taken note of the arguments presented by the Turkish authorities on this subject to the extent that the Copenhagen criteria impinge on Turkey's obligations as a Council of Europe member. The decision taken at the Copenhagen summit and the possible date for the opening of EU accession negotiations are not part of their mandate and are not, as such, relevant topics for discussion with the Turkish authorities.

35. However the co-rapporteurs have stressed that Turkey is a founder member of the Council of Europe and as such entered into commitments in 1949 that must be honoured, concerning pluralist democracy, respect for the rule of law and the protection of individual fundamental rights, as laid down in the Council of Europe's Statute and conventions¹⁹.

b. The Cyprus issue

36. The reunification of Cyprus has been a constant source of concern for the Council of Europe for many years. It is also a crucial factor affecting Turkey's prospects for admission to the European Union. In its annual report published on 5 November 2003, the Commission stated that the absence of a settlement could become a "serious obstacle" to Turkey's EU aspirations. Finally, at the December 2003 Brussels Summit, the Union member states restated their preference for the admission of a reunified Cyprus on 1 May 2004 and said that greater involvement in the search for a solution "would greatly facilitate Turkey's membership aspirations". The co-rapporteurs consider that these appeals to

¹⁶ See also Recommendation 1247 (1994) on enlargement of the Council of Europe.

¹⁷ The aid is broken down as follows: EUR 250 million in 2004, 300 million in 2005 and 500 million in 2006.

¹⁸ Decision of the European Council of 19 May 2003.

¹⁹ Of the 194 conventions drawn up under Council of Europe auspices, by 10 February 2004 Turkey had ratified 83 and signed a further 41.

Turkey in no way exempt the Greek Cypriot authorities from themselves participating constructively in the search for a satisfactory solution.

37. Of course Turkey still considers that its military intervention in 1974 as a guarantor power was legitimate to protect the Turkish Cypriot community and that it cannot be held solely responsible for the division of the island. Turkey also believes that the 1983 self-proclaimed "Turkish Republic of Northern Cyprus"²⁰ (TRNC) is a full state with democratic institutions, as provided for in its 1985 "constitution". Despite the 35 000 Turkish soldiers stationed in the northern part of Cyprus and the EUR 560 million of subsidies granted annually to the "TRNC", Turkey still refuses to acknowledge that it is fully and completely responsible for the acts of the administration it supports. This position was reaffirmed to the co-rapporteurs at their meetings in February 2003, particularly with Mr Yakis, the then-foreign minister.

38. Yet the "TRNC" is not recognised by anyone other than Turkey²¹. In international law it is not a state but a de facto entity and the European Court of Human Rights has found, in both the Loizidou and the Cyprus-Turkey inter-state cases, that violations of the Human Rights Convention were imputable to Turkey and not to the "TRNC".

39. The co-rapporteurs note that this Mediterranean island has now been divided for nearly thirty years, that inter-community talks under the United Nations Secretary General's aegis have been under way since 1977 and that no solution is currently in sight. A compromise, however imperfect, must eventually be found. The Turkish Cypriot population is weary of this situation and showed this in numerous demonstrations during the Annan plan negotiations. Despite Turkish economic aid, per capita income in the northern part of Cyprus is four times less than that in the southern south and Cyprus's forthcoming EU membership increases the risk of Turkish Cypriots' economic and social isolation.

- *The Annan plan*

40. The situation has barely changed since January 2002, when the Assembly expressed the hope in Resolution 1267 that direct negotiations would finally lead to a solution. The co-rapporteurs regret the failure in March 2003 of these direct negotiations, commenced in January 2002 and attended by the Secretary General of the United Nations.

41. On 11 November 2002, when it became clear that the parties would not reach an agreement, the United Nations Secretary General presented a plan for a comprehensive settlement of the Cyprus problem. In response to the two parties' reactions to the plan, Mr Annan presented a second version on 10 December 2002, with the parties' agreement required by 28 February 2003.

42. Following Tassos Papadopoulos' election as President of Cyprus on 17 February 2002 and the departure on 28 February of its long-serving leader, Glafcos Clerides, the UN Secretary General agreed to a further modification of his plan and convened a meeting in The Hague for 10 March, to try to persuade the two parties to agree to a referendum on 30 March. Agreement would have allowed a reunified Cyprus to sign the Treaty of Accession to the European Union on 16 April 2003.

43. Unfortunately no agreement was reached. When he presented his report to the United Nations Security Council on 1 April 2003, Mr Annan said that although both Cypriot parties had to take a share of the blame for the failure of the various stages and lost opportunities in the settlement process, the Turkish Cypriot leader, Mr Denktash, bore prime responsibility for the final failure.

44. Direct negotiations were therefore suspended, even though discussions continue and the Annan plan is still on the table. Mr Erdogan's government seems prepared to seek a solution and at all events no longer, unlike its predecessor, threatens simply to annexe the northern part of Cyprus. The co-rapporteurs fully share Mr Erdogan's opinion that "no solution is not a solution", but fear that the intransigence shown until recently by Rauf Denktash²² will act as a brake on any government desire to find a compromise.

²⁰ This reference to the "TRNC" does not imply any recognition by the Rapporteurs, the only State recognised by the Council of Europe being the Republic of Cyprus.

²¹ See Resolution 1267 (2002) on the situation in Cyprus (report of the Political Affairs Committee, Doc. 9302, Rapporteur: Mr Barsony).

²² For Mr Denktash "no solution is a solution".

45. The co-rapporteurs had hoped that the “parliamentary” elections in the Northern part of Cyprus scheduled for 14 December 2003 would help to revive the Annan plan. In fact, although the outgoing “government” lost, the opposition did not win. The December 2003 poll resulted in a tie, since the two opposition parties, the Turkish Republican Party (CTP) and the Movement for Democracy and Peace (BDH), won 25 seats, exactly the same number as the two parties that made up the outgoing majority, the National Unity Party (UBP) and the Democratic Party (DP) of Serdar Denktash, son of Rauf Denktash. The opposition parties, which had made resumption of the Annan plan negotiations the centrepiece of their campaigns, undoubtedly emerged stronger from the election, but without the necessary majority for a radical change in policy.

46. Mehmet Ali Talat, leader of the CTP (Turkish Republican Party), was asked to form the new “government” of the “TRNC”. After intensive negotiations, a coalition “government” of the CTP, the DP and the BDH was formed on 13 January 2004. Mehmet Ali Talat and Serdar Denktash, leader of the Democratic Party, announced their support for the reunification of the Turkish and Greek parts of the island, prior to Cyprus joining the European Union in May.

47. The co-rapporteurs had hoped that the leaders of the two communities would resume negotiations as soon as possible on the basis of the Annan plan with a view to reaching a political settlement of the Cyprus problem preferably by 1 May 2004, in accordance with the Assembly’s views in Resolution 1362 (2004) on the situation in Cyprus. They were pleased to hear that on 13 February last the decision was taken in New York to resume negotiations which should lead to a solution in the interests of all the population. They call upon both the Cypriot and the Turkish authorities to at last find common ground and bury the quarrels of the past.

- *Confidence measures*

48. Although there has been until recently very little political progress towards a final settlement of the Cyprus question, the situation on the ground has changed greatly. For example, the co-rapporteurs welcome the decision taken by the “TRNC” authorities to open the demarcation line (the so-called green line) on 23 April. In just the first ten days 130 000 persons travelled to the other side through the three authorised crossing points. Mr Denktash has also proposed the reopening of Nicosia Airport and major mine-clearing operations. For its part, the Republic of Cyprus has made similarly noteworthy efforts to improve the situation. On 30 April 2003 it was decided that Turkish Cypriots could export via the south, hold a work permit in the south and have entitlement to medical care. On 10 July 2003 the Cypriot parliament passed legislation finally ending the ban on mixed marriages between Greek and Turkish Cypriots, in force since 1960.

49. Finally the EU Commission granted the Turkish Cypriot administration EUR 12 million in aid in June 2003 to bring it closer to the Union.

50. These confidence measures are promising but are clearly not sufficient by themselves to settle the problem of the division of Cyprus. The co-rapporteurs encourage the Republic of Cyprus, the “TRNC” and Turkey to continue this policy of détente and avoid any provocation that could threaten the climate of confidence that is just starting to appear.

- *The implementation of the Loizidou judgment*

51. The Turkish authorities have long persisted in linking the implementation of this judgment to the current discussions on the future of Cyprus and in particular those on the Annan plan, which has not been on the table since 30 March. The requirement for Turkey to pay just satisfaction in this case, in accordance with Article 41 of the ECHR, is unrelated to the political issue of the settlement of the Cyprus problem. By ratifying the Convention and accepting the Court’s compulsory jurisdiction Turkey formally undertook to abide by the Court’s final judgements in any case to which it was a party (Article 46 of the Convention). In both February and May 2003, the co-rapporteurs told all the officials they met that it was totally unacceptable that after more than five years, and despite three Committee of Ministers resolutions reminding it of its obligations, Turkey had still not paid, without attaching conditions, the sum owed to Mrs Loizidou. One of the main principles of the rule of law is that decisions of the courts, be they domestic or international, must be respected. There is no point in courts ruling on disputes if one of the parties then refuses to comply with a decision that, by definition, must be in favour of one particular side.

52. The co-rapporteurs were assured in Ankara that there was political commitment at the highest level to finally settling this problem and that there could be an unconditional payment in early autumn, around October. Unfortunately this was not the case and on 12 November 2003 the Committee of Ministers adopted a 4th interim resolution²³ threatening Turkey with all appropriate measures if payment was not made by 19 November. A further 15 days of intensive negotiations and pressure were required for Turkey to comply with the Court judgment and agree to pay just satisfaction amounting, with default interest, to about USD 900 000.

53. On 2 December 2003, in Resolution DH (2003) 190, the Committee of Ministers, after taking note of a declaration made by the Turkish government, noted that the payment had been made and decided to terminate its consideration of the Loizidou judgment, with regard to just satisfaction²⁴. The execution of the Loizidou judgment is very good news and the co-rapporteurs congratulate the Turkish authorities for eventually realising how far their persistent refusal to comply with the Court's decision was damaging Turkey's image as a country that respected the rule of law.

54. The co-rapporteurs are aware of how difficult it was for the Turkish authorities to take such a decision, particularly in view of its possible snowball effect. Since the Court has found in this case that there is a continuing violation of the right to enjoyment of property, the six-month deadline for lodging applications does not apply to persons currently in the same situation as Mrs Loizidou and new applications are therefore likely. Some 460 similar cases are already before the Court. Two judgments were delivered in such "clone" cases on 31 July²⁵. As in the Loizidou case the Court found that there had been violations of article 8 of the Convention and article 1 of the Additional Protocol and decided that the question of just satisfaction for pecuniary and non-pecuniary damage was not ready for decision.

55. To avoid the need for Turkey to pay millions or even billions of dollars in compensation the "parliament" of the "TRNC" passed legislation on 30 June 2003 granting Greek Cypriots the right to apply to a specially created commission, within a specified time limit, for compensation for the properties they had had to evacuate in 1974. By 15 August 2003 some twenty requests had already been submitted, despite a campaign by the Greek Cypriot authorities to discourage such initiatives.

56. The Court must decide, in the light of its case-law on the subject, whether this commission constitutes a domestic remedy, in accordance with the generally recognised principles of international law, and if so whether it is an effective remedy, capable of redressing the alleged violation²⁶. Whatever the Court's eventual decision, it will have to be complied with, whether or not the Cyprus question has been resolved in the meantime.

²³ See Interim Resolution DH (2003) 174.

²⁴ In another resolution adopted the same day, the Committee of Ministers decided to resume consideration of the execution of the judgment of 18 December 1996 in due time, taking into consideration proposals to do so at the end of 2005.

²⁵ The Eugenia Michaelidou Developments Ltd and Demades v. Turkey judgments.

²⁶ At all events Turkey could not, for procedural reasons, rely on non-exhaustion of domestic remedies for the 47 cases declared admissible by the Court before the new law came into force on 30 June 2003 (see paragraph 20 of the Demades judgment of 31 July 2003).

c. *The Iraq crisis*

57. Turkey has been a member of NATO since 1952 and is one of Washington's most faithful allies in the region. As a country bordering Iraq, in 1991 at the time of the first Gulf War Turkey received a massive influx of refugees²⁷ fleeing Iraqi Kurdistan, thus paying a heavy economic price for the war, particularly with regard to energy supplies²⁸. The American commitment to a new war in Iraq, with or without United Nations support, placed the new government in a very difficult situation, particularly vis-à-vis its European allies, following American requests for a northern front, via Turkey, to capture Baghdad in a pincer movement.

58. Between January and March 2003 there were intensive consultations with the Americans and a wide-ranging domestic debate, punctuated by a certain number of stops and starts. As in many European countries there were anti-war demonstrations and according to opinion polls 90% of the Turkish population was opposed to military intervention in Iraq.

59. In January 2003 the government launched an intensive, but unsuccessful, parallel campaign in the region to try to prevent the war²⁹.

- *The refusal of assistance to the United States*

60. On 1 March 2003 the government submitted a motion to the Turkish National Grand Assembly asking for authorisation, as requested by the American government, for the deployment of some 62 000 US troops in Turkey and the dispatch of Turkish troops to northern Iraq. This was rejected, for lack of an absolute majority. It should be noted that no recommendations were made at the National Security Council's monthly meeting of 28 February and the AKP did not issue any voting instructions, leaving it to each member of parliament to decide according to his or her conscience. Only the CHP announced that it would vote against.

61. On 20 March, the actual opening day of the American offensive, the Parliament simply authorised aircraft of the Anglo-American coalition to overfly Turkish territory (though not their refuelling on Turkish bases) and the dispatch of Turkish troops to northern Iraq if necessary. Between 20 March and 1 May, when President Bush announced the end of armed operations, Turkish troops, who were held in readiness to intervene in south-east Anatolia, did not enter northern Iraq.

62. On 4 July 2003 about a hundred American soldiers burst into a Turkish liaison office in Sulaymaniyah in northern Iraq and arrested eleven Turkish soldiers and officers³⁰. They were transferred to Baghdad and only freed two days later. The arrest created a serious diplomatic incident with the United States, with Turkey refusing to accept such treatment from an ally.

63. Relations between Turkey and the United States have clearly gone through a difficult stage recently, despite the government's efforts to minimise the effects. However, the granting of a loan of USD 8.5 billion by the United States in September 2003 and the parliamentary vote of 8 October 2003 authorising the deployment of Turkish troops in Iraq for one year show, if this were necessary, that Turkey is still one of the United States' main allies in the region, even though for the time being the Turkish government has not sent any troops to Iraq because of opposition from that country's interim governing council.

- *Assistance to refugees and asylum seekers*

64. During the co-rapporteurs' first visit (17-21 February 2003), when there was still great uncertainty about the possibility of military intervention in Iraq, the interior minister, Mr Aksu, assured them that all steps had been taken to provide emergency humanitarian assistance for any refugees from Iraq³¹, but that there were no plans to lift the geographical reservation of the 1951 Geneva

²⁷ Nearly 120 000 persons took refuge in Turkey in 1988 to escape the chemical bombardments ordered by the Iraqi regime.

²⁸ Turkey has no oil, no nuclear reactors and little coal and energy costs are on average 20% higher than in other Union countries.

²⁹ After the prime minister had undertaken a round of meetings in the Middle East in January Turkey invited the foreign ministers of Syria, Egypt, Saudi Arabia, Iran and Jordan to Istanbul on 23 January for a regional forum, at the end of which a declaration was adopted urging Iraq to comply with Resolution 1441 of November 2002.

³⁰ Since 1997 Turkey has deployed about 3000 troops in Northern Iraq.

³¹ Five refugee camps would be opened actually inside Iraq.

Convention. The co-rapporteurs raised the issue again during their May visit but received no concrete response.

65. Lifting the geographical reservation of the 1951 Geneva Convention and its 1967 protocol was already one of the medium-term objectives for 2004 of the March 2001 national programme and was repeated in the revised version of the programme approved in July 2003. The co-rapporteurs very much hope that this objective will be achieved as soon as possible. They consider it anomalous for a European country like Turkey to fulfil its international obligations by refusing to grant refugee status to non-European asylum seekers, in this case mainly from Iran and Iraq. In Turkey the HCR is responsible for determining refugee status, finding third countries willing to accept them or taking the necessary steps to organise voluntary repatriation.

66. At all events a review should be carried out of the 1994 decree requiring asylum seekers to apply to the Turkish authorities for a temporary residence permit while their asylum request is under examination³². However the co-rapporteurs note with satisfaction that the regulations on asylum seekers were amended in 1999 to extend the period within which foreign nationals could lodge political asylum applications from five to ten days of their entry, legal or illegal, into Turkey. While this ten day period is probably still too short it does represent progress compared with the previous situation.

C. REFORMS SINCE JUNE 2001

i Introduction

67. Despite a difficult political and economic situation Turkey has undeniably made unprecedented efforts since 2001 to honour the undertakings in the March 2001 national programme for the adoption of the *acquis* and take account of the Assembly's criticisms and recommendations in Resolution 1256 (2001).

68. The preamble to and 33 articles of the Constitution were amended on 3 October 2001, three reform packages³³ were approved by the previous government in February, March and August 2002, and two more were passed by the new government in January 2003³⁴. The National Assembly went on to approve two further reform packages, which came into force on 19 July 2003 and 7 August 2003³⁵, after the national programme had been updated by the European Union harmonisation committee established under legislation that came into force on 19 April 2003. The National Assembly is working away steadily and has passed a considerable number of laws in a wide range of areas.

69. Apart from key measures such as abolition of the death penalty, changes to the role of the National Security Council, the complete lifting of the state of emergency and reductions in the length of police custody, which have long been called for (see below), the reform packages cover very varied subjects.

³² The European Court of Human Rights has ruled that Turkey was in violation of article 3 of the Convention when it expelled an Iranian woman threatened with death by stoning in her country for adultery (*Jabari v. Turkey* judgment of 11 July 2000). The Court also found that there had been a violation of article 13 (right to an effective remedy) and criticised the procedure followed under the 1994 decree.

³³ The constitutional reform came into force on 17 October 2001. The first package was contained in Act no. 4744 of 6 February 2002, the second in Act no. 4748 of 26 March 2002 (entered into force on 9 April), the third in Act no. 4709 of 3 August 2002 (entered into force on 9 August), the fourth in Act no. 4778 of 2 January 2003 (entered into force on 11 January) and the fifth in Act no. 4793 of 23 January 2003 (entered into force on 4 February).

³⁴ Not to mention the constitutional amendments voted a second time, following a presidential veto, on 24 December 2002, which enabled Mr Erdogan to stand in a by-election in Siirt. These amendments came into force on 31 December 2002.

³⁵ The sixth package (Act no. 4928) was adopted by the National Assembly on 19 June but one of its sections, relating to the repeal of section 8 of the anti-terrorism act, was vetoed by the President. After it had again been passed unaltered by the National Assembly the sixth package came into force on 19 July 2003. The seventh package (Act no. 4963) was approved on 30 July 2003 and came into force on 7 August.

70. The co-rapporteurs believe that the government and parliament are fully committed to carrying out the necessary reforms but that, as the present government is well aware, passing legislation and implementing reforms on the ground are two different things. Time is needed for reform to become a reality, particularly to overcome bureaucratic resistance and change attitudes. It will only be possible to assess the impact of the reforms in the medium term, since much will also have to be done to adapt the secondary legislation and inform the authorities at all levels of the content and scope of the reforms. The co-rapporteurs consider that the establishment in September 2003 of an interministerial committee to monitor reforms, chaired by the deputy prime minister and minister for foreign affairs, Mr Abdullah Gül, is a very welcome development. This monitoring committee, which will meet monthly, will be able to identify and resolve rapidly any problems arising from the implementation of the reforms.

71. Turning to the October 2001 constitutional revision (summarised in Appendix 1), the co-rapporteurs strongly support the new government's proposal to carry out a full revision of the Constitution and believe that Turkey could benefit from the Venice Commission's experience in this field. The current Constitution has a rather bad name. Although it was adopted by referendum in 1982, it is criticised for bearing the hall marks of the authors of the 1980 military coup.

72. It should also be noted that it has been amended on a number of occasions (in 1987, 1993, 1995, 1999, 2001 and 2002) and that this is inevitably reflected in the general balance of the text, which is too vague on certain points and over-explicit on others. What makes it even more important to adapt the Turkish Constitution to more modern standards³⁶ is the fact that the European Convention on Human Rights is not directly applicable in Turkish law. Under article 90 of the Constitution the Convention has legislative but infra-constitutional status, which raises certain problems, particularly regarding the execution of the Court's judgments. The co-rapporteurs consider that Turkey would have everything to gain from a new Constitution. While making historic reference to the foundation of modern Turkey, this should be based on safeguarding the fundamental rights of all those under the jurisdiction of the Turkish state.

ii. The institutions of state

a. Role of the army

73. Turkey is undoubtedly a democratic country with free elections, separation of powers and a genuine parliamentary multiparty system. However the army's considerable influence on Turkish public life has been a constant source of concern in Europe, particularly as real power in Turkey has not been exercised, as in other European democracies, exclusively by parliament and government. The co-rapporteurs believe that in a modern democracy it is essential for the army to be answerable to democratic institutions.

74. It appears that the problem concerns both the army's institutional role and the prestige and confidence it enjoys in Turkish society. The co-rapporteurs found it difficult *prima facie* to understand why the army³⁷ enjoys such a fund of good will in the country: elsewhere in Europe two coup d'états, in 1960 and 1980, and two interventions leading to the resignations of democratically elected prime ministers, in 1971 and 1997³⁸, would have been enough to discredit it. They were told that much of this could be explained by modern Turkey's foundation in 1923 by a soldier, Mustapha Kemal, or "Ataturk", and the military's subsequent unswerving devotion to the values he defended, which have taken the form of a set of principles known as Kemalism. General Kilingç, Secretary General of the MGK, whom the co-rapporteurs met in February 2003, also argued that the army was egalitarian in its recruitment, which was based purely on merit, and was non-politicised and professional. Above all, compared with a political class that was unstable and often fairly unreliable, it was permanent.

³⁶ It is regrettable, for example, that the provisional articles of the 1982 Constitution have not been repealed and that articles 6 to 9 on national sovereignty make no provision for transfer of sovereignty to supranational bodies, particularly those of the European Union.

³⁷ The term "army" is used here as a matter of convenience: as in France, as well as the military in the strict sense, the gendarmerie (*jandarma*), which mainly operates in rural areas, is an integral part of the armed forces.

³⁸ Army intervention in 1971, without seizing power, to force Süleyman Demirel (subsequently elected President in 1993) to resign and introduce martial law. Further intervention in 1997: Necmettin Erbakan, who had become prime minister in July 1996, had to resign in June 1997 and his Refah party (Welfare Party) was dissolved in 1998.

75. Briefly the army knows what is good for the country and if the country is not aware of the fact the army will take the necessary measures. This role of oracle and paterfamilias is buttressed by certain organs of the media, who at the end of each meeting of the MGK are on the lookout for signs of discord between government and the military and are ready to open their columns to generals, even retired ones, wishing to express themselves on any subject whatever.

76. This somewhat paternalistic attitude is no longer appropriate in the 21st century. Eighty years after the proclamation of the republic the Turkish political class is no more incompetent or irresponsible than its counterparts elsewhere and at all events it is not immature. From his public statements, particularly during the Iraq crisis, the chief of general staff, General Özkök, seems to have understood this.

77. The co-rapporteurs also tried to establish whether one of the reasons for the army's influence was its considerable presence in the Turkish economy. The army mutual aid association (OYAK) was established in 1961 and by 2001 had a turnover of USD 2.8 billion and an annual profit of USD 475 million. It has 28 subsidiaries, eight of which have stock market quotations, and employs nearly 17 000 persons. The basis of its economic power is the contributions of its members: 10% of the pay of permanent members of the armed forces and 5% of that of non-permanent members, a total of about 193 000 contributors. However the co-rapporteurs were told, particularly by TÜSIAD, an employers' association that OYAK was not run by the military and was in fact nothing more than a well-run pension fund such as those to be found in the United States. In other words there was no question of the army exercising any control over the country's economy, particularly as OYAK had nothing like the size and financial power of other large Turkish conglomerates, like Dogan, Dogus or Sabanci.

78. Besides, in a country as large as Turkey, with thousands of kilometres of land frontiers with Greece, Bulgaria, Georgia, Armenia, Iran, Iraq and Syria, it is hardly surprising that there is a strong army. It has 650 000 men (including 100 000 career soldiers) and numerically is the second largest in NATO.

79. There is no conscientious objection in Turkey and military service is compulsory from the age of 18 and lasts up to 18 months³⁹. Moreover, for Turks living abroad failure to complete military service is punishable by loss of Turkish nationality. A certain number of young persons thereby become stateless, which undoubtedly creates problems for their country of residence, as in Germany⁴⁰. Finally, article 155 of the Criminal Code makes any criticism of the institution of military service liable to up to two years' imprisonment. This offence is however one of those covered by article 58 of the Military Criminal Code, which will no longer be heard by military courts under the partial limitation introduced by the 7th reform package of August 2003 on military courts' jurisdiction to hear cases concerning civilians. This is a welcome reform.

80. The co-rapporteurs consider that the Turkish authorities should authorise conscientious objection in the near future and introduce an alternative civilian service, as is the case in most European countries. The co-rapporteurs recall that the right to conscientious objection has been a constant concern of the Council of Europe for more than thirty years and, like the other member states, Turkey should comply with the decisions of the Assembly, which has called for genuine alternative service of a clearly civilian nature that should be neither deterrent nor punitive in character⁴¹.

³⁹ However the army does plan to reduce its manpower by 17% from 15 July 2003: military service will be reduced from 18 to 15 months for other ranks and 16 to 12 months for reserve officers, while university graduates who are called up will be able to choose between becoming a reserve officer and serving six months as a simple soldier.

⁴⁰ Of 3.5 million Turks living abroad, two million are in Germany and 100 Turkish citizens living there have therefore become stateless for refusal to do their military service.

⁴¹ Admittedly, as the Turkish authorities have observed, the right to conscientious objection as such is not enshrined in the European Convention on Human Rights, but reference should be made to Recommendation 1518 of May 2001 on the exercise of the right of conscientious objection to military service, Resolution 337 (1967) on the right of conscientious objection and Recommendation 816 (1977) on the right of conscientious objection to military service. The principles laid down by the Committee of Ministers in Recommendation R (87) 8 regarding conscientious objection to compulsory military service are equally clear: "alternative service ... shall be in principle civilian and in the public interest".

- *oversight of the army by democratic institutions*

81. Most criticisms focus on the National Security Council (MGK), which is a constitutional body⁴² that met once a month under the President's chairmanship and whose agenda is drawn up by the President after consultation with the prime minister and the chief of general staff. The MGK's "recommendations" are reported in a press communiqué.

82. Article 118 of the Constitution on the MGK was amended on 17 October 2001. It is now clearly stated that the MGK's opinions on national security matters are advisory in nature. In the case of other issues concerning "the preservation of the existence and independence of the state, the integrity and indivisibility of the country and the peace and security of society", the council of ministers must now "evaluate the decisions of" the MGK, rather than according them "priority", which appears to leave the former more discretion.

83. Finally, the new article 118 has also changed the MGK's composition. The addition of the deputy prime ministers and the minister of justice means that there are now nine civilian and only five military members.

84. The problem of the army's influence in society will only be resolved by a change of attitudes and the steps taken will only be effective in the long term. Nevertheless the co-rapporteurs did recommend that the MGK's functions be limited in practice to those of a consultative body on national security, and this has in fact been done, among other things via changes to the legislation governing the MGK's operating methods and its secretariat.

85. The 7th reform package adopted in August 2003 effectively modified Act No. 2945 of 9 November 1983 on the MGK and its secretariat along the lines recommended by the co-rapporteurs: section 4 of this act, which had already been amended by the 4th package in January 2003, now states even more clearly that as part of its functions under section 2 the MGK will only make recommendations concerning the formulation and application of national defence policy. The executive powers conferred on the MGK secretariat by sections 9 and 14 of the act have been abolished and section 13, as amended, reduces its role, which interfered with that of the executive. The co-rapporteurs welcome this fundamental reform, designed to bring the legislation into line with the Constitution as amended in October 2001.

86. They also note with satisfaction that the normal frequency of MGK meetings has been reduced to once every two months, except when it is convened on the request of the prime minister or directly by the President. The MGK's secretary general can now be a civilian since he or she will henceforth be appointed on the proposal of the prime minister, subject to presidential approval. The chief of general staff's approval will only be necessary if it is proposed to appoint a military person to this post⁴³. Finally, legislation (Act No. 5017) that came into force on 17 December 2003 abolished the official defence secrets status of decrees governing the activities of the MGK general secretariat. This has permitted the publication, in the official gazette of 8 January 2004, of a new decree setting out the new responsibilities of the general secretariat, which is now transformed into a body serving a purely consultative institution. The co-rapporteurs welcome the Turkish authorities' efforts to secure greater transparency. The changes are momentous: reduced secretariat powers, new responsibilities and new methods of operation. The secretariat is no longer able to conduct national security investigations on its own initiative. Nor does it any longer manage directly the special funds allocated to it, which will now be under the exclusive control of the prime minister.

⁴² See article 118 of the Constitution and Act no. 4789 on the National Security Council and its secretariat, as amended on 18 January 2003.

⁴³ This is what happened recently, when General Kiliç was replaced by another general.

87. On the other hand, the co-rapporteurs see no reason to justify the presence of army representatives on civil bodies such as the Higher Education Council (YÖK)⁴⁴ or the supreme public broadcasting council (RTÜK). This problem appears to have been partially resolved in the 7th package (section 9 of Act no. 4963) since the secretary general of the MGK has been excluded from the 1981 Act on appointment procedures for ministries and other related institutions. However, it has been confirmed that in the case of the YÖK, it will be necessary to amend Article 131.2 of the Constitution, which expressly states that the chief of general staff may nominate candidates. The co-rapporteurs hope that this modification is made without delay. In the case of the RTÜK, the authorities plan to amend section 6 of the Radio and Television Act of 14 June 2002 to remove this anomaly. There has been some delay in implementing this reform following a decision of the Constitutional Court, which has ordered the temporary suspension of certain sections of the act.

88. Finally it is not normal in a democratic country for the armed forces budget not to be debated in parliament, like any other public expenditure item. It appears that the Grand National Assembly votes the defence budget en bloc and that the army has a number of extra-budgetary sources of finance, particularly for arms purchases⁴⁵, which are not subject to any serious scrutiny. It is therefore practically impossible to determine what proportion of the national budget goes on defence. Some think it is at least 10%, others that in reality it represents nearly 18 to 20%. In any case it is clear that Turkey devotes a much higher proportion of its budget to the armed forces than other European countries and that this is to the detriment of necessary spending on such areas as justice, health⁴⁶, education and economic development. The co-rapporteurs hope that the draft legislation on governance and financial control currently before parliament will totally eliminate these extra-budgetary sources of funding by incorporating these items into the normal state budget.

89. The co-rapporteurs consider it urgent to establish normal parliamentary oversight of and voting on the military budget in the National Grand Assembly, so that it can assess the cost of the army to the nation with the full facts at its disposal. The 7th reform package in August 2003 gave the Assembly's investigating committees the right to request the state auditor's department to audit, as a matter of priority, state assets held by the armed forces. This represents progress but is inadequate, particularly on account of the envisaged procedure, which is designed to maintain defence secrecy.

b. Dissolution of political parties

90. The co-rapporteurs consider that the frequency with which political parties are dissolved in Turkey is not only a breach of the freedom of assembly and association embodied in article 11 of the Human Rights Convention but also reflects a more general institutional problem. It is apparently very easy in Turkish law to establish a political party⁴⁷ but the Constitution and the relevant legislation give the authorities very wide discretion to dissolve any parties considered to be incompatible with and likely to pose a threat to the Republic's founding principles. Of all European countries Turkey has had the most dissolutions of political parties and the Convention case-law shows that, in the majority of cases, this sanction has been disproportionate⁴⁸.

⁴⁴ In which case it might be necessary to amend article 131.2 of the Constitution.

⁴⁵ In particular through two defence industry support funds, the SSDF and TSKVG, financed in part from indirect taxes.

⁴⁶ Only 2.4% of the national budget is devoted to health.

⁴⁷ Under the January 2003 4th package, only 30 citizens are required to form a political party.

⁴⁸ See the following judgments: United Communist Party of 30 January 1998, Socialist Party and others of 25 May 1998, Freedom and Democracy Party (ÖZDEP) of 8 December 1999, People's Labour Party (HEP) of 9 April 2002, Democracy Party (DEP) of 10 December 2002, Refah Partisi (Welfare Party) of 12 February 2003 and, finally, Socialist Party of Turkey (STP) of 12 November 2003. The dissolution of the Islamic Refah Party, led by Necmettin Erbakan, is the only one the Court has found not to be incompatible with article 11 of the Convention.

91. As the Parliamentary Assembly notes in Resdution 1308 (2002), although all democracies have the right to defend themselves against extremist parties, the dissolution of political parties should be regarded as an exceptional measure to be applied only in cases where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country.

92. Some progress has been achieved since 1995. Members of parliament who belong to dissolved parties do not automatically lose their seats⁴⁹ and certain changes have been introduced by the constitutional reforms of October 2001 and amendments to the legislation on political parties. Under article 69 of the Constitution as amended, political parties may only be dissolved if they have become the focus of unconstitutional activities when such actions are carried out "intensively" by the members of that party or are explicitly or "implicitly" approved by a party's decision-making organs or carried out directly and deliberately by those bodies.

93. The new article 69 also provides for an alternative to dissolution, namely total or partial deprivation of state aid. In addition, under the newly amended article 149 of the Constitution, dissolution of a political party now requires a 3/5 majority⁵⁰ of the Constitutional Court rather than a qualified majority.

94. Sections 101, 102 and 103 of the Political Parties Act no. 4748 have been amended by Act of 26 March 2002. The new section 101 states that the deprivation of public aid may not amount to less than half the last annual grant to that party. The new section 102 introduces a warning system: parties may avoid dissolution if, within a certain time, they dismiss the members or bodies whose statements or actions have been deemed unconstitutional by the state prosecutor. However, section 96 of the Act, which prohibits the use of the term Communist in the title of a political movement, has not been amended.

95. Section 105 of the Political Parties Act has recently been declared unconstitutional. The state prosecutor had asked for the dissolution of seven political parties under this section because they had not fielded candidates at the two most recent parliamentary elections.

96. However, the recent (13 March 2003) dissolution of the HADEP party, 45 of whose members or officials were banned from all political activity for five years, the dissolution proceedings against the DEHAP for contravening the regulations requiring parties to be organised in a certain number of districts in the November 2002 elections, and the dissolution proceedings launched against the AKP, the party now in power, fifteen days before the November elections, are all matters for concern. Finally, numerous criminal proceedings are still pending against leaders and members of political parties, particularly against DEHAP members accused of forging certificates establishing their organised presence in certain districts, which will probably be used eventually to justify the DEHAP's dissolution. In anticipation of such an event a number of former HADEP members recently (6 June 2003) established a new party, the Free Society Party (OTP).

97. The co-rapporteurs consider that these dissolution proceedings - launched quite independently and with no outside instructions, according to the state prosecutor at the Constitutional Court - not only tarnish Turkey's image abroad but also, and above all, fail to achieve their official purpose, which is to protect the constitutional system. In practice new parties immediately emerge from the banned parties' ashes. In the case of pro-Kurdish parties, we have seen successively the HEP, DEP, HADEP, DEHAP and now the OTP; in the case of Islamic parties Refah was followed by Fazilet and then Saadet. The leaders who are banned from politics resume their activities after five years, as in the case of Necmettin Erbakan, or continue to pull the strings from outside.

⁴⁹ See the Selim Sadak and others judgment of 7 June 2002, concerning the automatic deprivation of the parliamentary mandates of 13 members of the National Grand Assembly following the dissolution in 1994 of the DEP, having regard to article 3 of Protocol No. 1: the right to free elections.

⁵⁰ There are 15 Constitutional Court judges (11 full and 4 substitute members). Before the reform a majority for dissolution meant at least six judges out of eleven. Now seven judges are required.

98. Democracy does not benefit from this cat and mouse game and the co-rapporteurs invite the Turkish authorities to undertake a comprehensive review of the Political Parties Act⁵¹, as Mr Erdogan promised in his election campaign, with a view to introducing strict criteria for dissolution, such as condoning violence or overt threats to fundamental democratic values. Here again, the Turkish authorities could usefully draw on the guidelines established by the Venice Commission in 2000⁵².

c. *The judicial system*

99. On their first visit to Turkey in February 2003 the co-rapporteurs met the President of the Constitutional Court, the state prosecutor to the Court of Cassation and its president and the minister of justice. It is impossible here to offer a complete picture of how the judicial institutions operate⁵³ so the co-rapporteurs will confine themselves to three issues that they consider important. First, though, they wish to point out that at no time during their two visits did they hear any allegations of corruption or a lack of independence or impartiality against judges in Turkey⁵⁴, who - as in other European democracies - suffer from an excessive workload and a lack of resources. Criticisms have largely focused on members of the state prosecutor's office for excessive zeal in launching prosecutions and in connection with freedom of expression and association. On the other hand they are accused of showing marked reluctance to investigate allegations of torture and ill-treatment.

100. In recent years the Turkish authorities, assisted by the Council of Europe, have trained no fewer than 9 600 judges and prosecutors, including judges of the state security court. Two hundred and twenty-five of them have received training instruction, and can in turn train their colleagues. Moreover, following the entry into force of Act No. 4954 on 31 July 2003, Turkey now has a Judicial Academy that will meet the training needs of all the members of the judicial system, including solicitors and barristers.

101. Most of the criticisms received by the co-rapporteurs have focused on members of the state prosecutor's office for excessive zeal in launching prosecutions and in connection with freedom of expression and association. On the other hand they have been accused of showing marked reluctance to investigate allegations of torture and ill-treatment. But it has also been pointed out that in a certain number of cases, prosecutions launched by the prosecution service, particularly concerning freedom of expression and association, have been dismissed by the courts.

102. The co-rapporteurs also took careful note of two recent and important reforms. The first concerns children's courts, which until now could only hear cases involving children aged 11 to 15. Any child aged over 15 could therefore be tried by an ordinary criminal court or a state security court. The 7th reform package amended the legislation on children's courts, section 6 of which now authorises children's courts to hear cases involving anyone up to the age of 18. The second reform concerns the restriction of military courts' jurisdiction to try civilians (see above, influence of the army).

- *Role of the Constitutional Court*

103. The Turkish Constitutional Court was established in 1962 and is one of the oldest in Europe. As with the French Constitutional Council, legislation may be referred to it on grounds of unconstitutionality by the President, the largest opposition party or one-fifth of members of parliament, up to 60 days after its adoption by parliament. It has sole and final power to dissolve political parties.

⁵¹ And the relevant articles of the Constitution.

⁵² See Guidelines on the prohibition and dissolution of political parties and analogous measures, published by the Venice Commission in January 2000.

⁵³ See the report of the Centre for the independence of judges and lawyers. The corapporteurs note with satisfaction that many of the recommendations contained in this report have been implemented since 1999.

⁵⁴ With the exception of the court retrying the case of Mrs Zana and others, where the defence has been unable to introduce certain witnesses.

104. It may also receive referrals for rulings by courts⁵⁵, when it is alleged that the law that the courts must apply is unconstitutional. If the Court rules that the legislation in question is wholly or partially unconstitutional, it immediately becomes inapplicable and parliament has one year to bring it into line with the Court's interpretation. The parties to proceedings may ask their court to refer a matter to the Constitutional Court, but there is no right of access for individuals, as in Germany for example.

105. The co-rapporteurs wish to stress the importance of the repeal of the final paragraph of article 15 (provisional) of the Constitution, as part of the October 2001 revision. The Constitutional Court will henceforth be empowered to examine challenges to the constitutionality of the 600 laws passed between the 1980 coup d'état and the first elections to the National Grand Assembly in December 1983. This constitutes significant progress that will strengthen the Constitutional Court's protection of individual liberties, as most of the legislation restricting fundamental rights and freedoms, such as the laws governing associations, political parties and trade unions, dates from this period.

106. On the other hand the European Convention on Human Rights is apparently still not directly applicable in Turkey⁵⁶. There has been considerable theoretical debate about the status of the European Convention in the hierarchy of the legal system and the matter has still not been finally resolved. Mr Bumin, President of the Constitutional Court, informed the co-rapporteurs that in the event of conflict between a constitutional provision and the Convention the Court would have to apply the Constitution. On the other hand, in a well-publicised address on 8 September 2003 at the formal opening of the judicial year, the President of the Court of Cassation told his audience that at every stage of every set of proceedings, the provisions of the Convention and the case-law of the Court had to be applied as domestic law. The co-rapporteurs therefore recommend that any further revision of the Constitution makes the Human Rights Convention directly applicable in Turkish law up to and including the constitutional level. This would greatly facilitate the execution of judgments by Turkey and the effective penetration of Strasbourg case-law into Turkish Constitutional Court decisions.

107. The co-rapporteurs also suggest that individuals should eventually be granted direct access to the Constitutional Court. In Germany in particular, where there are significantly fewer individual applications to the Strasbourg Court than in other countries of comparable size, the system of individual constitutional appeals has proved its worth.

- *The role of the Court of Cassation*

108. The Court of Cassation, or supreme court of appeal, comprises 250 judges, divided into 21 civil and 11 criminal divisions. The co-rapporteurs were staggered to discover that it receives 500 000 referrals a year, 300 000 civil and 200 000 criminal, and that despite this enormous workload examination of cases does not exceed three to four months. They were equally surprised to learn that there is no court of appeal in the Turkish system and that in the majority of cases an appeal on points of law is the only available remedy after the decision at first instance. The Court of Cassation does not hear cases a second time on their merits: it either confirms the decision at first instance or quashes it and orders a fresh hearing or trial.

109. With such a heavy workload it is hardly surprising that the Court of Cassation's decisions are very brief (generally less than a page), as the examples of criminal cases concerning freedom of expression supplied by the Turkish authorities to the co-rapporteurs showed. As a result, except when it sits as a full court, the Court of Cassation is unable to fulfil the role of other European supreme courts of delivering often closely argued decisions laying down case-law guidelines for lower courts to apply.

110. The main burden of establishing the facts, hearing the parties' evidence and applying the law therefore lies with the courts of first instance, often sitting as a single judge - a heavy responsibility. The co-rapporteurs consider it essential to continue efforts to train judges throughout the country, particularly via the joint Council of Europe-European Union training programmes for judges and prosecutors, with a particular emphasis on the Human Rights Convention. These programmes should if possible be strengthened to create a reservoir of experienced Turkish training staff.

⁵⁵ Of the 520 applications pending, 500 are for such rulings.

⁵⁶ Under article 90 of the Constitution, the Human Rights Convention, which is a duly ratified treaty, has supra legislative but infra-constitutional status.

111. The impression gained was that the impact of European Court of Human Rights case-law in Turkey is relatively limited. This probably reflects the fact that the first judgment against Turkey was only delivered in 1996 and that Turkish courts are not yet accustomed to referring to Strasbourg decisions as a criterion for interpreting Turkish law (see above on the direct effect problem), even though progress could be seen.

112. The co-rapporteurs were also surprised by statements by one of the leading members of the judiciary, the state prosecutor at the Court of Cassation, who challenged the binding nature of the Strasbourg Court's decisions and complained of double standards, particularly regarding the Court's case-law on the non-necessity to exhaust domestic remedies in Turkey. They hope that these views are not shared by the new general state prosecutor, Mr Nuri Ok, since the binding force of the Court's decisions, as provided for in article 46 of the Convention, is unambiguous, though of course this does not mean that such judgments cannot be criticised.

- *The state security courts*

113. Following the Human Rights Court's Incal judgment of June 1998, the National Grand Assembly amended article 143 of the Constitution to exclude military judges from the state security courts. Nevertheless a number of distinctive procedural features were retained, particularly the rules governing police custody. To bring security court proceedings fully into line with normal criminal practice the 6th reform package of 19 July simply repealed section 31 of the Criminal Code Reform Act, no. 3842 of 1 December 1992. This section excluded the state security court from the changes to criminal proceedings, leaving the former code still applicable.

114. The co-rapporteurs congratulate the Turkish authorities on this important reform, which will finally bring state security court and normal criminal procedure into line. The Turkish authorities have confirmed that the repeal of section 31 will automatically lead to the disappearance of any conflicting provisions in the legislation on the state security courts and the various regulations governing arrest, police custody and questioning.

115. If this were the case there would be no further reason to retain the state security courts. The eight existing courts, composed of three judges and two prosecutors, could be transformed either into courts of appeal (see above) or into specialist courts dealing with corruption and financial offences, organised crime or trafficking in human beings. The latter option is under consideration in the ministry of justice, but it should be noted that this would necessitate a change to the Constitution.

d. *Role of civil society*

- *Role of NGOs*

116. Democracy involves not only functioning political institutions but also the participation of civil society in the political, economic and social debate. Progress in democratisation is measured by the diversity of opinions expressed, the existence of a variety of organisations and the dialogue they maintain with the authorities.

117. The authorities apparently still mistrust associations that they do not control and view any divergence of views as an immediate threat to the integrity of the state, secularism and even Turkey's very existence as an independent republic.

118. The co-rapporteurs fully understand the Turkish establishment's argument that Turkey is still a young democracy in a difficult region on the periphery of Europe, and that vigilance is therefore necessary. Nevertheless they think that more than eighty years after the republic's foundation, the authorities ought to have greater confidence in Turkish citizens, who are just as attached to democratic values as their counterparts elsewhere in Europe. At all events they are convinced that democracy is better served by dialogue with opponents and calm discussion of problems than by mistrust and that the creation of independent organisations such as NGOs, trade unions and local authorities should be encouraged.

119. As the Commissioner for Human Rights states in his 2002 annual report, their active commitment and direct understanding of what is happening on the ground makes NGOs particularly well placed to raise questions about certain practices, suggest solutions and contribute to their implementation. Moreover NGOs are often much more than just outside opponents of governmental policy and practice, since in many areas they also contribute to the exercise of state responsibilities, by assisting vulnerable groups, offering a sympathetic ear, aid and advice to the victims of violations and participating in training programmes for officials.

120. How NGOs operate in Turkey will be considered in the section on freedom of association. More generally though the co-rapporteurs were struck by the authorities' unwillingness in practice to accept the role of NGOs or their representative bodies⁵⁷ especially locally. Not all the victims of torture or ill-treatment in Turkey are Kurds or extreme left militants but these two categories have undoubtedly suffered such violations in the past. This does not mean that the NGOs that criticise such practices are necessarily enemies of the republic, provided, of course, they can demonstrate their good faith, independence and sense of responsibility.

121. Although the situation has much improved, the authorities still adopt a very defensive attitude to what they consider to be unjust and purely partisan criticisms. The co-rapporteurs therefore hope that the consultative machinery recently introduced or reactivated by the authorities, particularly at prime-ministerial level, like the provincial and district human rights commissions, will help to establish and consolidate mutual confidence. They note with satisfaction that the composition of these provincial and district commissions was modified by a decree of 23 November 2003. The number of NGO representatives has been increased whereas members of the security forces (police and gendarmerie), whose presence had often been criticised, will no longer be represented. Moreover the new Access to Information Act (No. 4982) of 9 October 2003, which comes into force on 24 April 2004, will require any public service to reply to a request from individuals or bodies for information or access to official information within 15 days. This will undoubtedly help to improve relations between citizens and governmental authorities.

- *Establishment of an ombudsman*

122. In October 2000 the Turkish authorities informed the previous co-rapporteurs that a bill to establish a "public inspector" or ombudsman, compatible with international standards and with Turkey's particular circumstances, was practically ready and should shortly be presented to parliament. In May 2001 the minister of justice stated that a bill to establish public monitoring institutions had been placed before parliament. More than two years later there is still no ombudsman.

123. The reaction of Mr Arınç, president of the National Grand Assembly, and of the chair of the parliamentary human rights commission, Mr Elkatmis, suggests that the proposed legislation is not a high priority at present and that it is likely to remain on the shelf for some time. This would be a pity since the institution of ombudsman as an independent and impartial mediator between civil society and the authorities has demonstrated its value in many other countries and has been particularly useful in ones in transition or emerging from periods of armed conflict. The co-rapporteurs therefore recommend that the Turkish authorities give close consideration to submitting a new bill to the National Grand Assembly as soon as possible.

⁵⁷ Examples include the espionage charges brought against six German foundations - among the most respected in that country - which fortunately resulted in an acquittal on 4 March 2003, the difficulties experienced by Amnesty in opening an office in Turkey and the many charges brought against domestic NGOs.

124. The parliamentary human rights commission, established in 1990, does excellent work and has produced several important reports, particularly on the situation in prisons. However it cannot table legislation and is not consulted in advance on bills tabled by the government. Finally it has does not have its own powers of investigation. It is therefore unable to fulfil the normal functions of an ombudsman.

e. Local and regional democracy

125. Turkey ratified the Charter of Local and Regional Self-Government on 9 December 1992 and this took effect on 1 April 1993. The only other treaty ratified by Turkey in this field is the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities⁵⁸. The co-rapporteurs consider that Turkey's modernisation and the improvement of standards regarding the rule of law and respect for human rights also call for reform of local government legislation.

126. Decentralisation involving a transfer of powers, particularly educational and cultural, to the local and regional levels, even if implemented uniformly across the entire country, would make it easier to exercise democratic rights, including those of the Kurdish-speaking population in the south-east of the country. Without wishing to create a direct link between the reform of local and regional government and the terrorism that blighted the region until 1999, the co-rapporteurs believe that such changes could help to remove the frustrations that developed during the era of PKK activities.

127. It would also be necessary to increase the proportion of public spending devoted to local authorities. Currently they are allocated less than 5% of government receipts.

128. The co-rapporteurs took advantage of their second visit in May 2003 to discuss the state of local and regional democracy in Turkey with the interior minister, Mr Aksu, and the mayors of Diyarbakir and Bingöl and the deputy mayor of Lice. Turkey is a very centralised state where the state has significant powers to oversee local authorities, according to principles and procedures laid down in law. In many areas, state appointed officials clearly have much more power than locally elected representatives.

129. In Turkey administrative oversight of local government is exercised by the minister of the interior and by the governors (vali) of the 81 provinces⁵⁹ and the district governors. The co-rapporteurs met the governors of Diyarbakir and Bingöl and the district governor of Lice.

130. Local elections are held every five years, in accordance with article 67 of the Constitution. The next will be held on 28 March 2004. Municipal elections are based on single round voting by direct universal suffrage. The winner is the person who gains more votes than any other candidate. In the south-east 36 municipalities are held by mayors belonging to the HADEP party, which was dissolved in March 2003. The mayors of Diyarbakir and Bingöl have since joined the DEHAP and the mayor of Lice, a member of the Fazilet party dissolved in June 2001, has joined the AKP. Co-operation between mayors and governors is generally good, even though the former complain of a lack of powers⁶⁰ and inadequate sources of finance.

131. Reform of local administration and the public service have now been under discussion for nearly ten years and various proposals have been drawn up⁶¹. The interior minister told the co-rapporteurs that following intensive consultations very ambitious draft framework legislation had recently been submitted to the Grand National Assembly. It would reduce governors' powers to

⁵⁸ Ratification on 12 July 2001, entry into force on 12 October 2001.

⁵⁹ There have recently been significant changes, with the replacement of 35 of the 81 governors. At the time of the May 2003 visit the governors of Diyarbakir and Bingöl had been in post for less than four months.

⁶⁰ The mayor of Bingöl, for example, complained that he could not allocate a hall belonging to the municipality for NGOs' use, without the governor's authorisation. It is also the governor rather than the mayor who issues authorisations to demonstrate.

⁶¹ See Recommendation 29 (1997) of 3 June 1997 of the Congress of Local and Regional Authorities of Europe and the report on local and regional democracy in Turkey of 22 November 2001, as the follow up to Recommendation 29 (1997). The Congress will prepare a fresh report in early 2004.

oversee mayors, which would now be restricted to checking legality and assessing performance. It was also planned to transfer to local authorities a number of state services administered at provincial level. The co-rapporteurs ask the Turkish authorities to ensure before it is enacted that the new legislation is compatible with the Charter of Local Self-Government.

- *Temporary removal from office of locally elected officials by the interior minister*

132. According to article 127 of the Constitution, objections to elected organs of local government acquiring local authority status, and their loss of such status, shall be resolved by the judiciary. However, as a provisional measure and pending a court decision, the minister of the interior may remove from office organs of local administration or their members against whom investigations or prosecutions have been initiated on grounds of offences related to their duties. This power is exercised on the governor's request to the minister, by the minister himself *ex officio* on the basis of inquiries carried out by his inspectors.

133. If an elected mayor is suspended by the minister the municipal council must be convened within ten days. At the meeting an interim or provisional mayor is elected from among the council members to carry out these duties pending fresh elections or the return of the former mayor, depending on the court's decision. The interior minister's power to temporarily suspend a mayor pending a court decision ceases when the final decision is handed down. If the court's decision is that the mayor should be dismissed, the Local Government Act procedure applies. Under the relevant section of this act only the Council of State, acting as the supreme administrative court, can order a mayor's dismissal. The interior minister used this prerogative 81 times between 1989 and 1996 and 12 times between 1996 and 2001. This represents 0.4% of the total number of mayors.

134. Like the Congress of Local and Regional Authorities of Europe, the co-rapporteurs think that this aspect of article 127 of the Constitution should be amended. Elected members' terms of office are irrevocable and can only be withdrawn through the ballot box or after a final criminal conviction. Suspension of an elected member's mandate, even temporarily, by the executive is incompatible with the principle of separation of powers.

iii. **Fundamental freedoms**

135. For more than twenty years, following the 1980 coup d'état and the Kurd rebellion between 1984 and 1999, Turkey was subject to a state of emergency and emergency legislation. The Cyprus conflict isolated Turkey on the international scene, despite its role as a strategic ally of the United States in NATO.

136. For a long time Turkey thought that the 1996 customs union with the European Union would be enough for it to realise its dream of a more prosperous economy through close ties with Europe. It was only in 1996-97, particularly with the publication of a report by TÜSIAD, an employers' organisation, that the country became aware of the importance of respecting and protecting human rights and genuinely democratic institutions, as opposed to economic development and European integration. Similarly before 1996, when the European Court of Human Rights handed down its first judgment, Turkey did not feel really concerned about human rights protection.

137. Since then the situation has changed radically, which the co-rapporteurs welcome. The progress made and the evolution of Turkish society since the mid-1990s have been quite remarkable, even if political life has been marked by great instability.

138. The economic situation is currently catastrophic and has been to a greater or lesser extent since 1997, while bad management and the crushing burden of an excessive military budget have emptied the state coffers. In 21 of the 81 provinces the population survives on an average of less than USD 1500 a year while 2 to 3 million persons have an income of less than USD 700.

139. In the co-rapporteurs' view, inadequacies in health and education provision, poor access to the courts and violence to women are major obstacles to the country's democratisation. A security policy that disproportionately restricts civil and political rights is quite unjustifiable. In a democratic society, individual rights cannot be sacrificed on the altar of security and the preservation of the state. The reforms undertaken since 1995, and above all since 2001, are evidence of the growing awareness of this fact.

a. *Police custody*

140. Article 19 of the Constitution, which provides for up to fifteen days' police custody for collective offences, was amended in the October 2001 constitutional reform. The maximum period of police custody before persons are brought before a judge is now four days for collective offences and all arrested or detained persons are entitled to have their next of kin notified immediately of their arrest or detention.

141. The co-rapporteurs congratulate the Turkish authorities on this important reform, which finally brings Turkey into line with European practice regarding the length of police custody, even for the most serious crimes, in accordance with the case-law of the European Court of Human Rights. They also note that, in contrast to many other member countries where the length of police custody is laid down in the Code of Criminal Procedure, the maximum four-day period is enshrined in the Constitution and therefore cannot be easily modified.

142. The corresponding provisions of the Code of Criminal Procedure have been amended by Act no. 4744 of 6 February 2002 (1st package), which also granted entitlement to the services of a lawyer from the first hour of police custody, except for cases in the jurisdiction of the state security courts. Finally Act no. 4778 of 11 January 2003 (5th package) abolished section 16 § 4 of the State Security Courts Act, which denied access to a lawyer during the first 48 hours of police custody for all persons detained by the police for offences dealt with by the state security courts.

143. The co-rapporteurs believe that granting all detained persons the right to the services of a lawyer from the outset of their police custody, whatever the type of offence, represents major progress towards protecting fundamental rights and is an important safeguard against the threat of police brutality.

144. It should be noted though that in the event of the re-establishment of a state of emergency in a province, pursuant to article 120 of the Constitution, police custody may be extended to seven days following an appearance before a judge (modification to section 16 § 3 of the State Security Courts Act, no. 2845)⁶².

145. On 18 September 2002 a regulation on stopping and questioning, police custody and interrogation implemented one of the CPT recommendations, namely a ban on the presence of police or gendarmerie officers at prisoners' medical examinations, unless expressly requested by the latter or their doctor. The regulation also specifies what information has to be supplied to detained persons and, in particular, makes it obligatory to inform them of their rights. This regulation was further modified on 3 January 2004 in response to CPT comments.

146. The co-rapporteurs hope that the various changes made will be strictly enforced by the police and gendarmerie when they carry out arrests, the number of which increased significantly in the first half of 2003 compared with the same period in 2002, particularly in the Diyarbakir region⁶³, something the co-rapporteurs strongly deplore.

147. The Diyarbakir bar association also reports persistent problems concerning detained persons' right to inform their families or request access to a lawyer. On the latter point, in its most recent report the CPT expressed surprise about the small number of persons asking to see a lawyer. It would therefore appear that information about their rights supplied by the police to persons in custody is still inadequate, particularly regarding free legal assistance.

⁶² This seven-day period of police custody in regions covered by a state of emergency should be compared, for example, with the 60 days of police custody introduced in Serbia and Montenegro when a state of emergency was decreed following the prime minister's assassination on 13 March 2003.

⁶³ According to the Human Rights Association (IHD) section in Diyarbakir, there were 2 773 arrests in the region in 2002 and 1 188 in just the first four months of 2003, of which only 271 led to a remand in custody.

b. Impunity and torture

148. Since 1996 the European Court has handed down more than 45 judgments concerning security force involvement in unlawful killings, disappearances, acts of torture and ill-treatment and the destruction of moveable and immoveable property, such as houses, villages and crops. Most of these judgments related to events in the past and therefore do not necessarily reflect the current situation, but it is clear, as the Committee of Ministers notes⁶⁴, that the serious violations found by the Court were attributable to structural problems: shortcomings in security force staff training and management, the statutory framework in which they operate and the criminal, civil and administrative remedies open to victims where abuses occur.

149. Successive governments have taken major steps to combat impunity. In 1999, the maximum penalties applicable to officials found guilty of torture or ill-treatment were increased to, respectively, 8 and 5 years' imprisonment. However this reform was criticised because the sentences handed down were often suspended or commuted to fines and there was still a requirement for prior administrative authorisation before criminal charges could be brought against public officials in certain cases.

150. The second reform package of 9 April 2002 amended section 13 of the 1965 legislation on public officials to oblige the latter to reimburse the state for any sum ordered to be paid by the European Court for torture or ill-treatment in breach of article 3 of the Convention.

151. The 4th reform package of 11 January 2003 modified articles 243 and 245 of the Criminal Code, concerning respectively torture and ill-treatment. Sentences cannot now be suspended or commuted into fines. In addition the 1999 legislation on the prosecution of public officials has also been amended to abolish the need for prior administrative authorisation in the case of prosecutions under articles 243 and 245 of the Criminal Code. An interior ministry circular informing all officials that torture and ill-treatment would no longer be tolerated in any form was issued on 16 January 2003.

152. Finally the 7th package in August 2003 amended the Code of Criminal Procedure and stipulated that all article 243 and 245 prosecutions would henceforth be conducted under an urgent procedure. Hearings could no longer be adjourned for more than thirty days and would even take place during judicial holidays. The last-named reform was necessary because it had been observed that multiple adjournments of hearings and the resulting length of the proceedings had frequently led to the abandonment of prosecutions against security forces because the time limit had expired.

153. Finally, it should be noted that a ministry of justice circular of 20 October 2003 now orders all prosecutors to investigate personally, as a matter of priority, any allegations of torture or ill-treatment rather than entrusting such inquiries to the police or gendarmerie.

154. However, the co-rapporteurs do not see why it should be necessary to retain the prior administrative authorisation requirement for other offences committed in the exercise of duties. At the very least it should be abolished in connection with articles of the Criminal Code concerned with unlawful killings, disappearances and the destruction of property committed by security forces. Consideration should also be given to a disciplinary suspension procedure for any official accused of serious offences in criminal proceedings.

155. The co-rapporteurs are aware that eradicating torture and ill-treatment in police custody is a long-term task. Changing the law is not enough - it also has to be applied on the ground by basic-grade officers. The interior minister told the co-rapporteurs that a major training effort had been made⁶⁵, that Court judgments were systematically translated and published and that circulars had been issued drawing attention to the authorities' zero tolerance policy in this regard.

156. The co-rapporteurs unreservedly support the government's efforts but vigilance is still required. According to the Association of Human Rights' (IHD's)⁶⁶ report, published in August 2003,

⁶⁴ See Interim Resolutions DH (99) 434 and DH (2002) 98.

⁶⁵ Police officer training has been extended from nine months to two years, with a compulsory human rights course, and Turkey benefits from the Council of Europe's "police and human rights" programme and the training programmes organised jointly by the Council and the European Union.

⁶⁶ The IHD is the oldest human rights organisation in Turkey. It was founded in 1986 and has about 10 000 members in 34 sections in every region of the country.

the number of persons subjected to torture and ill-treatment in the first half of 2003 was higher than the equivalent figure for 2002 (413 in the first six months of 2002 compared with 715 in the same period of 2003). The report also states that in the first half of 2003 the prosecution of a total of 63 members of the security forces in 11 courts for torturing 42 persons resulted in 29 discontinued proceedings because the time limit had been exceeded, 13 acquittals, 8 convictions with suspended sentences and 13 prison sentences whose application was partially or wholly suspended.

157. In its most recently published report following its visit to Diyarbakir in September 2002⁶⁷, the CPT stated that it had found injuries on prisoners consistent with allegations of torture and ill-treatment. The CPT has since carried out another visit, from 7 to 15 September 2003, to Adana, Bismil, Cinar, Diyarbakir and Mersin. The conclusions have not yet been published. The co-rapporteurs again urge the Turkish authorities to implement all the CPT recommendations and severely punish any abuses that come to light.

c. Situation in prisons

158. The Turkish government did launch a reform of its prison system to replace existing large dormitory cells, containing up to 100 prisoners, with one or three-person cells. This reform, which brought Turkey into line with European prison standards, was rejected by certain prisoners, who alleged that in practice this involved solitary confinement that amounted to torture and ill-treatment. In 2000 they launched a hunger strike and demonstrated in several prisons. This led to the intervention of the gendarmerie, who evacuated the prisons by force, at a cost of 32 lives⁶⁸.

159. The hunger strikes of persons opposed to type F prisons have led to the deaths of more than 70 persons between 2000 and 2003, which is extremely regrettable. The co-rapporteurs can only support all those who are calling on the strikers and the Turkish authorities to bring an end to this human drama. They congratulate the Turkish authorities on accepting the CPT advice that prisoners in type F establishments be allowed to spend a reasonable part of the day in out-of-cell communal activity programmes and regret the intransigence of the prisoners who still refuse to take part in them.

160. Co-operation with the CPT is excellent. Turkey has accepted all its reports and the government's responses are published, which represents significant progress. The report on the CPT's visit from 2 to 14 September 2001 was published in April 2002 and the government's response on 24 January 2003. The Turkish authorities agreed to the publication of the CPT's preliminary observations to the authorities following the visit from 21 to 27 March 2002, particularly to a type F prison in Sinçan, near Istanbul, and certain gendarmerie stations in Diyarbakir. They also agreed to the publication of the report of the September 2002 visit, together with the government's observations, which both appeared on 25 June 2003.

161. It emerges from the last named reports⁶⁹ that the CPT is satisfied with the communal activities organised by the authorities. The government has also implemented another CPT recommendation: following a justice ministry circular issued on 10 October 2002, the right to participate in conversation periods, during which prisoners can talk together for two to three hours without surveillance, is no longer conditional on prior participation in one of the communal activities.

⁶⁷ According to the Diyarbakir IHD section, there were 228 complaints of ill-treatment during police custody in 2002 and have already been 117 in the first four months of 2003. In contrast complaints of torture have significantly declined: most complaints concern such forms of ill-treatment as standing upright for prolonged periods, blindfolding, depriving of food and so on.

⁶⁸ Criminal proceedings against the officers in question are pending.

⁶⁹ CPT/Inf (2003) 28 and 29.

162. The Turkish authorities have implemented the CPT recommendations on certain other practical questions, such as systematic medical examinations on arrival in prison and the confidentiality of all such examinations, in a health ministry circular of 10 October 2003. The co-rapporteurs invite the authorities to continue to implement all the relevant CPT recommendations as soon as possible.

163. More generally, the Turkish authorities should be congratulated on the adoption of Act no. 4806 amending the Criminal Code and the Prison Administration Act, which came into force on 10 February 2003. This brings the relevant legislation into line with European standards, particularly regarding the confidentiality of documents held by prisoners to prepare their defence and the ban on searches of lawyers visiting their clients.

d. Abolition of the death penalty

164. On 3 October 2001, after a particularly stormy debate, parliament amended article 38 of the Constitution to abolish the death penalty in peacetime, though with an exception for terrorist crimes⁷⁰. This exception was subsequently abolished in the Act of 9 August 2003 (3rd package). This specified that, other than in time of war or imminent danger of war, death sentences for all capital offences specified in the Criminal Code and other legislation, such as that on smuggling or on forests, would be commuted to life imprisonment without the possibility of conditional release. Amendments are currently being prepared to the Military Code, which also provides for the death penalty. The 6th package of 19 July 2003 states that abolition will also apply to crimes carrying the death penalty covered by the Gallipoli Peninsula National Park Act of 17 February 2000.

165. Protocol no. 6 was signed by Turkey on 15 January 2003, just before the Turkish prime minister's visit to the Assembly session. The instruments of ratification were deposited with the Secretary General of the Council of Europe on 12 November 2003. On 9 January 2004, Turkey also signed Protocol No. 13 concerning the abolition of the death penalty in all circumstances, which includes acts committed in time of war.

166. The co-rapporteurs welcome this important reform, which required much political courage. Total abolition of the death penalty is a fundamental European principle and Turkey, which has not executed any convicted offenders since 1984, is to be congratulated on taking the final step towards *de jure* abolition. This important reform should now be completed by amending the Constitution and also by removing the death penalty from the military penal code.

e. Freedom of expression

167. Turkish law offers many opportunities to restrict freedom of expression. In their discussions with journalists, trade unions and associations the co-rapporteurs were told that one of the major problems was the large number of laws that could be used to restrict freedom of expression: the criminal, civil and electoral codes, the laws governing associations, political parties, the press, television and so on. Many organs of the press and associations have to devote a large part of their budget or resources to paying specialist lawyers and personal appearances of their top managers before the courts. *Hürriyet*, for example, which describes itself as a "constitutional" newspaper, has someone assigned full-time to its defence.

168. The other problem mentioned is that of judicial harassment. Journalists, NGOs, writers and elected representatives never know in advance whether what they say, write or publish will be liable to prosecution. It will "pass" in some cases, and not in others. It depends on the timing, the region and the attitude of the interior ministry official who checks all publications before their appearance. In response, certain newspapers have acknowledged that they practise a form of self-censorship, in order to maintain political correctness as laid down in the first three articles of the Constitution⁷¹.

⁷⁰ Which excluded the possibility of commuting Abdullah Öcalan's death sentence to one of imprisonment.

⁷¹ According to article 4 of the Constitution, articles 1 to 3 are irrevocable and cannot be amended. Article 1 states that Turkey is a republic, article 2 that it is a democratic, secular and social state governed by the rule of law, respects human rights and is loyal to the nationalism of Atatürk, and article 3 that the Turkish state, with its territory and nation, is an indivisible entity.

Other newspapers are systematically seized or banned from publication. The pro-Kurd *Yenide Özgür Gündem*, for example, which is the eighth in succession to the daily *Özgür Gündem*⁷², has been published since September 2002⁷³: of the 164 editions up to 12 February 2003, 64 were seized on the day of publication, including once on the day of the co-rapporteurs' visit. They were also informed that the editor and owner of the newspaper faced a total of 82 criminal proceedings (one of which called for the paper's complete banning), based on articles 159, 169 and 312 of the Criminal Code or sections 6 and 8 of the anti-terrorist law.

169. It was also pointed out that in very many cases prosecutions launched by the state prosecutor finally resulted in acquittal or discharge and that prison sentences were regularly amnestied. It therefore appears that the courts generally fulfil their role as guardians of individual liberties, except for the state security courts, which tend to be more severe.

170. What is worrying is the number and frequency of proceedings. The Bingöl (East) IHD section, for example, currently faces nearly 50 prosecutions on various charges. The most recent concerns the publication, without prior authorisation, of a report dated 5 July 2003 on respect for human rights in the region. The association GÖc-DER, which looks after migrants, has been charged with undertaking activities outside its statute, namely distributing a questionnaire to try to establish the number of persons wishing to return to their villages of origin.

171. The IHD headquarters in Ankara were searched on 6 May 2003 and documents seized, the day after a meeting to which its representatives had been summoned by the authorities for consultation on the new national programme. The search was admittedly authorised by a judge but has been criticised by the human rights committee of the National Grand Assembly. When the co-rapporteurs asked the minister of justice for clarification, he told them that the judicial system was independent. In this context the co-rapporteurs wish to point out that, under article 144 of the Constitution, the justice ministry inspectorate is responsible for supervising judges and public prosecutors with regard to the performance of their duties.

172. The co-rapporteurs note with satisfaction that, since the October 2001 constitutional reforms, restrictions on freedom of expression have been considerably relaxed. It is too soon to assess the impact, even though a number of court decisions have already been handed down. The co-rapporteurs believe that there must also be a fall in the number of prosecutions. According to the International Federation for Human Rights (FIDH) report, published in December 2002, this is not the case in the eastern and south-eastern regions. Paradoxically, according to the Diyarbakir and Bingöl NGOs, the higher number of prosecutions is probably also the result of better protection for freedom of expression, which encourages people to make greater use of it. However the situation has started to improve: according to the human rights association's most recent report, published in late 2003, the number of prosecutions relating to freedom of expression halved between 2002 and 2003.

173. Another matter of concern is prosecutors' use of other provisions of the Criminal Code, apparently to get round and avoid the application of articles amended by parliament. For example, far fewer prosecutions are based on articles 159 and 312 of the Criminal Code or section 8 of the anti-terrorist law, whereas there has been a considerable increase in the number of article 169 prosecutions, which makes it an offence punishable by up to five years' imprisonment to furnish any sort of assistance or support whatever to illegal organisations. The change to article 169 in the 7th reform package of August 2003 (deletion of the words indicating "any sort of ... whatever") are not such as to reduce the co-rapporteurs' concerns.

⁷² See *Özgür Gündem v. Turkey* judgment of 16 March 2000.

⁷³ *Yenide Özgür Gündem* has a print run of barely 35 000 copies, most of which are sold on the street or by subscription.

174. Notwithstanding the Turkish authorities' denials, the co-rapporteurs consider that such a practice, if it were the case, would seriously undermine the undoubted efforts of government and parliament. Prosecutors and judges are of course independent and do not receive instructions from the ministry of justice but they should be reminded, if only by ministerial circular, of their important role in carrying out democratically voted reforms.

175. Finally, even if the reforms' main purpose is to respond to European states' criticisms and demands, the co-rapporteurs strongly urge the authorities, when they are less constrained by time, to carry out a thorough reform of legislation and regulations on freedom of expression, if necessary with Council of Europe assistance. They believe that the underlying philosophy is still largely dominated by security considerations and that it is inadmissible in a democracy for freedom of expression to be so frequently punished by sentences of imprisonment, which should be confined to the most serious offences, and then only in the event of reoffending.

176. As far as the changes to legislation since October 2001 are concerned the co-rapporteurs will confine themselves to the most symbolic ones, concerning legal provisions frequently challenged by the European Court of Human Rights. For lack of time they will pass over the various changes made to the legislation governing the press and television⁷⁴.

177. Article 159 of the Criminal Code, which makes it an offence to insult the principal organs of state and the concept of "Turkishness"⁷⁵, was amended by Act no. 4744 of 6 February 2002 (1st package): the maximum punishment for such insults was reduced from 6 to 3 years' imprisonment (but the minimum remains one year). Those who openly insult the laws or decisions of parliament are still liable to 15 days to 6 months' imprisonment but the fine⁷⁶ has been abolished.

178. The Act of 3 August 2002 (3rd package) again amended article 159 by replacing the word "publicly" with "overtly", which according to the Turkish authorities made the offence conditional on an intentional element. The 7th reform package of August 2003 reduced the maximum penalty for this offence from one year to six months' imprisonment, which is a significant advance. A new paragraph has also been added stating that criticising without the intention of insulting or deriding is not an offence. The co-rapporteurs find this somewhat surprising since they had been led to believe that the intentional element of the offence had already been introduced in the 3rd package. They are also surprised by the retention of the offence of insulting the Turkish nation, which when committed by a Turkish national abroad is liable to an increase of between one-third and one-half in the sentence.

179. The co-rapporteurs wish to point out that, according to the case-law of the European Court, the limits of permissible criticism are wider with regard to the government⁷⁷ than in relation to a private citizen or even a politician, and that the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings⁷⁸. The co-rapporteurs therefore recommend the total repeal of article 159 of the Turkish Criminal Code, or at the very least, the total abolition of imprisonment for this offence and its replacement by a fine.

⁷⁴ No longer a criminal offence for publishers to use a language other than Turkish and reduction of the length of suspension of periodicals (2nd package), certain penalties of imprisonment reduced to fines (3rd package), protection of journalists' sources (4th package) and new rules governing TV and radio broadcasts in election periods (6th package).

⁷⁵ According to article 66 of the Constitution "Everyone bound to the Turkish state through the bond of citizenship is a Turk".

⁷⁶ The fine laid down was in any event ludicrous: TRL 100 to 500.

⁷⁷ For example, criminal proceedings based on article 159 have recently been brought against Cem Uzan, a controversial businessman and leader of the Youth party, for calling the prime minister a coward and miscreant, while the five television channels controlled by the Uzan family, which reported his statements, were banned from broadcasting for a month in July 2003.

⁷⁸ See in particular the *Castells v. Spain* judgment of 23 April 1992, paragraph 46, concerning the criminal conviction of an elected representative for attributing responsibility for Basque terrorism to the government.

180. Article 312 of the Criminal Code, which makes incitement of hatred between peoples an offence, has also been - slightly - amended by the Act of 18 February 2002. The penalty may still vary from 6 months to two years' imprisonment but the fine for the offence of speaking openly in favour of a crime or incitement to disobey the laws has disappeared. The maximum penalty for public incitement to hatred is still 3 years (again the fine has been abolished) but the criterion of breach of public order has been added. The minimum penalty remains one year in prison.

181. Section 7.2 of the 1991 anti-terrorist law has also been modified, by the Act of 18 February 2002 (1st package) and then by the 7th package of August 2003. Assistance to and propaganda on behalf of prohibited organisations is still liable to 1 to 5 years' imprisonment, and now also to a fine of TRL 500 million to 1 billion, though only when those concerned advocate the use of terrorist methods.

182. Section 8 of the anti-terrorist law, which was concerned with separatist propaganda through the medium of the press, other written material, radio and television, and demonstrations, was amended in February 2002 in the 1st reform package. It still provided for 1 to 3 years' imprisonment and a fine of TRL 1 to 3 billion. However, under the 1st reform package the penalty could only be increased by a third if the propaganda in question had encouraged the use of terrorist methods. More or less the same penalties were applicable to media publishers and proprietors. On the other hand prohibitions on publishing or broadcasting were henceforth only for a maximum of seven days (compared with 15 previously).

183. The 6th package⁷⁹ (Act no. 4928 of 19 July 2003) totally repealed section 8 of the Anti-Terrorism Act. All the preliminary inquiries initiated under this section will be terminated with no further action. Persons detained will be released either by the state prosecutor, if they have not yet been charged, or by the relevant court, if charges have been preferred. The consequences of convictions under this section will be annulled, whether or not the sentence has been carried out or has the status of a final judgment. All these cases, whether or not they are pending and no matter what the stage of proceedings, including the execution of sentence, will be given priority by the courts.

184. This is a very important reform, particularly as it will probably enable the Committee of Ministers to terminate its supervision of the execution of 17 judgments of the European Court where the latter has found a violation of Article 10 of the European Convention on Human Rights.

185. Certain lawyers believe that with the exception of the complete repeal of section 8 of the anti-terrorist law the above modifications are purely cosmetic. There is still no ground of good faith or a clear criterion of what constitutes incitement to violence and the minimum sentence is still excessive. The co-rapporteurs consider it necessary to wait to see how the courts apply the new provisions. The Constitutional Court will have an important role in this regard, as a result of the amendments to the fifth paragraph of the preamble to the Constitution, which now only refers to activities contrary to Turkish national interests, and not to ideas and opinions, and to article 26 of the Constitution on freedom of expression, which now includes an exhaustive list of possible exceptions, as in article 8 paragraph 2 of the European Convention on Human Rights.

f. Freedom of association

186. The Associations Act 1983⁸⁰ was one of 600 laws passed between 1980 and 1983 by the national security council under the state of emergency and could not be challenged in the Constitutional Court, in accordance with provisional article 15 of the Constitution. Fortunately, the relevant paragraph of this article was repealed by the October 2001 constitutional reform. Nevertheless it still bears the imprint of the security considerations that dominated after the 1980 coup and must be totally revised, as the prime minister has undertaken. In practice the co-rapporteurs have the impression that the restrictions on freedom of association have been partially relaxed but not lifted, and that the principle of strict state oversight remains in force.

⁷⁹ Act 4928 was approved by the National Grand Assembly on 19 June 2003 but the repeal of section 8 of the Anti-Terrorism Act was vetoed by the President. It was repassed in the same terms on 16 July, and came into force on 19 July 2003.

⁸⁰ Act no. 2908 of 6 October 1983. The Political Parties Act, no. 2820, was passed on 22 April 1983 in the same circumstances.

- *establishing associations*

187. The 1983 act contains numerous restrictions on freedom of association. Section 5 places considerable limits on associations' objectives, which may not, for example, be intended to "infringe the indivisible unity of the state and the Turkish nation" or "promote the idea that there are minorities in Turkey based on differences of class, race, language, religion or region or create minorities by protecting, promoting, defending or disseminating languages or cultures different from the Turkish language or culture"⁸¹.

188. This restriction was partially lifted by the Act of 9 April 2002 (2nd package), and then the Act of 11 January 2003 (4th package), which reformulated section 5, particularly by adding the restrictions in article 11.2 of the European Convention. Henceforth prohibition would only be possible for associations that sought to create "differences of race, religion, sect, region and minorities, and harm the unitary structure of the state". It would appear therefore that in future it will be possible to promote at least the idea that there are minorities in Turkey, with different languages and cultures. It should be noted though that it is still forbidden to defame or denigrate the person, work or memory of Atatürk.

189. Article 33 of the Constitution on freedom of association was amended on 17 October 2001. Refusal to register associations' statutes and the dissolution or suspension of their activities is now the responsibility of the courts. Any administrative decisions in this area must be brought before a judge within 24 hours and if the judge has not ruled within 48 hours the decision is annulled. This represents significant progress that should limit the arbitrary behaviour and harassment often suffered by associations in the past.

- *International activities*

190. Sections 7, 11 and 12 of the act, restricting Turkish associations' activities abroad and prohibiting foreign associations from operating in Turkey, were repealed in the acts of 9 April 2002 (2nd package) and 9 August 2002 (3rd package). But the new section 11, adopted in August 2002, still prevents Turkish associations from being members of other international organisations or taking part in international activities without prior authorisation of the council of ministers, on the request of the interior minister and after the minister for foreign affairs had been consulted. The procedure was simplified but not abolished by the 7th package in August 2003. Henceforth the council of ministers will not be involved.

191. In the absence of authorisation an association could immediately be dissolved by the council of ministers on the request of the interior minister and after the minister for foreign affairs had been consulted. This is no longer the case but authorisation may be withdrawn if a foreign association of which a Turkish association is a member and with which it co-operates undertakes activities contrary to Turkish law and Turkish national interests. Under the new section 12 the same procedure applies to associations with headquarters abroad that wish to open an office in Turkey.

192. The legislation passed in August 2002 authorised foreign associations to operate in Turkey if international co-operation enabled the country to benefit from skills and knowledge in the fields of culture, economy, technical matters, sport and science. The co-rapporteurs are not sure that this definition applies to Amnesty International, which secured authorisation to create a Turkish section in March 2002 after several refusals.

193. On the other hand, and this constitutes considerable progress, associations wishing to invite members of foreign associations to Turkey or to take part in meetings abroad no longer require prior approval. Under section 43 of the act, as amended in April 2002 (2nd package), they now merely have to inform the relevant authority at least seven days in advance, giving the address, date, place and purpose of the meeting and a list of participants.

⁸¹ In February 2002, for example, court no. 2 in Ankara ordered the closure of the union of Alevite and Bektashi organisations (ABKB) under section 5, on the grounds that its statutes provided for the teaching of Alevite and Bektashi culture, and that it could encourage the division of the Turkish state. This decision has subsequently been quashed.

194. Section 60 still prevents associations from receiving funds from individuals or institutions abroad without the interior minister's prior approval.

195. Section 38, modified in April 2002 (2nd package), still limits the scope of students' associations to their strict sphere of activity (education, teaching, work, catering, physical and moral health and so on). The 7th package of August 2003 again amended section 38 to enable students to establish associations in the interests of art, culture and science. The ban on civil servants establishing associations outside their strict sphere of activity (section 39) was lifted by an amendment passed in August 2002 (not produced by the government, which states that this section has been totally repealed). However judges must obtain prior authorisation from the justice minister and other civil servants from the prime minister.

- *monitoring associations' activities*

196. Section 6 prohibited the use of any language but Turkish not only in written form in statutes and documents but also orally in private meetings of associations' members. This restriction was lifted by the Act of 11 January 2003 (4th package) and associations are now only obliged to use Turkish in official proceedings.

197. Under section 44, the authorities had a genuine power of censorship since associations were required to submit their public statements, tracts and other publications to the state prosecutor and the governor's representative before dissemination, and they could not appear in the press until 24 hours had elapsed. This prior censorship was abolished in the 4th package of 11 January 2003. Press releases, publications, tracts and so on can now only be confiscated on the orders of the most senior local administrative authority, who must advise the judge of first instance within 24 hours. The judge must rule on the confiscation within 48 hours, failing which the administrative decision is automatically annulled.

198. Finally it should be noted that the Act of 11 January (4th package) amended sections 45 and 46 on the supervision and inspection of associations by establishing an associations directorate within the interior ministry. This responsibility will therefore no longer devolve, as was formerly the case, on the ministry's security directorate.

199. The co-rapporteurs consider that the aforementioned examples of changes in successive reform packages indicate the need for a total reform of the law on associations, and the corresponding provisions of the Civil Code. Changing it one step at a time and section by section simply detracts from the coherence of the whole and necessitates further corrections. Moreover, as they have not been able to consider the law in its entirety the co-rapporteurs are unable to confirm that it is now fully compatible with European standards, particularly those of the European Convention on Human Rights. They therefore invite the Turkish authorities to submit the entire Associations Act to the Council of Europe for an expert appraisal.

- *Freedom to meet and to demonstrate*

200. The co-rapporteurs are pleased to note that the 7th package of August 2003 significantly relaxed Act no. 2911 of 6 October 1983. Demonstrations may now only be banned or deferred if there is a clear and immediate risk of a criminal offence being committed. In addition the maximum period for the prohibition or deferral of a demonstration has been reduced to a maximum of one month. However the co-rapporteurs would like further information on the prior authorisation procedure and judicial remedies available to challenge any bans on demonstrating.

g. *Freedom of religion*

- *Religious minorities*

201. The only minorities recognised as such in Turkey are religious minorities to which the 1923 Treaty of Lausanne grants special rights. Ninety-eight percent of the Turkish population is Sunni Muslim⁸². The remaining 2% are made up of Orthodox Christians, Jews, Catholics and Protestants. The Orthodox Syrians, Protestants, Baha'is and Maronite, Bulgarian, Chaldean, Nestorian and

⁸² Including 22 to 25 million Alevi, who are not recognised as a separate Sunni religious community, even though their practices are somewhat different (they pray not in mosques but in prayer houses called cemevis and the women can pray with the men).

Georgian Christians are not covered by the treaty of Lausanne, which is confined to Armenian and Greek Orthodox Christians and Jews. There are now fewer than 100 000 Christians in Turkey, divided into numerous churches, out of a population of nearly 70 million. The Armenians - about 60 000 persons - are mainly attached to the Apostolic Church of Armenia led by their Patriarch, Mesrob Moutafian (Mesrob II), in Istanbul. The others are Roman or eastern Catholics under the leadership of a Catholicos in Beirut. The Armenian Church has some forty places of worship and schools that are supervised by the state. There are very few Jews: about 25 000.

202. The Greek Orthodox Church has about 3 000 faithful, mainly in Istanbul, compared with several hundred thousand at the start of the last century. Their Patriarch Bartholomew I is the spiritual head of all the Orthodox Christians of western Europe. He is a Turkish citizen and his election had to be approved by the Turkish state. However he does not always enjoy easy relations with the authorities, who mistrust his international role and reject his ecumenical title. He has particularly criticised the lack of progress on the reopening of the theological seminary of Heybeliada (Halki in Greek) on one of the islands off Istanbul, which was closed in 1971.

203. The main problem suffered by religious minorities in Turkey was lack of legal personality and the impossibility of acquiring or selling property. The government maintains that the problem was settled by the amendments to section 1 of the Foundations Act, no. 2762 of 1935, in the 3rd reform package. Henceforth religious communities, even ones without legal personality, would be able to buy and sell property with the authorisation of the council of ministers, so long as they registered their existing property within six months of the legislation's entry into force, that is by 9 February 2003.

204. This period turned out to be too short and the 4th package of 11 January 2003, using exactly the same wording as the previous version (other than substituting the directorate general of foundations, in the prime minister's office, for the council of ministers, as the body granting authorisation), stated that a ministerial order would specify how this section was to be implemented. The order was published on 24 January 2003 but the final deadline for registering existing property holdings remained 9 February 2003, which could not be met. The 6th package of 19 July 2003 therefore added an interim section to the law on foundations providing for registration to take place within eighteen months of the legislation's entry into force. By 1 December 2003 the directorate general of foundations had already received nearly 2000 applications from some 116 foundations.

205. The co-rapporteurs have no information on any difficulties in implementing this order but they consider the absence of legal personality of churches and religious communities to be a matter for concern⁸³.

206. They are also concerned that two and a half years after a friendly settlement in the Court, the Turkish authorities have still not found a way of carrying out the terms of the agreement reached in the Case of the Institute of French Priests and others (judgment of 14 December 2000). As the Chair of the Committee of Ministers noted in a letter to the Turkish foreign minister in June 2003, this is an unprecedented situation. The co-rapporteurs hope that the Council of State decision of 30 December 2003 will serve to unblock the situation as rapidly as possible.

207. It should also be noted that the 6th package in July 2003 amended the 1985 Construction Act, no. 3194, which was only concerned with mosque construction. The term "mosques" has been replaced with the more general "places of worship", and the authorisation of the local mufti is no longer required, which enables non-Muslim religious communities to apply for building permits.

⁸³ It should be noted that Greece, which is also a signatory to the Treaty of Lausanne, was condemned by the European Court in 1997 for failure to grant legal personality to the Canea Catholic Church.

- *Secularism*

208. Turkey is the only secular Muslim state. This secularism was decided on and imposed by Atatürk and is one of the founding principles of modern Turkey. According to article 174 of the Constitution, no provision of the Constitution shall be construed or interpreted as rendering unconstitutional the eight so-called reform laws passed between 1924 and 1934. Among other things these laws prohibited certain traditional forms of dress and headwear, including the veil for women, banned dervishes, introduced the Latin alphabet, abolished Ottoman titles, made civil marriage obligatory and unified the education system. Atatürk thereby imposed, practically from one day to the next, a radical transformation of a society where the religious and political authority were traditionally interchangeable.

209. However, the co-rapporteurs note that the concept of secularism has nothing to do with the separation of church and state, as practised in France since the law of 1905, as a result of which France neither recognises nor subsidises any religion. There is no Church, clergy or ecclesiastical authority in the Muslim religion, simply a community of believers. The 72 000 imams in Turkey are public officials, paid and trained by the religious affairs directorate (DIYANET). As such Islam can be said to be a state religion. In Turkey secularism signifies the relegation of religion to the private sphere and a ban on Koranic laws in social and political life.

210. Hence the authorities' hostility to any form of fundamentalism - seen as a threat to the republic's existence. The co-rapporteurs hope that the Istanbul bombings of 15 and 20 November 2003, which targeted two synagogues, the British consulate and a British bank and for which an obscure Turkish Islamic group, Raiders of the Great Orient, has claimed responsibility, will not reinforce these fears.

211. However the co-rapporteurs have found it difficult to understand the bitter debate surrounding the wearing of Islamic headscarves by women in public, when women face many other problems in Turkish society. They consider it excessive to treat this as grounds for excluding women students or preventing them from sitting exams. But they do understand the fears of women who want to be able to wear a headscarf if they so choose but do not want it to be imposed on them. For them, the complete ban on the Islamic headscarf is a safeguard. Be that as it may, two such cases have been referred to the European Court of Human Rights, which will have to produce a ruling.

212. In contrast the authorities are rightly concerned about any proposals to reintroduce Sharia law, which contains principles and rules that are incompatible with a democratic society, as the Court stated in its judgment on the dissolution of the Refah party.

iv. The Kurdish question

213. The conflict between 1984 and 1999 caused more than 35 000 deaths, including some 5000 civilians, and has left deep scars. The conflict and how it has been waged by Turkey has undoubtedly delayed its entry into the European Union, not to speak of the economic and social consequences for the region and the country as a whole. The Kurds are not the only minority in Turkey but they are particularly numerous: 10 to 12 million according to estimates⁸⁴. Because of this situation and the large number of human rights violations in the region the co-rapporteurs decided to visit eastern and south-eastern Turkey, rather than the north or south.

214. On their second visit (24-28 May 2003), the co-rapporteurs travelled to Diyarbakir and Bingöl, which on 1 May had just suffered a terrible earthquake that had caused the death of more than 200 persons, including 80 children crushed in the ruins of their boarding school. The co-rapporteurs also visited the small town of Lice, where there had been very violent clashes in October 1993 between the PKK and security forces, in which 16 persons (including the Diyarbakir general of gendarmerie) had been killed and 19 injured⁸⁵. The town was left in ruins, with more than 400 shops and 600 houses partially or totally damaged⁸⁵.

⁸⁴ Officially there are no minorities in Turkey, other than religious minorities recognised by the Treaty of Lausanne. As a result there are no statistics on ethnic affiliation.

⁸⁵ The 1993 incidents in Lice have led to more than 600 applications to the European Court of Human Rights: 247 were struck off the list following the government's offer to pay each of the applicants TRL 10 to 15 000 (see dec.

215. Numerous human rights violations were committed by PKK members but the anti-terrorist measures used by the security forces during this period also led to serious abuses, such as torture, arbitrary arrests, disappearances and the destruction of villages and crops, which have been condemned by the European Court of Human Rights. The authorities' strategy of arming Kurdish "village guards" was probably militarily successful as way of countering local support - at least passive - for PKK activities but it posed an acute dilemma for the civilian population: if they refused to accept responsibility for security on the authorities' behalf they faced the threat of penalties, such as destruction of property or crops; if not, they were seen as traitors by the PKK, and again ran the risk of reprisals.

216. However following the capture of the PKK leader Abdullah Öcalan in Kenya in February 1999, the PKK decided to end the armed struggle in September 1999. Fortunately it has not been resumed apart from a few isolated incidents, even though a certain number of PKK fighters⁸⁶ have retired to the mountains, particularly in northern Iraq. All those whom the co-rapporteurs met in the east and south-east said that the situation had improved considerably since the ending of hostilities in 1999 and that the lifting of the state of emergency would help still further.

a. *Lifting the state of emergency*

217. The co-rapporteurs were relieved to learn that the state of emergency had finally been lifted in Hakkari and Tunceli provinces on 30 July 2002 and in the last two, Diyarbakir and Sirnak, on 30 November 2002. However there were still gendarmerie road blocks and check points, as the co-rapporteurs saw when they travelled from Diyarbakir to Bingöl in May 2003.

218. Moreover, since the early 1990s Turkey has notified the Council of Europe of derogations under article 15 of the European Convention concerning the safeguards in article 5 governing arrest and detention. The last derogation was withdrawn on 29 January 2002, which is also very positive. Finally the co-rapporteurs note that at no time during the Iraq crisis were there any proposals to restore the state of emergency in the eastern and south-eastern provinces.

b. *The Reintegration Act of 29 July 2003*

219. The co-rapporteurs are aware that the Kurdish question is still a very sensitive issue in Turkey but more than four years after the PKK abandoned their armed struggle they believe the time has come to think about reconciliation. On 26 June 2003, the Turkish interior minister, Abdulkadir Aksu, proposed amnesty measures *inter alia* for militant Kurds. The legislation subsequently passed by the Grand National Assembly, which came into force on 6 August 2003⁸⁷, offers pardons for those who give themselves up and have not committed any murders or similar crimes, and reduced penalties for the others, so long as they supply information on their organisation. The leaders are excluded from any amnesty offers. The legislation was valid for six months and by 6 February 2004 about 3000 persons, most of them detained in Turkish prisons, had apparently asked to be amnestied. It would seem, therefore, that for the time being the legislation has not achieved one of its purposes, which was to secure the surrender of the Kurds entrenched in northern Iraq, of whom barely 700 appear to have given themselves up.

220. The government's offer, the eighth of its kind, has been criticised as counter-productive by Tuncer Bakirhan, leader of the Democratic People's Party (DEHAP), the main pro-Kurdish party in Turkey. A million-signature petition on this subject was delivered to the National Grand Assembly in June and a number of demonstrations, often organised by women's associations, also took place in May and June and were dispersed - apparently violently - by the police.

no. 26679/95 of 14 June 2001), 280 were declared inadmissible for failure to exhaust domestic remedies or the six-month time limit (dec. no. 62566/00) and 98 are pending. See also the Court's recent finding of a violation in the Ayder and others judgment of 8 January 2004.

⁸⁶ The PKK became KADEK in April 2002 and the Turkish authorities are now trying to register this new organisation on the list of terrorist organisations. KADEK in turn dissolved itself on 11 November 2003 and has been replaced by the Kongra-Gel (congress of the Kurdistan people).

⁸⁷ Article 87 of the Constitution, amended on 17 October 2001, now requires a three-fifths majority for amnesties and pardons.

221. On 1 September 2003 KADEK ordered the end of the ceasefire in force since 1999 and threatened to resume its armed struggle if the government did not enter into political negotiations on a general amnesty. The co-rapporteurs firmly condemn this threat, which is not calculated to promote the reconciliation that everyone fervently seeks. The rule of law must be respected by all, including Kurds, who cannot demand to be part of the country's democratic life while continuing to advocate the use of violence and terrorism.

222. It is probably too early to envisage a general amnesty, with no other conditions, particularly for those guilty of murder, though the Reintegration Act does at least have the merit of offering an escape hatch for all those wishing to return to the country and resume a normal life. However it will not be enough to create the climate of confidence that Turkey and its inhabitants so greatly need. Fifteen years of armed conflict have clearly left deep wounds on both sides that will not be easily healed.

223. The co-rapporteurs wonder whether a reconciliation commission should eventually be established, starting with a discussion forum where, patiently and with the greatest possible objectivity, the facts could first be established, and then examined and discussed. The aim would be to identify the reasons for such a murderous conflict, on which both sides could agree and acknowledge their own responsibilities. They could then go on to identify ways of overcoming the accumulated hate and antagonism and resolving the problems, something that will necessarily involve the region's economic development (see below).

c. *The Abdullah Öcalan situation*

224. Abdullah Öcalan, who has admitted to being the founder and leader of the PKK, has been detained since February 1999 on the island prison of Imrali. He was condemned to death on 29 June 1999 by the Ankara state security court, after the National Grand Assembly has amended article 143 of the Constitution on 18 June to exclude military judges from the security courts. The Öcalan case is undoubtedly the reason why it has taken so long for parliament to abolish capital punishment in Turkey, even though there have been no executions since 1984. A large part of the population as well as the political class could quite simply not accept that Öcalan should escape such a well deserved punishment.

225. The death penalty was abolished in two stages: in October 2001, article 38 of the Constitution was amended to read that capital punishment could not be imposed except in time of war or imminent threat of war, or for terrorist crimes, which excluded Öcalan. This limitation was dropped by parliament in the August 2002 5th reform package. Abdullah Öcalan's death sentence was commuted to life imprisonment by the state security court on 3 October 2002, though with no possibility of release on parole⁸⁸ or a reduction in sentence. He will therefore serve his sentence until he dies.

226. On 12 March 2003, the European Court sitting as a chamber found that during police custody and in the proceedings before the state security court, Mr Öcalan had suffered violations of articles 3, 5 and 6 of the European Convention on Human Rights. Both the applicant and the government subsequently requested that the case be referred to the Grand Chamber, which was agreed on 11 July 2003. In the absence of a final decision the co-rapporteurs will abstain from any comment.

227. On the other hand they do wish to draw attention to the detention conditions of Turkey's most famous prisoner. During their February 2003 visit they were informed that Mr Öcalan had been held in isolation since 1999 and had not received any visits from his lawyers and his family (restricted to his brothers and sisters) since 27 November 2002. The authorities referred to the bad weather conditions that prevented the boat from taking to sea and said that the CPT had just visited Imrali (16 and 17 February). The CPT visit had been prompted by a number of reports that Mr Öcalan's lawyers and family faced major problems in visiting him on the island of Imrali. The CPT delegation re-examined his detention conditions in the light of the committee's recommendations following its earlier visits (in March 1999 and September 2001). The co-rapporteurs very much hope that the Turkish authorities will continue to take systematic account of the CPT recommendations contained in the report which was made public, together with the Government's response, on 25 February 2004.

⁸⁸ See section 1 of Act no. 4771, final sub-paragraph. In this regard, the legislation is manifestly incompatible with Committee of Ministers Recommendation (2003) 22 on conditional release.

d. *Retrial of the Zana and others case*

228. In its Resolution 1256 (2001) the Assembly asked Turkey, pending a judgment of the European Court of Human Rights in the case of Mrs Leyla Zana and others, to examine or, if necessary, create the legal possibilities to revise prosecution procedures and subsequent sentences in respect of the former DEP parliamentarians imprisoned since that time.

229. The Sadak and others (including Mrs Zana and MM Dicle and Dogan) judgment was delivered on 17 July 2001. The Court held that the four members of parliament in question had not had a fair trial, particularly because they had been unable to examine or have examined certain witnesses against them and because, at the last minute, the charge of treason against the integrity of the state of which they were initially accused, under article 125 of the Criminal Code, was changed to that of belonging to an armed organisation (article 168), without the opportunity for them to adjust their defence. They are currently serving the fifteen year sentences imposed on them and in theory could be released in 2005.

230. In response to widespread protests about this conviction and pressing demands for a retrial, in its 3rd reform package of 3 August 2002 the National Grand Assembly modified the codes of criminal and civil procedure to permit fresh hearings or retrials following judgments finding violations of the Convention. However the relevant part of the new legislation only came into force a year after it was enacted, namely 2 August 2003, and only concerned applications to the Court lodged after this date. It was therefore inapplicable to Mrs Leyla Zana and her co-defendants.

231. The 5th package, adopted by parliament on 23 January 2003, extended the right to request a retrial, among others to cases already heard by the European Court. The deadline for requesting a retrial for both civil and criminal cases was set at one year from the date the legislation came into force. The 6th package of July 2003 also introduced the possibility of a retrial, subject to the same one year deadline, for administrative cases. In the case of final Court judgments delivered after the Act came into force, the one year retrial deadline starts from the date of the judgment.

232. The co-rapporteurs congratulate the Turkish authorities on this important reform, which enabled the lawyers representing Mrs Leyla Zana and the other defendants to request the reopening of proceedings on 4 February 2003. Since 28 March 2003 the Ankara security court has been holding monthly hearings in this case. However until now all applications for release on bail have been rejected. The co-rapporteurs find this particularly incomprehensible and regrettable since Mrs Zana and the others, who have been imprisoned for more than ten years, are scheduled to be released in June 2005 and it cannot be claimed that the offences for which they are to be retried represent a serious threat to public order, given the time elapsed since the events took place.

e. *Cultural rights*

233. The great majority of Kurds are not fighting for independence and have agreed to live inside the Turkish state. But they quite rightly want to secure recognition of their status as a minority ethnic group and a certain cultural and economic autonomy. They are not worried by the fact that Turkish remains the common language of education⁸⁹, but they also want Kurdish to be taught⁹⁰, on the same basis as English or German, in state and private schools. Finally they consider the total ban on the use of Kurdish as a language of communication in dealings with the administrative authorities, in cultural and political life⁹¹ and in the press and on television to be a negation of their identity.

⁸⁹ The co-rapporteurs were told this by the president of HADEP, whom they met in Ankara in February, and the mayor (DEHAP) of Diyarbakir.

⁹⁰ The co-rapporteurs were told that in fact there was no Kurdish language, but a total of 28 dialects, of which the most important are Kurmançî (75%), Sorani and Zazaki.

⁹¹ It is forbidden, for example, to use any language but Turkish in election campaign meetings and any breaches are liable to criminal sanctions.

234. The Turkish authorities told the co-rapporteurs that Kurds enjoyed the same civil and political rights as other Turkish citizens and that they did not suffer any discrimination, particularly in terms of access to the civil service or elective office (there are more than 200 members of parliament of Kurdish origin in the National Grand Assembly). They consider the idea of a national minority claiming additional rights to those applicable to all other citizens to be a form of separatism that threatens the unity of the nation. Turkey has not therefore signed or ratified either the Framework Convention for the Protection of National Minorities or the European Charter for Regional or Minority Languages, and only plans to do so if and when other large European countries do likewise.

235. Four years after the end of the conflict the Turkish authorities seem finally to acknowledge that the Kurdish question will not be resolved simply by force of arms and repression. The previous government had the initial courage to propose and adopt certain reforms. These are still fairly modest and will need time to take effect but they have the undoubted merit of bringing to an end the total denial of the Kurdish problem.

- *Radio and television broadcasts in a language other than Turkish*

236. Paragraph 3 of article 26 of the Constitution, which restricted the use of languages prohibited by law, was repealed in the October 2001 constitutional revision. The 3rd reform package of August 2002 amended section 4 of the 1994 Broadcasting Act to authorise broadcasting in the different languages and dialects traditionally used by Turks in their everyday lives. However the implementing order of 18 December 2002 limited such radio and television broadcasts to 4 and 2 hours per week respectively and said that they had to be translated into or sub-titled in Turkish and could only concern cultural, musical or news programmes. Furthermore, this order only provided television and radio broadcasts on public channels. The law has not been implemented because the public broadcasting council (RTÜK) has lodged an appeal with the Constitutional Court that is still awaiting examination. There are therefore still no official broadcasts in Kurdish. However the co-rapporteurs were told when they visited Diyarbakir that the local population, or at least those who could afford a television, watched a station, Medya TV, transmitted by satellite from Belgium, and that the authorities had not managed to stop it.

237. The 6th package of 19 July again amended section 4 of the 1994 act to extend permission to broadcast in languages other than Turkish to private radio and television stations. After examination by the council of ministers, the implementing order drawn up on 8 November 2003 by the RTÜK was published on 25 January 2004. The co-rapporteurs will wait and see how the situation develops in practice. Certain private television channels, such as NTV, will probably decide that broadcasting in Kurdish is not economically viable. At all events the liberalisation that has taken place represents substantial progress.

- *Teaching languages other than Turkish*

238. The second major reform concerns the right to be taught languages other than Turkish. The 3rd reform package of 9 August 2002 amended section 2 of the Teaching of Foreign Languages Act, no. 2923, which also dates from the era of the coup d'état, having been adopted on 14 October 1983. Henceforth, subject to an implementing order, it will be possible to open private schools for the teaching of languages and dialects used by Turks in their daily lives. The implementing order of 20 September 2002 was criticised because totally new schools had to be established and Turkish qualifications and nationality were necessary to teach in them, and because the courses were confined to children who had completed compulsory education, and therefore aged over 15.

239. Some of these criticisms were taken into account in the 7th package. Section 2 was again amended to allow the teaching of other traditional languages in existing language schools. The implementing order, which superseded the previous one of September 2002, was published on 5 December 2003. Under section 8 of the order primary and secondary school children are now also entitled to attend such classes. Thus, in January 2004 language classes started in Batman, Sanliurfa and Van.

240. The co-rapporteurs consider that these changes are a step in the right direction that should be welcomed, as they were by all those they met in south-eastern Turkey. However the proper application of these measures will take time. University courses will have to be established to train teachers to teach the Kurdish language or languages, as well as the other minority languages spoken in the country. There are currently no Kurdish language teachers in Turkey because Kurdish has been banned until now and the implementing order forbids the recruitment of foreign teachers.

Eventually the teaching of Kurdish should also be authorised in state or private schools before the age of 15, as is the case with Breton, Basque or Alsatian in France.

- *Using languages other than Turkish in communications with the administrative authorities*

241. The co-rapporteurs consider that the use of Kurdish in official dealings with the administrative authorities in eastern and south-eastern Turkey is a fundamental issue that is far more important than quarrels about cultural identity. As a result of a combination of factors, such as rural depopulation, the region's underdevelopment, poverty, the role of women and the high level of non-school attendance, particularly among girls, many families, and especially women and children, do not speak Turkish. They are therefore excluded from any communication with the world outside their village and family. They have no access to the most basic and essential information, such as hygiene and dietary rules and public health issues, and are excluded from the country's social and political life.

242. While recognising successive governments' concern to maintain the country's territorial integrity and respect the equality of all Turkish citizens, the co-rapporteurs consider that the non-participation of a significant part of the population in the lowest strata of society is not only a violation of human rights but also a more serious threat to the country's cohesion than that represented by recognition of Kurdish as an authorised language of official communication. They therefore recommend that the authorities take steps to provide interpreters for the non-Turkish speaking population of certain regions of the country, to ensure universal access to justice, administrative services, health care and social services.

243. Finally the co-rapporteurs congratulate the Turkish authorities on another important reform, concerning parents' right to choose their children's first names. It appears that following amendments to section 16 of the 1972 Census Act in the 6th reform package of 19 July 2003, only first names that are incompatible with moral standards or cause public offence are forbidden. The co-rapporteurs hope that this reform will settle the problem of Kurdish first names, which in the past have been the subject of numerous proceedings, thus delaying the official registration process and forcing parents to choose Turkish names. They have learnt that certain first names have been rejected by registrars on the grounds that the names start with letters, such as x, w or q, that do not exist in the Turkish alphabet or correspond to sounds in the Turkish language. They hope that the authorities will show a certain flexibility – for example, even if it does not appear in the Turkish alphabet, the letter w must feature on the keyboards of Turkish computers, otherwise it would be impossible to access the Internet.

f. *Return of displaced persons*

244. The conflict with the PKK between 1984 and 1999 led to the forced displacement of either some 350 000 or one and a half million persons in south-east Turkey, depending on whether one takes government or NGO figures. Half the 10-12 million Kurds now live outside south-eastern Turkey. The majority have settled in the shanty towns of the country's large cities or in Diyarbakir, whose population has more than doubled, with nothing like the equivalent expansion in health, education and housing services or social assistance.

245. Rural depopulation is an inevitable phenomenon in Turkey as elsewhere, but the regions of the east and south-east have also become depopulated for security reasons, as well as because of economic factors. The co-rapporteurs were told that the ban on pasturing herds on the high plateaux, considered to be PKK strongholds, the first Gulf War, which totally interrupted trade and trafficking with Iraq, and the under-development of a region where insecurity means that no one wants to invest are just as significant as the destruction of villages and the enforced displacements imposed by the security forces. Most NGOs consider that improving economic and social conditions is a sine qua non for the return of the population, whether it left under compulsion or voluntarily.

246. Clearly many persons will not return because they have made fresh lives elsewhere. It should be said that successive governments have done little to encourage such returns. The draft legislation on compensation for persons who have suffered loss or damage as a result of "action by terrorist organisations and measures taken by the government to combat it" was only published by the ministry of justice on 19 January 2004 and has not yet been enacted, while the legislation on the state's non-intentional liability has a very limited application. Finally the "village return" programme has not always had the expected results, because of a lack of transparency in the strategy, financing⁹² and calendar for implementation.

247. The "village return and rehabilitation programme" was launched in 1994 as part of the south-east Anatolia Project (GAP, which is mainly responsible for infrastructure projects such as dams) and reports to the prime minister. In late 2002 the finance minister, Abdülkadir Aksu, announced that a total of 58 513 persons had benefited from the village return programme since June 2002 and the governor of Diyarbakir stated on 18 December 2002 that 48 villages and 58 hamlets had been provided under the project, even though in certain areas, particularly the districts of Kulp and Dicle, authorisation to occupy villages had still not been granted for security reasons. Altogether, according to the Turkish authorities, between 2000 and the end of July 2003, 91 829 persons returned to their villages, which represents more than 25% of the displaced persons.

248. The government has sought to use the opportunity to promote regional planning and has tried to rationalise the pattern of new hamlets and villages to achieve a better distribution of facilities such as schools and dispensaries. However these new settlements are shunned by certain members of the local population, who do not see why they cannot simply return to their own homes. Finally return has apparently been complicated in certain cases by the continued existence of the village guard system. These are Kurdish militias whom the authorities have still not disarmed and who are accused by some of settling in villages emptied of their occupants during the conflict.

249. The co-rapporteurs refer to the Assembly's two previous adopted recommendations⁹³ on the humanitarian situation of the Kurdish refugees and displaced persons in south-eastern Turkey, whose recommendations have not been implemented, and invites the Turkish authorities to take early and appropriate steps to encourage the return of those who wish to do so or offer them fair compensation. They note with satisfaction that the Government plans to establish closer contacts with international lenders, particularly the United Nations and the World Bank, and that the legislation on compensation is about to be passed by the Grand National Assembly.

g. *Economic state of emergency*

250. Despite the Parliamentary Assembly's recommendation in 2001, there has been no declaration of an economic state of emergency for the south-eastern provinces, mainly on account of the serious general economic crisis that struck Turkey in November 2000 and then February 2001. The development projects for the region, above all the construction of large dams by the GAP, have not been sufficiently backed up by socio-economic development measures. The co-rapporteurs were told that, with the exception of the Gaziantep and, to a lesser extent, Bitlis regions, the east and south-east still suffered from a chronic lack of social facilities and infrastructure.

⁹² The authorities say that they have invested some USD 72.5 millions in the region.

⁹³ Recommendation 1377 of 25 June 1998 (Report of the Committee on Migration, Refugees and Demography, Doc. 8131) and Recommendation 1563 of 29 May 2002 (Report of the Committee on Migration, Refugees and Demography, Doc. 9391).

251. In Diyarbakir, where there are 5 000 classes, another 3 000 are needed to educate all the children in satisfactory conditions. Two new care centres have recently been opened but there are insufficient hospital places and doctors. In December 2003 for example about 100 000 children, mainly in south-eastern Turkey, were affected by a serious influenza epidemic, and Diyarbakir hospital had enormous difficulty coping with 2000 requests for admission every day. Despite the existence of a green card theoretically offering free medical care to the least well off, there is no real guaranteed access to care and the 1963 Medical Services Act, no. 224, is not applied.

252. Finally there is a severe shortage of housing and finance for new building. In Lice, for example, which was completely destroyed by an earthquake in 1975, most of the buildings are still prefabricated. The same could happen in Bingöl following the May 2003 earthquake. Nor are there any social assistance programmes and in Diyarbakir there is a serious problem with street children, which is still not being dealt with satisfactorily.

253. The co-rapporteurs consider that one of Turkey's absolute priorities must be to reduce the enormous disparities in development between the country's regions. The east and south-east are not the only regions concerned but a redistribution of resources ought to be an objective in itself and would benefit the whole of Turkish society.

v. Other issues

a. Women's rights

254. In theory, women in Turkey have a fairly enviable status compared with their counterparts in other Muslim countries. They were granted the right to vote in 1935, are no longer obliged to wear the veil, can drive, go out in public, have an occupation and attend school and university like men. More than 30% of university graduates are women and they are similarly represented in skilled posts, but not in the world of politics or decision making.

255. As in certain other European countries women are very under-represented in public life. After the last elections in November 2002 they only represented 4.3% of the members of the National Grand Assembly⁹⁴, or 24 members of parliament out of 550. Of the 81 provincial governors, not one is a woman, and there is just one female mayor. There is only one woman in the government.

256. Turkey therefore comes 140th out of 179 countries in terms of women's political representation and the arrival in power of Tansu Ciller, the first Turkish woman prime minister, in 1993 has changed nothing.

257. There is still not equal pay for equal work and Turkey has been ruled to be in breach of article 4.3 of the Council of Europe's Social Charter on this point. However there has been some significant progress, including the October 2001 constitutional reform (article 41 now enshrines equality between spouses) and the complete overhaul of the Civil Code (which dated from 1926) in November 2001⁹⁵. Under new legislation passed in August 2002 (see below, social rights) pregnant women are now protected against dismissal. On the other hand there do not appear to be any regulations on maternity leave.

258. It appears to the co-rapporteurs that as far as women's rights are concerned there is a great divide between modern and traditional Turkey and between west and east. There is a major difference between women and girls from urban settings and middle and upper class backgrounds, who wear head scarves to be stylish or to express social and religious claims, and their counterparts from poor rural areas, who have no choice but to accept traditional practices imposed on them.

⁹⁴ Which is less than the 4.6% of elected members of the Assembly in 1935, when women first got the vote.

⁹⁵ The new Civil Code came into force in January 2002.

259. The co-rapporteurs were shocked to discover on their visit to eastern and south-eastern Turkey (though the situation is apparently the same in certain other regions) that nearly 60% of women are illiterate⁹⁶, arranged marriages and even polygamy⁹⁷ are common, the authorities continue to tolerate crimes of honour and domestic violence is a perfectly acceptable social practice. Many girls are simply not sent to school by their parents and some are not even registered because this necessitates a journey and expenditure and also because some families wait until the child is three and has survived childhood illnesses.

260. Nearly 95% of the crimes of honour recorded are committed in eastern and south-eastern Turkey and the suicide rate among women - apparently imposed as an alternative to murder by a family member or to escape a forced marriage - is twice as high as elsewhere. This situation is intolerable in a modern state and cannot be justified by social and cultural traditions or particular regions' lack of economic development. There can be no equality of citizens if one sex is as disadvantaged as women are in certain regions of Turkey.

261. The co-rapporteurs were horrified by certain cases of honour crimes described to them. The authorities must show great firmness in bringing to an end these practices from another age. They should offer financial support to voluntary organisations that help victims such as Ka-Der or Ka-Mer, whether in the form of aid and advice or by providing refuges for battered women or those at risk.

262. There is also an urgent need to amend the articles of the Criminal Code recognising attenuating circumstances or authorising reduced sentences for so-called crimes of honour and the definition of the offence of rape, which in contrast to current international standards can only be established if sexual penetration has taken place, should be extended. The July 2003 6th package did amend article 453 of the code on infanticide, which only imposed 4 to 8 years' imprisonment for the murder of an illegitimate child immediately after its birth. The sentence has been increased to 8 to 12 years. The 6th package also abrogated article 462 of the criminal code which allowed for reduced sentences in cases of honour crimes. This is a remarkable progress.

263. As regards sexual violence or threats against women in police custody or detention. The authorities should here again show zero tolerance. Moreover at least until 2001 enforced virginity tests or gynaecological examinations at the end of police custody appear to have been common practice, to protect police officers against any accusations of rape. This practice was condemned by the European Court on 23 July 2003 (Y.F v. Turkey case). Until February 2002, virginity tests were also required for access to certain occupations, such as nursing.

264. Finally the clear inadequacy of schooling for girls and the resulting illiteracy deprive women in certain parts of Turkey from access to health care for themselves and their children, as well as to jobs and education. As General Özkök has noted, it is regrettable that the Turkish authorities have not even been able to teach Turkish to the population of certain eastern and south-eastern regions, but the ban on Kurdish as a working language in dealings with government also deprives the Turkish authorities of an important means of getting across their messages on such subjects as public health. For example the Diyarbakir medical association says that it is difficult to persuade people in the countryside of the benefits of preventive medicine - child vaccination, family planning, hygiene and so on - because all the written material is only in Turkish.

⁹⁶ Compared with some 30-35% of men in the same regions, the difference being explained by the obligation to do military service.

⁹⁷ i.e. marriages not registered with the authorities, which entails absence of property rights for women in case of divorce or death of their spouse and limitations on their custody rights over children in case of separation.

b. Combating corruption

265. Corruption is an endemic problem in Turkey⁹⁸. Admittedly the country passed anti-laundering legislation (Act No. 4208) in 1996 and is a member of the Financial Action Task Force (FATF), but Transparency International's 2003 global corruption index, which reflects the perceptions of business people, academics and risk analysts, still places Turkey in 77th place out of 133 countries, with a score of three out of ten. It is hardly surprising therefore that combating corruption was one of the major planks of the AKP's election campaign. The new government promised ruthless action and in January 2003 approved an emergency anti-corruption plan. The Grand National Council has also set up a parliamentary committee of inquiry on the subject. It submitted a preliminary report on 11 July 2003, which estimated that corruption had cost the Turkish economy about USD 150 billion: 40 billion as a result of fraudulent banking failures and 110 billion from losses associated with privatisations or tender procedures, particularly in the energy sector. The committee has proposed the arraignment of 23 former ministers before the high court of justice and seizure of the property of directors of the banks concerned, without awaiting the outcome of any criminal proceedings. Finally on 9 November 2003 the Grand National Council set up several investigating committees that will look into the affairs of former prime minister Mesut Yilmaz (leader of the Motherland Party) and five other former ministers.

266. The co-rapporteurs unreservedly support the current government's efforts, for which the Council of Europe will be able to offer valuable assistance following Turkey's ratification, on 17 September 2003, of the Civil Law Convention on Corruption (of 1999), which it had signed two years previously. Ratification of this convention means that Turkey automatically on 1 January 2004 became a member of GRECO (Group of States against Corruption) and thus benefits from the recommendations the group makes as part of its monitoring of member states. The Criminal Law Convention on Corruption, which again Turkey signed in September 2001, should also be ratified shortly. The co-rapporteurs also recommend that the Turkish authorities ratify the Council of Europe's 1990 convention on Laundering, yet again signed in September 2001. Finally, they recommend the rapid establishment of the necessary administrative arrangements, in particular a specialist co-ordinating body answerable to the prime minister, to permit the early implementation of the anti-corruption programme agreed with the Turkish authorities in April 2003, which would be eligible for significant Council of Europe support starting in the first quarter of 2004, thanks to EUR 5.9 million of European Union funding over two years under the latter's pre-accession programmes.

c. Social rights

267. On their first visit to Turkey in February 2003, the co-rapporteurs met representatives of employers' associations (TÜSIAD and MÜSIAD) and of the DISK trade union. For lack of time they were unable to see employers' unions, such as TISK, or other trade unions, such as HAK-IS or TURK-IS. They were surprised to discover how much the trade unions were looking forward to entry into the European Union. They were told that the unions expected not only a rise in living standards but also recognition and a strengthening of their role.

268. Trade unions are subject to the same restrictions on freedom of association and assembly as other NGOs but the fact that their purpose is to protect and defend social rights makes this even more serious. The co-rapporteurs were told that barely 50% of the population benefited from social security coverage (34% in towns), unemployment insurance was only introduced in April 2002, the black economy was very widespread and the minimum wage was totally inadequate to live on⁹⁹. Many persons, including civil servants and academics, had to have two jobs to make ends meet.

⁹⁸ Transparency International's 2003 global corruption index, which reflects the perceptions of business people, academics and risk analysts, still places Turkey in 77th place out of 133 countries, with a score of three out of ten.

⁹⁹ Even though on 1 January 2004 the net minimum wage was set at TRL 172.75 per month, an increase of 34% over 2003.

269. The co-rapporteurs lay great emphasis on the restrictions on trade union rights in Turkey because they had the impression during their visit that many persons do not take part in democratic life or even claim their rights, since they have no access to education or health care, are not eligible for a retirement pension and lack decent housing. Their concern with survival leaves them totally indifferent to fundamental freedoms.

270. The co-rapporteurs are convinced that trade unions have a fundamental role in defending social rights. Hindering or preventing them from carrying out this role deprives part of the population of a means of improving their living conditions, which would then enable them to claim their democratic rights.

271. Although freedom of association has statutory recognition it is hedged around with numerous restrictions. Candidates for trade union office must have worked at least ten years in the sector represented. Moreover anyone wishing to join a union, or any association for that matter, must register their membership with a notary, for a not inconsiderable fee, and trade unions are required to produce a complete list of their members, with names and addresses, whenever the authorities request.

272. Trade unions must also secure official authorisation to organise meetings or demonstrations, and allow the police to attend and record their discussions, which greatly surprised the co-rapporteurs.

- *The right to strike*

273. General and sympathy strikes and go-slows are forbidden. There are a number of penalties for taking part in illegal strikes, including imprisonment. Strikes are banned in numerous sectors that do not come into the ILO categories of essential services. These include undertakers and cemeteries, gas, oil, water and electricity, the fire brigade, the merchant fleet, railways and urban public transport, banking and finance, health services and other public services. All these areas are subject to statutory compulsory arbitration. Legislation on public sector trade unions and employees passed in June 2001 restricts the rights to bargain collectively and strike of all public employee trade unions, representing over 2 million staff.

274. However it should be noted that the 10-year ban on strike action and lock-outs, coupled with mediation, in free trade zones was repealed in the August 2002 legal reforms.

- *Protection against dismissal*

275. The Job Security Act (No. 4867) was passed in August 2002 and represents significant progress. In undertakings with more than ten employees, employers will no longer be able to dismiss staff on permanent contracts and with more than six months in the firm without good reason. Under the legislation the following cannot be considered valid reasons for dismissal: membership of a trade union or participation in trade union activities, occupying or standing for an employee representative post, encouraging or taking part in judicial proceedings against employers for breach of rights, grounds based on race, religion, sex, civil status, family obligations, pregnancy, political opinions or ethnic or social origins, or temporary absence from work because of disability or illness.

276. According to the unions the most serious gap in this law is the exclusion of work places with ten or fewer employees. This enables employers to avoid these legal provisions by employing fewer than ten employees, often by transferring production to sub-contractors or employing workers on fixed-term contracts.

277. In 2000 work places with fewer than ten employees accounted for 25% of total employment. The informal sector accounts for 30-40% of employment and it is precisely here and in small firms in the formal sector that major breaches of workers' rights occur. The co-rapporteurs were told that it is normally women and children who suffer from this lack of protection, even though the employment of children under 15 appears to have declined significantly, particularly with the introduction of eight years' compulsory schooling.

278. The 1936 Labour Act was amended in August 2002 to bring the job security provisions into line with ILO conventions. The amended law extended the scope of the national labour legislation scheduled to come into force on 15 March 2003 to farms with fewer than 50 workers.

- *Restrictions on collective bargaining*

279. The right to collective bargaining is closely restricted in Turkey. To secure recognition as a negotiating body unions must represent more than half the employees of a firm and 10% of all the sector's employees. In the case of firms owned by a holding company they must represent 51% of the employees of all the firms owned by the company. Only one union per firm is authorised to bargain collectively. The procedure is so long and bureaucratic that in many cases it is difficult to use the right freely, particularly as employers or competing trade unions can challenge the 51% minimum in the courts. The co-rapporteurs note with satisfaction that the government plans to reduce these thresholds.

280. The co-rapporteurs urge Turkey, which ratified the European Social Charter in 1989, to accept articles 5 (right to organise) and 6 (right to bargain collectively) of the 1961 Charter, which form part of its nine "core articles"¹⁰⁰, and to bring its legislation, particularly the Trade Unions and Collective Bargaining Acts (respectively Nos 2821 and 2822), which date from the period of the 1980 coup, into line with Council of Europe standards.

281. They hope that the government's planned reforms will also enable Turkey to accept other articles that it has not ratified, such as articles 2 (right to just conditions of work), 3 (right to safe and healthy working conditions), 15 (right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement) and above all 8 (right of employed women to protection, particularly the right to maternity leave and protection against dismissal on account of pregnancy).

282. Finally, it should also ratify the revised Social Charter of 1996 in the near future and accept the 1995 protocol on collective complaints.

¹⁰⁰ When they ratify the 1961 Charter, states must accept at least 6 of the 9 core articles.

Appendix I

Summary of constitutional changes of 17 October 2001

Changes to the preamble to the Constitution and **articles 13** (restriction of fundamental rights: only for specific reasons embodied in the Constitution and legislation; in particular, removal of the reference to "the indivisible integrity of the State with its territory and nation"¹⁰¹); **14** (introduction of a clause prohibiting the abuse of fundamental rights, based on article 17 of the European Convention); **19** (right to liberty and security: reduction of police custody for collective offences from 15 to 4 days maximum; introduction of an absolute and immediate right to inform next of kin of one's arrest or detention; right to compensation in the event of a violation); **20** (protection of privacy: repeal of exceptions relating to the needs of the inquiry or investigation and addition of the general exceptions in article 8 paragraph 2 of the Convention and the requirement for a written order for any interference); **21** (inviolability of the home: same as for article 20); **22** (freedom of communication: same as for articles 20 and 21); **23** (freedom of residence and movement: no longer allowed to restrict citizens' right to leave the country on account of the "national economic situation"); **26** (freedom of expression: repeal of the ban on using a language not authorised by the law but restrictions still possible, if they are provided for in law "for the purposes of protecting ... the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation"; **28** (freedom of the press: repeal of the ban on publishing in a language not authorised by the law); **31** (right to use media other than the press: addition of restrictive cases based on article 10 paragraph 2 of the Convention); **33** (freedom of association: wording based on article 11 of the Convention); **34** (freedom of assembly and to demonstrate without prior authorisation: repeal of the ban on demonstrating for public sector trade unions and professional organisations), **36.1** (introducing the right to a fair trial as a constitutional right), **38** (abolition of the death penalty other than in time of war and for terrorist offences); **40** (second paragraph added to this article on fundamental rights requiring the state to provide legal remedies); **41** (protection of the family now based on equality between spouses); **46** (expropriation); **49** (right to work: state also required to protect the unemployed and not just workers); **51** (right to establish trade unions without prior authorisation); **55** (right to a minimum wage that takes account of workers' basic needs); **65** (clarifying state's social and economic duties); **66** (acquisition of Turkish nationality now automatic when father is a foreign national), **67** (right to vote, be elected and engage in political activity: loss of right to vote for persons serving criminal sentences no longer applies to offences of negligence); **69** (political parties: introduction of precise criteria to determine whether political parties have become the "centre of illegal activities": this must involve repeated individual acts that have received the tacit or explicit approval of the party's governing bodies and the Constitutional Court may now order less severe penalties than the dissolution of the party, such as total or partial deprivation of state financial aid); **74** (right to petition parliament and the authorities extended to foreign nationals resident in Turkey, subject to reciprocity); **86** (social rights, pensions and allowances of members of parliament); **87** (3/5 majority vote required in parliament for the proclamation of amnesties and pardons); **89** (promulgation of laws by the President: obligation to refer to the Grand National Assembly laws which he deems wholly or partially unsuitable); **94** (reduction in the maximum time for appointing the president of the National Grand Assembly from ten to five days); **100** (procedure for parliamentary investigations concerning the prime minister or ministers); **118** (National Security Council: changed wording to strengthen or emphasise this body's purely consultative function); **149** (proceedings in the Constitutional Court: political parties may now only be dissolved by a 3/5 majority, compared with the previous 2/3). Finally it is now possible to use the constitutional appeal procedure to challenge decisions taken or laws passed during the 1980-82 military dictatorship (repeal of the final paragraph of article 15 (provisional)).

¹⁰¹ Though this notion is reintroduced in the revised article 26 of the Constitution.

Appendix II

Programme of the fact-finding visit to Turkey 17-21 February 2003

Co-rapporteurs: Mrs Mady Delvaux-Stehres (Luxembourg, SOC)
Mr Luc Van den Brande (Belgium, EPP/CD)

Secretariat: Mrs Caroline Ravaud

Monday, 17 February 2003

- Arrival of the co-rapporteurs in Ankara
- 22.00 Meeting with the Human Rights Association of Turkey (Mr Hüsni Öndül, President, and Ms Feray Salman, Secretary General)

Tuesday, 18 February 2003

- 08.00 Working breakfast with UNHCR (Ms Gesche Karrenbrock, Representative, and Mr Stephen Corliss, Deputy Representative) and UNDP (Mr Alfredo Witschi-Cestari, UN resident coordinator in Turkey, and Ms Claire Van der Vlaeren, Deputy resident Representative)
- 09.30 Meeting with the members of the Turkish Delegation to PACE
- 10.30 Meeting with Mr Mehmet Ali Sahin, Minister of State and Deputy Prime Minister
- 11.30 Meeting with Mr Inal Batu, Deputy Chairman of the Republican People's Party (CHP)
- 12.30 Lunch hosted by Mr Murat Mercan, Chairman of the Turkish Delegation to PACE
- 14.00 Meeting with Mr Cemil Çiçek, Minister for Justice
- 15.30 Meeting with Mr Yasar Yakis, Minister for Foreign Affairs
- 17.00 Meeting with Mr Recep Tayyip Erdogan, Chairman of Justice and Development Party (AKP)
- 19.00 Meeting with Dr Ayhan Bilgen, President of Mazlum-der (Organisation of Human Rights and solidarity with oppressed people)
- 20.00 Dinner hosted by the Dutch Ambassador, with the Ambassadors of Bulgaria, Denmark, Poland and Sweden

Wednesday, 19 February 2003

- 09.30 Meeting with Mr Mustafa Bumin, President of the Constitutional Court
- 11.00 Meeting with Mr Bülent Arinç, Speaker of the Grand National Assembly of Turkey
- 12.15 Meeting with General Tuncer Kiliç, Secretary General of the State Security Council

- 13.30 Lunch hosted by Ms Gülsün Bilgehan, member of the Turkish Parliamentary Delegation to PACE, in honour of the co-rapporteurs, at the Pink House, İnönü Foundation
- 15.00 Meeting with Mr Sabih Kanadoglu, Prosecutor General of the Court of Cassation
- 16.15 Meeting with Mr Eraslan Özkaya, President of the Court of Cassation
- 17.30 Meeting with Mr Abdülkadir Aksu, Minister of Interior
- 18.30 Meeting with Mr Ahmet Turhan Demir, Acting Chairman of HADEP
- 21.15 Departure from Ankara
- 22.15 Arrival in Istanbul

Thursday, 20 February 2003

- 09.30 Meeting with Mr Oguz Haksever, News Coordinabr, from NTV (private television channel)
- 11.00 Meeting with DISK (Confederation of progressive trade unions of Turkey), Mr Süleyman Celebi, President, Mr. Musa Cam, General Secretary, and Mr Tonguç Coban, advisor
- 12.30 Meeting with Mr Ergun Babahan, Editor of SABAH daily newspaper
- 14.00 Meeting with Dr Ömer Bolat, Vice-Chairman of MÜSIAD (Independent industrialists and businessmen's association) and Mr Yusuf Cevahir, chairman of foreign affairs commission of MÜSIAD
- 15.30 Meeting with Mr Perin Baran, Member of the Board of TÜSIAD (Turkish industry and business association) and Dr Bahadır Kalegasi, permanent representative of TÜSIAD to the European Union and UNICE
- 17.30 Meeting with Mr Enis Berberoglu, news coordinator, Mr Dogan Satmis, editor, and Gila Benmayor, columnist, HÜRRIYET daily newspaper
- 19.00 Meeting with Mr Ali Celik Kasimogullari, owner, Mr Mehmet Colak, Chief Editor, YENIDEN ÖZGÜR GÜNDEM (New Free Agenda), daily newspaper

Friday, 21 February 2003

- 8.45 Departure of Mr Luc Van den Brande
- 9.30 Meeting with Ms Özlem Dalkiran, Amnesty international Turkey, and Prof. Dr Murat Belge, Helsinki Citizens' Assembly
- 18.15 Departure of Ms Mady Delvaux-Stehres

Appendix III

Draft programme of the visit to Turkey by the co-rapporteurs 25 to 28 May 2003

Co-rapporteurs: Mr Luc van den Brande (Belgium, EPP)
Mrs Mady Delvaux-Stehres (Luxembourg, SOC)

Secretariat: Mrs Caroline Ravaud, Head of the Monitoring Committee Secretariat

Saturday, 24 May 2003

Arrival of the co-rapporteurs in Ankara

Sunday, 25 May 2003

9.30 Meeting with Human Rights Association (HRA) (Hotel Hilton)

15.00 Departure from Ankara for Diyarbakir (TK 646)

16.30 Arrival in Diyarbakir and transfer to Hotel Dedeman

19.00 Meeting with Mrs Nebahat Akkoç, General Co-ordinator for KA-MER (Women's Association)

Monday, 26 May 2003

9.30 Departure from Diyarbakir for Bingöl

11.00 Arrival in Bingöl

11.15 Meeting with Mr Hüseyin Avni Cos, Governor of Bingöl

12.15 Lunch

13.30 – 14.20 Meeting with Mr Fevzullah Karaaslan, Mayor of Bingöl

14.30 – 15.30 Meeting with Mr Ridvan Kizgin, Chairman of the Human Rights Association

15.30 Departure for Lice

16.30 Meeting with Mr Abdülmuttalip Akdemir, Vice-Governor of Lice

17.30 Meeting with Mr Ziya Arda, Acting Mayor of Lice

18.00 Departure for Diyarbakir

19.00 Meeting with Mr Serdar Talay, Chairman of GÖÇ-DER (Migrants' Association)

Tuesday, 27 May 2003

9.15 Departure from hotel

9.30 – 10.30 Meeting with Mr Nusret Miroglu, Governor of Diyarbakir

10.45 – 11.45	Meeting with Mr Feridun Çelik, Mayor of Diyarbakir
12.00 – 13.00	Meeting with Mr Necdet Ipekyüz, Chairman of the Academy of Medicine of Diyarbakir
13.00 – 14.00	Lunch
14.15 – 15.15	Meeting with Mr Selahattin Demirtas, Chairman of Human Rights Association
15.30 – 16.30	Meeting with Mr Sezgin Tanrikulu, Chairman of the Diyarbakir Bar and of the Human Rights Foundation
17.10	Departure for Ankara (TK 647)
18.40	Arrival in Ankara
20.00	Dinner with Council of Europe Ambassadors and the Representative of the European Union in Turkey at the Embassy of Bulgaria

Wednesday, 28 May 2003

9.15	Departure from hotel
9.30 – 10.30	Meeting with Mr Mehmet Elkatmis, Chairman of the Committee on Human Rights of the Grand National Assembly
10.45 – 11.30	Meeting with Mr Abdülkadir Aksu, Minister of Interior
11.45 – 12.30	Meeting with the Turkish Delegation to the Parliamentary Assembly
12.30 – 14.00	Lunch hosted by the Turkish members of the Monitoring Committee
14.30 – 15.30	Meeting with Mr Cemil Çiçek, Minister of Justice
16.00 – 17.00	Meeting with Mr Ridvan Cakir, Acting Chairman of the Directorate for Religious affairs (DIYANET)
18.15 – 19.30	Meeting with Human Rights Association and Foundation
20.00	Dinner hosted by Mr Murat Mercan, Chairman of the Turkish Delegation to the Parliamentary Assembly

Thursday, 29 May 2003

Departure of the co-rapporteurs from Ankara.

Appendix IV

Resolution 1256 (2001)¹ Honouring of obligations and commitments by Turkey

1. The Assembly recalls firstly its Recommendation 1298 (1996) on Turkey's respect of commitments to constitutional and legislative reforms, in which it instructed its committees concerned to open the monitoring procedure in respect of Turkey under Order No. 508 (1995), and secondly Order No. 545 (1998) on the humanitarian situation of the Kurdish refugees and displaced persons in south-eastern Turkey and northern Iraq, in which it instructed its Monitoring Committee to study the issue of the Kurdish minority in the framework of the monitoring procedure concerning Turkey.

2. The Assembly is aware of the importance of Turkey – one of the oldest member states of the Council of Europe – for the Organisation, because of Turkey's choice in favour of Europe, its contribution to Europe's social and cultural heritage and basic values, as well as the geopolitical significance of Turkey.

3. The Assembly is pleased with the increased mutual understanding of each other's concerns: in the other Council of Europe member states comprehension of the difficulties met by Turkey in its efforts to solve the conflict in south-eastern Turkey and, within Turkey, understanding of the criticism from other member states on the country's human rights record.

4. The Assembly commends the Turkish authorities on the establishment – notwithstanding an economic crisis without precedent throughout the country – of the National Programme for the Adoption of the *acquis communautaire*, approved in March 2001 by the Turkish Government in the framework of the accession process to the European Union, and out of which Chapters 1.1 (Introduction) and 1.2 (Political Criteria) have been presented by the government as a programme for honouring the obligations and commitments of Turkey as a member state of the Council of Europe.

5. The Assembly recognises that Turkey is a functioning democracy with a multiparty system, free elections and an active and independent legislature, based on a constitution approved by referendum in 1982.

6. However, the Assembly recalls also that this constitution was drafted when Turkey was under military rule and that it is partly based on principles

which are no longer in line with presentday criteria in force in the Council of Europe.

7. The Assembly welcomes, therefore, the amendments which have since been made to the constitution, in particular regarding the replacement of the military judges in each of the Turkish State Security Courts. It also notes with satisfaction that in the National Programme the review of the constitution will have priority and trusts that the amendments will include the changes which the Assembly suggests in paragraph 16 of this resolution.

8. With regard to the rule of law, the Assembly welcomes the measures taken by the Turkish authorities to improve the conditions of police custody, to eradicate torture and ill-treatment and to identify and efficiently sanction those who have committed such acts.

9. In particular, the Assembly commends the Turkish authorities on their recent decision to authorise publication of the reports drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after its visits to Turkey in 1999, 2000 and January 2001.

10. The Assembly welcomes also the adoption of laws amending the Penal Code, the Law on Penal Procedures against Civil Servants and the Law on the Fight against Organised Crime, and encourages the authorities concerned to accelerate work on the new Code of Criminal Procedure, the new Penal Code, amendments to the Civil Code, the draft bill on the creation of the institute of ombudsman and the draft bill on local authorities.

11. The Assembly notes with satisfaction that the Turkish authorities have accepted the need to reform their penitentiary institutions and that Article 16 of the Prevention of Terrorism Act has been amended to allow prisoners to take part in communal activities.

12. Turkey is to be commended on progress made in creating awareness of the need for the respect for human rights and fundamental freedoms, as well as on the measures taken by the Turkish authorities to improve or complement legislation in this field.

13. Above all, the Assembly welcomes the return of tranquillity in south-eastern Turkey, the cease-fire announced by the PKK and the reduction of action by the Turkish armed forces to some occasional security operations; it also notes that the Turkish authorities have embarked on a relief programme for people who have left their homes

and returnees, and that they are determined to develop the economy in the region.

14. The Assembly acknowledges the increased freedom of association in Turkey, which enables a growing number of associations, foundations and trade unions to state their opinions and views, and thus to influence public opinion. However, there are concerns that defenders of human rights and human rights organisations are still under pressure.

15. The Assembly welcomes the extension of freedom of expression following the adoption of the Law on the Postponement of Sentences and Trials in respect of Crimes Committed through the Press and Broadcasting and the ongoing amendment of the Penal Code, including the debate on modifying Article 312, which provides for sentences of up to three years and exclusion for life from public functions for incitement to hatred on grounds of race or religion.

16. However, the Assembly is concerned about a number of obligations where progress made cannot yet be considered to be substantial and the honouring of which requires further action by the Turkish authorities in charge:

a. the Assembly trusts that the revision of the constitution announced in the National Programme will lead also to the establishment of a certain parliamentary control over the Turkish National Security Council, revision and completion of the system of protection of human rights and fundamental freedoms, abolition of the death penalty, confirmation of the pre-eminence of law and reinforcement of the judiciary's control over all administrative acts;

b. whilst recognising fully the independence of Turkey in constitutional matters, its experience and its expertise, the Assembly nevertheless recommends that in any amendment of the Turkish Constitution account be taken of the experience and work of the European Commission for Democracy through Law (Venice Commission) in constitutional revisions;

c. the Assembly recommends that the Turkish authorities ensure that the relevant constitutional provisions and other legal rules cannot be interpreted in a way which prevents political parties from carrying out their normal functions and elected representatives from expressing freely their political opinions, with due respect to the principle of refraining from engaging in any activity or performing any act aimed at inciting violence or discrimination, at undermining parliamentary democracy or at destroying any of the rights and

freedoms set forth in the European Convention on Human Rights;

d. pending a judgment of the European Court of Human Rights in the case of Mrs Leyla Zana and others, the legal possibilities should be examined or, if necessary, be created to revise prosecution procedures and subsequent sentences in respect of the former DEP parliamentarians imprisoned since that time;

e. the Assembly encourages the Turkish authorities to ensure implementation of the measures taken to improve the conditions of police custody, to eradicate torture and ill-treatment and to identify and efficiently sanction those who have committed such acts; they should also continue their co-operation with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);

f. with regard to prison reform which has converted the large dormitory system to cells for one to three prisoners, the Assembly regrets that hunger strikes have caused to date the loss of twenty-three lives and urges the fasting prisoners and the Turkish authorities to end this human drama. The Turkish Government should follow the advice of the CPT and take immediately the necessary measures to ensure that, in particular, prisoners in the F-type prisons spend a reasonable part of the day engaged in a programme of communal activities outside their cells;

g. with regard to the right to life, the Assembly encourages Turkish society to continue and conclude the ongoing debate: no death sentences must be executed; the death penalty must be abolished *de jure* and Protocol No. 6 to the European Convention on Human Rights must be signed and ratified;

h. full enjoyment of the freedom of association should also be guaranteed in respect of organisations, and in particular organisations working legally for the protection of human rights in south-eastern Turkey; investigations should be conducted by the competent authorities into their complaints that these organisations are being prosecuted for exercising their legal activities, their offices being closed, their members being arrested and their telephone lines being tapped. The Assembly also urges the Turkish authorities to again grant human rights organisations access to prisoners;

i. the Assembly urges the Turkish authorities to accelerate modification of Article 312 of the Turkish Penal Code and to revise Article 8 of the Prevention of Terrorism Act, which in its present unclear wording opens the door to arbitrary action

by the state against individuals for “crimes of expression of thought”, in particular journalists and politicians for having expressed opinions which, under the existing rules, could be interpreted as incitement to separatism, and to avoid further contravention of the European Convention on Human Rights;

j. although the Turkish authorities have executed most of the judgments of the European Court of Human Rights in which Turkey has been condemned, the Assembly encourages these authorities to accelerate procedures for adequate follow-up to those judgments which have not yet been completely implemented. In particular, the Assembly refers to the Loizidou case and takes full note of the third interim resolution of the Committee of Ministers (DH (2001) 80), adopted on 26 June 2001, whereby the Committee of Ministers declares its resolve to ensure, with all means available to the Organisation, Turkey's compliance with its obligations under the judgment;

k. the Assembly recommends that the Turkish authorities lift the state of emergency in the four remaining south-eastern provinces and replace it with an economic state of emergency, and that they take the necessary legislative and administrative measures to guarantee full respect of the human rights of the Kurdish people in Turkey and enable them to live their Kurdish cultural identity (including teaching of the Kurdish language in schools in the Kurdish regions and authorisation of Kurdish language audiovisual media);

l. the Assembly also recommends that the Turkish authorities examine the principles laid down in the Framework Convention for the Protection of National Minorities (ETS No. 157) and in the European Charter for Regional or Minority Languages (ETS No. 148), with a view to signing and ratifying these instruments and applying the principles in respect of the different ethnic groups which live in Turkey;

m. in order to identify the various questions raised by the cohabitation of different ethnic groups, to exchange experiences and to define appropriate solutions, the Assembly invites the Turkish authorities to consider the opportunity of organising with the Parliamentary Assembly a seminar on multi-ethnic societies, to be held in Turkey.

17. The Assembly is aware that most of its concerns, expressed in paragraph 16 above, have been taken into account by the drafters of

Chapters 1.1 and 1.2 of the National Programme for the Adoption of the *acquis communautaire*. It realises also that these chapters, ambitious and far-reaching as they may seem, reflect a delicate compromise between the ruling political forces in Turkey and are therefore worded in a cautious way, as good intentions, with long and flexible deadlines for their implementation.

18. The decision of the Turkish Constitutional Court of 22 June 2001 to ban the Virtue Party (the country's main opposition party with 102 seats out of 550 in the Turkish Grand National Assembly) for activities contrary to the principle of a secular republic, to expel two of its members from parliament and to impose political bans on five more members, although it may be in accordance with the Turkish law, is in contradiction with the principles of pluralist democracy. The Assembly regrets this decision, which would contribute to political instability at a time when Turkey is engaging in important reforms.

19. In conclusion, the Assembly welcomes the progress Turkey has made in the honouring of its obligations as a member state of the Council of Europe since the start of the monitoring procedure, and in particular the open and sincere dialogue that has developed on still outstanding issues. The Assembly therefore encourages the Turkish authorities to implement the National Programme and to continue taking the legislative and administrative measures necessary to comply with the outstanding obligations listed in paragraph 16 above.

20. Whilst thus recognising that progress has been made in the honouring of certain aspects of Turkey's obligations, but that other aspects still warrant further action, the Assembly resolves to pursue, in close co-operation with the Turkish delegation, the monitoring procedure in respect of Turkey, with a view to advising and assisting the Turkish authorities concerned in their policy towards complying with Turkey's obligations as a member state and to assess further progress until the Assembly decides to close the monitoring procedure.

¹ *Assembly debate* on 28 June 2001 (23rd Sitting) (see Doc. 9120, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, co-rapporteurs: MM. Bársony and Zierer).
Text adopted by the Assembly on 28 June 2001 (23rd Sitting).

Reporting committee: Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Reference to committee: Doc. 8574, reference No 2459 of 4 November 1999

Draft resolution adopted with 1 vote against and 2 abstentions and *draft recommendation* unanimously adopted by the Committee on 3 March 2004

Members of the committee: Mrs Durrieu (Chairperson), Mr Frunda, Mrs Tevdoradze, Mrs Severinsen (Vice-Chairpersons), Mrs Aguiar, Mr Akçam, Mr Akhvlediani, Mr B. Aliyev, Mr André, Mr Arzilli, Mr Atkinson, Mr Baška, Mrs Bauer, Mr Bernik, Mrs Bilgehan, Mr Bindig, Mrs Bousakla, Mr van den Brande, Mr Budin, Mrs Burbiene, Mr Cabrnach, Mr M. Cavusoglu, Mr Cekuolis, Mr Christodoulides, Mr Cilevics, Mr Colombier, Mr Debono Grech, Mrs Delvaux-Stehres, Mr Dobelis, Mr Einarsson, Mr Elo, Mr Eörsi, Mr Glesener, Mr Gross, Mr Grusenbauer, Mr Hancock, Mr Hedrich, Mr Hegyi, Mr Herkel, Mr Holovaty, Mrs Jätteenmäki, Mr Jakic, Mr Jaskiernia, Mr Jurgens, Lord Kilclooney, Mr Kirilov, Mrs Konglevoll, Mr Kvakkestad, Mrs Leutheusser-Schnarrenberger, Mr van der Linden, Mr Lintner, Mr Martínez Casañ, Mr Marty, Mr Medeiros Ferreira, Mr Melcák, Mr Mikkelsen, Mr Mollazade, Mr O'Keeffe, Mr Olteanu, Mr Pangalos, Mrs Petrova-Mitevskaa, Mrs Petursdottir, Mr Prijmireanu, Mr Rakhansky, Mrs Ringstad, Mr Rivolta, Mr Rogozin, Mr Rustamyan, Mr Sasi, Mrs Shakhtakhtinskaya, Mr Shytko, Mr Slutsky, Mr Smorawinski, Mr Soendergaard, Mr Spindelegger, Mrs Stoyanova, Mr Surjan, Mr Tepshi, Mr Tkác, Mr Vis, Mrs Wohlwend, Mr Yáñez Barnuevo, Mr Zacchera .

N.B. The names of those members who were present at the meeting are printed in italics.

Head of the secretariat: Mrs Ravaud

Secretaries to the committee: Mr Gruden, Mrs Odrats, Mrs Clamer