



Office for Democratic Institutions and Human Rights

**Information Submitted to the
Office of the United Nations High Commissioner for
Human Rights
as a Stakeholder in the
Universal Periodic Review of Turkey**



WARSAW, JULY 2014

The following information is submitted by the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) about an OSCE participating State under consideration in the Universal Periodic Review process:

Participating/Partner State: Turkey

UPR Session: 21st Session

Background

Turkey is a participating State in the Organization for Security and Co-operation in Europe (OSCE) and has thus undertaken and has recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE documents.¹ The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) has been mandated by OSCE participating States, including Turkey, to assist them in implementing their human dimension commitments. OSCE/ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Turkey and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in the country.

Parliamentary Elections, 12 June 2011

In response to an official invitation from the authorities of the Republic of Turkey, based on the findings and conclusions of the OSCE/ODIHR Needs Assessment Mission deployed from 30 March to 1 April 2011, and in accordance with its mandate, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) on 23 May to observe the 12 June 2011 parliamentary elections. The OSCE/ODIHR EAM was led by Cayetana de Zulueta of Italy and consisted of 19 experts from 13 OSCE participating States. Experts were based in Ankara as well as in Istanbul, Diyarbakır and İzmir.

According to the EAM’s final report “The parliamentary elections demonstrated a broad commitment to hold democratic elections in Turkey. The level of participation from the side of the electorate was impressive both during the campaign and on election-day. The existence of a solid framework and of experience in the conduct of democratic elections is clear. Certain issues, however, could stand to be further addressed. The Constitution and implementing legislation continue to unduly limit freedom of expression, freedom of association and electoral rights. There is also the need to ensure the equality of vote weight among constituencies, lifting certain existing restrictions on suffrage rights, and enhancing

¹ Compendium of OSCE Human Dimension Commitments, vol 1 and 2; Astana Commemorative Declaration, 2010.

transparency in the complaints and appeals process.” The full report, together with its recommendations, can be found at <http://www.osce.org/odihr/84588>

Presidential Election, 10 August 2014

In response to an official invitation from the authorities of the Republic of Turkey, based on the findings and conclusions of the OSCE/ODIHR Needs Assessment Mission deployed from 7 to 9 May 2014, and in accordance with its mandate, the OSCE/ODIHR will deploy a Limited Election Observation Mission (LEOM) to observe the 10 August 2014 presidential election. The OSCE/ODIHR LEOM commences its activities in Ankara on 7 July 2014. The full NAM report can be found at <http://www.osce.org/odihr/elections/turkey/119439>

Tolerance and non-discrimination issues, including incidents of and responses to hate crime

OSCE participating States have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime, and the OSCE/ODIHR supports states in their implementation of those commitments. In this context, the OSCE/ODIHR produces an annual report on hate crime – *Incidents and Responses* – to highlight the prevalence of hate crimes and good practices that participating States and civil society have adopted to tackle them. It also helps participating States to design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States’ criminal justice systems and the law-enforcement officials, prosecutors and judges that staff them; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes.

The report relies mainly on information and statistics provided by governments, since such data collection is primarily the responsibility of states, as is the responsibility to respond to hate crimes. As of 2012, 55 of the 57 OSCE participating States had appointed National Points of Contact on Combating Hate Crimes, to support ODIHR in its task of serving “as a collection point for information and statistics collected by participating States”. The bulk of information for the report was gathered through the completion of an online questionnaire by National Points of Contact. The questionnaire for 2012 contained questions about the following areas: data-collection methods; legislation; reported hate crime data; and policies and initiatives.

Information concerning Turkey in the most recent edition of the annual hate crimes report² covering 2012 includes the following:

Turkey regularly reports hate crime data to ODIHR. Turkey's Criminal Code contains a specific penalty-enhancement provision applicable in case of hate crimes.

Data are collected by the Ministry of Interior and the Ministry of Justice, and are not made publicly available. Turkey does not report to ODIHR the data on hate crimes recorded by the police.

In 2012³, Turkey reported to ODIHR that 497 cases were prosecuted and in 158 cases perpetrators received sentences. These figures, however, represent solely crimes of

² <http://tandis.odihr.pl/hcr2012/>

³ see Turkey’s data reported to ODIHR at <http://hatecrime.osce.org/turkey>

incitement to hatred and criminal discrimination cases and do not, therefore, count as hate crimes under the OSCE definition.

A number of cases of assaults, threats and damage to religious property targeting Christians were reported to ODIHR by the Holy See in 2012.

Roma and Sinti issues

The OSCE/ODIHR has a specific mandate to assist participating States in implementing the OSCE Action Plan for Improving the Situation of Roma and Sinti within the OSCE Area.⁴ The most recent Status Report on the implementation of the Action Plan was issued by ODIHR in 2013.⁵ The report included the following information about the situation of Roma and Sinti in Turkey.

In 2013, Turkey provided a reply⁶ to the questionnaire related to ODIHR's second Status Report on the implementation of the OSCE Action Plan for Improving the Situation of Roma and Sinti within the OSCE Area, in which Turkey listed some specific achievements regarding the implementation of OSCE commitments.⁷ In relation to the housing situation of Roma, in their reply to ODIHR questionnaire, Turkey listed housing projects which focus on the "rehabilitation" of towns or particular districts.

Country-specific ODIHR monitoring, assessment, co-operation and assistance activities

Rule of Law – Judicial Independence

ODIHR has raised concerns and addressed those to the Turkish authorities in February 2014 in the context of recent amendments to several laws concerning the judiciary, including the Law on the High Council of Judges and Prosecutors in February 2014. The adopted amendments seem to significantly enhance the influence of executive structures over the judiciary by shifting a number of competencies from judicial bodies to the Ministry of Justice, and therefore raised concerns from the perspective of the principle of judicial independence as established under international human rights law. While Turkey's Constitutional Court in April 2014 annulled the amendments concerning the restructuring of the High Council of Judges and Prosecutors, the overall concern of a decreasing independence of the Turkish judiciary remains.

Other assessments and recommendations contained in ODIHR reports on thematic human issues

Migration

In 2012-2014, upon request of the Turkish authorities ODIHR in co-operation with the Migration Policy Group, conducted and published an assessment of migrant integration measures for Turkey, according to the internationally recognized Migrant Integration Policy

⁴ <http://www.osce.org/odihr/17554>.

⁵ <http://www.osce.org/odihr/107406>.

⁶ OSCE/ODIHR, *Implementation of the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, Status Report 2013* (Warsaw: OSCE/ODIHR, 2013), p. 16.

⁷ *Ibid*, p. 19.

Index (MIPeX) methodology. The assessment contains a number of findings in relation to Turkey's integration of migrants, including that while some work on migrant integration policies and practices has been undertaken by municipalities in areas where the main migrant communities are clustered, the issue should be more specifically addressed at the national level. After years of discussion, Law 6458 on Foreigners and International Protection was passed by the Turkish Parliament in 2013 and welcomed by the UN and EU. Maintaining the geographical limitation, the law does create basic procedures for international protection, work permits, and residence permits. Under Article 96, the mutual 'adaptation' of immigrants and society can be facilitated through courses and information campaigns, depending on available funds and stakeholders' recommendations. A Migration Policies Board within the Interior Ministry will draft new migration strategies, determine and monitor implementation, and carry out mutual adaptation activities.

Even after passage of the Law 6458, the MIPeX assessment finds that Turkey's legal framework is slightly unfavourable for integration and ranks below the other MIPeX countries, scoring only 24-out-of-100 points. Immigrant workers and their families have restricted rights and little-to-no state support. The policies are unfavourable for labour market mobility, education, and political participation, even compared to other new countries of immigration in Central and South East Europe. Turkey also has the weakest protections against discrimination because a dedicated anti-discrimination law and agency are still lacking and pending approval by Parliament. The country's relative strength, family reunion, is still incompatible with EU law. Settled immigrants face not only a slightly unfavourable path to citizenship, as in several new countries of immigration, but also one of the least favourable paths to simply a long-term residence permit, far below EU standards. While Law 6458 improved transparency and the rule-of-law, the new family reunion and long-term residence statuses generally formalised existing practices, including new rights, but also new requirements. The new Migration Policies Board still has to create national adaptation strategies and programmes and determine the conditions for long-term residence.