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Held at the Palais Wilson, Geneva, on Wednesday, 17 October 2012, at 10 a.m.

Chairperson: Ms. Majodina

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant
(*continued*)

Initial report of Turkey

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

*Initial report of Turkey (CCPR/C/TUR/1; CCPR/C/TUR/Q/1;
CCPR/C/TUR/Q/1/Add.1)*

1. *At the invitation of the Chairperson, the delegation of Turkey took places at the Committee table.*
2. **Mr. İşcan** (Turkey), introducing his country's initial report (CCPR/C/TUR/1), highlighted the major developments since the submission of the report in 2011 and summarized the replies to the Committee's list of issues (CCPR/C/TUR/Q/1). He said that Turkey was pursuing a comprehensive reform process, including a number of amendments to the Constitution and a complete overhaul of basic laws, with a view to aligning the domestic legal framework with international principles and standards in the area of human rights, democracy and the rule of law. The reforms had already resulted in substantial progress in such areas as the fight against torture, reforming the prison system, freedom of association and assembly, freedom of religion, civil-military relations, and anti-corruption measures.
3. In that connection, numerous human rights training programmes were under way at law enforcement and judicial level as well as for students, civil society and the general public.
4. Since the initial report had been submitted, a number of further steps had been taken, notably the adoption in July 2012 of a series of new measures intended to improve the effectiveness of the judiciary, known as "the third judicial reform package". Among other improvements, the scope of judicial control as an alternative to detention had been enlarged, the penalty imposed for membership of an illegal organization had been reduced, the right to present a defence before courts with special powers had been reinforced, and provisions authorizing the prohibition of publications related to terrorist organizations by a judicial decision had been repealed.
5. Furthermore, in June 2012, the law on the creation of the Office of the Ombudsman and the law on the establishment of the National Human Rights Institution of Turkey, which had been drafted in consultation with civil society and taking into account the Paris Principles, had been adopted by Parliament.
6. Following a recent constitutional amendment, it was now possible for anyone to submit an individual application to the Constitutional Court claiming that his/her rights and freedoms as set forth in the European Convention on Human Rights had been violated by a public authority. That remedy would ensure better protection of individual rights and freedoms, while contributing to efforts to reduce the workload of the European Court of Human Rights.
7. As an important element of the reform process and as a result of the consensus on the need for a more democratic, transparent and participatory Constitution, a commission composed of members of the four political parties represented in Parliament had been established to draft a revised text.
8. Turning to the replies to the list of issues, on the issue of the constitutional and legal framework within which the Covenant was implemented, he emphasized that, according to article 90 of the Constitution, duly adopted international instruments on fundamental rights and freedoms prevailed in the event of conflict with the provisions of national legislation. Consequently, essential international instruments on fundamental rights and freedoms to which Turkey was a party could be invoked before the domestic courts. The provisions of

the Covenant were taken into consideration by Turkish judges in their judicial practice, and the Constitutional Court, the Supreme Administrative Court and the Court of Cassation had made references to the Covenant in their rulings.

9. With regard to non-discrimination, he said that, under the Constitution, all individuals were equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. There was also a provision on equal treatment and non-discrimination in the Labour Law, while the Criminal Code made it a criminal offence, punishable by imprisonment or a judicial fine, to discriminate against a person on the grounds of language, race, colour, gender, disability, political opinion, philosophical belief, religion, sect or similar reasons.

10. Forms of positive discrimination, in accordance with the Constitution, included measures to increase the enrolment rate of girls in schools, incentives such as reimbursement by the State of insurance premiums paid by the employer for women employees, and a quota system for both the public and the private sector to ensure adequate employment for persons with disabilities.

11. Regarding counter-terrorism measures and respect of Covenant guarantees, he said that Turkey had adopted an Anti-Terror Law, which complied with the provisions of international human rights conventions, to protect its citizens from the actions of terrorist organizations. Critics had alleged that the provisions of the Anti-Terror Law were used to restrict freedom of expression, but the aim was in fact to prevent terrorist organizations from gaining support by means of propaganda. Nonetheless, discussions were continuing on the revision of certain provisions of the law, and one article had already been amended in July 2012, with the result that “specially authorized heavy criminal courts” had been abolished.

12. In response to the questions concerning the prohibition of torture and other cruel, inhuman or degrading treatment, he stressed that ensuring prompt, effective, transparent and independent investigations in relation to allegations of torture and ill-treatment was a priority. Public prosecutors immediately initiated investigations into allegations of torture and ill-treatment ex officio and conducted them personally in accordance with the new Code of Criminal Procedure.

13. Concerning measures taken to prevent violence against women and children, he said that the law on protecting women and family members from violence, which had entered into force in March 2012, was of particular importance, as it was the first of its kind in Turkey. Efforts were continuing to increase the number of shelters and provide consultancy services for victims of violence.

14. One of the most important amendments to criminal legislation adopted in July 2012 was the deferral of judicial fines, investigations, prosecutions and sentences imposed on journalists with regard to freedom of expression or actions carried out through the press, which could be considered an amnesty for press-related offences affecting thousands of individuals in Turkey.

15. Concerning the situation of refugees and asylum seekers, he reported that a new law on foreigners and international protection, which contained provisions on entry, exit and residence in Turkey as well as the protection to be provided to foreigners who requested it, was awaiting adoption. On that topic, he noted that Turkey currently hosted more than 100,000 refugees from Syria.

16. Regarding the property rights of non-Muslim communities, he said that an amendment to the law on foundations had made it possible for many properties to be registered in the name of non-Muslim community foundations.

17. **Mr. Flinterman**, noting that States were encouraged to continuously reassess the declarations and reservations they had made upon ratification of international human rights instruments, asked the delegation to clarify the thrust of the three declarations made by Turkey, which appeared to limit the State party's obligations under the Covenant. He also requested clarification of the impact of the reservation to the Covenant on the scope of those obligations. He would also welcome an explanation of how the declarations and reservations could be considered compatible with the object and purpose of the Covenant.

18. He invited the delegation to comment on the State party's reservation concerning article 5, paragraph 2 (a) of the Optional Protocol to the Covenant, to the effect that the competence of the Committee should not apply to communications by means of which a violation of article 26 of the Covenant was reprimanded, if and insofar as the reprimanded violation referred to rights other than those guaranteed under the Covenant.

19. It would be useful to have details of the references to the Covenant that the Constitutional Court, the Supreme Administrative Court and the Court of Cassation had made in their decisions. He asked whether the scope of article 90 of the State party's Constitution extended to all provisions of all international agreements to which Turkey was a party. It would be interesting to hear whether a Turkish court had ever annulled a provision of domestic legislation on the ground that it violated a provision of a regional or international human rights instrument. He asked whether the Covenant, the Optional Protocol, the Committee's case law and its general comments were on the curricula of law faculties and training programmes for members of the judiciary and legal professionals.

20. The Committee would welcome details of the procedures that were in place at the national level to implement the Committee's Views under the Optional Protocol. Given that the Committee had decided on only one case that had been brought against Turkey since the State party's ratification of the Optional Protocol in 2006, he asked whether steps were being taken to raise awareness of the individual complaints procedure available under that instrument. It had been disappointing to learn that the State party did not intend to implement the Committee's Views in the case of *Atasoy and Sarkut v. Turkey* (communications Nos. 1853/2008 and 1854/2008).

21. While welcoming the adoption of legislation on the establishment of a National Human Rights Institution, the Committee was concerned at reports that the institution did not conform to the Paris Principles, particularly with regard to its independence. Furthermore, it would appear that the concerns and proposals of national and international human rights experts had not been fully reflected in the text of the legislation, and not all stakeholders had been consulted in the preparation of that text. He would therefore welcome more detailed information on the relevant legislation, the mandate of the National Human Rights Institution, its composition and the financial and human resources allocated to it.

22. He asked whether the definition of discrimination in the draft Anti-Discrimination and Equality Law included discrimination in the public and private spheres and whether it covered both direct and indirect discrimination. It would be useful to know precisely what grounds for discrimination were included in the bill, particularly whether it incorporated discrimination on the grounds of sexual orientation and gender identity. He wished to know whether there had been any prosecutions under the amended Criminal Code and requested an update on the current status of the draft Anti-Discrimination and Equality Law. It would be useful to learn about the mandate of the Anti-Discrimination and Equality Board which would be established if the legislation was adopted.

23. As requested in point 5 of the list of issues, the Committee would welcome information on the number of complaints and decisions of courts or administrative tribunals relating to discrimination on any basis since 2007. Details of any punishments imposed or

remedies provided and steps taken to implement those decisions would be appreciated. He also asked the delegation to identify the most important decisions and indicate any trends that were evident in that context.

24. **Mr. Salvoli** requested information on the resources that had been allocated to the temporary special measures listed in the written reply to point 6 of the list of issues, and the results achieved by those measures. In particular, he wished to know whether public officials had been trained to uphold the rights of people with disabilities and whether any steps had been taken to increase the political participation of women in the State party. He asked whether children with disabilities attended mainstream schools and if so, whether teachers were given the relevant training. Given the lack of information on special measures for minority communities, he asked whether minorities were recognized in the State party and whether special measures were considered appropriate for them, particularly the Alevi community.

25. **Mr. O'Flaherty** said that the State party's written reply to point 7 in the list of issues was extremely disappointing, as it appeared to betray a disregard for the rights of lesbian, gay, bisexual and transgender (LGBT) people. He requested oral replies to all the elements of the question. The Committee was concerned at the State party's persistent unwillingness to add explicit reference in its legislation to sexual orientation and gender identity as prohibited grounds for discrimination, as required under the Covenant. The Committee had received reports that gay men were exempt from military service on the ground that their homosexuality constituted a psychosexual disorder. He asked the delegation to comment on the definition of homosexuality as a psychosexual disorder, which was incompatible with the Covenant. Apparently, individuals could seek exemption from military service on the ground that they were gay only by proving their homosexuality, *inter alia* by providing photographic evidence of themselves engaging in same-sex sexual activity. Since that requirement raised concerns with regard to privacy rights under article 17 of the Covenant, he would also welcome the delegation's comments in that regard. The Committee had also received reports that homosexuals were being targeted by public prosecutors who invoked civil law to bring cases concerning violations of Turkish morals and family structure. Indeed, the State party's highest administrative court (Danıştay) had reportedly upheld a decision to dismiss a police officer on the ground that he had engaged in same-sex sexual activity. The delegation's comments on those reports would be appreciated. Moreover, there appeared to be an alarmingly high incidence of transgender murders in the State party. A consortium of non-governmental organizations (NGOs) had written to the Government on 2 February 2010 in that regard, but to date had received no reply. In 2012 alone, some four transgender women had been killed. He asked what steps the Government was taking to protect those people.

26. He drew the State party's attention to the fact that national human rights institutions that did not comply fully with the Paris Principles had no credibility or influence and could not fulfil their role as sturdy counterparts of the State. The Committee was concerned that in 2012, a State could establish a national human rights institution that was so badly out of harmony with those Principles. The State party's indication that the national preventive mechanism under the Optional Protocol to the Convention against Torture would fall within the remit of the National Human Rights Institution was equally alarming as the national preventive mechanism was also required to be totally independent. He asked whether the national preventive mechanism would be empowered to conduct unannounced and unrestricted visits to places of detention.

27. The Committee would appreciate an indication of the human and financial resources that would be allocated to the implementation of the Second National Action Plan on Combating Trafficking in Human Beings, as requested in point 16 in the list of issues. He

asked whether that Plan struck a balance between the human rights of victims of trafficking and the criminal dimension in respect of perpetrators.

28. Lastly, he wished to know what steps the State party was taking to prevent intimidation and attacks on conscripts in the armed forces. That issue had gained significant public attention since April 2011, when a website inviting conscripts to tell their stories had gone online. Some 433 allegations of bullying, beatings, denial of health care and excessive punishment had apparently been posted by conscripts. He also asked for the delegation's comments on the death in 2011 of a Turkish soldier serving in Cyprus who had apparently been exposed to the sun for such an extended period that he had been hospitalized and had subsequently died.

29. **Ms. Waterval** said that the Committee would welcome an account of the results of the studies that had been conducted into the impact of the ban on wearing headscarves in the fields of education, employment, health and political and public life, as requested in point 8 of the list of issues.

30. Turning to point 9 in the list, she asked how counter-terrorism legislation, including articles 6 and 7 of the 2010 law that had amended the Anti-Terror Law, was compatible with the rights guaranteed in article 4 of the Covenant. The Committee wished to know which procedural guarantees were available for individuals charged under counter-terrorism legislation and whether those provisions were compatible with the Covenant. She would welcome the delegation's comments on reports that the State was using the counter-terrorism legislation to prosecute journalists, academics, writers and publishers. It would be useful to learn whether an effective mechanism existed to challenge the lawfulness of detention. She requested information on the alleged practice of blocking the disclosure of evidence to the accused and defence lawyers – the so-called “secrecy decisions”. In addition, the Committee wished to know whether any children had been prosecuted after the Anti-Terror Law had been amended, and if so, what charges and penalties they had incurred. She urged the State party to review its counter-terrorism legislation and amend the provisions that were incompatible with the provisions of the Covenant.

31. **Mr. Iwasawa** requested clarification of whether the Covenant took precedence over the Turkish Constitution in the case of a conflict between the two. He would welcome additional information on the references the Constitutional Court, the Supreme Administrative Court and the Court of Cassation had made to articles 8, 12, 14 and 23 of the Covenant in their decisions. In particular, he asked whether those references had been made in conjunction with references to the European Convention on Human Rights, whether the Covenant had been cited as a persuasive authority to reinforce the Courts' decisions, and whether those articles had been used to interpret a Turkish statute or the Constitution.

32. **Mr. Fathalla**, referring to the reservation the State party had made to the Optional Protocol to the Covenant, enquired about the number of States parties with which Turkey had not had diplomatic relations at the time it had entered the reservation. It would also be useful to know the number of States parties with which it did not currently have diplomatic relations.

33. **Ms. Chanet** asked whether the State party considered that, given the reservation it had entered to the Covenant, it was not bound to protect the rights of citizens of countries with which it had not had diplomatic relations at the time it had entered the reservation. Or was it the case that, whenever it cut diplomatic ties with a State, citizens of that State were no longer afforded protection in Turkey under the Covenant? Under the provisions of the Vienna Convention on the Law of Treaties and in the opinion of the International Court of Justice, the restriction of the application of the Covenant to a State party's national territory raised serious questions about the legitimacy of the reservation.

34. Turning to the reservation to the Optional Protocol to the Covenant, she urged the State party to examine the Committee's Views in the case of *G.E. v. Germany* (Communication No. 1789/2008), which concerned a reservation similar to the one entered by the State party. In that case, the reservation had been considered incompatible with the substance of the Optional Protocol and therefore invalid.

35. **Mr. Bouzid** asked whether the prohibition on wearing a headscarf in schools and universities was an obstacle to girls' education.

36. **Mr. Kälin** requested clarification regarding the State party's declaration to the effect that the Covenant applied exclusively to its national territory. Did the State party understand that declaration to mean that Turkish armed forces or police on external missions would not be bound by the provisions of the Covenant? He wished to know why Turkey had made that reservation. He pointed out that the European Court of Human Rights had found that the concept of "jurisdiction" under the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) was not restricted to the national territory of the States parties to the Convention and that the International Court of Justice had determined that the International Covenant on Civil and Political Rights was applicable where the State exercised its jurisdiction on foreign territory. He therefore wondered what point there was in Turkey maintaining its reservation to the Covenant.

The meeting was suspended at noon and resumed at 12.15 p.m.

37. **Mr. Işcan** (Turkey) emphasized that Turkey was committed to effective cooperation with mechanisms to protect and promote human rights, as well as to honouring its obligations under international human rights instruments. He agreed that reservations to international instruments had to comply with the letter and spirit of the Vienna Convention on the Law of Treaties. Turkey's three declarations and its reservation to the Covenant had been made in the light of the country's circumstances and its concerns regarding potential developments. In view of a number of political agreements and disputes, the Government had wished to protect Turkey in the event of unjust allegations being levelled against Turkish armed forces or police forces operating under host country agreements in territories outside Turkey's national boundaries. The declarations and reservation to the Optional Protocol were also compatible with international law and no objections had been made to them. His Government would, however, study the Committee's comments on Germany's reservation to the Optional Protocol to the Covenant and would reassess its position in the light thereof.

38. Under the Turkish Constitution, the concept of "minorities" encompassed only those groups which had been defined and recognized as minorities in the bilateral and multilateral instruments to which Turkey was a party. It was Turkey's legitimate right under international law to establish its own definition of a minority. Minority rights in Turkey were regulated in accordance with the 1923 Treaty of Lausanne. Under the Treaty, Turkish citizens belonging to non-Muslim minorities fell within the scope of the term "minority". Turkish legislation based on the Treaty contained only the term "non-Muslim minority". Articles 37 to 45 of the Treaty regulated the rights and obligations of individuals belonging to non-Muslim minorities in Turkey. As the law stood, no other group could be recognized as a minority. As a result of Turkey's evolving obligations as a party to international human rights instruments it was, however, making progress towards the recognition of the rights of persons belonging to different ethnic and cultural groups.

39. In human rights cases the Turkish courts referred, as a matter of priority, to the European Convention on Human Rights, which had primacy in the country's legal system. The case law of the European Court of Human Rights, which was comprehensive and binding, had provided effective guidance on the reform of the Turkish legal system. Turkish

courts did, however, refer to other international instruments when making a determination. Although, in the event of a conflict between an international instrument and Turkish legislation, the international instrument prevailed, no law had ever been annulled because it conflicted with Turkey's international obligations. There were two ways to annul a law: through a decision of the Constitutional Council or through the enactment of a new law by Parliament. The Supreme Administrative Court, in a ruling of 14 June 2011, had found that article 14 of the Covenant took precedence over domestic law.

40. The High Council of Judges and Prosecutors, an independent body responsible for the promotion and appointment of legal officers, had decided that an important criterion to be borne in mind when deciding whether to promote a judge or prosecutor was whether that person had referred in their decisions or pleadings to Turkey's obligations under international instruments and case law. The decisions of the European Court of Human Rights were translated and circulated to all judges and prosecutors. In 2011 the Ministry of Justice had established a special department to deal with applications to the European Court of Human Rights and it sent judges and prosecutors to the Strasbourg court for training. The communications of the Human Rights Committee were also translated and disseminated widely to the civil service and the judiciary.

41. Turning to the question regarding the hierarchy of the Constitution, the Covenant and domestic legislation, he explained that the Constitution was the basic law of the country. Article 90 of the Constitution gave force of law to the international instruments to which Turkey was a party. They then became *primus inter pares*, because Turkish national laws were subject to the review of their constitutionality by the Constitutional Court, whereas international instruments were exempt from any such review.

42. The reason why only one individual communication from Turkey had been dealt with by the Committee to date was not only that there was a lack of awareness about the existence of that channel, but also that the Human Rights Committee was in competition with the European Court of Human Rights, which was better known in Turkey.

43. His Government was aware of the Committee's views regarding conscientious objection. The European Court of Human Rights had also delivered some binding decisions on that subject. There was an ongoing debate within the country about that challenging issue. The option of introducing compulsory civilian service as an alternative to military service had been suggested, but no decision had yet been taken.

44. The underlying purpose of the laws on the establishment of the National Human Rights Institute, referred to in Turkey's replies to the list of issues (CCPR/C/TUR/Q/1) as the National Human Rights Institution, and the Office of the Ombudsman had been to bring those institutions into line with the Paris Principles. His Government would, of course, take into account any recommendations and comments the Committee might make on that subject and would also bear in mind civil society's concerns in that area. The National Human Rights Institute was independent in terms of its responsibilities and management. It had its own budget and staff. Article 3 of the law stipulated that no one could give orders or recommendations to the Institute regarding matters falling within its jurisdiction. In order to meet the requirement of plurality laid down in the Paris Principles, the law stated that, when selecting members of the Institute, special attention had to be paid to the representation of NGOs, trade unions, social and professional organizations, academia and representatives of the media working in the area of human rights. The Institute had to hold regular three-monthly consultations with public institutions and organizations, NGOs, trade unions, social and professional organizations, higher education institutions, press and broadcasting organizations, or other relevant persons, to discuss human rights issues. The function of the Ombudsman was to examine and verify the compliance of all administrative acts with law, equity and justice and to ensure that those acts were consistent with the principle of respect for human rights and the rule of law. His Government would be pleased to provide the

Committee with an English translation of the laws as soon as it was available. There was no reason why the functions of the Human Rights Institute should not be merged with the national mechanism to prevent torture, once the law in question had been revised to bring it fully into line with the Paris Principles.

45. Comprehensive draft legislation to provide effective protection against discrimination would be referred to Parliament in the near future. The bill contained a definition of the main concepts related to the principle of non-discrimination, including direct and indirect discrimination in the public and private spheres, and it specified that, if the prohibition of discrimination were found to have been violated, the relevant public authorities had not only to end and remedy that violation, but also to prevent its reoccurrence. Article 122 of the Criminal Code made discrimination on a wide variety of grounds and for a number of purposes a punishable offence. Twenty-four complaints under that article had been filed with the offices of the Chief Public Prosecutors and there were 10 cases of alleged discrimination on the dockets of criminal courts. According to the regulations of the Ministry of the Interior, any law enforcement officer found guilty of a discriminatory act would be expelled from the service.

46. The wearing of headscarves in schools and universities was a challenging issue for Turkey. There was no legislation on the subject. The European Court of Human Rights had ruled that the Government's ban on the wearing of headscarves in educational institutions did not violate the freedom of religion. The controversy would have to be resolved on the basis of social consensus.

47. **Ms. Şanal** (Turkey) said that, in practice, great strides had been made towards solving the problem of headscarves in schools and universities by allowing girls and women to wear them. The Government was conducting a survey to obtain exact statistics on the number of girls and women who had been banned from study and the workplace for wearing a headscarf. The survey would be completed in 2014 and its findings would be forwarded to the Committee.

48. The number of women Members of Parliament, local councillors and mayors was slowly rising. Studies were being conducted into the reasons for women's low participation in political decision-making and efforts were being made to improve that situation.

The meeting rose at 1 p.m.