

Council of Europe contribution for the 35th UPR session (Jan-Feb 2020) regarding Turkey

Contents

<i>Prevention of torture (CPT).....</i>	<i>2</i>
<i>Council of Europe Commissioner for Human Rights</i>	<i>2</i>
<i>Fight against racism and intolerance (ECRI).....</i>	<i>4</i>
<i>Protection of minorities</i>	<i>4</i>
<i>Framework Convention for the Protection of National Minorities</i>	<i>4</i>
<i>European Charter for Regional or Minority Languages.....</i>	<i>4</i>
<i>Action against trafficking in human beings (GRETA).....</i>	<i>5</i>
<i>Preventing and combating violence against women and domestic violence (GREVIO).....</i>	<i>5</i>
<i>Protection of children against sexual abuse (Lanzarote Convention).....</i>	<i>6</i>
<i>Fight against corruption (GRECO).....</i>	<i>7</i>
<i>Execution of judgments and decisions of the European Court of Human Rights.....</i>	<i>7</i>
<i>Statistical data</i>	<i>7</i>
<i>Main cases / groups of cases under the Committee of Ministers' supervision</i>	<i>8</i>
<i>Important cases closed in 2018 - 2019.....</i>	<i>8</i>
<i>Social and Economic Rights (ECSR)</i>	<i>9</i>
<i>Venice Commission</i>	<i>9</i>
<i>Constitutional reforms, state institutions, check and balances.....</i>	<i>9</i>
<i>Freedom of expression and media freedom.....</i>	<i>10</i>
<i>Judicial reforms</i>	<i>11</i>
<i>Electoral legislation</i>	<i>11</i>

Prevention of torture (CPT)

The 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' organises country visits in order to visit places of detention to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information.

<https://www.coe.int/en/web/cpt/turkey>

Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights is an independent and impartial non-judicial institution established by Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe member States.

Since 2014, the Commissioner has dealt with several concerns regarding the human rights situation in Turkey, in particular the effects on the enjoyment of human rights of the measures taken under the state of emergency declared in the country in July 2016, the human rights implications of anti-terrorism operations in South-Eastern Turkey, the right to freedom of expression and media freedom, and the protection of human rights defenders.

Protection of Human Rights Defenders

The Commissioner expressed her deep concerns regarding developments affecting the work of human rights defenders in Turkey with a [statement](#) in November 2018. In January 2019, she made a third-party intervention in the case of Mehmet Osman Kavala v. Turkey before the European Court of Human Rights ([written submission](#) to the Court of 20 December 2018), drawing the attention of the Court to the deteriorating situation of human rights defenders and her serious concerns about the state of the Turkish judiciary.



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Turkey.pdf

The Commissioner also made several statements on judicial actions unduly targeting human rights defenders for their work, including a [statement](#) on the sentencing of Murat Çelikkan in May 2017 and a [statement](#) on the detention of Taner Kılıç in June 2017.

Freedom of expression and media freedom:

In February 2017, the Commissioner published a [memorandum](#) on freedom of expression and media freedom in Turkey. He looked in particular at the serious deterioration in media pluralism and independence; judicial harassment of large swaths of society, including journalists, parliamentarians, academics, human rights defenders and ordinary citizens, in particular through the criminal judges of the peace; a general deterioration in the safety and security of journalists; and internet censorship. The Commissioner found that the space for democratic debate had shrunk considerably in recent

years, and the deterioration regarding media freedom and freedom of expression posed an existential threat to Turkish democracy.



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Based on the findings of this memorandum, the Commissioner made two third party interventions before the European Court of Human Rights, on groups of cases concerning, respectively, the detention of journalists ([written observations](#) submitted on 10 October 2017) and the right to liberty and security of opposition parliamentarians ([written observations](#) submitted on 2 November 2017).



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CommDH_2017_33_Turkey.pdf

Human rights implications of anti-terrorism operations in South-Eastern Turkey:

In December 2016, the Commissioner published a [memorandum](#) on the effects of curfews imposed and anti-terrorism operations conducted in South-Eastern Turkey since August 2015. He found that numerous human rights of a very large civilian population had been violated as a result of these curfews and operations. He called on the authorities to stop the use of curfews in the manner in which they were deployed, to finally start investigating the serious allegations of human rights violations, and to put in place comprehensive schemes for redress and compensation.



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On the basis of these findings, the Commissioner also made a third party intervention to the European Court of Human Rights in a group of relevant cases ([written observations](#) submitted to the Court on 25 April 2017).



CommDH_2017_13_Turkey.pdf

State of emergency:

In October 2016, the Commissioner published a [memorandum](#) on the human rights implications of the measures taken under the state of emergency in Turkey, examining notably the criminal law aspects of these measures; administrative measures affecting public employees, civil society and the private sector, as well as family members of suspects; legal remedies against these measures; and a number of other issues. He expressed deep concern about the excesses identified in this respect and called on the Turkish authorities to roll these measures back as quickly as possible.



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Fight against racism and intolerance (ECRI)

The European Commission against Racism and Intolerance (ECRI) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as “race”, national/ethnic origin, colour, citizenship, religion and language. It prepares reports and issues recommendations to member States, in which its findings, along with recommendations are published. These reports are drawn up after a contact visit to the country in question and a confidential dialogue with the national authorities. The country monitoring takes place in five-year cycles. As part of the fourth round of ECRI’s monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI’s country reports.

Fifth report on Turkey (adopted on 30 June 2016 / published on 4 October 2016)



ECRI_2016_37_Turkey.pdf



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and Conclusions on Turkey (adopted on 3 April 2019 / published on 6 June 2019):



ECRI_2019_27_Turkey.pdf

Protection of minorities

Framework Convention for the Protection of National Minorities

The monitoring procedure for this convention requires each state party to submit a report within one year following the entry into force of the Framework Convention and additional reports every five subsequent years. State reports are examined by the [Advisory Committee](#), a body composed of 18 independent experts responsible for adopting country-specific opinions. These opinions, on which States Parties have an opportunity to comment, are meant to advise the Committee of Ministers in the preparation of its resolutions, containing conclusions and recommendations to the State concerned.

European Charter for Regional or Minority Languages

The [Charter's monitoring procedure](#) is based on state reports, as each State Party is required to present its first report within the year following the entry into force of the Charter with respect to the Party concerned. The subsequent reports are presented at three-yearly intervals. A committee of independent experts examines the state's periodical report and addresses an evaluation report to the Committee of Ministers, including proposals for recommendations.

n/a

Action against trafficking in human beings (GRETA)

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008, following its 10th ratification. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims.

The Convention has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

The main added value of the Convention is its human rights perspective and focus on victim protection. Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and integrity of the human being. The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, to be granted a renewable residence permit, and to receive compensation for the damages suffered.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

The report on Turkey is still under preparation and will not be published until September 2019.

Preventing and combating violence against women and domestic violence (GREVIO)

The Council of Europe Convention on preventing and combating violence against women and Domestic violence (**Istanbul Convention**, [CETS No. 210](#)) is the most far-reaching international treaty to tackle this serious violation of human rights. It aims at zero tolerance for such violence and is a major step forward in making Europe and beyond safer. Preventing violence, protecting victims and prosecuting the perpetrators are the cornerstones of the convention. It also seeks to change the hearts and minds of individuals by calling on all members of society, in particular men and boys, to change their attitudes. In essence, it is a renewed call for greater equality between women and men, because violence against women is deeply rooted in the inequality between women and men in society and is perpetuated by a culture of intolerance and denial.

The Council of Europe Istanbul Convention provides for two types of monitoring procedures:

1. a country-by-country evaluation procedure;
2. and a special inquiry procedure in exceptional cases where action is required to prevent a serious, massive or persistent pattern of any acts of violence covered by the Convention.

[GREVIO](#), the Group of Experts on Action against violence against women and domestic violence, is the independent body responsible for monitoring the implementation of CETS No. 210. GREVIO launched its first evaluation procedure in spring 2016, after adopting a questionnaire on legislative and other measures giving effect to the Istanbul Convention.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

Results from the first baseline evaluation procedure in relation to Turkey:

In the context of the first (baseline) evaluation report, the following documents are available:

1. [State report](#) (received on 3 July 2017)



GREVIO_Inf_2017_5
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2. [1st baseline evaluation Report by GREVIO](#) (Published 15 October 2018)



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3. [Government Comments to the GREVIO report](#) (Received by GREVIO on 17 September 2018)



GREVIO_Inf_2018_3
_Turkey.pdf

4. [Recommendation by the Committee of the Parties](#) (Published on 28 January 2019)



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Protection of children against sexual abuse (Lanzarote Convention)

The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, also known as "[the Lanzarote Convention](#)", requires criminalisation of all kinds of sexual offences against children. It sets out that states in Europe and beyond shall adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators.

The "Lanzarote Committee" (i.e. the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse) is the body established to monitor whether Parties effectively implement the Lanzarote Convention. To do so, the Committee evaluates the information which has been provided by the national authorities and other sources in their replies to questionnaires developed by the Committee itself. This monitoring procedure is divided by rounds, each round concerning a theme; starting with sexual abuse in the circle of trust.

As to the 1st monitoring round on the "Protection of children against sexual exploitation and sexual abuse in the circle of trust", Turkey was urged to:

- review its legislation to ensure effective protection of children from situations where abuse is made of a recognised position of influence (R1, 1st implementation report);
- take the necessary legislative or other measures to set up or designate mechanisms for data collection or focal points at national or local level and in collaboration with civil society, for the purpose of observing and evaluating in terms of quantitative data collection the

phenomenon of the sexual exploitation and sexual abuse of children in general and child sexual abuse committed in the circle of trust, in particular (R13, 1st implementation report);

- *to take the necessary legislative or other measures to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care (R30, 1st implementation report);*
- *put in place a tool or procedure to evaluate the effectiveness of the intervention programmes or measures (R27, 2nd implementation report).*

Fight against corruption (GRECO)

The 'Group of States against Corruption' ([GRECO](#)) monitors all its 49 members through a peer review evaluation procedure within thematic evaluation rounds. The evaluation reports contain recommendations aimed at furthering the necessary legislative, institutional and practical reforms. Subsequently, the implementation of those recommendations is examined in the framework of a "compliance procedure", assessing whether they have been implemented satisfactorily, partly or have not been implemented 18 months after the adoption of the evaluation report.

Fourth Evaluation Round: "Corruption prevention in respect of members of parliament, judges and prosecutors".

The latest publicly available compliance report was published in March 2018:



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However, GRECO adopted a more recent report in March 2019. The Turkish authorities have not yet authorised publication of this report. We can only say that GRECO considered that the level of compliance with its recommendations relating to corruption prevention in respect of MPs, judges and prosecutors remains "globally unsatisfactory" and Turkey is thus in GRECO's non-compliance procedure.

Execution of judgments and decisions of the European Court of Human Rights

Statistical data

At 31 December 2018, there were 1237 (1446 cases at 31.12.2017) cases against Turkey pending before the Committee of Ministers ("CM") for supervision of their execution. Among these cases, 162 cases were "leading cases" evidencing more or less important general problems (177 leading cases at 31.12.2017).

In 2018, the CM was seized by 13 new leading cases (14 new leading cases in 2017) and the amount of just satisfaction awarded was € 1 559 380 (€ 11 580 458 awarded in 2017). In 2018, 372 cases (123 cases closed in 2017) were closed by the adoption of a Final Resolution.

Main cases / groups of cases under the Committee of Ministers' supervision

The main cases presently under the Committee of Minister's supervision cover notably the issues presented below. For fuller overview of the situation see the **Country Factsheets** available on the website of the Department for the Execution of Judgments of the European Court of Human Rights and in the **Committee of Ministers' Annual Reports** on its supervision activity. More detailed information on the status of execution in individual cases can be found through **Hudoc-EXEC**.

Important cases closed in 2018 - 2019

Unjustified interference with the right to freedom of expression

Oner and Turk group, Application No. 51962/12, judgment final on 30/06/2015, enhanced supervision;

Lack of relevant and sufficient reasons justifying lengthy detention of journalists

Nedim Sener group, Application No. 38270/11, judgment final on 08/10/2014, enhanced supervision;

Use of excessive force to disperse peaceful demonstrations

Ataman group, Application No. 74552/01, judgment final on 05/03/2007, enhanced supervision

Unforseeable application of Article 220§§ 6 and 7 together with Article 314 of the Criminal Code leading to extensive interpretation by domestic courts

Isikirik group, Application No. 41226/09, judgment final on 09/04/2018, enhanced supervision;

Ineffectiveness of investigations into allegations against members of security forces

Bati and others group, Application No. 33097/96, judgment final on 03/09/2004, enhanced supervision;

Domestic violence

Opuz group, Application No. 33401/02, judgment final on 09/09/2009, enhanced supervision;

Violations linked with the situation in the northern part of Cyprus (missing persons and property rights of Greek Cypriots)

Cyprus v. Turkey, Application No. 25781/94, judgment final on 10/05/2001 (merits) and on 12/05/2014 (just satisfaction), enhanced supervision

Varnava, Application No. 16064/90, judgment final on 18/09/2009, enhanced supervision

Xenides-Arestis group, Application No. 46347/99, judgment final on 22/03/2006 (merits) and on 23/05/2007 (just satisfaction), enhanced supervision

Lack of adequate and sufficient reasoning in domestic court decisions

Deryan group, Application No. 41721/04, judgment final on 21/10/2015, standard supervision.

Social and Economic Rights (ECSR)

The *European Committee of Social Rights (ECSR)* monitors compliance with the [European Social Charter](#) under two procedures: the national periodic reporting system and the collective complaints procedure. Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.



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Venice Commission

The [European Commission for Democracy through Law](#) (Venice Commission) is the Council of Europe's advisory body on constitutional matters. It provides States and international organisations working with it (EU, OSCE/ODIHR) with legal advice in the form of opinions.

Since 2014, and, most importantly, since the failed coup of 2016 in **Turkey**, the Commission adopted an important number of opinions on the subsequent legislative reforms in the country concerning such important issues as functioning of the checks and balances and local democracy, guarantees for freedom of expression and election processes.

Constitutional reforms, state institutions, check and balances

CDL-AD(2017)021

Opinion on the Provisions of the Emergency Decree-Law N° 674 of 1 September 2016 which concern the exercise of local democracy



CDL-AD_2017_021_Turkey.pdf

CDL-AD(2017)005

Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a National Referendum on 16 April 2017



CDL-AD_2017_005_Turkey.pdf

CDL-AD(2016)037

Opinion on Emergency Decree Laws N°s667-676 adopted following the failed coup of 15 July 2016



CDL-AD_2016_037_Turkey.pdf

CDL-AD(2016)027

Opinion on the suspension of the second paragraph of Article 83 of the Constitution (parliamentary inviolability)



CDL-AD_2016_027_Turkey.pdf

CDL-AD(2016)010

Opinion on the legal framework governing curfews



CDL-AD_2016_010_Turkey.pdf

Freedom of expression and media freedom

CDL-AD(2017)007

Opinion on the measures provided in the recent Emergency Decree Laws with respect to freedom of the media



CDL-AD_2017_007_Turkey.pdf

CDL-AD(2016)011

Opinion on Law No. 5651 on regulation of publications on the Internet and combating crimes committed by means of such publication ("the Internet Law")



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CDL-AD(2016)002

Opinion on articles 216, 299, 301 and 314 of the Penal Code of Turkey (criminal offences related to the freedom of speech)



CDL-AD_2016_002_T
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Judicial reforms

CDL-AD(2017)004

Opinion on the duties, competences and functioning of the criminal peace judgeships



CDL-AD_2017_004_T
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Electoral legislation

CDL-AD(2018)031

Joint Opinion of the Venice Commission and ODIHR on amendments to the electoral legislation and related "harmonisation laws"



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