

Denial of a Language: Kurdish Language Rights in Turkey



A Kurdish Human Rights Project Fact-Finding Mission Report
June 2002

KHHRP
Kurdish Human Rights Project



Institut Kurde de Paris

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This report was written by Robert Dunbar and Fiona McKay and edited by the Kurdish Human Rights Project.

Cover photograph courtesy of *Özgür Politika*. Placard reads: "We want Kurdish education."

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The Kurdish Human Rights Project (KHRP) is an independent, non-political, non-governmental human rights organisation founded and based in London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living within the Kurdish regions, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people.

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FOREWORD

Prompted by recent ongoing campaigns for education in Kurdish being waged by Kurdish university and school students across Turkey – campaigns which have faced harsh repression from Turkish authorities since they first began in the autumn of 2001 – KHRP sent a fact-finding delegation to Turkey in February 2002 in order to obtain accurate and objective information about the student campaign and to investigate the wider status of the Kurdish language both in Turkish law and in practice, not only in education but also in other areas of life including broadcasting, political discourse, civil society institutions, the justice system, cultural life, private and commercial life and the naming of children and places.

The mission delegation comprised minority rights expert Robert Dunbar from the School of Law at Glasgow University; Nazmi Gür, an experienced Kurdish human rights defender from Turkey and member of KHRP's International Board of Patrons; and Fiona McKay, a human rights lawyer and Deputy Director of KHRP. This new report documents the mission's findings and provides a thorough analysis of the situation from the point of view of applicable international legal standards, including the Copenhagen Criteria that Turkey will have to comply with before being accepted for entry into the European Union. This report also explores the basis for potential litigation under the European Convention on Human Rights along with challenges under other international mechanisms. At the conclusion of the report, the mission has compiled a detailed list of recommendations for reform.

This report comes at a time when Turkey is being pushed, in the context of the EU pre-accession process, to give greater recognition to the rights of minorities, including language rights. As this report clearly reveals, Turkey has violated a number of international principles and standards regarding language rights and minority rights. As the mission members argue here, wide-ranging changes need to be made to the Turkish Constitution, to legislation and to policy and practice, before Turkey can be considered to have complied with international standards.

KHRP would like to thank the mission members, especially Robert Dunbar and Fiona McKay who prepared this report.

Kerim Yildiz
Executive Director
Kurdish Human Rights Project

London
June 2002



INTRODUCTION

On 20 November 2001, a group of students at Istanbul University signed a petition demanding the introduction of optional Kurdish lessons at the university, and announced their action at a press conference. This was to trigger the presentation of thousands of similar petitions at universities and high schools around the country, a clampdown from the authorities and reverberations around the country and beyond. By 14 February 2002, students at 24 universities across Turkey had attempted to hand in a total of 11,837 petitions and they had been joined by thousands of school pupils and their families who had presented their own petitions with respect to the teaching of Kurdish in primary and secondary schools. The response of the authorities was swift and harsh: by 14 February, 1,359 had been taken into custody, 143 had been remanded in custody, and 46 had been suspended from their school or university.¹

The student campaign raised the issue of optional lessons in Kurdish, but this is just one aspect of the question of language rights in Turkey. KHRP decided to send a mission to Turkey in February 2002 to investigate the student campaign and the wider issues it raises regarding the status of the Kurdish language in Turkey. The aims of the mission were three-fold:

- To obtain accurate and objective information about the student campaign and the precise situation as regards the use of the Kurdish language in Turkish law and practice, not only in education but also in other areas of life including broadcasting, political discourse, civil society institutions, the justice system, cultural life, private and commercial life and the naming of children and places.
- To analyse the findings from the point of view of applicable international legal standards, including the Copenhagen Criteria that Turkey will have to comply with before being accepted for entry into the EU, and explore the basis for potential litigation under the European Convention on Human Rights and for challenges under any other international mechanism which applies to Turkey.
- To raise awareness both within Turkey and internationally of the actual status of the Kurdish language in Turkey and of any violations of international standards, and to make recommendations for reform.

The mission delegation comprised Robert Dunbar of the School of Law, Glasgow University, an expert in minority language rights; Nazmi Gür, an experienced Kurdish human rights defender from Turkey and member of KHRP's International Board of Patrons; and Fiona McKay, a human rights lawyer and Deputy Director of KHRP.

In order to learn about the reality and impact of restrictions on the Kurdish language to the fullest extent possible, the delegation visited Istanbul in the West of Turkey, a city

¹ Information compiled by the Human Rights Association of Turkey (IHD) - Istanbul Branch, and distributed at a press conference held on 14 February 2002.

with a large Kurdish population including some one and a half million internally displaced by the conflict during the last two decades, and two places in the predominantly Kurdish Southeast of Turkey, Diyarbakir - the largest Kurdish city and Van, a smaller city. During the visit, the delegation met with human rights organisations, representatives of bar associations and other legal professional associations, Kurdish cultural institutions and broadcasters, political parties, university students, parents, grass roots organisations representing the internally displaced, teachers and trade unionists and local government officials.

With respect to demographic issues, it is not possible to know with certainty how many Kurds there are in Turkey, how many Kurdish speakers there are in Turkey, or how many monolingual Kurdish speakers there are in Turkey, because the Turkish Government does not collect such information in the national census, and as we shall see, there are none of the other institutions within Turkey, such as academic departments, national cultural organisations, and so forth, which would be in the position to carry out research. All such demographic information is therefore based on intelligent estimates. Based on such estimates, it appears that there are more than 15 million Kurds in Turkey, a sizeable minority of around 20% of the population. Despite efforts of successive Turkish Governments to assimilate the Kurds and repress their language, Kurdish remains the first language of many Kurds in Turkey. According to a 1995 survey carried out in six provinces in the Southeast, over 65% of those surveyed spoke Kurdish at home, and outside the home 52% spoke a combination of Kurdish and Turkish while 21% spoke exclusively Kurdish.² Kurdish children commonly learn Kurdish at home and start to learn Turkish only when they go to school at the age of seven. Kurdish is particularly predominant among older people, women and Kurds from rural areas, and although no statistics are available, many Kurds in these groups would not also speak Turkish. Problems faced by those who have been internally displaced and move to the cities are particularly acute, and one organisation working with this community told the delegation that some 75% of mothers and children who moved to Istanbul do not speak Turkish when they arrive.

Many people whom the delegation met explained why being able to speak and use Kurdish was important to them. One student said: "*Kurdish is my mother tongue. I grew up with it, and first came to recognise the world through it.*" Another said: "*I want to dream in Kurdish!*" and "*I believe it is our human right to use our own language.*"

Until 1991, the use of Kurdish was totally prohibited in Turkey, even in private. The 1983 Law Regarding Publications in Languages Other than Turkish provided that:

*"It is prohibited for any language except the first official language of states recognised by the Turkish State to be used for the expression, dissemination and publication of opinions."*³

² 1995 Survey by the Turkish Chamber of Commerce, cited in *Cultural and Language Rights of Kurds*, KHRP, February 1997, p.20.

³ Law No. 2932 of 19 October 1983.

The Law proclaimed that the mother tongue of Turkish citizens was Turkish, and prohibited any activity that involved the use of another language as a mother tongue, and proscribed all records, tapes and audio or visual materials in any other language than Turkish. The aim of the Law was stated to be *“to protect the indivisible integrity of the State, its country and people, national sovereignty, the Republic, national security and public order.”* Although the 1983 Law was annulled in 1991, Turkish remains the only official language, and there are many restrictions still in place on the use of other languages in education, the media, political life and many other spheres. As we shall see in this report, it appeared to the delegation that many of these restrictions are aimed specifically at preventing the use of Kurdish.

Under pressure from the EU to comply with pre-accession criteria, Turkey is slowly introducing reforms. One of the short term criteria included in the pre-accession document is that Turkey must: *“Remove any legal provisions forbidding the use by Turkish citizens of their mother tongue in TV/radio broadcasting.”*⁴ In the medium term, Turkey is required by the EU to *“ensure cultural diversity and guarantee cultural rights for all citizens irrespective of their origin. Any legal provision preventing the enjoyment of these rights should be abolished, including in the field of education.”* The period for the implementation of short-term criteria elapsed in March 2002. In its National Programme developed in response to the EU accession document, Turkey made no commitments to make changes: *“The official language and the formal education language of the Republic of Turkey is Turkish. This, however, does not prohibit the free usage of different languages, dialects and tongues by Turkish citizens in their daily lives. This freedom may not be abused for the purposes of separatism and division.”* Two articles of the Constitution were amended in October 2001 as part of a package of reforms, removing the basis for prohibiting the use of languages other than Turkish in the media and other channels of expression. However, changes to legislation that are needed to implement those amendments have not yet been introduced,⁵ and other key articles of the Constitution that restrict Kurdish language rights remain.

Meanwhile, Kurds continue to be denied their right to speak their language and face many difficulties as a result of this situation. One student at Istanbul University told the delegation *“My mother does not speak Turkish and I learnt it from the age of six; I do not speak good Kurdish now, so cannot communicate with my mother effectively. There are many in this situation.”* A number of mothers with children of school age confirmed that they did not speak much Turkish and that they found it hard to communicate with their children once they went to school and were allowed to speak only Turkish.

The delegation found an extraordinary level of official paranoia about what might be the consequences of lifting the prohibition on use of Kurdish. Simply put, the view appeared to be that to allow use of the Kurdish language beyond purely private use would be to

⁴ Council of the European Union, Council Decision on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership, 8 March 2001.

⁵ See for example: “Ecevit: National Security Council to debate Kurdish broadcasting”, *Turkish Daily News*, 15 March 2002, and “Kurdish language TV ‘probably’ on the agenda soon: Ecevit”, *AFP*, 14 March 2002.

give in to terrorism and would represent a step towards the break-up of the state and separatism for the Kurds. In this atmosphere, even the really rather limited demand for optional Kurdish lessons for university students is viewed as dangerous and unacceptable. Why would the prospect of some optional Kurdish lessons in university be so sensitive a matter as to trigger mass arrests and accusations of terrorism and separatism? Why would the prospect of some teaching of Kurdish or some teaching through the medium of Kurdish, in addition to the teaching of Turkish and through the medium of Turkish, to children and young teenagers whose mother tongue is Kurdish be just as sensitive a matter to the authorities? The Government is taking the view that those who take part in or express support for the student campaign have the aim of bringing about a separate Kurdish state and that the entire campaign is orchestrated by the banned Kurdistan Workers' Party (PKK). In other words, to campaign for optional Kurdish classes is to support terrorism and separatism. This message has been emanating clearly and strongly from the National Security Council, the Prime Minister and other members of the Government. However, there are also voices putting over an alternative perspective. In April 2002, the President of the European Court of Human Rights, Judge Luzius Wildhaber, said in an interview for Turkish television that in his view, broadcasting in mother tongue would not divide Turkey. "On the contrary", he said, "if minorities can express themselves, they will be more relieved".⁶ This view appears to be gaining at least some ground within Turkey itself, with Deputy Prime Minister Mesut Yilmaz saying in February 2002 that Turkey should allow some Kurdish language education and that lifting the ban would not erode national unity.⁷

The delegation concluded that Turkey was violating a number of international principles and standards, and that wide-ranging changes need to be made to the Constitution, to legislation and to policy and practice, before Turkey can be considered to have complied with international standards.

⁶ "European Court head: Broadcasting in Kurdish will not divide Turkey," *Turkish Daily News*, Ankara, 10 April.

⁷ "Turkey should allow Kurdish education – Deputy PM", *Reuters*, 20 February 2002.

I. THE STUDENT CAMPAIGN AND THE REACTION OF THE AUTHORITIES

The campaign for optional Kurdish lessons was initiated by a group of students at Istanbul University who decided to submit petitions to their university administration in November 2001. Their example was followed in universities and schools around the country, triggering a reaction from the authorities and reverberations around the country and beyond that they had possibly not anticipated. By 14 February 2002, students at 24 universities around the country had attempted to hand in a total of 11,837 petitions and they had been joined by thousands of school pupils and their families who had presented their own petitions; in response, 1,359 had been taken into custody, 143 had been remanded in custody, and 46 had been suspended from their school or university.⁸

The status of the Kurdish language in Turkey forms the background to the student demands, and also the bulk of this report. The delegation interviewed a total of seven university students in the East and the West of the country.⁹ One of the questions the delegation asked the students was their reasons for participating in the campaign. All of them were absolutely clear that it was their right to know their own mother tongue and to have the option of studying the language. One student at Marmara University told the mission: *"We began the campaign because we believed that universities are places for science and learning, so we thought they would take the issue seriously. You can learn Arabic, Farsi, English and other languages at the university, why not Kurdish?"* A student at Istanbul University said: *"The campaign is important to me because Kurdish is my mother tongue. I learnt it, grew up with it, and recognised the world through this language. I learnt Turkish only in school, when I first went to primary school at the age of seven. We are immediately supposed to be educated in Turkish even though we don't even know the language. From then on we were prohibited from speaking Kurdish with each other. The teachers would check on us, and forced us to inform on whether our parents spoke to us in Turkish or Kurdish - they told us we must speak Turkish at home. Once I was told to bring a cloth - 'bez' in Turkish - to school for cleaning. In Kurdish that means meat fat, so I brought some from a butcher. I was beaten by the teacher."*

Within days of the initiative in Istanbul, the student campaign had spread to other universities around the country and then to schools, where students and parents of students in primary and secondary education began petitioning for the teaching of Kurdish and through the medium of Kurdish in these schools. Although most of the petitioners were Kurdish students, in some universities they were supported by Turkish students and members of other minority groups.

The reaction of the authorities was swift and harsh. In the first few days, some universities had accepted the petitions and the reaction had been relatively muted. The

⁸ Information compiled by IHD Istanbul, and distributed at a press conference held on 14 February 2002.

⁹ The delegation has the names of those students, but the students asked that their names be withheld in this report.

mood changed suddenly after the National Security Council (NSC)¹⁰ discussed the issue at its monthly meeting in January and issued a circular declaring that the campaign had been organised by the outlawed Kurdistan Workers' Party (PKK) and that those participating in it should be charged with membership or support of the PKK. This was followed by other circulars emanating from different ministries and public statements of ministers along similar lines. On 10 January the Ministry of Justice asked Public Prosecutors to prosecute students for membership of an illegal organisation, and on 18 January the Minister of Interior issued a directive stating that the students' demands were promoted by the PKK, and were part of a PKK strategy to create civil disobedience and political uprising in Turkey. The status of these circulars and how their content was made known appeared to the delegation to be unclear and a subject of some mystery. Press releases are issued by the NSC following each meeting summarising the issues discussed, decisions taken and follow-up measures. However, its decisions it seems do not have status in themselves, and therefore are not challengeable before a court, but effectively mandate the government of the day to act on them. Circulars issued by ministries and government departments, however, do have formal status and are challengeable, it seems, in the Higher Administrative Court (Danistay), for instance on the grounds that they contravene the Constitution.

The basis of the authorities' response is that the student campaign was initiated by an illegal organisation (the PKK) and the students are merely following orders. Some of those being prosecuted are being charged under sections 168 and 169 of the Penal Code with membership of, or the lesser offence of support for, an illegal organisation, as well as with offences involving the promotion of separatism. In other words, merely to campaign for the option of Kurdish classes is viewed as expressing support for terrorism and separatism. However, the delegation found no evidence of the PKK orchestrating the campaign, and even less indication that the campaign can be equated with any aim of achieving a separate state. Furthermore, we understand that the Turkish Government has itself provided no serious evidence of either PKK involvement or separatist intent.

The response called for by the Government was implemented on the ground by university and school administrations, education authorities, police and other law enforcement officials. Already on 27 November 2001, even before the NSC's decision, YOK, the Higher Education Council, issued a statement calling on universities to take disciplinary action against students involved in the campaign, which it said was organised by the PKK. Following January's meeting of the NSC, official attitudes became harsher. One student at Marmara University told the delegation that after the meeting of the NSC: *"Teachers turned against us, even those who had privately expressed support for our campaign. Lots of pressure was put on us. For example, a friend whose father had died and came from a poor family who the university had helped, had his university grant when the police asked the university to do so. My friend was told that he and the other students were enemies of this country. A friend of mine who had already been tortured*

¹⁰ The NSC is chaired by the President of the Republic and is composed of the Prime Minister, the Chief of the General Staff, the Ministers of National Defence, Internal Affairs and Foreign Affairs, the Commanders of the Army, Navy and Air Force and the General Commander of the Gendarmerie. While its recommendations are not legally binding, it has a strong influence on the Turkish Government.

on a previous occasion was taken to a room and threatened with torture again. Many around the country were arrested and charged with membership of an illegal organisation or with support for such an organisation. But we are just exercising our democratic rights.”

Those who support the student campaign cite Article 74 of the Constitution, which guarantees the right of citizens to petition in the following terms:

"Citizens and foreigners resident considering the principle of reciprocity have the right to apply in writing to the competent authorities and to the Turkish Grand Assembly with regard to the requests and complaints concerning themselves or the public. The result of the application concerning himself shall be made known to the petitioner in writing without delay. The manner of exercising this right shall be determined by law."¹¹

According to this provision, even if they do not ultimately meet the demands made, the universities are bound to at least consider the petitions. The delegation heard testimony that on the contrary, university administrations refused to accept some two-thirds of the petitions, took disciplinary measures against those who presented them, invited the police on to campuses and referred individuals to the police and the judicial authorities for criminal investigation. Legal experts interviewed by the delegation expressed the view that there was no basis in Turkish law for the steps taken by university administrations. At first they attempted intimidation. Istanbul University said that those who withdrew their petitions would not be investigated. Those perceived as leaders were targeted and several had their homes raided by the police.

Several universities called in the police. One student from Marmara University explained what happened when he and fellow students went to the university offices to back up their petitions: *“Our university invited us to defend our petitions. Grey Wolves rightists¹² came and the police did not prevent them from attacking the Kurdish students - then they arrested the Kurdish students! Investigations were opened on the grounds we were aiming to divide the state on ethnic grounds. This was very painful for us - we were only saying we are Kurds and they accuse us of that. In fact it is they who are racist. In some places they offered to give us English instead of Kurdish classes.”*

The response was similar at Dicle University in Diyarbakir. One student told us: *“We read that a group of students had begun a campaign in Istanbul and we came together and decided to launch a campaign in Diyarbakir. The authorities heard about this and launched a huge psychological war against us. In the university the police were in special rooms and would call us in individually to try to persuade us not to submit our petitions. They would use intimidation. But we continued, and collected 1,500 petitions.”* His companion spoke of what happened next: *“We went to hand in our petitions to the University Administration on 7 December 2001. The police surrounded the campus.*

¹¹ Article 74 of the Constitution, as amended on 17 October 2001.

¹² ‘Grey Wolves’ is the nickname given to far right Turkish nationalists who support the MHP Party.

There were three checkpoints, and police buses blockaded the main entrance to the Administration Office. We were arrested on our way in and spent three days in custody at the police station, where we were beaten. They had already tortured others, by electric shocks etc, to get the names of the organisers.”

Reports have come from around the country of students who participated in the campaign being rounded up by the police, detained and questioned. A number of students allege that they were subjected to torture or ill-treatment. The delegation interviewed one of the leaders of the student campaign at Istanbul University, who said that he had been arrested and tortured with the aim of making him confess to having been directed by the PKK. *“I was kidnapped on my way home from university. Two plain-clothes police forced me into a taxi with a friend. They blindfolded us. We were held for three days, placed under lots of pressure including beatings and psychological pressure. Bad language was used against the Kurdish nation and me personally. This happened about a month ago. I was not allowed access to a lawyer, or to my family. Under the Anti-Terror Law people can be held incommunicado like this for up to four days. But they did not tell me I was being held under the Anti-Terror Law. They just told me I had participated in pro-PKK activities. I was not given food or water.”* Other cases of torture and ill-treatment have been documented by Turkish human rights organisations and medical reports have been obtained.¹³

A student at Van University told the mission: *“In January, I signed a petition and gave it to the University Administration. The university rector told us it was better to give in the petitions individually. We did so and then he gave the list of those who did so to the gendarmerie. It was after that I was arrested and taken into custody for three days by the gendarmerie, with the first big group. We were taken to the gendarmerie headquarters. Some of us were taken away and tortured, including being blindfolded and beaten. The rest of us were threatened and told to withdraw the petitions. We were questioned separately. They put psychological pressure on us. Twice I was called for questioning. They threatened that if I did not withdraw the petition I would go to prison, be expelled and lose my chances in life. We were some 500 people in one small place with no food. I refused to withdraw the petition or sign a statement. Then I was sent to the Prosecutor and he ordered my release. Those who did agree to withdraw their petitions were forced to sign a statement that they were not given a chance to read.”*

Criminal charges have been brought against some. The student leader from Istanbul University told the delegation that he had been charged with membership of an illegal organisation. A student in Diyarbakir who the delegation interviewed had been charged with supporting an illegal organisation. These charges are extremely serious. If convicted, those charged face prison sentences of up to three to five years.¹⁴ They can expect to be tried not in the ordinary criminal courts but in the State Security Courts,

¹³ See for example: Human Rights Association of Turkey (IHD), “The Mother Tongue is a Right,” February 2002; Amnesty International, Urgent Action 35/02 Issued on behalf of Medeni Alpkaya, AI Index: EUR 44/008/2002, February 2002; and Human Rights Watch, “Turkey: Courts Must Safeguard Free Speech,” February 2002.

¹⁴ Section 169, Turkish Criminal Code.

which have been severely criticised by KHRP and others.¹⁵

Some of the students involved in the campaign had been suspended or expelled from their universities. In Van, the mission was informed that 65 had been evicted from their dormitories. University administrations have a disciplinary board that has power to suspend or expel students, and such decisions can be challenged in the Regional Administrative Courts (*bilge idare mahkemeleri*). The delegation heard that some of the students are planning to take their cases to these courts. The impact on the future lives and prospects of students suspended or expelled from university will clearly be considerable. Aside from the loss of the opportunity to study, whether temporary or permanent, and some probable financial loss in terms of fees and so on, the fear was expressed that the disciplinary measures taken would remain on students' records and affect their future careers. In particular, success in applications for certain jobs – such as in the teaching profession – will depend on having a clean record in the secret files kept by the security services. The mission also heard that family members could be adversely affected; once a person is regarded as an activist, his or her family may find that their applications for positions are turned down inexplicably.¹⁶

Others who have expressed support for the campaign, such as school teachers, human rights organisations, members and officials of political parties (primarily the pro-Kurdish People's Democracy Party, HADEP), trade union activists and officials, local government officials and lawyers representing the students, have also faced measures. Several school heads and other teachers have been suspended or arrested. The head of the Istanbul branch of the IHD (Human Rights Association of Turkey), Eren Keskin, has been charged with support for an illegal organisation.¹⁷

The student campaign was taken up also by school children and their families across Turkey. In Istanbul, hundreds of parents applied to the local Education Departments. The delegation interviewed one mother in Istanbul with three school-age children who

¹⁵ See for example: *State Violence Against Women in Turkey and Attacks on Human Rights Defenders of Victims of Sexual Violence in Custody*, KHRP, December 2001, available from KHRP; *The Viranşehir Children: The Trial of 13 Kurdish Children in Diyarbakir State Security Court*, KHRP, January 2002, available from KHRP; and "...Peace is not Difficult": *Observing the Trial of Nazmi Gür, Secretary General of the Human Rights Association of Turkey*, KHRP, Bar Human Rights Committee of England and Wales, Norwegian Bar Association, Euro-Mediterranean Human Rights Network and Danish Centre for Human Rights, April 2000, available from KHRP. See also: *The Independence of Judges and Lawyers in the Republic of Turkey*, Centre for the Independence of Judges and Lawyers, Geneva, November 1999; and *Incal v Turkey*, 41/1997/825/1031, ECHR judgment of 9 June 1998 and *Ciraklar v Turkey*, 70/1997/854/1061, ECHR judgment of 28 October 1998.

¹⁶ A board member of the pro-Kurdish People's Democracy Party (HADEP) informed us that his daughter had been refused a place on a university Masters programme and had been told by the university that the reason was her father's activities.

¹⁷ Prosecution of human rights activists for such activities are not uncommon in Turkey. The case brought in relation to the student campaign was the 79th case opened against Eren Keskin. KHRP has also recently expressed concern at the intimidation and prosecution of human rights activists who have spoken out in connection with the ongoing prison crisis, see *The F-Type Prison Crisis and the Repression of Human Rights Defenders in Turkey*, KHRP, the Euro-Mediterranean Human Rights Network and OMCT, October 2001, available from KHRP.

explained what had happened when she had joined in the campaign:

“My son who is in the 5th grade came home and said there was a campaign going on, and prepared a petition for me. A group of about 50 of us went from the neighbourhood to the local education office. The police were in the area and when we left the office, 11 of us were taken into police custody. We were ordered to turn to the wall, but some could not understand, so the police swore at us. A senior police officer came and spoke bad language against Kurds. One of the Kurdish men spoke back and was attacked and beaten. A big group of us women moved towards them and they stopped beating him. Some women were released, but most of the group remained in detention for three days. We were asked if any of us had health problems. When I said I was pregnant I was told if this was not true I would have to stay a long time. We were told if we spoke bad language against Öcalan [imprisoned leader of the PKK] they would release us.”

In Van, all schools decided to support the campaign by only speaking Kurdish for three days. In one high school where pupils had petitioned for Kurdish lessons, six 15-16 year-old pupils were expelled and four others were suspended for five days. The police turned out in force when pupils tried to hand in petitions to the Governor and the local Board of Education.¹⁸

In Diyarbakir, we heard that families displaced to the cities as a result of the armed conflict in Southeast Turkey that lasted from 1984 to 1999 were petitioning the Government for Kurdish courses for their children. The internally displaced face particular problems resulting from the prohibitions on the use of Kurdish, which are documented in this report.

¹⁸ This information was provided by IHD in Van who have documented the campaign in the city.

II. TURKEY'S INTERNATIONAL OBLIGATIONS

Turkey has entered into a number of international agreements which create binding obligations with regard to the linguistic and cultural rights of its Kurdish population, including the following: the Treaty of Peace with Turkey Signed at Lausanne, 24 July 1923 (the "Treaty of Lausanne"),¹⁹ the United Nations' Universal Declaration of Human Rights, 1948 (the "Universal Declaration"),²⁰ the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (the "European Convention on Human Rights", or the "ECHR"), together with the First Protocol thereto,²¹ and the United Nations' Convention on the Rights of the Child, 1989 (the "CRC").²² The status in Turkish domestic law of international treaties to which Turkey is party is regulated by the Constitution. According to Article 90 of the Turkish Constitution, international treaties to which Turkey is party are approved by the Grand National Assembly by enactment of a law, and: "*International agreements duly put into effect carry the force of law.*" The ECHR, for instance, was incorporated into the Turkish legal system in 1954.²³

Furthermore, there are other instruments of relevance to the linguistic and cultural rights of the Kurdish population, although they do not create binding legal obligations for Turkey, including the following: the United Nations' International Covenant on Civil and Political Rights, 1966 (the "ICCPR") and the International Covenant on Economic, Social and Cultural Rights, 1966 (the "ICESCR"), both of which Turkey has signed but has not yet ratified, (these will, of course, becoming binding legal obligations for Turkey upon ratification); the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference for Security and Co-operation in Europe, 1990 (the "Copenhagen Document"); and the United Nations' General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992 (the "UNGA Minorities Declaration"). Finally, it seems likely that the process of accession to the European Union will have implications for the linguistic and cultural rights of the Kurdish population.

Binding International Obligations

With respect to the **Treaty of Lausanne**, Section III, comprising Articles 37 to 45, contains provisions with respect to the protection of minorities. Most of these provisions are directed at the protection of Turkey's "non-Muslim" minorities, which would include Turkey's ethnic Greek, Armenian and Jewish populations; as Turkey's Kurdish population

¹⁹ The Treaty of Lausanne had been preceded by the Treaty of Sèvres, signed on 10 August 1920, which promised the formation of an autonomous region for the Kurds followed by the right to elect for complete independence after a year if the League of Nations were persuaded of their capacity for independence. The treaty was superseded by the Treaty of Lausanne. See David McDowall, *A Modern History of the Kurds*, (London: I.B. Taurus, 1996), p. 137.

²⁰ The UDHR is not a treaty but at least some of its provisions are generally accepted as norms of general international law; Ian Brownlie, *Principles of Public International Law*, (Oxford: Oxford University Press, 1998), 5th ed., p.575.

²¹ Turkey ratified both the Convention and the First Protocol on 18 May 1954.

²² Turkey ratified the CRC on 4 April, 1995.

²³ Law No. 6366 of 10 March 1954.

is largely of the Muslim faith, it would generally not benefit from such provisions. However, there are a few provisions in Section III which are of relevance to the Kurdish population. First, Article 38, paragraph 1 provides that the Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, *language*, race or religion (emphasis added). Second, Article 39, paragraph 4 provides that no restrictions shall be imposed on the free use by any Turkish national of *any language* in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings (emphasis added). Finally, Article 39, paragraph 5 provides that notwithstanding the existence of the official language (i.e. Turkish), adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts. Article 37 provides that Turkey undertakes that these stipulations shall be recognised as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them.

With respect to the **Universal Declaration**, Article 12 provides that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, and that everyone has the right to the protection of the law against such interference or attacks. Article 19 provides that everyone has the right to freedom of opinion and expression and that this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Paragraph 1 of Article 20 provides that everyone has the right to freedom of peaceful assembly and association. Paragraph 1 of Article 26 provides that everyone has the right to free education; significantly, paragraph 2 provides that education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms, and paragraph 3 provides that parents have a prior right to choose the kind of education that shall be given to their children. Finally, Article 2 provides that everyone is entitled to all the rights and freedoms set forth in the declaration, without distinction of any kind, such as race, colour, sex, *language*, religion, political or other opinion, national or social origin, property, birth or other status, and Article 7 provides that all are equal before the law and are entitled *without any distinction* (including any distinction based on language) to equal protection of the law.

With respect to the **ECHR**, Article 8, paragraph 1 provides that everyone has the right to respect for his private and family life, his home and his correspondence. Significantly, the Strasbourg institutions have shown a willingness to accept that this article extends protection against measures which can threaten ethnic identity. In *Chapman v. UK*,²⁴ for example, the applicant, a gypsy, contested measures which, she alleged, threatened her home and family life as a gypsy with a traditional lifestyle of living in mobile homes. The European Court of Human Rights considered that the applicant's occupation of her caravan was an integral part of her ethnic identity as a gypsy, reflecting the long tradition of that minority of following a travelling lifestyle. As a result, measures which affected her stationing of caravans had a wider impact than on the right to respect for home; they

²⁴ App. No. 27238/95, 18 January 2001.

also "affect her ability to maintain her identity as a gypsy and to lead her private and family life in accordance with that tradition."²⁵ Therefore, the Court found that the applicant's right to respect for her private life, family and home were in issue. In the result, the Court did find that the interference was justified under Article 8, paragraph 2, but noted that the vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle, and that there is a positive obligation imposed on States by virtue of Article 8 to facilitate the gypsy way of life.²⁶

Article 10, paragraph 1 of the ECHR provides that everyone has the right to freedom of expression and that this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The European Court of Human Rights has made clear that this right applies to "commercial"²⁷ as well as "political"²⁸ speech, and while the Court has apparently not yet had cause to consider whether the right to freedom of expression includes the right to choose one's language of expression, it would be remarkable if it concluded that the right did not cover the right to choose one's means of expression.²⁹ Certainly, the United

²⁵ *Ibid*, para. 73.

²⁶ *Ibid*, para. 96. Of similar effect, for example, is the decision of the Commission in *App. Nos. 9278/81 and 9415/81 v. Norway*, indexed at 6 E.H.R.R. 357, which involved a claim by two Norwegian Sami that a projected dam development would adversely affect their traditional way of life, which involved hunting and fishing, and therefore would violate their rights under Article 8. The Commission was of the opinion that under Article 8, a minority group is in principle entitled to claim the right to respect for the particular lifestyle it may lead as being 'private life', 'family life' or 'home', and that the consequences arising for the applicants from the construction of the hydro-electric plant constitute an interference with their private life as members of a minority who move their flock of deer over a considerable distance. The adverse effects on the environment surrounding the plant would interfere with the applicants' possibilities of enjoying the right to respect for their private life. However, the Commission concluded that the interference was justified under Article 8, paragraph 2.

²⁷ See *Case Law Concerning Article 10 of the European Convention on Human Rights*, Human Rights Files No. 18, (Strasbourg: Council of Europe Publishing, 2001), pp. 43-46, and the cases referred to therein.

²⁸ *Ibid*, at p. 50, *et seq.* In a series of judgements of 8 July 1999, the Court has there is little scope under Article 10, paragraph 2 of the ECHR for restrictions on political speech, and that the limits of permissible criticism are wider with regard to the government than in relation to the private citizen or even a politician: *Arslan v Turkey*, *Polat v Turkey* and *Gerger v Turkey*, all unpublished, and cited in numerous other cases.

²⁹ It must be noted, however, that the Commission has ruled on one occasion that Article 10 did not guarantee the right to use a minority language in certain settings. This decision, *Fryske Nasjonale Partij and others v. Netherlands*, App. No. 11100/84, reported at 9 E.H.R.R. 261, involved a complaint made by members of a Frisian political party that they were not being permitted by Dutch authorities to use the Frisian language in contesting Dutch parliamentary elections. The Commission merely concluded that Article 10 did not "guarantee linguistic freedom as such" and in particular did not guarantee "the right to use the language of one's choice in administrative matters." The Commission did note, however, that the applicants had not demonstrated that they were also prevented from using the Frisian language for other purposes, perhaps implying that if the interference with the use of Frisian had been in other contexts, particularly in the private sphere, the decision may have been different. Such an approach would be in line with UN Human Rights Committee jurisprudence, and leading decisions in many domestic jurisdictions. To the extent that the Commission ruling suggests that a minority language such as Frisian could not be used for political speech, particularly in the context of elections and particularly where, as is the case in Turkey, many voters cannot speak or understand the only official language (virtually all Frisians are also

Nations Human Rights Committee has made clear that the parallel provision in the ICCPR protects the right to choose one's language of expression, as have domestic courts such as the Supreme Court of Canada, which has expressed the matter in this way:

*"Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice. Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is, as the preamble of the Charter of the French Language [the legislation being challenged as infringing the right to freedom of expression] itself indicates, a means by which a people may express its cultural identity. It is also the means by which the individual expresses his or her personal identity and sense of individuality."*³⁰

Further, Article 11, paragraph 1 of the ECHR provides that everyone has the right to freedom of peaceful assembly and to freedom of association with others.

The delegation suggests that all of the rights contained in Articles 8, 10 and 11 should ensure the freedom to use a particular language, one's mother tongue, in most areas of private and public life. The enjoyment of the rights set out in these articles may, however, all be limited, but only where the limitations are prescribed by law and are necessary in a democratic society in the interests of matters such as national security (Articles 10 and 11), territorial integrity (Article 10), public safety, the prevention of disorder or crime (Articles 10 and 11), the protection of public order, health or morals, or for the protection of the rights and freedoms of others. Article 14 provides that the enjoyment of the rights and freedoms set forth in the ECHR shall be secured without discrimination on any ground such as sex, race, colour, *language*, religion, political or other opinion, national or social origin, *association with a national minority*, property, birth or other status (emphasis added). It should also be noted that Protocol No. 12 to the ECHR was opened for signature on 4 November 2000, though it is not yet in force.³¹ Unlike Article 14 of the ECHR, Protocol No. 12 is a free-standing non-discrimination provision, similar to Article 26 of the ICCPR (see below), and provides at Article 1, paragraph 1 that "[t]he enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, *language*, religion, political or other opinion, national or social origin, *association with a national minority*, property, birth or other status" (emphasis added). Finally, Article 5, paragraph 2 provides that everyone who is arrested shall be informed promptly, *in a language which he understands*, of the reasons for his arrest and of any charge against him; Article 6, paragraph 3 provides that everyone charged with a criminal offence has the right (a) to be

fluent speakers of Dutch), we suggest that it is simply incorrect. The Commission ruling does not, however, go nearly as far as that. In any case, *Fryske Nasjonale Partij* was decided well before the recent case law which has recognised the fundamental importance of political speech, well before the various European and international minorities instruments, referred to earlier in the report, and would, we suggest, be decided differently even on its own facts today.

³⁰ *Ford v. Quebec*, [1988] 2 S.C.R. 712, at para. 40.

³¹ The Protocol requires ten ratifications before it comes into force, and thus far only two States have ratified it, although 27 have signed it, including Turkey, which signed it on 18 April 2001.

informed promptly, *in a language which he understands* and in detail of the nature and cause of the accusation against him, and (e) to have the free assistance of an interpreter if *he cannot understand or speak the language used in court* (emphasis added).

With respect to the CRC, State Parties agree under Article 29, paragraph 1 that the education of the child shall be directed to “(a) the development of the child's personality, talents and mental and physical abilities to their fullest potential; . . . (c) the development of respect for the child's . . . *own cultural identity, language and values*, [and] for the national values of the country in which the child is living..”(emphasis added). Paragraph 2 of that article provides that nothing in the article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject to the principles set forth in paragraph 1 and to any minimum standards that are laid down by the State. Article 30 provides that in States in which *ethnic, religious or linguistic minorities* or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, *to enjoy his or her own culture*, to profess and practise his or her own religion, *or to use his or her own language* (emphasis added). It should be noted that Turkey made a reservation upon signature of the CRC, which reservation it confirmed upon ratification, to the effect that it reserves the right to interpret and apply the provisions of Articles 29 and 30 “according to the letter and the spirit of the Constitution of the Republic of Turkey and those of the Treaty of Lausanne of 24 July 1923.” The implications of this reservation shall be discussed further, below, in the section entitled “Kurdish in Education.”

Non-Binding International Obligations

As noted above, Turkey has signed the ICCPR and the ICESCR and is expected to ratify both instruments in the near future; indeed, in Turkey's Accession Partnership with the European Union (see below), ratification of both instruments is listed amongst Turkey's medium-term priorities. Many of the provisions of the ICCPR mirror those in the ECHR. For example, like Article 8 of the ECHR, Article 17, paragraph 1 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence. Like Article 10 of the ECHR, Article 19, paragraph 2 of the ICCPR provides that everyone has the right to freedom of information, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice. The United Nations Human Rights Committee has ruled that this right includes the right to choose one's language of expression, and applies to "commercial" as well as "political" speech.³² And, like Article 11 of the ECHR, Article 21 of the ICCPR provides that the right of peaceful assembly shall be recognised, and Article 22 of the ICCPR provides that everyone shall have the right to freedom of association with others. As with these rights in the ECHR, the right to freedom of expression and the right to freedom of assembly and association in the ICCPR are subject

³² See, for example, *Ballantyne, Davidson and MacIntyre v. Canada*, (1993), CPR/C/47/D/359/1989 and 385/1989.

to certain restrictions, but these must be "provided by law" and must be "necessary" for the protection of national security or of public order, or of public health or morals (in the case of the right to freedom of expression in Article 19), and must be "in conformity with" or "prescribed by" law, "necessary in a democratic society", and in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others (in the case of the right to peaceful assembly in Article 21 and the right to freedom of association in Article 22).

Like Article 6, paragraphs 3(a) and (e) of the ECHR, Article 14, paragraph 3 of the ICCPR provides that in the determination of any criminal charge against him, everyone shall be entitled "(a) to be informed promptly and in detail *in a language which he understands* of the nature and cause of the charge against him", and "(f) to have the free assistance of an interpreter if he *cannot understand or speak the language used in court*" (emphasis added).

With regard to non-discrimination, like Article 14 of the ECHR, Article 2, paragraph 1 of the ICCPR provides that States party to the ICCPR undertake to respect and to ensure to all individuals the rights recognized in the ICCPR without distinction of any kind, such as race, colour, sex, *language*, religion, political or other opinion, *national or social origin*, property, birth or other status. Significantly, however, the ICCPR goes beyond the ECHR in at least three important respects. First, in addition to the non-discrimination provision in Article 2, the ICCPR contains a "free-standing" non-discrimination provision in Article 26, which provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law, and that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, *language*, religion, political or other opinion, *national or social origin*, property, birth or other status (emphasis added). Protocol No. 12 to the ECHR will be a comparable provision, but as noted above, it is not yet in force. Second, Article 25 provides that every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 (which includes any distinction based on language) and without unreasonable restrictions: "(a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and be elected at genuine periodic elections; and (c) to have access, on general terms of equality, to public service in his country." Third, the ICCPR contains a "minorities provision"; Article 27 provides that in those States in which *ethnic*, religious or *linguistic* minorities exist, persons belonging to such minorities shall have the right, in community with the other members of their group, to *enjoy their own culture*, to profess and practice their own religion, or to *use their own language*. Although framed in the negative – members of linguistic minorities *shall not be denied* the right to use their own language – the United Nations Human Rights Committee, the body which oversees and interprets the ICCPR, has recognised that Article 27 creates an obligation for States to take positive measures in support of linguistic minorities: "positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language . . . in community with other members of the group."³³

³³ General Comment 23, 8 April 1994, at para 6.2.

It should be noted that the ICCPR does not define what constitutes a “minority”; indeed, while a number of the instruments to which we shall refer also use the term “minority” or “national minority,” like the ICCPR none of these instruments have defined such terms either. Yet, there is a growing consensus amongst international lawyers as to what the core criteria for the determination of a linguistic, or other minority would be. In 1979, for example, the Special Rapporteur of the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Professor Francesco Capotorti, provided a definition, which has subsequently received favourable comment. He submitted that the term “minority” may be taken to refer to: “A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.”³⁴ The delegation submits that Turkey’s Kurdish population would, without any question whatsoever, meet all of the conditions set out in Professor Capotorti’s definition, and is *prima facie* a minority under this definition; furthermore, we submit that Turkey’s Kurdish population should, without question, benefit from any provision in any instrument to which Turkey is a party or may become a party which makes reference to “minorities”, “national minorities” or other similar formulations of the minority concept. Of course, the finding that the Kurds are a minority in international law does not preclude the possibility that they are also a people in international law, but this is not the subject of this report.

With respect to the ICESCR, Article 13, paragraph 1 recognises the right of everyone to education, that education shall be directed to the full development of the human personality and the sense of its dignity, and that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, *ethnic* or religious groups. Article 13, paragraph 3 provides that State Parties are to undertake to have respect for the liberty of parents to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. Article 15, paragraphs 1 (a) and (b) recognise the right of everyone to take part in cultural life and to enjoy the benefits of scientific progress and its applications, and paragraph 2 provides that the steps to be taken to achieve the full realisation of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. Finally, like Article 14 of the ECHR and Article 2 of the ICCPR, Article 2, paragraph 2 of the ICESCR provides that States party to the ICESCR undertake to guarantee that the rights enunciated in the ICESCR will be exercised without discrimination of any kind as to race, colour, sex, *language*, religion, political or other opinion, *national or social origin*, property, birth or other status.

³⁴ Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, (New York: United Nations, 1991, 2nd ed.), at para. 568, p. 96.

With regard to the **Copenhagen Document**, this does not create legally binding international obligations for States, but it does have considerable importance as a political document and an expression of normative values for those States, such as Turkey, which are participants in the OSCE (Organisation of Security and Co-operation in Europe) and which agreed to the Copenhagen Document. The Copenhagen Document contained a number of provisions relevant to national minorities. For example, paragraph 30 thereof provides that the participating States reaffirm that respect for the rights of persons belonging to national minorities is an essential factor for peace, justice, stability and democracy in the participating States. Paragraph 31 thereof provides that members of national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law, and, significantly, recognises that the participating States will adopt, where necessary, special measures to ensure that members of national minorities enjoy full equality with other citizens and enjoyment of human rights and fundamental freedoms. This seems to imply a requirement to take positive measures of support to ensure full and equal access to things like public services through, for example, the medium of the minority language. Furthermore, paragraph 33 provides that the participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. Again, this certainly implies that States have a duty to take positive measures of support in respect of linguistic minorities. Paragraph 32 provides that to belong to a national minority is a matter of individual choice and that no disadvantage may arise from such a choice; furthermore, members of national minorities have the right to freely express, preserve and develop their ethnic, cultural, linguistic or religious identity, and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. Assimilationist policies and practices are therefore strongly condemned.

The Copenhagen Declaration then offers a number of more specific guarantees and protections to members of national minorities, including the right to freely use their mother tongue in private as well as in public (paragraph 32.1), to establish and maintain unimpeded contacts among themselves within their country as well as contacts across borders with citizens of other States with whom they share a common ethnic or national origin or cultural heritage (paragraph 32.4), and to disseminate, have access to and exchange information in their mother tongue (paragraph 32.5). It also offers the right to establish and maintain their own educational, cultural and religious institutions, organisations or associations (paragraph 32.2), and to establish and maintain organisations or associations within their country and to participate in international non-governmental organisations (paragraph 32.6). Finally, paragraph 34 contains some important provisions with respect to education and public services, including that participating States will endeavour to ensure that persons belonging to national minorities have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities.

The **UNGA Minorities Declaration**, like other such declarations, generally does not create legally binding obligations (although such documents can constitute important evidence of State practice), but are merely recommendatory, and have varying degrees of

political importance.³⁵ This declaration was adopted by the General Assembly, of which Turkey is a member, without a vote on 18 December 1992. The preamble to the UNGA Minorities Declaration recognises that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contributes to the political and social stability of States in which they live and can contribute to the strengthening of friendship and cooperation among peoples and States. Under Article 1, States are required to protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their territories and shall encourage conditions for the promotion of that identity; they are also required to adopt appropriate legislative and other measures to achieve those ends. The commitment to "protect the existence" of minorities would presumably imply that States are not to engage in acts which imperil the physical existence of minorities, such as extermination, ethnic cleansing or expulsion, but also which would be in furtherance of a policy aimed at the assimilation of members of minorities against their will. So, once again, States are clearly required to take positive measures of support for linguistic minorities.

Under paragraph 1 of Article 2, persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture and to use their own language, in private and in public, freely and without interference or any form of discrimination. Under paragraph 4 of that article, they have the right to establish and maintain their own associations, and under paragraph 5, they have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic or linguistic ties. Article 4, paragraph 1 requires States to take measures, where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law. Paragraph 2 of that article requires States to take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.

With respect to minority language education, Article 4, paragraphs 3 and 4 are significant. Paragraph 3 provides that States should take appropriate measures so that, wherever possible, persons belonging to minorities have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. Paragraph 4 provides that States should, wherever appropriate, take measures in the field of education in order to encourage knowledge of the history, traditions, language and culture of the minorities within their territory. Paragraph 5 of Article 4 provides that States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development of their country.

Finally, there are a number of provisions with respect to policy-making and the role of minorities therein. Article 5, paragraph 1 provides that national policies and programmes

³⁵ See, for example, Malcolm N. Shaw, *International Law*, (Cambridge: Cambridge University Press, 1997, 4th ed.) at 90-92.

shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities, and Article 2, paragraph 3 provides that persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live.

Accession to the European Union

Turkey is a candidate country for accession to the European Union (the "EU"). The EU has established both political and economic criteria for accession which must be met by all candidate countries. The political criteria were laid down by the Copenhagen European Council in June 1993, and these stipulate that candidate countries must have achieved "stability of institutions guaranteeing democracy, the rule of law, human rights and *respect for and protection of minorities*" (emphasis added). The Accession Partnership between the EU and Turkey, which is the centrepiece of the pre-accession strategy, identifies short- and medium-term priorities for legislative changes for Turkey. Among the short-term priorities with respect to the political criteria for accession established for Turkey (which were to be met by March 2002) were to strengthen legal and constitutional guarantees for the right to freedom of expression in line with Article 10 of the ECHR, to strengthen legal and constitutional guarantees of the right to freedom of association and peaceful assembly and encourage the development of civil society, and *to remove any legal provisions forbidding the use by Turkish citizens of their mother tongue in TV/radio broadcasting*. Among the medium-term priorities with respect to the political criteria were to guarantee full enjoyment by all individuals without any discrimination and irrespective of their *language*, race, colour, sex, political opinion, philosophical belief or religion of all human rights and fundamental freedoms, to ratify the ICCPR and its first optional protocol and the ICESCR, and *to ensure cultural diversity and guarantee cultural rights for all citizens irrespective of their origin, and that any legal provisions preventing the enjoyment of these rights should be abolished, including in the field of education*.

The Accession Partnership did not make explicit what sorts of steps Turkey should take to "ensure" cultural diversity, nor did it make clear what rights are included within the phrase "cultural rights." Presumably, however, cultural rights are rights which differ from and go beyond the basic civil and political rights of the sort contained in the ECHR and the ICCPR and even the broader cultural rights set out in the ICESCR which, as discussed above, have relevance to language and culture; if cultural rights were limited to the rights contained in those instruments, there would be no need to make specific reference to "cultural rights" as a separate category in the Accession Partnership, as Turkey is already a party to the ECHR, and reference is, as just noted, made to the ICCPR and the ICESCR in other provisions in the Accession Partnership. We submit that this reference to "cultural rights" must, then, refer to cultural rights found in other international instruments, such as the Copenhagen Declaration, the UNGA Minorities Declaration, discussed above, the Council of Europe Framework Convention for the Protection of National Minorities (the "Framework Convention"), and even, perhaps, the

other major Council of Europe instrument relevant to these issues, the European Charter for Regional or Minority Languages (the "European Charter").

We suggest that our interpretation is strengthened by a number of fairly clear indications which the Commission of the European Communities has made in its series of Regular Reports on Turkey's Progress Towards Accession. Indeed, these Regular Reports make very clear that the Commission views the Kurdish population as a minority which is to be a beneficiary – perhaps, given the emphasis placed in the Regular Reports on the Kurds, *the beneficiary with the most pressing need* – of minority rights, cultural rights and State protection. These regular reports make clear that rights to things like Kurdish language broadcasting and education are clearly cultural rights and minority rights within the meaning of the Copenhagen criteria, and therefore issues which must be addressed by Turkey. Finally, these regular reports consistently make reference to Turkey's failure to sign and ratify the Framework Convention, signalling the importance of this particular instrument to the Commission and to Turkey's chances of accession.

So, in the 1998 Regular Report, in the introductory section of part 1.2, entitled "Human Rights and the Protection of Minorities," the Commission noted that Turkey has not signed the Framework Convention, implying the importance the Commission attaches to this instrument with respect to the Copenhagen criterion of respect for and protection of minorities. The 1998 Regular Report also noted the following in its more detailed coverage of minority rights and the protection of minorities:

"In Turkey there is a de jure and de facto difference in the treatment accorded to minorities officially recognised under the Lausanne Treaty [i.e. non-Muslim minorities such as Armenians, Jews and Greeks] and those outside its scope. The Turkish authorities do not recognise the existence of a Kurdish minority, considering them to be simply Turks of Kurdish origin. Kurds are found all over Turkey but are mainly concentrated in the Southeast. They are economically and socially disadvantaged, and in the provinces where the state of emergency is in force they suffer all the consequences of continued terrorist action and the restrictions on the normal exercise of civil and political rights resulting from the state of emergency. *In that connection, Turkey will have to find a political and non-military solution to the problem of the Southeast. . . . A civil solution could include recognition of certain forms of Kurdish cultural identity and greater tolerance of the ways of expressing that identity, provided it does not advocate separatism or terrorism.*" (emphasis added)

The 1998 Regular Report also noted in its discussion of Economic, Social and Cultural Rights that the repeal of the Law on Publications in Languages other than Turkish in 1991 enabled the publication of material in "foreign" languages, "including Kurdish", and that Kurdish is no longer banned in the context of cultural activities [as we shall see below, this last statement is, perhaps, true, but elides the very significant restrictions that still exist in practice]. But the report also noted that Kurdish cannot be used in "political

communication" or education, and was at that time banned in radio and television broadcasting.

In the 1999 Regular Report, in its discussion of Minority Rights and Protection of Minorities, the Commission noted that progress on the Kurdish question had not been made, and after quoting with approval its statement in the 1998 Regular Report that "a civil solution [to the Kurdish question] could include recognition of certain forms of Kurdish cultural identity and greater tolerance of the ways of expressing that identity," noted as an example that TV broadcasting in Kurdish was still officially not allowed. The report then quoted with approval the following passage from a January 1999 report by a Council of Europe committee, the "Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe":

"...the essential point is that any such group [Turkish citizens of Kurdish origin] should have the opportunity and material resources to use and sustain its natural languages and cultural traditions in circumstances and under conditions now clearly and reasonably defined by two important Council of Europe Conventions: the Framework Convention on Protection of National Minorities and the European Charter for Regional or Minority Languages, as well as by Assembly Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights."

In its 2000 Regular Report, in section 1.2, on "Human rights and the protection of minorities," the Commission, while welcoming the signing by Turkey of the ICCPR and the ICESCR, noted that there were, however, still other major human rights instruments to which Turkey has not yet acceded, and made specific reference to the fact that Turkey has also not signed the Framework Convention. With respect to the use of languages other than Turkish, while no particular problems had been reported for Jews, Armenians and Greeks, for those belonging to groups outside the scope of the non-Muslim minorities in the Treaty of Lausanne, the situation had not improved, "notably concerning TV/radio-broadcasting and education." Noting that under domestic legislation, no language other than Turkish is generally allowed for broadcasting and teaching purposes, the Commission stated that "[n]either legislation nor practice should prevent the enjoyment of cultural rights for all Turks irrespective of their ethnic origin," thereby implying that minority language broadcasting and education formed part of such cultural rights. In the section entitled "Minority rights and the protection of minorities," the Commission noted once again (and clearly with disapproval) that Turkey had not yet signed the Framework Convention and does not recognise minorities other than those defined by the Lausanne Treaty (i.e. Jews, Armenians and Greeks). The report continued as follows:

"Regardless of whether or not Turkey is willing to consider any ethnic groups with a cultural identity and common traditions as 'national minorities', members of such groups are clearly still largely denied certain basic rights. Cultural rights for all Turks, irrespective of their ethnic origin, such as the right to broadcast in their mother tongue, to learn their

mother tongue or to receive instruction in their mother tongue, are not guaranteed In addition, these citizens are not given opportunities to express their views on such issues.

In the case of Turkish citizens of Kurdish origin, it should be mentioned that the expression of pro-Kurdish views is still vigorously fought by the Turkish State. . . Since the last Regular Report, several newspapers and magazines have been forbidden and certain pro-Kurdish associations have been closed in the region under emergency rule.

This question of cultural rights is of particular importance for the improvement of the situation in the Southeast, especially as the security situation there has largely improved and as Turkey is embarking on a socio-economic development programme in the region."

Finally, in its most recent regular report, the 2001 Regular Report, in section 1.2, on "Human rights and the protection of minorities," the Commission again noted that Turkey had not yet signed the Framework Convention. In the section on cultural rights, the Commission noted with approval amendments to Articles 26 and 28 of the Constitution (referred to below, in the section in this report on Turkish domestic law) which "could pave the way for the use of languages other than Turkish," which was "a positive development," but also noted that "changes in existing restrictive legislation and practices will be needed to provide effective protection against interference with the right to communicate in languages other than Turkish," making special reference to the RTUK law (again, see below). The report continued:

"For persons belonging to groups that are outside the scope of the 1923 Lausanne Treaty (Armenians, Greeks and Jews), the actual situation has not improved, notably in relation to broadcasting and education. In practice, for instance, Kurdish songs and street interviews in Kurdish are occasionally broadcast. In the field of education (basic and extended education), no language other than Turkish is allowed for teaching purposes, except where officially authorised by the Ministry of National Education. No amendment under the constitutional reform provides for education in languages other than Turkish."

In the section on "Minority rights and the protection of minorities," the Commission noted that "there has been no improvement in the ability of members of ethnic groups with a cultural identity and common traditions to express their linguistic and cultural identity," and again made reference to the failure of Turkey to sign the Framework Convention.

Given the clear importance which the Commission of the European Communities has placed on cultural rights in the broad sense, and to the Framework Convention in particular, it is appropriate to make reference to the provisions of the **Framework Convention** and to use these provisions as a convenient measure of Turkey's progress

towards meeting the Copenhagen political criteria with respect to minorities. It should be noted in passing though, that if Turkey's application for membership in the EU is ultimately successful, Turkey will have to adapt its laws to a very developed body of EU law on non-discrimination, most notably the recent Directive implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin³⁶, which applies in respect of discrimination on the grounds of race and ethnic origin. The preamble to the Framework Convention recognises that the protection of national minorities³⁷ is "essential to stability, democratic security and peace" in Europe and that "a pluralist and genuinely democratic society should not only respect the ethnic, *cultural, linguistic* and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity" (emphasis added). Furthermore, Article 1 of the Framework Convention provides that "the protection of national minorities and the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights."

The Framework Convention establishes a number of important general principles with respect to national minorities. Article 3, paragraph 1, for example, establishes that every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as a member of the minority, and that no discrimination shall result from such a choice; paragraph 2 of that article guarantees that members of national minorities may exercise their rights individually as well as in community with others. Article 4, paragraph 1 provides that State Parties are to guarantee to members of national minorities the right to equality before the law and of equal protection of the law, and paragraph 2 requires State Parties to take adequate measures in order to promote, in all areas of economic, social, political and cultural life, *full and effective equality* between members of national minorities and members of the majority. This provision effectively sanctions the use of measures of so-called "positive discrimination" which may be necessary to ensure equality of treatment of disadvantaged members of society, such as members of national minorities. Significantly, in a Turkish context, Article 5, paragraph 2 requires State Parties to refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will, and Article 6, paragraph 2 requires State Parties to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their *ethnic, cultural, linguistic* or religious identity. Additionally, Article 16 provides that State Parties shall refrain from taking measures which alter the proportions of the population in areas inhabited by members of national minorities and which are aimed at restricting the rights and freedoms of such persons under the Framework Convention. Finally, Article 5, paragraph 1 requires State Parties to promote the conditions necessary for members of national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, including their religion, *language, traditions and cultural heritage*.

³⁶ Council Directive 2000-43 [OJ L180/22].

³⁷ Again, we consider that the Kurds are clearly a national minority within the sense of the Framework Convention, and that, based on the foregoing discussion, the EU would almost certainly also be of this view.

The Framework Convention also contains a number of more specific provisions relating to language and culture. Article 7 reiterates provisions in other major human rights instruments by recognising that every person belonging to a national minority has the right to freedom of peaceful assembly, association, expression and thought, conscience and religion, and Article 10, paragraph 3 reiterates provisions in those instruments by recognising that members of national minorities have the right to be informed promptly, *in a language which he or she understands*, of the reasons for their arrest and the nature and cause of any accusation against them, and to defend themselves *in their language*, if necessary with the free assistance of an interpreter. The right to freedom of expression is given further content in a number of provisions. In Article 10, paragraph 1, for example, State Parties recognise that members of national minorities have the right to use freely and without interference their minority language, in private and in public, orally and in writing. Article 9, paragraph 1 recognises that the right to freedom of expression of members of national minorities includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers.

The protection of freedom of expression given under the Framework Convention is of special relevance to broadcasting and other media of communication. Article 9, paragraph 1 provides that members of national minorities are not to be discriminated against in their access to the media (although paragraph 2 accepts that States still have the power to license, without discrimination and based on objective criteria, sound radio and television broadcasting, and cinema enterprises). Paragraph 3 further provides that in the legal framework of sound radio and television broadcasting, State Parties shall ensure, as far as possible, that members of national minorities have the possibility of creating and using their own media. And, paragraph 4 provides that State Parties shall adopt adequate measures to facilitate access to media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism. Finally, with respect to print media, paragraph 3 of Article 9 provides that State Parties shall not hinder the creation and use of such media by members of national minorities.

There are a number of provisions, in Articles 12, 13 and 14, which are relevant to education. Article 12 is mostly concerned with ensuring full and equal access to education, teacher training and textbooks for members of national minorities, although paragraph 1 of this article provides that State Parties shall take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities as well as of the majority. This would clearly imply that instruction about the Kurds, making reference to their culture, history and languages, should form part of the general Turkish educational system. Article 13 provides the right to national minorities to establish and manage their own private educational and training establishments, although it also makes clear that the State is under no obligation to provide financial support to such institutions. Finally, and most significantly, perhaps, Article 14 provides at paragraph 1 that every person belonging to a national minority has the right to learn his or her minority language. Paragraph 2 of this article provides that in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, State Parties shall endeavour as far as possible and

within the framework of their education systems, to ensure that persons belonging to national minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language. This formulation seems to imply that States must provide the opportunity for mother tongue education, or the teaching of the mother tongue in language classes, but not necessarily both. Paragraph 3 notes that this right is without prejudice to any obligation to learn the official language of the State or to the teaching in the official language.

With respect to public services in minority languages, paragraph 2 of Article 10 is significant. It provides that in areas inhabited by members of national minorities traditionally or in substantial numbers, where such persons request and where such a request corresponds to real need, the State Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities. Although the right is hedged with a number of conditions, it is still a significant measure.

With regard to personal and place names, and public signage, Article 11 is relevant. Paragraph 1 of this article provides that members of national minorities have the right to use their surname and first names in the minority language, and to have such names official recognised in the domestic legal system. Paragraph 2 provides that members of national minorities have the right to display in their minority languages signs, inscriptions and other information of a private nature visible to the public. Paragraph 3 provides that in areas traditionally inhabited by substantial numbers of persons belonging to national minorities, State Parties shall endeavour, within the framework of their legal system, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is sufficient demand therefor.

With respect to cross-border communication, Article 17 provides that State Parties are not to interfere with the right of members of national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, especially those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

The Framework Convention contains certain limitations on the foregoing rights and freedoms. In particular, Article 20 provides that members of national minorities are to respect national legislation and the rights of others. Article 21 provides that nothing in the Framework Convention implies any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States. Finally, Article 22 provides that nothing in the Framework Convention limits or derogates from any of the human rights and fundamental freedoms which may be ensured under national laws or international agreements to which the States are party.

The other important "minorities" instrument of the Council of Europe is the **European Charter**, referred to earlier. While the Commission of the European Communities has

not made much reference to the Charter when discussing the Copenhagen political criteria, the European Charter has been ratified by a significant and growing number of member States of the EC and the Council of Europe³⁸, and as the first binding international instrument which is directed at minority languages, its provisions merit at least a brief reference here. A "regional or minority language" is defined in Article 1 as languages which are traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population and are different from the official language(s) of that State. Under this definition, Kurdish clearly would be a "regional or minority language" within the meaning of the European Charter. Part II of the European Charter imposes a range of general obligations on States with respect to their "regional or minority languages." In particular, Article 7, paragraph 1 provides that States are to base their policies, legislation and practice on a number of objectives and principles, including: the recognition of the regional or minority languages as an expression of cultural wealth; the need for resolute action to promote regional or minority languages in order to safeguard them; the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life; the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages; the promotion of study and research on regional or minority languages at universities or equivalent institutions; and the promotion of appropriate types of transnational exchanges for regional or minority languages used in identical or similar form in two or more States. Article 7, paragraph 2 provides that States shall undertake to eliminate any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. Article 7, paragraph 3 provides that States shall undertake to promote mutual understanding between all the linguistic groups of the country and in particular the inclusion of respect, understanding and tolerance in relation to regional or minority languages among the objectives of education and training provided within their countries and encouragement of the mass media to pursue the same objective. Article 7, paragraph 4 provides that in determining their policy with regard to regional or minority languages, States shall take into consideration the needs and wishes expressed by the groups which use such languages, and are encouraged to establish bodies for the purpose of advising the authorities on all matters pertaining to regional or minority languages. In addition to these general obligations which States owe to all regional or minority languages within their borders, they owe additional obligations under Part III of the European Charter in respect of those regional or minority languages which the States themselves designate. These obligations provide for more detailed "positive" measures of support in the following areas: education (Article 8); the justice system (Article 9); administrative authorities and public services (Article 10); the media (Article 11); cultural activities and facilities (Article 12); economic and social life (Article 13); and trans-frontier exchanges (Article 14).

A final point which should be made is that these various international instruments, particularly those relating to minority rights, address, and indeed challenge, what appear to us to be the two ideological preoccupations which seem to guide Turkish law and

³⁸ Thus far, the European Charter has been ratified by 16 States and signed by a further 12 States.

policy on the issue of the minority rights of Kurds. The first of these preoccupations is the fear, even paranoia that the extension of minority rights to the Kurds will necessarily undermine the political unity and territorial integrity of the Turkish State. The second is that the extension of such rights will somehow undermine the equal rights of all Turkish citizens.

With regard to the first of these preoccupations, the "minorities" instruments discussed above all make clear that the legal recognition of minorities and the extension to such minorities of various rights does not permit any activity which is contrary to the territorial integrity of States; in this context, we simply refer once again to Article 21 of the Framework Convention, just referred to above, or Article 8, paragraph 3 of the UNGA Minorities Declaration. Article 5 of the European Charter provides that nothing in the charter may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes of the Charter of the United Nations or other obligations under international law, including the principle of the sovereignty and territorial integrity of States. Indeed, the various minorities instruments are guided by the conviction that the protection of minorities through the various measures they espouse contributes to increased harmony and greater political unity within States. Thus, the United Nations General Assembly asserts in the preamble to the UNGA Minorities Declaration that it considers that "the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live". The various "minorities" instruments also make clear the view that the protection of minorities also contributes to international peace and security. And, as noted earlier in the context of the discussion of the possible accession by Turkey to the EU, the Commission of the European Communities has taken the view that the protection of minorities and of the rights of minorities, including the Kurdish minority, is the only way in which the ongoing political instability within Turkey can possibly be resolved. The clear thrust of international thinking is that respect for the identity of ethnic and other minorities in fact will tend to *lessen* tensions within States and *enhance* the prospects for internal peace, stability, prosperity and unity.³⁹

With regard to the second preoccupation, that the extension of minority rights to certain segments of the Turkish population, in particular to the Kurds, will somehow undermine the equal rights of all Turkish citizens, this reflects a narrow and formalistic understanding of the concept of equality which has become outdated in modern liberal theory and which is clearly rejected in the various "minorities" instruments, as well as in the ICCPR, with its recognition of minority rights, most notably in Article 27. It is now generally recognised that where segments of the population have been systematically disadvantaged, special measures of support are required to promote the full inclusion in society and de facto equality of members of such segments of the population. Thus, in Article 8, paragraph 3 of the UNGA Minorities Declaration, the United Nations General Assembly makes clear that "[m]easures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not *prima facie* be considered

³⁹ It should be noted that the only possible legal bases in international law for separation is where there are egregious violations of human rights and/or the denial of meaningful access to government.

contrary to the principle of equality contained in the Universal Declaration of Human Rights.” Article 4, paragraph 2 of the Framework Convention provides that Parties shall undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, *full and effective equality* between persons belonging to a national minority and those belonging to the majority, and paragraph 3 provides that measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination. Article 7, paragraph 2 of the European Charter provides that the adoption of special measures in favour of regional or minority languages aimed at promoting equality between users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages. Thus, both modern liberal rights theory and the international community recognise that the protection of minorities and the provision of minority rights is not only *not* inconsistent with equal citizenship rights, but in fact *enhances and promotes* such rights, enhances and promotes the effective equality of all citizens. We submit that the narrow focus on formal equality in multi-ethnic and multilingual societies such as Turkey in conditions in which only one ethnicity and only one language are recognised necessarily leads to exclusion and real inequality for many members of minority ethnic and linguistic groups; indeed, the delegation encountered clear and irrefutable evidence of precisely this throughout our mission to Turkey, as will be illustrated in this report. In this context, the insistence on formal equality is, in fact, nothing more than the promotion of inequality. In any case, the delegation notes that the formal equality of all Turkish citizens has already been compromised by the special legal position conferred upon certain non-Muslim minorities – in particular, the Armenian, Greek and Jewish minorities – under the Treaty of Lausanne. The special protection granted to such minorities extends beyond rights with regard to religious practices, and includes rights and privileges relating to mother tongue education and other minority language services. To this extent, Turkey already provides special measures of support to certain linguistic groups that are not available to others, most notably Turkey's largest minority, the Kurds.

III. TURKISH DOMESTIC LAW

Until 1991, the use of any language other than Turkish as a mother tongue was prohibited by law in Turkey.⁴⁰ Under Law 2932, it was completely prohibited to play Kurdish music or even to speak Kurdish in the street, and a person could be fined for speaking Kurdish, even where it was the person's mother tongue, whether in private or in public. Other languages could be used "*for the expression, dissemination and publication of opinions*", but only languages that were "*the first official language of states recognised by the Turkish State*," thus excluding Kurdish. At the same time, Article 3 of the Constitution provided that the official language of the State was Turkish.

Law 2932 was annulled in 1991, but the legal position now as regards the status of the Kurdish language in a number of spheres appears to be a matter open to interpretation. There are now no specific provisions in Turkish law that explicitly prohibit the use of Kurdish or other languages, either in private or in public. However, the Turkish Constitution, and a number of statutes, still contain numerous provisions stipulating that only Turkish can be used in different areas of life, such as political life, education and broadcasting. Statements and publications "*in a language prohibited by law*" used to be prohibited under Articles 26 and 28 of the Constitution, which in conjunction with legislation governing the media, political life and other spheres, created a basis for restricting expression in the Kurdish language specifically. The specific references to language in Articles 26 and 28 were removed in the amendments of October 2001, but the legislation in the relevant spheres remains in place, and as this legislation reflects the prohibitions and restrictions which were formerly constitutionally mandated, it needs to be amended.

The Constitution still provides that Turkish must be the main language of education. Article 42, which guarantees the right of education, provides that:

"No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education. Foreign languages to be taught in institutions of training and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law. The provisions of international treaties are reserved."

As we discuss below in the section entitled "Kurdish in Education", the reference to "mother tongue" may not preclude private education in other languages or the teaching of other languages as a second language.

The legal effect of the provision in Article 3 of the Constitution making Turkish the official language of the State is also unclear. It appeared to be perceived by many as a further basis for restricting the use of other languages in many spheres. However, the provision that Turkish is an official language of the State would not necessarily preclude

⁴⁰ Law Regarding Publications in Languages other than Turkish, No. 2932 of 19 October 1983.

the use of other languages. These and other issues are explored in more detail in later sections of this report.

The Turkish Constitution dates from 1982, a period when Turkey was under military rule, and its structure tends to reflect its conception. A number of fundamental human rights are guaranteed, including the right to freedom of expression and association and the right to education, but are subject to considerable restrictions. In October 2001, the Turkish Parliament, attempting to move closer to compliance with criteria set by the EU for Turkey's accession to the EU, adopted a law amending 34 articles of the Constitution.⁴¹ However, the Constitution still contains broad restrictions on the human rights it purports to protect.⁴² For instance, Article 14, as amended, still includes specific restrictions referring to the indivisible integrity of the state:

"None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights. No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms embodied in the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution. The sanctions to be applied against those who perpetrate these activities in conflict with these provisions shall be determined by law."

Specific rights also remain subject to limitations within the Constitution itself. For instance, Article 26, which protects "freedom of expression and dissemination of thought," as amended in October 2001, still provides that:

"The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary."

As will be noted in this report, such restrictions are considerably broader than those permissible under the European Convention on Human Rights, and Turkey has been criticised by the European Court of Human Rights in this regard.⁴³

⁴¹ Law no. 4709 was approved by the Turkish Parliament on 3 October 2001 and entered into force on 17 October 2001.

⁴² See Amnesty International, "Turkey - Constitutional amendments: Still a long way to go," January 2002, AI Index EUR 44/007/2002.

⁴³ See below, section on Publishing and Broadcasting.

Additional restrictions on human rights apply in parts of the Southeast that are under a state of emergency.⁴⁴ Under section 11 of the State of Emergency Law 1983, there are measures to prohibit the publication or distribution of newspapers, magazines, books and other printed matter or their importation into the state of emergency area, and also measures to “restrict and prohibit all kinds of speech, writing, pictures, film, records and audio and visual tapes and publication made through sound.” Additional powers were given under Decree Law 430 enacted in 1990.⁴⁵ Four provinces remain under emergency rule, which as the map in Appendix 2 indicates, constitutes a large part of the predominantly Kurdish area of the Southeast.⁴⁶ Of the two areas of the Southeast that the delegation visited, one - Diyarbakir - remains under state of emergency while the other - Van - is no longer under state of emergency but still feels its reach. Under the principle of Mûcavir İl, the powers of the Governor of the state of emergency regions extend to neighbouring areas. Thus, for example, the Mayor of Van had just received a letter from the Governor ordering him to change the names of streets and other places in the city that were Kurdish or had any meaning in Kurdish.

One of the most striking aspects of Turkish law related to the status of the Kurdish language is the link that is consistently made between Kurdish language and culture on the one hand and separatism and terrorism on the other. For instance, section 4 of the RTUK Law (the Radio and Television Commission) sets out “broadcasting principles” for radio and television. The first principle listed is “*the existence and independence of the Turkish Republic and the indivisible integrity of the State, its country and its people.*” The same law prohibits broadcasting in languages other than Turkish, and the only exceptions would exclude the possibility of broadcasting in Kurdish.

Another aspect of this same tendency is that, in addition to the legal provisions that relate specifically to the use of language, a number of other statutory limitations on freedom of expression exist that are commonly used as the basis for restricting use of the Kurdish language. Section 8 of the Anti-Terror Law prohibits written and spoken propaganda, meetings, assemblies and demonstrations that are “*aimed at undermining the territorial integrity of the Republic of Turkey or the indivisible unity of the nation.*” Section 312, paragraph 2 of the Penal Code provides the basis for anyone who “*incites the people to hatred or hostility on the basis of a distinction between social classes, races, religions, denominations or regions*” to be prosecuted. The sentence for both offences, upon conviction, is between one and three years’ imprisonment and a fine. The Penal Code, section 159 provides:

“Whoever overtly insults or vilifies the Turkish nation, the Republic, the Grand National Assembly, or the moral personality of the Government, the

⁴⁴ Law No. 2935 of 25 October 1983.

⁴⁵ Decree having the force of law concerning additional measures to be taken by the state of emergency regional Governor during a state of emergency, 16 December 1990.

⁴⁶ See Appendix 2: Map of the state of emergency regions in Turkey. The Turkish Parliament renewed emergency rule in the provinces of Diyarbakir, Tunceli, Hakkari and Sirnak for a further four months from 30 March 2002, *Voice of America News*, 14 March 2002. In July 2002, the National Security Council is due to ask the Turkish Parliament to put an end to the state of emergency in Hakkari and Tunceli, *AFP*, 30 May 2002.

Ministries or the military or security forces of the State or the moral personality of the judicial authorities shall be punished by imprisonment of one to six years."

Another aspect of Turkish law that appeared to the delegation to be crucial to the exercise of language rights is the effectiveness of remedies available to Turkish citizens who wish to pursue their rights or believe their rights have been violated. Article 74 of the Constitution guarantees the Right of Petition:

"Citizens and foreigners resident considering the principle of reciprocity have the right to apply in writing to the competent authorities and to the Turkish Grand Assembly with regard to the requests and complaints concerning themselves or the public. The result of the application concerning himself shall be made known to the petitioner in writing without delay. The manner of exercising this right shall be determined by law."

The university students who attempted to exercise this right faced a harsh response, as is documented in this report.

Another aspect of the Turkish domestic legal system that was highlighted for the delegation by the Turkish Government's campaign against the students was the powerful role played in Turkey by the National Security Council (NSC). The NSC is chaired by the President of the Republic and is composed of the Prime Minister, the Chief of the General Staff, the Ministers of National Defence, Internal Affairs and Foreign Affairs, the Commanders of the Army, Navy and Air Force and the General Commander of the Gendarmerie. As the Commission of the European Communities pointed out in its 1998 Regular Report on Turkey's Progress Towards Accession, the NSC "plays a key role in the formulation and implementation of national security policy and also covers a wide range of political matters. . . . The recommendations of the NSC are not legally binding, but have a strong influence on government policy. The existence of this body shows that, despite a basic democratic structure, the Turkish Constitution allows the Army to play a civil role and to intervene in every area of political life."⁴⁷

The delegation was informed that various attempts had been made or were being planned to mount legal challenges to aspects of the prohibition on the use of Kurdish language, and also to measures taken by the authorities in response to the student campaign such as suspension and expulsion and criminal prosecutions. Legal experts with whom the delegation met expressed doubts as to the prospects of success of such challenges, though it was felt that the attempt should be made, and believed that a number of cases may need to be taken to the European Court of Human Rights where infringement of Convention rights have occurred.

⁴⁷ Section 1.1, entitled "Democracy and the Rule of Law."

IV. PROHIBITIONS ON THE USE OF KURDISH AND ITS CONSEQUENCES

In this section we analyse the extent that the use of the Kurdish language is permitted or prohibited in a number of different spheres. Under each heading we look at the relevant domestic legislation and practice, in light of the reality that we found to be facing the Kurdish community in Turkey, and we compare this legislative framework and State practice with Turkey's existing and potential international obligations (assuming that it will continue to want to proceed towards accession to the EU). The mission heard about the reality facing the Kurdish community directly from lawyers, human rights defenders, community based organisations, local community leaders and politicians, parents, teachers, health workers, union officials and students. Finally, we attempt to make recommendations as to what would be needed for Turkey to meet its international commitments, both existing and reasonably foreseeable, and as significantly, for the Kurdish language, Kurdish speakers and the Kurdish linguistic community as a whole to survive and prosper in each sphere.

Kurdish in Education

At present, the Kurdish language has no place whatsoever in the Turkish educational system at any level, from pre-school to post-secondary. In particular, it is not possible to obtain any education through the medium of Kurdish (i.e. Kurdish mother tongue education), nor is it even possible to learn Kurdish as a language. The complete exclusion of the Kurdish language from the educational system means that Kurds are deprived of the opportunity to develop an understanding of their own language, together with its literature, songs, traditions and so forth in any formal setting. As we have already seen, the student campaign had two objectives: that children in primary and secondary education should be able to obtain Kurdish mother tongue education or at least classes in Kurdish, and that students at university should be able to take courses in the Kurdish language as an optional subject in their university curriculum. As already discussed, the Turkish authorities have rejected both campaigns. One reason that has been given for official rejection of Kurdish mother tongue education and courses in the Kurdish language is that such education or such courses would violate the Turkish Constitution of 1982.

The constitutional provision upon which the Turkish authorities apparently rely in rejecting any instruction in or through the medium of the Kurdish language is Article 42. This article provides that no language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education. The authorities have considered that this provision means that even the teaching of Kurdish at private establishments during the evening or on weekends is prohibited, and the authorities have closed the Istanbul Kurdish Institute partly on the basis that they were allegedly holding such classes. Article 42 also provides that foreign languages to be taught in institutions of training and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law. Finally, it provides that the

provisions of international treaties are reserved. Paragraph (a) of Article 2 of Law No. 2923, the Law on Foreign Language Education and Training, provides that Turkish citizens may not be taught their mother tongue in any language other than Turkish. Paragraph (b) of Article 2 provides that lessons concerning Turkish Republican Reform history, Turkish language and literature, history, geography, social sciences, religious culture and morality and Turkish culture may not be taught in a foreign language, and that students may not be given research tasks or homework relating to these subjects in any language other than Turkish. Finally, paragraph (c) of Article 2 provides that foreign languages to be taught in Turkey shall be determined by a decision of the Council of Ministers, obtaining the opinion of the National Security Council. For these purposes, we understand that the Council of Ministers has never listed Kurdish amongst the "foreign" languages which may be taught in Turkey.

The delegation heard considerable testimony from lawyers and human rights campaigners which cast some doubt over the precise effect of Article 42 of the Turkish Constitution and Article 2 of Law 2923, and, in particular, whether such provisions did, in fact, have the effect which the Turkish authorities have claimed. In particular, while Article 42 does seem to suggest that only Turkish can be used as the medium of instruction in Turkish schools ("no language other than Turkish shall be taught as a mother tongue"), the Article clearly anticipates that other languages – "foreign languages" – can be taught within schools and other educational establishments, presumably as a subject. Similarly, the effect of Article 2, paragraph (a) of Law 2923 is unclear: it does not say that Turkish citizens cannot be taught their mother tongue, but only that their mother tongue can only be taught through the medium of Turkish. Thus, once again, this provision does not appear incompatible with the teaching of Kurdish to mother tongue Kurdish speakers as a subject, so long as such teaching is through the medium of Turkish. And once again, Article 2 of Law 2923 does provide for the teaching of "foreign languages." While, it is not clear that Kurdish, a language indigenous to Turkey, is a "foreign" language within the meaning of the Constitution or Law 2923, it seems relatively clear that Kurdish is considered by both officialdom and the Turkish legal system to be a "foreign language"; in recent cases relating to the registration of Kurdish names, which cases shall be discussed below, the Turkish courts have clearly and consistently described Kurdish names to be names in a "foreign" language. Thus, the only barrier to the teaching of at least some Kurdish, at least as a subject, is not constitutional or even legislative, but administrative: Kurdish could be taught as a "foreign language" merely by virtue of a decision of the Council of Ministers.

To the extent that the interpretation of the Turkish authorities of Article 42 is correct under Turkish law, and to the extent that there is a prohibition on either the teaching of Kurdish as a mother tongue or as a subject, there is a strong argument that the provision is inconsistent with Turkey's international obligations. To the extent that the Law on Foreign Language Education and Training has the effect of banning the teaching of Kurdish, either as a medium of mother tongue instruction or as a subject in the curriculum, there is a strong argument that it too would be inconsistent with Turkey's international obligations. For example, Article 26 of the Universal Declaration provides that everyone has the right to a free education which shall be directed to the full

development of the human personality, and Article 29, paragraph 1 of the CRC provides that the education of the child shall be directed to “(a) the development of the child's personality, talents and mental and physical abilities to their fullest potential; . . . (c) the development of respect for the child's . . . *own cultural identity, language and values*, [and] for the national values of the country in which the child is living...”(emphasis added). Expert opinion amongst linguists and specialists in childhood education now quite clearly supports the notion that mother tongue education is the form of education that is most likely to result in the fullest development of a positive, well-adjusted child, and that the forced assimilation into a second language through the medium of non-mother tongue education can be harmful to the development of the human personality. This understanding is reflected, for example, in the Hague Recommendations regarding the Education Rights of National Minorities, which were prepared under the auspices of the Foundation on Inter-Ethnic Relations at the request of the OSCE High Commissioner on National Minorities, who sought recommendations on “an appropriate and coherent application of minority education rights in the OSCE region.” Paragraph 11 of the Hague Recommendations states that “[t]he first years of education are of pivotal importance in a child's development” and that “[e]ducational research suggest that the medium of teaching at the pre-school and kindergarten levels should ideally be the child's language,” and paragraph 12 provides that “[r]esearch also indicates that in primary school, the curriculum should ideally be taught in the minority language.”

Furthermore, Article 26 of the Universal Declaration also provides that parents have a prior right to choose the kind of education that shall be given to their children, and paragraph 2 of Article 29 of the CRC provides that nothing in that article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject to any minimum standards that are laid down by the State. So long as Kurdish mother tongue education conformed to the broader requirements of the Turkish education system, it is difficult to see why its refusal by Turkish authorities is justified, and such refusal would be difficult to reconcile with these obligations.

The extent of the right to education in the European Convention on Human Rights (Article 2 of Protocol 1) has been relatively restrictively interpreted by the European Commission and Court of Human Rights, in that it has been deemed only to guarantee access to existing educational facilities.⁴⁸ Nevertheless, in *Cyprus v Turkey*⁴⁹ the Court found a violation of this provision arising from the failure to provide secondary education in the Greek language to students in northern Cyprus who had had a primary education in Greek. Moreover, given the developments in international standards in this area since the 1968 *Belgian Linguistic* judgment, it is suggested that the European Court would now

⁴⁸ *Belgian Linguistic Case (No. 2)* 1 EHRR 252.

⁴⁹ Judgment of 10 May 2001, paras. 273-280. See also the report of the European Commission in that case which noted the pupils' “legitimate wish to preserve their own ethnic and cultural identity” (No. 25781/94; Comm. Rep. 4 June 1999, para. 478).

give very careful consideration to the invocation of Article 14 (the prohibition of discrimination) together with the right to education.⁵⁰

Article 30 of the CRC provides that in States in which *ethnic or linguistic minorities* exist, a child belonging to such a minority shall not be denied the right, in community with other members of his or her group, *to enjoy his or her own culture or to use his or her own language*. This provision is essentially identical to the “minorities” article set out in Article 27 of the ICCPR. As noted above, in the section on Turkey's international obligations, although framed in the negative – members of linguistic minorities *shall not be denied* the right to use their own language – the United Nations Human Rights Committee has recognised that Article 27 creates an obligation for states to take positive measures in support of linguistic minorities: “positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language . . . in community with other members of the group.” As we also noted in that section above, Turkey's Kurdish population is *prima facie* a minority under this definition, and we therefore submit that Article 30 of the CRC imposes positive obligations on Turkey with respect to the protection of the identity of Kurdish speakers and to develop their culture and language. While neither Article 30 or the Human Rights Committee has specified the precise modalities by which such protection and support should be provided, the provision of the opportunity to enjoy Kurdish mother tongue education and the opportunity to learn Kurdish as a subject in the curriculum of schools and universities would clearly be consistent with such an obligation, if not required thereby, and the complete denial of such opportunities would clearly be wholly inconsistent with Turkey's obligations.

As was also noted above in the section on Turkey's international obligations, Turkey has made a reservation upon signature of the CRC, which reservation it confirmed upon ratification, to the effect that it reserves the right to interpret and apply the provisions of Articles 29 and 30 “according to the letter and the spirit of the Constitution of the Republic of Turkey and those of the Treaty of Lausanne of 24 July 1923.” It is not at all clear what the effect of this reservation is. The first part of the reservation is an example of a so-called “constitutional reservation,” and the legal status of such reservations is not entirely clear; indeed, a number of States reject that such reservations are permissible in international law,⁵¹ and Portugal, for example, has entered an objection to Turkey's reservation under the CRC, on the basis that “reservations by which a State limits its responsibilities under the Convention by invoking general principles of National Law may create doubts on the commitments of the reserving State to the object and purpose of

⁵⁰ See, for example, *Skender v Former Yugoslav Republic of Macedonia*, No. 62059/00, 22 November 2001 – application by the father of two daughters whom he wanted to send to Turkish-speaking school in a district other than the one where they lived (admissible under Article 14 in conjunction with Article 2 of Protocol 1).

⁵¹ See, for example, Anthony Aust, *Modern Treaty Law and Practice*, (Cambridge University Press: Cambridge, 2000), at pp. 119-122. Some have argued that the rule in Article 27 of the Vienna Convention on the Law of Treaties, which provides that internal law of a State may not be invoked as a justification for failure to perform a treaty, means that such “constitutional reservations” are not permissible, although Article 27 does not come within the section of the treaty concerning reservations, and may therefore not be relied upon to found an objection to a reservation.

the Convention and, moreover, contribute to the undermining of International Law.” In any case, as we have just discussed, the precise effect of Article 42 of the Turkish Constitution is not altogether clear, and it may allow for a considerable measure of Kurdish language education. With respect to the second part of the reservation, there is nothing in the Treaty of Lausanne which appears to be in any way inconsistent with the CRC provisions in Articles 29 and 20, and in particular, there does not appear to be anything in that treaty which would in any way restrict the right of Kurds to receive education in or education through the medium of Kurdish. Any restrictions which may exist on Kurdish education are primarily matters of domestic law and, to a very great degree, domestic practice.

Leaving aside the CRC, present Turkish practice and legislation with respect to the place of Kurdish in the Turkish educational system is clearly inconsistent with the provisions with respect to mother tongue education in paragraphs 3 and 4 of Article 4 of the UNGA Minorities Declaration, in paragraph 34 of the Copenhagen Document, and in Articles 12 to 14 of the Framework Convention, all of which were described above in the section on Turkey's international obligations. For example, both Article 4, paragraph 3 of the UNGA Minorities Declaration and paragraph 34 of the Copenhagen Document provide that States should ensure that persons belonging to national minorities have adequate opportunities for instruction of their mother tongue or in their mother tongue. Paragraph 1 of article 14 of the Framework Convention simply affirms the right of every member of a national minority to learn his or her minority language, and paragraph 2 of article 14 contains provisions similar in content and effect to those in the UNGA Minorities Declaration and in the Copenhagen Document, just described. All of these instruments also recognise that students should also learn the national language, so there should be no question that the provision by Turkey of the right to be instructed in or through the medium of Kurdish will mean that students should not also be taught and become fluent in Turkish. Significantly, all of these instruments also suggest that States should take measures in the field of education to encourage knowledge of the history, traditions, language and culture of minorities within the State, and so Turkish authorities should be ensuring that all Turkish students, regardless of ethnic background, are taught about the history, tradition, language and culture of the Kurds.

Finally, the delegation heard considerable evidence concerning the strongly adverse effects which the prohibition on Kurdish mother tongue education and the prohibition of the teaching of Kurdish even as a subject had on family life. In particular, the situation of internally displaced persons is a particularly serious one, and many thousands of Kurdish people are living in Istanbul and other major urban areas where they are a linguistic minority. Children raised in such families are forced to learn only Turkish in the schools, but they also tend to have fewer opportunities to develop their competence in Kurdish because they are generally living in majority Turkish-speaking areas. They are generally subject to particularly strong pressure to assimilate. The delegation heard evidence that many students from such families consequently now have considerable difficulty in conversing with some close family members, particularly mothers, aunts and grandparents, who are often monolingual Kurdish speakers. The developing language gap, which could be addressed through the provision of Kurdish mother tongue education

or at least the teaching of Kurdish as a subject in schools and universities, has caused significant pain to a number of the persons we interviewed, especially in Istanbul, and resulted in significant barriers being raised to normal and healthy family life. Indeed, it was this problem which seemed to have motivated some of the students we spoke to in Istanbul to support the students' campaign in the first place. Given this testimony, the delegation is of the view that the complete denial by the Turkish authorities of opportunities to learn the Kurdish language is having an impact on family life, and is therefore arguably inconsistent with the provisions of Article 8 of the ECHR with respect to the right to respect for one's private and family life, one's home and one's correspondence. This denial of any opportunity to learn Kurdish also has the effect of restricting the use of Kurdish in private intercourse within the home, and is therefore also arguably in violation of Article 39, paragraph 4 of the Treaty of Lausanne, which provides that no restrictions shall be imposed on the free use by any Turkish national of *any language* in private intercourse.

We submit that there is therefore a strong basis under Turkey's international commitments in support of Kurdish mother tongue education in pre-school, primary, secondary and, possibly, even post-secondary education, and that there is also clearly a strong basis in support of the teaching of Kurdish as a subject in the school curriculum, from pre-school through post-secondary education. To the extent that the Turkish Constitution and Turkish legislation prohibits both Kurdish mother tongue education and the teaching of Kurdish as a subject, the Constitution and such legislation violate Turkey's international obligations.

Recommendations: We recommend that the Government of Turkey take the following steps with regard to Kurdish in education:

1. Article 42 of the Constitution be amended to eliminate the prohibition on the teaching of other languages and to remove reference to provisions of international treaties being reserved. This Article may provide that all students are required to be taught Turkish, but this should not be to the exclusion of being taught, or taught through the medium of, other languages. We suggest that the teaching of, and the teaching through the medium of other languages be expressly permitted, if only to remove any uncertainty with respect to this matter.
2. Article 2 of Law 2923 be amended to eliminate the prohibition in paragraph (a) thereof on Turkish citizens being taught their mother tongue in any language other than Turkish, and the prohibition in paragraph (b) thereof on subjects being taught in a foreign language and on research tasks and homework being in any language other than Turkish.
3. Law 2923 be amended, or other legislation relative to education be passed, to ensure that Kurds living in Turkey have the right to receive education in and education through the medium of Kurdish at every level in the Turkish public educational system, but that they also have the right to establish their own

schools, colleges and universities, and other institutions of learning where they so desire.

Publishing and Broadcasting: Newspapers, television and radio media, and freedom of expression

Although the Turkish Constitution purports to protect freedom of expression and, in particular, freedom of the media, and although in recent months the indirect Constitutional prohibition on expression in Kurdish has been lifted, it is clear that many legal and practical obstacles remain to the use of the Kurdish language in publishing and broadcasting.

Article 28 of the Constitution declares that: "*The press is free and shall not be censored,*" while Article 26 states that:

"Everyone has the right to express and disseminate his thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities."

The Constitutional provisions on freedom of expression and freedom of the press are among those amended in October 2001. Prior to the amendments of October 2001, Articles 26 and 28 had banned free expression and publications "*in a language prohibited by law.*" As already mentioned, until 1991, under Law 2932, the use of any language other than Turkish in publications was prohibited by law in Turkey.⁵² Law 2932 was annulled in 1991. The further amendments of October 2001 abolishing the specific restriction on the basis of language are to be welcomed. However a number of concerns remain, both as regards the law itself and practice.

A first key concern as regards the law is that the constitutional restrictions on freedom of expression and publication remain unacceptably broad in comparison to the restrictions permitted under the ECHR. Article 10 of the Convention guarantees the right of everyone to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas without interference by public authority. The permissible restrictions are found in paragraph 2. Paragraph 2 provides firstly that any restrictions must be "prescribed by law". In addition, they must be necessary in a democratic society, for one of a specified list of aims, as follows: "*in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection or health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*"

⁵² Law Regarding Publications in Languages other than Turkish, No. 2932 of 19 October 1983.



Article 28 of the Constitution, as amended, provides:

“Anyone who writes or prints any news or articles which threaten the internal or external security of the state or the indivisible integrity of the state with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified state secrets and anyone who prints or transmits such news or articles to others for the above purposes, shall be held responsible under the law relevant to these offences. Distribution may be suspended as a preventive measure by the decision of a judge, or in the event delay is deemed prejudicial, by the competent authority designated by law...”⁵³

Similarly, in Article 26, the declaration of the right is immediately subjected to restrictions. In addition to being subjected to a system of licensing, the right to freedom of expression may be limited for a number of purposes:

“The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.”

The main legislative provisions used as a basis for restricting freedom of expression, including section 8 of the Anti-Terror Law and sections 159 and 312.2 of the Penal Code, have already been described.⁵⁴ They essentially reflect the restrictions on freedom of expression mentioned in the Constitution and create criminal offences. Additional powers that exist within the state of emergency areas have already been described. The legislation has been widely used against the press and broadcasting media in Turkey and continues to be used regularly. One of the ways in which these laws are used is against the use of the Kurdish language in newspapers, radio and television. For instance, the delegation heard direct testimony concerning a one-year closure order that had been issued against the Gün Television station in Diyarbakir on 12 February 2002 - after the Constitutional amendments - for playing a song that was interpreted as propaganda under the Anti-Terror Law. Criminal charges were also issued against the owner of the station. The broadcaster claims that the closure and the charges are based on a misunderstanding of the words of the song and he intends to challenge both. Gün is an independent local television station that broadcasts in Turkish but plays some Kurdish music. There are currently 17 ongoing cases against the owner, and his radio station had already been closed in June 2001, and all the equipment confiscated, on the pretext that it was interfering with police radios.

The closure order against Gün Television had been issued by the RTUK (Radio and

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Article 28 of the Constitution of 1982, as amended on 17 October, 2001.

⁵⁴

See section on Turkish Domestic Law, above.

Television Higher Commission), which is responsible for regulation of broadcasting in Turkey. The RTUK issues licenses, and regulates local and national radio and television stations in Turkey. Members of this body are nominated by political parties that are represented in the Turkish Parliament. A department of the RTUK is dedicated to monitoring broadcasting stations and programmes, and under the Law on the Establishment of Radio and Television Stations and Broadcasting of 1994 (the RTUK Law) the RTUK has the power to give warnings, suspend broadcasting for up to a year and ultimately cancel the license of a broadcaster for infractions of the licensing rules as set out in the Law.⁵⁵ Such decisions, with reasons, can be found on the RTUK's web site.⁵⁶ These powers have in fact been used in recent years against radio and television stations. Although no stations based in Turkey broadcast in Kurdish,⁵⁷ some have played Kurdish music, which has not been prohibited since the removal of the blanket ban of the Kurdish language in 1991, though there was an awareness that this was likely to draw the attention of the authorities. The delegation was shown a list of some 250 music cassettes that had been banned by the Governor of Diyarbakir within the borders of the Diyarbakir area, between 1993 and 1998, mainly, it seems, acting on powers given under the state of emergency legislation. Since this list is not made available, broadcasters have to somehow know what is or might potentially be banned, so in practice they exercise self-censorship. Songs that include words such as "Kurd", "Kurdistan", "guerrilla", "PKK" are likely to be unacceptable. Those that violate these unwritten rules are likely to face criminal prosecution under the Anti-Terror Law for disseminating "propaganda against the indivisible unity of the state." The RTUK Law is yet another example of how a linkage is made between Kurdish language and culture and the risk of separatism. Section 4 of the RTUK Law sets out "broadcasting principles" for radio and television. The first principle listed is "*the existence and independence of the Turkish Republic and the indivisible integrity of the State, its country and its people.*"

The European Court of Human Rights has considered the application of these laws against the press in Turkey. In its judgment in the case of *Özgür Gündem v. Turkey*, the European Court considered whether measures taken against a pro-Kurdish daily newspaper (published in Turkish) complied with Article 10.⁵⁸ This aspect of the case concerned prosecutions and convictions brought under the Penal Code and the Anti-Terror Law in relation to some 30 articles published in the newspaper. The Court found that while the measures were "prescribed by law" and pursued the legitimate aims of protecting national security and territorial integrity and of preventing crime and disorder, most of them were not "necessary in a democratic society." Holding that the adjective "necessary" implied the existence of a "pressing social need," that in assessing the interference it must look at the content of the impugned statements and the context in which they were made, and that it must in particular determine whether the interference was proportionate to the legitimate aims pursued and whether the reasons adduced by the national authorities to justify it were relevant and sufficient, the Court found that the

⁵⁵ Law no. 3984 of 1994. Sanctions are set out in Section 6. 33 of the Law.

⁵⁶ www.rtuk.org.tr Interview with Osman Ergin, Vice-President of the Istanbul Bar Association, Istanbul, 14 February 2002.

⁵⁷ Medya TV broadcasts in Kurdish from Europe and is very widely watched via satellite.

⁵⁸ Application no. 23144/93, Judgment of 16 March 2000, paragraphs 51 - 71.

particular articles in question were factual, of public interest and, even though some were emotive and critical of the government, they could not be reasonably regarded as justifying the measures taken in respect of them. It would appear likely that, held up to the same scrutiny, many of the charges brought by Turkish authorities on the basis of the legislation just described against Kurdish language materials that have been published or broadcast would fall foul of Article 10 of the ECHR.⁵⁹

A second concern regarding the use of the Kurdish language in publishing and broadcasting is that any restrictions on the use of the Kurdish language in the media would violate the obligations undertaken by Turkey in the Treaty of Lausanne, which included, in Article 39 paragraph 4, the provision that no restrictions shall be imposed on the free use by any Turkish national of any language in, *inter alia*, the press or in publications of any kind or at public meetings.

A third, and very serious, concern is that ordinary legislation that prohibits or places obstacles in the way of publishing and broadcasting in the Kurdish language remains in force. So far as publishing is concerned, the Press Law authorises the prohibition of distribution, confiscation of printed material and closure of newspapers and journals as authorised by the judiciary, the punishment of the editor and the prohibition of entry into the country of materials printed abroad, if necessary in order to protect against separatism.⁶⁰ The delegation heard that there are three regular publications that appear in Kurdish: *Azadiya Welat*, a weekly newspaper; *Pine*, a weekly comic strip magazine; and *Roja Welat*, a political magazine in both Kurdish and Turkish that comes out every two weeks. All of these are produced in the West of Turkey, many in Istanbul. It seems that while these can be sold in Western Turkey, they cannot be distributed legally in the Southeast, as the Governor uses his powers under the state of emergency legislation to prevent materials being brought into the area. In addition there are four or five publishers that publish books including novels, poetry and dictionaries in Kurdish. The delegation found these available on sale both in Istanbul and in Diyarbakir.

As regards broadcasting, the Law on the Establishment of Radio and Television Stations and Broadcasting of 1994 (the RTUK Law) still specifically prohibits broadcasting in languages other than Turkish.⁶¹ Special provision is made permitting the use of foreign languages for the purposes of teaching those languages or in news bulletins, but this is stated to apply only to languages that “*have contributed to universal works of culture and science.*” The meaning of this rather bizarre phrase, and how it is to be determined, is not clear and, it seems, has not been subject to judicial interpretation in Turkey. The common perception among Kurdish lawyers is that the specific intention is to exclude

⁵⁹ In a case not yet decided by the European Court of Human Rights but declared admissible on 16 November 2000, the applicant, a Kurdish judge, has claimed that being punished for reading a pro-Kurdish daily newspaper, *Özgür Gündem*, and watching a television channel which broadcasts from abroad in Kurdish, Medya TV, was a violation of his right to freedom of expression under the Convention. *Mehmet Emin Albayrak v. Turkey*, Application no. 38406/97.

⁶⁰ Law No. 5680 of 15 July 1950, as amended by Law No. 4748 of 26 March 2002.

⁶¹ Law no. 3984 of 1994. Article 4 (f) provides that “Turkish shall be used as the language of radio and television broadcasts, with the exception that foreign languages which have contributed to universal works of culture and science may be used for teaching and newscasting purposes.”

Kurdish - dismissed by the Turkish official line as not a real language but merely a collection of dialects - while permitting broadcasting in languages such as English, French and German. One interlocutor believed the phrase refers to the United Nations official languages.

The measures taken against use of the Kurdish language in the media would likely violate the protection of freedom of expression under Article 10 of the ECHR and would certainly violate Article 19, paragraph 2 of the ICCPR. With respect to publicly regulated radio and television broadcasting, the case of *Informationsverein Lentia v. Austria*⁶² should be borne in mind. The case involved complaints by a number of individuals and organisations which had been refused broadcasting licenses by the authority responsible for regulating broadcasting. Austria effectively operated a state broadcasting monopoly at the time, and in this respect, at least, the general framework in Turkey is different, because no such broadcasting monopoly operates. One of the applicants, AGORA, planned to establish a radio station in southern Carinthia to broadcast non-commercial radio programmes in both German and Slovene. In addition to claiming that the refusal constituted a violation of Article 10, this applicant also alleged a violation of Article 14, taken together with Article 10, on the basis on an alleged discrimination against the Slovene minority in Carinthia as regards its right of access to broadcasting; in AGORA's view, the Austrian Broadcasting Act did not provide for representation of ethnic minorities in the various organs of the state monopoly broadcaster and that the programmes intended for these minorities were insufficient. In the result, neither the Commission nor the Court ruled on the Article 14 claim, as both had already concluded that Austria's system of monopoly state broadcasting violated Article 10. However, the Commission did rule that AGORA's Article 14 complaint was admissible. Also, the Court placed significant importance on concepts such as diversity and pluralism:

"The Court has frequently stressed the fundamental role of freedom of expression in a democratic society, in particular where, through the press, it serves to impart information and ideas of general interest, which the public is moreover entitled to receive. Such an undertaking cannot be successfully accomplished unless it is *grounded in the principle of pluralism*, of which the State is the ultimate guarantor. This observation is especially valid in relation to audio-visual media, whose programmes are often broadcast very widely."⁶³ (emphasis added)

Also of note in this regard is *Verein Alternatives Lokalradio Bern and another v. Switzerland*,⁶⁴ involving the refusal of a local broadcasting concession. The applicant alleged a violation of expression but also alleged discrimination based on language, on the basis that they had planned to set aside broadcasting time so that the views of national minorities living in and around Berne and Basle could be heard. The Commission ruled

⁶² Series A, No. 276, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89 and 17207/90, 24 November 1993, 17 E.H.R.R. 93.

⁶³ *Ibid*, para. 38, at p. 113.

⁶⁴ 16 October 1986, 49 D. & R. 126.

that a refusal of a license application should not be manifestly arbitrary or discriminatory, and that to be consistent with the ECHR, a licensing system had to respect "the requirements of pluralism, tolerance and broadmindedness, without which there is no democratic society."⁶⁵ The Commission rejected the applicants' Article 14 claim (brought in conjunction with Article 10), but on the basis that they had failed to demonstrate that their application had in fact been rejected because they planned to set aside broadcast time for linguistic minorities. The Commission did, however, mention that, in other circumstances, the refusal to grant a broadcasting license might raise a discrimination issue, and gave as an example where the refusal to grant a license resulted directly in a considerable proportion of the inhabitants of an area being deprived of broadcasting in their native tongue.⁶⁶ Indeed, the Commission has ruled on a number of occasions that while Article 10 does not include a general and unfettered right for any private citizen or organisation to have access to broadcasting time on radio or television, it has indicated that the denial of broadcasting time to one or more specific groups of persons may, in particular circumstances, raise a problem under Article 10, either considered on its own or in conjunction with Article 14.⁶⁷

It should also be noted, however, that such measures against the use of Kurdish would also appear to contravene the Council of Europe Framework Convention for the Protection of National Minorities, which provides in Article 9 that members of national minorities should not be discriminated against in their access to the media, that States shall ensure, as far as possible, that they have the possibility of creating and using their own media, that States adopt adequate measures to facilitate their access to the media and in order to promote tolerance and permit cultural pluralism, and that States shall not hinder the creation and use of print media by members of national minorities.⁶⁸

The delegation also encountered a case that raises serious questions about freedom to publish in the fields of science and research. Article 27 of the Turkish Constitution protects freedom of science and the arts: "*Everyone has the right to study and teach freely, explain, and disseminate science and arts and to carry out research in those fields.*" This is consistent, for instance, with the obligation on States to respect freedom of scientific research contained in Article 15.3 of the International Covenant on Economic, Social and Cultural Rights, and the right to freedom of expression in Article

⁶⁵ *Ibid.*, at p. 140.

⁶⁶ See Alpha Connelly, "The European Convention on Human Rights and the Protection of Linguistic Minorities" (1993) 2 *Irish Journal of European Law* 277 at 284. Connelly notes that these comments would suggest that, with respect to broadcasting, the Commission at least was sensitive to the special needs of linguistic minorities and was prepared to go some of the way to meeting these needs in its interpretation of the ECHR, although it stops well short of recognising any regime of special rights for minorities.

⁶⁷ See *Case Law Concerning Article 10 of the European Convention on Human Rights*, Human Rights Files No. 18, (Strasbourg: Council of Europe Publishing, 2001), p. 38; see the cases referred to there, at note 102, including: App. No. 9297/81, *X. Association v. Sweden*, decision of 1 March 1982, 28 D. & R. 204; App. No. 12439/86, *Sundberg v. Sweden*, decision of 15 October 1987, unpublished; App. No. 23550/94, *Association mondiale pour l'Ecole Instrument de Paix v. Switzerland*, decision of 24 February 1995, unpublished; App. No. 25060/94, *J. Haider v. Austria*, decision of 18 October 1995, 83 D. & R. 66; and App. No. 28079/95, *L. De Angelis v. Italy*, decision of 17 January 1997, unpublished.

⁶⁸ See section on Turkey's International Obligations, above.

10 of the European Convention on Human Rights. However, this right is subject to the following restriction: “*The right to disseminate shall not be exercised for the purpose of changing the provisions of Articles 1, 2 and 3 of this Constitution.*” In 1992 Edip Polat, a Kurdish biologist, published a book entitled *The Kurds and Kurdistan in the Language of Science* in which he criticised the official ideology as regards biology that insisted on giving Turkish names. The book included details of plants and animals found in the region and gives their Latin names, adding “kurdicum” where a particular species is found only in the Kurdish region. He was charged under section 8 of the Anti-Terror Law with propaganda against the integrity of the state. Despite being acquitted twice by the State Security Court, which accepted his defence that this was a purely scientific work and the elements of the crime were not made out, he was ultimately convicted and sentenced to a year in prison and a fine.

In sum, broadcasting in Kurdish is still prohibited under legislation that has not yet been changed, and the delegation found that even to broadcast Kurdish songs is to risk prosecution or closure. When it comes to the print media and publications, while there is a degree of freedom to publish in Kurdish in the West of Turkey, severe restrictions remain on production and distribution of Kurdish materials in the predominantly Kurdish Southeast of the country.

Recommendations: We recommend that the Government of Turkey take the following steps with regard to Kurdish in publishing and broadcasting:

1. Amend Article 4, paragraph (f) of Law 3984 of 1994, the Law on the Establishment of Radio and Television Stations and Broadcasting (the RTUK Law), to remove any prohibition on broadcasting in Kurdish. The RTUK Law should further be amended to ensure that licensing procedures are such that broadcasters wishing to broadcast in Kurdish have full and equal opportunities to obtain such licenses and that, in general, there is a wide range of Kurdish language radio and television programming available throughout the country.
2. The Turkish authorities should take all necessary steps to ensure that provisions such as section 8 of the Anti-Terror Law and sections 159 and 312.2 of the Penal Code are not used to effectively suppress the ability to use the Kurdish language, play Kurdish music or otherwise express any aspect of Kurdish culture, through any media. Given the extreme broadness of these provisions, which leave their application open to abuse, these provisions should also be amended to narrow their scope and to ensure that they are not used as means for the effective repression of the use of Kurdish in various communication media.

Cultural life and the Arts

A number of international instruments aimed at protecting the rights of minorities provide that States take steps to protect the cultural and linguistic identity of national minorities,

and create conditions for the promotion of that identity.⁶⁹ Among the instruments that safeguard this right are the Copenhagen Document, the United Nations Minorities Declaration and the Council of Europe Framework Convention for the Protection of National Minorities. Fundamental to this right is the right of minorities to freely develop their culture in all its aspects, free of attempts at assimilation against their will, and the freedom to establish and maintain educational and cultural institutions, associations and organisations. The Convention on the Rights of the Child provides, at Article 30, that a child belonging to a minority shall not be denied the right, in community with other members of his or her minority group, to enjoy his or her own culture and to use his or her own language.

Keeping traditional music, poetry, stories and other expressions of culture alive is essential for the preservation of any language and culture. The Kurds rely particularly on oral culture, a situation that has been brought about partly by the fact that as a marginal group within a state that does not recognise their status as a minority and has taken no steps to encourage or facilitate their culture and identity, they have never had the opportunity to develop their own formal institutions through which aspects of Kurdish culture can be preserved, transmitted and developed through more formal structures. Such formal institutions as did exist to preserve expressions of Kurdish culture in Turkey, such as libraries and religious institutions, have been destroyed or closed over the years. The tradition of community members who maintain and pass on songs to the next generation, known as "Dengbêj," has been kept alive but such informal, oral, community-based institutions are inevitably under threat in the modern world.

However, it was clear to the delegation that any efforts to preserve traditional Kurdish culture and language, or to produce modern expressions of it, and particularly any efforts to take it out to people, are likely to be obstructed by State authorities. Cultural institutions are particularly under threat. While the authorities are prepared to tolerate research and publications in Kurdish or concerning Kurdish culture, any activity that could be interpreted either as in any way educational, or as aiming to promote Kurdish culture among the community, will not be tolerated and, on the contrary, will be quickly and severely suppressed. The delegation heard that it is extremely difficult to establish institutions aimed at preserving and cultivating aspects of Kurdish culture. For instance, one institute had had its application for registration as a company refused until it agreed to drop organising conferences, seminars and training from its planned activities. Another had been refused permission to establish branches in towns in the Southeast, or such branches had been opened and then subject to closure orders soon afterwards.

The delegation heard first-hand evidence of severe measures taken against three cultural institutions, the Kurdish Institute and the Mesopotamia Cultural Centre both in Istanbul, and the Van Cultural Centre in the Southeast. The Kurdish Institute in Istanbul was established in 1992 by Kurdish and Turkish intellectuals for the study of the Kurdish language, culture and literature. Clearly a highly respected institute of international standing, it had been afforded a level of official recognition, such as invitations to official functions. It organises seminars and publications and had recently published a Turkish-

⁶⁹ See section on Turkey's International Obligations, above.

Kurdish dictionary. Its publications in the Kurdish language had not been banned. Nevertheless the week before the delegation's visit, on 29 January, the police had arrived to serve a closure order. The basis for closure appeared to be little more than the fact that the police had found a blackboard in a small back room at the Institute, and on this scant evidence had based a charge that the Institute was offering educational courses without the requisite permission having been obtained.⁷⁰ While the Institute had not been linked at all with the student campaign for Kurdish lessons, it seems probable that the timing of the closure is not coincidental, and that the Institute is a victim of the official State hysteria concerning the Kurdish language that was unleashed by the student campaign.

The Mesopotamia Cultural Centre, also based in Istanbul, specialises in organising cultural and artistic events and activities including theatre, cinema, folklore, music, dance and photography, mainly Kurdish but also reflecting the other cultures of Mesopotamia. It produces and supports the production of publications, music cassettes and CDs. Perhaps because of its active role in taking culture out to the people, since its establishment in 1991 it has faced considerable interference from the authorities. In 1998 the Centre's hall had been closed down on the basis that it lacked a license. An application for a license had been turned down on the grounds that it was not appropriate to have such activities so close to a high school, under a law providing that places open to the public should be at least 200 metres from schools. It was clear that this law was applied selectively, since the delegation saw a number of bars and restaurants in the same street that were even closer to the high school. Because of the closure of its hall, the Centre has been forced to look to put on performances elsewhere, but in practice finds that local authorities find all sorts of reasons to turn down their applications or they simply fail to respond.⁷¹ Three of the Centre's branches in the Southeast have been closed down under the emergency powers of the local Governor, and "hundreds" of legal cases have been brought against them.

A third recent example of measures against cultural institutions is the recent closure order against the Van Cultural Centre in Southeast Turkey. Established only in 2000, the Centre's main focus had been on Kurdish music, and it organised amateur performances such as at wedding parties and activities aimed at preserving and developing traditional music. The order to close the Centre was issued by the Regional Governor, on the grounds it was offering courses illegally. Courses had been started in the 'saz', a type of musical instrument, without obtaining permission. The Centre is hoping to be allowed to reopen and continue its other activities.

Aside from measures taken against institutions themselves, artistic products are also closely regulated. The State of Emergency Law empowers the Governor of state of

⁷⁰ The Institute had already been charged and acquitted, in December 2001, of running illegal educational courses.

⁷¹ Law 2911 on demonstrations and public meetings, and Law 2908 on associations both require associations to inform the authorities if they wish to organise a public event outside their own premises 72 hours in advance. The authorities have a duty to reply at least 24 hours before the event. In reality, the delegation was told that this is treated by the authorities as a process of seeking and granting permission and that the authorities frequently impose conditions, give warnings of possible breaches of the law or simply fail to reply. In other words, the process is often not according to law.

emergency areas to prohibit publications from being published in, or entering, the area. The production of music cassettes is subject to strict controls. Songs in Kurdish may be banned, particularly if there is any political content. Sometimes a simple expression of Kurdish identity will be found unacceptable; we were told that this depended on the prevailing political atmosphere at the time of the request. Producers might be instructed to change a particular word or phrase. Sometimes music cassettes are banned even after receiving permission. Many cassettes are banned in the Southeast but permitted in the rest of the country. The delegation was shown a list of some 250 cassettes that had been banned in Diyarbakir as of 1998. The experience of Gün TV in Diyarbakir, already described above, in which the closure of a television station is being sought by the authorities for the playing of one song the meaning of which is at least open to interpretation, demonstrates the draconian way in which powers to regulate cultural life are implemented. Elected municipal authorities may also play a role in organising cultural activities in the community, but municipalities in or neighbouring a state of emergency area in the Southeast are forced to seek permission from the regional Governor before putting on cultural events, and such permission may not be forthcoming. For instance, in 2001 Van municipality was refused permission put on a play entitled "Peace".

In sharp contrast to its attitude towards Kurdish and other minority languages, the Turkish State sets out to actively promote the Turkish language; one law aims to "*bring out the pure beauty and richness of the Turkish language, [and] ensure it reaches an exalted place amongst the languages of the world ...*".⁷² At the same time as aiming to restrict expression of Kurdish and other minority languages and cultures in the media, Turkish law also seeks to actively promote and encourage Turkish language and culture. Thus one of the "broadcasting principles" included in section 4 of the RTUK Law is that broadcasting will be in accordance with "*the general aims of Turkish national education, its fundamental tenets and the principle of the development of national culture,*" while section 31 provides that private radio and television stations must broadcast a certain proportion of programmes on education, culture and Turkish folk music and art.

The Turkish State's insistence on linking expressions of minority cultures with a threat of separatism is evident in the legislation as well as in the practice of the State authorities with respect to Kurdish arts. The very first among the purposes of the Law on Works of Cinema, Video and Music is stated in section 1 to be to "*bring order from the point of view of national unity, integrity and its perpetuation in cinema and musical life...*".⁷³ Section 3 again reiterates that supervision of the Law will involve ensuring that no works constitute an offence "*from the point of view of the indivisible integrity of the state, its*

⁷² Law on the Establishment of the Atatürk Culture, Language and History Society, No. 2876 of 11 August 1983. Other legislation pursues similar aims. For instance, the Decree Law on the Organisation and Duties of the Ministry of Culture mandates the Directorate General for Research and the Development of Popular Culture to research and teach different Turkish dialects, and to establish institutes for this purpose. Decree with the power of law no. KHK/354, 2 March 1989. The Law on Radio and Television in Turkey, No. 2954 of 11 November 1983 refers in sections 5 and 9 refers to the importance of entrenching Atatürk's reforms, protecting the indivisible integrity of the country and promoting the development of national culture and "using a comprehensible, correct and beautiful Turkish" (section 5(g)).

⁷³ Law no. 3257 of 23 January 1986.

country and people; national sovereignty, the republic, national security, public order, the public good and general morality and health" and that works will be monitored by officials "for suitability as regards our national culture and customs." Yet again, section 9 provides that any work found to violate these principles will be banned, and a prosecution launched. The police are given powers to close down places in which plays, films or videos are shown "that will harm the indivisible integrity of the state, its country and people, the Constitutional order, general security and morality," or otherwise terminate such activities.⁷⁴ The delegation was told that this widely framed power is used frequently against Kurdish cultural associations and other civil society organisations.

It is hard to escape the conclusion that while the Turkish Government may be prepared to accept, since 1991, that Kurds speak their language and maintain their culture in their own homes, any attempt to engender a distinctively Kurdish cultural life in the community, whether by cultural associations or by producers of music or broadcasting, will be closely scrutinised and subjected to severe limitations. Inescapable also is the conclusions that such limitations are often imposed even outside the limits of Turkish domestic law, and certainly in breach of Turkey's international obligations.

The numerous provisions in international instruments that provide for the protection of the cultural identity of minorities, described in detail above in the section on Turkey's international obligations, are simply not being honoured in Turkey. The delegation found that Kurds, at least, are not able to freely develop their culture, or to establish and maintain educational and cultural institutions.

Recommendations: We recommend that the Government of Turkey take the following steps with regard to Kurdish in cultural life and the arts:

1. Amend legislation designed to encourage and promote the Turkish language and culture, such as the Law on the Establishment of the Atatürk Culture, Language and History Society, No. 2876 of 1983, and the Decree Law on the Organisation and Duties of the Ministry of Culture, Decree Law No. KHK/354 of 1989, in order to provide for the promotion and encouragement of minority languages in Turkey in addition to Turkish, and in particular, the promotion and encouragement of Kurdish.
2. Amend Articles 1 and 3 of the Law on Works of Cinema, Video and Music to ensure that these provisions cannot be used to restrict the right to use the Kurdish language or express any aspect of the Kurdish culture in any area of creative expression.
3. Turkey should lift the state of emergency in the remaining four regions of the Southeast, thus removing powers of the regional State of Emergency Governors

⁷⁴ Section 8, Law no. 2559 of 4 July 1934, as amended by Law no. 3233 of 16 June 1985. The police may exercise these powers on the orders of the highest local authority, which in the state of emergency regions of the Southeast would be the Governor.

restricting the publication, importing and distribution of publications, music cassettes and other materials.

Use of Kurdish in Dealing with Public Bodies and in the Justice System

At present, it is not legally permissible to use Kurdish in obtaining public services, in dealing with public bodies (including the making of oral and written communications with such bodies), nor is it generally permissible to use Kurdish in the justice system. The basis for this complete denial of the right to use Kurdish in such settings is said to be Article 3 of the Turkish Constitution of 1982, which simply provides that the Turkish State, with its territory and nation is an indivisible entity and its language is Turkish. Turkish authorities interpret this provision to mean that no other language than Turkish can be used in dealing with public bodies, in the provision of public services, and in the operation of the justice system. We suggest that the designation of Turkish as the official language of the Turkish State does not and should not imply that organs of the Turkish State are not entitled to use other languages to deal with Turkish citizens; indeed, Article 3 does not state the Turkish must be used exclusively in all circumstances.

The delegation heard considerable evidence as to the hardship that this effective prohibition of the use of any language other than Turkish causes for a great many Kurdish speakers. In particular, all credible evidence suggests that a significant portion of Turkey's Kurdish population do not speak or understand Turkish at all or do not speak or understand Turkish to a degree of fluency which allows for effective communication in that language. As noted elsewhere in this report, this is particularly true of Kurdish women from rural districts and of the older generation of Kurdish people, particularly those from rural areas; such persons have generally not received much formal education and consequently did not adequately learn the Turkish language. One of the problems that the delegation faced – indeed, which anyone who is conducting research with respect to the social position of Kurdish people faces – is, also as noted elsewhere in this report, that there is a complete lack of reliable statistics as to the number of people in Turkey who are or who consider themselves to be ethnically Kurdish, the number of people in Turkey who speak, understand, read and write the Kurdish language, and the competence of mother tongue Kurdish speakers in both Kurdish and Turkish. One of the reasons for this lack of information is that the Turkish authorities do not solicit it through census returns or other means. For the Turkish authorities, to ask such questions and conduct such research would be to recognise the existence of a Kurdish people, and to do so would threaten the official ideology which says that there are no Muslim minorities in Turkey. However, it is clear that as many as 20% of the population of Turkey is ethnically Kurdish, and that although a significant number of ethnic Kurds have been assimilated, there are still very large numbers – certainly millions – of mother tongue Kurdish speakers and very significant numbers of people who speak and understand very little or no Turkish.

This linguistic reality, coupled with the complete denial by Turkish authorities of any public services through the medium of Kurdish, has created a serious barrier to a very

significant percentage of the Turkish population in gaining access to adequate public services. The delegation received numerous examples from informants in Istanbul, Diyarbakir and Van as to the serious adverse consequences which have befallen Kurdish-speaking Turkish citizens because of this reality. For example, we received many accounts of monolingual Kurdish speakers receiving inadequate health care because the State takes no steps to ensure that there are trained medical staff capable of providing adequate medical services through the medium of Kurdish. This problem was particularly acute in Istanbul, and is likely a serious problem in any area outside of the core Kurdish-speaking areas in the Southeast. The delegation received reports of doctors who spoke no Kurdish and who were unwilling and/or unable to give monolingual Kurdish speakers anything more than derisory medical care. We heard reports of monolingual Kurdish-speaking expectant mothers who were inadequately cared for during their pregnancy, in giving birth or in the post-natal period because of this language barrier. In Kurdish-speaking areas, the delegation had the impression that this problem was not quite as acute, because there is a greater chance that some medical personnel may be able to speak Kurdish and act as interpreters. However, the problem in such areas was still extremely serious, because the medical system is run nationally, and even in Kurdish-speaking areas, many medical personnel come from non-Kurdish speaking areas. The delegation heard evidence that sometimes a doctor or other medical service provider would try to locate someone within the medical facility who could act as a translator, but that this was done on an ad hoc basis, and in many cases, the translator was not trained in translation and therefore was unable to translate with a sufficient degree of precision. In some cases, men were asked to act as translators for female patients, and this was clearly a cause of embarrassment, given that a strange man was asked to translate in respect of what were often very sensitive female health problems. It is clear that even in strongly Kurdish-speaking areas, the health service makes no effort to ensure that there is adequately-trained Kurdish-speaking staff. There is certainly absolutely no evidence of any training programme to deal with this issue or any operating policies meant to address it. Therefore, the provision of adequate health services to monolingual Kurdish speakers, who represent a very sizeable minority within the Turkish population, is uneven at best and almost unavailable at worst.

This same problem manifests itself with respect to other public services, and is also a significant problem in the justice system. The delegation heard widespread and consistent testimony to the effect that the Turkish justice system makes no provision for the use of Kurdish in Turkish courts, administrative tribunals and other judicial and quasi-judicial bodies.⁷⁵ We understand that there may be a limited legal right to a translator in the criminal justice system. In particular, Article 252 of the Turkish Code of Criminal Procedure provides that if an accused does not understand Turkish, an interpreter shall inform him of the final accusations and defence of the Public Prosecutor and defence council. It is not clear whether the entitlement to an interpreter in this provision extends to a right to the accused to give evidence, either documentary or oral, and it makes no reference to the right of other participants in the criminal process, such as witnesses, to

⁷⁵ Interestingly, the European Court of Human Rights, when it held fact-finding hearings in Ankara in the cases of *Tepe v. Turkey* and *Tekdağ v. Turkey* in October 2000, App. Nos. 27244/95 and 27699/95, permitted witnesses to give evidence in Kurdish.

participate with the assistance of an interpreter. With regard to the civil courts and other non-criminal tribunals, there is, as best as the delegation could determine, no right to use Kurdish in giving testimony or other evidence, either documentary or oral, even where the person giving the evidence – either a litigant or other participant in the process or simply a witness – has little or no ability to speak, understand, read or write Turkish. There is similarly apparently no right to obtain use of a translator. Even the provision in the Turkish Code of Criminal Procedure, however, seems to be honoured in the breach, or at least applied in an ad hoc and inconsistent manner. We heard of many examples of testimony or other evidence given in the Kurdish language by persons with an inadequate knowledge of Turkish simply being disregarded; in such cases, the court records often simply recorded that the witness had given testimony in a language which was not understood by the court. The delegation also heard of some cases, particularly in Kurdish-speaking areas in the Southeast, where the judge or presiding officer in the court would ask whether there was anyone in the court who could act as a translator, and there may be someone, such as a court clerk, who could translate for the court. However, this was simply an ad hoc solution and was totally reliant on the will of the judge or presiding officer to countenance such a solution, and on the possibility of some Kurdish-speaker being present. Informants indicated, however, that because such ad hoc translators had no formal training, they often mistranslated evidence, mis-communicated testimony, and were generally not fully up to the task of providing reliable translations. Where the ad hoc translator is employed by the State – perhaps as a court clerk – and particularly where that person is a participant in some way in the justice system, there will be added concerns about impartiality.

This same state of affairs generally applies in dealings with police and security forces. In particular, we heard considerable evidence to the effect that when Kurdish speakers are taken into custody, questioned, charged with offences or asked to sign statements by police or security officers, they have no right to use the Kurdish language, even where they speak or understand little Turkish. Such statements could possibly be challenged under Article 6, paragraph 2 of the ECHR, which generally embodies the right to a fair trial, on the basis that evidence contained in such statements has been illegally obtained. On occasion, we heard evidence that a police or security officer may act as an ad hoc translator, but once again, this is not officially sanctioned – indeed, we heard testimony to the effect that this was positively discouraged – and was in any case an unsatisfactory solution, not only because such persons are not trained translators, but also because they are participants in the process whose interests may not coincide with those in custody, being questioned, subject to charges, and so forth.

We are of the view that the complete denial of the right to use Kurdish in dealing with public bodies or in the receipt of public services represents a clear violation of a number of Turkey's existing international commitments, and would clearly violate a number of provisions in various instruments to which Turkey may become party. In particular, denial of the right to use Kurdish in dealing with public bodies or in the receipt of public services, especially health care and social services, is arguably a violation of the protection given under paragraph 1 of Article 38 or the Treaty of Lausanne, which provides that the Turkish Government undertakes to assure full and complete protection

of life and liberty to all inhabitants of Turkey without distinction of language. The inability to use Kurdish, particularly where, as is the case for a significant proportion of the Kurdish-speaking population, the individual is unable to fully and adequately understand or express him- or herself in Turkish, means that such persons are placed at a considerable disadvantage; where the health or personal liberty of the person is at stake, as is the case when the person is dealing with health care, certain social services, and the criminal justice system, such disadvantage may amount to a threat to the person's life and liberty. Similarly, the clearly disadvantaged position in which many Kurdish speakers are put in the enjoyment of public services which should be fully and equally available to all Turkish citizens would amount to a violation of Article 7 of the Universal Declaration, which provides that all persons are to be equal before the law and are entitled without *any* distinction (which presumably includes a distinction based on language) to equal protection of the law. We are also of the view that the effective prohibition on the use of Kurdish in dealing with public authorities would, for the very same reasons, amount to a violation of Article 26 of the ICCPR,⁷⁶ which, as noted earlier in the section on Turkey's international obligations, provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law, and that the law shall guarantee to all persons equal and effective protection against discrimination on any ground, including on the basis of language. We note in this context the relatively recent decision of the United Nations Human Rights Committee in *Diergaardt v. Namibia*.⁷⁷ The complaint, brought by Afrikaans speakers, involved a number of issues, but one of the issues they raised was that the Namibian government had instructed civil servants not to reply to written or oral communications in the Afrikaans language, even where the civil servants were perfectly capable of doing so. A majority of the Human Rights Committee found that this amounted to a violation of Article 26. Clearly, the significant disadvantage which many Kurdish speakers suffer because of language is something which the Copenhagen Document and the Framework Convention would require Turkey to address. For example, paragraph 31 of the Copenhagen Document requires the participating States to adopt, where necessary, special measures for the purpose of ensuring that members of national minorities enjoy full equality in the exercise and enjoyment of human rights and fundamental freedoms. Paragraph 34 thereof provides that the participating States will endeavour to ensure that persons belonging to national minorities, *notwithstanding the need to learn the official language of the State*, have adequate opportunities wherever possible and necessary for the use of their mother tongue before public authorities. Article 10, paragraph 2 of the Framework Convention provides that State Parties shall endeavour to ensure conditions which would make it possible to use the minority language, in this case Kurdish, in relations between persons belonging to the national minority and the administrative authorities. This obligation applies in areas inhabited by members of national minorities such as the Kurds "traditionally" or "in substantial numbers." This formulation would clearly apply to not only the Southeast, but places like Istanbul, Izmir, Ankara, and elsewhere in Turkey where there are very large numbers of Kurdish speakers. The obligation only applies where members of national minorities request such services and where such a request

⁷⁶ For the same reasons, we are of the view that Article 1 of Protocol No. 12 to the ECHR would be violated.

⁷⁷ CCPR/C/69/D/760/1997, decision of 6 September 2000.

corresponds to real need. It would, in our view, and given the testimony just referred to, be impossible to argue that there does not exist "real need" for Kurdish language services.

With regard to the general inability to use Kurdish in the Turkish justice system, this, in our view, constitutes a clear violation of a number of Turkey's most basic existing international obligations. In particular, Article 39, paragraph 5 of the Treaty of Lausanne provides that, notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish (e.g. of Kurdish) speech for the oral use of their own language before the Courts. It should be noted that this right is not limited to simply litigants, nor is it limited to the criminal courts. Article 5, paragraph 2 of the ECHR provides that everyone who is arrested shall be informed promptly and in a language he or she understands of the reasons for his or her arrest and of the charges against him or her. Article 6, paragraph 3(a) provides that everyone who is charged with a criminal offence has right to be informed promptly in a language which he or she understands and in detail of the nature and cause of the accusation against him or her. Article 6, paragraph 3(e) provides that everyone who is charged with a criminal offence has the right to have the free assistance of an interpreter if he cannot understand or speak the language used in court. The level of comprehension and speaking ability at which the right to an interpreter arises is a question of fact and degree, and will have a bearing on the degree of assistance which is necessary⁷⁸; the European Court has made clear that the right to an interpreter does not arise where the person speaks and understands the language of the court.⁷⁹ In *Luedicke, Belkacem and Koç v. Federal Republic of Germany*,⁸⁰ the Court made clear that the person using the interpreter was not required to pay anything for the service, even if he or she was convicted. The Court also ruled that, as the right to an interpreter was meant to ensure a fair trial for the accused, the right to free assistance of an interpreter extended to the translation or interpretation of all those documents or statements in the proceedings instituted against him which it is necessary for him to understand in order to have the benefit of a fair trial.⁸¹ Thus, the right in this case covered an initial appearance before a judge, a review of detention on remand and translation of the indictment, as well as the hearing itself. In *Kamasinski v. Austria*,⁸² the Court confirmed that the right to free assistance of an interpreter applies not only to oral statements made at the trial hearing but also to documentary material and pre-trial proceedings, but the Court noted that the right does not go so far as to require translation of *all* items of written evidence or official documents in the procedure; the interpretative assistance should be such as to enable the defendant to understand the case against him and to defend himself, notably by being able to put before the court his version of events. Significantly, the Court noted that in view of the right guaranteed by paragraph (3)(e) to be practical and effective, the obligation of the competent authorities is not limited to the

⁷⁸ *K. v. F.R.G.*, App. No. 2465/65, 24 CD 50 (1967); *X v. U.K.*, App. No. 8124/77, 2 Digest 916 (1978).

⁷⁹ *K. v. France*, App. No. 10210/82, 35 DR 203 (1983); *Bideault v. France*, App. No. 11261/84, 48 DR 232 (1986). Both cases involved Breton speakers who, though perfectly capable of speaking French, sought to use Breton in the court and obtain the use of an interpreter to do so.

⁸⁰ Series A, No. 29, 28 November 1978, reported at 2 E.H.R.R. 149.

⁸¹ *Ibid.*, at para. 48, p. 65.

⁸² Series A, No. 168, App. No. 9783/82, 19 December 1989, reported at 13 E.H.R.R. 36.

appointment of an interpreter but, if they are put on notice in the particular circumstances, may also extend to a degree of subsequent control over the adequacy of the interpretation provided.⁸³ While an oral explanation of the contents of the indictment may be sufficient, a defendant who is not provided with a written translation of the indictment may in some circumstances be disadvantaged, and in such cases, a written translation is required.⁸⁴ Translation at the trial itself does not necessarily have to be simultaneous, and can be consecutive and summarising,⁸⁵ and while a complete written translation of the judgement itself may not be necessary, some oral explanation of the judgment is required that is sufficient to allow the person to understand the judgment and its reasoning to be able to lodge an appeal against the sentence.⁸⁶

While, as noted, there is a provision in the Turkish Code of Criminal Procedure with respect to the use of languages other than Turkish, it is not clear that the extent of this right is as great as is required under these international obligations, particularly with respect to the pre-trial period; in any case, based on the oral evidence the delegation heard, the domestic provision is not generally adhered to and, at best, is applied in an ad hoc and inconsistent manner. The consequent general inability to use Kurdish in even the criminal courts is a clear violation of the provisions in international instruments in the very significant number of cases which presently arise in Turkey where the person being detained, charged or tried has inadequate command of the Turkish language.

Recommendations: We recommend that the Government of Turkey take the following steps with regard to the use of Kurdish in dealing with public bodies and in the justice system:

1. To the extent that Article 3 of the Constitution does prohibit the use of any language other than Turkish by organs of the Turkish State, Article 3 should be amended to eliminate such a prohibition. In particular, Article 3 could make clear that Turkish is the official language of the Turkish State, but other languages may also be used, perhaps subject to legislative provision. In keeping with Turkey's existing and anticipated international obligations, however, we suggest that the Constitution be amended, and perhaps legislation be introduced, to ensure that Kurdish speakers are entitled to receive public services of equal quality to those received by other Turkish citizens through the medium of Kurdish, and to ensure that Kurdish speakers are able to interact with governments at all levels, as well as all other public bodies, through the medium of Kurdish language, where they so desire.
2. Article 52 of Article 252 of the Turkish Code of Criminal Procedure be amended to broaden the entitlement to a translator so that it is consistent with the relevant provisions of the ECHR. Furthermore, legislation should be created which allows

⁸³ *Ibid*, para. 74, at pp. 64-65.

⁸⁴ *Ibid*, para. 79, p. 66.

⁸⁵ *Ibid*, para. 83, p. 67

⁸⁶ *Ibid*, para. 85, p. 68. With the right to an interpreter, see also *Brozicek v. Italy*, Series A, No. 167, App. No. 10964/84, 19 December 1989, reported at 12 E.H.R.R. 371.

for the use of Kurdish in the Civil Courts and in other judicial and quasi-judicial settlements, again in line with Turkey's existing and anticipated international obligations. Finally, Turkish authorities should develop a system for providing interpretation services, free of charge, to Kurdish speakers (and speakers of other minority languages indigenous to Turkey) who wish to make use of such services; this would involve a system for training and even accrediting interpreters for these purposes.

Private and commercial life

From 1983 until 1991, the use of the Kurdish language in daily life was severely restricted by Law 2932, the Law Regarding Publications in Languages Other than Turkish. Article 3 of this law provided that the mother tongue of Turkish citizens is Turkish and that it is forbidden to carry out any activity for the use or dissemination of languages other than Turkish as a mother tongue. Article 2 of this law provided that it was forbidden for any language except the first official languages of States recognised by the Turkish State to be used for the expression, dissemination and publication of opinions. By necessary implication, this proscribed the Kurdish language, as Kurdish is not the first official language of any State;⁸⁷ indeed, both KHRP and other human rights organisations have previously documented many prosecutions of Kurds under this legislation for the simple act of speaking their language, many of whom were monolingual Kurdish speakers. Law 2932 was repealed in 1991, but the effects of this change in the law, and therefore the precise status of Kurdish in the private sphere, are still unclear.

This lack of clarity is partly due to the various prohibitions and restrictions on the use of Kurdish in virtually all dealings with the Turkish State and in public activities, in the educational system, the significant restrictions on the use of Kurdish in all broadcasting, all illustrated elsewhere in this report, and also by a number of other laws which continue to impinge on the use of Kurdish in the sphere of private and commercial life. For example, Article 5 of Law 2908, the Law on Associations, and which applies in respect of business organisations and voluntary sector bodies, provides that no association may be founded in contravention of the fundamental principles in the preamble of the constitution, and in particular, that associations may not be established for the purpose of: endangering the existence of the Turkish Republic, whose characteristics are stated in the Constitution, based on differences of language, race, class, religion or sect; engaging in activities based on region, race, social class, religion or sect; or, claiming the existence of minorities based on differences of race, religion, sect, culture or language or creating minorities by protecting, developing and disseminating languages and cultures apart from the Turkish language and culture or securing sovereignty or privileges for those from one region, race, class or of a specific religion or sect over others. Article 5 was amended on 26 March 2002 by Article 5, paragraph B of Law No. 4748, to provide that it is also

⁸⁷ KHRP, *Cultural and Language Rights of the Kurds*, (KHRP: London, February, 1997), p.9. This report notes that a former mayor of Diyarbakir had been sentenced to imprisonment for merely speaking Kurdish with his staff.

prohibited to establish an association for the purpose of creating a minority in the Republic of Turkey based on differences of race, religion, sect, culture or language, or securing sovereignty or privileges for those from one region, race, class or of a specific religion or sect over others. Clearly, the scope of this provision is practically open-ended, and it can and has been used to ensure that organisations are not established with the purpose of developing the Kurdish language or culture. Another provision which has been used to restrict the creation of bodies which are involved in the preservation or promotion of Kurdish is Article 74 of Law 903, the Law Amending the Civil Code, which provides that the registration of foundations aiming at supporting political views which are against the law, or against moral or national values or which support members of a certain race or society shall not be carried out. Again, the breadth of this article is so great that it could be used as a basis for rejecting the registration of foundations directed at the preservation and promotion of the Kurdish language and culture.

Article 6 of Law No. 2908 prohibited the use of languages forbidden by law in their statute or in the writing of any other of an association's regulations or publications, in its general meeting, or in any of its private or official, open or closed meetings, and any banner, sign, placard, audio or video tape, brochure, pamphlet, declaration or similar document in a language forbidden by law in any meeting, open or closed, organised by the association, or in which the association is participating. As noted, with the repeal of Law 2932 in 1991, Kurdish, strictly speaking, ceased to be "a language forbidden by law," but this provision in the Law on Associations was only amended recently, by Article 5, paragraph C of Law No. 4748 of 26 March 2002. However, the amended provision still provides that associations shall use Turkish in their official business, which is a provision which did not, in fact, exist in the earlier statutory provision.

Article 1 of Law No. 805, the Law Concerning the Compulsory Use of the Turkish Language within Economic Enterprises/Corporations of 10 April 1926 (which, we understand, is still in force), requires that all the institutions and enterprises within the Turkish Nation are obliged to keep all their agreements, contracts, correspondence, books and accounts in Turkish within the borders of the State of Turkey. Under Article 3 of this law, foreign companies and enterprises can have paperwork and documents in a language other than Turkish, but such paperwork and documents must be accompanied by a Turkish language version, and it is this version which must bear the signatures and which is considered to be the original document and the one which is legally valid.

Regarding the use of Kurdish, Article 2 of Law No. 1353, the Law Regarding the Adoption and Application of the Turkish Alphabet, requires that the acceptance of correspondence written in Turkish letters is obligatory in all correspondence in all state offices and establishments and all companies, associations and private societies. Article 4 of this law requires that all private and official notices, proclamations, advertisements and cinema promotions and all newspapers, publications and magazines must be written and printed in Turkish. Article 5 provides that it is obligatory for books to be published in Turkish to be published with Turkish letters. While the Kurdish language is generally written in Latin script in Turkey, there are a number of letters which appear in Kurdish and which do not form part of the Turkish alphabet. While this law does not prohibit the



use of Kurdish in writing, it can therefore obviously have that effect, or be used to that effect. It should be noted that Law No. 1353 is one of the laws mentioned in Article 174 of the Constitution of 7 November 1982 the provisions of which cannot be construed or interpreted as being unconstitutional. Finally, Law No. 2911, the Law on Public Meetings and Demonstrations has often been used to effectively ban a wide range of Kurdish public events, including concerts, meetings and so forth. Article 10 of this law provides that associations must notify the Governor or District Governor at least 72 hours before a public meeting takes place. Although the law refers only to a duty to notify police, rather than to obtain a certificate or permission, the delegation heard testimony from a representative of the Istanbul branch of the Contemporary Lawyers' Association that the law has been interpreted as being a certification provision, and certification of Kurdish events has often been rejected. Article 17 of the law formerly provided that the Governor or District Governor might ban or postpone a public meeting in the event that there was a strong possibility of incidents that seriously disrupt public order breaking out or the violation of national security requirements or the commission of acts having the purpose of destroying the fundamental qualities of the republic, or for the purpose of protecting the indivisible integrity of the state, its country and its people, and of general morality and health. Again, this almost open-ended formulation effectively gave wide scope to the authorities to restrict Kurdish language events. This provision was amended by Article 6 of Law No. 4748 of 26 March 2002, and now permits the Governor or District Governor to ban or postpone a public meeting for the purpose of national security, public order, the prevention of the commission of crime, the protection of general health and morality or the rights and freedoms of others. This amendment narrows somewhat the broad scope of Article 17, as is to be welcomed, but it is still not clear that it will not be used by authorities in a way which effectively restricts Kurdish language events.

Taken together, these various laws have had a deadening effect on both the creation of organisations, particularly voluntary sector organisations and private companies, which aim at the preservation and promotion of the Kurdish language and culture, and on the use of Kurdish as a means of communication, particularly written communication, in the private and voluntary sectors. With respect to organisations, the Law on Associations seems to have been applied in a manner that is, at best, capricious. In Istanbul, the delegation met the Chairperson of the Istanbul Kurdish Institute, which was established in 1992 and has recently been closed down by the police and is facing a number of charges. The Institute was established in response to the fact that there is no body in Turkey which is able to promote the academic study of the Kurdish language and culture. In most countries, the standardisation of a language, the creation of dictionaries and grammars, the publication of academic treatises and so forth is carried out by academic departments or institutes within universities, language planning bodies, government departments or other similar bodies. There is no such body in Turkey with respect to the Kurdish language; indeed, the prohibitions outlined elsewhere in this report in respect of Kurdish education, the use of Kurdish in the public sector and so on, have ensured that this would not be possible in Turkey. The Institute was set up in order to rectify this situation, and has published a number of impressive works since 1992, including the first comprehensive Kurdish-Turkish dictionary. In spite of the aims and objectives of the

Institute, which would seem to have been inconsistent with the provisions of Article 5 of the Law on Associations, the Institute was created as a private company, and carried on its work, mostly unhindered, except on two occasions: once, in respect of a conference they had on Kurdish culture, and once in respect of a course which the Institute was running which the authorities described as a course in Kurdish language education, and therefore prohibited.

The Mesopotamia Cultural Centre, which was discussed further in the section above on Cultural life and the arts, was established in 1991, but their activities are not directed solely at Kurdish culture, as they have activities relating to cultures of other Mesopotamian peoples. On a practical level, however, most of their branches have been closed, and they have faced very regular restrictions on the sort of activities they can hold, and have been often denied permission to hold events, pursuant to Law 2911, described earlier. Similarly, in Van, we met with a representative of the Van Cultural Centre, which was established as a company in November 2000. The main aim of the company was to record and carry out research on Kurdish and other cultures. The representative told us that their application for registration as a company was repeatedly refused by the Ministry of Commerce in Ankara; they were only able to become registered by removing all reference to Kurdish in their by-laws, and replacing such references with references to general research in relation to Anatolian culture. The organisation has recently been closed down.

The delegation is of the view that the foregoing legislation, taken individually and collectively, clearly violate a number of Turkey's existing international obligations and would certainly violate a number of other non-binding obligations and obligations to which Turkey may become a party. With respect to Turkey's binding international obligations, Article 39, paragraph 4 of the Treaty of Lausanne provides that no restrictions shall be imposed on the free use by any Turkish national of *any language* in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings. The various restrictions described above are, in our view, a clear violation of this provision. Similarly, they would, in our view, constitute clear violations of the right to freedom of expression and the right to freedom of association, protected under Articles 19 and 20 of the Universal Declaration, Articles 10 and 11 of the ECHR, and Articles 19, 21 and 22 of the ICCPR. Although the ECHR and ICCPR provisions are subject to a number of limitations, none of these should apply in such a way as to accommodate the very broad restrictions on the use of Kurdish which presently exist in Turkish law. In particular, it is not clear how the broad restriction of Kurdish in a wide range of settings is in the interests of national security, territorial integrity, public safety, the prevention of disorder or crime, the protection of public order, and so forth, nor is it clear that such broad restrictions are necessary in a democratic society.

With respect to Turkey's non-binding obligations, these broad and wide-ranging restrictions on the use of Kurdish are clearly fundamentally inconsistent with both the objectives and provisions of documents such as the Copenhagen Document, the UNGA Minorities Declaration and the Framework Convention. For example, such restrictions cannot remotely be said to be measures which are designed for or have the effect of

protection the ethnic, cultural or linguistic identity of Turkey's Kurdish-speaking population or which create conditions for the promotion of that identity, in line with paragraph 33 of the Copenhagen Document; furthermore, they clearly infringe the right of Kurdish speakers to freely use their mother tongue in private as well as in public (as required under paragraph 32.1), to disseminate, have access to and exchange information in their mother tongue (as required under paragraph 32.5), the right to establish and maintain their own educational and cultural institutions, organisations or associations (as required under paragraph 32.2), and to establish and maintain organisations or associations within their country (as required under paragraph 32.6).

Recommendations: We recommend that the Government of Turkey take the following steps with regard to the use of Kurdish in private and commercial life, the business sector and other aspects of daily life:

1. Articles 5 and 6 of Law No. 2908 should be deleted, or at least amended so significantly as to remove all prohibitions and restrictions, direct or indirect, on the establishment of associations for the preservation and promotion of Kurdish culture, language and identity, and all prohibitions and restrictions on the use of the Kurdish language in any aspect of the operations of all associations.
2. Articles 1 and 3 of Law No. 805 should be deleted, or at least amended so significantly as to remove all prohibitions and restrictions, direct or indirect, on the use of languages other than Turkish, and in particular, on the use of Kurdish by economic enterprises and corporations, foreign and domestic.
3. Article 174 of the Constitution of Turkey should be amended to allow for the amendment of Law No. 1353, and then Articles 2, 4 and 5 of Law No. 1353 should be amended to eliminate the requirement that only Turkish letters be used, or if it is thought necessary that such requirement be maintained, to allow for the use of non-Turkish letters and characters as well, where users so choose and desire.
4. Article 17 of Law No. 2911 should be further amended to further reduce the ability of public officials, and in particular Governors and Deputy Governors, to effectively limit public meetings which are being held through the medium of the Kurdish language and public meetings with respect to Kurdish language, culture and all other aspects of Kurdish identity.

Political discourse and activities

The use of the Kurdish language in all political discourse and activities, including internal meetings and documents as well as public activities, is formally prohibited. The legal basis of the prohibition is several statutory provisions making the use of Turkish mandatory. For instance, Article 43 of the Political Parties Law prohibits the use of any language other than Turkish whether in spoken or written form during the process of

selection of candidates,⁸⁸ while Article 81(c) of the same Law mandates that party rules and regulations and programmes, banners, placards, records, audio and visual recordings, brochures and bulletins must be in Turkish, and only Turkish must be used at all congresses, public meetings, rallies and propaganda. Article 58 of the Law on General Provisions regarding Elections and Electoral Registration provides that all election propaganda, including radio and television broadcasts, must be in Turkish.⁸⁹ Although party rules and regulations and political programmes may be translated into foreign languages, they may only be translated into languages not prohibited by law.⁹⁰ As mentioned already, it would appear that since the annulment of Law 2932 in 1991, Kurdish is no longer, strictly speaking, a language prohibited by law.

The restrictions on the use of the Kurdish language in political discourse are clearly inconsistent with Turkey's obligations under Article 10 of the European Convention on Human Rights as regards freedom of expression. The right to hold and impart opinions and ideas has been interpreted to include "political" speech, and the European Court attaches the highest importance to the protection of political expression.⁹¹ The right to free expression in elections, protected by Article 3 of Protocol 1 of the Convention, is also highly relevant. Article 3 of Protocol 1 provides: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature." In the recent case of *Podkolzina v. Latvia*, a member of the Russian speaking minority in Latvia stood as a parliamentary candidate but was struck off the list of candidates after the Central Electoral Commission found that he did not have an adequate command of the Latvian language.⁹² The Court held that while the rules requiring that candidates have knowledge of the official language pursued a legitimate aim of ensuring the proper functioning of the Latvian parliamentary system, the striking off could not be considered to be proportionate to this aim, and therefore a violation of Article 3 of Protocol 1 had occurred. The problem was that the candidate had been arbitrarily subjected to a second language test which had not conformed to due process standards. Turkey has ratified Protocol 1 to the Convention, and in the Turkish situation, the question could be posed whether the restrictions on the use of the Kurdish language in the process of selection of candidates, particularly in regions where a significant number of people do not speak good Turkish, may violate the right to "free expression of the opinion of the people in the choice of the legislature." Finally, the restrictions on the use of Kurdish mother tongue in political life would also arguably violate the principles of equality and non-discrimination. For instance, the right to free elections under Article 3 of Protocol 1, in combination with Article 14 of the European Convention on Human Rights (prevention of discrimination) would appear to provide a further ground for complainants.⁹³

⁸⁸ Law no. 2820, 23 April 1983, section 43 paragraph 3.

⁸⁹ Law no. 298 of 26 April 1961, section 58, as amended by Law no. 2234 of 17 May 1979.

⁹⁰ Section 81(c), Political Parties Law.

⁹¹ *Lingens v. Austria*, A 103 para 42 (1986), *Barthold v. FRG*, A 90 paras 42, 58 (1985).

⁹² Application No. 00046726/99, judgment of 9 April 2002.

⁹³ As noted in the discussion of the ECHR in the section above on Turkey's international obligations, the Commission has ruled in *Fryske Nasjonale Partij and others v. Netherlands*, App. No. 11100/84, reported at 9 E.H.R.R. 261, that Article 10 of the ECHR did not "guarantee linguistic freedom as such" or

The delegation met with representatives of two of Turkey's political parties, the pro-Kurdish HADEP (Peoples' Democracy Party) and the CHP (Republic Peoples' Party), and discussed with them their ability to operate in a context in which a large number of their members and constituents speak Kurdish, some being bi-lingual, others not speaking any Turkish, yet they are prohibited by law from using Kurdish. While neither party currently has representatives in the Turkish Parliament, for which there is a threshold of 10% of the overall vote, HADEP is by far the most popular party among the Kurdish population.⁹⁴ Infringements of the law, however minor, are harshly penalised. The delegation heard how last year one of HADEP's posters for Newroz (Kurdish New Year, the main annual Kurdish festival) had been confiscated because it used the Kurdish spelling "Newroz" instead of the Turkish "Nevruz". The delegation also heard how in 2000 HADEP had printed a calendar that included the word "peace" written in 13 languages, including Kurdish, and that this factor had resulted in all the calendars being confiscated and a prosecution opened against local party leaders. The delegation was told of a similar case occurring in Hakkari, after a calendar was produced with the names of the months written in Turkish, English and Kurdish.

Adopting a platform that includes open support for the right of Kurds to use their own language has proved dangerous for political parties in the past. The DEP Party (Democracy Party) called for a democratic solution to the Kurdish question, including "cultural autonomy" which would involve the right of the Kurds to use their own language. DEP was closed in 1994 by a decision of the Constitutional Court in Ankara and a total of 19 members were stripped of their immunity and faced criminal charges. The charges against Leyla Zana, one of the former DEP MPs who remains in prison in Turkey, include the allegation that she insisted on taking her oath in the Turkish Grand

the right of candidates to use Frisian in certain political and administrative settings. The applicants had complained that they were prohibited from registering their candidacies in Frisian, and that this constituted a violation of Article 3 to Protocol No. 1. The Commission recalled that this Article guarantees in principle the right to vote and the right to stand for election, and that as the applicants were not as such prevented from standing as candidates, and since nothing prevented them from submitting a translation of their registration of the name of the party and the list of candidates into Dutch, the official language, there was no violation of the article. The Commission went on to say that neither Article 3 of Protocol 1 nor any other provision of the ECHR guarantees the right to use a particular language for electoral purposes. We submit that this case cannot be applied to justify the almost complete prohibition of the use of Kurdish in political activity that applies at present. We are of the view that the right to freedom of expression certainly should apply to the choice of the use of language of expression – to suggest otherwise would be perverse – and given the importance which the Court has attached to political speech in subsequent ECHR case law, it would be almost inconceivable that the Court would refuse to protect the right to express political views in the context of electoral politics, or more generally, through the medium of a minority language. With respect to Frisian, we understand that Frisian speakers are also fully fluent in Dutch, and were therefore arguably not disadvantaged by the restrictions on use of Frisian imposed by the Dutch authorities; where, however, a significant proportion of a population does not speak the official language, a prohibition on the use of their mother tongue would have clear and obvious implications for their right to participate in the political process, and, we submit, would involve a clear violation of both Article 10 of the ECHR and Article 3 of Protocol 1 thereto.

⁹⁴ HADEP won 65% of the vote in the Kurdish cities of Diyarbakir and Van at the last election.

National Assembly in November 1991 in Kurdish.⁹⁵ The measures taken against political parties for, *inter alia*, demanding Kurdish language rights and using the Kurdish language in the context of political discourse, clearly constitute interference with the exercise of the rights to freedom of expression and of association. The European Court of Human Rights' 11 June 2002 judgment handed down in the case of the DEP MPs found Turkey in violation of Article 3 of Protocol 1 of the ECHR.⁹⁶ The Court confirmed that this provision guarantees the right of all individuals to stand for election and, once elected, to exercise their mandate. The Court also held that there had been an infringement of "the unfettered discretion of the electorate which had elected the [DEP MP] applicants."⁹⁷

The delegation was concerned to know how non-Turkish speakers among the Kurdish community, particularly women and the elderly and those in the rural areas of the Southeast, are able to participate effectively in political life in such conditions. For instance, how can people participate in party activities if they are unable to understand or express themselves well in the language (Turkish) that they are forced to use? This seemed particularly unjust in the Southeast, where many of the party officials and members would themselves speak Kurdish and would therefore be able to communicate in the language. There is some evidence that the language issue also has an impact on elections. HADEP believes it loses votes because of the inability of non-Turkish speakers to read ballot papers. To the extent that the restrictions on the use of the Kurdish language in political discourse and activities undermine the ability of non-Turkish speakers to participate effectively in political life, this situation constitutes an infringement of their right to take part in the conduct of public affairs, to vote and be elected, protected under Article 25 of the International Covenant on Civil and Political Rights, of which Turkey is a signatory, and Article 21 of the Universal Declaration of Human Rights.⁹⁸ As mentioned above, there might also be violations of the right to free elections and the prohibition on discrimination.

The delegation found that, yet again, in the field of political life Turkey viewed any reference to or use of the Kurdish language as a threat to the integrity of the State. Article 78 of the Political Parties Law provides that "*Political parties may not adopt the aim of endangering the existence of the Turkish State and Republic, destroying fundamental rights and freedoms, creating distinctions on the basis of language, race, colour, religion and religious sect or establishing a state based on these concepts and views, and may not carry out activities directed towards these aims, and may not encourage others to do so.*" Nor can political parties be founded that are based on a particular region, community, group or religion (Article 78(b)), and even merely to "*claim that there are minorities based on national or religious cultures or religious sects or race or difference in language on the territory of the Turkish Republic*" is forbidden (article 81(a)). Parties may not aim to protect and develop languages and cultures other

⁹⁵ Summary of the files of indictment prepared by the Chief Prosecutor of the Ankara State Security Court in the case of Remzi Kartal and seven other DEP MPs, on file at KHRP.

⁹⁶ Application numbers 25144/94, 26149/95 – 26154/95, 27100/95 and 27101/95, *Sadak and Others v. Turkey*, judgment of 11 June 2002.

⁹⁷ European Court of Human Rights Press Release, "Chamber Judgment in the Case of *Sadak and Others v. Turkey*," 11 June 2002.

⁹⁸ *Lingens v. Austria*, A 103 para 42 (1986), *Barthold v. FRG*, A 90 paras 42, 58 (1985).

than the Turkish language and culture, “*thereby creating minorities and leading to the destruction of the integrity of the people of the Turkish Republic*” (Article 81(b)). Furthermore, they may not aim to change the secular nature of the State or “*defame or speak ill of the person, activities or memory of Atatürk*” (Articles 85-88).

Recommendations: We recommend that the Government of Turkey take the following steps with regard to the use of Kurdish in political discourse and activities:

1. Amend Articles 43, 78 and 81 of the Political Parties Law, Law No. 2820 of 1983, and Article 58 of Law No. 298 of 1961, the Law on General Provisions regarding Elections and Electoral Registration, in order to remove the prohibition on use of languages other than Turkish in political life including party rules and regulations, programmes, campaigning materials and public meetings.

Personal and Place Names

The use of Kurdish for both personal and place names is severely restricted in Turkey. With regard to personal names, historically under the Surname Regulations No. 2/1759 of 1934, parents were unable to register their children if they were given distinctively Kurdish names. This provision has been superseded by the Registration Law, Article 16, paragraph 4, which provides that names that “do not conform to our national culture, our rules of morality and our usage and customs” or “names that offend public opinion” may not be given. Until the 1990s, Turkish authorities used this provision as justification for the refusal to register children who were given distinctively Kurdish names; however, this restrictive interpretation has been successfully challenged on a number of occasions in the courts, including in Turkey’s highest court, and so it now appears possible to register children who have been given distinctively Kurdish names. The delegation understands that in March 1992, a Turkish appeals court ruled that a Kurdish couple could not be prosecuted under Article 16(4) for giving their child a Kurdish name, and that the Government confirmed in 1993 that parents were now free to give their children Kurdish names. In these cases, the courts seem to accept that Kurdish names are “foreign,” but also reject the notion that such names do not conform to the national culture, usage or customs simply for that reason. In one case before the Court of Cassation in 2000, for example, the court noted that paragraph 4 of Article 16 was not there to cleanse all words of foreign origin, and recognised that Eastern and South Anatolia “is a part of the motherland where people of various ethnic origins live, not of just one ethnic origin,” and that “[t]here is also no doubt that such an entrenched situation constitutes part of our national culture and customs” and “that in addition to Turkish words as people’s names there are names derived from words in foreign languages like Arabic and Persian that have taken root in our national culture and traditions.”⁹⁹ The delegation heard much testimony, however, to the effect that in spite of such legal victories, many local registrars still refuse to accede to requests to register children having Kurdish names, forcing parents so affected to seek legal remedies; this testimony

⁹⁹ Court of Cassation, General Judicial Council, E: 2000/18-127, K: 2000/154, T: 1.3.2000.

is, we understand, consistent with cases documented by Helsinki Watch, and therefore with their conclusion that the implementation of the change in legal and government policy would appear to depend to a very considerable extent on the will of local officials. Since the delegation's return, we have noted reports in the Turkish press which appeared on 4 March 2002 that seven families have been charged with breaking a Turkish law—presumably the provision of the Population Law, cited earlier—which provides that parents cannot give children names that “do not fit our national culture, ethical laws, norms and traditions.” The press reports refer to an indictment filed in December 2001 and just made public which says that the PKK uses names used by these seven families, such as Serhat, Baran, Rojda, and Zelal, as codenames for its members, and demanded that the families rename their children; if the parents refuse, they could be fined. The reports also indicate that the Turkish Government has drawn up a list of banned Kurdish names, and has ordered local officials to curb the use of Kurdish place names. They finally note that, as just mentioned, Kurds often complain that Turkish authorities in the Southeast change Kurdish names for Turkish ones when issuing birth certificates for Kurdish babies.

With regard to place names, there has been a long-standing policy in Turkey of changing Kurdish place names to Turkish ones and effectively prohibiting the use of Kurdish place names. Under Article 2 of Law No. 5442 of 1949, the Law on Provincial Administration, village names that are not Turkish or that give rise to ambiguity had to be changed to Turkish; thus, the names of Kurdish villages have effectively had to be changed to Turkish-sounding names. While the Minister of the Interior announced in 1991 that the restoration of Kurdish names to towns and villages would be allowed, this announcement has not been implemented.

With respect to the restrictions on the use of Kurdish personal names, we submit that this is a violation of a number of Turkey's existing international obligations. In particular, we submit that this is a violation of the right to freedom of expression, in that the choice of how one wishes to be named, which is a significant aspect of one's personal identity, is a fundamental part of one's self-expression. It is also clearly a limitation on one's personal or family life which is not justified by any relevant legal principle. Therefore, these restrictions are inconsistent with the relevant provisions of the Universal Declaration and the ECHR (in particular, Article 8 and Article 10), as well as of Article 39, paragraph 4 of the Treaty of Lausanne, which provides that no restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse. In particular, in *Stjerna v. Finland*,¹⁰⁰ the Court noted that Article 8 of the ECHR did not contain any explicit reference to names, but that since a name constitutes a means of personal identification and a link to a family, an individual's name does concern his or her private and family life. Furthermore, the fact that there may exist a public interest in regulating the use of names is not sufficient to remove the question of a person's name from the scope of private and family life, which has been construed, to a certain degree, the right to establish relations with others.¹⁰¹ In the event, the Court recognised that legal restrictions on the right to change one's name may be justified in the public interest – for

¹⁰⁰ Series A, No. 299-B, App. No. 18131/91, 25 November, 1994, reported at 24 E.H.R.R. 195.

¹⁰¹ *Ibid*, para. 37, at p. 214.

example, in order to ensure the accurate registration of the population or to safeguard the means of personal identification¹⁰² – however, we do not see any reason why the prohibition of the use of a name rendered in one's mother tongue would be justified as being in the public interest. We suggest that these restrictions also violate provisions in the various non-binding obligations cited earlier in this report; for example, Article 11, paragraph 1 of the Framework Convention provides that the Parties to the Convention undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system. The OSCE process has also produced the Lund Recommendations on the Effective Participation of National Minorities in Public Life,¹⁰³ which came out of a meeting of international experts under the auspices of the OSCE's High Commissioner on National Minorities. The Lund Recommendations are intended to clarify the content of minority rights and other standards applicable in the situations in which the High Commissioner is involved.¹⁰⁴ Recommendation 18, dealing with non-territorial arrangements for minorities, specifies: "Individuals and groups have the right to choose to use their names in the minority language and obtain official recognition of their names," and calls for minority institutions under non-territorial arrangements to be able to determine curricula for teaching of their minority languages, cultures or both.

While the prohibitions on the use of Kurdish place names do not appear to violate any of Turkey's current binding obligations, it would violate a number of the non-binding obligations as well as provisions in instruments such as the Framework Convention, which may ultimately become binding on Turkey. Article 11, paragraph 3 of the Framework Convention, for example, provides that in areas traditionally inhabited by substantial numbers of persons belonging to a national minority, State Parties shall endeavour to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is sufficient demand for such indications. Clearly the predominantly Kurdish Southeast of Turkey would be one such area, but given the very sizeable number of Kurds in many urban areas in Turkey, these too are arguably areas to which this paragraph should be applied.

Recommendations: We recommend that the Government of Turkey take the following steps with regard to the use of Kurdish in personal and place names:

1. Article 16, paragraph 4 should be amended to make absolutely clear that parents have a right to give their children non-Turkish names, and in particular that parents shall have the right to give their children Kurdish names. Furthermore, legislation should make clear that people have a right to use and register Kurdish surnames, and should also create a right for those who were not allowed to use and register the Kurdish version of their names to change registers and take whatever other steps may be necessary to allow them to use and register such Kurdish versions.

¹⁰² *Ibid*, para. 39, at p. 214.

¹⁰³ Distributed by the OSCE in doc. HCNM.GAL/4/99 dated 30 June 1999.

¹⁰⁴ *Ibid*, p.3.

to study abroad, particularly those students who wish to study any aspect of the Kurdish language or culture, should be eliminated.

2. Article 31 of the Press Law should be amended, or at very least applied in such a way as to ensure that the cross-border movement of publications and other materials in the Kurdish language is not restricted.

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V. CONCLUSIONS

In spite of amendments to certain legislation in the early 1990s and the more recent constitutional and legislative changes which have been occasioned by the process of accession to the EU, the use of the Kurdish language is still subject to wide ranging and significant restrictions in Turkey, restrictions which, in our view, amount to the almost complete denial of a language. This report was prepared in response to the severe and unjustifiable reaction of various Turkish State authorities to very limited requests by students to be able to study their native tongue as an optional course in Turkish universities. Our mission has found that it is simply impossible for Kurdish speakers to use their native tongue in many aspects of daily life, particularly in respect of public services and participation in public life. Given that significant numbers of Kurdish speakers are not fully competent in Turkish, these barriers are not merely the source of daily humiliation, but also mean that a significant portion of the Turkish population are denied the same level and quality of services which are enjoyed by fellow citizens. Beyond this, the complete exclusion of Kurdish from the education system and the almost complete exclusion of Kurdish from the media pose very significant challenges to the long-term maintenance of the Kurdish language in Turkey, and this represents a very significant risk to the cultural richness and distinctiveness of the Turkish State.

We are of the view that this state of affairs constitutes a violation of a wide range of international commitments made by Turkey, and a violation of a very wide range of international human rights and minorities standards. The denial of the Kurdish language does not promote, but in fact compromises, the equality of all Turkish citizens. The denial of the Kurdish language does not promote, but endangers national unity. The implementation of the recommendations set out in this report is, in our view, both necessary, given Turkey's existing and potential international commitments, but is highly desirable as part of a process of promoting peace, understanding and harmony within Turkey. Before we can live peacefully with our fellow citizens, we must understand and respect them for who they are. We must allow them the space to express their identity, through their own language and culture as well as through an official language, in all aspects of their daily lives. Ultimately, the question for Turkey is one of basic human dignity.

VI. SUMMARY OF RECOMMENDATIONS

1. Turkey should make further amendments to the Constitution, including:
 - 1.1. Article 3 to make clear that other official languages can exist in Turkey and not only Turkish.
 - 1.2. Article 42 to remove the prohibition on education in languages other than Turkish, and to remove reference to provisions of international treaties being reserved.
2. Turkey should make amendments to legislation, including:
 - 2.1. Article 2 of Law 2923, the Law on Foreign Language Education and Training, Law 2923, should be amended to eliminate the prohibition in paragraph (a) thereof on Turkish citizens being taught their mother tongue in any language other than Turkish, and the prohibition in paragraph (b) thereof on subjects being taught in a foreign language and on research tasks and homework being in any language other than Turkish. This law should also be amended, or other legislation relative to language be passed, to ensure that Kurds have the right to receive education in and education through the medium of Kurdish at every level in the Turkish public educational system, but that they also have the right to establish their own schools, colleges and universities, and other institutions of learning where they so desire.
 - 2.2. Article 3 of the Constitution, to the extent that this Article does prohibit the use of any language other than Turkish by organs of the Turkish State, should be amended to eliminate such a prohibition. In particular, Article 3 could make clear that Turkish is the official language of the Turkish State, but other languages may also be used, perhaps subject to legislative provision. In keeping with Turkey's existing and anticipated international obligations, however, we suggest that the Constitution be amended, and legislation be introduced, to ensure that Kurdish speakers are entitled to receive public services of equal quality to those received by other Turkish citizens through the medium of Kurdish, and to ensure that Kurdish speakers are able to interact with governments at all levels, as well as all other public bodies, through the medium of Kurdish language, where they so desire.
 - 2.3. Article 174 of the Constitution to allow for the amendment of Law No. 1353, and then Articles 2, 4 and 5 of Law No. 1353 should be amended to eliminate the requirement that only Turkish letters be used, or if it is thought necessary that such requirement be maintained, to allow for the use of non-Turkish letters and characters as well, where users so choose and desire.
 - 2.4. Article 4, paragraph (f) of Law 3984 of 1994, the Law on the Establishment of Radio and Television Stations and Broadcasting (the RTUK Law), should be amended to remove any prohibition on broadcasting in Kurdish. The RTUK Law should further be amended to ensure that licensing procedures are such that broadcasters wishing to broadcast in Kurdish have full and equal opportunities to obtain such licenses and that, in general, there is a wide range of Kurdish

- language radio and television programming available throughout the country.
- 2.5. Legislation designed to encourage and promote the Turkish language and culture, such as the Law on the Establishment of the Atatürk Culture, Language and History Society, No. 2876 of 1983, and the Decree Law on the Organisation and Duties of the Ministry of Culture, Decree Law no. KHK/354 of 1989, should be amended in order to provide for the promotion and encouragement of minority languages in Turkey in addition to Turkish, and in particular, the promotion and encouragement of Kurdish.
 - 2.6. Articles 1 and 3 of the Law on Works of Cinema, Video and Music should be amended to ensure that these provisions cannot be used to restrict the right to use the Kurdish language or express any aspect of the Kurdish culture in any area of creative expression.
 - 2.7. Article 52 of Article 252 of the Turkish Code of Criminal Procedure should be amended to broaden the entitlement to a translator so that it is consistent with the relevant provisions of the ECHR. Furthermore, legislation should be created which allows for the use of Kurdish in the Civil Courts and in other judicial and quasi-judicial settlements, again in line with Turkey's existing and anticipated international obligations. Finally, Turkish authorities should develop a system for providing interpretation services, free of charge, to Kurdish speakers (and speakers of other minority languages indigenous to Turkey) who wish to make use of such services; this would involve a system for training and even accrediting interpreters for these purposes.
 - 2.8. Articles 5 and 6 of Law No. 2908 should be amended to remove all prohibitions and restrictions, direct or indirect, on the establishment of associations for the preservation and promotion of Kurdish culture, language and identity, and all prohibitions and restrictions on the use of the Kurdish language in any aspect of the operations of all associations.
 - 2.9. Articles 1 and 3 of Law No. 805 should be amended to remove all prohibitions and restrictions, direct or indirect, on the use of languages other than Turkish, and in particular, on the use of Kurdish by economic enterprises and corporations, foreign and domestic.
 - 2.10. Article 17 of Law No. 2911 should be amended to further reduce the ability of public officials, and in particular Governors and Deputy Governors, to effectively limit public meetings which are being held through the medium of the Kurdish language and public meetings with respect to Kurdish language, culture and all other aspects of Kurdish identity.
 - 2.11. Articles 43, 78 and 81 of the Political Parties Law, Law No. 2820 of 1983, and article 58 of the Law on General Provisions regarding Elections and Electoral Registration, Law No. 298 of 1961, should be amended in order to remove the prohibition on use of languages other than Turkish in political life including party rules and regulations, programmes, campaigning materials and public meetings.
 - 2.12. Article 16, paragraph 4 should be amended to make absolutely clear that parents have a right to give their children non-Turkish names, and in particular that parents shall have the right to give their children Kurdish names. Furthermore, legislation should make clear that people have a right to use and register Kurdish surnames, and should also create a right for those who were not allowed to use

and register the Kurdish version of their names to change registers and take whatever other steps may be necessary to allow them to use and register such Kurdish versions.

- 2.13. Article 2 of Law No. 5442 should be eliminated, and legislation should make clear that public authorities have the right to use Kurdish place names, street names and other public designations, and to erect signage in the Kurdish language indicating such Kurdish names. Legislation should require public authorities to use Kurdish signage in areas where Kurdish has historically been used or where there are significant numbers of Kurdish speakers.
- 2.14. Article 31 of the Press Law should be amended so as to ensure that the cross-border movement of publications and other materials in the Kurdish language is not restricted.
3. Change in policy as regards implementation of the law in all areas relating to the status of the Kurdish language, particularly the association of any assertion or use of the Kurdish language with the intent to bring about the division of the state. Such changes should include:
 - 3.1. Instructions should be issued to Prosecutors not to prosecute for use of the Kurdish language, the playing of Kurdish music, or the expression of any other form of Kurdish culture.
 - 3.2. Instructions should be issued to Prosecutors not to prosecute for expressions of support for Kurdish language rights.
 - 3.3. Instructions should be issued to those responsible for registration of names on birth to accept Kurdish names.
 - 3.4. Instructions should be issued to Ministry of Education officials to ensure that Kurdish students who wish to study abroad can do so without interference, particularly those students who wish to study any aspect of the Kurdish language or culture.
4. Turkey should lift the state of emergency in the remaining four regions, thus removing powers of the regional State of Emergency Governors restricting the publication, importing and distribution of publications, music cassettes and other materials.
5. Turkey should take immediate steps to become party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Turkey should also take immediate steps to become party to the Framework Convention and the European Charter, and should designate Kurdish as a regional or minority language to be covered by Part III of the charter.

Appendix 1

Petitions (Turkish original and English translation)

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DİCLE ÜNİVERSİTESİ REKTÖRLÜĞÜNE

Bilindiği üzere 4709 Sayılı Yasanın yayınlanıp yürürlüğe girmesiyle birlikte, Anayasa'nın Temel Hak ve Özgürlükleri düzenleyen bir çok maddesinde değişiklikler yapılmış, hak ve özgürlükleri sınırlayıcı hükümler daraltılmış, sınırlamaları sınırlayan ölçütler ise genişletilmiştir. Anayasa da yapılan değişikliklerden bir tanesi de, Anayasa'nın 28. maddesinde düzenlenmiş olan "Kanunla yasaklanmış dil..." kavramının Anayasa'dan çıkarılarak tamamen terkedilmiş olmasıdır. Böylelikle Anayasa Koyucu Meclis Türkçe dışındaki dillerin, özellikle Türkçe dışındaki en büyük ve yaygın dil olan Kürtçe'nin kullanım alanlarının genişlemesine olanak yaratmıştır. Bu gelişme, 1987 yılında Kürtçe yasağının kaldırılmasından sonra bu doğrultuda atılmış önemli bir adımdır. Bu son değişiklik Anayasa'nın Eğitim ve Öğretim Hakkını düzenleyen 42. Maddesiyle birlikte düşünüldüğünde, herkesin eğitim ve öğretim hakkını, bildiği en iyi dil olan anadilinde görmesi hakkının anayasal bir hak olarak belirdiği görülmektedir.

Yapılan bilimsel araştırmalar ışığında görülmektedir ki, kişi anadilinden farklı bir dilde düşünmeye, eğitime ve yaşamaya zorlandığı takdirde eğitim ve öğrenimde geri kalma, uyum problemleri, kaybetme ve başarısızlık duygusu, ilişki kuramama ve yabancılaşma gibi bir dizi sorunla karşılaşmaktadır. Bir halkın dilinin, kültürünün, tarihinin yok sayılması, bu alanlardaki gelişiminin engellenmesi, sadece o halkın yok olması sonucunu doğurmakla kalmaz, toplumun bütününde sağlıklı bir gelişmeye, ayrılıkçılığa, düşünsel ve ruhsal parçalanmaya, şiddete neden olur. Toplumsal barış ve ortak çıkarlar için birlikte hareket etme olanağını ortadan kaldırır. Anadil, kişinin kendi varoluşunu tamamlayabilmesi ve toplumsal ilişkiler ağı içerisinde kendi kimliği ile yerini alabilmesi, üretken, düşünen, kendini ve toplumu geliştiren bir birey olması için kullanabileceği yegane önsel araçtır.

Gerek uluslararası antlaşmalar, gerekse de diğer ülkelerde yaşanan benzer deneyimler incelendiğinde, uygar dünyada anadilde eğitim hakkı ile kendi kültürünü yaşama ve geliştirme, anadilini yaşamın her alanında kullanabilme olanaklarının tanındığı ve bir çok ülkede bu tür girişimlerin devlet tarafından desteklendiği, hatta bütçeden kaynak aktarıldığı görülmektedir.

Ne yazık ki, Türkiye'de, başta Kürt halkı olmak üzere bütün halklar yıllardır yok sayılmış, bu halkların dillerini, kültürlerini geliştirmeleri ülkenin bölünmesi kaygısıyla engellenmiştir. Bir çok ülkede yaşanan deneyimler göstermektedir ki, ülkede yaşayan diğer halkların dillerini, kültürlerini geliştirmesi ülkeyi bölüp parçalamaz, tam tersine toplumsal barışı ve uyumu geliştirir, ülkenin zenginleşmesini ve güçlenmesini sağlar. Halktan gelen çağdaş demokratik bir ülkede yaşama isteğini görmesi gereken Türkiye Cumhuriyeti Devleti, tek ulusçu yapıya dayanan toplumsal düzenden artık vazgeçmelidir. Birden fazla halkın bir arada yaşadığı Türkiye coğrafyasının gerçeğine uygun olarak, Anayasal vatandaşlığa dayalı çok uluslu, çok kültürlü, katılımcı bir toplumsal sistem yaratmalıdır. Bunları yaratmak, Demokratik toplum düzeninin olmazsa olmaz gereğidir ve tüm idari kurum ve kuruluşların öncelikli görevleri arasındadır.

Yukarıdaki anayasal gereklilikler ve bilimsel görüşler ışığında;

Ben, Diyarbakır Dicle Üniversitesi'nde öğrenim gören bir öğrenci olarak Türkiye'nin Demokratikleşmesinin önünü açacağına inandığım bir adım atıyor ve Üniversitemiz Rektörlüğünden, Kürtçe dersinin seçmeli dersler kapsamında, Üniversitemiz bünyesinde okutulmasını talep ediyorum.

.....
.....
Gereğinin yapılmasını saygılarımla arz ederim.

Adı-Soyadı.:

Bölümü.....:

Numarası...:

İmza.....:

To the Rector's Office of Dicle University

With the coming into force of Law no. 4709 amendments have been made to many articles that prescribe fundamental rights and freedoms in the Constitution, provisions that limit rights and freedoms have been cut back and measures that limit restrictions have been broadened. One of the amendments made to the Constitution is the removal of the concept of "language prohibited by law" in article 28. In this way the Parliament that orders the Constitution created the possibility for the development of fields of use of languages apart from Turkish, in particular Kurdish, the most widely-used language after Turkish. This is the most significant development in this respect since the lifting of the ban on Kurdish in 1987. When this last amendment is considered along with article 42 of the Constitution, which orders the right to education, it is apparent that the right to have education in the language known best, one's mother tongue, has become a constitutional right.

It has been observed in the light of academic research that in the event of a person being forced to think, be educated and live in a language other than their mother tongue a whole raft of problems such as backwardness in education, problems in harmonisation, feelings of failure, inability to forge relationships and alienation result. The denial of the existence of a people's language, history and culture and prevention of development in these fields does not only result in the loss of that people but also causes unhealthy developments in society as a whole, separatism, emotional disintegration and violence. It removes the possibility of joint action for social peace and shared interests. The mother tongue is the one and only means for an individual to complete their own existence and take their place in the network of social relations with their own identity as a person who is productive, thinking, developing themselves and society.

When both international agreements and experiences in other countries are examined it will be seen that in the civilised world the right of mother tongue education and living and developing your own culture, the possibility of using the mother tongue in all fields of life is recognised, and encouraged by the state in many countries, even with resources provided from the budget.

Unfortunately, in Turkey all peoples, first and foremost the Kurdish people, have been deemed to not exist and the development of their languages and cultures prevented due to the concern that the country will be divided. Developments in many countries demonstrate that the development of their languages and cultures by other peoples in countries does not divide and partition countries, on the contrary it brings social peace and harmony and ensures the enrichment and strengthening of the country. The State of the Republic of Turkey needs to see the wish emanating from the people to live in a contemporary democratic country and abandon its social order based on a single nation structure. A multi-national, multi-cultural, participatory social system based on constitutional citizenship should be created, in line with the geographic reality of Turkey where more than one people

live. To create this is a precondition of a democratic society and is a priority task for all administrative bodies and establishments.

In the light of the above constitutional necessities and academic views:

I, as a student studying at Dicle University in Diyarbakır, am taking a step that I believe will open the way for the democratisation of Turkey and request from the Rector's office of our university that Kurdish classes be provided within the scope of optional classes.

I respectfully request that the necessary steps are taken.

Name-Surname:

Department:

Number:

Signature:

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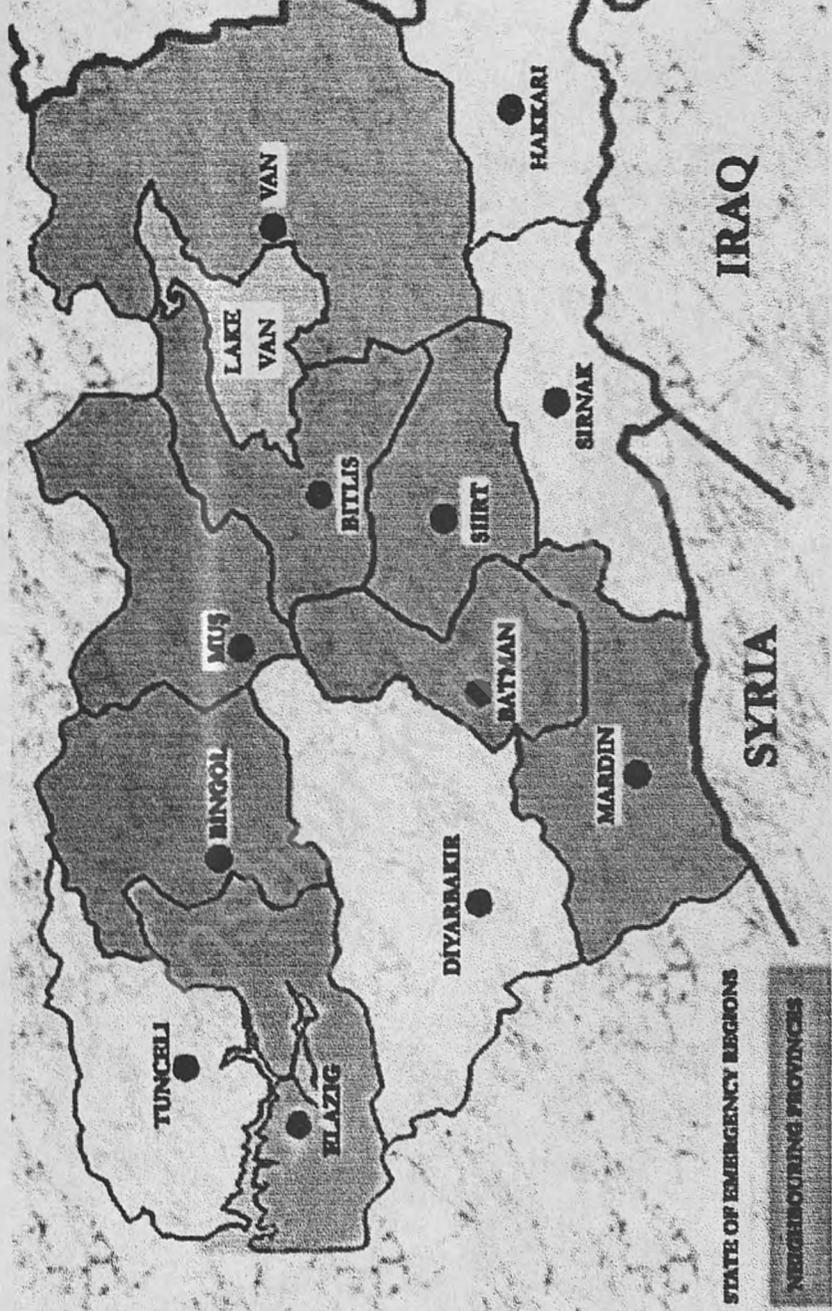
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Appendix 2

Map of the state of emergency regions in Turkey

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State of Emergency Regions in Southeast Turkey as of June 2002
From the T.C. Olganustu Hal Bolge Valiligi (Turkish Republic, The Governorship of the Regional State of Emergency) website - www.ohal.gov.tr

All of the areas in dark grey have previously been under State of Emergency rule (Note: security matters in Mus had formerly been controlled by the Regional Governor for State of Emergency Rule).



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The Kurdish Human Rights Project

The Kurdish Human Rights Project (KHRP) is an independent, non-political, non-governmental human rights organisation founded and based in London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living within the Kurdish regions, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people.

AIMS

- To promote awareness of the situation of the Kurds in Iran, Iraq, Syria, Turkey and the countries of the former Soviet Union
- To bring an end to the violation of the rights of the Kurds in these countries
- To promote the protection of human rights of Kurdish people everywhere

METHODS

- Monitoring legislation including emergency legislation and its application
- Conducting investigations and producing reports on the human rights situation of Kurds in Iran, Iraq, Syria, Turkey, and in the countries of the former Soviet Union by, amongst other methods, sending trial observers and engaging in fact-finding missions
- Using such reports to promote awareness of the plight of the Kurds on the part of committees established under human rights treaties to monitor compliance of states
- Using such reports to promote awareness of the plight of the Kurds on the part of the European Parliament, the Parliamentary Assembly of the Council of Europe, the national parliamentary bodies and inter-governmental organisations including the United Nations
- Liaison with other independent human rights organisations working in the same field and co-operating with lawyers, journalists and others concerned with human rights
- Assisting individuals with their applications before the European Court of Human Rights
- Offering assistance to indigenous human rights groups and lawyers in the form of advice and training seminars on international human rights mechanisms



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