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**ECRI CONCLUSIONS
ON THE IMPLEMENTATION OF THE RECOMMENDATIONS
IN RESPECT OF TURKEY
SUBJECT TO INTERIM FOLLOW-UP**

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¹ Except where specifically indicated, any developments which occurred after 7 September 2018, the date on which the response of the Turkish authorities to ECRI's request for information on measures taken to implement the recommendations chosen for interim follow-up was received, have not been taken into account in this analysis.

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FOREWORD

As part of its fifth round of monitoring work, ECRI has renewed its process of interim follow-up with respect to two specific recommendations made in each of its country reports.

In line with the Information Document on ECRI's fifth monitoring cycle brought to the attention of the Ministers' Deputies on 14 November 2012¹, not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

¹ CM/Del/Dec(2012)1154/4.2.

1. *In its report on Turkey (fifth monitoring cycle) published on 4 October 2016, ECRI strongly recommended that the Turkish authorities ensure that the provisions on the independence and mandate of the new Human Rights and Equality Authority comply with ECRI's General Policy Recommendations Nos. 2 and 7. This institution should not be a government department and its members should not be appointed by the executive. It should also be given clear authority to hear witnesses in the course of its investigations and the right to initiate and participate in court proceedings. Moreover, the authorities should bring their anti-discrimination legislation fully into line with ECRI's General Policy Recommendation No. 7; in particular they should include the grounds of citizenship, sexual orientation and gender identity in the list of grounds of prohibited discrimination and insert rules on the compensation of victims and the burden of proof in court cases.*

With regard to the first part of the recommendation concerning the independence of the Human Rights and Equality Authority (HREA), the authorities informed ECRI that this body was restructured after the Constitutional Referendum of 16 April 2017, which changed Turkey's political regime to a "Turkish-style" presidential regime.¹ As from the entry into force of Decree Law No. 703 on 9 July 2018, which brought about this restructuration, the President selects all 11 members of the HREA's decision-making body (Article 149 of Decree Law No. 703) and the HREA is affiliated to the Ministry of Justice.² The HREA itself points out that it has legal personality and administrative and financial autonomy. According to civil society, the aforementioned restructuring has further weakened the HREA's independence, as now all 11 members of the decision-making board are nominated by the President, who was also given the power to nominate the Chair and the Vice-Chair of the board. Civil society also points out that there is no longer any provision requiring relevant professional experience to become a board member and that the board has developed only a very limited activity since the beginning of 2017. ECRI recalls that equality bodies should have both *de jure* and *de facto* independence and that the executive should not have a decisive influence in any stage of the process for the selection of the persons holding leadership positions in the equality body (§§ 2 and 22 *et seq.* of ECRI's General Policy Recommendation (GPR) No. 2 on Equality Bodies).³ ECRI therefore concludes that this part of the recommendation has not been implemented.

With regard to the second part of the recommendation – to give the HREA clear authority to hear witnesses in the course of its investigations and the right to initiate and participate in court proceedings – ECRI welcomes the information provided by the authorities that the implementation regulation to the Law on the HREA of 24 November 2017 sets forth that the board can hear witnesses and carry out on site visits in the course of its investigations and inquiries (Articles 56 and 59 of the aforementioned implementation regulation). It can also file criminal complaints and inform, upon request, judicial bodies, public bodies and relevant persons of its views and considerations. The HREA points out that it can guide persons with regard to administrative and judicial remedies in case of violation of their right to non-discrimination. ECRI regrets that there is no information that the HREA would also have the right to initiate court proceedings as recommended in § 14 c and d of its GPR No. 2. Overall, ECRI considers that this part of the recommendation has been partly implemented.

¹ Council of Europe, Venice Commission (2017), Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017, CDL-AD(2017)005: § 43.

² The term of "affiliation" describes the loosest link of a public authority to the central government under the new presidential system, while the two other types of links are "associated" and "related" institutions.

³ This revised version of this GPR, which contains more detailed recommendations for the establishment and functioning of equality bodies, was adopted on 7 December 2017.

Regarding the last part of the recommendation to bring the Turkish anti-discrimination legislation fully into line with ECRI's General Policy Recommendation No. 7, the authorities informed ECRI that Article 3.2 of Law No. 6701 contains an exhaustive list of discrimination grounds, which is subject to interpretation by the judiciary. ECRI however regrets that this list of grounds does still not contain the discrimination grounds of citizenship, sexual orientation and gender identity, which should be explicitly mentioned in the law. Regarding the recommendation to insert rules on the burden of proof in court cases, the authorities refer to Article 21 of Law No. 6701, but do not deal with the aspect raised in § 17 of ECRI's fifth report on Turkey, that this provision seem to be restricted to applications before the HREA and not to apply to court proceedings. Regarding the recommendation to insert into the anti-discrimination law rules on compensation⁴, the authorities state that the board of the HREA can impose fines. However, fines are paid to the State Treasury and do not compensate the victim for the material and moral damage suffered. The HREA itself mentions the possibility to agree in the framework of a conciliation procedure on the payment of compensation to the victim (Article 18.3 of Law No. 6701) but no rules that would allow awarding compensation to victims of discrimination in proceedings before the HREA or the judiciary. Given the above, ECRI regrets to note that it cannot identify progress with regard to this part of the recommendation.

Overall, ECRI concludes that this recommendation has been partly implemented.

2. *In its report on Turkey (fifth monitoring cycle), ECRI repeated and insisted on its recommendation to entrust a body that is fully independent of the police, other security forces and the prosecution services with the investigation of alleged cases of misconduct by members of the police or other security forces, including ill-treatment directed against members of vulnerable groups. To implement this recommendation, the Ombudsperson should be given a clear mandate to deal with this issue.*

In its observations about the implementation of this recommendation, the Turkish authorities recall that the Law on the Establishment of the Law Enforcement Monitoring Commission entered into force on 20 May 2016. As ECRI already stated in its previous conclusions and its fifth report on Turkey, the Law Enforcement Oversight Commission cannot be considered independent in the sense of § 10 of ECRI's GPR No. 11, as it acts as a permanent board within the Ministry of Interior; is headed by the Under Secretary of the Ministry of Interior and is composed of senior ministry officials and members chosen by the government among candidates proposed by the Ministries of Interior and Justice. ECRI therefore concludes that this recommendation has not been implemented through the establishment of the Law Enforcement Monitoring Commission.

Regarding the second part of the recommendation, that the Ombudsperson could fulfill the role of a fully independent body to investigate complaints about police misconduct, the authorities underline that the Ombudsperson investigates, according to Article 74 of the Constitution and Articles 1 and 5 of the Law No. 6328 on the Ombudsperson Institution of 14 June 2012, complaints about the functioning of the administration. According to the authorities, those rules provide the Ombudsperson with the authority to investigate all complaints about the administration, including law enforcement. The Ombudsperson Institution confirmed that it has a mandate to investigate cases of misconduct by the police and other security forces. In 2017, it received three such complaints and until August 2018 another eight. In one case a recommendation was addressed to the relevant administration, while in the other cases no decision was taken on the substance, in most cases for not having exhausted other remedies (Article 17.4 of Law No. 6328). ECRI takes positive note of these clear statements that confirm that the Ombudsperson has de jure a mandate to investigate cases of misconduct by members of the police and other security forces.

⁴ See in this respect § 12 of ECRI's GPR No. 7.

At the same time, ECRI regrets to note that serious concerns persist regarding the Ombudsperson Institution's independence. The European Commission recently pointed out that the Ombudsperson Institution has neither operational, nor structural nor financial independence and that its members are not appointed in compliance with the UN Paris Principles.⁵ The Ombudsperson Institution itself emphasised that amendments to the legal framework are needed to provide it with the authority to conduct investigations *ex officio*. The fact that the Ombudsperson did not or was not able to address some of the most burning human rights issues⁶; the low number of complaints against law enforcement officers and the fact that in only one of these cases a decision with a recommendation was issued, point to an additional problem of *de facto* independence.

Given the above, ECRI concludes that this recommendation has been partly implemented.

⁵ EU EC 2018, Turkey 2018 Report, SWD(2018) 153 final: 31.

⁶ EU EC 2018, Turkey 2018 Report, SWD(2018) 153 final: 15.

