



UNIVERSAL PERIODIC REVIEW

FOURTH CYCLE - TURKEY

Human Rights Agenda Association Submission, İzmir, Turkey

International Conventions

Republic of Turkey is a state party to many of the human rights law and humanitarian law related conventions and protocols at universal and regional level. Turkey is a state party to 70 of 94 detected human rights conventions and protocols; has put several reservations to 17 of these; signed 9 of them which she is not a party, but has not yet ratified¹.

The Rome Statute establishing an International Criminal Court (ICC), is one of the conventions which Turkey has not acceded yet. Article 38 of the Constitution after the 2004 constitutional amendments which gives reference to ICC in the language, places Turkey as a unique state in the world in this regard. Turkey must accede to Rome Statute and in order to enhance the power of the court, Turkey must sign and ratify the Elements of Crimes, Rules of Procedure and Evidence, and Privileges and Immunities documents of the court. In this respect, the article on crimes against humanity in the Turkish Penal Code should be revised and the domestic law should be enacted on war crimes and aggression. The ratification of Protocols I, II and III to the 1949 Geneva Conventions on war crimes is an obligation.

It also attracts attention that Turkey puts reservations and declarations to conventions and protocols which she is a state party. The Human Rights Agenda Association (HRAA) invites the Republic of Turkey, which has the responsibility of being a civilized state, to become party to all human rights conventions and protocols and requests the removal of all reservations and declarations that put in which would be contrary to the object and purpose of the conventions and protocols.

Starting from International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the declaration which was put in to some of human rights

¹ University of Minnesota Human Rights Library <http://www1.umn.edu/humanrts/research/ratification-turkey.html> ; International Treaties Adherence, Rule of Law in Armed Conflicts Project http://www.adh-geneve.ch/RULAC/applicable_international_law.php?id_state=226 ; UN Treaty Collection, Multilateral Treaties Deposited with the Secretary General, UNODA Disarmament Treaties Database <http://disarmament.un.org/treaties/> ; ILO NORMLEX, Ratifications for Turkey, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102893 ; United Nations Treaty Collection <https://treaties.un.org/pages/ParticipationStatus.aspx> ; CoE Treaty Office, Complete list of the CoE treaties, <https://www.coe.int/en/web/conventions/full-list> (10.06.2024).

conventions and protocols which Turkey is a party, is a reservation in nature and should be removed².

The reservation³ which was put in to some human rights conventions and protocols which Turkey is a party, particularly including the International Covenant on Civil and Political Rights (ICCPR), should be abolished in line with the general comment No. 23 of the UN Human Rights Committee⁴.

Turkey, which is a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) has put a reservation to the convention regarding the paragraphs 3 and 4 of Article 13 will be implemented according to the provisions in the Article 3, 14 and 42 of of the Constitution. The above-mentioned paragraphs of the Convention relate to the freedom of parents to give their children religious and moral beliefs in accordance with their own beliefs and to the freedom to establish educational institutions. This reservation, which constitutes an obstacle on religious freedoms, should be lifted. In addition, an additional protocol on individual application should be signed and ratified (OP-ICESCR).

Under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), a functional, not formal, national preventive mechanism should be introduced. Since the Human Rights Institution of Turkey (TİHK) and its successor Human Rights and Equality Institution of Turkey (TİHEK) are not compatible with the Paris Principles, a new and contemporary structure should be established.

Turkey has made a reservation stating that, it reserves the right to interpret the Convention on the Rights of the Child (CRC)'s Article 17, 29 and 30 in accordance with the provisions and spirit of the Republic of Turkey Constitution and the Lausanne Peace Treaty. These reservations should be removed.

Turkey, which is a state party to the Optional Protocol to CRC on the involvement of children in armed conflict (OP-CRC-AC), has declared that the provisions of the Protocol will only apply against states that are recognized and has established diplomatic relations. In the second declaration, considerations such as minimum age in compulsory military service and the status of students of military high schools were evaluated and declared to be in compliance with the provisions of the Protocol. The last declaration stated that the reservation to Article 29 of the Convention on the Rights of the Child remained in full force and effect. All three declarations should be removed.

2 “The Republic of Turkey declares that it will apply only to the States with which it has diplomatic relations with the provisions of this Agreement.”

3 “The Republic of Turkey, reserves the right to apply Article 27, in accordance with the provisions and procedures related to the Constitution of the Republic of Turkey and the Lausanne Treaty of 24 July 1923 and the Annex.”

4 According to General Comment No. 23, the presence or absence of a minority is not bound to a decision by the State. This asset (or absence) should be determined according to objective criteria. See. General Comment 23 of the Human Rights Committee: Minority Rights (Art. 27), CCPR / C / 21 / Rev. 1 / Add. 5, 04.08.1994.

Turkey which has ratified Optional Protocol to CRC on the sale of children, child prostitution and child pornography (OP-CRC-SC), has declared the provisions of the Protocol can only be applied against a state party that is recognized and has established diplomatic relations. This declaration is a reservation in real and should be removed.

Turkey which is a state party to the Optional Protocol to CRC on a communications procedure (OP-CRC-IC), declares that the declarations and reservations put in related conventions and protocols are also valid for this protocol. These reservations and declarations should be removed.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) was ratified by Turkey. Turkey declared that it is put as a reservation that, foreigners will maintain the validity of the limitations stipulated in the law on the acquisition of real estate in Turkey; 2nd, 3rd and 4th paragraphs of the Article 45 of the Convention will be implemented in accordance with the Constitution and Laws of the Republic of Turkey; Article 46 will apply in accordance with national customs legislation provisions; Protection of the rights of All Migrant Workers, Children and Families Committee's powers of will be recognized at a later time and migrant workers and their family members' rights to form trade unions in the state in which they are employed can not be valid in terms of the laws of Turkey. Turkey's all reservations should be removed.

Convention on the Legal Status of Refugees and the 1967 Protocol Relating to the Status of Refugees (1967 Protocol to the 1951 Refugees Convention) respects Turkey as the only country that retains its geographical reservation. Turkey, which puts this declaration in terms of refugees and asylum seekers coming from the east of the country should remove this declaration, since the said declaration is clearly contrary to the object and purpose of the convention.

Turkey's accession to the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) is required.

The Istanbul Convention, or the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, is an international human rights convention prepared by the Council of Europe and signed by 45 countries and the European Union, which sets the basic standards in preventing and combating violence against women and domestic violence and the obligations of states in this regard. Turkey was the first country to sign the convention on 11 May 2011 and ratify it in its parliament on 24 November 2011, and the instrument of ratification was submitted to the General Secretariat of the Council of Europe on 14 March 2012. On the other hand, as a result of the Presidential Decision No. 3718 published in the Official Gazette dated 20 March 2021, the convention was withdrawn and this decision was communicated to the General Secretariat of the Council of Europe on 1 July 2021. This is a major step backward in the field of human rights and the decision should be reversed.

Turkey should immediately accede or take action to the Council of Europe Protocol 4 to the Convention for the Protection of Human Rights and Fundamental Rights by delivering

the wet signed and ratified document of 1994 to the General Secretariat.

Turkey should ratify the Council of Europe Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Rights on prevention of discrimination.

Regarding the International Labour Organization (ILO) Conventions, Turkey has to ratify the Protocol of 2014 to the Forced Labour Convention (1930) (P029), the Labour Inspection (Agriculture) Convention (1969) (C129), and all other possible technical applicable instruments of ILO. In particular, the situation of all public employees who were unjustly dismissed by statutory decrees in 2016-2018 should be reconsidered in accordance with the right to a fair trial.

On the Special Procedures of the UN Human Rights Council, Turkey should withdraw all its pretexts, excuses and guises and rely on the work of possible visits of Working Groups and Special Rapporteurs, especially the Special Rapporteur on Torture, the Special Rapporteur on toxics and human rights, and activate the work of inactive Special Procedures, especially, the Special Rapporteur on independence of judges, the Special Rapporteur on human rights and counter terrorism, the Special Rapporteur on Human Rights Defenders, the Special Rapporteur on minority issues and the Special Rapporteur on cultural rights.

RECOMMENDATIONS:

- Turkey must urgently accede to the Rome Statute establishing the International Criminal Court; she must be a party by signing and ratifying the Elements of Crimes, Rules of Procedure and Evidence, and Privileges and Immunities Documents attached to the Statute.
- Turkey must approve Protocols I, II and III of the 1949 Geneva Conventions.
- Particularly (ICCPR), reservations put to some human rights conventions and protocols which Turkey is a party, should be abolished in line with the general comment No. 23 of the UN Human Rights Committee.
- Particularly (ICERD), the declaration put in some of human rights conventions and protocols which Turkey is a party, which is a reservation in nature, should be removed; Turkey should compromise with the spirit of international conventions by not putting declarations and reservations to be contrary to the object and purpose of the conventions.
- The reservations made to the International Covenant on Economic, Social and Cultural Rights (ICESCR) should be abolished and the additional protocol on individual application should be acceded (OP-ICESCR).
- In accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), a functional, not formal, national preventive mechanism should be activated in Turkey.
- Turkey should remove all the reservations and declarations put in to Convention on the Rights of the Child (CRC), (OP-CRC-AC), (OP-CRC-SC) and (OP-CRC-IC).
- Turkey should remove all reservations put in to International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).
- Turkey should remove the geographical declaration to 1967 Refugee Protocol (1967 Protocol to the 1951 Refugees Convention).
- Turkey should accede to the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).
- Turkey should reverse the decision withdrawing the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.
- Turkey should immediately accede or take action to the Council of Europe Protocol 4 to the Convention for the Protection of Human Rights and Fundamental Rights by delivering the wet signed and ratified document of 1994 to the General Secretariat.
- Turkey should ratify the Council of Europe Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Rights on prevention of discrimination.
- Turkey has to ratify the Protocol of 2014 to the Forced Labour Convention (1930) (P029), the Labour Inspection (Agriculture) Convention (1969) (C129), and all other possible technical applicable instruments of ILO.
- The situation of all public employees who were unjustly dismissed by statutory decrees in 2016-2018 should be reconsidered in accordance with the right to a fair trial.
- Turkey should withdraw all its pretexts, excuses and guises and rely on the work of possible visits of Working Groups and Special Rapporteurs on the Special Procedures of the UN Human Rights Council.