CHAPTER 19

# The Impact of the United Nations Human Rights Treaties on the Domestic Level in Turkey*

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## 1 Introduction to Human Rights in Turkey

The history of fundamental rights protections in Turkey traces back to developments in the early nineteenth century Ottoman Empire: The 1876 Basic Law was the first document to recognise the rights of citizens.[1] In the Republican era starting in 1923, the 1961 Constitution provided a comprehensive list of fundamental rights. The constitutional protection of rights has continued with the 1982 Constitution. According to the Turkish Constitution, the Turkish Republic is a democratic, secular, welfare, rule of law state based on respect for human rights.[2]

Until 2012, constitutional rights were justiciable before the Turkish Constitutional Court only by way of 'norm review', subject to referral by the President of Turkey, members of parliament or lower domestic courts. Since 2012 there exists a right to individual petition before the Turkish Constitutional Court.[3] This, however, applies only to rights that are protected by both the Constitution and the European Convention on Human Rights and Fundamental Freedoms.[4] Turkey established the office of an Ombudsman capable of receiving, among others, human rights complaints also in 2012, while the Human Rights and Equality Institution (the country's NHRI) was established in 2016.

Military *coups*, states of emergency, and the Kurdish question play important roles in Turkey's contemporary human rights history.[5] Turkey's multi-party

* This chapter uses Turkey as the country name as it covers documents and events before 2022.

1 Ottoman Constitution of 1876.

2 Constitution of the Republic of Turkey 1982, art 2.

3 Constitution of the Republic of Turkey 1982, arts 148, 149 (with the amendment of 12 September 2010 (Law 5982)); Law on the Establishment and Rules of Procedures of the Constitutional Court (No 6216) 2011, arts 45–51.

4 Law on the Establishment and Rules of Procedures of the Constitutional Court (No 6216) 2011, art 45.

5 Zehra F Kabasakal (ed) and Richard Falk, *Human Rights in Turkey* (University of Pennsylvania 2007).

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democratic regime, established in 1946, has been interrupted by a military *coup* in 1960, a military memorandum in 1971, and another military *coup* in 1980. Turkey also experienced an attempted military *coup* in 2016. The effects of military rule, in particular that of the 1980 military regime, have left a long-lasting legacy with approximately 650 000 people detained and 49 people executed, alongside enforced disappearances and deaths from torture in custody.[6] The state of emergency regime in the east and south-east provinces of Turkey aimed at combating the Kurdistan Workers' Party (PKK) lasted from 1987–2002. In this period, an estimated 950 000 to 1 200 000 people were displaced from their homes and 1 352 people were subjected to enforced disappearances.[7] After the attempted *coup* of July 2016, Turkey was under a fully-fledged state of emergency until July 2018. According to data gathered by the Turkey Human Rights Joint Platform, at least 228 137 people were detained during the state of emergency and over 100 000 civil servants were purged, including one quarter of the judiciary.[8]

Turkey is a country with longstanding institutional ties to Europe. It is a member of the Council of Europe, the Organisation for Security and Co-operation in Europe (OSCE) and the North Atlantic Treaty Organisation (NATO). Since Turkey's acceptance of the right to individual petition before the European Court of Human Rights (ECtHR) in 1990, the ECtHR has played a central role in Turkey. Turkey's candidacy to the EU in 1999 also led to significant legal human rights reforms, in particular between 1999 and 2004.[9] In 2004, Turkey abolished the death penalty in all circumstances.[10]

Women and girls face discrimination and domestic violence in Turkey. Turkey ranks as the 130th state in the global gender gap index of UN Women.[11] Poverty and socio-economic deprivation have become highly prevalent in recent years. Although the poverty rate in Turkey declined from 27,3 to 9,9

6 Turkish Human Rights Association, 'No to 12 September Darkness' (12 September 2019) <https://www.ihd.org.tr/12-eylul-karanligina-hayir/> accessed 24 March 2022.

7 Özgür Sevgi Göral, Ayhan Işık and Özlem Kaya, *Unspoken Truth: Enforced Disappearances* (Truth Justice Memory Centre 2013).

8 İnsan Hakları Ortak Platformu, 27 Temmuz 2016–20 March 2018 Olağanüstü Hal Uygulamaları: Güncellenmiş Durum Raporu, 17 April 2018 <https://www.ihd.org.tr/wp-content/uploads/2018/04/Olağanüstü-Hal_17042018.pdf> accessed 24 March 2022.

9 Meltem Müftüler-Bac, 'Turkey's Political Reforms: The Impact of the European Union' (2009) 10(1) South European Society and Politics 16–30.

10 Law on the Amendment of the Constitution of the Republic of Turkey (No 5170) 2004, art 5.

11 UN Women, Global Database on Violence against Women: Turkey <https://evaw-global-database.unwomen.org/en/countries/asia/turkiye> accessed 24 March 2022.

per cent between 2004 and 2016, economic growth significantly slowed down in the second half of 2018.[12] Unemployment climbed between May 2018 and May 2019, from 10,6 to 14 per cent, leaving 4,5 million people unemployed.[13] Likewise, the youth unemployment rate increased sharply to 25,5 per cent from 19,4 per cent in 2019.[14] Inequality has increased over the last decade in Turkey: Although the Gini index, measuring the degree of inequality in the distribution of family income, decreased from 42,2 per cent in 2003 to 39 per cent before the economic crisis in 2008, it rose back to 41,9 per cent in 2016.[15] As of 2017, 13,5 per cent of the population lives below the national poverty line.[16] In addition, over three million Syrians who have arrived in Turkey since 2011 face challenges in accessing human rights protections.[17]

## 2 Relationship of Turkey with the International Human Rights System in General

International human rights law enjoys the status of domestic law under article 90 of the Turkish Constitution. No appeal to the Constitutional Court can be made with regard to these treaties on the grounds that they are unconstitutional.[18] Significantly, article 90 of the Constitution holds that in the case of a conflict between human rights treaties and domestic law the provisions of international treaties shall prevail. In the case of *Sevim Akat Eşki* (2013), the Constitutional Court also formulated a direct effect doctrine of international human rights treaties under the Constitution.[19]

Turkey has a long history of engagement with United Nations (UN) human rights mechanisms. Turkey was considered under the former '1503' procedure focusing on gross and systematic human rights violations, between 1983 and 1986. Since 2001, UN Special Rapporteurs have enjoyed a standing invitation from Turkey. The most recent visits by the UN Special Rapporteurs to

12 Facundo Cuevas, World Bank Group Poverty and Equity Brief: Turkey (2019) <https://databank.worldbank.org/data/download/poverty/33EF03BB-9722-4AE2-ABC7-AA2972D68AFE/Global_POVEQ_TUR.pdf> accessed 24 March 2022.

13 ibid.

14 ibid.

15 ibid.

16 ibid.

17 Burcu Toğral Korca, 'Syrian Refugees in Turkey: From "Guests" to "Enemies"?' (2016) 54 New Perspectives on Turkey 55.

18 Constitution of the Republic of Turkey, art 90.

19 Turkish Constitutional Court, App No 2013/2187 (19 December 2013) para 42.

Turkey were carried out by the Special Rapporteur on Torture and the Special Rapporteur on Freedom of Expression after the attempted *coup* of Summer 2016. The Working Group on Enforced or Involuntary Disappearances also undertook a visit to Turkey in 2016, Turkey also accepted the inquiry into the killing of Jamal Khashoggi, the Saudi Arabian journalist who was murdered in the Saudi Arabian consulate in Istanbul. This inquiry was conducted by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings in 2019.

The Ministry of Foreign Affairs is the governmental contact point for all issues regarding the UN human rights mechanisms. This includes nominations for membership of the UN treaty bodies, preparing state reports and defending the government when there is an individual complaint before UN treaty bodies.

Turkey has a policy of having as wide a representation as possible of Turkish citizens in UN human rights mechanisms.[20] It has also been successful in securing the election of Turkish citizens in UN treaty bodies (UNTBs) and Special Procedures. Yet, the procedures for nominations for UNTB positions are highly opaque at the domestic level, where there is no transparent call for candidates or clear standards for selection.[21] The Ministry of Foreign Affairs enjoys full discretion in these nominations. So far, successful candidates have included academics, former diplomats and bureaucrats.

Turkey generally exhibits a co-operative attitude towards UN human rights mechanisms that visit Turkey. In recent years, however, there has also been strong criticism of the UN human rights machinery. For example, the two reports of the United Nations High Commissioner for Human Rights, one analysing the clashes between the state security forces and the PKK or affiliated groups between July 2015 and 2016 and one on the impact that the declaration of the state of emergency had on human rights between January and December 2017, received strong criticism.[22] In 2018, the Ministry of Foreign Affairs accused the High Commissioner for exhibiting prejudice against

20 Interview with the Ministry of Foreign Affairs, 15 January 2020, Ankara, Turkey. Notes of all interviews (including this one) are on file with the authors.

21 ibid.

22 See Office of the United Nations High Commissioner for Human Rights, Report on the Human Rights Situation in South-East Turkey: July 2015 to December 2016 (2017) <https://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf> accessed 24 March 2022; Office of the United Nations High Commissioner for Human Rights, Report on the Impact of the State of Emergency on Human Rights in Turkey, Including an Update on the South-East January-December 2017 (2018) <https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf> accessed 24 March 2022.

Turkey.[23] This concern regarding Western double standards against Turkey was also raised in interviews conducted with government representatives.[24]

On certain occasions, criticisms by the international human rights system of Turkey's commitment to international human rights law go beyond reactions to specific reports. Gender equality has been one such area. President Erdoğan, for example, has said that men and women are not equal, and he has also criticised feminists for not understanding the importance of motherhood.[25] These views have also been echoed in the activities of the Human Rights and Equality Institution of Turkey. One outcome declaration of a symposium organised by this institution included statements against gender equality and respect for the rights of the lesbian, gay, bisexual and transgender (LGBT) individuals. This declaration called for changing or revoking domestic law and international treaties that are deemed to have a detrimental effect on families. These include the Istanbul Convention and Law No 6284 to Protect Family and Prevent Violence against Women.[26] Turkey withdrew from the Istanbul Convention in March 2021.

## 3 At a Glance: Formal Engagement of Turkey with the UN Human Rights Treaty System

Refer to the chart on the next page.

## 4 Role and Overall Impact of the UN Human Rights Treaties in Turkey

### 4.1 *Role of UN Human Rights Treaties*

#### 4.1.1 Formal Acceptance

Turkey is a state party to eight of the nine core UN human rights treaties, as well as OP2-CCPR, OP-CRC-AC, OP-CRC-SC and OP-CAT. The first treaty that

23 Ministry of Foreign Affairs, No 79, Press Release Regarding the OHCHR Turkey Report published on 20 March 2018 (20 March 2018) <https://www.mfa.gov.tr/no_-79-bm-insan-haklari-yuksek-komiserli%C4%9Finin-ulkemize-iliskin-olarak-20-mart-2018-tarihinde-yayimladigi-belge-hk_en.en.mfa> accessed 24 March 2022.

24 Interview with MP Hakan Çavuşoğlu, Human Rights Commission of the Grand Assembly, 23 October 2019, Ankara, Turkey.

25 Agence France-Presse in Istanbul, 'Recep Tayyip Erdoğan: "Women not Equal to Men"' *The Guardian* (24 November 2014) <https://www.theguardian.com/world/2014/nov/24/turkeys-president-recep-tayyip-erdogan-women-not-equal-men> accessed 24 March 2022.

26 Human Rights and Equality Institution of Turkey, Final Declaration of the Human Rights Symposium on the Right to Protection of the Family (2019) <https://www.tihek.gov.tr/ailenin-korunmasi-hakki-sonuc-bildirisi/> (in Turkish) accessed 24 March 2022.

TURKEY
Treaties
Individual complaints procedure
OP-CRC -SC
OP-CRC -AC
CERD
CCPR
CMW
OP2 -CCPR
OP- CAT
CRPD
CESCR
CAT
CRC
CEDAW
OP- CEDAW
OP1- CCPR
OP- CRPD
OP- CRC-CP
1985
1988
1995
2002
2003
2004
2006
2009
2011
2015
2017

Turkey ratified was CEDAW in 1985, followed by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1988 and the Convention on the Rights of the Child (CRC) in 1995. Turkey ratified the older UN human rights treaties, namely, the International Covenant on Civil and Political Rights (CCPR), the International Covenant on Economic, Social and Cultural Rights (CESCR) in 2003 and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 2002. Turkey ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) in 2003 and the Convention on the Rights of Persons with Disabilities (CRPD) in 2009. The surge in ratifications in the 2000s and the late ratification of the twin Covenants in 2003 correspond with Turkey's Europeanisation process. In this period Turkey undertook major human rights reforms to make its legal framework more compatible with the European Union (EU) *Acquis communautaire* in the context of its EU accession negotiations.[27] In this context Turkey's increased commitment to UN treaties was driven by its membership negotiations with the EU.

Turkey is not a state party to the International Convention for the Protection of All Persons from Enforced Disappearance (CED), and the ICC Statute. Turkey exited from a human rights treaty for the first time in its history in 2021, the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, better known as the Istanbul Convention.[28] Although Turkey has not ratified CED, the campaign for its ratification by domestic NGOs is ongoing: The Human Rights Foundation of Turkey, the Human Rights Association, the Saturday Mothers and the Truth Justice Memory Centre have on several occasions called for the ratification of CED, including through the stakeholder reports they have submitted to the Universal Periodic Review (UPR).[29] Our interlocutors pointed out two possible reasons for the lack of ratification of CED. The first concerns the enforced disappearances in Cyprus which may be attributable to Turkey, and the second concerns the widespread

27 Council of Ministers Decision No 2001/2129 (24 March 2001); Council of Ministers Decision No 2003/5930 (24 July 2003); interview with Prof Dr Bertil Emrah Oder, Koç University, 26 March 2019, Istanbul, Turkey.

28 İlayda Eskitaşçıoğlu, 'Turkey's Withdrawal from the Istanbul Convention: A Sudden Presidential Decision in the Dead of the Night and an Alarming Setback' *Völkerrechtsblog* (27 March 2021) <https://voelkerrechtsblog.org/turkeys-withdrawal-from-the-istanbul-convention/> accessed 24 March 2022.

29 Interview with Adem Arkadaş Thibert, Child Rights International Network, 5 August 2019, Istanbul, Turkey.

enforced disappearances in Turkey in the 1990s.[30] It is argued that the state does not have the political will to be under international scrutiny with respect to their military operations abroad or with respect to accountability for high-level state officials for enforced disappearances that took place in the context of the security operations against the PKK.[31] There furthermore are new dimensions to this problem with current concerns regarding possible enforced disappearances in the post-*coup* period after 15 July 2016. Taken together, the question of enforced disappearances has always been an overly political and sensitive topic for Turkish authorities acting as a barrier against the ratification of CED as well as against fighting impunity through domestic courts.[32]

Turkey's ratifications of the UN human rights treaties came with substantive and procedural reservations. The substantive reservations primarily aim to limit the legal effects of provisions that seek to protect people belonging to minorities. For Turkey, the definition of minorities is limited to non-Muslim minorities with reference to the Lausanne Peace Treaty of 1923, thereby only covering Jewish, Greek and Armenian minorities. Turkey's procedural reservations focus on its non-recognition of Cyprus and limiting access to the International Court of Justice (ICJ) in cases of bilateral disputes arising from UN human rights treaties. In the case of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and in parallel with the amendments to the Turkish Civil Code in 2001 and 2004, reservations concerning article 15(2) and (4), and article 16(1)(c), (d), (f) and (g) were withdrawn on 20 September 1999.[33]

The motivations for ratifying UN human rights treaties and their subsequent impact on political discourse, courts, academia, and civil society are closely interlinked in Turkey. The ratification processes of all treaties emerge as top-down processes. While there has been a campaign for the ratification of CEDAW by the Turkish women's rights movement in the 1980s, the ratification of CEDAW is best explained by the post-1980 *coup* civilian government's decision to signal better integration to the international community.[34] Yet, the

30 Interview with Emel Ataktürk Sevimli, Truth Justice Memory Centre, 25 July 2019, Istanbul, Turkey.

31 ibid; interview with Asst Prof Dr Murat Önok, Koç University, 24 December 2019, Istanbul, Turkey.

32 Interview with Dr Kerem Altıparmak, Ankara Bar Association Human Rights Centre, 6 August 2019, Istanbul, Turkey.

33 Communication by the Secretary-General of the United Nations regarding Turkey's partial withdrawal of reservations to CEDAW, Communication No CN895.1999.TREATIES-7 (5 October 1999).

34 Interview with Prof Dr Ayşe Feride Acar, Middle East Technical University, 22 October 2019, Ankara, Turkey.

early mobilisation of the women's movement around CEDAW has certainly increased its impact and led to the process of the lifting of reservations. The ratification of CAT in 1988 corresponds to a time where practices of torture in custody in Turkey were systemic. The government of the time saw this ratification as a useful tool to deflect criticism about its torture practices and to criticise the torture practices of other states.[35]

Turkey is a selective ratifier of optional protocols and clauses that enable the right to individual petition before the UN treaty bodies. It accepted the right to launch petitions before CAT in 1988, and ratified OP-CEDAW in 2004, OP1-CCPR in 2006, OP-CRPD in 2016 and OP-CRC-CP in 2017 (with reservations). The lack of acceptance of right to individual petition with respect to CERD and CMW may be explained by widespread views holding that racial discrimination is alien to the Turkish context,[36] and that Turkey is a migrant sender country rather than a migrant receiving one.[37] The lack of ratification of OP-CESCR coheres with views concerning the non-justiciability of economic, social and cultural rights under the Turkish Constitution.[38]

#### 4.1.2 Domestic Processes

The top-down dynamics and concerns for its international reputation that drove Turkey's increased commitment to the UN human rights treaties also help to explain the lack of long-standing legislative engagement with UN treaties as a basis for domestic legal reform in the country. Turkey has not carried out broad consultative processes to make its legal frameworks compatible with the UN human rights treaties prior to the ratification of these treaties. In legislative changes following ratification, explicit references to UN treaties are scarce. Yet, in the preceding decades there have also been many legal reforms that indeed have brought domestic legal frameworks more in line with the UN treaties and their interpretations by their committees. However, these legal reforms correspond to the dynamics of Turkey's EU membership negotiations. In addition, there are no clear, public and transparent domestic institutional mechanisms to follow up on COs and views by UNTBs. COs are neither systematically translated nor disseminated by state authorities. There therefore is a very important information gap about the COs of UNTBs.

35 Interview with Asst Prof Dr Murat Önok.
36 See Section 5.1. on CERD.
37 See Section 5.7 on CMW.
38 See Section 5.3 on CESCR.

#### 4.1.3 State Reporting

Overall, Turkey is slow in reporting. Significantly, following the ratification of the twin Covenants in 2003, it has reported only once, its next reports being more than seven years late. The trend repeats itself with respect to CAT: Turkey is overdue to report by eight years. Turkey fares better concerning its reports to CRC, CEDAW and CERD. The Ministry of Foreign Affairs explains that these delays are not due to an unwillingness to report, but due to bureaucratic delays and the length of time that is required to compile the required information from all state agencies.[39]

There are cross-cutting issues in the reports which Turkey has submitted to the UNTBS which have been asked by the various treaty bodies to make further progress and undertake legal reforms. The first common area of concern is Turkey's reservations. All UNTBS have issued calls for Turkey to withdraw these. Closely related to this is the concern over the protection of rights of those belonging to minorities, in particular the rights of Kurdish citizens. Women's rights, and the need to take comprehensive steps to end violence against women, are also a cross-cutting issue. Finally, all UNTBS have called on Turkey to establish a national human rights institution (NHRI) in line with the Paris Principles.

### 4.2 *Overall Impact of UN Human Rights Treaties*

In respect of all these common areas of concern there has been no significant progress, with one exception: the creation of a NHRI. Turkey first established a NHRI in 2014 entitled the Human Rights Institution and subsequently reconstituted it as the Human Rights and Equality Institution in 2016. Yet, the top-down creation of this institution has attracted strong domestic civil society criticism, noting that this institution does not fulfill the criteria of independence under the UN Paris Principles,[40] and that it falls significantly short in terms of the UN's definition of equality and investigative powers. This institution has not received accreditation in line with the Paris Principles.

The impact of the UN treaties on judicial decision making varies from treaty to treaty and also between the Constitutional Court, other apex courts and first instance courts. A key difficulty in this regard is the lack of public reporting of

39 Interview with the Ministry of Foreign Affairs.

40 In 2016 nearly 30 Turkish civil society organisations signed a petition entitled Bu Kanunla Olmaz ('Repeal This Law') to underline problems with the law establishing the Human Rights and Equality Institution <https://bukanunlaolmaz.wordpress.com> accessed 24 March 2022.

court decisions in Turkey and the absence of comprehensive databases of all case law, as well as the dearth of academic studies on citations of UN treaties and their COs and General Comments.

Based on our research of the publicly available judgments of the Constitutional Court, the High Court of Appeals and the Council of State, we find that CRC attracts the most frequent references, in particular its 'best interests of the child' maxim and the right to participation (article 12 of CRC) followed by references to CEDAW. In contrast, references to CRPD, CERD, CMW, CAT, CCPR and CESCR are scarce. The references at the level of the Constitutional Court, however, after the introduction of the right to individual petition in 2012, demonstrate that the Constitutional Court is open to making use of all UN treaties that Turkey has ratified as persuasive authority alongside the case law of the European Court of Human Rights. There has been one case in which the Constitutional Court has relied on CCPR to offer a more permissive interpretation of religious freedom than the one offered by the European Court.[41]

Data collected through interviews with members of civil society and academia shows that the reach of the UN human rights treaties in domestic advocacy, teaching and research, is thin. Overall, interlocutors point to the fact that UN human rights treaties are not well known.[42] Some also point to the fact that knowing the names of treaties such as CRC and CEDAW does not mean that actors are fully versed in their content and transformative potential.[43] In the case of CEDAW, some also point out that despite a general level of awareness, the treaty is only partially invoked. For example, no systematic attention is paid to the protection of the economic and social rights of women by CEDAW.[44]

Several factors are put forward to explain the meagre reach of UN treaties in Turkey. First and foremost, there is an important language barrier to accessing the UN treaty body mechanisms and their outputs. While most decisions against Turkey from the European Court of Human Rights are translated by the Ministry of Justice and are comparatively accessible, this is not the case with UN treaty body documents. The translation of these documents does not fall squarely within the mandate of a specific agency or ministry. This means that while some of these documents are translated by specialised

41 Turkish Constitutional Court, App No 2014/256 (25 June 2016).

42 Interview with Emel Ataktürk Sevimli; interview with Hakan Özgül and Süleyman Akbulut, Social Rights and Research Society (TOHAD), 24 September 2019, Istanbul, Turkey; interview with Murat Köylü, Kaos GL, 26 November 2019, Istanbul, Turkey.

43 Interview with Adem Arkadaş Thibert.

44 Interview with Prof Dr Bertil Emrah Oder.

ministries, or by civil society initiatives, most of them are not. Second, there are no institutionalised domestic channels of input to the treaty reporting process by civil society. The lack of domestic channels of engagement only leaves the opportunity to engage with the system through shadow reports. Yet, members of civil society in Turkey face resource and capacity problems to engage with UNTBs. The EU is the key funder of civil society organisations in Turkey. Domestic philanthropic sources are scarce and often do not support rights-based advocacy efforts, but rather development projects in the fields of women's empowerment, public health and education. These barriers are also confirmed by the number of domestic shadow reports submitted to the UN treaty bodies. To this day, most of the shadow reports submitted to the UN are prepared by international non-governmental organisations (NGOs) or NGOs that work outside Turkey rather than domestic organisations. The fact that the state authorities write their reports only in English further inhibits the participation of NGOs in shadow reporting. There are, however, exceptions to this pattern as seen by the shadow reports submitted to CEDAW, CAT and CRPD.

International human rights law is not part of the compulsory curriculum of law schools in Turkey. While some universities have made this compulsory, in many others it is either an elective course or not offered at all. Courses in the fields of constitutional, criminal and public law may include references to human rights law, but the case law of the European Court takes the centre stage in these courses.[45] In public international law courses, too, international human rights law may be covered as a single module at best. This means that most lawyers have a very limited knowledge of UN human rights treaties at the time of their graduation from law school. Legal professional education, too, is primarily geared towards learning to bring complaints before the European Court. Having said this, there has been recent interest in learning more about UN petition mechanisms in Turkey[46] due to the dissatisfaction with the slow progression of cases before the European Court and the large number of cases from Turkey that are declared inadmissible.

45 Interview with Prof Dr Bertil Emrah Oder; interview with Asst Prof Dr Murat Önok.

46 Interview with Tuğçe Duygu Köksal, Istanbul Bar Association Human Rights Centre, 29 July 2019, Istanbul, Turkey; interview with Dr Kerem Altıparmak.

## 5 Detailed Impact of the Different UN Human Rights Treaties on the Domestic Level in Turkey

### 5.1 *International Convention on the Elimination of All Forms of Racial Discrimination*

#### 5.1.1 Incorporation and Reliance by the Legislature and Executive

Since its ratification of CERD in 2002, Turkey has had a number of reforms in its domestic frameworks that relate to CERD. In 2002. the changes to the Law on Foreign Language Education and Teaching enabled the opening of private courses to teach local languages other than Turkish.[47] In 2004, the new Penal Code criminalised incitement to hatred (article 216). In 2011, the law prohibited defamation and discrimination on the basis of race or colour in media services.[48] In 2013, the Criminal Procedural Code was amended to allow defendants to express themselves in languages other than Turkish.[49] In 2014, the election law was changed to allow the use of languages other than Turkish in election campaigns.[50]

In addition to these legal changes, the most notable public policy giving effect to the provisions of CERD was the 'democratic opening' or 'Kurdish opening' which was initiated in 2009. This was aimed at increasing democratic standards and preventing terrorism, and paved the way for peace negotiations called 'the reconciliation process'. This initiative officially started in 2013, but collapsed in 2016. Subsequently, this democratic initiative was also extended to the Roma. Yet, in none of these changes was CERD cited as a reason. Thus, while the congruence of the domestic framework and CERD has increased over time, it is not possible to attribute such changes to the ratification of the treaty as such.

#### 5.1.2 Reliance by the Judiciary

CERD is not a treaty that receives a significant number of citations by the domestic courts. It has been cited only once by the High Court of Appeals,[51] and twice by the Turkish Constitutional Court. In the latter cases, the Turkish

47 Law No 4771, art 11.

48 The Law on the Establishment of Radio and Television Enterprises and Their Media Services, arts 8 and 9.

49 Law No 6411, art 1.

50 Law No 6529, art 1.

51 The High Court of Appeals, File No 2017/4–1734 Decision No 2018/668 (4 April 2018).

Constitutional Court referred to the definition of racial discrimination in article 1(1) and to articles 2 and 4 of CERD.[52]

### 5.1.3 Impact on and through Independent State Institutions

The Human Rights and Equality Institution of Turkey has the competence to receive individual applications alleging violations of non-discrimination and issue administrative sanctions. However, the Institution has not cited or applied CERD in individual applications. This is also the case for the office of the Ombudsman.

### 5.1.4 Impact on and through Non-state Actors

CERD has had a very slight impact on non-state actors. None of the interlocutors reviewed for this report viewed CERD as a well-known treaty in Turkey. The monitoring process before the CERD Cttee, however, attracted the attention of ten different international and domestic organisations. Although international reporting organisations outnumber domestic organisations, it is important to note that all domestic NGOs submitted their shadow reports in 2015 without collaborating with an international organisation.

### 5.1.5 Impact of State Reporting

Turkey submitted two reports to the CERD Cttee: the first in 2007 and the second in 2014. The 2007 report contains strong statements such as 'racial segregation or apartheid are concepts alien to the Turkish society'[53] and 'anti-Semitism has traditionally been alien to Turkish society'.[54] This approach is also followed in the 2014 report which states that 'in the fight against terrorism, Turkey does not discriminate in purpose or effect on the grounds of race, color or any other grounds, and individuals are not subjected to racial or other profiling or stereotyping',[55] and that the 'concept of racial discrimination by those who rent or sell houses or apartments is alien to Turkish society'.[56]

In the COs, the CERD Cttee asked Turkey to make specific legal adjustments by adopting a clear and comprehensive definition of racial discrimination

52 Turkish Constitutional Court, File No 2009/47, Decision No 2011/51 (17 March 2011); Turkish Constitutional Court – GK, B. 2014/12225 T. 14.7.2015.

53 Third periodic reports of state parties due in 2007 – Addendum – Turkey, 13 February 2008, CERD/C/TUR/3, para 88.

54 ibid para 137.

55 Combined fourth to sixth periodic reports of state parties due in 2013 – Turkey, 17 April 2014, CERD/C/TUR/4–6, para 85.

56 ibid para 114.

including all elements in article 1 of CERD;[57] ensuring that the interpretation and application of article 216 of the Turkish Penal Code are in compliance with article 4 of CERD;[58] ensuring that the new article 301 of the Turkish Penal Code is interpreted and applied in conformity with CERD;[59] enacting comprehensive anti-discrimination legislation covering all rights in article 5 of CERD,[60] including the motive of ethnic, racial or religious hatred as an aggravating circumstance in the Penal Code;[61] and considering further amendments to the legislation to allow the teaching of languages traditionally used in Turkey in the general public education system.[62]

Only a limited number of these recommendations have been implemented to date. With the entry into force of the Law establishing the Human Rights and Equality Institution of Turkey, the Committee's recommendations to enact comprehensive anti-discrimination legislation and to include ethnic origin as a protected ground have been implemented.[63] The Committee's recommendation to grant work permits to refugees has also been implemented by the coming into force of the Regulation on Work Permit of Refugees under Temporary Protection entered into force on 15 January 2016.[64]

Despite these positive developments towards implementation, some of the comments made by Turkey in the state reports or in the follow-up reports to the COs may be interpreted as showing its reluctance to implement the recommendations. The government, for example, does not intend to withdraw its reservations.[65] Furthermore, Turkey refuses to collect, maintain or use either qualitative or quantitative data on ethnicity since it 'is a sensitive issue, especially for those nations living in diverse multicultural societies for a long period of time'.[66]

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57 ibid para 11.

58 ibid para 14.

59 ibid para 16.

60 ibid para 17.

61 ibid para 23.

62 ibid para 20.

63 The Law on Human Rights and Equality Institution of Turkey (Law No 6701) 2016, arts 2 and 3. This is included in the follow-up letter sent to the state party, 17 May 2017, CERD/92nd/FU/GH/HH/ks; see also information received from Turkey on follow-up to the COs, 9 February 2017, CERD/C/TUR/CO/4–6/Add.1, para 7–10.

64 CERD/C/TUR/CO/4–6/Add.1, para 93.

65 CERD/C/TUR/4–6, para 4.

66 CERD/C/TUR/4–6, para 7; Comments by the Government of Turkey on the COs of the Committee on the Elimination of Racial Discrimination, 30 March 2009, CERD/C/TUR/CO/3/ADD.1, para 5.

Regarding article 216 of the Penal Code, Turkey holds that the provision aims to strike a balance between freedom of expression and the obligation to combat incitement to hatred.[67] According to the follow-up report of 2009, the number of languages traditionally used in Turkey may reach into the hundreds and it therefore is beyond the capacity of the state to offer teaching in all of these languages in the public education system. Furthermore, Turkey argues that 'any act in favour of one or two languages traditionally used in Turkey can be interpreted as discrimination against other languages and their respective speakers'.[68]

Regarding the COs on the impact of anti-terror measures on the Kurdish community, Turkey has raised strong objections in the follow-up report of 2017. Turkey rejects the fact that its criminal procedure is discriminatory,[69] and calls for distinguishing between PKK terrorism and 'the possible legitimate expectations of the citizens of Kurdish origin in Turkey'.[70] Turkey's objections also extend to the recommendation on the elimination of economic disparities between Kurdish provinces and the rest of the country. Turkey stated that it is misleading to make a differentiation between provinces based on ethnicity and claimed that the fact that certain regions face economic hardship stems from geographical or economic characteristics of those regions and not from ethnicity, religion or language of the residents.[71]

The Committee, in its follow-up letter sent to Turkey on 17 May 2017, raised concerns about the implementation of recommendations with Syrian and Iraqi refugees. It noted the lack of information regarding the efforts to protect these refugees from racial discrimination and hatred, and the fact that mother tongue education is not provided to refugee children.[72]

#### 5.1.6 Brief Conclusion

The impact of CERD since its ratification in 2002 in Turkey has been limited. This is partly due to the fact that Turkey maintains that racial discrimination is alien to Turkey and partly because the CERD Cttee's approach to the interpretation of the treaty incorporates the treatment of minorities. CERD also is not

67 CERD/C/TUR/3, para. 68–69; CERD/C/TUR/CO/3/ADD.1, para 4; CERD/C/TUR/CO/4–6/Add.1, paras 45–46.

68 CERD/C/TUR/CO/3/ADD.1, para 6.

69 CERD/C/TUR/CO/4–6/Add.1, para 52.

70 CERD/C/TUR/CO/4–6/Add.1, para 72.

71 CERD/C/TUR/CO/4–6/Add.1, para 74.

72 CERD/92nd/FU/GH/HH/ks.

a treaty to which the judiciary, the legal profession, civil society and academia have paid systematic attention since its ratification.

### 5.2 *International Covenant on Civil and Political Rights*

#### 5.2.1 Incorporation and Reliance by Legislature and Executive

While no compatibility analysis of the domestic legal framework with CCPR was carried out prior to the ratification of CCPR in 2003, legal reforms undertaken in the 2000s have nevertheless increased the level of compatibility between the two. The abolition of the death penalty in peacetime in 2002[73] and the abolition of the death penalty in all circumstances, that is, inclusive of times of war or imminent threat of war, in 2004;[74] the new Labour Law No 4857;[75] and the new Penal Code No 5237[76] are notable examples. CCPR has been mentioned in the explanatory notes of some draft Bills.[77]

In addition to CCPR, Turkey ratified both OP1-CCPR and OP2-CCPR in 2006. In the explanatory notes for both ratifications, it was indicated that all EU members and EU candidates have already ratified the Protocol, that the ratification of the Protocol has been among the criteria Turkey has to fulfill according to the 2003 EU Accession Partnership document and that the ratification is necessary to become a party to international human rights law documents and to 'accelerate the completion of a comprehensive human rights framework'.[78]

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73 Law on the Amending Various Laws (No 4771) 2002, art 1.

74 Law on the Abolishment of Death Penalty and on Amending Various Laws (No 5218) 2004.

75 The most remarkable changes may be listed as change of the 'workplace' definition and introduction of 'flexible work' (art 2); introduction of the 'non-discrimination principle' for the workplace (art 5); introduction of 'job security' protection for the workers (arts 18–20); increase in the annual paid leave and maternal leave (arts 53, 74); integration of ILO standards for child labour (art 71); improvements regarding occupational health and safety (arts 80–83). For further information, see Celal Emiroğlu and Sultan Özer, 'Eski ve Yeni İş Yasası: Ne getirdi? Ne götürdü?' (2003) 4(15) Sağlık ve Güvenlik Dergisi (2003) 4–8.

76 The new Penal Code has brought some positive changes in line with international human rights law standards, such as the introduction of genocide and crimes against humanity in the Penal Code for the very first time (arts 76–77) and the aggravation of sentences regarding gender-based violence (arts 102–105). However, it also includes restrictive and retrogressive articles considering freedom of the press and freedom of expression (art 218), and comprehensive regulations on crimes against the state (arts 247–339) and the crime of insulting the President (art 299).

77 For example, the Explanatory Notes of the Draft Law on the Human Rights and Equality Institution of Turkey (28 January 2016) <https://www.tbmm.gov.tr/sirasayi/donem26/yil01/ss149.pdf> accessed 24 March 2022; Explanatory Notes of the Draft Law on the Execution of Punishments and Measures (30 November 2004) <https://www2.tbmm.gov.tr/d22/1/1-0933.pdf> accessed 24 March 2022.

78 The explanatory notes are available at <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d22/c016/tbmm22016089ss0150.pdf> accessed 24 March 2022.

In the explanatory notes for the ratification of OP2-CCPR, particular emphasis is placed on the abolishment of the death penalty in 2004 through the constitutional amendment and Turkey's ratification of Protocols No 6 and 13 to the European Convention on Human Rights (ECHR).[79]

Turkey has officially informed the UN Secretary-General about the state of emergency in 2016 and derogated from CCPR. Following the end of the state of emergency on 19 July 2018, Turkey withdrew the derogation in accordance with article 4.[80]

### 5.2.2 Reliance by the Judiciary

Interviews with the representatives of human rights commissions of bar associations and NGOs indicate that CCPR in recent years has become one of the better-known UN human rights treaties among the judiciary.[81] Indeed, CCPR has been cited by the High Court of Appeals, the Constitutional Court and the Council of State. However, courts in general do not provide detailed discussions of the scope of the provisions, general comments or case law, but instead refer only to the relevant articles in the cases that we reviewed.[82] We have found CCPR citations in at least 26 decisions of the General Assembly of Civil Chambers and Penal Chambers of the High Court of Appeals. The Constitutional Court has referred to CCPR in 39 individual application decisions, with 18 of these including references to the General Comments or the COs of the HRCttee. Among them, references to General Comment 22, which further explains article 18 stand out.[83] The Council of State has referred to CCPR in four decisions. Compared to the references to the jurisprudence of the European Court, references to CCPR are rare.

79 The explanatory notes are available at <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d22/c094/tbmm22094004ss0793.pdf> accessed 24 March 2022.

80 Answer by Minister of Foreign Affairs to the Written Question No 7/633 submitted by MP Kamil Okyay Sındır (11 January 2019) <https://www2.tbmm.gov.tr/d27/7/7-0633sgc.pdf> accessed 24 March 2022.

81 Interview with Dr Kerem Altıparmak; interview with Tuğçe Duygu Köksal.

82 There are 71 decisions that include at least one reference to ICCPR. This information was reached via LexPera through searching for 'Medeni ve Siyasi Haklara İlişkin Uluslararası Sözleşme' on 29 January 2020.

83 Some of these cases include Turkish Constitutional Court Decision No 2015/51 (27 May 2015); Turkish Constitutional Court Decision No 2014/17354 (22 May 2019); Turkish Constitutional Court Decision No 2009/4 (11 December 2009); Turkish Constitutional Court Decision No 2016/22169 (20 June 2017).

### 5.2.3 Impact on and through Independent State Institutions

The Ombudsman cited CCPR in 22 decisions. These citations are mostly made to articles 5, 6, 17, 18, 19, and 25(c). One reference has been made to the HRCttee's General Comment 25 on the right to participate in public affairs, voting rights and the right of equal access to public service.[84] There are seven decisions[85] by the Equality and Human Rights Institution of Turkey in which CCPR has been briefly mentioned, with a specific emphasis on article 7 and one reference to the HRCttee's General Comment 22 on the right to freedom of thought, conscience and religion.

### 5.2.4 Impact on and through Non-state Actors

Given the significant level of overlap between the ECHR and CCPR in terms of their coverage of civil and political rights, CCPR competes with the ECHR for the attention of civil society. Yet, there is evidence that the increased difficulty of accessing the ECtHR has enhanced interest in the individual petition mechanisms of CCPR among the Turkish legal profession. There is increasing demand and interest towards training on the individual petition mechanisms, according to the representative of the bar associations.[86] There also is an increase in the knowledge and visibility of CCPR, specifically after the *coup* attempt in 2016 and the cases following thousands of expulsions. During our interviews, many NGOs stated that CCPR is one of the well-known UN human rights treaties among human rights activists, particularly in terms of the right to life, citizenship, non-discrimination and self-determination. The low level of ownership of UN human rights treaties within the judiciary, the political discourse and the curricula of law schools are criticised by academics and NGOs.[87] However, they have also noted that CCPR and the HRC jurisprudence was referred to by the Constitutional Court concerning freedom of religion cases and, particularly, in cases concerning the wearing of headscarves.[88]

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84 The Ombudsman Institution of Turkey, File No 2015/2608 (27 October 2015) para 17.4.

85 Equality and Human Rights Institution of Turkey, File No 2018/99 (30 October 2018); Equality and Human Rights Institution of Turkey, File No 2018/99 (30 October 2018); Equality and Human Rights Institution of Turkey, File No 2018/83 (18 July 2018); Equality and Human Rights Institution of Turkey, File No 2019/04 (8 January 2019); Equality and Human Rights Institution of Turkey, File No 2019/07 (12 February 2019); Equality and Human Rights Institution of Turkey, File No 2019/24 (9 April 2019); Equality and Human Rights Institution of Turkey, File No 2019/26 (16 April 2019).

86 Interview with Tuğçe Duygu Köksal; interview with Asst Prof Dr Kerem Altıparmak.

87 Interview with Prof Dr Bertil Emrah Oder; interview with Asst Prof Dr Murat Önok.

88 Turkish Constitutional Court, App No 2014/256 (25 June 2014); Turkish Constitutional Court, App No 2013/7443 (20 May 2015); interview with Prof Dr Bertil Emrah Oder.

### 5.2.5 State Reporting and Its Impact

Turkey has submitted only one initial report to the HRCttee, in 2011. Turkey's second report, which has not yet been submitted, was due on 31 October 2016. The initial report states that consultations with civil society were held as part of the reporting process, and that civil society has provided decisive input in establishing priority issues in the report. However, detailed information is not available.[89]

Only a few COs and key recommendations have so far seen implementation. The Turkish NHRI was established in 2016, and its founding law includes provisions regarding anti-discrimination and equality and, thus, indirectly the law functions as anti-discrimination legislation. The recommendations regarding adopting a strict timeline to protect women and family members from violence, zero tolerance of so-called honour killings and awareness-raising programmes have been partially fulfilled through the ratification of the İstanbul Convention in 2011, the adoption of the Law on the Protection of Family and Prevention of Violence against Women No 6284 and the establishment of ŞÖNIMS (Centres for Prevention of Violence and Monitoring) in 2012, as well as the consecutive adoption of the National Action Plans for Combating Domestic Violence against Women (2007–2010), (2012–2015), and (2016–2020). Despite these policies and action plans, however, gender-based violence has in recent years increased.[90]

### 5.2.6 Impact of Individual Communications

The HRCttee found violations in three individual communications with respect to Turkey.

The first was delivered in the case of *Atasoy and Sarkut v Turkey* in 2012.[91] This case concerns the conscientious objection of two Jehovah's Witness citizens to military service, in which the Committee found a violation to the right to freedom of thought, conscience and religion under article 18, and that Turkey is under an obligation to provide the authors with an effective remedy, including expunging their criminal records and providing them with adequate compensation. No information has been found on whether Atasoy and Sarkut received individual remedies. To this day conscientious objection to military service is not permitted in Turkey.

89 CCPR/C/TUR/1, para 4.

90 See GREVIO, Baseline Evaluation Report: Turkey (2018) <https://rm.coe.int/eng-grevio-report-turquie/16808e5283> accessed 24 March 2022.

91 CCPR/C/104/D/1853–1854/2008 (19 March 2012).

The second individual communication is *Türkan v Turkey,* which was decided in 2018.[92] It concerns the refusal of university admission to the author, who was wearing a wig substituting for a head scarf, in which the Committee found a violation of article 18 (the right to freedom of thought, conscience and religion) and article 26 (anti-discrimination), and of article 3 (equal rights of men and women) read in conjunction with article 18, and stated that Turkey was obligated to provide the author with adequate compensation, including as a result of her lost employment opportunities, and to ensure that she is afforded the full opportunity to pursue her higher education studies, should she seek it. Turkey explained that due to recent amendments of the Law No 2547 in 2008 on higher education, the author now is entitled to be enrolled and to continue her education. No information has been found whether Türkan has received compensation. By the time this case was decided, Turkey had already liberalised the legal regime on limiting the wearing of headscarves in all public institutions.

The third communication is *Özçelik, Karaman and IA v Turkey*, delivered in 2019.[93] This case concerns two individuals who are considered to be connected to the Gülen movement by the Turkish authorities and who were detained and forcibly removed from Malaysia without an extradition hearing or a judicial decision. The Committee, recalling that a derogation (following the *coup* attempt on 15 July 2016) cannot justify a deprivation of liberty that is unreasonable or unnecessary, found a violation of article 9 (the right to liberty and security) of the Covenant, and asked Turkey to release Özçelik and Karaman within 180 days and to provide them with adequate compensation for the violations. Turkey contested the admissibility of both communications on grounds of non-exhaustion of domestic remedies, and argued that the authors' claims under articles 9, 10 and 14 are inadmissible as Turkey had derogated from the Covenant in accordance with article 4. Özçelik and Karaman have not been released although the 180-day period has passed. This is the first opinion adopted by the HRCttee considering arbitrary detention and derogations in the aftermath of the *coup* attempt in Turkey, and the opinion was covered in the media.[94] No information has been found on any kind of follow-up

92 CCPR/C/123/D/2274/2013 (17 July 2018).

93 CCPR/C/125/D/2980/2017 (26 March 2019).

94 Büşra Taşkıran, 'BM'nin uygulanması için Türkiye'ye 180 gün verdiği karar hakkında hukukçular ne diyor?' Euronews (1 July 2019) <https://tr.euronews.com/2019/07/01/bm-nin-uygulanmasi-icin-turkiyeye-180-gun-verdigi-karari-hakkinda-hukukcular-ne-diyor> accessed 24 March 2022.

concerning implementations, either concerning individual redress for Özçelik and Karaman, or broader legal reform.

#### 5.2.7 Brief Conclusion

While the Turkish legal framework has over time become more compatible with CCPR, this is largely a consequence of EU pressures to make Turkish institutions more compatible with European human rights law. In some other fields, such as freedom of religion, Turkey has aligned more closely with the HRCttee case law.

### 5.3 *International Covenant on Economic, Social and Cultural Rights*

#### 5.3.1 Incorporation and Reliance by Legislature and Executive

As is the case with CCPR, Turkey did not carry out a compatibility analysis prior to the ratification of CESCR in 2003. However, legal reforms undertaken in the 2000s also improved the compatibility of domestic legal frameworks with CESCR. Some major domestic legislative changes of this kind include the new Labour Law No 4857, which has partially improved workers' rights, and the Social Security and Universal Health Insurance Law No 5510, which introduced the private pension system and a new system for universal health care.

Turkey has still not signed or ratified OP-CESCR. During the 46th session of the CESCR Cttee in 2011, in which Turkey's initial report was considered, the Turkish delegation could not give any date for ratification, but assured the Committee that Turkey was examining the matter.

#### 5.3.2 Reliance by the Judiciary

The provisions of CESCR have been relied upon by the High Court of Appeals, the Council of State and the Constitutional Court in a number of decisions. However, the courts have not discussed these clauses in detail, but instead have only referred to the relevant articles in general terms, either by only mentioning the relevant article or by citing the Turkish texts of the articles without additional comments. We found CESCR citations in at least six decisions of the General Assembly of Civil Chambers and Penal Chambers of the High Court of Appeals.[95] The Constitutional Court has referred to CESCR in 14 decisions; in nine of them there are references to the General Comments of the

95 There are 40 decisions including at least one reference to CESCR. This information is reached via LexPera through searching for 'Ekonomik, Sosyal ve Kültürel Haklara İlişkin Uluslararası Sözleşme' on 29 January 2020.

Committee.[96] Concerning labour-related rights, references to ILO Conventions rather than CESCR are dominant in the jurisprudence.

### 5.3.3 Impact on and through Independent State Institutions

The involvement of the Ombudsman Institution and the Equality and Human Rights Institution of Turkey with the Convention or the Committee is very limited. There are only two Ombudsman decisions[97] among those published on their official website that have cited CESCR, which is limited to the text of the relevant clauses only.

### 5.3.4 Impact on and through Non-state Actors

NGOs have undertaken some activities with a focus on CESCR. In particular, the Human Rights Agenda Association has authored, published and distributed a booklet that explains social, economic and cultural rights in accessible language. Although several NGOs have acknowledged CESCR as an important UN human rights treaty, it is not well-known or widely used by civil society.[98] Academics and NGOs agree that although economic and social rights could have been a rather easier area to campaign for (from a developmental point of view and considering rights on non-political areas) labour unions are not at all active considering the Covenant.[99] Indeed, labour unions have not been actively involved with CESCR and no labour unions have submitted a shadow report.

### 5.3.5 Impact of State Reporting

Turkey submitted its initial report to the CESCR Cttee in 2008 after a four-year delay. Turkey's second report was due in 2016. In the initial report, there are no references to any consultation with civil society. Only a few key recommendations made in the COs have to date been implemented. Apart from the regular operations and projects of the Ministry of Family, Labour and Social Services

96 Some of these cases are Turkish Constitutional Court Decision No 2011/6 (26 January 2012); Turkish Constitutional Court Decision No 2015/68 (29 November 2017); Turkish Constitutional Court Decision No 2012/174 (8 November 2012; The High Court of Appeals 17th Penal Chamber, File No 2015/15665 Decision No 2015/10872 (10 December 2015); The High Court of Appeals 17th Penal Chamber, File No 2016/5390 Decision No 2017/15604 (11 December 2017); The High Court of Appeals 13th Penal Chamber, File No 2014/36407 Decision No 2016/659 (18 January 2016).

97 The Ombudsman Institution of Turkey, File No 03.2013/687 (6 March 2014) para 10; The Ombudsman Institution of Turkey, File No 04.2003/1707 (26 February 2014) para 85.

98 Interview with Adem Arkadaş Thibert.

99 ibid.

regarding assistance to older persons, the rights of disabled people, rural development and youth employment, which might be considered as partially fulfilling the relevant recommendations of the Committee to take measures in these areas, no specific action has been taken to implement the recommendations. No parliamentary questions were raised and no draft legislations were proposed as a result of the COs.[100]

#### 5.3.6 Brief Conclusion

The impact of CESCR in Turkey has been limited, except in the case of cross-cutting recommendations such as that of establishing the national human rights institution. There have also been times when the object of CESCR and Turkish domestic policy have aligned, such as was the case with social security reform. A central explanation for the lack of deeper impact of CESCR in Turkey concerns the limitations to the justiciability of economic social and cultural rights directly under the Turkish Constitution. Whilst the Turkish Constitution recognises state duties with respect to social and economic rights,[101] these parts of the Constitution are not justiciable as a matter of individual rights.

### 5.4 *Convention on the Elimination of All Forms of Discrimination against Women*

#### 5.4.1 Incorporation and Reliance by Legislature and Executive

CEDAW is the longest-standing human rights treaty adhered to by Turkey. Following its ratification in 1985, a significant number of legislative reforms brought the legal and constitutional framework in line with the Convention. The rise of women's rights activism, particularly second-wave feminism in Turkey, and the ratification of CEDAW has coincided with an era of post-*coup* democratisation in the mid-1980s.[102] This started with the reform of the Civil Code in 2001 to define a family as an entity that is 'based on equality between the spouses', removing the previous recognition of the man as the head of family; the reform of rights over the family domicile and representational power; and the equalisation of minimum marriage ages for both sexes. In 2004, equality between men and women was added into article 10 of the Constitution. In 2010, the inclusion of the provision 'any measures to be taken to this aim shall not be contrary to the principle of equality' provided the constitutional recognition of temporary special measures. The Turkish Penal Code also saw significant improvements in 2005 with the amendment of the 'hatred and

100 E/C.12/TUR/CO/1/Add.1, para 3.
101 Constitution of the Republic of Turkey, art 65.
102 Interview with Prof Dr Bertil Emrah Oder.

discrimination' provisions, specific amendments to combat violence against women, the criminalisation of marital rape and harassment at the workplace. Turkey also introduced the Law on Protection of Family and Prevention of Violence against Women No 6284 in 2012. In addition, between 2011 and 2014, 31 laws were reviewed with a gender perspective in consultation with local governments and NGOs.[103]

CEDAW has received several mentions during the parliamentary discussions concerning women's rights: A total of eight written questions from parliamentary members to the government have been submitted solely on the implementation of CEDAW provisions.[104] The Minister Responsible for Women's Affairs (which ministry was later put under the command of the Minister of Family, Labour and Social Services) often responded to these questions in a timely manner. There are also several mentions of CEDAW among the minutes of the general meetings of Parliament, particularly in the course of discussions regarding violence against women.[105]

Turkey has adopted general national action plans in the field of women's rights and in a majority of these national action plans, there are explicit references to CEDAW articles, state reports, COs and shadow reports.[106]

Alongside these, a range of institutions have been established that relate directly to the implementation of CEDAW. In 2002, the National Task Force to Combat Trafficking was founded.[107] In 2004, the General Directorate on the Status and Problems of Women was restructured and the Directorate on the Status of Women was established.[108] In 2007, the Monitoring Committee on Violence Against Women was founded.[109] In 2009, the Parliamentary

103 CEDAW/C/TUR/7, para 23. For the report (in Turkish) see Kevin Devaux, Toplumsal Cinsiyet Eşitliği Mevzuatının Uygulanmasının İzlenmesi Raporu (2014) < http://ceidizleme.org/ekutuphaneresim/dosya/367_1.pdf > accessed 24 March 2022.

104 For example, Answer by Minister Responsible for Women's Affairs to the Written Question No 7/10647 submitted by MP Nevin Gaye Erbatur (27 October 2009); Answer by Minister Responsible for Women's Affairs to the Written Question No 7/21722 submitted by MP Ayşe Gülsün Bilgehan (23 March 2007) <https://cdn.tbmm.gov.tr/KKBSPublicFile/D22/Y5/T7/WebOnergeMetni/986f8d03-f384-4185-b7dd-4fe05393ccec .pdf> accessed 24 March 2022.

105 For example, Speech by MP Mehmet Şandır (22 November 2011) <https://www5.tbmm.gov.tr//develop/owa/Tutanak_B_SD.birlesim_baslangic?P4=21045&P5=B&PAGE1=81&PAGE2=86> accessed 24 March 2022.

106 CEDAW/C/TUR/6 at 63; CEDAW/C/TUR/7, para 197.

107 ibid 21.

108 ibid 5.

109 CEDAW/C/TUR/6, 12.

Commission on Equal Opportunities for Women and Men (KEFEK) was established.[110] The Commission monitors and informs Parliament of national and international developments with respect to gender equality, and provides opinions upon request on draft laws and decree laws submitted to Parliament. Following the adoption of Law No 6284 to Protect Family and Prevent Violence Against Women (2012), Centres for Preventing and Monitoring Violence (ŞÖNİM) have also been established nationwide.[111]

#### 5.4.2 Reliance by the Judiciary

Interviews with the representatives of human rights commissions of bar associations and NGOs indicate that CEDAW is among the better-known UN human rights treaties among the judiciary.[112] We found CEDAW citations[113] in over 100 decisions of the General Assembly of Civil Chambers and Penal Chambers of the High Court of Appeals. The Turkish Constitutional Court has referred to CEDAW in 15 individual application decisions and the Council of State has referred to CCPR in four decisions. On the one hand, in the majority of these judgments the clauses were not discussed in detail and the relevant articles were merely cited. On the other hand, the Constitutional Court has used CEDAW as a basis for progressive legal interpretation in a few precedent-setting cases. In 1990, the Constitutional Court annulled article 159 of the former Civil Code which required the permission of the husband for married women to work outside the home.[114] In 1998, it annulled articles 440 and 441 of the former Penal Code which demarcated a husband's and wife's adultery on separate grounds.[115] In 2013, in the case of *Sevim Akat Eşki*,[116] the Constitutional Court found the automatic change of a woman's name after marriage unconstitutional. The judiciary overall, however, refers to CEDAW less than the jurisprudence of the ECtHR and the Istanbul Convention. Despite this, CEDAW clauses, jurisprudence and General Comments are well-known among lawyers

110 CEDAW/C/TUR/6, 5.

111 CEDAW/C/TUR/CO/6/Add.1, para 32.

112 Interview with Prof Dr Bertil Emrah Oder; interview with Tuğçe Duygu Köksal.

113 There are 127 decisions including at least one reference to CEDAW. This information is reached via LexPera through searching for 'Kadınlara Karşı Her Türlü Ayrımcılığın Önlenmesi Sözleşmesi' on 29 January 2020.

114 Turkish Constitutional Court, App No 1990/30 (29 November 1990).

115 Turkish Constitutional Court, App No 1998/3 (23 June 1998).

116 Turkish Constitutional Court, App No 2013/2187 (19 December 2013) para 43.

who specialise in gender-based violence cases and are often used by women's rights NGOs in their petitions concerning cases of gender-based violence.[117]

### 5.4.3 Impact on and through Independent State Institutions

CEDAW has been named as one of the most well-known and most widely used UNTBs by Ombudsperson Tunçak.[118] We found two Ombudsman decisions[119] among those published on their official website that have cited provisions of CEDAW. The Human Rights and Equality Institution of Turkey, on the other hand, hosted several conferences in which women's rights were discussed exclusively as a part of the family unit and several panelists have heavily criticised CEDAW and the Istanbul Convention for not being in line with traditional Islamic family values.[120]

### 5.4.4 Impact on and through Non-state Actors

Women's rights NGOs and activists have been very actively involved with the Committee and the procedures since the ratification of the Convention. CEDAW's impact on civil society has been far greater than its impact on the judiciary or the political discourse in Turkey.[121] It is not possible to state that the ratification process has been the outcome of the civil society efforts only; rather, the progressive political atmosphere has contributed significantly.[122] However, after the ratification, several petitions have been launched by women's rights NGOs, activists and prominent feminist academics for the implementation of CEDAW clauses and for the withdrawal of reservations.[123] One of the most prominent of these campaigns led to the amendment of the Civil Code. Women's rights NGOs not only succeeded in collecting hundreds of thousands of signatures for this campaign,[124] but also used CEDAW effectively to enable the legal redefinition 'family' as an entity that is based on equality

117 Interview with Yeşim Erkan Yetişer, Women for Women's Human Rights – New Ways, 9 October 2019, Istanbul, Turkey; interview with Tuğçe Duygu Köksal; interview with Adem Arkadaş Thibert.

118 Interview with Celile Özlem Tunçak, Ombudsperson, 16 October 2019 Ankara, Turkey.

119 The Ombudsman Institution of Turkey, File No 2013/2 (20 September 2013) para 68; The Ombudsman Institution of Turkey, File No 04.2003.1707 (26 February 2014) para 83.

120 Human Rights and Equality Institution of Turkey, Final Declaration of the II. Human Rights Symposium on the Right to Protection of the Family (2019) <https://www.tihek.gov.tr/ailenin-korunmasi-hakki-sonuc-bildirisi/> accessed 24 March 2022.

121 Interview with Prof Dr Bertil Emrah Oder.

122 Interview with Prof Dr Ayşe Feride Acar.

123 ibid.

124 ibid.

between the spouses and to eliminate discriminatory clauses in the Civil Code. A collective for NGOs named the Executive Committee for NGO Forum on CEDAW has been established for the specific purpose of preparing shadow reports to be submitted to CEDAW. This NGO collective has presented detailed, high-quality shadow reports through consecutive reporting cycles.

NGOs, academics and representatives of bar associations view CEDAW as among the most well-known and used UN human rights treaties within civil society.[125] The state has been in a closer dialogue with the NGOs considering CEDAW compared to other UNTBs: For example, consultation meetings have been organised by the General Directorate on the Status of Women and several NGOs have been invited. CEDAW has been described as the constitution of women's human rights by the women's rights movement.[126] Academics and NGOs acknowledge the lack of clauses considering gender-based violence and employment in CEDAW.[127] However, they emphasise article 5 on stereotyping and cultural prejudices and article 4 on affirmative action as major achievements. Article 4 has been the basis for arguments in favour of affirmative action in Turkey, particularly considering quota systems for women's participation in politics and regarding the introduction of the affirmative action concept to the Turkish Constitution.[128]

### 5.4.5 Impact of State Reporting

Turkey has submitted a series of reports to CEDAW, in all cases accompanied by delay. In its reports Turkey stated that all state reports have been prepared in a participatory process, integrating the contributions of relevant government agencies, academicians and NGOs.[129] This has also been confirmed by NGO representatives.[130] In addition, the NGO Forum on CEDAW, a civil society collective consisting of 20 independent women's rights organisations, was established with a view to submit regular shadow reports to CEDAW.

Regarding the implementation of the key recommendations of COs, it has been stated by the Committee in the 2005 COs that Turkey has implemented some of the recommended legal reforms aimed at the promotion of gender

125 Interview with Yeşim Erkan Yetişer; interview with Tuğçe Duygu Köksal; interview with Adem Arkadaş Thibert.

126 Interview with Prof Dr Bertil Emrah Oder.

127 Interview with Prof Dr Ayşe Feride Acar; interview with Prof Dr Bertil Emrah Oder.

128 Interview with Prof Dr Bertil Emrah Oder.

129 CEDAW/C/TUR/6, 3.

130 Interview with Yeşim Erkan Yetişer; interview with Beydağ Tıraş Öneri and Özlem Yılmaz, Human Rights Agenda Association, 4 July 2019, Istanbul, Turkey.

equality and the elimination of discrimination against women, and combating domestic violence, such as the amendments of articles 10 and 90 of the Constitution, the adoption of the Civil Code of 2001, the Penal Code of 2004 and the criminalisation of marital rape.[131] The Committee also noted that Turkey has increased the duration of compulsory education from five to eight years with a focus on increasing the enrolment of girls, and ratified the Optional Protocol to the Convention, in accordance with the previous recommendations.[132] Turkey has also withdrawn its declaration to article 9, paragraph 1, of the Convention in 2008.[133]

In addition, a wide range of legislative measures, policies and programmes have been adopted, in accordance with the recommendations of the Committee such as the adoption of the Gender Equality National Action Plan, the amendments to the Penal Code to combat violence against women, the creation of the Parliamentary Commission on Equal Opportunities for Women and Men,[134] the adoption of the Law No 6284 on the Prevention of Violence against Women and the Protection of the Family in 2012,[135] and the National Action Plan on the empowerment of rural women (2012–2016).[136]

Turkey has actively engaged in the follow-up procedures and provided follow-up reports and additional information in reply to the follow-up letters.

### 5.4.6 Impact of Individual Communications

The CEDAW Cttee has examined three individual complaints. While *Rahime Kayhan v Turkey*[137] and *NM v Turkey*[138] were found inadmissible, the Committee found a violation in one instance, *RKB v Turkey*.[139]

*RKB v Turkey* is a unique case about a female hairdresser dismissed from her position based on a claim of having an affair with a male colleague, while the male colleague was not dismissed. RKB claimed that her employer had unfairly

131 A/60/38(SUPP) paras 350–387.
132 ibid para 346.
133 CEDAW/C/TUR/CO/6, para 4.
134 ibid paras 5–7.
135 CEDAW/C/TUR/CO/7, paras 4–6.
136 ibid para 6.
137 *Rahime Kayhan v Turkey*, CEDAW/C/34/D/8/2005 (27 January 2006). The case concerns the expulsion of a civil servant woman from her teaching position for wearing a headscarf at the workplace. This was found inadmissible by the Committee due to a failure to exhaust domestic remedies.
138 *NM v Turkey* CEDAW/C/70/D/92/2015 (9 July 2018). The case was submitted by a Singaporean woman who was married to a Turkish man and had two children by him. It was found inadmissible due to a failure to exhaust domestic remedies.
139 *RKB v Turkey* CEDAW/C/51/D/28/2010 (24 February 2012).

terminated her contract of employment based on gender stereotypes. The first degree labour court ruled that dismissing her but not her male colleague was not discriminatory but only that the termination was unjustified, and the Court of Cassation dismissed the appeal without reference to gender discrimination. Turkey claimed that the violation claims of the author were manifestly ill-founded and not sufficiently substantiated, and that she had been dismissed on the grounds that she failed to have regular work attendance and did not act in line with business ethics, without properly mentioning the gender stereotypes aspect of the case. The CEDAW Cttee concluded that the Turkish courts based their decisions on gender stereotypes, tolerating allegations of extramarital relationships by male employees but not by female employees and that articles 5(a), 11(1a) and 11(1d) of CEDAW had been violated.[140] The Committee also emphasised that despite the appropriate legislative measures, the state has an obligation to improve women's position in society and to eliminate wrongful stereotypes.[141] The Committee decided that adequate compensation should be paid; that the state should take measures to implement laws on gender equality in the work environment; and that the state should provide training to judges, lawyers and law enforcement personnel on women's rights and gender-based stereotypes.[142]

Regarding the implementation of this decision, the Working Group on Communications under OP-CEDAW reported in 2015 the finding of a partly satisfactory implementation of the Committee's recommendations concerning the *RKB* case.[143] In an addendum to the 2014 state report, Turkey reported that although the first degree labour court refused the demand for a retrial – with the justification that the decisions of the CEDAW Cttee, which are advisory in nature, do not provide the conditions for a retrial and that a retrial requires a final decision by the Turkish Constitutional Court – yet it also decided on a compensation payment of 4 446 Turkish Liras to RKB.[144]

140 *RKB v Turkey*, para 8.10.

141 ibid.

142 ibid.

143 CEDAW/C/2015/II/CRP.Add para 11(d).

144 INT/CEDAW/ADR/TUR/19028/E (Annex to the State Report Submitted by Turkey for the 7th Reporting Cycle, dated 2014). <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/TUR/INT_CEDAW_ADR_TUR_19028_E.pdf > accessed 24 March 2022.

#### 5.4.7 Brief Conclusion

CEDAW enjoys the widest implementation constituency in government, Parliament and civil society. Compared to all other treaties there also is a more robust institutional infrastructure that is able to connect CEDAW case law with national actors. This infrastructure not only carries out key functions such as the translation of the CEDAW COs into Turkish, but also inactions between civil society and state actors. Compared to other treaties, the jurisprudence of CEDAW is more widely translated and better disseminated. Yet, the decline in the quality of the state reports over time, and anti-women's rights discourse adopted by some members of the government, also raise concerns about the sustainability of the impact of CEDAW over time. As a retrogressive institutional change, for example, the Ministry for Women and Family in 2011 was replaced by the Ministry of Family and Social Policies, thereby reducing the emphasis on women's rights and strengthening the focus on traditional, patriarchal family life and women as caretakers of their families.

### 5.5 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

#### 5.5.1 Incorporation and Reliance by Legislature and Executive

CAT was ratified in 1988 when systemic torture in Turkish prisons and detention centres remained a key concern. As the explanatory notes indicate, the motivation of the government was to align with the 'Western powers moving in the same direction' and to obtain a tool to 'speak up against any kind of human rights violations'.[145] The latter is also confirmed by one member of Parliament stating that the ratification of CAT would increase Turkey's negotiation capacities.[146]

CAT has been incorporated into domestic law 11 years after the entry into force in 1999 by way of amendments made to the Penal Code. These amendments broadened the definition of torture with direct reference to CAT and increased the maximum sentence of imprisonment from five to eight years for the crime of torture.[147] The legislative history of the amendments points to the direct impact of CAT. The explanatory notes of the amendment explicitly

145 The Reports of the Justice Commission and the Commission on Foreign Affairs on the Draft Law on the Approval of CAT (8 February 1988) <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d18/c010/tbmm18010061ss0041.pdf> accessed 24 March 2022.

146 The 61st Session of the Parliament (21 April 1988) <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d18/c010/tbmm18010061.pdf> accessed 24 March 2022.

147 The Law on the Amendment of Certain Provisions of the Penal Code (No 4449) 1999, arts 1 and 2.

refer to the definition of torture in CAT.[148] Furthermore, during the relevant parliamentary debates three separate MPs referred to its provisions.[149] The direct influence of CAT can also be seen in the adoption of the new Penal Code in 2004. Article 94 broadens the definition of torture and also increases the maximum sentence to 12 years. The legislative history shows the CAT figures as part of the explanatory notes, where direct references to articles 1, 4 and 16 are made.[150]

In addition to these legal developments, the most remarkable executive policy regarding torture and other forms of ill-treatment has been the Zero Tolerance for Torture which was initiated in 2003. This was later emphasised in the programmes of the 60th government in 2007 and the 61st government in 2011.[151]

### 5.5.2 Reliance by the Judiciary

The reliance of the domestic courts on CAT has been limited to the definition of torture. The High Court of Appeals cited CAT in 16 different cases and in all these cases quoted the definition of torture.[152] This is also the case for the Turkish Constitutional Court which cited article 1 of CAT in 27 different cases. In these cases, the TCC cited CAT to emphasise that torture carries a particular intent different from other forms of ill-treatment.[153] While the definition of

148 The explanatory notes are available at <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d21/c012/tbmm21012058ss0141.pdf> accessed 24 March 2022.

149 In the words of one MP, '[t]he Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has entered into force by our country's signature and has become a domestic legal document. With the signature and ratification of this Convention, the obligation to implement its content has arisen.' See the records of the 58nd Session of the Parliament (26 August 1999) <https://www5.tbmm.gov.tr/tutanak/donem21/yil1/bas/b058m.htm> accessed 24 March 2022.

150 Niyazi Güney, Kenan Özdemir and Yusuf S Balo, *Gerekçe ve Tutanaklarla Karşilaştirmali Yeni Türk Ceza Kanunu* (Adil Yayınevi 2004) 304.

151 The programme for the 60th government, <https://www.resmigazete.gov.tr/eskiler/2007/09/20070907M1-1.htm> accessed 24 March 2022; the programme of the 61st government, <https://www.resmigazete.gov.tr/eskiler/2011/07/20110717-1.htm> accessed 24 March 2022.

152 Some of these cases are The High Court of Appeals the 8th Penal Chamber, File No2017/468 Decision No 2017/4455 (20 April 2017); The High Court of Appeals the 8th Penal Chamber, File No 2010/12567 Decision No 2011/10230 (28 September 2011); The High Court of Appeals Penal General Council, File No 2002/191 Decision No 2002/362 T. 15.10.2002; The High Court of Appeals the 8th Penal Chamber, File No 1998/10667 Decision No 1998/12819 (12 October 1998).

153 TCC used CAT to emphasise that torture carries a particular intent different from other forms of ill-treatment in 2014 in the case referenced as App No 2013/293 (17 July 2014).

torture in the Convention attracts the occasional interest of the judiciary, the work of the Committee against Torture, however, goes largely unnoticed. Only in one case before the TCC has a judge referred to the COs of the Committee concerning Canada in his dissenting opinion.[154]

### 5.5.3 Impact on and through Independent State Institutions

Since 28 January 2014, the Human Rights and Equality Institution of Turkey has functioned as the national prevention mechanism pursuant to OP-CAT. Due to this specific mandate, the Law on the Human Rights and Equality Institution of Turkey and its relevant regulation explicitly mention OP-CAT.[155] As of January 2020, the Institution has issued 13 reports on the visits conducted pursuant to OP-CAT. In each report there is a reference to OP-CAT as the main reason behind the visit.[156] In the work of the Institution, particularly in its decisions on the complaints regarding detention conditions, there are references to article 2 of CAT.[157] However, these references are only made in passing. The Ombudsman, meanwhile, has referred to CAT in only one of its decisions.[158]

### 5.5.4 Impact on and through Non-state Actors

CAT has had a substantial impact through non-state actors. The Human Rights Association and Human Rights Foundation of Turkey, which were founded in 1986 and 1990 respectively, are considered the leading organisations in campaigning against torture and providing medical and legal aid to the victims of torture.[159] These two organisations contributed significantly to the monitoring process of the CAT Cttee by submitting five shadow reports in three different

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This reasoning was followed in other cases such as App No 2014/2871 (27 October 2016); App No 2015/13100 (31 October 2018); App No 2014/7296 (29 September 2016); App No 2014/19954 (12 June 2018).

154 Turkish Constitutional Court, App No 2015/14363 (3 April 2019).

155 The Law on the Human Rights and Equality Institution of Turkey (No 6701) 2016, art 2/1(k) and art 9/1(1); The Regulation on the Law and Procedure of the Implementation of the Law on the Human Rights and Equality Institution of Turkey, art 4/1(bb) and art 24/1(1).

156 See the Report No 2018/19 (December 2018) <https://www.tihek.gov.tr/upload/file_editor/2019/06/1560845325.pdf> accessed 24 March 2022.

157 See the Decision No 2018/104 (27 November 2018); Decision No 2018/99 (30 October 2018); Decision No 2018/98 (30 October 2018); Decision No 2018/83 (18 July 2018); Decision No 2019/04 (8 January 2019); Decision No 2019/24 (9 April 2019); Decision No 2019/26 (16 April 2019).

158 See the Decision No 2013/90 (3 December 2013).

159 Interview with Gulan Kaleli and Barış Yavuz, Human Rights Foundation of Turkey, 15 November 2019, Istanbul, Turkey, interview with Emel Ataktürk Sevimli.

cycles. Despite the work of these strong organisations, the 'politicised' nature of torture[160] and overall denial by the government that torture takes place[161] prevent CAT from having a wider reach. The impact of CAT on non-state actors was more evident before the adoption of the new Penal Code. When the definition of torture was limited, non-state actors referred to the definition of CAT to widen the existing scope of domestic provisions.[162]

### 5.5.5 Impact of State Reporting

Turkey has reported to CAT, albeit with significant delays. In its 2010 report, Turkey pointed to its reporting burden to other UN human rights treaty bodies and the European Committee for the Prevention of Torture (CPT) as the reason for late reporting.[163]

In the COs, the Committee asked Turkey to make specific legal reforms including amending article 161/5 of the Criminal Procedure Code which requires special permission to prosecute high-level officials;[164] reviewing the Law on the Right to Access to Information so that information regarding detention facilities is not subject to restrictions;[165] aligning the definition of torture in article 94 of the Penal Code with article 1 of CAT;[166] repealing article 47 of the Penal Code;[167] raising the age of criminal responsibility;[168] prohibiting corporal punishment of children in the home, school and penal institutions;[169] and amending the Penal Code to ensure that the crime of torture is not subject to any statute of limitations.[170]

As recommended by the Committee, Turkey removed the statute of limitations for the crime of torture[171] and this was endorsed by the

160 Interview with Dr Kerem Altıparmak.

161 Interview with Gulan Kaleli and Barış Yavuz.

162 ibid.

163 Third periodic report of state parties due in 1997; the present report is submitted in response to the list of issues (CAT/C/TUR/Q/3) transmitted to the state party pursuant to the optional reporting procedure (A/62/44, paras 23 and 24) – Turkey, 26 January 2010, CAT/C/TUR/3, para 326.

164 COs of the Committee against Torture: Turkey, 20 January 2011, CAT/C/TUR/CO/3, para 8.

165 CAT/C/TUR/CO/3, para 17.

166 COs on the fourth periodic reports of Turkey, 2 June 2016, CAT/C/TUR/CO/4, paras 17–18.

167 CAT/C/TUR/CO/4, para 36.

168 CAT/C/TUR/CO/3, para 21.

169 ibid para 22.

170 ibid para 24.

171 Art 94 of the Penal Code has been amended by art 9 of the Law No 6459. See CAT/C/TUR/4, para 231. It is noteworthy that in the third periodic report, Turkey rejected this recommendation by arguing that it would be against the principle of equality to remove the statute of limitation for one crime. See CAT/C/TUR/3, para 149.

Committee.[172] However, no reference has been made to the CAT Cttee in the drafting history nor in the parliamentary debates of this removal.[173] Some recommendations of CAT, however, were openly rejected by Turkey. For instance, the recommendation to amend the Law on the Right to Access to Information has not been implemented. Turkey stated that the Law includes no restrictions on access to information about detention facilities.[174] Similarly, the recommendation to provide data on complaints related to torture disaggregated by ethnic origin, age and gender has not been implemented.[175] The issue of impunity may be regarded as an area with a low level of implementation as the Committee selected that issue for follow-up both in the third and fourth cycles.

### 5.5.6 Impact of Individual Communications

Only one communication has been decided by the CAT Cttee against Turkey; it was found inadmissible.[176]

### 5.5.7 Impact of Other Measures

The SPT conducted its first visit to Turkey in October 2015, and its report was published in December 2019. The report noted that the Law on the Human Rights Institution of Turkey (No 6332) dated 2012 did not provide a sufficient legal basis for this institution to act as the national preventive mechanism.[177] It further asked for clarification with respect to the functions of the institution as a national preventive mechanism.[178] The first concern was partly remedied by the adoption of the new Law on Human Rights and Equality Institution of Turkey (No 6701) in 2016, which clearly endowed the institution with the mandate to act as the national preventive mechanism pursuant to the OP-CAT.[179]

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172 CAT/C/TUR/CO/4, para 5(a).

173 The Draft Law on the Amendment of Some Laws in the Context of Human Rights and Freedom of Expression (No 6459) (7 March 2013) <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d24/c048/tbmm24048090ss0445.pdf> accessed 24 March 2022.

174 CAT/C/TUR/4, para 272.

175 ibid para 273.

176 The applicant, REG, who was granted refugee status in France alleged that he had been tortured and ill-treated in Turkey. The Committee found this application inadmissible on the basis of non-exhaustion of domestic remedies. See CAT, *REG v Turkey*, Communication 4/1990 (29 April 1991).

177 Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of Turkey, 12 December 2019, CAT/OP/TUR/1, para 19.

178 ibid, para 20.

179 See arts 1 and 9.

However, the functions of the mechanism remain indistinguishable from the general functions of the national human rights institution. Turkey explained that combining all these functions under one institution pursued the 'goal of avoiding possible duplication among different institutions'.[180]

Similar to the concerns raised by other treaty bodies, the SPT also commented on the independence of the national human rights institution, and noted that its members are selected at the discretion of the executive branch.[181] Turkey commented that with the changes brought by Law No 6701 in 2016 a wide range of stakeholders including lawyers, NGOs, media representatives and academics were able to propose membership.[182] However, members were still appointed by the President of Turkey and the Council of Ministers. After the amendments in July 2018, the President directly appoints the members without being notified by any proposals for membership.[183]

#### 5.5.8 Brief Conclusion

CAT has had a direct impact on legislative changes, judicial decisions and the work of non-state actors with regard to the definition of torture. However, this substantial impact does not extend to procedural obligations arising from CAT as impunity is one of the most raised and repeated issues by the CAT Cttee. It is also worth noting that some of the legislative and executive changes in this field can readily be attributed to the European Court case law.

### 5.6 *Convention on the Rights of the Child*

#### 5.6.1 Incorporation and Reliance by the Legislature and Executive

Turkey ratified the CRC in 1995. Although Turkey did not engage in a comprehensive review of its domestic law before or after ratification, there have been many changes increasing the impact of CRC. First, the Law on the Competence and Functioning of the Juvenile Courts was amended in 2003 to include children above the age of 15. The explanatory notes cite the definition of the child in CRC to justify this amendment.[184] Second, the new Penal Code that was

180 Comments of Turkey on the recommendations and observations addressed to it in connection with the Subcommittee visit undertaken from 6 to 9 October 2015, 16 December 2019, CAT/OP/TUR/CSPRO/1, para 33.

181 CAT/OP/TUR/1, para 24.

182 CAT/OP/TUR/CSPRO/1, para 20. This referred to art 10(2) of the Law no 6701 before the amendment of 2 July 2018.

183 Statutory Decree (No 703) 2018, art 149.

184 The Draft Law on the Amendment of Certain Laws (23 July 2003) <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d22/c025/tbmm22025113ss0262.pdf>; <https://www2.tbmm.gov.tr/d22/1/1-0282.pdf> accessed 24 March 2022.

adopted in 2004 defines 'child' as any person below the age of 18 years and sets the age for criminal responsibility as 12 years. CRC is not cited explicitly in the text of the Code. However, the explanatory notes cite CRC as the source for the definition of the child as such.[185]

Third, the most comprehensive domestic framework – the Law on Child Protection – was adopted ten years after ratification. There is no direct reference to CRC in the formal text of the Law or in the explanatory notes presented by the government.[186] However, during the parliamentary proceedings on 3 July 2005, Cemil Çiçek, who at the time was the Minister of Justice, stated the Draft Law was aimed at incorporating the obligations arising from CRC into the domestic law.[187]

Fourth, in 2010 legal changes were made to the Anti-Terror Law regarding children charged with terror-related offences who are publicly known as 'stone-throwing children'.[188] It was accepted under the new provisions that the crime of resistance and the crime of terrorist propaganda during assemblies are not applicable to children. Furthermore, the clause under the Anti-Terror Law increasing the penalties for terror-related crimes has been changed to exclude children from its scope. Although there is no direct reference to CRC in the wording of the legal amendment, the explanatory note quotes article 40 of CRC to show the obligation to take preventive instead of punitive measures and not to apply penalties for children unless they are of last resort.[189]

Finally, CRC had an impact on the 2010 constitutional amendments. First, 'the rights of the child' was added to the title of article 41, which now reads 'Protection of the family and the rights of the child'. Second, the 2010 amendments added the third and fourth paragraphs to article 41 which ascribe children

185 Erdener Yurtcan, *Yargıtay Kararları Işığı Altında Türk Ceza Kanunu* (*Genel Hükümler*) *Cilt-1* (Türkiye Barolar Birliği 2015) 106.

186 The Draft Law on Child Protection (10 March 2005) <https://www5.tbmm.gov.tr/sirasayi/donem22/yil01/ss963m.htm> accessed 24 March 2022.

187 'This draft under concern is about the protection of children. The Turkish Grand National Assembly has adopted the United Nations Convention on the Rights of the Child a while ago. Therefore, Turkey implements an international obligation with this draft about which we are debating today and which we will evaluate soon. It is about adapting the obligations arising from the Convention on the Rights of the Child into our domestic law.' The 125th Session of the Parliament (3 July 2005) <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d22/c091/tbmm22091125.pdf> accessed 24 March 2022.

188 'Stone-Throwing Youths Face up to 58 Years in Prison in Turkey' *Hurriyet Daily News* (1 December 2008) <http://www.hurriyet.com.tr/gundem/stone-throwing-youths-face-up-to-58-years-in-prison-in-turkey-10480767> accessed 24 March 2022.

189 The Draft Law on the Amendment of the Anti-Terror Law and Other Laws (10 November 2009) <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d23/c076/tbmm23076137ss0526.pdf> accessed 24 March 2022.

'the right to protection and care and the right to have and maintain a personal and direct relation with his/her mother and father unless it is contrary to his/her best interests', and assign a duty to the state to protect children from all kinds of abuse and violence. Third, the rule which sets out that the measures taken for children are not deemed to be against the principle of equality was added to article 10 of the Constitution.[190] The explanatory notes provided by the government in 2010 state that the amendment to article 41 aims to incorporate the universal principles on the rights of the child as established by CRC and the European Convention on the Exercise of Children's Rights.[191]

### 5.6.2 Reliance by the Judiciary

CRC has been widely cited in the decisions of the domestic courts. The vast majority of these decisions emanate from the High Court of Appeals.[192] In criminal cases, the High Court of Appeals consistently cites CRC as authority that the child cannot be charged for the cost of the proceedings.[193] In civil cases, the High Court of Appeals refers to article 12 of CRC to emphasise the requirement to take the child's opinions into account in custody cases.[194] It also refers to article 3 of CRC in many cases to show that the best interests of the child are the main principle guiding custody cases.[195] The Turkish Constitutional Court also refers to CRC, particularly in recent years in its decisions on individual applications. The impact of CRC on these decisions range

190 The Law on the Amendment of the Constitution of the Turkish Republic (No 5982) 2010, art 1.

191 The Draft Law on the Amendment of the Constitution of the Turkish Republic <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d23/c066/tbmm23066088ss0497.pdf> accessed 24 March 2022, art 4.

192 There are 1655 decisions including at least one reference to CRC. This information is reached via LexPera through searching for 'Çocuk Haklarına Dair Sözleşme' on 7 November 2019.

193 Some of these cases are The High Court of Appeals 17th Penal Chamber, File No 2015/15665 Decision No 2015/10872 (10 December 2015); The High Court of Appeals 17th Penal Chamber, File No 2016/5390 Decision No 2017/15604 (11 December 2017); The High Court of Appeals 13th Penal Chamber, File No 2014/36407 Decision No 2016/659 (18 January 2016).

194 Some of these cases are The High Court of Appeals 2nd Civil Chamber, File No 2008/3840 Decision No 2009/6670 (8 April 2009); The High Court of Appeals 2nd Civil Chamber, File No 2010/12050 Decision No 2011/12818 (20 July 2011); The High Court of Appeals 2nd Civil Chamber, File No 2012/25767 Decision No 2013/17834 (24 June 2013).

195 Some of these cases are The High Court of Appeals 2nd Civil Chamber, File No 2014/26364 Decision No 2015/11749 (4 June 2015); The High Court of Appeals 2nd Civil Chamber, File No 2013/5542 Decision No 2013/25510 (7 November 2013); The High Court of Appeals 2nd Civil Chamber, File No 2017/2281 Decision No 2017/14852 (19 December 2017); The High Court of Appeals 2nd Civil Chamber, File No 2016/23674 Decision No 2016/16251 (20 December 2016).

from the best interests of the child and the right to participation,[196] the right to health,[197] to the right not to be separated from parents.[198]

When it comes to the work of the CRC Cttee, the number of references decreases dramatically. The High Court of Appeals twice cited General Comment 14.[199] The TCC also referred to the General Comments[200] and the COs on Turkey in a few decisions.[201] These references were made in passing and do not seem to have directly affected the outcome of the cases.

### 5.6.3 Impact on and through Independent State Institutions

The establishment of the Ombudsman in 2012 and the establishment of the Human Rights and Equality Institution of Turkey in 2016 were major developments enhancing the impact of CRC. The Office of Ombudsman allocates one ombudsman to the rights of the child and women's rights.[202] Similarly, the Human Rights and Equality Institution of Turkey accepts individual applications from children. These applications can be made anonymously.[203] While the Institution has not relied on CRC in any complaints, the Ombudsman cited CRC in six decisions,[204] and General Comment 9 in one decision.[205]

196 Turkish Constitutional Court, App No 2015/13760 (18 July 2018); Turkish Constitutional Court, App No 2015/10826 (17 July 2018); Turkish Constitutional Court, App No 2014/13936 (8 March 2018).

197 Turkish Constitutional Court, App No 2015/4664 (11 October 2018); Turkish Constitutional Court, App No 2015/4662 (10 October 2018); Turkish Constitutional Court, App No 2015/13136 (30 October 2018); Turkish Constitutional Court, App No 2015/1863 (30 January 2015); Turkish Constitutional Court, App No 2015/326 (11 October 2018).

198 Turkish Constitutional Court, App No 2013/6382 (9 March 2016); Turkish Constitutional Court, App No 2013/8846 (9 March 2016); Turkish Constitutional Court, App No 2013/3181 (3 February 2016).

199 See The High Court of Appeals 4th Civil Chamber, File No 2016/9024 Decision No 2018/6595 (25 October 2018); and The High Court of Appeals 4th Civil Chamber., File No 2016/12541 Decision No 2018/7636 (5 December 2018).

200 Turkish Constitutional Court, App No 2014/5974 (26 December 2017); Turkish Constitutional Court App No 2014/18179 (25 October 2017); Turkish Constitutional Court App No 2013/2928 (18 October 2017); Turkish Constitutional Court, File No 2015/68, Decision No 2017/166 (29 November 2017).

201 Turkish Constitutional Court App No 2014/18179 (25 October 2017); Turkish Constitutional Court App No 2013/3262 (11 May 2016).

202 Law on the Institution of Ombudsman (No 6328), art 7(1)(f).

203 Law on Human Rights and Equality Institution of Turkey (Law No 6701), art 17(7).

204 Complaint No 02.2013/378 (27 January 2014); Complaint No 2014/3164 (2 October 2014); Complaint No 2017/1293 (11 January 2018); Complaint No 2015/5175 (31 March 2016); Complaint No 2015/5629 (23 August 2016); Complaint No 2015/4978 (15 April 2016).

205 Complaint No 02.2013/1064 (6 June 2014).

### 5.6.4 Impact on and through Non-state Actors

Many interlocutors with whom we engaged referred to CRC as one of the well-known human rights treaties.[206] They consider that CRC is well-known because it is deemed 'non-political',[207] 'harmless'[208] and 'sympathetic',[209] to some extent it overlaps with women's rights[210] and it has institutional support under the Ministry of Family.[211] The work of the United Nations Children's Fund (UNICEF) has also increased awareness of CRC.[212] According to the interlocutors, the impact of CRC has been seen in the following areas: the right to participation of children;[213] changing perceptions of childhood;[214] the definition of the child;[215] and the best interests of the child principle.[216]

### 5.6.5 State Reporting and Its Impact

In the COs, the CRC Cttee asked for specific legal reforms such as increasing the marriage age of girls to equal that of boys (from 15 to 17 years) and instituting the same age for the end of compulsory education and the beginning of employment;[217] amending the Civil Code of 1926 which excludes children from forming, joining and leaving associations;[218] raising the minimum legal age for criminal responsibility;[219] establishing juvenile courts in every province;[220] and prohibiting corporal punishment in the home and in alternative care settings.[221]

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206 Interview with Prof Dr Bertil Emrah Oder; interview with Gulan Kaleli and Barış Yavuz; interview with Hakan Özgül and Süleyman Akbulut; interview with Beydağ Tıraş Öneri and Özlem Yılmaz; interview with Dr Taylan Barın, Turkish Constitutional Court Rapporteur, 22 October 2019, Ankara, Turkey; interview with MP Hakan Çavuşoğlu.

207 Interview with Dr Kerem Altıparmak.

208 Interview with Adem Arkadaş Thibert.

209 Interview with Celile Özlem Tunçak.

210 Interview with Prof Dr Ayşe Feride Acar.

211 Interview with Zehra Güleç Kayış and Mehmet Aktaş, Human Rights and Equality Institution of Turkey, 23 October 2019, Ankara, Turkey.

212 Interview with Prof Dr Ayşe Feride Acar.

213 Interview with Bayram İnce, Child Services Unit at the Ministry of Family, Labour and Social Services, 23 October 2019, Ankara, Turkey; interview with Emrah Kırımsoy, 1 August 2019, Istanbul, Turkey.

214 Interview with Emrah Kırımsoy.

215 Interview with Gulan Kaleli and Barış Yavuz.

216 Interview with Beydağ Tıraş Öneri and Özlem Yılmaz.

217 COs of the Committee on the Rights of the Child: Turkey (9 July 2001) CRC/C/15/Add.152, para 26.

218 CRC/C/15/Add.152, para 38.

219 CRC/C/15/Add.152, para 66.

220 CRC/C/15/Add.152, para 66.

221 COs: Turkey (20 July 2012) CRC/C/TUR/CO/2–3, para 45(a).

During the 60th session in 2012, the Committee endorsed the steps taken in the following areas that were among the COs taken in 2001:[222] amendments to the counter-terrorism law that softens the penalties for children (2010); the adoption of the Law on Child Protection (2005); legal amendments regarding persons with disabilities (2005); increasing the minimum age of criminal responsibility (2004); the entry into force of the Turkish Civil Code (2005); and the ratification of the Optional Protocols to CRC. Nonetheless, the Committee stressed that Turkey had not fully or sufficiently implemented the previous recommendations of the Committee in the following areas:[223] reservations to the Convention on the Rights of the Child; coordination between public agencies; an independent and effective monitoring mechanism; data collection; honour killings; the prohibition of discrimination against children belonging to minorities not recognised under the Treaty of Lausanne of 1923; disparities affecting children living in the eastern and south-eastern regions and in rural areas especially with regard to their access to adequate health and education; corporal punishment; and the administration of juvenile justice, including long detention periods and poor conditions in some prisons.

#### 5.6.6 Brief Conclusion

CRC has had a direct impact on legislative changes, executive policies, judicial decisions and non-state actors. The definition of the child, the right to participation and the best interests of the child principle are the thematic areas in which CRC is well-known and has had the most significant impact. Some interlocutors pointed out that this impact could be attributed to the comparatively less politicised nature of CRC. Yet, there is also resistance to CRC, in particular where it conflicts with the political stance of the government, as is the case with children belonging to minorities and the marriage age for children.

### 5.7 *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*

#### 5.7.1 Incorporation and Reliance by the Legislature and Executive

Turkey ratified CMW in 2004. A number of domestic laws indirectly speak to Turkey's obligations under the Convention on Migrant Workers, although none of them make explicit reference to it. Of these, the Law on Work Permits of Foreigners No 4817 of 2003, the Law on Foreigners and International Protection No 6458 of 2013, followed by the establishment of the Directorate General of

222 CRC/C/TUR/CO/2–3, paras 3–4.

223 CRC/C/TUR/CO/2–3, para 7.

Migration Management, and the Law on International Workforce No 6735 of 2016, are of most relevance. Turkey additionally listed the Law on Passports No 5682, the Law on Child Protection No 5395, and the Attorneyship Law No 1136 as laws that realise the aims of the Convention in its state report.[224]

Although migration, with a specific focus on the influx of Syrian refugees (as of 25 November 2020 Turkey hosts 3 635 288 registered Syrian refugees)[225] has been intensively discussed in the Turkish Grand National Assembly, CMW has received limited attention in such debates. The discussions on migration and asylum mainly concern the domestic legislations, social services and budgetary allocations for Syrian refugees and the EU-Turkey deal of 2016.

There are no direct references to the Convention in the process of the formulation of policies. The Presidency for Turks Abroad and Related Communities established in 2010,[226] the General Directorate of Migration Management and the Department of Protection of Human Trafficking Victims established in 2013 under the Law on Foreigners and International Protection No 6458, however,[227] are prominent institutions in the field of migration. Turkey works closely with other UN institutions and other stakeholders, namely, the UNHCR, IOM and the EU, in the field of migrants and refugees.[228]

### 5.7.2 Reliance by the Judiciary

CMW is one of the least known UN human rights treaties among lawyers, prosecutors and judges. The treaty has been briefly mentioned in one decision of the High Court of Appeals' General Assembly of Civil Chambers.[229]

### 5.7.3 Impact on and through Non-state Actors

CMW is largely unknown within civil society and academia. There are many NGOs working with a focus on refugee rights in Turkey, particularly after the arrival of Syrian refugees. However, these NGOs do not seem to be actively using CMW. Instead they focus on international documents and mechanisms that focus directly on the protection of refugees. No domestic NGOs have submitted shadow reports to the Committee. CMW was not mentioned throughout

224 CMW/C/TUR/1, para 12.

225 UNHCR, Syrian Regional Refugee Response (2020) <https://data2.unhcr.org/en/situations/syria/location/113> accessed 24 March 2022.

226 CMW/C/TUR/1, para 160.

227 CMW/C/TUR/1, para 27.

228 IOM, IOM Refugee Response Operations in Turkey (2019) <https://turkiye.iom.int/sites/g/files/tmzbdl1061/files/documents/Refugee_Response_One_Pager_FEB-APR19_EN_Web.pdf> accessed 24 March 2022.

229 High Court of Appeals, File No 2005/618 (16 November 2005).

our interviews with NGOs, academics, representatives of bar associations and other interlocutors.

### 5.7.4 Impact of State Reporting

Turkey has only submitted an initial report concerning CMW in 2016 with a 10-year delay. Turkey stated in its report that it was not possible to cooperate with the NGOs during the preparation process.[230]

COs have not been translated into Turkish and are not accessible on public websites. For the implementation of the key recommendations within the COs, Turkey continues to invest in policies and projects aiming to improve the living and working conditions of migrant workers and their families in a few areas in accordance with the key recommendations, such as education, the right to be informed and medical care. However, it is not possible to state to what extent these measures have been taken as a result of the COs. The key recommendations have not been implemented in some critical areas, such as expulsions, remuneration, conditions of work, and the right to join trade unions.

In the months following the COs, the International Labour Force Law No 6735 was enacted regulating, among others, work permit applications for foreign nationals. However, there are no references to CMW in the new law. No parliamentary questions were raised, no draft legislations were made as a result of the COs and there have been no follow-ups.

### 5.7.5 Impact of Individual Communications

While Turkey made a declaration that the competence of the Committee would be recognised at a later time, the individual complaint mechanism has not yet entered into force for CMW.

### 5.7.6 Brief Conclusion

The ratification of the Convention on Migrant Workers by Turkey is best understood as support from a migrant-sending country. As is well known, there is very limited support for CMW from migrant-receiving countries around the world. Yet, alongside the significant presence of migrants from Turkey, in particular, in Europe, the Syrian conflict of the past decade has significantly transformed Turkey's position as a migrant-sending country. Turkey now is home to a large number of refugees, as well as migrant workers in the domestic care and other sectors.[231] Despite this fundamental change, Turkey has not yet systematically

230 CMW/C/TUR/1, para 36.

231 According to the 2018 statistics published by the Ministry of Family, Labour and Social Security, the highest percentage of work permits given to foreigners is for

engaged with this Convention with a focus on migrant workers within Turkey, but rather with a focus on migrant workers from Turkey elsewhere. This can be seen both in the emphasis placed on the protection of Turkish migrant workers in the activities of the NHRI, and in the Parliamentary Human Rights Commission and state reporting.

### 5.8 *Convention on the Rights of Persons with Disabilities*

#### 5.8.1 Incorporation and Reliance by the Legislature and Executive

Turkey ratified CRPD in 2009. It is worth noting that at the time of ratification, Turkey already had a comprehensive law – the Turkish Disability Act – which was enacted on 1 July 2005. The legal amendments after ratification show limited impact of CRPD.

In 2010, the constitutional amendments to article 10 of the Constitution enshrined that the special measures taken for the persons with disabilities are not against the principle of equality. Yet, the explanatory notes of the 2010 constitutional amendments which added this sentence to article 10 contain no reference to CRPD. In 2013, the term *özürlü* ('with defect'), which has a defamatory meaning in Turkish, was replaced by *engelli* ('with disability') in all the relevant laws including the Turkish Disability Act. During the parliamentary proceedings on this amendment, many members of Parliament discussed the rights of persons with disabilities and referred to CRPD.[232] In 2014, several provisions of the Turkish Disability Act were amended. These amendments expanded the purposes of disability services, added an anti-discrimination provision, including indirect discrimination and reasonable accommodation, and stipulated the general principles in the fields of labour and education.[233] Despite these important changes, there is only one explicit reference to CRPD in the parliamentary debates in 2014.[234]

On the question of how well CRPD is known by the government, the interlocutors point out that disability rights are known only with respect to the fields such as education and health. There is a lack of awareness regarding the

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domestic/household employees. See Ministry of Family, Labour and Social Security, 2018 Statistics: Work Permits of Foreigners (2019) <https://www.csgb.gov.tr/media/63117/yabanciizin2019.pdf.> accessed 24 March 2022.

232 The 97th Session of the Parliament, 25 April 2013 <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d24/c049/tbmm24049097.pdf> accessed 24 March 2022.

233 Law No 6518, 2014, arts 62–75.

234 The 54th Session of the Parliament (29 January 2014) <https://www5.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d24/c070/tbmm24070054.pdf> accessed 24 March 2022.

right to autonomy. Therefore, the authorities are reluctant to change laws that are capable of creating more autonomy in civil rights and employment such as the Civil Code, the Law on Notary, and the Law on Judges and Prosecutors.[235]

### 5.8.2 Reliance by the Judiciary

CRPD has attracted almost no attention from the domestic courts. The Turkish Constitutional Court has cited CRPD in three decisions,[236] while the High Court of Appeals, the Council of State and the Court of Accounts have once referred to CRPD in their decisions.[237] The domestic courts have not referred to any of the general recommendations or COs of the CRPD Cttee.

### 5.8.3 Impact on and through Independent State Institutions

The Human Rights and Equality Institution applied reasonable accommodation by reference to CRPD in one individual application complaining about the failure to adjust working conditions to the individual's disability.[238] The Ombudsman has also cited CRPD in nine different cases.[239]

### 5.8.4 Impact on and through Non-state Actors

The monitoring process of the CRPD Cttee has attracted the attention of many domestic NGOs working in the field of disability rights. Most of the reports submitted to the Committee are collaborative work of many organisations. For instance, the report led by the Network for the Rights of Children with Disabilities (EÇHA) received contributions from 73 domestic organisations. Despite this high interest in the CRPD mechanisms, the representatives of the Social Rights and Research Society (TOHAD) have indicated that for most of the disability organisations in Turkey, CRPD is known only by its name. Many organisations have no detailed information of the obligations of CRPD, or its

235 Interview with Hakan Özgül and Süleyman Akbulut.

236 Turkish Constitutional Court, App No 2014/19352 (24 May 2018); Turkish Constitutional Court App No 2015/17844 (7 March 2019); Turkish Constitutional Court, File No 2012/102, Decision No 2012/207 (27 December 2012).

237 The Court of Accounts, No 1304 (28 January 2010); The High Court of Appeals 12th Civil Chamber, File No 2011/7964 Decision No 2011/7497 (25 April 2011); The Council of State, File No 2008/2220 Decision No 2012/2239 (21 November 2012).

238 Decision No 2019/06 (15 January 2019).

239 Complaint No 02.2013/1064 (6 April 2014); Complaint No 2016/2600 (24 April 2017); Complaint No 2016/4990 (31 July 2017); Complaint No 2017/384 (24 August 2017); Complaint No 2016/1863 (28 October 2016); Complaint No 2016/102 (26 September 2016); Complaint No 2015/5862 (19 May 2016); Complaint No 2015/5496 (27 July 2016); Complaint No 2016/719 (10 October 2016).

mechanisms.[240] Due to this low level of awareness, they do not have the capacity to create pressure on the government to make necessary changes.[241]

### 5.8.5 Impact of State Reporting

The COs for Turkey were delivered in April 2019. The Committee asked Turkey to make a number of changes in civil law including replacing the guardianship regime with support decision-making mechanisms; abolishing the requirement of the presence of two witnesses under the Notary Law; and revising the Civil Code which subjects the right to marry and the right to vote of persons with intellectual disabilities to medical authorisation.[242] Turkey should also repeal the provisions of the Civil Code that deny the right of persons with disabilities to marry and support them to raise their children at home.[243] In the field of access to justice, Turkey is asked to amend the Law on Judges and Prosecutors to allow persons with disabilities to participate in the justice system.[244] The Committee also requested Turkey to repeal the criterion of 'dangerousness' as a basis for depriving persons with disabilities of their liberty[245] and to abolish the requirements of medical reports and third-party authorisation to travel.[246] Lastly, Turkey is asked to strengthen the capacity of the General Directorate of Social Services for Persons with Disabilities and the Elderly.[247]

### 5.8.6 Brief Conclusion

It is difficult to assess the impact of CRPD as the Committee delivered its first COs on Turkey in April 2019. It is interesting to note that the rights of persons with disabilities were legalised before the adoption of CRPD. The parliamentary debates on the legal amendments show clearly that there is an overall knowledge of CRPD at the legislative level. This is not the case for the judiciary, probably because it is a new instrument. The strongest impact of CRPD clearly is on the NGOs and the monitoring process before the CRPD Cttee attracted more attention from many domestic organisations than any UNTB ever has.

240 Interview with Hakan Özgül and Süleyman Akbulut.
241 ibid.
242 COs on the Initial Report of Turkey (9 April 2019), CRPD/C/TUR/CO/1, para 26.
243 CRPD/C/TUR/CO/1, para 47.
244 CRPD/C/TUR/CO/1, para 28.
245 CRPD/C/TUR/CO/1, para 30.
246 CRPD/C/TUR/CO/1, para 41.
247 CRPD/C/TUR/CO/1, para 67.

## 6 Conclusion

The impact of UNTB in Turkey significantly varies based on the treaty. Despite Turkey's monist stance towards international law as reflected in its Constitution, the treaties that have had the most direct impact on the practices of the judiciary are those treaties that have been embedded in domestic law, even if only partially. We observe this particularly in the cases of CEDAW, CAT and CRC. It is when certain standards, such as the definition of torture, the definition of a child or the definition of the head of family in line with UN human rights treaties, are incorporated in domestic laws that their impact becomes routine and normalised. In contrast, in cases that lack such domestic incorporation such as CERD, the impact of UN human rights treaties has only been superficial. The impact of the Covenants that encompass a wide range of rights, on the other hand, is inhibited due to their general formulations of rights. In the field of civil and political rights, the state authorities and the judiciary are strongly socialised into relying on the European Convention on Human Rights. All the individual petition case law of the Turkish Constitutional Court, too, focuses on the intersection of the Convention and the Constitution. CCPR is unable to compete with this highly-institutionalised embedded quality of the ECHR in the Turkish system. With respect to CESCR, the non-justiciability of economic, social and cultural rights *qua* human rights in Turkey and in the Constitution, in particular, constitutes a barrier to impact.

There are important ideological barriers to impact across the full spectrum of treaties. In the case of the enforced disappearance treaty, this takes the form of non-ratification; in the case of the protection of rights of persons belonging to minorities, it results in reservations. In the case of racial discrimination and the rights of migrant workers, while Turkey is a state party to both, there is a general perception that violations of these rights only occur in other places in the world, for example, in Europe. In the case of CESCR, these rights are viewed as programmatic and not justiciable. While CRC and CRPD are subject to comparatively fewer ideological barriers, the domestic perception of these rights continues to be through the lens of assistance and vulnerability. CEDAW is also subject to ideological barriers based on a patriarchal understanding of families and women's sexuality.

Institutionally, UN human rights treaties are not well entrenched at the domestic level. While there is specialised institutional ownership of CEDAW, CRC and CRPD at dedicated ministries, the rest of the treaties are within the general purview of the Ministry of Foreign Affairs. In addition, there is no intra-governmental coordination concerning the follow-up to treaty body

recommendations or structured dialogues between the executive and the legislative branches on such recommendations.

Our study reveals that the impact of UN human rights treaties on civil society is strongly hampered by capacity constraints, most notably language barriers. This is exacerbated by the fact that even the UN state reports are not prepared in Turkish, but in English. The translation of reports, COs and General Comments are piecemeal and incomplete. Despite these difficulties, UN treaties have enabled important mobilisation for domestic civil society organisations when it comes to CEDAW, CAT, CRC and, more recently, CRPD. We found that between 1999 and 2020 the treaties with the weakest impact in Turkey have been CESCR, CERD and CMW.