Chapter Eight

Protecting Marginalised Individuals and Minorities in the ECtHR: Litigation and Jurisprudence in Turkey

Dilek Kurban*

1. Introduction

Turkey is a founding member of the Council of Europe, having become a member in 1949. It ratified the European Convention on Human Rights (hereafter, ECHR or Convention) and Protocol no. 1 in 1954. Over time, Turkey also ratified Protocols nos. 6 and 13 but has yet to ratify Protocols nos. 4, 7 and 12. Turkey is also a party to the principal UN human rights conventions. Turkey’s foreign policy vis-à-vis the ratification of treaties is closely related to its domestic policy on minorities. With the exception of non-Muslims who have been granted minority status under the 1923 Treaty of Lausanne, the Turkish state refuses to recognise any other group as minorities. Accordingly, it ratifies human rights conventions that contain provisions relating to minorities with reservations on such provisions. When it

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1 Turkey has ratified the statute of the Council of Europe on 12 December 1949 through law no. 5456, which put into effect Turkey’s retrospective membership in the organisation as of 8 August 1949.

2 Law no. 6366, 10 March 1954.

3 The major UN human rights treaties Turkey has ratified are: the International Covenant on Civil and Political Rights (hereafter, ICCPR), the International Covenant on Economic, Social and Cultural Rights (hereafter, ICESCR), the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Elimination of All Forms of Racial Discrimination.

4 In addition to the European Convention on Human Rights (hereafter, Convention), Turkey is a party to the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the revised European Social Charter.

5 This is the case for Article 27 of the ICCPR; Articles 17, 29 and 30 of the Convention on the Rights of the Child; Article 13(3) and (4) of the ICESCR; as well as various OSCE
comes to conventions that are specifically on minorities, however, Turkey does not sign the treaty altogether, as in the case of the Council of Europe's Framework Convention for the Protection of National Minorities.

For a long time, the status of international conventions in the domestic legal order has been a matter of contention among legal scholars in Turkey. Prior to its amendment on 22 May 2004, Article 90 of the Turkish Constitution read: 'International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional.' While there have been instances where courts stressed the supremacy of the Convention over domestic laws, and even the constitution, there was no uniform judicial view or practice with regard to which body of law should prevail in case of a conflict between international treaties and national laws. This debate was resolved in 2004 in favour of the monist view, with the addition of a clause to Article 90. Pursuant to this amendment which gives direct effect to human rights treaties to which Turkey is a party, the courts of general jurisdiction are now required to enforce the supremacy of the Convention over domestic laws. Yet, while the Court of Cassation and the Council of State referred in some of their judgments to