



Right to Education-National Report Turkey

ULAŞ KARAN

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Work Package 3 (Law as or against justice for all?) for Deliverable 3.6 (The Right to Education-National Report Turkey)

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The logo for ETHOS, featuring the word "ETHOS" in blue capital letters with a small orange globe icon to the right of the letter "O".

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About ETHOS

ETHOS - Towards a European Theory Of Justice and fairness, is a European Commission Horizon 2020 research project that seeks to provide building blocks for the development of an empirically informed European theory of justice and fairness. The project seeks to do so by:

- a) refining and deepening the knowledge on the European foundations of justice - both historically based and contemporary envisaged;
- b) enhancing awareness of mechanisms that impede the realisation of justice ideals as they are lived in contemporary Europe;
- c) advancing the understanding of the process of drawing and re-drawing of the boundaries of justice (fault lines); and
- d) providing guidance to politicians, policy makers, advocacies and other stakeholders on how to design and implement policies to reserve inequalities and prevent injustice.

ETHOS does not merely understand justice as an abstract moral ideal, that is universal and worth striving for. Rather, it is understood as a re-enacted and re-constructed "lived" experience. The experience is embedded in firm legal, political, moral, social, economic and cultural institutions that are geared to giving members of society what is their due.

In the ETHOS project, justice is studied as an interdependent relationship between the ideal of justice, and its real manifestation – as set in the highly complex institutions of modern European societies. The relationship between the normative and practical, the formal and informal, is acknowledged and critically assessed through a multi-disciplinary approach.

To enhance the formulation of an empirically-based theory of justice and fairness, ETHOS will explore the normative (ideal) underpinnings of justice and its practical realisation in four heuristically defined domains of justice - social justice, economic justice, political justice, and civil and symbolic justice. These domains are revealed in several spheres:

- a) philosophical and political tradition,
- b) legal framework,
- c) daily (bureaucratic) practice,
- d) current public debates, and
- e) the accounts of the vulnerable populations in six European countries (the Netherlands, the UK, Hungary, Austria, Portugal and Turkey).

The question of drawing boundaries and redrawing the fault-lines of justice permeates the entire investigation.

Alongside Utrecht University in the Netherlands who coordinate the project, five further research institutions cooperate. They are based in Austria (European Training and Research Centre for Human Rights and Democracy), Hungary (Central European University), Portugal (Centre for Social Studies), Turkey (Boğaziçi University), and the UK (University of Bristol). The research project lasts from January 2017 to December 2019.

Executive Summary

This working paper was written within the framework Work Package 3 (Law as or against justice for all?) for Deliverable 3.6 (Right to Education-National Report Turkey) of the ETHOS Project. The paper focuses on right to education of two groups, namely ethnic and religious minorities and persons with disabilities in Turkey in a strict sense. It mainly elaborates on the existing legal framework without addressing its application or interpretation by the relevant organs.

The notion of “minority rights” has a negative meaning in Turkish state and society which associated with separatism in internal policy and unjustified interference in internal affairs in foreign policy. In Turkey, the rights of minorities are addressed through the Lausanne Peace Treaty and in practice, protection afforded by the existing legal framework is restricted to Greek Orthodox Christians, Armenian Orthodox Christians and Jews only, leaving out other ethnic and “non-Muslim” minorities as well as religious groups. The provisions of the Constitution of Republic of Turkey (CRT) are fundamental legal rules binding upon the legislative, executive and judicial organs, and administrative authorities and they also have horizontal effect on other private institutions and individuals. Art. 42 of the CRT explicitly and set forth the right to education in a broad sense. Having looked at the wording of the Art. 42, right to education considered both a first generation right as well as a second generation right imposes positive obligations on the state. Art. 10 of the CRT (principle of equality) can be served as a basis to provide protection to persons belonging to all disadvantaged groups including ethnic and religious minorities as well persons with disabilities. However, Art. 24 provides for religious education courses in schools and Art. 42. prohibits teaching languages other than Turkish as a mother tongue to Turkish citizens.

There are few statutory laws directly referring ethnic or religious minorities in Turkey, either directly through laws granting minority rights or indirectly through an anti-discrimination law, which are restrictive in general. The education system in Turkey adopted a centralized approach where the curricula of the all schools, regardless of their status as public, private or minority schools strictly determined by the Ministry of Education. The current number of children with disabilities attended to inclusive or special education classes is very low.

Although address-based school enrolment and centralized education system gives the impression of the justice concept of justice as redistribution has been employed and promoting equality, in actual fact, it disregards the diversity of the Turkish society and imposes a monistic identity to the various ethnic or cultural groups. In other words, the education system indigenises either of the concepts of justice, as redistribution or recognition. Having looked at the legal framework only PwDs is regarded as vulnerable group and ethnic or religious minorities constantly ignored. It will not be wrong to say that the concept of vulnerability does not play a role in the context of the right education of ethnic and religious minorities.

With respect to PwDs, the legal framework seems mostly in line with the international standards. The reason is that, although, as stated above, minorities are regarded as “sensitive” and “unwanted” groups, PwDs are acknowledged as persons need to be “protected” by the state and the society as whole. Thus, the problems of PwDs are not acceded as “political” and they do not appear in the focus of the political debate. In contradiction to ethnic and religious minorities, as regards PwDs, the concept of vulnerability plays a role in the context of the right to education.

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List of Abbreviations

Art./Arts.	: Article/Articles
CERD	: Committee on the Elimination of Racial Discrimination
CESCR	: Committee on the Economic, Social and Cultural Rights
CRPD	: Committee on the Rights of Persons with Disabilities
CRC	: Committee on the Rights of the Child
CRT	: Constitution of Republic of Turkey
ECHR	: European Convention on Human Rights
ECRI	: European Commission against Racism and Intolerance
ECSR	: European Committee on Social Rights
ECtHR	: European Court of Human Rights
ESC-R	: European Social Charter (Revised)
EU	: European Union
HRC	: Human Rights Committee
ICCPR	: International Covenant on Civil and Political Rights
ICERD	: International Convention on the Elimination of Racial Discrimination
ICESCR	: International Covenant on Economic, Social and Cultural Rights
p	: page
para./paras.	: paragraph/paragraphs
PwDs	: Persons with disabilities
TCC	: Constitutional Court of the Republic of Turkey
TİHEK	: Turkish Human Rights and Equality Institution
UDHR	: Universal Declaration of Human Rights
UNCRC	: United Nations Convention on the Rights of the Child
UNCRPD	: United Nations Convention on the Rights of Persons with Disabilities
UNESCO	: United Nations Educational, Scientific and Cultural Organization

1) National Legal Framework

1.1) Background Information

This report focuses on right to education of ethnic and religious minorities and persons with disabilities (PwDs) in Turkey. As is the case with most of the European countries, Turkey has a great variety of ethnic and religious groups. It is home to various ethnic minorities as Caucasians, Kurds, Laz, Arabs, Albanians, Bosnians, Armenians, Greeks etc. and religious minorities such as Alevi, Armenian Orthodox Christians, Greek Orthodox Christians, Jews, Arameans (Syriacs), Ezidis, etc.

In Turkey, the rights of minorities are addressed through the Lausanne Peace Treaty,¹ which negotiated in 1923 and usually referred as “the title deed of the state” in official discourse. According to the reports submitted by Turkey to the UN Committees, “the word ‘minorities’ encompasses only groups of persons defined and recognized as such on the basis of multilateral or bilateral instruments to which Turkey is party”² and the only international treaty that encompasses minority rights is the Lausanne Treaty. Section III of the Treaty on the protection of minorities guarantees non-Muslim minorities of Turkey: Equality before law; the right to establish, control and manage their own institutions, including schools, with the right to use their own language therein; and obliges Turkey to provide instruction in primary schools in minority languages in towns and districts where a considerable proportion of non-Muslim nationals are resident.

In practice, however, protection afforded by the existing legal framework is restricted to Greek Orthodox Christians, Armenian Orthodox Christians and Jews only, leaving out other ethnic and “non-Muslim” minorities as well as religious groups like Alevi.³ This practice is called “arbitrary interpretation and selective use of” Lausanne Treaty by the one of the leading non-recognized non-Muslim minorities in Turkey, namely Arameans (Syriacs).⁴ The *travaux préparatoires* of the Lausanne Treaty suggested that the Turkish delegation committee deliberately refused to grant minority status to other minorities.⁵

None of the ethnic groups in Turkey have minority status on grounds of ethnicity defined in cultural and/or linguistic terms. Because of State’s restrictive definition of minorities based on “religion” minorities within Islam are also excluded from its protection. In this report the phrase as “ethnic and religious minorities” will be used in a broad sense that covers “non-Lausanne minorities” such as Alevi, Roma etc.

¹ Full text of Lausanne Peace Treaty in English is available at, https://www.lib.byu.edu/index.php/Treaty_of_Lausanne (Last accessed: 01.10.2018)

² CERD, Third periodic reports of States parties due in 2007, Turkey, CERD/C/TUR/, 13.02.2008, para 27; HRC, Initial reports of States parties, Turkey, CCPR/C/TUR/1, 13.04.2011, para 408.

³ Alevi are known to be the largest religious minority in Turkey. Their population is estimated to be between 10 and 33 per cent of the total population. See, Nurcan Kaya, Forgetting or Assimilation?: Minorities in Turkey’s Education System, Minority Rights Group International, London, 2007, p. 10.

⁴ CESCR, Syriac Universal Alliance, Report to the United Nations Committee on Economic, Social and Cultural Rights 46th Session, 09.03.2011, p. 6.

⁵ Ayşe Dicle Ergin, “Azınlık Dillerinin Kullanımı Konusunda Türkiye Nerede Duruyor?”, Ankara Üniversitesi Hukuk Fakültesi Dergisi, Vol. 59, No. 1, 2010, p. 20.

The concept of minority is defined as “a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.” by UN.⁶ According to the common components of the definition of minorities, namely, certain objective characteristics, self-identification, numbers and long-term presence, “non-Lausanne” minorities, ethnic or religious, should be acknowledged as minorities. As the Committee on the Elimination of Racial Discrimination (CERD) pointed out in 2016 that the Lausanne Treaty does not explicitly prohibit the recognition of other groups as minorities and recommended recognizing other groups that may qualify as being ethnic, national or ethno-religious minorities, such as Kurds, Roma, Ezidis and Caferis.⁷ The same recommendation also reflected by the Committee on the Economic, Social and Cultural Rights (CESCR) in 2011⁸ and the European Commission against Racism and Intolerance (ECRI) in 2016.⁹

As it was righteously stated, the combination of the Constitution of Republic of Turkey (CRT) which will be focused upon below and Turkish foreign policy serves a dual purpose: ensuring that Turkey remains in compliance with Lausanne Treaty without granting non-Muslims minority status in the Constitution and preventing the widening or deepening of Lausanne’s protection to the recognized minorities.¹⁰ Following the ratification of Lausanne Treaty and the establishment of the republic in 1923, a separate legal regime was created for non-Muslim minorities (indeed limited to Armenian Orthodox Christians, Greek Orthodox Christians and Jews), all Muslims, categorized as ‘Turks’, became subject to homogenization policies. According to the Kurban, inherent in this dichotomy was a trade-off between minority status and full citizenship: non-Muslims had to pay the high price of “second-class citizenship” in return for minority rights, and various ethnic groups, as well as individuals belonging to non-Sunni denominations of Islam, were compelled to suppress their differences in exchange for “full citizenship”.¹¹ As can be seen below, the narrow interpretation of the definition of minority is impeding for some groups the enjoyment of right to education protected under the CRT and relevant international treaties.¹²

The number of individuals belonging to various minority groups varies according to different sources, since the state does not ask citizens about their ethnic, religious or other origin in censuses, actually current number in Turkey is unknown.¹³ The last census that citizens were asked about their “mother tongue” and “the second language they speak” in Turkey was in 1965. To this respect, there is no reliable data with regard to the population of minorities. Although the international monitoring

⁶ Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, Submitted by F. Capotorti, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (UN Doc.E/CN.4/Sub.2/ 384/Rev.1, 1979)

⁷ CERD, Concluding observations on the combined fourth to sixth periodic reports of Turkey, CERD/C/TUR/CO/4-6, 11.01.2016, para 14.

⁸ CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights, Turkey, E/C.12/TUR/CO/1, 12.07.2011, para.10.

⁹ ECRI, 5th Report on Turkey, CRI(2016)37, 2016, para. 73.

¹⁰ Dilek Kurban, A Quest for Equality: Minorities in Turkey, Minority Rights Group, 2007, p. 10.

¹¹ *ibid*, p. 7.

¹² CRC, Concluding observations of the Committee on the Rights of the Child, Turkey, CRC/C/15/Add.152, 09.07.2001, para 10.

¹³ For a list of key minority groups and brief information about these groups, see, Kaya, Forgetting or Assimilation?: Minorities in Turkey’s Education System, p. 11.

mechanisms like ECRI and CERD asked the Government of Turkey to submit reports based on academic and social research providing reliable social indicators concerning ethnicity, nationality and/or origins, to date, however, no such research has been carried out and no information has been submitted to any international organizations concerning these social indicators.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) set forth that “such data are also essential for determining the extent of discrimination and building an evidence base for more inclusive policies.”¹⁴ UNESCO stated that gathering data on disadvantaged and marginalized groups raises several concerns, such as widespread perception that data protection legislation prohibits collecting sensitive data revealing race, ethnic origin or religion; poses a risk of stigmatization; misusing for purposes of discrimination and mistreatment; definition and measurement challenges etc.¹⁵ On the other hand, even Turkey provides for no ethnic classification in any statistics collected by the government, data with regard to religion exist, since religion is one of the items recorded by the register offices. The records concerning religion are based on the declaration of the citizens. However, register offices refused to entry of some religions or sects such as Alevism which was subjected to an application to the European Court of Human Rights (ECtHR) in which the Court found a violation of article (Art.) 9 of the European Convention on Human Rights (ECHR).¹⁶

By contrast with ethnic minorities, and along with the religious minorities, there exists an official database, although not so reliable, that comprise PwDs. Even though the Turkish Government stated that a “National Disability Database” was established in 2006 with the objective of ensuring efficiency of disability services,¹⁷ no information has been given on the number of registered persons with disabilities on the database, as well as the distribution of gender, province, type of disability, in which public service planning the registered data is used or the results of these activities etc.¹⁸

The total number of persons with disabilities still unknown in Turkey. An official study carried out in 2002 indicated that the total number of disabled people was 8.4 million which amount to 12.29% of the general population. However, another study conducted in 2011 demonstrated this figures as 4.9 million and which amount to 6.6% of the general population.¹⁹ The researches done by the state presenting different figures leads to a complicated depiction of the situation.²⁰ It was submitted to the Committee on the Rights of Persons with Disabilities (CRPD) that there is no official statistics or analysis, which focus on the education, health, employment, access to rights and participation of women and girls with disabilities, or any disaggregated data in overall statistics system.²¹

¹⁴ Global Education Monitoring Report, *Accountability in Education: Meeting Our Commitments*, UNESCO, Paris, 2017, p. 196.

¹⁵ *ibid*, pp. 197-199.

¹⁶ ECtHR, *Sinan Işık v. Turkey*, Appl. No. 21924/05, 02.02.2010.

¹⁷ CRPD, Initial report submitted by Turkey under article 35 of the Convention, CRPD/C/TUR/1, 04.10.2017, p. 55.

¹⁸ CRPD, Proposal of List of Issues from Association for Monitoring Equal Rights in relation to the Government report of the Republic of Turkey for the 10th Pre-Sessional Working Groups, p. 20.

¹⁹ Engelli ve Yaşlı Bireylere İlişkin İstatistik Bilgiler, Engelli ve Yaşlı Hizmetleri Genel Müdürlüğü, October 2018, p. 32.

²⁰ CRPD, Initial Report on the Convention on the Rights of Persons with Disabilities, Turkey, CRPD/C/TUR/1, 04.10.2017, p. 4; ECSR, Conclusions 2016, Turkey, 2016/def/TUR/15/1/EN, Article 15-1, 09.12.2016.

²¹ CRPD, Shadow Report Turkey prepared by the coordination of the Confederation of the Disabled of Turkey, 20.08.2018, para 19.

1.2) Constitutional Protection

Does national constitutional law protect the right to education and if so, in which terms (as elaborated through judicial interpretation, where relevant). Are there any corresponding state obligations imposed under national constitutional law? If not protected under national constitutional law, which national legal framework (if any) affords protection to the right to education?

The existing Turkish Constitution is the fourth one that has been adopted after the fall of the Ottoman Empire and is still in force since 1982 with major amendments mostly inspired by the EU accession process.²² Art. 2 of the Constitution describes the State as “a democratic, secular and social state governed by the rule of law... respecting human rights”. Turkey is an officially declared secular state without an official religion. Secularism is a fundamental principle of the constitutions since 1937 and this concept set forth with covering its different aspects in Art. 2, 13, 14, 68, 81, 103, 136 and 174 of the CRT. According to the Constitutional Court of the Republic of Turkey (TCC), “In these articles, secularism is organized as a political principle that determines the position of the state against religious beliefs... Those who have different religious beliefs or who do not have any faith are protected by the secular state.”²³ The provisions of the CRT are fundamental legal rules binding upon the legislative, executive and judicial organs, and administrative authorities and they also have horizontal effect on other private institutions and individuals. Minorities are disregarded in the Constitution without even referring the word ‘minority’ including the Lausanne minorities.

It is worth to mention that right to education is the only social right set forth in the all constitutions adopted following the establishment of the republic in 1923.²⁴ The current constitution, which was adopted two years after the coup d’etat staged in 1980 and designed directly by the members of military council, explicitly set forth the right to education in article (Art.) 42 very broadly:

“No one shall be deprived of the right of education.

The scope of the right to education shall be defined and regulated by law.

Education shall be conducted along the lines of the principles and reforms of Atatürk, based on contemporary scientific and educational principles, under the supervision and control of the State.

Educational institutions contravening these principles shall not be established.

The freedom of education does not relieve the individual from loyalty to the Constitution.

Primary education is compulsory for all citizens of both sexes and is free of charge in state schools.

The principles governing the functioning of private primary and secondary schools shall be regulated by law in keeping with the standards set for the state schools.

The State shall provide scholarships and other means of assistance to enable students of merit lacking financial means to continue their education. The State shall take necessary measures to rehabilitate those in need of special education so as to render such people useful to society.

Training, education, research, and study are the only activities that shall be pursued at institutions of education. These activities shall not be obstructed in any way.

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

²² For the official text of the Constitution of Republic of Turkey in English see, http://www.constitutionalcourt.gov.tr/inlinepages/legislation/pdf/constitution_en.pdf (Last accessed: 01.10.2018)

²³ TCC, E. 2012/65, K. 2012/128, 20.09.2012.

²⁴ Art. 80 and 87 of the Constitution of 1924; Art. 50 of the Constitution of 1961; Art. 42 of the Constitution of 1982.

Since its adoption in 1982, beginning with the first amendment in 1987, in total, there are 19 amendments with the last amendment adopted in 2017.²⁵ The only amendment made in Art. 42 of the CRT was carried out in 2008 in order to solve the issue stemmed from the headscarf ban initiated in 90's for university students in university facilities.²⁶ However, shortly afterwards, the reaction of TCC was to annulled it,²⁷ which caused an intense criticism against the Court.

The CRT gives a place to right to education in the second part, under the Chapter 3 entitled "Social and Economic Rights and Duties". Thus, it appears from the CRT that the said right is regarded as a social right in contrary to the Art. 2 of the Protocol to the European Convention on Human Rights as Turkey has been party to since 1954. Having looked at the wording of the Art. 42, right to education considered both a first generation right as well as a second generation right imposes positive obligations on the state. On the one hand, the first sentence of the right, "No one shall be deprived of the right of education" hinders illegitimate interferences to accessing existing public or private educational institutions. On the other hand, the phrases as "free access to primary education", "scholarships and other means of assistance" or "rehabilitation of those in need of special education" may be regarded as the basis for the positive obligations stemmed from the right to education. Since Turkey is also party to international treaties that involve right to education as a social right, the text of the said article seems somewhat in conformity with relevant instruments in this field.

Another provision related with the right to education is Art. 10 of the CRT which encompasses principle of equality and prohibition of discrimination: "Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such consideration." The ECRI recommended to amend the list in a way to cover language, citizenship, national or ethnic origin.²⁸ In addition, a series of amendments to CRT without mentioning disability, ethnic origin or minority status in the article has criticized.²⁹ However, as can be seen from the wording, the protection afforded is not limited to the grounds enlisted in the provision, therefore, the wording of the article does not require such an amendment. The assertion of "any such considerations" potentially empowers the Turkish judiciary to widen the protection to the groups that have not been expressed in the article. Besides, the material scope of the Art. 10 is not limited to specific rights and covers right to education in the strict sense. Accordingly, Art. 10 of the CRT can be served as a basis to provide protection to persons belonging to all disadvantaged groups including ethnic and religious minorities as well PwDs.

The amendment made in Art. 10 in 2010 annexes a new subsection to the provision as "Measures to be taken for ... disabled people ... shall not be considered as violation of the principle of equality." The new subsection both obliges state to take special measures as well as provides that those measures would not constitute a breach of principle of equality. Although the former version of the provision implicitly recognizes the need for special measures and their conformity with the principle of equality, the 2010 amendment fosters this approach by way of emphasizing the disadvantage

²⁵ For a list of these amendments made in CRT, see, <http://anayasa.gov.tr/icsayfalar/mevzuat/1982anayasasi.html> (Last accessed: 01.10.2018)

²⁶ Turkish Grand National Assembly, Report of the Constitution Committee, Term: 23, Legislative Session: 2, Ordinal No: 101, 2008, p. 9.

²⁷ TCC, E. 2008/16, K. 2008/116, 05.06.2008.

²⁸ ECRI, 5th Report on Turkey, CRI(2016)37, 2016, para. 12.

²⁹ Katarina Tomaševski, Special Rapporteur on the right to education, Mission to Turkey, 3-10 February 2002, E/CN.4/2002/60/Add.2, 27.03.2002, para. 45.

groups such as PwDs and adding indirectly the disabled persons to the list of prohibited grounds of discrimination. As a consequence, Art. 10 of the CRT enhanced the protection provided for right to education for persons with disabilities. Along with Art. 10 of the CRT, Art 61, subsection 2 which states that “The State shall take measures to protect the disabled and secure their integration into community life.” also provides duties for the state which should also embrace right to education of the disabled persons and enhance the subsection concerning special measures in Art. 10.

Despite the wording of the Art. 10 of the CRT which seems to allow for a widened protection, some of the restrictions and requirements set forth in Arts. 24 and 42 render the protection afforded by the equality principle and prohibition of discrimination with regard to ethnic and religious minorities. The first one is pertains to religious minorities and appears in Art 24 that “Religious and moral education and instruction shall be conducted under state supervision and control.” This sentence gives the state to control all religious education and a wide discretion to ascertain which religions or beliefs would be provided education by means of state institutions and would not be allowed to teach even by private institutions. This discretion used in a way to foster religious education for Muslims. According to the statistics, for the school year 2017/2018, the number of “imam hatip” schools -which provides religious education for Muslims as state-run schools- in both levels is 4891 and the total number of students enrolled to those schools is 1.350.611.³⁰ There are no elective courses on Christianity and Judaism in the curricula for the public schools and these subjects can only be taught at minority schools. Therefore, Christian and Jewish students studying at public schools instead of minority schools cannot access religious education.

The second sentence of the fourth subsection of the Art. 24 provides, again affecting the religious minorities, that “instruction in religious culture and ethics shall be one of the compulsory lessons in the curricula of primary and secondary schools.” The text of the Art. 24 along with the relevant statutory law set forth an obligation to take religious lessons in all three levels of compulsory education which leads to a serious violation of freedom of religion or belief and right to education that will be focused below. The compulsory teaching of religion in primary and secondary education is detrimental to all individuals who do not wish to receive this instruction. Courses are predominantly about the theory and practice of Sunni-Hanefi Islam.

A third restriction is valid for ethnic minorities and appears in first sentence of the last subsection of Art. 42: “No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institution of education.” This provision leaves no room for any doubt regarding right to education in mother tongue is not recognized, even worse, prohibited explicitly by the CRT. Besides, it is not only prohibiting education in the mother tongue or bilingual education, but also learning the mother tongue.³¹ As the CERD recommended in 2009 to Turkey “to consider further amendments to the legislation to allow teaching of languages traditionally used in Turkey in the general public education system and encourages it to establish a public school network offering teaching of these languages.”³² Furthermore the Committee on the Rights of the Child (CRC) affirmed that

³⁰ National Education Statistics, Formal Education, 2017-2018, Ministry of National Education Strategy Development Presidency, Ankara, pp. 92 and 128.

³¹ Sibel İnceoğlu, “Eğitimde Ana Dilin Yeri: Uluslararası Belgeler ve Yeni Anayasa”, Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi, V. 19, No. 2, 2013, p. 163.

³² CERD, Concluding observations of the Committee on the Elimination of Racial Discrimination, Turkey, CERD/C/TUR/CO/3, 24.03.2009, para. 20.

unavailability of education in languages other than Turkish presents educational disadvantages for children of non-recognized minorities whose mother tongue is not Turkish.³³

The last sentence of the subsection provides that “the provisions of international treaties are reserved.” The international treaties implicitly referred in the sentence is the Lausanne Treaty which consequently leads to an exception for only Armenian Orthodox Christians, Greek Orthodox Christians and Jews. Only children belonging to these groups are eligible to get an education in their mother tongue with a further limitation based on citizenship which prohibits foreigners with those ethnic or religious background to enrol to minority schools. In minority schools, courses except Turkish and Turkish culture are taught in their own languages. Mother tongue of the children belonging to non-Muslim minorities are taught as a compulsory course for the same duration devoted to Turkish course.

Even not directly related with right to education, to depict the current situation as regards freedom of religion and belief, Art. 136 of the CRT provides constitutional protection to the “Diyanet” (Presidency of Religious Affairs) as a Directorate of Religious Affairs, which follows the Sunni-Hanefi version of Islam. Even though there is no reference to Islam in any articles of the CRT and particularly in Art. 136 of the CRT, according to the Law No. 633 regarding “Diyanet”, other religions or denominations are not permitted to have representation in this institution. The state allocates substantial funds to provide religious services for Sunni Muslims as to pay the salaries of imams, construct mosques and oversee pilgrimage. However, no funding provided to non-Sunni Muslims or other religions and denominations for any religious activity. State control over religion and selective funding of religious activities also run against the basic concept of secularism guaranteed under the Constitution.

The general basis for positive obligations regarding rights and freedoms enlisted in CRT is Art. 5 which states that “The fundamental aims and duties of the State are [...]to strive for the removal of political, economic, and social obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by rule of law...” In order to secure exercising the right to education by all, Art. 42 of the CRT implies that “Primary education is compulsory for all citizens of both sexes and is free of charge in state schools.” Although the education is compulsory for a period of 12 years, CRT only provides that the primary education is only free of charge which means that only first 4 years of the compulsory education, namely primary education should be fully afforded by the government.

Despite this explicit reference for the primary education therein, no direct emphasis for positive obligations stemming from right to education beyond general obligations of the state set forth in Art. 5 of the CRT. On the contrary, Art. 65 of the CRT implies that “The State shall fulfil its duties as laid down in the Constitution in the social and economic fields within the capacity of its financial resources, taking into consideration the priorities appropriate with the aims of these duties.” As a restriction clause for social rights, Art. 65 gives a wide discretion to the state to priorities its social policies and a pretext for non-fulfilment of social rights including right to education.

One exception with regard to positive obligations persons with disabilities may be referred to. Along with the Art. 5 of the CRT which constitutes a general legal basis for positive obligations, CRT also

³³ CRC, Concluding observations of the Committee on the Rights of the Child, Turkey, CRC/C/TUR/CO/2-3, 20.07.2012, para. 58.

provides a general positive obligation as regard to PwDs. Art 61, subsection 2 of the CRT states that “The State shall take measures to protect the disabled and secure their integration into community life.” Wording of the subsection explicitly provides duties for the state which should also embraces right to education of the disabled persons.

1.3) National Legal Framework

Please summarise the national legal framework regulating access to public/free/subsidized primary and secondary education. As school places may come in short supply, please pay attention to any kind of eligibility or priority criteria (e.g. residence in the district, performance, etc.)

Do national legal rules provide for/allow for inclusive education, special accommodation, etc.?

There are few statutory laws directly referring ethnic or religious minorities in Turkey, either directly through laws granting minority rights or indirectly through an anti-discrimination law. The main provisions related with the minorities set forth in Lausanne Treaty, which is regarded as statutory law according to Art. 90 of the CRT. Despite significant constitutional and legislative reforms, various laws seek to limit the political, participatory, religious, educational and linguistic rights of minorities. As a result, “non-Lausanne minorities” ethnic or religious are not officially regarded as minorities and perceived as part of Islam and Turkish identity. In case of other non-Muslim minorities such as Arameans (Syriacs) they usually ignored.

Aside from Art. 42 of the Turkish Constitution, further regulations dealing with the right to education also exist within domestic law:

- Law on Unification of Education (Law No. 430)
- Law on Primary Education (Law No. 222)
- Basic Law on National Education (Law No. 1739)
- Higher Education (Law No. 2547)
- Law on Foreign Language Education and Teaching of Different Languages and Dialects of Turkish Citizens (Law No. 2923)
- Law on Persons with Disabilities (Law No. 5378)
- Law on Private Educational Institutions (Law No. 5580)
- Turkish Human Rights and Equality Institution Law (Law No. 6701)

The education system in Turkey adopted a centralized approach where the curricula of the all schools, regardless of their status as public, private or minority schools strictly determined by the Ministry of Education. The principal law in this field is the Basic Law on National Education (Law No. 1739) and according to Art. 7 of the said law “Primary education is the right of every Turkish citizen.” Art. 4 of the Law forbids discrimination and states that “institutes of education are open to everyone regardless of language, race, gender, disability and religious affiliation. In education, no privileges shall be accorded to an individual, family, group or class.” In addition, Art. 8 set forth that “in order to ensure that successful students who lack financial means can obtain the highest level of education, assistance will be provided in the form of free dormitories, scholarships, loans and other means.” With this article, the Law obliges the state to take special measures targeting disadvantaged groups. However, what is notable is that “disadvantaged” here is limited to the state of economic disadvantage. Unfortunately, with the exception of PwDs, the Law remains silent on the issue of other forms of disadvantage, such as those faced by ethnic or religious minorities. Let it be known,

with the Law No. 6287, adopted in 2012, the period of compulsory education was increased to twelve years.

Apart from a specific provision focused on principle of equality and prohibition of discrimination, for the first time a general definition of different types of discrimination provided in Art. 2 of the Turkish Human Rights and Equality Institution Law (TİHEK) (Law No. 6701). The types of discrimination set forth in the Law are segregation, direct discrimination, indirect discrimination, multiple discrimination, instruction to discriminate, mobbing, denying reasonable accommodation, harassment, discrimination on an assumed ground and victimization. The TİHEK Law also obliges both public and private bodies or natural persons to eliminate discrimination in public and private sector along with education. The TİHEK Law prohibits discrimination confined to selected grounds including ethnic origin, religion, belief, sect and disability in Art. 3/1. Even before the passing of the TİHEK Law, as noted above, Art. 4 of the Basic Law on National Education (Law No. 1739), required that educational institutions be open to everyone regardless of language, race, gender, disabilities and religious affiliation. However, the new law extended the grounds for discrimination and for the first time gives a place to notion of “ethnic” in a statutory law.

Last but not least, ethnic or religious minorities or children with disabilities are sometimes subjected to mistreatment and harassment of a discriminatory nature. In 2016, the TİHEK Law defined harassment in Turkish law for the first time and recognized it as a form of discrimination.³⁴ The Art. 3/3 of the TİHEK Law stipulates that with regards to cases of harassment, public institutions and organizations as well as occupational organizations of a public nature must take the necessary precautions to eliminate infringements, redress infractions, prevent the repetition of such acts, and ensure that legal and administrative steps are carried out to follow up on such matters. Together with the TİHEK Law, the Turkish Penal Code (Law No. 5237) forbids physical violence within the scope of crimes such as wilful injury, and it is possible for administrative sanctions to be carried out within the context of the Art. 125 of the Law on Public Servants (Law No. 657). Despite the fact that the legislative framework provides protection against discrimination, there is no case available that depicts the relevant national anti-discrimination laws have been used to counter discrimination of ethnic or religious minorities or PwDs.

1.4) Special Rules Targeting Selected Group

Are there any specific rules targeting our selected groups (children with disabilities, children from minority background and third country nationals, 'ethnic and religious minorities, persons with disabilities, refugees, asylum seekers and undocumented migrants) with regard to access to public/free/subsidized primary and secondary education, and in matters of inclusive education? Do they provide for integrated education? Do they provide/require education in special schools or institutions? Do they allow for special accommodation in free/public/subsidized primary and secondary education? (prayer time, food requirements, exemptions from religious classes, mixed sport activities, etc). Do national rules require that the curriculum recognise the participation of

³⁴ TİHEK Law, Art. 2/1-j: Harassment is defined in the following terms: “Every kind of behaviour that seeks to harm human dignity or is intimidating, derogatory, insulting, and/or intends to cause embarrassment and thus results in harm to human dignity, on the grounds stipulated in this law, including those of a psychological and sexual nature”.

selected vulnerable groups in society (e.g. history of the former colonies, pictures and course materials reflecting social, religious and ethnic composition of the society, etc.).

1.4.1) Ethnic and Religious Minorities

Language

Children belonging to ethnic minorities generally do not leave their neighbourhoods until they start to attend primary school, and the teachers of children whose mother tongue is not Turkish are unable to fully understand the language they use. Since education in their mother tongue is not provided, such children have insufficient knowledge both of their own language and of the language of education, therefore lowering their chances of success.

Although the exact figure is not known, there are millions of children that have a mother tongue other than Turkish. For such children, the fact that they have not received sufficient language instruction in Turkish and therefore have to learn Turkish as a priority during their schooling raises the likelihood of them being less successful at school than other children. It is evident that a student who knows little or none of the state's official language will be unable to benefit from education to the same extent as a student who knows that language.³⁵ For this reason, in terms of equal access to education, it is crucial that children belonging to ethnic minorities whose mother language is not Turkish also be taught the official language.

UNESCO recognized that in most multilingual countries, many children are taught and tested in languages they do not speak at home, hindering their early acquisition of reading and writing proficiency.³⁶ UNESCO asserted that language of instruction policy can hold the key to making education more inclusive for disadvantaged groups. Therefore, it is recommended that, sustained use of the first or home language as a medium of instruction for at least six years of schooling has been highlighted as a way to improve student performance in language skills and other subjects.³⁷ In Turkey, children belonging to Lausanne minorities can receive education in their mother tongue. For the other minorities, the existing possibilities are private language courses, elective courses in schools or private schools providing education in mother tongue.

The mother tongue of the children who are Turkish citizens and belonging to Lausanne minorities are taught as a compulsory course along with the Turkish courses with the same duration. All the courses except Turkish and Turkish culture are taught in minority languages. As stated in the state report submitted to the UN Human Rights Committee (HRC), students belonging to non-Muslim minorities can also freely attend any other public or private school that is not run by their respective minorities, without any restriction.³⁸

Law on Foreign Language Education and Teaching, and the Learning of Different Languages and Dialects by Turkish Citizens (Law No. 2923) reiterates the prohibition purported in Art. 42 of the CRT by stating "no language other than Turkish can be taught and taught as a mother tongue to Turkish

³⁵ Nurcan Kaya, *Discrimination in the Turkish Education System Based on Colour, Ethnic Roots, Language, Religion and Beliefs*, MRG, History Foundation, İstanbul, 2015, p. 14.

³⁶ *Global Education Monitoring Report, Education for People and Planet: Creating Sustainable Futures for All*, UNESCO, Paris, 2016, p. 267.

³⁷ *Global Education Monitoring Report, Accountability in Education: Meeting Our Commitments*, UNESCO, Paris, 2017, p. 190.

³⁸ ICCPR, Initial reports of States parties, Turkey, CCPR/C/TUR/1, 13.04.2011, para 414.

citizens in education and training institutions.” Yet, it also lays the way open to teaching minority languages in public schools. However, the only language courses available in languages and dialects traditionally spoken by Turkish citizens in the public education system are provided on an elective basis. As of 2014, the elective courses were available: Kurdish (Kurmanji and Zazaki), Circassian (Adige and Abkhaz) and Laz.³⁹ It was told that these courses offered from the fifth grade onwards, under the name of “living languages” and with a minimum of ten-student enrolment which led to serious bureaucratic difficulties making them almost impossible to put into practice.⁴⁰ The total number of students that taken those classes in the school year 2013-2014 was 51.654 and in 2014-2015 was 83.344.⁴¹

Law No. 2923 also states that, “in order to learn the different languages and dialects traditionally used by Turkish citizens in their daily lives, special courses can be opened which shall subject to the provisions of the Law on Private Education Institutions; language classes can be created for the same purpose in these courses and other language courses.” The Law enables to open private language courses to teach mother tongue of the people belonging to minorities. However, these courses do not have an impact in practice, as provides an opportunity only for those speak a language other than a minority language to learn the minority languages.

With the adoption of Law No. 6529 in 2014 that amended Law No. 2923, it became possible to open private schools for education in different languages other than Turkish. According to the Art. 2/a of the Law, “Subject to the provisions of the Law on Private Education Institutions, private schools can be opened in order to provide education and training with the different languages and dialects traditionally used by Turkish citizens in their daily lives.” Albeit, this languages and dialects to be taught in these institutions shall be determined by the President's decision. Currently there is no private school providing education in any of the minority languages other than schools belonging to the Lausanne minorities.

Schools

Pursuant to Art. 90 of the CRT, international treaties duly put into effect have the force of law. Thus as a binding norm in Turkish law, Art. 40 of the Lausanne Treaty which provides for Turkish nationals belonging to non-Muslim minorities a right “[...]to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.” Although the term “non-Muslim minorities is not limited to Armenian Orthodox Christians, Jews or Greek Orthodox Christians, the Law on Private Education Institutions (Law No. 5580) defines the “minority schools” as “the private schools of preschool education, primary education and secondary education, established by Greek Orthodox Christians, Armenian and Jewish minorities which is guaranteed by the Lausanne Treaty that students belonging to to these minorities and having Turkish citizenship are eligible to enrol” in Art. 2/e. This definition leaves out other

³⁹ CERD, Combined fourth to sixth periodic reports of States parties due in 2013, Turkey, CERD/C/TUR/4-6, 17.04.2014, para. 125.

⁴⁰ CERD, An Alternative Country Report on Turkey for the 88th CERD Meeting by Association for Monitoring Equal Rights (AMER), Migrants' Association for Social Cooperation and Culture (İstanbul-GöçDer), 2 November, 2015, p. 6.

⁴¹ Kaya, Discrimination in the Turkish Education System, p. 26-27.

religious minorities such as Arameans (Syriacs) and all other ethnic or religious minorities. The only exception is a pre-primary school established by the Arameans (Syriacs) in Istanbul following a judgment of the administrative court in 2013.⁴² Besides, Law No. 5580 which limits attendance of these schools to members of minorities with Turkish citizenship, leaving the children of regular or irregular migrant families with no access to these schools. In addition, the Basic Law on National Education (No. 1739) lays out the provisions binding for all education institutions either public or private, in the Turkish education system without any distinction which applies to, including but not limited to, curricula and weekly schedules. Therefore, non-Muslim minority schools do not display any difference in terms of general objectives and principles when compared to other public schools.

Official figures provided by the state in 2018 shows that the number of schools belonging to non-Muslim minorities is 77⁴³ which was declared as 84 in 1999.⁴⁴ The numbers of minority schools and students that enrolled in these schools in the school year 2017/2018 are as follows:⁴⁵

	Number of Schools	Number of Students
Pre-primary education	21	651
Primary education	24	1033
Secondary education	21	1086
Upper-secondary education	11	904
Total	77	3674

Curriculum

The education system in Turkey has an extremely centralized structure. The curriculum is developed and standardized in a centralized way without taking into account the characteristics of the populations in different areas of the country or their cultural, social and economic particularities. Textbooks are approved in Ankara and no changes can be made in this regard unless on the initiative of the central administration. While the system may be based on a constructivist approach that makes it possible for teachers to adapt their syllabi to their students' needs, the fact that teachers have not received sufficient training in this area, as well as a number of other factors at play, means that such practice is not widespread.⁴⁶

It is crucial that different groups are taken into account during the development of curricula. Just as the aims of a country's education system and the content of its curricula and textbooks can contribute to developing greater respect for other identities and for diversity, they can also serve to compound the state of prejudice and animosity in society.⁴⁷ In international law it is agreed that education systems must be used as a means to bolster human rights and respect for fundamental

⁴² *Ibid*, p. 32.

⁴³ National Education Statistics, 2017-2018, pp, 55, 70, 71 and 129.

⁴⁴ CRC, Initial reports of States parties due in 1997, Addendum, Turkey, CRC/C/51/Add.4, 08.08.2000, para 399.

⁴⁵ National Education Statistics, 2017-2018.

⁴⁶ Kaya, *Forgetting or Assimilation?: Minorities in Turkey's Education System*, p. 10.

⁴⁷ Kaya, *Discrimination in the Turkish Education System*, p. 17.

rights, as well as to improve understanding between groups of people who identify with different ethnicities, languages and religions, and to help develop tolerance.⁴⁸

In Turkey, the aim of the education is strictly determined by the Art. 42 of the CRT and in statutory law, Art. 2 of the Basic Law on National Education (Law No. 1737). Along with the universal values the main objective of the Turkish National Education is to raise individuals as “adopting, protecting and developing the national, moral, humanitarian, spiritual and cultural values of the Turkish Nation; loving his/her family, homeland, nation and always trying to glorify them.” which disregard the diversity of the Turkish citizens and cast out the culture or language of ethnic or religious minorities.

Lessons do not cover other social groups or multiculturalism, and there are no regular events or activities that could be used to introduce students to other cultures.⁴⁹ Schoolbooks contain no information about the history and culture of other social groups in Turkey, and some groups are even discussed in terms that are discriminatory and xenophobic. The curriculum presents concepts such as citizenship, patriotism/nationalism and national values not within a universal/general framework but ethnically through Turkishness and religiously through Islam.⁵⁰

Ethnic or religious minorities are not mentioned in the existing curriculum in Turkey or in any instructional materials and as such these cultures are ignored entirely. Furthermore, textbooks contain discriminatory and prejudiced views, and may encourage intolerance. Turkey’s education system is not pluralist and instead of strengthening diversity, it incites discrimination.⁵¹ The ECRI recommends that the textbooks used in primary and secondary schools be reviewed from the perspective of human rights and any content that incites prejudice, stereotypes or excessively nationalistic be removed.⁵²

Religion Classes

With regard to religious minorities the main issue is religious education in schools. Before adverting on religious education, it would be much better to provide a clear picture of the existing state-religion relations in Turkey. Since the amendment of the Constitution of 1924 in 1928, there has been no official religion in Turkey and since 1937, *laïcité* is one of the fundamental characteristics of the state which at the beginning strictly externalised the religion out of the public sphere. However, beginning with the 1950’s, the relation between them transformed to a more of a cooperation model, for sure with up and downs in certain years. The budgets allocated to the Presidency of Religious Affairs, the main state institution established in the early years of the Republic responsible for the public services for Muslims, exclusion of the other religions and most of the Islamic sects from the said institution and religious classes in schools implies a compromise between state and the

⁴⁸ Art. 29(d) of the UNCRC; Art. 26/2 of the Universal Declaration of Human Rights; Art. 13/1 of the ICESCR; Art. 5/1 of the UNESCO Covenant.

⁴⁹ Kaya, *Forgetting or Assimilation?: Minorities in Turkey’s Education System*, p. 28

⁵⁰ Kenan Çayır, ‘Biz’ Kimiz?: Ders Kitaplarında Kimlik, Yurttaşlık, Haklar, Ders Kitaplarında İnsan Hakları III Projesi: Tarama Sonuçları (Who are ‘We’?: Identity, Citizenship, and Rights in Course Books - Human Rights in Course Books III Project, Research Results), History Foundation, Istanbul, 2014, p. 25.

⁵¹ CERD, Written Comments by Minority Rights Group International Concerning Turkey for Consideration by the Committee on the Elimination of Racial Discrimination at Its 74th Session, p. 19.

⁵² ECRI, 2nd Report on Turkey, CRI(2001)37, 2001, para. 16; 3rd Report on Turkey, CRI(2005)5, 2005, para. 35, 38; 4th Report on Turkey, CRI(2011)5, 2011, para. 161; 5th Report on Turkey, CRI(2016)37, 2016, para. 88.

religion in which state is more deterministic due to unorganized structure of Islam in contrast to churches in Europe. The privileged status of Islam in legal framework affects the scope of the public services including education system which puts the religious minorities in a disadvantaged position.

There are two aspects that need to be emphasized on this issue. One is the religious culture and ethics classes which are mandatory in all schools and the other one is the elective religious courses provided by the Ministry of National Education and school administrations in schools. Religious culture and ethics classes are discriminatory in various ways. Firstly, the content of the courses is overwhelmingly being based on Sunni Islam. Secondly, although there is a possibility of exemption from these classes, the existing legal framework requires disclosure of religion or belief in order to be exempted. Religious culture and ethics classes are particularly discriminatory against non-Sunni Muslim minorities, since the exemption offered to Christian and Jewish students is not available to them. According to a decision of the Ministry of National Education dated 9 July 1990: “[...]pupils of Turkish nationality who belong to the Christian or Jewish religions and who attend primary and secondary schools, with the exception of schools for minorities, are not obliged to follow the classes in religious culture and ethics, provided they affirm their adherence to those religions. If, however, such pupils wish to attend such classes, they must submit a written request from their legal representative.” It is also discriminatory against atheists, agnostics and secularists, who may not wish their children to receive any religious education. Only a small percentage of textbooks and classroom instruction deals with religions other than Islam. Minority pupils in this class have reportedly been asked to observe Muslim rituals that are not listed in the curriculum, such as performing ablutions, prayer and attending mosque. In a series of judgments, ECtHR also finds violation of freedom of religion and right to education.⁵³

ECRI formerly criticized these classes as “several sources have described these courses as instruction in the principles of the Muslim faith rather than a course covering several religious cultures. ECRI notes that only Muslim pupils are required to follow these courses, while pupils belonging to minority religious groups can be exempted. ECRI considers the situation unclear: if this is indeed a course on the different religious cultures, there is no reason to make it compulsory for Muslim children alone. Conversely, if the course is essentially designed to teach the Muslim religion, it is a course on a specific religion and should not be compulsory, in order to preserve children's and their parents' religious freedom.”⁵⁴

As for elective courses, according to the Art. 25 of the Basic Law on National Education, “In secondary and high schools, The Holy Quran and The Life of our Holy Prophet are provided as elective courses.” With this article, along with the religious culture and ethics courses, two other courses regarding Islam form a part of the curriculum. Since all the elective courses are determined by the Ministry of National Education and principals in each school, in practice those elective courses can easily become *de facto* mandatory courses for children belonging to religious minorities without any possibility of exemption.⁵⁵

Another issue come to the fore with respect to religious minorities is the religious education other than religious courses in schools. Art. 24 of the CRT provides that “Religious and moral education and

⁵³ ECtHR, *Hasan and Eylem Zengin v. Turkey*, Appl. No. 1448/04, 09.10.2007; *Mansur Yalçın and Others v. Turkey*.

⁵⁴ ECRI, 3rd Report on Turkey, CRI(2005)5, 2005, para. 68.

⁵⁵ Kaya, *Discrimination in the Turkish Education System*, p. 56.

instruction shall be conducted under state supervision and control” which suggests possibility of religious education in private institutions. In addition to said sentence, the last sentence of the same subsection of Art. 24 utters that “Other religious education and instruction shall be subject to the individual’s own desire, and in the case of minors, to the request of their legal representatives.” also seems supporting this argument. However, Art. 3 Law on Private Education Institutions (Law No. 5580) explicitly precludes this possibility by stating “The same or similar private education institutions of religious education-teaching institutions cannot be opened.” TCC stipulates the said prohibition as “the state has a monopoly on the establishment of religious education-teaching institutions on the one hand and on the determination of compulsory and elective courses related to religious education and education in schools on the other hand.”⁵⁶

1.4.2) Persons with Disabilities

The situation of children with disabilities quite a long time subject to criticism by different international monitoring bodies. Beginning with firstly by CRC, monitoring the situation of children with disabilities in order to assess effectively their needs, allocating the necessary resources for appropriate programs and inclusion of them in society and integration into the regular educational system, including by providing special training to teachers and by making schools more accessible.⁵⁷ However, as of 2011, it was stated by the state that “In 1480 Special Education Classes within primary education schools, 576 teachers provide education to 8,921 students. 45,532 students in 7,422 schools are following “Adaptation Education”.⁵⁸ The number of children with disabilities is so low when considering total number of students enrolled in a school is around 14 millions in 2011 and data obtained by the 2002 Research on Persons with Disabilities revealed that the total number of disabled persons in 2002 was circa 1.775.000.⁵⁹

The latest statistics provided by the state reveals that the current number of children with disabilities attended to inclusive or special education classes is 353.610 for the 2017-2018 school year.⁶⁰ Comparing with the total number of children with disabilities, 1.158.636 in 2011,⁶¹ the disabled children that can access to education is very low. Hence CRC stated in 2012 that a large number of school-age children with disabilities still did not enjoy their rights to education, and a high percentage of children with disabilities remained in special education programmes.⁶² Turkey also acknowledges that the education level of the population with at least one disability is lower when compared to the general population and gives the example of literacy rates as 95.5% for general

⁵⁶ TCC, E. 2012/65, K. 2012/128, 20.09.2012.

⁵⁷ CRC, Concluding observations of the Committee on the Rights of the Child, Turkey, CRC/C/15/Add.152, 09.07.2001, para 50; CRC, Concluding observations of the Committee on the Rights of the Child, Turkey, CRC/C/TUR/CO/2-3, 20.07.2012, para. 50.

⁵⁸ CRC, Combined second and third periodic reports of States parties due in 2007, Turkey, CRC/C/TUR/2-3, 18.07.2011, para. 113.

⁵⁹ CRC, Combined second and third periodic reports of States parties due in 2007, Turkey, CRC/C/TUR/2-3, 18.07.2011, para. 32.

⁶⁰ Engelli ve Yaşlı Bireylere İlişkin İstatistiki Bilgiler, Engelli ve Yaşlı Hizmetleri Genel Müdürlüğü, October 2018, p. 5.

⁶¹ ECSR, Conclusions 2016, Turkey, 2016/def/TUR/15/1/EN, Article 15-1, 09.12.2016.

⁶² CRC, Concluding observations of the Committee on the Rights of the Child, Turkey, CRC/C/TUR/CO/2-3, 20.07.2012, para. 50.

public and 76.7% for persons with disabilities.⁶³ The European Committee on Social Rights (ECSR) found in 2016 that it has not been established that the right of persons with disabilities to mainstream education.⁶⁴

Art. 17 of the European Social Charter (Revised) (ESC-R), which concerns the right to education, obliges signatories to establish and sustain an accessible and effective education system. When evaluating whether or not that obligation has been fulfilled it is necessary to see whether education is accessible for all children, and in particular whether or not the precarious situation of children of disadvantaged groups such as Roma and similar social groups has been taken into consideration and if special measures have been put into place to ensure equal access to the right to education.⁶⁵ According to the UNESCO, people with disabilities are among the most marginalized and excluded groups and are routinely denied their right to education of good quality.⁶⁶ UNESCO estimates that one-third of all out-of-school children at the primary level have a disability.⁶⁷

The primary law concerning the disabled persons is Law on Persons with Disabilities (Law No. 5378). By means of a reform made in 2014, the Law initially adopted in 2005 has been providing enhanced and far-reaching protection. The Art. 15 of the Law utterly and extensively focuses on education:

“The right of education of the disabled people cannot be prevented by any reason. Disabled people can benefit from lifelong education without discrimination, in an integrated habitat in an environment where they live by taking into account their special needs and differences and on the basis of equality.

Integrated planning is given a place in education system in general in order to provide education to disabled persons in all levels.

Necessary measures are taken for inclusion of disabled people who have started their formal education programs late for different reasons.

Counselling and Coordination Centre for Disabled People is established in order to carry out works within the higher education institutions under the coordination of the Higher Education Council on the procurement of equipment and course materials, and providing appropriate education, research and accommodation for the disabled people in order to achieve active participation of the disabled university student to the university education.

The operation procedures and principles of the Counselling and Coordination Centre for Disabled People are arranged by the regulation which is issued jointly by the Ministry of Family and Social Policy, the Ministry of National Education and Higher Education Council.

Turkish sign language is created in order to provide the education and communication of the hearing impaired people. The methods and principles of the actions for creating, promoting and implementing this system are determined by the regulation to be issued jointly by the Ministry of National Education and Turkish Language Institution under the coordination of the Turkish Language Institution.

The required procedures in order to provide the production of relief, written, audio and electronic books; subtitled, translated to sign language and audio described film and similar material to meet all kinds of educational, social and cultural needs of the disabled people are carried out jointly by the Ministry of National Education and the Ministry of Culture and Tourism.”

⁶³ CRPD, Initial Report on the Convention on the Rights of Persons with Disabilities, Turkey, CRPD/C/TUR/1, 04.10.2017, p. 4.

⁶⁴ ECSR, Conclusions 2016, Turkey, 2016/def/TUR/15/1/EN, Article 15-1, 09.12.2016.

⁶⁵ ECSR, *MDAC v. Bulgaria*, Complaint No. 41/2007, 03.06.2008, para 34.

⁶⁶ Global Education Monitoring Report, Education for People and Planet: Creating Sustainable Futures for All, UNESCO, Paris, 2016, p. 265.

⁶⁷ *Ibid*, p. 76.

The Law No. 5378, in Art. 13, also covers vocational education, habilitation and rehabilitation. The Art. 16 of the Law No. 5378 provides that the state shall conduct an educational evaluation for persons with disabilities:

“The performance and procedures of the educational evaluation, diagnose and referral of the disabled people are carried out by the Special Education Evaluation Board which established in the guidance and research centres. At every stage of this process, the family is informed and their opinions are taken and the participation in the process is ensured. As a result of the educational evaluation and diagnosis, the Special Education Evaluation Board prepares a report and develops a training plan for the individuals who are determined to need special education. This planning is revised on annual basis.

Special Education Evaluation Board refer the individuals who are determined to need special education to formal or non-formal education in accordance with their interest, desire, development characteristics, competence in academic disciplines and educational needs.

The foundation and operation procedures and principles of the board are determined by the regulation to be issued jointly by the Ministry of Family and Social Policy and the Ministry of National Education.”

The existing legal framework classifies the children with disabilities as children that can to be placed in an inclusive class or in a special education institution. The principles that should be followed and the criteria that should be considered are regulated by a by-law on special education services issued in 2018.⁶⁸ The type education that will be provided to the children with disabilities is assessed and determined by the Counselling and Research Centres established by the Ministry of Education. The evaluation of the children with disabilities is carried out by the request of the school administrations, parents and if the child is older than 18, the child’s own request. Following an educational assessment and diagnosis, children with disabilities are referred to public special education schools, special education classes, full time inclusive/integration classes or private special education institutions.

The concept of reasonable accommodation is also employed in statutory law. The Law on Persons with Disabilities (Law. No. 5378) and TİHEK Law (Law No. 6701) also defines reasonable accommodation with some distinctions. Art. 2/1-i of the TİHEK Law provides that “Proportional, necessary and appropriate modifications and measures which are required in particular situations within the boundaries of financial means in order to enable the persons with disabilities to exercise and enjoy rights and freedoms fully and equally as other individuals”. Art. 3/j of the Law on Persons with Disabilities uses “necessary and appropriate modifications and measures that do not place disproportionate or excessive burden” instead of “proportional, necessary and appropriate modifications and measures”. The definition of Law No. 5378 seems more compatible with the definition of the concept in Art. 2 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD). Despite the partial difference in definition of the concept, both laws (Art. 5/2 of the Law No. 6701 and Art 4A of the Law No. 5378) obliges public or private institutions who are responsible for the planning, offering and supervising of the services shall be liable for taking into consideration the needs of different disabled groups and making reasonable accommodation. According to the

⁶⁸ Official Gazette, Date: 07.07.2018, No. 30471, <http://www.resmigazete.gov.tr/eskiler/2018/07/20180707-8.htm> (Last accessed: 01.02.2019)

official figures provided by the Ministry of National Education, the ratio of school or institution accommodated for the use of persons with disabilities in 2014 is only 42%.⁶⁹

Another law related with the right to education of the persons with disabilities is the Law on Primary Education (Law No. 222) adopted in 1961. The law in conformity with the Art. 42 of the CRT regulates that primary education for the children aged 6 to 13 is compulsory and free of charge. The law provides that “special education and training is provided for children who are mentally, physically, spiritually and socially disabled although they are in the age of compulsory primary education.” The law guarantees 8 years of continuous and free education for all disabled children without any distinction from non-disabled children. Contrary to children belonging to minorities, the legal framework related with PwDs seems more inclusive and as a matter of fact enabling rather than being restrictive.

1.5) Constitutional Challenges

Have national rules on access to free/public/subsidized primary education and inclusion/institutionalization/segregation been challenged for incompatibility with national constitutional norms? If so, which ones, and with what effect? [If information is easily accessible, can you also indicate who were the parties challenging those rules? Have certain national rules contested by societal actors but not challenged before courts?]

In Turkey, since 1962, there has been a constitutional court with a broad mandate. According to the Art. 148 of the CRT, the Constitutional Court of the Republic of Turkey (TCC) shall examine the constitutionality, in respect of both form and substance, of laws, presidential decrees and the Rules of Procedure of the Grand National Assembly of Turkey, and decide on individual applications. Thus, both the relevant laws in this field can be subject to constitutional review and allegations concerning violations of right to education can be submitted by individual application process to the TCC. The third subsection of the Art. 148 set forth that “Everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities.”

Although there is a vast number of judgments as regards elections and referendums, the number of judgments concerning is so limited. However, the TCC has ruled on some aspects of the right to education in recent years. Having looked at the database of the TCC, as of October 1st of 2018, circa 10.000 judgments ruled in both processes are accessible. Although not many, there are some cases rendered by the TCC with regard to right to education of the groups focused upon in this study. The judgments that will be dwelled upon are only ruled in constitutionality review procedure. As of October 2018, no cases came across with regard to right education of the ethnic or religious minorities or PwDs.

The first judgment delivered by the TCC within the scope of the study is related with education in mother-tongue.⁷⁰ As mentioned above, CRT provides that “No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institution of education.” This sentence prohibits education in mother-tongue both in public and private institutions including language courses.

⁶⁹ Milli Eğitim Bakanlığı, 2015-2019 Stratejik Planı, Ankara, 2015, p. 57.

⁷⁰ TCC, E. 2002/146, K. 2002/201, 27.12.2002.

However, in one of the harmonization packages enacted in 2002 during the EU accession process, namely Law No. 4771, amended the Law on Foreign Language Education and Teaching of Different Languages and Dialects of Turkish Citizens (Law No. 2923) and allows for opening language courses for languages spoken in Turkey other than foreign languages. Albeit, the TCC has not annulled the amendment, strongly emphasized that this courses are private language courses which did not amount to education in mother-tongue and was not contrary to the last sentence of the Art. 42 of the CRT. The judgment of the Court affirms the strict interpretation of the CRT and asserted a clear need for a constitutional amendment. A second amendment made in Law 2923 allows for opening private schools which can provide education in mother tongue has not been subjected to constitutionality review. The former jurisprudence of the Court as regards education in mother tongue, suggested a judgment unconstitutionality and annulment of the amendment made in Law No. 2923 in case of a claim of unconstitutionality.

As stated above, Art. 65 of the CRT leaves a wide discretion to the state regarding the realization of right to education. In a judgment rendered in 2012, TCC reaffirmed application of this restriction clause in a strict sense without any detailed review. The Court stated that “In cases where the lack of public resources or physical and geographical characteristics requires, the possibility of establishing secondary schools together with primary schools or high schools is a result of paying regard to the adequacy of the financial resources of the state.”⁷¹ The inevitable consequence of this judgment is that the government can determine its priorities in terms of right to education without a constitutional review unless the law does not hinder access to education of any specific group in defiance of principle of equality or non-discrimination.

The same judgment is also significant since its effects on religious minorities. As noted above, the Art. 25 of the Basic Law on National Education set forth that “In secondary and high schools, The Holy Quran and The Life of our Holy Prophet are provided as elective courses.” This sentence was subjected to a disappointing constitutionality review by the TCC in 2012. The Court emphasized the positive obligations stemmed from the Art 2 and 24 of the CRT and defined those courses as a result of fulfilling these obligations. TCC attached importance to the elective status of these courses and disregard its contradiction with the principle of equality and the neutrality of the state in terms of religious services for the society. The Court by stating “There are no legal obstacles to the Ministry's teaching of the divine books of other religions and the life of the prophets as elective courses.” instead of guaranteeing freedom of religion and right to education of religious minority, granted an extensive discretionary power to the Ministry of National Education.

The number of judgments directly or indirectly regarding right to education of persons with disabilities is so limited. Even though not directly related with right to education, a judgment of the TCC demonstrate the approach of the Court with regard to special measures provided by the legislature. The judgment was about the quota system adopted by the Labour Code (No. 4857) for persons with disabilities. One of the courts of first instance alleged the unconstitutionality of the obligation for the employers to employ disabled persons if the number of the employee in the place of business is more than 50. The sanction for any violation of this obligation is a moderate fine which even seems not dissuasive. TCC stated that, considering the obligations set forth for the state, the rule which obliges to employ disabled persons without a distinction between the public and the

⁷¹ TCC, E. 2012/65, K. 2012/128, 20.09.2012.

private sector is the result of the social aims and the social state principle in CRT and not disproportionate as well.⁷²

Another judgment of the TCC is related with the concept of accessibility.⁷³ When the Law on Persons with Disabilities (Law No. 5378) adopted in 2005, the legislature puts some provisional articles to the law concerning obligation of ensuring accessibility. According to the 2nd and 3rd provisional Art. of the said law, “The existing official buildings of the public institutions and organizations, all existing road, pavement, pedestrian crossing, open and green areas, sporting areas and similar social and cultural infrastructure areas and all kinds of structures built by the natural and legal persons serving to public” and “Metropolitan Municipalities and municipalities take the necessary measure to make sure that the mass transport services in the city provided or controlled by themselves” shall be brought to suitable condition for the accessibility of the disabled people within seven years after the date of effect of this law. The Law No. 6353 has amended the seven-year term to eight years thus provides an additional year to the institutions and persons under the obligation of realizing accessibility and a new sentence as “an additional period of not more than two years may be granted after the expiry of this period.” which enable to suspend the said obligation for an additional 3 years. So the term for the accessibility set forth by the law became 10 years in total. The TCC referred to the progressive realization of the economic, social and cultural rights of the disabled persons set forth in Art. 4 of the UNCRPD and found the law in conformity with the principle of equality (Art. 10) and the restriction clause (Art. 65) of the CRT.

1.6) Relevant Institutional and Procedural Aspects

Please summarise institutional aspects (e.g. judicial review mechanisms) or procedural rules (e.g. standing) which are important in terms of guaranteeing access to social housing/housing benefits and the protection from eviction (200 words or reference to English language presenting it in a relevant, synthetic and concise manner).

As this study is not intended to provide in-depth information on the remedies in relation to the right education, brief information will be given on judicial remedies. The judicial system in Turkey has a multipartite structure at the levels of first instance courts, appellate courts and high courts. Criminal courts of first instances are divided into penal courts of first instance, and aggravated felony courts, on the basis of the severity of crimes. Civil courts of first instances are civil courts of peace and the civil courts of first instances. Specialized courts are established to deal with the cases in their jurisdiction and they are found at an equal level to one of the courts of general jurisdiction.

In 2016, the former two-tier system was replaced by a three-tier system after the introduction of Regional Courts of Appeal. These appellate courts have the authority to examine cases coming from the courts of first instance in terms of form and substance. As a result of the separation between ordinary courts (as civil and criminal courts) and administrative courts, the Court of Cassation⁷⁴ and

⁷² TCC, E. 2006/101, K. 2008/126, 19.06.2008.

⁷³ TCC, E. 2012/102, K. 2012/207, 27.12.2012.

⁷⁴ Art. 154(1) of the CRT: “The Court of Cassation is the last instance for reviewing decisions and judgments given by civil courts that are not referred by law to other civil judicial authority. It shall also be the first and last instance court for dealing with specific cases prescribed by law.”

the Council of State⁷⁵ are the last instances for reviewing decisions and judgments rendered by civil and criminal courts and administrative courts respectively. These high courts are also the first and last instance courts for dealing with special cases prescribed by relevant laws. Judgments of the Court of Cassation and the Council of State are not binding on other cases that are heard in other courts. On the other hand, those high courts are entitled to render decisions of assembly of chambers which have the binding force on all judicial authorities.

First instance courts of administrative jurisdiction are assigned to deal with the administrative cases. Administrative cases are the cases in which the defendant is, with some exceptions, a public institution. Administrative courts are split into two categories as administrative and tax courts. Tax courts deal with tax disputes and administrative courts deal with other administrative disputes. Administrative courts are courts of general jurisdiction in the administrative judiciary branch; therefore, they deal with all administrative cases that remain outside the jurisdiction of the Council of State and tax courts.⁷⁶

Historically Turkey is the third state in Europe to establish a constitutional court following Italy and Germany. The Constitutional Court of the Republic of Turkey examines the constitutionality of laws, decrees having the force of law and the Rules of Procedure of the Turkish Grand National Assembly as well as individual applications submitted by applicants.

When public authorities are responsible for violations, administrative and criminal courts have the jurisdiction. Civil or penal courts have jurisdiction if there is a natural or legal person responsible for violations. Victims of infringement may apply to the judicial means under the Criminal Procedure Law (Law No. 5271), the Civil Procedures Code (Law No. 6100) and the Administrative Procedure Code (Law No. 2577). Restorative justice mechanisms, which offer alternative means of settlement, such as alternative dispute resolution in civil or criminal matters are quite limited. Therefore, the only option with respect to the violations of the right to education is the courts with heavy workload which may carry out the proceedings in a long time.

Legal disputes regarding right to education arising from private education institutions mostly under the jurisdiction of consumer courts or in case of an offense, under the jurisdiction of penal courts. Since, education system is fully supervised by the state, disputes rather than financial obligations or disputes with the public education institutions are under the jurisdiction of administrative courts. These disputes encompass both acts and actions of the administration. According to Art. 125 of the CRT, recourse to judicial review shall be available against all actions and acts of administration and shall be liable to compensate for damages resulting from its actions and acts. However, the cases should be opened within a certain period of time; the jurisdiction shall be limited to the control of administrative actions and acts and the judicial decision shall not be made in the form of administrative action and act or to abolish discretion left to the administration. In the case of administrative proceedings, the administrative court may decide to cancel the administrative procedure and/or compensate the loss if it is found unlawful. Thus, administrative actions are subject to compensation. Yet, the burden of proof is on the victim.

⁷⁵ Art. 155(1) of the CRT: *"The Council of State is the last instance for reviewing decisions and judgments given by administrative courts and not referred by law to other administrative courts. It shall also be the first and last instance for dealing with specific cases prescribed by law."*

⁷⁶ İsmail Aksel, Turkish Judicial System, Bodies, Duties and Officials, The Ministry of Justice of Turkey, Ankara, 2013, p. 65.

All victims of right to education in domestic law who do not receive any result in any judicial manner and feel that they have been victimized have the right to submit application to the TCC within a period of 30 days following the exhaustion of domestic remedies with the allegation that one of the rights set forth in both CRT and ECHR has been violated. It should be noted, however, that the rights and freedoms set out in the CRT and ECHR cover largely the first generation rights. For this reason, it would most likely not be possible to apply to the TCC in areas such as education with regard to positive obligations. In case of a ratification of the Protocol No. 12 of the ECHR, it may be possible to apply to the TCC concerning positive obligations on the basis of discrimination claims. Ethnic and religious minorities as well as PwDs can rely provisions related with right to education and positive obligations stemmed from them in conjunction with provisions of prohibition of discrimination.

It is also possible to lodge an application to ECtHR, following exhaustion of individual application to the TCC in six months. However, the Court applies similar conditions regarding the admissibility of the application and the material scope of the rights and freedoms set forth in the CRT and ECHR is quite similar. Thus, possibility of finding a violation of right to education by the ECtHR is so low following a judgment of the TCC founding the application inadmissible or non-violation of the said right.⁷⁷

The domestic and international application procedures and judicial proceedings are quite complex, hence, it is formidable for victims of right to education to initiate a case or an application procedure without the assistance of a lawyer. At the point where the victims initiated judicial procedures, the judicial bodies do not show sufficient sensitivity to disadvantaged groups such as ethnic or religious minorities or PwDs. In cases where judicial procedures are used, the proceedings last a long time and people face difficulties in restoring their grievances. This situation may create a vicious circle and result in victims not seeking judicial procedures and not seeking their rights.

Also, the state-oriented and nationalistic approach that the judiciary reflects minimise the effect of judicial means in Turkey particularly with regard to minorities. According to a research carried out ten years ago, judges and prosecutors have hesitations about legal arrangements and amendments done during the EU harmonization process.⁷⁸ Although there are different conceptions, most judges and prosecutors found the process and its positive effects on human rights and rights of minorities incompatible with the conservative social structure of the Turkish society and complain about the coercion of the EU or foreign governments. A number of them explicitly opposed the membership.⁷⁹

With respect to access to justice, current legal aid scheme is also worth to be focused upon. According to the Civil Procedures Code (Law No. 6100), it is not obligatory for the parties to be represented in the court by a lawyer. The right to free legal assistance in civil law, criminal law and administrative proceedings is regulated by the statutory law and is provided by the legal aid offices established by the bar associations. However, due to the low amount of allowances, relatively few people have access to free legal aid and there are few applications to legal aid offices. Most lawyers prefer not to work in legal aid offices because of lack of sufficient funds and low fees. Victims and the

⁷⁷ In the first six years of individual application process, the number of judgments that ECtHR found a violation of rights set forth in the ECHR is just two. Based on this example, it is unlikely for the ECtHR to find a violation in an application duly reviewed by the TCC.

⁷⁸ Suavi Aydın; Meryem Erdal; Mithat Sancar; Eylem Ümit Atılğan, Just Expectations, A Compilation of TESEV Research Studies on the Judiciary in Turkey, TESEV, Istanbul, 2011, pp. 30 et al.

⁷⁹ *Ibid.* p. 39.

general public, especially the most disadvantaged groups, do not know their rights or possible legal remedies. In civil and administrative proceedings, victims are required to demonstrate that they have no financial means to hire a lawyer and that legal representation will serve the interests of justice. This is also valid for individual applications to the TCC.

There is no explicit reference to the vulnerable groups or preference for providing legal aid to those groups in any law. The services provided by legal aid offices can reach quite a small part of the disadvantaged groups and mostly victims of domestic violence, despite all good intentions. Therefore, in the context of right to education, comprehensive measures should be taken in order to provide legal assistance to victims, particularly to the ethnic and religious minorities as well as PwDs.

Along with the judicial means, there are also quasi-judicial institutions which may provide remedy for the disadvantaged groups such as the TİHEK and the Ombudsman Institution. TİHEK was established in 2016 by the Law No. 6701 as a national human rights institution, an equality body and a national preventive mechanism against torture and ill-treatment. Ombudsman Institution was established in 2012 with the Ombudsman Institution Law (Law No. 6328) and together with TİHEK entrusted with applications concerning human rights violations. As the Chief Ombudsperson and the ombudspersons have been elected just by the votes of ruling party in Parliament since the beginning and all the members of the TİHEK have been elected directly by the President, the lack of independence is a major issue that affected the efficiency of these institutions. Their capacities, financial resources, lack of public awareness, non-binding nature of their decisions are other aspects of concern for their effectiveness.

Despite these efforts, apart from the judiciary, still there exists no proper quasi-judicial human rights protection mechanism which satisfies the Paris Principles. As to date, TİHEK has not been an accredited institution by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. The present quasi-judicial bodies still far from being compatible with the international standards and provide no effective means for the victims of right to education, particularly for the groups focused upon in this study.

The existing legislative framework provides no effective and accessible means of judicial or quasi judicial remedies, redress or compensation to the victims of right to education. It seems that there is a need for judicial and quasi-judicial protection mechanisms that are easily accessible to disadvantaged groups who have suffered from violation of right to education can apply and acquire reparative outcomes.

2) Impact of International and European Law

2.1) Challenges to National Rules Based on International Instruments

Have national rules on access to free primary and secondary education been challenged by reference to reference to international instruments (notably the ICESR, CRPD, CRC, CAT, Refugee Convention, etc). If so, with what effect?

Have international monitoring bodies (HRC, CESR, CRC, CAT, CERD) adopted opinions/decision on the compatibility of those rules with international law? Did it produce any effect on national law? Please

refer to background paper (Deliverable 3.3), section 4) Justice in the rights to Vote, Housing and Education in International Law for relevant information.

It is worth to mention the status of international law in Turkish law. Turkey has been party to nearly all the major human rights treaties adopted by the UN. The Art. 90 of the CRT set forth that “International agreements duly put into effect have the force of law.” Considering the status of international treaties in Turkish law, the treaties duly ratified should be implemented as in the case of laws adopted by the legislature. Moreover, as pointed out in the last sentence of Art. 90, “In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.” Thus, the self-executing provisions of the international treaties are directly applicable in a conflict with a Turkish law. Other provisions should also be taken to interpret Turkish law in order to comply with the obligations derive from the treaties.

The right to education is a fundamental human right that is included in international covenants to which Turkey has ratified. This right is also considered to be essential for the realization of other human rights. According to the CESCR, education is a key means to eliminating economic and social inequalities, as well as ensuring that adults, youth and children who have been excluded from society are able to free themselves from deprivation and poverty, change their status in the society in which they live, and take part in various social networks.⁸⁰

Turkey has not been party to a series of international treaty protecting right to education of minorities. Art. 5/1-c of the UNESCO Convention against Discrimination in Education adopted in 1960 set forth that “It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language.”⁸¹

Art. 27 of the International Covenant on Civil and Political Rights (ICCPR), Art. 26 of the Universal Declaration of Human Rights, Art. 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Art. 28 of the UN Convention on the Rights of the Child (UNCRC) and Art. 5 of the International Convention on the Elimination of Racial Discrimination (ICERD) all concern the right to education of persons belonging to minorities and guarantee this right in various aspects. However, although a signatory, Turkey has made reservations to the provisions pertaining to education in all of those conventions with the exception of the ICERD.

The right to education is included in Art. 13 of the ICESCR, which can be considered the fundamental regulation in this area. Turkey has made a reservation to Art. 13 of the Covenant in a similar way with the UNCRC. The first paragraph of Art. 13 states the necessity of the goal of developing understanding, tolerance and friendship among racial, ethnic and religious groups. Turkey’s reservation concerning paragraphs 3 and 4 of Art. 13 do not nullify the obligation to make the above-mentioned rights available to all.⁸² In its first and only review, the Committee on Economic, Social and Cultural Rights recommended to Turkey to withdraw its reservation to Art. 13, with a view to

⁸⁰ CESCR, General Comment No. 13, para. 1.

⁸¹ See, <https://en.unesco.org/sites/default/files/cade-list-of-states-parties.pdf> (Last accessed: 01.10.2018)

⁸² Turkey ratified the Covenant on 23 December 2003 with the following reservation: ‘The Republic of Turkey reserves the right to interpret and apply the provisions of paragraph (3) and (4) of the Article 13 of the Covenant on Economic, Social and Cultural Rights in accordance to the provisions under Article 3, 14 and 42 of the Constitution of the Republic of Turkey.’

applying their provisions and interpreting them in the light of the jurisprudence of the Committee.⁸³ As of October 2018, the Optional Protocol still awaits to be ratified by Turkey.

Turkey ratified the ICCPR in 2003 and its First Optional Protocol in 2006. The only reservation put by Turkey to the ICCPR is related to the Art. 27 of the treaty in which minority rights are protected. This reservation does not limit the material scope of the ICCPR as regard to right to education. However, as a result of the reservation Art. 27 is only limited to groups considered as minorities under the Lausanne Peace Treaty.⁸⁴ With regard to the Optional Protocol Turkey formulated a reservation concerning Art. 5 paragraph 2 (a) of the Protocol to the effect that “the competence of the Committee shall not apply to communications by means of which a violation of article 26 of the International Covenant on Civil and Political Rights is reprimanded, if and insofar as the reprimanded violation refers to rights other than those guaranteed under the afore-mentioned Covenant.” Hence, while Human Rights Committee decisions relating to social rights, which were made on the basis of Art. 26, cannot be brought onto the agenda via complaints lodged to the Committee, the consideration of social rights within the context of prohibition of discrimination has been prevented.

As of October 2018, there has been only on three individual communications submitted to the Human Rights Committee (HRC), two regarding conscientious objection and one concerning wearing headscarf in universities. The HRC in all of these communications concluded that Turkey has violated freedom of religion.⁸⁵ Right to education of ethnic and religious minorities and PwDs has not been review by the HRC yet. Turkey has submitted only one state report to the HRC since 2003⁸⁶ without any reference to the restrictions to the right to education for ethnic and religious minorities. In its concluding observations the Committee recommended that Turkey “should ensure that all persons belonging to ethnic, religious or linguistic minorities are effectively protected against any form of discrimination, and can fully enjoy their rights. To this regard, the State party should consider withdrawing its reservation with respect to article 27 of the Covenant.”⁸⁷

With regard to UNCRC, reservations made to the Arts. 17, 29 and 30,⁸⁸ Turkey reserves the right to interpret the articles concerning the rights of children belonging to minorities in parallel with the provisions of the Constitution and the Lausanne Treaty. That being said, these reservations have an effect upon the scope of the right to education of ethnic and religious minorities, particularly right to education in mother tongue and religious education. The Committee on the Rights of Child (CRC) repeatedly recommended Turkey to consider withdrawing its reservations and noted with concerns

⁸³ CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights, Turkey, E/C.12/TUR/CO/1, 12.07.2011, para. 6.

⁸⁴ The Covenant was ratified on 23 September 2003 with the following reservation: “The Republic of Turkey reserves the right to interpret and apply the provisions of Article 27 of the International Covenant on Civil and Political Rights in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendixes.”

⁸⁵ HRC, *Cenk Atasoy and Arda Sarkut v. Turkey*, Communications Nos. 1853/2008 and 1854/2008, CCPR/C/104/D/1853-1854/2008, 19.06.2012; *Şeyma Türkan v. Turkey*, Communication No. 2274/2013, CCPR/C/123/D/2274/2013, 20.09.2018.

⁸⁶ ICCPR, Initial reports of States parties, Turkey, CCPR/C/TUR/1, 13.04.2011.

⁸⁷ HRC, Concluding observations on the initial report of Turkey adopted by the Committee at its 106th session (15 October - 2 November 2012), CCPR/C/TUR/CO/1, 13.11.2012, para. 9.

⁸⁸ Turkey ratified the Covenant on 4 May 1995 with the following reservation: “The Republic of Turkey reserves the right to interpret and apply the provisions of articles 17, 29 and 30 of the United Nations Convention on the Rights of the Child according to the letter and the spirit of the Constitution of the Republic of Turkey and those of the Treaty of Lausanne of 24 July 1923.”

these reservations and stated that, “in particular in the fields of education ... and the right to enjoy their own culture and use their own language, these reservations may have a negative impact on children belonging to ethnic groups which are not recognized as minorities under the Treaty of Lausanne of 1923...”⁸⁹

The leading instrument as regard to persons with disabilities is UNCRPD was ratified by Turkey in 2009 and its Optional Protocol in 2012 without a reservation. Since then, there has been no communications submitted to and concluded by the Committee on the Rights of Persons with Disabilities. Since ratification of the UNCRPD, Turkey has submitted only one state report, however, as of October 2018 it has not been reviewed by the Committee yet.⁹⁰ The country review expected to be carried out during 21st session which will be held in March-April 2019. In order to comply with UNCRPD, the Law on Persons with Disabilities (Law No. 5378) comprehensively amended in 2014, including right to education.

The Council of State, considering relevant articles of and obligations stemmed from the UNCRPD and Turkish legislation, rendered that, PwDs cannot be prevented from access to education for any reason, should be provided equal opportunities in inclusive environments with the non-disabled persons, taking into account their special circumstances and differences and fulfil its obligation of reasonable accommodation.⁹¹

2.2) Challenges to National Rules Based on European (Council of Europe) Instruments

Have national rules on access to free primary and secondary education and inclusive/institutionalized/segregated education been challenged by reference to Council of Europe’s law, in particular Article 2 Protocol 1 ECHR, Article 7, 9-10, 15 and 17 of the RESC, the ECRML (notably Article 8), the FCPNM (Article 12 and 13).

Have any cases concerning on access to free primary and secondary education and inclusive/institutionalized/segregated education taken to/decided upon by the ECtHR? With what effect? Was national law adjusted to comply with the ECtHR decision(s)?

Has the Committee on Economic and Social Rights issued decision against your country for non compliance with the RESC? Was national law adjusted to conform to the RESC? Please refer to background paper (Deliverable 3.3), section 5 subsection: The Right to Education in Council of Europe Law – Justice as Recognition for relevant information.

Turkey is one of the founding members of the Council of Europe and is party to ECHR and its First Protocol since 1954. The only reservation put by Turkey to the Convention and its ratified Protocols is the one put to Art. 2 of the First Protocol. During the ratification procedure in 1954 it was stated that “Article 2 of the Protocol shall not affect the provisions of Law No. 430 of 3 March 1924 relating to

⁸⁹ CRC, Concluding observations of the Committee on the Rights of the Child, Turkey, CRC/C/15/Add.152, 09.07.2001, para 11-12; Concluding observations of the Committee on the Rights of the Child, Turkey, CRC/C/TUR/CO/2-3, 20.07.2012, para. 8-9.

⁹⁰ CRPD, Initial report submitted by Turkey under article 35 of the Convention, CRPD/C/TUR/1, 04.10.2017

⁹¹ Council of State, Plenary Session of Administrative Law Chambers, E. 2008/2220, K. 2012/2239, 21.11.2012.

the unification of education.”⁹² The text of the reservation refers to the full control of the state on education regardless of public or private thus do not effect the scope of the right for the groups focused upon in this study. Thus the reference to the Law No. 430 implies that religious education will be carried out by the Ministry of National Education or under the supervision of the Ministry, and religious education institutions cannot be opened without the permission of the Ministry.⁹³ This reservation mainly deals with the religious education which affected religious minorities. Since the ECHR does not guarantee right to education in mother tongue the reservation does not relevant with ethnic minorities or children with disabilities.

Art 2 of the First Protocol to the ECHR is as follows: “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.” As can be traced from the text there two different aspects of right to education. The first one covers mainly access to education and the second one ensures that the state respects the right of parents to ensure that education and training is carried out in accordance with their own religious and philosophical beliefs. According to the jurisprudence of the ECtHR, it is considered groups such as ethnic minorities and PwDs as disadvantaged and vulnerable groups and stated that special protection should be provided.⁹⁴

Along with the UNESCO Convention against Discrimination in Education, another treaty that Turkey has not been ratified for many years with other 7 member states of the Council of Europe (Belgium, France, Greece, Andorra, Luxemburg, Iceland and Monaco) is the Framework Convention for the Protection of National Minorities adopted in 1994.⁹⁵ This Convention also provides in Art 14 that “The Parties undertake to recognize that every person belonging to a national minority has the right to learn his or her minority language.” and “In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.”

Turkey is also one of 22 of the 47 member states of the COE not to have ratified the European Charter for Regional or Minority Languages. Although these two treaty is somewhat disappointing, focus on state actions rather than minority rights and regard the minorities as the beneficiaries of the treaties more of a subject of the rights, still important to provide a legal framework for them. Turkey has not ratified Protocol No. 12 to the ECHR either. Considering the long standing official minorities policy of Turkey, those treaties are unlikely to be ratified by Turkey in the short term.

As the ECHR and ESC-R are the only regional treaties with a monitoring mechanism, the cases or reports referred below is mainly focused on these mechanisms. Beginning with the ECtHR, the judgments rendered against Turkey as regards right to education are quite substantial in various

⁹² See, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/009/declarations?p_auth=hTPBXqPp (Last accessed: 01.10.2018)

⁹³ İdil Işıl Gül, “Eğitime Erişim: Eğitimde Ayrımcılık Yasağı ve Fırsat Eşitliği”, Eğitim Hakkı ve Eğitimde Haklar: Uluslararası İnsan Hakları Belgeleri Işığında Ulusal Mevzuatın Değerlendirilmesi, Eğitim Reformu Girişimi, İstanbul, 2009, p. 54.

⁹⁴ See, ECtHR, *D. H. and Others v. Czech Republic*, Appl. No. 57325/00, 13.11.2007, para. 182.

⁹⁵ See, <https://www.coe.int/en/web/minorities/etats-partie> (Last accessed: 01.10.2018). Those states are Belgium, Greece, Iceland, Luxembourg, Andorra, France and Monaco.

ways. While some of these cases are related with religious minorities, some others are concerned with persons with disabilities. The first case that a violation of right to education had found is *Hasan and Eylem Zengin v. Turkey*.⁹⁶ In this case, the applicants, father and his daughter are adherents of Alevism and the father asked for an exemption for his daughter from religious culture and ethics classes which are compulsory for students from 4th grade to 11th grade in all schools, regardless of public or private, throughout the Turkey on the basis of explicit obligation set forth in statutory law. They alleged that the classes in religious culture and ethics were not conducted in an objective, critical or pluralist manner, and thus did not fulfil the criteria identified by the Court in the context of its interpretation of Art. 2 of Protocol No. 1. In addition to this, according to the applicants, the syllabus, which was taught entirely from a religious perspective and which praised the Sunni interpretation of the Islamic faith and tradition, together with textbooks describing the traditional rites of Sunni Islam, clearly indicated that this instruction lacked objectivity.

In *Hasan and Eylem Zengin Case*, the Court presented a comprehensive study of comparative law and variations concerning religious education in state schools in COE countries. Referring the above allegations, the Court concluded that the content of the “religious culture and ethics” classes cannot be considered to meet the criteria of objectivity and pluralism as well as respect the religious and philosophical convictions of applicants.

The Court also laid emphasis on the exemption procedure and contradiction by stating that “if this is indeed a course on the different religious cultures, there is no reason to make it compulsory for Muslim children alone. Conversely, if the course is essentially designed to teach the Muslim religion, it is a course on a specific religion and should not be compulsory, in order to preserve children's and their parents' religious freedoms.”

The last point that the ECtHR urged upon was the disclosing religious in order to be exempted from the classes. According to the Court, “exemption procedure is not an appropriate method and does not provide sufficient protection to those parents who could legitimately consider that the subject taught is likely to give rise in their children to a conflict of allegiance between the school and their own values.” Although the Court considered that bringing the Turkish educational system and domestic legislation with regard to religious instruction into conformity with the Convention standards would represent an appropriate form of compensation which would make it possible to end the violation found, the religious culture and ethics classes are still not compatible with the Convention standards and need an extensive reform. Following the judgment of ECtHR, The Council of State also rendered judgments in the same direction.⁹⁷

The same issue had also come before the Court again in 2011.⁹⁸ In *Mansur Yalçın and Others v. Turkey Case*, which was rendered in 2014, ECtHR stated that, despite the fact that there have been some changes with the syllabus for religious classes, “the changes did not entail a real overhaul of the key components of the syllabus, which focuses primarily on knowledge of Islam as practised and interpreted by the majority of the population in Turkey.” The Court reiterated the same inferences made in *Hasan and Eylem Zengin Case* and concluded that “it appears that the education system of the respondent State still does not provide appropriate means in order to ensure that parents’

⁹⁶ ECtHR, *Hasan and Eylem Zengin v. Turkey*, Appl. No. 1448/04, 09.10.2007.

⁹⁷ See, Council of State, 8th Chamber, E. 2006/4107, K. 2007/7481, 28.12.2007; E. 2007/8365 K. 2009/3238, 15.5.2009.

⁹⁸ ECtHR, *Mansur Yalçın and Others v. Turkey*, Appl. No. 21163/11, 16.09.2014.

convictions are respected.” The Court, differently from the former judgment, drew attention to a structural problem and stressed “the need to make the necessary means available without delay, and without pupils’ parents being obliged to disclose their religious or philosophical convictions in order to make use of them.” Following the judgment had become final on 16 February 2015, as in the case of *Hasan and Eylem Zengin* the need for a reform has still been waiting by the Committee of Ministers for nearly 4 years and execution process of the both judgment is still pending. The Council of State again rendered judgments in the same direction.⁹⁹

There are two cases lodged against Turkey regarding the right to education of persons with disabilities that the Court had found violation of right to education in conjunction with prohibition of discrimination. In the first case, *Çam v. Turkey*,¹⁰⁰ the applicant had been diagnosed with hypermetropia with nystagmus and severe bilateral amblyopia. She applied to take part in the entrance competition the Turkish National Music Academy and found successful by the said academy. Although she had a health report represented her ability to receive education and instruction, the Academy refused to enrol the applicant. The ECtHR stated that the right to education set out in such instruments as the European Social Charter or the United Nations Convention on the Rights of Persons with Disabilities should therefore be taken into consideration. The Court followed its precedent cases and stated that “in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the” prohibition of discrimination. The Court subsequently define the reasonable accommodation concept in the same way with the UNCRPD and emphasized that prohibition of discrimination must be read in the light of other treaties and refusal to make reasonable accommodation should be considered as discrimination on the ground of disability.

ECtHR, as it has done in cases regarding Roma, underlined particular vulnerability of persons with disabilities. Eventually the Court found that there had been a violation of Art. 14 of the Convention taken in conjunction with Art. 2 of Protocol No. 1. Since the applicant following the rejection of her application to the Turkish National Music Academy, continued her education in the Music Department of the Arts Faculty of Marmara University, no individual measures required in order to eliminate the consequences of the violation. Prior to this judgment, the Law on Persons with Disabilities (Law No. 5378) and TİHEK Law (Law No. 6701) has already defined reasonable accommodation as form of discriminatory treatment. Following the *Çam v. Turkey* judgment of the ECtHR, another ruling was given by the Court in 2018. In the *Enver Şahin v. Turkey* judgment the Court again dealt with the reasonable accommodation of a person with disability in the educational facilities and found a violation of the same articles.¹⁰¹

In two other cases, *Kalkanlı v. Turkey* and *Sanlısoy v. Turkey*, the refusal of two private school administration for enrolment of children with disabilities subjected to a judicial review by the ECtHR. The Court concluded in these cases that there was no question of a systemic denial of the applicants' right to education because of their disabilities (blindness and autism), they have not been denied access to a public school. There the refusal of a single private school which does not have the

⁹⁹ See, Council of State, 8th Chamber, E. 2013/4877 K. 2014/9019, 21.11.2014.

¹⁰⁰ ECtHR, *Çam v. Turkey*, Appl. No. 51500/08, 23.02.2016.

¹⁰¹ ECtHR, *Enver Şahin v. Turkey*, Appl. No. 23065/2012, 30.01.2018.

appropriate means to admit an applicant can not be understood, in itself, as a failure by the State to its obligations under Art. 2 of Protocol No. 1 to the ECHR.¹⁰²

The right to education is also protected by the European Social Charter (Revised) which Turkey is has been a party since 2007. Turkey made the following declaration during the ratification process: “In accordance with Part III, Article A, of the European Social Charter (revised), the Republic of Turkey declares that it considers itself bound by the following articles, paragraphs and sub-paragraphs of Part II of the revised Charter: Article 1; Article 2, paragraphs 1, 2, 4, 5, 6 and 7; Article 3; Article 4; paragraphs 2, 3, 4 and 5; Articles 7 to 31.” The declaration demonstrates that there is no reservation for articles related with education such as 7, 15 and 17. While the Art. 15 points out right to education of PwDs, Art. 17 provides a general protection to right to education of all.

Turkey has not been ratified Additional Protocol to the European Social Charter providing for a system of collective complaint, nor declare by notification that it accepts the supervision of its obligations under ESC-R following the procedure provided for in the said Protocol. Thus, currently the collective complaint mechanism is not available for complaints against Turkey. The only monitoring mechanism valid for Turkey is the reporting procedure in every two years for the accepted provisions of the ESC-R. In the last supervision held in 2016 with regard to PwDs, the ECSR concluded that “the situation in Turkey is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream education and vocational training is effectively guaranteed.”¹⁰³ None of the conclusions of the Committee features right to education of minorities. Even when the ECSR uses the expression “children of vulnerable groups”, it usually refers to the “children of families under the risk of poverty” instead of children belonging to minorities.¹⁰⁴ In one of the last conclusions, the Committee recalled that “The Committee recalls that Article 17§2 of the Charter requires that equal access to education must be guaranteed for all children, with a particular attention to vulnerable groups, such as children from minorities[...]” without any reference to specific ethnic or religious minority.¹⁰⁵ In conclusion, the findings of the ECSR are mostly verbalised in general terms and up until now, almost all of them seems ignored by Turkey.

ECRI is one of the most important monitoring mechanisms in Europe with regard to racism, xenophobia, anti-Semitism and intolerance from the perspective of the protection of human rights and fundamental freedoms. It also focuses on discrimination on grounds of race, ethnic/national origin, colour, citizenship, religion, language, sexual orientation and gender identity. ECRI’s statutory activities cover, inter alia, country monitoring and Turkey has been visited for five times by the ECRI in the last two decades. In the last report published by the ECRI on October, 2016 for the visit conducted in 2016, along with with particular recommendations for the Kurds and Roma, recommended that the Turkish authorities “ensure that, when entering primary school, all children from minority groups have sufficient mastery of the language of instruction to complete their schooling successfully. These children should also receive any necessary specialised support during their schooling.” and “strictly respect their duty of neutrality and impartiality in regulating matters of religion, abolish discriminatory regulations and practices in this regard and expedite the

¹⁰² ECtHR, *Kalkanlı v. Turkey*, Appl. No. 2600/04, 13.01.2009; *Sanlısoy v. Turkey*, Appl. No. 77023/12, 08.11.2016.

¹⁰³ ECSR, Conclusions 2016, Turkey, Article 15-1, 2016/def/TUR/15/1/EN, 09.12.2016.

¹⁰⁴ ECSR, Conclusions 2015, Turkey, Article 17-2 2015/def/TUR/17/2/EN, 04.12.2015.

¹⁰⁵ ECSR, Conclusions 2011, Turkey, Article 17-2, 2011/def/TUR/17/2/EN, 09.12.2011.

implementation of the related decisions of the European Court of Human Rights.”¹⁰⁶ In common with the judgments of ECtHR and conclusions of ECSR, the recommendations of the ECRI are consistently overlooked by the Turkey.

2.3) Challenges to National Rules Based on EU Law

Has EU law, in particular the EU Charter (Articles 14 and 24, and also 16), EU free movement of workers and EU citizenship rules, EU immigration and refugee law, EU non-discrimination law, EU internal market, competition and state aid law, EMU law, the European Pillar of Social Rights or relevant EU soft law), been invoked in domestic courts to challenge national rules concerning access to free primary and secondary education and inclusive/institutionalized/segregated education?

Has the EU Commission launched enforcement actions against your state for violation by national rules concerning access to free primary and secondary education and inclusive/institutionalized/segregated education? Did the Commission take your state to the CJEU? Was national law adjusted to comply?

Have they been referrals to the CJEU, and decisions, related to a violation of EU law by your member state's rules regarding access to free primary and secondary education and inclusive/institutionalized/segregated education? If yes, where they follow by any effect? Please refer to background paper (Deliverable 3.3), section 6) subsection 4) The Right to Education in EU Law - Justice as recognition for relevant information.

The history of EU-Turkey relations goes back to the 1950's. The fluctuating relations have always had a great influence on the democratization process and human rights policy of Turkey. As can be seen above, the main motive behind the amendments made in the CRT is the close relationship between the EU and Turkey. This can also be traced by the Turkey's policy of ratification of international treaties. The main motivation behind the human rights reforms after the World War II has always been the integration of Turkey into the EU.¹⁰⁷ Despite the ratification of ECHR in 1954, the acceptance of the jurisdiction of the ECtHR in 1989 and the ratification of the core United Nations Human Rights Treaties after 1999 are not a coincidence since all the given dates were the main historic moments in relation to the integration process. It would not be an exaggeration to say that leading law reform packages were the consequences of the close ties between Turkey and EU.

Turkey and EU maintain their relations which they started with “association” in 1963, with full membership process of Turkey. In 1963, the Agreement Establishing an Association Between the European Economic Community and Turkey (Ankara Agreement) establishing an Association between the European Economic Community and Turkey was signed by Turkey and by the Member States of the European Economic Community and the Community. Also in 1987, Turkey submitted a formal request for full membership. The European Commission rejected the request on the grounds that Turkey manifested grave democratic deficiencies in 1989. However, it confirmed that Turkey was still eligible for full EU membership. Both association and status of “candidate state” require harmonization of laws.

¹⁰⁶ ECRI, 5th Report on Turkey, CRI(2016)37, 2016, paras. 86 and 91.

¹⁰⁷ See, “Human Rights: Policy Objectives and Development”, Ministry of Foreign Affairs,

<http://www.mfa.gov.tr/insan-haklari.en.mfa> (Last accessed: 01.10.2018)

The Ankara Agreement builds the association in the frame of an economic integration including customs union and free movement of persons, services and capital.¹⁰⁸ It presents a framework for Turkey's gradual integration into the Community. The instruments that followed, such as the Additional Protocol of 1973, and Decision No. 1/95 of the Association Council, filled this frame. According to the Art. 28 of the Agreement "As soon as the operation of this Agreement has advanced far enough to justify envisaging full acceptance by Turkey of the obligations arising out of the Treaty establishing the Community, the Contracting Parties shall examine the possibility of the accession of Turkey to the Community." Hence, harmonization of laws is inherent in the gradual integration model of this association.¹⁰⁹ As a first instrument, the Additional Protocol of 1973 followed the Agreement and regulated the issues regarding attainment of free movement of goods (customs union) and adjunct free movement of persons and services, approximation of economic policies and approximation of laws.¹¹⁰

Decision No. 1/95 of the EC-Turkey Association Council which was established by the Ankara Agreement to ensure the implementation and promotion of the association regime, and was given power to take decisions, is the most detailed instrument referring to the approximation of legislation. In this context, "approximation of legislation" was set out as a separate chapter and protection of intellectual, industrial and commercial property rights, competition, trade defence instruments, government procurement, direct and indirect taxation were regulated under this chapter.¹¹¹ Moreover, this Decision provides a general obligation clause stating "In areas of direct relevance to the operations of the Customs Union¹¹² ... Turkish legislation shall be harmonized 'as far as possible' with Community legislation."¹¹³ Last but not least, the Decision includes a clause regarding "interpretation" stating "The provisions of this Decision, in so far as they are identical in substance to the corresponding provisions of the Treaty establishing the European Community shall be interpreted for the purposes of their implementation and application to products covered by the Customs Union, in conformity with the relevant decisions of the Court of Justice of the European Communities."¹¹⁴

Pursuant to its formal request for full membership in 1987, Turkey obtained the status of a candidate state in the 1999 Helsinki Summit Meeting and started the membership negotiations in October 2005. For full membership every candidate state must fulfil the Copenhagen criteria (political,

¹⁰⁸ For the text of Ankara Agreement in English, see, https://www.ab.gov.tr/117_en.html (Last accessed: 01.10.2018)

¹⁰⁹ İlke Göçmen, "Avrupa Birliği ile Türkiye İlişkileri Çerçevesinde Türk Mahkemelerinin Avrupa Birliği Hukuku Karşısındaki Tutumuna Yönelik Bir Öneri: AB-Dostu Yorum Yöntemi", Ankara Üniversitesi Hukuk Fakültesi Dergisi, Vol. 63, No.1, 2014, p. 135.

¹¹⁰ See respectively Art. 2 and following articles, Art. 36 and following articles, Art. 43 and following articles of the Additional Protocol.

¹¹¹ For instance, Art. 39 (1) of the Decision states "With a view to achieving the economic integration sought by the Customs Union, Turkey shall ensure that its legislation in the field of competition rules is made compatible with that of the European Community, and is applied effectively. "

¹¹² These areas are commercial policy and agreements with third countries comprising a commercial dimension for, industrial products, legislation on the abolition of technical barriers to the industrial products, competition and industrial and intellectual property law and customs legislation (Decision No. 1/95 of the Association Council Art. 54 (2))

¹¹³ Decision No. 1/95 of the Association Council, Art. 54 (1)

¹¹⁴ Decision No. 1/95 of the Association Council, Art. 66.

economic and EU *acquis* criteria) and beside adapting *acquis* it must have the administrative and institutional capacity to implement it effectively.

The negotiations are carried out through the Negotiating Framework.¹¹⁵ According to the Negotiating Framework, “Accession implies the acceptance of the rights and obligations attached to the Union system and its institutional framework, known as the *acquis* of the Union. Turkey will have to apply this as it stands at the time of accession. Furthermore, in addition to legislative alignment, accession implies timely and effective implementation of the *acquis*.”¹¹⁶

Moreover, “In all areas of the *acquis*, Turkey must bring its institutions, management capacity and administrative and judicial systems up to Union standards, both at national and regional level, with a view to implementing the *acquis* effectively or, as the case may be, being able to implement it effectively in good time before accession. At the general level, this requires a well-functioning and stable public administration built on an efficient and impartial civil service, and an independent and efficient judicial system.”¹¹⁷

The Regular Progress Report of 2016 on Turkey states that regarding its ability to assume the obligations of membership, Turkey has continued to align with the *acquis* and with despite the visa liberalization related work, its efforts continued at a limited pace. The report points out that, Turkey is well advanced in the areas of company law, trans-European networks and science and research and it has achieved a good level of preparation in the areas of free movement of goods, intellectual property law, financial services, enterprise and industrial policy, consumer and health protection, customs union, external relations and financial control.¹¹⁸ In areas especially regarding the titles under the political criteria, human rights and protection of minorities¹¹⁹ and environment and climate change,¹²⁰ Turkey should ensure legislative alignment with the *acquis*. The political climate in Turkey in recent years caused harsh criticism among EU institutions and member states with respect to human rights and related fields.

The laws adopted in the last three decades show that the influence of the EU law is valid only in certain fields of law, such as intellectual property law, labour law and competition law. This is mainly based on the leading motives behind the relevant laws. Such an influence is the necessity of the EU accession process which requires Turkey to harmonize its laws with the *acquis*. Right to education or any other political rights are not at the agenda of EU-Turkey relations thus Turkey receives no harsh critics for lack of harmonizing its legislation in conformity with international standards.

As stated above, pursuant to the art. 90 of the Turkish Constitution “international agreements duly put into effect have the force of law” and “in the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.” The Constitutional Court also interpreted the given article in a way to give precedence to

¹¹⁵ European Council, Negotiating Framework, Luxembourg, 3 October 2005, https://www.ab.gov.tr/files/pub/2016_progress_report_en.pdf (Last accessed: 01.10.2018)

¹¹⁶ Negotiating Framework, Art. 10.

¹¹⁷ Negotiating Framework, Art. 17.

¹¹⁸ European Commission, Turkey 2016 Report, SWD (2016) 366 final, Brussels, 9.11.2016, p. 18.

¹¹⁹ The report namely underlines that the anti-terror law and its implementation, freedom of assembly and non-discrimination in law and practice are not in line with the *acquis*. (European Commission, Turkey 2016 Report, p. 25)

¹²⁰ European Commission, Turkey 2016 Report, p. 86.

the judgments of ECtHR in a conflict with laws. As Turkey is not an EU member and is not party to EU treaties, EU law in general does not have a binding effect in Turkish Law, nor prevail over Turkish Law. Consequently, Turkish judiciary or SBE do not feel themselves under an obligation to follow EU law in general or CJEU jurisprudence as a rule.

1999 is the year in which Turkey was officially regarded as a candidate country and so far EU has published a Progress Report each year in which the human rights and democratization reforms were assessed. Having looked at those reports, one can easily say that ratification policy of the international human rights treaties and realized legal reforms can be regarded as an answer to the criticisms therein. Thus it can be claimed that motivation behind the ongoing harmonization process of the Turkish legislation with the Copenhagen criteria, the EU *acquis communautaire* and the Council of Europe human rights standards has been the aspiration of EU integration. The relationship between EU and Turkey affects the level of conformity with the international human rights standards. In order to illustrate the correlation, the figures regarding the applications that lodged against Turkey before the ECtHR can be pointed out. Accordingly, when viewed from this aspect, preserving the relations and enhancing the cooperation with Turkey are closely connected with the promotion of human rights in Turkey as well.

Finally, the legal status of EU law also causes less attention to EU law in comparison with the ECtHR or other international instruments. The main underlying reason may be the non-binding rules of EU law in Turkish law. As mentioned above, pursuant to the Art. 90 of the CRT “international agreements duly put into effect have the force of law.” Art. 90 also provides that “In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.” The TCC also interpreted the given article in a way to give precedence to the judgments of ECtHR in a conflict with laws.¹²¹ As Turkey is not an EU member and is not party to EU treaties, EU law in general does not have a binding effect in Turkish Law, nor prevail over Turkish Law. Consequently, by contrast with the executive and the legislature, Turkish judiciary do not feel themselves under an obligation to follow EU law as a rule which affected the positive impact of EU law with regard to ethnic and religious minorities as well as PwDs.

3) Right to Education, Justice as Recognition and Vulnerability

When reviewing the national legal framework and, where relevant, references to International and European norms, could you identify arguments engaging different conceptions of justice as recognition. Please specify whether these were part of court’s reasoning or parties’ arguments, and if the later, provide any relevant information that could help evaluate who mobilized the law to achieve greater justice (e.g. NGOs, etc.). Please refer to background paper (Deliverable 3.3), section 2) subsection Justice as Recognition and the Right to Education for relevant information.

Does the concept of vulnerability play a role in the context of the right to education? Please explain how, and provide some representative illustrations. Please refer to background paper (Deliverable 3.3), section 2) subsection 3) Vulnerability as a human rights law concept for relevant information.

¹²¹ TCC, *Sevim Akat Eşki*, B No: 2013/2187, 19.12.2013; *Adalet Mehtap Buluryer*, B. No. 2013/5447, 16.10.2014.

Since the establishment of the Republic of Turkey, following the adoption of Law on Unification of Education (Law No. 430), a very centralized approach has been implemented in whole education system. This approach leaves no discretion to the schools regardless of their status, whether public, private or minority schools. The existing system strictly follows the French republican idea since the adoption of Constitution of 1924, in which the right to education was recognized as the only social right in the Constitution. The right to education was the only right that also imposes a duty for the holder of the right as primary education was regulated as compulsory.

The current education system, with regard to primary education, is free of charge and “addressed-based”, thus does not accord a right that can be referred to as “freedom of choice of school”. Even if “address-based” school enrolment fosters access to education for disadvantaged groups, eventually this situation leads to residential segregation and unequal access to quality education as well as “ghetto” schools for particular minorities.

Although address-based school enrolment and centralized education system gives the impression of the justice concept of justice as redistribution has been employed and promoting equality, in actual fact, it disregards the diversity of the Turkish society and imposes a monistic identity to the various ethnic or cultural groups. In other words, the education system indigenises either of the concepts of justice, redistribution or recognition.

During the research accessibility of the court judgments has been a sincere problem, so the number of cases referred to are so few. According to the Art. 141 of the CRT, all the court hearings shall be open to the public, consequently all the case files should be available to the public. However, only few cases are published by the monthly or quarterly journals by the Council of State¹²² and Court of Cassation¹²³ as well as by private law journals. Thus, for the researchers only a limited number of cases are available and the researches on the Turkish judiciary may reveal only the tip of the iceberg and are far from setting forth a clear picture of the existing situation in Turkey. For the purpose of this research, those journals were disregarded, as they do not have a proper index and it is not feasible to carry out a search by using a set of keywords.

Following the establishment of the National Judiciary Informatics System (NJIS), all the judgments given by the courts on all levels are accessible through a digital database provided on the Internet.¹²⁴ The NJIS has different web portals for citizens, lawyers, court experts as well as civil, penal and administrative courts. Yet, only courts can access the rulings of their own or rulings of the courts at the same level, whereas lawyers can only access their own case files. Citizens can only get very limited information concerning the cases they are party to. This situation weakens the accessibility of jurisprudence not only for researchers, but also for the legal community as a whole.

As has been pointed out ethnic and religious minorities and PwDs are both vulnerable groups with respect to access to and benefit from the rights. “Vulnerability” concept has been used by different international bodies. To set an example, according to the ECSR, the European Social Charter (Revised) requires that equal access to education must be guaranteed for all children, with a particular attention to vulnerable groups, such as children from minorities and whenever necessary, special

¹²² See, Danıştay Dergisi at <http://www.danistay.gov.tr/dergiler.html> (Last accessed: 01.10.2018)

¹²³ See, Yargıtay Kararlar Dergisi at <https://www.yargitay.gov.tr/sayfa/yargitay-kararlari-dergisi/958> (Last accessed: 01.10.2018). This journal has been published since 1975 and only printed versions are accessible.

¹²⁴ For further information on NJIS, see, <http://www.e-justice.gov.tr/UYAP-History> (Last accessed: 01.10.2018)

measures should be undertaken to ensure equal access to education for these children.¹²⁵ This notion also stated by ECtHR in a series of judgment regarding minorities and PwDs.¹²⁶ Having looked at the legal framework only PwDs is regarded as vulnerable group and ethnic or religious minorities constantly ignored. The Ministry of National Education's definition of disadvantaged groups as groups composed of individuals such as women, young people, long-term unemployed, disabled people who have more difficulties in their education than other groups may be given as an example of approach. Even the definition of the term does not include ethnic or religious minorities.¹²⁷ From this point of view, it will not be wrong to say that the concept of vulnerability does not play a role in the context of the right education of ethnic and religious minorities.

The notion of "minority rights" has a negative meaning in Turkish state and society which associated with separatism in internal policy and unjustified interference in internal affairs in foreign policy. The scope of the term was frozen in 1923 once and for all and still has been interpreted from the view of 1920s which was mainly based on proviso of the Lausanne Treaty. In the official discourse minority rights are special treatment to minorities owing to the said treaty. This approach can be traced from the state party reports to different UN committees as follows: "In line with the State philosophy based on equality of citizens assuring non-discrimination, Turkish citizens belonging to non-Muslim minorities enjoy and exercise the same rights and freedoms as the rest of the population. Additionally, they benefit from their minority status in accordance with the Lausanne Peace Treaty."¹²⁸

Even so, in the official discourse the Lausanne minorities seen as "foreigners" and any advocacy for minority rights or protection of minorities seen as a threat to the unity of the state. One of the outcomes of this approach is that, apart from a small number of cases filed with respect to compulsory religious classes, the number of cases filed to the courts are so limited, therefore, the courts cannot portray any conceptions of justice. This situation also leads to an opposition to minority status among the members of non-Lausanne minorities such as. They usually refer to themselves as the "constitutive element of the state". As rightly said "Muslim minorities inevitably internalized the negativity, such as Roma and Alevi, some of whom vehemently reject the minority tag for fear of being perceived as a security threat, notwithstanding that they at times effectively demand minority rights, such as public education in their mother tongue and a share of the national budget for religious services."¹²⁹ Turkish political climate also fosters nationalism and blamed the EU or foreign governments for creating new minorities in the Republic by calling ethnic and religious communities minorities in its discourse.

Considering the negative approach to minority rights and limited scope of the protection afforded to the minorities in Turkey, the only option for the minorities is the existing human rights protection, which is also limited. On the other hand, individual remedies do not lead to a change in the lives of minorities. The dichotomy of individual rights and group rights inherited in minority rights; do not provide a sufficient protection to those rights. Even a recognition of minority status to other groups and minority rights would not bring about a change, as the legal framework focuses on the

¹²⁵ ECSR, Conclusions 2011, Turkey, 2011/def/TUR/17/2/EN, Article 17-2, 09.12.2011.

¹²⁶ ECtHR, *D.H. and Others v. the Czech Republic*, Appl. No. 57325/00, 13.11.2007; *Çam v. Turkey*, Appl. No. 51500/08, 23.02.2016.

¹²⁷ Milli Eğitim Bakanlığı, 2015-2019 Stratejik Planı, Ankara, 2015, p. xi.

¹²⁸ ICCPR, Initial reports of States parties, Turkey, CCPR/C/TUR/1, 13.04.2011, para 410.

¹²⁹ Kurban, p. 7.

individuals not the minority as a whole.

Turkey's foreign policy regarding international treaties focuses on to hinder legal protection to minorities other than non-Muslims stipulated in Lausanne Treaty. Turkey continuously puts reservations on the provisions of the international treaties that are relevant to minority rights and minorities' right to education as in the case of ICESCR and ICCPR. The international conventions to which Turkey is a signatory forbid the kind of discrimination to which ethnic and religious minorities are subjected, but largely those stipulations are ignored in practice. However, the legal framework regarding minority rights in international law also promises no hope to minorities under existing circumstances.

The international human rights law focuses mainly on equal rights for all individuals and mostly ignore special measures for minorities as before the 2nd World War. The existing mechanisms are far from effectively deal with the minority rights issues. Despite individual application procedures, complaint procedures are not available for minority groups. Monitoring bodies usually reluctant to the minority issues and in cases where pay attention, the result is mostly inefficient as the cases before the ECtHR regarding the applications related with compulsory religious classes.

The existing provisions of international law emphasize the rights of individuals belonging to minorities, thus minorities are not directly subjects of the minority rights. Nevertheless, group rights are inevitable to guarantee a range of rights for minorities. Otherwise, as the equal rights and non-discrimination are slow in bringing equality, without recognition of minority rights preferential treatment or special measures can easily be denied and equal enjoyment of rights and freedoms will never be realized. Special measures also should be not temporarily; however, some special measures such as those relating to language and culture or political participation should be permanent.

As explained above in details, the current constitutional and legislative framework does not promise so much for the minorities. In general, rights protected by international conventions should be acknowledged for all minority groups living in Turkey, regardless of being within the scope of Lausanne Treaty. All ethnic and religious groups should be recognized and should enjoy rights on an equal basis in accordance with international standards. The existing legal framework should be bolstered in favour of the fight against discrimination targeting Roma and similar social groups, and obstacles that prevent people from securing their rights should be identified and eliminated.

The Turkish constitutional scheme 'solves' the question of minorities without ever addressing it. There is no reference in the Constitution to the word 'minority', not even the Lausanne minorities. The constitution should ensure the inclusion of minorities and in a democratic society, differences should not only be seen as cultural richness; rather, they should be taken into account in order to bring about real and effective equality. Compulsory religious education in Art. 24 and prohibition of mother tongue in Art. 42 of the CRT should be abolished and enacted again in line with international standards. Therefore, legal restrictions on education in and teaching of mother tongue in public and private schools and the compulsory religious classes in statutory law also should be abolished.

With respect to PwDs, the legal framework seems mostly in line with the international standards. The reason is that, although, as stated above, minorities are regarded as "sensitive" and "unwanted" groups, PwDs are acknowledged as persons need to be "protected" by the state and the society as whole. Thus, the problems of PwDs are not acceded as "political" and they do not appear in the focus of the political debate. In contradiction to ethnic and religious minorities, as regards PwDs, the

concept of vulnerability plays a role in the context of the right to education. The adoption of Law on Persons with Disabilities (Law No. 5378) in 2005, ratification of UNCRPD in 2009 and its Optional Protocol in 2012 as well extensive amendment to the Law no. 5378 in 2014 gives the impression that rights and vulnerability of PwDs are fully recognized by the Turkey. In addition as can be seen from the statistics of the Ministry of National Education, the ratio of school or institution accommodated for the use of persons with disabilities in 2013 was 32%, however it became 42% in 2014.¹³⁰ The figures asserts that, unlike ethnic or religious minorities, even though there is much to do, there is a gradual effort to enable access to education of children with disabilities to formal education.

¹³⁰ Milli Eğitim Bakanlığı, 2015-2019 Stratejik Planı, Ankara, 2015, p. 57.

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