



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2006/98/Add.2
24 March 2006

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sixty-second session
Item 17 of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS

**Preliminary note by the Special Rapporteur on the promotion and
protection of human rights and fundamental freedoms while
countering terrorism, Martin Scheinin**

Addendum

**VISIT TO TURKEY*
(16 to 23 February 2006)**

1. The present document contains a preliminary note concerning the country visit of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, to Turkey from 16 to 23 February 2006, at the invitation of the Government. The Special Rapporteur will prepare a comprehensive report on his findings, including “best practices” in the area of counter-terrorism measures that are compatible with human rights, and a list of recommendations, which will be issued at a later stage.
2. The mission to Turkey was the Special Rapporteur’s first country visit since he accepted the appointment as mandate holder on 8 August 2005. Its main purposes were to gather first-hand information about past, current and future initiatives in the area of counter-terrorism and how such measures affect the protection and promotion of human rights and to begin a process of cooperation with the Government.

* The present note is circulated in the language of submission.

3. Over the course of his visit the Special Rapporteur visited Ankara and Diyarbakir Province. In Ankara the Special Rapporteur met with representatives from the following institutions: the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Justice, the Ministry of Defence, the Ministry of Education, the Ministry of Culture and Tourism, the National Security Council, the Human Rights Presidency of the Prime Minister's Office, the Parliamentary Human Rights Investigation Committee, and representatives of the Directorate General of Security of the Turkish National Police, the Jandarma General Command, the Coast Guard Command, the Prosecutor General and the National Intelligence Agency (MIT). In Diyarbakir, he had discussions with the Governor, the provincial Human Rights Advisory Board, the Prosecutor General, the provincial Commander of the Jandarma, the provincial Loss Assessment Commission, judges of the Aggravated Felony Court and the Director of Security. He also met with various national and local civil society actors, such as the Human Rights Platform (which includes the Human Rights Foundation, the Human Rights Association, Mazlum Der, Amnesty International Turkey and the Helsinki Citizens Assembly), the Human Rights Agenda Association and the Contemporary Law Society in Ankara. In Diyarbakir, he held meetings with local branches of several non-governmental organizations and the Diyarbakir Bar Association. The Special Rapporteur also met with individuals affected by counter-terrorism measures, as well as suspects charged with or convicted of offences related to terrorism in the F-type prison in Ankara and the D-type pretrial detention facility/prison in Diyarbakir. In addition, he visited the detention facilities of the Jandarma and the counter-terrorism branch of the Security Directorate in Diyarbakir. The Special Rapporteur had the occasion briefly to observe a trial at Ankara Aggravated Felony Court. In Ankara, he had consultations with the local offices of the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA), the World Food Programme (WFP), the Food and Agriculture Organization (FAO) and the Delegation of the European Commission.

4. The Special Rapporteur commended the authorities at all levels for their hospitality and openness. He expressed his gratitude for the excellent cooperation of the Government in relation to his visit, including facilitation of meetings and compliance with the terms of reference for the visit. He saw the visit as the fruitful beginning of cooperation for a common aim to find new ways and means of ensuring full respect for human rights in the fight against terrorism. He also expressed his appreciation to the United Nations Resident Coordinator for facilitating the preparation of the mission.

5. The Special Rapporteur acknowledged the high pace of reform pursued by the Government of Turkey since 2001, and credited those who assumed leadership on the platform of human rights and democratic principles. He commended the commitment and efforts the Government and Parliament had undertaken to reform the legislative framework and the law enforcement and criminal justice systems, and to compensate victims of terrorism and counter-terrorism measures.

6. Based on his meetings with officials, civil society actors and persons suspected or convicted of crimes relating to terrorism, the Special Rapporteur observed that the definition of terrorism as contained in article 1 of the Anti-Terror Act of 1991, which defines terrorism based on its purpose or aims rather than referring to specific criminal acts, is formulated vaguely and in very broad terms. It therefore raises concerns in respect of the principle of legality as prescribed

in article 15 of the International Covenant on Civil and Political Rights (ICCPR), a provision that allows for no derogation even during states of emergency. When applied in conjunction with other provisions of the Act, this definition of terrorism may result in prosecution and conviction in cases where the individual concerned is not personally linked to any terrorist acts properly defined, i.e. acts of deadly or otherwise grave violence against persons, or the taking of hostages, in the furtherance of aims covered by the international understanding of “terrorism”. At the same time, the Anti-Terror Act of 1991 seems not to be up-to-date as to the requirements of international conventions in the fight against terrorism. Not all specific forms of international terrorism, as defined in these conventions, are covered by article 1 of the Act, which was drafted at a different time in response to domestic needs. Whereas the Special Rapporteur received indications that the 1991 Act was being reconsidered, he was unable to obtain specific information about the review and the relevant timelines.

7. The Special Rapporteur observed that in Turkey the term “terrorist” continues to be used to refer to a large number of individuals, their organizations and activities, even if no connection to the commission of crimes which fall under a definition of terrorism that complies with the principle of legality has been established. He warned that such indiscriminate use of the terms “terrorism” and “terrorist”, apart from the concerns raised as to the principle of legality, risks undermining the effectiveness of the struggle against terrorism. Furthermore, he noted a lack of transparency as to which organizations are classified as terrorist ones, the procedure of classification and to the consequences of such classification.

8. Another issue discussed in the meetings both with authorities and civil society actors was whether new legislation in the area of counter-terrorism is needed to replace the 1991 Anti-Terror Act. Many of the interlocutors considered that the current legislation, in particular the Penal Code of 2004, contain sufficient provisions to punish perpetrators of terrorist acts and successfully fight terrorism. Some of the authorities, however, emphasized the continued need for a separate law against terrorism.

9. The Special Rapporteur noted with great satisfaction that many efforts undertaken by the Government in the area of human rights, such as intensified human rights training, the abolition of capital punishment, a zero-tolerance policy vis-à-vis torture and improvement in physical conditions of places of detention have led to significant progress including a considerable reduction in incidents related to torture and ill-treatment, widely recognized by civil society. However, with regard to allegations of torture and ill-treatment of terrorism suspects, he did not find convincing evidence that an independent, impartial, accessible and effective investigation mechanism is in place. He also regretted that no functioning monitoring system for places of detention by independent human rights institutions exists in Turkey to date.

10. The Special Rapporteur welcomed the measures taken in Turkey over the last years to improve the safeguards for persons suspected of having committed terrorist acts, such as immediate access to a lawyer, the right to remain silent, and improved rules with regard to legal aid. The Special Rapporteur would like to draw the attention to Turkey’s recent experience, which demonstrates that the eradication of torture and the strengthening of procedural safeguards available to suspects are not obstacles to the effectiveness of counter-terrorism measures. These reforms are of particular importance in the light of the picture which emerged during the visit of

the Special Rapporteur in sample interviews with persons suspected or convicted of terrorist crimes. It appeared that up to now persons remain in detention, either convicted or awaiting trial or outcome of appeal, on the basis of confessions or other testimonies they allege to have been obtained under torture in the 1990s.

11. The Special Rapporteur noted with regret that at least two cases of extrajudicial killings have allegedly occurred in Turkey, in Kiziltepe in 2004 and Semdinli in 2005, which were allegedly carried out by members of security forces and related to counter-terrorism activities. He welcomed the setting up of a parliamentary Commission to investigate the Semdinli case. He also commended the legislative amendments stipulating that government officials suspected of crimes no longer are automatically released pending trial. In the fight against impunity and in order to build public trust in law enforcement, it is important that officials charged with crimes are detained and arrested on equal grounds as other criminal suspects.

12. The Special Rapporteur commended the Act on Compensation of Victims of Terrorism. He considered the existence of such a law, and the fact that it extends to victims of acts of terrorism as well as to victims of counter-terrorism operations by the State, an example of “best practice” to be studied by other States. Encouraged by his observations on the implementation of the law in the Diyarbakir Province, the Special Rapporteur noted that, if applied in an efficient manner and in the spirit of human rights, the law can serve as an important mechanism of redress. However, many of his interlocutors indicated that the law does not fully meet their expectations because the loss assessment commissions under the law are ill-equipped to fulfil their tasks appropriately and because the loss they assess is confined to material damage instead of aiming at full restitution. Moreover, the compensation of personal losses suffered is not sufficient to create a safe environment conducive to the return of internally displaced persons.

13. A further issue complicating the return of internally displaced persons to their villages is related to the continued existence of the institution of village guards, who cooperate with the Jandarma and, according to many reports, may hamper the right to return. The Special Rapporteur was assured by government authorities that the village guards are being phased out, but the pace and effectiveness of that policy remains unclear.

14. The Special Rapporteur emphasized that Turkey stands at an important juncture of change and has shown remarkable commitment to reforms over the last years. The Special Rapporteur acknowledged that socio-economic problems in the South-East of the country are related to the difficult security situation and the prevalence of violence, including acts of terrorism that this region has experienced. However, he considers that further progress in reducing the tensions in Eastern and South-Eastern Turkey needs to be accomplished in order to ensure that reforms are sustainable and credible. Such a development can contribute to an environment less conducive to support for terrorist groups and strategies. Addressing the great disparities in the socio-economic field between the country average and the East and South-East, including in terms of unemployment, access to education, and housing and health care, is necessary and important. Also, improvements in the field of participation are needed so that every individual in Turkish society can enjoy his/her cultural and linguistic rights in order to create an atmosphere of mutual respect and tolerance.

RECOMMENDATIONS

15. Based on the above observations, the Special Rapporteur has issued the following preliminary recommendations addressed to the Government of Turkey:

Definition of terrorism

(a) The definition of terrorist crimes should be brought in line with international norms and standards, notably the principle of legality as required by ICCPR, article 15, including defining more precisely what crimes constitute acts of terrorism and confining them to acts of deadly or otherwise grave violence against persons or the taking of hostages (for more detailed information on the definition of terrorism see also E/CN.4/2006/98, paras. 26-50);

(b) The need for a separate definition of “terrorism”, beyond acts that in themselves constitute terrorist crimes, should be reconsidered;

(c) International conventions for the elimination of terrorism should be carefully taken into account when drafting new legislation against terrorism;

(d) With regard to possible legislative amendments, the Special Rapporteur offers to engage in further dialogue before and during discussions in the Parliament. He emphasizes that in a democracy draft legislation touching upon questions of fundamental rights and freedoms should be discussed openly and transparently and that civil society should be fully involved in these debates at all stages;

(e) If a continued need exists to classify some organizations linked to terrorist crimes as terrorist organizations, with adverse legal consequences, the procedure for such designation should be transparent and objective, and organizations should be able to appeal to an independent judicial body;

(f) The Special Rapporteur is of the opinion that only full definitional clarity with regard to what acts constitute terrorist crimes can ensure that the crimes of membership, aiding and abetting and what certain authorities referred to as “crimes of opinion” are not abused for other purposes than fighting terrorism;

Investigation of allegations of torture and extrajudicial killings and the fight against impunity

(g) The Special Rapporteur recommends the creation of an independent and impartial investigation mechanism with the power promptly to investigate allegations of torture or other ill-treatment. It is crucial that such a mechanism be located outside the institution that is alleged to have committed the acts of torture under investigation;

(h) The Special Rapporteur recommends that a rapid procedure be established through which persons convicted of or charged with terrorist crimes can obtain a retrial, an amnesty or a pardon, in cases where the evidence used against them does not meet the current standard of zero tolerance in respect of torture;

(i) The Special Rapporteur trusts that impartial, thorough, transparent and prompt investigations and fair trials are carried out in relation to the incidents in Semdinli and Kiziltepe. The objectivity, impartiality and thoroughness in conducting such investigations are necessary prerequisites for the public to enjoy confidence in such proceedings;

(j) He encourages Turkey to ratify the Optional Protocol to the Convention against Torture. In order to combat any remnants of impunity and to strengthen the international protection of human rights he also recommends Turkey to ratify the Rome Statute of the International Criminal Court;

Victims of terrorism and prevention of terrorism

(k) Whereas the adoption of the Act on Compensation of Victims of Terrorism is a very laudable step in the right direction, the Special Rapporteur would like to remind the Government that it is confined to material compensation and falls short of full restitution and rehabilitation. Hence, measures should be taken to address rehabilitative and other needs of victims of violence related to terrorism and counter-terrorism;

(l) One means of providing restitution is through ensuring a safe environment conducive to enable persons who so wish to return to their previous villages. In this context, the Special Rapporteur recommends that the process of phasing out the village guards be accelerated and clearly articulated;

(m) The Special Rapporteur is of the opinion that, in the long run, full respect for economic, social and cultural rights helps to eliminate the risk that individuals make the morally inexcusable decision to resort to acts of terrorism;

(n) In order for all inhabitants of Turkey to fully enjoy their human rights without discrimination and to feel fully included in society, persons belonging to different cultural and linguistic groups, including the Kurdish population, should enjoy protection of their cultural, linguistic and religious rights, including the possibility to freely use their language in public and private. In particular, effective access to education for the Kurdish population should be enhanced through, at least, initial immersion in their mother tongue;

International cooperation

(o) The Special Rapporteur requests relevant international organizations to provide, in a coordinated manner, assistance in the follow-up to the above recommendations.

- - - - -