

**Evaluation of the MRG project:**  
**Combating Discrimination and Promoting Minority Rights  
in Turkey**  
**2006-2008**

**Final Evaluation  
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## **EXPLANATION of ACRONYMS**

**Action Plan:** “The Problem of Turkey’s Displaced Persons-An Action Plan for Their Return and Compensation”

**AGOS:** Weekly magazine published by the Armenian community in Turkey

**CERD:** Committee on the Elimination of Racial Discrimination

**Country Report:** “Report-A Quest for Equality: Minorities in Turkey by Minority Rights Group International

**DBA:** Diyarbakir Bar Association

**ECHR:** European Court of Human Right

**Education Report:** Report-Forgotten or Assimilated? Minority Rights in Education System of Turkey by MRG

**EP:** Ecumenical Patriarchate

**GÖÇDER:** Migration Association

**IDP:** Internally Displaced Persons

**IHOP:** Human Rights Common Platform

**MRG:** Minority Rights International

**The Guide:** Guide for Displaced Persons

**TOHAV:** Foundation for Society and Legal Studies.

**UN:** United Nations

**Persons the evaluator interviewed with:**

1. Mr.**Tahir Elçi**, legal representative in the case of Yumak and Sadak v. Turkey before ECHR
2. Mr.**Sezgin Tanrıkulu**, former president of Diyarbakır Bar Association
3. Ms.**Aycan Akdeniz**, EU Commission Ankara
4. Ms.**Sema Kılıçer**, EU Commission Ankara
5. Mr.**Levent Korkut**, member of International Executive Board of Amnesty International
6. Mr.**Muhammet Akar**, project coordinator Diyarbakır Bar Association.
7. Mr. **Serhat Eren**, former member of board of Diyarbakır Bar Association.
8. Mr. **Devrim Biçen**, project coordinator Diyarbakır Bar Association
9. Mr.**Muzaffer İris**, from Mesopotamia Culture and Solidarity Association
10. Mr. **Erol Dora**, from Mesopotamia Culture and Solidarity Association
11. Ms. **İdil Işıl Gül**, expert on discrimination, lecturer at the Bilgi University
12. Mr. **Mustafa Ayzit**, lawyer of a case supported by MRG
13. Ms. **Feray Salman**, coordinator of IHOP.
14. Ms. **Ayla Akat**, member of parliament.
15. Mr. **Erdoğan Çekiç**, chair person of Edirne Roman Association.
16. Mr. **Soner Tufan**, member of Turkish Protestant community.
17. Ms. **Nurcan Kaya**, project coordinator.
18. Mr. **Osman Can**, rapporteur at the Constitutional Court
19. Ms. **Şefika Gürbüz**, migration association (Göç-Der)
20. Mr. **Hasip Kaplan**, member of parliament.
21. Mr. **Murat Sayın**, presidency of strategy, Ministry of Education.
22. Ms. **Claire Thomas**, MRG
23. Ms. **Gamze Sarısen**, History Foundation.
24. Mr. **Emrullah Beytar**, vice president of Mazlum-Der
25. Ms. **Ruşen Doğan**, TOHAV
26. Mr. **Julien Desmedt**, Political desk-Turkey, EC delegation in Brussels.

## I. INTRODUCTION

This report is an overall evaluation of the project on combating discrimination and promoting minority rights in Turkey by Minority Rights Group International. The project was undertaken by MRG during the period of 2006-2008 with the financial support of the European Union Commission as well as other funders. The project period was extended until April 2009 with the approval of the EC.

This evaluation has been made upon the request of the MRG with the purpose of providing an assessment of:

- whether MRG completed all activities as planned in the project,
- whether the activities contributed to the planned results,
- whether the project and its implementation was relevant and effective;
- whether there were any unplanned outcomes or impacts
- the extent to which gender was successfully mainstreamed throughout the project;
- the lessons that MRG and other organizations can learn for future similar initiatives.

To prepare this report and to make an assessment about the project implemented by MRG the evaluator has taken following steps:

- conducted in-person and telephone interviews with all relevant people listed in the previous section.
- read all documents, reports, mail and communication contained in the files of MRG pertaining to this project.
- read reports, written submissions, draft law and other products of the project to evaluate the content.
- conducted internet research to evaluate the impact of the project.

The evaluator prepared the report in the following format:

Section III. **The Project:** includes a short summary of the project as prepared and submitted by Minority Rights Group to the European Commission.

Section IV. **Chronology of Project activities:** lists all project activities in the order they were executed by MRG.

Section V. **General Observations:** includes the general evaluation of the implementation of the project by the evaluator.

Section VI. **Specific outcomes and their evaluation:** include a specific assessment of the main outcomes of project activities. In this section, the evaluator also made some recommendations for further development of the project.

Section VII. **General recommendations:** the evaluator made general recommendations to accompany the specific recommendations made under specific headings of the project activities.

### III. THE PROJECT

Combating Discrimination and Promoting Minority Rights in Turkey is a three year project funded by EC. The overall goal, objective, and main activities of the project may be summarized as follows:

**The overall goal** of the project as formulated in the EC proposal is the implementation of minority rights protection in Turkey to European standards (the Copenhagen criteria), benefiting minorities in Turkey, which consist of several million people – including Kurds, Syrians, Armenians, Greeks, Laz, and Alevis.

**The objective** can be summarized as follows: Implementation of minority rights protection in Turkey to European standards as defined in the Copenhagen Criteria. To achieve this, the project tries to deliver some specific objectives. These are:

- Agreement between minority partners, EU officials and some officials in Turkey on specific steps needed to meet the Copenhagen Criteria;
- Creation of more favorable conditions for the return of refugees and IDPs;
- Development of anti discrimination laws and litigation for the peaceful resolution of conflicts over discrimination through ;
- Creation of a model of public and private education that teaches respect of all communities;
- Regular and full discussion of the issue of minority rights in the Turkish media.

**The main activities** are cited as the production of a report on how to achieve EU standards for minority rights protection in Turkey; workshops leading to specific guidelines on how to create an education system respecting minority rights; drafting of comprehensive anti-discrimination laws to meet EU standards, and litigation to begin implementation of anti-discrimination laws; workshops and research on property rights and return, leading to specific guidelines for policy makers and a guide for internally displaced people (IDPs) and refugees and litigation to support property claims.

#### IV. CHRONOLOGY OF PROJECT ACTIVITIES

This chronology is not a comprehensive list but highlights most of the significant activities.

MRG and its partners have executed this project in the chronological order given below:

**March 2006:** Project planning **trip** to Turkey

**June 2006** MRG and its partners *visited Sarejevo*. The aim of this meeting was to give partners a chance to learn about the experience of displacement in another country through roundtable discussions with experts. Information obtained during this visit was later used in the “Action Plan.”

**June 2006** Ms Kaya and Clive Baldwin from MRG met *with the staff at EC delegation in Ankara* and some MEPs to discuss minority rights in Turkey.

**September 2006** Ms. Kaya travelled to Istanbul and Diyarbakır to *meet with project partners*. During this visit Ms. Kaya held meetings with Roma NGOs, TESEV, Mr. Hrant Dink, and Mayors of Diyarbakir, Yenişehir, and Suriçi Municipalities.

**September 2006** Ms. Kaya and Mr. Baldwin attended a *roundtable meeting in Brussels* to give a brief to Mr. Olli Rehn and EC staff on minority rights in Turkey.

**November 2006** MRG and TOHAV *prepared the “Action Plan.”* TOHAV *published* both English (500 copies) and Turkish versions (1000 copies) of the action plan. The action plan was distributed widely.

**November 2006** MRG and DBA *published the “Guide”* in Turkish and Kurdish. Both copies were distributed widely across the country and were also sent to Kurdish and Assyrian NGOs in Europe.

**November 2006** A press conference was organized in Istanbul for the *launch of the Action Plan and the Guide*. The event was organized and hosted by TOHAV with the assistance of MRG. Some other NGOs working on displacement attended the press conference. They include but are not limited to: GÖÇDER, and the Helsinki Citizens Assembly and Migration Research Center at Bilgi University. Since the press conference coincided with the visit of Pope Benedict XVI to Istanbul, there was not wide coverage of the conference by the press. However, two news agencies issued news on the action plan.

**December 2006** MRG, DBA and TOHAV had a *roundtable meeting* in Ankara with staff and representatives from UNDP, EC Delegation and Human Rights Presidency to discuss and exchange ideas *about the Action Plan and the Guide*.

**December 2006** Ms. Kaya *attended the conference* on displacement by TESEV in Istanbul.

**March 2007** The *first workshop on anti-discrimination and litigation* was held in Istanbul. In this workshop Turkish legislation on anti-discrimination, relevant EU and international standards and the anti discrimination practices in different countries were examined. Twelve



individuals from Universities and different NGOs working on discrimination related issues attended this two day workshop.

**June 2007** MRG staff *travelled to Brussels* to give a briefing to the staff at the enlargement unit of EC on the situation of minorities in Turkey.

**July 2007** The second *workshop on anti discrimination and litigation* was held in Istanbul. In this workshop anti-discrimination laws, remedies, and relevant EU and international standards and practices from different countries were examined. The outline of the draft law on discrimination was also examined. Sixteen individuals from Universities and different NGOs working on discrimination related issues attended this two day workshop.

**November 2007** The *country report was printed* in London in English (1000 copies) and Turkish (2000 copies).

**December 2007** MRG media team *launched the report on their website* and sent the report to press in Turkish and English.

**December 2007** Ms. Kaya *visited* IHOP, AGOS, Bilgi University Human Rights Center, Sulukule Roma Association, and some minority rights experts in Istanbul.

**December 2007:** Selection of some legal cases ; **preparation of detailed legal advice** for the Demirbas case; supporting the Yumak and Sadak case among others through submission of an amicus brief to the ECHR's Grand Chamber.

**January 2008** MRG held a *workshop* in Istanbul titled "*Education Rights in Multicultural Communities: Turkey's experience.*" Twenty eight participants from NGOs, minority communities and international organizations attended this workshop. Participants discussed, among other things, the following subjects: access to education, education about religion, language and education, and minority friendly education.

**April 2008** MRG staff and members of partners *travelled to Brussels*. MRG made a presentation on the situation of minorities in Turkey to the members of European Parliament.

**May 2008** MRG staff and members of partners *traveled to Sweden*. They met with the members of Assyrian, Kurdish and Yezidi communities in Stockholm. They discussed with representatives of minorities the country report and possible strategies for return. The delegation also visited Swedish Parliament.

**June 2008** Project coordinator made an *oral presentation at the Enlargement Delagation* of the European Commission on Turkey's progress with minority issues in 2008.

**November 2008** MRG and IHOP held a *workshop* in Ankara titled, "*Anti-Discrimination Legislation and Equality Bodies.*" Fifty two participants from NGOs and governmental bodies attended this workshop.

**December 2008** The *project coordinator attended the UN Forum on minority issues* held in Geneva and made a statement on the education of minorities in Turkey.

**February 2009** MRG *submitted a shadow report* on Turkey's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination to UN CERD and attended the CERD session on Turkey with a minority community representative. They organized a lunch-time briefing for the members of the CERD and carried out individual advocacy before and after the session.

**March 2009** MRG **published a report** on the situation of minorities in the education system in Turkey. The report, titled "*Forgotten or Assimilated? Minority Rights in Education System of Turkey*" was published in Turkish and English.

**March 2009:** The above-mentioned **report** was **introduced to the public** by a media launch in Istanbul, where a panel of minority community representatives presented the report alongside with MRG's Turkey Project Coordinator.

**March 2009** MRG organized *an advocacy tour in the UK* in order to bringw attention to its education report. MRG held meetings with officials from the Foreign and Commonwealth Office, and members of the UK parliament. MRG also visited some human rights NGOs in London.

**April 2009** MRG staff and some individual members of minority communities from Turkey *visited EC Turkey desk* and the office of *High Commissioner on National Minorities of the OSCE* in Brussels to discuss the education report.

**April 2009** MRG and Diyarbakir Bar Association organized a *meeting in Diyarbakir on education rights of minorities*. Twenty eight people from NGOs and Universities attended the meeting.

**April 2009** MRG, Education Reform Initiative and the History Foundation organized a half-day *roundtable discussion* with public officials from the Ministry of Education.

**April 2009:** The same day, MRG organized a half-day roundtable *meeting* in Ankara, bringing together members of minority groups and officials from the Ministry of Education.

**April 2009** Project coordinator made a **presentation to EU countries representatives** and diplomats in Turkey on minority rights in Turkey, at an event hosted by the Delegation of the European Commission in Ankara and in cooperation with Education Reform Initiative and the History Foundation.

**April 2009** The **drafting** process of Draft **Anti-discrimination law** has been **completed**.

## V. GENERAL OBSERVATIONS

The evaluator, when making a general assessment of the project has come to conclusion that with regard to the implementation of the project, some general comments for the weaknesses and strengthens can be made as follows:

It is obvious that MRG has had some serious difficulties working with its partners in Turkey. At the early stages of the implementation of the project, MRG lost one partner. One important partner was included into the project scheme at the very end of the project. There were serious problems in getting specific work done by the partners. These problems of course cannot be explained by focusing only on limited factors. Without losing sight of Turkey's specific problems, and some problems inherent in overseas partnership (inexperience of partners in Turkey on executing project with partners, partners' shortage of permanent staff, communication problems and limited face to face contact and so on) the evaluator believes that there were some major problems in MRGs' approach to partnership in this project.

The evaluator received the impression that the partners only had knowledge and initiative on the parts of project that they were responsible for. No partner seemed to have full knowledge and responsibility over the implementation of the whole project except MRG. Some partners have the feeling that their participation in decision making progress was not satisfactory.

If this project was only about producing some written materials or having some seminars, this type of relationship would not have produced as much problem as it did in the implementation period. However, the "objectives" and "results" stated by MRG in the project may cause very high expectations on the part of EU Commission and other relevant actors. To be able to understand whether MRG has chosen the best possible type of partnership, it might be useful to remember these "objectives" and "results:"

According to project fiche, the specific objective of the project is:

*Enhanced human rights standards in Turkey by the creation of conditions that will allow for cooperation between majority and minority ethnic, linguistic and religious communities and the peaceful resolution of conflicts in Turkish society.*

*To reach this specific objective, the project will implement activities delivering the following results:*

- *Agreement between minority partners, EU officials and (some) officials in Turkey on specific steps needed to meet the Copenhagen criteria and how they can be achieved;*
- *Creation of more favorable conditions for return of refugees and IDPs, including the provision of information to the displaced on return options and possibilities for compensation for loss of property;*
- *Conditions favorable to full implementation of property rights for refugees and IDPs;*
- *Mechanisms for the peaceful resolution of conflicts over discrimination (and conditions working towards an end to discriminatory practices) by the development (and ultimately adoption) of an anti-discrimination law and anti-discrimination litigation;*
- *Creation of a model of public and private education that respects all communities, including languages, religions, ethnicities and cultures, and promotes cooperation based on respect for human rights;*
- *Issue of minority rights discussed regularly and in full in the Turkish media, following media-led campaigns on each of the issues above.*

These statements show that the project sought to have a huge impact at many different levels in Turkey. To have this kind of impact, as a foreign organization with no branch or office in Turkey, it is obvious that MRG was heavily dependent on the power, enthusiasm and hard work of its partners. In practice however, it seems that the technical details of implementing an EU funded project have taken precedence over the enthusiasm of creating a serious impact. The evaluator believes that partners of MRG were not motivated enough to undertake such energetic work.

For every organization there are different factors that they may motivate them. If this organization is a “professional one”, specific assignments of tasks to staff and regular check of progress might be sufficient to get the desired results. However, if the organization concerned is a grassroots organization or a bar association for example, the motivating factors might be quite different from those that motivate a professional organization. In this sense MRG should have analyzed the motivation factor for each partner at the beginning and should have acted accordingly. Executing a EU funded project may be quite motivating on its own for MRG, however, apparently this was not caused too much enthusiasm on the part of project partners. . In practice, MRG’s partners appointed some staff to execute the project but the leadership of these organizations lost their contact with the project. MRG could have followed different ways in order to be more effective and influential in the execution of this project. It could either have taken every decision, every step by having frequent and close contacts of the leaders of the partners or it could have had one strong partner and tried to create a serious network through this organization. Towards the end of this project the MRG has taken some steps that may be seen in the context of the latter. As it is explained below, despite many difficulties and constraints it was possible to produce a draft law. It is obvious that MRG’s partner IHOP played an important role in this process. IHOP’s already existent network, its approach to the matter, namely seeing itself as the main actor to produce the draft report amongst the factors that lead to the progress which resulted having a rich and valuable draft law.

It should be noted that MRG did not have much experience of work in Turkey prior to 2006 and therefore it was not in a position of starting this project with a fully developed partnership.

The evaluator believes that another overall weakness of this project was the usage of media. There were only two occasions that MRG and its partners appeared before the media physically. These were the media launches for reports. Apart from these two occasions, MRG and partners were either in no contact with the media or they just sent press releases through e-mails, a method that does not get much media attention in Turkey. Apparently, security concerns and the fact that MRG being specifically targeted by chief of staff in Turkey also hampered MRG’s relations with media. Another way of getting media involved was writing and publishing of articles by project staff. This was done on a few occasions with the effort and personal initiative by the project coordinator.

It is also worth mentioning that MRG and partners’ contact with state officers, policy makers and parliamentarians was not satisfactory given the projects overall goals and targets. This is of course also related to the states’ general approach to civil society in Turkey and cannot be attributed to MRG and its partners’ attitudes only.

The evaluator also believes that there were some other factors that should be cited as the overall strength or benefits of this project.

The evaluator has the impression that during the execution of project gender mainstreaming was targeted and has been reached at many different levels. Coordinators, trainers, participants reflect fairly balanced gender mainstreaming.

Without exception, every person the evaluator interviewed expressed high satisfaction with their participation of the events in the scope of the implementation of the project. The participants found workshops and roundtable discussions extremely satisfactory. And people who attended study and advocacy trips to foreign countries found them quite useful. It is obvious that MRGs experience in organizing these kind of events and the special skills of the coordinator turned these events into quite useful and knowledgeable experiences for the participants.

It is quite clear that the knowledge and information that MRG has accumulated about the minority situation in Turkey through this project has and will be reflected in the international fora. The shadow report, briefings, and reports that were prepared within the scope of this project, and world report prepared by MRG, and oral presentations will benefit international bodies and help them gain insight into the situation of minorities in Turkey. MRGs work created tangible impact on the reports and findings of international bodies regarding minorities' problems in Turkey. This kind of impact could not have been created if this project was executed by Turkish NGO's only.

Given the complex and widespread nature of the problems of minorities, MRG's knowledge and expertise on the subject is invaluable in Turkey. The evaluator believes that MRG should definitely continue to work on and in Turkey and allow everyone concerned to benefit from its experience, knowledge and perspective. In this sense self evaluation of this project may provide serious insight to MRG through which it can give new directions and dimensions to its possible further works in Turkey.

## **VI. SPECIFIC OUTCOMES AND THEIR EVALUATION**

In the following section, an assessment is made regarding the extent to which the activities led to the achievement of the stated objectives that proved most helpful in reaching the objectives. Attention to quality, appropriateness, effectiveness and shortcomings will be given. This part of the evaluation follows the order in the original project document.

### **A) Minority Report and Advocacy**

#### **aa) Country Report (A Quest for Equality: Minorities in Turkey)**

The evaluator is in total agreement with the self assessment of the report by MRG in the interim report to EC: “The report is the most comprehensive report on minority rights in Turkey published both in English and Turkish. It is up to date, it is comparative, reflects both de jure and de facto situation in Turkey, analyses the situation in Turkey under international standards, gives background-historical information and finally provides specific recommendations. We believe that this report will be used as a reliable resource on the subject for many years.”

The evaluator would also specifically emphasize the following features of the report:

-The report is a significant contribution to human rights culture in Turkey. Human rights defenders in Turkey have a tendency to focus on the negative sides of the issues and ignore the positive developments on the same problems. In this context the report shows a well balanced approach in which it criticizes shortcomings of Turkey in the minority rights field but also highlights positive steps taken by the government.

-Well written background in the report provides insight into the emergence of the “minority problem” of Turkey.

-The stigma attached to the term minority and its root causes is well explained. This provides the reader an insight to understand one of the biggest obstacles before the promotion of minority rights in Turkey.

-Citing Kurds as one of the minority groups in Turkey, the report introduce a brand new understanding of the “Kurdish Question.” In this way it challenges gross misunderstandings of minority rights in Turkey.

-The report provides a useful brief about international standards.

-It gives useful explanations about legal framework for minority rights in Turkey. It also shows how Turkey frustrates international agreements and Turkey’s double standards in demanding other countries compliance with international standards when it comes to the rights of Turks in other countries.

-Report gives non-exhaustive but most comprehensive list of minorities in Turkey.

-The report explains: shortcomings in respect to the usage of minority languages in, education, media and public services; restrictions on usage of minority languages for places and persons names; religious minorities problems in opening new worship places, in gaining and enjoying legal personality; exclusion of non Muslims and non Muslim denominations from the services and structures of Diyanet (Directorate dealing with religious affairs); discriminatory nature of mandatory religious lessons in primary and secondary schools; freedom of expression problems in general and as related to minority groups; problems in the area of freedom of association; restrictions on political parties; and finally, minorities' problems in the area of property rights.

-The reports end with very useful recommendations indicating necessary steps that should be taken in order to advance minority rights in Turkey.

### ***Problems, the work to be done and recommendations***

#### **Are Kurds a minority group?**

As the evaluator tried to explain above the Country report is quite useful but was not immune from short comings. In this report, Kurds are presented as one of the minority groups in Turkey and the evaluator fully agrees with this approach. However, it is a well known fact that, because of the stigmatization of the concept of “minority” in Turkey, Kurds strongly refuse to be categorized as one of the minorities. If discussion on this subject had been encouraged amongst civil society organizations on this subject and maybe more importantly if a consensus had been sought amongst the partners of this project about this terminology, the report could have provided even more benefits for the stake holders in Turkey. In this way the preparation process itself could turn into a kind of education for Kurds who constitute the biggest minority group in Turkey. Even though the report cites Kurds as one of the minority groups in Turkey, the evaluator has not observed nor detected even the slightest change in the understanding of this concept by the Kurdish population in Turkey. However, this report, by seeking consensus in the preparation process, could have triggered an intense debate amongst Kurds about whether they are a minority group; whether being accepted as a minority group would be the long awaited solution to the Kurdish question and so on. The evaluator believes that MRG still plays an important role in this discussion. Today, there has been an intense debate for the possible solutions to the Kurdish question. However, whether Kurds constitute a minority group in Turkey is not a part of these discussions. The Kurdish question and its possible solution is very complex and there is no magic formula to that effect. If a discussion on whether Kurds are a minority group in Turkey can be encouraged, this would be a huge contribution to further debates on the status of Kurds in Turkey and there is no doubt that this kind of discussion would be an important contribution that will help remove stigmatization from the concept of being a minority.

#### **Website for publications**

According to project fiche, “A website will be created and the report will be updated at six-monthly intervals to show progress towards minority rights.” As of today, there is neither an active website dedicated to this purpose nor any update to the country report.

The evaluator has made a search on the web to assess how accessible this report is. The Turkish version of the minority report can only be reached on the website of MRG. It is not

available even on the web pages of project partners. Given the importance of this, it is obvious that it must be easily accessible for everyone concerned.

With little effort, it should be possible to get a report posted to the websites of human rights and minority rights organizations. If country report is updated and this updated version posted on different websites in Turkey, this can also be used as an opportunity to draw attention to the report. Posting and media launch can follow each other.

The evaluator has learnt that MRG's world directory of minorities and indigenous peoples (accessible at <http://www.minorityrights.org/3/home/mrg-directory-homepage.html>) which is to be MRG's reference website on minority rights in Turkey will be regularly updated.

## **B) Anti-discrimination**

Two specific outcomes are being targeted under this heading: the production of the Draft of Anti-Discrimination Law, and providing support for five key anti discrimination cases.

### **ba) Draft of Anti Discrimination Law**

It is obvious that Turkish legal system is far from being satisfactory when it comes to discrimination. Although there are some provisions on discrimination in the Constitution, Turkish Penal Code, and Labor Law, these provisions are ineffective, insufficient and lack proper sanctioning in order to provide redress if they are violated. In addition to the shortcomings of Turkish legislation, prevailing mindset in the judiciary is far from understanding the importance of the problem and the gravity of the widespread discrimination that exists in Turkish society. It is also obvious that at the societal level, awareness about discrimination is very low and if there is any, it is limited to the understanding of people's own problems.

Against this background, it is quite obvious that a law on discrimination is desperately needed. The evaluator thinks that the end result, the draft law prepared under this project scheme, is highly satisfactory and useful and it is the most comprehensive legislation that has ever been prepared in Turkey. The draft law, which comprises of 52 articles, includes the following sections:

*-Definitions:* Fundamental concepts relevant to the question of discrimination are described in this section. Concepts introduced in this section are all new and are needed to understand and cover different types of discrimination. Examples of these new concepts offered in this draft law to the Turkish legal system are: "Direct and indirect discrimination," "hate discourse," "institutionalized discrimination;" (from the point of discrimination) "pregnancy," "ethnicity," "national origin," and so on.

*-Basic concepts:* Some basic concepts are defined in the first parts of the law. They are "equality and ban on discrimination," "types of discrimination," "positive obligations."



*-The areas discrimination prohibited:* The draft law specifically refers to and regulates the areas where discrimination is prohibited. The specific areas covered by the law are: “employment,” “self employment,” “education,” “healthcare services,” “transportation,” “services,” “communication,” “accommodation and other touristic services,” “social services,” “social security,” “justice services,” and “law enforcement activities.”

*-Prohibition of discrimination in accessing services and facilities:* The law specifically regulates the areas in which discrimination in access are prohibited. They are; “public areas and buildings,” “sport and cultural services,” “leasing, purchasing and transferring movable and immovable properties,” “social benefits,” “participation in public life,” “establishing civil society organizations and benefiting from their services.”

*-Equality Authority:* the draft law introduces a brand new institution to Turkey. Under this section detailed provisions about the establishment, powers and scope of work of this authority are regulated.

The Draft Law prepared by four experts under the light of the outcomes of three workshops in which experts and activists were allowed to make their own contributions to this process.

The experts’ came together eight times and were in constant communication through e-mail and telephone. Experts not only took into consideration the outcomes of workshops, but also made extensive research into relevant EU texts, judgments and decisions of international human rights bodies and legal provisions of individual countries from Europe and across the globe. The experts continued their consultations with stake holders during the entire time they worked on the draft. Their first drafts were sent to project partners and other civil society organizations working on discrimination related issues. MRG has also made comments various times and its comments were taken into consideration by the experts.

The evaluator has come to the conclusion that the draft law is a pioneer work in the discrimination legislation area in Turkey. It is an important document to trigger enacting a new law in this area.

### ***Problems, the work to be done and recommendations***

The Draft Law has reached the evaluator at the time of evaluation. In the original project proposal it is suggested that this draft law would be prepared together with MRG and Diyarbakir Bar Association. However at the later stage IHOP (Human Rights Joint Platform) was assigned for this task.

Preparation process for this draft law should have been started from the beginning of the project. Instead the experts were just given five to six months to complete the entire work. Experts benefited both from the outcomes of workshops and the feedback collected by IHOP from civil society organizations working in the field. However, this process was not sufficient to get the most input from civil society organizations in Turkey. In Turkey civil society organizations have no habit of producing written comments on this kind of document. IHOP sent this document to eighty civil society

organizations working on human rights, minority rights and discrimination related issues. Only thirteen organizations out of eighty returned it with their written comments to IHOP. The experts who prepared the draft law have the opinion, which is also shared by the evaluator, that for each section of the law a separate workshop should have been conducted. In these workshops, experts could have provided the piece they prepared for the workshop and the participants would be able to discuss every single provision under the relevant section of the law. In this way not only as much input by the civil society actors provided but also participants would feel that this draft law actually belongs to them, that it is their work.

At the time this evaluation is prepared, draft law was being reviewed by external anti discrimination experts. After this process have been completed, the final round of reviews by whole stake holders will start.. According to project fiche, the EU Commission would also be invited to make their suggestion about the draft. It is obvious that completion of all these phases would take considerable time. Only after all these preparations have been completed, a campaign could be started to get this draft enacted by the Parliament.

Accumulative effects of changing partners and the late start in working with experts caused missing deadlines set out by the project.

As the evaluator tried to explain above the fact that such an important text was produced is an important contribution on its own. The evaluator also believes, even if this part of the project has been completed in such a premature way, this draft will be beneficial in the future. In the evaluator's opinion MRG and IHOP can lead a successful campaign to get this text enacted in the foreseeable future. In order to succeed in this endeavour MRG and IHOP should be aware of some crucial elements that will lead to a successful campaign.

These factors are creating awareness and turning this text into a consensus document that will be advocated and promoted by some segments of civil society organizations. In the evaluator's view, to be successful these two campaigns should continue simultaneously, hand in hand.

Awareness in Turkish society concerning discrimination is extremely low. Racist and discriminatory remarks are part of daily discourse in society and people are discriminated against widely on the grounds of sex, sexual orientation, race, nationality, ethnicity, color, cultural background, age and so on and so forth. In spite of these widespread, almost epidemic discriminatory practices, there is no awareness whatsoever as to what discrimination means, what kinds of treatments and behaviors are discriminatory, what constitutes racism etc. If you ask people in the street in Turkey what constitute racism, most probably you would get answers referring to situations in other countries, like black men in America, or Turks in European countries. Even intellectuals in Turkey can make extremely discriminatory comments about some groups without realizing how racist or discriminatory their remarks are. For example, Mr. Ali Bulac from Zaman daily newspaper said very recently that massacres in Iraq and Afghanistan are orchestrated by homosexual soldiers. He continues writing his columns in this newspaper without being condemned by his fellow columnists for these unacceptable comments.

In order to make good preparations for the campaign for this draft law, MRG, IHOP and other parties concerned should launch a campaign to raise awareness about widespread discriminatory practices prevailed in Turkish society. The first step that will lead to the adoption of this law by the parliament is to develop an understanding of what discrimination is!

Together with this campaign MRG and IHOP should take some steps in which they will get endorsements and support from different segments of civil society organizations in Turkey. This draft law should be submitted to open discussion in various workshops. All groups working on human rights, women's rights, children's rights, minority rights and other related topics should be invited to these workshops. In the end this text should be turned into something that represents the views of all related parties.

A media campaign should be started. Together with the experts, two organizations should have a couple of media events. These media events can be organized in Istanbul and Ankara. Considering the sophisticated nature of the work senior media members should be targeted in these meetings. In the Istanbul meeting columnists from different newspapers whereas in Ankara correspondents from both print media and TV channels working on Parliamentary issues should be targeted.

If IHOP and its partner organizations play an active role in lobbying activities the chances of being influential and getting concrete results would increase. Given the nature of the law making processes and the prevalent factors in the context of Turkish politics, it would not be efficient if these lobbying activities are directed to Parliament only. The Prime minister, Minister of Justice and the State Minister responsible for the relations with EU should be targeted as a minimum.

Another factor should also be taken into account. The current Turkish Constitution is based on the denial of the very existence of the rights of minorities. It would be extremely helpful, if the outcomes of the work done so far and the future work would be used to add input into the preparation process of the new constitution in Turkey.

## **bb) Providing support for key anti discrimination cases**

According to project fiche, MRG "would provide litigation support on five key anti discrimination cases during the project period." MRG, in respect to what cases it may possibly be handling has also foreseen that, "clear possibilities today include challenging the unofficial ban on non Muslims being members of the civil service and challenging the segregation of Roma in education."

During the implementation of the project MRG supported two cases.

One case was concerned with the dismissal of Mr. Abdullah Demirbaş, former mayor of Sur District in Diyarbakir, from duty by the decision of the Council of State on the basis that the municipality had decided to provide multilingual services. Legal memorandum prepared for the lawyers of Mr. Demirbaş was sent to the evaluator. The evaluator had the opportunity to study the content of this written advice thoroughly.

In Abdullah Demirbaş case MRG provided quite useful legal advice for submitting to domestic courts as well as preparing ground work for submitting the case to the European Court of Human Rights after exhausting domestic remedies. This nineteen page legal advice summarizes relevant international standards, explains European Court of Human Rights approach to the matter and illustrates individual European Countries approaches to the question of the use of minority languages before public authorities. This case is before the European Court of Human Rights now.

The second case that MRG supported was Yumak and Sadak v. Turkey, before the European Court of Human Rights on the 10 % electoral threshold applied in general elections for the parliament in Turkey. MRG provided its assistance with Mr. Tahir Elci, representative of the applicants, by way of submitting its intervention to the ECHR while the case was being reviewed by the Grand Chamber. The text of the intervention did not reach the Evaluator. However, the evaluator was able to form an opinion about the content of this intervention as it is summarized in the judgment by the Court (Case of Yumak and Sadak, judgment by the Grand Chamber, 8 July 2008). In this intervention MRG discussed that the election threshold applied by Turkey is the highest in all European Countries. According to MRG, “by depriving a whole segment of the population of the possibility of being one day represented in parliament by a party which voiced its opinions, the national threshold removed the very essence of that right. Such a serious and systematic interference with the rights of a whole group, unique as it was among all European electoral systems, could not be justified by the margin of appreciation.” It is very unfortunate, in spite of the valuable contribution of MRG to the case, the ECHR found no violation of Convention in the application of said threshold by Turkey.

### ***Problems, the work to be done and recommendations***

In spite of valuable contributions in two cases, it is not possible to say that MRG has reached its goals stated in the project fiche. Only two cases were supported and these cases have not created any jurisprudence (Demirbaş case still pending before the ECHR) that will benefit minority groups in Turkey.

Strategic litigation which is also called impact litigation involves selecting and bringing cases before courts with the goal of creating broader changes in society. Thus, the law used by the litigator leaves a lasting mark beyond just winning the case at hand. Therefore, strategic litigation cases are as much concerned with the effects that they will have on larger populations and governments as they are with the end results of the cases themselves.

In order to get the desired impact, the litigator has to have a certain road map in mind from the very beginning of the case. And the litigator should be able to advance his/her case in the direction that will lead to the final destination. In Turkey, “strategic litigation” is almost a foreign concept for lawyers. In this sense MRGs’ efforts to introduce this concept to minority rights advocates during workshops was admirable. However, apparently these efforts to introduce the concept of strategic litigation to the members of minority groups and lawyers who attended the workshops did not trigger usage of this mechanism. No case was introduced. Two cases, MRG supported were chosen and input provided while these cases passed through certain stages. In the case

of Yumak and Sadak the intervention made while the case was being reviewed by the Grand Chamber. Therefore, even in these supported cases MRG was not in a position to direct them from the beginning.

MRG may not have considered difficulties involved in this kind of work when it prepared the project. As a foreign institution, it had to rely on its partners to establish potential cases for this kind of litigation. However, there is no civil society organization in Turkey which has experience in this kind of litigation. To be able to handle this part of the project, MRG should have educated its partners on this matter first, and then in the second phase they should have look at the potential cases together in order to evaluate their appropriateness to the desired end results. However, it would be unfair if all fault was attributed to MRG for it has not done proper preparation for this process. There are some other problems which may not be overcome by MRG or its partners' efforts only.

Minority groups in Turkey have an extremely deep rooted fear of retaliation for anything they do that may seem to contravene the State's understanding and approach to the matter in question. The situation of Ecumenical Patriarchate (EP) (Orthodox Church) in today's Turkey can very well explain what we mean by this "fear." EP, as a result of state policies, has come to the edge of total extinction. Turkey, amongst other things, exerts heavy control over the procedure for the election of a new patriarchate. According to the regulations, all members of Holy Council, which will elect the patriarchate, should be Turkish citizens. The patriarchate should also be a Turkish citizen. However, it is not possible for the remaining tiny Orthodox community (it is estimated that their total population is 3,000-4,000) to elect a qualified candidate for this post. In addition to these extremely arbitrary and restrictive rules, the very school which would raise potential patriarchates, Halki Seminary, was closed down thirty eight years ago and all requests to reopen it have been rejected by successive governments. It is hard to believe, the EP has never taken any cases against the arbitrary practices which brought this historical institution to the verge of extinction. The only cases that have ever been taken by the EP are related to property issues. There has not been one single case taken by this institution in order to challenge constraints with regard to its legal status or the election process of the patriarchate.

This approach of EP to legal remedies is not an isolated incident; it is shared by all minority groups in Turkey. Against this back ground, it was not easy for MRG to find and follow cases which have a potential to create precedents. However, these difficulties should have been analyzed before engaging even in the drafting process of the project.

Consequently, for strategic litigation case studies in Turkey the work should be started from much more simple premises. Namely, leaders of minority groups should be convinced that it is in their interest to take new cases with a view of gaining new rights. This is especially true for religious minorities. When it comes to other minority groups other work needs to be done. Namely they should be equipped with a new understanding and perspective on the legal remedies available to them.

Given the extremely difficult terrain for strategic litigation, it would not be an exaggeration to say that MRG's approach to this problem in Turkey was too naïve from the very beginning of its work. Its efforts to introduce this concept to the

members of minority groups during workshops and its valuable contribution to two cases had no potential to create a significant impact in this problematic area in Turkey.

The evaluator, however, believes that MRG can still contribute to this area by bringing some pilot cases before the ECHR.

## **C) Education**

### **ca) Report-Minorities in the Education system in Turkey**

This report is the first and only report exploring exclusively minorities' situation in education in Turkey. The evaluator would like to state the following specific features of the report:

- International standards for each subject that the report evaluates and explained quite well.

- It spotlights child labor and its effects on children.

- The report illustrates the effects of displacement on education of Kurdish children.

- It explains disadvantages of Roma children in accessing education.

- Report discusses the effects of education in Turkish language on students belonging to minority groups whose mother tongue is not Turkish.

- Indoctrination and one sided nature of the "mandatory" religious classes is explained.

- The report shows that there is no specific Turkish law which defines and prohibits discrimination in education. It gives examples of discriminatory practices in education.

- It explains the role of nationalism in education and illustrates how education system disseminates intolerance towards different identities.

- The report ends with quite useful recommendations which provide, if taken seriously, a kind of road map for the Turkish government to bring the Turkish education system in line with internationally recognized standards for combating discrimination in the field of education.

The evaluator believes that this part of the project was the one which was implemented most successfully. Media launch briefings, roundtable discussions, and an extremely useful and insightful report created serious impact on the people concerned. This part of the project presents good practices that could also be used for other parts of the project as well. One of the most positive aspects of this project was the contribution of the minorities themselves to the report and to the ensuing events including press launches, advocacy trips, and meetings with the officials. It is also worth mentioning that the "dialogue" meeting between members of minority groups and officials from the ministry was the first of its kind in Turkey in which minorities and state officials had the opportunity to exchange ideas and to have real communication with each other. The evaluator has the impression that these dialogue meetings need to be done

for each subject that education report touch upon. The evaluator advise MRG to continue these dialogue meetings between minority groups and state officers.

#### **D)Return and Property**

In the project proposal MRG suggested a plan of action, identifying what needed to be done as well as guideline for refugees and IDP's on what they could do to ensure return. Under this heading MRG has foreseen to support litigation on property cases, one of which addresses the issue of gender.

#### **da) Publications and written materials**

##### **Action Plan: The Problem of Turkey's Displaced Persons-An Action Plan for Their Return and Compensation**

The Action Plan was produced in November 2006. It was a pioneer work in the field. The value of this work is crystal clear in Turkey which has a serious problem of Internally Displaced Persons. The report explains the causes of displacement, obstacles before the return of IDPs to their origin, international standards for the rights of IDPS, and provides useful information about restitution and compensation processes from other countries, Bosnia and Herzegovina.

##### **Guide for Displaced Persons**

The guide, like the action plan, was the first of its kind in Turkey. It was produced in November 2006. Even though it was designed for a specific purpose, (to provide a practical tool to benefit from the Law on the Compensation of Loses as a result of Terrorist Activities) the guide provides information which raises awareness about the extent of the problem of IDPs as well as equipping its users with practical knowledge on applications against the decisions of compensation commissions.

Both publications were distributed widely in the southeast and across the country. Almost everyone we interviewed stated that they found both materials quite useful and practical. The evaluator has the impression that, even though the guide was published late in terms of the passing of the relevant laws, many lawyers and human rights defenders benefited from this publication when they were preparing their application for compensation to be submitted to the relevant authorities.

##### ***Problems, the work to be done and recommendations***

These two documents are still relevant for people working on the rights of internally displaced persons. When these two documents were prepared, it was not known how law 5233 would be applied in practice. Today however, there has been significant case law from which a good analysis of practice can be made. Therefore, revised versions of these documents which also analyze the actual implementation of this law are needed very much. The revised version can also be used for the preparation process of the litigation work. These revised versions of the reports should also be distributed widely to persons and institutions concerned, including civil society organizations, governmental bodies and the members of parliament. The evaluator would like

emphasis that the old versions are not accessible on the net. No partners or any other civil society organizations have these documents on their websites.

MRG may encourage relevant parties in Turkey to prepare a draft law on IDPs. As it is stated in the Action Plan, “No official definition of an IDP has yet been formulated in Turkey.” It is obvious that there is an urgent need in Turkey for a law on IDPs. The evaluator, from his interviews with the parliamentarians, got the impression that, if such a draft law was prepared by civil society organizations, some members of parliament would eagerly work to get this kind of law passed. A draft law may comprise the following elements: Definition of IDPs, IDPs rights, regulations necessary to ensure the return of IDPs. The Action Plan, Guide and the experiences of human rights defenders in Turkey on the practice of the application of the law 5233 would provide necessary ground work to prepare such a draft law. Some other developments make this kind of preparation vital. As a result of Ilisu Dam project between 50,000-70,000 people will lose their homes and will have to live elsewhere in the country. Passage of such a law would provide necessary precautions to protect property rights and the right to privacy as well as help solve problems stemming from village destructions and forceful evacuations of Kurdish villagers.

#### **db) Strategic litigation**

According to the original project proposal MRG would facilitate or at least contribute to **four** cases to address the problems of IDPs. It is very unfortunate, during the project term, no case has ever been supported. The evaluator has the impression that the project coordinator had sincerely tried to find appropriate cases to support. She tried to contact relevant actors both in Turkey and abroad. MRG and its partners brain stormed about possible cases during their meeting in Istanbul and their trip to Sarajevo. They diagnosed problematic areas on which they could possibly produce some case law. They came to the conclusion that not awarding non pecuniary damages, asking non available documents for proving ownership, inconsistency between the decisions of the compensation commissions and low compensations, security problems before returning to villages all be taken as strategic cases. Partners had also made contacts with local NGOs and lawyers in order to find appropriate cases on which they could work together. In spite of all efforts it was not possible to find appropriate cases to support. This work should have been coordinated by local partners. It seems to the evaluator that communication problems between MRG and its partners as well as lack of interest among partners to develop strategic cases were amongst major factors in ending up with no cases to work with.

#### ***Problems, the work to be done and recommendations***

The evaluator believes that MRG still has great potential to make a significant contribution to the situation of IDPs by pursuing strategic litigation for some cases. There are two main obstacles before strategic litigation for the time being. First the time limits set forth by the law 5233, and second, a negative judgment by the European Court of Human Rights. However, the evaluator believes that there are also some opportunities that can help overcome these obstacles.

As it is known in the Aydın and İçyer v. Turkey judgment the ECHR concluded that Damage Assessment Commission established under law 5233 provided a reasonable



and effective domestic remedy. As a result of this decision, it seems that the IDPs have lost an opportunity to discuss their cases before the ECHR. However, in practice, not only the amount of compensation awarded by Damage Assessment Commission are extremely low and far from reflecting actual losses that the IDP suffered but also compensation for non-pecuniary damages are denied. It is estimated that there are almost 25,000 cases which have not been reviewed by the Diyarbakır Governorate for the time being. These cases are not bound by the time limits set forth by the law since they have not been reviewed yet. These cases provide an opportunity for both exhaustive domestic remedies and lodging a strong case with the European Court of Human Rights.

In spite of the judgment of Aydın and İçyer, there is a good chance that the denial of compensation for non pecuniary damages by the Damage Assessment Commissions can be found in violation of Articles 6, 8, and 13 of the European Convention on Human Rights and Article 1 of Protocol 1. If the MRG can follow such a case before the ECHR and encourage lawyers in the region to follow their cases and bring similar cases before the ECHR, it may create a huge impact affecting the lives of large segments of population in the region.

## VII) GENERAL RECOMMENDATIONS

-MRG, when it executes such a large project with partners in Turkey next time, should try to have at least one **strong partner** with whom it shares whole responsibility of the project.

-MRG should seek ways to get more **media coverage** by media launches.

-**Creation of a web page** dedicated to minority rights would be quite useful. This web page can be prepared in English and Turkish. All materials created under this project scheme can be posted to this webpage, thus it will be easily reached by the parties concerned.

-For the continuation of the project MRG either directly or through one of its partners can **create different e-groups** consisting of individuals who participated in the programs under this scheme. Through these e-groups it would be possible to maintain relations, encourage further discussions, and facilitate possible common projects amongst different partners.

-There is a desperate need in Turkey for reports analyzing problems of minorities' **specific problems** under international human rights laws and offering solutions to them. The Education report was an extremely important contribution to the area in this way. There are many other areas in the field of minority rights in Turkey waiting to be analyzed and evaluated. Examples of these problematic areas on which specific reports would be extremely helpful may be: "Restrictions on the election of religious leaders imposed by the state on religious minority groups," "restrictions on opening new places of worship for religious minorities," "legal personality problems for religious communities," "GLBTT rights and situation in Turkey," "minorities in public employment," "minorities and conscious objection," "hate crimes" and so on.

-MRG may prepare a **short guide** for members of minority groups on strategic litigation. In this guide it may encourage members of minority groups to make recourse to legal remedies in order to get redress for violations and to widen the scope of the rights they enjoy. The guide could also provide new perspective as well as practical advice for lawyers of minority groups.

-MRG can continue educate and encourage relevant actors in Turkey on preparation and presenting "**shadow reports**" to UN Human rights bodies.

### **Conclusion:**

In spite of some short comings the project created serious impact which will be last longing. The reports and other written materials are being used and benefited for a long time. The perspective that has been taken from workshops, roundtable discussions, visits and trips both in Turkey and abroad will echo in the works who attended these activities. There is no doubt this project helped and will continue helping everyone who works for promotion and advancement of minority rights in Turkey. As a final note, the evaluator would like to emphasise that he is very much impressed by cooperative and helpful attitude of all MRG stuff during the preparation process of this report. Likewise, the evaluator is grateful for extremely helpful and insightful considerations of Ms. Ayca Akdeniz at the EC, which helped a lot to the evaluator in locating this report in the right perspective.