

International Conference on Turkey, the Kurds and the EU  
European Parliament, Brussels, 22-23 November 2004 - Conference Papers

Patron: Archbishop Desmond Tutu

Edited by Mark Muller, Claire Brigham,  
Kariane Westrheim and Kerim Yildiz







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#### **Bar Human Rights Committee**

The Bar Human Rights Committee (BHRC) is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with the protection of the rights of advocates and judges around the world. It is also concerned with defending the rule of law and internationally recognised legal standards relating to the right to a fair trial. The remit of the BHRC extends to all countries of the world, apart from its own jurisdiction of England & Wales.



#### **Kurdish Human Rights Project**

The Kurdish Human Rights Project (KHRP) is an independent, non-political human rights organisation founded and based in London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living in the Kurdish regions, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people. KHRP is grateful to all its funders, without whom its work would not be possible.



#### **medico international**

Medico international was founded in 1968 in the context of the Biafra and Vietnam Wars. It is registered as a non-profit, welfare organisation independent of political or religious affiliations that struggles for the human right to the best possible access to good health. In so doing it supports local partners, primarily in Africa, Asia and Latin America, in their endeavours to create the economic, social and cultural conditions which allow each person to attain the highest health standard possible. In particular medico stands by those who are in situations of emergency and in poverty, including refugees and the victims of war.



#### **The Rafto Foundation**

Founded in the humanistic tradition of the Helsinki Accord, the aim of the Rafto Foundation is the promotion of the fundamental human rights of intellectual and political freedom and free enterprise. Established in 1986, in fond memory of Professor Thorolf Rafto, it awards the annual Professor Thorolf Rafto Memorial Prize to recipients who are active participants in the struggle for the ideals and principles underlying the Human Rights Charter, or who are a symbol of these. Four Rafto Laureates have later received the Nobel Peace Prize.



## ACKNOWLEDGEMENTS

This report is a collection of the speeches delivered at the international Conference ‘Turkey, the Kurds and the EU’, held in the European Parliament, Brussels on 22-23 November 2004. The conference was sponsored and organised by the Bar Human Rights Committee, the Kurdish Human Rights Project, medico international and the Rafto Foundation. The organisers would also like to extend their sincere thanks to those at the European Parliament who kindly allowed the conference to be hosted there.

Especial thanks are due to Stefano Squarcina, Secretary General of the United Left (GUE/NGL) in the European Parliament, for his assistance in making the conference possible.

The organising committee gratefully acknowledges the following:

John Austin MP  
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Jonathan Bloch (Writer and Haringey Councillor, UK)  
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Hugo Charlton (Chair, Green Party of England, Scotland and Wales)  
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Eurig Wyn (Ex-MEP, Plaid Cymru; Parliamentary Candidate for election 2005)  
Leyla Zana (Ex-Parliamentarian, HEP)

The organisers would like to give their warmest and deepest appreciation to the sponsors of the conference. A positive dialogue, mutual understanding and awareness of the situation regarding the relationships between the EU, Turkey and the Kurds, are of tremendous importance to democracy and peace in the Middle East. Without our sponsors' goodwill, this important conference would not have become a reality.

*The opinions expressed in this work do not necessarily represent the views of the conference co-hosts: the Bar Human Rights Committee, the Kurdish Human Rights Project, medico international or the Rafto Foundation.*

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## LIST OF ABBREVIATIONS

ANC	African National Congress
BHRC	Bar Human Rights Committee
CoR	Committee of the Regions
DEHAP	Democratic People's Party
DEP	Democracy Party
DGM	State Security Courts
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
EEC	European Economic Community
EU	European Union
Göç-Der	Migrants' Social Solidarity and Culture Association
HADEP	People's Democracy Party
HPG	Peoples' Defence Force
HRFT	Human Rights Foundation of Turkey
IDP	Internally displaced person
IHD	Human Rights Association of Turkey
KDP	Kurdistan Democratic party
KDPI	Kurdish Democratic Party of Iran
KHRP	Kurdish Human Rights Project
Kongra-Gel	Kurdistan People's Congress
MEP	Member of the European Parliament
NGO	Non-governmental organisation
PACE	Parliamentary Assembly of the Council of Europe
PKK	Kurdistan Workers' Party
PUK	Patriotic Union of Kurdistan
RTÜK	Radio and Television Supreme Council
SI	Socialist International
TEU	Treaty of the European Union
TRC	Truth and Reconciliation Commission
TRT	Turkish National Radio and Television
YAKAY-DER	Association for People who have Lost their Relatives



# MAP OF THE KURDISH REGIONS





## FOREWORD

On 17 December 2004, the EU issued its groundbreaking decision that accession talks would be started with Turkey in October 2005. From 22 - 23 November 2004, an international conference was convened at the European Parliament in Brussels in order to consider the implications of Turkey's EU membership bid for the future of the Kurds in Turkey.

The impetus for the conference came from the Report and Recommendation on Turkey's implementation of pro-EU reforms issued by the European Commission in October 2004, upon which the decision by Europe's leaders to open accession talks was based. Turkey's formal EU candidature is of historic importance to both Kurds and Turks, as it represents an unparalleled opportunity to bring about democracy, human rights, the rule of law and a lasting peaceful solution in the Kurdish-dominated South-east of Turkey. However, the EU's approach to the Kurdish issue has generated unease among European, Turkish and Kurdish communities, who believe that the EU has so far failed to openly or adequately address the plight of the Kurds.

The conference accordingly brought together leading human rights institutions, political parties, academics, writers, legal experts and prominent Turkish and Kurdish intellectuals from Europe, the United States, Africa and the Middle East to highlight to decision-makers the successes and failures of Turkey's reform process, to share their concerns, to exchange ideas and to establish joint positions on Turkey's progress towards EU accession.

At the conference, which was hosted by the Bar Human Rights Committee (UK), the Kurdish Human Rights Project (UK), medico international (Germany) and the Rafto Foundation (Norway), papers were presented examining the current human rights situation in Turkey in the context of EU accession criteria. Participants also examined the broader issues of breaking down Turkish conceptions of ethnic nationalism which deny Kurdish identity, status and culture, and explored the potential for achieving democratic pluralism in Turkey. Means of moving forward to secure a just and enduring resolution to the Kurdish question were evaluated, and a variety of proposals ranging from improved local governance to autonomy were put forward. The appropriateness of the EU's current approach to the Kurds was a particular subject of discussion.

Other elements of democratisation in Turkey including the situation of the Assyrians, the implications of the war in Iraq and lessons to be gleaned from the

South African experience were also examined.

The conference acknowledged and endorsed the reforms so far carried out by Turkey, and was supportive of Turkey's EU accession bid. This support, though, was conditional upon firm commitment by the Turkish state and by the EU to achieving genuine democratisation in Turkey. It was concluded that a great deal remains to be achieved in devising and implementing human rights reform and in reaching a politically negotiated solution to the Kurdish issue. Admitting Turkey to the EU prematurely, before these concerns are addressed, would simultaneously bestow undue legitimacy on Turkey while also damaging EU credibility.

This publication brings together some of the leading papers delivered at the conference. It also contains the final resolutions reached by the conference, and a recommendation for the establishment of an EU Turkey Civic Commission to press forward with monitoring compliance by Turkey and the EU with their obligations in the accession process. The Civic Commission is currently being set up in Brussels with the assistance of leading British and international lawyers, and the cooperation of the European Commission.

*Bar Human Rights Committee  
Kurdish Human Rights Project  
medico international  
The Rafto Foundation*

## ADDRESS BY THE PATRON OF THE CONFERENCE, ARCHBISHOP EMERITUS DESMOND TUTU

**The European Union, Turkey and the Kurds: Conference in Brussels 22 – 23  
November 2004**



Dear Friends,

I send my warm greetings. I am deeply distressed by the many situations of internal conflict that arise in countries that do not have a homogenous population. Differences of ethnicity, race or faith drive people apart, competing for turf and a place in the sun. Tension and violence undermine the security of all. No country can prosper when there is a lack of trust amongst its citizens.

I hope this conference will build on the good work that has already been done in improving relationships between the Kurds and the Turkish people. There must be a way forward to be inclusive of all, to be caring to all, to work together rather than against each other.

I am encouraged that you should be meeting at this time and I pray that your deliberations will be fruitful.

God bless you.

The Most Reverend Desmond M Tutu OMSG DD FKC, Anglican Archbishop Emeritus of Cape Town, Nobel Peace Prize Recipient



PART ONE:

OPENING REMARKS DELIVERED ON BEHALF OF  
THE CONFERENCE ORGANISERS



*Conference co-organiser Kariane Westrheim (Rafto Foundation), who opened the conference on behalf of the conference organisers*



## **International Conference on the EU, Turkey and the Kurds: Opening Remarks**

*Kariane Westrheim*

Board member of the Rafto Foundation (Norway) and Lecturer at the University of Bergen, Department of Education and Health Promotion

Dear Patron, Sponsors, distinguished Speakers and Moderators, Guests, Ladies and Gentlemen,

It is with great pleasure that I, on behalf of the three co-hosts, welcome you all to the Brussels Conference 2004 and to the very heart of Europe - the EU's Capital city - Brussels.

We are gathered at this conference to discuss, and exchange different views on the important questions regarding Turkey's bid for EU membership and Kurdish rights and status within both Turkey and the EU. During the conference, speeches and perspectives from qualified authorities will be presented on a number of topics regarding the EU-Turkish-Kurdish question. I hope these will engage the audience and lead to constructive discussions, which we hope in turn will continue outside this room. The topics include areas such as judicial reforms, democratic and parliamentary reforms, cultural rights, language rights, freedom of expression, compensation for internally displaced persons, and the rights of displaced persons to return to their villages - among others. There is power in bringing people together and we believe that the diversity of voices represented at this conference will contribute to a more constructive, nuanced and first and foremost fair discussion about these questions.

This conference would not have become a reality had it not been for the good feeling, contacts and cooperation amongst the three organisations co-hosting the event: the Kurdish Human Rights Project (KHRP) located in the UK, medico international in Germany, and the Rafto Foundation in Norway. We should also not forget the good will the European Parliament has shown by hosting the conference in such a wonderful location.

I will now briefly present the three organisations:

- The Kurdish Human Rights Project represented by Mark Muller and Kerim

Yildiz is an independent, non-political organisation founded and based in Britain. KHRP's work in bringing cases to the European Court of Human Rights (ECtHR), seeking justice for the victims of human rights violations including torture and extra-judicial killings, has been groundbreaking. In many of these cases the ECtHR has concluded that the Turkish authorities have violated individual's rights under the European Convention on Human Rights.

- Medico international represented by Hans Branscheidt was founded in 1968. Medico international is registered as a non-profit, welfare organisation independent of political or religious affiliations. The organisation struggles for the human right to the best possible access to good health. In particular, it stands by those who are in situations of emergency and in poverty, including refugees and victims of war. Medico international was a founding member of the International Landmine Campaign which received the Nobel Peace price in 1997.
- The aim of the Rafto Foundation represented by Arne Liljedahl Lynngård and Kariane Westrheim is the promotion of the fundamental human rights of intellectual and political freedom and free enterprise. We award the annual Rafto Prize on the first Sunday of November each year. Four Rafto Laureates have later received the Nobel Peace Prize. In 1994 the Kurdish parliamentarian, Leyla Zana, received the Rafto Prize. As a result of this, the Rafto Foundation has developed and kept its good contacts within the Kurdish communities worldwide, and also increased its expertise on the subject.

While mentioning these three organisations - I would like to emphasise that the very fact that we are able to talk about the reform process in Turkey is actually a result of the struggle of the Kurdish people and the EU-Turkey accession process has to be regarded against this background.

The relationship between the EU, Turkey and the Kurds is important to highlight, and is also the main focus of this conference. The way the Kurdish question is handled in this accession process might turn out to be the crucial point in Turkey's bid for EU membership.

We are delighted in having assembled such a good international expertise on EU-Turkish-Kurdish relations at this conference. I would especially like to mention the regional Kurdish experts in Turkey who will present and discuss the current human rights situation from different perspectives. As organisers of this conference we very much hope that the discussion and the exchanging of views in relation to Turkey's accession bid will greatly assist both the EU and the Turkish government.

We would like to make clear that the three organisations co-hosting this conference have no political agenda but we certainly have concerns over the way in which the European Commission has referred to the rights of the Kurds in its reports. We are supporting Turkey's application, and sincerely hope that the European Parliament and the European Commission will listen to the views that will be expressed over these two days and that our discussions will assist them as well as Turkey on the road to EU membership.



## PART TWO:

### 17 DECEMBER 2004 AND THE FUTURE OF TURKEY AND THE KURDS IN EUROPE



*From left: Peter Galbraith (expert in Kurdish issues), Hatip Dicle (former member of the Turkish Parliament), Kariane Westrheim (Rafto Foundation), Kerim Yildiz (Kurdish Human Rights Project), Conny Fredriksson (Head of the Kurdish Working Group in Socialist International), Helene Flautre (Chair of the Sub-Committee on Human Rights, MEP) and behind camera: Lord Russell-Johnston (member of the House of Lords, UK)*



## The EU, Turkey and the Kurds<sup>1</sup>



*Kerim Yildiz*  
Executive Director of the  
Kurdish Human Rights Project



*Mark Muller*  
Barrister and Vice-  
President of the Bar  
Human Rights  
Committee

### Introduction

17 December 2004 was a date of historic importance for the Kurds, the Turks and the EU. There can be no doubt now that Turkey's future and the future of the Kurdish people are intractably tied up in Europe, and that EU leaders are on course to embrace their eastern neighbour as a fully integrated EU partner.

Many Kurds are supportive of Turkey's bid to join the EU, and it is our argument that on balance, accession is desirable. EU membership and the accession process itself impose important checks and balances on the behaviour of the Turkish state, as well as stimulating debate on human rights, democracy and the rule of law, and pressing forward the reform process. In particular, for Turkey's 15 to 20 million – strong Kurdish population EU accession, at least initially, appeared likely to offer the opportunity to secure a lasting solution to the Kurdish question. Already, the prospect of accession has triggered rapid and apparently far-reaching legislative reforms since 2002.

However, we are somewhat wary about heralding the pro-EU reform process as

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<sup>1</sup> This paper is based on the paper delivered by Kerim Yildiz at the Brussels Conference entitled 'The EU, Turkey and the Kurds: A Background Paper', and has been updated in light of more recent events.

ushering in a new era in human rights and democracy in Turkey. Certainly Turkey deserves credit for the steps she has taken, albeit rather hesitantly, towards meeting international standards on human rights and the rule of law. The fanfare which has accompanied many of Turkey's outwardly dramatic legislative changes, though, belies the enduring presence of outdated mindsets among elements of the 'deep state' which are implacably hostile to change. The existence of substantial gaps in the reform process itself, the limitations on Turkey's implementation of reform on the ground and the marked failure to openly and realistically address the Kurdish issue challenge the widely-held notion that Turkey is democratising and confirm the continued sway of old ethnic nationalist ideologies.

This prompts serious doubts over the legitimacy of the current course of the accession process. The European Commission's 2004 Report on Turkey's progress towards accession,<sup>2</sup> which set out the framework within which the EU's approach to Turkey's membership bid appears now to be based, presents a considerably sanitised version of the current human rights situation in Turkey and manifestly fails even to adequately name the Kurdish question; issues which are addressed at some length in this paper. The perceived desirability of bringing Turkey into the EU has triggered concerns that political imperatives and the dictates of international security strategies are detracting from the importance of a genuine realisation of human rights standards and the achievement of a lasting solution to the Kurdish question in the accession process.

The initial enthusiasm with which the heightened prospect of EU membership from 2002 was greeted has, therefore, waned somewhat among human rights defenders and pro-Kurdish groups as it has become less clear that a culture of democracy and human rights is evolving in Turkey, or that Kurdish concerns will be addressed in the accession process.

We are committed to the principle that Turkey be allowed to accede to the EU *only* when she has fulfilled all the necessary conditions. The accession process, with its attendant stipulations in the fields of minority rights, human rights and democracy, still presents an unprecedented opportunity to mainstream Kurdish concerns and bring human rights reform and the Kurdish issue to the fore of political debate in Brussels and beyond. It is the responsibility of human rights organisations and civil society representatives to ensure that these opportunities are utilised, and we must not shy away from adopting a critical approach to EU decision-making. Voices advocating the placing of justice at the centre of accession negotiations must be heard.

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2 European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final

## **Turkey's route to accession**

Turkey applied for associate membership of the EEC<sup>3</sup> in 1957, and entered into an Association Agreement in 1963 which offered the future possibility of full membership. For decades, though, economic flux and internal strife militated against accession. An application to become a full member was turned down in 1989, a time when the conflict in the Kurdish regions of Turkey was gaining momentum. At length, the relaxation in violence which occurred in the late 1990s, combined with the 1993 decision of the Copenhagen Council of the EU that the 'associated countries' would be offered the chance of membership,<sup>4</sup> set the groundwork for Turkey's progression to candidature in 1999.<sup>5</sup>

Following the decision to grant candidature, the European Commission devised Turkey's Accession Partnership<sup>6</sup> detailing how she would meet EU standards on eligibility for the opening of accession negotiations. The document was revised during 2002, and in the same year the Council of the EU ('the Council') agreed that accession negotiations would commence 'without delay' if, following a Commission Report on Turkey's fulfilment of the Copenhagen Criteria and a subsequent Recommendation by the Commission on the appropriateness of opening negotiations, EU leaders at the Council decided that Turkey met the required standards.<sup>7</sup>

On 6 October 2004 the Commission issued its Recommendation as anticipated, concluding that Turkey had sufficiently fulfilled the criteria necessary to open accession negotiations.<sup>8</sup> The decision was described by the EU's President as a 'qualified yes'<sup>9</sup> due to the imposition of certain conditions, including that Turkey

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3 The European Economic Community (EEC) was one of the three treaties which together became known as the European Communities (EC) from 1967. The other two treaties were the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (EURATOM). In 1993 the Treaty of Maastricht was signed, radically overhauling the Rome Treaties upon which the European Communities were founded, furthering the goals of political and economic union between Member States and changing the name of the institution to the European Union (EU).

4 Copenhagen European Council 21 - 22 June 1993, Conclusions of the Presidency

5 Helsinki European Council 10 - 11 December 1999, Conclusions of the Presidency

6 Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey (2003/398/EC)

7 Copenhagen European Council 12 - 13 December 2002, Conclusions of the Presidency

8 European Commission, 'Communication from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey's progress towards accession', COM(2004) 656 final, Brussels, 6 October 2004, p3

9 Radio Free Europe / Radio Liberty, 'EU / Turkey: Commission Gives Qualified 'Yes' to Entry Talks', 6 October 2004

should first be obliged to bring into force six specified pieces of legislation.<sup>10</sup> On 17 December 2004, EU leaders largely endorsed the Commission's Recommendation that Turkey was ready to begin accession negotiations at the Brussels meeting of the Council, and envisaged that talks would commence in October 2005.<sup>11</sup>

## **The decision of the Council of the EU**

This decision by the Council on 17 December 2004 to open accession talks was formally based upon fulfilment of the criteria for EU membership, as determined at the Copenhagen meeting of the Council in 1993<sup>12</sup> (the 'Copenhagen Criteria'). These are minimum criteria which all states must fulfil before they can become recognised as official EU negotiating partners. The political elements of the Copenhagen Criteria require that candidate countries should have achieved: 'The stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'.

At the Helsinki European Council of 1999, it was stated that Turkey was a candidate for EU membership on the basis of the same criteria as other candidates.<sup>13</sup>

Since Turkey became a candidate for EU membership, the Commission has been submitting annual reports to the Council on Turkey's progress towards fulfilment of the Copenhagen Criteria. The most recent report by the Commission,<sup>14</sup> submitted on 6 October 2004, examined in detail Turkey's progress on the political elements of the Copenhagen Criteria. The Report cites reservations over the failure to adequately implement reforms, uncooperative attitudes among public authorities, the continued perpetration of torture, the continued prosecution of non-violent opinion, and considerable restrictions on minority rights. Nevertheless, the Commission cast a broadly positive light on Turkey's progress and subsequently concluded in its Recommendation that 'Turkey sufficiently fulfils the political

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10 These include: the Law on Associations, the new Penal Code, the Law on Intermediate Courts of Appeal, the Code of Criminal Procedure, the legislation establishing the judicial police and the legislation on the execution of punishments and measures. European Commission, 'Communication from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey's progress towards accession', COM(2004) 656 final, Brussels, 6 October 2004, p9

11 Brussels European Council 16-17 December 2004, Conclusions Of The Presidency

12 Copenhagen European Council 21-22 June 1993, Conclusions Of The Presidency

13 Helsinki European Council 10 - 11 December 1999, Conclusions Of The Presidency

14 European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final

criteria' and that accession negotiations should be opened.<sup>15</sup> This Recommendation in turn informed the decision on 17 December 2004 by the Council that entry talks could begin.

The Council, in its decision,<sup>16</sup> goes on to invite the Commission to continue to monitor Turkey's progress in human rights reform on the basis of areas of concern identified in the 2004 Report in order to 'ensure the irreversibility of the political reform process and its full, effective and comprehensive implementation, notably with regard to fundamental freedoms and to full respect of human rights...'<sup>17</sup>

The Commission is also invited to present to the Council a proposal for a framework for negotiations with Turkey. Accession talks are subsequently set to proceed in the usual way through inter-governmental conferences between the EU and Turkey, in which Turkey's current legislation and administrative structures are comprehensively 'screened' against each of the 31 chapters of the *acquis communautaire*: that is, the body of economic, social, administrative and environmental legislation that all Member States of the EU must implement. The negotiations will focus on the terms under which Turkey will adopt, implement and enforce the *acquis*.

Additional provisions in the Council decision which are less common to the accession process as experienced by other states allow for 'long transition periods, derogations, specific arrangements or permanent safeguards',<sup>18</sup> and although it is stated that the 'shared objective of the negotiations is accession', the negotiation process is defined as open-ended, 'the outcome of which cannot be guaranteed beforehand'.<sup>19</sup> Furthermore, an unprecedented, explicit provision allows that accession talks may be suspended by a qualified majority in the Council in the event of 'a serious and persistent breach...of liberty, democracy, respect for human rights and fundamental freedoms'.<sup>20</sup>

## Background to Turkey's EU bid

The decision to open accession talks with Turkey was ostensibly based on her fulfilment of the objective, EU-defined Copenhagen Criteria. Turkey's accession bid is, though, progressing against a complex backdrop of issues relating to European

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15 European Commission, 'Communication From The Commission To The Council and the European Parliament: Recommendation of the European Commission on Turkey's progress towards accession', COM(2004) 656 final, Brussels, 6 October 2004, p9

16 Brussels European Council 16-17 December 2004, Conclusions Of The Presidency

17 Ibid., p3

18 Ibid., p5

19 Ibid., p10

20 Ibid., p6

politics, international security and economic affairs.

On the one hand, Turkey's forthcoming accession is strongly welcomed in some parts, including by Britain and the US, as potentially creating a 'bridge' between Europe and the wider Muslim world. In today's climate of alienation, such a move has the potential to endow the EU with a strategic reach into the heart of the Middle East, and to establish an example of a progressive, secular state with a majority Muslim population within the European fold. It is further anticipated that membership could finally secure a lasting resolution of the conflict in Cyprus.

At the same time, the prospect of Turkish membership has met a mixed reception in other parts of the EU, including among the political opposition within France and Germany, and calls have been made for full accession to be substituted with a 'privileged partnership'. This is in part attributable to concerns that Turkey's size and underdevelopment will potentially generate strain on EU budgets. Moreover, the presence of a large, poor, and overwhelmingly Muslim state within the borders of Europe is generating substantial disquiet. The dictates of electoral politics within the EU, and the current predominance of anti-immigrant, anti-Muslim feeling, suggest that European governments may move to allay public fears that Turkish membership would alter the cultural makeup and geographic reach of the EU and 'flood' it with immigrant labour.<sup>21</sup> Turkey's admission would stretch the borders of the EU to Iraq, Iran and Syria.

However, probably the most significant impediment to accession, at least on paper, is Turkey's poor human rights record. For years, Turkey has lagged behind Europe in meeting even the most basic human rights standards, while democracy and the rule of law have been slow to take hold. Cases brought by KHRP to the European Court of Human Rights against Turkey have established unequivocally and as a matter of public record that the most severe abuses of human rights in the Council of Europe are taking place in Turkey.

It is hoped within the leadership of the EU that the process of entry negotiation will provide clear incentives for further reform, and that Turkey's course towards accession will have a 'civilising' influence on government behaviour. Nevertheless, although many Kurds have supported the accession process on this basis, there remain well-founded concerns that the desire to bring Turkey into Europe may overwhelm objective analysis of whether or not Turkey meets the required standards. The role of political factors in EU decision-making is not necessarily controversial in itself; the EU is a political body and a range of strategic concerns necessarily shape its actions. However, it becomes so if these factors take precedence over Turkey's

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21 It is worth recalling here that similar hysterical fears of 'mass influxes' of labour migrants from the ten new Member States joining the EU in 2004 proved unfounded.

progress on democratisation. The accession process should not be accelerated at the expense of a genuine commitment to human rights and the achievement of an enduring solution to the Kurdish issue.

### **The Kurds and accession**

The Kurds in Turkey comprise around 15 million of Turkey's population of 63 million, potentially making up over 3 per cent of the inhabitants of the EU and thus representing a significant population group. Kurds have been, on the whole, supportive of Turkey entering the EU. For them, accession seemed to present the possibility of an end to decades of repression and abuse, and to offer an unprecedented chance to ensure that their identity is acknowledged and respected. Importantly, it could open doors to enhanced dialogue on the resolution of the Kurdish question itself.

Accession has proved it can act as a catalyst for change, demonstrated in the process of constitutional and legislative reform enacted by Turkey aimed at readying the country for the opening of formal accession negotiations. Although reactionary elites remain entrenched within Turkey's governing structures and human rights reforms have proved in many respects insubstantial, Turkey deserves some recognition for the tentative steps taken towards a consensus within the country in favour of liberal democracy. The groundwork for these reforms was laid by years of courageous efforts by human rights defenders, Kurds and their supporters in Turkey, defying anti-democratic legislation and braving harassment and torture to uphold fundamental rights.

The accession process should continue to present the Kurds with potential opportunities to press for their rights to be better respected. In particular, under the three pillar approach to accession negotiations set out by the Commission in its Resolution of October 2004, the Commission will continue to play a central role in monitoring the reform process under the first pillar, including reviewing Turkey's continued compliance with the Copenhagen Criteria.<sup>22</sup>

As noted above, a 'serious and persistent breach' of human rights can lead the Commission, on its own initiative or on the request of one third of the Member States, to recommend the suspension of negotiations.<sup>23</sup> Whether or not this mechanism would in fact be used is another issue. Prime Minister Erdogan has, perhaps predictably, argued that suspension of negotiations would show a lack of

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22 European Commission, 'Communication from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey's progress towards accession', COM(2004) 656 final, Brussels, 6 October 2004, p9

23 Brussels European Council 16-17 December 2004, Conclusions Of The Presidency, p6

respect for Turkey's democratisation process,<sup>24</sup> and the EU may prove unwilling to provoke Turkey by applying the clause. It does, though, offer a significant point of departure for Kurds to argue forcefully that accession negotiations should be suspended if there are no substantial improvements in Turkey's respect for Kurdish cultural, linguistic and political rights, if a further intensification in fighting in the South-east occurs, or if Turkey maintains her unwillingness to move towards democratically resolving the Kurdish issue and / or instituting a constitutional resettlement.

Under the third pillar, the EU is expressly committed to strengthening political and cultural dialogue between Turkey and the EU, and civil society is set to play a key role in any such dialogue, facilitated by the EU itself.<sup>25</sup> Thus fora will be created to discuss viewpoints and concerns on issues including minority rights. Dialogue and debate engaged in by NGOs and civil society actors can supply an arena for raising information levels and generating interest in the ongoing plight of the Kurds in Turkey, as well as providing a platform for the exchange of ideas on how best to move forward and potentially assisting Turkey in devising and implementing reform.

More broadly, accession heralds new possibilities to mainstream Kurdish concerns. It opens unprecedented political space to press for human rights and to draw attention to the need for political dialogue between Turkey and the Kurds. It is evident that accession negotiations will invite a great deal of attention over the coming years, particularly in the event of significant milestones such as the drawing up of the new framework for negotiations expected in mid-2005. Attention drawn to EU-Turkey relations can be utilised to focus political debate in Brussels and Turkey on the Kurdish issue. This observation is, though, substantially qualified by the fact that the current political situation in the Kurdish regions received negligible coverage in the media and political debates in the run-up to the Council decision of December 17 2004, with focus instead being placed on immigration debates and, to a lesser extent, the broader human rights context in Turkey and the 1984 to 1999 conflict between Turkey and the Kurdistan Workers' Party (PKK).

Full EU membership will impose checks on the behaviour of the Turkish state. From inside the EU, Turkey can be brought under the sway of liberal democratic ideals, and transgressions of acceptable behaviour can be controlled through political influence and legal action. The Treaty of the EU (TEU) sets out that the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, and that discrimination based on

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24 The Guardian 'EU puts Turkey on a long road to accession', October 7 2004

25 European Commission, 'Recommendation of the European Commission on Turkey's Progress towards Accession', COM (2004) 656 final, p8

nationality, gender, race or ethnic origin is prohibited.<sup>26</sup> Importantly for the Kurds, though, these human rights and fundamental freedoms are seen to be based on the European Convention on Human Rights (ECHR), which does not explicitly protect minority rights. The Union's Charter of Fundamental Rights obliges the institutions and bodies of the Union to comply with human rights standards, and these standards must also be respected by Member States when they are implementing Union law.<sup>27</sup> In addition, EU Directives impose direct and legally enforceable obligations on Member States to put in place legislative measures to prohibit racial and other forms of discrimination.<sup>28</sup>

Perhaps most importantly for the Kurds, the accession process appeared to promise EU facilitation of a politically negotiated solution to the Kurdish situation *per se*. The EU had expressed a clear commitment in 1998 to openly and comprehensively address the problems encountered by the Kurds,<sup>29</sup> and seemed to acknowledge the need for a political settlement. Kurds have invested much hope in seeing the establishment of dialogue between Kurdish representatives and the Turkish state set in motion by the EU, and other regional bodies including the Council of Europe have endorsed the need to establish a mechanism to foster communication between the Kurds and the Turks.<sup>30</sup>

On the whole, then, accession has the potential to bring significant advantages to the Kurds in terms of enhanced protection of their status and rights. However, as Turkey progresses closer towards EU membership despite the absence of a Turkish-Kurdish settlement, initial Kurdish eagerness to see Turkey an EU Member State is dissipating. The EU seems unwilling to use its leverage over Turkey and fulfil its initial undertaking to openly tackle the Kurdish question, squandering a unique opportunity to assist the Kurds to finally shake off their historical oppression and enforced subservience to a hostile governing regime. If the EU continues in this vein, then for the Kurds EU accession will prove little more than an unfulfilled promise.

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26 Treaty of the EU (as amended by the Treaty of Amsterdam)

27 Charter of Fundamental Rights of the EU

28 Directive 2000/43/EC

29 European Commission, 'Regular Report on Turkey's Progress Towards Accession', 1998, p53

30 Council of Europe (COE), Parliamentary Assembly, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, 'Turkey: Explanatory memorandum by the co-Rapporteurs, Mrs. Mady Delvaux-Stehres and Mr. Luc Van den Brande (Co-rapporteurs)', March 2004, § 223

## **Why do we support accession?**

The projected improvements in the prospects of the Kurds in Turkey through accession which are detailed above illustrate why the accession process should be supported. Despite considerable reservations over the success so far of Turkey's pro-EU reforms, Turkey has achieved far more in terms of progress towards fulfilling international standards on human rights and democracy in the past two years than over previous decades, and accession still offers the most realistic possibilities for facilitating dialogue and reaching an end to years of subjugation for the Kurds. If the EU ensures that its standards on human rights, democracy and the rule of law are genuinely met in the accession process, then for the Kurds Turkey is much better inside than outside the EU.

However, it is important to stress that our support of the accession process is conditional. Accession must not be unduly hastened for political reasons unconnected with Turkey's progress on democratisation. If Turkey is accepted as an EU member before human rights criteria are satisfied, or without the realisation of a political solution to the Kurdish question, EU accession can have no real resonance for the Kurds and no real legitimacy in the eyes of human rights and civil society organisations committed to seeing a new, more civilised Turkey.

## **The validity of the decision to open accession negotiations**

The decision by the Council of 17 December 2004 to open accession negotiations with Turkey adds weight to concerns that accession may be expedited for strategic reasons despite substantial ongoing problems with regard to achieving democratic pluralism and respect for human and minority rights in the country.

Several human rights groups and civil society organisations believe that while Turkey's steps towards meeting the European *acquis* are to be welcomed, her progress is by no means sufficient to warrant inviting her to the negotiating table.

There can be no doubt that Turkey has outwardly moved towards closer compliance with international standards on human rights, democracy and the rule of law through her enactment of pro-EU reforms. Even if, as appears to be the case, the reform process is directed largely towards satisfying minimum EU criteria on democratisation with limited accompanying commitment by Turkey to bring about genuine change, the 'carrot' of EU membership has encouraged Turkey to enact a noteworthy series of reforms over a very short period of time. There have been some, albeit faltering, improvements in human rights generally: the legal regulation of torture has been tightened and the prohibition on broadcasting and teaching in the Kurdish language has theoretically been lifted. Permissible

detention periods have been shortened and the death penalty has been abolished. Turkey consequently argues that she has met her side of the bargain and should be rewarded accordingly.

It is also true to say that whatever the motivation behind Turkey's reform process, the current AKP government has staked much on achieving EU accession. It has weakened the power of the unaccountable state by reducing, at least formally, the traditional influence of the old elites in government, particularly the military. It has also refused to pander to the religious right on issues such as education. These measures have the potential to substantially alienate key government supporters.

Turkey used her position in this respect to argue that a decision to delay accession negotiations in December could prove a regressive step, jeopardising the current regime's delicate political balancing act between disparate elements of the political establishment upon which support for the reform programme is based, and hence playing into the hands of reactionary Islamist elements. This argument, though, which is effectively that the EU should overlook substantial outstanding problems with the reform process and admit Turkey to the negotiating table for fear that a more repressive government may otherwise come to power, is not particularly convincing.

Furthermore, it is argued that none of these factors can outweigh the importance of assessing whether or not Turkey has genuinely fulfilled the political elements of the Copenhagen Criteria. It is well documented that although there has been resistance to Turkey's accession in some quarters, Turkey's strategic importance to the EU has meant that the Union has not, as promised, applied the same standards to Turkey as it did to the other accession states. Instead, it may have 'lowered the bar'.

### **The Commission's Report**

The Commission's Report of October 2004<sup>31</sup> has provided the basis for the Commission's Recommendation and the Council's subsequent decision that the EU should commence accession negotiations with Turkey. Although the Report is by no means wholly positive, criticising both substantive gaps in Turkey's reform programme and failures to effectively implement new legislation, it is argued that the Report as a whole is an inadequate representation of the reality of the situation in Turkey.

The Commission focuses on legislative and administrative reforms enacted by the

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31 European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final

current administration and puts forward little *de facto* analysis of the situation on the ground. It fails in its wording and emphasis to reflect the depth and severity of the continued human rights violations in Turkey, at times glossing over significant shortcomings in the reform process and presenting ongoing violations as mere qualifications to generally encouraging progress. In a number of sections a positive 'spin' is put on Turkey's failings, even where serious and ongoing abuses of key human rights are detailed at length, sometimes by emphasising Turkey's efforts at compliance rather than the results she has achieved. No real attempts are made to place political reform in the context of a state grappling with its secular identity, struggling to overturn decades of impunity for human rights abuses and permeated by a seemingly unremitting hostility to minority ethnic identities.

A constructive approach is certainly desirable, but not to the extent of 'toning down' the seriousness of the current continued violations. Other important factors central to any assessment of the situation in Turkey are substantially overlooked, notably the Kurdish issue.

Overall, the evidence presented in the Report of continued violations, as well as its omissions, are very difficult to reconcile with the largely positive picture painted and the subsequent Recommendation of the Commission that the political aspects of the Copenhagen Criteria are fulfilled.

### *Torture*

The Commission's assessment of Turkey's success in her professed 'zero tolerance' approach to torture is indicative.

Detailed consideration is given in the Report to the range of progressive legislative and administrative measures, undoubtedly to be welcomed, which Turkey has enacted in her endeavour to eradicate torture. This is qualified with the statement that: 'Turkey still needs to pursue vigorously its efforts to combat torture and other forms of ill-treatment by law enforcement officials.'<sup>32</sup>

A number of low-key references are later made to the fact that the obligation to inform relatives of the whereabouts of detainees is still 'not always respected', that security forces continue to be present during medical inspections, and that: 'despite reforms prosecutors are not always promptly and adequately conducting investigations against public officials accused of torture.'<sup>33</sup> In view of the fact that incommunicado detention, a lack of substantiating medical evidence and impunity

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32 Ibid., p33

33 Ibid., p34

of officials carrying out torture are key contributory factors to the continued occurrence of torture, the persistence of these practices is perhaps underplayed.

Much attention is given in the Report to whether or not torture can be defined as systematic in Turkey, since it is hardly conceivable that the EU could commence accession negotiations with a state which routinely advocated the use of torture against its citizens. The Commission accordingly conducted a fact-finding mission in September 2004 to decide on this point. It concluded that the Turkish government is 'seriously pursuing' its policy of zero tolerance and that torture is no longer systematic.<sup>34</sup>

However, a number of NGOs strongly dispute this claim,<sup>35</sup> and it is decidedly difficult to uphold. It is noted in the Commission Report that although torture methods such as suspension by the arms and electric shocks are now rare, less detectable torture methods continue to occur, and the number of complaints of torture outside formal detention centres has *increased*. This suggests that the problem has been displaced rather than resolved as perpetrators deliberately seek to evade legislative restrictions. Further, the prevalence of torture springs from long-ingrained habits among law enforcement bodies accustomed to receiving a green light from above to integrate torture methods into interrogation techniques. The continued pervasiveness of old habits of holding detainees incommunicado indicates that torture incidences are not just odd anomalies, and high levels of impunity among alleged perpetrators signify that torture is tolerated from above, as does Turkey's abject failure to adequately supervise detention facilities. Even the Commission concedes that 'numerous' cases of ill treatment including torture continue to occur, an observation which sits very uneasily with the Commission's conclusion that torture is not systematic.

In any case, in view of the fact that torture is defined by the international community as one of the most severe violations of human rights and subject to an absolute prohibition under international law,<sup>36</sup> the observation that reported cases of torture and ill-treatment remain 'numerous' suggests that torture levels in Turkey are unacceptable whether or not torture is described as 'systematic'. It is also difficult to see that the Turkish state's failure to combat the 'numerous' cases of torture and ill-treatment taking place is consistent with the 'stability of institutions guaranteeing ... human rights', as required under the Copenhagen Criteria for the commencement of formal accession negotiations. For the EU to countenance opening accession negotiations with a country in which torture continues to reach these levels when

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34 Ibid., p35

35 Including the Human Rights Association (IHD) and the Human Rights Foundation of Turkey (HRFT)

36 Article 4 of the International Covenant on Civil and Political Rights; Article 2 (2) of the United Nations Convention against Torture; ICTY decision in Furundzija, 10<sup>th</sup> December 1998, § 153.

it has itself proclaimed a prohibition on torture in the Charter of Fundamental Rights<sup>37</sup> is questionable to say the least.

### *Freedom of expression and association*

Here again, it is doubtful whether the positive approach adopted by the Commission with regard to Turkey's progress is borne out by reality.

It is noted in the Report that although there has been a decrease in cases filed under specific articles, as well as a number of other positive developments, non-violent opinion is still being prosecuted and punished in Turkey. Specifically, sentencing of journalists, writers and publishers continues for reasons that contravene the standards of the ECHR, and the amended articles of the Penal Code and the Anti-Terror Law are still used to prosecute and convict people exercising freedom of expression, as are other provisions pre-dating the amended legislation. Allusion is also made to the regularity with which cases are filed against members of the press, which is held to be 'a significant deterrent' to freedom of expression through the media.<sup>38</sup>

Despite these extensive and well-justified qualifications, the Report's section on freedom of expression opens with the statement that 'the situation of people sentenced for the non-violent expression of opinion is now being addressed.'<sup>39</sup>

With regard to freedom of association, much of the new legislation detailed in the Report either remains hypothetical as it is not yet in force, or is yet to be implemented. In reality, a host of legislative and administrative provisions continue to place substantial limitations on the capacity of associations to operate openly and effectively, to hold public meetings without state intimidation and to liaise with overseas organisations. The Report itself refers to over 98 court cases or investigations launched against the Human Rights Association of Turkey (IHD) between October 2003 and August 2004 as indicative of substantial continued judicial harassment imposed on human rights defenders.<sup>40</sup> It is noted that 'civil society, in particular human rights defenders, continues to encounter significant restrictions in practice.'<sup>41</sup>

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37 Article 4, Charter of Fundamental Rights of the EU

38 European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, p39

39 Ibid., p36

40 Ibid., p42

41 Ibid., p42

Despite these observations, which are rightly listed in the Report and are undeniably indicative of immense problems in the fulfilment of international standards on the rights to freedom of expression and association, the Commission has recommended somewhat inconsistently on the basis of its Report that: ‘Although some practical restrictions still exist, the scope of fundamental freedoms enjoyed by Turkish citizens, such as freedom of expression and assembly has been substantially extended. Civil society has grown stronger.’<sup>42</sup>

As such, it is recommended that the Copenhagen Criteria are fulfilled.

It is submitted that the evidence of serious and persistent violations of the rights to freedom of expression and association detailed in the Commission Report denote rather more than the continuation of ‘some practical restrictions’ in a broader context of encouraging progress.

### *Political representation*

The inability of minorities, including the Kurds, to achieve adequate political representation in Turkey is a substantial impediment to the realisation of democracy, and is inadequately addressed in the Commission Report.

Cursory reference is made to the barrier to minorities achieving representation in parliament due to the requirement that parties attain a 10 per cent threshold in elections,<sup>43</sup> which effectively serves to preclude minority political parties with strong regional support from participating in national government. It was reported elsewhere that the Democratic People’s Party (DEHAP) gained more than 45 per cent of the vote in the five largely Kurdish provinces in the November 2003 elections, but received no Parliamentary seats due to receiving only around 6 per cent of the total national vote.<sup>44</sup> Brief mention is also made in the Commission Report of prosecutions pursued during the March 2004 elections for speaking Kurdish during political campaigning.<sup>45</sup>

These factors deserve fuller analysis. The exclusion of pro-Kurdish political parties from parliament and restrictions on electioneering in Kurdish fundamentally inhibit the realisation of genuine, participatory democracy for the Kurds. They are effectively prevented from participating in public affairs, and their capacity

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42 Ibid., p40

43 Ibid., p49

44 Report of Minority Rights Group International, ‘Minorities in Turkey’, July 2004

45 European Commission, ‘2004 Regular Report on Turkey’s Progress Towards Accession’, COM (2004) 656 final, p50

to be represented politically is significantly undermined, leaving an already very vulnerable group unable to protect its rights and interests. Furthermore, if substantial sections of a country's population are not politically represented by the individuals whom they elect to that office, then democracy cannot be deemed to be functioning effectively.

### *Cultural and linguistic rights*

Turkey was conceived along nationalist lines as a unitary, secular state, and has long repressed minority cultural and linguistic rights, particularly those of the Kurds. Moves to realise international standards in this area have been dismissed by many Kurds as tokenism, and important issues remain to be addressed which are not granted sufficient consideration in the Commission Report.

Language is an essential component of cultural identity, and the Kurdish language has been progressively undermined for decades as Turkey regards any expression of non-Turkish identities as a threat to the territorial integrity of the state. It is certainly true as the Commission Report states that there has been important progress since 1999 and Turkey's Seventh Harmonisation Package allowed the opening of the first language school teaching in Kurdish. The Commission also refers to the restrictions remaining on teaching in Kurdish, and these are of considerable importance; regulations provide that only pupils attending regular school may participate in classes, courses will only last for 10 weeks and no more than 18 hours per week, and lessons must not contradict the 'indivisible unity of the state'. The Commission also discusses the lifting of the prohibition on broadcasting, and cites several recent cases where attempts to broadcast in Kurdish have met with harassment and prosecution.

Despite these references to the continued restrictions on Kurdish cultural rights, much is still made of the lifting of the constitutional prohibition on the use of Kurdish in the Report, and no real sense is given of the great disappointment which followed the announcement of these reforms as it became increasingly apparent that they would not be followed up with realistic enforcement measures. For many Kurds, Turkey's failure to implement Kurdish broadcasting and language teaching to any meaningful extent has left the initially much-heralded reforms looking like no more than hollow gestures aimed at satisfying EU criteria, while Turkey remains deeply hostile towards any manifestation of Kurdish culture. The considerable space dedicated in the Report to Kurdish broadcasting in particular fails to highlight the key point that to date, no private broadcasting outlet has yet received permission to broadcast in Kurdish.

Moreover, despite the significance of Kurdish language teaching to sustaining

Kurdish culture and identity, reference is not made in the Report to Article 42 of the constitution which maintains that ‘no language other than Turkish shall be taught as a mother tongue to Turkish citizens.’ As such, there is no provision for the teaching of Kurdish in state schools, so precluding children from receiving education in their mother tongue.

A further linguistic issue of significant importance to the protection of the human rights of the Kurds, that of continued bureaucratic restrictions placed in the way of parents wishing to give their children Kurdish names, fails to find reference at all in the Commission Report. Apparent concessions were made in the Sixth Harmonisation Package which allowed parents to give their children Kurdish names. However, a circular of 23 May 2002 remaining in force clarifies that a ban exists on the use of names including the letters ‘q’, ‘w’, and ‘x’ (common letters in the Kurdish language) due to the letters not existing in the Turkish alphabet. There are reports of authorities refusing to register Kurdish names even without these letters and of children being assigned alternative names since the reform was passed.

### *Children*

The Commission Report considers children’s rights principally from the perspective of the failure to adequately combat child labour, and passing mention is also made of low school attendance in the South-east.

In fact, there are multiple factors impeding the full realisation of children’s rights in Turkey, and particularly in the South-east.<sup>46</sup> In the first place, children suffer widespread neglect and physical and sexual abuse. The Committee on the Rights of the Child has noted that such offences are infrequently reported, and that where reports are made the police rarely intervene.<sup>47</sup> The Committee also expressed concern over the apparent lack of resources to deal with domestic violence and abuse, including child sexual abuse. Girls continue to be subject to early and non-consensual or forced marriage; a study in the South-east found that 36.9 per cent of women were married before the age of 15, and that the vast majority of these marriages were arranged.<sup>48</sup> These issues are barely addressed in the Report.

Children also suffer compound social and economic marginalisation, and those subject to displacement generated by the conflict in the South-east are especially vulnerable to inadequate shelter, poor nutrition, disease, and limitations on access

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46 KHRP ‘Turkey: The Situation of Kurdish Children’, October 2004

47 Committee on the Rights of the Child, Twenty Seventh Session, Concluding Observations of the Committee on the Rights of the Child: Turkey

48 KHRP ‘Turkey: The Situation of Kurdish Children’, October 2004, p24

to health and education.<sup>49</sup> Street children, to whom a very succinct reference is made in the Commission Report, often live an extremely precarious existence and receive very little assistance from the state.<sup>50</sup>

### *The Kurds*

Perhaps the most glaring omission from the Commission Report is the failure to address the Kurdish issue in any kind of substantive and coherent manner.

The Commission Report essentially appears to adopt a piecemeal approach to the situation in the Kurdish South-east which consists of dealing with the occasional Kurdish dimensions of a series of discrete human rights violations. Thus where the Commission considers freedom of expression, the lifting of restrictions on broadcasting in Kurdish is examined, and in the section on cultural rights the opening of the first Kurdish language courses is separately detailed. Discrete reference is made under the Commission's consideration of freedom of association to continued restrictions on the activities of Kurdish associations.

Even the Report's section on minority rights makes no attempt to analyse the situation of the Kurds as a group or people within Turkey, and indeed barely refers to them. Very little is made of the absence of the Kurds from the state definition of a minority contained in the Turkish Constitution, an issue of substantial importance for the political and legal status of the Kurds, despite the fact that the Kurds make up nearly a quarter of Turkey's population. Furthermore, this and Turkey's failure to sign the European Framework Convention for the Protection of National Minorities or to adhere to any other international minority protection provisions is not placed in the context of her deep rooted antipathy towards her Kurdish population.

Whether this is through deference to those who do not believe the Kurds should be defined as a minority is unclear,<sup>51</sup> but the part of the Report referring to the situation in the South-east does little more to set out a comprehensive analysis of the complex and deep-rooted problems there. The circumstances of the internally displaced are rightly referred to as 'critical', and reference is made to legislative changes established to address this and related issues, as well as to continued barriers to return.<sup>52</sup> The issue is considered, though, simply at face value as a failure of the Turkish government to adequately deal with displacement. There is no real

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49 Ibid., p5

50 Ibid., October 2004, pp38 - 40

51 KHRP takes no position on the question of whether the Kurds are best described as a minority, a people or by any other term.

52 European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, p50

examination of other aspects of the Kurdish question, and the only reference to the problems faced by the Kurds as a comprehensive issue is where the Report identifies in rather guarded and opaque language that: ‘The normalisation of the situation in the South-east should be pursued through the return of displaced persons, a strategy for socio-economic development and the establishment of conditions for the full enjoyment of rights and freedoms by the Kurds.’<sup>53</sup>

It is later asserted in the Commission’s Recommendation that ‘the process of normalisation has begun in the Southeast’.<sup>54</sup>

The Kurdish issue is not, then, ignored in the Report, but is treated as if resolution were possible through responding to the Kurdish dimension of an assortment of unrelated human rights abuses which should not be specifically differentiated from Turkey’s overall record on compliance with the Copenhagen Criteria. There is no consideration afforded to the political context within which restriction of the human rights of the Kurds occurs. The Report never appears to intimate that state sponsored impediments to the return of hundreds of thousands of Kurds to their homes or continued violations of their human rights has any kind of ethnic dimension.

It must be asked, then, whether the Commission’s approach constitutes an adequate response to the Kurdish issue, and whether it can be regarded as an appropriate departure point for the commencement of accession negotiations.

The Kurdish inhabitants of South-east Turkey have been subject to repression and attempts to crush their identity for decades. The Turkish state has long been predicated on the concept of an overarching, unified national identity, an ideology that stretches back to the days of Atatürk. The imposition of cultural homogeneity has been seen as vital to securing Turkey’s future as a national republic, and the expression of alternative identities is not traditionally tolerated. The Kurds, as by far the largest non-Turkish ethnic group in Turkey, have endured particularly brutal and long-standing policies of subjugation and marginalisation.

The Turkish state’s behaviour towards the Kurds is, then, fundamentally rooted in hostility to Kurdish identity. Despite some improvements since 1999, Kurds have been subject to continual harassment and coercion through spurious judicial decisions and arbitrary detention and torture. Their rights to free expression and association have been violated where they have sought to assert their Kurdish identity, and they have suffered the effects of protracted armed conflict and subsequent forced

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53 *Ibid.*, p55

54 European Commission, ‘Recommendation of the European Commission on Turkey’s Progress towards Accession’, COM (2004) 656 final, p3

displacement aimed at disbanding Kurdish regional dominance in the South-east. Turkey's antipathy towards countenancing the presence of group identities distinct from the official Turkish nationalist identity has meant that she has failed even to acknowledge the existence of the Kurds or to grant them any constitutional recognition. Crucially, even today Prime Minister Erdogan repeatedly states that 'there is no Kurdish question' and there is 'no Kurdish minority'.<sup>55</sup> The suffering of the Kurds at the hands of the Turkish state is intrinsically linked to their status as Kurds.

As such, it is difficult to conceive that the compound array of interlinked human rights violations and injustices taking place in the Kurdish regions can be resolved by occasional reference to individual human rights issues. The Commission's approach fails to appreciate that human rights violations against the Kurds are not merely the mark of an occasional tendency to discriminate against a non-dominant minority, and nor are Kurds targeted in Turkey simply as a result of legislative gaps in the pro-EU reform process or inadequate controls on public authority behaviour. Turkey's treatment of the Kurds is the outward manifestation of a long-standing and deeply embedded hostility towards the Kurds as a people. The Kurds are targeted *because* they are Kurds, and human rights violations which bear no overt relation to 'Kurdish' rights as such will frequently have a Kurdish element. Torture, for example, remains most prevalent in the Kurdish-dominated South-east, but there is not even acknowledgement in the Report that Kurds may be particularly vulnerable to torture.

The Commission's approach seems to be based on an implicit assumption that there is no need to address the Kurdish question directly, and that instead ingrained mentalities within the Turkish establishment which inform continued attempts to quash expressions of Kurdishness will simply dissipate with the advancement of the reform process. It is submitted that such an eventuality *cannot* be simply presumed. Turkey has not yet demonstrated any real inclination to tackle deep-seated hostility to the notion of a distinct Kurdish identity, and to a significant extent the veiled forces of the highly traditionalist and reactionary deep state, particularly the military who recently made an implied reference to the Kurds as 'so-called citizens',<sup>56</sup> continue to hold significant sway over Turkish governance. The Commission's unwillingness to define the situation of the Kurds as a cohesive issue provides no incentive for Turkey to do so.

Indeed, in denying the integral nature of the situation in the South-east and treating the Kurdish issue as if it will resolve itself as reform progresses, the EU edges out the

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55 See, for example, Prime Minister Erdogan's speech on 12 April 2005 on 'The Global Search for Peace and Turkey's Contribution' at the Nobel Institute, Oslo.

56 Financial Times 'Furious Turks wave the flag demonstrators tried to burn', 26 March 2005

prospect of encouraging Turkey to acknowledge that there exists a Kurdish 'issue' to be addressed at all. Instead, it implicitly upholds the Turkish view that there is no problem in the Kurdish regions requiring resolution except a 'terrorism' problem which occupies only the military domain. Turkey has long used this pretext to evade dealing with the substantive, rights-related elements of the Kurdish question. Those advocating for much needed sustained and comprehensive efforts to achieve enduring peace and justice in the South-east, including the Council of Europe, are effectively sidelined.

In this context, the Commission's apparent solution to the Kurdish issue of implementing a series of general, legislative reforms over a period of time also precludes addressing the need for a negotiated political settlement. The Kurdish question is a political one, and demands a political answer. The EU is in a prime position to press Turkey to engage with Kurdish representatives to seek such an answer, but to date nothing has been done in this regard and it is hard to avoid the conclusion that the EU is skirting around this extremely important yet highly sensitive issue for fear of offending the Turkish government. Certainly, there has been a marked failure by the EU to consult adequately with Kurdish groups and representatives, and to take into account Kurdish views.

### *The resurgence of armed conflict in the South-east*

The EU has also notably disengaged itself from the recent resurgence of the armed conflict in the South-east. Since the end of the HPG (Peoples' Defence Force)<sup>57</sup> ceasefire in June 2004, the security threat in the Kurdish regions has been substantially stepped up and 159 people were reportedly killed in armed hostilities from January to October 2004.<sup>58</sup> AFP reported over 50 clashes between HPG's fighters and Turkish security forces between 1 June 2004 and 13 August 2004 alone.<sup>59</sup>

In 1998, prior to the unilateral PKK ceasefire, the Commission had asserted that 'Turkey will have to find a political and non-military solution to the problem of the South-east. The largely military response seen so far is costly in human and financial terms and is hampering the region's social and economic development.'<sup>60</sup> However, in its 2004 Report the Commission barely refers to the need to end the

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57 The Kurdistan Workers' Party (PKK) changed its name in April 2002 to the Congress for Freedom and Democracy in Kurdistan (KADEK), and again in November 2003 to the Kurdistan People's Congress (Kongra-Gel), the name by which it is now known. The People's Defence Force (HPG) is a militant organisation involved in armed conflict in the Kurdish region of Turkey.

58 US Department of State (US DOS), 'Turkey: Country Reports on Human Rights Practices 2004', Bureau of Democracy, Human Rights, and Labor, 28 February 2005

59 AFP, 'Police Officer Killed in Clash With Kurdish extremists: Report', 13 August 2004

60 European Commission, '1998 Regular Report on Turkey's Progress Towards Accession', p20

current conflict, mentioning only that '[t]errorist activities and clashes between HPG militants and the Turkish military have been reported' and that the 'security threat' has increased since the ending of the ceasefire in June 2004.<sup>61</sup> The Report nevertheless assesses there generally to have been gradual improvements in security in the South-east since 1999.<sup>62</sup> The only other references which touch upon the conflict are to the Law on Compensation of Losses Resulting from Terrorist Acts, and the moves towards granting partial amnesties made by Turkey in 2003 / 2004.<sup>63</sup> Resolving armed conflict in the Kurdish regions is of critical importance and merits much closer attention. From 1984, the region saw over fifteen years of conflict in which more than 30,000 people, mainly Kurds, died. Three million were displaced from their homes in the Kurdish villages, and the relaxation of judicial supervision of state behaviour under the government declared State of Emergency opened the door to chronic abuses commissioned during state security operations, while the pro-Kurdish press, publishers, associations and cultural initiatives were comprehensively silenced.

There are real fears that the renewal of the conflict will, if not addressed, see a regression into old habits. Already, the military presence in the area is being stepped up again, and state security operations in July 2004 in which hundreds of residents of the village of Ilıcak in Şırnak province were forcibly removed from their homes for six weeks during a state security operation<sup>64</sup> was chillingly reminiscent of mass forced displacement in the 1980s and 1990s. Turkey's tentative, EU-inspired steps towards granting the Kurds hard-won cultural and civil rights would be significantly threatened by a return to fully-fledged state counter-terror activity.

### **The EU, human rights and the accession process**

The Commission Report, then, is substantially flawed in its drawing of excessively positive inferences from Turkey's efforts to improve human rights, its overly brief or lack of reference to a number of serious human rights issues, and its failure to address comprehensively Turkey's treatment of the Kurds.

Contrary to the decision of the Council, based upon the Commission's Report and Recommendation, it is argued that Turkey's fulfilment of the Copenhagen Criteria is questionable, and that the defects of the Report render it at least likely that factors extraneous to the realisation of human rights standards have been allowed

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61 European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, p50

62 Ibid., p50

63 Ibid., p50

64 Human Rights Watch, 'Last Chance for Turkey's Displaced?', October 4 2004,

to influence the Commission's assessment. Concerns that the accession process may be unduly accelerated and that the bar may be lowered for Turkey look to be justified. Assessing whether or not Turkey has fulfilled the political elements of the Copenhagen Criteria ought to have been made on the basis of tangible improvements in democratisation, and not dictated by extraneous political factors. The Commission Report is not an encouraging development for those interested in seeing genuine human rights reform in Turkey. If this approach is to be indicative of the EU's line on accession negotiations in the future, then the projected advantages of accession for advancing justice and democracy will be substantially undermined. EU decision-making wrongly implies that Turkey's behaviour in the human rights sphere is broadly compliant with international human rights standards, and belittles the severe, ongoing human rights violations taking place in the country. It should be remembered in this context that promises to enact human rights reforms and address the Kurdish question made by Turkey prior to the establishment of the 1995 Turkey-EU Customs Union proved empty, though of course, the Copenhagen Criteria are much more authoritative than the relatively insubstantial and non-binding political pre-requisites attached to the Customs Union.

On the EU side, opening membership talks with a country which continues to frequently violate fundamental rights is damaging to the EU's own human rights commitments. The EU professes itself to be founded upon 'the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law',<sup>65</sup> and its apparent relaxation of these principles in relation to Turkey could jeopardise its long-term credibility.

It is of considerable importance, then, that the Commission Report is scrutinised in depth, and that concerns are raised in Brussels over the Report's failings and omissions. Human rights must be placed at the centre of negotiations over Turkey's entry to the EU.

### **The Kurds in the accession process today**

It has already been stated that accession could ultimately be a very positive step for Turkey's Kurdish population. However, the implications of the EU's failure to prescribe or facilitate an acceptable solution to the Kurdish issue as a precondition for the commencement of accession negotiations are potentially serious. Although there have been some improvements in the status of the Kurds in recent years, it is much less clear that Turkey is moving towards European conceptions of democratic pluralism and minority rights. The Turkish Justice Minister was recently reported as saying that Turkey and the EU speak 'different languages' on minorities, and warned

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Article 6 (1) of the Treaty on EU

against engaging in a debate on minority rights that would ‘call into question the unity of Turkey’.<sup>66</sup>

In reality, then, the idea that the expression of alternative identities is a threat to the unitary, secular state remains enormously powerful in Turkey. The public espousal of Kurdish identity or rights is still currently met with outright hostility both politically and legally, and Turkey has refused to implement a constitutional resettlement recognising the existence of the Kurds or sign up to any international standards requiring her to protect minority rights. In short, the accession process has brought very little change so far for the Kurds. Profound Kurdish aspirations of finally seeing their status and rights protected through an EU-driven reform process in Turkey do not at present look set to be realised.

In addition, countenancing allowing Turkey access to the EU negotiating table before the security situation in the South-east is addressed is highly contentious. Stability and security, predicated on an absence of violence or armed conflict, is a touchstone of democracy. It is simply not feasible that effective, participatory democracy and a culture of respect for human rights can exist in South-east Turkey while armed conflict continues. It is true that armed violence is found in existing EU Member States, but only where democratic, consensual government structures are in place, and multi-party negotiations have been established giving voices to both sides to the dispute through peaceful channels. As yet, Turkey refuses even to concede that the armed conflict in the South-east is symptomatic of the broader issue of her subjugation of the Kurds, defining the situation purely in terms of security and/or terrorism and refusing to become involved in bilateral negotiations with the Kurds.

For the EU, its evasive approach to the Kurdish issue also has the potential to bring into the territory of the EU a volatile, unresolved conflict situation, jeopardising the Union’s commitment to the much-lauded creation of ‘an area of freedom, security and justice’.<sup>67</sup>

What is urgently needed is for Kurdish and Turkish representatives to sit around a negotiating table to exchange ideas and possible solutions to the situation in the Kurdish regions today. Sustained and constructive dialogue could act as an important step towards achieving justice and stability in the South-east. The EU accession process offers possibilities for the Kurds and Turks to come together, to recognise the problem as it stands, to seek solutions and ultimately to live together in freedom and democracy. So far, the EU’s approach, in failing even to name the Kurdish issue,

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66 EU Business, ‘Turkey and EU speak ‘different languages’ on minorities, says minister’, 4<sup>th</sup> November 2004, available at <<http://www.eubusiness.com/afp/041104162026.04et8eej>>

67 The Treaty of Amsterdam on the European Union came into force on 1 May 1999, Preamble and Articles 2, 29 and 40.

has instead weakened voices calling for much-needed political dialogue. In recent years, EU leaders have singularly failed to promote any democratic platform or meaningful discourse about the Kurdish question.

In evading the Kurdish issue, the EU is also evading its own responsibilities. The critical situation facing the Kurds and the Turkish people is not a distant problem unrelated to European affairs; its roots are in the dissolution of the Ottoman Empire in the aftermath of the First World War, and issues such as the use of weapons exported to Turkey by Germany in unlawful acts against Kurds places the situation in Turkey firmly at Europe's door. Europe has a moral and political obligation to facilitate democratic dialogue and to assist Turkey towards a peaceful future based on full respect for the equal and fundamental rights of her Turkish and Kurdish populations.

Although the EU's failure to promote the discussion of a political solution to the Kurdish question and to compel Turkish participation renders the achievement of such a solution far less probable, it should be stressed that it is by no means yet too late. The institutions of the EU should, now that Turkey is secure in her position as an EU negotiating partner, revise its approach to the Kurdish issue and engage in transparent negotiations with the parties, advancing steps towards reconciliation and resolution. It is imperative that this is done before it is too late and this opportunity for ending years of conflict and human suffering is missed altogether.

### **Beyond 17 December 2004**

Turkey's political future is undoubtedly now firmly anchored in the EU. The December 2004 Council summit made clear that accession is the ultimate goal of negotiations with Turkey. From the end of 2005 political reforms will be reviewed annually on the basis of a revised Accession Partnership, and as outlined earlier the Commission has undertaken to recommend suspension of negotiations where there is a serious and persistent breach of key principles including human rights.

Already, the EU and Turkey have begun preparations for pre-accession screening, the process of comparing Turkey's legislation with the body of EU law which all members must enact known as the *acquis communautaire*. From here, Turkey's position on the chapters of the *acquis* will be drawn up, and negotiations will commence to determine the terms under which Turkey will adopt, implement and enforce the *acquis*, including the granting of any transitional arrangements whereby possibilities exist for phasing in compliance with certain rules. The pace of negotiations is formally dependent on the rapidity with which Turkey progresses towards the *acquis*. The results of the negotiations are incorporated into accession treaties to be ratified both by Turkey and by the other Member States, and it is likely

that at this stage debates will occur within Member States over the desirability of enlargement and any pertinent issues. Provided that the accession treaties are ratified by all existing EU Member States,<sup>68</sup> Turkey would then become a full Member State herself, obliged to comply with EU legislation and rules.

The next phase of accession negotiations will bring substantial new challenges, but if EU scrutiny is robust it is still possible that the process could result ultimately in a real transformation in Turkey and bring about a modern, open and multi-cultural state in which a comprehensive and sustainable solution to the Kurdish question is realised. With constructive and sustained input from the NGO sector and civil society representatives, including monitoring developments closely, according detailed consideration to Turkey's movement towards the *acquis*, constructively criticising EU decision-making and making use of EU undertakings such as the suspension of talks in the event of a 'serious breach', accession can still be a positive force for change.

Whether or not Turkey's reform process can be directed to fully realising democratisation through the accession process will, though, depend to a considerable extent on the approach taken by the EU. The omens so far have not been positive. If the current EU approach is followed through, Turkish membership could be cemented with only limited, superficial human rights reform, no real recognition of Kurdish identity and rights, and an unaddressed conflict situation in the South-east. The robustness of the Commission's future approach in prescribing and reviewing political reforms and the commitment to principle by leaders in the Council will be crucial in determining whether this proves the case.

Turkey's progress on democratisation must be made pivotal to her progression towards accession, and the decision to allow Turkey membership should be based in the end on an impartial assessment of whether the necessary criteria have been fulfilled. Ongoing, EU-facilitated dialogue on the peaceful resolution of the Kurdish question is fundamental to these requirements.

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68 Some Member States, notably France, will hold referendums on whether or not their respective accession treaties with Turkey will be signed. If one or more accession treaties are not signed on the basis of such a referendum(s), Turkey will not be able to accede to the EU.

## PART THREE:

# HUMAN AND MINORITY RIGHTS IN TURKEY



*Participants at the conference*



## Turkey's Implementation of European Human Rights Standards - Legislation and Practice

*Jon Rud*

Member of the Oslo Bar Association



*From left: Doğu Ergil (Professor of Political Science, Ankara University), Imam Gassan Solomon (ANC Member of Parliament, South Africa), Jon Rud (Member of the Oslo Bar Association), Matay Arsan (Expert in Assyrian affairs and the Assyrian Political question) and Pervin Buldan (Chair of the Association for People who have Lost their Relatives - YAKAY-DER)*

### Introduction

Turkey has for many years been high on the international list of countries with serious human rights violations. Now, human rights organisations both in Turkey and abroad are hopeful that Turkey will become a country sharing European values and standards. The prospect of Turkish membership of the EU is the best opportunity Turkey has ever had of becoming a real democracy, with full respect for human rights and the rule of law, based on European values.

The purpose of this article is to evaluate the extent to which Turkey has complied with the conditions and criteria established by the EU in relation to countries applying for membership of the Union. The criteria state, in essence, that an applicant state must have achieved: 'Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'.

The Council of the EU ('the Council') recognised in December 2003 the efforts made by Turkey to 'accelerate the pace of reforms'. However, the Council also stated that 'further sustained efforts are needed'. The Council pointed in particular to the

following areas, on which this article also will focus:

- ‘Strengthening the independence and functioning of the judiciary’;
- ‘The overall framework for the exercise of fundamental freedoms (association, expression, religion)’;
- ‘The further alignment of civil-military relations with European practice’;
- ‘The situation in the South-east of the country and cultural rights’.

On 6 October 2004, the European Commission published its annual Progress Report. Subject to various reservations and conditions being fulfilled, the Commission stated that ‘Turkey sufficiently fulfils the political criteria and recommends that accession negotiations be opened.’

The Council will in December 2004 take a decision on the possible opening of accession negotiations, based on the progress made by Turkey in complying with the Copenhagen Criteria.

### Summary of the present status

It is interesting to note that the Progress Report does not conclude that the Copenhagen Criteria have been *fulfilled*, but that the degree of compliance is *sufficient* to open accession negotiations. As admitted by the Turkish government itself, there are various shortcomings which must be overcome, before one can conclude that Turkey has achieved the degree of democracy and rule of law prevailing, both in law and in practice, in the EU Member States.

In the area of legislation, considerable efforts have been made over the last few years and in particular since the end of 2002 by the new government. Nonetheless, there are still numerous articles scattered throughout various laws that need amendment. Examples are various articles of the new Penal Code, and the laws on Associations (No. 2908), on Foundations (No. 2860) and on Meetings and Demonstrations (No. 2911). The philosophy of the further legislative reforms must be to move away from laws whose *primary objective is to control and restrict* the exercise of all fundamental freedoms, to a situation where human rights are seen as *desirable and necessary*.

However, the *main problem* remaining is the *practical implementation* of the reforms. Every day there are cases which demonstrate that police and security officers, prosecutors, judges and other public servants either do not understand or do not have the will or ability to comply with the legislative reforms and the relevant human

rights standards, some of which were accepted by Turkey decades ago.

The lack of practical implementation of the reforms must be seen in the light of the existence of powerful forces among the military, certain political circles, elements within the bureaucracy and the media, often called the 'deep state', or simply 'the state' (thus being distinguished from the government and the parliament). These forces consider the reforms a threat against the 'unity' of the 'secular' Turkish state, and the tenets of the Atatürk ideology, which continue to be protected by the 1982 constitution. These forces look upon the reforms as a threat to their positions and power. They claim that the reforms have been imposed by the EU, and welcome any opportunity to stop or at least slow down the reform process.

The government promised in the spring of 2004, belatedly, that after its reforms have been legislated, the time has now come to *implement* these reforms. The government has probably underestimated the enormous difficulties it will have in changing a *mentality*, which has become ingrained in the judiciary and the bureaucracy during decades. The '*acid test*' of Turkey's compliance with human rights standards and respect for minorities lies precisely in the practical implementation of the reforms.

### **The independence and proper functioning of the judiciary**

In a democratic state, it is vital to have an independent judiciary, which applies the law fairly and correctly, without any interference from the executive and legislative arm of the state. Paradoxically, it may be said that a main problem in Turkey, is that the judiciary is *too* independent of the government and the Parliament. The judiciary does not seem to have acknowledged the determination of the government and the Parliament to ensure that international human rights standards must be observed by the judiciary in interpreting and applying Turkish law. Even if this principle has now been incorporated into the constitution, the Turkish judiciary has failed to take on board modern values and standards in the field of human rights.

Kemal Atatürk himself was a believer in embracing modern values and ideals. He once stated, shortly before he died: 'I am leaving no ... commandment that is frozen in time or cast in stone ... To argue for rules that never change would be to deny the reality found in scientific knowledge and reasoned judgment'.

Unfortunately, the opposite has happened. Enshrined in the constitution, Atatürk's ideas have been proclaimed eternally sacrosanct. They cannot be amended and even proposals to do so may constitute a criminal offence. From Ottoman times, the dominant philosophy was that the state *was right and could do no wrong*. The concept of individual rights was weak. The result is that anything which can be seen as a potential threat to the state ('devlet') must be punished. Human rights standards

protecting individual rights are interpreted consistent with the interests of the state, as perceived and interpreted by 'the deep state'.

It is not helpful to changing old habits and thinking, when the authorities themselves sometimes send out confusing and conflicting signals. One example is the abolition of Article 8 of the Anti-Terror Law, which prohibited 'separatist propaganda'. First, President Sezer vetoed the proposed abolition. When the proposal was reintroduced, the Justice Minister declared, apparently to comfort the members of Parliament, that the deletion of Article 8 only meant that the same offence would remain punishable under existing articles of the Penal Code!

A proper reform of Turkish legislation, establishing the rule of law and respect for human rights, should ideally have started with a complete overhaul of the constitution, preferably in the form of a completely new constitution. This is an aim mentioned by the government and the EU on various occasions, but not acted upon so far. Although the 1982 Constitution has been changed many times, it still bears the hallmarks of a constitution imposed under threats by the military regime. The former Chief Justice of the Supreme Court of Appeals, Sami Selcuk, said already in 1999: 'The degree of the legitimacy of the 1982 Constitution is close to zero ... [because it has been] imposed on a society under threat'.

Numerous court cases bear witness to the need for a complete reform of the constitution. One of these cases, against four MPs, including Leyla Zana, is an adequate illustration. The European Court of Human Rights (ECtHR) found serious errors in the proceedings and declared that the defendants had not received a fair trial. The retrial proved to be a repetition of the trial in 1994, with the same deficiencies. The court upheld its previous sentence and failed to respect the clear conclusions of the ECtHR. After heavy pressure from abroad, particularly from the EU, the Supreme Court 'saved' the situation by setting the four parliamentarians free, having spent almost ten years in jail. However, there will be another retrial, and in addition they are under investigation in connection with speeches they have delivered after their release from prison.

Under the Turkish criminal procedural system, the functioning of the prosecutors is a main key to ensure the rule of law and respect for human rights. However, in spite of the government's declared policy on human rights, the prosecutors continue to bring cases in blatant violation of Turkey's obligations under the European Convention on Human Rights (ECHR), other relevant international instruments and case law of the ECtHR. The numerous cases brought against Turkey under the ECHR have so far had only limited impact on Turkish court cases, although in the last year some progress can be noted.

One line of reasoning in Turkish legal practice is *guilt by association*. One example:

1. The terrorist organisation the PKK is making propaganda for the right to use the Kurdish language, including in education.
2. Consequently, anyone who advocates the right to use the Kurdish language is guilty of supporting ('aiding and abetting,' Article 169 of the Penal Code) a terrorist organisation.

Another problem frequently seen in the prosecutors' indictments is the failure to distinguish between the *non-violent* expression of political views, and cases of *manifest violence* or *incitement* to violence. For example, a charge of 'aiding and abetting an illegal organisation' does not need to be supported by concrete evidence of any linkage with the organisation.

A third case in point is the use of 'taboo' words. Some of the prominent taboo words are:

- 'Kurdish people', or worse '*the* Kurdish people', or even worse 'the Kurdish nation' or 'Kurdistan' (being seen as encouragement to 'separatism' or 'incitement to hatred');
- 'Turks and Kurds', or worse 'the Turkish and Kurdish people' (suggesting that they are two distinct peoples);
- 'Mr' Öcalan (the combination of these two words constituting 'aid and assistance to an illegal organisation'; in 2003 there were 58 sentences on this basis).

A fourth case is the 'sanctity' attributed to public institutions, such as the military, the police, the President and, above all, Kemal Atatürk's memory. For example, under the revised Article 159 of the Penal Code, 'insulting or belittling' different state bodies are still punishable, including criticising: 'Turkishness, the Republic, the Grand National Assembly, the moral personage of the government, the military security forces of the State or of the judiciary'.

Although an unclear addition was made to this article, to exclude 'expression of thought made only for criticism...', penal provisions like Article 159 will still lend themselves to the continued suppression of the free word. In 2003, 70 cases were instituted under this provision. 21 cases were tried, resulting in seven sentences and 14 acquittals.

A main concern is the numerous cases brought against human rights defenders, journalists and lawyers, who are prosecuted on flimsy 'evidence' and spurious charges. It seems that the prosecutors either do not understand, or refuse to understand, that

they are obliged to apply the law in an *objective, independent manner, in harmony with Turkey's obligations under the ECHR.*

Although many of these cases lead to acquittals when they come to the courts, the constant investigation and prosecution of human rights defenders constitute a *pattern of harassment and persecution.*

Statistics from the Turkish Human Rights Foundation (HRFT) show that 65 per cent of cases tried during 2003 under three of the most frequently invoked articles restricting freedom of expression resulted in acquittals! This supports the contention made by human rights defenders that the objectives of the prosecutors are not primarily to have the defendants placed behind bars. The effect of this practice is to perpetuate an atmosphere of uncertainty, fear and intimidation.

During the first 14 years of its existence, the Human Rights Association of Turkey (IHD) has had 300 cases opened against it. In the last three years more than 450 cases have been opened. One of its members, the lawyer Osman Baydemir, now elected as mayor of Diyarbakir, has had a record of 200 cases opened against him for his human rights activities, including as chairman of the local branch of IHD. These figures do not include the cases of investigations that did not result in a prosecution.

The pressure on human rights defenders is partly due to old persisting attitudes, and also to open or covert pressures from certain elements of the state. Whatever the explanation, it cannot be seen that the government has been able to take any effective steps to put an end to this practice. With considerable assistance from the EU, Turkish judges and prosecutors have been trained in European human rights standards and practices, but the effect so far is limited.

During the court hearings, judges often behave in a manner that would not be tolerated in Europe. For example, the judge will sometimes demand, even in minor cases that observers and other persons following the hearings, not only are subjected to a body search, but also that pen and paper which they may have brought, are taken from them. Nobody holds judges accountable for such behaviour.

The police and security forces are another area of serious concern. Unlawful detentions, brutal and inhuman treatment, including torture, continue to be widespread. IHD reports 6,472 cases of human rights violations in the Kurdish areas in 2003. There has been much discussion about the use of torture. The Turkish government, while accepting that torture occurs, denies that it is systematic. The EU Commission appears to agree with this.

HRFT reports 770 torture victims in the period January-September, 2003, compared

with 456 for the corresponding period in 2002. IHD reports that 692 persons were subjected to torture in the first six months of 2004. Torture methods such as electric shock, Palestinian hanging and falaka are still in use. The IHD branch in Diyarbakir claims that one third of the persons recently detained said they had been tortured.

Such massive use of torture could not be used, unless there is at least a tacit understanding within the police and security forces, and that the responsible authorities either know about it, or fail to exercise necessary supervision or to adopt adequate systems and procedures. At least in this sense, torture remains *systematic* in Turkey, as claimed by IHD and HRFT.

The suspicion that there is a mechanism of *impunity* is supported by the slow and low rate of prosecution of public servants guilty of torture and inhuman treatment. Those few cases which are prosecuted often lead to acquittal or lenient sanctions. In fact, persons complaining about police brutality risk prosecution on the basis of 'belittling' the security forces.

### **The fundamental freedoms**

*Freedom of association* and *freedom of assembly* continue to be curtailed in a manner inconsistent with the ECHR. Of particular concern are the restrictions imposed on human rights organisations, trade unions and political parties. Those organisations and parties that work for a solution of the Kurdish problem have in particular been singled out for harassment and prosecution.

In fact, human rights organisations report a massive increase of cases against associations, in particular those that work for human rights and democracy. Article 33 of the constitution on freedom of association was amended in 2001, and declared to be in harmony with European standards. However, it contains important restrictions on this freedom, 'on the grounds of protecting national security and public order, or prevention of crime, or protecting public morals or the public health'.

These restrictions are broadly interpreted by the prosecutors and judges, to close down or penalise associations and individuals who dare to criticise the state, in particular relating to violations of human rights standards.

In addition to the provisions of the constitution, Turkish law provides a wide variety of legal provisions, which can be used, and are used, to impede activities of human rights organisation, close them down and punish the leadership and members.

For example, Articles 5 and 37 of the Law on Association prohibit associations

whose goals or whose activities, respectively, are:

contrary to ... national security and public health and morals, advocating the creation of a minority in the Turkish Republic on the basis of race, religion, sect and regional difference and the division of the unitary state structure of the Turkish Republic; or the denigrating or belittlement of the personality, principles, works or memories of Atatürk ...

In January 2003, a saving clause was introduced to allow persons to claim that there is in fact a minority in Turkey based on these differences! Nonetheless, provisions such as Articles 5 and 37 still lend themselves to a broad interpretation if the authorities wish to close down a human rights association.

Freedom of assembly, an essential element of human rights in Europe, continues to be impeded and restricted. Human rights organisations and individual defenders of human rights are frequently impeded and restricted in holding press conferences, holding public meetings and arranging public demonstrations. Such activities are met with prosecution under various provisions giving the authorities wide discretionary powers. This leads to an *ad hoc* administration of the law, prohibiting activities which the authorities do not like.

Police and security officers are supervising meetings and other activities in a manner which is, and is intended to be, threatening and intimidating. This includes recording and photographing those who are present. In other cases, the meeting is prohibited. According to Human Rights Watch, in the nine months since the Parliament enacted more liberal wording in the Law on Meetings and Demonstrations (No. 2911), 105 peaceful public gatherings, press conferences and demonstrations were dispersed, and 1,822 demonstrators were arrested. This is clearly a situation which is not acceptable by European standards.

One example is a seminar organised in Izmir in 2003 by the Turkish Medical Association. The police demanded to observe the seminar claiming to have information that the seminar was used to carry out 'propaganda for an illegal organisation' (read: PKK). When the organisers complained, an investigation was initiated against them. The charge was 'propaganda for an illegal organisation', 'insulting the spiritual personality of the state', and 'slandering the security forces'.

With regard to freedom of speech and of the press, the judiciary continues to prosecute and sentence organisations and people who speak out against violations of human rights, even completely non-violent and innocuous statements. One of the problems in this area is the above-mentioned established legal logic of guilt by association.

Although many of the frequently used provisions of Turkish laws restricting freedom of expression have been amended in the last few years, these amendments have so far not been seen by prosecutors and judges as preventing them from pursuing cases, which under European standards would never have been investigated or prosecuted. Article 26 of the constitution, which was amended in 2001 to harmonise it with European standards, still contains important restrictions. Freedom of expression is limited to the extent necessary 'for the purpose of protecting national security ... the basic characteristics of the Republic and ... the indivisible integrity of the State', etc., etc.

Again, such language lends itself to wide interpretation, which would make it punishable to criticise, for example, 'the basic characteristics of the Republic' (whatever these 'characteristics' may be considered to imply?).

One of the articles of the Penal Code which is used to limit freedom of expression is Article 312-2. This article criminalises 'incitement to enmity ... based on social class, race, religion, creed or religious difference'. The article was amended in 2002, reducing the sentences allowed, and clarifying that only statements which are 'dangerous to the public order' can be punished. However, the article was also amended in the opposite direction, by punishing the new offence of insulting 'a section of the public in a degrading manner and which would damage human dignity'.

Vaguely worded provisions such as Article 312 may be used, and have been used, to punish statements which in Europe could never be considered as a criminal offence. IHD reports that 35 trials involving 218 persons were launched in the first six months of 2004, under the infamous Articles 159, 169 and 312 of the Penal Code. This compares with 27 trials against 78 persons in the corresponding period in 2003.

An example in point is the recent case against the NGO 'Göç-Der'. In January 2004 the leader of the association and a university sociologist were brought before the State Security Court. The charge was based on a report they had prepared on village evacuation in the South-east. The report claimed that individuals had been tortured, their houses and livestock burned, and that they had been threatened with death if they returned to their village. This was seen as 'openly inciting the people to hatred'. The leader was given a fine of the equivalent of 1,300 €, and the sociologist was acquitted.

On the positive side, the number of confiscated and banned publications has decreased from 2003 to 2004. 'Only' three books and four journals were confiscated, and one newspaper and four journals banned in the first half of 2004.

In the area of *religion*, the rights under the ECHR continue to be neglected, and various obstacles are placed upon the free exercise of their faith by religious communities other than Sunnis. The major Islamic sect of Alevis (the majority of whom are Kurds) are subjected to the same discrimination as non-Muslim faiths. This applies to such issues as difficulties in having property rights and legal status recognised, training of clergy, etc.

### **Civil-military relations**

Some legislative reforms have been made, including in the constitution, to limit somewhat the role of the military, which traditionally has been seen as the 'guardian' of Kemal Atatürk's ideology, including the ideals of the secular state. The military has traditionally been widely respected by the population at large, as a stabilising and incorrupt institution.

In acts and words, the military continues to exert influence and make political statements on issues which in Europe would be seen as highly inappropriate, e.g. on the education system and the role of religion in Turkish society. The main areas where the military today continue to influence the political agenda are:

1. 'Separatism', i.e. the fear of Kurdish nationalism;
2. 'Fundamentalism', i.e. the fear of Islamists changing the 'secular society'.

In the past few months, the Deputy Chief of General Staff, Ilker Basbug, has, for example, expressed the following:

- 'Secularism and moderate (!) Islam cannot coexist; there is either one or the other';
- The future will be 'very difficult and bloody' if there is established 'a federal structure in Iraq on an ethnic basis' (i.e. the fear of Kurdish autonomy in Iraq);
- The US was criticised for not 'meeting our [the military's?] expectations to start military action against the PKK'.

Reforms proposed by the government are quickly dropped if the military comes out with statements against such reforms. Investigations of 'subversive' cases, e.g. speeches on the Kurdish problem, are often started after the military has come out with public criticism of the speech. Such activities by the military are often the result of alliances made by the military with political forces, which share the

military's views on any given subject.

A recent example is the government's proposal to amend the law on YOK, the Higher Education Board, which is supervising universities, in conjunction with changing the situation of the religious schools, called 'Imam Hatip' schools. The proposal would give graduates from the Imam Hatip Schools wider access to universities than they have had until now.

The Chief of General Staff, Hilmi Ozkok, issued a stern statement, stating that the reform bill 'contradicted the principles of secularism', that it would boost the influence of Islam in education. It also said that the military was 'one of the sides' in the dispute. The EU Commission Representative in Ankara, Mr. Kretschmer, characterised these statements as not displaying 'a constructive attitude', referring to the civil-military relations as important criteria for the EU. Some politicians demanded that Mr. Kretschmer should be declared 'persona non grata', for interfering in Turkey's internal affairs and showing 'disrespect for codes of international diplomacy'. The spokesman of the Foreign Ministry also referred to these codes, for which he expected respect (from Mr. Kretschmer). Criticism of the military is obviously not easily acceptable in Turkey.

Many of the government's proposals are seen by the 'deep state' as evidence of the 'hidden agenda' of the government to lead Turkey in the direction of Islamist fundamentalism. It is assumed that the President, Ahmet Necdat Sezer, himself a strong 'secularist', will veto the new law on YOK.

### **The Kurdish problem**

The Council of Ministers of the EU referred to 'the situation in the South-east of the country and cultural rights' as one of the four major areas of concern. This is a diplomatic euphemism for '*the Kurdish problem*', a very sensitive and controversial area in Turkish politics. The Turkish perception of human rights and minority rights, has since 1923 been that the Kurds are *not* a minority. The official view is that only non-Muslim communities have minority rights (described as Jews, Armenians and Greeks in the Lausanne Treaty of 1923), and that human rights problems must be solved on the basis of the *individual's* human rights.

Even some Kurds do not like to be described as a minority, being a demeaning swear word. Some say they are a *nation*, others say they are a part of the majority. The point is that international law and various pertinent conventions grant minorities certain rights, which in practice have often been denied to them. Once a minority has all the rights to which they are entitled, it becomes largely irrelevant how they are described. However, the international concept of 'minorities' has had no impact

on the uniquely Turkish concept of minority rights.

The Copenhagen Criteria specifically refer to ‘respect for and protection of minorities’, in order to underline the importance of minority protection. The Commission has in all its progress reports stated again and again its requirements as far as minority rights are concerned. In its 2004 Report, the Commission:

- Rejected the Turkish interpretation, reminding the Turkish government that there are other communities in Turkey than Jews, Armenians and Greeks, ‘including the Kurds’;
- Expressed in this context, its concern that Turkey’s reservations to UN Covenants on the right to education and the rights of minorities ‘could be used to prevent further progress in the protection of minority rights’;
- Pointed out the valuable role which the OSCE High Commissioner on National Minorities could play ‘in assisting Turkey to move towards full compliance with modern international standards on the treatment of minorities’;
- Also pointed out that Turkey has not signed the European Framework Convention for the Protection of National Minorities, or the Charter for Regional and Minority Languages.

Commenting on the Report, the Turkish President dismissed the fact that Kurds (and Alevis) constituted a minority. He said they were just part of the majority in the country, and ‘why should we call a part of the majority a minority?’ The Progress Report had a chapter (1.3) on ‘Human rights and the protection of minorities’ dealing at length with minorities, including the Kurdish minority. Nonetheless, the Turkish Foreign Minister, Abdullah Gül, proclaimed that the Report ‘did not refer to minorities’. He even claimed that the Commission had ‘agreed to take out all references to minorities’. The Turkish Prime Minister recently put the official view this way: ‘If you do not think about it, there is no Kurdish question’.

With attitudes like these at the highest political levels, it is not surprising that the authorities have never attempted to resolve the problem through peaceful means. Instead, Turkey has so far met the Kurdish problem with a wide range of repressive measures, which have brutalised Turkish society. Every year thousands of Kurds (and Turks) are beaten up during demonstrations, arrested, detained, tortured, sentenced or they simply ‘disappear’, all as a result of having expressed non-violent, but unpopular, opinions about the solution of this problem. The prisons are overcrowded with such persons.

The Kurdish population comprises somewhere between 15 and 18 million people, about 25 per cent of the total population of Turkey. The Kurdish problem is *the single most important cause of human rights violations in Turkey*. However, as long as Turkey denies the existence of the problem, it will be impossible to find a satisfactory solution in the near future. Turkey will have come a long way, the day it realises that ‘minorities’ in Turkey are not only Jews, Armenians and Greeks! As mentioned above, it is no longer a criminal offence to say that, for example, Kurds are a minority in Turkey, even though the state does not recognise them as a minority (!). This is at least a step in the right direction.

In spite of this *policy of denial*, the Turkish government has declared that it accepts and promises to implement fully the Copenhagen Criteria, which very specifically include ‘the respect for and protection of minorities’. Confronted with the Copenhagen Criteria, some legislative reforms have now been made, somewhat hesitantly. For example, in the area of broadcasting and teaching of the Kurdish language, a few reforms have been introduced, narrowly circumscribed and giving wide, discretionary powers to the authorities to determine the extent of the ‘rights’ which in principle have been granted.

For example, programmes in Kurdish for children on radio or TV are prohibited. Radio programmes must not exceed one hour per day and five hours per week. TV programmes must not exceed 45 minutes per day, and four hours per week. Subtitles or translations into Turkish are mandatory. Such clauses are far from showing ‘respect for and protection of minorities’. Warnings and closure of TV and radio stations continue to be frequent. In February 2004, the supervisory authority, RTÜK, issued a warning to one TV channel which had shown a music programme with songs in Kurdish. This was based on a provision which prohibits programmes that are ‘in breach of the general principles of the Constitution...national security...etc. The citizens of any EU country would surely not accept such laws and practices.

The reforms and the practice followed by the RTÜK indicate that the government is not yet prepared to accept the granting of all rights that the Kurds have under the ECHR and other international instruments. Its reservations to Article 27 of the UN Covenant on Civil and Political Rights are indicative in this respect.

In 2003 a new law was passed allowing Kurds to use their Kurdish names. It is indicative of the attitudes of the authorities, that the Commander of the Gendarmerie requested from the Attorney General the full list of people who had applied to use Kurdish names. He considered such persons as ‘potential threats to the social order’.

It would be helpful if the EU clarified in some detail its requirements under European standards, to ensure ‘respect for and protection of minorities’. The EU

should address the problem directly, for example by using the term ‘the Kurdish minority’, instead of euphemistic terms, such as ‘the South-east’, ‘the situation in the South-east’, and ‘citizens of Kurdish origin.’ This is terminology used by Turkey to prevent a *real* discussion of the *real* issue, which is the Kurdish problem.

## **The objectives**

The EU Commission in its Report has indicated some basic conditions for the opening of accession negotiations. Among these are:

- The ‘legislation and implementation measures need to be further consolidated and broadened’;
- The Commission will ‘continue to monitor progress of the political reforms closely’;
- There will be an annual review of the progress;
- ‘[T]he pace of reforms will determine the progress in negotiations’;
- There will be benchmarks for each chapter of negotiations, including ‘legislative alignment and a satisfactory track record of implementation’;
- There should be a ‘substantially strengthened political and cultural dialogue’ between people from the EU and Turkey, and ‘civil society should play the most important role in this dialogue’; and
- In case of a serious breach of the ‘principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law’, accession negotiations may be suspended.

From a human rights perspective, the goal of the accession negotiations must be to ensure at the earliest stage of the accession negotiations, that Turkey has achieved the following objectives, in its legislation and its practice:

- An independent and well functioning judiciary;
- Full freedom of expression, including the press, radio and TV, in line with European standards, with abolition of the censorship system, and based on a system of equality as far as use of the Kurdish language is concerned;

- Freedom for associations and political parties, without the bureaucratic restrictions - whose main purpose are control - including the right to freely cooperate with foreign and international institutions, as practiced in Europe;
- An end to the traditions of torture, inhuman treatment and 'disappearances';
- Recognition of the cultural and other rights of the Kurdish people, including the right to give and receive education in the mother tongue;
- Aligning the civil-military relationship with European practices; and
- Right of return for the millions of Kurdish internally displaced persons to their homes and villages, assistance to do so, and redress for the losses suffered.

### **Methods to achieve the objectives**

There are various procedures which may be considered by the EU, in order to achieve the above-mentioned objectives.

As mentioned above, finding a solution to the Kurdish problem is a *sine qua non* for Turkey to comply with the Copenhagen Criteria. Therefore, it is important to clarify that:

- There exists in Turkey a Kurdish minority, which under the Copenhagen Criteria and international law has the right to be respected and protected by Turkey;
- There is in Turkey a Kurdish problem, which needs to be resolved urgently in law and practice; and
- Turkey can never comply with the Copenhagen Criteria until this problem has been satisfactorily resolved.

Secondly, in order to achieve the overall objectives of full respect for human rights, the following may be suggested:

- As indicated by the Commission, Turkish and European NGOs should have a prominent role in monitoring the implementation of the reforms;

- A tripartite body, consisting of representatives from the Turkish government, the EU Commission and NGOs, should be established;
- This tripartite body should have the authority to examine any case of alleged violations, which any participant in this body considers important to bring to its attention. Depending on the workload, subordinate groups may be created to deal with individual cases;
- In this tripartite body, the government will be expected to explain and document why a violation has occurred, during which the prosecutor involved may be called upon to explain what action he has taken or proposes to take;
- The tripartite body may give recommendations as to the steps to be taken to remedy the violation, and to help ensure that similar violations do not recur; and
- The tripartite body will advise the government on the type of information and instructions or guidelines that may be issued to the judiciary and other relevant public bodies, to help in the practical implementation of the reforms; this would include:
  - The instruction that (under the recent amendment to the constitution), Turkish law is subordinated to the ECHR, including the jurisprudence of the ECtHR;
  - Detailed explanations of human rights standards as they should be interpreted and applied in various standard types of cases; and
  - A reminder of the personal responsibility of each member of the judiciary to comply with, and apply, Turkish laws *and* the ECHR.

As a pilot project, one could also visualise that during a trial period of, say, six months, all prosecutors would submit to the Ministry of Justice (for review by the tripartite body), all proposals they may entertain, to bring prosecutions relating to:

- The proposed closure of any media (newspapers, periodicals, radio, TV);
- Words spoken or written on the basis that they are

violating specified articles which punish the expression of views;

- The proposed dissolution of, or other sanctions against, a political party, an association or a foundation; and
- Words spoken or written by members of political parties, associations or foundations relating to their activities as members.

The tripartite body would discuss the above-mentioned cases, in consultation with the relevant prosecutors, and advise the government of the steps to be taken to avoid instituting proceedings on manifestly unfounded grounds. Procedures should be adopted to ensure that all cases where officials are suspected of having violated human rights standards will be promptly and effectively investigated and prosecuted.

The EU should at this stage be more specific than it has been so far with regard to the remaining legislative reforms that are needed, as well as specific steps to be taken to ensure effective implementation of the reforms. This would help the government to get a more complete understanding of these requirements and assistance in complying with the requirements. In this way, Turkey would get the opportunity to adopt a work programme that would fully address all remaining areas of concern, and in the end would make human rights a reality in the daily life of all citizens.



## **The Cultural Situation of the Kurds in Turkey**

*Lord Russell-Johnston*

Member of the House of Lords and former President of the Parliamentary Assembly of the Council of Europe (PACE)



*Lord Russell-Johnston (far right) with: (from left) Peter Galbraith, Hatip Dicle, Kariane Westrheim, Kerim Yildiz, Conny Fredriksson and Helene Flautre*

To begin with I should like to thank the organisers of this conference on ‘The EU, Turkey and the Kurds’ for the invitation. Listening to the message from the splendid Archbishop Tutu I thought to myself: globalisation often gets a bad name and perhaps some of its economic effects are less than benign, but the globalisation of thinking and commitment on human rights standards is a wonderful development.

The Council of Europe (46 Member States) is not the EU. It deals with human rights but also with many other aspects of inter-governmental cooperation (Turkey has been a member for more than 50 years). The Parliamentary Assembly is made up of national parliamentarians (contrary to the directly elected European Parliament). Our Committee on Culture, Science and Education of the Assembly appointed me as Rapporteur on the cultural situation of the Kurds and I intend to present my report sometime next year.

As a start I went to the South-east of Turkey last June. I visited Diyarbakir, Mardin, Van, Hakkari, Ankara and Istanbul and I met Kurdish institutes and cultural centres, local authorities, NGOs, Turkish MPs from Kurdish regions, the Turkish Minister of Foreign Affairs – Abdullah Gül, the Minister of State responsible for broadcasting and the Director of Turkish Radio and Television. Two important events took place during my visit: the liberation of Leyla Zana and three other

former parliamentarians of Kurdish origin and the first ever broadcast in the Kurdish language by the Turkish National Television.

Although I was looking at the cultural aspect of the question, the political and human rights situation was also very much present as this is part of the same picture: the situation of the Kurds in Turkey. I hope also to take full account of Kurds in Iraq, Iran and Syria, though access is a problem.

In a week I did not, of course, become a specialist on Kurds but I learned much and will now share some of my reactions.

There is no doubt that a very large minority of Turkish citizens are Kurds, mainly concentrated in South-east Anatolia but also in large cities such as Istanbul (there are no official statistics but estimates indicate from 10 to 15 million Kurds in Turkey). There are of course many other minorities in Turkey, with their particular cultural heritage, but they are not the subject of my report or of this conference.

South-east Anatolia is also the least developed region in Turkey. Several reasons contribute to this: its isolation (which is illustrated by the fact that it took me 7 hours to go to Hakkari – where I was told there was 70 per cent unemployment - and back by the only existing road), the social structure (which still features some remnants of feudalism – such as the Agas), the economic structure (based mainly on agriculture and livestock). I understood that much of the benefits from the GAP irrigation project does not profit the region or their inhabitants but only a few already rich landowners who do not reinvest those profits at home.

Some claim that an increase in religious fundamentalism is also responsible for the backwardness of this region but I saw no evidence of this. Indeed the brave lady of Ka-Mer, whom I met, campaigning against honour killings, said the Mullahs were supportive.

The war opposing the PKK to the Turkish army of course made the situation much worse. From the cultural point of view, for instance, I was told that the literacy rates in the region had decreased dramatically in the last 15 years, in particular those concerning women, as a direct consequence of the war (parents are afraid of sending their daughters to school).

For many decades the Kurds were not recognised by the Turkish authorities, they were not allowed to use their language and there was, of course, no mention of the Kurdish language (or languages) in education or in the media. Perhaps a little bit of folklore was allowed every now and then. All those who tried to speak in favour of their cultural rights were seen as traitors and treated accordingly. During what was a civil war I was leader of the Liberal Group and we were joined by a Turk. He flatly

denied the existence of Kurdish culture.

By their attitude of total rejection, the Turkish authorities fuelled the very Kurdish separatism that they contested and which they fought at such a high price for Kurds and Turks and for the country as a whole.

This situation seems to be changing, in particular in the last two years of the new government. Whether this is because of pressure from European institutions, as many Kurds suspect, or because of government awareness, as it claims, does not appear to be really relevant: what is important is the fact that changes are taking place both at official level and within the opinion of the Turkish public as a whole.

The changes I witnessed in the cultural field include the broadcasting in Kurdish dialects on the Turkish National Television and the permitting of Kurdish language courses. Books, records and concerts in Kurdish are no longer forbidden but still face unreasonably high administrative hurdles.

As those broadcasts took place too early in the morning, the subjects treated were trivial and the whole exercise was carried out without any involvement of the Kurds themselves; given that the very few language courses that function are in the format of Kurdish as a foreign language (and therefore of no use for the Kurds) one must conclude that the changes that have been implemented are hesitant.

But if on the other hand one compares these changes with the situation of not very long ago when it was not conceivable that a Turkish politician or official would even pronounce the word 'Kurd', one must realise that they do represent a deep change.

They mean that a process has been set in motion, a process which we all wish to be irreversible. They are but very little steps, but steps in the right direction. It is for Europe and its institutions, but also for the Kurds themselves and for the many Turks that support the preservation of Kurdish culture, to keep the pressure on the government of Turkey to widen and to accelerate the process of change.

It should be noted however that, while laws can be changed in one day, attitudes and mentalities take much longer. And many Kurds and Turks need to revise and reconsider some attitudes.

Turks should realise that Kurdish language and culture are part of the heritage of their own country, that they are a richness worth preserving and not a threat to be combated.

Kurds should believe in the goodwill of the government and convince by their attitude their Turkish compatriots that they wish to contribute to build their

common country.

Many inhabitants of Turkey have to modernise attitudes. The great majority of Kurds and Turks are aware that Europe is a positive thing and place hope in their common future within Europe. They should also be aware that a country where so-called 'honour killings' are still accepted by some as a part of their 'traditions' is a country which has no place in the Europe of human rights.

The Turkish Penal Code has no specific clause on honour killings but there are often acquittals. This is unacceptable. It is difficult to know how different the Kurds are from the other inhabitants of the area on this issue but, according to a poll published by USA Today last April and relating to Northern Iraq, the Kurds had the most progressive views on the general question of the treatment of women. Equality between women and men is one of the basic principles of the Council of Europe.

The member countries of the Council of Europe vary in their approach to regional or minority languages and to the role of mother tongue in education (the Committee on Culture, Science and Education will be looking into this issue in the near future). The official language in Turkey is Turkish and it is only normal that this is the language of education provided by the national education system. But Kurdish is the mother tongue of a large part of the population and it is only normal that Kurds are also able to study their own language at school.

After the start of broadcasting in Kurdish it is now time for the setting up of Kurdish media: newspapers, radio and television stations. These should be authorised by the government and should be actively supported by Kurdish businessmen and intelligentsia. The evolution of public opinion in Turkey mentioned before makes this possible.

Europe and its relevant institutions, in particular the Council of Europe and the EU, have a major responsibility. Turkey is engaged in both being within the Council of Europe – and in permanent dialogue in its Assembly – which some say is the anti-chamber of the EU, where it seeks entry.

## **The Suffering of Kurdish Women**

*Pervin Buldan*

President of the Turkish Association for Aid and Solidarity for the Families of Missing Persons (Yakay-Der)



At a period when the accession of Turkey to the EU is being debated, I believe that the discussions regarding the system of governance in Turkey are flawed.

There are inadequate discussions on the continuing influence of the military on the domestic and foreign policies of Turkey, the obstacles to the development of civil society, the concern that Turkey continues to be governed by a 'Military Constitution' and also concerns about the economic strength of the military. There needs to be an unfettered discussion regarding the shortcomings of the Turkish polity.

Why? Because in Turkey we have to acknowledge that there is a reluctance to discuss what some call the 'deep state' or, more openly, 'contra-guerrilla institutions'. This diminishes the levels of transparency and clarity necessary both for the internal dynamics of Turkey as well as for the EU.

If in Turkey the person at the head of a state organ is also a close ally and confidant of the so-called 'deep state', and moreover, if this person protects and assists those in the 'contra-guerrilla' institutions which have killed thousands through extra-judicial murders and furthermore grants these gangs virtual immunity from prosecution when in custody, it is impossible to talk of real democratisation and the development of civil society.

Turkey's portfolio with regard to the right to life and human rights in general proves that we are far behind the civilised world in the application of universally accepted ethics and conventions. Nowhere is the constant, uninterrupted and extensive violation of fundamental rights and freedoms more pervasive than in the approach to the Kurdish question. The policies practiced by the civil and military administration in its approach to the Kurdish national question are the real primary cause of the impenetrable fog that surrounds the human rights field. The Kurdish question is the most fragile and weakest link in the rotten chain of Turkish rule. And the fact that Turkey is trying desperately to conceal this truth only places an unbearable and additional burden on the chain.

In the past the legal system and the Turkish Constitution fed and protected the dark forces and enabled them to brutally crush whatever fundamental rights and liberties the Kurdish people still enjoyed. We would like to point out that the illegal organisations which prospered under this terrible system have not vanished. They are closely related to the current prevailing human rights violations and have spread to all aspects of life. If we were to outline the statistics of this trend, this would show its extremely negative nature.

The period of violent clashes between 1990 and 1997 in the Kurdish region of Turkey caused immense pain and intense sorrow.

Some were taken from their homes, some from their work and some were killed in public in front of many eye witnesses. Most do not even have gravestones. Some of us lost our partners, children, friends, brothers, sisters and fathers. However, unfortunately those who have committed these crimes enjoy a free life and do not have to fear being convicted in the future. Some have even been rewarded by the authorities.

No voice was raised in criticism either in Turkey or internationally against the repressive policies and violence of the Turkish regime.

The main victims of this bloody period were Kurdish women. Thousands of women lost their relatives to contra-guerrilla murders or never saw their relatives again after they were taken into custody. After thousands of villages were burnt and emptied, many women were forced to migrate to the metropolitan cities where they endured a different trauma. They were forced to live in an area where they did not know the language, or after their husbands were put into prison they had to bear the economic burden of the home. This period did, though, produce another result. The women who were harassed or intimidated in the Kurdish region became more politically aware.

They organised the 'Saturday Mothers', who used 'civil disobedience' to gain publicity. They succeeded with this mission and their campaign brought attention to the 'disappearances in custody' cases. These cases now became known to the public in Turkey as well as to the world at large. Every week they held sit-down demonstrations at Galatasaray Place to 'ask for the people that have disappeared', which forced the state to talk about the 'reality of the disappeared'.

The Kurdish women once again took a stand against war and expressed their desire for a world without weapons when they founded the 'Peace Mothers'. Suffering had politicised these women, who took to the streets to question their lives in the Kurdish region and the behaviour of the Turkish state.

Women were in this period, as in all wars, seen as war trophies. To break their will, 'sexual violence' was practiced against Kurdish women. Despite this suffering, Kurdish women became increasingly aware of their rights.

Now women in the Kurdish region speak up about the sexual violence they have endured, and for that reason women who have lived through similar victimisation have also developed the assertiveness to 'demand their rights'.

In conclusion, Kurdish women in the period of the military conflict made enormous sacrifices. However, their suffering also forced them to become more politically aware, and they started to participate more in public life and even took to the streets demanding their rights. Today the most effective defenders of peace and anti-militarism in Turkey are Kurdish women.

With my hope and belief that we are close to an honourable peace, love, justice, democracy and human rights, I would like to once again give my respects to the participants at this conference. Thank you.



## **Forced Migration**

*Şefika Gürbüz*

President of the Migrants' Social Solidarity and Culture Association (Göç-Der)

Starting with the process of its foundation the most basic problem of the Turkish state has been democratisation.

The democratisation of Turkey and the establishment of a pluralist, humane and peaceful social structure are vital to solving the Kurdish problem. Turkey's dismissal of this problem, her denial of the existence of the Kurds, her disregard for Turkey's multi-ethnic society and her attempts to create a homogenous and unitary society out of these foundations by using violence and force, have all contributed to harming the relationship between Kurds and the Turkish Republic. Many times, this situation gave rise to rebellious social movements. Such movements have been met by the state with various strategies, one of which is forced migration. Particularly in the decade between 1991 and 1999, people living in the villages who resisted pressure to become village guards were forced by the state to evacuate their villages. During this process approximately 4000 villages and hamlets were burnt or destroyed and approximately three million Kurds were forced against their wishes to migrate to bigger cities in the area and to metropolises in Western Turkey.

The fact that the Kurds had to leave their homes and migrate to new places resulted in a number of problems. The demographic make up of cities was destroyed; municipalities that were already having difficulties serving the city population were unable to provide services at all to new residential areas; and the lack of municipal services has meant that cities have essentially been transformed into large, underdeveloped villages.

Forced migration has greatly harmed the social, economic, cultural and psychological conditions of Turkey and has also destroyed the productive capacities of the migrants.

The problems that the internally displaced face can be discussed under the following headings:

- Economic problems related to employment and income;
- The inability to meet basic needs such as education, health and nutrition;
- Problems related to adaptation and to linguistic and cultural differences;

- Psychological problems related to the experience of migration, feelings of fear, insecurity and the treatment of migrants as potential criminals.

Internal displacement was enforced upon a population consisting of people who made their living primarily as agricultural producers. Thus as well as creating social problems in the cities, the most important being unemployment, internal displacement has caused agricultural production to stop in the area from which displacement has occurred. After internal displacement Turkey, a country that prided itself on its animal products and for not importing any basic agricultural produce, has started to import meat, milk and agricultural goods and has become a country unable to feed its population with its own resources.

One of the most important problems that internally displaced people face after migration is unemployment, temporary employment and employment in low-paying jobs with no social security. The internally displaced become absorbed into the city as unskilled labourers, unable to take advantage of the possibilities offered by the city. They have no opportunities to elevate themselves; to adapt and become integrated into urban life. As a result, they live in 'ghetto-like' areas of the city with very low living standards.

Internally displaced persons (IDPs) find themselves in very difficult living conditions and face irresolvable problems. Due to the anti-democratic measures taken by the state against Kurdish people in general and IDPs in particular, IDPs are unable to exercise their social rights that include the right to live in a humane environment, the right to social security, and the right to education and health.

The provision of a humane, secure and sustainable environment for IDPs necessitates the implementation of projects that will support them. However, the creation and application of such projects are constantly delayed, leaving IDPs to their fate.

We should also note that problems of adaptation only add to the problems faced by IDPs. 29.4 per cent of IDPs experienced problems due to linguistic and cultural difference after migration.

For example, research shows that:

- 21.6 per cent of those who migrated to Diyarbakır;
- 2.6 per cent of those to Batman;
- 32.3 per cent of those to Istanbul;
- 20.7 per cent per cent of those to Batman;

- 48.4 per cent of those to İzmir; and
- 27.2 per cent of those to Mersin

experience problems due to linguistic and cultural difference. This is a very important fact since it is these differences that make it difficult for IDPs to participate in social and public life. It should also be noted that most of those who experience problems stemming from cultural and linguistic differences are women.

The problems that women face after forced migration should be discussed under a separate heading, most importantly because the experience of internal displacement has left many women traumatised. Since many women do not speak Turkish, they have not been able to enter public life and develop new networks in the city. Psychologically, they have become alienated from urban culture and their own culture alike. The difficulty in expressing themselves due to linguistic issues and the fact that they are obliged to always use a translator has left displaced women isolated and adversely affected their health. The violence experienced during forced migration has left many traces on them, and their desire to return home grows every day, making it impossible for them to integrate into urban life.

While women were producers in their villages, they were disconnected from production through displacement and in the city they lost their productive role altogether. Economic problems have increased the violence they face at home. Feelings of isolation and of being redundant have grown. Employers in urban areas have often used the existence of IDPs to their advantage. Specifically, the use of women's labour and child labour has become prevalent in the cities. As a result many women work long hours in low paying jobs with no social security.

While access to education has always been one of the basic problems in Turkey, for IDPs the situation is even grimmer.

75.4 per cent of IDPs are unable to provide long-term education for their children due to lack of resources. Children either do not start school, or are forced to leave school before finishing primary education. The problem of not sending children to school due to financial difficulties is most prevalent in the cities of Batman, Van and Mersin. Also, the fact that IDP children are seen as potential criminals in the schools they attend is another frequently stated reason for quitting school.

Many children are forced to work as their parents are unable to find jobs after being forcibly displaced. Since 1994 the numbers of children who work in order to contribute to family income have increased immensely. The numbers of children who work as street sellers (selling for example water, gum and tissues) have also increased, and the fact that governors have reacted adversely to these children

leaves them insecure and fearful.

Kurds who were forced to migrate to new areas due to the conditions of conflict and tension in their homes frequently face pressure from central and local authorities. In addition, the police treat them as potential criminals. A broader implication of the conflict has been the psychological harm that it has caused to IDPs relocated to urban areas, who often encounter prejudice and discrimination in their host cities. Even Kurds who migrated earlier to urban areas and who are successfully integrated avoid contact with IDPs since they are either ashamed of the poverty that newcomers suffer or fear that prejudices may also be directed towards them. As a result, urban environments are currently ridden with ethnic tensions.

In order to create a sustainable and deep social peace and to establish an integrated, pluralist and democratic social life and value system, it is necessary to produce projects that will increase and stabilise the experience of living together among urban groups.

### **Proposed solutions**

The problem of internal displacement is closely connected to the Kurdish problem. As such it can not be resolved without addressing broader issues. The following are identified as measures which should be taken to resolve the problem:

- The Kurdish identity should be constitutionally recognised;
- The village guard system should be lifted;
- Landmines should be cleared;
- Conditions for return should be prepared. These conditions include the provision of health, education and security of life;
- Loan possibilities aimed at improving agriculture should be created;
- Practices whereby IDPs are compelled to sign papers that declare forced migration to be a consequence of terrorism should be abandoned.

Policies that recognise and are harmonious with the linguistic and cultural plurality of the Anatolian heritage should replace policies that uphold power and identity, ignore diversity and enforce unitary identities. This will open the way for resolving the problems in a framework of 'pluralist citizenship', generate democratic, humane and peaceful solutions and go towards the creation of social peace.

## The Role of the Media

*Celal Başlangıç*

Author and founder of the Turkish newspaper 'Radical'

The history of the media in Turkey is actually the history of finding and losing freedom. It is clear that in the last 25 years what we have lost is greater than what we have found.

We should take the military coup of 12 September 1980 as the starting point for the first big loss.

The picture of the past 25 years, including recent years, from the perspective of the freedom of the press and human rights violations is frightful.

According to the work carried out by the 78's Trust, after the period of the military coup:

The total sentences that journalists in prison have received amounts to 3,315 years, the number of days that newspapers were banned from publication in Istanbul amounts to 300, the total number of years of imprisonment for journalists is 4000, the number of journalists in prison totals 31, the number of journalists who have been charged in *absentia* and are wanted by the police is 13, the newspapers, magazines and books that have been confiscated and destroyed by burning amount to 39 tonnes, and the quantity of publications impounded to be destroyed is 40 tonnes.

Following the introduction of some form of limited multi-party politics after the coup, and in view of the fact that the leader of the coup became the President, a certain hope of freedom subsequently arose, although it was relative - the PKK's actions began at this time.

During the initial stages of the coup, prior to its full realisation, an environment was indeed created which was conducive to writing or the expression of opinions. There were still charges and convictions, but what was happening in the region was, to a limited extent, being reflected in the media.

The most important inhibiting factor which we were experiencing at that time was self-censorship, which had proven difficult to get rid of altogether following the 12 September coup.

Censorship in the period following the coup, though, became institutionalised in the media. This institutionalisation is still very much current today. There existed open channels of information about what was happening in the East and South-east, but the problem was in the flow of information to the public. The three obstacles to this were: legal restrictions, the monopolisation of the media by moneyed interests and self-censorship.

The public was not only prevented from accessing information regarding the region where the so-called low intensity war, as it was named by the military, was taking place. The penetration of a mass media motivated by corporate interests into almost every aspect of life became a barrier to information on many subjects of public interest reaching the public, such as the running of the banks and the stock market, among others. During this period the public's mistrust of the news as printed in the newspapers and portrayed on television increased. This deep mistrust generated a disengagement from the problems in the country in general.

There was also the issue of the media workers. During the 1990s, most of the media workers who belonged to the trade unions which formerly existed within most of the newspapers in Turkey were sacked. The unions were thus in no position to protect their own interests as workers, never mind start protecting the rights of the public to receive the news or exert pressure as journalists to deliver the news informatively to the public. As a result, this lack of job security and lack of security within the journalism profession reached a new low level in Turkey.

The problem today can for example be seen in the report of 2003 from the Journalists' Association of Turkey, which refers to 'between five and six thousand unemployed journalists'.

As I mentioned before, life in the 1990s seemed to be moving backwards. This was partly because the Republic of Turkey had decided to change its conception of its struggle with the Kurdish problem. In essence this meant that the existing battle would be intensified. There were inevitably repercussions for the media.

As an example, in 1989, when I found out that the villagers of Yesilyurt in Cizre had been forced to eat excrement, I was not concerned 'whether this news would be published in my paper'. At that time Cumhuriyet newspaper was trying to publish stories like this. Even though it was difficult, this incident became the headline in Cumhuriyet. However, the new laws concerning censorship and exile in connection with the State of Emergency, which began in 1990, prevented the public from obtaining this sort of information. When, accordingly, more authoritarian government orders began to be issued, my manager at the time told me 'don't bring news like this again, we can't publish it.'

After this the Anti-Terrorism Law was enacted. It was especially Articles 6, 7 and 8 of this Act which were opening a way for journalists and writers to be prosecuted as 'terrorists' in the State Security Courts (DGM).

On top of the existing self-censorship, the media corporations were interested in submitting bids to the state for factories or assets sold off cheaply following privatisation, a situation which served to further impede press freedom. Furthermore, the media were now facing heavy financial penalties and prison sentences.

For these reasons, the reality behind the bombing of Sirnak town centre and the burning and destruction of Lice District in 1992, for example, were not reported to the public openly. Only part of the reality behind these incidents was explained by an official report from the Prime Minister's Inspections Committee in the official 'Report into Susurluk'. However, to this day, some of the pages from this report have not been disclosed to the public on the basis that they are 'state secrets'.

When this report was used as evidence in my book 'The Temple of Fear', which was published in 2002 and covered the incidents in Lice and Sirnak, a court case was brought against me under Article 159 of the Penal Code, and my book was confiscated. I was cleared of charges after the trials which lasted for eight months.

The change of policy at the beginning of the 1990s led to increased murders, a new wave of enforced village evacuations, killings of journalists, and even bombing of newspaper headquarters. By the year 2000, the media's self-censorship had become worse, especially regarding the Kurdish problem. Now the mainstream media was in a position of being unable to write or disseminate proper news or comment as they could be subjected to court action. In other words, those who effectively imposed self-censorship on journalists could themselves enjoy the freedom of the media.

Let's leave the mainstream media to one side. In a district in the west of Turkey with no connection with the Kurdish problem, what happened to a journalist who had come into conflict with a leading local official is a striking example of 'freedom of the media' in Turkey. Sinan Kara is the owner of the Datca newspaper in the district of Datca in Mugla. As a result of the investigations he made regarding a leading local official of the district, a number of cases were brought against him.

So far, Sinan Kara has been tried on 31 charges. In two of the cases, he was sentenced to 15 months in prison and was imprisoned twice. Of the other twenty-nine cases, he paid one billion lira of fines as a result of five of the cases. In eleven cases it was decided to dismiss proceeding and release Kara. Four of the rest of the cases are pending at a local court and another nine in the High Court. The outcome of the decisions on nine cases which went to the High Court from the local court was that Sinan Kara was sentenced to a total of six years, having to pay more than 20

billion lira in fines. A further eleven prosecutions are being brought by the public prosecutor.

Thus whilst on the one hand new legislative provisions have been introduced in line with EU regulations, on the other hand contradictory actions have been taken. For example, in 2003 a new application was made against Prof. Dr Fikret Baskaya under Article 159 of the Penal Code. He has repeatedly had charges brought against him over the last forty years because of his ideas and has been imprisoned three times. In 1992 he was charged for publishing articles in a newspaper. In 2003, when the articles were re-published as a book under the name 'Writing Against the Flow', legal action was brought against him. The interesting feature of his case is that legal action was brought against him not for the first or second editions of his book, but for the third edition.

Another example I want to give is regarding the newspaper *Ulkede Ozgur Gundem*. According to the statement made by Editor Irfan Ucar, up until 7 September 2004 a total of 90 charges had been brought against the newspaper for a total of 192 editions. Under Article 159 and 312 of the Penal Code, 15 cases were already pending. 12 cases are also pending at a specialised criminal court, which replaced the DGM.

We have also this year's second report by Media Observation Report, published by the Freedom of Media and Independent Journalism and News Watch Network. In the period that the report covers, Turkish National Radio and Television (TRT) for the first time aired programmes in languages other than Turkish, including Bosnian, Arabic, Kurmanji, Zaza and Circassian. Also, in this three month period the Publishing Acts were amended and the DGM were closed down.

I would like now to present a series of illustrative facts in relation to this report.

Nine out of 23 journalists were put on trial following proceedings initiated against them under Article 159 of the Turkish Penal Code, and five of them were tried under Article 312 of the Penal Code. Two out of six libel cases against eight journalists were concluded. A total of 670 billion lira in moral compensation was awarded to five journalists from *Vakit* Newspaper and *Mus* News paper.

Within a period of three months, the Radio and Television **Supreme Council** (RTÜK) issued warnings to sixteen radio and television corporations, ten of which were local, for 'crossing the limit of criticism'. RTÜK alleged that Diyarbakir Can TV, Diyarbakir Gun TV, Istanbul Anadolu'nun Sesi, Ankara Ozgur Radyo, Hakkari FM and Arifan Radio had 'incited society into ethnic separatism, and terrorism. Allegations were also made of 'separatism' against Istanbul Anadolu Sesi Radio and Diyarbakir Gun TV, and they were asked to respond to these allegations by providing a defence statement.

Again in this three month period, out of twenty five staff working for Dicle Haber Ajansi (Dicle News Agency) and Ozgur Halk Dergisi (Free People Magazine), Ugur Balik and Baris Gullu were released after being detained for six days following allegations of 'having connections with Kongra-Gel'.

Before the NATO summit, the police arrested eight people from TRT Istanbul Radio. After this event Mehmet Demir, a reporter for TRT and also a representative of Haber Sen, was relocated to Erzurum for temporary duty for a month.

So even the changes made in the law in order to bring it into conformity with EU standards have not led to the dismantling of self-censorship, and neither have these changes made any improvements to the media's ability to cover what is really happening regarding the Kurdish problem. For example, last month when the Turkish and Kurdish youth organisation Live Shields went to the battle area in Hakkari and Siirt, they were attacked, beaten, taken into custody and arrested. The news regarding these youth was not reported in the media, except in a few papers which are not part of the mass media.

Last month in the city of Mus, a mass grave was uncovered. There were serious concerns as it was found that the skulls belonged to eleven villagers arrested ten years ago. But in the west of Turkey, of the approximately 3,500,000 newspapers then in circulation, around 3,400,000 contained no mention of the discovery and readers were thus not able to hear the news that this mass grave had been uncovered.

Now with the EU accession process, positive changes in the law are observed. However, there are also negative elements to these changes. For example in the Press Act, imprisonment penalties were revoked but instead were replaced with heavy fines. Also, the punishments previously contained in the Press Act were carried over to the Turkish Penal Code.

In other words, the threats that were removed from Turkish legislation following the enactment of the EU harmonisation packages have effectively been substituted with new provisions in the Penal Code, and will hang over the media like the Sword of Damocles. Article 305 of the revised Penal Code on 'offences against fundamental national interests', as adopted by parliament during the pro-EU reform process, provides the most striking example. Journalists, writers, speakers in panels and civil public committees can suddenly be 'suspects'. They may risk standing trial for what they write - for speaking or for what takes place in meetings or protests where there is alleged 'intention to act against fundamental national interests'. Under this article, any citizen can be accused of 'receiving monetary benefits' from 'a foreign person or institution' either for himself or for someone else.

NGOs specialising in working for children or education could for example be

punished for as long as three to ten years and may also be fined. Sentences could also include a small fine (equivalent in the Turkish justice system to '10,000 days') if they are found to be personally benefiting from funds received from the EU. Civil public committees working for children or in the education sector charged with receiving 'monetary service' from foreigners could face imprisonment from three to ten years and a small fine. In a situation where a crime is committed by the media, the penalty given is scaled up by half.

The explanatory note for this legislation is interesting: 'the punishment will be higher if money, a favour or undertaking has been accepted to spread propaganda through the media.' It also cites examples of punishable offences, which include calls for Turkish soldiers to leave Cyprus, pressurising Turkey to accept a settlement in Cyprus which could go against its interests, and the publication of items on the issue of Armenian Genocide after the First World War.

Those of us who live in Turkey are used to changes being made in this country without the involvement of civil society in the process; we are also used to the consequent defects in those changes.

What needs to be done is to get rid of the negative changes made which are not in line with EU demands, and to put into practice the positive ones. The process of EU accession is an important safety measure for the creation and continuation of the freedom of the media in Turkey.

Turkey has tried for over 150 years to 'be in line with the West', but has not managed it so far. As an example, in 1839 under pressure from Western states, some rights were introduced for minorities. These rights were announced in a document called 'Gulhane Hatti Hamanonü' by Sadrazam Mustafa Resit Pasha.

A person who was listening to this announcement was asked the question: 'what did you understand?'

He answered the question from the perspective of minority rights of non-Muslims or 'gavur' - an offensive term in Turkish.

'I understand that from now on "gavur" should not be called "gavur".'

My worry now is, what will happen if a situation occurs in which the EU-Turkey connection is terminated? Without EU pressure to change the laws, if instead the same laws stay in place, Turkey will become a place where journalists and writers cannot breathe at all.

And after that, who knows what will happen to a person who called a Kurd 'a Kurd'.

PART FOUR:  
SECURING DEMOCRACY AND PLURALISM IN  
TURKEY



*From left: Peter Galbraith (Expert on Kurdish affairs), Hatip Dicle (former member of the Turkish Parliament), Kariane Westrheim (Rafto Foundation) and Kerim Yildiz (Kurdish Human Rights Project)*



## **Turkey, Kurds, Europe and the EU Accession Process: ‘What is to be Done!’**

*Kerim Yildiz*  
Executive Director of the  
Kurdish Human Rights  
Project

*Mark Muller*  
Barrister and Vice-  
President of the Bar  
Human Rights  
Committee

### **The challenge ahead**

We are gathered here on the eve of one of the most momentous decisions to be taken by the EU so far this century. There can be little doubt that the EU decision to grant Turkey candidate accession status will radically change the lives of Turks and Kurds in both Turkey and the Kurdish regions forever. It will also have a profound affect on Europe’s own vision of itself. The EU must decide whether Europe is an exclusive Christian fortress or a pluralist, multi-cultural Union capable of reaching out to those on the edges of Europe. No one should be in the slightest doubt that the impending accession process will determine the nature of the EU and Turkey in the 21<sup>st</sup> Century. Turkey does not just stand at an important cross road, it *is* the cross road for Turks, Kurds and Europeans, and the decisions that the EU takes now will seal the fate of all of us for the next half a century or more.

So what is to be done! As supporters of Kurdish rights what should be our response to this accession process? How should the EU approach the Kurdish question? How should the Kurds and their supporters approach the EU? What should be our response to the EU Commission Report and its recommendations to the Council of the EU (‘the Council’) as to how to proceed regarding Turkish accession? Should we support it or reject it or demand a set of preconditions? These are all difficult questions but ones to which we must find answers if we are to take advantage of the opportunities that this process presents.

### **The challenge to Europe’s political leaders**

How should we all approach these fundamental questions? The lessons of history offer a partial guide. Many of the delegates to this conference may recall the negotiations over the Customs Union in 1995. The echoes of that debate continue to reverberate today and the lessons of that experience are worth recalling. At that time, Turkish Prime Minister, Tansu Çiller, warned the European Parliament that Islamic fundamentalism would take over Turkey if it did not ratify the Customs Union. According to her, the only way Europe would get the improvement in the human

rights situation it sought was through incremental reform and by backing Turkey to the hilt in its struggle with its perceived internal and external foes. Yet within a year the Kurds had tasted, and we had witnessed, the sour fruits of that unhappy association – further village destruction, displacement and assassination. Many leading MEPs have since admitted that they were duped by the Turkish government and that no significant reform or improvement in human rights occurred in Turkey until the AKP wrested control from the traditional political elite in 2002. It is deeply ironic that it is a pro-Islamic party that has harnessed the dynamic effect of the EU accession reform process. Suspicions continue as to AKP real motives but such concerns are surely irrelevant if the effect of the process is to introduce fundamental change and democratic reform. The crucial question is will it?

The first point to make is that the 2004 accession process is a much different animal from the one used by the EU in its negotiations with Turkey over the Customs Union in 1994. There can be little doubt that the Copenhagen Criteria of the Council set out a much more detailed, concrete and meaningful set of accession conditions that Turkey is required to meet in order to obtain candidate status. This is readily apparent when the Copenhagen Criteria are compared to the relatively puny set of non-binding commitments obtained by the European Parliament before it gave its positive approval to the Customs Union in 1995. The second point to make is that there has been some real progress in fundamental legislative reform in Turkey over the last two years, unlike in 1994. While many informed political commentators initially believed that reform in Turkey had only been politically possible because of the Council's insistence upon it (and that without such insistence the AKP reform agenda may well have been perceived as a Trojan horse through which hidden Islamic policies would later be promoted against the interests of the traditional state) there is now little doubt among such commentators that if the three pillar approach recommended by the European Commission is adopted by the Council on December 17, there will be further entrenched reform and radical change across all sectors of Turkish society

However, the big question for those who are involved in the Kurdish issue is how all this radical change will affect the Kurds and their legitimate rights. Will they be encompassed by this process or bypassed? Will their rights be respected and entrenched in a new democratic Turkey or will they be lost in a sea of broad self-congratulation by Turkey and Europe about economic integration? In one sense the omens do not look good. In recent years EU political leaders have singularly failed to issue any statement on the Kurdish issue or promote any democratic platform or meaningful political dialogue about the issue. Some of these policy makers take the view that the Kurdish conflict can be slowly solved through the EU accession process itself without the need for an express political settlement. In their view, the process of legislative and economic reform in Turkey will, by necessary implication, ameliorate the Kurdish conflict over time. They argue that the social and economic

whirlwind of reform will inevitably lead to greater prosperity, stability and individual freedom across the board. But will this be enough? Is further political and diplomatic action needed by Europe's elected leaders on this issue? Should the accession process specifically include a chapter on the Kurdish issue?

The authors reject this gradualist argument and believe much more needs to be done. Although it takes no view as to whether the Kurds constitute a people or a minority, it submits that the Kurdish issue will remain a touchstone issue for Turks, Kurds and Europeans throughout the accession reform process irrespective of that debate. It will remain an issue for Kurds because the bitter experience of the past has demonstrated that whatever the level of repression, Kurds will continue to see themselves as Kurds and demand that others do the same. It will remain an issue for Turks because the expression of Kurdish identity is still currently met with outright hostility both politically and legally. And it will remain an issue for the EU, whether it likes it or not, because the issue of democratic reform in Turkey is fundamentally tied to ideological reform. A truly pluralist democracy cannot be constituted in Turkey without reform to the official ethnic nationalist ideology of the state. The greatest threat to this ideology is the existence of Kurds and the public expression of their culture and human rights. It follows that if democratic reform is predicated on ideological reform, and the greatest test of ideological reform is recognition of minority rights, then the Kurdish issue must, by definition, remain a touchstone issue for all parties. Everyone has an interest in it and no party can achieve their aims without some form of resolution to it.

It is for this reason that the authors are both supportive and critical of the current stance of the Council and Commission regarding the conditions set for Turkey's accession. Too often the political leaders of Europe have conveniently chosen to forget the past when it comes to the Kurds. Too often, whether by design or inadvertence, they have conspired with Turkey not to notice Kurdish existence and pain. It would appear that some believe that a form of collective amnesia about the past, together with the promise of gold and a New Jerusalem tomorrow, will be enough to see off the issue. But history tells us otherwise. When the international community seeks to turn a blind eye and ignore the plight of a people or a minority which has been subjected to unremitting injustice, those same elements come back to haunt it. One need only look to the Middle East to see examples of that fact.

Yet, ironically, the key to progress on the issue is obvious. In one sense, all Europe's political leaders need do is to ensure that Turkey actually complies with and signs up to existing international commitments concerning minority and human rights in a way that actually gives the Kurds the political and civic freedoms they so desire. So why are they so reticent about expressly insisting upon this ostensibly sensible and morally modest demand? The answer is that in reality many of Europe's leaders are all too aware of the fragility of Turkey's democracy and of the hidden powers

that secretly rule behind the façade of its so-called and much heralded ‘Republican Democracy’. They also know that what drives these hidden powers within the military and ‘deep state’ is their adherence to a cult of ethnic nationalism. Many European leaders do not want to risk alienating those shadowy powers by provoking an unnecessary backlash against AKP reforms. But are they right to be so timid and will such timidity yield the results they desire?

One of the fundamental obstacles to reform is the shadowy forces embedded in the so called ‘deep state’. These forces will not just disappear into the night without a fight. Moreover, the whole *raison d'être* of these forces is predicated on the ideology of ethnic nationalism. The reason why the security forces hold such prominence within governmental and judicial institutions and circles in Turkey is that they are seen as the ultimate ‘protectors of the nation’, a concept which itself is defined by outdated notions of ethnic nationalism. It follows that if European leaders truly support full democratic reform in Turkey they must help Turkish democrats remove these forces from within the state structure and the only way this can be done in practice is to challenge the ideological constraint that places them there. This cannot simply be achieved through legislative reform precisely because these hidden forces, protected by ideologically motivated provisions in the constitution, float above and beyond parliamentary and administrative enactments and practice. It follows that the same ideological constraints that lead to the suppression of Kurds also lead to the suppression of a wider democracy in Turkey.

European political leaders need to understand this fundamental reality. Yet this analysis is not new. The authors recall that ten years ago, within the secure confines of another Brussels conference hall, KHRP and medico international held another international conference on the Kurdish conflict in South-east Turkey. On that occasion the conference brought together numerous Kurdish, European and American intellectuals, parliamentarians, trade unionists, party representatives and human rights activists in an attempt to stop the bloodshed which had engulfed Kurdistan and to kick-start a democratic process to resolve the Kurdish conflict in Turkey. On 13 March 1994 this international conference duly issued a final resolution calling upon the countries of the EU to stop exporting military hardware to Turkey for use against its Kurdish civilians and to help create a democratic platform in order to promote a non-violent, peaceful resolution to the conflict. The resolution called upon Turkey to stop its onslaught upon the Kurdish civilian population and demanded that Europe take steps to ensure that Turkey complied with its CSCE (now OSCE) commitments regarding minorities and human rights obligations under the European Convention on Human Rights (ECHR). The resolution argued that a democratic dialogue was only possible if Turkey respected the right to freedom of expression and association guaranteed under the ECHR and permitted Kurdish parties to organise legally and unhindered in Turkey. This, in turn, was only possible if Turkey underwent fundamental political and ideological reform. This conference

clearly demonstrated how the Kurdish conflict was, therefore, intimately tied up with the issue of ideological and democratic reform in Turkey.

Many of you will recollect that conference. Many more will recollect just how dire those times were for Kurds in Turkey. Just one week before the start of the 1994 conference Leyla Zana and her Democracy Party (DEP) colleagues were stripped of their parliamentary immunity and unceremoniously thrown into jail for simply uttering Kurdish while taking their parliamentary oath. Their real crime had been to call for a peaceful and negotiated resolution to the Kurdish conflict. They had wanted to come to the Brussels Conference to alert Europe and the West to the systematic destruction of Kurdish villages by Turkish security forces. They wanted to tell the people of Europe about the displacement of three million Kurds and protest about the state induced assassination of hundreds of Kurdish politicians, intellectuals, writers, lawyers and activists across Turkey. Above all they wanted to enlist Europe to help stop the endless cycle of violence which had engulfed their country. In the event, the DEP MPs were arrested and prohibited from attending by the Turkish government.

Yet the message of the conference fell on deaf ears within the corridors of power in Europe with further devastating results for the lives of ordinary Kurds. The link between the Kurdish issue and true democratic reform in Turkey was lost in the scramble to ensure negotiations over the Customs Union reached a satisfactory conclusion for both parties. In the event, the European Parliament quickly ratified the Customs Union in the forlorn hope that the potentially liberalising effect of such a union might just do the Parliament's political job for it, thereby obviating the need for the Parliament to set its own clear political conditions. Those hopes were to be quickly dashed by subsequent events. This should constitute a salutary lesson for EU leaders and policy makers.

Sensing it may have been duped, in January 1995 the European Parliament gave Leyla Zana the Sakharov Prize for freedom of thought. For some observers this was a profoundly ironic and ultimately disingenuous gesture that illustrated both the vanity and duplicity of Europe towards the Kurds. How could elected politicians really believe in the liberating effect of the Customs Union when despite massive international protest one of their own languished in jail for simply expressing her constituency's interests? But if the Turkish government thought it could silence Zana's message by physically stopping her from going to Brussels they were to be sorely mistaken. Leyla Zana quickly became a beacon for a people hitherto shrouded in official darkness. From the confines of her prison cell she and other political colleagues, together with a host of NGOs and solidarity organisations, put the Kurdish issue firmly on the European political map. Now after ten long years in jail, Leyla Zana has finally completed the journey to Brussels that she started so long ago. Today she delivers the same message she would have delivered

all those years ago - one of peace and reconciliation – but in a radically different political landscape. The crony regime of Tansu Çiller has gone. For the first time in Turkey a non-establishment party without Kemalist roots has taken power and is using the EU accession process to introduce reforms that go way beyond anything previously envisaged by Turkey's other orthodox parties. Some of these reforms are merely cosmetic but others do hint at a fundamental transformation in the political culture of Turkey. The big political question for Europe's elected politicians today is whether Europe will finally listen to Leyla Zana's political message? We know that the present European Parliament will do its best to ensure that her message is heard. But will Europe's national leaders be brave enough to confront the forces of reaction in Turkey and for once give grass roots democrats the backing they need today and not tomorrow. The authors believe that we in this conference hall in 2004 must ensure that this time the EU and the European Parliament not only listens but also acts. Put simply, the time has come for Europe to stop giving prizes to the Kurds and to start giving them the freedoms which all human beings are entitled to enjoy.

### **The challenge to the European Commission**

So if that is our message to the politicians of Europe what should be our message to the technocrats of Europe sitting in the European Commission? The Commission is of course vitally important for while the Council will take the political decision it is the Commission that in practice will oversee and construct the detailed architecture of the accession reform process. How then might we bring home to the Commission the fundamental reality behind Turkish political life outlined above? What should be our response to the EU Commission 2004 Report and its recommendations as to how to proceed regarding Turkish accession? Should we support it or reject it or demand a set of other preconditions than its three-pillar approach to accession?

Once more, the answer to these questions partly depends upon our conception of the Turkish state and in particular, about where it has come from and where it is going. In fact there is little disagreement in public between Turkey and the EU as to where Turkey should go. There seems almost universal agreement that if Turkey is to join the EU and function within a single market, it must turn itself into a normal European pluralist democracy where minorities are respected. Here even the Kurds agree. The real bone of contention with the Commission, however, concerns our mutual conception of where Turkey is today and how far it has to go both politically and legally. This is the real nub of the issue. Is Turkey's human rights problem simply a development issue or is it the result of a deeper political malaise? Is there an ideological constraint on democratic reform as argued here or is democratic reform merely a technical matter of implementing agreed legal reforms over a period of time as implied by the 2004 Commission Report?

In broad terms the authors applaud and adopt much of the Commission's three pillar approach to the accession process. However, it should be reiterated that the prevalence of ethnic nationalism within Turkey acts as an ideological constraint on democratic reform which cannot be cured solely by piecemeal reform or without some form of democratic dialogue taking place between Turkey's constituent parts about the future constitutional structure of the state. This ideological constraint goes to the very heart of the Turkish state's conception of itself and can only be lifted once the state has constitutionally and practically redefined its nature and purpose. A constitutional resettlement is an absolute pre-requisite if Turkey is to become a true democracy, and this should include recognition of Kurdish rights. It is the ethnic nationalist element of Atatürk's secular ideology which has historically required the state to suppress all manifestations of Kurdish culture and existence. The exhibition of Kurdish culture constitutes an anathema to the 'unity and indivisibility' of the Turkish state. This is because 'indivisible unity' continued to be exclusively defined by recourse to the cultural characteristics of being a 'Turk'. In its 2004 Report, the European Commission cites its own startling contemporary example of how this disposition persists within official circles notwithstanding the impending accession vote. 'In March 2004,' it reported, 'RTÜK ordered the closure for 30 days of ART TV, a local television channel broadcasting from Diyarbakir, on the grounds that it had violated "the principle of the indivisible unity of the state" when, in August 2003, it broadcast two Kurdish love songs. If this broadcaster is closed for a second time, its license will be revoked.'

Yet, despite these sanctions, and previous decades of unremitting repression, the one thing the state has been unable to suppress, how ever much it tries, is the sheer historical fact of Kurdish existence in Turkey. Throughout this period Kurds have continued to bravely exhibit their existence in spite of repression. By the end of the 20<sup>th</sup> Century it was clear that neither the Kurds nor their culture were likely to go away or disappear from Kurdistan or Turkey, save for another ethnic genocide. If the history of the 20<sup>th</sup> Century has taught us anything it is that you cannot eradicate or erase the history and existence of even the most down-trodden of indigenous people. Yet this is precisely what the Turkish state has tried to do. It is this ideological crusade that is the root cause of Turkey's endemic, chronic political instability throughout the late 20<sup>th</sup> Century. Ethnic nationalism is the last outdated ideological construct of the 20<sup>th</sup> Century which has to be dismantled if Turkey and the Kurds are to be set free. Like other authoritarian ideologies of the 20<sup>th</sup> Century, ethnic nationalism has contorted natural political, economic and social development. Turkey has been placed in a political straightjacket for 80 years and been strangled by overly rigid and dogmatic precepts. These precepts have set peoples against peoples, minorities against peoples, and neighbour against neighbour. The imposition of artificial ideological imperatives has literally obliterated all attempts at ethnic reconciliation and cohesion. But now for the first time in three generations Turkey has a chance to free itself from its own ideological chains.

It follows from this analysis that if the AKP government is genuine about its intention to transform Turkey into a stable and democratic state in Europe in the 21<sup>st</sup> Century it has to begin to recognise the reality of Kurdish existence and thereafter peacefully resolve its crisis with the Kurds. It further follows that if Europe is serious about Turkey becoming a stable democratic state it too must seek to resolve the conflict and abolish its ideological roots. There can be little doubt that in time the ideological construct of ethnic nationalism will be dismantled or simply internally combust under the weight of history. But how much pain must ordinary people in the region endure before this happens or the EU and Turkey's new political masters finally find the political will to confront this problem?

This is why the foregoing historical analysis remains as apposite and pertinent today as it was at the last Brussels Conference in 1994. It is of immense relevance to the argument about democratic reform and the EU accession process. Its importance to the debate about accession should not be underestimated simply because it has been repeated constantly in pro-Kurdish public meetings across Europe time after time, to little or no avail. It is material not only because it is true but because it strikes at the heart of the problem concerning Turkey and its desired entry into Europe. In short, there can be no genuine and enduring democratic progress, political stability or peace without political and ideological reform. Ideological reform and the resolution of the Kurdish issue remain the real keys to progress in Turkey.

So what does the European Commission have to say on these matters? Well the short answer is very little. The most striking fact about the EU, individual Member States, and the Commission's declarations concerning the reform process in Turkey is the manifest failure to refer to the political dimension of the Kurdish issue and/or to expressly refer to or insist upon the need for ideological reform. This omission was more intelligible back in 1994 but is little short of incredible in 2004. Back in 1994, only those persons who had had first hand experience of what it was like to be a Kurd in Turkey understood the need for express ideological reform. Since then European policy makers have been made aware of the pernicious effects of the anti-democratic and outdated nature of Turkish nationalist ideology through a welter of cases at the European Court of Human Rights (ECtHR), fact finding missions, trial observations, and economic and social campaigns conducted by numerous Kurdish and European NGOs and solidarity organisations over the last 10 years, many of whom are represented here today. The authors salute all of those who have been involved in that work.

However, despite the official silence over ideological reform, the authors have first hand experience that many of Europe's policy makers both within the EU and national Member States now quietly share the foregoing historical analysis. Many have told us that they broadly accept that Turkey can only truly become a stable, democratic country once it recognises the legitimate rights of its Kurdish

population. One policy maker said it was about as obvious as the recognition of a two state solution is to the resolution of the Israeli-Palestinian conflict. So why does the foregoing historical analysis find little if no expression in the numerous reports released by EU institutions regarding Turkey's accession to the EU? Why is it that despite the tacit recognition of the force of this argument, this analysis remains in official quarters 'an analysis that dares not speak its name'?

Is it because European states are at pains not to be seen to interfere with the so-called 'internal political affairs' of another country? Is it because they fear risking the wrath of a NATO ally whose geopolitical and strategic position is paramount to the stability of the region? Is it because Europe is simply unwilling to deal with the resolution of such a difficult and far away issue as the Kurdish conflict? Or is the real reason why Europe has been so consistently unwilling to fully confront the political dimension of the Turkish reform process because it is ultimately unwilling to incorporate Turkey and its political reality into Europe as a fully fledged European partner? Perhaps there is a bit of truth in all of these things. But whatever the true explanation may be, one thing remains certain - the Kurdish question will continue to haunt both Turkey and Europe for as long as both parties ignore it.

Yet despite this historical disposition, there are signs of a discernible and dawning acceptance in some important quarters that both parties will have to address the issue sooner or later, especially if the Council adopts the Commission's Recommendation to start accession talks with Turkey on 17 December 2004. A positive accession vote on 17 December will convert the ideological debate over the 'Kurdish Question' into an existentialist question for both Turkey and Europe which both parties will be unable to duck as they enter into the Commission's more structured and detailed reform process. Such a process will not simply ask of Turkey what type of state it aspires to be, it will also ask of Europe what type of Union it aspires to be. Will it be a truly liberal, democratic and pluralistic Union both in ethos and in practice? Or will it be a Union that essentially rests upon the promotion of Member State self-interest and which merely plays lip service to higher ideals concerning political freedom as binding myths rather than truths grounded in concrete reality? This is a question that many of Europe's politicians know in their heart of hearts they must now ask themselves and answer. It is a question they can no longer avoid indefinitely. Turkey's accession process will define what Europe really stands for and is, as much as it will define Turkey in the 21<sup>st</sup> Century. Given the explosive effect of the Kurdish conflict, it follows that if Europe is serious about embracing Turkey into its bosom it also has to be serious about democratic reform in Turkey if it wants to avoid exporting instability and the Kurdish conflict into its own body politics. In short, it must resolve to deal with the Kurdish issue and ideological reform in Turkey in some manner, either as part of the accession reform process or as a pressing international issue which challenges its geopolitical and strategic interests *per se*.

It is for this reason that we treat aspects of the European Commission's 2004 Report and Recommendations to the Council with a degree of scepticism. Although the authors agree with much of the Commission's analysis on many technical human rights issues and likewise congratulates the Turkish government for the adoption of its reform packages, it notes with profound regret that the European Commission hardly refers to the political dimension of the Kurdish conflict at all, save only in the context of its effect on various piecemeal legal reforms. In fact there is a detectable weariness on the part of the Commission to refer to Kurds or the conflict. Phrases such as 'the situation in the South-east' are used instead. Rather than dealing head on with the issue of ideology, it refers obliquely to 'rapidly evolving mentalities' without telling us what this refers to or means. Why is it, for example, that the 2004 Report is completely silent on the central relevance of the Kurdish conflict when in its own 1998 Report the European Commission concluded that 'a civil and non-military solution must be found to the situation in South-east Turkey, particularly since many of the violations of civil and political rights observed in the country are connected in one way or another with this issue.'

Although the 2004 Report did refer to the need for 'the normalisation of the situation in the South-east' and a strategy for 'the establishment of conditions for the full enjoyment of rights and freedoms by Kurds', nothing more concrete was said as to how those conditions could be established. Given that the European Commission's task is not to take the political decision concerning accession but to simply give the Council 'an objective assessment' of the true state of development in Turkey in respect of its compliance with the Community *acquis* and the Copenhagen Criteria, we are concerned at the extent of the Commission's present reticence to even refer to a people and a conflict that has engulfed and defined Turkey's political history for the better part of the last quarter of the 20<sup>th</sup> Century. Surely more has to be done if political stability is to be ensured?

What are the possible reasons that can account for this marked reticence? Is it because the Commission shares the fear of many of Europe's elected leaders about a Turkish backlash if the Kurdish issue is raised directly, or is its omission from the Report explicable on the basis that the Commission does not view the Kurdish issue as either central to Turkey's democratic deficit or the EU accession process? Both the Council and the people of Europe deserve to be told what the position of the Commission is on this issue. Or is it the case that the Commission has privately recognised the centrality of the Kurdish and ethnic nationality issue to the issue of democratic reform but has chosen not to tackle it head on? Has it decided instead to continue to merely insist on incremental legal reform in the hope that the totality of the reform process will gradually and irreversibly change the political culture in Turkey? If this is the case then again it should say so for this disposition has significant implications for how the Council and supporters of Kurdish rights should approach any subsequent accession process. In the view of the authors,

the Commission is under a clear duty to objectively assess and elucidate all the relevant and material issues which are central to the accession reform process. The Commission should set out squarely and fairly why it believes that Turkey's political and ideological problems, including the Kurdish question, can be solved merely by piecemeal legal, judicial and legislative reform, if that is indeed what it believes. For our part, we believe that Turkey will only become a stable, pluralist democracy capable of entering Europe if it confronts its past and its outdated, anti-democratic nationalist ideology. Furthermore, it believes that long term political stability and peace can only be achieved if some form of democratic platform is created which allows all segments of Turkish and Kurdish society a chance to debate and influence the character and nature of a reformed Turkish state that is finally at peace with itself and its people.

### **The challenge to the people of Europe**

What then is to be done! Given the above historical context, it is recommended that this conference adopts the following initial position in respect of the Turkish-EU Accession Process and that the following action be taken by all those who support the right of Kurds to exercise their civil and political rights as guaranteed under the ECHR, which must include the right to freely participate in the ensuing democratic debate about the future of their homeland:

### **The basis of a conference resolution**

1. The conference should express its conditional support for the Turkish government's recent reform packages, but urge further ratification and full and unconditional compliance with international instruments concerning minority and human rights and other relevant rights guaranteed under international law;
2. The conference should declare its broad support of the Commission's Recommendation to the Council that it should grant Turkey candidate status to attempt to accede to the EU over the course of the next few years;
3. The conference should also express conditional support for the three pillar approach of the European Commission to any future accession process, provided that approach includes within the relevant pillars the development of concrete proposals concerning the domestic recognition and respect for Kurdish rights as provided for under international law. This must include a constitutional resettlement in Turkey in which the existence and rights of

the Kurds are recognised within any new Turkish constitution;

4. The conference should call upon the European Commission to fully and publicly clarify its position over the issue of ideological reform and the resolution of the Kurdish issue. In particular, the European Commission should be asked whether it stands by its 1998 conclusion that ‘a civil and non-military solution must be found to the situation in South-east Turkey, particularly since many of the violations of civil and political rights observed in the country are connected in one way or another with this issue.’;
5. Irrespective of such clarification, the conference should demand that the Commission endeavour to use its good offices to actively develop a democratic platform whereby the constituent elements of Turkey, including the Kurdish people, can freely enter into dialogue and debate with the government over possible reform to the constitution and an end to ethnic hostilities;
6. The conference should set up a standing European Civic Commission on Turkish EU Accession consisting of European, Turkish and Kurdish elected politicians, NGOs, intellectuals and human rights activists whose task would be to monitor and conduct regular audits of the European Commission’s performance in ensuring Turkey’s compliance with the accession criteria across the board. This should specifically include a Council of Europe monitoring unit to track whether Turkey has complied with judgments of the ECtHR and ratified relevant outstanding Council of Europe Conventions;
7. The conference should recommend that the newly constituted EU Turkey Civic Commission set up a select advisory committee whose task would be to identify concrete constitutional and legislative measures aimed at dismantling outdated ideological provisions and practices within Turkey which hinder the drive for democratic reform. These measures would then be submitted to the European Commission for consideration. Chief among these measures should be the constitutional recognition by Turkey of the existence of the Kurdish people within Turkey and ratification of the Council of Europe’s Framework Convention for the Protection of National Minorities. A similar committee with a specific remit regarding resolution of the Kurdish conflict should also be established to help foster a democratic platform for dialogue; and
8. The conference should also call upon all political parties and individuals who represent the Kurds in the region to issue a declaration in relation to

their position in respect of the EU accession decision and the initiatives proposed by this conference. In particular, the conference should call upon all parties engaged in the Kurdish conflict whether in Turkey or Northern Iraq to cease military hostilities and commit themselves to non-violent forms of conflict resolution, so as to help the Commission foster and establish the beginning of a democratic platform for dialogue between all the constituent parts of, and peoples of, Turkey and where relevant, Northern Iraq.



## The Concept of Difference

Nazan Üstündağ

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I would like this presentation to pose certain questions in relation to the Kurdish issue rather than to answer some already formulated questions. The questions that I will pose aim at exploring the political arena where the Kurdish issue, the EU and politics in Turkey meet. As a sociologist I often aim to make visible the historically constituted implicit limits of this political arena and to consequently open up this arena so that we can imagine new forms of politics and policies. Given the time limit, I will try to be brief in the issues I raise. This will inevitably lead me to make some oversimplifications.

Let me start by indicating that the challenges the Kurdish issue raises for the Turkish state and for the ways in which polity and governance in Turkey is constructed are very crucial and very difficult to meet. For the first time in Turkish history, the state and society are faced with an internationally supported political demand to recognise differences when constructing its policies and imagining its polity. Regional differences have, of course, always been an important dimension of political discourse in Turkey. However, regional differences between the South-east where the Kurdish population reside and Western Turkey, or the differences between the village and the city for example, were regarded as obstacles that could be overcome through projects of development, education and the widening of social and economic services by means of industrial and public investment. In other words, existing differences in Turkey were usually seen to be caused by tradition, underdevelopment, administrative mistakes, and at times corruption, that would nevertheless be minimised through the implementation of developmental programmes and correct policies. However, what the Kurdish issue today means for Turkey and what the Kurdish movement demands from the state is recognition of differences here and now; differences that will not go away by themselves. Moreover, the Kurdish movement demands the active participation of the state in the reproduction and constitution of difference through various policies, such as in the spheres of education and language, as well as in the sphere of state sovereignty. The difficulty for the Turkish state and the public in facing up to the Kurdish issue stems from the fact that the demands made by the Kurdish movement are not a matter of correcting the current *status quo* by, for example, paying more attention to individual human rights. They question and go against the grain of the fundamental premises upon which the Turkish state and its modernising project is based.

Let me elaborate how what I have described operates by giving a more contextualised example. As is widely known, the conflict between the PKK and army forces led to the creation of a large and vulnerable Kurdish population in urban areas due to forced migration. Having left all their belongings and networks behind, forcibly migrated Kurds live under severe conditions in the urban areas of Turkey. Combined with discrimination, increased unemployment, limited opportunities for housing, the diminishing of social security and the changing urban economic structure due to policies of neo-liberalism, forcibly displaced migrants often find themselves in situations where they can not meet their most basic needs. While men are unable to fulfil their expected traditional roles, social pressures on women increase, and children start working on the street and engage in illegal activities. As a result of these processes, Kurdish Internally Displaced Persons (IDPs) become the object of social policy in urban areas, specifically of the social services and NGOs. Moreover, they become the object of social policy when they create 'criminal problems', for example in the form of violence against women, of forcing under-aged children to work or of collective street fights. Community centres, youth centres and centres for street children are places created by the social services in collaboration with several NGOs to rehabilitate and educate these so called 'new migrants at risk' in the city. In developing and applying social policies through these institutions, the Turkish state recognises and classifies the Kurdish population through already existing categories. Poverty occupies the centre of these categories and is juxtaposed with other categories such as level of education, familial relations, health, criminal record, ability, or the lack and presence of each of them. Policies based on these categories shape and limit the way in which the needs and the rights of the forcibly displaced population are assessed and defined. It is not a secret in any institution of the state, nor in any NGO, that the new urban poor are overwhelmingly Kurdish and that their circumstances are very different from all other migrants. Nonetheless, social policy insists on using the categories of development and on imagining that what is happening is an administrative issue of urban governance pertaining to individualised poverty. This denies the political dimension of the problem. More importantly, it denies that the difference observed in urban areas today is one of a communal sort and one pertaining to the constitution of ethnic differences in recent Turkish history.

The process of becoming a member of the EU forces the Turkish state to recognise communal differences. However, the European liberal tradition has its peculiar way of recognising and registering differences. On the one hand, there is the long tradition of categorising groups and countries in terms of a lack of or presence of certain factors, from which Turkey borrowed its discourses of social policy. Lack of development currently is, for example, transformed to the discourse of lack of human rights or lack of democracy, both a productive and a destructive discourse as we know most obviously in the case of Iraq or Afghanistan. On the other hand, there is the discourse of cultural difference and the discourse to have the right to

be different which provides the opportunity for communities to speak in their own voice, as with several recognised minority groups in Europe. Such a notion of difference makes it possible for communities to occupy the same temporality and the same public sphere, the here and now, as opposed to notions developed around the categories of lack and presence that expects groups defined in terms of lack to inhabit the world stage until they have been transformed. It seems that the EU forces both of these notions of difference on Turkey in the shape of its increased financial support for NGOs working in the sphere of human rights, poverty alleviation and good governance on the one hand and in its most recent suggestion to define Kurds and Alevis as a minority group, on the other hand. Despite the fact that these forced policies open up a way for discussing difference in Turkey, in other ways they make invisible the ways in which difference has been constructed and constituted historically.

The concept of differences both in Europe and outside of it and in Turkey has a history of violence behind it. In the discourses of cultural differences, this history is denied, making it seem like groups are differentiated on the basis of their different cultural or linguistic attributes. Discourses of cultural difference, multi-culturalism and minority rights often operate to whitewash the histories of violence that gave different opportunities for groups to reproduce themselves and to realise their dreams. If we want to employ a 'thick' notion of differences in constituting our future polities we need to recognise the fact that differences are often built on different forms and levels of loss and on how communities mourn over what they have been forced to lose; in other words on the suffering inflicted upon different groups by the world order, the nation state being one of its constituent features. The recognition of differences in modern times, I would argue, necessitates that the collective and the individual suffering of the other is registered, heard and witnessed and that responsibility for its creation is accepted. It also means that the ways in which the 'mourning' person occupies her or his present should be taken into account. This can only occur when the power to make space and history, to shape the contemporary and to remember the past are shared. Once again, let me elaborate what I mean by giving reference to the case of forced migration.

Most policy suggestions that pertain to forced migration developed by the EU demand that the conditions for returning to evacuated villages are put in place. Referring to Kurds as an indigenous population, the discourse of return recognises the territoriality of a community while ignoring the fact that violence has de-territorialised and re-territorialised it. I will not deny that the opportunity to return is crucial as a right that one can use if one wants to in individual terms, and also as a concept to enable the Kurds collectively to return. However, the fact remains that the place to which to return does not exist anymore. Returning will not, in other words, undo what has already been done. For Kurdish IDPs, 'home' as they know it is gone forever. Hence the de-territorialisation effect of violence. Can the opening

of villages for habitation undo the poisonous knowledge Kurdish people possess, having witnessed unspeakable atrocities? Is it meaningful or just in the imagination that today's tolerance for diversity distributing differences in terms of culture, language and space, can compensate for yesterday's doings?

By re-territorialisation on the other hand, I refer to the ways in which displaced Kurds inhabit the places to which they migrated. In their collective activities and through their political agency, Kurdish groups inhabit their new home (the city) in a gesture of mourning, and create symbols of loss in their gatherings. There are many examples of this in everyday life, in the uses of the city, in political protests and public meetings that Kurds organise. But I will not be able to elaborate on these examples due to time limitations. Neither can this form of presence in the city be undone. What can be done however, as a political project, is the recognition of this gesture and these symbols and to rethink polity in the terms they create. This is not a problem that faces only Turkey. The same goes for migrants in Europe uprooted by economic difficulties and feelings of exclusion due to a long colonial history. I think that the Western tradition has severely failed to register the fact that violence cannot be undone even with best intentions and that power cannot be shared when the power-holders are not prepared to radically transform themselves, their memories and the spatial configurations over which they rule, along with the new rights they distribute.

The demand of Kurds to change the constitution and the uniform ethnic identity of policy in Turkey, in my opinion, can be read as a claim to remake memory and space in Turkey. Nevertheless, a political project based on a significant notion of difference does not begin or end there. It necessitates that we talk, recognise, diagnose violence and injustice, transform the national symbols to include the sufferings we inflicted upon ourselves and start imagining a future from there. I suggest and believe that establishing a policy which would be ready to hear others' mourning and to recognise others' loss and suffering is not only a challenge to what Turkey is today, but also to what the EU is today, and what it represents for the rest of the world.

## **The 'Kurdish Problem' in Turkey**

*Doğu Ergil*

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After long deliberations between parliamentarians, statesmen and diplomats from countries in the EU, one can feel the crystallization of an elite consensus – although not wholeheartedly – on declaring a reasonable date to start accession talks with Turkey. If it were put to a popular vote, there could be spoilers and national governments that would like to hide behind such a vote. Yet, we live in a world of diversity and we ought to learn how to live together while revering each other's differences rather than just advocating doing so in rhetoric. Yet, one is often struck by the contradictory behaviour of some European politicians: while they have made a vocation in reprimanding Turkish governments for not acknowledging the multicultural reality of the

country's population in the past, now they try to build up unconvincing arguments against Turkey's membership of the Union for reasons of cultural incompatibility. Is this an innocent slip of the mind or sheer hypocrisy? It is hard to tell.

Another such argument is the persistence of the 'Kurdish problem' in Turkey. It is true that this problem has not been solved, and the emphasis is put in the wrong place (ethnicity), which sadly leads Turkey to the acceptance of a terrorist organisation as the representative of the Kurds. Allow me to elucidate the flaw in the Turkish political system that has led to the 'Kurdish problem', among other problems of participation and representation.

The 'problem' emanates from the monolithic and monocultural understanding of nationhood and the ensuing restrictive definition of citizenship. After the declaration of the Turkish Republic (1923), citizenship was defined by obedience to the state, which bestowed 'Turkishness' upon anyone who did not refrain from showing such obedience. Such an official (and artificial) identity deprived the citizens of their socio-cultural ties and historical heritage where this was not officially acknowledged. This may be likened to a flower severed from its stem and put into a bowl. The bowl being the state would nurture the flower and contain it. Well, the bowl could not nurture the flower for long, and the restrictive nature of citizenship in Turkey fell into crisis because it was simply unrealistic.

State defined and state owned citizenship turned the citizens into a flock and deprived them of the individualism that could otherwise reflect the cultural, social and political diversity of the nation. If the latter alternative had been achieved then the main concern of the state or political system would have been finding creative ways of reconciling existing differences rather than repressing them and truncating basic rights and freedoms.

Now we understand that this official suspicion of differences and efforts to repress them are the main factors behind Turkey's democratic deficit. All efforts towards compensating for this deficit will lead the existing 'nation of the state' paradigm to be transformed into a 'state of the nation' paradigm. Indeed, Turkey is discussing and trying to alter its official definition of citizenship which is currently based on an overt accent on Turkishness and covert acceptance of Sunni Islam. The loyalty of individuals will no more be to the state but to the country and the political unity of all its citizens symbolised by the democratic and non-ethnic state that guarantees equality before law. Such a system can only be inclusive and encompassing, leaving no one out for belonging to another ethnic, linguistic, religious or political group that is not officially favoured. Recent political and legal reforms are changing this crisis-producing situation.

What else? The official ideology of nation building and nation keeping has been Turkish nationalism. Any student of social affairs knows that nationalism is exclusive, defines itself as opposed to 'others' and sharpens on other nationalisms. Insisting on Turkish nationalism in a multi-ethnic society aggravated Kurdish nationalism simply by way of denying the existence of the Kurds and Kurdish culture. Now a government who took office without a nationalistic agenda is trying to repair this mistake.

Nationalism must be devoid of its oxygen: fear and suspicion. Turkish nationalism is nurtured by suspicion of Kurds who are looked upon as potential separatists. The 16 years of internal strife drove this point home in the mind of the average Turk. However, the government took impressive steps in enacting reforms that eased tensions in society. Now it is the Kurds' turn. They must abandon their pedestrian positions behind the PKK and free themselves from the authority of one man in prison. Whether it is out of hero-worshipping or mere loyalty to a man who put them on the map, now it is time to keep up with the reality of the times. Just as civilian politics is institutionalising in the country, the Kurds must prove their maturity by detaching themselves from a paramilitary organisation and a remote leadership. Here is a proposition:

The Kurds who still follow Abdullah Öcalan's lead must force their incarcerated leader to give orders to the PKK to leave the country and go back to Northern Iraq. There, they must work to earn the amnesty they have long been demanding,

by protecting Turkey's economic interests in this country and protecting hundreds of drivers who have been slaughtered, kidnapped for ransom and had their trucks ransacked. If the PKK, for the first time since its existence, can prove that it can do some good for Turkey's citizens rather than just harm, then it can expect to discuss some form of amnesty in the future that would lead to its complete dissolution. Maybe Kurdish politics will then be emancipated from the authority of this radical organisation, at the same time leaving Turkish nationalism devoid of the excuse for upholding a 'State of Emergency' regime.

Probably this proposition will infuriate Turkish and Kurdish nationalists alike, but it has always been impressive to see the worst of foes lying side by side in peace eternally after slaying each other for ephemeral reasons during their short, precious lives. If only they knew, that one can feel larger than life but cannot be larger than life.



## Assyrian Christians,<sup>69</sup> Kurds and Turkey's EU Membership

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'The Kurds, Turkey and the EU' is the theme of this conference. However, I wish to draw your attention to the situation of another people, namely that of one of the most oppressed nations of the world: the Assyrians. We do not need to think very far on this, because the journey from Assyria to Kurdistan is the same short walk as from Vlaanderen and Wallonia in Belgium. The Kurds and the Assyrians are neighbours in the same region. What the Assyrians and Kurds have in common in the Middle East is that both of them are oppressed peoples, without an independent state of their own and living across different countries in the Middle East. One of these countries is Turkey.

Another thing that the Assyrians have in common with the Kurds is that both of them hoped for political support from strong countries who share with them their religion. The Assyrians are Christians, and have been hoping for political support from the Christian Western world for decades. The Kurds are Muslim and they have certainly been hoping for support from the Islamic countries. However, neither of these peoples received any indication of support that has led to the improvement of their situation in Turkey. The conclusion is that neither Christianity nor Islam has aided these two peoples in their cry for justice. Their only hope lies now in democracy, European Democracy!

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69 The Assyrian Christians (also known as Chaldeans, Suryanis and Syriacs) are the members of the following churches: The Syriac (Suryani) Orthodox Church, The Chaldean Church, The Assyrian Church of the East and The Syrian Catholic Church.

The homeland of the Assyrians is ancient Assyria, which lies in Northern Mesopotamia, including Northern Iraq, South-eastern Turkey and North-eastern Syria.

For more information kindly visit:

- Assyrian Academic Society: [www.aas.net](http://www.aas.net)
- Assyrian International News Agency: [www.aina.org](http://www.aina.org)
- Assyrian Aid Society: [www.assyrianaid.org](http://www.assyrianaid.org)
- Assyrian Politics and Culture: [www.atour.com](http://www.atour.com)

Although the political question of the Assyrians in Turkey should not be separated from that of their brethren in Iraq, Syria and Iran, I will limit my presentation to Turkey to respect the theme of this conference, which is on the minorities of Turkey. I will also limit my speech to the situation of the Assyrian minority in Turkey. Turkey eagerly wishes to become a family member of Europe. Europe leads the world in democracy and human civilization.

What do the Assyrians expect from Turkey as a future EU Member State? To answer this question properly, we need to know about the political situation of the Assyrians in the past century, and even more important is to know the current political status of the Assyrians in Turkey.

Today, according to the law and constitution of the Turkish Republic, there are no Assyrians living in this country! According to our understanding of this law and constitution, I actually have never lived as an Assyrian in Turkey. Hundreds of thousands of European Assyrians will not be able to resettle in their birthplaces because their ethnicity is being denied in their own homeland, situated in the eastern part of Turkey, soon to be the eastern border of Europe! This denial of Assyrian existence is illustrative of the treatment of the Assyrians in the past century in Turkey. Unfortunately their political oppression has not been limited to a simple constitutional denial, but has entailed an inhuman policy towards minorities that began with the first genocide of the 20<sup>th</sup> century, during the days of the First World War, which caused the deaths of millions in today's Turkey. This tragic event is still being denied. Some of the speakers before me mentioned the city of Diyarbakir with its 1.5 million Kurdish inhabitants as the largest Kurdish city. I wish to share a fact with all of you: just before the year 1900 the number of Muslim Kurds and Christian Assyrians was equal, but in 1915 this balance was totally destroyed. Now there are 1.5 million Kurds living in Diyarbakir with just four Assyrian families among them! This is the result of the *genocide* of our people. The world today would be shocked if Germany denied the genocide that occurred during the Second World War. It is surprising that a country such as Serbia, which is far behind Turkey in its development and modernisation, very recently apologised for the massacres of Srebrenica, committed just a few years ago. In 2015, a possible date for Turkish inclusion in the EU, it will be the 100<sup>th</sup> anniversary of this Assyrian Genocide, let us hope the Turkish apology will transpire before this unfortunate milestone.

The oppression of the Assyrians has been performed systematically in the past century. Possessions were confiscated, higher positions in Turkish society were denied to them, winning in court was almost impossible, and schools teaching in the Assyrian language were not allowed. One of the most fearful moments in the life of an Assyrian young man is the two years of Turkish military service. Almost all Assyrians have been tortured during their military service; they were continuously discriminated against and marked as infidels. The aggression of the Turkish soldiers

towards the Assyrians was extraordinarily inhuman. These and other facts have caused the flight of the large majority of the Assyrians of Turkey. These hundreds of thousands of refugees, including myself, have been waiting for decades now for a safe return to their lands and towns.

The right to return! With this point we come to the question of what we can expect from Europe today, tomorrow and the near future *if* Turkey becomes a member of the EU?

- First of all the Assyrians need to be recognised and accepted as a separate ethnicity. They don't want to be called 'Assyrians' in Brussels only, but also within all the future borders of Europe. Without this total ethnic recognition of the Assyrians, Turkey cannot be taken seriously in presenting herself as a fully democratic European country. How racist would it sound if the Turks themselves were described as 'Muslim Germans' or 'Mountain Italians' to simply deny their ethnicity in Europe?
- The Assyrians have been living continuously in their homeland for centuries, since the birth of the ancient civilizations of Mesopotamia. They should be recognised as an indigenous people. By this they have the right to open their own schools in their own language, and to develop and keep their culture alive.
- The constitutional recognition of the Assyrians ought to be accompanied by the return of their confiscated lands and property. Thousands of Assyrians are waiting eagerly to return to their fathers' lands which they left two or three decades ago.
- Secularisation, which is the separation of state and religion, should be implemented in all parts of society, so that a Christian cannot be discriminated against because of his religion.

These are a few, yet very important issues concerning the Assyrian political question in which Turkey is far behind in her democratic development. Despite all the recent changes and modifications in the Turkish law and Constitution, I have not seen any improvement at all on the above mentioned points. If Turkey is granted EU membership in the current situation, we the Assyrians will still be without human rights in one of the countries of Europe.

In this matter, we expect the following from the European Parliament. Turkey has not been willing to fulfil her democratic duty towards minorities to the standards we are used to in European countries. The EU should approach Turkey much more openly in this regard. One of the first crucial mistakes of the European Commission

was to change the paragraph on minorities because of diplomatic pressure by Turkey. This was a very wrong signal to send to Turkey. We know the Turkish politicians, and if you give them one finger, they will take the whole hand! On her side, Turkey is clearly showing that she is doing her utmost to avoid the minority issue and is almost determined to continue her denial of their existence, despite her position as a future EU Member State. The Copenhagen criterion that ‘a candidate country must have achieved stability of institutions guaranteeing democracy, the rule of law, *human rights and respect for and protection of minorities*’ [emphasis added] should not be pushed aside to make an exception for Turkey.

From this, the Assyrians say: only once the Turkish Republic has ended the systematic oppression of minorities, by law and by practice, will we say *yes* to Turkey’s EU membership. *Therefore, during future negotiations, the EU should not give any opportunity to Turkey to import the current systematic oppression and undemocratic politics of the Turkish Republic into the EU.*

We do welcome the incorporation of the Turkish Republic into the EU, but for how long will school children in Turkey still be obliged to state the words of Kemal Atatürk: ‘*How happy is he who can say ”I am a Turk”*’, and what about statements like ‘*Turkey is for the Turks only*’ in the major newspapers? Is it not a duty of the EU to end this type of un-European behaviour?

In conclusion, we expect from Turkey and from the EU that the rights of the Assyrians and of the other minorities will be guaranteed and respected in Turkey in accordance with European standards. A last important message is that the fate of one minority cannot be separated from the other; the granting of Assyrian rights is not possible when the rights of the Kurds who are living next to the Assyrians are still ignored and denied, and *vice versa*! It will only be of benefit to a future European Turkey if minorities are seen as first class citizens. If that is the case, we the Assyrians being a well-known trading people, will be more than happy to offer a helping hand to Turkey in her development towards peace and prosperity.

## **The EU: A Hope for the Kurds in Turkey?**

*Hatip Dicle*

Former member of the Turkish Parliament



*Hatip Dicle (left) with Kariane Westrheim (Rafto Foundation), Kerim Yildiz (Kurdish Human Rights Project)*

I welcome you all with the deepest part of my heart. It is a great honour to be with you at such an important international conference after ten years of imprisonment. I am very happy and I thank sponsors, members of the organising committee and participants for bringing me this great joy.

Over the past 60 years, one of the most war-torn regions of the world, Europe, has developed a great democratic process on behalf of humanity and has become a centre of such, with the largest project being the EU. This project brought a great hope to the world's modern, democratic and peace seeking powers. This project gave great expectations and hopes to the Kurdish people who for the past two hundred years have faced great pains in the Middle East. This is why the Kurdish people value the Turkish relationship with the EU.

The Kurds, along with Arabs, Persians and Turks, are among the original inhabitants of the Middle East. Archaeological and ethnological research has proved that the Kurds' ancestors represent an old civilization, which contributed to the development of humanity. The Kurdish population numbers over 40 million. Without any doubt, the Kurds face different problems in each of the countries where they live: Turkey, Iran, Syria and Iraq. The Kurdish people believe that it is indeed possible to find democratic and peaceful solutions to the Kurdish question. This is a realistic

approach.

The majority of the Kurdish population is in Turkey. According to the EU Commission Report of 6 October 2004, their numbers are 15-20 million, constituting one quarter of the population of Turkey. Kurds were one of the main founders of the Turkish Republic 85 years ago. Unfortunately, under the 1924 Constitution their identity, language, culture and social rights were completely denied. They were forced to live under Turkish assimilation measures. This policy of denial has led to many Kurdish rebellions, which were brutally suppressed by the government, further deepening the problem. After 15 years of war, it is clearly evident to both sides that the denial policy will not bring any solution. The solution is not in the policy of 'kill and die' but 'live and let live'. This is definite at least for the Kurds. A democratic and peaceful solution for both Turkish and Kurdish people should be found inside the borders of Turkey.

Kurds of Turkey do not consider the Turkish identity and its constitutional application based on ethnicity as a framework that can protect the unity of Turkey. Instead, just as practised in countries like America, Switzerland and Spain, Kurdish people consider the terms 'Turkish Nation' and constitutional citizenship as a framework that can contribute to a democratic solution and the fraternity of people. So the cultural and linguistic rights of the Kurdish people should be guaranteed at the constitutional level. This is why the military coup constitution of 1982 is obsolete. The Kurds expect to have a new democratic and modern constitution that protects their existence and provides them with an educational and media system reflective of their own identity, allowing them to practise their political and cultural rights and express themselves freely.

## PART FIVE:

# EU ACCESSION - A NEW FUTURE FOR THE KURDS?



*From left: Mark Muller (Bar Human Rights Committee), Joost Lagendijk (Chair of the EU-Turkey Joint Parliamentary Committee in the European Parliament), Kerim Yildiz (Kurdish Human Rights Project) and Jean Lambert (Member of the European Parliament)*



## Turkish Membership in the EU and the Kurds

Michael M. Gunter

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### Background

The Turkish attitude toward the Kurds in general and the Iraqi Kurds in particular is rooted in the historic Turkish fear of partition — today represented by Kurdish secession — and thus the necessity of maintaining a strongly centralised state. It is interesting and ironic, therefore, that into the first third of the 19<sup>th</sup> century, the Ottoman Empire was decentralised, while the *millet* system of religious communities also offered the various nations in that empire a certain degree of autonomy.<sup>70</sup> To modernise and thus save



Michael Gunter (left) with Kerim Yildiz,  
Executive Director of KHRP

itself from Western encroachments through encouraging the minorities to secede, however, the Ottoman Empire began to centralise itself in the 1830s.<sup>71</sup> This process of centralisation eliminated the autonomy long enjoyed by the Kurdish emirates.<sup>72</sup>

These modernisation processes continued after the First World War with the demise of the Ottoman Empire and Mustafa Kemal Atatürk's creation of the modern Republic of Turkey. When Atatürk first fashioned the Turkish Nation-state, however, it was not clear what constituted a Turk.<sup>73</sup> Indeed, in appealing for Islamic unity against the Christian (Greek and Armenian) invaders, Ismet Inonu — Atatürk's famous lieutenant and eventual successor — initially spoke of the new

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70 For background, see Halil Inalcik, *The Ottoman Empire; the Classical Age, 1300-1600* (London: Weidenfeld & Nicolson, 1973); Kemal Karpat, *An Enquiry into the Social Foundations of Nationalism in the Ottoman State: From Social Estates to Classes, from Millets to Nations* (Princeton: Princeton University Press, 1973); and Stanford Shaw and Ezel Shaw, *History of the Ottoman Empire and Modern Turkey, Vol. II: Reform, Revolution, and Republic: The Rise of Modern Turkey, 1805-1917* (Cambridge: Cambridge University Press, 1977).

71 Bernard Lewis, *The Emergence of Modern Turkey*, 2<sup>nd</sup> ed., (London: Oxford University Press, 1968).

72 David McDowall, *A Modern History of the Kurds* (London: I.B. Tauris, 1966), pp. 38-65; and Martin van Bruinessen, *Agha, Shaikh and State: The Social and Political Structures of Kurdistan* (London: Zed Books Ltd., 1992), pp. 133 ff.

73 On this point, see Lewis, *Emergence of Modern Turkey*, pp. 1-5.

Turkish state as being a 'homeland for Kurds and Turks'.<sup>74</sup>

Kurdish troops played an indispensable role in the over-all nationalist victory. The nationalist parliament in Ankara included some 75 self-identified Kurdish deputies. For a while Atatürk even toyed with the idea of meaningful Kurdish autonomy in the new state. The minutes of the Amasya interview and the proceedings of the Erzurum and Sivas Congresses in 1919 make this clear.<sup>75</sup>

Kurdish autonomy, however, proved to be the road not taken. The Sheikh Said rebellion in 1925 convinced the Turkish authorities that the Kurds were a mortal danger to Turkish territorial integrity.<sup>76</sup> The Kurds became 'Mountain Turks', a code term that suggested their eventual assimilation into the larger Turkish population.<sup>77</sup> In addition, until 1926, Turkey also continued to claim the lost *vilayet* of Mosul or Kurdistan.<sup>78</sup> If this claim had stuck, the Iraqi Kurds too would have been treated in the same way their cousins in Turkey were.

Until the early 1980s, Turkey largely considered the Iraqi Kurds an internal problem for Iraq and thus not something with which to be particularly concerned. The Iran-Iraq War in the 1980s opened opportunities for Kurdish self-determination in both of those warring states and began to internationalise the Kurdish problem.<sup>79</sup> At approximately the same time, the rise of the Kurdistan Workers Party (PKK) in Turkey and its development of bases in Northern Iraq from where it could attack South-eastern Turkey also began to cause concern in Turkey. Until the mid-1980s, the PKK received help from Barzani's Kurdistan Democratic Party (KDP) in Northern Iraq. Gradually, however, the then Marxist PKK began to fall out with the more traditional KDP over a number of issues including their different attitudes toward Turkey. Increasingly, Turkey and the KDP began to cooperate.<sup>80</sup> At the end of the Iran-Iraq War, Turkey even received some 60,000 Iraqi Kurdish refugees fleeing from Saddam Hussein's wrath.

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74 **Ismet Cheriff Vanly**, *Le Kurdistan irakien: entite nationale* (Neuchatel: Editions de la Baconniere, 1970), p. 54.

75 **Robert Olson**, 'Kurds and Turks: Two Documents concerning Kurdish Autonomy in 1922 and 1923', *Journal of South Asian and Middle Eastern Studies* 15 (Winter 1991), pp. 20-31.

76 **On the first major Kurdish rebellion in the Republic of Turkey**, see **Robert Olson**, *The Emergence of Kurdish Nationalism and the Sheikh Said Rebellion, 1880-1925* (Austin: University of Texas Press, 1989).

77 **For background**, see **M. Hakan Yavuz**, 'Five Stages of the Construction of Kurdish Nationalism in Turkey', *Nationalism and Ethnic Politics* 7 (Autumn 2001), pp. 1-24.

78 **For background**, see **C.J. Edmonds**, *Kurds, Turks and Arabs: Politics, Travel and Research in North-Eastern Iraq, 1919-1925* (London: Oxford University Press, 1957), pp. 398 ff.

79 **For background**, see **Michael M. Gunter**, *The Kurds of Iraq: Tragedy and Hope* (New York: St. Martin's Press, 1992), pp. 37-48.

80 **Michael M. Gunter**, *The Kurds and the Future of Turkey* (New York: St. Martin's Press, 1997), pp. 115-25.

The results of the 1991 Gulf War made the Iraqi Kurds even more important for Turkey. A half a million Iraqi Kurdish refugees fled to the Turkish border after their uprising against Saddam Hussein failed. This human tragedy threatened to overwhelm Turkey. Initially proposed by Turkish president Turgut Özal, safe havens were created for the refugees to return to in Northern Iraq. Turkey also offered bases for the United States to use in enforcing its 'no-fly' zone to protect these safe havens which in time evolved into the Kurdistan Regional government.

On March 8, 1991, Turkey broke its longstanding policy against negotiating with any Kurdish groups when it received a representative of Massoud Barzani's KDP and Jalal Talabani—the leader of the other main Iraqi Kurdish party, the Patriotic Union of Kurdistan (PUK). Talabani declared 'that a new page had been turned in relations between Turkey and the Kurds of Iraq,' and added that he believed 'we were able to convince them we do not pose a threat to Turkey. . . . Our goal is to establish a federation of Arabs, Turkomans, and Kurds.'<sup>81</sup>

When he returned to Turkey in late 1991, Talabani concluded that 'Turkey must be considered a country friendly to the Kurds.'<sup>82</sup> By the time he met with the Turkish Prime Minister Suleyman Demirel in June 1992, the Turkish Prime Minister was referring to the PUK leader as 'my dear brother Talabani,'<sup>83</sup> while the Kurdish leader declared that 'the people in northern Iraq will never forget the help of the Turkish government and people in their difficult days.' Hoshiyar Zibari, a leading figure in the KDP and subsequently the interim Foreign Minister of the first post-Saddam Hussein administration in Iraq, explained:

Turkey is our lifeline to the West and the whole world in our fight against Saddam Husayn. We are able to secure allied air protection and international aid through Turkey's cooperation. If Poised Hammer [the no-fly zone] is withdrawn, Saddam's units will again reign in this region and we will lose everything.<sup>84</sup>

By the end of 1991, the Iraqi Kurds had two representatives in Ankara, one for the KDP and the other for the PUK. To explain his actions, Turkish President Özal even declared that 'it must be made clear that those in the Iraqi Kurdish area are

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81 'Kurdish Leader on Significance of Talks in Ankara,' *Ankara Anatolia in English*, 1515 GMT, Mar. 14, 1991; as cited in *Foreign Broadcast Information Service—Near East & South Asia*, Mar. 15, 1991, p. 39. Hereafter cited as *FBIS-NES*.

82 'Talabani Calls on PKK to End Armed Action,' *Ankara Anatolia in Turkish*, 1415 GMT, Oct. 18, 1991; as cited in *Foreign Broadcast Information Service—Western Europe*, Oct. 21, 1991, p. 58. Hereafter cited as *FBIS-WEU*.

83 This and the following citation were taken from 'Meets with Demirel,' *Ankara TRT Television Network in Turkish*, 1600 GMT, June 9, 1992; as cited in *FBIS-WEU*, June 11, 1992, p. 42.

84 'Iraqi Kurds Reportedly to Block Terrorist Attacks,' *Ankara TRT Television Network*, 1600 GMT, Apr. 8, 1992; as cited in *FBIS-WEU*, Apr. 9, 1992, p. 43.

relatives of Turkish citizens. So the borders are to some extent artificial, dividing people into two sections.<sup>85</sup> This then was the golden age of modern Turkish - Iraqi Kurdish relations. Overcoming Turkey's traditional fear of the Kurds, Özal sought to win their support against the PKK and to dissuade them from trying to establish their own state.

This imaginative Turkish sponsorship of the Iraqi Kurds also proved to be the path not taken. Increasingly, Özal's actions seemed to be threatening Turkish territorial integrity. If the Turkish President could countenance some sort of federal solution for the Kurds in Iraq, might he not also be contemplating one for the Kurds in Turkey? Then on April 17, 1993, Özal suddenly died from a heart attack, and with him ended this brief spring of imaginative initiatives between Turkey and the Kurds. During the following years, Turkey increasingly came to see the *de facto* state of Kurdistan evolving in northern Iraq<sup>86</sup> as a threat to the Turkish future. Ankara sought to play the KDP and PUK off against each other and intervened repeatedly in attempts to eliminate the PKK. The formerly optimistic Talabani now concluded, 'the Turkish Government is against any type of Kurdish national identity. . . . They want to finish our experiment with democracy at all costs.'<sup>87</sup>

### Consequences of the 2003 Iraqi war

Turkey's almost paranoid opposition to Kurdish nationalism and Turkey's strong strategic alliance with the United States since the days of the Truman Doctrine first promulgated in 1947, have arguably been two of the main reasons for the inability of the Kurds to create any type of an independent state in the modern Middle East that began to develop after the First World War. Although the United States paid lip service to the idea of Kurdish rights, when the chips were down, again and again the United States backed its strategic NATO ally Turkey when it came to the Kurdish issue. Only when the United States perceived the Iraqi Kurds to be a useful foil against Saddam Hussein did the United States begin to take a partially pro-Kurdish position, at least towards the Iraqi Kurds. Although this US support for the Iraqi Kurds did not prohibit Turkey from unilaterally intervening into Northern Iraq in pursuit of the PKK during the 1990s, US support for the Kurdistan Regional Government, and disagreements over sanctions and the future of Iraq itself helped begin to fray the longstanding US-Turkish alliance.

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85 'Özal on Syrian Aid to Terrorist Groups,' *Al-Hayah* (London), Dec. 15, 1991, p. 5; as cited in *FBIS-WEU*, Dec. 18, 1991, p. 42.

86 For background, see Michael M. Gunter, *The Kurdish Predicament in Iraq: A Political Analysis* (New York: St. Martin's Press, 1999); and Gareth R.V. Stansfield, *Iraqi Kurdistan: Political Development and Emergent Democracy* (London: RoutledgeCurzon, 2003).

87 Cited in Bretislav Turecek, 'Our Democracy Is Unique,' *Tyden* (Prague), Apr. 28, 1998, p. 102; as cited in *FBIS-NES* (98-120), Apr. 30, 1998, pp. 1-2.

The US war to remove Saddam Hussein from power in 2003 furthered this process and even partially reversed alliance partners. For the first time since the creation of Iraq, the Iraqi Kurds now — at least for the present — have a powerful ally in the United States. This ironic situation was brought about by Turkey refusing to allow the United States to use its territory as a base for a northern front to attack Saddam Hussein's Iraq in March 2003. Courtesy of Turkey, the Iraqi Kurds suddenly were thrust into the role of US ally, a novel position they eagerly and successfully assumed. Quickly, the Iraqi Kurds occupied the oil-rich Kirkuk and Mosul areas which would have been unthinkable encroachments upon Turkish 'red lines' had Turkey anchored the northern front. What is more, Turkey had no choice but to acquiesce in the Iraqi Kurdish moves.

The new situation was further illustrated in July 2003 when the United States apprehended 11 Turkish commandos in the Iraqi Kurdish city of Sulaymaniya who were apparently seeking to carry out acts which would destabilise the *de facto* Kurdish government and state in Northern Iraq. Previously, as the strategic ally of the United States, Turkey had *carte blanche* to do practically anything it wanted to in Northern Iraq. No longer is this true. The 'Sulaymaniya incident' caused what one high-ranking Turkish general called the 'worst crisis of confidence'<sup>88</sup> in US-Turkish relations since the creation of the NATO alliance. It also illustrated how the United States was willing to protect Kurdistan from unwanted Turkish interference.

Because of its new role in Iraq, the United States has come to be seen by many Turks as hindering Turkey's struggle against the threat of renewed activities of the PKK/Kongra-Gel based in Iraqi Kurdistan. General Ilker Basbug, Turkey's Deputy Chief of Staff, recently declared, for example, that the 'United States has not carried out [an] effective and noticeable fight against those terrorist groups' and concluded that 'it was obvious that the United States did not meet Turkey's expectations on that issue.'<sup>89</sup> In preventing Turkey from being able to move against these entrenched PKK/Kongra-Gel elements in Iraqi Kurdistan as in the past, however, the United States has ironically pushed Turkey closer to Iran and Syria. This is because these two states see eye to eye with Turkey on the Kurdish factor.

Powerful Iraqi Kurdish opposition to the deployment of 10,000 Turkish troops to even areas in Iraq south of the Kurdish area — a decision the Turkish Parliament took in October 2003 in an effort to revive its failing fortunes with the United States and control over evolving events in Kurdistan — helped force Turkey to rescind its offer shortly after it was issued. The US Congress continued its offer of an \$8.5

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88 'Ozkok: Biggest Crisis of Trust with US,' *Turkish Daily News*, July 7, 2003, accessed over the Internet; and Nicholas Kralev, 'U.S. Warns Turkey against Operations in Northern Iraq,' *Washington Times*, July 8, 2003, accessed over the Internet.

89 Cited in 'General Basbug: US Has Not Carried Out Effective Fight against Terrorists in North Iraq,' *Briefing* (Ankara), July 12, 2004, p. 8.

billion loan and credits to Turkey on the condition that Turkey refrain from entering Northern Iraq unilaterally. The Iraqi Kurds also demanded that Turkey remove some 5,000 of its troops already in Northern Iraq supposedly to contain the PKK. Osman Faruk Logoglu, the Turkish ambassador to the United States, complained that the United States was giving ‘excessive favors’ to the Iraqi Kurds and thus encouraging future civil war and Kurdish secession.<sup>90</sup>

As the Iraqi Kurds continued to move toward establishing a Kurdish federal state in post-Saddam Iraq, General Ilker Basbug, Turkey’s Deputy Chief of Staff, declared that ‘if there is a federal structure in Iraq on an ethnic basis, the future will be very difficult and bloody.’<sup>91</sup> Turkish Prime Minister Recep Tayyip Erdogan accused the Iraqi Kurds of ‘playing with fire’<sup>92</sup> by trying to annex the oil-rich Kirkuk area to their prospective federal state. Turkish opposition to ethnic federalism in Iraq reflects its longstanding security fears that any decentralisation there—especially in favour of the Kurds—will inevitably encourage the Kurds in Turkey to seek autonomy and eventually separation. Thus, in the name of stability, Turkey remains an inveterate opponent of an ethnically based federal system in post-Saddam Iraq.

The most Turkey seemed to be willing to grant was some type of geographic federalism, possibly based on Iraq’s already existing 18 governorates. Such an arrangement would tend to dilute Kurdish ethnic strength and its perceived challenge to Turkey. Turkey also argued that geographic federalism would dampen ethnic animosities (that might be aroused by ethnic federalism) by encouraging multi-ethnic and multi-sectarian civic nationalism.<sup>93</sup>

Some have noted the inconsistencies of this Turkish aversion to ethnic federalism in Iraq with Turkey’s demand for ethnic based federalism in Cyprus. When the present author brought this inconsistency up at a scholarly conference held at the Eastern Mediterranean University in Northern (Turkish) Cyprus in April 2003, he was sharply informed by his Turkish interlocutors that there was no inconsistency. This was because the Turkish position in Cyprus had been guaranteed by the international treaty that had originally established a bi-national Cypriot state in 1960. No such treaty, of course, existed on behalf of the Kurds.

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90 Jonathan Wright, ‘Turkey Accuses U.S. of ‘Favoritism’ in Iraq,’ Reuters, Nov. 4, 2003, accessed over the Internet.

91 Daniel Williams, ‘Iraqi Kurdish Leader Demands Guarantees: Minority Seeks Autonomous Region, Expulsion of Arabs under New Government,’ *Washington Post*, Jan. 18, 2004, accessed over the Internet.

92 ‘Turkey’s Growing Uneasiness over Iraqi Kurds’ Federalist Aspirations,’ *Briefing* (Ankara), Jan. 19, 2004, p. 7.

93 For further analysis, see M. Hakan Yavuz, ‘Provincial not Ethnic Federalism in Iraq,’ *Middle East Policy* 11 (Spring 2004), pp. 126-31.

## The future

Now, of course, Turkey's important geographical location and tremendous military superiority over Kurdistan remain. Given time, therefore, it is likely that Turkey will partially reassert its strategic relationship with the United States even if the Iraqi Kurds offer the United States ready bases for former ones in Turkey no longer so available. For the time being, however, there is an historic opportunity for the Iraqi Kurds to step forward, with US support, to achieve what Turkey has always opposed, with US support — the possibility of either some kind of a federal Kurdistan within Iraq or, if this proves impossible, an independent Kurdistan.<sup>94</sup>

The Iraqi Kurds, of course, would be well advised to proceed with the consent of Turkey because in the end, the United States will leave Iraq and the Kurds will have to live with the Turks who always will remain next door. Thus, the Iraqi Kurds initially should be rather modest, and from their newfound position of relative strength, work with Turkey, not against it.<sup>95</sup> Turkey, for its part, must become convinced that greater stability will stem from a democratic federal Kurdistan, rather than a reconstituted authoritarian Iraq that leaves the Iraqi Kurds disgruntled. Although

Turkey has legitimate reasons for . . . opposing an ethnic federation in the new Iraq . . . elevating the prevention of a Kurdish state to the level of Turkey's most important strategic interest in the region spreads the impression that Turkish and Kurdish interests are in fundamental conflict. . . . The key for regional peace and socio-economic development is to ensure that the political configuration in Northern Iraq will be stable and will have friendly and cooperative relations with Turkey.<sup>96</sup>

The first step to achieve this seemingly impossible task of Turkish approval is for the Iraqi Kurds to be seen giving their all in trying to make a democratic federal Iraq work. If such an Iraq proves impossible to achieve,<sup>97</sup> the Iraqi Kurds then will be seen as having the right, in the name of a stability that also will benefit Turkey, to move towards independence.

At that point, the Iraqi Kurds must convince Turkey that, in return for Turkish support for Iraqi Kurdish independence, an independent Kurdistan would not

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94 For further thoughts on the possibility of an independent Kurdistan, see Liam Anderson and Gareth R.V. Stansfield, *The Future of Iraq: Dictatorship, Democracy, or Division?* (New York: Palgrave Macmillan, 2004).

95 Ofra Bengio, 'Iraqi Kurds: Hour of Power?' *Middle East Quarterly* 10 (Summer 2003), accessed over the Internet. For additional background, see M. Hakan Yavuz and Michael M. Gunter, 'The Kurdish Nation,' *Current History* 100 (January 2001), pp. 33-39.

96 Murat Somer, 'Turkey's Kurdish Conflict: Changing Context, and Domestic and Regional Implications,' *Middle East Journal* 58 (Spring 2004), p. 251.

97 For background, see Toby Dodge, *Inventing Iraq: The Failure of Nation Building and a History Denied* (New York: Columbia University Press, 2003).

foment rebellion among the Kurds in Turkey either directly or indirectly. Turkey's guarantee of an independent Iraqi Kurdish state would be a powerful incentive for the Iraqi Kurds to satisfy Turkey on this point. Furthermore, the Kurds must proceed in a manner that Turkey would perceive to be fair to the Turkmen minority in Kurdistan. This will probably mean compromise on the Kurdish demand for oil-rich Kirkuk as the capital of Kurdistan.

In addition, the Iraqi Kurds should encourage Turkey's begrudging democratic reforms that will help lead to eventual Turkish membership in the EU and thus help solve the Kurdish problem in Turkey without secession. If Turkey joins the EU, its fears about Kurdistan will most likely abate since EU membership would guarantee Turkish territorial integrity. Furthermore, once Turkey joins the EU, the influence of the Turkish military on political decisions regarding such issues as Kurdistan will diminish. A more civilian directed Turkish government within the EU would be less likely to fear an independent Kurdistan. On the other hand, if Turkey were kept out of the EU, Turkey would be more likely to continue to view the Kurdish issue through traditional national security issues hostile to an independent Kurdistan. Cast adrift from both the EU and the United States, Turkey would be more likely to seek succour from Syria and Iran, both of which remain very hostile to any concept of an independent Kurdistan.

The stability achieved by an independent Kurdistan supported by Turkey would also encourage strong economic relations between the two. These relations have been suffering for years because of the instability caused by Iraq's wars against Iran and the United States, as well as the US-led sanctions against Iraq that in turn have hurt Turkey. Improved economic relations between Turkey and the Iraqi Kurds in turn would also help benefit the Kurds in Turkey who so badly need a better economic situation.

Finally, Turkey must come around to trusting more in its inherent strength, rather than revisiting its outdated fears. As Ilnur Cevik, a leading Turkish journalist observed: 'Instead of seeking confrontation and friction with the Iraqi Kurdish leaders, some people in Turkey could change their attitude dramatically and start seeking ways to forge closer ties with them and actually treat them as regional partners.' Cevik also argued that 'the Iraqi Kurds are our natural allies. They were part of the Ottoman Empire and we lived with them for centuries.' Therefore, 'it is only natural that the Iraqi Kurds should be treated as our relatives just like the Iraqi Turkmens. Some people who do not seem to appreciate this will have to change their attitude if they want to live in a realistic world.'<sup>98</sup>

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98 Ilnur Cevik, 'Iraqi Kurds in Baghdad Administration,' *Turkish Daily News*, July 15, 2003, accessed over the Internet.

Massoud Barzani also spoke to this issue when he told Cevik and Cengiz Candar, another leading Turkish journalist, that ‘when the situation is good in Iraq and in the north of the country this would be beneficial for Turkey. . . . We should walk together (Turkey and the Kurds) and take joint steps to help each other to solve problems.’<sup>99</sup> In other words, Turkey should come to realise that as the more powerful partner by far, it would become the natural leader and protector of an independent Kurdistan, a state that would also serve as a buffer between Turkey and any lingering instability to the south. Historic Turkish fears of a Kurdish *kukla devlet* (puppet state) that would be the first step of a wider plot to divide Turkey are anachronistic and will only help create a self-fulfilling prophecy. The late Turkish president Özal’s imaginative initiatives during the early 1990s illustrate that these arguments concerning Turkish-Kurdish cooperation are not divorced from reality.

Iran too, of course, must be considered in this overall scenario. Although this regionally powerful state has her own important and legitimate interests, much of the argument made about why Turkey might be brought around to favour an independent Iraqi Kurdistan can also be made for Iran. Indeed, Turkey and Iran, who share a long history of pragmatic compromise in the modern Middle East,<sup>100</sup> might find their joint agreement on and sponsorship of an independent Kurdistan yet another reason to continue their relatively peaceful and pragmatic relationship. This, of course, remains only a distant possibility. Indeed, recent reports of Israeli activities in Iraqi Kurdistan have led Iran to worry that the United States is seeking to establish a ‘second Israel’ in the region. Although Turkish officials publicly have accepted Israeli denials, privately these same officials remain sceptical. Turkish Prime Minister Recep Tayyip Erdogan’s high profile visit to Iran at the end of July 2004, gave him an opportunity to share this and other common concerns about Iraqi Kurdistan with his hosts. Clearly, the evolving situation in Iraqi Kurdistan is bringing Turkey and Iran closer together.

## The US role

The United States should cautiously play a background role in encouraging Turkish EU membership. However, if the United States tries to apply too much pressure, it might backfire as Europeans might fear specifically Turkey as a US Trojan horse in

99 Cited in İlnur Cevik, ‘Barzani: Iraq Is Not an Exclusively Arab State,’ *Turkish Daily News*, July 24, 2003, accessed over the Internet.

100 For background, see Atila Eralp, ‘Facing the Challenge: Post-Revolutionary Relations with Iran,’ in *Reluctant Neighbor: Turkey’s Role in the Middle East*, Henri J. Barkey, ed. (Washington, D.C.: United States Institute of Peace Press, 1996), pp. 93-112; and Suba Bolukbasi, ‘Turkey Copes with Revolutionary Iran,’ *Journal of South Asian and Middle Eastern Studies* 13 (Fall/Winter 1989), pp. 94-109.

their midst, and in general resent US pressures. The United States should support Turkish EU membership as a long-term, partial solution to the Kurdish problem because, as noted above, Turkey in the EU would less likely fear Kurdish rights in Turkey or an Iraqi Kurdish state. On the other hand, Turkey out of the EU might be more likely to maintain a garrison state mentality with strong military influence — all to the detriment of Kurdish rights.

In conclusion, the following points should be made:

1. The United States has enormous potential for positive influence, but unfortunately the current US administration is unlikely to be able to exercise this influence effectively given its unilateral and perceived arrogant approach to foreign policy.
2. The United States privately but seriously should continue to remind Turkey there is a continuing Kurdish problem in Turkey and make it clear the United States expects Turkey to make progress on solving it. Otherwise, Turkey will think it can get away with ignoring its Kurdish problem to death.
3. The United States should remind everybody that Atatürk himself set Turkey's ultimate goal as achieving the level of contemporary civilization, which today means full EU membership. Among other things, full EU membership means completely implementing the Copenhagen Criteria, which implies full Kurdish rights.
4. The United States should remove the PKK/Kongra-Gel from its terrorist list and encourage the PKK to earn and keep this new designation by stopping its self-defeating violence.
5. The EU should swallow its opposition to the United States and support US efforts to bring about a democratic federal Iraq, which would largely solve the Kurdish problem in Iraq.
6. The EU should remember that it was US and Soviet power that ultimately destroyed Nazi Germany. Without US and Soviet power, there would never have been the EU and its genuine respect for human rights today. Without US power today, the EU would not possess the military security to pursue its post-modern civilization. The EU should remember who ultimately protected West Europe during the Cold War, and even after the Cold War, who led the way to halt the deplorable events that occurred in former Yugoslavia.

## **Kurds in Turkey: From Assimilation to Regional Self-rule?**

*Conny Fredriksson*

Head of the Kurdish Working Group in Socialist International and former Secretary General of the European Forum for Democracy and Solidarity

The Socialist International (SI) working group on Kurdish issues was started in 1993. The active parties in the process were the French Parti Socialiste (PS), the German Sozialdemokratische Partei Deutschlands (SPD), the Austrian Sozialdemokratischen Partei Österreichs (SPÖ) and the Swedish Sveriges Socialdemokratiska Arbetareparti (SAP). There were several reasons for establishing this working group: in 1989 and 1992 the Iranian Kurdish leaders Gassemlou and Sharafkandi had been murdered by Iranian agents after having visited the congresses of the SI in Stockholm and Berlin, respectively; in 1991 the Iraqi Kurds had been driven up into the mountains on the Turkish border, but after the Gulf War they started rebuilding their society in Northern Iraq; and in Turkish Kurdistan the Turkish army was waging a war against the PKK. In our home countries the number of Kurdish refugees was rising.

We started our work by defining our basic positions: we would like to support Kurdish demands for human rights and recognition as full and equal citizens in their respective countries. We all found it impossible to ask for a change of existing borders under the circumstances.

To start with the Turkish Republican People's Party (CHP) was a member of the group, but from 1996 they have been absent.

Kurdish parties who took part were Kurdish Democratic Party of Iran (KDPI), Iran, Kurdistan Democratic Party (KDP) and Patriotic Union of Kurdistan (PUK), Iraq, and from 1995 People's Democracy Party (HADEP), Turkey. Today KDPI, PUK and HADEP- Democratic People's Party (DEHAP) are members of the SI.

Over the years Iraqi Kurdistan has been the dominant issue in our work. Today some former members of our group from KDP and PUK are ministers in the Iraqi government. They have convinced us that federalism is a realistic and necessary model for a future multi-ethnic and democratic Iraq.

So progress has taken place in Iraq. The 12-year reconstruction period has been well used even if there was a temporary setback in the mid-1990s. For the Kurds in the neighbouring states this certainly is an inspiration.

Developments in Iran have been less successful. We think the only possible way is to start a dialogue with Tehran, although this will take time. We therefore ask Western powers, mainly the EU and USA, to improve relations with the Iranian government – there are many more good reasons for that.

Turkey, a candidate for EU membership, was for a long time a country ruled by a political elite in the tradition of Atatürk. In its constitution it only recognises three minorities in Turkey, based on religion: the Jews, the Greeks and the Armenians. Kurds, the real big minority, are not even mentioned in the constitution. EU membership will automatically lead to implementation of both EU and UN human rights conventions in Turkey.

The Turkish army sees itself as the guarantor for the survival of Atatürk's state. In the period since 1923 the large majority of its actions have been directed against the Kurds: in the post-Second World War period, the invasion of Cyprus in 1974 was the only exception. In the National Security Council, the military plays a dominant role, and the Council's decisions are kept secret from the public.

So, the first thing to change is the Turkish Constitution. This was created in 1982, during the military regime, and has strong authoritarian ingredients. It must be rewritten, and the National Security Council in its present form must be abolished. The Kurds must be recognised as a minority, with rights according to international law and EU practice. In today's EU the security of the peoples and human rights, rather than state security, is now the number one issue.

Changing the electoral law is another improvement that would help democracy in Turkey. Today a party needs 10 per cent of the national vote to enter parliament. Despite early promises to lower this threshold the present government has not yet delivered.

The law on political parties also needs changing. Today parties that work for Kurdish rights are not allowed to exist – therefore we are eagerly waiting for the outcome of the trial against DEHAP. Another ban of this successor of the Democracy Party (DEP) and HADEP would be a serious setback, both for DEHAP and Turkey.

If and when negotiations with the EU start, so-called inter-parliamentary groups will be established. We think it is necessary to find ways to have Kurds represented on the Turkish side.

EU negotiations will offer possibilities as well as restrictions. For one thing, only non-violent solutions will be accepted. Whoever turns to violence is an automatic loser, and the whole process will come to an end. Today there are embryonic changes. In the lawmaking process we notice that implementation of the new laws is a slow

procedure in practice. The laws on minority languages are still mostly on paper only. For the EU it is necessary to ask for clear improvements before negotiations start.

We ask our Kurdish friends to create the right tools to be able to work with democratic means in this new phase of greater transparency. Besides new media, democratic, parliamentary parties provide these tools. Democracy takes a lot of work. You can count on support from us in this critical moment.

All that has been said so far presupposes keeping Turkey as a unitary state. However, developments in Iraq will also become more and more important for Turkey. Nobody can deny that South-eastern Turkey offers good conditions for some sort of regional self-rule: homogenous population, common historic experiences and large natural resources. Over the years Turkish governments have talked a lot about developing the region in economic terms, but not much has happened. A determined and directed support for modernising the region will strengthen Kurdish self-confidence and produce strong improvements. This will come about faster following EU membership. In the longer term this will lead to demands both for regional self-government and maybe independence.

This does not have to result in the break-up of Turkey, though. There are good examples inside the EU of strong states that have managed to develop a *de facto* federal system with democratising activities – Spain and Belgium have succeeded in that, while maintaining their unity as states.

The right to autonomy of nationalities and regions in Spain after Franco has brought considerable growth and domestic peace to Catalonia as well as to the Basque country after 1978, and in Belgium from 1993 three territorial regions have been taking their own economic decisions while three language-based, non-territorial regions run their own cultural and linguistic matters. These developments have taken place peacefully under EU membership and supervision and should be studied by Turkish Kurds in this new situation.

Turkey as an EU member could very well become a model for a multi-cultural and pluralistic society.



## Statement by Mr Roger Kaliff

Member of the European Parliament and Vice-President of the EU Committee of the Regions

Intervening in his capacity of vice-President of the EU-Committee of the Regions (CoR) and representative of the Socialist group within the CoR, Mr Kaliff stressed that local and regional authorities have a very important role to play in the further process of democratisation. The cooperation between local and regional authorities is not only vital to build up accountable public structures closer to the people, but also to enable social and economic development towards more cohesive welfare systems.

Democracy cannot be decided only at the central level. Reforms on that level can only be a starting point for a lively democracy, close to the citizen and therefore more legitimate.

Also with regard to the threshold of 10 per cent for representation in the Turkish parliament, Mr Kaliff emphasised the *need for multi-tier political cooperation of Kurdish and European political movements*. This political cooperation could happen through twinning relationships of local authorities. It could happen and it actually happens also through cooperation within transnational political forces such as the European political parties.

Among these, the Socialist family already has institutional relationships with Kurdish parties since the alliance of DEHAP (Democratic People's Party, and SHP (Social Democratic People's Party) has an observer party status within Socialist International (SI). Concretely speaking, DEHAP representatives were for instance involved in the last meeting of the Socialist International Committee on Local Authorities in Mons (Belgium) on 16 to 17 July.<sup>101</sup>

As an organ of the EU, the CoR had a first occasion to have an exchange of view with local representatives at the Ankara conference on October 11, 2004. That conference, organised by the Mayor of Ankara, was also attended by representatives from Kurdish parties such as Mrs Songül Erol Abdil, Mayor of Tunceli (SHP).

Moreover, on the basis of the Council of the EU's decision on Turkey, the CoR expects the Turkish government, the Council of Ministers and the Association

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101 That meeting was attended by the following DEHAP representatives : Veli Buyuksahin - (Deputy Chair) - Metin Tekce (Mayor of Hakkari) - Fayik Yagizay (European Representative)

Council to propose the establishment of a Joint Consultative Committee between Turkish local and regional authorities and the CoR, which would comprise eight local or regional elected representatives from each side. As regards the membership in this body, it is to be expected that the political diversity will be respected on both sides.

Lastly, the Commission for External Relations (RELEX) of the CoR is to appoint at its next meeting on 3 December a draftsman on the 2004 Regular Report on Turkey. In this context, the CoR would focus in particular on:

- The capacity building at the local and regional level so as to enable Turkey to cope with the EU *acquis* with regard to structural policies;
- The need to give to the relevant local authorities the necessary financial and human resources to fully implement the ongoing reforms on devolution;
- The economic and social development of the Turkish less-favoured regions and the preparation of a legal framework on regional development policy;
- The situation with regard to local democracy in compliance with the surveillance carried out by the Council of Europe.

All these issues are of course all the more relevant for local authorities in the Kurdish-populated parts of Turkey because these regions have to face at the same time the issue of enhancing local democracy and setting the path for economic and social regional development. Both challenges are inextricable.

## **Turkey and the European Union**

*Joost Lagendijk*

Member of the European Parliament and Chair of the EU-Turkey Joint Parliamentary Committee in the European Parliament



Let me start by making some general remarks before I come to the issue of policies towards the Kurds. When I started in January 2002 the old Ecevit government was still in place. There was a lot of talk about reforms, but the reform process was gradual. If it was moving at all it was moving extremely slowly, and if we could have foreseen the overall movement of the last three years I am sure we would not be where we are today. So what happened after November 2002 when this new party came to power, the AKP Party which none of us really knew?

What I have witnessed over the last few years I would call a silent revolution. Things have changed in Turkey that nobody expected to change I would say three or four years ago. I think that the time has come for the EU in a way to reward those people who have introduced changes and partly, I underline partly, implemented these reforms. That is why I am in favour, and my party the Greens is in favour, of starting negotiations with Turkey next year. So I hope the Member States will take the decision on 17 December to start negotiations.

Does that mean according to me or to my party that everything is okay, everything is perfect and all the political elements of the Copenhagen Criteria of are wholly fulfilled? No! It does not mean that. I have said many times in many speeches that in my opinion, when you look at the overall picture, Turkey has probably achieved 75% to 80% of what is necessary to fulfil completely the political criteria. Indeed on human rights and a lot of other issues, and of course on the issue of the Kurds which I will come back to later, there is no full compliance of the criteria.

Still I am in favour of starting negotiations, because I am convinced that it is the best way to get from 75% to 100% fulfilment as soon as possible, and I think that is what we are all aiming at. I am in favour of starting negotiations with the conditions or under the conditions that the Council of the EU has proposed, that is to keep up the pressure from European side to get from 75% or 80% to 100%, preferably in the next few years. And there is the possibility to suspend negotiations if Turkey for one reason or another does not do what she says she is going to do. Therefore this

is the starting point. I am in favour of starting negotiations knowing that things are not perfect. Now on the issue of Kurds: what has been done and what should still be done?

I would like to focus on 3 important issues;

- One is what I will call Kurdish identity, focusing on the use of language and the Kurdish language in the media;
- Second is the return for those who wish to do so to the South-east, and the opportunity to become much involved in, or part of, the socio-economic development of the region;
- The third is the most sensitive of the issues at stake: I refer to the phrase that has often been used in the British-Irish conflict, that is 'to take the guns out of politics'.

### **Kurdish Identity**

I think we all agree that there is a point that most of us have been fighting for over many years: that is, the use of the Kurdish language in education and in the media. On this point, to be honest, we are only at the beginning. On paper there are many reforms which are good - which we have always fought for - but that is paperwork. In practice it is still extremely difficult to enjoy these rights, according to the information I have. To have one half hour of broadcasting in Kurdish on TRT, Turkish National Radio and TV, that is important but it is a symbol. What I am still waiting for is really very normal in a lot of our countries: that is for people to be able to start a TV channel, a TV broadcasting organisation by themselves on a private initiative, with no problems created for them by the authorities. This is still not possible, and I am not satisfied with all these reforms on paper. I am sure that it is not acceptable for the European Parliament that it is not possible for the Kurds, or Turks, to start a TV channel, to broadcast in Kurdish without the fear of being prosecuted.

What we have seen today is that because of the language that has been used in broadcasting, or because of things that have been said on particular television channels, stations continue to be closed and certain subjects cannot be freely discussed on television and radio. Therefore I say that on this particular part of the reforms we are only at the beginning. I consequently tabled an amendment to the report that the Parliament is going to discuss and, I hope, adopt before the summit in December. This is the information from Mr Eurlings, a Dutch Christian Democrat who has drafted this report. He has tabled this proposed reform.

In the course of this discussion a lot of amendments were tabled; one of those

amendments concerns creating the possibility of legally operating a TV or radio channel broadcasting in Kurdish without any difficulties. This is still not possible; again half an hour is nice, is fine, it is a big symbol but it is far from enough.

### **Return and socio-economic development in the South-east**

Now I turn to the second issue. There is a lot of talk and some commitment by the Turkish authorities to socio-economically develop the South-east region. We have heard these thoughts and plans for many years, but on the ground little or nothing has happened. This includes the continued impossibility, or very great difficulty, for those who wish to return to their villages to do so. There is an excellent report produced a month or two ago by Human Rights Watch in which they say, and I agree with them, that torture is an issue. But I am not going to talk about that now as it is not just a Kurdish issue. It's a general point that has to be solved.

Another issue which is not being dealt with is return to the villages. The Turkish government has not made any real commitments to work together with the UN, with the EU or with the Council of Europe, all of which have produced plans, some in great detail, to enable people to return and in particular to abolish the village guard system. I think that this latter point is very important. If the village guard are still in place all those fine plans for the socio-economic development of the region will not make sense. Therefore, I think it is crucial that in the next few months the Turkish government really moves on those two issues of torture and the ability to return. I think these are two very highly symbolic and visible reforms that have to genuinely be put into practice, and not remain merely reforms on paper. Again, these issues are the subject of concrete amendments to Mr. Eurlings' report and it seems that there is, I would say, 75 to 80% support to push them as the two most important points in that report.

### **Security**

Then I come to the most sensitive issue. I am truly convinced that, without security, all these fine plans about the Kurdish media and about returns to the villages do not really make sense and will not work. Without security, without an end to the violence, all these fine things may partly happen, but in the end they will fail.

Therefore I refer to the sentence that has been used in the British - Irish conflict involving Sinn Fein and the IRA, that is 'to take the guns out of politics'. I have said it before, I have said it many times, and I have been condemned as a 'PKK lawyer' in the Turkish media for saying it. I am in favour of the Turkish authorities and the Kurdish parties starting a dialogue. I am still convinced that this should happen. I

know it is very sensitive, I know it will not happen before December 17, but I am also convinced that everybody in the Turkish government knows ultimately that Turkey will not become a full member of the EU while fighting is still going on.

So there is another amendment. I refer to these amendments to the report because the report will express the opinion of the whole European Parliament, not only mine or that of my party. I want to read the amendment I tabled to you because I think it is crucial and again needs a very sensitive debate. We have already had one round of negotiations on this proposal and it seems there is a possibility it will gain broad support in the Parliament.

This amendment reads as follows;

(The European Parliament) urges the Kurdistan People's Congress, Kongra Gel and the Turkish authorities to put an immediate end to the hostilities in the South-east of the country, and invites the Turkish government to take more active steps to build reconciliation with those Kurdish forces who choose to abandon the use of arms.

Let me be very clear that this is a sensitive issue on both sides. It will be very easy for the Kurds to say 'okay, we are waiting for the Turkish government; if they come to us everything will be perfect, and we don't have to do anything'. That is not true. Both sides have to act; both sides have to take courageous steps. It was a courageous step for Kongra-Gel to stop fighting in the South-east and to try to imagine ways of putting an end to the conflict, trying to find a way of communicating with the Turkish authorities one way or another. It would be as sensitive and as courageous, I would say, for the Turkish authorities to do the same. There will be a lot of protest on both sides, I think especially on the Turkish side, against reconciliation.

There are many people on both sides who do not want reconciliation, who are afraid of it, who find it too sensitive. Therefore I was extremely happy with what Leyla Zana said when she was here in the European Parliament. She made a very clear plea in favour of reconciliation between Turks and Kurds, and she called for courageous steps not only from Turkish side, but also from the Kurdish side. It will be a step by step approach. There will be many problems. It will not be easy but I am truly convinced that it is necessary, otherwise all those ideas about Kurdish identity and socio-economic development of the region won't materialise. So I sincerely hope that the Parliament is willing to make a call on both sides to come together. It will be secret, it will be behind the scenes and it probably will not happen within the country. We all know about the experiences of the British and the Irish, how they did it. I think both sides could learn from British-Irish history; both sides should be able and willing to make that step. I said that on some issues this is only the beginning and I think that we should all be aware that even if on December 17 the

heads of state say yes to the start of negotiations, we have to come down to earth on December 18. It will not be an easy process; I think we have to be positive, and I am positive, but we should not be naïve. It will take years, perhaps ten to fifteen years or even more, for Turkey to become a country where everybody has the same rights, the same status, and the same means and freedom to express themselves.

Turkey will become a different country as a result of accession negotiations, which is one of the main reasons why I am in favour of EU membership, but we will come to see very complicated debates, including on the Kurdish issue. That debate has already started in, for example, the whole debate about minorities. What are minorities? The European concept of minorities is totally different from the Turkish concept of minorities, and that debate has only just started. Are the Kurds a minority? The Kurds say no, the Turks say no. That seems to be the end of story – but it is not. There will be a lot of debates about minority rights and about what minority rights mean in the Turkish situation? I think that we should all be prepared for these debates.

Again, I am in favour of negotiations but I am not naïve. Problems will not go away. There are still a lot of problems which I am convinced can be solved better during negotiations than by closing the door on Turkey now, and by supporting those people who are opposed to reforms. Therefore I am in favour of the opening of accession negotiations, but again let us be honest, accession negotiations will create problems that cannot be solved in one or two years: we will need many more years to achieve that.

And I think it was the president of my political party who was the first to say that the real test for these negotiations, the real test for what we will all be seeking over the next ten years, is not the situation in Istanbul and it is not the situation in Ankara - it will be the situation in Diyarbakir. There the situation will have to change fundamentally within ten years if Turkey wants to have the chance of entering the EU a decade from now. All these reforms that I am talking about deal with the situation in Turkey in general: for instance with reference to torture. But the real test for the reforms that Turkey has to implement is in Diyarbakir and with regard to the situation in the South-east. If that does not change, I am sure Turkey will never become an EU member. If that does change and the situation there is normalised, then I am quite positive and optimistic that Turkey one day will become an EU member.

I have made political statements before I became president of the Turkey delegation, I said that Turkey belongs in Europe and the Kurds belong in Turkey. I am happy that I did. I think it is still the way I want to pursue politics in the EU and in the European Parliament. This way of expressing ourselves has brought us far; it has brought Turkey to the verge of starting accession negotiations. It has in one way - on

paper - improved the rights of Kurds, though not enough by a long way in practice. I really hope this will be my last comment. It has brought us a long way. Turkey belongs in Europe, Kurds belong in Turkey. I am convinced, I am positive that it will bring us to a satisfactory conclusion if we stick to that. It will make Turkey a more democratic country and it will also give the Kurds the same rights as all citizens have in the EU. Thank you very much.

## **The Kurdish Question and Civil Society**

*Osman Baydemir*

Mayor of Diyarbakir and former Deputy President of the Human Rights Association of Turkey (IHD)

The Kurdish question in Turkey has retained its importance by reaching new levels of complexity. Throughout the last 20 years the Kurdish question has become the source of increasingly deeper and more difficult problems. This has resulted in huge human and economic losses to both parties involved in the conflict. Recent history has demonstrated the fact that the Kurdish question will not be resolved by resorting to war and violence. For this reason, the fact that the issue must be approached through peaceful dialogue and non-violence has become manifestly apparent.

Today, we have reached a stage where the side that has endeavoured to solve the Kurdish question by recourse to warfare as its strategy has now committed itself to democratic and peaceful means and has taken significant steps to that end. It has moved from a strategy of separatism on an ethnic basis to a strategy of encouraging the equal rights for the Kurdish people within the Turkish territories on the basis of an acknowledgment of the Kurdish identity and equal citizenship. The only problem with this has been the fact that the responding side has deemed these efforts as mere manoeuvring.

On the other hand there has been some change in the stance of the side that has until recently rejected any acknowledgment of the Kurdish identity both politically and culturally, in that its policies show some sway towards recognition. With the process of Turkey entering into negotiations for EU membership, some of the basic cultural rights (i.e. the right to publish in Kurdish, Kurdish language courses) of the Kurdish people that were previously denied have been recognised; albeit with limitations in practice. From the Kurdish point of view however, the question of whether these changes are an acknowledgment of the Kurdish identity is approached with caution. These changes are viewed by the Kurds that live in Turkey not as a result of their struggle for their rights but as a means to an end to fulfil Turkey's desire to enter the EU.

For this reason the Kurdish issue must be approached free from all forms of violence. Mutual respect and common ground must be sought, and most importantly there must be mutual trust between the parties.

All strategies that are designed to achieve these aims would require both sides to take certain important steps. These steps can be categorised into two interchangeable

headings.

1. Steps to ensure mutual trust between the parties; and
2. Steps to solve the Kurdish question on the basis of the Kurds being an indivisible element within the Turkish borders and on the basis of their being citizens of the Turkish Republic.

As a general rule of politics the rejection of one party or their non-acknowledgment will be reflected in a rejection of any approach to resolve an issue in dispute between the parties. This type of rejection or non-acknowledgment brings with it two broad problems.

- Firstly, this type of rejection or non-acknowledgment will be seen as a hindrance to the other side's efforts and importantly the refusal of the other's identity. This will in turn result in the side that is being rejected adopting a strategy of promoting and advancing its identity, which will inevitably lead to arguments of justice and injustice.
- Secondly, this type of policy would trigger intolerance amongst the public, which will unavoidably lead to separatist policies being adopted.

Additionally, the result of such rejection and hence the fight for identity and share of resources leads to two separate strategies being taken.

- The first strategy aims to establish itself within the already existing system. This type of approach ignores the exclusionary regime of the current system and aims to establish itself within this current system.
- The second strategy is the more radical approach of completely rejecting the current system and aiming to establish a new system for either the whole populace or just its own segment of the population.

Identity in Turkey as defined as ethnic Turkish identity has meant that the Kurdish identity has been through a long history of rejection and non-acknowledgment. To this end, it is worth noting that historically this type of rejection and non-acknowledgment has not been limited to cultural and political rights but has also been evident in the use of economic resources. For instance the South-eastern region of Turkey, which is where Kurds are mainly situated, has been subjected to significant economic neglect.

This process of rejection coupled with the government's recourse to military warfare to resolve the Kurdish question has resulted in economic loss across the whole

populace. Along with the high death-toll of the last 20 years, natural resources and living standards have deteriorated across the whole population. This is especially true for the South-eastern region. In the face of this situation it is clear that the Kurdish question must be thought over by all segments of the public and government.

It can be said that there are three alternatives/scenarios to the Kurdish question. These alternatives are:

- To put an end to the strategies of attempting to resolve the Kurdish question through military warfare, (incidentally a consensus of this line of thought seems to be emerging), to accept the current situation and to be satisfied with the limited steps that have been taken; or put another way, to protect the *status quo*.
- To aim to resolve the issue by returning to the violent warfare that has been adopted in the past.
- To aim for both sides to reach common grounds on which a peaceful resolution can be sought.

To this day, both the strategies of keeping the *status quo* and or recourse to military warfare have been tried but have resulted in great losses and have not manifested any gain. To that end, bringing to life the third option would, in the given circumstances be the more attractive approach.

However, it is an undisputable truth that with Turkey's current circumstances there are significant barriers to bringing this option to life. It is a known fact that alongside those who desire the Kurdish question to be resolved, there are segments who wish for the question not to be addressed. This is true of both sides. It could be said that a reason for this is the fact that there is a lack of trust between the sides. For this reason, as we have highlighted already, steps to gain this trust is an important prerequisite. To achieve this there must be an immediate step to remove all notions of rejection and to establish civic rights for the various segments of the public, including the Kurds.

Looking at the Turkish example, it is clear that there are important questions raised on the use of civic rights amongst the public. For instance it is notable that many segments of the public can be prevented from exercising their civic rights. It is clear however that the most disadvantaged section has been the Kurds. The Kurdish question to this date has been approached in two spectrums, namely, rejection of their basic rights and rejection of their political rights.

The bases of tension have been the restrictions on the use of the Kurdish language,

restrictions on freedom of expression, restrictions on equal participation in the political system and restrictions on the right to vote and to be elected. The closing down of parties, difficulties in voting and the threshold of votes required serve as examples here. An additional source of tension is the more general problem of the refusal to acknowledge the Kurdish identity.

If one views regional development within Turkey it is quite clear that the South-eastern area where the Kurdish population is concentrated, is significantly underdeveloped. As a result of the systematic and continued neglect of the region, there are a significant number of the regional population who have not had the opportunity of participating in the labour market, which has meant that the unemployment rate of the region has risen significantly. Likewise the region is also notably disadvantaged in terms of the equal distribution of resources. It is clear that only a limited amount of the public resources are sent to the region. Another indication of the poor conditions of the region is made evident by the lack of housing available.

When one views the resolution of the Kurdish question in these terms, it is apparent that it is linked with another domain: namely, civil society and local government.

To this end, it could be said that there have been two strategies followed with regard to the relationship between central government and civil society. These are:

- The strategy of conflict; and
- The negotiative strategy.

Prominent barriers however curtail the resolution of these problems in a negotiative fashion. Both the central government and civil society itself are not without fault in this respect. The most notable problem of the central government in the field of civil society and democratisation is its unwillingness to allow local government to self govern.

Equally it must be said that in the process of transforming into a civil society and achieving democratisation, civil society itself is not without fault. Only a limited section of the forces within civil society are in union. Likewise, a large section of civil society is not represented.

Throughout the past 20 years we have witnessed many examples of both the central government's unwillingness to allow for civil society's development and the inability of civil society to actively participate in unity.

For these reasons local government in Turkey gains more importance. The factors

that make local government important are on the one hand its obvious link with central government and on the other hand the fact that it is directly accountable to the local public and is responsible for the services provided to and for them. For this reason local government can play an important role in the central government's efforts at democratisation and furthering civil society; because as stated above, local government has the characteristics of both sides of the spectrum.

An evaluation of the local governments in Turkey would most definitely need to concentrate on both the local government's use of economic resources and the fact that local governments are excluded from any real decision making. To express it another way, in the current regime, local people are unable to utilise their municipal rights.

As an example of this I would like to explain a problem that has been apparent in my constituency, Diyarbakir. In the recent past Diyarbakir underwent a significant crisis. Compulsory village migration and the like led Diyarbakir to an economic halt bringing it face to face with poverty and mass unemployment. This is a problem of a large section of Diyarbakir's population. But more importantly the most affected of this crisis have been women and children. Women have been cast out of city life as far as economics are concerned. The resolution of this recurring problem lies in politics. However, other more minor forms of resolving such problems are also possible.

We have established launderette centres in Diyarbakir's three poorest boroughs. These launderette centres are designed to help the poor people by being free from any cost. As expected these launderette centres are mainly used by women from poor families. We have also aimed to develop additional programmes and projects for the poor women and children who use these launderette centres. These programmes and projects are primarily aimed to increase the potential of these poor people in society. We aim to bring the women out of their homes and make them active users of the city. In other words we are of the opinion that developing strategies to help with poverty alone is not a satisfactory answer. We aim to increase the capacity and potential of the poorest segments of the population to contribute in society.

In this respect, the characteristic of local governments in their close proximity and relations with the public makes their role exceedingly important. This role not only means that local governments must act as a bridge between central government and the public but also means that they are responsible for the equal distribution of resources amongst the public and the creating of the potential for members of the public to become more active in civil society.



## **Is a Peaceful, Democratic Turkey Possible?**

*Ali Yiğit*

Former member of the Turkish Parliament and now President of the Union of Democratic Kurdish Federations in Europe (KONKURD), Holland

As it is popularly known, a decision from the EU on whether or not to grant an accession date to Turkey will be taken in December 2004. Turkey, for its future EU membership, has undergone legislative reforms. However, no serious steps have been taken to solve Turkey's, and the Middle East's, biggest problem: the Kurdish issue. Changes made have been purely cosmetic and do not address the crux of the problem. Despite these serious issues, I still want to let you know that we support Turkey's entry into the EU.

A comparison will help to show the severity of the problem. In the end, it will not be just Turkey that joins the EU. Together with Turkey, over 20 million Kurds will be joining the Union. Current statistics reflect that out of the 25 EU states, 19 have a population fewer than 20 million. It is difficult to believe that a solution for the cultural, ethnic and social problems of Turkey's 20 million plus Kurds **will not** need to be resolved **upon before Turkey's EU entry. Should Turkey in her current situation be accepted into the EU? Will not accepting Turkey where she has chosen not to solve this serious problem, mean that the EU is inheriting the problem?**

In Turkey there are still thousands of people who have been imprisoned because of their political beliefs. The towns and villages that were destroyed in the Kurdish regions remain as they are with no plans for reconstruction. The population who were forced out of their homes are still not allowed back. The notorious village guard system is still operating at full force. All the paths for a peaceful and democratic solution to the Kurdish question remain closed, and the national identity of the Kurds is being denied.

For six long years the leader of the Kurdish people, Mr Abdullah Öcalan, has been held in a one-man cell. In fact he is the one and only prisoner on an island. Despite repeated requests, no changes have been made to his situation. Mr Öcalan is denied all human and legal rights, including the most fundamental rights of seeing his family and lawyers. Even these weekly one hour meetings are being prevented. The treatment of Mr Öcalan, who is the one person responsible for stopping the war and starting the process of searching for a democratic solution, is still grave, and falls outside the boundaries of international law. His treatment is degrading.

The criteria in the EU Constitution which address issues regarding human dignity,

democracy, equality, human rights, and the superiority of the law which apply to European countries should also be applicable to Turkey.

We are not expecting a magic solution to the Kurdish issue. However, we do expect a minimal level of respect, good intentions, and that our national Kurdish identity is constitutionally protected. When these requirements have been met, it will mean to the Kurdish people that there is a true intention to find a solution.

Despite all barriers, the Kurdish people remain determined to find a peaceful solution. This is clearly reflected in their actions during the past five years when they have remained true to their unilateral cease-fire declaration. What the Kurdish people want is official recognition and a guarantee of all their rights. All they want is to have the right to freely speak/study/teach their language and culture, and to be able to use their political rights.

The unilateral cease-fire was answered with increased attacks by the Turkish military. No single demonstration of good intent was witnessed from the other side and the EU has remained silent on this issue as well. Many European countries, such as Britain, Belgium and Spain, have had similar problems; however, the difference is that a solution through peaceful dialogue was found for these problems. Such a solution is surely possible for the Kurdish issue as well.

In the upcoming months Turkey's EU accession talks will be taking place. This period and the military conflict should bring new steps and discussions to ensure a peaceful solution to the Kurdish question. Otherwise, even if EU accession talks start, the conflict and tension on the Kurdish issue will complicate these talks. For this reason, the implementation of the political criteria should not be delayed. The political criteria should provide the framework for democratisation and a long-term solution to the Kurdish question. Unity between Europe and the Kurdish people can only be achieved in this manner.

Turkey is trying to enter the EU without solving her Kurdish problem and without constitutional guarantees for Kurdish rights. Denial of the existence of the Kurds and their identity, culture, and language is the biggest barrier to the democratisation of Turkey. Turkey is trying to make the EU a partner in its Kurdish strategy. Turkey is taking advantage of its strategic importance and political situation in order to achieve its goal. This policy, which has not changed for 200 years, has lost its viability. It is a dangerous foreign policy that could bring a heavy toll to the country. Therefore, without undue delay, the Kurdish question should be solved.

As a member of the modern democratic world, we, the Kurds, want to live as equals of everybody else. We say 'yes' to a multi-cultural and multi-national system. Therefore we identify ourselves as Kurds, as citizens of Turkey, and as Europeans.

However, we will always be against all forms of fundamentalism - religious or otherwise – and of nationalism.

I would like to draw attention to the following:

In order to establish stability, freedom and democracy, a number of requirements must be met. Achieving respect for and understanding of these criteria requires that the following propositions, which are essential in the search for an acceptable solution to the conflict, ought to be satisfied:

1. In order for Turkey to successfully implement peace and stability in the Kurdish regions and the Copenhagen Criteria, a central committee for a dialogue with the Kurds by Turkey and the EU is needed.
2. As the Kurds are one of the main founders of the Turkish state, an immediate plan of action for dialogue must be taken to find a solution to the Kurdish issue.
3. The EU must, from an impartial position, become a referee for the resolution of the Kurdish question by striving to achieve a bilateral ceasefire.

In addition, the following conditions should be met:

1. The Kurdish question should be seen as the basis of Turkey's democratisation and unity problem. Military operations in the Kurdish regions must cease.
2. The military build-up in the Kurdish regions must be reversed.
3. All elements of martial law in the Kurdish regions should be removed and the village guard system rendered obsolete.
4. The Repentance Law, which is intended to demean and strip individuals of their character and humanity, must be replaced by a law of general political amnesty encompassing all political prisoners, including Mr Abdullah Öcalan.
5. Resolutions of the European Parliament and European Commission regarding the Kurdish issue must be respected.
6. Towns and villages destroyed by the Turkish government should be rebuilt. The inhabitants of the Kurdish towns and villages forced to leave should be fully compensated and their return should be facilitated.

7. All democratic rights that the Turkish people have must also be applicable to the Kurdish people.
8. The Kurdish identity, culture, and language must be fully and officially recognised.
9. Centres for the development of the Kurdish culture, language, history, and music must be created.
10. The names of all Kurdish geographical regions and locations which – as a result of the assimilationist policies of the state – were changed to Turkish must be restored.
11. Reforms should be carried out within the judicial system in order to allow true cultural pluralism, and to allow for rights of Kurds and minorities to practice these freely.
12. An economic and social plan must be put forward for the development of the Kurdish regions.
13. The administration should be decentralised to allow for more local control.
14. All prohibitions and obstacles facing Kurdish political organisations must be promptly lifted.
15. The Kurdish identity, culture and language should be fully and officially recognised. The Kurdish language should also be taught in schools and universities.

## A Democratic Solution to the Kurdish Issue<sup>102</sup>

Denzil Potgieter

Advocate in South Africa and former President of the Amnesty Committee of the Truth and Reconciliation Commission



### Introduction

Today everyone claims to love democracy. Practically every government calls itself 'democratic' no matter how authoritarian it may actually be. Bernard Crick<sup>103</sup> wryly concluded that democracy has become the most promiscuous word in the world of public affairs.

The word democracy is of course derived from the two Greek roots - *dem*, meaning the people, and *kratos*, meaning authority. This described the original concept of direct democracy as practised in the Athenian democracy in the fifth century BC where citizens met in assemblies and took major policy decisions themselves. Things have of course changed and today the concept applies to political systems which manage to reconcile competing political interests rather than imposing one interest on another.<sup>104</sup> The essential characteristic of democracy is the reconciliation of the need for order and stability with a degree of competition among different pluralistic interests. Democracy is legitimised by the notion that what the government undertakes is based on the consent of the subjects.

In its major present-day models, viz. social democracy and liberal democracy, it is respectively understood as a system of public decision-making dedicated to the realisation of the ideals of social emancipation and distributive justice as opposed to the nature of the procedural and institutional mechanisms that safeguard the rights of individuals by imposing limitations on the exercise of power by the state.<sup>105</sup> In current practice, democratic government requires three institutional pillars:<sup>106</sup>

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102 A talk delivered at Brussels on 23 November 2004 by Adv. Denzil Potgieter SC [B.A. (Hons); LL.M] former Commissioner of the South African Truth and Reconciliation Commission.

103 *In Defence of Politics* (London : Penguin, 1964)

104 **Barnard Crick** *Basic Forms of Government : A sketch and a Model* (London : MacMillan, 1973)

105 **Esterhuysen et al** *The Myth Makers* (Cape Town : Southern Book Publishers, 1990) p. 15

106 **Licht et al** *South Africa's Crisis of Constitutional Democracy* (Cape Town : Juta, 1994) p. 201

1. Universal adult suffrage, enabling voters to vote in regular, free elections;
2. The upholding of fundamental human rights, including especially freedom of expression and association;
3. An independent judiciary.

It is also widely accepted that constitutionalism related to the theory of limited government is an important element of democracy.<sup>107</sup> This entails that:

1. Government should be constrained by the constitution, i.e. certain limits should be placed on what government on all levels (national, regional and local) may do;
2. Legal and constitutional limitations should be placed on the way in which government power may be executed;
3. Fundamental rights and liberties should be protected by a *justiciable* bill of rights;
4. A system of normative principles should determine governmental action;
5. A balance should be struck between limited government and majority government by, for example:
  - a) The separation of legislative, executive and judicial powers;
  - b) Federalism and devolution of power to regional and local spheres of government.

Adam Przeworski<sup>108</sup> aptly observed that:

Democracy is the realm of the indeterminate; the future is not written. Conflicts of values and of interests are inherent in all societies. Democracy is needed precisely because we cannot agree. Democracy is only a system for processing conflicts without killing one another; it is a system in which there are differences, conflicts, winners and losers. Conflicts are absent only in the authoritarian systems. No country in which a party wins 60 percent of the vote twice in a row is a democracy.

The spirit of the last comment is apposite, namely that in general long, unbroken

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107 *Ibid* p. 19 *et seq*

108 *Democracy and the Market : Political and Economic Reforms in Eastern Europe and Latin America* (Cambridge : Cambridge University Press, 1991) p. 95

periods of single-party dominance are hardly conducive to democratic health in any given political system.

As was pointed out by Licht *et al.*:<sup>109</sup>

In divided societies - where groups, however composed or configured, endure through time and are relatively impervious either to losses of electoral support (by defection, for example) or to gains in support (by the recruitment of new strata or making new coalitions or alliances, for example) - the problem of the permanent minority may become an acute one, possibly leading to the minority's disaffection and certainly to a limitation on the political system's pretensions to democratic status.

As Hans Daudt and Douglas W. Rae say:

A democratic system with majority rule can only function in a satisfactory way if the conflicts that the system must deal with can be solved by compromises in such a way that everybody's interests are taken into account. Only in that case is it, theoretically at least, possible that there might be *unanimity* about the desirability of majority rule and only in that case will the system be experienced by anybody as coercive. If a person belongs to a minority that is permanently prejudiced by the system or harmed in what it considers its most fundamental rights, there cannot be any rational argument why he should consider the system as legitimate.

Another recent theorist, Jane J. Mansbridge, writes:

On its face, majority rule seems to protect interests equally because it gives each individual a vote of equal strength in the peaceful equivalent of a 'fair fight'. Yet despite the fairness implicit in tug of war and weights-in-the-scale analogies, majority rule does not always protect interests equally. As a winner-take-all system, it does not usually produce a proportional distribution of benefits, and it can create permanent minorities. If some minority is always on the losing side in every collective decision, few would say that the minority's interests were being protected, let alone that they were being protected equally. Majority rule ensures equality only in the procedure, not in the result.

Securing democracy in culturally or ethnically divided societies is difficult. Creating and sustaining an overarching sense of nationhood are major problems; protecting minorities against majority oppression and ensuring that they are enabled to participate effectively in the political system are others.

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109 *op. cit.* (note 4) p. 205-6

It was against this background in the middle 1990s that South Africa made a peaceful transition from a deeply divided society wracked by almost 50 years of authoritarian rule to democracy. This in itself had been a momentous achievement. However, an even greater challenge lay in the need to normalise and reconstruct society. To understand the full extent of the challenge, it is instructive to consider the context in which the transformation occurred.

## **Historical overview**

Prior to the arrival of the first colonists, the Dutch in 1652 and the British in the 19<sup>th</sup> century, the inhabitants of the area which later became known as South Africa, were mainly nomadic indigenous people who lived off the soil. The experience of colonialism has been one of the subjugation and exploitation of the indigenous people by European settlers. The relationship has been one of conflict, importation of slaves, wars of dispossession, colonial conquests, and the systematic hunting and elimination of indigenous people.

Segregation and racism have been the hallmark of the colonialist experience and also formed the basis of the later struggle of the black majority for political liberation. The unification of the four former British colonies into one nation and its grant of independence in 1910 as the Union of South Africa entrenched white minority rule in the country. This set the stage for the election victory in the 1948 all white elections of the Nationalist Party, which governed the country until 1994 and imposed a system of statutorily entrenched racial segregation of all spheres of life in South Africa and the systematic repression of blacks. The resultant liberation struggle was thus a racial political conflict involving a ruling white minority and a disenfranchised, politically oppressed and economically exploited and impoverished black majority.

As the conflict intensified the major black liberation movements, notably the African National Congress under the influence of a respectable youth leader at the time, Nelson Mandela, resorted to armed struggle in the 1960s pursuant to intensified and bloody repression by the National Party regime which led to great loss of life.

This turned into a protracted and often bloody conflict involving the white minority government and the liberation movements. The conflict seemed to be intractable and resulted in large scale loss of life, destruction of property and the devastation of the country and the economy. Indiscriminate killings, torture and political assassination by the regime were met by intensified armed attacks and disruption of the infrastructure by the liberation movements whose followers rendered the country ungovernable. The economy was brought to the brink of total collapse and the country suffered under trade sanctions and international isolation.

Under the circumstances the contending forces were compelled to accept that there was no real likelihood of a military victory by any of the opposing forces and that the only real prospect to establish a lasting peace, was through negotiations and compromise. The key to this solution was the highly respected imprisoned leader of the African National Congress (ANC), Nelson Mandela.

As with all deep-rooted conflicts, some catalyst is needed to kick-start talks and contact among the contending forces. In the case of South Africa, this came in the form of the end to the Cold War in the late 1980s with the introduction of glasnost and perestroika in the Soviet Union, as well as certain regional changes, particularly the independence of some of the neighbouring countries from colonial rule and the support of the new governments for the South African liberation movements. The initial contact between the parties was facilitated by the international community.

Talks and secret contact involving the imprisoned and exiled leadership of the ANC began in the 1980s. This culminated in the lifting of the bans on all the liberation movements on 2 February 1990 by the then President F.W. De Klerk. Shortly thereafter all imprisoned political leaders, including Nelson Mandela, were released and the exiled members of the liberation movements returned to the country.

Formal multiparty negotiations took place, which after a period of upheaval, with large scale killings of innocent people including women and children (widely believed to be orchestrated by a faceless third force opposed to negotiations) eventually resulted in a political settlement being reached among the main political movements early in December 1993. An interim constitution was agreed upon, which would apply pending the holding of democratic elections and the drafting of a final constitution by a democratically elected Constituent Assembly. The first democratic elections were held in the country on 27 April 1994, when most South Africans voted for the first time in their lives. The ANC won a landslide victory and Nelson Mandela was deservedly elected as the first President of the democratic South Africa. A final constitution, entrenching a Bill of Rights, was adopted by the democratically elected Constituent Assembly on 8 May 1996 and came into operation on 4 February 1997. For the first time in the history of the country, fundamental human rights were constitutionally protected and the courts given the power to review laws and executive acts to ensure that they comply with the principles and values contained in the constitution (this process was initiated in 1993 by the interim constitution).

The scene was now set to truly normalise the situation in the country.

According to political scientists, the situation in the country at the time of transition in 1994, was reminiscent of Machiavelli's equation of dysfunction in the affairs of state to an advanced stage of the plague, in which the condition is easily diagnosed

but impossible to treat.

The main problems were inter-related and diagnosed as:

1. Lack of participation by the majority in the political process. This was a direct result of the apartheid policy of depriving blacks of any political rights. This issue was addressed in the constitution adopted by the new democratic government in which a bill of fundamental human rights is entrenched. This legally ensured full political participation by all South Africans.
2. Failure of the economy to provide for the basic needs of all. This was a more intractable problem which was exacerbated by the skewed distribution of economic power along racial lines, with economic power concentrated in white hands. The solution was seen in a more equitable distribution of economic benefits, and the adoption of prudent economic policies that will result in improved levels of investment and economic growth. This called for more long-term strategies which are presently beginning to come to fruition.
3. The fragmented nature of the South African polity which resulted from a deliberate policy of racial separation and segregation of citizens applied by the previous regime.

The latter problem raised the issue of nation building in order to address the divergent demands of the various groupings in the South African society. It was accepted that the other problems facing the country could only be meaningfully addressed by a united and reconciled people with a common objective of serving and advancing the best interests of their country.

It was, however, also realised that this objective can only be achieved if the conflicts of the past are put behind us and used as a means of motivating future generations never to regress into such a destructive situation. A better future is secured by confronting and unravelling the past. True healing can only occur once all the causes of the conflict are fully disclosed and identified.

### **Mechanism adopted to consolidate democracy**

One of the matters that finally led to a political settlement being reached was a last minute agreement on the granting of an amnesty for political offences committed during the conflict. This provision was, in fact, written into the 'postamble' or postscript to the 1993 interim constitution under the heading 'National Unity and

Reconciliation.’ This formed the legal basis for the new democratic Parliament to adopt the law which established the Truth and Reconciliation Commission (TRC) viz. the Promotion of National Unity and Reconciliation Act of 1995 (‘the Act’). Given the fact that the conflict did not produce any victor or vanquished and that there was a real risk of the fragile peace being undermined by armed factions opposed to the settlement, the issue of promoting national unity and reconciliation became critically important to preserving the new democratic order. The manner in which the past conflict was handled became equally important. It was accepted that the best approach is to adopt a process which would put that conflict behind us while at the same time using it as a means of motivating future generations never to regress into such a destructive situation. This could only be achieved by investigating fully and establishing the truth about the nature and circumstances of the conflict and the violations of their human rights which many South Africans suffered during that conflict. It was accepted that national unity and true reconciliation can only be based upon a full disclosure of the actions of the contending forces.

To this end the Act provided as follows:

1. It established a Presidential Commission with the powers to investigate the nature and causes of the conflict and make recommendations to avoid a future repetition.
2. The TRC was to conduct its activities through three Committees, viz. the Human Rights Violations Committee (HRVC), the Amnesty Committee (AC) and the Reparations and Rehabilitations Committee (RRC). The HRVC had to collect information from victims of gross violations of human rights (defined as killings, torture, abductions and severe ill-treatment) and investigate and hold hearings into violations. It has managed to collect statements from approximately 22,000 victims recording a wide range of violations. The AC considered applications for amnesties from perpetrators and has received and finalised approximately 7,000 applications involving about 1,400 incidents. The RRC is mandated to recommend policy to government concerning reparations for victims of gross human rights violations as a means of promoting healing and reconciliation and to counterbalance the effects of the amnesty. It has submitted recommendations for the payment of individual monetary grants and for symbolical forms of reparations such as erection of monuments and memorials and similar forms of recognition for and commemoration of victims of the conflict.
3. It provided for the granting of amnesties to perpetrators of politically motivated offences or violations of human rights in return for a full disclosure of their actions. Amnesties were granted only for offences

committed during the period of conflict (1 March 1960 to 10 May 1994). No offences committed subsequent to the installation of the new democratic government were covered. The application, which was voluntarily submitted by individuals, had to comply with various stipulated requirements, including that the offence should be proportional to the political objective pursued by the perpetrator and that the perpetrator should not have been actuated by malice or ill-will towards the victim or acted for financial gain. Common crimes without political motive were excluded. The offence should, moreover, have been committed on behalf of one of the conflicting parties i.e. the state or political organisations involved in the conflict. The amnesty had the effect of obliterating all criminal or civil liability for the deeds in question.

4. An opportunity was given to victims of violations to relate their experiences as part of an official recording of the details of the conflict and as an act of recognition of the victim status of the deponents. This was necessary to heal the deep divisions in our society caused by the conflict and to promote reconciliation. It was part of a national catharsis.

The TRC executed its mandate by holding numerous hearings throughout the country and collecting statements, information and evidence from all sectors of society, in order to establish the truth and obtain the fullest picture possible of the conflict. Submissions were received from and hearings held into the legal sector, the media, faith communities, the business community, youth, women, the education system and political parties. All of the information was collected and recorded in a five volume report presented to the President in October 1998. A supplementary report was prepared to account for the period from October 1998 until the closure of the TRC. The two volume supplementary report was handed to the President on Human Rights Day, 21 March 2003.

Understandably a process such as a TRC would enjoy a mixed response in a deeply divided society such as ours. Supporters of the previous regime perceived the process as a way of discrediting or punishing them. Very few of these people participated in the process, although every South African followed the process very anxiously in the media. Very wide publicity was given to the process and many hearings were given live coverage on radio and television. This effectively brought home to the country, the enormous extent of human rights violations that had occurred during the conflict. The truth about the conflict had been largely established and the TRC report is accepted as the authentic version of that conflict. The reconciliation component of the mandate is more daunting. The TRC had endeavoured to promote the concept of national unity and reconciliation by means of various initiatives, such as encouraging all communities to attend public hearings, arranging public debates involving leadership figures on reconciliation, arranging

contact between individual perpetrators and victims, encouraging contact among different communities and the like. Although there had been some success with these initiatives, the TRC accepted that it would be unable to *effect* reconciliation or national unity - hence its mandate was limited to '*promoting*' these objectives. These are clearly more long term processes. There is also no consensus on the content of these concepts. The disadvantaged regard economic uplifting and an improvement in their living standards as an integral part of the process while the beneficiaries of the previous regime regard the protection of their possessions as essential to reconciliation. Others see reconciliation in individual forgiveness and repentance. Continued public debate and the dissemination of views and information will hopefully lead to a national consensus in this regard.

## **Conclusion**

Our view as South Africans is that we are better able, after the introduction of a democratic order and efforts at reconstruction such as the TRC process, to face and work towards the resolution of our problems as a nation. We have largely succeeded in normalising our country through a process of political negotiations and peaceful settlement of our differences. This requires honest commitment to seeking solutions and a willingness to compromise. We only regret not having engaged in that process earlier and thus having avoided a great deal of unnecessary loss and suffering. It is much easier to destruct than to construct as we found out to our great regret.

We can only share our experiences with others who are facing the same daunting challenges as we did, in the hope that they can find something of lasting value in what we went through. No two situations are identical and no lasting solution can be imposed from outside. The parties involved are in the best position to find solutions that fit the unique circumstances of their own situations. As South Africans, we have received much needed assistance, counsel and guidance from our many friends around the globe, for which we are eternally grateful, but the eventual solution was found after long and hard discussion and debate among ourselves. As freedom and peace-loving people, we can only encourage others to seize available opportunities to commit themselves, as we did, to finding democratic, peaceful and sustainable solutions that are in the best interests of your own people. You have our unstinting support in that endeavour.



## PART SIX:

### CLOSING REMARKS ON BEHALF OF THE CONFERENCE ORGANISERS



*Conference organisers (from left) Kariane Westrheim (Rafto Foundation), Kerim Yildiz (Kurdish Human Rights Project) and Hans Branscheidt (medico international)*



## **Perspectives for a Democratic Turkey: An Analysis of the International Conference ‘The EU, Turkey and the Kurds’**

*Hans Branscheidt*

Head of medico international (Germany)



Based on the Copenhagen Criteria of the EU, the international conference in Brussels is taking place at a point in time when a new form of Kurdish self confidence is developing and also strengthened by this very conference. Rather than being understood as a static and fixed object in terms solely of a minority status for the Kurds, the Kurdish representatives present at the conference argued that on the ground the 20 million strong Kurdish people have been a key force in founding and shaping the changing Turkey and widening Europe.

International experts, qualified resource personnel, lawyers and academics as well as members of various institutions of the EU came together for a two-day conference, signing and issuing final resolutions after open, extensive and constructive discussions. These final resolutions will be presented to the European Commission, the Turkish-European Group of Parliamentarians and national governments in the EU in order to contribute to an active and inclusive political process which will be initiated on 3 October 2005.

Put differently, this international conference was an opportunity for Kurdish demands to be expressed, manifested and successfully fought through, for example the central demand for the Kurds to be directly involved in the monitoring of the process of democratisation in Turkey – as an accepted and engaged partner in an open and interactive process being placed within a firm institutional framework.

All participants of the conference agreed to the following text:

We are developing and pointing out practical political ways and technical possibilities in order for the Kurdish people and the Kurdish question to play a relevant and integral part in the upcoming negotiations in the context of this historical hour of the forthcoming enlargement of Europe with the potential membership of Turkey. A particular formula has to be found and defined on the basis of which Kurdish society can be directly involved in the negotiation process.

Proposals for relevant procedures will be developed and suitable persons will be named who from now on will take part in the monitoring process; this monitoring process will be further institutionally formalised and dominate the negotiations between the EU and Turkey probably until 2014.

In this context, the Kurds understand themselves as creative and active partners claiming qualified equality in the process, demanding appropriate political recognition and consideration of the importance of millions of Kurds in an enlarged Europe.

Such demands and statements which dominated debates and built the common ground at the conference are highly significant in that they represent the historical beginning of the procedural recognition and acknowledgement of the Kurds in the context of the accession process of Turkey to the EU; an accession process with the emphasis on the significance of the Kurdish question within the Turkish Republic, and the necessity of applying consideration to it and seeking its resolution.

This is anything but unrealistic. The professional content and layout of the conference as well as the high level political prominence of the conference participants prepared the ground for the historic meeting in Brussels which was held under the patronage of Archbishop Desmond Tutu. Offering as advice the expertise of their country, high level representatives of the South African Parliament (for example Imam Gassan Solomon) and the Supreme Court of South Africa (such as Denzil Potgieter) provided crucial help with their experience and the success of the truth commissions in South Africa.

It has been remarkable that the representative of the European Enlargement Commissioner who is responsible for the negotiations with Turkey, Ms Clara Albrecht, attended and followed the entire conference with great interest and enthusiasm. Asked about the issues on the agenda, she replied that the European Commission is waiting for Kurdish suggestions and proposals. She also pointed out that the European Commission is willing to check and process with great interest proposed names of Kurds for the Kurdish monitoring in Turkey. Besides the Commission, the responsible representative and speaker of the Joint European-Turkish Group of Parliamentarians, Joost Lagendijk (Member of the European Parliament), has also been actively and helpfully engaged. Both the European Commission as well as the European Parliament were present and asked the Kurdish community to draw up specific and qualified concepts and proposals for creative and pro-active Kurdish participation in the accession process.

Various explanations of the situation of the Kurds were presented and talks delivered by the following individuals: Helene Flautre (Chair of the Sub-Committee of Human Rights in the European Parliament), Jon Rud (President of the Euro-Mediterranean

Human Rights Network), Conny Fredriksson (Socialist International), Peter Galbraith (leading expert on Kurdish issues, international law and negotiation), Angelika Beer (MEP Germany) and Feleknas Uca (MEP Germany), Kariane Westrheim (RAFTO Foundation), Kerim Yildiz and barrister Mark Muller from KHRP London, and the Kurdish representatives Hatip Dicle, Akin Birdal and Ali Yiğit.

The conference has, then, proved an extremely productive one for the Kurds and for others seeking to ensure the realisation of freedom and democracy in Turkey. The names of various Kurdish personalities and politicians have now been given to EU institutions to form the core of the future EU Turkey Civic Commission which will follow the accession process generally and be responsible for the monitoring process specifically.

The significant changes also in terms of political climate can be felt by observers who remember the first international conference on Kurdistan in 1993 which also took place in Brussels. In a Belgian hotel the atmosphere then was dominated by misunderstanding and official disapproval of the Kurds. In 2004, the international conference was located in the rooms of the European Parliament itself. Due to the internal communication-system of the European Parliament, it was possible for all conference participants to be constantly informed of the debates through the dissemination of a wide range of conference talks, papers and drafts of resolutions.

The Kurds, who are citizens of Turkey and Europe, ought to be listened to and given the chance to be an acknowledged part and partner in further negotiation processes. It can be said without exaggerating that this is the beginning of a new chapter in the history of the Kurds and their struggle for freedom in a new, democratically changed Turkey.

This also calls for strong Kurdish and international articulation and presence. The final resolutions presented at the conference, which also provide the basis for activities of the new EU Turkey Civic Commission, formulate and express the demands and expectations of democratically minded Kurds towards Turkey and Europe.

However, this historic window of opportunity which opened up with the current negotiation processes between Turkey and the EU has to be seen, understood and used as a way to finally recognise the reality and history of the Kurdish people.



## PART SEVEN:

### FINAL RESOLUTIONS OF THE CONFERENCE



*Participants at the conference*



## **Resolution of the Brussels Conference ‘The EU, Turkey and the Kurds’, held on 22 - 23 November 2004 at the European Parliament in Brussels**

*Hans Branscheidt (medico international)*

*Mark Muller (Bar Human Rights Committee)*

*Kariane Westrheim (Rafto Foundation)*

*Kerim Yildiz (Kurdish Human Rights Project)*

### **Introduction**

The international conference on the EU, Turkey and the Kurds brought together leading human rights institutions, political parties, academics, writers, legal experts and prominent Turkish and Kurdish intellectuals from Europe, the United States, Africa and the Middle East. The conference was convened to exchange ideas and formulate a constructive and coherent response to Turkey’s impending accession negotiations on 17 December 2004. These negotiations will be of historic importance to both Kurds and Turks as they represent the first opportunity for the Kurdish issue to be addressed within a wider global context since Turkey became a member of the Council of Europe.

The European Commission released its Report on 6 October 2004. That Report attempted to outline the political, economic, social, cultural, linguistic and civil reforms that the Turkish government has passed. The Commission has now issued its assessment as to whether or not Turkey has implemented those reforms sufficiently to warrant negotiations on accession status. It was this Report that was the impetus for convening the conference because members of the European, Turkish and Kurdish communities felt that the Report failed to address the situation of the Kurds including the resurgence of the conflict in the Kurdish regions in the South-east. The accession negotiations will provide unprecedented political space to press for far-reaching legal reform and to highlight the plight of the Kurds in Turkey. The conference acknowledges and supports the reforms so far carried out by the Turkish government. Ongoing dialogue about the peaceful resolution of the Kurdish issue is by implication a fundamental component to the Copenhagen Criteria. The conference recognises that accession is a positive step in bringing democracy, human rights, the rule of law and a lasting peaceful solution to Turkey.

### *Turkey and accession*

Turkey applied for association membership of the European Economic Community (EEC) in 1957 and entered into an Association Agreement in 1963 that offered the

future possibility of full membership. An application to become a full member was turned down in 1989 at a time when the conflict in the Kurdish regions of Turkey was gaining momentum. Since then, the relaxation in violence which occurred in the late 1990s as a result of the unilateral cease-fire (combined with the 1993 decision of the Copenhagen European Council that the 'associated countries' would be offered the chance of membership) helped set the foundation for Turkey's progression to candidature in 1999. After several years of reports and mediation concerning Turkey's Accession Partnership, European leaders decided that if Turkey met the required standards and recommendations in December 2004, accession negotiations could begin. Turkey's forthcoming accession is strongly welcomed in some parts as potentially creating a 'bridge' between Europe and the wider Muslim World. However, one of the most significant impediments to accession is Turkey's human rights record.

### *The Kurds and accession*

The Kurds in Turkey comprise between 15 to 20 million of Turkey's population of 63 million. This would represent over 3 per cent of the inhabitants of the EU, a significant population group. Kurds are, on the whole, conditionally supportive of Turkey entering the EU. For them, accession presents the possibility of an end to decades of repression and abuse, and offers an unprecedented chance to ensure that their identity is acknowledged and respected. It should also open doors to enhanced dialogue on the resolution of ongoing armed conflict. However, there remain concerns that the political desire to bring Turkey into the EU may undermine an objective analysis as to whether or not Turkey meets the Copenhagen Criteria. There remain widespread concerns that the accession process may be accelerated at the expense of human rights and the achievement of an enduring solution to the Kurdish issue.

### *The Assyrians and other minorities and accession*

These human and minority rights concerns would likewise relate to the Assyrians and other minorities within Turkey, and this conference reiterates its concerns for the plight of these other minorities and makes clear that the final resolutions equally apply to the Assyrians and other minorities within Turkey where relevant.

### *The EU and accession*

On 17 December 2004, EU leaders are set to decide upon whether or not to open formal accession negotiations with Turkey, and, if so, under what conditions

negotiations should advance. Decisions on the commencement of official accession negotiations are formally based upon fulfilment of the criteria for EU membership as determined at the Copenhagen meeting of the European Council in 1993. Among other issues, the Copenhagen Criteria require adherence to democratic values, the rule of law, human rights and respect for and protection of minorities. The Commission has submitted reports on a yearly basis detailing Turkey's progress towards fulfilment of the Criteria. On 6 October, the Commission finally recommended the opening of accession talks and it was as a result of these developments that the conference was convened in order to fashion a response by leading elements of European, Turkish and Kurdish civil society to the European Commission's recommendations. After hearing and considering the interventions made by conference delegates, this conference has resolved unanimously to adopt the following set of declarations concerning the accession process and initiate the following calls for action to be undertaken by the host organisers.

### **Final Resolutions**

Pursuant to the presentation of conference papers and interventions made by delegates, this conference has unanimously resolved to adopt the following declarations concerning the EU-Turkish accession process and initiate the following calls for action to be undertaken by the host organisers.

The conference issues the following declarations:

1. This conference believes that the impending EU Council decision of December 2004 constitutes one of the most momentous decisions likely to be taken by the EU. The decision to begin accession negotiations with Turkey will radically change the lives of Turks, Kurds and Europeans forever. In short, the accession process will determine the nature of the EU and Turkey in the 21<sup>st</sup> Century and will fundamentally affect the status and rights of the Kurds in Turkey.
2. The conference acknowledges the Turkish government's recent reform packages but urges the government to fully implement these packages and continue the process of fundamental reform in the wake of accession negotiations beginning.
3. The conference further declares its conditional support for the Commission's Recommendation of 6 October 2004 to the Council of the EU to begin negotiations with Turkey to accede to the EU over the course of the next few years.

4. In particular, the conference expresses its conditional support for the three pillar approach of the European Commission to any future accession process provided that approach includes within the relevant pillars the development of concrete proposals concerning the domestic recognition and respect for Kurdish rights as provided for under domestic and international law. This must include a constitutional resettlement in Turkey in which the existence and rights of the Kurds are recognised within any new Turkish Constitution.
5. The conference asserts that the resolution of the Kurdish conflict is central to the establishment of a stable, democratic and peaceful Turkey capable of entering the EU. True democratic reform can only occur if Turkey undertakes new political reform to its state institutions and banishes adherence to ethnic nationalism which is the root cause of the conflict and Turkey's endemic instability.
6. This conference therefore asserts that the Kurdish people and their representatives have a fundamental role to play in the accession process and should be given a full participatory role by the EU and Turkey in the debate over Turkey's democratic and constitutional future.
7. To this end the conference calls upon the Turkish government to fully and unconditionally comply with all international instruments concerning human and minority rights guaranteed by the European Convention on Human Rights, in particular, the rights concerning freedom of expression and association without discrimination, in order to ensure that a democratic debate can take place. In this respect the conference further calls upon Turkey to constitutionally give recognition to the existence of the Kurdish people within Turkey and urges ratification of the Council of Europe's European Framework Convention for the Protection of National Minorities. It believes that the European Commission should adopt both of these measures as condition precedents to Turkey's eventual entry into the EU.
8. The conference further calls upon the European Commission to endeavour to use its good offices to itself actively develop a democratic platform whereby the constituent elements of Turkey, including the Kurdish people, can freely enter into dialogue and debate with the government over possible reform to the constitution and an end to ethnic hostilities. In this respect the conference requests the European Commission to publicly clarify its position over the issue concerning political reform and the resolution of the Kurdish issue in the light of its 1998 finding that 'a civil and non-military solution must be found to the situation in South-east Turkey particularly

since many of the violations of civil and political rights observed in the country are connected in one way or another with this issue.’

9. The conference calls upon all political parties and individuals who represent the Kurds in the regions to issue a declaration in relation to their position in respect of the EU accession decision and the initiatives proposed by this conference. In particular, the conference calls upon all parties militarily engaged in the Kurdish conflict, whether in Turkey or Northern Iraq, to cease military hostilities and commit themselves to peaceful forms of conflict resolution, so as to help the EU, Turkey and the Kurds foster and establish the beginning of a democratic platform for dialogue between all the constituent parts of, and peoples of, Turkey and where relevant, Northern Iraq (South Kurdistan).
10. The conference further calls upon the leaders of the EU to use their best endeavours to end hostilities between parties and help bring together in an international conference the legitimate political and democratic representatives of the Kurds with the Turkish government to resolve the Kurdish issue, provided all parties involved are not engaged in any military hostilities and have committed themselves to a peaceful resolution of the Kurdish conflict. To this end, the conference urges both the EU and Turkey to give serious consideration to promoting a general amnesty for all political prisoners in the context of a process of truth and reconciliation within the spirit of justice.

The conference calls for the following action to be taken:

1. For the organisers of this historic conference to ensure the widest distribution of this Resolution and that specific proposals are communicated to Turkey, the EU and other relevant bodies.
2. To set up a standing Civic Commission on Turkish EU Accession. This Commission shall consist of leading European, Turkish and Kurdish elected politicians, NGOs, academics, and human rights and environmental activists. The purpose of the Commission is to undertake to monitor and conduct regular audits of the European Commission’s performance in ensuring Turkey’s full compliance with the accession criteria as defined within the meaning of the accession agreements.
3. To further set up, if so advised by the Civic Commission on EU Turkish Accession, a number of relevant standing committees under the auspices of the Commission to deal with numerous thematic issues arising out of accession. Consideration should be given to setting up the following

specific select committees:

- a) A Kurdish Select Committee with a specific mandate to deal with the Kurdish issue and promote a democratic platform for dialogue between the constituent parts and peoples of Turkey;
  - b) A Council of Europe Select Committee to monitor Turkey's compliance with judgments of the European Court of Human Rights and to track whether it has ratified relevant outstanding Council of Europe conventions;
  - c) A Constitutional Select Committee whose task would be to identify concrete constitutional and legislative measures aimed at dismantling out-dated political provisions and practices within Turkey which hinder the drive for democratic reform. These measures would then be submitted to the European Commission for consideration; and
  - d) A legal Select Committee to use all existing international human rights instruments and available remedies to legally enforce any breach of either the EU or Turkey's non compliance with any accession agreement or other relevant international instrument or law.
4. To establish a Steering Committee responsible for appointing members to the Civic Commission and its standing committees.
  5. To establish a series of yearly conferences to be held both at the European Parliament and in the relevant regions to consider the annual audit reports of the Civic Commission on EU Turkish Accession.

This international conference ends with an appeal to all delegates and wider representatives of European, Turkish and Kurdish civil society to promote the declarations and actions of these conference resolutions as well as other similar initiatives currently underway in Turkey and to nominate any individual or organisation that can play a vital role in the Civic Commission on EU Turkish Accession.

## ABOUT THE CONTRIBUTORS

### **Matay Arsan M.D.**

After completing his studies at gymnasium, Matay Arsan entered the Free University of Amsterdam in 1996 and started Medical Studies. In 2002 he finished his general medical exam and is currently doing his residency in General and Traumatic Surgery.

Matay Arsan is an active member of the Foundation 'Help Assyrian Christians' (SHAC), a founder of Beth Nahrin TV (Mesopotamia TV) in Amsterdam in 1997, an active member within the Assyrian Youth Federations of Europe, and active in the European Lobby for the Assyrian Democratic Movement (ADM) in Iraq. Matay Arsan is also a member of the Assyrian Academic Society of Chicago, USA and writes analyses and reports for the US-based Zinda magazine ([www.zindamagazine.com](http://www.zindamagazine.com)).

### **Celal Başlangıç**

The journalist and author Celal Başlangıç was born in 1956 in Istanbul. After completing secondary and high school education there, he studied journalism at the University of Ege. He became a journalist in the Ege Express in 1975. Celal Başlangıç worked for the newspapers 'Democratic Izmir' and 'Politics' while he was studying. He began working at the Ege Office from 1981 to 1984. From 1986 to 1990 he was responsible for covering the South and South-east regions for the newspaper Cumhuriyet. In 1991 he became Head of Home Affairs in Cumhuriyet.

Celal Başlangıç established the newspaper 'Radical', and five of his books have so far been published.

### **Osman Baydemir**

Osman Baydemir was born in 1971 in Diyarbakir. He graduated from Dicle University law faculty in 1994. Mr Baydemir is also a well known human right activist. He was made head of the Diyarbakir branch of the Human Rights Association of Turkey (IHD) in 1994, and later became Deputy President of the IHD. He was selected as a parliamentary candidate by the Democratic People's Party (DEHAP) in the national elections in 2002.

Mr Baydemir was elected mayor of Diyarbakir on 28 March 2004 by an overwhelming majority of voters (61 per cent), and is also the President of the South Eastern Anatolian Region (GAP) municipalities.

### **Hans Branscheidt**

Hans Branscheidt is head of the German based NGO medico international, an organisation which struggles for the human right to the best possible access to good health. In doing so it supports local partners, primarily in Africa, Asia and Latin America, in their endeavours to create the economic, social and cultural conditions which allow each person to attain the highest health standard possible. In particular medico stands by those who are in situations of emergency and in poverty, including refugees and the victims of war.

Hans Branscheidt is also a member of the Coalition for a Democratic Iraq (KDI).

### **Pervin Buldan**

Pervin Buldan was born in Hakkari in 1967. After completing high school there, she moved to Istanbul with her husband Savas Buldan. After the murder of her husband by an 'unknown perpetrator' on June 3 1994, she became involved in the political struggle for democracy.

Pervin Buldan has worked as central administrator for the People's Democracy Party (HADEP), and now works both as a central administrator for the Democratic People's Party (DEHAP) and as the President of the Association for Aid and Solidarity for the families of missing persons (Yakay-Der).

Yakay-Der is an NGO established by families who have lost their relatives. The main objective of Yakay-Der is to investigate the circumstances of people who have 'disappeared' and the role of state special forces and the army and police in these incidents. Yakay-Der considers these activities as essential to promote basic human rights and establish true democracy.

### **Hatip Dicle**

Hatip Dicle is a former Member of Parliament in Turkey. He was arrested, along with Leyla Zana, Orhan Dogan and Selim Sadak in 1994 and sentenced to 15 years in prison for 'separatism' and being a 'member of an illegal armed organisation', the Kurdistan Workers' Party (PKK). Mr Hatip has been the head of the Diyarbakir

Human Rights Association and was also an active member of DEP (Democracy Party).

### **Doğu Ergil**

Doğu Ergil is Professor of Political Science at Ankara University, Turkey. Professor Ergil has actively worked for the rights of the Kurds for many years, and he has published numerous articles and papers on the Kurdish issue. These efforts bore fruit in early 1994 when he convinced Mr Yalim Erez, the then President of the Turkish Union of Chambers of Commerce and Industry (TOBB), of the importance of understanding the true nature of the protracted conflict that was tearing their country asunder. The TOBB administration later wrote to Ankara University to hire Professor Doğu Ergil as a special adviser to the President.

Professor Ergil is also President of TOSAM, Centre for the Research of Societal Problems.

### **Conny Fredriksson**

Conny Fredriksson is a member of the Swedish Social Democratic Party (SAP), and was Secretary General of the European Forum for Democracy and Solidarity until April 2003, an institution dedicated to supporting the transformation and democratisation process in Central and Eastern Europe. Conny Fredriksson heads the Socialist International Middle East Committee Working Group on the Kurdish Question.

### **Michael Gunter**

Michael M. Gunter is a Professor of Political Science at Tennessee Technological University in Cookeville, Tennessee. He is the author of five critically praised scholarly books on the Kurdish question, the most recent being *The Kurds and the Future of Turkey*, 1997; *The Kurdish Predicament in Iraq: A Political Analysis*, 1999; *Historical Dictionary of the Kurds*, 2004; and *The Kurdish Question and the 2003 Iraqi War* (co-editor), 2005. He has also published numerous scholarly articles on the Kurds in such leading periodicals as the *Middle East Journal*, *Middle East Quarterly*, and *Orient*, among others and is a former Senior Fulbright Lecturer in International Relations in Turkey. He has a Ph.D. from Kent State University (1972) and an MIA (1966) and BA (1964) from Columbia University.

## **Şefika Gürbüz**

Şefika Gürbüz was born in Bitlis province in 1960. She worked in various posts in the health service for many years. For the past 15 years she has been working for NGOs and pro-Kurdish political parties. In the general election of 1999 she was nominated as a candidate for the Istanbul Metropolitan Municipality, and was head of the Migration Commission at HADEP, Istanbul Branch. Şefika Gürbüz joined the Migrants' Social Solidarity and Culture Association (Göç-Der) in 2000, and is now the organisation's **President**.

## **Roger Kaliff**

Roger Kaliff is an MEP and a member of the Bureau of the Swedish Social Democrat Party. He holds the following positions:

- Vice-President of the EU-Committee of the Regions (PES/Sweden);
- Chairman of the Swedish delegation to the Committee of the Regions;
- Member of the Institutional Committee and Commission 5 of the Committee of the Regions; and
- Chairman of the Kalmar City Council.

Mr Kaliff is responsible for Committee of the Regions contacts with local and regional politicians in the accession countries.

## **Joost Lagendijk**

Joost Lagendijk has been a Member of the European Parliament for GroenLinks (the Netherlands) since 1998. As Chair of the EU-Turkey Joint Parliamentary Committee in the Parliament he plays an important role in the debate on Turkey, advocating the desirability of the country's EU Membership. As a Green spokesman in the European Parliament's Foreign Affairs Committee, Joost Lagendijk is an authority in the fields of conflict prevention and the reconstruction of the Balkans.

Prior to becoming a member of the European Parliament, Joost Lagendijk edited the political magazine 'De Helling', a Green / left-wing publication of the GroenLinks party.

## **Mark Muller**

Mark Muller is a barrister, and has been Head of Chambers at 10-11 Gray's Inn Square since 1998. He is also Vice-President of the Bar Human Rights Committee (BHRC) and Chair of the Kurdish Human Rights Project (KHRP). He mainly specialises in international human rights and criminal related litigation.

Mark Muller has conducted a multitude of cases before the European Court of Human Rights, including *Abdullah Öcalan v. Turkey* and *Issa & Others v. Turkey*. He has also provided advice and representation in human rights related actions brought before the European Court of Justice of the European Union. Mark Muller has been instrumental in devising and providing ECHR training to lawyers throughout Europe, including in Turkey, Armenia and Azerbaijan, and has published fact finding and trial observations reports detailing the systematic abuse of human rights in the Kurdish areas of Turkey, as well as numerous legal reports and a book entitled 'The Kurdish Nationalist Movement in the 1990s'.

## **Denzil Potgieter**

Mr Denzil Potgieter has practised as a human rights lawyer conducting numerous political trials prior to 1994 throughout South Africa and Namibia. Post-1994 he was involved in developmental issues and consolidating the new democracy. Potgieter was a founding member of the National Association of Democratic Lawyers and is its national Vice-President. He served as Secretary and Vice-President of a local ANC branch.

Mr Potgieter co-ordinated the process for appointing Commissioners of the Truth and Reconciliation Commission (TRC) during 1995 and became one of the Commissioners. He initially served in the Human Rights Violations Committee of the TRC and later as a member of the Amnesty Committee. Mr Potgieter was appointed as an Acting Judge of the Cape High Court during 1998-2001 to preside over amnesty hearings and subsequently became Vice-Chair of the Amnesty Committee until the closure of the TRC in 2001.

Mr Denzil Potgieter co-ordinated the process for writing the Codicil to the 1998 TRC report. His current status of Senior Counsel was conferred to him in 1996.

## **Jon Rud**

Jon Rud is a Norwegian human rights lawyer. He is a former Chairman of Amnesty International in Norway, of the Norwegian Bar Human Rights Committee and of

the Norwegian Council for the Rights of the Kurdish People. He is now Chairman of the Kurdish Working Group of the Euro-Mediterranean Human Rights Network, an **organisation supported by the EU**.

### **Lord Russell-Johnston**

Lord Russell-Johnston was elected as Liberal Member of Parliament for Inverness in 1964, and was successively Chairman (1970-4) and Leader (1974-88) of the Scottish Liberal Party and then President of the Scottish Liberal Democrats (1988-94). Lord Russell-Johnston became a member of the House of Lords in 1997.

Lord Russell-Johnston first became a member of the Parliamentary Assembly of the Council of Europe in 1984, and from 1999 to 2002 he served as its President. He is now President of the Council of Europe Parliamentary Assembly's Liberal, Democratic and Reformers' Group, and Rapporteur on the cultural situation of the Kurds for the Assembly's Committee on Culture, Science and Education.

### **Archbishop Desmond Tutu**

Desmond Tutu was a teacher in Johannesburg until 1957, when he took up studying theology. In 1961 was ordained as an Anglican priest and studied for Bachelor's and Master's degrees in Theology at King's College, London. Back in South Africa from 1967 to 1972 he drew attention to the situation of the black population, and in 1975 he was appointed Dean of St. Mary's Cathedral in Johannesburg, the first black person to hold that position.

From 1976, at the time of the pupil and student rebellions in Soweto, Tutu supported an economic boycott of his country. From 1976 to 1978 he was Bishop of Lesotho, and in 1978 Secretary-General of the South African Council of Churches. Desmond Tutu worked tirelessly against apartheid, preaching reconciliation between both sides, and in 1984 he was awarded the Nobel Peace Prize for his 'role as a unifying leader figure in the campaign to resolve the problem of apartheid'.

In 1986 Tutu became the first black person to lead the Anglican Church in South Africa, and after the fall of apartheid he headed the Truth and Reconciliation Commission. In 1999 he was awarded the Sydney Peace Prize for his work as Chairman of South Africa's Truth and Reconciliation Commission.

### **Nazan Ūstūndađ**

Nazan Ūstūndađ is an Associate Professor in the Department of Sociology at Bogaziçi University, Istanbul. She is currently a PhD candidate at the Indiana University in Bloomington, USA. The title of Ustundag's thesis is 'The Case of Migrant Women in Turkey', and her principle research interests include a.o. modernity and post-colonialism, ethnography of the state and gender studies.

### **Kariane Westrheim**

Kariane Westrheim is a board member of the Rafto Foundation (Norway) and university lecturer at the University of Bergen, Department of Education and Health Promotion. Westrheim jointly co-ordinated and chaired the Brussels Conference 2004. She is also a member of the Steering Committee preparing for the establishment of the EU Turkey Civic Commission.

### **Ali Yiđit**

Ali Yiđit was born in 1959. He is an exiled member of the Turkish Parliament and a former member of the Democracy Party (DEP). He currently lives in Holland. Ali Yiđit is also a spokesman for the Confederation of European Kurdish Associations. He is a former Member of Parliament for Mardin, and President of the Union of Democratic Kurdish Federations in Europe (KONKURD), Holland.

### **Kerim Yildiz**

Kerim Yildiz is a writer and the founder and Executive Director of the Kurdish Human Rights Project (KHRP), the only independent non-political human rights organisation of its type dedicated to the promotion and protection of the human rights of all people in the Kurdish regions of Turkey, Iraq, Iran, Syria, the Caucasus and elsewhere. KHRP's work has contributed to important reforms in Turkey, including the lifting of the State of Emergency and abolition of state security courts.

Yildiz received an award from the Lawyers Committee for Human Rights for his services to protect human rights and promote the rule of law in 1996, and KHRP was shortlisted for the Liberty/ Justice/ Law Society Human Rights Awards in 2004.

Yildiz has written extensively on human rights including numerous essays, articles and book chapters on freedom of expression, national security and minority rights

published in English, Turkish and Russian: most recently 'Kurdish Cultural and Language Rights' (2004) and 'Kurds in Iraq: Past Present and Future' (Pluto Press, 2004).

## ANNEX ONE:

### CONCLUSIONS OF THE EUROPEAN COMMISSION IN ITS 2004 REPORT ON TURKEY'S PROGRESS TOWARDS ACCESSION

#### ***Commission of the European Communities, 2004 Regular Report on Turkey's progress towards accession (Conclusions), Brussels, 6 October 2004***

When the European Council of December 1999 decided that Turkey is a candidate for accession, Turkey was considered to have the basic features of a democratic system while at the same time displaying serious shortcomings in terms of human rights and protection of minorities. In 2002, the Commission noted in its Regular Report that the decision on the candidate status of Turkey had encouraged the country to make noticeable progress with the adoption of a series of fundamental, but still limited, reforms. At that time, it was clear that most of those measures had yet to be implemented and that many other issues required to meet the Copenhagen political criteria had yet to be addressed. On that basis, the Council of the EU decided in December 2002 to re-examine Turkey's fulfilment of the political criteria at the end of 2004.

Political reforms, in line with the priorities in the Accession Partnership, have been introduced by means of a series of constitutional and legislative changes adopted over a period of three years (2001-2004). There have been two major constitutional reforms in 2001 and 2004 and eight legislative packages were adopted by Parliament between February 2002 and July 2004. New codes have been adopted, including a Civil Code and a Penal Code. Numerous other laws, regulations, decrees and circulars outlining the application of these reforms were issued. The government undertook major steps to achieve better implementation of the reforms. The Reform Monitoring Group, a body set up under the chairmanship of the deputy Prime Minister responsible for Human Rights, was established to supervise the reforms across the board and to solve practical problems. Significant progress took place also on the ground; however, the implementation of reforms remains uneven.

On civil-military relations, the government has increasingly asserted its control over the military. In order to enhance budgetary transparency the Court of Auditors was granted permission to audit military and defence expenditures. Extra-budgetary funds have been included in the general budget, allowing for full parliamentary control. In August 2004, for the first time a civilian was appointed Secretary General

of the National Security Council. The process of fully aligning civil-military relations with EU practice is underway; nevertheless, the armed forces in Turkey continue to exercise influence through a series of informal mechanisms.

The independence and efficiency of the judiciary were strengthened, State Security Courts were abolished and some of their competencies were transferred to the newly-created Serious Felony Courts. The legislation to establish Intermediate Courts of Appeal was recently adopted, but the draft new Code of Criminal Procedure, the draft Laws on the Establishment of the Judicial Police and on the Execution of Punishments still await adoption.

Since 1 January 2004, Turkey has been a member of the Council of Europe's Group of States Against Corruption (GRECO). A number of anti-corruption measures have been adopted, in particular by establishing ethical rules for public servants. However, despite these legislative developments, corruption remains a serious problem in almost all areas of the economy and public affairs.

Concerning the general framework for the respect of human rights and the exercise of fundamental freedoms, Turkey has acceded to most relevant international and European conventions and the principle of the supremacy of these international human rights conventions over domestic law was enshrined in the constitution. Since 2002 Turkey has increased its efforts to execute decisions of the European Court of Human Rights. Higher judicial bodies such as the Court of Cassation have issued a number of judgments interpreting the reforms in accordance with the standards of the European Court, including in cases related to the use of the Kurdish language, torture and freedom of expression. Retrials have taken place, leading to a number of acquittals. Leyla Zana and her former colleagues, who were released from prison in June 2004, are to face a further retrial, following a decision by the Court of Cassation.

The death penalty was abolished in all circumstances according to Protocol No 13 to the European Convention on Human Rights, which Turkey signed in January 2004. Remaining references to the death penalty in existing legislation were removed. Further efforts have been made to strengthen the fight against torture and ill-treatment, including provisions in the new Penal Code. Pre-trial detention procedures have been aligned with European standards, although detainees are not always made aware of their rights by law enforcement officers. The authorities have adopted a zero tolerance policy towards torture and a number of perpetrators of torture have been punished. Torture is no longer systematic, but numerous cases of ill-treatment including torture still continue to occur and further efforts will be required to eradicate such practices.

As regards freedom of expression, the situation has improved significantly, but

several problems remain. The situation of individuals sentenced for non-violent expression of opinion is now being addressed and several persons sentenced under the old provisions were either acquitted or released. Constitutional amendments and a new press law have increased press freedoms. The new law abrogates sanctions such as the closure of publications, the halting of distribution and the confiscation of printing machines. However, in a number of cases journalists and other citizens expressing non-violent opinion continue to be prosecuted. The new Penal Code provides only limited progress as regards freedom of expression.

If adopted, the new Law on Associations, initially passed in July 2004 and then vetoed by the President, will be significant in terms of reducing the possibility of state interference in the activities of associations and will contribute towards the strengthening of civil society. Despite measures taken to ease restrictions on demonstrations, there are still reports of the use of disproportionate force against demonstrators.

Although freedom of religious belief is guaranteed by the constitution, and freedom to worship is largely unhampered, non-Muslim religious communities continue to experience difficulties connected with legal personality, property rights, training of clergy, schools and internal management. Appropriate legislation could remedy these difficulties. Alevis are still not recognised as a Muslim minority.

As regards economic and social rights, the principle of gender equality has been strengthened in the Civil Code and the constitution. Under the new Penal Code, perpetrators of “honour killings” should be sentenced to life imprisonment, virginity tests will be prohibited without a court order and sexual assault in marriage will qualify as a criminal offence. The situation of women is still unsatisfactory; discrimination and violence against women, including “honour killings”, remain a major problem. Children’s rights were strengthened, but child labour remains an issue of serious concern. Trade union rights still fall short of ILO standards.

As far as the protection of minorities and the exercise of cultural rights are concerned, the constitution was amended to lift the ban on the use of Kurdish and other languages. Several Kurdish language schools recently opened in the Southeast of Turkey. Broadcasting in Kurdish and other languages and dialects is now permitted and broadcasts have started, although on a restricted scale. There has been greater tolerance for the expression of Kurdish culture in its different forms. The measures adopted in the area of cultural rights represent only a starting point. There are still considerable restrictions, in particular in the area of broadcasting and education in minority languages.

The state of emergency, which had been in force for 15 years in some provinces of the Southeast, was completely lifted in 2002. Provisions used to restrict pre-trial

detention rights under emergency rule were amended. Turkey began a dialogue with a number of international organisations, including the Commission, on the question of internally displaced persons. A Law on Compensation of Losses Resulting from Terrorist Acts was approved. Although work is underway to define a more systematic approach towards the region, no integrated strategy with a view to reducing regional disparities and addressing the economic, social and cultural needs of the local population has yet been adopted. The return of internally displaced persons in the Southeast has been limited and hampered by the village guard system and by a lack of material support. Future measures should address specifically the recommendations of the UN Secretary General's Special Representative for Displaced Persons.

In conclusion, Turkey has achieved significant legislative progress in many areas, through further reform packages, constitutional changes and the adoption of a new Penal Code, and in particular in those identified as priorities in last year's report and in the Accession Partnership. Important progress was made in the implementation of political reforms, but these need to be further consolidated and broadened. This applies to the strengthening and full implementation of provisions related to the respect of fundamental freedoms and protection of human rights, including women's rights, trade union rights, minority rights and problems faced by non-Muslim religious communities. Civilian control over the military needs to be asserted, and law enforcement and judicial practice aligned with the spirit of the reforms. The fight against corruption should be pursued. The policy of zero tolerance towards torture should be reinforced through determined efforts at all levels of the Turkish state. The normalisation of the situation in the Southeast should be pursued through the return of displaced persons, a strategy for socio-economic development and the establishment of conditions for the full enjoyment of rights and freedoms by the Kurds.

The changes to the Turkish political and legal system over the past years are part of a longer process and it will take time before the spirit of the reforms is fully reflected in the attitudes of executive and judicial bodies, at all levels and throughout the country. A steady determination will be required in order to tackle outstanding challenges and overcome bureaucratic hurdles. Political reform will continue to be closely monitored.

As regards the enhanced political dialogue, relations with Greece developed positively. A series of bilateral agreements were signed and several confidence building measures adopted. A process of exploratory talks has continued. On Cyprus, over the last year Turkey has supported and continues to support the efforts of the UN Secretary General to achieve a comprehensive settlement of the Cyprus problem. The European Council of June 2004 invited Turkey to conclude negotiations with the Commission on behalf of the Community and its 25 Member

States on the adaptation of the Ankara Agreement to take account of the accession of the new Member States. The Commission expects a positive reply to the draft protocol on the necessary adaptations transmitted to Turkey in July 2004.

Turkey has made further considerable progress towards being a functioning market economy, in particular by reducing its macroeconomic imbalances. Turkey should also be able to cope with competitive pressure and market forces within the Union, provided that it firmly maintains its stabilisation policy and takes further decisive steps towards structural reforms.

Economic stability and predictability have been substantially improved since the 2001 economic crisis. Previously high inflation has come down to historic lows, political interference has been reduced and the institutional and regulatory framework has been brought closer to international standards. Thus, an important change towards a stable and rule based economy has taken place. Key economic vulnerabilities, such as financial sector imbalances, have been tackled. Financial sector supervision has been strengthened. As a result, the shock resilience of the Turkish economy has significantly increased. Important progress has been achieved in increasing the transparency and efficiency of public administration, including public finances. Furthermore, important steps have been taken in facilitating the inflow of FDI and in improving the legal framework for privatisation.

In order to transform the current positive dynamics into sustained growth and stability, it is of crucial importance to continue the ongoing reform process. Maintaining a stability-oriented economic policy is a key element in this respect. In particular, fiscal imbalances have to be reduced and the disinflation process has to be maintained. The business climate would be improved by streamlining administrative procedures and strengthening the rule of law. Improving the efficiency of the commercial judiciary is of particular importance in this context. The banking sector's surveillance and prudential rules should continue to be aligned with international standards. The privatisation of state-owned banks and enterprises should be accelerated. Sufficient public and private investment and devoting particular attention to education are important to increase the competitiveness and the growth potential of the economy. The inflow of foreign direct investment has to be encouraged by removing remaining barriers.

Turkey's alignment has progressed in many areas but remains at an early stage for most chapters. Further work is required in all areas, new legislation should not move away from the *acquis*, and discrimination against non-Turkish service providers, or products should be discontinued. Administrative capacity needs to be reinforced. Moreover no Member State should be excluded from the mutual benefits deriving from the alignment with the *acquis*.

On the *free movement of goods*, overall transposition of the *acquis* is advancing

steadily, but is not complete, while implementation remains uneven. There has been progress in the area of horizontal and procedural measures, and sector specific legislation, in particular in new approach areas, where substantial progress has taken place concerning conformity assessment and market surveillance. The public procurement Law still contains discrepancies with the *acquis*. Turkey should speed up the efforts to remove technical barriers to trade, and to increase compliance with the Decision 1/95 of the Association Council establishing the Customs Union, and to take the necessary steps to implement free circulation of products in the non-harmonised areas.

No progress has taken place concerning the *free movement of persons*, and overall legislative alignment is still at a very early stage. The administrative capacity needs thorough upgrading. Concerning the *freedom to provide services*, some progress could be recorded for financial services, except for insurance, but no development took place in the area of non-financial services. Market access restrictions are in place in particular in the area of non-financial services. In the field of professional services, no progress has been made since the previous Report. The alignment with the *acquis* on personal data protection needs to be achieved. An authority dealing with personal data protection should be established and the independence of the existing financial services supervisory authorities should be safeguarded. Limitations for foreigners should also be lifted. Alignment remains limited with the *acquis* on the *free movement of capital*. The priority should be the adoption of anti-money laundering provisions, and the removal of restrictions to investment by foreigners. Improvements in this area would contribute to facilitate inflow of foreign direct investment.

In the area of *company law*, the alignment with the *acquis* remains very limited. However, important efforts have been undertaken to fight piracy with regards protection of intellectual and industrial property rights, but insufficient administrative capacity prevents remains a constraint. Concerning *competition policy*, the alignment with the *acquis* on anti-trust legislation is significant and progress continues in a satisfactory manner. On the contrary, alignment with state aid *acquis* is very limited, in spite of its inclusion in the Customs Union. The adoption of the state aid Law and the establishment of the state aid monitoring authority are crucial issues. Further efforts are also necessary to prepare an acceptable restructuring programme for the steel sector.

Little progress can be recorded since the previous Report in the area of *agriculture*, and overall alignment with the *acquis* remains limited. Progress has taken place concerning in particular veterinary, phytosanitary and food, but transposition and administrative capacity are still insufficient to ensure effective implementation. Rural development, eradication of animal diseases and upgrading of the Administrations concerned should be regarded as priorities. Progress has been very limited

concerning *fisheries*. It is necessary to increase the efforts concerning resources management, as well as to reinforce the inspection and control capacities.

Some progress could be recorded in all *transport* modes, excepted air transport, but overall alignment remains limited and all modes present problematic issues. Concerning in particular maritime transport, the detention rate remains much higher than the EU average, and Turkey remains in the black list of the secretariat of the Paris Memorandum of Understanding on Port State controls. Cypriot vessels or vessels having landed in Cyprus are still not allowed in Turkish ports. Transposition of the *acquis* should take place in parallel with adherence to international agreements. The staff and capacity of the Ministry of Transport needs to be strengthened substantially.

As regards *taxation*, there has been limited progress in the area of *indirect taxation*, while no progress could be reported on direct taxation, or administrative co-operation. Overall, the Turkish fiscal regime remains partly aligned with the *acquis*, and important efforts remain necessary on all areas under this chapter. Alignment is necessary in particular concerning VAT, the scope of exemptions and applied rates. With regards to indirect taxation, excise duties should not penalise imported products. Also, administrative capacity requires a substantial strengthening, in particular to improve tax collection.

No progress can be recorded concerning *economic and monetary union* since the previous Report, and the overall level of alignment is limited. The most important issues to be addressed are the independence of the central bank and the remaining possibilities of privileged access to the financial sector to finance the budget.

In the area of *statistics*, there has been steady progress, but the alignment remains still limited. Therefore substantial efforts are still needed concerning statistical development. To this end, the new Statistical Law should be given priority. On *social policy and employment*, progress has been made since the last report, in particular as concerns health and safety at work. Nevertheless, the main problematic areas remain gender equality, labour law, anti discrimination, and social dialogue. Enforcement and full implementation of the legislation also appear as major challenges.

Turkey has made some progress in the *energy* chapter, while the degree of alignment remains limited and uneven across the different areas covered by the *acquis*. Effective implementation of the *acquis* requires a reinforcement of the administrative capacity. Sector restructuring including privatisation and the elimination of price distortions should continue.

In the area of *industrial policy*, there is a large alignment with the EC principles of *industrial policy*. Turkey has adopted an industrial strategy, but privatisation

and restructuring are not progressing as planned. Steel sector and state owned banks in particular needs to be restructured. Despite progress in the framework legislation, foreign direct investment remains low. Concerning *small and medium sided enterprises*, access to finance has improved, and the Turkish policy is broadly in line with the EU enterprise policy. Nevertheless, further efforts remain necessary to improve SMEs' access to finance, and the business environment. In particular, a more effective treatment of the commercial court cases should be ensured. The definition of SME used by Turkey is not in line with the relevant Commission recommendations.

Some progress has been made in the area of *science and research*. The framework for cooperation is established, and representatives of Turkey participate as observers in the Committees preparing the 6th Framework Programme. To achieve full and effective participation to the Framework Programme requires that Turkey further upgrades its research-related administrative capacity. Similarly, some progress has been achieved concerning *education and training*, especially concerning the enrolment of girls in less favoured regions. The participation of Turkey to the EC programmes is satisfactory, but the investment remains below the EU average. Reforms and reinforcement of the training and education policies and institutions should continue, including the role of the High Education Board (YÖK), and the links between the labour market and the education should be improved.

In the *telecommunications* sector, fixed telephony services has been fully liberalised in 2004, and competition in internet services market has increased. There is overall a certain level of alignment with the *acquis*, but since the previous Report, very limited further progress has been made. Further efforts are in particular necessary to complete the legal framework and effectively implement the rules, including an adequate empowerment of the Telecom Authority, and to ensure an adequate level of competition in all telecommunication services.

Turkey's alignment with the *acquis* in *culture and audiovisual policy* remains limited, but some progress has been made through adoption of the regulation concerning radio and television broadcasts in languages and dialects used traditionally by Turkish citizens. The regulation has started to be implemented and broadcasts in Kurdish and other languages have started on national and regional basis. However, the conditions attached the regulation are still restrictive and substantial efforts continue to be necessary to achieve alignment with the *acquis*.

The *acquis* concerning *regional policy* is relevant for the implementation of Structural and Cohesion Funds. Very limited development has been made and the overall level of alignment with the *acquis* is limited. Substantial efforts would therefore be necessary to make appropriate use of the EU's structural instruments. Necessary institutions need to be created and administrative capacity to be reinforced.

Some progress has taken place concerning the *environment*, and the administrative capacity has been reinforced. However, the overall transposition of the environment *acquis* remains low. Administrative capacity needs further reinforcement and improved co-ordination among the administrations involved. The most intense efforts are needed for horizontal legislation, air and water quality, waste management, nature protection, industrial pollution and risk management.

In the area of *consumers and health protection*, efforts to align with the *acquis* have continued, in particular concerning market surveillance. Overall alignment is uneven throughout the different components of consumers protection, and is more advanced concerning non-safety related measures. The efforts to ensure an effective transposition and implementation of the *acquis* on product liability and to improve administrative capacity should be pursued.

Turkey has continued to make efforts to align with the *acquis* in the area of *justice and home affairs*. Nevertheless, progress is required in important areas such as the reform of the judiciary and the fight against corruption. Co-operation both at national level among all relevant administrative bodies and with the EU should be improved on issues such as illegal migration and trafficking, including through the negotiation of a readmission agreement. The geographic limitation to the Geneva Convention on refugees should be lifted and co-operation among the relevant institutions should be improved.

Concerning the *acquis* in the area of *customs union*, there has been some progress since the previous Regular Report, the administrative capacity has been further strengthened and the overall level alignment is high, with exceptions in specific areas. The alignment of non-customs provisions applied in free zones continues to diverge from the *acquis* and need to be corrected. The overall level of alignment concerning *external relations* is already high, and some further progress has taken place. The adoption of most of the EC Generalised System of Preferences in particular is a welcome development. Certain discrepancies with the *acquis* still exist, concerning special regimes under the GSP, and other derive from the difficulties met in the negotiations with certain third Countries. Turkey is encouraged to continue its efforts in this area. As regards, *common foreign and security policy*, Turkey's foreign policy continues to be broadly in line with that of the EU, though less so when Turkey's neighbouring countries are concerned. Turkey's track record could be improved by ensuring a higher alignment with EU positions in international fora, and by ensuring the applicability of the sanctions or restrictive measures agreed.

Some progress can be reported since last year's Report regarding *financial control*. In particular, the adoption of the Public Financial Management and Control Law constitutes a significant step but the law will only be entirely implemented as from 2008. Turkey should further reinforce its administration and the capacity to protect

the financial interests of the EC. In addition, significant progress has taken place concerning national budget formulation and execution, in the area of *financial and budgetary provisions*. However, there has been no improvement in the application of provisions on own resources. Further efforts are therefore necessary concerning the adoption of the necessary legislation and its implementation.

Implementation of legislation formally aligned with the *acquis* continues to be insufficient. Administrative capacity in most areas needs to be strengthened to ensure that the *acquis* is implemented and enforced effectively. In some cases, administrative reform should entail the establishment of new structures, for example in the field of state aid and regional development. Where regulatory bodies have been set up, they should be adequately empowered to perform their tasks, including adequate staffing and resources, and to ensure that their decisions are enforced. To this end, their autonomy should be safeguarded. Improved co-operation between the Commission and the Turkish administration in areas such as conformity assessment should be extended to other areas.

## ANNEX TWO:

# DECISION OF THE COUNCIL OF THE EUROPEAN UNION ON THE OPENING OF ACCESSION NEGOTIATIONS WITH TURKEY

### **TURKEY: Presidency Conclusions, Brussels European Council, 16/17 December 2004**

The European Council recalled its previous conclusions regarding Turkey, in which, at Helsinki, it agreed that Turkey was a candidate state destined to join the Union on the basis of the same criteria as applied to the other candidate states and, subsequently, concluded that, if it were to decide at its December 2004 meeting, on the basis of a report and recommendation from the Commission, that Turkey fulfils the Copenhagen political criteria, the European Union will open accession negotiations with Turkey without delay.

The European Council welcomed the decisive progress made by Turkey in its far-reaching reform process and expressed its confidence that Turkey will sustain that process of reform.

Furthermore, it expects Turkey to actively pursue its efforts to bring into force the six specific items of legislation identified by the Commission. To ensure the irreversibility of the political reform process and its full, effective and comprehensive implementation, notably with regard to fundamental freedoms and to full respect of human rights, that process will continue to be closely monitored by the Commission, which is invited to continue to report regularly on it to the Council, addressing all points of concern identified in the Commission's 2004 report and recommendation, including the implementation of the zero-tolerance policy relating to torture and ill-treatment. The European Union will continue to monitor closely progress of the political reforms on the basis of an Accession Partnership setting out priorities for the reform process.

The European Council welcomed Turkey's decision to sign the Protocol regarding the adaptation of the Ankara Agreement, taking account of the accession of the ten new Member States. In this light, it welcomed the declaration of Turkey that "the Turkish Government confirms that it is ready to sign the Protocol on the adaptation of the Ankara Agreement prior to the actual start of accession negotiations and after

reaching agreement on and finalising the adaptations which are necessary in view of the current membership of the European Union”.

The European Council, while underlining the need for unequivocal commitment to good neighbourly relations welcomed the improvement in Turkey's relations with its neighbours and its readiness to continue to work with the Member States concerned towards resolution of outstanding border disputes in conformity with the principle of peaceful settlement of disputes in accordance with the United Nations Charter. In accordance with its previous conclusions, notably those of Helsinki on this matter, the European Council reviewed the situation relating to outstanding disputes and welcomed the exploratory contacts to this end. In this connection it reaffirmed its view that unresolved disputes having repercussions on the accession process should if necessary be brought to the International Court of Justice for settlement.

The European Council will be kept informed of progress achieved which it will review as appropriate.

The European Council noted the resolution adopted by the European Parliament on 15 December 2004.

The European Council welcomed the adoption of the six pieces of legislation identified by the Commission. It decided that, in the light of the above and of the Commission report and recommendation, Turkey sufficiently fulfils the Copenhagen political criteria to open accession negotiations provided that it brings into force these specific pieces of legislation. It invited the Commission to present to the Council a proposal for a framework for negotiations with Turkey, on the basis set out in paragraph 23. It requested the Council to agree on that framework with a view to opening negotiations on 3 October 2005.

## ANNEX THREE:

### PROGRAMME OF THE CONFERENCE

**International Conference: ‘The EU, Turkey and the Kurds’**  
**22 - 23 November 2004, European Parliament, Brussels, Room PHS 7C50**

Monday, 22 November 2004  
14.00 - 15.30: Opening Session

Opening remarks by **Kariane Westrheim** and the organising committee

‘Video Speech’ by the Patron of the Conference, **Archbishop Emeritus Desmond Tutu**

*Nobel Peace Prize recipient, South Africa*

**Kerim Yildiz**

*Executive Director of the Kurdish Human Rights Project*

**Hatip Dicle**

*Former DEP Parliamentarian*

**Helene Flautre**

*Chair of the Sub-Committee of Human Rights in the European Parliament*

**Lord Russell-Johnston**

*Member and former President of the Parliamentary Assembly of the Council of Europe (PACE)*

**Peter Galbraith**

*Former US Ambassador and expert on the Kurds*

**Conny Fredriksson**

*Head of Socialist International’s Working Group on the Kurdish Question*

Monday, 22 November 2004  
15.30 - 18.30: Session I

## Human Rights Violations and Democratisation in Turkey

Remarks by the co-chairmen of the Session I:

**Jon Rud**

*Chairman of the Kurdish Working Group in the Euro-Mediterranean Human Rights Network; and*

**Imam Gassan Solomon**

*ANC Member of Parliament, South Africa*

Freedom of Expression

**Akın Birdal**

*Former Chair of the Human Rights Association, Turkey, and Vice President of the Fédération Internationale des Ligues des Droits de l'Homme (FIDH)*

Current Human Rights Situation and Reforms

**Yusuf Alataş**

*Lawyer and President of the Human Rights Association of Turkey (IHD)*

Democracy and reforms

**Ayhan Bilgen**

*President of the Organisation of Human Rights and Solidarity for Oppressed Peoples (MAZLUM-DER)*

Internally Displacement and its Impact upon Economic, Social and Cultural Rights

**Şefika Gürbüz**

*President of the Migrants' Association for Social Cooperation and Culture (GÖÇ-DER)*

Issues relating to Women and Children

**Pervin Buldan**

*Chair of the Association for People who have Lost their Relatives (YAKAY-DER)*

Assyrian Christians, Kurds and the EU membership of Turkey

**Matay Arsan**

*Expert in Assyrian affairs and the Assyrian Political question*

Human Rights and Torture

**Jean Paul Nunez**

*CIMADE, France*

Perspectives for Turkey and the EU membership

**Doğu Ergil**

*Professor of Political Science at Ankara University, Turkey and President of the Centre for the Research of Societal Problems (TOSAM)*

The Role of the Media

**Celal Başlangıç**

*Turkish journalist*

Interventions followed by remarks and debate with the audience

Monitoring Group Meeting

Dinner

Tuesday 23 November 2004

09h30 – 13h00: Session II

Turkey's European and International Obligations

Remarks by the co-chairs of the Session II

**Jean Lambert**

*Member of the European Parliament; and*

**Vittorio Agnoletto**

*Member of the European Parliament*

Turkey and the European Union

**Joost Lagendijk**

*Chair of the EU-Turkey Joint Parliamentary Committee in the European Parliament*

Democratisation Process in Turkey

**Luigi Vinci**

*Former Member of the European Parliament*

The Role of the Council of Europe and the European Convention on Human Rights

**Mark Muller**

*Vice President of the Bar Human Rights Committee (UK)*

A Democratic Solution to the Kurdish Question

**Denzil Potgieter**

*Advocate of the High Court of South Africa and former Chair of the Truth and Reconciliation Commission's Amnesty Committee*

The Role of the European Parliament and Copenhagen Political Criteria

**Roger Kaliff**

*Vice-President of the EU Committee of the Regions*

The Role of the Academician

**Michael Gunter**

*Political scientist and expert on the Kurds*

Which Turkey in the European Union

**Francis Wurtz**

*Chair of the Confederal Group of the European United Left – Nordic Green Left Group in the European Parliament*

The role of the political parties for the solution of the “Kurdish Question”

**Tuncer Bakırhan**

*President of the Democratic People’s Party (DEHAP), Turkey*

Interventions followed by remarks and debate with the audience

Monitoring group meeting

Tuesday 23 November 2004

15h00 - 18h30: Session III

Securing Peace, Democracy and Human Rights in Turkey

Remarks by the co-chair of the Session III:

**Reyhan Yalçındağ**

*Human Rights Association of Turkey (IHD); and*

**Lord Rea**

*Labour Member of the House of Lords (UK)*

Message from **Ann Clwyd** MP (UK)

The Role of Local Authorities and Democratisation in Turkey

**Osman Baydemir**

*Mayor of Diyarbakır*

Kurdish Perspectives for Turkey and the EU membership

**Ali Yiğit**

*DEP Former Parliamentarian, Chair of Confederation of Kurdish Associations in Europe (KON-KURD)*

Perspectives for Turkey and the EU membership

**Nazan Üstündağ**

*Associate Professor at Bogaziçi University (Istanbul)*

International Human Rights Standards and Turkey

**Sidiki Kaba**

*President of Fédération Internationale des Ligues des Droits de l'Homme (FIDH)*

The Role of the European Parties

**Angelika Beer**

*Member of the European Parliament*

Monitoring Group Meeting

Final remarks by:

**Nelly Maes**

Chair of European Free Alliance Party, Former Chair of the Kurdish friendship group in the European Parliament;

**Feleknas Uca**

Member of the European Parliament; and

**Hans Branscheidt** on behalf of the organising committee

Dinner









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