European Integration and the Transformation of Turkish Democracy

Senem Aydın and E. Fuat Keyman

Abstract

This paper's general argument is that the Copenhagen political criteria constitute the leverage that is making Turkish modernisation and democratisation more plural, multi-cultural and consolidated. In the first section, a historical overview of modern Turkey is undertaken from the perspective of political modernisation and democratic consolidation in order to assess Turkey's ability to meet the requirements of the Copenhagen political criteria. The second section evaluates the impact of EU conditionality and the remaining problems and prospects in four major areas – the role of the military, human rights, protection of minorities and the judicial system. The paper concludes with the assessment that the dynamic process of change underway requires the continuation of efforts by Turkey to fully implement the Copenhagen political criteria and a credible policy of conditionality by the EU that respects the principle of fairness in relations between the two sides.

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ECONOMICS AND FOREIGN POLICY FORUM

Thinking ahead for Europe

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Introduction

In recent years, Turkey's reform process, aimed at opening of accession negotiations with the European Union, has been impressive. Since August 2002, the Turkish parliament has made a number of important legal and constitutional changes to upgrade Turkish democracy in accordance with European standards. These changes have been so radical and at the same time unexpected that they have shocked both the anti-EU forces in Turkey and the anti-Turkey factions in Europe. As a result of these changes, and the political will of the Justice and Development Party (AKP) government to work very hard on their implementation, both of the 'anti-' lobbies now face big legitimacy problems. Contrary to the discourse of the anti-EU forces, who have always argued that more democratisation would lead to more political instability in Turkey, these changes have created a more politically stable and internationally robust Turkey, and have been supported by a large majority of the Turkish people. Despite the false expectations of the anti-Turkey lobbies in Europe that, owing to its authoritarian, Kemalist, militaristic and state-centric traditions, Turkey could not initialise the political reform process to consolidate its democracy, both the AKP government and the state elite have demonstrated a strong political will to meet the Copenhagen political criteria. Moreover, they also made a courageous political step forward in accepting the Annan plan as a foundation for the peaceful solution to the Cyprus problem.

At the end of 2004, the EU will decide whether to start accession negotiations with Turkey. The recent legal and constitutional changes to upgrade democracy in Turkey, as well as the AKP government's efforts to implement these changes, would indicate that the EU's decision about Turkey should be based on the principle of fairness. As the EU's enlargement commissioner Gunter Verheugen has suggested, both the European Commission's report on Turkey's readiness to begin the full accession negotiations and the EU's final decision at the end of this year should "use the same methodology and benchmarks, the same criteria and same rules" that have been applied to other new members of the EU and should not have "higher or lower standards for Turkey" or involve "double standards". "We cannot have double standards. We cannot have 100 percent implementations. We do not do that even with our own countries".[1]

What is the principle of fairness with regard to the EU's decision about Turkey? In this paper, we argue that the EU's decision has to be based on the Copenhagen political criteria or the level and the nature of democratisation and modernisation in Turkey rather than references to Turkey's Muslim population or its geography. Regarding references to religion and geography, there is nothing that Turkey can do about these factors, since it cannot change its cultural identity or its geographical location. Such references are culturalist and any decision about Turkey and its place in Europe that has been taken on the basis of religion and geography would not say as much about Turkey as it would about the EU and a culturally essentialist orientation. Thus, there would be no need to analytically discuss issues related to Turkey's democracy and modernisation any further, nor its ability and capacity to adapt to Europe.

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[1] See J. Dempsey, "EU appeals for fairness over Turkish talks", Financial Times, 28 May 2004.

But the real debates over Turkish democracy and modernisation do indeed require more conversation and dialogue, in particular over Turkey's ability to become a consolidated democracy and a liberal/plural modernity. It is this discussion that we would like to highlight in this paper.

In order to substantiate these points, Part I of the paper provides a historical overview of modern Turkey from the perspective of political modernisation and democratic consolidation. In this context we argue that the history of modern Turkey since the early republican period (1923-30) reveals a paradoxical development in terms of the simultaneous presence of its 'success' in modernisation and democratisation and its 'failure' to spread its modernity or deepen its democracy by making it more participatory, stable and strong. We suggest that political modernisation and democratic consolidation together constitute the content of the Copenhagen political criteria. Political modernisation ultimately aims at creating a more liberal, plural and multicultural society. Democratic consolidation entails a transition from formal democracy to substantial democracy, a process that includes procedures (free and recursive elections, a multi-party system and the ability of the opposition parties to criticise the governing party or coalition in a given country) as well as the substantial democratisation of state-societal relations through the respect and protection of individual/group rights and freedoms.[2] Hence, fulfilment of the Copenhagen political criteria will make positive contributions to solving the problem of a democratic deficit in Turkey.

Part II the paper focuses on the problems and prospects that exist in Turkey's attempt to fulfil the Copenhagen political criteria and discusses these in a detailed manner. In this rather long section, our aim is to highlight the main problem areas in democratic governance in Turkey and how the AKP government has been dealing with them. We have given little attention to some of the principal constitutional and institutional features of Turkey's political system, such as the workings of its parliamentary system or the principle offices of the state (presidency, prime ministry, cabinet of ministers). This is simply because these essential features of the Turkish polity are quite 'normal' by European standards and hardly require elaboration.

In conclusion, the paper points out that despite the problems that exist in the process of implementing the Copenhagen political criteria, a fair decision by the EU about Turkey – based on its modernity and democracy – would be to start the full accession negotiations in 2005 without delay.

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[2] See G. Pridham, (2000), *Dynamics of Democratization*, London: Continuum.

PART I. The Making of Modern Turkey

As Feroz Ahmad correctly observes, "Turkey did not rise phoenix-like out of the ashes of the Ottoman Empire. It was 'made' in the image of the Kemalist elite which won the national struggle against foreign invaders and the old regime".[3] The making of modern Turkey raises an interesting question for the students of social change, since neither the class-based understanding of revolution nor the (post-colonial) state-oriented development theory can be used as an explanatory model. This is precisely because Turkey has never experienced colonialism in the real sense of the term; nor has its national independence been carried out by a social class. Nevertheless, just as other post-colonial states, the history of the making of modern Turkey has been that of Westernisation, conditioned by "the will to (Western) civilisation". In the process of 'making', the image of the Kemalist elite was to "reach the contemporary level of civilisation" by establishing its political, economic and ideological prerequisites, such as the creation of an independent nation-state, the fostering of industrialisation and the construction of a secular and modern national identity. The Kemalist elite thus accepted the universal validity of Western modernity as *the way* of building a modern Turkey. In this sense, the making of Turkey was based upon both an independence war against Western imperialism and an acceptance of its epistemic and moral dominance.

The Kemalist will to civilisation has attempted to achieve this end through the process of nation-state building and therefore acted as **a project of modernity**, which was premised on the equation of modernity with progress: the making of a modern nation through the introduction and the dissemination of Western reason and rationality into what was regarded as traditional and backward social relations. It is in this sense that the connection between Kemalism and modernity is what needs to be explored, in order to provide an adequate account of the dilemma of Turkish nationalism.

In his analysis of the making of modern Turkey, Şerif Mardin argues that the meaning of Kemalism lies in "the conceptualisation of the Turkish Republic as *a nation-state in its fullest form*" (our emphasis), and finds its expression in its constant effort to create a modern nation.[4] Mardin's seemingly straightforward and sensible argument in fact carries with it a number of crucial insights for a more adequate understanding of Kemalism. First, to think of Kemalism as an act of "conceptualisation" is to present it as a project of creating a nation on the basis of a set of epistemological and normative procedures. Second, to argue that Kemalism means the conceptualisation of the Turkish Republic as a nation-state in its fullest form is to recognise that it constitutes a project of modernity – a project of creating a *modern* nation that "accepts the claim to universality of the 'modern' framework of knowledge". Third, to think of Kemalism as a project of modernity is to recognise its *modus operandi* as a social engineering project that aims at creating a modern nation in a social formation where the material and institutional availability of the conception of a modern nation as a nation-state in its fullest form was absent. These three points also indicate that Kemalism is a nationalist discourse that operates as a "will to civilisation" by producing at the conceptual level a boundary between what is civilised and what is uncivilised. Thus, by accepting **rational thinking** and **rational morality** as the way of becoming modern, Kemalist nationalism attempts to "reach the level of civilization", that is, the making of modern Turkey as nation-state in its fullest form.

1. Kemalism and the will to civilisation

The conceptualisation of the Turkish Republic as nation-state manifests itself in: i) the transition in the political system of authority from personal rule to impersonal rules and regulations; ii) the shift in understanding the order of the universe from divine law to positivist and rational thinking; iii) the shift from a community founded upon class divisions to a populist-based community; and iv) the transition from a religious community to a nation-state. These transitions were regarded by Mustafa Kemal as

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[3]See Feroz Ahmad (1993), *The Making of Modern Turkey*, London: Routledge.
[4]See Şerif Mardin (1994), *Türk Modernleşmesi*, İstanbul: İletişim.

the pre-condition for the possibility that Turkey would live as an advanced and civilised nation in the midst of contemporary civilisation. It is in this context that the Kemalist elite attempted to remove from political discourse the notion of an Islamic state, the existence of which was regarded as the main cause of the perpetuation of backwardness in Turkey. Thus, the foundation of a modern nation-state was seen as the crucial element of the will to civilisation. For the Kemalist elite, modern Turkey could thus possess secularity and rationality; it could employ reason to initiate progress and establish a modern industrial economy, thereby fostering the processes of industrialisation and modernisation. In a Weberian fashion, the purpose of political power was considered to carry out a social and economic revolution without which the political revolution would dissipate. This means that for the Kemalist elite political power was not reducible but interrelated to the economic domain. The rationalisation of the political and economic domains was seen to be related processes whose reproduction could be made possible through the construction of a national identity as a modern rational entity.

As Metin Heper points out, the idea of the state employed by the Kemalist elite was by no means abstract: rather it was derived from a reaction to two fundamental problems, which they viewed as the key to the decline of the Ottoman Empire.[5] First, the Ottoman state was identified with the personal rule of the sultan, which eventually led to its inability to compete with the European nation-state system. Second, the Islamic basis of the Ottoman state was regarded as the primary obstacle to progress in Ottoman society. Thus for the Kemalist elite, there was a need to create a nation-state distinct from the person of the sultan and secular enough to reduce Islam to the realm of individual faith. This meant a reconstruction of the idea of having sovereignty with a national rather than a popular character. Underlying this, as Heper argues, is the association of the Kemalist elite with the Durkheimian conception of the state as the agent of rationality. The state is neither viewed as an arbitrary institution nor an expression of class interest but as an active agent; while taking its inspiration from the genuine feelings and desires of the nation, the state shapes and reshapes itself to elevate the people to the level of contemporary (Western) civilisation. Therefore, the Kemalist idea of the state was embedded in the question of how to motivate the people towards the goal of civilisation, that is, how to construct a national identity compatible with the will to civilisation.

Ernest Gellner considered the Kemalist idea of the state to be a commitment to "political modernity", which sees "the modernisation of the polity and society" as "linked to the state". This commitment "constitutes its legitimation and is itself in turn justified by the strength which it bestows on the state".[6] It would be wrong, however, to view the Kemalist idea of the state as institutional. The Kemalist elite took the Weberian answer to the riddle of the 'European miracle' seriously – believing that the reasons behind Western advancement could be located precisely in Western cultural practices. Kemalism understood modernisation not just as a question of acquiring technology, but as something that could not be absorbed without a dense network of cultural practices that made instrumental thought possible. This means that the commitment to political modernity has to be supplemented with a set of cultural practices in order to ground "the articulation of reason and capital via the nation-state", in other words the institutional and discursive construction of national identity. It is for this reason that the Kemalist elite initiated a set of reforms needed to be *imposed from above* to "enlighten the people and help them make progress".[7] These reforms were designed to equate the general will with the national will, thereby creating a vision of society not as an aggregation of different interests, but as an almost Platonic vision of an organic totality organised around the principles of division of labour and the reciprocity of needs.

Republicanism, nationalism, etatism, secularism, populism and revolutionism-reformism (from above) were the six principles of the act of modern governance. Republicanism defined the nation-state as an entity governed by 'impersonal rule', which was contextualised as national sovereignty through

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[5] See Metin Heper (1985), *The State Tradition in Turkey*, North Humberside: The Eothen Press.

[6] See Ernest Gellner (1995), *Encountering Nationalism*, London: Polity.

[7] Ibid.; these reforms included the hat revolution, the reform of attire, the adoption of a civil code, the alphabet reform and the religious reform.

nationalism. These two principles constituted the political image of the Kemalist elite. Etatism was designated to foster capitalist industrialisation through import-substitution policies carried out by the state and gave expression to the political-economic logic of the Kemalist elite. Together, these three principles indicate the acceptance of the dominance of the West and its determination of the Kemalist elite's will to civilisation. They also indicate the significance of nation-state building for nationalist discourse. What gave specificity to Kemalist nationalism, however, was its populist character and its rejection of the West as a class-based social formation. Populism meant, in the Turkish context, the affirmation of the non-class character of Turkish society. As Binnaz Toprak put it, "Kemalist populism defined 'people' as an organic unit composed of professional groups rather than classes. As opposed to class solidarity, populism emphasised the solidarity of the whole nation. There were no classes, hence no privileges based on class differences, and hence no class conflict."[8]

In this sense, Kemalist nationalism was an attempt to base its will to civilisation on populism rather than liberalism, whose reflection at the economic level was the replacement of *laissez-faire* with etatism. The last two principles, secularism and reformism from above, served to construct a national identity compatible with republicanism, nationalism and etatism, and at the same time to incorporate populism and its appeal to organic unity into the identity of the individual citizen. They were also central to the practice of inclusion/exclusion, i.e. to the determination of who is included and who is excluded from the organic unity. It is through secularism that Kemalist nationalism established the boundary between the self and the 'other', thereby giving a concrete form to its populist-based creation of the national identity. Hence, the national identity was meant to be an organic unity of the secular, non-class based identity, which necessarily involved the subjugation of its other, (i.e., Muslim) identity.

2. Kemalism and the Turkish state

What is striking here, and what defines the basis of Kemalist nationalism, is the fact that the identification of popular sovereignty with national sovereignty within the context of the organic conception of society was not derived from 'to whom sovereignty belonged' but from 'to whom it did not belong'. In other words, embedded in the making of modern Turkey as an organic society was the nationalist discourse to create an identity in relation to difference and to freeze the other identities, such as the Islamic one, into history.

By assuming national identity to be the primary agent of progress, the Kemalist elite thus came to locate secularism within dichotomies such as progress versus conservativism, modernity versus tradition and advancement versus backwardness.[9] It is in this sense that, as Toprak has observed, up until the 1961 constitution (which liberalised political discourse according to the multi-party system), Kemalist nationalism was able to define the political landscape on the basis of the secularist anti-secularist axis (especially with the aid of its non-class based, populist ideology), as well as to categorise political forces in accordance with their stance on secularism. Secularism, in this context,

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[8] See Binnaz Toprak (1987), "The Religious Right", in Irvin C. Schick and Ahmet E. Tonak (eds), *Turkey in Transition*, New York: Oxford University Press.

[9] In situating secularism in a dichotomy between modernity and tradition, Kemalist nationalism had as its basic objective the construction of the modern Turkish identity. In the debates over the identity question, women's rights and gender equality are important features. The symbolic representation of women as the bearers of modernisation was an effective strategy against the anti-secular Islamic identity. The recognition of the place and the role of women in public life of the republic as 'educated social women', the adoption of the Swiss civil code in 1926 with which Turkish women gained new rights (along with the abolition of polygamy and repudiation) and the enfranchisement of women in 1934 were the policies by which the secular identity and its essential role for progress was justified against the anti-secular Islamic identity. It should be noted, however, that the rights and the reforms provided by the Kemalist elite, although based upon the recognition of the equality of Turkish men and women, were also obstacles to the emergence of an independent women's movement. In other words, as the state-proclaimed gender equality rested on the symbolic representation of women as symbolic pawns rather than political actors, women came to be embedded in a discourse of modernisation.

served not only to reinforce the image of the Kemalist elite in the making of modern Turkey but also to create a secular national identity as a modern rational one by excluding and marginalising the Islamic identity.

Nevertheless, it should be pointed out that the Kemalist preoccupation with secularism and the marginalisation of Islam is not without basis. At least three factors are worth emphasising.[10] First, insofar as Islam is characterised by the incorporation of the political into the religious realm, it constitutes a radical alternative to both secularism and secular political authority. Second, Islam is conducive to the creation of an alternative political community and identity on the basis of divine revelation and in this respect is able to have a unifying appeal to the masses as a source of common identity. Third, the Islamic impact on Ottoman social and political life serves as a reminder that Islam can indeed be a base of resistance to modernisation efforts that follow the Western pattern. These three factors constitute the very basis of the sensitivity of the Kemalist elites on the issue of Islam and their attempt to impose a strict version of secularism on Turkish society.

Such strict secularism did not prevent Islam from remaining a significant agent in the formation of social and political life in modern Turkey. While being excluded from the national identity, Islam has been a significant symbolic system providing meaning to human existence and thereby forming the bases of both individual and community identity. In other words, while Kemalist nationalism was successful in transforming Islam into the position of a purely individualist faith, the transformation of the Ottoman subject into a citizen of the Turkish republic proved much more complicated than *de jure* acceptance of equal treatment before the law. It was Islam that caused the complication by providing religious group norms and values by which the individual subject can be integrated into a political community that presents itself as able to supersede an abstraction such as nation and national identity. Thus, strict secularism was a solution to keep Islam in its place as an individual faith. In fact, from the beginning of the making of modern Turkey, the process of identity construction was determined by the discursive struggle between the will to civilisation through secularism and the will to a traditional political community based on Islam.

By functioning as a boundary-setting practice, nationalist discourse with its six operative mechanisms – republicanism, national sovereignty, etatism, populism, secularism and reformism from above – enabled the state to be successful in its *performance* of excluding the Islamic identity from the political landscape, subjugating it to secular political discourse and preventing it from becoming a political actor. It can be argued in this respect that the Turkish nation-state indeed operated with the above-mentioned mechanisms, which had constituted its reality and its identity as a secular and modern nation-state. This theoretical extrapolation provides a crucial insight for an adequate understanding not only of the relegation of Islam to the position of an individual faith, but also, and more importantly, of the rise of the Islamic identity in the post-1980 coup period in Turkey. That is to say that if keeping Islam in its place is central to the ability of Kemalist nationalist discourse to manifest its will to civilisation through the nation-state as a whole, the very crisis of such discourse is also central to the rise of the Islamic identity in Turkey. That is not to say that there is a causal linkage between the two phenomena, but a crisis of the former provides a context or a discursive space for the possibility of the transformation of Islam into a political factor and of the Islamic identity into a radical alternative to the secular national identity. Implied here is also the suggestion that the 1980 military coup brought about a radical transformation in the Turkish political landscape as fundamental as the post-1923 nation-building period.

On the basis of the account of Turkish modernisation that we have attempted to provide so far, we can conclude that the 1923-80 period demonstrates very clearly that Turkish modernisation was successful as a project of political modernity, but failed to make such modernity an accepted way of modernisation within its society. Instead, Islam has remained a powerful symbolic force in the everyday life of Turkish people and in the way in which they define themselves as Muslims. It is also

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[10] Here we are relying on Toprak's interpretation of Islam as a political force – see B. Toprak (1987), op. cit., p. 219.

clear that Turkish modernisation as a method of political modernity aimed at modernising and industrialising Turkey, rather than democratising its state-societal relations. It was only in the post-1980 period and especially during the 1990s that the need to make Turkish modernity more liberal, plural and multicultural, as well as to connect it with democracy, became one of the important issues in Turkish politics. It was in the 2000s that the political effort to connect or link modernity with democracy started as a result of the process of deepening Turkish-EU relations. Later in this paper, we turn to the role that the strengthening of Turkish-EU relations has played in Turkey's attempt to make its modernity democratic and its democracy consolidated. But, before focusing on the post-1980 coup period, it is important to explain briefly how Kemalist nationalist discourse remained dominant despite the emergence of the multi-party democracy in Turkey after World War II.

3. The transition to democracy

Although it was no longer possible to define the Turkish political landscape purely on the basis of the secularist versus anti-secularist axis, especially since the transition to the multi-party system (1945) and the rise of the 'new left' (in the 1960s), Kemalist nationalism can be said to have maintained its hegemony over Turkish political and social life. With the multi-party system, the emergence of the liberal vision of Westernisation and modernisation presented a serious alternative to the Kemalist principle of etatism and populism. At the same time, with the rise of the new left, the emergence of the socialist vision challenged the non-class based, populist image that had been used to define Turkish society as an organic totality. Yet these challenges did not lead to a significant transformation in the construction of state identity. Nor did they give rise to a radical rupture in the ability of Kemalist nationalism to give meaning to the making of modern Turkey. In fact, both liberal and new left political discourses functioned in relation to Kemalist nationalism and, to a significant extent, assumed its will to civilisation, thus employing its principal *modus operandi*, i.e. creating the general will 'in the name of the people'.

Several reasons explain the continuing hegemony of Kemalist nationalism in the 1945-80 period. First, both the liberals and the new left affirmed and reaffirmed the essentialism of Kemalism and its practice of inclusion and exclusion. Second, both discourses were intrinsically bound with modernity and thus by no means constituted a challenge to the Kemalist will to civilisation. Third, although etatism was now subjected to serious criticism, import-substituting industrialisation remained as the motor of industrialisation after the transition to the multi-party system. Hence, Kemalist nationalism was not questioned with respect to its industrialisation policy.

Thus, the 1945-80 period made it clear that Turkish modernisation should involve some elements of economic and political liberalism, but did not alter the dominant role of the state and its strong character vis-à-vis society. By then the effective instruments of formal democracy had been established with the transition to a multi-party and parliamentary democracy in Turkey. There were free and recursive elections and the ability of the opposition parties to criticise the governing party or coalition in Turkey. The military coups of 1960 and 1980 were both short-lived with relatively smooth transitions to civilian rule. Nevertheless, the establishment of formal democracy proved to be inadequate in resolving the problems of the country. Despite these obstacles, Turkish modernisation in this period was able to reproduce its hegemony by according primacy to state over society, modernity over democracy and secular/organic national identity over the language of individual/group rights and freedoms.

4. The crisis of national identity and the politics of difference

The 1980 coup brought about a radical rupture in the making of modern Turkey, the impact of which was deeply felt at each and every level of Turkish society. At the economic level, the goal of industrialisation was decisively shifted from import-substitution to export-promotion and much more emphasis was placed on market forces. It should be noted, however, that the main agent of this shift was the state and that it was primarily a political act (or an outcome of a political decision), which was

independent from any specific interest group. Those interest groups who were supposedly the main actors in the different industrial development policies (that is, export-oriented development) were the same industrialists who, with substantial support from the state, had been transformed from merchants into industrialists in the 1950s. Again, it was through state support that import-substitution industrialists became exporters in the years following 1980. Thus, contrary to belief, export promotion did not lessen state intervention, *it merely changed its direction*. State intervention was directed toward the privatisation and neo-liberalisation of the economy, the creation of a new trade regime and the employment of new modes of foreign policy in search of markets for export. Similar to the new right policies of Reaganism and Thatcherism, it was also directed at the managerial and technocratic reconstruction of political discourse to shape state-societal relations on the basis of technical-instrumental rationality, which was to operate by prioritising efficiency over social welfare.

The crucial point to be emphasised here is that since export-promotion was the form of adaptation to the international division of labour, the shift in industrialisation was in fact the transformation of the Kemalist will to civilisation to civilisation through *laissez-faire*, which was fundamentally contradictory with the Kemalist image of the organic state. In other words, while serving to create a secure ground for the liberal restructuring of economic life, the 1980 coup ironically set the stage for a new idea that was to replace the Kemalist, republican populist state, the existence of which it was supposed to protect. Indeed, the 1980 coup resulted in the transformation of state identity from radical secularist to what Faruk Birtek and Binnaz Toprak termed 'neo-republicanism', whose appeal to national and ideological uniformity was no longer dictated by the basic principles of Kemalist nationalism. Instead, by incorporating Islamic discourse and implicitly taking *umma* (a community of believers who are united by the same Islamic faith) as its model of social organisation, and also by abandoning the radical secularism of the early republic to secure its popular support and to open up the domestic market to Islamic capital, the post-1980 military regime weakened the very conditions of Kemalist nationalism and the republican state.[11] This was the peculiar nature of the weak state consensus, first established by the military regime and then consolidated by the neo-liberal Motherland Party government. Its peculiarity was derived from the fact that although it was embedded in the logic of global capital and global modernity, it also opened itself to Islamic discourse and made use of it to the extent that it contributed to the resurgence of Islamic identity as a strong political force.

The use of Islamic discourse and its notion of *umma* were considered by the military regime to be a temporary and short-term pragmatic strategy to restructure the political domain and to restore the power of the Kemalist republican state.[12] Yet such a contradictory move led to unintended consequences. The first was that in the 1983 national election, which marked the transition to civilian rule, the neo-liberal Motherland Party came to power despite the resistance of the post-1980 coup military regime and its publicly announced support for the Nationalist Democracy Party (which had been formed as the 'state party' of the post-1980 coup regime). This result revealed the crisis in the capability of the state to carry out the Kemalist will to civilisation and gave rise to the construction of a new state identity whose actions were no longer bound by radical secularism or the populist conception of the people. These acts were in fact embedded in *laissez-faire* market ideology, the managerial and technocratic understanding of the state and the dissemination of the discourse of economic rationality within Turkish society.

The second consequence of the regime's temporary and pragmatic appeal to the Islamic discourse to create ideological unity is that it has become one of the enabling factors for the emergence and re-

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[11] See Faruk Birtek and Binnaz Toprak (1993), "The Conflictual Agendas of Neo-Liberal Reconstruction and the Rise of Islamic Politics in Turkey", *Praxis International*, No. 13, p. 194, July.

[12] Interestingly enough, the use of the Islamic identity by the military regime in the form of the Turkish-Islamic synthesis, in order to depoliticise society and eliminate the left discourse from the political sphere (which had contributed to the resurgence of Islamic identity as a political force), ended in 1997, as the National Security Council declared that Islamic fundamentalism constitutes a fundamental threat to the secular regime. In this sense, the post-1980 Turkish modernisation reflects the ambiguous and pragmatic role of the Turkish military with respect to Islam.

emergence of Islamic organisations within state and civil society as political parties or as *tarikats* (the religious brotherhoods) and their increasing strength within the Turkish political landscape. Notwithstanding its overtly Kemalist orientation, the coup inadvertently opened a discursive space for the revitalisation of the language of difference, which created a possibility for the marginalised and silenced identity to surface and express its resistance to the national secular identity as the privileged modern self. More concretely, and even ironically, while depoliticisation was targeting the discourses of the left-right axis, whose *modus operandi* were not directed at the essential identity of Kemalist nationalism, it was giving rise to discourses aiming primarily at dismantling that identity. Thus, depoliticisation brought into existence once again the secularist versus anti-secularist axis.

Consequently, it can be argued that the rise of the Islamic identity in Turkey was not without basis. It was the outcome of the changing nature of Turkey's economy and politics, in which neo-liberalism went hand in hand with Islamic discourse. It is for this reason that besides its relation to the newly emergent, upwardly mobile middle classes, which were organised within the newly laid avenues created by the anti-left politics of the 1980s, the Islamic identity arose discursively in a context in which Kemalist nationalist discourse was facing a serious identity crisis and its will to civilisation was no longer capable of limiting the imagination of a political community within the horizon of modernity. More importantly, it emerged at a time when the total exposure of Turkish society to global modernity (through the increasing modernisation of the economy based on the export-oriented development) was radically transforming identity conceptions and social configurations into ambivalence and uncertainty. Islamic discourse acted successfully as an articulating principle of resistance to such uncertainty by identifying ambivalence with global modernity and certainty with community, that is, with a turn to religion.

5. The search for a democratic consensus

The search for a political community both outside the terrain of and as a response to the Kemalist will to civilisation formed and continued to give meaning to Turkish politics in the 1990s. The conjuncture of the 1990s in the Turkish political landscape was based upon a clash between the discourse of progress, secularism and reason and the discourse of tradition and anti-secularism, as well as nationalism and the emergence of the ethnic assertions by the Kurdish population, whose activities ranged from the politics of identity/difference to PKK terrorism.

As for the question of Islamic resurgence, the intersection between the decline of the hegemony of Kemalist nationalism and its definition of national identity and the rise of Islamic discourse as an effective articulating principle was one crucial area in which the politics of the crisis of identity was taking place in Turkish political life. Such an occurrence can be considered as a positive development, insofar as the emergence of alternative visions of modernity may be an indicator of multiculturalism and pluralism. As has been pointed out, however, the Islamic resurgence was mainly the outcome of the weak-state consensus, which was created through neo-liberalism and which generated a clash between Western and Islamic visions of modernity. To the extent that the weak-state consensus aims at minimising state power rather than democratising it, it does not contain any possibility of the democratic regulation of the state-societal relations in which Islamic identity acts not as the essence of an alternative vision of society, but as one identity among others in a multicultural, plural setting.

For this reason, when analysing the language of difference within the context of Islamic discourse, it is necessary to point to two crucial points of demarcation in order to avoid falling into the trap of reversed-essentialism, which the discourse of political Islam employs, as in the case of the Welfare Party. The language of political Islam during the 1990s tended to be essentialist by promoting a fixed and coherent Islamic community against the Kemalist will to civilisation. It did so by speaking the language of difference against what it regards as the exclusively secular national identity. In this way, the political Islamic discourse used a nationalistic standpoint (the Muslim brotherhood) as it articulated its idea of 'the just order and the just society' and used communitarian political strategies. Paradoxically, in this sense the language of difference turns out to be just as exclusive as the national identity to which it is radically opposed. Thus, the binary logic that situates the secular versus anti-

secular polarisation is placed at the centre of the political domain, elevating the essentialist and communitarian claims to identity to the forefront of Turkey's political agenda and discourse.

The second point of demarcation is that the changing terms of political discourse from grand strategies of modernisation to identity politics, while characterising the crisis of Kemalist nationalism, did not mean the end of nationalism. On the contrary, nationalism became the dominant ideology of the reorganisation of civil society in the 1990s. The 1990s exhibited 'the dark spring of nationalism', especially of ethnic nationalism, which provided the ideological dressing of essentialist and communitarian claims to identity. In other words, the emergence of the language of difference in the post-1980 coup period that had brought with it the shift to civil society resulted in cultural struggles in which each and every position used nationalist ideology to articulate its identity politics. A quick glance at these positions in cultural struggles, which have been organised around a binary logic – first between secular identity and Islamic identity, second between Turkish identity and Kurdish identity, and third between European identity and Turkish national identity – illustrates the resurgence of nationalist ideology in the form of the (ethnic) identity politics of the 1990s. In these positions, it is nationalist ideology that made it possible for each to speak of its identity as if it is coherent, fixed and constituted by an eternal essence, to redefine the political identity through the practice of inclusion/exclusion (based upon the 'us/them' distinction) and to pose itself as the foundational ground of political community. It is also nationalist ideology that enabled each to present itself as a unifying element of civil society. Thus, the discourse of political Islam attempted to unify different identities under the notion of Muslim brotherhood, Kemalist nationalism attempted to do so under the notion of secular identity and ethnic nationalist discourse strove for unity under the notion of Turkish identity. As a result, essentialist claims to identity with a nationalist wrapper marked and dictated the boundaries of the political sphere in the 1990s, creating an impasse.

What these two points of demarcation indicate is that Turkish politics in the 1990s was and continues to be characterised by both the end of certainty, established by the Kemalist will to civilisation through its economic, political and cultural meta-narratives of modernisation, and the presence of ambivalence in the way in which state-societal interactions are regulated and managed. On the one hand, we have the emergence of civil society as an area of political practice and the revitalisation of political identities as discourses of difference that have created a new ground outside the terrain of Kemalist nationalism for thinking about the question of democracy. Thus, the democratisation of state-societal interactions within the context of the recognition of differences as a challenge to the mono-culturalism of the republican search for national identity became a significant feature of political discourse of the 1990s. On the other hand, we have nationalist attempts to render the discourse of difference into an essentialist claim to identity, which have resulted in the organisation of civil society through communitarian lines – preventing rather than enabling the project of democracy to be consolidated. Indeed, what marked the nature of Turkish politics in the 1990s was the ambivalent relationship between 'the state in search of its nation' and the 'nation in search of its description'.

The main conclusion concerning the impasse of the political sphere in Turkey, which can be extrapolated from recognising ambivalence as the marker of Turkish politics in the 1990s, is the following: if it is true that the project of democracy has been impeded by the essentialist and communitarian claims to identity, then it is necessary to think of identity in relation to difference – to problematise any unifying and exclusive notion of identity and to historically investigate how it is established in relation to difference, i.e. to recognise that the very unity of an identity is always achieved through the practice of the exclusion of other identities. The problem of identity/difference therefore helps us not only to see how democratic possibilities can turn out to be possibilities for the articulation of essentialist claims to identity, as in the case of Turkey in the 1990s, but also, and more importantly, to develop effective strategies against essentialism, nationalism and communitarianism in the attempt to consolidate the project of democracy. Such an attempt to consolidate Turkish democracy, not only to resist essentialist and nationalist claims to religious and ethnic identity, but also to build a democratic consensus between the state and civil society, identity and difference, and the self and the other in Turkey, became what was needed the most as Turkey approached the beginning of the new millennium.

6. Turkey in the 2000s: Democratic opening

When we look at the emergence of the continuous efforts since the year 2000 that aim at linking modernisation and democracy with one another, and more importantly, at consolidating and deepening Turkish democracy, it is possible to observe five crucial developments (international and national) that have generated extremely important, if not system-transforming changes in state-societal relations in Turkey. These have forced political and state elites to come to terms with the fact that democracy is not only a normatively good system of governance, but also constitutes a valuable strategic and political device to enable any country to be strong and stable in its homeland and in international relations. Very briefly, these developments are explained below.

i) Changing Turkish-EU relations and the need for democratisation. As we later elaborate in great detail, since the Helsinki Summit of 1999 at which Turkey was granted the status of a candidate country for full membership, Turkish-EU relations have gained 'certainty'. This certainty has forced the political and state actors in Turkey to focus on democracy, since the candidate-country status requires Turkey to fulfil the Copenhagen political criteria, which means having modernity and democracy linked and upgraded in a given candidate country for full EU membership. Turkey's efforts to make a number of important legal and constitutional changes before the Copenhagen summit of 2002 was only enough to obtain a conditional date (2004 if there is no delay) for the beginning of full accession negotiations with the EU on condition that it meets the Copenhagen criteria in terms of implementation in its state-societal relations. This process is continuing, as are Turkey's efforts to consolidate its democracy in order to obtain a starting date for negotiations. What is important here is that as Turkish-EU relations have gained certainty over time, Turkish politics have come to terms with the fact that democracy should be 'the only game in town'.

ii) The February 2001 financial crisis and Turkish-IMF relations. As the Turkish economy collapsed in February 2001, which had a devastating impact on Turkey, the need to restructure state-economic relations became very apparent. Although the crisis appeared to be economic and financial, it was in fact a governance crisis that had occurred as a result of the populist clientelist and corruptive nature of Turkish politics. For this reason, the strong economy programme, prepared in connection and accordance with the structural adjustment programme of the IMF, had as its first aim the intention of restructuring the state in a way of freeing the economy from Turkish politics. It has become clear that without a strong and stable economy, Turkey faces drastic problems and a viable solution is to democratise both the state and its governing relations with society. Thus, the need for upgrading Turkish democracy also became apparent in the economic sphere, where not only the ordinary people who suffered severely from the economic crisis but also the economic actors have come to believe that democracy is necessary for economic stability.

iii) The November 2002 national election and the AKP government. The fourth important development in Turkey was the November national election, from which the impact was felt like a political earthquake. On the evening of 3 November 2002, as the final vote count came in, an electoral shock reverberated through Turkish politics. The three parties that had formed the coalition government after the 1999 elections, as well as two opposition parties, failed to pass the 10% national threshold and found themselves left outside parliament. This electoral punishment was so dramatic (but at the same time so deserved) that the winner of the 1999 elections, the Democratic Left Party (DSP) lost almost its entire constituency. Other parties found themselves thrown out of parliament by losing more than half of their electoral support.

The winner of the election, the Justice and Development Party (AKP) received 34.2% of the popular vote, gained 66% of the parliamentary seats and formed a single-party majority government. The Republican People's Party (CHP), with 19.4% of the popular vote and 34% of the parliamentary seats, became the single opposition party in parliament.

The election results demonstrated the popular feeling in Turkey that the ineffective and undemocratic governing structure based on economic populism, clientelism, corruption and democratic deficiencies had run its course and that a strong single-party government with institutional and societal support

could make Turkey a democratic and economically stable country. In fact, the AKP government has created political stability in Turkey and made a number of important legal and constitutional changes necessary for meeting the requirements of the Copenhagen political criteria.

iv) The war in Iraq and Turkish-American relations. There is a consensus within the debates on terrorism that the purpose of terrorist acts is much greater than the direct physical destruction they cause. The September 11th attacks illustrate this point very clearly, insofar as the effect they have generated in the world in which we live has gone much beyond the killing of around 3000 innocent civilians. Their effects have even gone further than the political goal, voiced by the leader of the al Qaeda network Osama bin Laden of creating a 'clash of fundamentalisms' in world politics in the name of the Islamic Jihad against the infidel American imperialism in particular and the Western modernity in general.

Since US President George Bush defined the attacks of September 11th as an act of war and responded by unilaterally declaring a global war on terrorism, we have seen the emergence of a number of radical developments, changes and crises in world affairs that have made it possible to characterise the present as the post-September 11th era. The unilateral declaration of the US aiming at revitalising state-centric international politics based on the normative and strategic primacy of security issues over global social justice problems has manifested itself as war. This policy stance has unearthed the problems of key international institutions, such as the UN and the NATO and created a split in the process of European integration. Further, it has divided the world into those who are the friends of the US and those who are against the war on terrorism. Thus, in the name of a global war on terrorism, the state-centric reordering of world affairs has operated not only by establishing a linear causality between the fight against terrorism and war, but also by codifying difference as a direct or indirect threat to security. In this sense, both the gruesome terrorist attacks on September 11th and the state-centric response to it have created a radical change in international relations, in which we are forced to choose between security and liberty, hegemony and autonomy, community and individuality, and state-centric nationalism and democratic cosmopolitanism.

Turkey has not been immune from this process and the problem became clearer as the Bush administration waged a war against Iraq and occupied the country in order to remove the tyranny of Saddam Hussein. Given its border with Iraq, Turkey has found itself subjected to demands by the Bush administration to deploy military troops in its south and south-eastern regions. Turkey's rejection of this demand in its now famous parliamentary decision of 1 March 2003 created big problems in Turkish-American relations. What has become apparent today is not only that Turkey took a very important decision to locate itself outside the war and occupation. It has also become clear that as long as Turkey does not solve its Kurdish problem, it will face security issues related to the activities of Kurdish tribal forces in Northern Iraq and remain very hesitant towards a political future of Iraq that involves (as a likely scenario) a federal system in which Northern Iraq is governed by the Kurds.

All of these developments in the post-September 11th world in general, and in Iraq in particular, have indicated that a democratic and economically stable Turkey is a much stronger country both in the region and against the unilateral demands of the Bush administration. The war in Iraq has made the state and political actors in Turkey realise that only a democratic Turkey, willing to solve its problems stemming from the questions of identity and difference (and most concretely the Kurdish question), will be strong in its negotiations with the actors involved in the increasingly problematic structure of the Middle Eastern region in general and post-war Iraq in particular.

v) The role of civil society. In addition to these international and national changes, there have been strong societal calls for the further democratisation of state, societal and individual relations in Turkey. Since 2000, most civic society organisations have made such calls and in doing so have shown their support of Turkish-EU relations. Strong economic actors, such as the Turkish industrialist and businessmen's organisation (TUSİAD), the independent industrialist and businessmen's organisation (MUSİAD) and the regional and provincial industrialist and businessmen's organisations (the SİADs) have supported Turkey's entry into the EU and initiated lobbying activities for this end. They have voiced the need for more democracy in Turkey, which is possible if Turkey demonstrates a strong

political will to implement it and if the EU plays the role of a positive international anchor for democratisation. Similarly, a number of civil society organisations and think-tanks operating in various fields have worked in their own ways for further democratisation and modernisation.

Today, civil society has become an important element of Turkish politics not only through its discourse of democratisation but also its associational activities. The qualitative and quantitative importance of civil society has forced political and state actors to come to terms with democracy as well as its normative and strategic significance for making Turkey a strong and stable country in international relations.

These changes in Turkish-EU relations, Turkish-IMF relations, the AKP single-majority government, Turkish-American relations and the increasing importance of civil society have together brought about the possibility of making Turkish modernity more societal, liberal, plural and multicultural, as well as transforming Turkish democracy into a more consolidated, substantial and deepened democratic mode of governance. Nevertheless, as we analyse in a more detailed fashion in Part II, among these changes the current Turkish-EU relations appear to be the most significant for societal modernisation and democratic consolidation. This is precisely because of the fact that these relations are concerned directly with substantial democracy as a normative ground and a political requirement for full membership. In this sense, what should be carefully analysed is the ability, capacity and willingness of Turkey to meet the Copenhagen criteria and its implementation. It is this analysis that this paper attempts to make in Part II.

PART II. Impact of EU Conditionality on the Consolidation of Turkish Democracy and Reform in Key Areas

The vast amount of literature that deals with Turkish democracy and its consolidation tend to stress the importance of internal or domestic factors that involve political actors and state institutions. The literature mainly refers to the clientelistic, populist centre-right or centre-left political parties and their increasing detachment from society, as well as to the institutional problems arising from the undemocratic character of the strong-state legacy in Turkey.[13] Although valuable in understanding Turkish democracy, the literature remains incomplete as it does not take into account the international dimension of the democratisation process in Turkey. The recent developments in EU-Turkish relations, however, have created a strong impetus to analyse the significant role the Union can play in the consolidation of Turkish democracy, through interaction with the domestic sphere of the country.

The prioritisation of the principles of democracy and human rights for entry into the EU was reflected in the EU's enlargement policy, the framework of which was set in the European Council at Copenhagen on 21-22 June 1993. The Copenhagen Conclusions outlined the political conditions attached to membership by stating that "membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities" along with the other two conditions regarding the existence of a functioning market economy and the ability to take on the obligations of the *acquis*.[14]

By making basic norms of liberal democracy a *sine qua non* condition for the most important tangible reward that it has to offer, namely membership, the EU developed the policy of 'conditionality' as an effective policy instrument to transform the governing structures, economies and the civil societies of the candidate countries, initially from Central and Eastern Europe. The major instruments of conditionality were 'gate-keeping' along with bench-marking and monitoring.[15] Hence, the EU institutions decided whether or not to give the green light to candidates at the different stages along the accession process, which in the case of the Central and Eastern European countries (CEECs) consisted of giving privileged access to trade and aid, signing and implementing enhanced Association Agreements, starting accession negotiations, opening and closing 31 chapters of the *acquis*, signing the Accession Treaty, ratifying the Accession Treaty and finally entering the European Union.[16] Regular annual reports monitored progress and outlined the steps taken by the candidate countries to fulfil the Copenhagen and Accession Partnership criteria, which presented a list of short- and medium-term recommendations to achieve that end. The Commission has also supported these mechanisms through a significant amount of financial aid and technical assistance. Conditionality through these mechanisms has allowed the EU to offer resources and legitimation to some actors and constrain the behaviour of others in the domestic sphere. Hence, the European Union has influenced the

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[13] See E. Fuat Keyman and Ziya Öniş (2004), "Helsinki, Copenhagen and Beyond: Challenges to the New Europe and the Turkish State", in Mehmet Uğur and Nergis Canefe (eds), *Turkey and European Integration: Accession Prospects and Issues*, London: Routledge; see also E. Fuat Keyman (2000), *Türkiye ve Radikal Demokrasi (Turkey and Radical Democracy)*, İstanbul: Alfa Publishing and Ergun Özbudun (2000), *Contemporary Turkish Politics: Challenges to Democratic Consolidation*, Boulder Colorado: Lynne Rienner Publishers.

[14] European Council (1993), *European Council in Copenhagen 21-22 June 1993, Conclusions of the Presidency*, SN180/1/93 REV1.

[15] See Heather Grabbe (2001), "How does Europeanisation Affect CEE Governance? Conditionality, Diffusion and Diversity", *Journal of European Public Policy*, Vol. 8, No. 6, pp. 1013-31.

[16] See Gergana Noutcheva et al. (2004), "Europeanization and Secessionist Conflicts: Concepts and Theories", in Bruno Coppieters et al., *Europeanization and Conflict Resolution: Case Studies from the European Periphery*, Ghent: Academia Press, pp. 1-50.

democratisation process of candidate countries primarily by empowering reformist elements in their societies and by altering the domestic opportunity structure during the accession process.[17]

There is a widespread consensus in the literature that the most crucial factors for conditionality to bear full fruit are its "consistent" and "credible" application and the low costs associated with compliance/rule adoption.[18] Starting with credibility, in the case of CEECs, there were no mixed signals leading them to doubt eventual accession, which would have had a strong strengthening impact on the conservative and resistant elements in society. The EU adhered to all the mechanisms of gate-keeping and bench-marking, coupled with a tremendous amount of aid and assistance. In the case of Turkey, however, the lack of the prospect of membership and a strategy for accession were coupled with very small amounts of aid and assistance. Where countries such as Poland, Romania and Bulgaria received around €470 million, €306 million and €161 million respectively under the PHARE, ISPA and SAPARD programmes between 1990 and 2001, the amount granted to Turkey in the same eleven-year period – a country of a considerably larger size and population – was only €840 million.[19]

The Helsinki summit of December 1999 caused a significant shift in the EU's policy towards Turkey by declaring it a candidate country and by subjecting it to the same formal mechanisms used for the CEECs to guide and measure progress on the Copenhagen criteria. The European Commission published the first Accession Partnership document in March 2000, which was followed by the preparation of the Turkish "National Program for the Adoption of the Acquis" by the Turkish authorities in March 2001. Immediately following the approval of the national programme, the silence on political reform was broken with a record number of 34 amendments made to Turkey's constitution in October 2001.

The amendments were not restricted to political rights, but extended over a large area of socio-political life. Although most of these amendments dealt with details or were simply changes in language that did not create a new legal situation, some of them were constitutional reforms, such as the shortening of pre-trial detention periods, the limitation on use of the death penalty to times of war or to imminent threat of war along with terrorist crimes, changes that made the prohibition and dissolution of political parties more difficult, expansion of the freedom of association and the strengthening of civil authority in the National Security Council. Another important amendment concerned the abolition of Art. 15, which had banned the constitutional review of acts passed during the National Security Council regime established after the 1980 coup. Those acts, many of which contain significant anti-democratic elements, can now be challenged in the Constitutional Court. After the constitutional amendments, the new Civil Code entered into force on 1 January 2002, introducing significant changes in the area of gender equality, protection of children and vulnerable persons. It established new practices and institutions in Turkish law, such as pre-nuptial contracts for the management of family assets.

These in turn were followed by three 'harmonisation packages'[20] adopted in the follow-up to the Copenhagen summit of 2002. These not only aimed at translating the above-mentioned C-constitutional amendments into action by harmonising Turkish law with them, but also introduced further reforms, particularly in the fields of human rights/protection of minorities, freedom of

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[17] Ibid., p. 17.

[18] See Karen Smith (2000), "The Conditional Offer of EU Membership as an Instrument of EU Foreign Policy: Reshaping Europe in the EU's Image", *Marmara Journal of European Studies*, Vol. 8, No. 2, pp. 33-46; see also Frank Schimmelfennig et al. (2003), "Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey", *Journal of Common Market Studies*, Vol. 41, No. 3, pp. 495-518.

[19] These data were obtained from the Secretariat-General for EU Affairs (retrievable from http://www.abgs.gov.tr) and the Representation of the European Commission to Turkey (retrievable from http://www.deltur.cec.eu.int).

[20] A term of reference for a draft law consisting of a collection of amendments to different laws designed to amend more than one code or law at a time, which was approved or rejected in a single voting session in the parliament.

expression and freedom of association. The most notable of these were the easing of restrictions on the right to broadcast in different languages and dialects traditionally used by citizens in their lives, namely Kurdish. These measures culminated in the EU's Copenhagen summit decision of December 2002, which concluded that "if the European Council in December 2004, on the basis of a report and a recommendation from the Commission, decides that Turkey fulfils the Copenhagen political criteria, the EU will open negotiations without delay".[21]

This decision was received with considerable disappointment in Turkey as general expectations had been raised in the country by the political elites as well as by the media that the decision to actually launch accession negotiations with Turkey would have been taken at that summit. Contrary to some theories circulated by the more fervent Eurosceptics in Turkey, this disillusionment has not led to a slowdown in the reform process, nor has it led to the abandonment of the EU project – as it is often referred to in Turkey. Just the opposite, in fact, has happened. The Copenhagen summit has fostered a "sense of certainty" in EU-Turkish relations by giving a specific date for the beginning of accession negotiations.[22] Even though 2004 was a conditional date, it was nevertheless a significant step forward, as "it has provided Turkey with the prospect that full EU membership is a real possibility".[23] Meanwhile, the EU also decided to significantly increase the amount of financial assistance to Turkey. Pre-accession financial assistance would reach €250 million in 2004, €300 million in 2005 and €500 million in 2006 to "help Turkey prepare to join the EU as quickly as possible".[24]

The strengthening of the credibility of conditionality was immediately reflected in the subsequent reform packages adopted by the Turkish government. Four comprehensive sets of democratic reforms entered into force in 2003, aiming at improving the most-criticised aspects of Turkish democracy, such as limits to freedom of speech and expression, freedom of association, torture and mistreatment along with the strong influence of the military on domestic politics.

With the two democratisation packages that entered into force in January 2003, the Political Parties Law was further liberalised, the fight against torture was strengthened, freedom of the press was further expanded, the procedures for setting up associations were eased and the restrictions that applied to the acquisition of property by non-Muslim community foundations were abolished. The retrial of cases on the basis of decisions taken by the European Court of Human Rights was also made possible, paving the way for the retrial of some former Kurdish nationalists such as Leyla Zana.

The sixth reform package that entered into force in mid-July 2003 became widely famous for the lifting of Art. 8 of the Anti-Terror Law (thus further expanding the freedom of speech), as well as the limitation on use of the death penalty and the expansion of broadcasting rights in Kurdish. It was the last set of democratic reforms, however, which entered into force at the end of July 2003, that has probably attracted the most attention, owing to its emphasis on strengthening the civilian control of the military as well as additional measures it has introduced to strengthen the fight against torture and the exercise of fundamental freedoms.

In May 2004, another set of amendments to the constitution was approved, some of which consisted of harmonising the constitution with the previous democratisation packages. More significant amendments regarding the further civilianisation of Turkish politics, reform of the judiciary and freedom of the press were also passed by parliament. The subordination of domestic law to international law in the area of fundamental rights and liberties was now secured in the Turkish

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[21] European Council (2002), *Presidency Conclusions,* Copenhagen European Council 12-13 December 2002, SN400/02.

[22] See Ziya Öniş and E. Fuat Keyman (2003), "Turkey at the Polls: A New Path Emerges", *Journal of Democracy*, Vol. 14, No. 2, pp. 95-107.

[23] See E. Fuat Keyman and Ziya Öniş (2004), "Helsinki, Copenhagen and Beyond: Challenges to the New Europe and the Turkish State", in Mehmet Uğur and Nergis Canefe (eds), *Turkey and European Integration: Accession Prospects and Issues*, London: Routledge.

[24] European Commission Representation to Turkey (2003), *EU-Funded Programmes in Turkey: 2003-2004*, December (retrievable from http://www.deltur.cec.eu.int/english/eufunded2004/01eufp04.pdf).

constitution. The eighth democratisation package adopted in July 2004 resolved yet another long-criticised issue by repealing the provision that had allowed the nomination of a member of the High Audio-Visual Board (RTÜK) by the Secretariat-General of the National Security Council. The new Penal Code and the Associations Law, currently pending in parliament are also expected to be adopted before the Commission's progress report in October. Its approval is highly likely considering the fact that most of the reforms in the past were passed immediately before or after crucial Council meetings, displaying once again the clear drive towards the prospect of membership.

In addition to legislative changes, the government has also taken specific steps geared towards securing their effective implementation, the most notable of which was the establishment of human rights boards in cities and provinces as well as a special Reform Monitoring Group composed of various representatives of selected ministries and government bodies.

It is evident that the prospect of EU membership becoming more 'real' clearly contributed to the emergence of effective conditionality in the case of Turkey; thus it became impossible to separate the domestic and international spheres from each other. The profound political and economic transformation initiated in 1980s, especially de-ruralisation coupled with the failed policies of the strong state and the increasingly corrupt parties of the centre, had already paved the way for the emergence of a stronger civil society and identity-related politics in Turkey, most notably regarding political Islam and the Kurdish identity. By helping to create a strong language of rights in the country, the EU started to play an important role in furthering the change in state-societal relations and provided legitimacy for a vast amount of civil society organisations calling for a more democratic Turkey and demanding recognition of cultural/civil rights and freedoms.[25] In a similar sense, the EU has also provided increasing legitimacy for the governing AKP party's heavy emphasis on democracy and the protection of individual rights and freedoms, reflected in the speed of political reforms after the AKP came to power in November 2002. Democracy as advocated by the EU became the "catchword and the strategy through which the former Islamists seek to change the system at the same time as they change themselves".[26]

Another reason that facilitated compliance by Turkey was the perceived decrease in the amount of adoption costs with respect to the concerns of the military/security establishment (which in the 1990s had viewed the costs as being particularly high). This was specifically the case for reforms related to minority rights. The political costs of compliance were reduced by the end of terrorism in late 1990s, weakening the previous opposition of the military/security establishment and strengthening the view that national unity can be preserved through further democratisation rather than exclusively through military means.

Although credible application of conditionality and relatively lower adoption costs have come together to bring political change in the country, there are still significant challenges for sustaining these preconditions for further democratic reform. Regarding credibility, it is well known that political discretion still plays a certain role in the EU in determining when and whether political conditions are met in a given country, accentuated by the vagueness of the conditions attached. Yet when blatant violations go unpunished or benefits are not granted despite the fulfilment of obligations, the EU's credibility can be seriously damaged.[27] In the case of Turkey, the progress achieved so far suggests that for the existing reforms to be entrenched and proceed further, the EU should follow the path it did with Romania and Bulgaria. It is generally argued that the EU opened negotiations with these countries – which had high degrees of corruption and malfunctioning public administrations – before

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[25] See E. Fuat Keyman and Ahmet İçduygu (2003), "Globalization, Civil Society and Citizenship in Turkey: Actors, Boundaries and Discourses", *Citizenship Studies*, Vol. 7, No. 2, pp. 219-33.

[26] See Duygu Bazoglu Sezer (2002), "The Electoral Victory of Reformist Islamists in Secular Turkey", *International Spectator*, Vol. 37, No. 4, pp. 7-21.

[27] See Gergana Noutcheva et al. (2004), op. cit., p. 22.

they sufficiently fulfilled the Copenhagen political criteria.[28] A similar situation exists with respect to Latvia, which, according to a report by the European Parliament on 17 February 2004, still has significant problems regarding the situation of its Russian minority. The opening of accession negotiations with Turkey on the grounds of 'sufficient progress', followed by regular assessments of compliance with the political criteria (upon the closure of a certain number of previously agreed chapters) could be a good option for sustaining the credibility of the offer by the EU. Avoidance of political discretion in the later stages would also be helped by a commitment to inform European public opinion about what Turkish accession really entails by publicising exact figures and preventing misinformation campaigns. The recent European Parliament election debates suggest that the prospect of Turkey being part of the Union is not popular in many member states and could even jeopardise the yes votes in the referenda on the European Constitution.

This issue of adoption costs requires us to consider another problematic aspect of EU conditionality: if the costs of compliance are considered to be too high for the country in question, there is a risk that these will lead to a rejection of the conditions.[29] In the case of Turkey, the adoption costs of the ultimate transformation that will occur on the path to eventual accession still seem to be perceived as high, particularly by the military/security establishment, extreme left and right, and even for a majority of 'social democrats'. The costs are perceived to arise from the pooling of sovereignty, decentralisation and increased recognition of the multiple identities that comprise the defining traits of European integration. These processes come into direct conflict with the authoritarian visions of nationalism based on a single identity and lead the members of the anti-EU coalition to regard significant political reform along these lines as a major threat to the unity of the nation.[30] Although such resistance was also present in a majority of the CEECs in transition, the levels are higher in the Turkish context owing to "historical legacies and the peculiarities of her nation-building experience".[31] There was also no complete overthrow of the existing system in the Turkish case, making it difficult to achieve reform from within the existing structures without the 'novelty of the elite'. The commitment levels to the European project are thus lower than in a majority of CEECs. For example, in Latvia even the most nationalistic opponents of concessions regarding citizenship and language rights did not question the priority of joining the EU and adherence to democratic values.[32]

A credible and consistent policy of conditionality is thus necessary to empower reformist elements in Turkish society. As the example of Slovakia under Prime Minister Vladimir Mečiar suggests, however, in cases where the main incentive offered by the EU (namely membership) requires the adoption of principles perceived as threatening to the ruling elite (imposing accountability in the case of Mr Mečiar), the only means for the EU to bring about change are tremendous direct democracy-promotion and mobilisation efforts aimed at both the elite and the mass public level to reverse power structures. These efforts, combined with the weariness of the electorate with the incumbents and the emergence of a centre party with democratic leanings triggered change in Slovakia, leading to the removal of Mr Mečiar and putting the country back on the reform track.[33] Similarly, in addition to sustained credibility, the EU also needs to continue offering aid and assistance to pro-democratic forces in Turkish society and to build transnational networks for change. Close and direct links with civil society and reformist leaders are essential for further change to occur. Rigorous attempts to change the perceptions of the political and military elite, particularly among those in the security

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[28] See Michael Emerson (2004), *Has Turkey Fulfilled the Copenhagen Political Criteria?*, CEPS Policy Brief No. 48, CEPS, Brussels, April, p. 2.

[29] See Frank Schimmelfennig et al. (2003), op. cit., pp. 495-518.

[30] See Ziya Öniş (2003), "Domestic Politics, International Norms and Challenges to the State: Turkey-EU Relations in the Post-Helsinki Era", *Turkish Studies*, Vol. 4, No. 1, pp. 9-34.

[31] Ibid., p. 5.

[32] See Nils Muiznieks and Ilze Brands Kehris (2003), "The European Union, Democratization, and Minorities in Latvia" in Paul J. Kubicek (ed.), *The European Union and Democratization*, London: Routledge, pp. 31-55.

[33] See D. Kevin Krause (2003), "The Ambivalent Influence of the European Union on Democratization in Slovakia" in Paul J. Kubicek (ed.), *The European Union and Democratization*, London: Routledge, pp. 56-86.

forces and the judiciary, would also prove beneficial. All these measures would be helpful in fostering 'socialisation' with European norms and values. Recommendations as to how these measures can be implemented are further elaborated in the next sections, where progress, problems and prospects regarding the areas in which the key challenges still remain – namely the influence of military in politics, protection of human rights and minorities and the judicial system – are discussed.

1. National Security Council and the military

Since its first intervention in 1960 with a *coup d'etat*, the military has been one of the most important actors in Turkish politics. It intervened again with further coups in 1971 and 1980, and although each intervention only lasted a reasonably short period, the military gained important guarantees that enhanced its role in the subsequent civilian regime. This was accomplished through two main strategies. One was to incorporate into the constitution certain substantive values cherished by the military – i.e. territorial and national integrity of the state and the modernising reforms of Kemal Atatürk. The second was to create formal institutions dominated by the military with the duty of preserving such values, namely the National Security Council.[34] Until very recently the National Security Council was responsible for preserving a very broadly defined concept of internal and external national security. State security courts – mixed courts composed of civilian and military judges – were established to deal with crimes against the security of the state, subject to review by the civilian Supreme Court. A Supreme Military Council was also established as a body of high-ranking generals and admirals who were charged with the important task of making final decisions concerning the promotion and retirement of military personnel. No judicial appeals were allowed against its decisions.

Despite their formal separation, a partnership based on an "imperfect concordance" was formed among the military and political elites in Turkey.[35] Although military-civilian relations seemed to be normalising by the early 1990s, the resurgence of Kurdish nationalism and terrorist activities together with the rise of political Islam brought it back to the forefront in the mid-1990s. This served to demonstrate the two fundamental values of the Turkish military, namely the indivisible integrity and the secular character of the state.

With the 2001 constitutional amendments, the sixth and seventh harmonisation packages and the May 2004 constitutional amendments, a number of fundamental changes have been made to the duties, functioning and composition of the National Security Council as well as to the conditions relating to the control of military spending (see Box 1). The changes aimed at reducing the powers of the National Security Council secretariat and introducing new methods of operation were described as "momentous" by the 2004 Council of Europe report on Turkey.[36] The secretariat has been transformed into a consultative body that is no longer able to conduct national security investigations on its own initiative. Nor does it directly manage the special funds allocated to it anymore, which are now under the exclusive control of the prime minister. The representatives of the National Security Council (NSC) in civilian bodies such as the High Education Council (YÖK) and High Audio-Visual Board (RTÜK) have also been removed.

There have also been important developments towards attaining a greater transparency of military expenditures. In the past, the military in Turkey enjoyed considerable autonomy regarding defence budgeting and defence procurement, linked to its influence on political decision-making. With the seventh harmonisation package and the May 2004 constitutional amendments, the state assets utilised by the military were brought under the inspection of the Court of Auditors, with no reservations

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[34] See Ergun Özbudun (2000), *Contemporary Turkish Politics: Challenges to Democratic Consolidation*, Boulder Colorado: Lynne Rienner Publishers.

[35] See Nilüfer Narlı (2000), "Civil-Military Relations in Turkey", *Turkish Studies*, Vol. 1, No. 1, pp. 107-27.

[36] See the Council of Europe, Parliamentary Assembly (2004), *Report on the Honouring of Obligations and Commitments by Turkey*, Strasbourg, 17 March, p. 20.

regarding 'secrecy clauses'. With the new Public Finance Ruling and Controlling Law to enter into force in January 2005, the long-criticised extra-budgetary funds will be brought into the defence budget and more detailed information and documents will be required with defence budget proposals. Parliamentary control is further enhanced by changes in the method of budgeting, which now require performance reports to be submitted to parliament and related institutions. The new law also paves the way to value-for-money inquiries by the parliament.

Box 1. Reforms undertaken to decrease the influence of the military in politics

National Security Council

- With the October 2001 constitutional amendments, the 'advisory' nature of the NSC was enshrined in the constitution and the number of civilians in the NSC was increased.
- With the July 2003 (sixth) harmonisation package, the representative of the NSC on the Supervision Board of Cinema, Video and Music was removed.
- With the August 2003 (seventh) harmonisation package, the extended executive and supervisory powers of the secretary-general of the NSC were abolished and other provisions authorising unlimited access of the NSC to any civilian agency were abrogated. The post of secretary-general was no longer confined to a military person and a civilian could be appointed upon the proposal of the prime minister. The frequency of NSC meetings was modified to convene every two months instead of once a month. With this package, the provision to obtain the views of the NSC when determining the languages to be taught in Turkey was also abrogated.
- With the May 2004 constitutional amendments, the military representative in the Higher Education Council (YÖK) was removed.
- The eighth harmonisation package repealed the provision allowing for the nomination of a member of the High Audio-Visual Board (RTÜK) by the Secretariat General of the NSC.

Defence expenditures

- With the August 2003 (seventh) package and the May 2004 constitutional amendments, new provisions have been adopted with a view to enhancing the transparency of defence expenditures. The seventh package allows the Court of Auditors, upon request of parliament, to audit accounts and transactions of all types of organisations including those concerning the state properties owned by the armed forces. The May 2004 constitutional amendments removed the items exempt from auditing under the secrecy clause.
- The Public Finance Ruling and Controlling Law adopted on 10 December 2003, which will enter into force in 1 January 2005, brings extra-budgetary funds into the overall state budget. The law requires more detailed information and documents to be provided in the budget proposals to be submitted to the parliamentary committees and parliament. It also requires longer periods of debate on the defence budget proposals.
- The Public Finance Ruling and Controlling Law establishes a method of budgeting based on performance, by requiring performance reports to be submitted to the parliament and related institutions, enhancing parliamentary control on military spending. The law also enables the Court of Auditors to undertake 'value-for-money' inquiries and improves the mechanisms of internal control.

The reforms have undoubtedly opened the way for a fundamental civilianisation of Turkish politics. In legislative/institutional terms, the only remaining challenge concerns the status of the decisions of the Supreme Military Council. It is often cited that the decisions of the Supreme Military Council should not be immune from judicial oversight or review to promote the rule of law in Turkey. But the reform is strongly resisted by the security establishment on the grounds of protecting the institutional norms and professional ethics of the military profession in Turkey. The strong resistance is mainly driven by the deep distrust the security establishment has of administrative courts and their judges, owing to their lack of full independence from the executive. This situation is reinforced by the role of the AKP as the party in power, as the security establishment is most concerned about an Islamic influence on the administrative courts.

Thus, the necessary measures to ensure full independence of the judiciary (which are later dealt with in detail) can also pave the way for this reform. Alternatively, because of the intrinsic interconnection

of such decisions with individual rights, the decisions taken in the Council regarding the expulsion of individuals from the military, could be taken by the Ministry of Defence, whose decisions are already subject to judicial review.

The role of the military in Turkey is also very closely bound with its economic power. Despite the fact that the proportion of military spending in the overall budget (which ranged between 9% and 11% until 2000) decreased to 6.6% in 2004, the military still remains one of the strongest economic forces in Turkey. This high rate of expenditure is at the expense of spending on areas such as justice, health[37] and economic development and also creates a situation where many private firms depend on contracts originating from the military. As the privileged position of the military-security establishment appears to be particularly threatened by the kind of reforms proposed by the EU, the related economic dependence of the business community, which was a pivotal actor in the furthering of the reform process, may also limit the extent to which it is willing to push for a full civilianisation of Turkish politics.[38]

In fact, the planning phase of the 2005 budget demonstrates that the principles behind the new legal changes regarding civilian control of military spending have now started to be applied in practice, leading to significant cuts in proposed expenditures. Upon the proposals of the prime minister for changes in procurement proposals and defence tenders, a practice not employed by previous prime ministers, the Defence Industry Committee (DIEC) that oversees procurement in defence-related areas agreed to reduce the proposed total budget of $12 billion to $6 billion, which involved the cancellation of three tenders.[39] Similarly, one-third of the proposed defence budget in 2004 was reduced by parliamentary reviews, leading for the first time in a decade to the fall of military spending to second rank behind education.[40]

Moreover, it is not just the economic power of the military that needs to be tackled for full civilianisation. Perhaps more importantly, the role of the military is a reflection of the public's beliefs and expectations. The military remains the most trusted institution in Turkish society. It is difficult for many in Europe to understand such high trust, in spite of three coups in the country's history. One of the most important reasons for this is the military's role in late Ottoman and early republican history as the most progressive force in society from which the founder of the nation, Kemal Atatürk, also emerged. The military has also been the most egalitarian, non-politicised and professional public institution compared with a political class that was often unstable, corrupt and unreliable. Hence, there is a strong belief among many that the army knows what is good for the country and will take the required measures if necessary.

The intense focus of the media, academia and political elites on NSC meetings in the wake of key decisions such as the one to send troops to Iraq in the autumn of 2003, the decision to re-launch negotiations in Cyprus and to favour referenda over the Annan Plan shows how expectations take time to change. The military's presence is also one of the main economic supports for certain regions.[41] Thus, a reduction of the military's political influence will depend as much on a transformation of the military's assessment of its role as on that of the wider establishment and public opinion, also

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[37] Only 2.4% of the 2004 national budget is allocated to health.

[38] See Ziya Öniş (2003), op. cit.

[39] "Savunmada Milli Üretime Dönüş (Return to National Production in Defence)", Yeni Şafak, 15 May 2004. The DIEC is chaired by the prime minister and includes the defence minister, undersecretary for defence industries and the chief of staff among its members. Despite this composition, the institution has traditionally been dominated by the military establishment.

[40] "Eğitim Bütçesi Savunmayı İlk Kez Aştı (The Budget for Education Has for the First Time Exceeded the Defence Budget)", Hürriyet, 1 July 2004.

[41] Based on interviews with military officials, Ankara, May 2004.

necessitating a considerable strengthening of civil society.[42] This attitudinal and cultural shift is crucial for the effective implementation of the legal reforms undertaken in the field of civilian-military relations.

There have been some recent developments suggesting that the military's omnipresent role – specifically regarding foreign policy decisions – has begun to decrease. Despite the willingness of the military-security establishment to intervene in Iraq, it has refused to exert pressure on the government on this issue and the parliament's decision to disallow the deployment of American troops through south-eastern Turkey prevailed. The US Department of Defense, which traditionally emphasised Turkey's strategic significance and enjoyed extremely close relations with the Turkish military, has blamed the Turkish military for not putting enough pressure on the government, provoking great resentment among the Turkish public. This turn in relations may also give way to an increased civilianisation of Turkish-American relations, whereby the Americans would lend more support to the further democratisation and civilianisation of Turkish politics.

A more recent case where the military-security establishment chose to remain silent concerns the developments in Cyprus. Despite being attacked by some members of the opposition party and the conservative voices in the media for not adopting a stance on the issue, the military made it very clear that this was a political matter that would be handled by the governing parties in Turkey and Northern Cyprus. The fact that the military did not try to reverse these decisions underlines the process of change in the modalities of governance in the country.

The most recent debates on the access of graduates from religious schools (*İmam Hatip Liseleri*) to any faculty positions in secular universities once again triggered the debate over the influence of the military in politics. Although the military made a declaration regarding its opposition to the proposed measure, parliament still went through with the vote and adopted the recent constitutional package of amendments that included this measure. The military is still very much concerned about the secular establishment and sees itself as its guardian, but the civil political institutions now prevail over it.

2. Human rights

In the Turkish context, the issue of human rights is very much linked with the treatment of minorities, particularly the Kurds. Turkey's human rights record was poor in the 1990s, mostly owing to the measures taken to combat PKK terrorism. The most significant of such measures was the state of emergency that extended to cover ten cities (where the military and governors enjoyed immense power), the establishment of the village guards system and the Anti-Terror Law, which contained severe restrictions on human rights and liberties.

In the period following 1999 when the PKK was militarily defeated and the EU-accession prospect arose, important steps were taken to strengthen the fight against torture, to broaden the scope of fundamental freedoms such as the freedom of expression, association, demonstration and peaceful assembly and to improve cultural rights. The most notable among these included the lifting of the state of emergency, amendments to the Penal Code broadening freedom of expression and association, limitations on the death penalty, stronger protection of detainee rights along with a significant decrease in the pre-trial detention period, abolition of Art. 8 of the Anti-Terror Law (propaganda against the indivisibility of state) and the right to learn and broadcast in languages other than Turkish, namely Kurdish. These steps have led to the lifting of the Council of Europe monitoring of Turkey.

In addition to these legislative reforms, specific measures have also been taken for ensuring their effective implementation. Human rights boards composed of the representatives of non-governmental organisations (NGOs), professional organisations, academic institutions, media, local administrations and the government have been established in all 81 provinces and 849 sub-provinces. The boards are

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[42] See Nathalie Tocci (2004), "Anchoring Turkey to the EU: The Domestic and Foreign Policy Challenges Ahead" in Nathalie Tocci and Ahmet Evin (eds), *Towards Accession Negotiations: Turkey's Domestic and Foreign Challenges Ahead*, EUI Florence, pp. 182-200.

responsible for handling human rights complaints and referring them to the prosecutor's office. A Human Rights High Council, chaired by the deputy prime minister (the minister responsible for human rights) and composed of the undersecretaries of various ministries was established with the task of acting upon the reports submitted by the Human Rights Advisory Council, a subordinate body that consists of high-level government officials as well as representatives of NGOs. The Advisory Council drafts recommendations for the government in matters of human rights policy and matters related to implementation. A special Reform Monitoring Group composed of several ministries and government departments was established in September 2003 with a view to ensuring effective implementation of all political reforms. Under the chairmanship of the deputy prime minister, this group holds weekly meetings. The remit of the group includes fact-finding missions intended to identify difficulties experienced in the practical implementation of the reforms. The group is also entrusted with the task of ensuring that allegations of human rights violations are investigated. A parliamentary Human Rights Inquiry Commission also exists, functioning basically as a national monitoring mechanism. The members of the commission conduct on-site inspections of detention centres and prisons and present their findings to competent government offices.

2.1 The fight against torture and ill-treatment

The government has committed itself to a policy of zero tolerance concerning torture and ill-treatment. The meetings of the prime minister and government officials with the representatives of Amnesty International in February 2004 were regarded by many as a symbolic attestation of the attitudinal changes of the Turkish state apparatus. Accordingly, legislation in this area has been considerably strengthened, particularly through the fourth, sixth and seventh harmonisation packages (see Box 2). All detained persons now have a formal right of access to a lawyer from the outset of their custody; prosecutors no longer need to seek authorisation from an administrative authority to instigate proceedings under Arts. 243 (torture) and 245 (ill-treatment) of the Criminal Code; procedural amendments have been adopted to ensure the speedy investigation and prosecution of offences under Arts. 243 and 245, and sentences imposed under these articles can no longer be converted into fines or be suspended. One of the most crucial developments has been the reduction in custody periods to 24 hours (extendable to a maximum of four days upon the written order of the public prosecutor in the case of collective offences). Considering the high correlation between the length of pre-trial detention periods and incidences of torture and mistreatment, this amendment deserves special attention for its contribution to the fight against torture and ill-treatment.

These legislative changes have also begun to be translated into implementation. A recent Council of Europe report on Turkey notes that the reduced police/gendarmerie custody periods are now being respected in practice and further adds that when an extension of custody is deemed necessary, the relevant procedure is now followed accordingly.[43] The report highlights that the obligation to notify without delay the relative of an apprehended person is now being complied with in practice, with the notification being recorded on a new custody follow-up form. It also finds evidence of recent efforts to ensure that detained persons are promptly informed of all their rights, contrasting sharply with many allegations of insufficient information during earlier periods of custody. Additionally, the Committee for the Prevention of Torture (CPT) has observed significant improvements in the conditions of detention in law enforcement establishments and noted that interrogation facilities were gradually being brought into line with the standards recently introduced for such premises.[44]

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[43] See Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2004a), *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 15 September 2003*, Strasbourg, 18 June, p. 7 (retrievable from http://www.cpt.coe.int/documents/tur/2004-16-inf-eng.htm).

[44] Ibid., pp. 8-15.

Box 2. Reforms undertaken to strengthen the fight against torture

- All detained persons, regardless of their suspected offence, now have a formal right of access to a lawyer from the outset of their custody.
- Arts. 243 (torture) and 245 (ill-treatment) of the Penal Code have been amended to prevent sentences for torture and ill-treatment from being suspended or converted into fines.
- The requirement to obtain permission from superiors in order to open investigations on public officials in cases of torture and ill-treatment has been lifted.
- Access to a lawyer and health checks are now guaranteed when detainees are taken out of prisons for interrogation. The decision of a judge, who must see the detainee in question, is required before permission is granted to take individuals from prisons or detention houses.
- The initial police/gendarmerie custody period has been reduced to 24 hours. In the case of collective offences that involve three or more persons, the custody period may be extended to a maximum of four days by written order of the public prosecutor.
- All exceptions to the right to have a relative notified without delay of one's custody have been removed.
- The possibility for the detained person to request the presence of law enforcement officials during medical examinations has been removed from Art. 10 of the Regulations on Apprehension.
- The investigation and prosecution of torture cases were classified as 'urgent matters'. In order to reduce the risk of impunity, hearings can be conducted during a judicial recess and cannot be adjourned for more than 30 days, unless there are compelling reasons to do so.
- Police officer training has been extended from nine months to two years, with a compulsory human rights course.
- Training programmes for the police forces were launched with the assistance of the EU and the Council of Europe.
- The local heads of the police and the gendarmerie were removed from the provincial human rights boards.

The government has also undertaken various projects to further the implementation of the legislative changes. Intensive human rights training with a view to informing personnel about the changes made to the legislation and regulations governing law enforcement agencies was launched with the assistance of the Council of Europe and the European Commission. The "Project for the Development of Interview Methods and Interview Rooms" prepared under the EU's PHARE Twinning Programme aims at training staff on statement-taking and interrogation along with standardising techniques in this area. The "Project for Strengthening Police Forensic Capacity" carried out by the Forensic Laboratories Department and designed to follow up the twinning project seeks to develop the methods used in criminal investigation procedures and to strengthen forensic capacity with regard to the identification, collection, examination and assessment of evidence.

Although important steps have been taken and there has been a sharp decline in 'heavy torture', there are still reports of torture incidents. According to the Human Rights Foundation, 920 credible applications were filed by torture victims at its five national treatment centres during 2003, compared with 965 applications in the previous year, suggesting a slight decrease, which should be evaluated against a background where many of the complaints stemmed from previous years' incidents and where complaint mechanisms have been rapidly expanding compared with the past.[45] There are some law enforcement officials who still fail to follow the legally prescribed detention procedures. Despite the recent legal changes requiring that all defendants have access to a lawyer in all cases, the Human Rights Association and some local bar associations reported that only 5% of detainees consulted an attorney in 2003.[46] There were also cases of insufficient medical assistance. All these suggest that further action is needed, especially regarding implementation.

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[45] See US Department of State, Bureau of Democracy, Human Rights, and Labor (2004), *Country Reports on Human Rights Practices: Turkey*, 25 February, p. 3 (retrievable from http://www.state.gov/g/drl/rls/hrrpt/2003/27869.htm).

[46] Ibid., p. 8.

The major problem is that many perpetrators of torture and ill-treatment are not punished for their actions. The ratio of reports of torture and ill-treatment to investigations and prosecutions of alleged perpetrators was extremely low in the past and has remained so. Between 1 January 1995 and 31 March 2004 only 4.5% of the total number of personnel subject to proceedings regarding ill-treatment and 6% of the total number of personnel subject to proceedings regarding torture have been convicted.[47] There are many mechanisms that create impunity for such cases. The most frequently employed mechanism is to make use of the statute of limitations. The authorities do not always act swiftly to locate the accused and serve them with a written summons to court. The repeated failure to bring all the accused to court in the two ongoing trials of ten police officers accused of torturing to death a student in the police headquarters in Ankara on 10 January 1991 was a case in point.[48] It was only after this case was raised by Amnesty International on their visit to the Turkish prime minister that the policemen were immediately brought to court and prison sentences were given. Failings such as these contribute to trials being drawn out for extended periods, sometimes so prolonged that they collapse because the statute of limitations has been exceeded. For that reason, it can be expected that Turkey repeals the statute of limitations for crimes of torture and ill-treatment.

Another kind of impunity takes the form of permission that is required from superiors of public officials to open investigations. Although this requirement has been repealed for cases of torture and ill-treatment by recent legislative reforms, permission is still required for a variety of other cases such as extra-judicial execution, disappearance and destruction of property. It can be expected that Turkey would have to lift this on the way to EU accession. A further problem relates to the sentences that are given to those found guilty of such crimes. The range of sentences for torture and ill-treatment is very great. Even when law enforcement officials are convicted of such crimes, judges regularly opt for minimum or low sentences.[49] Thus it is crucial for the judiciary to receive further training to impress upon them that sentences must be commensurate with the gravity of the crime. The new draft Penal Code that is currently being discussed in parliament constitutes a positive step in this respect by introducing heavy prison sentences for such cases. The draft Code also provides for the sentencing of public prosecutors and security officials who turn a blind eye to torture incidents.[50]

It is also the case that law enforcement officials who are under investigation or have been indicted and are on trial for such crimes remain on active duty. Their suspension from active duty during an investigation (and until its outcome) is a measure to demonstrate that the crimes for which they are being investigated or charged are regarded and treated with appropriate gravity. Further amendments to the Regulation on Apprehension, Detention and Interrogation to provide for the recording of additional details, such as the time when a person's relatives or chosen individual were informed of their detention and the officer who made the telephone call, will add further guarantees against the abuse of duty. In that respect, the government plans to introduce measures to film interrogations and set up a special telephone line for victims of torture before the end of 2004.[51]

Lifting impunities is crucial, but insufficient in the fight against torture and ill-treatment. There is considerable concern that public prosecutors exercise little or no supervision over police officers

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[47] See Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2004b), *Response of the Turkish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Turkey from 7 to 15 September 2003*, Strasbourg, 18 June, p. 17 (retrievable from http://www.cpt.coe.int /documents/tur/2004-17-inf-eng.htm).

[48] See Amnesty International (2004a), "From Paper to Practice: Making Change Real", in *Turkey: Memorandum to the Turkish Prime Minister on the Occasion of the Visit to Turkey of a Delegation led by Irene Khan, Amnesty International's Secretary-General*, 12 February.

[49] Ibid., p. 5.

[50] "Yeni TCK Tasarısı Komisyondan Geçti (The New Draft Penal Code is Adopted by the Commission)", Hürriyet, 14 July 2004.

[51] "Karakola Kamera Kahvede Seminer (Cameras in Police Stations Seminars in Coffee-Houses)", Radikal, 21 April 2004.

during the pre-trial investigation period. Both the collection of evidence and the protection of the rights of detainees are left largely to the police and the prosecutor makes a decision on prosecution solely based on the evidence before him.[52] It is also the case that although public prosecutors are theoretically empowered to order police officers to conduct investigations, in practice, they have little control over them. This is mostly related to the fact that there is no specialisation within the police force and the police have limited ability to act upon the orders of a public prosecutor. Factors such as the prosecutor's heavy caseload and an inefficient administrative system exacerbate this problem. The high degree of influence the police force has over the pre-trial investigation period increases the likelihood that torture cases will arise. The handling of criminal investigations by a juridical police force with officers operating under individual public prosecution offices could be a solution to the existing problem.

Another important problem concerns the preparation of official court forensic reports. First of all, there are not enough forensic doctors (a total number of 250 out of 80,000 doctors) to detect signs of torture. The physical conditions of the courthouse examination rooms appear insufficient for a proper forensic medical examination. Most of them are lacking in standard medical devices and they are located within courthouses where examinations are conducted by physicians attached to the Ministry of Justice, serving to develop a sense of affinity between the public prosecutor and the medical examiner, thus preventing some detainees from providing a full account of their ill-treatment. It is also observed that in some cases the security officers, in particular the gendarmerie, who bring the detainees to the examination room remain in the room during the course of interrogation and are given a copy of the report. Hence, law enforcement officials are in a position to read the report and, if they are not satisfied with it, take the detained person elsewhere for medical examination.[53]

The Council of State has recently declared that the provisions that allow the report to be given to security officers should be annulled. Although this is a very positive step, the recommendation needs to be acted upon with the introduction of a requirement that all reports are immediately sent to the public prosecutor by the examiner and other measures are needed to increase the quality and reliability of forensic reports. The recommendations of the Council of Europe CPT to designate one specific medical facility as having the primary responsibility for carrying out medical examinations could be useful in this respect. This would help centralise medical examinations of those in custody. Further, by virtue of its status as the specifically designated facility for such examinations, the proposed facility would be better placed to ensure strict observance of confidentiality. It would also facilitate the provision of appropriate training to doctors and the introduction of uniform working methods and standards.[54]

Another issue concerns the duration of trial proceedings, which take excessively long periods. As highlighted by Amnesty International on their recent visit to Turkey, there is a need to expedite trials by introducing regulatory time frames for the provision of evidence – such as medical reports from the Forensic Institute – by improving the mechanisms for ensuring more thorough pre-trial preparation of cases by the relevant authorities and by introducing the practice of conducting trial hearings on consecutive days until a verdict is reached. The maximum interval of 30 days between hearings recently introduced may be an improvement on the past, but will not solve the problem of excessively drawn-out trial proceedings.[55]

Although special training programmes in human rights in general and detainee rights in particular are being held for the police force, gendarmerie, public prosecutors and judges, these need to be intensified during this period of rapid legal reform as they are one of the most important mechanisms for ensuring implementation. Such training is crucial for the emergence of a strong commitment to

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[52] Based on interviews at the European Commission Representation, Ankara, May 2004.

[53] See the Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2004a), op. cit., pp. 13-14.

[54] Ibid., pp. 14-15.

[55] See Amnesty International (2004a), op. cit., p. 6.

investigate cases, bring the alleged to court and deliver deterring sentences. Training should also focus on advanced methods of crime investigation, reducing reliance on information and confessions obtained through interrogations and leading to an ultimate shift in mindsets, so that instead of proceeding 'from the suspect to the evidence' investigations progress 'from the evidence to the suspect'.[56]

Beyond the training of law enforcement officials, there is also a clear need for a public information campaign, linked to a public drive against torture and ill-treatment, to inform the population of their basic rights in custodial situations. Bar associations in particular should be permitted to place posters advocating the rights of detainees within police stations. In 2002, the Diyarbakır Bar Association received a total of only 150 applications for legal aid, which increased by 300% after the association initiated a public information campaign on the issue.[57] There are also many reported cases where detainees did not even ask for a lawyer, fearing that such a request would prompt ill-treatment by the police. Police stations could be required to submit a list of detained persons to the local bar associations to remedy this problem. Regular periodic and unannounced visiting of police and gendarmerie stations by representatives of independent monitoring bodies in order to scrutinise practices within the station, their functioning, chain of command, record-keeping, detention procedures and officers' knowledge of those procedures, would further contribute to preventing torture and ill-treatment.[58]

2.2 Freedom of expression

A number of existing restrictions have been lifted in this field, leading to both acquittals and the release of a number of prisoners sentenced for non-violent expressions of opinion (see Box 3). Amendments in particular to Art. 312 of the Penal Code (inciting people to enmity and hatred by pointing to class, racial, religious, confessional or regional differences), Art. 159 of the Penal Code (insulting the state and state institutions and threats to the indivisible unity of the Turkish Republic), Art. 169 of the Penal Code (aiding and abetting an illegal organisation), Art. 7 of the Anti-Terror Law (propaganda encouraging the use of terrorist methods) and the abolition of Art. 8 of the Anti-Terror Law (propaganda against the indivisible unity of the state) constituted tremendous progress in meeting the European Convention of Human Rights (ECHR) standards in the field of freedom of expression. Accordingly, the authorities have actively reviewed the files of persons who could potentially benefit from these legislative amendments.

Hence, as the March 2004 Council of Europe report on Turkey highlights, since the October 2001 constitutional reforms, restrictions on freedom of expression have been considerably relaxed. According to the Human Rights Association's most recent report, published in late 2003, the number of prosecutions relating to freedom of expression halved between 2002 and 2003.[59] The number of cases filed by the public prosecutors under Arts. 159, 169 and 312 as well as the Anti-Terror Law are also believed to have decreased significantly.

Nevertheless, we believe that Art. 159 of the Penal Code, which in its amended form criminalises statements deemed to be made with the 'intention' to insult or deride Turkishness, the Republic, the Grand National Assembly or the moral personage of the government or state's armed forces or security forces or the moral personage of the judiciary needs to be repealed, in light of the OSCE view that libel should not be criminalised and that it should form part of civil law. The role of the state in a democratic society is to serve its citizens, not to require respect from them. Similarly, as the Council of Europe report on Turkey highlights, "the limits of permissible criticism are wider with regard to the

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[56] See the Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2004a), op. cit., p. 16.

[57] Based on interviews at the Diyarbakır Bar Association, Diyarbakır, May 2004.

[58] See Amnesty International (2004a), op. cit., p. 6.

[59] Cited in Council of Europe, Parliamentary Assembly (2004), op. cit. p. 33.

government than in relation to a private citizen or even a politician, and that the dominant position the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings".[60]

Box 3. Reforms undertaken to expand the freedom of expression

- Art. 8 of the Anti-Terror Law (propaganda against the indivisible unity of the state) was repealed with the sixth reform package. This reform was crucial, as it was a very broad clause that was most commonly referred to in prosecutions.
- The minimum sentence under Art. 159 of the Penal Code (insulting the state and state institutions and threats to the indivisible unity of the Turkish Republic) has been reduced. Expression of opinions intended only to criticise and not intended to insult or deride these institutions were kept exempt from punishment.
- Art. 169 of the Penal Code has been narrowed in scope by removing the provision sanctioning actions which facilitated the operation of terrorist organisations in any manner whatsoever. Art. 7 of the Anti-Terror Law, which introduced the notion of propaganda in connection with the terrorist organisation in a way that encourages the use of terrorist methods was amended by replacing terrorist methods with resorting to violence or other terrorist means.
- Amendments to the Cinema, Video and Music Works Law narrowed the scope for suspending or banning works in these fields to cover only those offences considered to undermine the fundamental characteristics of the Turkish Republic and the indivisible integrity of the state. Any administrative decision to suspend a work in these fields must now be confirmed by a judge within 24 hours.
- An amendment to Art. 312 abolished the fines for praising a criminal act, encouraging others to disobey the law or inciting hatred on lines of class, race, religion sect, or territory. This amendment has also established 'endangering public order' as the criteria for the definition of the crime itself.
- A new paragraph was added to Art. 312 that prohibits degrading a part of society in a way that violates human dignity and hence penalises individuals who express degrading comments about other ethnic and religious groups within the country.
- The sanction of depriving a political party from state financial assistance was introduced alongside dissolution. Dissolution decisions that required a simple majority in the Constitutional Court now require a three-fifths majority, making it more difficult to close down political parties.
- The Press Law was amended to repeal prison sentences for criminal offences related to the press, thereby further extending the freedom of expression.
- The penalties for media outlets in violation of the resolutions of the Supreme Board have been reduced and more clearly defined.
- Closure of printing houses is now prohibited under all conditions.

Similarly, it is in our opinion that the Political Parties Law needs to be further amended in a way that the dissolution regime is made harmonious with the ECHR. Regarding the freedom of expression of political parties, only opinions that are undemocratic or provoke violence should be considered as reasons for sanctions, where the sanction of dissolution should be viewed as a last resort to protect the democratic regime. Oktay Uygun highlights that the Constitutional Court could apply lighter sanctions such as permanent or temporary deprivation from political life, which would be functional and processed faster in the Turkish court system.[61]

The other amended articles, namely Arts. 321(2) and 169 of the Turkish Penal Code as well as Art. 7 of the Anti-Terror Law could also be reviewed and further amended to expand the freedom of speech. An even more profound change would involve further amendments to Arts. 26 and 28 of the constitution where the right to express opinions without censorship and freedom of press would be

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[60] Ibid., p. 20.

[61] See Oktay Uygun (2004), *Freedom of Expression under the ECHR and Turkish Law*, paper presented at the Human Rights General Assembly: European Convention of Human Rights and Turkey, İstanbul, 17-19 May 2004.

constitutionally guaranteed. It needs to be stressed, however, there are limits to amending laws. If laws are restricted in scope it can be difficult to investigate or file certain cases such as those that involve significant terrorist activity. Thus, the most important challenge for Turkey is to change the mindsets of the public prosecutors and the judiciary in a way that will allow them to open cases or deliver judgements that will not violate the freedom of expression.

Here, one of the most important issues concerns the methodological difference between Turkish courts and the European Court of Human Rights (ECtHR) in determining whether an expression in discussion threatens public order. The ECtHR takes into account four different conditions when determining whether thoughts or opinions create a real danger to public order: the content of the relevant statement, the identity of the speaker, the context in which the statement is made and the form of the expression of the statement. The Turkish courts on the other hand have traditionally taken into account only the content of the expression, resulting in contradictory decisions.[62] There have recently been some cases where the High Court of Appeals has adopted the methodology of the ECtHR and delivered interpretations in line with its standards, particularly regarding sentences delivered by the lower courts on the basis of Art. 312.[63] This approach, however, needs to be adopted by all sections of the judiciary, which will surely take time to establish through tremendous efforts of education and training. Details regarding the tools to achieve this end are further discussed in the section on the judicial system.

2.3 Freedom of peaceful assembly and association

Considerable measures were also taken to expand the freedom of assembly and association, especially by easing the restrictions on organising demonstrations and by abolishing some pre-existing limitations on setting up associations, their membership requirements and the general regulations regarding their activities (see Box 4).

On the freedom of peaceful assembly, the remaining problem seems to be the excessive use of force by the police against protestors in meetings and demonstrations. Further training of the police in the area of policing demonstrations is necessary and could be undertaken in collaboration with countries such as the UK, which had similar problems in Northern Ireland. Authorities could also ensure independent, thorough and prompt investigations into allegations of police brutality in meetings and demonstrations.

On freedom of association, further amendments and simplifications to the Associations Law and the procedures required for associations to obtain government approval have often been cited as necessary measures to enable civil society to flourish in Turkey. The new draft Associations Law currently in the parliament lifts the restrictions regarding government approval in the establishment of associations with the exceptions of military personnel and civil servants. With the adoption of the draft law, members of the judiciary will also be able to form and become members of associations without having to seek permission.

There are, however, some remaining problems with respect to the closure of offices and branches and the supervision of association activities. The Associations Law gives the Interior Ministry and local government officials broad authority to inspect premises and records of associations at any time. Requiring a warrant or a judicial decision for such inspections could be helpful in this respect. In addition to this, despite the formation of a Department of Associations in the Interior Ministry and the transfer of the functions of supervision and inspection from local police headquarters to this new department, it is observed that the officials responsible for inspecting associations under the previous arrangement have been transferred to these new structures, making it difficult for the new reform to be

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[62] Ibid., pp. 3-4.

[63] "Yargıtay'dan AB Ölçütünde Özgürlük Yorumu (Interpretation of Freedoms along EU Standards by the High Court of Appeals)", Hürriyet, 15 July 2004.

implemented.[64] According to a recent policy proposal by Amnesty International, the structure responsible for inspecting associations should be entirely independent of security forces and be staffed by those with training in the relevant international standards, including UN Declaration of Human Rights Defenders.

Box 4. Reforms undertaken to expand the freedom of peaceful assembly and association

Peaceful assembly

- The amount of time required to request permission has been reduced from 72 to 48 hours.
- The age limit for organising demonstrations has been reduced from 21 to 18.
- The ability of governors to postpone meetings has been restricted. Meetings can now be banned only in cases where there is a clear and imminent threat of a criminal offence being committed. The number of meetings that were postponed or prohibited was reduced from 141 in 2001 to 95 in 2002.
- Civil society institutions (foundations, associations, trade unions, etc.) have been allowed to organise meetings and demonstrations that fall outside the scope of their field of activity.

Freedom of association

- The freedom of establishment and membership of associations was extended, in particular by the August 2002 democratisation package and the consequent packages of January and February 2003. Restrictions on the establishment of associations by people convicted of certain crimes and those who had previously been members of an association or political party closed down by a court decision were eased. Restrictions on the establishment of associations by civil servants and on the participation of students in associations were repealed.
- Registration and related procedures of associations were transferred from the competence of the police to the newly established Department of Associations within the Ministry of Interior.
- Restrictions on making announcements or distributing publications by associations have been eased. The obligation to forward copies of these documents to the relevant authorities prior to distribution (including to the public prosecutor) has been removed. Any decision taken by the provincial administrative authorities regarding the confiscation of associations' declarations, announcements and other publications is now subject to confirmation by a judge within 48 hours. In the absence of such confirmation the decision is invalidated.
- The restrictions on the activities abroad of associations established in Turkey and the activities in Turkey of foreign associations were eased.
- Associations are now allowed to use foreign languages in their international contacts and unofficial correspondences.
- Restrictions on the activities of foreign associations in Turkey were further eased by a shift in the permission procedure from the Council of Ministers to the Ministry of Interior. Restrictions on international cooperation between associations were also eased and extended to cover non-profit organisations.
- Penalties for failing to obtain permission for contacts with foreign associations and organisations and to fulfil the obligations concerning auditing and declaring real estate in possession were reduced.

Another problematic area regarding associations concerns the restrictions on the establishment of foreign foundations as well as cooperation with foreign associations and international bodies, including the receipt of funds. These issues become particularly important when one considers the EU's efforts to establish transnational NGO networks between Eastern and Western Europe through multi-country civil society programmes and the tremendous importance of foreign NGO activities in promoting democracy in the pre-accession period of the CEECs.[65] Art. 92 of the Turkish Civil Code states that permission is needed from the minister of interior following approval by the Ministry of

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[64] See Amnesty International (2004b), *Turkey: Restrictive Laws, Arbitrary Application – The Pressure on Human Rights Defenders*, 12 February.

[65] For more information, see Dorota Dakowska (2002), "Beyond Conditionality: EU Enlargement, European Party Federations and the Transnational Activity of German Political Foundations", *Perspectives on European Politics and Society*, Vol. 3, No. 2, pp. 271-96.

Foreign Affairs for foreign associations to operate and open branches in Turkey. In addition to this cumbersome procedure, such associations' activities can also be temporarily suspended in situations where the organisations are understood to be engaged in activities which are not in accordance with our laws and our national interest. This reference to the broad and vague concept of national interest leaves a wide scope for intervention by the state, as demonstrated in the cases filed against six German foundations in the past, and suggests that further action could be useful in addressing these restrictions.

Regarding cooperation with foreign associations, Art. 43 of the Associations Law requires that members of foreign organisations and associations can only be invited to Turkey if at least seven days' advance notice is given to the governor of the province where the association's headquarters are and where the activities to which the visitors are invited will be held. Similarly, any member or representative of an association who goes abroad in response to the invitation of a foreign organisation or association needs to notify the authorities. These notifications should state all the details about the organisations and the meetings. The intensification of relations with foreign associations in the process of EU accession is now providing the impetus for the lifting of such restrictive practices. The new draft Associations Law not only lifts all these restrictions, it also abolishes significant constraints regarding the areas of cooperation and receipt of funds in relation to foreign associations.

With the adoption of the draft law, the scope of cooperation will no longer be restricted to 'beneficial' and 'reciprocal' activities. The permission required from the Ministry of Interior to receive funds from organisations or individuals in foreign countries, which in the past has restricted the funding of organisations and impeded their work, will be lifted and replaced by notifications to local government officials in the new draft law. The draft law also introduces measures to increase the fundraising capabilities of associations, aiming at remedying a long-criticised aspect of associational activity in Turkish society.[66]

3. Protection of minorities

The legal status of minorities in Turkey was established by the 1923 Treaty of Lausanne, which defined minorities on the basis of religion.

3.1 Non-Muslim minorities

The Treaty of Lausanne grants non-Muslim minorities (represented by approximately 25,000 Jews, 3,000 Greeks and 50,000 Armenians) substantial negative rights as well as positive ones, with obligations for the Turkish government to undertake measures for the enjoyment of those rights. Most significantly, the Treaty gives non-Muslim minorities the right to equal protection and non-discrimination, the right to establish private schools and provide education in their own language, the conditional entitlement to receive government funding for instruction in their own languages at the primary level in public schools, the right to settle family law or private issues in accordance with their own customs and the right to exercise their religion freely.

There have been two sets of problems with the practical implementation of these rights. First was the selective application of these rights to the three main non-Muslim communities, hence excluding other non-Muslim minorities such as the Assyrians (approximately 15,000). The second problem related to shortcomings in the implementation of these rights, especially regarding property issues and religious/educational institutions. The reform process initiated with the prospect of EU accession has aimed at resolving these issues (Box 5).

The main problems suffered by religious minorities in Turkey have been the lack of a legal personality and the impossibility of acquiring or selling property. Under Turkish law, religious institutions do not have a legal personality and they can only be incorporated as 'foundations', falling under the

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[66] "Derneklerde Uyum (Harmonisation in Associations)", Radikal, 14 July 2004.

jurisdiction of the Foundations Law. Thus, their property rights were significantly limited since under Turkish law only properties declared under Law No. 2762 (of 1936) were legally recognised (160 minority foundations) and all properties not listed in 1936 could be confiscated by the Turkish state.

Box 5. Reforms undertaken in the field of religious minorities

- A new paragraph was added to Art. 312 of the Penal Code that prohibits degrading a part of society in a way that violates human dignity and hence penalises individuals who express degrading comments about ethnic and religious groups within the country.
- Art. 1 of the Foundations Law was amended to address the specific conditions pertaining to the legal problems regarding the real estate held by community foundations.
- The requirement for a Council of Ministers decision for the acquisition of immovable property by community foundations was replaced with that of the Directorate-General for Foundations, putting them on equal footing with other foundations in this respect.
- A list of non-Muslim foundations annexed to the January 2003 regulation led to indirect recognition of those non-Muslim groups that are, in practice, exempt from the rights granted by the Treaty of Lausanne.
- The application period allowed to community foundations for registering real estate holdings was extended from six to eighteen months. An amendment to the Construction Law has allowed places of worship to be built by all religions and faiths in the country.

The reform packages (specifically the third, fourth and the sixth) have addressed this problem by amending the Foundations Law and allowing non-Muslim minorities to register the property they actually use as long as they can prove ownership. Yet the regulation that was issued following the amendment required foundations to follow incredibly lengthy and cumbersome bureaucratic procedures (having to obtain an expert report about the state of the property, provide proof of purpose for which it is used, etc.). Furthermore, it introduced a condition not applied to other foundations, that of consulting the relevant ministries and public institutions regarding the acquisitions of property in cases where it is deemed necessary, hence paving the way for further bureaucratic intervention. Consequently, implementation on this front has been extremely slow. As of November 2003, out of 2234 applications, the directorate had rejected 622 as inadmissible and returned 910 as incomplete. It approved only 242 applications, which corresponds to 15.79% of the total. By May 2004, the rate of approval had increased to 18.66% with 286 applications approved.[67]

It should also be noted that the amended law fails to bring a just solution regarding the return of confiscated properties. In order for a property to be returned, the foundation not only needs to prove ownership, but it also has to show that it is still using the property. This violates basic property rights and keeps the door open to future confiscations as communities become smaller. Property confiscation can also occur when foundations are dissolved after encountering problems with respect to elections to their boards. As boards require an electorate in the catchment area surrounding the foundation, and electors may have moved out of these areas over time, it is not always possible to hold the elections. When elections are not held in due time, the result may be the confiscation of property. Although there have been a few examples of catchment areas being enlarged to resolve this problem, there has often been a bureaucratic reluctance to spread this application. The decision of the administrative court in Ankara in 2001 put an end to confiscations, but introduced the requirement that the property needs to be in "functional and beneficial use", which ties the fate of the community property to the wide discretion of the bureaucracy.[68]

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[67] See Baskın Oran (2004), *Türkiye'de Azınlıklar: Kavramlar, Lozan, İç Mevzuat, İçtihat, Uygulama (Minorities in Turkey: Concepts, Lausanne, National Legislation, Case Law, Implementation)*, İstanbul: TESEV Publications, pp. 108-9 (retrievable from http://www.tesev.org.tr/etkinlik/baskin_oral.pdf).

[68] See Etyen Mahçupyan (2004), *Türkiye'de Gayrımüslim Cemaatlerin Sorunları ve Vatandaş Olamama Durumu Üzerine (On the Problems of the Non-Muslim Foundations in Turkey and the State of not Being a*

It is evident that the simplification of the application procedures and the introduction of necessary legal changes allowing the return of previously confiscated property and preventing future confiscations would result in the granting of full property rights to non-Muslim minorities as specified in the Treaty of Lausanne. On a positive front, the government is currently in active cooperation with the representatives of non-Muslim communities to identify the exact problems they are encountering in the newly adopted procedures and to make necessary revisions upon their recommendations. The results are now coming through. A new regulation setting out the procedures of elections in community foundation boards that aims at abolishing state interference is now under preparation. The Reform Monitoring Group, after a meeting in July 2004, has announced that a new law on foundations will be prepared by September 2004 in which there will no longer be a distinction between community foundations and others. Non-Muslim community foundations will thus be subject to same rules, regulations and restrictions as other foundations operating in the country.[69]

Another issue regarding non-Muslim minorities concerns their religious and educational institutions. These are both regulated by the Directorate-General of Foundations, a government agency that must approve their operations (it has a right to dismiss their trustees and intervene in the management of their assets and accountancy). This direct state interference violates the Treaty of Lausanne as it restricts the right of non-Muslim minorities to manage and control their institutions. The restriction of the competences of the Directorate would guarantee the rights of non-Muslim minorities to freely manage their own institutions.

As a result of the recent democratisation packages, non-Muslim communities can now apply for building permits for their places of worship. The Reform Monitoring Group, after its meeting in June, announced that the necessary measures would be taken to facilitate the construction of two churches by the Catholic and Protestant Germans in Alanya. The famous case of the construction of a Presbyterian church in Ankara was finally resolved by the determination of the minister of interior to overcome bureaucratic reluctance.[70] Nevertheless, there is still a ban on the training of Christian clergy, which creates a critical shortage of them. This shortage is exacerbated by the ban on the provision of religious services by non-citizens and the limited resources of the vast majority of minority religious communities from training their clergy abroad. Hence it is often suggested by the EU that the Armenian and Greek Orthodox seminaries (which were closed in 1969) are re-opened for granting these minorities the right to exercise and teach their religion.

Regarding education, the state is directly involved in the affairs of minority schools through the placement of Muslim administrators in their administration. The abolition of the requirement of having a Muslim representative of the Ministry of Education as the deputy head of minority schools would help secure the rights granted to non-Muslims by the Treaty of Lausanne.

In order to fully respect the rights of its non-Muslim minorities, Turkey does not need to undertake any radical change of policies. On the contrary, the correct and full application of the provisions of the founding Treaty of the Republic to the non-Muslim communities would be sufficient to eradicate the problems faced by these groups. It is clear that legislators now have the intention to follow this direction, but that the mindsets of those in the bureaucracy who prepare the implementing regulations and deal with these activities have the potential to slow down the irreversible pace of reform. The challenge now lies in aligning the attitude of the bureaucracy with that of the legislature through a process of dialogue and bridge-building with the non-Muslim communities. This also involves a gradual transformation of the concept of citizenship, which we deal with in further detail in the next section.

Citizen), TESEV, June 2004, p. 5 (retrievable from http://www.tesev.org.tr/etkinlik/demokratiklesme_cemaatler.php

[69] "'Azınlık Vakfı' Kavramına Son (An End to the Concept of 'Community Foundations')", Radikal, 20 July 2004.

[70] See Etyen Mahçupyan (2004), op. cit., p. 6.

3.2 The Kurdish question

The conflict with the PKK, the terrorist-guerrilla organisation that launched a violent secessionist campaign in the south-east, which led to more than 35,000 fatalities including 5,000 civilians, had immense economic and social consequences and left deep scars in the country. Thus it is imperative to understand the sources of this conflict and establish the means to achieve a sustainable solution to the issue that will prevent any future violence and guarantee the unity of the country by democratic means.

The Kurds make up the most numerous minority in Turkey with 10 to 12 million people according to estimates.[71] At the time the Republic of Turkey was established, a continuation of the Ottoman philosophy was used by the founding fathers to create a multicultural sense of solidarity that helped them win the Kurds' support during the war of independence and in the early years of the republic. Yet the vacuum left by the removal of Islamic elements in state ideology soon started to be filled with an emphasis on ethnic Turkishness, signifying a policy shift from *Ottomanism* to *Turkification* in the country. This was observed in policies such as filling administrative appointments in the Kurdish-populated regions with Turks, replacing names of Kurdish places with Turkish ones and prohibiting the Kurdish language in schools and courts. This contributed to the alienation of Kurds, but did not lead to the emergence of an ethnic or national Kurdish identity, mainly because of the regional, feudal and religious divides among the Kurds themselves. Such an identity began to emerge, however, in the 1950s and developed further in the following decades, mainly as a result of the modernisation and urbanisation that led to high rates of Kurdish migration to industrialised cities. As the Kurds left behind their tribal bonds, they started to participate in the political life of urbanised societies, increasingly through their ethnic and cultural identity.[72]

But demands for the recognition of this identity were perceived as threats to the territorial integrity of the state and met with hostility by the traditional establishment, especially after the 1980 coup. Although the Kurdish language had been banned by administrative decrees since the late 1930s, the law that prohibited use of the Kurdish language in public was only introduced in 1983. The military government that had ruled the country until 1983 turned much of the Kurdish region in the south-east into a militarised zone, committing human rights abuses there. The situation worsened when the PKK – formally established in 1977 – started its operations in 1984 and was countered by a military reaction from the Turkish government.

Various measures taken in the fight against terrorism also led to serious human rights abuses, which in turn resulted in a significant degree of mistrust between the state and the inhabitants of the region. One of the major instruments used to combat the PKK was the state of emergency declared in 1987 that applied to ten cities with the heaviest concentration of the Kurdish population. These provinces were governed by special regional governors with extraordinary powers. They could censor the press and exile individuals from the region who presented a danger to law and order. Another instrument was the Anti-Terror Law of 1991. With its broad definition of terrorism, this law imposed great restrictions on the freedom of expression and was used for the prosecution of many individuals including some prominent academics, intellectuals and politicians. The immense powers that the law gave to the administrators and law enforcers in the region led to many reported cases of mysterious fatalities and disappearances.

A major tool used to counter terrorist activity was the village guards system, a civil defence force of about 60,000 located mostly in the south-east and reputed to be the least-disciplined of the security forces. The system was established to fight the PKK in mountainous and rural areas where the Turkish military experienced logistical problems. But the village guards were very loosely controlled by

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[71] See the Council of Europe, Parliamentary Assembly (2004), op. cit., p. 39.

[72] For an excellent analysis of the roots and development of the Kurdish problem, see Kemal Kirişçi and Gareth Winrow (1997), *The Kurdish Question and Turkey: An Example of a Trans-State Ethnic Conflict*, London: Frank Cass.

government and committed a large number of human rights violations. The Turkish government also evacuated villages in the region to prevent them from being used by the PKK for strategic purposes. For their part, the PKK attacked villages and civilians that were considered loyal to the state. The inhabitants of the region, stuck between the PKK and the state, suffered greatly from the policies of both sides, resulting in mass migration to nearby cities and to the west of the country. The government reported that 369,278[73] residents migrated from the south-east during the conflict while various NGOs estimated that there were up to 4.5 million[74] internally displaced persons (IDPs). Migration was also driven by factors such as the first Gulf war, which interrupted trade and trafficking with Iraq and the under-development of a region where insecurity meant no investment.

The PKK's eventual defeat by the Turkish military and the emergence of EU conditionality triggered a change in the official view on the Kurdish issue, leading to significant reforms that directly intended to improve the lives of Kurds in the country (Box 6). The most notable of these reforms concerned the right to broadcast in Kurdish, the right to learn the Kurdish language and the right to name children in Kurdish. The legislation regarding education was implemented in March 2004 by the opening of Kurdish courses in three cities in the south-east (Batman, Şanlıurfa and Van). Upon the amendment of the related regulation, broadcasting in Kurdish by the Turkish state broadcasting corporation (along with broadcasts in Bosnian, Arabic and Circassian) started in June 2004.

Box 6. Reforms undertaken on the Kurdish issue

- The constitutional amendments of October 2001 removed the restriction on the use of any language prohibited by law in the expression and dissemination of thought from Art. 26 of the constitution. Similarly, restrictive language on broadcasting was also removed from Art. 28.

- Broadcasting in Kurdish was permitted with the third democratisation package in August 2002. The seventh package adopted in July 2003 further amended the broadcasting law to provide for such broadcasting by public and private radio and television stations.

- The law that deals with the teaching of foreign languages was also amended with the third package in August 2002, opening the way for private courses in Kurdish. The seventh package adopted in July 2003 allowed the teaching of such languages in existing private courses without requiring that new courses be created altogether. It also prescribed that the Council of Ministers alone would regulate and decide which languages are to be taught (without having to obtain the approval of the National Security Council).

- The Civil Registry Law was amended in July 2003 to permit parents to name their children in Kurdish.

- In an attempt to foster social peace in the region, parliament adopted a law on 'social reinsertion' in August 2003. The law provides for a partial amnesty and reduction in sentences for persons involved in the activities of an illegal organisation, namely the PKK. The law excludes the leaders of the organisation as well as those who have committed crimes. By December 2003, 524 prisoners out of 2067 applications had been released and about 586 PKK militants have surrendered.

- Implementation of the "Return to Village and Rehabilitation Project" (where the aim is to support the return of those displaced during the conflict to their villages) has continued. According to official sources, 124,218 people were authorised to return to their villages from June 2000 to May 2004. More than 400 villages and hamlets have reportedly been reopened with government assistance.

Other reforms of a general nature have had a significant impact on the lives of Kurds in the country. Human rights reforms that have been evaluated under the previous subheadings all serve to contribute to the improvement of the situation of Kurds living in Turkey, as the major restrictive measures that were repealed had mostly been used in the past against those who speak for a distinct Kurdish identity.

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[73] Data obtained from the Ministry of Foreign Affairs, 27 May 2004.

[74] See GOC-DER (Immigrants' Association for Social Cooperation and Culture) (2002), *The Research and Solution Report on the Socio-Economic and Socio-Cultural Conditions of the Kurdish Citizens Living in the Turkish Republic who are Forcibly Displaced due to Armed-Conflict and Tension Politics: The Problems they Encountered due to Migration and their Tendencies to Return back to the Villages*, 1999-2001, p. 12.

Therefore, it is also the case that efforts by Turkey to address the remaining shortcomings in this area, particularly with regard to the freedom of expression, would be most beneficial.

Similarly, the limiting of the death penalty had a positive impact as the majority of the prisoners on Turkey's death row were convicted for crimes related to separatism. The lifting of Art. 8 of the Anti-Terror Law (written or oral propaganda aimed at disrupting the indivisible integrity of the State of the Turkish Republic, country and nation) that expanded freedom of speech and the gradual lifting of the state of emergency from all ten provinces by November 2002 were also noteworthy developments in that respect. The lifting of the state of emergency deserves special attention here as it not only paved the way for the extension of rule of law in the conflict-ridden regions but also had a positive psychological impact in the area despite the increased tension caused by the events related to the Iraqi war and the concerns over the possible resurgence of terrorist activity. At no time during the Iraqi crisis were there any proposals to restore the state of emergency in the eastern and south-eastern provinces.

The draft law on the Turkish public administration is also expected to be indirectly beneficial for the Kurdish minority. The draft, which is still pending in parliament, introduces a significant degree of decentralisation of administration in Turkey and extends the powers and competences of local administrations to areas that were previously under the sole control of nine ministries, such as education, culture, health and the environment. While general principles, aims, policies and standards will still be determined and monitored by the centre, local authorities will have the sole responsibility for implementation. Cooperation between local governments and civil society is also envisaged, reinforcing democratic governance at the local level. But the draft lacks the necessary measures to ensure full accountability, transparency or the quality of personnel in local governments, leading to concerns over increased political patronage and corruption in local administrations. It also makes local governments excessively reliant on the central administration for funds and fails to introduce any mechanisms for the local administrations to raise funds. In any case, the public administration reform is a positive step in fostering democratic governance in the country by providing opportunities for greater self-governance at the local level.

In line with these reforms, the government has pressed on with the "Return to Village and Rehabilitation Project", to encourage (albeit with some problems) the return of those displaced during the conflict years to their villages. Based on official figures, as of 21 May 2004, 124,218 people out of 369,278 have returned to their villages. The Turkish government has so far spent around $72.5 million on this project, where a significant amount of the money has been used for infrastructural investments.[75] There were some claims that the government did not allow some displaced villagers to return unless they signed a document stating that they had left their homes because of PKK terrorism, rather than because of government actions, and that they would not seek government assistance in returning. Such claims are very strongly opposed by government officials who argue that no such documents were found. Village guards, however, have reportedly occupied homes abandoned by IDPs and have attacked or intimidated IDPs attempting to return to their homes with official permission, pointing once again at the need for the abolition of the village guards system. The abolition of the village guards system would not just ease the return to villages and prevent human rights abuses in the region, but would also constitute an important step in building trust between the state and the inhabitants of the region.

Other concerns that have often been voiced in relation to the project are the lack of transparency of government policies, which prevents the identification of problems leading to a low number of returns and the lack of financial resources to support returnees or compensate villagers for the destruction of houses or dwellings. The government needs to establish focal points in the government on IDPs, improve coordination within the government as well as between the government and NGOs and the international community to develop return programmes and strategies. The international community and the EU in particular could assist the process not just through developing strategies but also by

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[75] Data obtained from the Ministry of Foreign Affairs, 27 May 2004.

providing financial assistance to the project. In December 2003 and in January 2004, government officials discussed these issues with representatives of UN agencies, the World Bank and the EU. A technical group has been formed by the UN agencies, the European Commission and the relevant Turkish institutions that held various meetings. Upon recommendations from international bodies, in particular the UN, the Turkish authorities have initiated a new study with the aim of covering some additional issues and updating the current ones. Draft legislation regarding the compensation of those who suffered losses owing to terrorism is also pending in parliament.

Overall, there has been tremendous progress on the Kurdish issue. As a country aspiring to become an EU member, however, Turkey could be expected to find a way to undertake a gradual shift from its traditional interpretation of the Turkish nation to a redefined notion of political community, which requires a more inclusive concept of citizenship and the recognition of cultural and ethnic pluralism in the country. There are some obstacles that make this a more difficult task in the short term. The fear of separatism and partition of the country among different ethnic groups (also known as the Sevres Syndrome, named after the infamous Sevres Treaty that partitioned the Ottoman Empire among the European powers) is still very strong, especially among the military-security establishment. In addition to this, the government estimates that there are 4,500 to 5,000 armed PKK militants across the border in Northern Iraq and another 1,000 in the south-eastern region of the country. Although it is well known that the PKK has serious internal divisions and leadership problems, the fear of a resurgence of terrorism is still there and has been worsened by the recent developments in Iraq.

Despite these restraints, it is clear that Turkey can undertake a gradual expansion of cultural rights to its Kurdish minority, which would foster multiculturalism and lead to a gradual transformation of the notion of citizenship in the country. This is strengthened by the fact that a great majority of Kurds are not fighting for independence and have agreed to live inside the Turkish state.[76] In fact, according to a report conducted in 1995, at the height of the conflict, only 13% of the Kurdish population favoured secession from Turkey.[77] Many Kurds bear multiple identities, which creates an even more conducive environment for further reforms.

As a first step, the consistent implementation of the reforms undertaken so far would ensure the full respect of human rights and prevent non-discrimination in the country. Additional measures could be taken (particularly in the field of broadcasting rights) to guarantee uninterrupted implementation in the future. The amended law on broadcasting prohibits broadcasts that contradict the fundamental principles of the Turkish Republic and the indivisible integrity of the state. The High Audio-Visual Board (RTÜK) – a nominally independent institution subject to political pressure as its council members are elected by parliament – could suspend future broadcasts on broad interpretations of this existing clause.

RTÜK has the authority to monitor and sanction broadcasters if they are not in compliance with either the law or its broadcasting principles. At a time when the broadcasting regulation was under preparation, it used this authority to temporarily suspend, without notice, a radio station on the grounds that its broadcasting of a cultural and music programme in the Kurdish language violated the principle of the existence and independence of the Turkish Republic and its indivisible territorial and national integrity. Thus, it can be expected that Turkey would have to undertake future reforms concentrating on the restriction of RTÜK's competences and its further restructuring not just to ensure more effective implementation of the new broadcasting rights, but also to strengthen freedom of speech in the country as the institution closed eight TV stations and seven radio stations for a period of 30 days each in 2003, not necessarily related to issues linked with the Kurdish question. In the process of its restructuring, some examples from Western and Eastern Europe can be illuminating.

The Conseil Superior de l'Audiovisuel (CSA) in France is one of the regulatory bodies that has members appointed by the executive and has the right to monitor and sanction public and private

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[76] See Kemal Kirişçi and Gareth Winrow (1997), *The Kurdish Question and Turkey: An Example of a Trans-State Ethnic Conflict*, London: Frank Cass.

[77] Ibid., p. 197.

broadcasts in the country. Like the Turkish RTÜK, it has the right to suspend licences, reduce licence terms and withdraw licences in severe cases. But unlike the law to which the RTÜK refers, which contains 23 broadcasting principles to be followed covering a wide range of areas, the French obligations cover mainly six areas: pluralism and veracity of information; conditions for the broadcasting of film and television productions; TV channels' contribution to the development of video and film production; protection of adolescence and childhood; advertising, sponsorship and teleshopping; and promotion of the French language.[78] The recent proposals put forward in Bulgaria to adopt a quota system in the appointments to the broadcasting supervisory body, where one-third will be appointed by the civil sector and the remaining will be appointed by the president and the parliament, could also be a useful example.

Addressing these issues would provide further guarantees for the implementation of the enacted laws. In the course of EU accession, however, it can be expected that Turkey would have to expand the linguistic rights granted under the new laws on the basis of the fact that linguistic rights have special significance for the protection of minorities as they are an essential means of cultural expression and its vitality, and a necessary condition for the survival of the culture as a whole. In this respect, one can draw some examples from the gradual expansion of rights in the French and the Bulgarian cases. With respect to France, there are many similarities with Turkey regarding their Jacobin conception of citizenship and thus their strong emphasis on national and territorial unity. More importantly, Turkish reformers have often used the French policies on Corsica as a reference point in undertaking reforms, particularly in relation to broadcasting. With respect to Bulgaria, the rights granted to the Turkish minority in particular were expanded in the course of EU accession and were considered sufficient by the EU. Moreover, both countries demonstrate that the expansion of cultural rights do not necessarily require constitutional recognition of national minorities.

One of the policies applied by the two countries and not adopted by Turkey so far, but which could prove very beneficial in the extension of cultural rights, is the right to broadcast in Kurdish at the regional level. The Turkish regulation allows broadcasting by national public and private TV and radio channels, but does not grant the same right to regional broadcasters. This creates a significant drawback as private commercial channels do not have many incentives to broadcast programmes in Kurdish at the national level. The fact that Kurds are regionally concentrated in the eastern and south-eastern provinces of Turkey accentuates the need to grant this right at the local and regional level. Most recently, Art. 7(2) of the regulation, which allows the broadcasting of music and films, has been used to broadcast a film in Kurdish (subtitled in Turkish) on a regional channel in the south-east.[79]

While recognising this positive step, the granting of full local broadcasting rights could serve important social purposes through programmes that touch upon issues specific to the region, such as 'honour killings'. The changing of laws in this area, especially the recent measures in the draft Penal Code, are fundamental steps in the fight against such murders. Nevertheless, the real challenge lies in making the illiterate and Kurdish-speaking women aware of their rights granted by the Civil and the Penal Codes. Similarly, local broadcasting in Kurdish would make it easier to spread information about the proposed measures to eradicate these crimes among the inhabitants of the region, such as the registration of women at the demographics bureau and encouraging people to opt for official instead of solely religious marriages. The government has recently stated that the restrictions on the right to regional broadcasting will be eased, signalling change on this front. Should this effort be undertaken, future progress could consist of granting the rights to set up regional radio and TV channels that broadcast in Kurdish.

With respect to learning the language, Kurdish, like Corsican in France or Turkish in Bulgaria, could be taught for a certain number of hours per week (three hours in the case of Corsican in France and ranging from two to three hours in the case of Turkish in Bulgaria) at the primary level in public

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[78] The broadcasting principles of RTÜK are retrievable from http://www.rtuk.org.tr/kanun2.htm; for detailed information on the functions and sanctions of the CSA, see http://www.csa.fr.

[79] "TV'de ilk Altyazılı Kürtçe Film (The First Subtitled Kurdish Film on TV)", Radikal, 9 May 2004.

schools in the south-east upon demand. Similarly, it could be taught as an optional course at the secondary level and in universities. For example in Bulgaria, the study of mother-tongue languages is also extended to cover the high-school education level where two mother-tongue classes per week are possible under the optimal time of 26 hours in the 12th grade. It should also be noted that optional language classes in public schools in Bulgaria were introduced gradually and were only implemented fully in 2002 when negotiations with the EU were ongoing.[80] As a further complementary step, the granting of the right to establish Kurdish language faculties, institutes and centres in both private and state universities would be useful, similar to the Department of Turkology at the Sofia University in Bulgaria.

The extension of cultural rights and the lifting of restrictions on expressions of cultural identity in Turkey should not just be restricted to the Kurdish minority, but applied to all other groups (Alevis, the Laz, Circassians, etc.) in the country. If these reforms are solely applied to the Kurds, then they constitute 'positive rights' that may lead to isolationist tendencies among the Kurds and foster hostilities by the majority group towards the Kurdish minority. The lifting of restrictions on cultural rights (often referred to as the extension of 'negative rights'), coupled with a shift towards a true civic understanding of citizenship would be tremendously important for the abolition of discrimination and for the consolidation of substantial democracy in the country.[81] It is equally important that such rights are granted together with an increase in economic support for these groups as the granting of cultural rights alone may help to strengthen ethnic nationalism.[82]

In addition to progress regarding cultural rights, the constitutional endorsement of the principle of multiculturalism would reflect a legal commitment to the preservation of Turkey's cultural heritage. Thus when interpreting and enforcing the constitution and laws, judicial, legislative and executive officials would be required to consider the preservation and enhancement of the cultural heritages of all minorities in Turkey.[83] Engaging in a national dialogue with all minority groups would also be crucial to obtaining their opinions before undertaking reforms that will potentially affect their lives, and in the long-term to increasing their trust and support of the state.

It can be expected that Turkey should also have to couple such efforts with the lifting of indirect restrictions on political representation in parliament, namely the electoral system. In Turkey, a national threshold of 10% is required for parties to enter parliament. In the election of November 2002, for example, the pro-Kurdish Democratic People's Party (DEHAP) did not reach the 10% threshold; thus it could not enter parliament despite having obtained around 5% of the national vote and more importantly receiving over 45% of the votes in 5 of Turkey's 81 provinces. This undemocratic threshold needs to be reduced not just to ensure the fair representation of Kurds in parliament and their effective participation in political dialogue, but above all for strengthening legitimate rule in Turkey, as votes and seats are very often disproportionately distributed. In the November 2002 elections, the governing AKP party won two-thirds of the seats with slightly more than one-third of the votes.

All of these proposed measures would help to foster a relationship of trust between the state and the citizenry and would provide further guarantees of unity in the country. As Baskin Oran has highlighted, in today's Turkey, where even the Constitutional Court is now seeking to reorganise itself in order to better respond to individual complaints and hence function as a pre-European Court of Human Rights, this process of unity through further democratisation seems to be irreversible.[84]

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[80] See the Bulgarian Helsinki Committee (2003), *The Human Rights of Muslims in Bulgaria in Law and Politics since 1878*, Sofia, November, pp. 104-9.

[81] See Baskın Oran (2004), *Türkiye'de Azınlıklar: Kavramlar, Lozan, İç Mevzuat, İçtihat, Uygulama (Minorities in Turkey: Concepts, Lausanne, National Legislation, Case Law, Implementation)*, İstanbul: TESEV Publications, pp. 133-134 (retrievable from http://www.tesev.org.tr/etkinlik/baskin_oral.pdf).

[82] Ibid., p. 133.

[83] See Dilek Kurban (2003), "Confronting Equality: The Need for Constitutional Protection of Minorities in Turkey's Path to the European Union", *Columbia Human Rights Law Review*, Vol. 151, No. 35, pp. 151-214.

[84] See Baskın Oran (2004), op. cit., p. 126.

4. The judicial system

A reform of the judicial system is crucial for the strengthening of democratic governance, the rule of law, human rights and respect for and protection of minorities in Turkey. In order to satisfy its international obligations as well as the popular aspirations of its people, Turkey has undertaken important legislative reforms regarding its judicial system and has made considerable efforts towards the training of its judges (Box 7).

Box 7. Reforms of the judicial system

- The court system has been strengthened with the adoption of the law on the establishment of family courts. Since January 2003, 114 such courts have been established and 63 are already operating. These courts are responsible for cases relating to family law. The task of these courts is to take protective, educational and social measures for children and adults including financial protection of the family. The courts are being established in all towns with a population of more than 100,000 inhabitants.

- The Code of Civil Procedure and the Code of Criminal Procedure have been amended to allow the retrial of civil and criminal cases in which the European Court of Human Rights has found violations of ECHR provisions and its additional protocols. This amendment led to the retrial of the former members of the pro-Kurdish party, the most famous being Leyla Zana.

- The system of judicial records has been brought into line with Art. 1 of the United Nations Convention on Children's Rights. The criminal record of children under 18 can now only be made available to public prosecutors under strict conditions. The law concerning Juvenile Courts has also been amended, raising the age at which young people must be tried in juvenile courts from 15 to 18.

- The law dealing with the Forensic Medicine Institution has been amended with the aim of accelerating judicial procedures. One function of the Forensic Medicine Institution is to conduct medical examinations of persons who claim to have been mistreated in police custody with a view to assessing the veracity of the allegations. Administrative capacity in this field has been strengthened and budgetary provisions for the recruitment of additional staff have been made. The amendments also envisage the establishment of forensic directorates in all penal court districts. In addition, three new directorates for forensic medicine have been set up and the network has been endowed with new technical equipment.

- The Establishment and Trial Procedures of Military Courts Law has been amended with a view to ending military jurisdiction over civilians. As a result, military courts will no longer try civilians (including juveniles) held responsible for inciting soldiers to mutiny and disobedience, discouraging the public from military duty and undermining national resistance under Art. 58 of the Penal Code.

- State security courts dealing with crimes against the state have been abolished.

One of the most significant reforms in the area of justice concerns the abolition of the state security courts, which were the most important remnants of the infamous years of the state of emergency and one of the main mechanisms of human rights abuses. The right to retry cases in which the European Court of Human Rights finds violations of the ECHR and its additional protocols along with amendments to the law on military courts to end the military jurisdiction over civilians are also noteworthy reforms in the judicial system.

In addition to legal reforms, important steps have been taken with respect to the training of judges and improving implementation. According to official figures, 1,132 judges and prosecutors were trained in 2002 and 2003 on the implementation of the new Civil Code adopted in November 2001. A further 731 received training on the harmonisation of laws with those of the EU, 4,594 were trained on human rights, 350 participated in training on forensic medical applications and 519 on criminal matters and human rights, as well as in numerous smaller training activities in other specialised areas such as international asylum law. A justice academy has been created to train judges and prosecutors as well as other judicial officers such as notaries. Since October 2002, six training sessions on the implementation of the reform packages have been held in several cities with the participation of approximately 1,100 judges and public prosecutors. The Ministry of Justice has also published and distributed a guide book to judges and public prosecutors which includes a Turkish translation of the

case law of the ECtHR. Furthermore, all decisions of the ECtHR are made available on the official website of the Ministry of Justice. Despite progress, the remaining problems with the Turkish judicial system can be classified under three broad categories: excessive workload, insufficient independence and impartiality, and inconsistent interpretation of the law.

4.1 Proper working conditions

Currently, a judge in Turkey faces an average number of 800 cases each year and finalises around 400 of these cases over the course of a year. Public prosecutors are also overworked with approximately 600 investigations each year. The duration of judicial proceedings is very long with an average of 290 days in criminal courts and 272 days in civil courts.[85] Coupled with the statute of limitations, this even leads to the dropping of some cases, specifically those with respect to the abuse of human rights. These numbers point to an urgent need to take the necessary measures to decrease excessive case workloads and improve judicial working conditions in Turkey.

The establishment of intermediate courts of appeal and alternative mechanisms of dispute resolution could be useful steps in this respect. With a few exceptions, all decisions of the general courts can be appealed to the High Court of Appeals (Yargıtay), resulting in an average of 500,000 cases a year that would otherwise be dealt with by courts of appeal. With this in mind, the Turkish authorities have decided to establish 15 intermediate courts in cooperation with the European Commission and the related legislation is currently pending in parliament.[86] This is expected to significantly increase the speed and efficiency of the judiciary and constitute an important step in ensuring the right to a fair trial. The establishment of courts of appeal will also relieve the High Court from its excessive workload and allow it to concentrate on its function of unifying and clarifying Turkish case law. Alternative mechanisms of dispute resolution in some private law disputes could also prove beneficial for the reduction of caseloads as some trivial problems such as the determination of rents are often brought to court, increasing the workload. Parties in minor disputes could reach conciliations through a mediator, without the case having to go to court. Mustafa Bumin, the head of the Turkish Constitutional Court, has also confirmed the need for such mechanisms in a recent speech at the ceremony held for the 42nd year of the Turkish Constitutional Court.

Another challenge concerning workload is the fact that many prosecutors feel pressured by Ministry of Justice inspectors to continue unmeritorious prosecutions.[87] In fact, in 2002, 25% of all the cases in the criminal courts concluded by the action being withdrawn. The draft Code of Criminal Procedure aims at remedying this problem by giving the courts the option of rejecting an indictment at a very early stage. It could also be useful to train and inform inspectors in this respect.

Judges themselves are found to be partly responsible for the excessive workloads because of reasons such as deciding on later dates for hearings without sufficient cause. More importantly, however, the judiciary seems to be overly reliant on experts on all matters (even on matters of law) in cases where the legal knowledge of the judge can solve the problem. This situation mainly stems from the fact the judges are sometimes reluctant to decide on certain issues and wish to rid themselves of such responsibility by delegating it to the experts.[88] Long-established modes of operation such as these could be altered by changes in the education system and rigorous in-service training for judges.

In addition to the excessive workload, financial resources allocated to the judiciary also seem to be extremely limited. Judicial services are allocated approximately 1% of the country's budget. Most court buildings and equipment are old and insufficient. Equipment and supplies are far from satisfactory, and judges and public prosecutors are poorly paid.[89] Aside from the general economic

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[85] See http://www.adli-sicil.gov.tr/ISTATIST.HTM for judicial statistics.

[86] Based on interviews at the European Commission Representation, Ankara, May 2004.

[87] Based on an interview with Oktay Uygun, İstanbul, March 2004.

[88] Ibid.

[89] The highest rank judges and prosecutors earn a monthly salary of approximately €1400.

conditions prevailing in the country, it is also suggested by many observers that the executive branch, which has complete discretion over the resources allocated to the judiciary, is generally unwilling to strengthen the judiciary in Turkey.[90] This creates two sets of problems: one is the unwillingness of the well-educated jurists who speak foreign languages to seek employment in the judiciary; the second is the lack of self-confidence on the part of judges who do not consider themselves superior to, but dependent on the executive.[91] Separation of power necessitates equality in terms of remuneration between the legislature and the judiciary. Hence, increasing the share of the budget allocated to the judiciary and making their pay levels comparable with those of parliamentarians would be useful in remedying such problems. The judges within a reformed High Council could also be involved in the preparation of the budget and be responsible for its internal allocation and administration.

4.2 Independence of the judiciary

The principle of judicial independence is enshrined in the Turkish constitution. In practice, however, its independence is undermined by several other constitutional provisions, which establish a profound link between the judiciary and the executive in the process of selecting, training, appointing, promoting, transferring and disciplining judges. Although the constitution provides for the security of tenure, the career paths of judges and prosecutors (through appointments, transfers, promotions, reprimands and other mechanisms) are determined by the High Council of Judges and Prosecutors, which is chaired by the minister of justice and of which the undersecretary of the Ministry of Justice is also a member. In relation to this, judges in Turkey are regularly evaluated by judicial inspectors who are civil servants working within the Ministry of Justice. This direct influence by the executive increases the risk of political partiality in decisions concerning judges and the fear among the judiciary of being removed and transferred to less attractive regions of Turkey – which is observed in some cases – thus having a possible impact on their attitudes and decisions.[92] Aside from the composition of the Council itself, the influence of the executive is further enhanced by the fact that the High Council does not have its own secretariat and its premises are inside the Ministry of Justice building. The Council is entirely dependent upon a personnel directorate and inspection board of the Ministry of Justice for its administrative tasks. Hence, the members of the Council are bound by information supplied by the ministry. What exacerbates the problem is the fact that the decisions of the High Council are not subject to review, contradicting both the independence of the judiciary as well as the basic principle of the rule of law.

Hence, constitutional changes that require the removal of executive members from the High Council as well as its complete administrative independence from the Ministry of Justice are necessary. It can be expected that Turkey would have to establish an independent administration of the judiciary and provide an adequately funded secretariat and premises for this institution.

Alongside these changes, it would also have to remove the judicial inspectors from the Ministry of Justice and assign inspectors to work under a reformed High Council, which should be run by the judiciary itself. In any case, as an institution that delivers administrative decisions, the actions of the High Council should be subject to judicial review as regulated by constitutional provisions.

Limits on independence are also observed at the point of entry into the judicial profession where the Ministry of Justice is highly involved. The written exam is followed by an oral exam conducted by personnel from the ministry. This not only creates the impression among aspiring judges that their profession will be extremely intertwined with the Ministry of Justice, but also leads to situations where political favouritism is observed. Oğuz Onaran and Koray Karasu highlight that one minister of justice recruited 130 candidates; his successor, who was from a different political party, recruited 230

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[90] Based on an interview with Oktay Uygun, İstanbul, March 2004.

[91] Ibid.

[92] See Coşkun Kirca (1996), "Yargı Sistemimizin Bazı Anayasal Meseleleri", *Yeni Turkiye*, 10, pp. 105-110.

candidates without considering whether or not there was a need.[93] For full independence at the entry level, recruitment could be solely performed by the justice academy that is being established or an altered High Council whose present members are replaced by judges.

Independence, however, is also compromised in the two-year period of vocational training undertaken at the school for candidate judges and public prosecutors. Up until recently, the content of training and the school as a whole was subordinated to the Ministry of Justice. It was suggested that this situation, above all, fostered symbolic practices where the junior candidates internalised an important degree of fear and subordination vis-à-vis ministry officials.[94] The responsibilities regarding in-service training are now being transferred to the recently established Justice Academy. Yet it is observed that members of the executive still have a relative majority in the academy's general assembly. Above all, the presidency of the Centre for the Training of Candidate Judges and Public Prosecutors, which is a part of the academy, is appointed by the Ministry of Justice on proposal of the president of the academy, who is himself appointed by the ministry. Hence, in order to abolish executive control from the training of candidates in the profession, the institutional structure of the justice academy could be changed to make judges the sole authority in regulating it.

An indirect mechanism that may serve to hinder judicial independence concerns the issuing of circulars to public prosecutors by the ministry on how particular laws should be interpreted. In cases where a public prosecutor advances an argument based on a circular, this may have an impact on the decision of a judge who may consider the existence of a circular regarding that particular law and recall the influence of the ministry on his own career. Hence, abolition of the practice of issuing circulars to public prosecutors could also be useful in attaining full independence.

At a more general level, when the relationship between judges and public prosecutors is observed, doubts arise as to the impartiality of the Turkish judiciary. Under normal conditions, judges should be separated from and regarded superior to the office of the public prosecutor. In the Turkish case, however, they are regarded as equals both in law and in various aspects of their everyday functioning. They take the same exams to enter their professions, have their careers determined by the High Council, attend the same school for in-service training, earn the same salaries throughout their career and even live in the same residences. Even in courts, certain symbolic actions such as entering the court through the same doors and sitting side by side on an elevated platform reinforce this link between the two. Furthermore, such symbolic actions distort the balance between the prosecution and the defence as lawyers use different doors to enter the court, sit at a table below the judges and prosecutors at the ground level and remain in court when prosecutors retire with the judges to the same chamber during the course of the proceedings. The prosecutors, unlike defence lawyers can call witnesses without having to seek the permission of judges and have no restrictions on the questions they can ask the defendants. Hence, it can be expected that legal, institutional and functional linkages between the judiciary and the office of the public prosecutor are abolished for the impartiality of judges, and defence and prosecution are also placed in equal positions.

4.3 Implementation of political reforms

The courts have started to apply these reforms, but rather slowly and inconsistently. Criminal proceedings launched against individuals on the basis of Arts. 312 (incitement to class, ethnical, religious or racial hatred) and 159 (insulting state institutions) generally concluded with acquittals in 2003. The courts have also started to review cases of persons convicted under Art. 8 of the Anti-Terror Law (which was abolished) and Art. 169 of the Turkish Penal Code (which was amended) and to order their release from prison. It is observed that judges and public prosecutors are increasingly giving

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[93] See Oğuz Onaran and Koray Karasu (2003), "Quality and Justice in Turkey", in Marco Fabri, Philip Langbroek and Helene Pauliat (research directors), *The Administration of Justice in Europe: Towards the Development of Quality Standards*, Research Papers of the Institute di Ricerca Sui Sistemi Giudiziari, Bologna, p. 466 (retrievable from http://www2.law.uu.nl/sbr/mdj/).

[94] Based on an interview with Oktay Uygun, İstanbul, March 2004.

references to ECtHR decisions in their cases, especially in the last two years.[95] Nevertheless, there are still signs of the inconsistent use of articles of the Penal Code, particularly in cases concerning the freedom of expression as shown by the broad use made of Arts. 312 and 169 of the Penal Code as well as Art. 7 of the Anti-Terror Law. Thus, as implied in the previous sections on human rights and the protection of minorities, although there is still a need to refine these laws to make them less vague and less open to interpretation, this in itself has its limits and will not be sufficient to solve the problem. It is often argued that judges and public prosecutors in fact internalise traditional state sensitivities and reflect these in their decisions. Hence, an even more important matter of independence is one from the entrenched beliefs and attitudes of the state bureaucracy. The crucial issue here is to change the mindsets of the judiciary and the prosecutors, not only to attain interpretation that expands fundamental rights and freedoms but also to ensure they take allegations of human rights abuses more seriously.

This is certainly no easy task. The most important tool to achieve this end is primarily the education system itself. It is well known that the legal training in universities is far from satisfactory. The methods used in over-crowded faculties rely excessively on simple memorising rather than on analytical reasoning.[96] This situation has started to change slightly with the introduction of new techniques such as virtual court cases where students are given opportunities to develop their independent reasoning abilities.[97] Yet a more comprehensive reform of law education, inspired by practices in other European countries, is necessary. Similarly, the training of candidate judges and prosecutors should also be reformed in such a way that candidates in the profession have significant experience before starting the profession. In-service training after the commencement of duty on matters such as EU law and international human rights is very significant as well, particularly in the short term, and needs to be continued in an intensive and systematic fashion.

The EU can be an effective instrument in undertaking judicial reforms in Turkey. EU assistance could be delivered in two directions: first through contributions to improve courthouses, equipment and facilities to the judiciary; and second, and most important of all, through efforts to change the mindsets of the judiciary. Although rigorous EU training is currently underway for the judiciary, in some cases it is observed that such mechanisms can cause a certain degree of resentment, particularly among the judges.[98] Alternative mechanisms should therefore be sought for this objective. It is a well-known fact that in Turkey, although the decisions of the High Courts are not legally binding, inferior courts generally pay attention to them partly because of the fact that the High Court evaluates the decisions of the inferior courts when considering the advancement of cases.[99] Hence, as a short-term measure, members of the High Court could be encouraged to socialise with their counterparts in member-state countries within devised institutional settings, as equals exchanging practices. As quoted by a law academic in Turkey, a civil society organisation had in fact initiated such a project in Turkey that was very well received by judges but was unsustainable owing to a variety of reasons. The European Union, however, can provide an ideal setting for such a policy through its twinning programmes, which were originally intended to make member states' expertise available to the candidate countries through the long-term secondment of civil servants and accompanying short-term expert missions and training, with the aim of strengthening their administrative and judicial capacity to implement and reinforce the *acquis*.

Such measures should also be complemented by Turkey's participation in two major EU programmes, namely AGIS (a framework programme to help police, the judiciary and professionals cooperate in criminal matters and the fight against crime) and the Framework Programme for Judicial Cooperation in Civil Matters. For the time being, Turkey has not applied to participate in either of the two

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[95] Based on interviews at the Diyarbakır Bar Association, Diyarbakır, May 2004.

[96] See Oğuz Onaran and Koray Karasu (2003), op. cit., p. 474.

[97] Based on an interview with Oktay Uygun, İstanbul, March 2004.

[98] Ibid.

[99] See Oğuz Onaran and Koray Karasu (2003), op. cit., p. 474.

programmes. Participation would, however, be beneficial for improving mutual knowledge of legal and judicial systems in civil and criminal matters, to promote networking and mutual cooperation, and to exchange information, experience and best practices.

The EU could also assist in improving the quality of law education in Turkey through fostering the exchange of law students, primarily under the umbrella of the Socrates programme to which Turkey has recently applied. There is a difficulty with the implementation of this policy option as the teaching of foreign languages is very weak among law faculties in Turkey, pointing to another area where further progress could be attained. The exchange of students could be supplemented by the preparation of publications in both Turkish and English that contain information on specific cases in member countries and at the EU level, concerning human rights law and practices in particular. Such publications should also include the arguments and discussions surrounding the cases as well as information on constitutional debates in European countries.

Conclusion
The Principle of Fairness

It is a fact that the implementation of the Copenhagen political criteria is a never-ending process, as the very meaning of democracy would not allow any country in the world to suggest that its democracy reflects the full implementation of the criteria. Therefore, even if Turkey begins accession negotiations with the EU, both the EU and Turkey should continue their efforts to achieve a more democratic Turkey, mainly through a credible policy of conditionality on the part of EU and a more effective implementation of the Copenhagen political criteria on the part of Turkey.

This combination has in recent years led to substantial improvements in Turkish democracy. The reforms that have so far been undertaken have addressed long-criticised aspects of Turkish democracy, particularly the role of the military in politics, respect for human rights, protection of minorities and the judicial system. In legislative and institutional terms, a lot has been achieved and few challenges remain, although there is still much to be done regarding implementation.

For example, concerning the protection of human rights and issues surrounding torture and ill-treatment, there are still legislative measures to be taken, the most significant of which are lifting the statute of limitations for such crimes, removing law enforcement officials from active duty pending the outcome of investigations and abolishing the practice of giving a copy of medical reports to security officers. Annulment of Art. 159 of the Penal Code and a comprehensive reform of the Political Parties Law would constitute fundamental steps in further expanding the freedom of expression. With respect to the freedom of association, the draft Associations Law introduces the legislative remedies for long-standing obstacles regarding government approval mechanisms and cooperation with foreign associations. The draft, however, does not touch upon the broad authority of the Interior Ministry and government officials to inspect premises and records of associations. This would require further legislative action in the next stages of the reform process.

The protection of minorities is no longer a taboo subject in Turkish political life. There are serious efforts to improve the lives of minorities in Turkey. Regarding non-Muslim minorities, the remaining problems in the field of property rights for community foundations and religious freedoms are resolvable through the correct and full application of the provisions of the Treaty of Lausanne. The other minority groups, particularly the Kurds, would greatly benefit from the extension of cultural rights such as the granting of local broadcasting rights, the introduction of optional language classes in public schools upon demand and the lifting of restrictions on expressions of cultural identity. In order to ensure effective implementation of such measures for all minorities, it is also necessary to undertake a gradual shift from the traditional interpretation of the monolithic Turkish nation to a redefined notion of political community that requires a more inclusive and truly civic concept of citizenship.

The Turkish judiciary, the guarantor of the reform process, has also undergone significant reforms, the most notable of which was the recent abolition of the state security courts that have in the past dealt with crimes against the state. Future reforms should focus on ensuring proper training and working conditions for members of the judiciary and ensuring its full independence from the executive.

Given the pace of reforms in the last three years, the remaining legislative and institutional tasks could be achieved in a relatively short period of time by the Turkish authorities. What requires more energy and more time are efforts geared towards changing the mindsets of citizens and public officials, particularly among the police force, bureaucracy, military, public prosecutors and judges of the country. This is especially the case for military-civilian relations, where the full implementation of the comprehensive reforms requires changes in the assessments of the military's role, both in the eyes of the public and of the military itself.

The process of change is already extending throughout society, including the policemen who are actually now following the newly opened Kurdish courses, the civil servants who are revising the implementation regulations, the military staff who are decreasing military spending upon the request of the civilian power, the judges and the public prosecutors who give increasing references to the European Convention of Human Rights and the majority of the citizenry who support the European

integration process. Further training and education coupled with the continued and credible application of EU conditionality would secure the path of reform, which in the eyes of many is as revolutionary as that achieved by Mustafa Kemal and his followers in the 1920s and 1930s.

It is for this reason that we would like to end our detailed historical, analytical and thematic analysis of democratic governance in Turkey within the context of Turkish-EU relations by making two suggestions. First, as we noted in the beginning of our analysis, the decision about Turkey's readiness for the full accession negotiations should be taken on the basis of the principle of fairness. That is to say that the capacity and willingness of Turkey to meet the Copenhagen criteria should be the objective basis of the decision that the EU will make about Turkey at the end of this year. The EU's approach to Turkey's place in Europe should not be based on religious or geographical references. Instead, Turkey's identity and its compatibility with the European norms of democracy and economic modernisation should be judged on the basis of an objective, historical and analytical reading of modern Turkey. We have attempted to demonstrate in this paper that the history of modern Turkey since 1923 has been a history of modernisation and democratisation. Yet such a history has also involved problems and failures in terms of linking together modernity and democracy. In this sense, we have suggested that even though Turkey today faces the problem of democratic consolidation and societal modernisation, on the basis of its political identity as a secular parliamentary democracy, it is compatible with European norms of democracy and a liberal economy. That is why the more Turkey has attempted to meet and implement the Copenhagen criteria, the more it has consolidated its democracy and made its modernity liberal, plural and multicultural. Moreover, Turkey has achieved this in a short period not only because of the strong political will to do so, but also because it has already established the institutions and norms of democracy and modernity.

In this sense, we have suggested that rather than the culturalist and essentialist discourses of Europe, which privilege religion and geography over the universal norms of democracy and a liberal economy, the principle of fairness and objectivity should be the basis of the EU's decision about Turkey. Fairness and objectivity have the potential to create a reciprocal relationship between Turkey and the EU, in which both parties have mutual benefits. While accepting Turkey as a full member of the EU justifies the fact that the process of European integration and its enlargement operates on the basis of universal norms rather than religion or geography, the project of Europeanisation in Turkey makes a significant contribution to the process of democratic consolidation and societal modernisation. With its secular modernity and mostly Muslim identity, Turkey can contribute substantially to the reshaping of the political identity of the EU as a multicultural space governed by the universal norms of democracy and a liberal economy. With such a political identity, the EU can for its part reshape international relations as a democratic space of world governance, which our extremely dangerous post-September 11th world needs today.

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