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Introduction

Last year's EU Commission Turkey Progress Report, published in November 2007, was arguably its most critical to date; in many fields it suggested there had been little, if any, progress, and in very few did it claim that significant progress had been made. Despite the relationship between Turkey and the EU having weathered the storm created by the temporary suspension of accession negotiations on eight chapters from December 2006 to March 2007¹, by the time of the EUTCC's 4th conference in December 2007, there seemed to exist a general feeling that progress towards the goal of Turkish EU membership was grinding to a halt. With several EU member state governments expressing strong reservations about the possibility of Turkey ever joining the EU² and support for joining the EU within Turkey down at 49%³ compared with 62% in 2004⁴, the future of EU-Turkey relations did not seem bright.

In the 2008 the security situation in Turkey, which had taken a turn for the worse in 2007, remained poor. Despite an increase in Turkish military operations in the Kurdish region and against PKK bases in Kurdistan Iraq, there were a number of attacks that killed civilians, including a bombing that left 17 dead in Istanbul⁵, and the conflict between the PKK and the Turkish State intensified. Additionally, there were periods of civil unrest, in particular in the Kurdish region in response to the alleged ill-treatment of Abdullah Öcalan, leader of the PKK, who is the sole inmate of the prison on İmralı Island.

There have also been positive developments that have tempered pessimism within the EU about Turkey's future. In particular, there was a general sigh of relief in response to the Constitutional Court's decision not to close down the governing AK Party for 'anti-secular activities', even though the party's funding from the taxpayer was halved⁶. Additionally, while doubts remain about the substantive impact of the alterations, the amendment of Article 301 of the Penal Code was greeted as a 'step forward'⁷ by EU officials.

However, 2008's progress report on Turkey remains cautious in its assessment of Turkey's progress in the areas of rights and democracy. As in the 2007 report, there remain serious concerns in areas where very minimal progress, or even regression, seems to have taken place. The report's claims of progress sometimes seem forced, given the report's own analysis of what changes have occurred. The implication seems to be that the efforts that are being made are appreciated, but that the speed of progress needs to increase. The Draft Report on Turkey's 2008 Progress Report noted that there had been improvements in some areas, but that these improvements were insufficient, and that the recent revision of the Accession Partnership only served to prolong non-fulfilled

¹ Background: European Parliament Vote on Turkey's 2007 Progress Report - www.europarl.europa.eu/

² France Puts Brakes on EU-Turkey Talks - www.dw-world.de - 26/06/2007

³ Eurobarometer 68: Fall 2007 - www.europa.eu/public_opinion/

⁴ Eurobarometer 64: Autumn 2005 - www.europa.eu/public_opinion/

⁵ Death toll in Istanbul bombings rises to 17 - www.reuters.com - 28/07/2008

⁶ INSTANT VIEW: Turkish court rules not to close AK Party - www.reuters.com - 30/07/2008

⁷ <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=140606>

priorities.⁸ In light of this, it urged the Turkish government to hasten reforms, most importantly, in terms of military oversight. The report also criticized the fact that no progress had been made in the area of freedom of expression. Similarly, the Final Resolutions from the Fourth International Conference on EU, Turkey, and the Kurds noted that ‘no major issue [had] been addressed and significant problems persist,’ especially with regards to Turkey’s obligations under the European Convention on Human Rights and Humanitarian Law, military activities of the state, and democratically supported dialogue between all peoples constituting the Turkish Republic. Turkey’s military activities continue unchecked, with no promise of a democratic resolution to the ongoing conflict in the Kurdish region and no impetus from the EU to end military activities.

This paper will focus on the progress and the lack thereof to date in Turkey’s bid for EU Accession. It will give an account of the views of actors involved in the accession process and assess the responsibilities of each of them, as well as propose moves for the future. In addition some background is included to give context to the discussion.

⁸ Draft Report on Turkey’s 2008 Progress Report, European Parliament Committee on Foreign Affairs 6/3/2008

Background: Pre-2004

Modern Turkey was formed out of the collapse of the Ottoman Empire in the wake of the First World War and the replacement of the hereditary caliphate with a republican form of government by Mustafa Kemal Ataturk in the early 1920s. Ataturk and his successors attempted to transform Turkey into a secular nation state defined along ethnic, but also religious, lines.

One problem for this Kemalist project, then, was the existence of substantial Greek and Armenian minorities in Turkey, even after the deaths of a large number of Armenians in 1914-15. Despite the overtly secular nature of the Turkish state these Christian groups were generally considered to endanger the Turkish state, since adherence to Sunni Islam was considered to be an integral part of the Turkish identity. The principle response to the 'issue' of Christian minority groups within Turkey was 'population exchanges' with Armenia and Greece, through which all three states attempted to make themselves more ethnically and religiously homogenous.

Those Christians that remained, along with non-Sunni Muslim minorities like the substantial Alevi population within Turkey, faced discrimination such as unequal opportunities for religious education and problems when attempting to form community associations. There were also occasional outbreaks of anti-minority violence, such as that which occurred during the 1955 Istanbul Pogrom, following which emigration of Greeks and Armenians from Turkey greatly accelerated.

Some of the greatest problems for Turkish nationalists of the Kemalist tradition were, however, posed by the existence of the substantial Kurdish population within the borders of modern Turkey, geographically clustered in the south-east of the country, where they make up a majority. Despite the fact that the majority of Kurds adhere to Sunni Islam, their cultural and linguistic differences from the rest of Turkey meant they have been perceived as a threat to the Turkish nation state.

Despite decades in which the Kurdish identity was denied and suppressed, Kurds proved resistant to assimilation. Many of the laws that are now the greatest barriers to improving Turkey's human rights standards derive from attempts to undermine the distinct identity of the Kurds. Thus the existence of the Kurdish ethnicity in Turkey was denied, the use of the Kurdish language and letters found in Kurdish was banned, giving children Kurdish names was made illegal, Kurdish media outlets were suppressed, demands for regional autonomy were punished, and Kurdish people were at times forcibly relocated away from Kurdish regions.

Armed resistance to the policies of the Turkish state by the Kurds goes back almost as far as does Turkey itself, dating back to the Sheikh Said rebellion of 1925. The use of vicious tactics by the agents of the Turkish state to repress such resistance also has a long history, with rebellion by a minority being met with retaliation against entire communities, such as during the repression of the Dersim Rebellion of 1937-8.

Despite the aspirations of Ataturk towards western-style democratic government, democracy was quite slow to take root in Turkey. The first true period of multi-party government only began with the elections of 1946. However, even since then the military's belief that it has responsibility for protecting the Kemalist nature of the Turkish state has at times led to democracy being partially undermined, or even totally suspended, as occurred following the military coups of 1960, 1971 and 1980.

The period following the 1980 military coup was particularly difficult for the Kurdish people in Turkey. During the 1980s the PKK's Kurdish nationalist insurgency – which had begun during the 1970s – increased in intensity, as did the aggression with which the Turkish state pursued its military strategy, affecting civilians caught up in the conflict. During this period many Kurdish areas came under the scope of State of Emergency Legislation that removed many of the normal constitutional checks on the actions of the security services, leaving civilians vulnerable to abuse by the authorities.

However, by the second half of the 1990s the PKK was increasingly on its back foot, and in 1999 Abdullah Öcalan, the leader of the PKK, was captured and imprisoned by the Turkish government. Following this, the PKK withdrew its permanent presence from Turkey and declared a ceasefire, after which there was a period of relative security in Turkey. Some of the worst legislation from a human rights perspective had begun to be removed during the 1990s, and reforms continued in the new millennium, particularly following the election of the AKP government in 2002 with a mandate to pursue EU membership. By 2003 the violence had receded to a level at which Project Ploughshares felt able to remove Turkey from its list of conflict zones⁹; there was real hope that the violence, which, according to Project Ploughshares, had claimed between 30,000 and 40,000 lives between 1984 and 2003¹⁰, was drawing to an end. Turkey has neither accepted nor admitted that there is an ongoing armed conflict between Turkey and the PKK and has refused to sign relevant protocols of the Geneva Convention.

⁹ Armed Conflicts Report: Turkey (1984 - 2002) - www.ploughshares.ca – ‘Turkey was removed from the active list of armed conflicts because, despite some skirmishes between government and rebel forces, reported conflict-related deaths for 2002 totalled less than 25 for the second consecutive year.’

¹⁰ Armed Conflicts Report: Turkey (1984 - 2002) - www.ploughshares.ca

EU Accession

Turkey's Route to Accession

In 2002, the EU agreed that accession negotiations would commence 'without delay' provided EU leaders at the Council felt that Turkey met the required standards. This decision was to be made following a Commission report on Turkey's fulfilment of the Copenhagen Criteria and a subsequent recommendation by the Commission on the appropriateness of opening negotiations.¹¹

On 6 October 2004 the Commission issued its recommendation as anticipated, concluding that Turkey 'sufficiently' fulfilled the criteria necessary to open accession negotiations.¹² Certain conditions were imposed, including that Turkey should first be obliged to bring into force six specified pieces of legislation.¹³ On 17 December 2004, EU leaders largely endorsed the Commission's recommendation that Turkey was ready to begin accession negotiations at the Brussels meeting of the Council, and envisaged that talks would commence on 3 October 2005.¹⁴

The decision to open accession talks with Turkey was formally based upon fulfilment of the criteria as determined at the Copenhagen meeting of the Council in 1993¹⁵ (the 'Copenhagen Criteria'). These are the minimum standards which all states must fulfil before they are recognised as official negotiating partners. The political elements of the Copenhagen Criteria require that candidate countries must have achieved, 'the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.'

The Commission's regular report on Turkey's progress towards accession, submitted on 6 October 2004,¹⁶ examined in detail Turkey's fulfilment of the political elements of the Copenhagen Criteria. Despite citing substantial reservations with regards to human and minority rights reforms, the Commission cast a broadly positive light on Turkey's progress and subsequently concluded in its recommendation that 'Turkey sufficiently fulfils the political criteria' and that accession negotiations should accordingly be

¹¹ Copenhagen European Council 12 - 13 December 2002, Conclusions of the Presidency.

¹² European Commission, 'Communication from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey's progress towards accession', 6 October 2004, COM(2004) 656, final.

¹³ These include: the Law on Associations, the new Penal Code, the Law on Intermediate Courts of Appeal, the Code of Criminal Procedure, the legislation establishing the judicial police and the legislation on the execution of punishments and measures. European Commission, 'Communication from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey's progress towards accession', 6 October 2004, COM(2004) 656, final.

¹⁴ Brussels European Council 16-17 December 2004, Conclusions Of The Presidency.

¹⁵ Copenhagen European Council 21-22 June 1993, Conclusions Of The Presidency.

¹⁶ European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, 6 October 2004.

opened'.¹⁷ The conclusion of the Copenhagen European Council set out in December 2002 had been that the December 2004 decision would be based upon whether or not Turkey had fulfilled the Copenhagen Criteria.¹⁸ The Commission recommendation therefore represented an apparent lessening of EU requirements in relation to Turkish compliance with the Copenhagen Criteria.

By 1 June 2005 Turkey had enacted the six pieces of legislation as set out in the Council's decision of 17 December 2004. On 29 June 2005 the Commission issued its draft 'Negotiating Framework for Turkey',¹⁹ a document which outlined the guiding principles and procedures for accession negotiations. The Framework had to be accepted by all 25 current member states before Turkey could commence formal accession negotiations. Turkey signed an EU protocol on 29 July 2005 which extended the existing Ankara-EU Customs Union, an agreement that came into force on 31 December 1995 pursuant to the 1963 EU-Turkey Association Agreement, to the 10 newest member states incorporated into the Union on 1 May 2004. The 17 December 2004 Council decision had mandated that Turkey needed to achieve this expansion of the Customs Union prior to the opening of formal accession talks.²⁰

On 3 October 2005, European and Turkish leaders welcomed the commencement of official EU Accession talks with Turkey. Prime Minister Recep Tayip Erdoğan's insistence on nothing short of full membership for Turkey paid off as the Negotiation Framework for full accession was agreed at the last minute. This was after Austria finally conceded on its request that Turkey be offered an option short of full membership.²¹

The Negotiations

The Council, in its December 2004 decision,²² invited the Commission to continue monitoring Turkey's progress regarding political reforms. The Negotiating Framework for Turkey,²³ prepared by the European Commission at the behest of the December 2004 Council, was drawn up in accordance with the Council decision and largely reinforced its findings on the opening of accession negotiations. The text of the framework was finally agreed at the official opening of accession talks on 3 October 2005. In terms of the future of accession negotiations, the Framework mandated that their advancement would be measured against a series of requirements which included the political elements of the Copenhagen Criteria.

¹⁷ European Commission, 'Communication from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey's progress towards accession', 6 October 2004, COM(2004) 656, final, p9..

¹⁸ Copenhagen European Council 12 - 13 December 2002, Conclusions of the Presidency [emphasis added].

¹⁹ European Commission, 'Negotiating Framework for Turkey', 4 October 2005.

²⁰ Brussels European Council 16-17 December 2004, Conclusions Of The Presidency

²¹ BBC 'EU hails Turkey membership talks' 4 October 2005, at <http://news.bbc.co.uk/1/hi/world/europe/4307700.stm> (last accessed 21 November 2007).

²² Ibid.

²³ European Commission, 'Negotiating Framework for Turkey', 4 October 2005.

It was decided that the Commission should continue to monitor Turkey's progress and regularly report on this to the Council. These reports would provide the basis for the Union's final decision as to whether the conditions for the conclusion of negotiations were met. Importantly, the Framework explicitly stated that the Commission needed to confirm that Turkey had fulfilled the aforementioned series of requirements (to include the Copenhagen Criteria) before a positive decision on accession would be taken.

Accession negotiations were to proceed in the usual way through inter-governmental Conferences between the EU and Turkey, in which Turkey's current legislation and administrative structures were comprehensively 'screened' against each chapter of the *acquis communautaire*, (the body of economic, social, administrative and environmental legislation that all member states of the EU must implement). The *acquis* includes 'the content, principles and political objectives of the Treaties on which the Union is founded', thus Turkey would have to abide by 'the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law'.²⁴ The Framework confirmed that to allow for the financial aspects of accession to be fully considered, negotiations would not be concluded until after the Financial Framework for the period from 2014 had been established. This meant, in short, that Turkey would almost certainly not accede to the EU before 2014.

The EU and Human Rights

EU enlargement is an important impetus for advancing peace and stability throughout Europe. Over recent years the EU has been increasingly promoted as a means of furthering commitment to shared principles and values within Europe, including human rights. Through the approval of the Copenhagen Criteria at the 1993 Council the protection of human rights became an explicit element in preparing candidates for membership, and as such enlargement can act as a potent force for change in the human rights environments of potential EU members.

In the period preceding the 2004 European Commission decision there is no doubt that Turkey had outwardly moved towards closer compliance with international standards on human rights, democracy and the rule of law through the enactment of a noteworthy series of reforms over a very short period of time: the legal regulations prohibiting torture were tightened²⁵; the prohibitions on broadcasting and teaching in the Kurdish language were somewhat relaxed²⁶; permissible pre-trial detention periods were shortened²⁷; and the death penalty was also abolished²⁸.

However, a strong case can be made that the conclusion by the EU heads of state in December 2004 that Turkey had 'sufficiently' fulfilled the Copenhagen Criteria misrepresented Turkey's progress on human rights, specifically regarding cultural,

²⁴ Article 6, Treaty of the European Union.

²⁵ European Commission: *2004 Regular Report on Turkey's Progress Towards Accession* (page 17)

²⁶ European Commission: *2004 Regular Report on Turkey's Progress Towards Accession* (page 18)

²⁷ European Commission: *2004 Regular Report on Turkey's Progress Towards Accession* (page 55)

²⁸ European Commission: *2004 Regular Report on Turkey's Progress Towards Accession* (page 166)

linguistic, and political rights, and the Kurdish issue. Human rights violations remained common place in Turkey, and were frequently perpetrated by officials either with the tacit tolerance of the state or legally with the support of Turkish law.

Delay or breakdown of negotiations between Turkey and the EU would have serious implications for human rights in Turkey. The 'soft power' of the EU with regards to monitoring and political pressure would be transformational for Turkey. However, there is much work to be done in Turkey, with its abysmal record of human rights abuses, and there is an urgent need for a genuine commitment to and implementation of the EU reforms. A constructive dialogue between the EU, its member states, and Turkey is crucial if Turkey is to emerge into a fully democratic future.

Background: 2004-2007

This is a summary of the development of the accession process between 2004 and the end of 2007, a period characterized by a slowing of reform in Turkey. It gives an account of the accession process from the initial optimism following the Commission's decision to start negotiations in December 2004 to the cynicism about the prospects for further progress that seemed to have become entrenched by the end of 2007. It also highlights recent developments in Turkey and their implications.

Developments in the Relationship between the EU and Turkey

On paper, the most significant impediment to progress towards Turkish accession since 2004 has been its poor human rights record, which has undermined its ability to meet the political elements of the Copenhagen Criteria. However, Turkey's accession bid has also been influenced by the complex backdrop of issues relating to European politics, international security and economic affairs.

The prospect of Turkish accession was strongly welcomed by Britain and the US, since they considered that an EU-member Turkey could potentially create a 'bridge' between Europe and the wider Muslim world. Additionally, it was hoped that the process of entry negotiation would incentivise further reform in Turkey.

Key EU member states such as the UK have continued to champion Turkish membership, despite doubts over whether Turkey could fully attain the standards of a full EU member. However, while the EU's Enlargement Commissioner, Olli Rehn, has vehemently insisted that full accession remains the endgame of negotiations with Turkey, amongst the key EU players there are increasingly many who oppose Turkish membership. The new French President Nicolas Sarkozy is a well-known opponent of Turkish membership, and the German Christian-Democrat Chancellor Angela Merkel has advocated a 'privileged partnership' instead of full membership. Other EU member states such as Austria, Portugal, the Netherlands and Cyprus also oppose Turkish membership.

Public opposition to Turkish accession was seen as a factor in the ‘no’ votes in the 2005 French and Dutch referenda on the EU constitution, and as a factor in growing ‘Euro-scepticism’ within Europe. Opposition is in part attributable to concerns about Turkey’s predominantly Muslim population, as well as that its size and economic underdevelopment would potentially generate strain on EU budgets. The increase in the intensity of opposition to Turkish membership is arguably partly caused by a general trend towards the election of right wing governments in Europe. This shift within the EU itself represents a serious obstacle in the future of the accession process.

In December 2006 the Council endorsed the recommendation of the Commission and agreed to suspend membership talks with Turkey on eight chapters. Olli Rehn, the EU Commissioner for Enlargement stated that the suspension would mean that ‘the train will slow down but not stop’²⁹, but it was of enormous symbolic importance.

In Turkey, the suspension of talks created a strong reaction against the EU and consequently public support for EU membership declined.³⁰ Despite the re-opening of negotiations in March 2007 the psychological effect of the suspension continues to have an impact on relations between Turkey and the EU, and may continue to do so for some time.

The decision to suspend negotiations was made as a result of Turkey not opening its ports to Greek Cypriot traffic. The decision has been criticised by some leaders within the EU, including former British Prime Minister Tony Blair, who said that this negative signal to Turkey could be a big mistake for the EU in the long run.³¹ Other commentators, such as the European Parliament’s Turkey Rapporteur Camille Earlings, also found the decision a harsh one.³²

Soon after the Cyprus roadblocks at the end of 2006 there was a warning that the EU’s decisions could have devastating consequences.³³ The EU approach has been seen by many in Turkey as discriminatory against Turkey and as a victory for those within the EU who either believe that Turkey is not or should not be a part of Europe, or who are seen to use Turkey’s accession as part of their domestic political posturing.³⁴

There was also a perception that the principle of conditionality has been applied unfairly to Turkey in comparison with other countries. While it is true to say that Turkey barely fulfilled the Copenhagen Criteria when negotiations were opened, critics claim that the EU has been more insistent on this point in the case of Turkey’s accession than it had been during the 2004 enlargement.

²⁹ The Guardian, ‘Turkey’s EU hopes suffer Cyprus setback’, 27 November 2006

³⁰ *Seeking Kant in the EU’s Relations with Turkey*, December 2006, Tesev Publications, Foreign Policy Program. Istanbul: TESEV, p. 28

³¹ Today’s Zaman, ‘Rehn: No Train Wreck, Pace will Slow’, 30.11.2006

³² Today’s Zaman, ‘Is the EU Kidding or Offering a Solution’, 01.12.2006

³³ The Turkish Economic and Social Studies Foundation (TESEV) EU Watch Reports: <http://www.tesev.org.tr>,

³⁴ Tiryaki, Sylvia, ‘All for One and One for All!’ in *EU Watch*, December 2006, No. 2, Istanbul: TESEV

Political Developments

2007 Elections

On 28 August 2007 former Foreign Minister Abdullah Gül became the 11th President of the Republic of Turkey. This followed a long controversy surrounding him, due to his previous association with the Islamist movement and because his wife wears a headscarf, which disturbed the Kemalist elite in Turkey. Following Gül's candidacy bid, the AKP government was accused by the military of insulting religious sentiment in society, in what has been described as an 'e-memorandum'³⁵.

The first round of the elections was boycotted by the opposition parties, leading to a situation where Gül, as the only candidate, failed to get the required two-thirds majority. The main opposition party CHP (Republican People's Party) then applied to the Constitutional Court, which decided to invalidate the vote. A second vote was held, but the two-thirds majority was not achieved this time either, and Gül decided to withdraw his candidacy.³⁶ This triggered early elections which resulted in a landslide victory for the AKP. This strong mandate led to Gül's renomination and election by the Parliament as President in the third round of the presidential elections.³⁷

Due to the crises surrounding the presidential elections early parliamentary elections were held on 22 July 2007. Three parties crossed the 10% threshold; the AKP with 46.6%, the CHP with 20.9% and the MHP (National Action Party) with 14.3%. A number of political parties managed to circumvent the electoral threshold and thereby get representation in parliament through independent candidates. 26 independent candidates were elected, 22 of whom were from the DTP and who formed their own political group within parliament.³⁸ This was the first time since 1994 that pro-Kurdish politicians had been elected to parliament. Kurds supported AKP on the basis of its promises to deal with Kurdish issues.

Constitutional Reforms

On 21 October 2007 a referendum was held which endorsed a package of Constitutional reforms proposed by the AKP. The package included the election of the President by popular vote and the shortening of the government's term of office from five to four years.³⁹ Some changes were also proposed in the areas of language rights, the notion of Turkishness, freedom of religion and the headscarf issue.

However, the process of drafting these reforms was criticised as it neither included other political parties nor the involvement of civil society. The attempt to replace the old 1982

³⁵ Yildiz, Kerim and Mark Muller, *The European Union and Turkish Accession*, (London: Pluto Press, 2008), p.120

³⁶ EU Commission Turkey Progress Report 2007, p. 7

³⁷ Yildiz, Kerim and Mark Muller, *The European Union and Turkish Accession*, (London: Pluto Press, 2008), p.120

³⁸ EU Commission Turkey Progress report 2007, p. 6

³⁹ EU Commission Turkey Progress report 2007, p. 6

Constitution, which was prepared during military rule, by a ‘civilian constitution’, was thus considered questionable. Moreover, it failed to address the Kurdish issue.⁴⁰

Concerns mounted as the perception grew that the constitutional reform project had been put on hold indefinitely. Instead of pursuing broad constitutional reforms the AKP government instead controversially chose to focus its efforts on just those constitutional reforms needed to remove the ban on women wearing the Islamic headscarf in universities⁴¹.

The focus on this divisive issue worried outside observers who feared that pursuing this one reform exclusively might alienate many in Turkey who would have been more willing to accept it as part of a package of human rights reforms. It was also feared that it might raise tensions within the country and contribute to a climate within which more important human rights reforms would not get the attention they needed.

The AKP government gained parliamentary assent for the constitutional amendment needed to relax the headscarf ban in February 2008, but almost immediately faced a judicial challenge. This culminated in the Constitutional Court decision of June 2008, in which it ruled against the advice of the rapporteur it had appointed⁴², that the constitutional amendment was itself unconstitutional⁴³ and therefore headscarves could not be worn in universities. It can be argued that the AKP government had focussed too narrowly, putting all of their energies into this one issue, to the cost of the pursuit of more wide ranging constitutional reforms still needed to bring Turkey up to EU human rights standards.

AK Party Closure Case

In March 2008 the Chief Prosecutor of the Supreme Court of Appeals launched a closure case against the governing AK party. The charges claimed that the party had become the focus of ‘anti-secular activities’, and hence was in violation of the constitution. These charges were closely related to the attempts of the party to relax the ban on the headscarf in universities.

In July the party was found by the judges of the Constitutional Court to be a ‘focus of anti-secular activities’. The majority of justices favoured closure, however, not quite enough to achieve the qualified majority needed to close the party. Instead, the party’s state-funding was cut in half.

The implications of the closure case for the process of EU accession are hard to judge. It remains a worry that the legal system in Turkey facilitates such anti-democratic cases, and that Turkey could have come so close to banning a party with such a strong public

⁴⁰ Yildiz, Kerim and Mark Muller, *The European Union and Turkish Accession*, (London: Pluto Press, 2008), p.124

⁴¹ Turkey: *Constitutional Court Ruling Upholds Headscarf Ban* – International Human Rights Eurasia Federation (<http://www.uhaf.org>)

⁴² *Rapporteur favours rejecting Turk headscarf case* – Reuters (www.reuters.com)

⁴³ *Court annuls Turkish headscarf bill in blow to government* – Reuters (www.reuters.com)

mandate. However, the EU will be relieved that the Constitutional Court eventually acted with restraint, and that the checks that the AKP government introduced in 2003, which mandate that a supermajority amongst Constitutional Court judges is needed in order to close a political party⁴⁴, were successful in preventing closure.

Democratic Society Party Closure Case

In November 2007 Public Prosecutor Abdurrahman Yalcinkya lodged a formal application to the Turkish Constitutional Court to close the pro-Kurdish Democratic Society Party (DTP) on the grounds that it had become ‘a centre of activities aimed at damaging the independence of the state and the indivisible integrity of its territory and nation’.⁴⁵ Attempts have been made to expel 8 DTP MPs from Parliament on charges of separatism after the DTP called for autonomy in the south-east in mid-November. The Public Prosecutor asserted that all of the 221 DTP members should be banned from political activity for a minimum of five years.

The closure case has been widely condemned by observers who noted that the evidence presented in the indictment against the DTP consisted of mainly non-violent speeches and statements by party officials and deputies. Even the ruling AKP government condemned the closure case against the DTP; Prime Minister Recep Tayyip Erdoğan warned that Kurds would be more likely to join the PKK if they were excluded from the political process, and said that ‘we should not choose anti-democratic means against those who have entered Parliament with the votes of hundreds of thousands of our citizens’.⁴⁶

The case has been very drawn out, with some claiming that the verdict is being purposefully delayed until after the spring 2009 local elections in order to avoid a situation in which public sympathy for the DTP, as a result of the perception that it was closed unfairly, gives pro-Kurdish candidates an electoral boost.

The result of the case still seems in doubt. Some commentators have implied that the escalation of violence in the south-east in the final months of 2008 makes closure much more likely, whereas others have pointed to the AKP verdict as indicative that the DTP can expect comparative leniency. DTP members appear to have taken the precaution of creating a new party, the Peace and Democracy Party (BDP), which could rapidly become a successor to the DTP should it be banned⁴⁷.

Military Interference

⁴⁴ Yildiz, Kerim and Mark Muller, *The European Union and Turkish Accession*, (London: Pluto Press, 2008) p. 69.

⁴⁵ The Jamestown Foundation MMIV, ‘AKP Condemns Judicial Attempts to Close Kurdish Party’, Gareth Jenkins, Monday 19th November 2007

⁴⁶ The Jamestown Foundation MMIV, ‘AKP Condemns Judicial Attempts to Close Kurdish Party’, Gareth Jenkins, Monday 19th November 2007

⁴⁷ *Pro-Kurdish DTP at crossroads ahead of local elections* – www.sundayszaman.com – 2/11/2008

The army e-memorandum which was published during the 2007 political crisis is an example of the continued tendency of the military during the post-2004 period to try and interfere in the political process through public statements that address issues that do not fall within the scope of military affairs, as understood in most western democracies.

Such comments often concerned secularism and the Kurdish issue. There were several attempts to restrict academic research and public debate, especially on security and minority issues. There was no progress in strengthening civilian control over the military and no parliamentary oversight of defence expenditure.⁴⁸ Possibly the best indication of how far the military was from adopting liberal democratic standards of behaviour is the fact that it seldom made any attempt to deny that it was interfering in politics; one example of this is General İlker Başbug's statement in 2006 that it was acceptable for him to make statements criticising rising Islamic influence in Turkey because defending 'the nation state, the unitary state and the lay state' was part of the army's role in Turkey.⁴⁹

The re-election of the AKP with a strong majority in 2007, along with the confirmation of Gül as president, was seen by many as a clear message to the military that the public would not tolerate intimidation. Therefore, there were many who hoped that there might be a weakening of the military's influence. However, the evidence seems to be that the military is maintaining its position of power.

The European Commission's 2008 Turkey Progress Report notes that 'senior members of the armed forces have expressed their opinion on domestic and foreign policy issues going beyond their remit'⁵⁰, showing that there has been no break with the military's traditional tendency to interfere in civilian affairs. Thus, for instance, in August 2008 General Isik Kosaner warned in a speech given in front of the Prime Minister and President, that there would be a military backlash if the country's secular status was eroded.⁵¹

The Commission's report also implies that such attempts by the military to influence domestic and foreign policy are successful. It notes that 'the armed forces have continued to exercise significant political influence via formal and informal mechanisms', and notes that there has been 'no progress' towards achieving civilian supervision of the military or towards achieving civilian oversight of the military budget⁵².

The military appears to have been given a wide degree of discretion in the past year in terms of its handling of the conflict with the PKK in the south-east of Turkey and Kurdistan, Iraq. This has led to allegations that the government has struck a deal with the military in which the military will not attempt to undermine the AKP government, and in return will be given a free hand to deal with security in the south-east as it sees fit.

⁴⁸ EU Commission Turkey Progress report 2007, p. 9

⁴⁹ *Turkish military commander warns against Islamization of society* - www.asianews.it

⁵⁰ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p. 9

⁵¹ *Turkish military will defend secular state, government warned* - 29/08/2008 - www.guardian.co.uk

⁵² European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p. 9

Ergenekon

2008 has seen the launch of judicial proceedings against an alleged ‘deep state’ organisation known as Ergenekon. In Turkey the ‘deep state’ refers to groups within the military, security and civil services and the judiciary, who have close links to the State and use criminal activities to pursue a political agenda. Investigations into Ergenekon began in the summer of 2006 following the discovery of an arms cache at the house of a former army officer⁵³. The investigation has grown to incorporate a very large number of suspects. The allegations against the group include that members organised the murder of a secularist judge in 2006 in a false flag operation designed to look like it was the work of an Islamist group in order to stoke up tensions, and that they were planning to assassinate Nobel Laureate Orhan Pamuk and PM Recep Tayyip Erdoğan.⁵⁴ In October 86 people were put on trial for alleged involvement with the group.⁵⁵

Opinions on the implications and impact of the trial are mixed. Some have seen the trial as evidence that transparency is beginning to take root in the Turkish state and that it may be a step in the right direction for reducing the influence of the army and security services and unearthing the whole of the ‘deep state’.⁵⁶ However, some secularists have alleged that the trial is a ‘witch-hunt’ launched to take revenge on those who had supported the failed closure case against the AKP.⁵⁷ The case is relevant to EU accession because it raises further questions about civilian control of the security services and military, and the extent to which Turkey enjoys the rule of law. It also brings up the subject of the human rights implications of trials of those allegedly involved in the Ergenekon affair.

Conflict in the South-East

In June 2004, six months before the historic decision of the Commission to recommend that negotiations begin on Turkish accession, the PKK officially ended the ceasefire that it had been engaged in since 1999. It claimed that ongoing military operations against its operatives were the reason for its policy change⁵⁸. Following the end of the ceasefire there was an increase in the level of the armed conflict in Turkey. However, the PKK’s behaviour during this period has been described as mainly ‘defensive’ in character, in contrast to their offensive tactics pre-1999. Unfortunately, the opportunity was missed by all parties involved for peaceful dialogue at this juncture.

Despite the PKK returning to ceasefire sporadically during 2005⁵⁹ and 2006⁶⁰, the conflict did not die away. Indeed, there was an increase in the intensity of the conflict

⁵³ ‘Deep state’ trial polarises Turkey – www.bbcnews.com

⁵⁴ ‘Deep state’ trial polarises Turkey – www.bbcnews.com

⁵⁵ ‘Turkish court starts hearing coup case’ – www.reuters.com

⁵⁶ ‘Turkish court starts hearing coup case’ – www.reuters.com

⁵⁷ ‘Q&A: Turkish court to hear high-profile coup case’ – www.reuters.com

⁵⁸ Kongra-Gel is latest reincarnation of Turkey’s Kurdish separatist PKK – AFP – 24/05/2004

⁵⁹ PKK declares ceasefire after Erdogan offers olive-branch – www.guardian.co.uk – 20/08/2008

⁶⁰ PKK Declares Cease-Fire - www.bianet.org - 02/10/2006

during 2007⁶¹; total conflict deaths (on Turkish government estimates) were at 461 (27 civilian deaths; 139 armed forces deaths; 295 rebel deaths) up from an average of 185 per annum between 2003 and 2006⁶². 2007 also saw a depressing landmark being reached as Turkey was returned to the Ploughshares list of conflict zones, with conflict deaths (on Turkish government estimates) in the ‘current phase of the conflict’ passing the one thousand deaths point (by the end of 2007 more than 1200 lives had been claimed since 2003).⁶³

The Commission’s 2008 Turkey Progress Report drew more positive conclusions than the previous year’s report, which had stated that ‘no steps ha[d] been taken to develop a comprehensive strategy to achieve economic and social development in the region’⁶⁴. The 2008 report noted with apparent approval the government’s May 2008 announcement that it would increase investment in the development project known as the South-east Anatolia Project by €10.2 billion between 2008 and 2012, in order to improve the economic situation in the predominately Kurdish south-east of Turkey⁶⁵. However, it failed to mention allegations that key components of the project, such as the Ilisu Dam, will have negative social and environmental costs, potentially destroying important Kurdish cultural sites and leaving impoverished Kurds with inadequate compensation⁶⁶.

The Commission’s report disappointingly failed to reiterate the important message it sent out in 2007 when it stated that the government of Turkey had failed ‘to create the conditions required for the Kurdish population to enjoy full rights and freedoms’⁶⁷. This failure stems from both the inadequate protections in law and fact for human rights in Turkey, which have a particularly bad impact on the Kurdish people in the south-east, who often run foul of laws restricting freedom of expression and association just by attempting to foster and live according to their culture, as well as the failure of the government of Turkey to deal with the situation of insecurity in the south-east in a constructive manner.

The extent of the instability in the Kurdish region is not apparent in the Commission’s 2008 Report, which merely states that PKK attacks ‘continued’⁶⁸. This fails to draw attention to the fact that 2007 and 2008 have represented a re-escalation of the conflict in the south-east to a level unknown since the arrest of Abdullah Öcalan in 1999.

17 October 2007 the Turkish Parliament authorised a military intervention in Kurdistan, Iraq, with the justification that clashes between the PKK and the Turkish State security forces had led to an escalation in conflict. Air strikes by the Turkish military against PKK targets in South Kurdistan began in earnest in the winter of 2007 and have continued throughout 2008. There have been complaints that the air strikes have led to civilian

⁶¹ Yildiz, Kerim and Mark Muller, *The European Union and Turkish Accession*, (London: Pluto Press, 2008) p.109-110

⁶² Armed Conflicts Report: Turkey (2003-) - www.ploughshares.ca

⁶³ Armed Conflicts Report: Turkey (2003-) - www.ploughshares.ca

⁶⁴ EU Commission Turkey Progress Report, 2007, p. 23

⁶⁵ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699 p.27

⁶⁶ *Public Statement on 2008 Progress Report* – KHRP (November 2008) – p.4

⁶⁷ EU Commission Turkey Progress Report 2007 – page 23

⁶⁸ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699 p.27

casualties⁶⁹ and the destruction of private property, and also that they have been ineffective in damaging the PKK itself.

In February 2008 the Turkish military launched a ground operation against the PKK in Northern Iraq. The offensive lasted a week, and – according to the Turkish military – led to the deaths of at least 240 PKK militants and 27 Turkish soldiers⁷⁰. However, this number has been denied by the PKK, indicated a level of psychological warfare as well. The incursion proved controversial for a number of reasons. There was concern at the possibility that the decision to launch the offensive stemmed not only from the need to fight terror, as was claimed, but from a desire by the Turkish military to undermine autonomy in Kurdistan, Iraq. Such claims are given credence by the words of the Turkish military's then Chief of Staff, General Büyükanit, who on several occasions made his hostility towards the Kurdistan Regional Government (KRG) clear.

Additionally, while the military insisted that the operation was successful and was terminated because it had achieved its objectives, concerns were voiced both by those who thought that the whole strategy of military engagement was a mistaken one and by those who worried that the operation had been ended prematurely due to pressure from the American and Iraqi governments for an early withdrawal

The military operations in Kurdistan Iraq have resulted in widespread destruction and two refugee camps have been created as a direct result of these actions. Military operations have also made it difficult to sustain dialogues with the Kurds and have hindered reforms in Kurdish regions of Turkey. Turkey has not implemented the Council of Europe's recommendations of establishing a 'discussion forum' which would objectively establish facts and ascertain the reasons for the conflict, and eventually serve as a 'reconciliation commission.' Turkey has also been unwilling to recognize PKK declared ceasefires or engage in any kind of negotiations.

The EU has also failed to consistently and clearly denounce these military operations and the lack of any significant reaction on its part can be perceived as tacit support for Turkey's invasion of South Kurdistan. Rather than voicing its opposition to such military measures, the EU has only claimed that Turkey has a right to self-defence and has failed to use its influence to discourage military operations in Kurdistan Iraq and pressure Turkey to find a political solution to what is a political problem.

A large number of civilians are continuing to be affected by this armed conflict. Turkish EU membership would bring an unresolved conflict situation with no immediate prospect of a diplomatic and democratic means of resolution into the EU.

Human Rights

The adverse effect of the 2006 anti-terror legislation on Turkey's reform process cannot be overstated. It has targeted fundamental rights and freedoms that had previously been bolstered by the amendments, and set the democratisation process back several years. The

⁶⁹ *Iraq: Turkish Bombs = Civilian Casualties* - www.cpt.org – 20/04/2008

⁷⁰ *Turkish troops pull out of Iraq* – www.bbcnews.com

amendments were in many ways fundamentally flawed and have undone a lot of the good work that the reform process had already achieved in areas such as freedom of expression and the freedom of the press. In terms of the rule of law, the imprecise drafting of the legislation and the use of ambiguous terms has meant that it has been difficult for individuals to regulate their behaviour so as to avoid criminal liability. The perhaps intentional result has been that individuals have been prosecuted unfairly under anti-terrorist laws.

The enactment of draconian pieces of legislation that target the supporters rather than the perpetrators of violence, failed to achieve a resolution to the issues in the Kurdish regions. Extending the list of terrorist offences only served to criminalise innocent people, and increased the antipathy felt in the region towards the current Turkish administration. This resentment has proved to be a fertile breeding ground for extremists and made a democratic solution to the Kurdish question more remote.

The EU and Human Rights

The AK (Development) Party Government staked much on achieving EU accession. It maintained its broadly reformist and pro-EU stance in the years following the commencement of accession negotiations, and the human rights situation in Turkey improved as a result. Nonetheless, Turkey's record on human and minority rights continued to be a problem, despite the periodic passage of reforms aimed at meeting EU human rights standards in the years after 2004.

One problem was that the reform process has often merely been in the form of new statutes that haven't had enough tangible impact on the ground. As a result, human rights violations have continued to occur. The EU's response to Turkey's failings has, unfortunately, not always been as objective as it might be.

The Commission's 2005 Progress Report⁷¹, the first to be published during the new phase of negotiations, focused too strongly on formal legislative and administrative reforms and put forward little de facto analysis of the situation on the ground. From reading the report one might have got the impression that it was enough that Turkey pushed reforms through the legislature. In reality legal reforms often have little impact unless the government provides the commitment, financial resources, expertise and bureaucratic structures necessary to turn legal into practical change. The full scope of the nature and extent of the conflict in Kurdish regions is also not apparent.

The 2005 Progress Report did refer to a large number of grave human rights problems in the realms of freedom of expression, minority rights, torture and ill treatment, and the freedom of association and peaceful assembly. In the light of this, its tone, which was determinedly positive about the reform process, seemed somewhat contradictory. Its wordings and emphasis failed to reflect the depth and severity of the continued human rights violations in Turkey, at times skimming over significant shortcomings in the

⁷¹European Commission 2005 Progress Report, 9 November 2005, SEC (2005) 1426

reform process and presenting ongoing violations as mere qualifications to generally encouraging progress.

The progress in the east and south-east of the country was described as ‘slow and uneven’ and mentioned only in passing that ‘[i]n some cases, the situation has even deteriorated’. However, the report failed to comprehensively recognise that the east and south-east of Turkey is overwhelmingly inhabited by Kurds; it therefore failed to recognise the myriad injustices and the discrimination faced by Turkey’s Kurdish population as an unrecognised minority group.

In a number of sections, a positive ‘spin’ was put on Turkey’s failings even where serious and ongoing abuses of key human rights were detailed at length, sometimes by emphasising Turkey’s efforts at compliance rather than the results achieved. Other important factors central to any assessment of the situation in Turkey were substantially overlooked, notably the Kurdish issue.

The 2006 and, to an either greater extent, the 2007 European Commission Progress Report, did become more forthright in their criticisms of the human rights situation in Turkey. Increasingly the gap between reforms on the statute book and in practice is being acknowledged. The 2007 Report stated that there had been limited progress in legislation and practice when it came to fundamental rights, and notably acknowledges that major problems had not been remedied. It was noted that the total number of new applications to the ECtHR from 1 September 2006 to 31 August 2007 was higher than the same period in the previous year, and that there were delays in enforcing ECtHR judgements⁷². However, the progress reports arguably remained at the charitable end of the spectrum in their analysis of Turkey’s performance, and continued to underplay the importance of the Kurdish issue for the prospects for reform.

Torture and Ill-treatment

The Commission’s 2005 Progress Report recognised that reports of torture and ill treatment were still ‘frequent’. However, it then submitted that ‘incidences were diminishing’ and no longer systematic⁷³. The founding members of the EUTCC and several other human rights organisations⁷⁴ have vehemently contested this conclusion, and have continued to do so. Torture continues to be used as a systematic practice of the state rather than in isolated cases.

Turkey’s efforts to combat torture, which have included reducing pre-trial detention periods and providing detainees access to medical examinations and legal counsel, were certainly welcomed. However, torture continued to reach levels unheard of in western democracies. In June 2006 alone, 34 investigations were launched against police officers in Diyarbakır alleging torture during and after the disturbances at the end of March 2006.

⁷² EU Commission Turkey Progress Report 2007, p. 12

⁷³ EU Commission Turkey Progress Report 2007, p. 12

⁷⁴ Including the Human Rights Association (IHD) and the Human Rights Foundation of Turkey (HRFT)

Human rights groups continued to report large numbers of human rights breaches, in some parts of the Kurdish region a rise in violations was reported. In 2005, 193 of the 675 people who applied to the Human Rights Associations of Turkey (TİHV) had valid claims of torture. By contrast, in the first five months of 2006, TİHV had already dealt with 113 new confirmed torture survivors. In addition, five people have died in police custody and at least seven in prison under suspicious circumstances.⁷⁵

Human rights advocates claimed that ‘only a small percentage of detainees reported torture and ill treatment because they feared retaliation or believed that complaining was futile.’⁷⁶ Authorities were deliberately using less detectable methods and adopting more devious practices including forms of psychological torture such as sexual harassment and humiliation, mock executions and sleep deprivation⁷⁷.

Another alarming development was that whilst torture and ill-treatment in detention were thought to have decreased, cases of torture and ill treatment outside detention and were still common. The number of reports of such cases actually increased in 2005. The report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following a December 2005 visit to Turkey described an increase in instances of ill-treatment inflicted outside of law enforcement establishments, in isolated areas such as forests.⁷⁸ Often people suspected of being involved in ‘terrorist activities’ were taken into unofficial detention, no records were kept and suspects were generally kept until the authorities had obtained the desired information.

Opening accession negotiations with a country which had sanctioned internationally prohibited practices, from the highest levels of government, could not be tolerated. It was thus imperative that no systematic torture was found in Turkey before formal talks began. Encouragingly, during 2005, courts investigated numerous allegations of torture by state security forces, although perpetrators were rarely adequately punished. In 2005, there were 232 convictions out of the 531 cases that actually went to full verdict. Meanwhile a staggering 1005 were acquitted. Of the convictions, only 37 carried jail sentences, and the rest received fines or other reprimands.

One of the issues that must be addressed is the persistence of torture and ill treatment within the country.

Inadequate implementation of legislation, legislative loop-holes and a surviving mentality conducive to the practice of torture has seen the systematic torture of detainees persist. The perpetrators are usually law enforcement officials and members of the security

⁷⁵ ‘Önen Speaks Out: Why Torture is Systematic’ BIA News Centre, 28 June 2006, at http://www.bianet.org/2006/07/01_eng/news81316.htm (last accessed 12 October 2006).

⁷⁶ Turkey: Country Reports on Human Rights Practices - US Department of State – 28 February 2005.

⁷⁷ Home Office Country Information & Policy Unit, ‘Turkey Country Report, April 2005’, para 6.36

⁷⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Report, 6 September 2006

services; ‘torture, ill-treatment and killings continue to be met with persistent impunity for the security forces in Turkey’.⁷⁹

Turkey’s efforts to impress the EU have led to a shift from flagrant to more subtle forms of ill-treatment. Nonetheless the Commission noted that incidents of torture and ill-treatment were still being reported, particularly during arrest and outside detention centres. This in turn betrays the progress reflected by official figures purporting to show that torture is being reduced. Victims of such torture also continue to face severe obstacles if they attempt to bring their complaints to court. Moreover Turkey’s failure to adopt the Optional Protocol to the UN Convention against Torture has meant that Turkey has felt no obligation to allow independent monitoring bodies in its places of detention by independent national bodies.

Turkey has also failed to implement much needed independent inspections of detention facilities in spite of a recommendation to this effect by the Council of Europe’s anti-torture committee.⁸⁰ In such circumstances, and given the increase in more sophisticated, less visible torture methods in recent years, effective medical examinations of detainees become crucially important. However, the current system is inadequate, since:

1. Medical examinations are usually brief and informal
2. Detainees are often refused access to a second examination by the authorities.
3. Only 300 out of the 80,000 doctors in Turkey have the forensic skills to diagnose instances of torture.
4. Law enforcement officers continue to be present during medical examinations
5. Courts refuse to recognize independent medical evidence in torture cases; only evidence provided by the Forensic Medical Institute, which is institutionally bound to the Ministry of Justice, is usually accepted.⁸¹

Furthermore Turkey failed to promptly investigate allegations of human rights violations by members of the security forces, and such investigations failed to be independent and impartial.⁸² There also remains a lack of accessible state-sponsored services for victims of torture and ill-treatment.⁸³

By abolishing ‘incommunicado’ detention and guaranteeing detainees immediate access to a lawyer, Turkey had sent a strong signal that it would attempt to eradicate the practice of torture. Unfortunately, in 2006 Turkey enacted a new Anti-Terror law to amend the 1991 *Law on the Fight against Terrorism* (Act 3713). This new law removed the detainees’ automatic right to access a lawyer. Article 9 of the law provides that during

⁷⁹ Amnesty International Report; Turkey: The entrenched culture of impunity must end; EUR 44/013/2007; 5 July 2007

⁸⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ‘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 2004, § 40.

⁸¹ Amnesty international Report: Turkey: The entrenched culture of impunity must end, EUR 44/013/2007; 5 July 2007

⁸² EU Commission Turkey Progress Report 2007, p 60

⁸³ EU Commission Turkey Progress Report 2007, p. 13

detention the detainee's right to see a lawyer can be restricted for a period of up to 24 hours, which is when the detainee is at the greatest risk of being tortured.

The issue of ill treatment of prisoners came to prominence in 2008 following allegations that the PKK founder Abdullah Öcalan, who has been imprisoned on İmralı Island since 1999, was suffering from ill treatment. The allegations, which were made by Öcalan's lawyers in October, included claims that his room was 'messed up', that he was 'manhandled', and that guards made a 'threat on his life'⁸⁴. The allegations sparked violent protests throughout the south-east of the country, particularly in areas where Prime Minister Erdoğan was visiting as part of a tour of the region⁸⁵.

While the allegations remain controversial, with the Justice Minister claiming that he commissioned an investigation which found that the allegations were 'entirely baseless'⁸⁶, they have refocused attention on the unusual conditions in which Öcalan is being held. The Council of Europe's Committee for the Prevention of Torture (CPT) has claimed that Öcalan's mental health 'has noticeably deteriorated'⁸⁷, and the government of Turkey claims it is now considering putting other prisoners on the island to relieve Öcalan's solitude⁸⁸.

Turkey has continually failed to fully implement CPT's recommendations with regards to the conditions of detention of Mr. Öcalan, specifically with regards to his health, or to close İmralı Island prison.

The Commission's 2008 Progress Report was unable to announce any net progress in the fight against torture in Turkey since 2007. While it was stated that there had been a decline in charges related to torture whilst under detention at police stations, there appears to have been an increase in torture in other places⁸⁹. The implication is that rather than giving up on the use of torture the police have simply changed the way in which they commit torture in order to avoid prosecution. This would seem to throw cold water on the EU's claims that torture has ceased to be 'systematic' in Turkey; if police have responded to legal measures designed to eliminate torture by purposefully changing the manner in which they go about torture in order to escape detection, it seems clear that the use of torture remains firmly part of police culture. The Turkish government has made negligible progress in its fight against torture perpetrated outside detention centres and against the impunity of law enforcement officials.

Turkey signed the Optional Protocol to the UN Convention against Torture in 2005, but has yet to ratify it. Ratification would provide for the prevention of systematic torture and for independent monitoring of detention centres and be an important step in ensuring the eradication of torture within places of detention (though it would do little to prevent

⁸⁴ *Lawyers Of PKK's Imprisoned Leader Demand Investigation* – www.bianet.org – 20/10/2008

⁸⁵ *Lawyers Of PKK's Imprisoned Leader Demand Investigation* – www.bianet.org – 20/10/2008

⁸⁶ *Minister Of Justice Denies Any Torture Against The Imprisoned PKK Leader* – www.bianet.org - 17/11/2008 Turkey must end confinement of rebel chief Öcalan rights watchdog- www.institutkurde.org

⁸⁷ *Turkey must end confinement of rebel chief öcalan: rights watchdog-* www.institutkurde.org

⁸⁸ *Turkey might end öcalan's isolation* - www.presstv.ir – 22/11/2008

⁸⁹ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699 p.69

torture in transit and elsewhere), since it would establish an inspection regime of detention centres along European lines.

Freedom of Expression

Rather than seeing progress within the area of freedom of expression, the period from 2005 to 2008 has seen a large increase in the number of persons prosecuted for expressing non-violent opinions, with the number almost doubling between 2005 and 2006⁹⁰.

The 2006 Anti-Terror legislation was partially responsible for the deterioration in the position of freedom of expression in Turkey during this period. Disastrously, it made publishing the statements of terrorist organisations an offence for which one could be imprisoned. The amendments also introduced heavy fines for owners and editors of media outlets that commit offences, and allowed judges and prosecutors to suspend publications which they considered to be glorifying terrorist acts for up to 30 days. Freedom of the Press 2007 reported that ‘constitutional provisions for freedom of the press and of expression exist, but are only partially upheld in practice and have been increasingly undermined by the more restrictive measures of the new Turkish Penal Code.’ The provisions referred to were Articles 216 (incitement to hatred), 220 (propaganda made through media, about the goals of an organisation which has been established in order to commit crimes) and Articles 301 (denigration of Turkishness – amended to ‘Turkish Nation’).

However, it was Article 301 (which in the form in which it existed before being amended in April 2008 made insulting ‘Turkishness’ a crime punishable by up to three years imprisonment⁹¹), that gained international attention during this period, when Nobel laureate Orhan Pamuk and Turkish-Armenian journalist Hrant Dink were, in separate cases, charged under the act for speaking out about Turkey’s role in the Armenian genocide. Hrant Dink’s later assassination in January 2007 showed how restraints over freedom of expression can contribute to creating an atmosphere of intolerance and hatred.⁹²

Even where no conviction resulted from a prosecution, anti-freedom of speech legislation had a pernicious effect, suppressing debate by creating a climate of self-censorship, as identified by the Commission in its 2007 report⁹³. Self-censorship resulted both from judicial proceedings and the extra-judicial threats that frequently went with prosecution.

Anti-freedom of expression laws had a particularly pernicious effect on Kurdish activists who often found themselves repeatedly facing prosecution for ‘expressing non-violent

⁹⁰ EU Commission Turkey Progress Report 2007, p. 15

⁹¹ Freedom House, November 7, 2007

⁹² European Parliament Debate 24-10-2007

⁹³ Publishers on Trial: Freedom of Expression in Turkey in the Context of EU Accession; Trail Observation Report; KHRP and BHRC May 2007, p. 9

opinions'. In 2007 in Diyarbakır alone there were six times more people on trial under Article 220 than under Article 301 in the whole of the rest of Turkey.⁹⁴

Human rights defenders were another group vulnerable to restrictions on their freedom of expression during this period. They were perceived to be acting against the state, rather than as a constructive force for change⁹⁵. The Turkish administration reacted by instigating a new strategy of investigations and prosecutions against human rights defenders as a means of harassing and intimidating them.

Recent developments indicate superficial progress, but substantial changes with regards to the protection of The Right to Freedom of Expression have yet to be seen. In April 2008, after years of criticism from human rights organisations and foreign governments, Article 301 of the Turkish Penal Code was amended. However, the amendments were largely cosmetic, and could in fact further politicise the judicial process⁹⁶ and therefore worsen the human rights situation in Turkey.

Until April the article had criminalised 'public denigration of Turkishness, the Republic or the Grand National Assembly of Turkey' as well as of 'the Government of the Republic of Turkey, the judicial institutions of the State, the military or security structures'⁹⁷. The amendment to the article substituted the phrase 'Turkish nation' for the word 'Turkishness'. The practical import of this change seems unclear, however, given Article 301 convictions such as that of Ragip Zarakolu in June 2008 for publishing *The Truth Will Set Us Free*, a book that 'tells the story of the slaughter of 1.5 million Armenians by Ottoman forces during the first world war through the eyes of ...[the author's] Armenian grandmother'⁹⁸.

The amendment has reduced the maximum prison term that can be given for an Article 301 offensive from three to two years, but given the fact that no one has ever been sent to prison for violating the article this has little practical import⁹⁹.

Potentially the most important change introduced by the amendment is that it requires that in future prosecutors attain the permission of the Justice Minister in order to bring a case to trial. This amendment led experienced Turkey observers such as Joost Lagendijk to express the belief that, while the amendment would not be a legal reform 'beauty contest' winner, it would mean that 'there won't be any more cases opened on the basis of 301'¹⁰⁰.

However, this optimism has not proved well-founded. Bianet's Quarterly Freedom of Expression Monitoring Report, published in November 2008, stated that during July,

⁹⁴ Freedom of the Media in Turkey and the Murder of Hrant Dink; Trial Observation Report; KHRP/BHRC/INDEX/A19; September 2007, p. 16

⁹⁵ See: 'Human Rights Defenders in Turkey', KHRP, October 2006.

⁹⁶ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p. -15-16

⁹⁷ Turkey: Article 301 is the real insult - www.amnesty.org.uk

⁹⁸ Turkish publisher convicted over Armenian genocide claims - www.guardian.co.uk - 19/06/2008

⁹⁹ Turkey: Murder of Hrant Dink Leads to Renewed Calls for Repeal Article 301 of the Penal Code - www.greekhelsinki.gr - The Balkan Human Rights Web Pages

¹⁰⁰ EU welcomes 301 amendment but calls for more - www.todayszaman.com

August and September ‘15 journalists and 36 individuals ...[were] prosecuted under Article 301 in 18 cases’¹⁰¹. This means that, despite the amendments, there have actually been more Article 301 cases than there were in the same quarter of 2007, when there were just 22 individuals facing prosecution¹⁰².

The Justice Minister has refused permission for trials to go ahead in some cases, such as in June in the case of İbrahim Tığ, editor of the newspaper *Devrek Bölge Haber* (Devrek Regional News), who prosecutors claimed had ‘openly denigrated the government’¹⁰³. However, in other cases the Minister showed a willingness to grant permission for trials under Article 301. This includes cases where the relevant speech-act could only be taken to indirectly fulfil the criteria of the amended article, such as when the Justice Minister gave permission for the trial of Temel Demirer, who was being prosecuted for stating that Hrant Dink was killed not only ‘for being an Armenian, but for recognizing the genocide as well’¹⁰⁴.

Between the passage of the amendment in April and the beginning of December, 462 Article 301 cases have been referred to the Justice Ministry for approval. Of these the Minister has accepted 58 and refused around 260, leaving over 120 cases still pending¹⁰⁵.

It is easy to agree that it would be a good thing *per se* if, as seems likely, the requirement that the Justice Minister grant permission for a trial to take place leads to a reduction in trials and convictions under Article 301. However, one must also be aware that the involvement of the government could also have a negative effect on freedom of expression and human rights more generally if it leads to the politicisation of the judicial process¹⁰⁶, or if the fact that the Justice Minister has granted approval for a trial ends up prejudicing its result.

The figures referred to above should serve to focus attention on two further serious problems with any claim that the April amendment to Article 301 is sufficient to remove the need for full repeal of the law. Firstly, a large number of cases have been accepted by the Minister of Justice of a party that is supposedly reformist and has an interest in complying sufficiently with human rights standards to gain admission to the EU. These moderating factors would not apply to the same extent once Turkey has achieved EU membership or if a government is elected which is less concerned with freedom of expression, as might well be the case if one of the Kemalist or nationalist opposition parties was voted into power in a few years time.

¹⁰¹ BIA Quarterly Report Released: State's Security Hijacks The Freedom Of Expression – www.bianet.org – 2/11/2008

¹⁰² BIA Quarterly Report Released: State's Security Hijacks The Freedom Of Expression – www.bianet.org – 2/11/2008

¹⁰³ BIA Media Monitoring Report For The Third Quarter of 2008

– www.bianet.org – 1/12/2008

¹⁰⁴ Writer Defends Himself Against Minister's Accusations In A Freedom Of Expression Case – www.bianet.org – 11/12/2008

¹⁰⁵ Writer Defends Himself Against Minister's Accusations In A Freedom Of Expression Case – www.bianet.org –

11/12/2008. See also European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699: ‘Of 163 cases subsequently reviewed by the ministry, 126 were rejected and 37 approved for prosecution.’ (p.15-16)

¹⁰⁶ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699 p. 15-16

Additionally, the long periods that it typically takes for the Justice Minister to officially decide whether to allow the case to progress means that the whole judicial process, from initial charges to final verdict, is more drawn out than before. This is a very serious issue in Turkey, which already has a very bad record when it comes to overly lengthy trials. It is arguably even more serious when it comes to Article 301 cases in particular, since – given the relatively minor official punishments that tend to result from conviction – the uncertainty caused by a lengthy trial seems likely to have a powerful effect in promoting self-censorship.

Even if it were accepted that the reform represents, on balance, a positive step, it must be remembered that, while Article 301 is the highest profile of the restrictions on freedom of expression in Turkey, it is by no means the only significant one. Other restrictions on freedom of expression remain and have been used frequently during 2008 to punish those who make statements publicly that are not approved of by the establishment.

Prosecutions have occurred under laws banning ‘targeting public officials who are part of anti-terror activities’; ‘provoking people to hatred and hostility, or denigration’; ‘alienating people from military service’; ‘provoking [people] not to abide by the laws’; ‘praising crime and the criminal’; ‘doing propaganda for an illegal organisation through the media’; and ‘publishing the comments of a terrorist organisation’.¹⁰⁷

Aside from the problem of the existence of laws that should not exist and restrict freedom of expression, there is the problem of the undesirable interpretation of legislation that may provide a legitimate check on freedom of expression in some cases. An example of this would be Article 285 of the Penal Code, which prohibits ‘violating the confidentiality of an investigation’ – and seems a measure that would in some circumstances be reasonable – but which has been used to stifle journalistic freedoms, and the provisions relating to ‘misconduct in office’, which have been used to undermine pro-Kurdish officials.

Another example is provided by Leyla Zana’s case. Zana was sentenced to ten years in jail in December 2008 under Article 314/2 of the Turkish Penal Code, which criminalizes being a member of a terrorist organisation. While there are some who might argue that being a member of a terrorist organisation should not be a criminal offence so long as that individual does not actually commit any acts of violence, many would argue that such restrictions are legitimate, and on most readings of the law it would not seem like it should restrict freedom of expression. However, Zana was convicted of this offence on the basis of speeches in which she simply referred to Abdullah Öcalan as a leader of the Kurds and claimed that the PKK was not a terrorist organisation, thus clearly violating her freedom of expression.

The example of the Zana case demonstrates the fact that resolving the problem of restrictions on free expression in Turkey is not simply a matter of legislative change; it is

¹⁰⁷ *BIA Quarterly Report Released: State's Security Hijacks The Freedom Of Expression* – www.bianet.org – 02/11/2008

also a matter of changing the jurisprudence of the judiciary. However, changes in judicial attitudes do not appear to have been keeping pace with reforms.

Freedom of Association and Assembly

The right of freedom of association and assembly remained heavily restricted, even after the reforms leading up to the start of accession negotiations in 2004. Open criticism of the government or peaceful activities which touched on taboo subjects such as the military, the Kurdish question or the Armenian genocide met with reprisals. Anti-democratic legislative provisions were used to harass and prosecute dissent; administrative restrictions on the formation of associations resembled those of a police state; and assemblies and public meetings regularly met with police harassment, violence and detention.

Scenes of non-violent women demonstrators being beaten with truncheons and dispersed with tear gas in March 2005 were reportedly greeted by the EU with shock and concern at the use of 'disproportionate force'.¹⁰⁸ However, the EU's response was insufficient to prevent further human rights violations, and the EU has not assumed the level of responsibility required to pressure Turkey into ensuring that such practices no longer occur. A fact-finding mission sent to the Kurdish region in the south-east in April 2006¹⁰⁹ found that the rule of law was clearly put aside during the security forces' handling of the violence that erupted following the funerals of PKK armed combatants at the end of March 2006. Police used indiscriminate, disproportionate and lethal force, clearly condoned by their superiors, chillingly reminiscent of the security force's behaviour under the state of emergency during the 1990s. Ten civilians lost their lives, including three children. Hundreds of civilians were detained, many of whom alleged that they had been tortured during their detention.

Minority Rights

Limited progress was achieved within the sphere of minority rights between 2004 and 2007. Language rights continued to be hindered; in June 2007 the Council of State dismissed the mayor from office in the Sur municipality and dissolved the Municipal Council for providing multilingual services despite it being an area in which many people speak no Turkish.¹¹⁰

Following legalisation the first private Kurdish language schools were opened in 2004, but by 2005 they had all closed down, allegedly due to a lack of demand¹¹¹; Kurdish children continued to be prevented from learning their mother tongue in the public school system.

¹⁰⁸ BBC, 'Turkish police beatings shock EU', 7 March 2005, at <http://news.bbc.co.uk/1/hi/world/europe/4325347.stm> (last accessed 11 October 2006).

¹⁰⁹ See 'Indiscriminate Use of Force: Violence in South-east Turkey' KHRP Fact Finding Mission Report, October 2006.

¹¹⁰ EU Commission Turkey Progress Report 2007, p. 22

¹¹¹ *Opened with a flourish, Turkey's Kurdish-language schools fold* - www.csmonitor.com

A big step in the right direction was taken in terms of education when the European Court of Human Rights held that Turkey should bring its educational system and domestic legislation into conformity with the ECHR in October 2007.¹¹² This case was in relation to an Alevi child unable to study her religion in school, which infringed her right to education under Article 2 of Protocol No. 1. It was held that where Contracting States include the study of religion in the curricula pupils' parents may expect that the subject will be taught in such a way as to meet the criteria of objectivity and pluralism, and with respect for their religious convictions.

Elsewhere, there appeared to be regression. State run human rights bodies were sidelined and relieved of any real influence. In March 2005, the Chairman of the Human Rights Advisory Board of the Prime Ministry (BİHDK), felt compelled to resign from his post after he and his colleagues were severely criticised over a government-commissioned report, subsequently known as 'the Minority Report', calling for improvements in Turkey's record on minority rights. The Chairman bitterly criticised the government's 'insincere attitude' towards human rights and its lack of consultation with BİHDK.¹¹³

In February 2006, two members of BİHDK, Professor Baskın Oran and Professor Ibrahim Kaboğlu, were charged under Articles 301 and 216 of the revised Penal Code on the basis that the report argued that 'Turk' is an identity of only one ethnic group and that Turkey also includes other ethnic groups such as 'Kurds' and 'Arabs'. These comments were considered to be sufficient 'denigration' of the Turkish state to warrant criminal proceedings.¹¹⁴

This case typified the mistrust which has been shown to the work of human rights defenders by the criminal justice system, which the state's programme of human rights training seems to have done little to shift. The irony is that the Human Rights Advisory Board was set up, by the state itself, for viewpoints such as this to be aired and debated. The defendants were first acquitted by the General Criminal Court in Ankara in February 2006. However, years of legal wrangling meant that the acquittal was not finally confirmed until April 2008, and even since then the authors of the report remain in danger following death threats. BİHDK itself has ceased to operate.

2008 has seen the implementation of some progressive measures upholding the rights of minorities. One substantial step forward would appear to have been achieved in the area of broadcasting. Following an amendment to the broadcasting law in June 2008¹¹⁵ the government began discussing the creation of a state-controlled TV channel broadcasting entirely in Kurdish. The state-run Turkish Radio and Television's (TRT) new Kurdish-language channel, TRT-6, went on the air on January 1, 2009.¹¹⁶ This must be considered a major step forward, given the emphasis that has been attached to the restrictions on

¹¹² Hasan and Eylem Zengin v Turkey (App No. 1448/04)

¹¹³ Yavuz Önen, 'Turkey PM rights adviser resigns', BBC, 25 March 2005, at <http://news.bbc.co.uk/2/hi/europe/4383075.stm> (last accessed 5 October 2005).

¹¹⁴ See: 'Suppressing Academic Debate: The Turkish Penal Code, a Trial Observation Report' KHRP, June 2006.

¹¹⁵ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p.25

¹¹⁶ http://www.rferl.org/Content/Turkeys_Kurdish_TV_Hopes_To_Win_Hearts_And_Minds/1365884.html

broadcasting by pro-Kurdish groups. However, some restrictions and doubts remain, and the legal basis allowing the station to broadcast had been questioned by some¹¹⁷. For instance, the laws that are currently in place mean that it would appear that the station will legally not be allowed to broadcast educational or children's programming¹¹⁸. It also appears that the station will not be using Turkish subtitles despite the fact that this is required of private stations broadcasting in Kurdish.

Another concern is that the station may simply be being used as a tool to broadcast government propaganda. This stems from controversy over the selection of some of its senior employees, as well as from its mandate, which stipulates that it tell 'the just cause of the fight against terrorism'¹¹⁹. Such concerns are heightened by the fact that privately operated Kurdish language broadcasting is currently very limited: while private stations are already broadcasting in Kurdish (for a total of less than 5 hours a week, in accordance with the old regulations), they have often been faced with complex regulations that have limited their ability to operate a Kurdish language service, while the transmissions of stations labelled 'pro-PKK', like Roj-TV, have been blocked by the Turkish government¹²⁰. The June 2008 reform has not changed the status of private broadcasting in the Kurdish language¹²¹. Thus, it seems possible that a Turkish government run station with a political agenda will have near monopoly control over Kurdish language broadcasting. Many are of the opinion that the channel is intended to engender good-will in the run up to local elections in March 2009.¹²² According to public opinion, in particular in the Kurdish region, most Kurds are suspicious that the AKP government has initiated the TRT Channel 6 just before the local elections in March 2009.

In the area of mother tongue schooling, no progress appears to have been made. Despite being legal, apparently no private Kurdish language schools are currently in existence. Public Kurdish language schooling remains illegal¹²³. However, there have been suggestions that a Kurdish Institute may be opened at one of the Turkish universities for the first time¹²⁴. There has also been no progress in terms of providing access to public services in languages other than Turkish¹²⁵.

Women's Rights

Combating violence against women was another key area in which government efforts to bring reform dwindled after 2004. Domestic violence, estimated by women's groups to affect up to a half of all Turkish women, remains rooted in traditional patriarchal conceptions of femininity and the proper role of women.

¹¹⁷ *Broadcasting in Kurdish Allowed To The State, But Banned To The Kurds* – www.bianet.org – 26/12/2008

¹¹⁸ *Turkish State TV To Broadcast In Kurdish* – www.bianet.org – 18/11/2008

¹¹⁹ *Turkish State TV To Broadcast In Kurdish* – www.bianet.org – 18/11/2008

¹²⁰ *Turkish Government blocks viewers from watching ROJ TV* - www.thecaravan.org

¹²¹ *Kurds welcome Kurdish broadcast bill* – www.todayszaman.com – 13/06/2008

¹²² http://www.economist.com/displaystory.cfm?story_id=12856373

¹²³ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699 p.26

¹²⁴ *Turkey and Europe: The Decisive Year Ahead (Europe Report N°197)* – International Crisis Group (ICG) – December 2008 - p.19

¹²⁵ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699 p.26

Professor Yakın Ertürk, the Special Rapporteur of the United Nations Commission on Human Rights on violence against women visited Turkey in May 2006 to investigate suicides of women. Senior justice and law enforcement officials in provinces informed the Special Rapporteur about cases in which ‘there were reasonable grounds to believe that the suicide was instigated or that a so-called honour killing was disguised as a suicide or an accident.’¹²⁶

While the legal system provided for equality, the Special Rapporteur found that in practice ‘authorities too often lack[ed] the willingness to implement these laws and protect women from violence.’¹²⁷ Importantly, Turkey had failed to respond to the well-evidenced calls from women’s groups for the establishment of more shelters for women fleeing abuse. In 2006, there were only 8 shelters to cater for Turkey’s population of 70 million.

For citizens in the Kurdish regions, the situation appeared even bleaker. Violence against women has been a pronounced problem in the Kurdish regions, and it was reported that in the first half of 2005, following the 17 December 2004 decision to open accession negotiations, there was a marked increase in human rights violations in Diyarbakır and the surrounding provinces.¹²⁸

Honour killings where the woman was seen to have transgressed her customary, socially defined role continue to occur with a culture of impunity protecting the murderers. In June 2006, the Diyarbakır Bar Association’s Women’s Rights Centre stated that honour killings had claimed the lives of 50 women in the past six years in the south-east region of Turkey.

In the sphere of women’s rights the 2006 Penal Code contained some more positive developments, particularly given the deeply chauvinistic nature of the 2003 draft which criminalised adultery and did not adequately punish honour killings. Characterisations of offences committed against women based on patriarchal notions of chastity, ‘honour’ and shame have been replaced with definitions based on international human rights norms and recognition of women’s bodily integrity and sexual rights. Sexual crimes were denoted as crimes against the individual rather than crimes against society, marital rape was criminalised and rape was no longer legitimised where the perpetrator married the victim. These changes came about following a constructive and sustained campaign by women’s rights groups in Turkey to incorporate a gender perspective into criminal law, which was much to the credit of the burgeoning Turkish women’s movement.

However, the 2006 code continued to refer to ‘custom killings’ rather than honour killings. It remains unclear whether this term covers all murders committed according to ‘honour’ codes and still allows the potential for legal justification for those committed in the name of honour. In addition, ‘genital examinations’ could be carried out if necessary for public health or, at the behest of a court, if required for the investigation of a crime.

¹²⁶ UN Press Release, 31 May 2006.

¹²⁷ Ibid.

¹²⁸ Diyarbakır branch of the Human Rights Association (İHD) Report, 2005.

No requirement that the woman's consent must first be attained had been stipulated. These highly invasive and discriminatory examinations have been used as a means of controlling female sexual relations, because pre-marital virginity is customarily seen as critical to a woman's 'honour'.

The Commission's 2008 Turkey Progress Report notes that the 'legal framework guaranteeing women's rights and gender equality is broadly in place'¹²⁹. However, the implication of the report is that this is yet to have a transformative impact on the position of women within Turkish society.

The government of Turkey does appear to have been trying to address the problem of the implementation gap between the legal status of women and their actual position. Examples of such efforts include 'gender sensitivity training' for law enforcement and health workers¹³⁰. However, much more still needs to be done.

The 2008 Progress Report notes that 'domestic violence, honour killings, and early and forced marriages are still a serious problem.'¹³¹ Given this the report's passing reference to the fact that the number of shelters for women had increased only 'marginally'¹³², this appears rather worrying. More generally, (despite some progress in reducing the gender gap in primary education)¹³³ women in Turkey, particularly Kurdish women, lag far behind their male counterparts in areas such as education, access to meaningful employment, political representation and access to justice¹³⁴.

Women also tend to be more vulnerable than men to non-gender specific forms of discrimination. For instance, the poor level of women's education in many deprived areas of Turkey means that women from minority groups are less likely than their male relatives to be literate in Turkish¹³⁵. This means that the ban on the provision of public services in languages other than Turkish, such as the Kurdish dialects, particularly disenfranchises women.

Internally Displaced Persons

In the period after 2004 the Turkish government made considerable strides to address the internal displacement situation. It undertook a national survey on the number and conditions of IDPs; drafted a national IDP strategy; adopted a law on compensation for property damages; and put together a comprehensive pilot plan of action for IDPs at the provincial level¹³⁶. The improvement in the security situation in the south-east (at least until 2007) also provided better conditions for the return of IDPs to their homes.

¹²⁹ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p.21

¹³⁰ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p.20

¹³¹ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p.20

¹³² European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p.20

¹³³ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p.20

¹³⁴ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p.20

¹³⁵ *European Parliament Project: The Increase in Kurdish Women Committing Suicide – Kurdish Human Rights Project* - p.11-12

¹³⁶ *Progress on national IDP policy paves way for further reforms – IDMC: www.internal-displacement.org – 26/07/2007*

However, the implementation of the compensation law came in for criticism, due to reports that difference in implementation between provinces made the scheme inequitable¹³⁷.

In December 2006 the Hacettepe University's Institute of Population Studies reported that the number of IDPs was substantially higher than previous estimates – in fact between 950,000 and 1,200,000¹³⁸.

The 2008 EU Commission Progress Report on Turkey stated, as it had in 2007, that Turkey lacked an 'overall national strategy to address the situation of IDPs'.¹³⁹ It notes that there remain 'shortcomings' in the implementation of the Law on Compensation, particularly regarding the 'uneven and inequitable calculation of compensation between provinces' and the pace at which applications for compensation are processed.¹⁴⁰ The report also states that IDPs continue to suffer from 'economic and social marginalisation'.¹⁴¹

The Report underlines that the security situation, as well as a lack of basic infrastructure, lack of capital, and limited employment opportunities continue to prevent the return of many IDPs to their homes¹⁴². The threat posed by the village guard system is identified as an additional problem, and it is noted that no progress has been made to abolish the village guard system¹⁴³. The recent escalation of the conflict in the Kurdish region, particularly near the border with Iraq, seems likely to slow progress in the IDP situation in Turkey. The conflict has had a devastating effect on civilian lives and is unlikely to result in any concrete gains for Turkey.

The Future: Achieving Full Compliance with the Copenhagen Criteria

One key question for Europeans and reform-minded groups in Turkey is how they can help ensure that Turkey's EU accession process has the biggest possible impact in terms of improving the human rights situation in Turkey. Mistakes could be made in one of two directions.

Firstly, the EU might fail to make the best use it can of the unusual leverage it enjoys during negotiations by accepting Turkey even though it had not improved its human rights standards to the extent that it was able. This has been an implicit criticism levelled by those who claim that Turkey had not met the requisite Copenhagen Criteria standards for beginning negotiations, and by those who have claimed that the Commission's Turkey Progress Reports have at times put a gloss on the true situations in Turkey.

¹³⁷ EU Commission Turkey Progress Report 2007, p.24

¹³⁸ EU Commission Turkey Progress Report 2007, p.23

¹³⁹ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p. 28

¹⁴⁰ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699 p. 28

¹⁴¹ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699 p.28

¹⁴² European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p. 28

¹⁴³ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p. 28

Alternatively, an excessively rigorous application of human rights standards, or rhetoric from Europe that is too condemnatory or pessimistic about Turkey's efforts might have the effect of demoralising reformers, alienating mildly pro-reformist constituencies in Turkey, and lending credence to those who claim that the EU is not really serious about letting Turkey join the Union. All of this could seriously undermine the prospects for lasting, deep reform in Turkey, and might even turn the country away from Europe and its values altogether. This danger is especially acute given the fact that, as mentioned previously, increasingly influential EU member states have been voicing reservations about Turkey ever enjoying full membership.

In order to avoid falling into either of these traps it seems sensible that the EU concentrates on identifying and promoting a complete but finite set of legislative changes and judicial and administrative targets necessary for Turkey to put itself in compliance with the political and human rights components of the accession criteria, as identified by the Helsinki Criteria. It must be made clear that meeting these targets is both necessary for Turkey if it is to become an EU member, but also that it is as much as is strictly necessary within the field of human rights and institutional change. In other words, once these targets are met Turkey should understand that it must merely comply with the economic requirements of accession in order to become a member.

Obviously, it is not within the scope of this report to identify such a complete set of targets. However, it does seem productive to highlight some of the key changes that need to be made in order for Turkey to progress speedily towards full compliance with the Helsinki Criteria.

1. It is vital that civilian control of the Turkish military be deepened and cemented. It is unthinkable to have a member state of the EU in which the military exercises the level of influence on politics that it does in Turkey. The military can currently operate with a wide degree of discretion because the *Turkish Armed Forces Internal Service Law* and the *Law on the National Security Council*, which determine the operational parameters of the military, define national security extremely loosely¹⁴⁴.

In order to achieve compliance with the Copenhagen Criteria it seems clear that these loose descriptions of the military's responsibilities must be replaced with a restricted and unambiguous statement of its position, which confirms its subordinate position to the democratic civilian government and Turkish constitution. Additionally it is vital that civilian auditing of the military budget, which is currently unable to ensure full accountability due to caveats such as that excluding extremely important 'extra-budgetary funds', is freed from restrictions.

2. 2008 has shown how important it is to alter the constitutional and legislative provisions that criminalise the activities of political parties. Constitutional reform is necessary in order to ensure that closure cases of the kind that were launched against the AKP and DTP, should not be allowed to disrupt Turkish democracy

¹⁴⁴ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p. 9

again. Fundamentally, this means that parties should not be banned unless they can be proven to have actively engaged in violent criminal activities or to have explicitly incited people to violence.

Additionally, restrictions under the Law on Political Parties, such as law number 2820 making it illegal for a party to attempt to protect or develop ‘non-Turkish cultures and languages’,¹⁴⁵ should be removed in order to allow full democratic representation for all people within Turkey.

Such changes should go hand-in-hand with a lowering of the electoral threshold, which – at 10% - currently seriously disenfranchises minority groups. While the European Court of Human Rights (ECtHR) has ruled, in January 2007, that the 10% threshold did not violate Article 3 of Protocol No. 1 to the European Convention on Human Rights (right to free elections), it did note that it would be desirable if the threshold could be lowered to ensure better representation.¹⁴⁶ In fact, such a change seems necessary in order to give minorities in Turkey the kind of voice in Turkish politics necessary in order to ensure full respect for their rights as required by the Copenhagen Criteria.

3. Point 8 of the Final Resolutions adopted by the *4th Annual Conference on the EU, Turkey and the Kurds* urges Turkey to completely overhaul its justice system, something that has not been done in the past year. This remains a very high priority given the frequency with which human rights abuses in Turkey occur through, or are legitimised by, the judicial branch.

Until it is ensured that the judicial branch in Turkey is independent and unbiased there is a considerable danger that legislative reforms will be eroded through misinterpretation in the courts and that compliance with reforms will not be achieved. In order to ensure a well-functioning and fair judicial system it is vital that the system by which judges and prosecutors are appointed and trained is reformed. In particular this will mean the reform of the *Supreme Council of Judges and Public Prosecutors*, which is currently influenced to an undesirable degree by the government, the military and the state bureaucracy.

4. Point 15 of the Final Resolutions adopted by the *4th Annual Conference on the EU, Turkey and the Kurds*, states that it is imperative that the Turkish government ‘remove restrictions on freedom of expression...entirely’ from the legal framework of Turkey.

It is vital that restrictions on the peaceful exercise of freedom of expression are removed; freedom of expression is not only extremely valuable in its own right, it also underpins and helps guarantee many of the other rights that are integral to the European conception of a free and democratic state. The past year has led to no

¹⁴⁵ Yildiz, Kerim and Mark Muller, *The European Union and Turkish Accession*, (London: Pluto Press, 2008), p. 68

¹⁴⁶ KHRP Press Release: ECtHR Grand Chamber in Hearing Today on Turkey’s Election Threshold, 21 November 2007

significant improvements in this area, and considerable legislative reform will be required before Turkey meets European standards on freedom of expression.

Articles 125 (defamation), 215 (praising a criminal act or a person for committing a criminal act), 217 (inciting the population to disobey the law), 220 [paragraph 8] (making propaganda for an illegal organisation), 301 (denigration of the Turkish nation and state institutions) and 318 [paragraphs 1 and 2] (alienating people from military service) must be removed from the penal code. Article 6 [paragraph 2] of the Anti-Terror Law (publishing statements of a terrorist organisation), also needs to be repealed.

Articles 216 (inciting hatred based on social class, race, religion, sect or regional differences in a manner which might constitute a clear and imminent danger to public order), 285 (violating the confidentiality of an investigation), 288 (attempting to influence a fair trial) and 314 [paragraph 2] (membership of a terrorist organisation) of the Penal Code have parallels in liberal democracies around the world and may arguably serve a legitimate purpose, but have frequently been used illegitimately to restrict free expression and should be altered or repealed to safeguard against further abuse.

5. Torture remains a serious problem in Turkey, and is clearly something that will need to be eradicated before Turkey can hope to join the EU. Turkey must end the use of torture as a tool of the state and should act with deliberate haste in order to make the necessary legislative and administrative changes. In particular it should adopt the *Optional Protocol to the [UN] Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, and establish a systematic inspection regime for detention centres and police stations in order to root out the practice. Additionally, Turkey needs to invest more in providing medical practitioners with forensic skills and in providing the bureaucratic network necessary to ensure that cases of torture are correctly diagnosed and that such diagnoses are acted upon¹⁴⁷. It should also be ensured that law enforcement officers are never present at medical examinations of prisoners without this being explicitly requested by medical staff on the grounds of their personal safety¹⁴⁸.
6. Turkey needs to ensure that speakers of non-Turkish languages are able to participate fully in society. Article 81(c) of the Law on Political Parties, making it illegal for parties to electioneer or campaign in non-Turkish languages, needs to be repealed to avoid disenfranchising non-Turkish speaking Kurds and other minority groups. Kurdish electives should be allowed to be taught in the public school system and public services should be available, at least in the south-east, in the Kurdish languages. Regulations on broadcasting in languages other than Turkish should be simplified in order to allow private stations to take advantage of the new law allowing stations to broadcast in Kurdish and other minority languages 24 hours a day.

¹⁴⁷ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p. 14

¹⁴⁸ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p. 14

7. State practices, laws and policies discriminating against minority religions or sects, such as Christians or Muslim Alevites should be ended. In particular restrictions on the training of Christian clergy, bias in the teaching of religious education in schools, and unequal terms in the funding of religious groups by the state urgently needs to end

Conclusion

While there has been progress over the last year towards transforming Turkey into the kind of country fit for EU membership. Change has not been as purposeful or as quick as many observers would have hoped for or expected at the time that accession negotiations began in 2004, and in some areas there even appears to have been some backsliding.

The EU accession process in Turkey has shown that the ‘carrot’ of EU membership can be an effective tool in terms of stimulating reform, but it has also shown that just being an EU candidate is not enough to ensure that reform will be pursued with vigour. Thus it is important that the EU maximises its impact by creating the right incentives and sending out appropriate signals.

There is thus a need for a new approach in EU-Turkey relations, one grounded in the stated principles of the EU accession process which include democracy and human rights. The EUTCC opposes those strands of thinking which exist within some national governments and political parties, which suggest that Turkey is somehow too large, too poor, too geographically distant or too Muslim to join the EU as a full member. It therefore regrets the growing number of member states that invoke these factors to oppose Turkish membership. The EU should condemn such views, particularly since the perception that the EU is not committed to accession is likely to be responded to by declining Turkish commitment to reform.

Both the EU and Turkey must be more forthright in identifying areas where there has been a failure to meet the Copenhagen Criteria, and be direct and transparent in the language used when discussing these issues. Rather than relying on the opaque and general terms that allow both sides to circumvent the problem, it is essential that the link is overtly made between Turkey’s lack of compliance with the Copenhagen Criteria and the treatment of the Kurdish population in Turkey.

With the focus squarely on military operations against the PKK in Northern Iraq and South-east Turkey over the past year, little attention has been given to the possibility of a negotiated solution to the armed conflict with the PKK. Evidence drawn from over 30 years of ongoing conflict demonstrates that a military approach will only serve to raise nationalistic tensions in Turkey.

Much more attention needs to be given by the EU to resolving the conflict. To date, the EU have neither adequately supported dialogue on the Kurdish issue and the situation of

minorities in Turkey, nor insisted on an immediate end to the conflict through diplomacy and dialogue. It has thus implicitly accepted Turkey's myopic security-centred perspective on the Kurdish issue. The EU must, as a matter of priority, denounce Turkish military operations and use its political clout to ensure that the conflict is resolved through democratic channels.

Continuation of the EU accession process without tackling the security situation in the Kurdish regions is highly contentious. It is true that armed violence is found in existing EU member states, but this happens against a background of democratic, consensual government structures, and in most cases multi-party negotiations have been established giving voice to both sides through peaceful channels. Turkey has continually refused even to concede that the armed conflict is symptomatic of the broader issue of its subjugation of the Kurds, defining the situation solely in terms of security and terrorism and refusing to become involved in bilateral negotiations with the Kurds. The EU must be firm in its stance against Turkish military action and insist upon a political approach. While reforms in Turkey are underway, many of them are superficial in nature. Turkey must cease to deny the existence of the 'Kurdish issue,' a central political challenge that needs to be addressed with a sustainable political solution. Turkey is unlikely to recognize the rights of Kurds without international pressure, and the EU should use accession negotiations as an avenue to exert pressure on Turkey to engage in substantive reforms and dialogue. The EU has thus far been limited in utilizing its unique position, and must use its leverage to encourage Turkey to achieve a lasting solution to the conflict.

International pressure to move towards reconciliation is crucial to conflict resolution in the Kurdish region (south-east) of Turkey. It is time for Turkey to think about reconciliation with regard to the Kurdish question after armed struggle has ended. Turkey persistently refuses to allow Kurds political or cultural rights; though the Kurdish issue is seen at root as a human rights problem, it is a fundamentally political issue and the right to self-determination is one of the fundamental principles of international law. Turkey must find political avenues to address the current situation of Kurds in Turkey, which, left untackled, will continue to serve as a spring well of instability for Turkey.

It is of vital importance that both the EU and Turkey stay committed to the accession process. The last year has been hesitant, and there must be renewed confidence in accession for progress to be achieved. This can only come about if all parties involved take responsibility. The EU must ensure that Turkey's accession is dealt with fairly and genuinely. Turkey, represented by the AKP government, must push forward determinedly with reform at a fundamental level, and encourage increased and free political dialogue.