

Turkey's Accession to the EU: Democracy, Human Rights and the Kurds

Kurdish Human Rights Project
KHRP
Established 1992



Bar Human
Rights
Committee
OF ENGLAND AND WALES



EU Turkey Civic Commission

by Kerim Yıldız and Mark Muller

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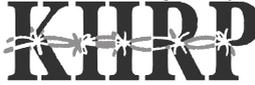
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Kurdish Human Rights Project (KHRP) is an independent, non-political, non-governmental human rights organisation founded and based in London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living within the Kurdish regions, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people.



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



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EUTCC was established in order to monitor and conduct regular audits of the European Commission's performance in ensuring Turkey's full compliance with the accession criteria as defined within the meaning of the accession agreements. It was founded by KHRP, BHRC, the Rafto Foundation and medico international.

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List of Abbreviations

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

Introduction

This publication is an extended version of the presentation given by Kerim Yıldız and Mark Muller at the second International Conference on Turkey, the Kurds and the EU convened at the European Parliament in Brussels from 19 to 20 September 2005. This event was hosted by the EU-Turkey Civic Commission (EUTCC), and its founder members; the Kurdish Human Rights Project, the Rafto Foundation, medico international and the Bar Human Rights Committee of England and Wales.

The EUTCC was established in November 2004 as the outcome of the first international conference on 'The EU, Turkey and the Kurds,' held in the European Parliament in Brussels on 22 – 23 November 2004. The aim of the EUTCC is to promote the accession of Turkey as a member of the EU, in order to guarantee respect for human and minority rights and a peaceful, democratic and long-term solution to the Kurdish situation. To this end, the EUTCC will monitor and conduct regular audits of the European Commission's performance in ensuring Turkey's full compliance with the accession criteria, as defined within the meaning of the accession agreements. It will also make recommendations of measures that could advance and protect human rights; act as a point of contact and exchange information with the institutions of the EU and other governmental and non-governmental organisations; and raise public awareness of issues affecting the EUTCC's work or mandate.

On 3rd October 2005, European and Turkish leaders welcomed the opening of official European Union accession talks, confirming that Turkey will now begin the process of becoming a full EU member. It is hoped that this process will have the eventual outcome of Turkey attaining the status of a valid and thriving democracy, with respect for human and minority rights and the rule of law.

Turkish membership of the EU will dramatically change the lives of Turks, Kurds and Europeans, and offers the most favourable opportunity for decades to reach a much-needed negotiated solution to the Kurdish question. It is vital that the institutions of the EU diligently fulfil their obligations to scrutinise Turkey's progress on meeting agreed standards in the accession process, in order that Turkish accession retains

credibility and fulfils its potential as a force for democratisation in Turkey.

Initially at least, it has looked as if the hopes that have been pinned on the accession process might be realised. The wealth of EU-inspired reforms embarked upon by the current AKP government appeared groundbreaking, and indeed many important changes ensued. We give credit to Turkey for the EU-inspired improvements in her human rights record; though maintain concerns over her record on compliance with the accession criteria.

In the months that have followed the EUTCC's second international conference in September 2005, and the opening of accession negotiations, the momentum of reform in Turkey has dissipated with human rights groups in the country now reporting high instances of human rights violations. We are concerned that the Turkish Government is becoming complacent towards its own reform process, and fear that with the opening of accession talks, Turkey now sees EU membership as a foregone conclusion. These developments have made it difficult for observers to keep faith in the validity of Turkey's commitment to advancing democratic principles.

The restrictions on **free expression** in Turkey continue to cause major concerns, with writers, journalists and publishers regularly appearing before Turkish courts during 2006 answering charges under the amended Turkish Penal Code (TCK). In the first week of June 2006 alone, courts in Istanbul heard 6 cases involving the freedom of expression. Turkish prosecutors have frequently used article 301 in particular to pursue criminal proceedings against writers for non-violent expressions of political opinion. Introduced in June 2005 to replace article 159, it makes it an offence to denigrate the Turkish identity, the Republic or the organs or institutions of the state. In line with the jurisprudence of the European Court of Human Rights on article 10 of the European Convention, paragraph 301(4) explicitly states that expressions of thought intended to criticise will not constitute a crime.

Two prominent cases which attracted international condemnation in 2006 were the prosecutions of the writer Orhan Pamuk and Professor Baskın Oran and Professor İbrahim Özden Kaboğlu, members of the Turkish Human Rights Advisory Board¹. These two eminent academics were charged under article 301 for a report commissioned by the Prime Minister's own office in which they argued that "Turk" is an identity of only one ethnic group and that Turkey also includes other ethnic groups such as "Kurd" or "Arab". This was considered to be sufficient "denigration" of the Turkish state to warrant criminal proceedings under article 301.

1 See 'Suppressing Academic Debate: The Turkish Penal Code', a KHRP Trial Observation Report, June 2006 and 'Turkey on Trial: The Prosecutions of Orhan Pamuk and Others Trial Observation Report' July 2006

The prosecutions were eventually dropped in both these cases but they highlight the arbitrariness of article 301 and the lack of legal certainty that surrounds it. The wording of article 301 is too vague, the difference between “denigration” and “criticism” being impossibly finite so as to safeguard legitimate free expression. Whether the fault lies with the drafters of the TCK or with the restrictive interpretation that the judiciary is currently giving to its provisions is difficult to ascertain. What is clear is that the lack of certainty of the terms of article 301 will lead to further criminal prosecutions of those seeking to add to political debate in Turkey. The onus is therefore on the Turkish Government to either amend the wording of article 301 or repeal the article all together.

We fear that the new anti-terrorism legislation which was passed by the Turkish parliament at the end of June 2006 will become another tool by which expressions of dissent can be stifled, with its controversial article 6 designating even the carrying of a banner, wearing an emblem or even chanting a slogan that pertains to a terrorist organisation as a terrorist offence. Turkey needs to strike a better balance between its security concerns and the need to protect fundamental rights and freedoms. This legislation will lead to further spurious prosecutions of those who peacefully protest on Kurdish issues in Turkey and contravenes Turkey's obligations under article 10 and 11 of the European Convention on Human Rights. It represents a further obstacle to Turkey's reform process and its ability to meet the Copenhagen Criteria, which will remain elusive if Turkey continues to renege on the progress it has made by enacting draconian pieces of legislation such as this.

The new anti-terror law will also directly impinge on Turkey's commitment to eradicate **torture**. Section 16 of the *State Security Courts Act* bolsters the protection of detainees from incommunicado detention by allowing detainees immediate access to a lawyer upon arrest. Provisions in the anti-terror law destroy this guarantee, by delaying a detainee's access to legal representation within 24 hours of arrest.² As most incidents of torture or ill treatment occur in the first 24 hours of detention,³ this amendment invites the practice of torture. Tighter legal measures are needed if Turkey is to stamp out this heinous activity as instances of torture in Turkey continue to be widespread in the south-east region.⁴ In June 2006 alone, 34 preparatory investigations were launched against police officers in Diyarbakir alleging torture of children and adults during and after the disturbances in the city

2 Article 9(b)

3 “Turkey: First Steps Toward Independent Monitoring of Police Stations and Gendarmeries” Human Rights Watch Briefing Paper (No.1), March 6 2006. See also KHRP's forthcoming publication “Indiscriminate Use of Force: Violence in South-east Turkey – Fact-Finding Mission Report” June 2006

4 US State Department Country Report on Human Rights Practices in Turkey, released by the Bureau of Democracy, Human Rights, and Labor March 2006, <http://www.state.gov/g/drl/rls/hrrpt/2005/61680.htm>

at the end of March 2006.⁵

Turkey also needs to show greater robustness in its prosecutions of the perpetrators of torture if it is to end the culture of impunity that prevails amongst security personnel. Encouragingly, during 2005, courts investigated numerous allegations of torture by state security forces. 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.

Crucial legal reforms have to take place if Turkey is going to make good on its commitment to **democracy** and the **rule of law**. Turkey's electoral law undermines its stated goal of attaining true democratic status as its threshold rule⁶ dictates that political parties have to attain 10% of the national vote to enter parliament. This high entry level discriminates against the Kurds as their political parties have a strong regional support but can not achieve the requisite 10% nationally. The Kurds as a minority group, therefore, do not and cannot have any political representation in parliament which can represent their interests and put forward their agenda.⁷ Pro-Kurdish parties and their members are still subject to routine harassment by police and criminal prosecution with the seeming intent of frustrating their campaigning activities. In June 2006, Ahmet Türk, the man who was regarded as the future leader of the pro-Kurdish Democratic Society Party (DTP), was arrested on the eve of the party conference for claiming that Öcalan was purposefully being kept in solitary confinement.

If Turkey is to adhere to the rule of law, the independence of the judiciary has to be respected. Article 140⁸ of the Constitution must be addressed as it ties the administrative functions of the judiciary to the Ministry of Justice creating a direct link between the judiciary and the executive. Prosecutors, too have to be able to perform their duties free from harassment and civil and penal liability. In the recent trial in May 2006 of three former military agents accused of bombing a bookshop in the **Şemdinli district of Van in Turkey, the Ministry of Justice authorized Ministry** inspectors to investigate the prosecutor in this case for possible misconduct. Following their recommendation that he be sanctioned, the Higher Council decided to dismiss him from his position as a prosecutor and a lawyer, thereby allowing political motivations to influence the conduct of a criminal trial.

5 Source: <http://www.flash-bulletin.de/>

6 Electoral Law of June 1983 (Law No. 2839)

7 There are over 100 Kurdish MPs in the Turkish Parliament. However, as Kurdish parties are prohibited, they were not elected on the basis of their Kurdish identity and so can not be relied upon to represent the Kurdish interest as they will have competing loyalty to their own political party.

8 Paragraph 6

The volatility of the **security situation in the south-east** remains a major impediment to Turkey meeting the standards of the Copenhagen Criteria. Violent clashes between the PKK and the state security forces are still frequent and there has been a notable resurgence in hostilities, with the deployment of 240,000 Turkish forces at the border with Iraq.⁹ In May 2006, the International Crisis Group named Turkey as one of the ten conflict situations in the world that had deteriorated significantly during that month.

The hard-line attitude that police and security forces continue to adopt towards unarmed civilians during pro-Kurdish protests in the south-east is only serving to harden the anti-Turkish sentiment amongst the Kurds. There have been a number of violent clashes between police and civilians in 2006, with reports of police firing on civilians, including children. A fact finding mission sent by KHRP to the south-east region in April 2006¹⁰ found that the rule of law was clearly put aside during the security forces' handling of the violence that sparked following the funerals of PKK guerrillas at the end of March 2006. Police used indiscriminate and disproportionate force, clearly condoned by their superiors, chillingly reminiscent to many of the Police and security forces behaviour under the state of emergency during the 1990s.

We commend the Turkish government for enacting the *Law on Compensation for Damage Arising from Terror and Combating Terror* (Law No. 5233) which offers Internally Displaced Persons (IDPs) in the south-east the possibility of full compensation for material losses incurred within the context of the conflict. However, the system is flawed. The compensation scheme will not offer redress to those who left their homes of their own "free will" or compensate for losses sustained before 1987. The documentation requirements for receiving compensation are burdensome, requiring the production of deeds to property which are impossible for many IDPs to lay claim to. The scheme has also been criticised for awarding sums of money that are below what is recommended by the European Court of Human Rights. The return and resettlement of Turkey's estimated three million IDPs is a project that is, perhaps, too great a financial and logistical burden for Turkey to bear alone. Urgent support and assistance is required from the international community so that these individuals receive adequate redress and reparation.

In spite of this unease, we continue to support the accession process in Turkey. We are convinced that accession, with its attendant enforceable standards on human and minority rights, remains by far the best hope for mainstreaming Kurdish

9 In April 2006, Turkish news agencies reported that the Turkish military was preparing a massive military operation against the PKK

10 See KHRP's forthcoming publication - Indiscriminate Use of Force: Violence in South-east Turkey – Fact-Finding Mission Report June 2006

concerns and bringing human rights reform and the Kurdish issue to the fore of political debate in Brussels and beyond. This anticipation is based on the belief that, during the future course of Turkey's accession bid, the EU will ensure that the prospect of EU membership remains a powerful incentive for change in Turkey by adopting a more robust approach to ensuring Turkish compliance with accession standards than has so far been exhibited.

The Turkish administration must begin to open a dialogue with democratic Kurdish representatives with a view to bringing about a peaceful end to the conflict and the EU should stress that this is a pre-requisite to EU membership. The EU Enlargement Commissioner Olli Rehn has recently been quoted as stating that EU membership talks could be suspended because of Turkey's reticence to move forward with its relations with Cyprus.¹¹ The EU must take an equally firm approach with Turkey as regards the conflict in the Kurdish region and make it clear that negotiations are dependent on its resolution.

We are cautiously optimistic about the comments made in the European Parliament's Draft Report on Turkey's progress towards Accession released in June 2006 that there is an urgent need to implement the legislation already in force and to seek a democratic solution to the Kurdish issue.¹² The recognition on the EU level that the problem in the south-east has political and economic dimensions is an encouraging sign that perhaps the EU now understands the extent and the depth of the Kurdish issue in Turkey. We would urge the EU to continue in this vein, to use its considerable influence to press Turkey to pursue its legislative reform process with more vigour and to assist to provide a democratic platform for the Kurds and the Turkish administration so that they may find a democratic solution to the Kurdish question.

11 "Rehn Says EU could Stop Talks with Turkey" 29 June 2006, Reuters

12 2006/2118 (INI) Committee on Foreign Affairs Rapporteur

Part One: Turkey's Route to Accession

The EU granted Turkey candidature in 1999,¹³ and in 2002 the Council of the EU ('the Council') agreed that accession negotiations would commence 'without delay' if, following a Commission report on Turkey's fulfilment of the Copenhagen Criteria and a subsequent recommendation by the Commission on the appropriateness of opening negotiations, EU leaders at the Council decided that Turkey met the required standards.¹⁴

On 6 October 2004 the Commission issued its recommendation as anticipated, concluding that Turkey 'sufficiently' fulfilled the criteria necessary to open accession negotiations.¹⁵ Certain conditions were imposed, including that Turkey should first be obliged to bring into force six specified pieces of legislation.¹⁶ 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 2005.¹⁷ By 1 June 2005 Turkey had enacted each of the six pieces of legislation which were set out in the Council's decision of 17 December 2004 as pre-requisites to the opening of formal accession talks.

On 29 June 2005 the Commission issued its draft 'Negotiating Framework for Turkey',¹⁸ a document which outlines the guiding principles and procedures for accession negotiations. The Framework must be accepted by all 25 current member

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

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

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

16 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, p9

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

18 European Commission, 'Negotiating Framework for Turkey (Draft)', 29 June 2005

states before Turkey can commence formal accession negotiations, currently still projected for 3 October 2005.

Turkey signed an EU protocol on 29 July 2005 which extends 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 EU member states incorporated into the Union on 1 May 2004. The 17 December 2004 Council decision had mandated that Turkey must achieve this expansion of the Customs Union prior to the opening of formal accession talks.¹⁹

The decision of the Council of the EU

The decision by the Council on 17 December 2004 to open accession talks with Turkey was formally based upon fulfilment of the criteria for EU membership as determined at the Copenhagen meeting of the Council in 1993²⁰ (the ‘Copenhagen Criteria’). These are minimum standards which all states must fulfil before they can become recognised as official EU negotiating partners. The political elements of the Copenhagen Criteria require that candidate countries must have achieved:

‘The stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.’

At the Helsinki European Council of 1999, it was stated that Turkey was a candidate for EU membership on the basis of the same criteria as other candidate states.²¹

The Commission’s regular report on Turkey’s progress towards accession,²² submitted on 6 October 2004, examined in detail Turkey’s fulfilment of the political elements of the Copenhagen Criteria. Despite citing substantial reservations on 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 opened.²³ The Conclusions of the Copenhagen European Council had set out in December 2002 that the December 2004 decision would be based upon whether or

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

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

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

22 European Commission, ‘2004 Regular Report on Turkey’s Progress Towards Accession’, COM(2004) 656 final, 6 October 2004

23 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 [emphasis added]

not 'Turkey *fulfils* the Copenhagen political criteria',²⁴ and therefore the Commission recommendation represented an apparent lessening of EU requirements on Turkish compliance with the Copenhagen Criteria.

The Commission's recommendation in turn informed the 17 December 2004 decision by the Council, which followed the Commission's line that the Copenhagen Criteria were 'sufficiently' fulfilled and that entry talks could begin.²⁵ The Council, in its December 2004 decision,²⁶ goes on to invite the Commission to continue to monitor Turkey's progress in political reforms.

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

'While taking account of all Copenhagen criteria, if Turkey is not in a position to assume in full all the obligations of membership it must be ensured that Turkey is fully anchored in the European structures through the strongest possible bond.'

The Draft Negotiating Framework for Turkey

The Draft Negotiating Framework for Turkey,²⁷ prepared by the European Commission at the behest of the Council in its 17 December decision, was drawn up in accordance with the Council decision and largely reinforces its findings on the opening of accession negotiations.

In terms of the future of accession negotiations, the Framework mandates that their advancement will be measured 'in particular' against a series of requirements which

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

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

26 Ibid.

27 European Commission, 'Negotiating Framework for Turkey (Draft)', 29 June 2005

include the political elements of the Copenhagen Criteria. The Commission will continue to monitor Turkey's progress and report on this regularly to the Council, and these reports will provide the basis of the Union's final decision as to whether the conditions for the conclusion of negotiations are met. Importantly, the Framework explicitly states that the Commission must confirm that Turkey has fulfilled the aforementioned series of requirements (to include the Copenhagen Criteria) before a positive decision on accession will be taken. The human rights 'break clause' is also restated.

Accession negotiations are set to proceed in the usual way through inter-governmental conferences between the EU and Turkey, in which Turkey's current legislation and administrative structures are comprehensively 'screened' against each chapter of the *acquis communautaire*: that is, the body of economic, social, administrative and environmental legislation that all member states of the EU must implement. It is stated in the Framework that the *acquis* includes 'the content, principles and political objectives of the Treaties on which the Union is founded'; thus Turkey will have to abide by the provision that

'The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.'²⁸

The Framework confirms that to allow for the financial aspects of accession to be fully considered, negotiations will not be concluded until after the Financial Framework for the period from 2014 has been established. This means, in short, that Turkey will almost certainly not accede to the EU before 2014.

The next stage

Beginning in December 2005, the Commission will embark again on its monitoring duties, annually reporting on the way in which political reforms are consolidated and broadened on the basis of a revised accession partnership.

Following the screening process, Turkey's position on the chapters of the *acquis* will be drawn up and negotiations will commence to determine the terms under which Turkey will adopt, implement and enforce the *acquis*, including the granting of any transitional arrangements whereby possibilities exist for phasing in compliance with certain rules. The Council, acting on Commission proposals, will draw up benchmarks for the provisional closure of each chapter. The results of the negotiations are incorporated into accession treaties to be ratified both by Turkey

²⁸ Article 6, Treaty of the European Union

and by the other member states, and it is likely that at this stage debates will occur within EU countries over the desirability of enlargement and any pertinent issues. Provided that the accession treaties are ratified by all existing member states,²⁹ Turkey would then become a full EU member herself, obliged to comply with EU legislation and rules.

Background to Turkey's EU bid

The decision to open accession talks with Turkey was ostensibly based on her fulfilment of the objective, EU-defined Copenhagen Criteria. On paper, the most significant impediment to Turkish accession prior to 2002 has been her poor human rights record and hence her inability to meet the political elements of the Copenhagen Criteria; for years, Turkey has lagged behind Europe in meeting even the most basic human rights standards. Turkey's accession bid is, though, also influenced by the complex backdrop of issues relating to European politics, international security and economic affairs against which it is progressing.

Turkey's forthcoming accession is strongly welcomed in some parts, including by Britain and the US, as potentially creating a 'bridge' between Europe and the wider Muslim world. In today's climate of alienation, such a move has the potential to endow the EU with a strategic reach into the heart of the Middle East, and to establish an example of a progressive, secular state with a majority Muslim population within the European fold. Building closer relations with moderate Islam is regarded as important in breaking down barriers and ultimately combating terrorist attacks carried out by extremists in the name of Islam. It is further hoped among the pro-Turkish elements in the leadership of the EU that the process of entry negotiation will provide clear incentives for further reform in Turkey, and that her course towards accession will have a 'civilising' influence on government behaviour.

Key EU member states such as the UK continue to champion Turkish membership, but the pendulum is now swinging decisively in other parts of Europe towards the substitution of full accession for a 'privileged partnership'. This is in part attributable to concerns that Turkey's size and underdevelopment will potentially generate strain on EU budgets. Moreover, the presence of a large, underdeveloped state with a predominantly Muslim population within the borders of Europe is generating substantial disquiet. The dictates of electoral politics within the EU and the current predominance of anti-immigrant, anti-Muslim feeling suggests that European

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

governments may move to allay public fears that Turkish membership would alter the cultural makeup and geographic reach of the EU and 'flood' it with immigrant labour.³⁰

Public opposition to Turkish accession is seen as a significant factor in the recent 'no' votes in the French and Dutch referenda on the EU constitution, and the ensuing political crisis in Brussels has done little to assist Turkey's EU bid. The EU's Enlargement Commissioner, Olli Rehn, has vehemently insisted that full accession remains the endgame of negotiations with Turkey, but the probability of France's pro-accession President Jacques Chirac being replaced by Nicholas Sarkozy and the recent successes of the Christian Democrats in Germany portend the probable demise of French and German support for Turkey joining the EU.³¹

Should the anti-Turkey camp ultimately win through and the accession programme remains unfulfilled or replaced with a lesser agreement, this could undo the current and potential positive changes in Turkey sparked by the promise of EU membership. Prime Minister Recep Tayyip Erdoğan has successfully forged a delicate balance between diverse interests in favour of the pro-EU reform process, which may be endangered if talks over full accession break down. There is the potential that a backlash would ensue with a regression to a reactionary and repressive system of government, the possible strengthening of political Islam and/or renewed military intervention in civilian government.

At the same time, the November 2004 international conference in Brussels documented concern over the agenda of those in favour of accession: specifically that the desire to integrate Turkey into Europe may be overwhelming objective analysis of whether or not she meets the required standards in areas including human and minority rights. Enlargement Commissioner Olli Rehn, who expresses determination that accession talks will open on 3 October as planned, referred to enlargement in July 2005 as the 'first and foremost security policy in our era which has been described, right or wrong, as the clash of civilisations'.³²

The role of political factors in EU decision-making is by no means controversial in itself; the EU is a political body and a range of strategic concerns necessarily shape its actions. When accession negotiations formally commence on 3 October 2005, however, the EUTCC hopes that they will proceed in accordance with EU-

30 It is worth recalling here that similar hysterical fears of 'mass influxes' of labour migrants from the ten new member states joining the EU in May 2004 proved unfounded.

31 BBC, 'French cloud Turkey's EU dreams', 31 May 2005, <http://news.bbc.co.uk/1/hi/world/europe/4595697.stm>

32 Olli Rehn, European Commissioner Responsible for Enlargement, 'EU Enlargement Under Stress – The Policy of Consolidation, Conditionality and Communication', Institute for European Policy, Berlin, 12 July 2005

prescribed standards on the development in Turkey of a genuine commitment to human rights and the achievement of an enduring solution to the Kurdish issue.

The Kurds

The Kurds in Turkey comprise over 15 million of Turkey's population of 70 million, potentially making up over 3 per cent of the inhabitants of the EU and thus representing a significant population group. Kurds have been, on the whole, supportive of Turkey entering the EU. For them, accession presents the possibility of an end to decades of repression and abuse at the hands of the Turkish state, and offers an unprecedented chance to ensure that their identity is acknowledged and respected. Importantly, the prospect of EU accession was reasonably presumed to bring into focus the Kurdish question itself and to demand EU facilitation of enhanced dialogue on its resolution.

The 'carrot' of EU accession, notwithstanding the serious human rights problems which remain, has proved capable of inspiring dramatic change in Turkey where other incentives have failed. The professed centrality of human and minority rights to the accession process affords the Kurds valuable opportunities to press for their rights and to ensure that improving the human rights situation in the Kurdish regions is at the heart of Turkey's EU membership bid.

The European Commission is tasked with playing a central role in monitoring reform under the first pillar of the three pillar approach to accession set out in the Commission Resolution of October 2004,³³ and according to the draft Negotiating Framework it will closely monitor and report to the Council on Turkey's fulfilment of her human rights commitments. Reports by the Commission, including on Turkey's compliance with the Copenhagen Criteria, will determine the conclusion of negotiations and Turkey's progression to membership.³⁴ The representation of Kurdish rights and interests to the Commission as it carries out these duties would go towards ensuring that the plight of the Kurds is closely incorporated into the human and minority rights elements of accession negotiations, and so impose obligations on Turkey to recognise and abide by her obligations to the Kurdish people.

The human rights 'break clause', mentioned earlier, could also prove an important rallying point for the Kurds. A "serious and persistent breach" of human rights

33 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

34 Ibid.

can lead the Commission, on its own initiative or on the request of one third of the member states, to recommend the suspension of negotiations.³⁵ This offers a significant point of departure for Kurds to argue forcefully that accession negotiations should be suspended if there are no substantial improvements in respect for Kurdish cultural and linguistic rights, if the resurgence of the armed conflict in the Kurdish regions continues to generate human rights violations, or if Turkey maintains her unwillingness to move towards democratically resolving the Kurdish issue and / or instituting a constitutional resettlement.

More broadly, accession heralds new possibilities to press for human rights, to mainstream Kurdish concerns and to draw attention in Brussels and elsewhere to the need for political dialogue between Turkey and the Kurds. This observation is, though, qualified by the fact that the situation of the Kurds received rather scant consideration in the run-up to the Council decision of December 17 2004, with political debate and media outlets focusing instead on immigration concerns, Turkey's economic underdevelopment and, to a lesser extent, the broader human rights picture. Where the Kurds were mentioned, this was virtually exclusively in relation to Turkey's non-recognition of cultural and linguistic rights; virtually nothing has been made of the resurgence of armed conflict and Turkey's unwillingness to countenance a political solution to the Kurdish issue.

Full EU membership will impose checks on the behaviour of the Turkish state. From inside the EU, Turkey can be brought under the sway of liberal democratic ideals, and transgressions of acceptable behaviour can be controlled through political influence and legal action.

Perhaps most importantly for the Kurds, the accession process appeared to promise EU facilitation of a politically negotiated solution to the Kurdish situation *per se*. The EU has a clear responsibility to address the Kurdish question, in view both of the continuing defiance of the political elements of the Copenhagen Criteria which Turkey's treatment of the Kurds engenders, and Europe's role in creating the Turkish-Kurdish conflict in the wake of the dissolution of the Ottoman Empire. Kurds have invested much hope in seeing the establishment of dialogue between Kurdish representatives and the Turkish state set in motion by the EU, and other regional bodies including the Council of Europe have endorsed the need to establish a mechanism to foster communication between the Kurds and the Turks.³⁶

35 Brussels European Council 16-17 December 2004, Conclusions of The Presidency; European Commission, 'Negotiating Framework for Turkey (Draft)', 29 June 2005

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

The EU-Turkey Civic Commission

The EUTCC sees the EU accession process as offering by far the greatest hope to achieve genuine respect for human rights, democracy and the rule of law in Turkey, and for the realisation of lasting peace in the south-east of the country. The potential of Turkey's EU membership bid to instigate dramatic improvements has been demonstrated by recent advancements in the reform process; Turkey has achieved far more in terms of progress towards fulfilling international standards on human rights and democratisation in the past two years than over previous decades. Accession still offers the most realistic possibilities for facilitating dialogue and reaching an end to years of subjugation for the Kurds, and these possibilities must be harnessed and built upon by those in a position to influence developments in Ankara and Brussels.

The EUTCC firmly believes that for the Kurds, Turkey is far better inside than outside the EU, and it therefore supports the Turkey-EU accession process. Despite substantial reservations over how far Turkey has moved towards fulfilling the Copenhagen Criteria (expanded upon below), the decision to open accession negotiations in October is on balance a positive one and, it is anticipated, the best course for prompting further democratisation in Turkey.

It should be added, though, that disquiet was expressed at the November 2004 international conference in Brussels and since over the course of Turkish accession. The EUTCC is concerned in particular by the seeming alteration in the level of compliance with accession standards required by the EU as a condition for the opening of negotiations with Turkey; that is, the change from the 2002 condition that Turkey must 'fulfil' the Copenhagen Criteria to the conclusion in December 2004 that she 'sufficiently' fulfils the criteria. If the EU does not compel Turkey to wholly fulfil her obligations under the Copenhagen Criteria prior to joining the EU, it is the EUTCC's contention that this will ultimately have very serious consequences for the Kurds and for others who face oppression and violence in the country. It would also threaten to significantly undermine the democratic credentials of the Union itself.

Thus, while the EUTCC gives its full backing to the commencement of formal accession talks in October, its continued support for the accession process is dependent upon the institutions of the EU robustly fulfilling their obligations to ensure that Turkey is not permitted to enter the Union before true democratisation has taken place and a lasting resolution of the Kurdish issue is secured. There should be no more compromises on Turkey's realisation of the necessary EU standards on human and minority rights in her path to reform.

It is for these reasons that the founders determined to establish a Civic Commission dedicated to reviewing the EU's scrutiny of Turkish reforms, and to calling attention to instances where EU conduct may be deficient in terms of its accession-related obligations. The November 2004 international conference in Brussels passed a resolution calling upon the organisers to set up

‘a standing Civic Commission on Turkish EU Accession *whose purpose would be* to monitor and conduct regular audits of the European Commission's performance in ensuring Turkey's full compliance with the accession criteria...’³⁷

The conference organisers, Kurdish Human Rights Project (United Kingdom), medico international (Germany), and Rafto Foundation (Norway), together with the Bar Human Rights Committee of England and Wales, became the founding organisations of the EUTCC.

The EUTCC is committed to carrying forward the pro-EU reform process and encouraging Turkey in her endeavour towards achieving a more tolerant, European system of government, as well as tendering constructive criticism on gaps and difficulties encountered. These goals are achieved through targeted monitoring and evaluation, performed with active and sustained input from the civil society sector and facilitated by the EUTCC. Engaging key figures within the accession process in Brussels, Turkish government representatives and other European politicians with the work of the EUTCC will be crucial to ensuring that its work generates a healthy and proactive dialogue and information exchange, and that the EU is held to its stated commitment to human rights and democracy.

The EUTCC's concerns in the accession process

The EUTCC accords Turkey the recognition she deserves for the tentative steps taken towards a consensus within the country in favour of liberal democracy. Prime Minister Erdoğan, confronted by influential, reactionary elites entrenched within the Turkish administration, is negotiating a difficult course towards EU standards on democracy, human rights and the rule of law. The groundwork for today's reform process was laid by years of courageous efforts by human rights defenders, Kurds and their supporters in Turkey, defying anti-democratic legislation and braving

³⁷ International Conference ‘The EU, Turkey and the Kurds’: Final Resolutions, 22-23 November, European Parliament, Brussels, Co-organised by Rafto Foundation (Norway), Kurdish Human Rights Project (United Kingdom), Bar Human Rights Committee (UK), Medico International (Germany)

harassment and torture to uphold fundamental rights.

However, the EUTCC remains concerned that Turkey is moving apace towards EU membership while serious and well-substantiated failings in the pro-EU reform process are being skirted over and the plight of the Kurds appears to have been to all intents and purposes written out of the Turkey-EU equation. The approach to human and minority rights in the accession process adopted by the organs of the EU, as exemplified in the Commission's report of October 2004,³⁸ glossed over important ongoing problems in the country and presented an undeservedly positive picture of Turkish reform efforts. The Kurdish issue, which is the most complex and deep-seated impediment to democratisation in Turkey, has received little open recognition at EU-level.

The resolutions of the November 2004 international conference³⁹ marked out the shared misgivings of the conference participants over Turkey's progress on the political elements of the Copenhagen Criteria, calling upon her to 'fully implement' the harmonisation packages and continue the process of fundamental reform. The resolutions also called for Turkey to relinquish her adherence to ethnic nationalism and to grant the Kurds the constitutional recognition and realisation of their rights to which they are entitled.

The EUTCC's qualms over Turkey's democratisation agenda have only intensified in the eleven months since the last conference. Turkey's commitment to human rights reform appears to be waning – indeed it has arguably become retrogressive – and EU requirements imposed by and subsequent to the 17 December 2004 Council Decision⁴⁰ are not always being fully complied with. For the Kurds, the vision of EU membership ushering in a new-found era of peace, security and respect for human rights in the Kurdish-dominated south-east is in danger of becoming no more than an unfulfilled promise.

The following sections of this paper set out some of the EUTCC's primary concerns arising in the context of Turkey's bid for EU membership, and its view on the most constructive ways of moving forward in the accession process.

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

39 International Conference 'The EU, Turkey and the Kurd: Final Resolutions', 22-23 November, European Parliament, Brussels, Co-organised by Rafto Foundation (Norway), Kurdish Human Rights Project (United Kingdom), Bar Human Rights Committee (UK), Medico International (Germany)

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

Part Two: Accession and Human Rights

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

The EUTCC hopes that this will ultimately prove the case in Turkey, but it has significant reservations over the present course of pro-EU human rights reform in the country.

Fulfilment of the Copenhagen Criteria?

It has been stated that the EUTCC endorses the opening of accession negotiations with Turkey on 3 October. It therefore welcomes public assertions by EU leaders and the statement within the Commission's July 2005 draft Negotiating Framework⁴¹ which defy apparent public opposition within existing EU member states to Turkish membership and reiterate EU assurances on this point. The EUTCC opposes those strands of thinking suggesting that Turkey is somehow too large, too poor, too geographically distant or too Muslim to join the EU as a full member.

Notwithstanding this, it is submitted that the conclusion that Turkey had 'sufficiently' fulfilled the Copenhagen Criteria for the commencement of membership talks on 17 December 2004 misrepresented Turkey's progress on human and minority rights at that point, which in reality no means warranted this conclusion – and nor does it now.

41 European Commission, 'Negotiating Framework for Turkey (Draft)', 29 June 2005

There can be no doubt that Turkey has outwardly moved towards closer compliance with international standards on human rights, democracy and the rule of law through her enactment of a noteworthy series of reforms over a very short period of time. There have been some, albeit faltering, improvements in human rights generally: the legal regulation of torture has been tightened and the prohibition on broadcasting and teaching in the Kurdish language has been relaxed somewhat. Permissible detention periods have been shortened and the death penalty has been abolished.

It is also true to say that the current AKP Government has staked much on achieving EU accession. It has taken steps to weaken the power of the unaccountable state by reducing, at least formally, the traditional influence of the old elites in government, though it should be added that the military continues to exert enormous influence through both formal and informal channels. The AKP has also refused to pander to the religious right on issues such as education.

There do, though, remain enormous outstanding problems with Turkey's record on human and minority rights which render the conclusion that the political elements of the Copenhagen Criteria are 'sufficiently' fulfilled difficult to sustain. The 2004 report by the European Commission on Turkey's progress towards accession,⁴² which the founders of the EUTCC critiqued in some detail at the 2004 international conference, arguably presented the reform process in Turkey in a more positive light than she deserved. The report was by no means wholly positive; it drew reference to a large number of grave human and minority rights problems. It rightly describes the perpetration of 'numerous' cases of torture and ill-treatment, the 'numerous provisions in different laws which can be interpreted to unduly restrict freedom of expression', the prosecution of non-violent opinion, the judicial harassment of human rights defenders, the serious problem of violence against women, restrictions on the exercise of cultural rights, and the critical situation of the internally displaced.⁴³

However, the report focused on formal legislative and administrative reforms and put forward little *de facto* analysis of the situation on the ground. It failed in its wording and emphasis to reflect the depth and severity of the continued human rights violations in Turkey, at times skimming over significant shortcomings in the reform process and presenting ongoing violations as mere qualifications to generally encouraging progress. In a number of sections a positive 'spin' 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 she has achieved. Other important factors central to any assessment of the

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

43 Ibid.

situation in Turkey were substantially overlooked, notably the Kurdish issue.

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

The human rights situation post-17 December 2004

Of further concern is the fact that it is now becoming increasingly difficult to conceive of Turkey's outwardly dramatic string of reforms enacted over the past three years as much more than a somewhat cynical attempt to do the minimum possible to satisfy EU criteria. The apparent weakening of human and minority rights in Turkey once the 17 December 2004 decision was issued and the immediate imperative of demonstrating compliance with the accession standards was therefore diluted has done nothing to quell apprehension over the substantial gaps in Turkish fulfilment of the political elements of the Copenhagen Criteria. Human rights groups continue to report large numbers of breaches of human rights standards, with some in the Kurdish regions even attesting to a rise in violations.

Torture and ill-treatment became a pivotal issue in the build-up to the 17 December 2004 decision of the European Council. Opening accession negotiations with a country which sanctioned the internationally prohibited practice from the highest levels of government could not be countenanced, so it was imperative that there was found to be no systematic torture in Turkey before formal talks began. The European Commission concluded, following a fact-finding mission to Turkey, that torture cases remained 'numerous' but torture was not systematic.

The founding members of the EUTCC and several other human rights organisations⁴⁴ have vehemently contested this conclusion, and continue to do so today. Turkey's efforts to combat torture, including by reducing detention periods and providing for access to medical examinations and legal counsel for detainees, are certainly to be welcomed. However, torture continues to reach levels unheard of in western democracies, perpetrators are rarely adequately punished, if at all, and Turkey has 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

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

committee.⁴⁵ Furthermore, although torture methods such as suspension by the arms and electric shocks are now relatively rare, less detectable torture methods which leave fewer visible marks continue to occur, and the number of complaints of torture outside formal detention centres has *increased*. Some members of local human rights groups report declining levels of torture overall, but others say there has been no significant change.

Freedom of expression, association and assembly are still heavily restricted. Open criticism of the government or peaceful activities which touch on taboo subjects such as the army, the Kurdish question or the Armenian genocide are met with reprisals – anti-democratic legislative provisions are used to harass and prosecute disfavoured speech, administrative restrictions on the formation of associations still resemble those of a police state and assemblies and public meetings are regularly met with police harassment, violence and detentions. 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’.⁴⁶

Combating violence against women is another key area in which the momentum of reform is dwindling. 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. It is a pronounced problem in the Kurdish regions. Perpetrators are rarely investigated or charged by the police, and women are not protected against aggressive husbands or other male relatives. Importantly, Turkey has failed to respond to the well-evidenced calls from women’s groups for the erection of more shelters for women fleeing abuse – currently there are only 8 to cater for Turkey’s population of 70 million.

For citizens in the Kurdish regions, the picture appears even bleaker. The Diyarbakır branch of the Human Rights Association (IHD) has reported that following the 17 December decision on opening accession negotiations, the first half of 2005 saw a marked increase in human rights violations in Diyarbakır and the surrounding provinces. DEHAP, a legal pro-Kurdish political party, also reports increases in prosecutions, arbitrary detention and other violations against its members, as well as against civil society organisations, following the Council decision.

Turkey’s stated enthusiasm for human rights is further brought into question by

45 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

46 BBC, ‘Turkish police beatings shock EU’, 7 March 2005, <http://news.bbc.co.uk/1/hi/world/europe/4325347.stm>

her attitude towards human rights defenders, who seem still to be perceived as something against which the state must be protected rather than a constructive force for change. The Turkish administration has responded to increased formal protections against arbitrary detention and torture by instigating a new strategy of launching deluges of investigations and prosecutions against human rights defenders as a means of harassing and intimidating them. Even the state's own human rights bodies are sidelined and relieved of any real influence – tellingly, the chairman of the Prime Minister's human rights advisory board felt himself compelled to resign from his post after he and his colleagues were severely criticised over a government-commissioned report calling for improvements in Turkey's record on minority rights. The Chairman criticised the government's 'insincere attitude' towards human rights and its lack of consultation with the board.⁴⁷

The new penal code

After a period of pronounced controversy and wrangling, Turkey's revised penal code was finally approved by parliament in June 2005. The enactment of the controversial code was made a precondition of the opening of accession negotiations in the Council's decision of 17 December 2004, in the context of the need to strengthen democratic reform – a factor which is rather troubling given aspects of the content of the code.

There are several welcome provisions in the code, including a strengthened sanctions regime for torturers, but overall it represents something of a 'mixed bag' and is by no means the great leap forward for human right that was hoped for.

Its enactment was dominated by the debate which raged in the preceding two months over provisions which placed excessive restrictions on press freedom. The draft adopted in September 2004 was vociferously criticised by human rights groups, international press associations and journalists, delaying its entry into force which was originally projected for 1 April 2004. It was argued that the code contained provisions which could restrict reporting freedoms and result in arbitrary prosecutions of journalists and others in the media. Under Article 125, for example, criticism of a political figure can be interpreted as a personal insult and land the journalist concerned with a one year prison sentence.

Turkey subsequently made some changes to these contentious elements of the code, including deleting most of the provisions which detailed stronger sanctions

47 BBC, 'Turkey PM rights adviser resigns', 25 March 2005, <http://news.bbc.co.uk/2/hi/europe/4383075.stm>

when an offence was committed by the media. However, out of the 23 changes the OSCE Representative on Freedom of the Media recommended in May,⁴⁸ only seven provisions of the code were subsequently amended in line with media freedom principles. The OSCE Representative responded that the amendments made by Turkey did ‘not sufficiently eliminate threats to freedom of expression and to a free press.’⁴⁹ Prime Minister Erdoğan’s recent initiation of defamation lawsuits against two newspaper cartoonists accused of ‘humiliating’ him does little to enhance the Turkish leadership’s image on press freedom.

Other pertinent misgivings over the new Penal Code relate to its retention of anti-democratic articles which have been used repeatedly to arrest, detain and charge individuals legitimately exercising their right to freedom of expression. It is still a crime to insult the Turkish state and its institutions – the notorious Article 159 of the old code which has no place in the criminal law of a modern, European state but which appears virtually unaltered in the revised code. The deliberate “incitement of a section of the population to hatred and hostility” on grounds of race, region or membership of a religious group also remains a part of the statute under Article 216. This provision has been repeatedly interpreted in a deeply arbitrary manner by the Turkish judicial system to punish peaceful, pro-Kurdish advocacy. Controversy further surrounded examples put forward in the Penal Code’s explanatory notes of offences which would be deemed against ‘fundamental national interests’, including advocating for the withdrawal of Turkish troops from northern Cyprus and attesting to the occurrence of the Armenian genocide.

In the sphere of women’s rights, the new code contains 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 in patriarchal notions of chastity, honour and shame are replaced with definitions based on international human rights norms and recognising women’s bodily integrity and sexual rights. Sexual crimes are denoted as crimes against the individual rather than crimes against society, marital rape is criminalised and rape is no longer legitimised where the perpetrator marries 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 is much to the credit of the burgeoning Turkish women’s movement.

There are, though, still sticking points for women in the new code. The killing

48 OSCE Representative on Freedom of the Media Miklos Haraszti, ‘Review of the Draft Turkish Penal Code: Freedom of Media Concerns’, Vienna, May 2005

49 OSCE Representative on Freedom of the Media, ‘OSCE Media Representative praises Turkey for changing penal code, but remains concerned’, 7 July 2005

of a woman in the name of 'honour' (where she is seen to have transgressed her customary, socially-defined role) previously served as a partial justification for the crime and led to a reduced sentence. This is no longer the case, but contrary to the lobbying efforts of women's groups the new code refers to "custom killings" rather than honour killings. It is not sufficiently clear that this term covers all murders committed according to 'honour' codes. In addition, although "genital examinations" can now only be carried out if necessary for public health or, at the behest of a court, if required for the investigation of a crime, there is no requirement that the woman's consent must first be attained. These examinations or 'virginity testing' have been used in Turkey, where pre-marital virginity is customarily seen as critical to a woman's 'honour', as a highly invasive and discriminatory means of controlling female sexual relations.

The EU, human rights and the future of the accession process

In underlining the continued impediments to the realisation of European standards on human rights in Turkey, it is not the EUTCC's intention to dismiss what genuine progress has been made or to cast doubt on the real benefits of the EU accession process as a harbinger of change. The EUTCC is concerned, though, that the EU's approach to human rights, as exemplified in the 2004 Commission report, has not been sufficiently robust; Turkey has enacted human rights reforms begrudgingly and haltingly, interspersed with frequent steps backwards, and her commitment to change appears fragile and at times half-hearted. The Commission report drew excessively positive inferences from Turkey's efforts to improve human rights, it made overly brief references to a number of serious human rights issues, and it failed to address comprehensively the human rights situation in the Kurdish regions. Events since 17 December 2004, whereby Turkey has relapsed even on what tentative progress she had made in some key reform areas, add considerable weight to disquiet over Turkey's commitment to achieving EU standards in human rights.

It is consequently imperative that the motivational pull of EU membership is re-harnessed by the Union, and that human rights requirements in the accession process are vigorously enforced as negotiations move forwards. Turkey must not be left to drift back into old habits.

As touched upon above, the EU has made clear that Turkey's obligations in human and minority rights reform do not end when she is accepted as a formal negotiating partner. It expects an ongoing and robust show by Turkey both in the period leading up to October 3 and thereafter that she is strengthening her reform achievements and ensuring the implementation of already enacted reforms. The Commission

report states that ‘implementation needs to be further consolidated and broadened’, and this is reiterated in the Commission recommendation.⁵⁰ The recommendation further clarifies that

‘The irreversibility of the reform process, its implementation, in particular with regard to fundamental freedoms, will need to be confirmed over a longer period of time.’

The need for irreversibility and full implementation is reinforced by the Council⁵¹ and in the draft Negotiating Framework.⁵² The Framework further sets out the EU’s expectation that Turkey will sustain the reform process, work towards further improvements and consolidate and broaden legislation and implementation measures. The Commission has recommended that

‘It is primarily by demonstrating determined implementation of continued reform that Turkey would be able to ensure a successful conclusion of the whole accession process.’

The stipulation that Turkey’s progress during accession negotiations and the ultimate decision on membership will be made with reference to her fulfilment of the Copenhagen Criteria is also specified in the Framework. Negotiations are to be suspended if there is a serious breach of human rights.

EU Enlargement Commissioner Olli Rehn has recently underlined his insistence on ‘the utmost importance’ attached to the ‘continuation of political reforms with the same pace and with the same intensity as in previous months.’⁵³

Furthermore, human rights may be set to play a more focal role in dialogue on Turkey’s adoption of the *acquis* itself. The Commission has stated that human rights developments ‘are in many ways closely linked to developments regarding [Turkey’s] ability to implement the *acquis*, in particular in the domain of justice and home affairs,’⁵⁴ and the preliminary indicative list of chapter headings for negotiations

50 European Commission, ‘2004 Regular Report on Turkey’s Progress Towards Accession’, COM (2004) 656 final, 6 October 2004; 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, § 2

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

52 European Commission, ‘Negotiating Framework for Turkey (Draft)’, 29 June 2005

53 Olli Rehn, Member of the European Commission Responsible for Enlargement, ‘Common future of the EU and Turkey: Roadmap for Reforms and Negotiations’, Meeting with business leaders (Istanbul), March 8, 2005

54 European Commission, ‘2004 Regular Report on Turkey’s Progress Towards Accession’, COM (2004) 656 final, 6 October 2004, p14

includes 'Judiciary and fundamental rights,' which was not a title in the Bulgarian or Romanian accession talks.

How far the EU insists upon Turkey satisfying these requirements will prove decisive in determining the level of success of the accession process in instigating real change in the country. The expectation of joining the EU can only inspire new approaches to human rights if progression through the forthcoming stages of the accession process is in accordance with tangible Turkish realisation of EU-mandated accession criteria. The omens have not so far been positive, but the EUTCC trusts that the EU will now abide by its obligations and commitments to ensure the advancement of human rights in Turkey as an integral component of the accession process, and that there will be no more toning down in human rights accession standards comparable to the EU decision to allow Turkey access to the negotiating table on the grounds that she 'sufficiently' fulfilled the Copenhagen Criteria.

Olli Rehn's recent confirmation that while he hopes that Bulgaria and Romania will achieve their goals in time, he is 'prepared to recommend the postponement of their membership if they do not implement essential reforms'⁵⁵ is reassuring in its indication that EU accession criteria will be enforced. Also encouraging is the affirmation in the draft Negotiating Framework that Turkey will not become an EU member before 2014. Turkey has a long road before her; bringing the country up to a par with European standards on human rights will be a long and challenging process which depends upon new values and ideals permeating Turkish mores and becoming internalised among the Turkish governing structures. A long path to accession will allow Turkey the time to counter the deep-seated mindsets in the Turkish administration which continue to oppose change, and to ensure that a genuine culture of respect for human rights and democratic principles takes root in the country.

If, however, the approach exemplified by the Commission Report of October 2004 endures and the EU allows Turkey to proceed with accession without satisfying the conditions set out by the Union, then the projected advantages of EU membership for advancing human rights will be substantially undermined. EU decision-making would wrongly imply that Turkey's behaviour in the human rights sphere is broadly compliant with international human rights standards, and belittle the severe, ongoing human rights violations taking place in the country. It would also send the message to Turkey that she need not effect a genuine transformation in the human rights situation in the country provided that she can point to a series of outward efforts at reform, and the EU could ultimately find itself embracing a member state

55 Olli Rehn, European Commissioner, Responsible for Enlargement 'EU Enlargement Under Stress – The Policy of Consolidation, Conditionality and Communication', Institute for European Policy, Berlin, 12 July 2005

which has implemented only superficial change but is still fundamentally rooted in outdated autocratic mentalities.

It should be remembered in this context that promises to enact human rights reforms and address the Kurdish question made by Turkey prior to the establishment of the 1995 Turkey-EU Customs Union proved empty, though of course, the Copenhagen Criteria are much more authoritative than the relatively insubstantial and non-binding political pre-requisites attached to the Customs Union.

On the EU side, opening membership talks with a country which continues to routinely violate fundamental rights is damaging to the EU's own human rights commitments. The EU professes itself to be founded upon 'the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law',⁵⁶ and its apparent relaxation of these principles in relation to Turkey could jeopardise its long-term credibility.

⁵⁶ Article 6, Treaty of the European Union

Part Three: Accession and the Kurds

The EU is the first institution for many years which has proven capable of exerting a 'civilising' influence over Turkey. It currently has considerable leverage over internal developments within the country, and wields the best opportunity to emerge for decades for inducing Turkey to improve her treatment of the Kurdish population. This prospect, though, can only be achieved if it becomes the mutual aim of Turkey, the Kurds and the EU, and to date the conduct of the institutions of the EU has provided the Kurds with little encouragement that their plight will be openly and robustly addressed in the course of Turkey's EU membership bid. The EUTCC maintains that promoting democratic dialogue on the Kurdish question and ensuring a secure future for the Kurds are intractable elements of the EU-directed democratisation process in Turkey, and must accordingly be made pivotal to Turkey's progression towards accession

The Kurdish question

At the November 2004 international conference in Brussels, the EU's failure to address the situation of the Kurds in any kind of substantive or coherent manner and the highly negative potential implications of this scenario for the Kurds, other citizens of Turkey and the EU itself were outlined. Turkey's movement towards EU membership was gathering pace despite the absence of any concerted efforts to achieve a Turkish-Kurdish settlement, and initial Kurdish eagerness over the probability of the accession process resulting in long-term, sustainable peace in the Kurdish regions was consequently dissipating.

Here the EUTCC reiterates these concerns, which have only deepened in the intervening period. The EU continues to appear impervious to calls for a more open and meaningful engagement with the plight of the Kurds, seemingly unwilling to use its influential position in relation to Turkey, at least publicly, to fulfil its obligation to ensure that the Kurdish question is tackled.

The October 2004 Commission report,⁵⁷ upon which the subsequent decision to open accession negotiations was based, did not ignore the Kurdish issue as such. Instead it adopted a piecemeal approach that appeared to advocate resolution through responding to the Kurdish dimension of an assortment of discrete human rights abuses which were not specifically differentiated from Turkey's overall record on compliance with the Copenhagen Criteria. The report's section on minority rights made no attempt to analyse the situation of the Kurds as a group or people within Turkey, and very little was made of the absence of the Kurds from the definition of a minority contained in the Turkish Constitution - an issue of substantial importance for the political and legal status of the Kurds. Whether this was through deference to those who oppose defining the Kurds as a minority is unclear,⁵⁸ but the part of the report referring to the situation in the south-east did little more to analyse the complex and deep-rooted problems there. The only reference to the problems faced by the Kurds as a comprehensive issue is where the report identifies, in rather guarded and opaque language, that:

'The normalisation of the situation in the south-east should be pursued through the return of displaced persons, a strategy for socio-economic development and the establishment of conditions for the full enjoyment of rights and freedoms by the Kurds.'⁵⁹

The need for a new approach

The EUTCC does not consider this to be an appropriate departure point for the commencement of accession negotiations. The foundations of the Kurdish question are rooted in the virulent nationalism which permeates the Turkish state and society and which insists upon cultural homogeneity in the country – all citizens of Turkey are defined as 'Turks' and alternative ethnicities are not tolerated. The Kurds, as by far the largest non-Turkish ethnic group in Turkey, have as a result been subject to brutal oppression and attempts to crush their identity for decades.

Turkey's treatment of the Kurds is, then, fundamentally anchored in hostility to Kurdish identity *per se*. Despite some improvements in their situation since 1999, Kurds who outwardly manifest their 'Kurdishness' have long been subject to

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

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

59 European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, 6 October 2004, p55

harassment and coercion through spurious judicial decisions, arbitrary detention and torture. Their rights to free expression and association have been violated where they have sought to assert their identity, and they have suffered the effects of protracted armed conflict and subsequent forced displacement aimed at disbanding Kurdish regional dominance in the south-east. Turkey's antipathy towards countenancing the presence of group identities distinct from the official Turkish nationalist identity has meant that she has refused to even acknowledge the existence of the Kurds or grant them any constitutional recognition. The suffering of the Kurds at the hands of the Turkish state is, then, intrinsically linked to their status as Kurds.

As such, it is difficult to conceive that the compound array of interlinked injustices taking place in the Kurdish regions can be resolved by occasional reference to individual human rights issues, as apparently propounded in the Commission report. The Commission's approach seems to be based on an implicit assumption that ingrained mentalities within the Turkish establishment which inform continued attempts to quash expressions of Kurdish identity will simply dissipate with the advancement of the pro-EU reform process. It is submitted that such an eventuality *cannot* be presumed. Such an approach fails to appreciate that human rights violations against the Kurds are not merely the mark of an occasional tendency to discriminate against a non-dominant minority, and nor are Kurds targeted in Turkey purely as a result of legislative gaps in the pro-EU reform process or inadequate controls on public authority behaviour. Turkey's treatment of the Kurds is the outward manifestation of a long-standing and deeply embedded hostility towards the Kurds as a people. The Kurds are targeted *because* they are Kurds, and human rights violations which bear no overt relation to 'Kurdish' rights as such will frequently have a Kurdish element. Torture, for example, remains most prevalent in the Kurdish-dominated south-east, but there is not even acknowledgement in the Commission report that Kurds may be particularly vulnerable to torture.

The EUTCC's concerns over the Commission's approach to the Kurdish issue and its potential for resulting in a democratic resolution are further exacerbated by the fact that Turkey has not demonstrated any real inclination to tackle deep-seated hostility to the notion of a distinct Kurdish identity, and to a significant extent the veiled forces of the highly traditionalist and reactionary deep state continue to hold sway over Turkish governance. Indeed, developments in the field of cultural and linguistic rights over recent months intimate that Turkey's string of seemingly impressive reforms enacted prior to 17 December 2004 was not indicative of a softening of Turkish antipathy towards expressions of Kurdish ethnicity; the reforms have proved little more than paper concessions presumably designed to allay EU criticism. Kurdish language schools proved expensive, unworkable and subject to bureaucratic obstructionism, compelling them all to close on 2 August, while Kurdish broadcasts are of poor quality and fail to attract meaningful audience

numbers. A court ruling in late July found that a provision in the statute of teaching union Eğitim-Sen voicing the desire of many Kurds for mother tongue education was contrary to the Turkish Constitution and therefore illegal.

It is put forward that entrenched Turkish mindsets opposing public recognition of the Kurdish culture and language will not be broken down merely by the enactment of rights-related legislative reforms; Turkey has shown she is inclined to simply backslide into old habits as soon as the immediate necessity of showing conformity with EU standards is lifted.

The trend towards a falling off in pre-17 December reforms addressing the situation of the Kurds is also discernible in other key areas. The Commission report noted on the subject of internal displacement that ‘serious efforts are needed to address the problems of internally displaced persons’ and described their situation as ‘still critical.’⁶⁰ Internal displacement was a deliberate policy of the Turkish state aimed at breaking down Kurdish cultural networks and dissipating Kurdish regional dominance in the south-east, and genuine efforts to combat displacement would intimate a sincere change in attitude by Turkey. However, since 17 December 2004 not only has there been no real progress on displacement, but what very limited positive developments could be reported at that time now appear illusory. The accuracy of Turkish government figures supplied to the EU on return numbers has been brought into question,⁶¹ and the Compensation Law enacted principally to satisfy EU watchdogs contains so many obstacles to achieving redress as to be virtually meaningless for most of the displaced. Wholly unrealistic documentation requirements, an inadequate appeals process, a prohibitively expensive fee to launch an appeal and the domination of the compensation commissions by state employees all serve to massively undermine the capacity of the law to bring about justice.

Again, displacement is a complex problem intimately tied in with the broader aspects of the Kurdish question, and EU pressure for change which fails to consider the contextual aspects of the problem and the need to combat attitudes which favour the effects of displacement is only likely to result in more sham measures by Turkey aimed at appeasing the EU.

These examples of continued Turkish reluctance to address the situation of the Kurds and recognise their rights lend considerable weight to the EUTCC’s supposition that the Commission’s sidelining of the Kurdish question from its assessment of democratisation in Turkey is unlikely to result in the lasting peace and security in the region, which was the hoped-for result of EU accession. Impediments to

60 Ibid., p50

61 Human Rights Watch, “‘Still critical’: Prospects in 2005 for Internally Displaced Kurds in Turkey”, 1 March 2005

realising Kurdish cultural and linguistic rights and to tackling displacement are unlikely to be resolved merely through the existing political reform impetus of the accession process. This conclusion is further supported by the fact that although there have been some improvements in the status of the Kurds in recent years, it is much less clear that Turkey is moving towards European conceptions of democratic pluralism and minority rights. Shortly before the decision to open accession negotiations, the Turkish Justice Minister was reported as saying that Turkey and the EU speak “different languages” on minorities and warned against engaging in a debate on minority rights that would “call into question the unity of Turkey”.⁶² The idea that the expression of alternative identities is a threat to the unitary, secular state remains enormously powerful in Turkey. Acceptance of ethnic diversity within Turkey, rather than defining Turkey as a collective nation of only ethnically Turkish citizens and dismissing alternative identities as separatist, is a prerequisite for the emergence of Turkey as a modern, stable democracy.

It should also be noted that the Commission's unwillingness to address the situation of the Kurds as a cohesive issue provides no incentive for Turkey to do so. Indeed, in denying the integral nature of the situation in the Kurdish regions and treating the matter as if it will resolve itself as reform progresses, the EU edges out the prospect of encouraging Turkey to acknowledge that there exists a Kurdish ‘issue’ to be addressed at all. Instead, it implicitly upholds the Turkish view that there is no problem in the Kurdish regions requiring resolution except a ‘terrorism’ problem which occupies only the military domain. Turkey has long used this pretext to evade dealing with the substantive, rights-related elements of the Kurdish question. Those advocating for much needed efforts to achieve enduring peace and justice in the Kurdish regions, including the Council of Europe, are effectively sidelined.

Importantly, this also means that the Kurds themselves are precluded from effectively contributing to the search for a negotiated solution, and certainly there has been a marked failure by the Commission to consult adequately with Kurdish groups and representatives and to take into account Kurdish views. The acceptance of Turkey as the only real party to EU negotiations exacerbates the risk that the accession process will fail to address the Kurdish issue in a locally coherent way or respond to Kurdish concerns on the ground.

In short, then, resolving the substantial problems endured by the Kurds – surely a fundamental pre-requisite to negotiating EU accession – demands much more than the EU has yet appeared prepared to invest. Crucially, the Kurdish question is in essence a political one, and demands a political answer. It will not be resolved if it is ignored or subsumed by human rights concerns, which form only one component

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

of the problem. It must be addressed fully, openly, and at its ideological roots, and it is of profound importance that the EU acknowledges and responds to the need for constructive and sustained dialogue to achieve this end.

Conflict in the Kurdish regions

The EU has also apparently disengaged itself from the resurgence of the armed conflict in the Kurdish regions. Since the end of the PKK⁶³ ceasefire in June 2004, the security threat in the area has substantially stepped up and 159 people were reportedly killed in armed hostilities from January to October 2004.⁶⁴ AFP reported over 50 clashes between PKK fighters and Turkish security forces between 1 June 2004 and 13 August 2004 alone.⁶⁵ More and more, parts of the south-east are reverting towards the scenes of conflict witnessed prior to 1999 as violence spirals and the death toll continues to rise.

In 1998, prior to the unilateral PKK ceasefire beginning in 1999, the European Commission issued the important assertion widely welcomed among the Kurds that

‘Turkey will have to find a political and non-military solution to the problem of the south-east. The largely military response seen so far is costly in human and financial terms and is hampering the region’s social and economic development.’⁶⁶

The escalating conflict now spreading again through the Kurdish regions, though, has merited no such acknowledgement. In its 2004 report the Commission barely refers to the need to end the current hostilities, mentioning only that ‘[t]errorist activities and clashes between HPG⁶⁷ militants and the Turkish military have been reported’ and that the ‘security threat’ has increased since the ending of the ceasefire in June 2004.⁶⁸ The report nevertheless assesses there generally to have been gradual

63 The Kurdistan Workers’ Party (PKK) changed its name in April 2002 to the Congress for Freedom and Democracy in Kurdistan (KADEK), and again in November 2003 to the Kurdistan People’s Congress (Kongra-Gel), the name by which it is now known.

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

65 AFP, ‘Police Officer Killed in Clash With Kurdish extremists: Report’, 13 August 2004

66 European Commission, ‘1998 Regular Report on Turkey’s Progress Towards Accession’, p20

67 Hêzên Parastina Gel (People’s Defence Force)

68 European Commission, ‘2004 Regular Report on Turkey’s Progress Towards Accession’, COM (2004) 656 final, 6 October 2004, p50

improvements in security in the region since 1999.⁶⁹

Other regional institutions have openly recognised the renewal of the conflict; the Parliamentary Assembly of the Council of Europe noted in 2004 that ‘the conflict and how it has been waged by Turkey has undoubtedly delayed its entry into the European Union’,⁷⁰ while the EU Parliamentary Committee on Foreign Affairs in 2004 urged

‘all parties involved to put an immediate end to the hostilities in the south-east of the country’ *and invited* “the Turkish Government to take more active steps to bring about reconciliation with those Kurdish forces who have chosen to abandon the use of arms.”⁷¹

Resolving the armed conflict in the Kurdish regions is of critical importance and merits much closer attention than has so far been visibly accorded to it by the Commission. From 1984, the region saw over fifteen years of conflict in which more than 30,000 people, mainly Kurds, died.

In addition to the evident human cost of the return to armed conflict, it is difficult to conceive that Turkey can fully satisfy the Copenhagen Criteria demanding respect for human and minority rights while fighting is ongoing. Her disproportionate reaction to the 1984 – 1999 armed conflict resulted in mass forced displacement from the Kurdish villages, a relaxation of judicial supervision of state behaviour under the government declared State of Emergency which opened the door to chronic abuses, and the comprehensive silencing of the pro-Kurdish press, publishers, associations and cultural initiatives. There are real fears that the renewal of the conflict will, if not addressed, see a regression into old habits. Already, the military presence in the area is being stepped up again, and state security operations in July 2004 in which hundreds of residents of the village of Ilıcak in Şırnak province were forcibly removed from their homes for six weeks during a state security operation⁷² was chillingly reminiscent of mass forced displacement in the 1980s and 1990s. Turkey’s tentative, EU-inspired steps towards granting the Kurds hard-won cultural and civil rights would be significantly threatened by a return to fully-fledged state counter-terror activity.

69 Ibid., p50

70 Council of Europe (COE), Parliamentary Assembly, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, ‘Turkey: Explanatory memorandum by the co-rapporteurs, Mrs. Mady Delvaux-Stehres and Mr. Luc Van den Brande (Co-rapporteurs)’, March 2004, p38

71 European Parliament Committee on Foreign Affairs, ‘Report on the 2004 regular report and the recommendation of the European Commission on Turkey’s progress towards accession’, (COM(2004)0656 - C6-0148/2004 2004/2182(INI)), 3 December 2004, para. 27

72 Human Rights Watch, ‘Last Chance for Turkey’s Displaced?’, October 4 2004

Addressing the return to armed conflict in the Kurdish regions is also inextricably linked with resolving the Kurdish question itself. Violence between Kurdish militants and the Turkish state fuels Turkish conceptions of the situation in the Kurdish regions as a terrorist problem which requires a purely military response. It is Turkey's inability or refusal to distinguish the political and rights-related elements of the Kurdish issue from the conflict which lay behind the Commission's 1998 objection to Turkey's 'largely military response' to the problem in the Kurdish regions.⁷³ The parameters of the conflict have been determined almost exclusively by reference to security considerations, and pro-Kurdish politicians with wholly peaceful agendas are not recognised by the state as legitimate negotiating partners – they are instead dismissed as terrorists or separatists. This approach by Turkey provides her with an ostensible justification to refuse to engage in dialogue with Kurdish representatives, and leads her to characterise peaceful, pro-Kurdish politicians and those legitimately calling for improved cultural and linguistic rights for the Kurds as 'terrorists'. The revision of Turkey's security-centred perspective on the Kurdish issue is vital to achieving normalisation and long-term stability in the region.

In addition, countenancing furthering the EU accession process without tackling the security situation in the Kurdish regions is highly contentious. Stability and security, predicated on an absence of violence or armed conflict, is a touchstone of democracy. It is simply not feasible that effective, participatory democracy and a culture of respect for human rights can exist in the Kurdish-dominated areas of Turkey while armed conflict continues. Democracy necessarily entails a commitment to the civil, non-violent resolution of disputes. It is true that armed violence is found in existing EU member states, but only where democratic, consensual government structures are in place, and multi-party negotiations have been established giving voices to both sides to the dispute through peaceful channels. As stated, Turkey refuses even to concede that the armed conflict is symptomatic of the broader issue of her subjugation of the Kurds, defining the situation solely in terms of security and/or terrorism and refusing to become involved in bilateral negotiations with the Kurds.

The EUTCC further argues that the appropriateness of the EU incorporating Turkey as a member state while an unaddressed conflict is gathering force in the country would threaten the Union's record on peace and conflict avoidance. The EU has long prided itself on its commitment to the creation of 'an area of freedom, security and justice',⁷⁴ seen as a fundamental element of European integration and the promotion of peace and prosperity, and the EU has also expressed that this

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

74 Preamble and Articles 2, 29 and 40, Treaty of the European Union

concept will inform its policies on enlargement.⁷⁵ Bringing into the territory of the EU a volatile, unresolved conflict situation would undermine EU security-related. Lastly in this context, in evading the Kurdish issue the EU is also evading its own responsibilities. The critical situation facing the Kurds and the Turkish people is not a distant problem unrelated to European affairs; its roots are in the dissolution of the Ottoman Empire in the aftermath of the First World War. Europe has a moral and political obligation to facilitate democratic dialogue and to assist Turkey towards a peaceful future based on full respect for the equal and fundamental rights of her Turkish and Kurdish populations. Furthermore, the stated importance of the protection of human and minority rights and democratic principles to the accession process gives rise to the reasonable expectation that progress on accession would be predicated on the reaching of a satisfactory settlement between the Turkish government and the Kurds.

Prospects for political dialogue

The implications of the EU's failure to prescribe or facilitate an acceptable solution to the Kurdish issue as a primary objective of accession negotiations are, then, potentially serious. Apparent EU reluctance to explicitly confront the problems in the Kurdish regions as a cohesive issue founded in Turkish antipathy towards Kurdish identity as such is doing very little to advance democratisation there, and fails to account for the need to mount a robust challenge to entrenched notions of Turkish ethnic nationalism. Meanwhile, the EU appears to be squandering a unique opportunity to assist the Kurds and Turks to arrive at a negotiated solution to a conflict which has been the cause of much pain and destruction, as well as risking the further weakening of democracy in the Kurdish regions and endangering stability in the EU. If the EU were to continue in this vein, then for the Kurds EU accession could prove yet another profound disappointment in a history of European failure to engage with their plight.

What is urgently needed is for Kurdish and Turkish representatives to sit around a negotiating table to exchange ideas and possible solutions to the situation in the Kurdish regions today. Sustained and constructive dialogue engaging representatives from all sides to the conflict could act as an important step in the use of diplomatic means to ensure the cessation of hostilities, as well as breaking down long-established barriers to co-operation and rapprochement, and furthering the interests of pluralism in Turkey. Such dialogue would also significantly enhance

75 European Commission, Department of Justice and Home Affairs, 'Strengthening the European Union as an area of freedom, security and justice', <http://europa.eu.int/comm/justice_home/fsj/intro/fsj_intro_en.htm>

elements of democracy in Turkey which pertain towards the preservation of peace and the management of conflict, including the facilitation of the expression of a plurality of opinions, the promotion of political participation, and the fostering of peaceful co-existence of different communities within state borders.

Ultimately, a genuine commitment by all parties to productive participation in political negotiations on the Kurdish question could result in a peaceful settlement for the achievement of long-term justice and stability in the Kurdish regions and throughout Turkey.

The EU has a historic opportunity to make use of its current sway over the course of developments in Turkey to ensure that dialogue on resolving the Kurdish question goes ahead. The accession process is generating momentum towards reform not known in Turkey for many years, and the political aspect of the accession process provides an unprecedented platform for facilitating talks on a Turkish-Kurdish settlement. These factors combine to provide probably the most plausible context for promoting an end to violence and oppression in the Kurdish regions that has arisen in recent history. In addition, the assertion in the Negotiating Framework that accession will not take place until at least 2014 allows for a gradual accession process with the political space necessary to work towards a sustainable solution to the conflict.

The propitiousness of the current climate for moving forward on the Kurdish issue may be further attested by a recent statement from Prime Minister Erdoğan, who broke new ground by referring to the 'Kurdish issue' during a speech in Diyarbakir in August 2005.⁷⁶ It has since been reported that a document prepared in response by the military, to be presented to the National Security Council, upholds the old view that there is no Kurdish question in Turkey, only a terrorism problem. However, Mr Erdoğan's words may yet prove indicative of new thinking on the subject.

The EU, then, must take advantage of the current environment and utilise the occasion to act as a vehicle for reconciliation. The EU's current approach, in exhibiting reticence even towards publicly naming the Kurdish issue, has been unsatisfactory. In recent years, EU leaders have singularly failed to promote any democratic platform or meaningful discourse about the Kurdish question. The EUTCC strongly hopes that the EU will now revise its position on the Kurdish question and openly turn its attention to this matter, particularly since Turkey is now secure in her position as an EU negotiating partner. The Union should engage in transparent negotiations with the parties, advancing steps towards reconciliation and resolution. It is imperative that this is done before it is too late and this opportunity for ending years of conflict

76 Turkish Daily News, 'Erdoğan statements on 'Kurdish issue' music to Europe's ears', August 14, 2005, <http://www.turkishdailynews.com.tr/article.php?newsid=20721>

and human suffering is missed altogether.

Part Four: Beyond 3 October 2005

The opening of accession negotiations on 3 October portends great opportunities for Turkey and the Kurds to move away from their current juncture and to bring the democratisation process begun in 2002 to fruition. The EUTCC is committed to promoting Turkish EU membership in order to achieve these ends, and sincerely hopes that recent unease within existing member states over Turkish accession will dissolve over the coming months and years.

Thus far, however, the course of the accession process has given the EUTCC some cause for concern. The human rights situation in Turkey is still mired in repression and autocratic attitudes among state officials, and progress has been at best faltering. Severe violations of human rights remain widespread, and the deterioration in standards since the December 2004 decision to open formal negotiations brings into question the sincerity of Turkey's commitment to change.

The Commission's approach to human rights has so far underplayed the significance of ongoing violations, and the EUTCC contends in particular that the downgrading of the standards set by the EU for the formal opening of negotiations should not be repeated at future stages of membership talks. The EU's extensive stipulations that reform must be further strengthened and implemented on the ground, including the human rights 'break clause', are to be welcomed – it is of great importance that the EU fulfils its obligations to compel Turkish compliance with the criteria it lays down.

The Commission line on the Kurdish question has also prompted disquiet. All endeavours must be made to ensure that the occasion presented by the accession process to secure a democratic future for the Kurds is fully utilised. So far, Kurdish aspirations of finally seeing their status and rights protected through an EU-driven reform process in Turkey do not look set to be realised, and the Commission appears to have reneged on its earlier pledge to see Turkey reach a political solution to the Turkish-Kurdish conflict. The Kurdish question is not even explicitly recognised, and the October 2004 report makes only occasional, incidental references to the situation of the Kurds.

The EUTCC is of the view that the problems faced by the Kurds are complex and deeply rooted in Turkish ethnic nationalism, and that addressing the Kurdish question in an open and comprehensive manner is critical to Turkish progress towards reform and EU membership. In particular, the EU has a momentous chance to promote democratic dialogue between the parties and to make possible the achievement of a viable, politically negotiated solution. If this course is not followed and instead the EU continues in its current vein, it will throw away a unique possibility for attaining peace and potentially bring an unresolved armed conflict into the EU.

Accession still has the potential to effect transformation in Turkey. Whether or not this proves the case will, to a significant extent, depend upon the EU. The vigour of the Commission's future approach in prescribing and reviewing political reforms and the commitment to principle by leaders in the Council will be crucial to reasserting the credibility of the accession process and ensuring its resonance among the Kurds and other victims of oppression and violence in Turkey.

The EUTCC will accordingly keep up its scrutiny of Turkey's democratisation efforts in the context of her obligations under the *acquis*, drawing attention both to successes and to setbacks in the reform agenda and ensuring that these reach the ears of EU decision makers. It will also monitor the EU's behaviour during accession negotiations and lobby to ensure that talks are indeed carried out within the structure set out in the Council decision and the Negotiating Framework. Placing both Turkish and EU decision-making under the spotlight will go towards ensuring that obligations and undertakings from both sides are not evaded.

The EU route is still the greatest hope for securing a civilised, democratic and pluralist Turkey in which a negotiated political solution to the Kurdish question is realised, but only if progress towards membership is based on tangible improvements in the protection of fundamental rights and freedoms and the tackling the plight of the Kurds is firmly integrated into accession negotiations.

Part Five: Final Resolutions of the Second International Conference of the EUTCC

The Second International Conference of the EUTCC brought together MEPs, other politicians, human rights defenders, writers, academics, lawyers and experts on the Kurdish issue to exchange ideas and generate dialogue on the Turkey-EU accession process. The two-day conference was held at the European Parliament and supported by members of the Council of Europe.

The Second Conference of the EUTCC was called to evaluate developments in respect of the EU-Turkey accession process since the decision of the European Council to enter into accession negotiation on 17 December 2004. The Conference noted with alarm the escalating military conflict in the south-east region of Turkey and the failure of certain state institutions to adhere to its obligations under the European Convention on Human Rights in accordance with the spirit and terms of its own recent reform packages and commitments given under the Accession process. The indictment of Orhan Pamuk is but one disturbing example. However, the Conference supported the important recent declaration of 12 August 2005 made by the Prime Minister of Turkey concerning the need for further democratic reform. It also welcomes the positive response of the Kurds to this declaration. The Conference also expressed its concern over the tenor of recent debates concerning Turkey's proposed admission to the EU articulated during the recent referendums. The Conference reiterated its support for the creation of a multi-cultural Europe and called upon leading European politicians to lead the debate in this regard. In particular, the Conference called upon the British Presidency of the EU to ensure that talks with Turkey are opened as planned on 3 October 2005 and to urge Turkey and other Member States to help foster a climate of peace so that a democratic platform for dialogue can be established between Turks, Kurds, and other constituent peoples and minorities who are resident in Turkey.

Pursuant to the presentation of Conference papers and interventions made by delegates, this Conference has unanimously resolved to adopt the following declarations concerning the EU-Turkey Accession Process and initiate the following calls for action to be undertaken by the EUTCC and other relevant parties.

The Conference issues the following declarations:

- 1) This Conference reaffirms its conditional support for the EU Turkish Accession Process as declared in the Final Resolution of the First Conference in 2004;
- 2) The Conference declares its further support for the opening of negotiations on 3 October 2005 and calls upon all member state governments to support this process;
- 3) The Conference acknowledges the Turkish Government's progress on reform, but expresses its concern over lack of implementation and other developments in the sphere of human rights since 17 December 2004. The Conference urges the Government to renew the reform process with the commencement of accession negotiations, and to fully implement legislative reforms so far enacted;

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- 4) The Conference supports the undertakings by the EU that reform in the area of fundamental rights, democracy and the rule of law must be strengthened in the course of accession negotiations and welcomes the commitment by the Commission expressed at this Conference to continue to monitor the reform process;
- 5) The Conference maintains the view that Turkey has not yet fulfilled the political elements of the Copenhagen Criteria, and reiterates that its support for the accession process is dependent upon the institutions of the EU robustly enforcing accession standards. There should be no further compromises on membership criteria akin to the EU decision to allow Turkey access to the negotiating table for "sufficiently" fulfilling the Copenhagen Criteria;
- 6) The Conference specifically calls upon both the Turkish Government and the EU to ensure that Turkey fully complies with its human rights obligations in relation to torture, the plight of internally displaced people, and protection of women and children.
- 7) The Conference also calls upon Turkey to ratify the Framework Convention on the Protection of Minorities as well as other UN

Instruments concerning minorities and to respect the existing cultural and minority rights of all groups, including the rights of the Assyrian minority in Turkey.

The Centrality of the Kurdish Question

- 8) The Conference asserts that the resolution of the Kurdish conflict is essential to the establishment of a stable, democratic and peaceful Turkey capable of entering the European Union. True democratic reform can only occur if Turkey undertakes new political reform to its state institutions and banishes adherence to ethnic nationalism which is the root cause of the conflict and Turkey's endemic instability;
- 9) This Conference therefore asserts that the Kurdish people and their representatives should be given a participatory role in the accession process and in any debate over Turkey's democratic constitutional future;
- 10) The Conference acknowledges as a positive step Prime Minister Erdoğan's historic 12 August 2005 acknowledgement of the existence of the Kurdish question;
- 11) The Conference welcomes as a positive step the month-long ceasefire called by Kongra-Gel in response to the Prime Minister's recent initiative;
- 12) However, the Conference further asserts that more must and can be done on both sides and calls for the following confidence building measures to be adopted;

Confidence Building Measures

- 13) The Conference hereby calls upon all relevant parties involved in the armed conflict to forthwith stop all hostile military operations in the region and to henceforth pursue non-violent resolutions to the conflict;
- 14) Further, the Conference calls upon all political parties in Turkey to help foster the conditions within Turkey for a democratic platform for

dialogue;

- 15) Pursuant to any extension of a ceasefire, the Conference calls upon the European Commission to endeavour to use its good offices to actively develop a democratic platform whereby the constituent elements of Turkey, including the Kurdish people and their representatives, can freely enter into dialogue and debate with the Government over possible reform to the Constitution;
- 16) In this respect the Conference recalls the following declaration in the EU- Commission's 1998 report that:

'A civil and non-military solution must be found to the situation in the south-east Turkey particularly since many of the violations of civil and political rights observed in the country are connected in one way or another with this issue.'

- 17) The Conference further recalls the EU Parliamentary Committee on Foreign Affairs in December 2004 urged:

'all parties involved to put an immediate end to the hostilities in the south-east of the country' and invited 'the Turkish Government to take more active steps to bring reconciliation with those Kurdish forces who have chose to abandon the use of arms.'

- 18) The Conference also calls upon the Turkish Government to fully and unconditionally comply with all international instruments concerning human and minority rights guaranteed by the European Convention of Human Rights, in particular, the rights concerning freedom of expression and association without discrimination, in order to ensure that such a democratic debate can take place;
- 19) In particular, the Conference calls upon the Turkish Government to ensure that all legally constituted Kurdish democratic parties are allowed to engage in peaceful political activity without interference or constant threat of closure, in accordance with Articles 10 and 11 of the European Convention of Human Rights.
- 20) The Conference further calls upon the Turkish Government to fully comply with all judgments of the European Court of Human Rights particularly in relation to those that pertain to the Kurdish conflict. The conference notes the European Commission's 2004 Report's particular citation of the ECHR case of Abdullah Öcalan v Turkey in this regard;

- 21) In this respect the Conference calls upon the Turkish Government to begin a public debate about the constitutional recognition of the existence of the Kurdish people within Turkey;
- 22) The Conference also urges all member states of the European Union to individually assist in the creation of a democratic platform for dialogue between Turkey and the Kurds and fully comply with their own obligations under Articles 10 and 11 of the European Convention on Human Rights in respect of those Kurdish organisations and individuals resident in Europe who are concerned to promote the same.
- 23) The Conference endorses the recommendations of the Council of Europe's representative at this Conference regarding the creation of a Committee for Reconciliation;
- 24) To assist this process, the Conference hereby agrees to set up its own embryonic Committee for National and Cultural Reconciliation under the auspices of the EUTCC consisting of leading European, Turkish and Kurdish politicians and representatives, NGOs, academics, intellectuals and human rights activists; and
- 25) Finally, the Conference mandates the EUTCC, its directors and committees, to engage and campaign on both a political and civic level across Europe in support of Turkey's accession bid to join the European Union on the basis as outlined in this Resolution.

Publications List

Other materials available from the Kurdish Human Rights Project include:

- A Fearful Land: Fact-Finding Mission to Southeast Turkey (1996)
- A Delegation to Investigate the Alleged Used of Napalm or Other Chemical Weapons in Southeast Turkey (1993)
- Advocacy and the Rule of Law in Turkey (1995)
- After the War: Fact-Finding Mission to Iraqi Kurdistan (2003)
- *Akduvar v. Turkey* - The Story of Kurdish Villagers Seeking Justice in Europe (1996)
- *Aksoy v. Turkey & Aydin v. Turkey*: Case reports on the practice of torture in Turkey -volume I (1997)
- *Aksoy v. Turkey & Aydin v. Turkey*: Case reports on the practice of torture in Turkey - volume II. (1997)
- Azerbaijan and Armenia – An Update on Ethnic Minorities and Human Rights by Deborah Russo and Kerim Yıldız (2000)
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