

SWP Research Paper

Stiftung Wissenschaft und Politik
German Institute for International
and Security Affairs

Dilek Kurban

Europe as an Agent of Change

The Role of the European Court of Human
Rights and the EU in Turkey's Kurdish Policies

RP 9
October 2014
Berlin

All rights reserved.

© Stiftung Wissenschaft
und Politik, 2014

SWP Research Papers are
peer reviewed by senior
researchers and the execu-
tive board of the Institute.
They express exclusively
the personal views of the
author(s).

SWP

Stiftung Wissenschaft
und Politik
German Institute
for International
and Security Affairs

Ludwigkirchplatz 3-4
10719 Berlin
Germany
Phone +49 30 880 07-0
Fax +49 30 880 07-100
www.swp-berlin.org
swp@swp-berlin.org

ISSN 1863-1053

This research and its publi-
cation have been enabled by
the generous support of
Stiftung Mercator, Essen.

Table of Contents

| | |
|----|---|
| 5 | Problems and Conclusions |
| 7 | The History, Law and Politics of Turkey's Kurdish Conflict |
| 7 | Turkey's Policies towards the Kurds: The Historical Background |
| 7 | The Emergence of the PKK and a New State Paradigm |
| 9 | The Evolution of Democratic Kurdish Resistance |
| 12 | Europe's Initial Engagement of and Impact on the Kurdish Question |
| 12 | Historical Background: Why and How Turkey Has Engaged with Europe |
| 13 | The Early Engagement of European Institutions in Turkey's Kurdish Conflict |
| 14 | <i>The EU</i> |
| 15 | <i>The ECtHR</i> |
| 16 | The Domestic Impact of Early European Engagement in the Kurdish Question |
| 18 | The Changing Dynamics |
| 18 | The Implications of 9/11 on the EU's Stance on Turkey's Kurdish Conflict |
| 19 | EU-Turkey Relations in Turbulence |
| 20 | The Cycle of Reforms, War and Politics in Turkey |
| 21 | <i>Revised Criminal Laws at Work: The KCK Cases</i> |
| 22 | <i>On the Road to Peace? The AKP-Öcalan Talks</i> |
| 24 | The EU's Engagement in the Kurdish Issue in the Accession Era |
| 25 | The ECtHR in Crisis |
| 28 | Conclusions and Policy Proposals |
| 28 | The Dynamics of Limited European Engagement and Impact |
| 29 | What Role for European Institutions? |
| 30 | Abbreviations |

*Dilek Kurban, Juris Doctor, is the 2013/2014 IPC-Mercator
Fellow at SWP*

**Europe As an Agent of Change:
The Role of the European Court of Human Rights
and the EU in Turkey's Kurdish Policies**

At its core, Turkey's Kurdish question is a deeply rooted ethno-political conflict originating from oppressive government policies against the cultural identity and fundamental rights of the Kurds. Although the armed insurgency led by the Kurdistan Workers' Party (PKK) is the result – rather than the cause of – the conflict between the state and the Kurds, ever since its outbreak, the war between the PKK and the Turkish military has overshadowed the roots of the conflict, enabling the state to frame it exclusively as counter-terrorism. The overlap between the core demands of the Kurdish human rights movement and the political goals of the PKK notwithstanding, the war has only been one – though a critical – aspect of the conflict.

The commencement of talks between the Turkish government and Abdullah Öcalan in late 2012, and the PKK's subsequent announcement of an indefinite ceasefire, has raised hopes for a peaceful solution to the conflict. Recent regional developments – with the emergence of a *de facto* Kurdish self-rule in Syria and the increasing likelihood of a Kurdish state in Iraq – have made Turkey's permanent settlement of its own conflict all the more pertinent. Certainly, the PKK's declaration of the end of its armed insurgency is, in and of itself, a significant development and a potential milestone towards a durable political settlement. However, the achievement of a permanent ceasefire or even peace, as such, will not *ipso facto* suggest a durable solution in the absence of structural reforms to ensure the Kurds' equality – in law and in fact. At the moment, recognition of Kurdish demands are tied to the outcome of the peace talks, notwithstanding that they concern individual rights that a democratic state should, at any rate, grant its citizens, as well as collective rights, which should be negotiated with the elected representatives of the Kurds in parliament rather than the PKK's leader in secret and informal peace talks. At any rate, the prospects for a peaceful settlement remain uncertain amidst a volatile political situation in Turkey and in the Middle East.

The ongoing peace talks in Turkey and the implications of the wars in Syria and Iraq on the Kurdish conflict have attracted a great deal of research and policy interest. Important as these developments are,

the exclusive framing of the issue within the discourse of “conflict resolution” bears the risk of reaching faulty policy analyses that attribute too much significance to the cessation of fighting. The crux of the Kurdish issue remains the structural inequalities against the Kurds, which predate the conflict between the PKK and the Turkish military. These inequalities are deeply rooted in Turkey’s authoritarian political regime and can only be addressed through structural reforms aimed at establishing substantive democracy and the rule of law.

Historically, democratisation in Turkey has been closely interlinked with the country’s European integration process. The desire to be a European Union (EU) member has led Turkey to subject itself to European oversight, notwithstanding its reluctance for a genuine democratic transition. Towards that end, Turkey recognised the jurisdiction of the European Court of Human Rights (ECtHR) and granted its citizens the right to take their grievances to the Strasbourg court. Once declared a candidate for EU membership, Turkey committed to undertake the requisite reforms to fulfil the Union’s accession criteria, including implementing the ECtHR’s rulings. These strategic foreign policy decisions enabled rights organisations in Turkey to exert pressure on the government through activating the European mechanisms. No domestic issue has preoccupied European institutions as intensively as the Kurdish conflict, and no other civil society organisations have invoked European institutions as intensively as those in the Kurdish region.

Current debates on the Kurdish demands in the framework of the peace talks often overlook the history in which these demands were shaped, communicated and pursued, not only by the Kurdish national movement but also, and first and foremost, by the human rights activists in the Kurdish region. The legal and political mobilisation of Kurdish civil society *vis-à-vis* European institutions raised awareness about the human rights abuses committed by the Turkish government and framed concrete rights claims for equality, justice and the rule of law. The ECtHR and the EU, for their part, have played a critical – though not necessarily always coherent and consistent – role in the relatively significant, albeit substantively limited, reforms adopted by Turkish governments since the late 1990s. At the same time, this European engagement has not always pushed Turkey in the direction of enhancing the democratic participation and human rights of its Kurdish citizens, particularly in the post-9/11 context.

How have Turkey’s policies on the Kurdish issue evolved in the course of its engagement with Europe? How has Kurdish political and legal mobilisation *vis-à-vis* European institutions evolved since the early 1990s? What has been the actual impact of the ECtHR and the EU on Turkey’s Kurdish policies? This paper looks into the evolution of the trilateral relationship between Turkey, Europe and the Kurds over the course of the past three decades. Based on the current political situation in Turkey and its region, it argues that there is a pressing need for European re-engagement in the Kurdish issue in a coherent, continuous and critical manner based on a systematic political dialogue with diversified domestic actors.

The History, Law and Politics of Turkey's Kurdish Conflict

Turkey's Policies towards the Kurds: The Historical Background

Although the origins of the conflict date back to the late Ottoman times, the political and legal foundation of Turkey's stance on the Kurdish question was laid down in the early Republican era.¹ The policies developed by the Kemalist founders and furthered by successive governments – military and civilian alike – can be grouped into the substantively and temporally overlapping categories of universal, territorial and selective.

All Kurds, irrespective of their residence and loyalty to the state, have been universally subject to cultural assimilation. On the one hand, the state has denied the existence of Kurdish as being a distinct identity and, on the other, adopted measures to eliminate its visible traces. Beginning in the mid 1920s, the Kurdish names of geographical places were “turkified”; individuals were banned from giving Kurdish names to their children; speaking Kurdish was prohibited at public institutions and, at times, in public places; school books and official documents were cleared of the words “Kurd” and “Kurdish”; and the use of Kurdish in broadcasting, education and political activities was banned.² These policies continued with interruptions and variations well into the 1990s. Notwithstanding the recent reforms, some restrictions on the use of Kurdish in education and political activities remain.

In addition, the Kurdish region has been governed by state-of-exception regimes, which, though discontinued for brief periods, have been a constant form of governance in the eastern and south-eastern territories.³ The forced displacement of civilians has been an

integral component of these exceptional legal regimes. Targeting community leaders and ordinary civilians alike, the policies of expulsion and relocation sought to achieve the dual goals of restoring central authority and weakening the Kurdish identity through disrupting communal ties.⁴

Third, there has been a selective restriction of Kurdish civil and political rights. Targeting members of the Kurdish national movement rather than ethnic Kurdish politicians as such, these restrictions were imposed both during military regimes and during times of “normalcy”. Since the late 1950s, when an urban Kurdish movement emerged within the broader socialist movement, the persecution of Kurdish politicians has been a constant reality.⁵ The discriminatory restrictions on Kurdish political activities intensified with the establishment of the first pro-Kurdish party in 1990 and continued without interruption.

The Emergence of the PKK and a New State Paradigm

The Kurdistan Workers' Party was founded in 1978 with the objective of waging an armed struggle to establish an independent Kurdistan. Although the 1980 coup crushed all other political parties and organisations across the spectrum in Turkey, the PKK survived largely due to the decision of its founder,

the Law on the Maintenance of Order (Turkish), no. 785, of 3 March 1925 in the aftermath of the suppression of the Sheikh Said Rebellion.

⁴ Although the first instance of the use of forced relocation as a means of suppressing Kurdish resistance was the 1926 Settlement Law, displacement as a systematic policy targeting the masses started in 1934, when the revised law required the resettlement of those “who do not share the Turkish culture and are not of Turkish origin”, namely the Kurds. Settlement Law (Turkish), no. 885, 31 May 1926, *Official Gazette*, no. 409, 1 July 1926; Settlement Law (Turkish), no. 2510, 14 June 1934, *Official Gazette*, no. 2733, 21 June 1934.

⁵ For examples of high-profile criminal cases against Kurdish intellectuals and activists in the 1960s and 1970s, see Cengiz Gunes, *The Kurdish National Movement in Turkey: From Protest to Resistance* (Oxon and New York, 2012); Nicole F. Watts, *Activists in Office: Kurdish Politics and Protest in Turkey* (Seattle, 2010).

¹ For a historical analysis, see Mesut Yeğen, *The Kurdish Issue in the Discourse of the State* (Turkish) (Istanbul, 2009); David McDowall, *A Modern History of the Kurds* (London and New York, 2004) (third edition); Robert Olson, *The Emergence of Kurdish Nationalism and the Sheikh Said Rebellion, 1880–1925* (Austin, 1989).

² Mesut Yeğen, “‘Prospective Turks’ or ‘Pseudo-Citizens’: Kurds in Turkey”, *Middle East Journal* 63, no. 4 (Autumn 2009): 597–615; McDowall, *A Modern History of the Kurds*. Ibid.

³ The first instance was the adoption of martial law through

Abdullah Öcalan, to move the organisation across the border to Syria. The military regime's severe atrocities against activists, opinion leaders and civilians in the Kurdish region led to a rapid increase in the number of new recruits to the PKK, turning it into a popular movement.⁶

The worst of the Kurdish conflict occurred during the 1980s and 1990s. The 1982 constitution prohibited the use of Kurdish in the public expression of opinions and in broadcasting.⁷ A 1983 law banned Kurdish altogether.⁸ Kurdish names were banned⁹ and topographic renaming resumed.¹⁰ Before handing power over to the civilians in 1983, the generals prepared the legal framework for tackling the Kurdish question within a security paradigm, including the establishment of "state security courts" and the adoption of the State of Emergency Law.¹¹

The transition to civilian rule in late 1983 did not bring an improvement in these policies. The Turgut Özal government, arguably under pressure by the National Security Council, furthered the security paradigm envisioned by the military junta. In May 1984, the state security courts began to operate in eight provinces, including two Kurdish provinces, and "did not differ substantially from military courts", which operated during the martial law period.¹² In June 1985, the "provincial village guard system", a paramilitary force made up of Kurdish peasants armed and paid by the state, was set up. Operating under the command

of the military, these guards have since been used extensively to not only fight with the PKK but also to conduct "counter-terrorism" operations against Kurdish civilians. In 1987, when martial law across the country was formally brought to an end, a state of emergency was declared exclusively in the Kurdish region. An executive decree¹³ established the Regional Governorship of the State of Emergency, which was, over time, vested with extraordinary powers and exempt from judicial review.¹⁴ Finally, in 1991, Parliament adopted the Anti-Terror Law primarily for the purpose of combating the PKK. Turkish judicial authorities have interpreted the law broadly to curtail peaceful Kurdish opposition, censor the Kurdish press, suspend political freedoms and ban one pro-Kurdish political party after another since 1993.¹⁵

Limited legal reforms and political attempts to end the armed conflict went hand in hand with these militarist measures. In 1991, the categorical ban on the Kurdish language was eased through the legalisation of its use for "non-political" purposes, which resulted in the flourishing of books, newspapers and music albums in Kurdish. However, the restrictions on the use of Kurdish in political activities were retained, leading to the continued prosecution of politicians simply for speaking Kurdish in their campaigns. The state of emergency had enabled the state to resort to wartime measures. From the late 1980s into the late 1990s, around one million civilians,¹⁶ predominantly Kurdish, were forcefully evicted by security forces from more than 3,000 villages and hamlets.¹⁷ Nearly

6 For more on the PKK, see Gunes, *The Kurdish National Movement in Turkey* (see note 5); Aliza Marcus, *Blood and Belief: The PKK and the Kurdish Fight for Independence* (New York and London, 2007); David Romano, *The Kurdish Nationalist Movement: Opportunity, Mobilization, and Identity* (New York, 2006); Martin van Bruinessen, "Between Guerrilla War and Political Murder: The Workers' Party of Kurdistan", *MERIP Middle East Report* 153 (July–August 1988): 40–46.

7 Former Articles 26 and 28, respectively.

8 *Law on Broadcasting in Languages Other than Turkish* (Turkish), no. 2932, 19 October 1983, *Official Gazette*, no. 18199, 22 October 1983.

9 Senem Aslan, "Incoherent State: The Controversy over Kurdish Naming in Turkey", *European Journal of Turkish Studies* (Online), no. 10 (2009), para. 16, <http://ejts.revues.org/4142>.

10 Kerem Öktem, "The Nation's Imprint: Demographic Engineering and the Change of Toponymes in Republican Turkey", *European Journal of Turkish Studies*, no. 7 (2008), para. 50, <http://ejts.revues.org/2243>.

11 State of Emergency Law (Turkish), no. 2935, 25 October 1983, *Official Gazette*, no. 18204, 27 October 1983.

12 Amnesty International, *Justice Delayed and Denied: The Persistence of Protracted and Unfair Trials for Those Charged under Anti-Terrorism Legislation* (September 2006), 3.

13 Decree with the Force of Law Establishing the Regional Governorship of the State of Emergency, no. 285, 10 July 1987, *Official Gazette*, no. 19517, 14 July 1987.

14 Among these powers were the evacuation of villages, the temporary or permanent banning of the print media, the expulsion from the region of individuals deemed to threaten public order, the banning of union activities and the restriction of freedoms of assembly and to demonstrate. Decrees no. 424, 425 and 430.

15 As documented by various ECtHR judgments: see Dilek Kurban, Ozan Erözden and Haldun Gülalp, *Supranational Rights Litigation, Implementation and the Domestic Impact of Strasbourg Court Jurisprudence: A Case Study of Turkey*, unpublished report for the JURISTRAS project funded by the European Commission (October 2008), <http://www.juristras.eliampep.gr>. See also Watts, *Activists in Office* (see note 5).

16 A government-commissioned survey estimated the number of displaced during the 1986–2005 period to be 950,000–1,200,000. Hacettepe University Institution of Population Studies, *Turkey Migration and Internally Displaced Population Survey* (Turkish), (Ankara, June 2006).

17 Turkish Grand National Assembly, *Report by the Parliament*

half of the displaced received “eviction orders” by security forces, in most cases due to their “unwillingness to become village guards”.¹⁸ Joining the village guard force was not necessarily a shield against displacement; those found to be reluctant to fight against the PKK were subsequently displaced by the military.¹⁹

The *carte blanche* given to the military authorities opened a new era in the Kurdish conflict, leading to the intensification of atrocities. The Gendarmerie Intelligence in Combating Terrorism (JİTEM), a clandestine criminal unit established within the military, was engaged in systematic atrocities against human rights activists, journalists and elected officials.²⁰ Extrajudicial executions,²¹ torture and enforced disappearances were common phenomena in Kurdish urban centres, particularly during the first half of the 1990s. In addition to the censorship of the media,²² dozens of members of the Kurdish press were tortured or (even) summarily executed.²³ In rural areas, the forced eviction of Kurdish civilians was accompanied with property destruction, the burning of forests, extrajudicial executions and torture.

Research Commission Formed with the Objective of Identifying the Remedies to be Undertaken on the Basis of Research into the Problems of Citizens who have Migrated as a Result of Evacuation of Settlements in East and Southeast Anatolia (Turkish), (Ankara, 14 January 1998), 11–13.

18 Hacettepe University, *Turkey Migration and Internally Displaced Population Survey* (see note 16), 98 and 129.

19 Dilek Kurban and Mesut Yeğen, *On the Verge of Justice: The State and the Kurds in the Aftermath of Forced Migration/An Assessment of the Compensation Law no. 5233 – The Case of Van* (Turkish), (Istanbul, February 2012), 91.

20 Parliamentary commissions established in the 1990s to investigate the state’s involvement in political assassinations, unresolved murders and other criminal activities established that the activities of JİTEM “were an un-debatable reality”, though its exact function remained unknown. Human Rights Watch, *Time for Justice: Ending Impunity for Killings and Disappearances in 1990s Turkey* (USA, September 2012), 10, citing the report of the Parliamentary Commission on Susurluk.

21 Between 1990 and 2007, more than one hundred pro-Kurdish party members and activists, including a DEP deputy, were murdered by unidentified perpetrators. Watts, *Activists in Office* (see note 5), 100–101.

22 For a first-hand account of the censorship in the mainstream Turkish media by journalists who covered the atrocities of the military in the Kurdish region, see the documentary by Sami Solmaz, *Witnesses of the War* (Turkey, 2012).

23 A total of 27 reporters, editors and distributors of the daily *Özgür Gündem* were killed in the Kurdish region during its short publication life between May 1992 and April 1994. Şenay Aydemir, “Its 27 Employees Have Been Murdered” (Turkish), *Radikal*, 18 March 2011.

The state was not the sole agent of violence. The PKK summarily executed its dissident militants and targeted state agents for killing as well as Kurdish political elite accused of being co-opted by the state, members of leftist and rival Kurdish organisations, village guards and their families, and Kurdish civilians who refused to take sides in the war.²⁴ Although the vast majority of village evictions were carried out by Turkish security forces, the PKK also displaced Kurdish civilians for their actual or perceived collaboration with the state.²⁵

The Evolution of Democratic Kurdish Resistance

The Kurds challenged state repression through legal mobilisation and electoral participation. The former was carried out by lawyers, mostly living in the Kurdish region, by bringing the grievances of Kurdish civilians before the ECtHR. Until the early 1990s, the individual petition mechanism, which the Turkish government had recognised in 1987, had been unknown to the Kurdish victims and lawyers. The Turkish courts, for their part, had systematically refused to review the acts of state officials, particularly in the Kurdish region. The 1992 visit to Diyarbakır by a group of British human rights lawyers from Essex University marked a turning point for the Kurds’ quest for justice.²⁶ A long-term cooperation commenced between British and Kurdish lawyers, who jointly filed dozens

24 Marcus, *Blood and Belief* (see note 6); Martin van Bruinessen, “The Nature and Uses of Violence in the Kurdish Conflict”, paper presented at the international colloquium *Ethnic Construction and Political Violence*, organised by the Fondazione Giangiacomo Feltrinelli, Cortona, 2–3 July 1999.

25 Turkish Grand National Assembly, *Report by the Parliament Research Commission* (see note 17).

26 The visit was organised by Kerim Yıldız, a UK-based Kurdish refugee and founder of the Kurdish Human Rights Project in London. For the activism of Kurdish diaspora organisations in Europe more broadly, see Bilgin Ayata, “The Politics of Displacement: A Transnational Analysis of the Forced Migration of Kurds in Turkey and Europe”, unpublished thesis submitted to the Johns Hopkins University (Baltimore, January 2011); Marlies Casier, “Contesting the ‘Truth’ of Turkey’s Human Rights Situation: State-Association Interactions in and outside the Southeast”, *European Journal of Turkish Studies* (online), no. 10 (2009); Başak Çah, “Human Rights Discourse and Domestic Human Rights NGOs”, in *Human Rights in Turkey*, ed. Zehra F. Kabasakal Arat Philadelphia (Pennsylvania, 2007), 217–232.

of cases.²⁷ The Kurdish lawyers, out of necessity and urgency, became the pioneers of ECtHR litigation in Turkey. The Court issued hundreds of judgments, documenting the grave human rights abuses committed by state security forces against Kurdish civilians.

As in earlier decades, the Kurdish activists also contested the state through electoral politics, though this time with their own party. What started in 1987 with a handful of Kurdish politicians entering parliament with the Social Democratic Populist Party (SHP) gave rise to the first pro-Kurdish party, the People's Labour Party (HEP), in 1990.²⁸ Although HEP and its successor parties were not established by the PKK, they share with it the same sociological basis and similar ideological/political leaning. To circumvent the 10 per cent threshold, the pro-Kurdish parties entered parliament through pre-election coalitions (1991) or independent candidates (since 2007). Despite the concerted efforts of the Turkish judiciary, these parties survived through a cat and mouse game.²⁹ Yet, their members could not escape prosecution for using Kurdish in their political activities and advocating Kurdish language and cultural rights.³⁰ They have also been subject to PKK influence or coercion, with varying frequency and degree, depending on the prevalent political climate in Turkey and the region.³¹

The year 1999 marked the beginning of Öcalan's life imprisonment and the PKK's ceasefire,³² on the

²⁷ Interview with Françoise Hampson, Boyle's colleague and long-term collaborator in the Kurdish cases filed in Strasbourg. Quoted in Kurban, Erözden and Gülalp, *Supranational Rights Litigation* (see note 15), 4.

²⁸ HEP was established on 7 June 1990 by a group of Turkish and Kurdish SHP deputies who resigned from the party in protest over its decision to expel seven Kurdish parliamentarians for having participated in a Kurdish conference organised in Paris in 1989.

²⁹ Between 1993 and 2009, the Constitutional Court closed five pro-Kurdish parties. The dissolution cases were based on the constitutional principle of territorial unity and the prosecutorial argument that they were organically linked to the PKK.

³⁰ The legal framework governing political participation in Turkey still preserves its restrictive character. Under the Law on Political Parties (no. 2820), political parties are banned from "claiming the existence of minorities" and advocating minority linguistic and cultural rights (Article 81).

³¹ For more on the dynamics of the relationship between the PKK and the pro-Kurdish political parties, see Watts, *Activists in Office* (see note 5).

³² Although this was not the PKK's first ceasefire, it resulted in the longest. Following "a period of retreat and reorganization" between 1999 and 2003, in which it "levelled down its demands, ceased military activities", and "withdrew the

one hand, and Turkey's EU process on the other. The cessation of violence in the Kurdish region and EU-induced reforms gave momentum to democratisation efforts, which lasted until around 2005, when the Justice and Development Party (AKP) government halted the reforms and the PKK resumed violence. During this time, the Kurdish demands for rights were principally of an individual nature and were articulated by human rights organisations. Pro-Kurdish political parties were absent in parliament and their representation in local government was in its early stages.³³ By the second half of the 2000s, the Democratic Society Party (DTP) mayors, more experienced in their second term, became the main representatives of the Kurdish people and started to demand collective rights of a political nature. This was both the consequence and cause of heightened oppression by security forces, facilitated by revised criminal laws.

In 2007, the Kurdish national movement³⁴ returned to the Turkish parliament after 13 years of absence. The DTP participated in the elections through independent candidates, to whom the threshold does not apply. Slightly more than half (21 out of 43) of the nominated candidates were elected and formed a DTP

majority of its guerrilla forces from Turkey onto Northern Iraq", the PKK resumed fighting in 2004. Ahmet Hamdi Akkaya and Joost Jongerden, "The PKK in the 2000s: Continuity through Breaks?", in *Nationalisms and Politics in Turkey: Political Islam, Kemalism and the Kurdish Issue*, ed. Marlies Casier and Joost Jongerden (USA and Canada, 2011), 143–161, here 153.

³³ These parties progressively increase the number of municipalities under their control. In 1999, HADEP won 37 municipalities (7 of which were provincial); in 2004, while experiencing a fall in its overall votes and losing four provinces to the AKP, Democratic People's Party (DEHAP) won 64 municipalities (including 5 provincial); in 2009, the DTP won 98 municipalities (including 8 provincial and 50 district); and finally in March 2014, the Peace and Democracy Party (BDP) won around 100 municipalities.

³⁴ In using this term, I refer to the broader political movement comprised of both illegal armed groups such as the PKK and civil society organisations pursuing non-violent resistance, including, but not limited to, the political tradition currently represented by the Peace and Democracy Party (BDP). What make this wide range of actors part of the same movement are their common rights claims, such as education in Kurdish in public schools, autonomy in the Kurdish region, the constitutional recognition of Kurdish identity and the removal of structural barriers to the Kurds' participation in the democratic system. In no way do I ignore the historical, ideological and political differences between various actors, first and foremost their positions with regard to the use of violence in the pursuit of these goals and their relations with the PKK.

group after they entered parliament.³⁵ This has intensified the vicious circle of a strengthened Kurdish national movement making bolder demands; intensified judicial and bureaucratic harassment of Kurdish mayors and politicians; heightened police brutality during demonstrations in the region; increased PKK violence; and government policies oscillating between a reform rhetoric occasionally supported by concrete steps and the conventional security approach.

³⁵ The BDP pursued the same strategy in 2011, increasing the number of seats to 35.

Europe's Initial Engagement of and Impact on the Kurdish Question

Since the establishment of the republic, Turkey has seen its integration with the European legal and political order as a strategic move to further its economic, military and political relations with the “developed Western civilisation”. The state has perceived human rights as a “bitter pill” to swallow in the name of economic development and modernisation through European integration. Successive Turkish governments undertook the minimal reforms necessary to remain connected to Europe without having to transition to a truly democratic order.

The legal and political mobilisation of the Kurds succeeded in drawing European institutions into the conflict. Although the continuity of unjust policies against the Kurds provided the moral justification for European engagement, the Turkish government's foreign policy choices made this involvement possible. By the time Turkey was declared a candidate for EU membership, a substantial ECtHR case law had already developed concerning its unlawful practices in the state of emergency region, owing to the Kurdish lawyers' extensive use of the individual petition mechanism. Turkey's self-submission to the Convention system and pursuit of European Community membership led to its “entrapment ... in a Catch-22 situation”³⁶ and had a “boomerang effect”³⁷ on its policies on the Kurdish question.

Historical Background: Why and How Turkey Has Engaged with Europe

Turkey's engagement with the European legal and political order is more than half a century old. It started with the entry into the Council of Europe (CoE) in August 1949 and the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR/the Convention) in 1954. This early engagement was driven not by a

normative commitment but by *realpolitik*.³⁸ Having aligned with the US-led bloc after the Second World War, Turkey saw that it was in its security interest to join the institutions set up by Western European countries.³⁹ Foreign policy considerations – in particular the endeavour to uphold a power balance with Greece – also played a role. To complement this political alliance with an economic one, Turkey applied for membership to the European Economic Community (EEC) in 1959.

The stability, security and prestige associated with being part of the emerging order in Europe offset for Turkey, at least initially, the risks involved in subjecting domestic policies to international oversight. At the same time, the risk was there. Therefore, Turkey for a long time kept its engagement with the CoE at a minimum. For example, notwithstanding its ratification of the Convention, it did not accept the jurisdiction of the ECtHR until 1990.⁴⁰ The weakness of the European Convention system⁴¹ enabled Turkey to more or less control the terms of its relationship with the CoE.

After its transition to multi-party democracy, Turkey experienced three *coup d'états* followed by periods of military rule, multiple declarations of state of emergency and martial law, and the suspension of human rights. The political climate of the Cold War, where national sovereignty was the supreme norm governing world affairs, by and large insulated Turkey against international pressure and gave it considerable leeway in its domestic policies. Certainly, the military interventions received condemnation and criticism from European institutions, but much of it remained symbolic and ineffective. In this regard, the EEC, which

³⁶ Ümit Cizre, “The Truth and Fiction about (Turkey's) Human Rights Politics”, *Human Rights Review* 3, no. 1, (October–December 2001): 55–77, here 61.

³⁷ Margaret E. Keck and Kathryn A. Sikkink, *Activists beyond Borders* (Ithaca, 1998).

³⁸ Füsün Türkmen, “Turkey's Participation in Global and Regional Human Rights Regimes”, in *Human Rights in Turkey*, ed. Zehra F. Kabasakal Arat (Pennsylvania, 2007), 249–261, here 252.

³⁹ At the international level, Turkey became a founding member of the UN in 1949 and joined NATO in 1952.

⁴⁰ Similarly, not until the 2000s did Turkey sign the UN's twin human rights covenants adopted in 1966.

⁴¹ Until the entry into force of Protocol 11 to the ECHR in 1998, the individual petition mechanism and the ECtHR's jurisdiction were not mandatory for CoE member states.

had not yet accepted Turkey as a candidate country, was better situated to exert pressure. The Community reacted to the 1960 military coup by freezing relations with Turkey. Although relations resumed with the Association Agreement,⁴² the 1971 coup and Turkey's military intervention in Cyprus in 1974 led the Community to continue deferring the Customs Union envisioned in the Agreement.

The 1980 intervention, by far the bloodiest and most repressive coup, inflicted the greatest damage to Turkey's relations with Europe. In protest of the grave human rights abuses in Turkey, both the European Community and the CoE exerted political – and, in the case of the European Community, economic – pressure on the military to return to democracy. There were heated debates within both organisations over the most effective strategy against the junta. The European Parliament adopted resolutions harshly criticising the conduct of the military authorities⁴³ and used its – limited but slowly growing – powers for restraining the EU's engagement with the Turkish government. The CoE carried out human rights fact-finding missions in Turkey while attempts were made in its Parliamentary Assembly to suspend the country's membership altogether.⁴⁴ Eventually, partly as a result of this European pressure,⁴⁵ the military regime handed power back to the civilians, but not before drafting an authoritarian constitution to shield itself with amnesty against possible future prosecution.

In 1983, as the first civilian elected to government after the transition to democracy, Turgut Özal came to power with a commitment to elevate – as a strategic policy – Turkey's engagement with Europe. The next year, the PKK launched its first military attack. From then on, Turkey's counter-terrorism and European integration projects went hand in hand. The most dramatic turn in relations with European institutions came in 1987. In January, Turkey recognised the right of individual petition to the ECtHR, and in April it ap-

plied for European Community membership. Allowing Turkish citizens to take their cases to Strasbourg was seen by Özal as a strategic decision to enhance Turkey's prospects for European Community membership.⁴⁶ On the other hand, on 10 July 1987, the government declared a state of emergency in the Kurdish region.

These three decisions created a paradoxical situation in which the government gave carte blanche to its security forces in their counter-terrorism efforts only a few months after subjecting its policies to European oversight. The incompatibility of Özal's domestic and foreign policies became evident when the European Community, based on the negative opinion of the Commission,⁴⁷ rejected Turkey's membership application on the basis, among other things, of its human rights record. Notwithstanding – and partly because of – this rejection, Turkey recognised the ECtHR's jurisdiction in 1990 to further demonstrate its commitment to human rights.

The Early Engagement of European Institutions in Turkey's Kurdish Conflict

Historical developments in Europe and Turkey in the 1990s set them apart and led them in different directions. In Europe, the end of the Cold War and the genocide in Former Yugoslavia led to the resurgence of a normative commitment to minority protection. In 1990, the Conference on Security and Co-operation in Europe (CSCE) adopted the Copenhagen Principles,⁴⁸ requiring states to ensure full equality between the minorities and the majority.⁴⁹ These Principles gained

⁴² Agreement Establishing an Association between the European Economic Community and Turkey, Ankara, 12 September 1963, *Official Journal of the European Communities*, no. L 361/1, 31 December 77.

⁴³ See e.g., European Parliament, *Resolution on the Events in Turkey*, 18 September 1980; *Resolution on Death Sentence Imposed on 52 Turkish Trade Union Leaders*, 22 June 1982; *Resolution on Political Situation in Turkey*, 8 July 1982.

⁴⁴ İhsan Dağı, "Democratic Transition in Turkey, 1980–1983: The Impact of European Diplomacy", *Middle Eastern Studies* 32, no. 2 (April 1996): 124–141, here 131–132.

⁴⁵ *Ibid.*, here 136.

⁴⁶ The European Parliament had made this link clear in 1985, setting Turkey's recognition of the right to individual petition as a condition for the normalisation of relations. "European Parliament, Resolution on the Human Rights Situation in Turkey, 23 October 1985", *Official Journal of the European Communities*, no. C 343/61, 31 December 1985.

⁴⁷ Commission of the European Communities, *Commission Opinion on Turkey's Request for Accession to the Community*, SEC(89) 2290 final/2, 20 December 1989.

⁴⁸ The organisation was subsequently called the Organization for Security and Co-operation in Europe (OSCE). For a critical assessment of the Copenhagen Principles and the CSCE/OSCE's reluctance to be actively involved in Turkey's Kurdish conflict, see Gülistan Gürbey, "The Kurdish Conflict in Turkey- (not) a Subject for the OSCE?", *Helsinki Monitor* 12, no. 1 (2001): 7–20.

⁴⁹ Conference on Security and Co-operation in Europe, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, 29 June 1990, <http://www.osce.org/odihr/elections/14304?download=true>.

legal significance when the Council of the EU, established under the 1992 Maastricht Treaty, adopted them in 1993 as accession criteria for candidate countries. The CoE followed course by adopting the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities, which the EU required its candidates to ratify. At an institutional level, the EU and the CoE were fast evolving from intergovernmental bodies of economic and political cooperation into transnational legal regimes with strong human rights mechanisms. The courts of these organisations – the European Court of Justice and the ECtHR – had taken the lead in developing strong and expanding human rights regimes, which were not envisioned by the founding fathers, and certainly not welcomed by all member states. In sum, the European political and legal order of the 1990s presented a completely different picture than that of the 1950s, when Turkey initiated its engagement with the CoE and the EU.

The Turkey of the 1990s was in a very different trajectory. The intensification of the war between the PKK and the Turkish armed forces at the turn of the decade strengthened the role and influence of the military in politics. In 1993, following the death of President Özal while he was reportedly in the process of seeking peace with the PKK, the hardliner Prime Minister Tansu Çiller declared that the resolution of the Kurdish issue was now in the hands of the military. As part of its anti-terrorism campaign, the state resorted to extra-legal measures. Clandestine units within the security forces were engaged in enforced disappearances, torture and extrajudicial killings against Kurdish politicians, journalists, activists and civilians suspected of PKK membership. As in the 1980s, European institutions reacted strongly, naming and shaming Turkey for its human rights violations.

The EU

From the outset, the EU sought to craft a balance between its economic and geostrategic interests *vis-à-vis* Turkey and its normative commitment to human rights as part of its enlargement policy.⁵⁰ In this respect, there have been differences between the EU

⁵⁰ For an argument that the European Council's key decisions on Turkey were adopted in accordance with the security interests of the Union and its member states, see Ebru Turhan, *The European Council Decisions Related to Turkey's Accession to the EU: Interests v. Norms* (Baden-Baden, 2012).

organs. Initially, the European Parliament advocated a political approach, pressing for the termination of relations at moments of rupture with democracy and human rights in Turkey. The European Council, on the other hand, refrained from making the strengthening of its economic ties with Turkey conditional on human rights. Over time, the divergence of positions became less apparent due to the evolution of the EU into a political union, the strengthening of the role of Parliament and the positive political developments in Turkey.

Long before the EU accepted the Copenhagen political criteria as a *sine qua non* for accession, Turkey's human rights record was in the radar of Parliament.⁵¹ However, Parliament did not specifically address the Kurdish issue until the 1988 mass killings by the Saddam Hussein regime,⁵² which drew Europe's attention to the plight of Kurds everywhere.⁵³ Although Parliament adopted several resolutions condemning the human rights abuses against the Kurds,⁵⁴ its most radical attempt to restrain the EU's relations with Turkey came in 1994, when parliamentary immunity of 14 deputies from the pro-Kurdish Democracy Party (DEP) was lifted, leading to the arrest and conviction of eight.⁵⁵ The European Parliament suspended the

⁵¹ In the 1980s, Parliament adopted numerous resolutions condemning the human rights violations committed by the military regime between 1980 and 1983 and the civilian government thereafter.

⁵² In two separate military campaigns (Al Anfal and Halabja) carried out in 1988, the Iraqi government systematically killed tens of thousands of Kurdish civilians through, *inter alia*, the use of chemical weapons.

⁵³ With the exception of a 1987 resolution over the Armenian genocide, which acknowledged the problem in Turkey's south-east, none of the resolutions adopted during the 1984 to 1989 term made a specific reference to the Kurdish issue. Marlies Casier, "The Politics of Solidarity: The Kurdish Question in the European Parliament", in *Nationalisms and Politics in Turkey: Political Islam, Kemalism and the Kurdish Issue*, ed. Marlies Casier and Joost Jongerden (Routledge, 2011), 197–217, here 199–200.

⁵⁴ Of the 16 resolutions on the Kurds adopted by Parliament from 1989 to 1994, five were specifically about the Kurds in Turkey. *Ibid.*

⁵⁵ On 2–3 March 1994, Parliament stripped seven deputies of their immunity to enable their prosecution on terrorism charges. The immunity of the remaining seven was removed by the Constitutional Court when it dissolved the DEP in June. Whereas six of the deputies fled to Europe and have since been living in exile, the remaining eight were sentenced to prison terms ranging from 3.5 years to 15 years. Five of these served a 10-year prison term.

EU-Turkey Joint Parliamentary Committee⁵⁶ and asked the Council to suspend the Customs Union negotiations with Turkey. When that failed, Parliament used its enhanced powers under the Maastricht Treaty of 1993 and refused to give assent to the Customs Union unless Turkey improved the human rights situation and the treatment of the Kurds. In 1995, Parliament awarded the imprisoned Kurdish deputy, Leyla Zana, with the Sakharov Prize for Freedom of Thought,⁵⁷ marking the beginning of its active involvement with the Kurdish issue.⁵⁸

To overcome the opposition of the European Parliament, Turkey adopted constitutional improvements and amended the Anti-Terror Law, making possible the release of 79 political prisoners. Two of the imprisoned Kurdish deputies were released, and Turkey gave assurances that the cases of those remaining would be heard by the ECHR.⁵⁹ Although these were largely changes on paper and there were strong doubts about Turkey's commitment to democracy and human rights, Parliament eventually gave in to the "intensive lobbying by the Council and the Commission"⁶⁰ and approved the Customs Union on 13 December 1995.⁶¹

Although the decision to implement the Customs Union brought about a degree of discursive change and "tactical concessions"⁶² on the part of Turkish official circles, widespread abuses and the impunity of perpetrators prevailed, in the Kurdish region and beyond. The EU's rejection of Turkey's candidacy in 1997 was both the consequence and the cause of this phenomenon. When Turkey unilaterally suspended the political dialogue as a protest of what it perceived to be discriminatory treatment, the Commission was tasked with continuing relations at a technical level. In 1998, the Commission prepared a European strat-

egy to help Turkey prepare for membership, initiated technical negotiations with Ankara and released its first progress report on Turkey.⁶³ Based on the positive assessments in the Commission's next report, the European Council declared Turkey as a candidate for accession in 1999.

This decision commenced the EU's monitoring of Turkey's compliance with the accession criteria, including the protection of minority rights. Turkey's treatment of its Kurdish citizens has become a litmus test for its prospects for membership. The EU called on Turkey to recognise the cultural rights of the Kurds, ensure the socio-economic development of the Kurdish region and enable the return of the displaced. Kurdish broadcasting and teaching, the abolishment of the village guard system, the clearance of landmines and compensation for displacement were put forth under the rubric of these general themes.

The Kurdish demands for truth and justice, on the other hand, were either overlooked or downscaled in the Commission reports. The impunity of the security forces has not been systematically handled either. Although the Commission pointed out the abuses committed by the Turkish military – including the "large-scale forced evacuation and destruction of villages" – in its very first report,⁶⁴ it did not mention the issue until 2001, when it briefly referred to the disappearance of two People's Democracy Party (HADEP) officials following their "visit" to a police station.⁶⁵ In reality, these were elected politicians called in by the local security officers and seen last entering the police station. This was a clear case of enforced disappearance, which moreover took place in 2001, when Turkey was subject to pre-accession monitoring. The Commission did not refer to this case in subsequent reports, nor did it publicly pressure Turkey to address the thousands of enforced disappearances and political killings by unidentified perpetrators.

The ECtHR

The Strasbourg court's first judgment on the Kurdish conflict was on a forced displacement case, where the Court made an exception to its admissibility criterion, which requires the prior exhaustion of domestic

⁵⁶ Established in the 1960s, the Joint Committee resumed in 1996. Christopher Piening, "The European Parliament: Influencing the EU's External Relations", paper presented at the 5th biennial ECSA Conference, Seattle, 30 May 1997.

⁵⁷ When she was awarded the prize, Zana was serving a 15-year jail sentence. She personally collected the prize on 14 October 2004, after her release from prison.

⁵⁸ Personal communication with Member of the European Parliament Hélène Flautre in Brussels on 28 June 2013.

⁵⁹ Piening, "The European Parliament" (see note 56), 4.

⁶⁰ Flavia Zanon, "The European Parliament: An Autonomous Foreign Policy Identity?", in *The Role of Parliaments in European Foreign Policy: Debating on Accountability and Legitimacy*, ed. Esthér Barbe and Anna Herranz (Barcelona, 2005), 5.

⁶¹ Decision no. 1/95 of the EC-Turkey Association Council of 22 December 1995 on Implementing the Final Phase of the Customs Union (96/142/EC).

⁶² Cizre, "The Truth and Fiction" (see note 36), 68–69.

⁶³ For a brief history of the development of EU-Turkey relations, see the Commission's progress reports.

⁶⁴ European Commission, *Turkey 1998 progress report*, 19.

⁶⁵ European Commission, *Turkey 2001 progress report*, 29.

remedies.⁶⁶ Considering the applicants' "insecurity and vulnerability" following their forced eviction and the absence of any official inquiry into the incidents, the Court assessed the prospects of a national court decision against the security forces to be "negligible" and concluded that remedies were *de facto* unavailable in south-eastern Turkey. It granted a similar exemption to dozens of applicants in subsequent cases. Within a few years, the ECtHR effectively became an appeals court for human rights victims in Turkey.

In its judgments, the ECtHR established, among other things, that unacknowledged detention is a "complete negation" of the right to liberty⁶⁷; the close relatives of the disappeared may themselves be victims of inhuman treatment; the enforced disappearance of a person is a violation of the right to life⁶⁸; the presence of a military judge in state security courts violates the right to a fair trial; and counter-terrorism does not justify the incommunicado detention for up to 30 days.⁶⁹ The Court stressed, time and again, that the notion of "effective remedy" in the meaning of Article 13 "entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible."⁷⁰ On the other hand, the ECtHR refrained from concluding that these atrocities were an administrative practice in the Kurdish region and dismissed the applicants' persistent claims of ethnic discrimination.

In its defences before Strasbourg, Turkey categorically denied the allegations, disputed the facts claimed by the applicants and refused to submit the information requested by the Court.⁷¹ It was so uncooperative that the Court was eventually obliged to hold fact-finding hearings in Turkey so as to establish the facts.⁷²

⁶⁶ ECtHR, *Akdivar and Others v. Turkey* (Grand Chamber), Application no. 21893/93, 16 September 1996.

⁶⁷ ECtHR, *Çiçek v. Turkey*, Application no. 25704/94, 27 February 2001.

⁶⁸ ECtHR, *Ipek v. Turkey*, Application no. 25760/94, 17 February 2004.

⁶⁹ ECtHR, *Aksoy v. Turkey*, Application no. 21987/93, 18 December 1996.

⁷⁰ ECtHR, *Aksoy*, para. 98; ECtHR, *Selçuk and Asker v. Turkey*, 24 April 1998, para. 96.

⁷¹ Başak Çalı, "The Logics of Supranational Human Rights Litigation, Official Acknowledgment, and Human Rights Reform: The Southeast Turkey Cases before the European Court of Human Rights, 1996–2006", *Law and Social Inquiry* 35, no. 2 (2010): 311–337.

⁷² See e.g. ECtHR, *Selçuk and Asker*; the ECtHR, *Ertak v. Turkey*, Application no. 20764/92, May 2000.

The government not only denied political responsibility, but also put the blame in many cases on the PKK, which it argued was responsible for the disappearance of civilians, had destroyed property and forcefully evicted villagers in retaliation for their cooperation with the Turkish military and refusal to join the PKK. Although Turkey has, over time, come to "regret the occurrence of individual cases of destruction of home, property and possessions resulting from the acts of agents of the State,"⁷³ it has always denied the existence of systematic and grave human rights violations as a state policy in the Kurdish region.

The Domestic Impact of Early European Engagement in the Kurdish Question

Turkey's declaration as an EU candidate was a turning point in its relations with European institutions. Since the EU began to treat the ECtHR judgments as benchmarks to measure Turkey's progress in fulfilling the accession criteria, the timely and proper execution of these judgments has become tied to Turkey's prospects for EU membership, rendering non-cooperation with the Strasbourg court to be too costly. With the stated goal of executing the judgments of the ECtHR and fulfilling the EU's Copenhagen political criteria, successive Turkish governments adopted a series of reforms.

The reforms of 2001–2002 removed the constitutional bans on the use of minority languages in broadcasting and the dissemination of thought; abolished the death penalty in peacetime; legalised broadcasting in select minority languages; allowed the opening of private courses for the teaching of minority languages; and abolished the state of emergency in all but two provinces, with a commitment to completely end it at the end of 2002. In relative terms, the reforms were so remarkable that the Commission concluded that they "provide much of the ground work for strengthening democracy and the protection of human rights in Turkey."⁷⁴

In November 2002, the AKP came to power on a pro-EU platform. In recognition of the new government's political will to continue the reforms, the EU declared that if "the European Council in December 2004, on the basis of a report and a recommendation from the

⁷³ ECtHR, *Kınay and Kınay v. Turkey* (friendly settlement), Application no. 31890/96, para. 22(2).

⁷⁴ European Commission, *Turkey 2002 Progress Report*, 46.

Commission, decides that Turkey fulfils the Copenhagen political criteria”, it would open accession negotiations “without delay”.⁷⁵ During the next two years, the AKP government introduced new reforms. Some of these concerned the Kurdish question: Zana and the other Kurdish parliamentarians were released, the scope of the right to broadcasting in Kurdish was expanded, the state of emergency regime was abolished in the remaining provinces and a law to compensate the monetary losses of the displaced was adopted.⁷⁶ Others were of a general nature: the Penal Code was revised and the supremacy of international human rights law was introduced as a constitutional norm.

Many of the post-1999 reforms were quite limited in substance. Only a handful of minority languages unilaterally decided by the government were allowed to be used in private broadcasting and taught in private courses. The state did not assume any positive obligations to finance these reforms, keeping intact the unequal treatment of Turkish – fully financed by public resources in all walks of life – and the remaining languages. The stringent bureaucratic conditions attached to these rights rendered their exercise very difficult.⁷⁷ And yet, some of these changes, such as the abolition of the death penalty, were so remarkable that the reforms were overall considered as “a breakthrough, a revolution in the overall mentality in Turkey”.⁷⁸

Caught between the necessity to acknowledge this relative progress and the resistance in some member states to Turkey’s accession,⁷⁹ the EU produced a middle solution, inventing “a brand new language in the report methodology”.⁸⁰ It concluded in December 2004 that “Turkey sufficiently fulfils the Copenhagen

political criteria” and decided to commence the accession negotiations the following year.⁸¹

⁷⁵ Council of the European Union, *Presidency Conclusions*, Copenhagen European Council, 12 and 13 December 2002, no. 15917/02, 29 January 2003.

⁷⁶ Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism (Turkish), no. 5233, 17 July 2004, *Official Gazette*, no. 25535, 27 July 2004.

⁷⁷ For an analysis of the substance and implementation of these reforms, see Dilek Kurban, “Confronting Equality: The Need for Constitutional Protection of Minorities on Turkey’s Path to the European Union”, *Columbia Human Rights Law Review* 35, no. 1 (Fall 2003): 151–214.

⁷⁸ Personal communication with EU official-1 on 11 November 2013.

⁷⁹ The resistance was particularly strong in France at the time, causing President Jacques Chirac to approve the opening of accession negotiations with Turkey on the condition of them being open-ended. Turhan, *The European Council Decisions* (see note 50), 328.

⁸⁰ EU official-1 (see note 78).

⁸¹ Council of the European Union, *Presidency Conclusions*, Copenhagen European Council, 16 and 17 December 2004, no. 16238/04 REV 1, 1 February 2005.

The Changing Dynamics

A series of global, regional and domestic developments changed the degree and nature of Europe's engagement in Turkey's Kurdish policies. In the 1990s, when the EU and the ECtHR issued critical resolutions, reports and judgments against Turkey, the Kurdish region was governed by a state of exception, the security forces were committing grave abuses and the government was refusing to cooperate with the international community. In the first half of the 2000s, the "new" Turkey presented a success story. It was in accession talks with the EU, in full cooperation with European institutions and heading towards more democracy and the rule of law. At any rate, the EU and the ECtHR were increasingly preoccupied with institutional and political challenges and had diminishing resources to spare on the Kurdish conflict. Finally, the EU and its member states' heightened interest in counter-terrorism gave rise to a new policy cooperation with Turkey, implicating not only the PKK but also the democratic Kurdish movement.

The Implications of 9/11 on the EU's Stance on Turkey's Kurdish Conflict

The new global order that followed September 11 had significant consequences for the EU's engagement with the Kurdish question, particularly with the PKK. On 21 September 2001, the European Council declared the "fight against terrorism" as a priority objective and published a list of "persons, groups and entities involved in terrorist acts".⁸² The PKK was included in the updated list published a year later, on 2 May 2002.⁸³ Although legal restrictions against the PKK in Western Europe go back nearly a decade earlier,⁸⁴

⁸² The Council of the European Union, "Council Common Position 2001/931/CFSP of 27 December 2001 on the Application of Specific Measures to Combat Terrorism", *Official Journal of the European Communities*, L 344/93 (2001).

⁸³ The Council of the European Union, "Council Common Position 2002/340/CFSP of 2 May 2002 updating Common Position 2001/931/CFSP of 27 December 2001 on the Application of Specific Measures to Combat Terrorism", *Official Journal of the European Communities*, L 116/75 (2002).

⁸⁴ In 1993, the German government banned PKK-affiliated

what changed after the 9/11 attacks was the emergence of an EU-wide measure, which declared the PKK as an international organisation engaged in terrorism.⁸⁵

For the political representatives of the PKK affiliate organisations,⁸⁶ the listing symbolises the European endorsement of Turkey's official policies on the Kurdish question. Questioning the wisdom and the fairness of the listing at a time when the PKK's unilateral ceasefire was in effect, its militants had withdrawn beyond the borders and the organisation "was deliberating to dissolve itself",⁸⁷ the PKK's political representatives in Europe argue that with this decision the EU effectively became a proxy in Turkey's counter-terrorism policies. The Peace and Democracy Party (BDP) leaders see the listing as the outcome of a bargain between the EU member states and the Turkish government, which affected the EU's engagement in the human rights dimension of the Kurdish conflict. They mark the decision as the beginning of a new period when the EU's diplomatic and human rights delegations ceased their visits to the Kurdish region, leaving the Turkish authorities unchecked in their

political and cultural organisations within its borders due to fear of "a spillover effect from the Turkish-Kurdish conflict". Vera Eccarius-Kelly, "Political Movements and Leverage Points: Kurdish Activism in the European Diaspora", *Journal of Muslim Minority Affairs* 22, no. 1 (2002): 91–118, here 91.

⁸⁵ Prior to that, the UK had declared the PKK a terrorist organisation on 28 March 2001. Marlies Casier, "Designated Terrorists: The Kurdistan Workers' Party and its Struggle to (Re)Gain Political Legitimacy", *Mediterranean Politics* 15, no. 3 (2010): 393–413, here 399.

⁸⁶ Personal communication with Chair of People's Congress of Kurdistan (KONGRA-GEL), and former DEP parliamentarian Remzi Kartal in Brussels on 11 November 2013. KONGRA-GEL is the legislative assembly of the "party complex" constituted of several parties and organisations, including the PKK. For a description of this complex structure, see Akkaya and Jongerden, "The PKK in the 2000s" (see note 32).

⁸⁷ Personal communication with Spokesperson of the Foreign Affairs Commission of the Kurdistan National Congress (KNK) Songül Karabulut in Brussels on 13 November 2013. The KNK is a pan-Kurdistan umbrella organisation established in 1999 and comprising political parties, individuals and non-governmental organisations from the Kurdish diaspora and all parts of Kurdistan. Among its 250 members, there are around 30 political parties, including the KCK. Ibid.

human rights policies and enabling them “to commit violations freely”.⁸⁸

Strongly refuting these claims, European policy-makers emphasise that listing an armed insurgency engaged in acts of terrorism was, and is, neither a political contradiction nor an unconditional form of support for the Turkish government. Noting the distinction between their counter-terrorism and human rights policies, they stress their lasting support for the Kurds’ democratic struggle for equality, democracy and the rule of law. EU officials also refute that their institutions ceased diplomatic visits in the Kurdish region, reiterating their continued engagement in the Kurdish issue.

It is clear that Kurdish political representatives and EU officials have divergent opinions regarding the EU’s engagement in the human rights dimension of the conflict. Leaving aside the accuracy of the complaints regarding the EU’s physical presence in the Kurdish region, the gap between the mutual perceptions is evident. As for the EU’s listing of the PKK, regardless of the principle behind it, what was intended as an EU-wide policy targeting the PKK and its members in Europe had far wider political implications in Turkey. The EU’s strong support for Turkey’s counter-terrorism policies in the mid-2000s strengthened the hand of the government *vis-à-vis* not only the PKK militants but also the non-violent Kurdish opposition in Turkey, enabling it to disguise its human rights violations in the Kurdish region “behind the cover of counter-terrorism”.⁸⁹

EU-Turkey Relations in Turbulence

Almost immediately after it had started, the accession process virtually halted due to two mutually reinforcing developments: the EU’s growing lack of commitment to Turkey’s membership and Turkey’s obstinacy concerning the Cyprus question. The institutional overload brought by the EU’s 2004 enlargement triggered a heated debate over further enlargement versus deeper integration. This caused the EU to consider Turkey’s accession in a new light and to introduce “absorption capacity” as a formal criterion in 2005.⁹⁰

⁸⁸ Personal communication with BDP politician and the Metropolitan Mayor of Diyarbakır Osman Baydemir in Istanbul on 3 October 2013.

⁸⁹ Ibid.

⁹⁰ Senem Aydın-Düzgüt and E.Fuat Keyman, *EU-Turkey Relations and the Stagnation of Turkish Democracy*, working paper

Domestic political debates in several member states⁹¹ linked together the discussions over the EU’s future and Turkey’s accession, leading to the announcement that the negotiations would be “an open-ended process”.⁹²

In the meantime, Cyprus’ accession and new veto power over enlargement (and Turkey’s membership) had turned the Cyprus conflict into a stumbling block for Turkey’s membership. Despite its original commitment, Turkey refused to open its ports and airports to the vessels and flights of the Republic of Cyprus, as required by the Association Agreement and its Additional Protocol of 1970. In response, the EU froze the negotiations of eight chapters in 2006.⁹³ The next year, following the election of Nicolas Sarkozy, France decided to block five chapters⁹⁴ “on the shaky grounds that they were too evidently related to full membership”.⁹⁵ Such a unilateral decision by a member state was unprecedented. But it provided a precedent for Cyprus, which followed suit two years later and announced that it would block the opening of six chapters, including 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security).⁹⁶ Thus, only four years after the start of the accession process, negotiations over more than half of the EU *acquis* chapters were blocked. As a result, merely 14 out of the 35 chapters have been opened since the start of the accession talks, only one of which was provision-

no. 2 (Rome: Istituto Affari Internazionali, 2012), 3.

⁹¹ In 2005, the EU’s Constitutional Treaty was rejected in popular referenda held in France and the Netherlands, and Angela Merkel, who strongly opposed Turkey’s accession, came to power in Germany.

⁹² Council of the European Union, *Enlargement: Accession Negotiations with Turkey: General EU Position*, Annex II: Negotiating Framework, 12 October 2005.

⁹³ These eight chapters are: 1-Free Movement of Goods, 3-Right of Establishment and Freedom to Provide Services, 9-Financial Services, 11-Agriculture and Rural Development, 13-Fisheries, 14-Transport Policy, 29-Customs Union and 30-External Relations.

⁹⁴ These were: 11-Agriculture and Rural Development (one of the chapters blocked by the European Council), 17-Economic and Monetary Policy, 22-Regional Policy and Coordination of Structural Instruments, 33-Financial and Budgetary Provisions and 34-Institutions. Following the election of François Holland in 2012, France stopped blocking Chapter 22, which was opened for negotiations by the EU in autumn 2013.

⁹⁵ Nathalie Tocci, *The Baffling Short-sightedness in the EU-Turkey-Cyprus Triangle*, Document IAI 1021 (Rome: Istituto Affari Internazionali, October 2010), 2.

⁹⁶ The remaining four chapters blocked by Cyprus are: 2-Freedom of Movement for Workers, 15-Energy, 26-Education and Culture and 31-Foreign, Security and Defense Policy.

ally closed.⁹⁷ Between July 2010 and October 2013, no new chapter was opened. This made “it easy for the Turkish Government to say ‘whatever we will do will not satisfy the EU’ and to cherry pick from the long list of reforms that the EU has demanded those that fitted their political agenda.”⁹⁸

Although the EU’s engagement in Turkey had already lessened after its eastern enlargement, it received a serious blow with the Euro crisis, which posed a credible threat to the longevity of the Union. Caught up in its own crisis, the EU had neither the political interest nor the ability to be actively engaged in Turkey’s domestic issues, including the Kurdish issue. By the same token, Turkey itself seemed no longer enthusiastic about joining the EU. The country’s economic growth – at a time when several EU members were dealing with severe financial crises – and its increasing engagement in world affairs had created a (false) self-confidence on the part of the government, leading it to “undervalue” the EU.⁹⁹

Less than a decade after the accession talks had started, both sides lost their commitment to the process. On the other hand, due to its energy and security needs and the growing instability in the Middle East, the EU did not have an interest in losing its influence over Turkey.¹⁰⁰ The popular uprisings that brought down authoritarian regimes in several Arab countries put Turkey on the spot as a predominantly Muslim, yet secular and democratic, country and a viable foreign policy partner for the EU in the Middle East. The establishment of the European External Action

Service in December 2010 provided the institutional framework for deeper foreign policy cooperation with Turkey.

The accession process started to be “more contextualized and become part of a broader Turkey-EU relationship”.¹⁰¹ The European Parliament started to emphasise “the potential of close EU-Turkey relations” in the Black Sea, Central Asia and the broader Middle East regions,¹⁰² and Turkey’s significance as a growing economy, an important trade partner for the EU, “source of inspiration for democratising Arab States” and “a major EU energy corridor for Caucasian and Caspian oil and gas resources”.¹⁰³

This spirit of cooperation, however, did not last long. It had soon become clear that transition to democratic rule was not a given in many of the Arab countries where autocratic regimes were brought down by popular uprisings. Furthermore, any prospect for Turkey to be an inspiration for countries ruled by authoritarian regimes was fast diminishing, particularly during the third term of the Recep Tayyip Erdoğan government. Finally, with the AKP government’s pursuit of an independent foreign policy in the Middle East, it was becoming increasingly difficult to find common ground. When divergences became all the more clear over Egypt and Syria, the EU started to exercise restraint in its assessment of the AKP’s involvement in the region, calling on Turkey to “progressively align its foreign policy with that of the EU”.¹⁰⁴

The Cycle of Reforms, War and Politics in Turkey

As in the Turgut Özal era, the AKP government’s policies on the Kurdish question oscillated between granting the Kurds limited rights on the one hand and enhancing the powers of counter-terrorism agencies on the other. Whereas the former was largely triggered by foreign policy considerations, the latter was

97 The chapters opened for negotiations are the following: 4-Free Movement of Capital, 6-Company Law, 7-Intellectual Property Law, 10-Information Society and Media, 12-Food Safety, Veterinary and Phytosanitary Policy, 16-Taxation, 18-Statistics, 20-Enterprise and Industrial Policy, 21-Trans-European Networks, 22-Regional Policy and Coordination of Structural Instruments, 25-Science and Research (provisionally closed), 27-Environment, 28-Consumer and Health Protection and 32-Financial Control.

98 Personal communication with former Member of the European Parliament Joost Lagendijk in Istanbul on 5 October 2013.

99 Personal communication with EU official-3 on 3 October 2013.

100 The EU’s interest in Turkey as a potential security partner was the principal reason for it to consider the latter’s membership in the 1960s. The Union’s interest in Turkey as a partner in energy security, on the other hand, dates back to the late 1990s. Şaban Kardaş, “Geo-strategic Position as Leverage in EU Accession: The Case of Turkish-EU Negotiations on the Nabucco Pipeline”, *Southeast European and Black Sea Studies* 11, no. 1 (March 2011): 35–52.

101 An EU official speaking at a roundtable discussion in Brussels under Chatham House rules.

102 European Parliament, *2009 Progress Report on Turkey: Resolution of 10 February 2010 on Turkey’s Progress Report 2009* (2010), para. 46.

103 European Parliament, *Enlargement Report for Turkey: Resolution of 29 March 2012 on the 2011 Progress Report on Turkey* (2012), para. H–J.

104 European Parliament, *Enlargement Report for Turkey: Resolution of 29 March 2012 on the 2011 Progress Report on Turkey* (2012), para. 58.

driven by domestic factors such as the AKP's ambition to be re-elected in 2007, the nationalist reactions to the reform process and the security forces' complaints that the reforms curtailed their counter-terrorism efforts.¹⁰⁵

Between the EU's 2004 Copenhagen summit and the next elections in Turkey, Parliament adopted a new Penal Code, and amended the Anti-Terror Law and the Law on the Duties and Authority of the Police, effectively rolling back many of the earlier reforms. The revised Anti-Terror Law, which required the prosecution of minors over the age of 15 in "heavy penal courts" with special powers instead of juvenile courts, led to thousands of Kurdish minors being put on trial merely for participating in pro-PKK demonstrations or celebrations.¹⁰⁶ The new criminal laws allowed political dissidents to be charged with terrorism offences with aggravated sentences, while the enhanced powers given to law enforcement officers led to a drastic increase in the use of disproportionate force by the police against peaceful protestors.

The security situation in the Kurdish region was rapidly deteriorating. In June 2004, the PKK resumed fighting upon expiration of the ceasefire it had declared following Öcalan's capture in 1999.¹⁰⁷ The

funerals of military conscripts killed in combat turned into platforms for anti-AKP protests. Capitalising on this social unrest, the Turkish armed forces and the opposition parties accused the government of giving concessions to the PKK. In response – in consideration of the approaching elections – the government adopted a hard line. Security forces started routinely stopping civilians, executing house raids without warrants and enforcing arbitrary restrictions of freedoms of association and assembly. In October 2007, the Turkish Parliament approved cross-border military operations against PKK camps in Iraqi Kurdistan.

Meanwhile, making use of its growing political power, the Kurdish political movement started to push the boundaries of the EU-induced reforms and press for collective rights. The DTP politicians aggressively pursued Öcalan's democratic confederalism project¹⁰⁸ through civil disobedience campaigns. In defiance of the laws banning the official use of Kurdish, the DTP/BDP mayors started to provide municipal services and carry out official correspondence in Kurdish, reinsert the Kurdish names of places and use their resources for the development and spread of the Kurdish language.¹⁰⁹

Revised Criminal Laws at Work: The KCK Cases

These policies rendered the DTP/BDP deputies and mayors the targets of judicial harassment. The authorities engaged in continuous attempts to prosecute the pro-Kurdish deputies¹¹⁰ and prevent their re-election.¹¹¹

the 2000s" (see note 32), 154. Others cite the PKK's frustration amid the Turkish government's "complacency toward reaching a negotiated settlement". International Crisis Group, *Turkey: Ending the PKK Insurgency*, Crisis Group Europe Report 213 (20 September 2011), 4.

108 Developed by Öcalan in prison as part of his legal defence, democratic confederalism seeks "democratic self-government" by the Kurds through local councils, parliaments and congresses to be established across Kurdistan. Akkaya and Jongerden, "The PKK in the 2000s" (see note 32), 152–153. It is the ideological and political basis of the DTP/BDP's "democratic autonomy project", which advocates the radical decentralisation of governance in Turkey and the transfer of competences in certain areas, such as education and culture, from the central government to elected regional assemblies.

109 Opening public kindergartens providing education in Kurdish; organising Kurdish conferences and festivals; offering free Kurdish language courses; and publishing Kurdish dictionaries, children's books and cookbooks are only some of the municipal policies in the area of language rights.

110 For examples, see the European Commission reports.

105 As discussed earlier, the EU's ambivalent approach and the increasing opposition of various EU member states to Turkey's accession also played a role in diminishing the political will and ability of the AKP government to further the reform process.

106 The first public protests where Kurdish minors participated in mass numbers took place on 28–29 March 2006 in Diyarbakır after the funeral of 14 PKK fighters killed by security forces. The police used disproportionate power, killing 10 civilians, including minors. The incidents sparked mass riots in the region and expedited the adoption of restrictive amendments to the Anti-Terror Law on 29 June 2006. In 2006 alone, 304 minors were taken into custody on the grounds of having committed "crimes of terrorism" and 719 were prosecuted. UNICEF, *Field Visit Report on Children Deemed to be Terrorist Offenders for Participating in Demonstrations* (2010), 6, http://www.bianet.org/system/uploads/1/files/attachments/000/000/105/original/kitap_tamam%C4%B1.pdf. In response to protests, the Anti-Terrorism Law was revised in 2010 to require the prosecution of minors in juvenile courts and allow the postponement or reduction of their sentences.

107 The reasons for the PKK's resumption of violence at the peak of the EU-induced reforms in Turkey are not entirely clear. Some studies argue that amidst internal developments (the pro-Kurdish party's losing votes in the 2004 local elections) and external developments (the autonomous Kurdish region in Iraq made possible by the US invasion in 2003), the PKK's military wing wanted to make itself relevant once again as a key political actor. Akkaya and Jongerden, "The PKK in

In addition to the bureaucratic obstruction of their day-to-day work, the municipal officials faced “judicial coercion”.¹¹² The peak of these efforts has been the KCK cases,¹¹³ in which DTP/BDP politicians are charged with holding leadership positions or membership in the Union of Communities in Kurdistan/Turkey Assembly (KCK/TM), which is the leg of “an international project” controlled by the PKK and comprised of sister parties in Iraq, Syria and Iran that seeks to establish “an independent state structure”.¹¹⁴ The basis of the indictments is the revised Anti-Terror Law, which allows the characterisation of advocating the same demands as the PKK to be defined as terrorist propaganda. This legal framework enabled the prosecutors to charge Kurdish rights activists, lawyers and elected municipal officials with KCK/PKK membership simply for demanding, through non-violent means, mother tongue education and autonomy for the Kurds.¹¹⁵ The number of defendants in pre-trial detention reached thousands, marking yet another turning point in the conflict.¹¹⁶

111 The most striking attempt to exclude members of the Kurdish national movement from parliament took place on the eve of the 2011 elections. The Supreme Election Board vetoed seven of the BDP-endorsed independent candidates due to their past convictions on terrorism charges. The mounting protests across the country caused the Board to reverse its decision soon after.

112 Watts, *Activists in Office* (see note 5), 113–120. Osman Baydemir, former metropolitan mayor of Diyarbakır, alone faced 28 court cases between 2004 and 2008. *Ibid.*, 115.

113 The KCK cases came to public attention with the arrest in Diyarbakır of 53 Kurds, including elected on-duty mayors, on 14 April 2009, two weeks after the local elections in which the DTP swept the elections in the region.

114 KCK indictment, cited in Fikret İlkiz, “KCK Cases and the Judiciary Mechanism”, *Perspectives-Political Analysis and Commentary from Turkey*, no. 2 (October 2012): 41–45. The KCK was indeed established by the PKK to put into effect Öcalan’s concept of “democratic confederalism”. It brings together political parties, civil society organisations and armed groups affiliated with the PKK in Turkey, Iraq, Iran and Syria. “In the PKK party complex, the KCK can be considered the executive body.” Akkaya and Jongerden, “The PKK in the 2000s” (see note 32), 159.

115 The evidence cited against these individuals include: participating in mass demonstrations during Kurdish New Year celebrations, on World’s Women’s Day and Human Rights Day; citing in their news articles the PKK leaders and/or PKK’s written materials; and even filing petitions with the ECtHR.

116 On 14 April 2009, in response to a parliamentary query, the Minister of Justice stated that in 113 cases launched as part of the KCK investigation across the country, a total of 2,146 defendants were being tried, 992 of whom were held in

Although the AKP, years later, would blame the targeted prosecution of Kurdish politicians on the followers of the Fethullah Gülen movement,¹¹⁷ who were “placed into” police intelligence units and the heavy penal court system, senior government officials, including the prime minister, defended the arrests at the time on the ground that defendants were PKK activists in disguise. Mindful of this history, Kurdish politicians do not attribute sole responsibility for the KCK cases to the Gülen movement and believe that the operations were “carried out through a state-wide consensus” based on a military strategy aimed at eradicating the PKK.¹¹⁸ Yet, the arrests produced the opposite result, “exponentially” increasing the number of recruits to the PKK.¹¹⁹ The Constitutional Court’s dissolution of the DTP in December 2009 eliminated any remaining hopes for a peaceful settlement and tipped the balance of power in favour of the PKK and against democratic Kurdish politics.

On the Road to Peace? The AKP-Öcalan Talks

The lockup of thousands of Kurdish politicians and the dissolution of the DTP gave rise to a new, and much more heightened, wave of violence at the turn of the decade. Another factor was the failure of the AKP’s short-lived “Kurdish opening”, which the government quietly abandoned soon after its launch in 2009. The sole legal outcomes of this initiative were the launch of 24-hour public broadcasting in Kurdish and the establishment of Kurdish institutes and departments at select universities.¹²⁰ The conflict

pre-trial detention. İlkiz, “KCK Cases and the Judiciary Mechanism” (see note 114), 43.

117 Widely known as “the Gülenists”, the movement started as a Turkish religious community led by a Muslim preacher named Fethullah Gülen and transformed into a “national and international player”. For more on the Gülen movement and its role in the KCK case, see Günter Seufert, *Is the Fethullah Gülen Movement Overstretching Itself? A Turkish Religious Community as a National and International Player*, SWP Research Paper 2/2014 (Berlin, January 2014).

118 Personal communication with BDP politician Fırat Anlı in Diyarbakır on 2 October 2013. Anlı is the former mayor of the Yenişehir district of Diyarbakır. On 30 March 2014, he was elected as the co-mayor of Diyarbakır Metropolitan Municipality.

119 *Ibid.*

120 What has led the AKP letting its “opening” die down is the nationalist backlash caused by the “peace envoys” sent by the PKK from across the border in support of the government initiative and a sign of future intentions to lay down arms if

entered one of its deadliest phases, with the PKK staging a series of fatal attacks against military targets.¹²¹

There was a growing realisation within the government about the futility of a “law and order” approach, particularly after the PKK’s deadly attacks in the summer. Furthermore, the persistent Kurdish question posed a credible threat to Erdoğan’s plans of ruling Turkey under a presidential system. Regional developments also made a peaceful resolution inevitable. The power vacuum created by the civil war in Syria gave rise to *de facto* Kurdish self-rule in the north (Western Kurdistan, or *Rojava*) under the leadership of the Democratic Union Party (PYD), which is ideologically, politically and militarily linked to the PKK.¹²²

Against this background, the government (re)commenced peace talks with the PKK. This time, as opposed to the “Oslo Process”, carried out with the PKK leadership with mediation from a third party in Europe, the talks would take place directly with Öcalan. A recent turn of events might have influenced this decision. In September 2012, 63 prisoners initiated one of the largest hunger strikes in Turkey’s history in response to the courts’ refusal to allow the KCK defendants to conduct their defence in Kurdish. Within weeks, the number of strikers reached 682,¹²³ who demanded improvements in Öcalan’s prison conditions, the right to education in Kurdish and the right to use Kurdish in courts. The duration of the strike

and when a peaceful settlement is reached. The euphoric greeting of eight unarmed PKK militants (and 26 refugees who came along from the UNHCR-run Mahmur camp in Iraqi Kurdistan) at the border crossing by tens of thousands of Kurds from Turkey and the DTP-organised celebrations across the Kurdish region in the following days led to counter-demonstrations in the rest of the country by Turkish nationalists who opposed the AKP’s initiative as treason. These reactions led to the prosecution of four of the PKK militants and six of the refugees on terrorism charges and led to the remaining 24 quietly returning to Iraqi Kurdistan thereafter. Cengiz Çandar, *Leaving the Mountain: How May the PKK Lay Down Arms? Freeing the Kurdish Question from Violence* (TESEV, Istanbul, 2012), 80.

121 Principal among these attacks were the killing of 20 soldiers in two separate attacks carried out by the PKK in May and July 2011.

122 For more on the Syrian civil war and Turkey’s policy therein, see Muriel Asseburg, “Syria’s Civil War: Geopolitical Implications and Scenarios”, *Mediterranean Yearbook* (2013), <http://www.swp-berlin.org/fileadmin/contents/products/fachpublikationen/AsseburgSyriaMediterraneanYearbook2013.pdf>.

123 The number is based on the announcement made by the Ministry of Justice on 2 November 2012.

and the participation of BDP deputies increased its public profile, forcing the government to start drafting a law to allow the use of Kurdish in courts.¹²⁴ The hunger strikes abruptly ended in response to Öcalan’s call, demonstrating his supremacy over the Kurdish movement.

The unofficial talks started soon after and bore first fruit when Öcalan delivered his historic message to the Kurdish people on 31 March 2013, announcing the end of the armed insurrection. The PKK responded by announcing an indefinite ceasefire and commencing the withdrawal of its fighters beyond the borders.¹²⁵ Despite this promising start, it soon became clear that the government and the Kurdish national movement had divergent expectations. For the government, the ultimate aim was the cessation of the armed conflict and for the PKK to lay down its arms. For both the PKK and the BDP, the goal was a political settlement based, for the short and medium term, on structural legal reforms that granted the Kurds political status and, for the longer term, on the disarmament and reintegration of PKK militants.¹²⁶ Following the PKK’s ceasefire declaration, the ball was now in the court of the government. It responded with a “democratisation package”, which, although it expanded on linguistic rights granted prior, it nonetheless failed to meet key Kurdish demands, such as public education in Kurdish, the lowering of the electoral threshold and the abolishment or revision of the Anti-Terror Law.¹²⁷

The peace talks between the AKP and Öcalan have become *the* platform where the Kurds’ long-standing

124 The law was eventually adopted on 24 January 2013, granting defendants a limited right of oral defence in “another language” other than Turkish during the reading of the indictment and in response to the substantive allegations. Defendants are required to bear the costs themselves. The law entered into effect with its publication in the *Official Gazette* on 31 January 2013.

125 For more on the peace process, see Michael Werz and Max Hoffman, *The United States, Turkey, and the Kurdish Regions: The Peace Process in Context* (Center for American Progress, July 2014); Kevin Matthees and Günter Seufert, *Erdoğan and Öcalan Begin Talks: A Paradigm Shift in Turkey’s Kurdish Policy and a New Strategy of the PKK*, SWP Comments 13/2013 (Berlin, April 2013).

126 Although the courts, seemingly instructed by the Ministry of Justice, released a few Kurdish mayors, including Firat Anlı, in early March 2013 – and a number of lawyers, journalists and activists in subsequent months – thousands of other KCK defendants remain in prison.

127 For an analysis of the package from the perspective of the Kurdish demands, see Dilek Kurban, *Not a Roadmap for Peace: Erdoğan’s Democratisation Package Defies Kurdish Expectations*, SWP Comments 35/2013 (Berlin, November 2013).

human rights claims – along with their more recent political demands for autonomy – are being negotiated. Thus, once linked to the EU process, recognition of the Kurds’ democratic demands has become contingent on the progress of informal and unstructured peace talks, whose future remains obscure amidst volatile political situations in Turkey and the wider Middle East. Once prepared under the guidance of the European Commission’s progress reports and the ECtHR rulings, the reforms are now tuned to the progress made in the negotiations with Öcalan.

The EU’s Engagement in the Kurdish Issue in the Accession Era

From the EU’s perspective – albeit limited in scope and slow in pace – the progress Turkey has made in democratisation has been remarkable. Although the AKP was selective in following the EU’s demands, it was “willing to listen and to move in a certain direction”.¹²⁸ The military’s overt opposition to the AKP was another factor in the EU’s support.¹²⁹ Although the reforms had, by and large, halted by the mid-2000s, the EU stood behind the Turkish government out of principle (an EU-oriented government should not be left alone in its struggle against military tutelage), necessity (the lack of a viable and desirable alternative to the AKP in Turkey) and convenience (the EU was busy with its own post-enlargement institutional problems).

The dynamics between the EU, the Kurdish national movement and the Turkish government were changing fast by the mid-2000s. The European Parliament, while remaining critical of official government policies, called on the DTP deputies and mayors to “distance themselves clearly” from the PKK.¹³⁰ The decisive factor in the adoption of this language was the PKK’s resorting to violence once again, which led Parliament to “draw a clear line between the elected politicians and the PKK” and to exclusively engage with the former.¹³¹ Certainly, the PKK’s resumption of armed hostilities required European policymakers to take a

firm stand against the continued use of violence as a means of political struggle. On the other hand, by adopting the political rhetoric prevalent in government and nationalist circles in Turkey at the time,¹³² Parliament effectively joined the harassment campaign, which portrayed DTP politicians as PKK militants in disguise and led to the dissolution of the DTP by the Constitutional Court in 2009. The European Commission reacted to the ruling as a “serious setback to the government’s efforts at democratic opening”.¹³³ However, in portraying the dissolution as a judicial measure, the Commission overlooked the fact that it was made possible by a legal framework kept intact by the AKP. Moreover, the Commission’s reaction was not even close to the strong protest it has shown over the dissolution of the AKP, which an EU official called “almost a coup attempt”.¹³⁴ The DTP’s dissolution, on the other hand, was business as usual, since it “*de facto* would not harm the Kurds because they would create another party”.¹³⁵

Perhaps the strongest indicator of the changing times was the EU’s belated reaction to the KCK cases. It was only in 2011 that the Commission explicitly criticised the 2006 revisions in the Anti-Terror Law and assessed the arrest of Kurdish politicians as “a challenge for local government”.¹³⁶ In accounting for the time lag, an EU official said that “in the context of the post-9/11 period”, the KCK operation was “sold to [the EU] as a big anti-terrorist operation [against] a clandestine structure in Turkey all linked to PKK”.¹³⁷ This, however, was by no means a new argument voiced by the Turkish government. In essence, it is similar to the portrayal of DEP deputies as PKK agents in the 1990s, which at the time did not prevent EU institutions from strongly condemning the arrests of elected Kurdish politicians who were engaged in non-violent democratic opposition to official policies. It was the EU governments’ uncritical acceptance of the same argument with respect to the DTP/BDP politicians that kept them from following the KCK case by observing trials, a practice they frequently resorted to in the 1990s.¹³⁸ Nonetheless, after a while, the Com-

128 Lagendijk on 5 October 2013 (see note 98).

129 The highlight of this opposition was the Chief of Staff’s failed attempt to preclude the election of Abdullah Gül to the presidential office by issuing an ultimatum to the government on 27 April 2007.

130 European Parliament, *Turkey’s 2007 Progress Report: Resolution of 21 May 2008 on Turkey’s 2007 Progress Report* (2008), para. 13.

131 Lagendijk on 5 October 2013 (see note 98).

132 The most symbolic and vivid symbol of the DTP’s pariah status was the prime minister’s refusal to shake the hands of the DTP deputies.

133 European Commission, *Turkey 2010 Progress Report* (2010), 8.

134 EU official-1 (see note 78).

135 EU official-1 (see note 78).

136 European Commission, *Turkey 2011 Progress Report* (2011), 11.

137 EU official-1 (see note 78).

138 A large number of delegations from Europe that were

mission revisited its initial assessments about the KCK case, concluding that “it was clearly over the top” and was not justified “solely on the account of the fight against terrorism”.¹³⁹

By the time the Commission started to criticise the judicial persecution of Kurdish politicians, however, the EU had lost much of its leverage over Turkey, due to the halting of the accession process and the consolidation of the AKP’s power. The EU’s declining political influence and moral power over Turkey was evident in the reception of its growing criticisms in government circles. The Commission’s 2012 progress report, which marked the first time the EU publicly expressed strong criticism of the AKP, was dismissed by the party leaders as being “biased”.¹⁴⁰ When the EU went beyond mere criticism and threatened to take concrete action, however, the continuation of its power over the Turkish government became evident. The European Council’s decision to postpone the opening of Chapter 22, originally planned for June 2013, in protest of the police brutality displayed in the Gezi protests, alarmed the AKP leaders, who pled for EU leaders to reconsider their decision.¹⁴¹ The incident showed not only that the accession process still matters for Turkey, but also that the EU still retains a degree of leverage over the government.

The ECtHR in Crisis

The CoE’s rapid eastbound expansion after the end of the Cold War worsened the docket crisis of the ECtHR, which now had 800 million potential applicants in 47 states. The situation led to the initiation of a reform process to render the ECHR system more efficient. One of these reforms, the pilot judgment mechanism,¹⁴² implicated in particular Kurdish victims’ access to Strasbourg.¹⁴³ In *Doğan*, a pilot judgment issued in a

planning to attend the first KCK hearing on 18 October 2010 changed their minds at the last minute when Turkish government officials told the embassies in Ankara that their attendance would not be appreciated. Anlı on 2 October 2013 (see note 118).

139 EU official-1 (see note 78).

140 Most symbolically, a senior AKP politician threw the progress report into the trash bin in front of press cameras.

141 After much consideration, the EU decided to open Chapter 22 in the autumn.

142 The first pilot judgment was issued against Poland. ECtHR, *Broniowski v. Poland* (Grand Chamber), Application no. 31443/96, 22 June 2004.

143 Dilek Kurban, “Shattered Hopes: When the European

displacement case, the Court identified, for the first time, internal displacement as being a systemic and structural problem in Turkey and called for the adoption of policies to address it.¹⁴⁴ The ruling led the government to expedite the adoption of a compensation law for the displaced in order to win an inadmissibility decision to enable the domestic settlement of the remaining 1,500 applications and strengthen the chances of a favourable EU decision regarding accession.

The period after *Doğan* witnessed concerted efforts by the Turkish government to make an exemplary implementation of the law.¹⁴⁵ These efforts paid off and the ECtHR, in an inadmissibility decision in the case of *İçyer*, found the compensation law to be an effective domestic remedy and rejected all pending applications.¹⁴⁶ For the displaced Kurds and their lawyers, the road to Strasbourg, while in theory still open, was effectively closed. For the government, the decision saved millions of Euros in compensation and repaired its tarnished international reputation.

In reality, in limiting compensation to pecuniary losses and the state’s liability to civil remedies, the Turkish law falls far below ECtHR standards. Prior to the law, the Court had compensated the displaced for their emotional suffering and emphasised that an “effective remedy” should entail the identification and prosecution of perpetrators. Furthermore, by prematurely passing judgment on a new mechanism, the ECtHR removed any incentive for Turkey to properly apply the law. Indeed, after *İçyer*, the administrative commissions tasked with implementing the law slowed down their work, rejected a high number of petitions and lowered the compensation amounts.¹⁴⁷ And yet, in 2008, the Committee of Ministers closed its

Court of Human Rights Shuts Its Doors to the Kurdish Displaced”, *Perspectives on Europe*, no. 1, special issue, “Justice and Unfairness: Ethics of Law and Power in Europe” (Spring 2014): 24–30.

144 ECtHR, *Doğan v. Turkey*, Applications nos. 8803–8811/02, 8813/02 and 8815–8819/02, 29 June 2004. Quite unusually, the ECtHR retroactively labelled *Doğan* as a pilot judgment in *İçyer*, an inadmissibility decision it issued two years later. ECtHR, *İçyer v. Turkey*, Application no. 18888/02, 12 January 2006.

145 The commissions tasked with implementing the law were instructed by the government to speedily process the applications and to award high compensation amounts. Kurban and Yeğen, *On the Verge of Justice* (see note 19).

146 ECtHR, *İçyer* (see note 144).

147 Dilek Kurban et al., *Coming to Terms with Forced Migration: Post-Displacement Restitution of Citizenship Rights in Turkey* (Istanbul, August 2007).

examination of the issue based on Turkey's assurances that there were a wide range of remedies available to the victims.¹⁴⁸ These assurances proved to be unjustified; the Turkish courts routinely approved the decisions of the commissions and the Constitutional Court refrained from exercising judicial review over the law.¹⁴⁹

Nonetheless, Kurdish lawyers continued to apply to Strasbourg. They have brought before the ECtHR novel issues pertaining to collective and cultural rights, pushing the boundaries of the Convention. The Court's stance in these cases has been mixed, and at times inconsistent. It ruled in favour of Turkey's 10 per cent threshold, which had excluded from parliament the pro-Kurdish political parties, which received 4 to 6 per cent of the votes nationwide in the three general elections they participated in between 1995 and 2002. While acknowledging that this was the highest threshold in Europe, the ECtHR held that member states have broad leeway on this matter owing to the political nature of electoral rights and the lack of a common European standard.¹⁵⁰ The Court also upheld Turkey's ban on the official use of the Kurdish letters x, q and w, finding the requirement to transliterate Kurdish names to the Turkish alphabet not to be a violation of the Convention.¹⁵¹ It did not take note of the fact that the ban is not limited to the use of these letters in names, but has systematically been used by the Turkish authorities to prosecute mayors for using the Kurdish alphabet in official correspondence.¹⁵²

In some cases, the ECtHR noted the incoherence in Turkey's legal framework on language rights. It found the government's attempt to dissolve a trade union whose by-laws advocated the right to public education in the mother tongue to be in violation of the freedom of association and expression, noting the contradiction in the dissolution case launched against the union and the Turkish Parliament's decision in 2002 to allow private courses for the teaching of minority languages.¹⁵³ In a case concerning the conviction of

five Kurdish politicians for having spoken Kurdish in their political activities and election campaigns, the Court found the blanket prohibition of the use of unofficial languages coupled with criminal sanctions to be in violation of freedom of expression laws.¹⁵⁴

While pointing out the tensions in Turkey's legal framework, the Court at times created inconsistencies in its own jurisprudence. It refused to hear a case concerning the dissolution of the municipal council and the dismissal of the mayor of the Sur district of Diyarbakır by a Turkish court on the basis of the municipality's decision to provide public services in Kurdish, Armenian, Syriac, English and Arabic.¹⁵⁵ In a majority decision, the ECtHR declared the case to be inadmissible.¹⁵⁶ If the attempt to dissolve a trade union merely because it advocates education in the mother tongue is a violation of the Convention, it is difficult to see why the ECtHR did not address a case concerning the government's removal from office of an elected council and mayor who decided to provide multilingual municipal services. After all, the union and the municipal officials were similarly engaged in civil disobedience by violating the laws that ban the advocacy of minority rights for an officially unrecognised language. The distinctions the Court drew between the ban on the use of Kurdish in political activities (which is not permissible) and the ban on the use of names with Kurdish letters (which is permissible) are difficult to justify in light of the fact that language is a unified entity that includes both its spoken and written forms.

The ECtHR's stance on the Sur case also stands in contrast to the position adopted by other CoE bodies. In 2007, the Congress of Local and Regional Authorities of Europe (the Congress) undertook a fact-finding mission specifically to investigate the Sur case,¹⁵⁷ on

cation no. 20641/05, 25 September 2012.

154 ECtHR, *Case of Şükran Aydın and Others v. Turkey*, Application no. 49197/06, 23196/07, 50242/08, 60912/08 and 14871/09, 22 January 2013.

155 The government had replaced the dismissed elected mayor, Abdullah Demirbaş, with an appointed bureaucrat, who held the position for two years, although the law required the holding of new elections within six months. In 2009, Demirbaş was re-elected to the same position by receiving 65.3 per cent of the votes.

156 ECtHR, *Abdullah Demirbaş and Others v. Turkey*, Application no. 1093/08, 301/08, 303/08 et al., 9 November 2010 (available in English).

157 The Bureau of the Congress, *Local Democracy in Turkey: Situation in Sur/Diyarbakır (South-East Anatolia, Turkey)*, Report of the Congress Fact-Finding Mission to Turkey, 8–10 August 2007.

148 Committee of Ministers, *Resolution on the Execution of the Judgment of the European Court of Human Rights Doğan and Others against Turkey*, CM/ResDH(2008)60 (2008).

149 Kurban and Yeğen, *On the Verge of Justice* (see note 19).

150 ECtHR, *Yumak and Sadak v. Turkey* (Grand Chamber), Application no. 10226/03, 8 July 2008 (upholding the initial Chamber judgment of 30 January 2007).

151 ECtHR, *Kemal Taşkın and Others v. Turkey*, Application no. 30206/04, 37038/04, 43681/04, 45376/04, 12881/05, 28697/05, 32797/05 and 45609/05, 2 February 2010.

152 Anlı on 2 October 2013 (see note 118).

153 ECtHR, *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, Appli-

the basis of which it called on the Turkish government to “permit municipal councils to use languages other than Turkish in the provision of public services when appropriate.”¹⁵⁸ Expressing “particular concern” for the dismissal of the mayor and the dissolution of the municipal council, the CoE’s Commissioner for Human Rights noted that “this repressive measure against local authorities was not an isolated incident but appears to be part of a generalized practice in the area of Diyarbakir.”¹⁵⁹

When it comes to conventional cases raising first-generation rights, however, the ECtHR ruled in accordance with its precedents. In two recent rulings concerning the indiscriminate killings of Kurdish civilians in the name of counter-terrorism, the Court ruled against the Turkish government. The cases concerned the killing of 38 civilians in an aerial bombardment¹⁶⁰ and the killing of a 12-year-old boy and his father by special police squad units in front of their home.¹⁶¹ The Court’s rulings show that the regime of impunity that shields civilian and security agents of the government has remained intact since the AKP came to power and undertook human rights reforms handed down by the EU. In the first case, although the incidents occurred in 1994, the investigations that the ECtHR found to be inadequate were carried out during the AKP government’s term; in the second, the violations took place in 2004, one month before the EU had decided to start accession talks with the AKP government.

158 The Congress of Local and Regional Authorities, *Local Democracy in Turkey*, Recommendation 229 (2007), 21 November 2007.

159 Council of Europe, *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey on 28 June – 3 July 2009* (Strasbourg, 1 October 2009), paragraphs 39 and 40.

160 ECtHR, *Benzer and Others v. Turkey*, Application no. 23502/06, 12 November 2013.

161 ECtHR, *Makbule Kaymaz and Others v. Turkey*, Application no. 651/10, 25 February 2014.

Conclusions and Policy Proposals

The Dynamics of Limited European Engagement and Impact

There is no question that Turkey has made significant progress in addressing the Kurdish issue and, to a certain extent, acknowledging the legitimacy of the Kurds' demands for equal treatment and democratic participation. The role that European institutions have played in this political transition is also undeniable. Compared to the 1990s, the country has come a long way in alleviating the human rights problems underscored by the ECtHR and the EU. Once banned from speaking their language, the Kurds can now learn in their mother tongue at public schools, watch publicly funded Kurdish broadcasting and even attain university education in their language. The Kurdish region is no longer governed by a state of emergency, nor are Kurdish civilians summarily executed by plainclothes state officials in broad daylight or disappearing after being taken into detention facilities.

At the same time, an assessment of progress is contingent on one's reference point. For a country that has been engaged with the European Convention system for more than half a century and in the EU accession process for a decade, Turkey is far behind in European human rights standards. In many respects, there has been an uninterrupted continuity in Turkey's laws and policies governing the Kurdish conflict. No attempt has been made to abolish, or even diminish, the village guard system, even after the initiation of the peace talks. The special legal regime governing counter-terrorism remains in force, enabling the continued selective targeting of Kurdish politicians and activists. The non-violent advocacy of enhanced rights for the Kurds still provides legal grounds for terrorism charges. The regime of impunity shielding state officials who commit human rights violations in the Kurdish region remains intact.¹⁶²

¹⁶² The CoE's Commissioner for Human Rights recently alluded to the impunity of law enforcement officials as "a very serious, long-standing human rights issue in Turkey". Council of Europe, *Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey from 1 to 5 July 2013* (Strasbourg, 26 November 2013), 2.

To some extent, European institutions' incoherent and uncritical oversight in a number of issues has facilitated Turkey's reluctance to go through genuine democratic transition. The ECtHR, for example, has refrained from concluding that the atrocities committed by the Turkish security forces in the Kurdish region in the 1990s were standard administrative practice, enabling the government to frame the abuses as isolated incidents of malpractice. Similarly, it systematically dismissed Kurdish applicants' claims of ethnic discrimination, though the discriminatory nature of government policies was evident. Certainly, the Court's reluctance to support the provision of public services in Kurdish is understandable, given the absence of common European norms and approaches on what is considered to be a collective right and a political issue. However, its unwillingness to review the dismissal and dissolution of a democratically elected mayor and municipal council on the basis of their decision to provide public services in Kurdish is difficult to reconcile with the Court's mandate to uphold the political rights protected under the European Convention. Similarly, in extending unconditional support for Turkey's counter-terrorism policies after 9/11, the EU and its members failed to see the implications of what was intended to be an anti-PKK measure for the non-violent democratic Kurdish opposition in Turkey. There is a sharp contrast between the EU's reaction to the prosecution of DEP deputies in the 1990s and that of the DTP/BDP politicians in the 2000s. Finally, the EU's exceptional treatment of Turkey's candidacy removed any incentive for the AKP government to bind itself to European norms.

Diminishing European oversight virtually gave the Turkish government a free hand in domestic policies. At the national level, this led to the arrest of a record number of journalists, the prosecution of thousands for the non-violent expression of dissent and the use of excessive force in the policing of demonstrations. In the Kurdish region, a *de facto* exceptional legal regime became operational, reminiscent of the 1990s. The collective prosecution of elected politicians and human rights defenders in the KCK cases and the dissolution of yet another pro-Kurdish party sought to curtail the Kurds' participation in the democratic system. The

disregard of civilian life in counter-terrorism operations was also back in force, as evident in the indiscriminate killing of 34 Kurdish civilians engaged in the cross-border trade of smuggled goods near Uludere (*Roboski*) on the border with Iraqi Kurdistan on 28 December 2011. The court indictment showed that the bombardment was carried out by the Turkish military and approved by the Chief of Staff, presumably with the consent of the government, allegedly on the basis that the victims were mistaken as PKK militants. Not only has there been “no direct apology, from either the military or civilian authorities”,¹⁶³ but the government denied any political responsibility, suggesting that the victims called for their end by engaging in criminal activities.¹⁶⁴

Certainly, sole responsibility for the current situation in Turkey does not rest with Europe. As with previous governments, the AKP’s rhetorical commitment to European norms stemmed from a pragmatic concern to facilitate Turkey’s admission to the EU. The gradual erosion of this prospect, the (false) self-confidence of the government based on Turkey’s economic growth and potential regional leadership, Erdoğan’s personal ambitions to run the country under a presidential system and the lack of a strong democratic opposition as a viable alternative to the AKP had mutually reinforcing effects on the rise of authoritarian government policies. The Kurdish national movement, for its part, often misread the European political landscape; misjudged the effectiveness of its lobbying, raising unrealistic expectations (such as European endorsement of democratic autonomy); and relied heavily on the sympathy and support it received from small political parties (such as the European United Left/Nordic Green Left at the European Parliament) who are ineffective *vis-à-vis* European institutions and governments. It has expected the same degree of support from the EU, although, from the perspective of European policymakers, the nature of the conflict and the attitude of the Turkish government “fundamentally changed from the ‘90s to the 2000s”.¹⁶⁵

¹⁶³ European Commission, *Turkey 2012 progress report*, 34.

¹⁶⁴ In December 2013, a military prosecutor dismissed the case on the grounds that the killings were an unavoidable mistake, “prov[ing] once again that in Turkey the state can kill civilians and get away with it”. Emma Sinclair-Webb, “Dispatches: Impunity and Cover-up in Turkey”, *Human Rights Watch*, 7 January 2014, <http://www.hrw.org/news/2014/01/07/dispatches-impunity-and-cover-turkey>.

¹⁶⁵ Legendijk on 5 October 2013 (see note 98).

What Role for European Institutions?

Recent political developments in Turkey have shown, once again, that the initiation of a genuine political transition will only be possible with coherent, continuous and critical European oversight. The Gezi protests led EU policymakers to reflect on their responsibilities for the domestic situation. The opinion that a vibrant accession process in which Chapters 23 and 24 had long been opened would have enabled the EU to better exert its influence on the Turkish government found growing support in Brussels.¹⁶⁶ The Gezi protests also showed that there was “a growing and active civil society in Turkey”,¹⁶⁷ which saw that the EU is still important and valuable for the protection of human rights.¹⁶⁸ This observation is also valid for Kurdish civil society, which continues to hold high expectations of the EU and the ECtHR. The Kurdish rights groups believe that the stances that European institutions will take in key issues, such as the *Roboski* and KCK cases, are critical. The ECtHR’s long-overdue decision in the KCK case, pending in Strasbourg since March 2010,¹⁶⁹ is highly anticipated.

After a decade of keeping a low profile in Turkey’s Kurdish conflict, it is high time for the European delegations, particularly from Brussels, to resume official visits to the Kurdish region, systematically monitor high-profile cases and critically address the criminalisation of political activities as well as the impunity shielding security officers and the obstacles to the political representation of minorities, such as the electoral threshold. The diversification of counterparts through re-engaging in continuous and structural dialogue with a wide range of civil society actors in the Kurdish region would enable European policymakers to make better-informed decisions and accurate analyses, minimising the risk of being misled by government circles.

The EU and its member states understandably kept a low profile with respect to the peace talks in Turkey, which they were not invited to take part in,¹⁷⁰ and

¹⁶⁶ Personal communications with EU officials.

¹⁶⁷ European Commission, *Turkey 2013 Progress Report*, 11.

¹⁶⁸ EU official-3 (see note 99).

¹⁶⁹ The first petition was filed on 19 March 2010 on behalf of 53 defendants. On 5 June, a second petition was filed on behalf of 50 more defendants and the ECtHR was asked to join the two applications in one case. The Court has yet to issue an admissibility decision.

¹⁷⁰ Personal communication with EU official-2 on 12 November 2013.

refrained from interfering in a process that it considered “primarily an internal matter”.¹⁷¹ However, what started as an attempt to resolve the armed conflict has turned into *the* political platform where the Kurds’ democratic rights claims – long supported by the EU and the ECtHR – are being negotiated in exchange for the PKK’s surrender of its arms. In this sense, the peace talks are not entirely an internal matter, but a process that needs to be closely monitored by the EU, as far as the negotiations over the Kurds’ demands for equal treatment, rule of law and democracy are concerned.

Finally, with respect to the accession process, the debates over the opening of Chapter 22 showed that the EU still retains a degree of leverage over Turkey, which proves most effective when the progress of the talks is conditional to the adoption of concrete human rights reforms. However, such a strategy would only be successful if the EU shows a clear commitment to Turkey’s full membership and attaches no additional strings other than the same conditions imposed on all candidates.

Abbreviations

| | |
|---------------------|--|
| AKP | Adalet ve Kalkınma Partisi (Justice and Development Party) |
| BDP | Bariş ve Demokrasi Partisi (Peace and Democracy Party) |
| CoE | Council of Europe |
| CSCE | Conference on Security and Co-operation in Europe |
| DEHAP | Demokratik Halk Partisi (Democratic People’s Party) |
| DEP | Demokrasi Partisi (Kurdish Democracy Party) |
| DTP | Demokratik Toplum Partisi (Democratic Society Party) |
| ECHR/ Convention | European Convention for the Protection of Human Rights and Fundamental Freedoms |
| ECtHR | European Court of Human Rights |
| EEC | European Economic Community |
| EU | European Union |
| HADEP | Halkın Demokrasi Partisi (People’s Democracy Party) |
| HEP | Halkın Emek Partisi (People’s Labour Party) |
| JİTEM | Jandarma İstihbarat ve Terörle Mücadele (Gendarmerie Intelligence in Combating Terrorism) |
| KCK | Koma Civakên Kurdistan (Union of Communities in Kurdistan) |
| KCK/TM | Koma Civakên Kurdistan/Türkiye Meclisi (Union of Communities in Kurdistan/Turkey Assembly) |
| KNK | Kurdistan National Congress |
| KONGRA-GEL | Kongra Gelê Kurdistan (People’s Congress of Kurdistan) |
| PKK | Partiya Karkerên Kurdistan (Kurdistan Workers’ Party) |
| PYD | Partiya Yekîtiya Demokrat (Democratic Union Party) |
| SHP | Sosyal Demokrat Halkçı Parti (Social Democratic Populist Party) |

¹⁷¹ EU official-1 (see note 78).