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Kurdish as a factor in Turkey-European Union Relation

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Abstract

Despite the disturbance, the new Turkish constitution of 1961 gave significantly wider freedoms of expression, the press, and association than it had in the past. The Turkish Kurds benefited from these new freedoms notwithstanding the continued prohibition on creating any regional or ethnic associations that would undermine Turkish unity. The Faik Bucak-founded Kurdish Democratic Party of Turkey, which was initially conservative, nationalist, and pro-Barzani, had a number of splits in the late 1960s and early 1970s.

Keywords: Kurdish, human rights, European Union, Turkey, culture

Introduction

The Kurds' central concern is without a doubt Turkey's attempt to join the EU. It has also been called a major "crossroads" for Turkey, a turning point in her history and a tie that will bind her to Europe for the foreseeable future.

The lengthy history of Turkish attempts to integrate more deeply with Europe has been hampered by a number of circumstances, not the least of which is her dismal record on human rights. On December 17, 2004, the European Council made the decision to begin official accession talks with Turkey. Turkey's political destiny now appears secure for the first time, and within the next ten years, she is destined to fully join the elite EU "club."

The process of Turkey joining the EU will subject it to the severe human rights laws and civilising influence of European democratic principles, placing significant checks and balances on government behaviour and advancing the reform effort. The requirements for minorities and human rights related to the accession process provide the Kurds with an unmatched opportunity to attain long-term justice and security. Since 2002, the possibility of admission has already sparked quick and significant legislative revisions.

However, it is debatable if Turkey has actually altered her tune and whether the EU's decision to begin accession negotiations was supported by a sincere assessment of Turkey's advancements in democratisation and human rights. There are signs that decision-making in Brussels has been influenced by reasons unrelated to the evaluation of Turkey's compliance with the political requirements of the Copenhagen Criteria. A important component in the decision to begin accession negotiations, the European Commission's 2004 report on Turkey gave a significantly sanitised picture of the human rights situation in Turkey and only made passing mention of the position of the Kurds. Kurds are the largest ethnic and linguistic minority in Turkey ^[1].

The gateway to access

Since Atatürk's idea of a secular, Westernized state served as the foundation for the modern Turkish state in 1923, she has long sought deeper connections with Europe. Turkey has pursued influence in the Central Asian republics and safeguarded her interests in the Middle East; her foreign policy is not only Western-focused. Although Turkey joined the North Atlantic Treaty Organization (NATO) in 1952, the Council of Europe in 1949, and the Organization for Security and Cooperation in Europe (OSCE) in 1975, successive Turkish governments have looked to Western institutions and organisations to forge alliances and achieve foreign policy goals.

However, the process of Turkey becoming a member of the EU has been drawn out and has generated significant discussion among current Member States.

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¹World Directory of Minorities and Indigenous Peoples - Turkey : Kurds, June 2018, Minority Rights Group International, <https://www.refworld.org/docid/49749c9623.html> [accessed 29 August 2020]

Despite sharing many characteristics with Western Europe, such as being a NATO partner, Turkey's fragile multi-party democracy, poor human rights record, relative economic underdevelopment, and mainly Muslim population have long been sources of unease in Brussels.

Turkey submitted an associate membership application to the European Economic

Community (EEC) in 1957, and as a result, in 1963, the two parties signed an association agreement that provided for Turkey's potential future full membership. The Association Agreement served as a first step toward a potential customs union and dealt with trade-related concerns as well as several other areas of cooperation. These early Association Agreements did not include any requirements for political dialogue, which significantly reduced their usefulness in pressuring Turkey to improve its record on human rights and treatment of the Kurds. However, some political dialogue did later occur in response to specific Association Council resolutions. The 1982 constitution provides for basic human rights safeguards ^[2].

However, political conflict and economic stagnation hindered Turkey's integration with the then-European Community (EC) for many years, and relations came to a stop in the 1970s in particular. Turkey finally submitted a formal application for full membership in the EC on April 14, 1987, as relations between Turkey and the EC were beginning to improve following the restoration of civilian rule in Turkey following the 1980 military coup. On December 18, 1989, the EC came to the conclusion that "it would not be suitable for the Community to engage in accession discussions at this time." This decision was made in light of a number of considerations, including internal EC restructuring concerns, Turkey's disregard for human rights standards, its size, and its underdevelopment. The appeal from Turkey was made in the same year that the State of Emergency in the Southeast, which would have such terrible repercussions for the Kurds, was announced, at a time when the war in the Kurdish regions was intensifying.

When the Turkey-EU Customs Union was finally approved on March 6, 1995, it marked a significant advancement toward EU membership. This agreement stipulated that Turkey would have preferential access to the European single market and be provided with adjustment payments totaling US\$470 million between 1996 and 2000. In order to understand the current state of Turkey's EU application, it is helpful to briefly review the circumstances leading up to and immediately following the agreement.

While the European Commission had advocated for additional advancements in human rights norms, the European Parliament, which had to adopt the customs union agreement, had mandated that Turkey must comply with a set of human rights requirements. The Turkish government subsequently announced a number of public initiatives to carry out reform as a top priority, with a focus on the Kurdish issue. According to reports, several MEPs referred to Turkey's subsequent legal revisions as "cosmetic," but the Commission and Council of Ministers were eager to move the Treaty forward. When the Turkish Prime Minister Tansu iller8 reportedly warned that failing to negotiate a deal could

result in "a severe backlash in Turkey," only Muslim extremists opposed to stronger ties with Europe, EU foreign affairs commissioner Hans van den Broek apparently reiterated his worries. Ms. Miller also advanced the idea that Turkey could advance through gradual reform only with significant European support. These predictions have received a lot of attention recently in respect to Turkey's ongoing EU application. The Kurdish movement is also trying to appeal to Islamic sentiment ^[3].

Even though Ankara revised its anti-terrorism law and amended the constitution, the much-heralded advancements in human rights norms did not materialise. In 1996, it was determined that Turkey had failed to "create any significant democratic advances or human rights legislation"; the Kurds were particularly hurt by this conclusion. Mass deaths, village demolition, torture, and other cruel treatment persisted. Key players in Brussels should take note of this experience in Turkey-EU ties since EU membership negotiations are a much more comprehensive process than negotiations over the 1995 customs union and include binding human rights standards. The EU must avoid falling victim to Turkey's hollow promises once more.

The process of Turkey's membership continued quickly after the late 1990s. The following was stated in the 1993 Copenhagen European Council Presidency Conclusions: "The linked nations in Central and Eastern Europe shall become members of the European Union if they so want." As soon as an affiliated country is capable of accepting the responsibilities of membership by meeting the necessary economic and political criteria, accession will occur.

Turkey's path to EU candidacy in 1999 was made possible by a decline in violence in southeast Turkey in the late 1990s and support for EU enlargement following the demise of the communist bloc. The European Council of Helsinki in 1999 came to the conclusion that Turkey met the same requirements as the other applicants and was therefore a candidate for EU membership. This meant that the Copenhagen Criteria had to be met before Turkey could start formal accession talks with the EU. Before beginning accession negotiations, all EU candidate states must meet the following minimal requirements, one of which is political: The candidate nation must have established stable institutions that uphold democracy, the rule of law, human rights, and respect for the protection of minorities before it may become a member.

Giving Turkey EU candidacy had been significantly hampered by this criterion. Turkey has long trailed behind Europe in upholding even the most fundamental human rights principles. The most severe violations of human rights in the Council of Europe occurred in Turkey, according to cases submitted by the London-based Kurdish Human Rights Project to the European Court of Human Rights against Turkey. The European Commission stated that "the situation on the ground has hardly improved and Turkey still does not meet the Copenhagen political requirements" in its annual report for 2000. During the height of the conflict in Turkey's south-eastern provinces between 1984 and 1999, around one million people, mainly Kurds, were forcibly

²The Situation of the Kurds, Canada: Immigration and Refugee Board of Canada, 1 February 1996, <https://www.refworld.org/docid/3ae6a8604.html> [accessed 29 July 2020]

³Turkey's Kurdish Impasse: The View from Diyarbakır, International Crisis Group (ICG), 30 November 2012, Europe Report N°222, <https://www.refworld.org/docid/50b8cac22.html> [accessed 31 August 2022]

displaced from their homes [4].

The Justice and Development Party (AKP), a pragmatic, "pro-European" Party with Islamic roots that brought together less radical Islamists, nationalists, and secular interests to form a party that is broadly comparable to a Western European style centre-right Christian democratic party, was elected by the Turkish electorate in 2002 in contrast to the traditional political establishment. It kicked off an unparalleled reform campaign in the nation that resulted in a number of significant legislative amendments and some improvement in the conduct of public officials. The legal definition of torture was greatly strengthened, there were less limits on the right to free expression and association, and there were theoretically no longer any restrictions on Kurdish language broadcasting and education. Turkey's general public support for EU membership contributed to the smooth passage of reform in certain more delicate sectors. As will be seen, there are still significant issues with these reforms, but the EU was hoping to capitalise on Turkey's apparent willingness to change by offering the inducement of membership.

Turkey's Admission Partnership, outlining how she would fulfil the Copenhagen Criteria, was created by the European Commission after the decision to designate her as a formal candidate for accession. The document was revised in 2002, and the European Council decided that accession negotiations would begin "without delay" if EU leaders determined that Turkey met the necessary criteria after receiving a report from the Commission on its compliance with the Copenhagen Criteria and a follow-up recommendation from the Commission on whether to begin negotiations.

Formal EU accession negotiations beginning

As expected, the European Commission released its proposal on October 6, 2004, finding that Turkey had satisfactorily met the requirements to begin accession negotiations. This was restrained by the clause mandating that Turkey first be required to implement six specific pieces of law. The president of the EU called the outcome a "qualified yes."

On December 17, 2004, the European Council largely approved the Commission's report, concluding that Turkey had met the political requirements of the Copenhagen Criteria and permitting the start of accession negotiations with some conditions. The present schedule is for Entry talks to begin in October 2005. The PKK, which launched an armed campaign against the Turkish state for Kurdish self-rule, is branded a terrorist organization by Ankara [5].

In its decision, the Council declares that the EU would continue to keep a close eye on the political reforms based on Turkey's Accession Partnership and invites the Commission to keep track of Turkey's advancements in human rights reform. The Commission is also invited to propose a framework for talks with Turkey to the Council.

⁴Turkey: Progress on National IDP Policy Paves Way for Further Reforms, Norwegian Refugee Council/Internal Displacement Monitoring Centre (NRC/IDMC), 26 July 2007, <https://www.refworld.org/docid/46a9a3e52.html> [accessed 11 Sept. 2020]

⁵Turkish court gives Kurdish editor 21-year sentence, Radio Free Europe/Radio Liberty, 11 February 2010, <https://www.refworld.org/docid/4b87909121.html> [accessed 12 Oct. 2022]

Following that, the EU and Turkey will hold intergovernmental conferences to continue the usual process of accession talks. During these conferences, Turkey's current legal and administrative frameworks will be thoroughly screened against all 31 chapters of the *acquis communautaire*, the body of economic, social, administrative, and environmental regulations that all EU members are required to enact. The parameters under which the applicants will accept, implement, and enforce the *acquis* are the main subject of the negotiations.

Additional clauses in the Council decision permit "long transition periods, derogations, specific arrangements, or permanent safeguards," and the negotiation process is defined as open-ended, "the outcome of which cannot be guaranteed beforehand," suggesting that accession may still be several years away. Additionally, a hitherto unheard-of specific clause permits the suspension of accession negotiations in the event of "a substantial and persistent violation... of liberty, democracy, respect for human rights and fundamental freedoms."

Turkey's EU Bid's political setting

The ostensible basis for starting accession negotiations with Turkey was her achievement of the precise, EU-defined Copenhagen Criteria. Beyond this, it is important to keep in mind that Turkey's path to EU membership is being complicated by problems with European politics, global security, and economic events, all of which have a significant impact on how the EU makes decisions.

Her size and underdevelopment are partly to blame for worries about Turkey joining the EU. Turkey is expected to have the largest population among EU members by 2025, giving her the most votes in the European Council if current demographic trends continue. However, Turkey's per capita GDP is just about one-third of the average of Western European EU member states, which might put a significant demand on EU resources." The resolution of the Kurdish issue has been one of the main targets of the AKP government [6].

Furthermore, the presence of a sizable, impoverished, predominately agrarian, and predominantly Muslim state within the boundaries of Europe is causing a great deal of unease. The EU's election politics force European governments to consider popular concerns that Turkey's accession might change the EU's cultural diversity and geographic scope. There is concern in Germany and France, in particular, that accession would bring "floods" of immigrant labour; Turkey's admission would extend the EU's borders to Iraq, Iran, and Syria. This is due in part to the rising anti-immigrant sentiment in Western Europe. Similar irrational concerns about "mass immigration" of workers from the ten new EU members that joined in 2004 proved unfounded, and the Council decision on accession calls for "Long transition periods, derogations, specific arrangements, or permanent safeguard clauses" in the area of free movement of people.

In any case, current regional security concerns vastly outweigh these problems, and overall, European leaders are very supportive of Turkey's impending EU membership.

⁶Kurdish Question Dominates Turkish Politics, Jamestown Foundation, 29 September 2010, *Eurasia Daily Monitor* Volume: 7 Issue: 175, <https://www.refworld.org/docid/4ca422f22.html> [accessed 14 Feb. 2020]

Turkey is most notable for its ability to build a "bridge" between Europe and the larger Muslim world. The Middle East, the Caspian Sea, and the Balkans are all crucial geopolitical intersections, and Turkey has historically played a significant role in European defence policy. The US, which views Turkey as an ally in the "War on Terror," has also supported Turkey's admission effort. The strategic access to the Middle East that Turkey's admission would give the West is of enormous significance in the difficult political environment of today. Strategic advantages for supporting Turkish enlargement have been publicly mentioned by important political figures in the EU.

In a similar vein, it is widely believed that Turkey, as the only Muslim candidate for entry into what has frequently been referred to as an exclusive Christian "club," could potentially prove to be a role model of a progressive, secular state with a majority Muslim population imbued with Western values by meeting EU accession standards. The British prime leader Tony Blair stated that the decision to begin accession negotiations in December "shows that those who believe there is a fundamental incompatibility of work together; that we can cooperate together." This would support the idea that Islam and democracy are not incompatible. There is hope that Turkey's experience may help democratic pluralism expand to other countries with a large Muslim population. In 2003, the ruling Justice and Development (AK) party sought to reform some of Turkey's harsher laws^[7].

The fear that a bad decision in December 2004 could have harmed Turkey's whole reform project is another reason Turkey herself is pushing for the opening of accession negotiations. The AKP, which is presently in power in Turkey, has publicly vowed to pursue EU membership and has bet a lot on this approach, including lowering the military's usually significant influence in politics and putting policies in place that curtail some of the authority of the unaccountable state. Turkey has argued, as she did during talks over the 1995 customs union, that adding more delays to the process will strengthen the hands of Islamist political establishment figures and threaten Prime Minister Erdogan's pro-EU, secular administration. It is true that Islamic forces have continued to fight for control in Turkey in recent years, and the Welfare Party, the AKP's predecessor, openly supported Islam. This argument's logic, which effectively says that the EU should accept Turkey to the bargaining table despite significant unresolved issues with human rights standards and the Kurdish question because of concern that another, more oppressive administration would take office, is not particularly persuasive. In fact, it has elements of blackmail.

Additionally, Prime Minister Erdogan has vehemently argued that Turkey has fulfilled her end of the accession bargain by enacting a dramatic series of pro-EU reforms motivated by the possibility of membership, and that as a result, the EU is required to welcome Turkey. Turkey "deserves" to be acknowledged as a partner in negotiations with the EU due to her initiative of reform. Prior to the Council resolution of December 17, 2004, which authorised the start of official accession negotiations, Mr. Erdogan had threatened to sever ties with the EU if Turkey were

subjected to unreasonably onerous requirements in order to become a full member. Again, Turkey's standing as a modern, democratic state does not improve when it tries to influence EU decision-making by making irrational demands and threats.

However, the idea of the EU expanding continues to be a widely held one. Since the gap left by the fall of the former Soviet Union, the search for an "ever closer union" is seen to have helped foster stability and cohesion in Central and Eastern Europe. It has also been successful in Western Europe in consolidating economic prosperity and democracy. It is suggested that include Turkey in Europe would build on these achievements by spreading the political and economic advantages of EU membership throughout the entire continent and enhancing the Union's position on the world stage.

The overall conclusions from these observations are that political and strategic considerations play a considerable role in determining how motivated key players in Europe are to advance Turkey's admission. It's not really novel or contentious to say that this is the case. Forging ahead with Turkish accession is undoubtedly desirable from the perspective of those who hope to see the accession process result in improved respect for human rights and a resolution to the Kurdish issue. The European Commission explicitly mentions the role of these factors in EU decision-making. Turkish legislation and practice is changing and these issues have come to have a growing impact on Turkish-EU relations^[8].

However, as will be seen, the situation becomes more complicated when taking into account the recent European Council decision to begin official accession negotiations, and in particular the finding that she has satisfied the political requirements of the Copenhagen Criteria. This has given rise to claims that the Council has "lowered the bar" and attempted to push through Turkish membership despite continued shortcomings, particularly in the areas of human rights and Turkey's willingness to address the Kurdish issue, rather than applying the same standards to Turkey as to the other accession states, as promised.

Kurds and accession

The question of whether Turkey joining the EU is desirable has generated some discussion among the Kurdish community. The majority of Kurds, however, have a tendency to be supportive; they believed that joining the EU was their best chance of ending decades of oppression and violence, of having their rights and status secured, and, most importantly, of having the chance to come to a lasting political agreement with Turkey and, as a result, to have a say in their own futures. However, Kurdish support for EU membership is by no means a guarantee. Many of the anticipated benefits of EU membership will be lost if the Kurds are neglected and the situation in the Southeast is left to smoulder unattended, as it currently appears to be the case.

What potential does the accession process have to ensure

⁷Freedom in the World 2004 - Turkey, Freedom House, 18 December 2003, <https://www.refworld.org/docid/473c54cdc.html> [accessed 15 Nov. 2020]

⁸*Global Commission on International Migration (GCIM), Reconciling Refugee Protection With Efforts to Combat Irregular Migration: The Case of Turkey and the European Union*, October 2004, *Global Migration Perspectives*, No. 11, <https://www.refworld.org/docid/42ce4a1c4.html> [accessed 11 Dec. 2021]

Kurdish security and find a long-term solution to the Southeast's problems, and to what extent is it fulfilling Kurdish demands?

The process of constitutional and legislative reform adopted by Turkey in preparation for the start of official accession discussions provides evidence that accession can operate as a catalyst for change. Turkey deserves some credit for the tentative steps towards an internal consensus in favour of liberal democracy, even if this consensus turns out to be nothing more than a show to convince the EU that Turkey is changing, despite the fact that she is still plagued by reactionary elites and that human rights reforms have largely been cosmetic. "Freedom of expression deteriorated sharply during the year"^[9].

The Kurds have potential "hooks" in the accession process that they might use to advocate for improved respect for their rights. In particular, the Commission will continue to play a key role in overseeing the reform process under the first pillar, including examining Turkey's continued compliance with the Copenhagen Criteria, if the three-pillar approach to accession negotiations set out by the Commission in its Resolution of October 2004 is followed. As mentioned earlier, a "severe and persistent breach" of human rights may prompt the Commission to suggest the suspension of negotiations and offer guidelines for a potential restart, either on its own initiative or at the request of one-third of the member states.

On such a recommendation, the Council shall decide by qualified majority. Another question is whether or not this technique would actually be used. Perhaps predictably, Prime Minister Erdogan has stated that halting negotiations would demonstrate a disregard for Turkey's democracy process and conflict with the EU's own principles. However, it does provide a significant starting point for Kurds to make a strong case for the suspension of accession talks if Turkey's respect for Kurdish cultural and linguistic rights does not significantly improve, if fighting in the Southeast worsens, or if Turkey continues to be unwilling to take steps toward a democratic resolution of the Kurdish issue.

As part of the third pillar, the EU is specifically committed to enhancing the political and cultural dialogue between Turkey and the EU. Any such dialogue will be facilitated by the EU, and civil society will play a significant role in it. Thus, forums will be established to discuss opinions and topics, such as minority rights. Non-governmental organisations (NGOs) and civil society actors can raise awareness of and interest in the ongoing plight of the Kurds in Turkey through dialogue and debate. They can also provide a forum for the exchange of ideas on how to best proceed.

More generally, accession opens up previously unheard-of political space to advocate for human rights and draw attention to the necessity of a political dialogue between Turkey and the Kurds. It also heralds new opportunities to mainstream Kurdish concerns. It is clear that in the upcoming years, accession discussions will attract a lot of media interest, especially if significant milestones like the creation of the new negotiation framework, which is anticipated for spring 2005, occur."In 2008, racist

propaganda and attacks were on the rise^[10].

The focus on EU-Turkey relations can be used to highlight the Kurdish question in political discourse in both Turkey and Brussels. This observation is, however, significantly qualified by the fact that, in the run-up to the Council decision of December 17, 2004, the situation of the Kurds received relatively little attention, with political debate and media outlets instead focusing on concerns about immigration, Turkey's economic underdevelopment, and, to a lesser extent, the broader human rights picture. When the Kurds were brought up, it was almost always in reference to Turkey's failure to recognise the cultural and linguistic rights of people in the Southeast; little was said about the revival of military conflict or Turkey's determination to accept a political solution to the Kurdish issue.

The Turkish state will be subject to checks and balances as a result of full EU membership, which may eventually give the Kurds some of the resources they need to defend their political and legal standing within Turkey. Turkey can be persuaded to adopt liberal democratic norms from within the EU, and violations of proper conduct can be curbed by political pressure and judicial action. Direct and legally binding obligations to prevent racial and other types of discrimination and to offer assistance to victims of discrimination are placed on member states by EU directives. Furthermore, Article 49 of the Treaty of the European Union stipulates that only states that uphold these principles are eligible to join the Union. The Treaty of the European Union states that the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. However, it should be noted that when we use the phrase "human rights and fundamental freedoms" in this context, we typically mean the rights and liberties that are enshrined in the European Convention on Human Rights (ECHR), to which all EU member states are parties. The protection of minorities is not specifically included in the Copenhagen Criteria, in contrast to the political components. "For the last 25 years, the PKK and Turkey have been locked in a bitter conflict, which has claimed the lives of thousands in the region"^[11].

The most thorough and exhaustive EU document on human rights is the recently adopted Charter of Fundamental Rights. For the first time, all of the civil, political, economic, and social rights of European citizens and everyone else who resides in the EU are purportedly combined in the Charter. Importantly, the Charter only outlaws discrimination based on membership in a national minority and promotes respect for cultural, religious, and linguistic diversity. There is no mention of the rights of minorities as such. In any case, the Charter merely has the vague status of being a "solemn declaration" by the Commission, Council, and Parliament and is not a treaty, constitution, or legal document. The proclamation is not yet legally binding³⁸, and cases cannot be brought solely on the basis of a Charter violation. However, the institutions

¹⁰State of the World's Minorities and Indigenous Peoples 2009 - Turkey, Minority Rights Group International, 16 July 2009, <https://www.refworld.org/docid/4a66d9a22.html> [accessed 12 August 2021]

¹¹Turks and Iraqi Kurds Don't Let Politics Get in Way of Business, Institute for War and Peace Reporting, 17 December 2008, <https://www.refworld.org/docid/494ba2f88.html> [accessed 22 Nov. 2020]

⁹Amnesty International Report 2016/17 - Turkey, Amnesty International, 22 February 2017, <https://www.refworld.org/docid/58b033a3195.html> [accessed 31 August 2022]

subject to the proclamation, as well as the European Court of Justice, are unlikely to act in violation of it. The new EU Constitution, which was signed in October 2004 but has not yet taken effect, integrates the rights outlined in the Charter and expressly explains minorities' rights. Judicial proceedings need to be speeded up to ensure the rights of the defence and to promote transparency in these cases^[12].

Given the growing uncertainty about their future position as Turkey moves closer to joining the EU despite the absence of a Turkish-Kurdish settlement, the absence of explicit minority protection provisions in EU legislation is of great concern to the Kurds in Turkey. It also serves to highlight how crucial it is for the EU to openly acknowledge and address the Kurdish problem, as well as to fulfil its responsibility to push for the establishment of real democracy and respect for minorities in Turkey by establishing a democratic forum for the discussion of potential Kurdish problem solutions.

More generally, for EU membership to have any impact on the Kurds, it must incorporate this crucial component of facilitating political dialogue, which has so far been disregarded in Europe and by the EU's institutions but is essential to both the future security of the Kurds and the process of democratisation in Turkey. Positive developments include the aspects of the EU accession process and eventual membership that indicate Kurds will have a stronger voice, better access to European networks, and a greater ability to advocate for their rights. They also include any improvements to the human rights situation in the Southeast brought on by EU pressure. But the Kurdish issue is fundamentally political, necessitating a political resolution. The terrible human rights violations that have occurred in the Kurdish region and the exclusion of Kurds from public discourse, including that on EU membership, are symptoms of the larger issue of the status of Kurds in Turkey. EU membership will amount to little more than an unfulfilled promise as long as the Kurds in Turkey are not recognised, excluded from constitutional status, and treated by the state effectively as unassimilated Turks.

Turkey has so far gotten away with neglecting the Kurdish issue in order to enact a number of pro-EU changes, making only very modest allowances for the Kurds' cultural and linguistic rights. In response, the EU has not pressed the matter and appears to have made no overtures to Turkey indicating that it would be suitable to begin a political dialogue with the Kurds in the context of EU accession negotiations. It is a great shame that the EU has not yet used the significant leverage at its disposal to carry out its duty to push for a long-term, peaceful solution in the Southeast given the tragic consequences caused by Turkey's hostility towards its 15 million strong Kurdish population over the years, the deeply rooted historical roots of the Kurdish question, and its ongoing centrality to the process of democratic change in Turkey.

The immense enthusiasm that many Kurds had for Turkey's recent push towards membership is, therefore, quickly fading as it becomes clear that the chance for both the Kurds and Turkey to officially recognise and handle the Kurdish issue is being lost. The likelihood that the Kurds will be able

to end their forced servitude to a hostile governmental regime and historical persecution through the EU accession process, which at first seemed a serious possibility, is rapidly dwindling as the EU appears hesitant to resolve the Kurdish issue. Of all, the actual accession talks have not even started, so there is still time for Kurdish aspirations to be revived, especially if the EU begins to see the need of a political resolution to the Kurdish issue for the future of democracy in Turkey.

The Copenhagen criteria for EU access were met?

On the basis of the Council's conclusion that Turkey has met the Copenhagen Criteria, the decision to commence formal accession negotiations with Turkey on December 17 was made prematurely, according to significant concerns about the Kurdish situation and grave questions about Turkey's human rights record. Turkey's entrance to the European Union may have been accelerated at the expense of the Turkish government's sincere commitment to human rights and the realisation of a lasting resolution to the Kurdish question because of the desire to bring Turkey into the fold of Europe as quickly as possible. The Kurdish issue has been prevalent in Turkey since the founding of the Turkish Republic in 1923^[13].

Formally, decisions about whether to start official accession talks are based on whether a country meets the requirements for EU membership as established in the 1993 European Council meeting in Copenhagen. Candidate nations must have attained the following political goals in order to meet the Copenhagen Criteria: "The stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities." Given these requirements, the Council's decision to start accession negotiations on December 17 is extremely debatable and has drawn criticism from several quarters. Through the implementation of pro-EU reforms, Turkey has undoubtedly taken steps toward closer compliance with international standards on human rights, democracy, and the rule of law. It is fair to say that the current AKP government has a lot riding on EU membership, even if, as seems to be the case, the reform process is only intended to satisfy Turkey's obligation to meet the bare minimum requirements for democratisation set forth by the EU without any accompanying commitment on the part of Turkey to enact genuine change. It has curbed, at least formally, the military's traditional influence in politics and refrained from appeasing the religious right on matters like education. These actions have the potential to significantly sour relations with the government's current backers.

It is also true that Turkey has implemented a notable number of reforms in a relatively short amount of time, regardless of the rationale driving its reform effort, including if it is simply a matter of accomplishing the bare minimum to check off EU-mandated "boxes." The legal definition of torture has been tightened, and the ban on broadcasting and teaching in the Kurdish language has, at least formally, been lifted. However, improvements in human rights have generally been patchy.

The question of whether Turkey has made enough progress

¹²Commission Staff Working Document: Turkey 2012 Progress Report, European Union: European Commission, 10 October 2012, <https://www.refworld.org/docid/5097ab402.html> [accessed 15 Sept. 2021]

¹³The Kurds: History –Religion – Language - Politics, Austria: Federal Ministry of the Interior, November 2015, <https://www.refworld.org/docid/568cf9924.html> [accessed 18 Jan. 2021]

to justify opening membership talks must be answered, though. It is very likely that in the rush to join the EU, political imperatives are taking precedence over other issues. However, some preliminary points are made here. Ongoing issues in Turkey that are important to the determination of whether the Copenhagen Criteria are satisfied, such as those related to the human rights situation in Turkey and the status of the Kurds, are described in more detail later in this publication.

First and foremost, the situation in Turkey is presented in a significantly sanitised manner in the Commission's 2004 Report on Turkey's progress towards accession, which served as the foundation for the Commission's recommendation and the Council's subsequent decision that Turkey has met the Copenhagen Criteria. It is argued that the report as a whole fails in its wording and emphasis to reflect the depth and severity of the ongoing human rights violations in Turkey, despite the fact that the report is by no means entirely positive and criticises both substantive gaps in Turkey's reform programme and failures to adequately implement new legislation. A proactive strategy is undoubtedly preferred, but not to the point where it 'tones down' how serious the ongoing infractions currently are. Overall, it is exceedingly challenging to square the Report's evidence of ongoing violations with the mainly optimistic portrayal and the Commission's subsequent recommendation that the Copenhagen Criteria's political requirements be met. The modern Turkish republic was founded by Kemal Mustafa Ataturk in 1923^[14].

The "glossing over" of serious flaws in the reform process and the portrayal of continuous violations as just qualifications to overall encouraging progress have drawn particular criticism. Even though substantial and ongoing violations of fundamental human rights are extensively described, a positive "spin" is applied to Turkey's shortcomings in a number of parts, often by highlighting Turkey's compliance efforts rather than the outcomes she has obtained.

These flaws are illustrated by a quick examination of the Commission's assessment of Turkey's history of using torture. The innovative steps Turkey has taken in her fight against torture are examined in great detail, with a few caveats that call for even more zealous pursuit of reform goals. In the end, it is determined that torture is no longer a systematic practise and that the Turkish government is "actively pursuing" its zero tolerance policy. The Commission is aware that there are still "many" instances of abuse, including torture, in Turkey. Given that torture is regarded by the international community as one of the gravest violations of human rights and is expressly prohibited by international law as well as the EU's own Ch. 10, it is difficult to imagine that the Turkish state's failure to address the "numerous" cases of torture and ill-treatment occurring is consistent with the "stability of institutions guaranteeing... human rights" as required under the Copenhagen Criteria.

Additionally, the Commission's strategy appears to be a somewhat superficial appraisal of change in Turkey, focusing on legislative and administrative reforms implemented by the present administration and offering

little in the way of a de facto analysis of the actual situation there. There are no serious attempts made to situate political change in the context of a state that is wrestling with its secular identity, fighting to end decades of impunity for human rights violations, and saturated by a hatred to minority ethnic identities that seems unrelenting. It's interesting that the Commission's reporting on the countries that joined the EU in 2004 has received similar criticism. Between 2001 and July 2004, the Turkish government adopted two major constitutional reforms and eight legislative packages^[15].

In this context, the Commission's treatment of the Kurdish problem is particularly significant. The Report appears to take a piecemeal approach to the situation in the Kurdish southeast, dealing with the sporadic Kurdish component of a number of individual human rights abuses rather than addressing this in any way that is substantive and consistent. Aspects of the Kurdish problem that are mentioned, often incidentally in connection with other issues, are not explored in light of Turkey's ingrained hostility against its Kurdish community.

It is maintained that the Commission's approach is an inadequate answer to the Kurdish issue and an improper starting point for the opening of accession discussions because of the Kurds' long and turbulent history of cruel subjugation and brutality at the hands of the state. The treatment of Kurds by the Turkish state is inextricably linked to Turkish animosity for the existence of a non-Turkish ethnic identity within Turkish territory. The terrible human rights abuses that the Kurds have experienced are considerably more than the occasional slip-up by government agencies or the sole outcome of insufficient legal restrictions on acts like torture. The Kurds are seen as an abnormal population whose attempts to assert their non-Turkish identity amount to secession, and they are an external manifestation of deeply ingrained ideological principles in Turkey that value the integrity of the state above the liberties of the group or person. Simply put, the Kurds in Turkey face persecution and harassment for claiming their Kurdish identity. The Kurdish issue cannot be resolved unless this observation is addressed, regardless of how much the Commission tries to obscure it. Before Turkey is permitted to join the EU, it is argued that such a crucial obstacle to the accomplishment of peace, justice, stability, and democracy in that country must be handled openly and completely.

More importantly, the Commission's treatment of the Kurds ignores the fact that the issues in southeast Turkey go much beyond a string of human rights abuses. The Kurds have been ostracised by Turkey for many years; they are not allowed to participate in politics and have been the target of an armed conflict that has affected practically every Kurdish household. Turkey has done nothing to recognise them constitutionally or even to acknowledge their existence. In order to achieve sustainable peace in the Southeast, it is necessary to find a far more comprehensive solution that includes political engagement between Turkey and the

¹⁴Countries at the Crossroads 2005 - Turkey, Freedom House, 5 May 2005, <https://www.refworld.org/docid/4738690a5a.html> [accessed 11 July 2021]

¹⁵Turkey: The situation of Kurds, including the extent to which legislative reform packages have been implemented (August 2004 - April 2005), Canada: Immigration and Refugee Board of Canada, 20 April 2005, TUR43470.E, <https://www.refworld.org/docid/42df619da.html> [accessed 21 April 2021]

Kurds, efforts to establish a negotiated agreement, and possibilities for the Kurds to determine their own destinies. The Commission Report makes almost no reference to this pressing necessity. The government maintains a large degree of influence over both the public and private media^[16]. Kurds speak Kurdish, which is divided into Kurmanci, Zaza and other dialects^[17].

The approach to human rights and the Kurdish question taken by the Commission in its 2004 Report appears to have set the standard for future EU action in these areas; the Council's determination that Turkey satisfies the Copenhagen Criteria effectively accepts the Commission's findings.

In December 1997, the Luxembourg European Council reaffirmed that Turkey's eligibility for membership will be determined using "the same standards" as the other applicant states. A brief comparison with the situation in Turkey is instructive. In its paper "Agenda 2000: For a Stronger and Wider Union," the Commission determined that of the ten candidate states at the time, Slovakia did not meet the political requirements of the Copenhagen Criteria. In reaching its conclusion, the Commission focuses primarily on the Slovakian government's lack of respect for the powers granted to other bodies by the constitution and its propensity to ignore the rights of the opposition, but it also emphasises the need for Slovakia to do better in terms of how it treats its Hungarian and Roma minorities.

The Framework Convention on Minorities of the Council of Europe had been ratified by Slovakia at this point, the constitution had been amended to include the right of minorities to participate in decision-making that affected them, to develop their own culture, and to receive information and education in their own language. The Commission mentioned a number of ongoing issues, including the absence of comprehensive legislation on the use of minority languages (although other texts governed the use of minority languages in many specific fields), a government decision to cut back on funding for Hungarian cultural associations, insufficient police protection of Roma against skinhead violence, and the underprivileged social status of the Roma. The Commission's position on Turkey seems rather odd when compared to the extensive violence and abuse experienced by Turkey's Kurdish population, including torture, judicial harassment, lengthy internal displacement, a recent resurgence in armed conflict, as well as Turkey's refusal even to recognise the Kurds.

Given these observations, it is clear that the EU's decision-making has involved factors other than whether Turkey has met the objective standards of the political components of the Copenhagen Criteria, and that a lesser standard has been applied to Turkey's application for membership. "Turkey's policy emerged amid divisions between the ruling party and the country's traditional establishment, particularly over how to deal with the PKK insurgency^[18]."

¹⁶Freedom of the Press - Turkey (2003), Freedom House, 30 April 2003, <https://www.refworld.org/docid/473450e423.html> [accessed 19 Jan. 2022]

¹⁷World Directory of Minorities and Indigenous Peoples - Turkey : Kurds, Minority Rights Group International, June 2018, <https://www.refworld.org/docid/49749c9623.html> [accessed 10 Feb. 2021]

¹⁸Turkey and Iraqi Kurds: Conflict or Cooperation, International Crisis Group (ICG), 13 November 2008, Middle East Report N°81,

What effects does this purported "lowering of the bar" for Turkey have?

It might support the claim that the decision to begin negotiations in December will give the reform process more momentum. The Erdogan administration has undoubtedly argued that a negative Council decision may have undermined its prior achievements in balancing political and public support from various sectors of Turkish society in favour of pro-EU reforms, with the Euroskeptic True Path Party likely emerging as the main beneficiary. As was already indicated, this kind of justification is insufficient to support the beginning of accession negotiations in light of the persistence of grave human rights violations and the refusal to address the Kurdish issue. It should have been decided whether Turkey has met the political requirements of the Copenhagen Criteria based on demonstrable advancements in democratisation, not on the basis of unrelated political considerations. In September 2004, the Turkish Parliament adopted a new Penal Code, which was due to enter into force in April 2005^[19].

Additionally, it has been maintained that the EU has adequately monitored Turkey to ensure that important requirements are completed before she is permitted to move on with full membership. In its 2004 Report, the Commission highlighted serious concerns about Turkey's human rights record and called for "further consolidation and broadening" of changes. The commitment in the Council decision that the Commission will keep an eye on Turkey's political reform efforts under the first pillar, including the zero-tolerance policy against torture, along with the "break clause" for human rights violations that allows for the suspension of accession talks, suggest that the EU intends to continue keeping a close eye on Turkey's development. The Commission also suggested that lengthy transition periods may be required and that existing legal requirements in conformity with the *acquis* must be satisfied before the commencement of discussions on related chapters. These protections aren't much consolation for the Kurds, though, as the EU institutions have established a precedent of refusing to discuss the Kurdish issue openly, so neither gradualism nor safeguards during the accession process can guarantee that the needs of the Kurds will be met by EU membership or that their status within Turkey will finally be acknowledged and accepted. Historically, Kurds are concentrated in the eastern and south-western parts of the country^[20].

The anticipated benefits of the accession process for advancing justice and democracy in Turkey will be significantly undermined if the Commission's and Council's stance on accession negotiations in the future is characterised by a failure to substantively address human

<https://www.refworld.org/docid/491c353f2.html> [accessed 14 March 2021]

¹⁹Turkey: The situation of Kurds, including the extent to which legislative reform packages have been implemented (August 2004 - April 2005), Canada: Immigration and Refugee Board of Canada, 20 April 2005, TUR43470.E, <https://www.refworld.org/docid/42df619da.html> [accessed 11 May 2021]

²⁰State of the World's Minorities and Indigenous Peoples 2015 - Case study: Little change, two decades on, for Turkey's displaced Kurds, Minority Rights Group International, 2 July 2015, <https://www.refworld.org/docid/55a4fa2e31.html> [accessed 29 August 2021]

rights concerns and a skirting of the Kurdish issue. Incorrectly downplaying the serious ongoing human rights breaches occurring in the nation, it indicates that the Turkish state's actions are generally in line with international norms. It should be kept in mind in this context that Turkey's prior to the creation of the 1995 customs union made empty promises to implement human rights reforms and address the Kurdish issue; however, this observation is somewhat qualified by the fact that the Copenhagen Criteria are far more authoritative than the comparatively weak and non-binding political prerequisites attached to the customs union.

The future security of Turkey's Kurdish minority will be seriously impacted if Turkey is given access to the EU negotiation table without making sufficient progress toward addressing the Kurdish problem. In addition to giving Turkey's treatment of the Kurds unjustified legitimacy, moving forward with admission before the situation of the Kurds is adequately handled shows that the matter is of secondary priority and doesn't require any special prolonged or comprehensive attempts at resolution. As a result, it undermines efforts to highlight the urgency of finding a mutually agreeable solution to the Kurdish problem. Therefore, the EU has blatantly failed to uphold its obligations to the Kurds by concluding that Turkey has met the Copenhagen Criteria. The hopes of Turkey's 15 million Kurds that EU membership would usher in a process of true democratisation in which their status would finally be addressed were dashed. It has given Turkey permission to continue ignoring the Kurdish question entirely. When the ruling Justice and Development Party (AKP) undertook its Democratic Opening in 2005 a period of hope began ^[21].

The EU's decision to begin membership talks even though there hasn't been any movement on the Kurdish issue has also weakened calls for the urgently required political dialogue between Turkey and the Kurds. It cannot be emphasised enough that Turkey has actively pursued an anti-Kurdish agenda for decades, completely subjugating them, persecuting any expression of Kurdish identity, and engaging in an armed conflict against them. As a result, the situation of the Kurds in the Southeast is not just the result of a series of unfortunate coincidences that have left them marginalised and impoverished. Only in the context of a political settlement jointly and openly agreed upon by Turkish and Kurdish officials can the Kurds and Turkey move on from here. By utilising its considerable influence to facilitate an open dialogue between the two parties that could lead to a lasting resolution of years of conflict and oppression, the EU has a clear chance to strongly encourage Turkey to achieve justice and stability in the Southeast. The EU has so far shown reluctance to seize this chance.

Opening membership negotiations with a nation that routinely violates fundamental rights is detrimental to the EU's own commitments to human rights. The EU claims to have been formed on "the values of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law", thus it may be in danger of losing credibility if it appears to have relaxed these standards in regard to Turkey. A violent, unresolved conflict situation may enter

EU territory as a result of the EU's evasive stance on the Kurdish problem.

The future of turkey in Europe

Undoubtedly, Turkey's political destiny is now firmly established in the EU. The Council summit in December 2004 made it quite apparent that membership is the ultimate objective of talks with Turkey. The next stage of the accession talks will present Turkey with significant new challenges, but if EU oversight is rigorous, there is still a chance that the process will ultimately result in real change in Turkey and create a modern, open, and multicultural state where a comprehensive and long-lasting solution to the Kurdish conflict can be achieved. Forced internal displacement in Turkey is complemented by a broader rural-to-urban migration, and the latter has been encouraged by the violence in the south-east ^[22].

The future of accession is still shrouded in some serious uncertainty. The strategy taken by the EU will have a significant impact on whether or not Turkey's reform effort can be guided toward fully fulfilling democratic pluralism through the accession process. So far, the signs are not promising. The political context in which Turkey's accession bid is being considered suggests a significant risk of rushing through the accession process before adequate human rights reforms have been implemented or allowed to proceed; the commitment that accession negotiations will be conditional, gradual, and open-ended is a reasonable one, but it is unclear whether it will be carried out in practise. The anticipated benefits of admission in promoting respect for human rights are likely to be compromised if the attitude exemplified by the Commission Report from October 2004 and the determination that Turkey has fulfilled the Copenhagen Criteria remains. Without sufficient legislation and reform execution, membership could be confirmed, and the EU might find itself accepting a member state that has made significant reforms but is nevertheless deeply ingrained in outmoded autocratic ideologies. In this context, the strength of the Commission's future strategy for recommending and evaluating political reforms, as well as the Council leaders' adherence to principles, will be essential. In 2003, the ruling Justice and Development (AK) party sought to reform some of Turkey's harsher laws ^[23]. The European Court of Human Rights has repeatedly challenged Turkey's harsh antiterrorism laws ^[24].

For the Kurds, being excluded from the accession process seriously imperils their hopes for a new Turkey where their political and cultural liberties are upheld and, most importantly, where their Kurdish identity is embraced. The change in Kurdish possibilities provided by accession will be significantly diminished without a higher profile in accession negotiations. It has been stressed that the

²²Turkey: Progress on National IDP Policy Paves Way for Further Reforms, Norwegian Refugee Council/Internal Displacement Monitoring Centre (NRC/IDMC), 26 July 2007, <https://www.refworld.org/docid/46a9a3e52.html> [accessed 19 Nov. 2021]

²³Freedom in the World 2004 - Turkey, Freedom House, 18 December 2003, <https://www.refworld.org/docid/473c54cdc.html> [accessed 25 March 2021]

²⁴Turkish court gives Kurdish editor 21-year sentence, Radio Free Europe/Radio Liberty, 11 February 2010, <https://www.refworld.org/docid/4b87909121.html> [accessed 16 Sept 2021]

²¹ Turkey's Kurdish Impasse: The View from Diyarbakır, International Crisis Group (ICG), 30 November 2012, Europe Report N°222, <https://www.refworld.org/docid/50b8cac22.html> [accessed 12 Feb. 2022]

likelihood of achieving such a settlement is significantly reduced by the EU's unwillingness to encourage the debate of and demand Turkish participation in a political solution to the Kurdish crisis. Of course, there is still time. The EU institutions must reconsider their stance on the Kurdish problem and enter into open negotiations with the parties, taking steps toward rapprochement and resolution now that Turkey is confident in her position as an EU negotiating partner. Before it is too late and this chance to put an end to years of violence and human suffering is lost forever, it is essential that this is done.

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