

# Political Violence and Law Reform in Turkey: Securing the Human Rights of the Kurds?

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Article abstract

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## **Political Violence and Law Reform in Turkey: Securing the Human Rights of the Kurds?**

by  
*Edel Hughes*

### **ABSTRACT**

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### **INTRODUCTION**

The course of the last century has witnessed a proliferation in the number of localized conflicts throughout the broader European landscape,<sup>1</sup> although this pattern has been slowly reversing over the past number of years.<sup>2</sup> These struggles invariably have a nationalist dimension, and are often accompanied by widespread and virulent violence, both by those armed groups generally seeking self-determination and in the state engagement with and response to the violence. The purpose of this article is to explore one such conflict, which has been somewhat neglected in works detailing political violence, ethnic conflict, and 'terrorism.' The Turkish example is a compelling one because, unlike the cases of other countries involved in conflicts in the Middle East, Turkey is a predominantly Muslim country that has largely embraced liberal Western ideology and is seen as a strategically important ally of Western states and of the United States in particular. This fact, coupled with the strong desire of successive Turkish administrations for the country to become a full member of the European Union, has undoubtedly influenced the response of the Turkish government to the conflict in the southeast and potential EU membership is now seen as being the best possible chance for the large Kurdish minority in Turkey to achieve equality and respect for their minority grouping.

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The article will begin by looking at the history of the Kurdish population in Turkey, detailing the background to the origins of the conflict in the southeast. This is by no means an attempt to provide a comprehensive history of Kurdish nationalism in Turkey as this would effectively warrant a comprehensive article in itself and has indeed been examined in notable works by distinguished commentators.<sup>3</sup> What is endeavored, however, is to outline the salient points in the history of Turkey that have impacted upon the current situation of the Kurdish minority. The responses to the conflict by the Turkish authorities are sketched and a critique of how both the ‘war on terror’ and Turkey’s EU membership aspirations have influenced the dynamics of the conflict posited.

## **HISTORICAL BACKGROUND TO THE CONFLICT IN SOUTHEAST TURKEY**

The use of political violence in southeast Turkey has a long and tortuous history. The most recent phase began with the formation of the Kurdistan Worker’s Party (PKK) in the late 1970s and has of late resurfaced following the end of the PKK ceasefire in mid 2004. This section will look at the historical background of the Kurds in Turkey from the beginning of the last century, which goes some way toward explaining the present-day conflict.

### **Turkish Kurds in the Early Twentieth Century**

*Unstable Peace: From the Treaty of Sèvres<sup>4</sup> to the Treaty of Lausanne<sup>5</sup>*

Whilst the origin of the Kurdish people is uncertain, it is generally held that they have retained their distinctive identity for at least 2,000 years.<sup>6</sup> The most modern phase in the history of the Kurds of Turkey can perhaps be said to have begun in 1918 with the defeat of the Ottoman Empire.<sup>7</sup> At the Paris Peace Conference of 1919 there was general agreement that Turkey’s minorities should be “assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development,”<sup>8</sup> albeit that the Kurds were “ill-prepared to face the challenge of the post-war settlement and the new nationalism.”<sup>9</sup>

Despite tribal loyalties, a number of the Kurdish intelligentsia attempted to establish political groups that would advocate Kurdish independence or autonomy.<sup>10</sup> Of these, *Kurdistan Taali Djemiyeti* (Society for the Recovery of Kurdistan) is seen as having been the most important as its leadership and support were drawn from eminent Kurdish immigrants in Istanbul.<sup>11</sup> Their society was not to remain united for long as it soon became split between the autonomists, who wanted to stand by the Turks, and the ‘independentists,’ who felt that they should be striving for complete self-determination. Aware that any independent state promised to the Armenians by the Allies would come at the expense of the Kurds, a group led by General Sharif Pasha, a former Ottoman diplomat, cooperated with Armenians and presented a joint memorandum to the Paris Peace Conference in 1919.<sup>12</sup> With the close of the Peace Conference and ensu-

ing Treaty of Sèvres, the Kurds were brought “closer to statehood than ever before or since.”<sup>13</sup>

Those parts of the Treaty of Sèvres pertaining to Kurdish statehood stated that a commission of Allied appointees would draft “. . . a scheme of local autonomy for the predominantly Kurdish areas lying east of the Euphrates, south of the southern boundary of Armenia as it may be hereafter determined, and north of the frontier of Turkey with Syria and Mesopotamia.”<sup>14</sup> Article 64 of the treaty seemingly rubber-stamped the idea of an independent Kurdish state:

If within one year of the coming into force of the present Treaty the Kurdish peoples within the areas defined in Article 62 shall address themselves to the Council of the League of Nations in such a manner as to show that a majority of the population of these areas desires independence from Turkey, and if the Council then considers that these peoples are capable of such independence and recommends that it should be granted to them, Turkey hereby agrees to execute such a recommendation, and to renounce all rights and title over these areas.

The detailed provisions for such renunciation will form the subject of a separate agreement between the Principal Allied Powers and Turkey. If and when such renunciation takes place, no objection will be raised by the Principal Allied Powers to the voluntary adhesion to such an independent Kurdish State of the Kurds inhabiting that part of Kurdistan which has hitherto been included in the Mosul vilayet.

However, the guarantees provided by the treaty remained strictly illusory in nature, as a lack of political will ensured that the provisions of the treaty relating to the Kurds remained unenforced. In fact, “Britain was the only one of the powers with more than a passing interest in seeing Kurdistan on the map.”<sup>15</sup> In any case, events in Turkey quickly overcame what little impetus was provided by the treaty. Mustafa Kemal Atatürk’s revolt in Anatolia was supported by a significant number of Kurds, indicating their “identity with the other Muslims of Anatolia and their fears of falling within an Armenian, and therefore Christian, state.”<sup>16</sup> During Atatürk’s struggle to establish a Turkish nation state he became a “virtual dictator by popular consensus”<sup>17</sup> and with his defeat of the Greeks in 1922 and the elimination of practically all of the remaining Christians in Anatolia, the Allies were forced to renegotiate the settlement of 1920.<sup>18</sup>

A new peace conference was arranged for November 1922, culminating in the Treaty of Lausanne in July 1923. When the agreement was signed, Turkey, under Atatürk’s direction, had achieved all of its demands, apart from the territorial claim over Mosul.<sup>19</sup> The treaty, unlike its predecessor at Sèvres, contained no provisions relating to Kurdish autonomy or the possibility of a Kurdish State and contained no reference to Kurds whatsoever. With regard to the dispute

between Britain and Turkey over Mosul, the question was referred by Great Britain to the Council of the League of Nations for settlement. The Kurds sought to demonstrate their anger at the loss of Kurdistan and the move to incorporate Mosul into either Iraq or Turkey “by way of an independence movement led by Sheikh Mahmud, which ultimately was suppressed by aerial bombardment of the British Royal Air Force.”<sup>20</sup> The only allusion to the rights of Kurds came in the decision of the Commission of Enquiry established under the auspices of the Council of the League of Nations to inquire into whether or not Mosul should be part of Iraq or Turkey. The commission, siding with Great Britain in deeming that the vilayet should become part of Iraq, attached two conditions, one of which stated that “[r]egard must be paid to the desires expressed by the Kurds that officials of Kurdish race should be appointed for the administration of their country, the dispensation of justice and teaching in the schools, and that Kurdish should be the official language of all these services.”<sup>21</sup> The Council of the League, following the request for an advisory opinion from the Permanent Court of International Justice,<sup>22</sup> adopted the proposals set out in the report of the Commission of Enquiry in December 1925, inviting the British Government to “lay before the Council administrative measures which will be taken with a view to securing for the Kurdish populations mentioned in the report of the Commission of Enquiry the guarantees regarding local administration recommended by the Commission in its final conclusions.”<sup>23</sup>

It took Turkey less than a year to accept the decision of the Council of the League of Nations and settle the issue of borders. The Angora Treaty between Great Britain, Iraq, and Turkey established cross-border control of Kurdish activity by stipulating that Asian states would refrain from corresponding in an official or political manner with chiefs, sheikhs, or other tribal members who were nationals of the other state and in the territory of the other state and not permit in the frontier zone any organization for propaganda or meeting directed against either state.<sup>24</sup>

### *‘Turkification’ and Kurdish Rebellion*

Atatürk, having previously stressed the unity of Turks and Kurds and even the idea that the Kurdish region would regain some sort of special status appeared to have changed his mind by mid-January 1923, stating:

Those in our national borders are only a Kurdish majority in limited places. Over time, by losing their population concentration, they have settled with Turkish elements in such a way that if we try to draw a border on behalf of the Kurds we have to finish with Turkishness and Turkey, for example in the regions of Erzerum, Erzinjan, Sivas and Kharput, — and do not forget the Kurdish tribes on the Konya desert. This is why instead of considering Kurdishness in isolation, some local autonomies will be established in accordance

with our constitution. Therefore, whichever provinces are predominantly Kurd will administer themselves autonomously. But, apart from that, we have to describe the people of Turkey together. If we do not describe them thus, we can expect problems particular to themselves . . . it cannot be correct to try to draw another border [between Kurds and Turks]. We must make a new programme.<sup>25</sup>

Thus, while there is no evidence of a willingness to grant any sort of political power to the Kurds in this statement, there is still a certain amount of recognition of their identity. David McDowall notes, however, that a major shift took place during the following four weeks: “When Kemal’s speech to the Izmir Economic Congress (17 February 1923) was published, all reference to the Kurds had been excised.”<sup>26</sup> Amongst the reasons for this change in policy was the fact that the social and political traditions of Kurdistan presented an obstacle to Atatürk’s idea of a modern state built on the European model. Additionally, the disruptions in Kurdistan in 1922 and the estrangement of some Kurdish chiefs, as well as the fear that the resolution of the territorial battle over Mosul, in which the Kurds of southern Kurdistan gained a certain degree of autonomy, were a threat to the country’s borders.<sup>27</sup>

The program of ‘Turkification’ initiated by Atatürk was aggressively pursued from 1923 onwards. In the elections for the new Grand National Assembly in the summer of 1923, it was felt in the Kurdish areas that the new candidates fielded and returned had “been nominated by the government rather than elected by the people,”<sup>28</sup> thereby exiling Kurdish dissent. Gradually, senior administrative appointments in Kurdistan were all filled by Turks and any references to Kurdistan were deleted from official documents, and Kurdish place names were replaced by Turkish ones. By 1924, the use of Kurdish in an official capacity was banned, effectively depriving people in Kurdish areas of education. The abolition of the Caliphate in 1924,

cut the last ideological tie Kurds felt with Turks. The closure of the religious schools, the *madrasas* and *kuttabs*, removed the last remaining source of education for most Kurds. By stripping Turkey of its religious institutions, Mustafa Kemal now made enemies of the very Kurds who had helped Turkey survive the years of the trial, 1919-22. These were the religiously-minded, the shaykhs and the old Hamidiya aghas who had genuinely believed in the defence of the caliphate.<sup>29</sup>

In addition to the effect that the abolition of the Caliphate had on the Kurds, ‘turkification’ and secularization of the education system meant that Turkish was the only language taught and necessitated the abolition of any foundation or institution espousing a separate Kurdish identity. Kurdish associations, schools, religious groupings, and publications were prohibited.

These radical changes to the fabric of Kurdish society, coupled with “the threat to Kurdish identity, and the threat to the traditional order of *aghas* and *sheikhs* (through the destruction of the Sultanate and Caliphate), unified many Kurds of different viewpoints.”<sup>30</sup> For the first time a Kurdish movement included not only the politically astute members of the Kurdish intellectual elite, but also *aghas* and *sheikhs*, who in turn mobilized large numbers of the Kurdish population. It is estimated that from 1924-38 no less than 17 Kurdish uprisings took place,<sup>31</sup> the most significant of which, the Sheikh Said rebellion, occurred in 1925.<sup>32</sup>

In the aftermath of the failed rebellion in 1925 the area of the southeast was subjected to an “extensive pacification programme,”<sup>33</sup> during which between 40,000 and 250,000 peasants died and hundreds of villages were destroyed.<sup>34</sup> This program of ‘pacification’ continued until the end of 1927 and included mass deportations with the intention of stripping the area of its Kurdish population. Martial law was declared in the southeast in February 1925.

## **Kurds in the Post-Atatürk Turkey**

### *An End to Rebellion?*

Following the successive defeats of Kurdish uprisings in the late 1920s and 1930s, a period of relative calm ensued for nearly 30 years. The measures taken by the Turkish authorities during the rebellions — massacres, deportations, and militarization — understandably had a marginalizing effect on the Kurdish population, compelling them into a submissive silence.<sup>35</sup> The extent of the forced deportations is evidenced in McDowall’s estimate that more than one million Kurds, including *aghas* and *sheikhs*, had been forcibly displaced between 1925 and 1938.<sup>36</sup> At the end of the Second World War both Turks and Kurds voted overwhelmingly for the Democratic Party; the rule of the Republican People’s Party finally came to an end in 1950 in the first free general election. The election of the Democratic Party, which had been founded by Adnan Menderes and Celal Bayar, the latter a prime minister and finance spokesman under Atatürk, coupled with the creation of new parliamentary parties, “were undoubtedly a considerable move forwards for Turkey as a whole and even for Kurdistan, which was the Party’s main stronghold.”<sup>37</sup> Votes from the Kurds were rewarded with a relaxation in the police and military repression in the southeast. Exiled *sheikhs*, landlords, and *aghas* were allowed to return home, and recover their goods and lands in return for their parliamentary support. Many were even elected to parliament and some became ministers, while infrastructure, schools, and social facilities were improved in the region.<sup>38</sup> The new Kurdish elite “espoused a new philosophy called *doouculuk* (‘Eastism’) which advocated economic development in the neglected east.”<sup>39</sup> The first group of ‘Eastists,’ Kendal notes, were based in Diyarbakyr and published a daily newspaper in Turkish, in which they criticized the underdevelopment and lack of infrastructure in the east of the

country. In 1959, however, the paper's publishers and those classed as 'Kurdists,' about 50 leaders of the movement, were arrested and imprisoned.<sup>40</sup> The economic instability, in addition to the deep resentment within the army regarding its loss of power over the political life of the country, was to come to a head in 1960.

*The Military Coup of 1960 and Repercussions*

On 27 May 1960, Turkey underwent a military coup d'état at the hands of a disgruntled army who felt that the old revolutionary ideas of Kemalism had been abandoned, resulting in the country being governed for a year and a half by a "Committee of the National Front made up of the main participants of the coup."<sup>41</sup> Following elections in 1961 the committee allowed a civilian government to take over once more. The introduction of a new constitution followed the elections and, according to McDowall, had the effect of improving the situation of the Kurdish community, although not before thousands had been deported by the military.<sup>42</sup> "This constitution allowed freedom of expression, of the press and of association. Kurds were able to express their dissent through Turkish structures, organizations, publications and so forth, writing in Turkish and even in Kurdish concerning the history, folklore and economic problems of the 'East,' even though the authors risked imprisonment for their views."<sup>43</sup> Conditions further improved for the Kurds with the formation of a new cabinet in 1962, which saw the Ministry of Health responsibilities go to Dr. Azizoolu, leader of the New Turkey Party and a Kurd from Diyarbakyr.<sup>44</sup> Although he was eventually accused of "regionalism" and Kurdish nationalism, and was forced to tender his resignation, this was not before he had "more hospitals and dispensaries built in Kurdistan than all previous governments put together."<sup>45</sup> By 1963, the right to strike and form collective agreements had been recognized as being protected under the new constitution, although a ban on forming any regionalist associations that might divide the nation was maintained.

Kendal refers to 'Eastism' as "a transitory period in the rebirth of the Kurdish national movement."<sup>46</sup> This "rebirth" was also influenced in no small part by the events taking place in Iraqi Kurdistan. The armed Kurdish uprising, led by Mustafa Barzani, which had begun in November 1960, undoubtedly had a huge effect on the subsequent radicalization of Kurdish nationalists in Turkey, an outcome which the military had feared from the outset of the uprising in Iraq. General Gürsel, leader of the junta, is quoted as issuing the following warning to the Kurds of Turkey who may be tempted to imitate their neighboring rebels in 1960: "If the mountain Turks do not keep quiet, the army will not hesitate to bomb their towns and villages into the ground. There will be such a bloodbath that they and their country will be washed away."<sup>47</sup> In 1965, a covert party called the Kurdistan Democratic Party (PKDT) was established in solidarity with Barzani's nationalist movement. McDowall notes that its supporters tended to be traditionalists, much like Barzani's supporters in Iraq, whereas, unlike the



Turkish Workers' Party,<sup>48</sup> who were leftists, the PKDT were "explicitly separatist."<sup>49</sup>

Throughout the 1960s both Kurdish and leftist parties became increasingly vocal and amassed large numbers of supporters. In response, the government intensified its campaign to eliminate subversive activity. This led to many of the Kurdish-Turkish journals that had begun publication in the mid-1960s being banned in 1967 and their editors arrested.<sup>50</sup> As the repression of the Demirel government increased from 1967 onwards, "with the use of special commando groups to patrol Kurdistan and intimidate the population and ransack the homes of suspects, Kurdish students and militants (apparently close to the Turkish Workers' Party) called for mass demonstrations, which took place on 3 August 1967 — the first expression of Kurdish anger for 30 years."<sup>51</sup> These demonstrations were encouraged by the publication in April 1967, of an anonymous article in the Turkish magazine, *Ötüken*, stating that the Kurds were a backward people devoid of history and culture, who wanted to carve Turkey into pieces.<sup>52</sup>

The demonstrations, which attracted up to 25,000 people in some cities, were violently suppressed by the Turkish authorities. In response to the oppression an Organisation of Revolutionary Kurdish Youth (DDKO) established the Eastern Revolutionary Cultural Centres in 1969, with the aim of promoting civil liberties and raising awareness of the social deprivation in the east of the country. With an increase in leftist groups in Kurdistan, confrontations with rightist groups, who were often backed by the police, also increased as did the number of political murders.<sup>53</sup> The popular Turkish Workers' Party became the first legal party to recognize the plight of the Kurds at its Fourth Congress in October 1970, when it tabled a motion on the Kurdish question. This resolution led to the party being banned.<sup>54</sup>

#### *Formation of the Partiya Karkerên Kurdistan*

By the end of the 1960s it was illegal to use the Kurdish language and a 1967 decree declared it "illegal and forbidden to introduce to, or distribute in, the country, materials in the Kurdish language of foreign origin in any form published, recorded, taped or material in similar form," thereby prohibiting the promotion of the language in any guise whatsoever.<sup>55</sup> In March 1971, the government was again overthrown by the military. Thousands were arrested, with widespread reports of murder and torture, particularly in the east, where there had been claims of an impending Kurdish uprising. Oppression of the Kurdish population was to continue "erratically" throughout the 1970s.<sup>56</sup>

The most significant event in the history of modern Kurdish nationalism occurred in 1974 with the formation of the *Partiya Karkerên Kurdistan* (PKK). At this time Abdullah Ocalan was working in the Ankara Higher Education Union and it was through his work there that he was provided "with the foundations of an ideological, political and strategic outlook."<sup>57</sup> In 1974, he met with

other militant Kurdish nationalists to draw up a plan for the formation of a “distinct Kurdish leftist organization, which would have no ties with Turkish leftist groups, all of which had ignored the Kurds’ specific needs.”<sup>58</sup> What they had in mind was a liberation movement, known initially as Ulusal Kurtuluş Ordusu (National Liberation Army) with Ocalan elected as its leader. Initially the group was an ideological one; a revolutionary youth group was established with the aim of attracting Kurdish youths and intellectuals. During the period between 1978 and 1980 the party organised itself and refined its politics, to allow the group to become a “political force.”<sup>59</sup> The organisation would, in time, evolve into a political party — the PKK (Kurdistan Workers’ Party), which was officially formed on 27 November 1978 declaring itself the “new organization of the proletariat of Kurdistan.”<sup>60</sup>

The formation of the PKK came just before what Kerim Yildiz has termed “[t]he most devastating period of recent history for the Turkish Kurds.”<sup>61</sup> Following yet another military coup d’état in 1980, martial rule was imposed in southeast Turkey. The limited concessions granted the Kurds under the 1961 constitution were annulled with the new 1982 constitution. The leader of the junta, General Evren, enforced the ban on Kurdish even more strictly than before, ordered the raiding of villages and homes in the southeast, and had tens of thousands of Kurds arrested. The situation was deemed so grave that, at this time, almost two-thirds of the Turkish army was deployed in the southeast.<sup>62</sup> By 1984, the PKK had declared a war of national liberation against the Turkish state.

## **RESPONSES TO THE CONFLICT**

Until recently the response of the Turkish authorities to the conflict in the southeast of the country was a purely military one, with widespread allegations of human rights abuses perpetrated by both sides to the conflict.<sup>63</sup> The military have always favored a military solution to the Kurdish problem and the political will to bring about a settlement or even countenance an approach other than a military one has been largely absent.<sup>64</sup> The gravity of the current conflict can be gleaned from the estimate that 37,000 people lost their lives in the period between 1984 and 1999, the majority of whom were Kurds. In addition, by 1999, approximately 3,500 villages in the southeast had been evacuated and about three million civilians (mainly Kurds) displaced.<sup>65</sup> This section will analyse the consequences that the suppression of PKK violence has had on the enjoyment of human rights for the Kurdish population in the southeast. In particular the consequences of the imposition of a civil state of emergency in the region and the enactment of anti-terrorist legislation will be explored.

## Reaction of the Turkish State to PKK Political Violence

### *The Village Guard System*

In the years following the escalation of violence in 1984, Turkish troops deployed in the southeast responded in a severe manner, resorting to draconian measures in an attempt to crush revolt against the state. PKK guerrilla attacks were met with mass arrests, beatings, and torture, responses that became commonplace in the course of the conflict.<sup>66</sup> By 1985 alone, the state had demanded the death penalty in the trials of more than 600 cases.<sup>67</sup>

The government attempted to mitigate PKK attacks on supporters of the government by arming villagers so that they could protect themselves. In April 1985, an amendment was made to the Village Law, which allowed for the maintenance of temporary village guards.<sup>68</sup> Those who volunteered for the guards were generally identified with right or far right political parties, attracted by “an income several-fold above the average per capita income in the area,”<sup>69</sup> and perhaps by the opportunity to mete out their revenge on the PKK. It was widely reported that the Village Guards were responsible for committing serious human rights violations during the conflict. Some were allegedly involved in the forced evacuation of villagers, drug trafficking, rape, corruption, and theft, but have been rarely been investigated or brought to justice.<sup>70</sup> The number of Village Guards recruited was as high as 65,000. Their existence was yet another menace to Kurds as those who were unwilling to join faced retribution from the state in the form of expulsion from their homes and the possible razing of their village.<sup>71</sup>

### *Imposition of a Civil State of Emergency*

In 1983, the Turkish government enacted the State of Emergency Law,<sup>72</sup> which provided the legal parameters for the imposition of a civil state of emergency in July 1987. Article 3(1)(b) of the law provided that the Council of Ministers assembled under the chairmanship of the president would declare a state of emergency “whenever there appear serious indications resulting from widespread acts of violence which are aimed at destroying the free democratic order or fundamental rights or freedoms, or violent acts causing serious deterioration to public order, after consultation with the National Security Council, in one or more regions or throughout the country for a period not exceeding six months.” The law sanctioned the imposition of a number of wide-ranging powers and restrictions in the case of an emergency. The Council of Ministers were granted the authority to issue “decrees having the force of law” on any matter “necessitated by the state of emergency” without adhering to the normal legislative procedure set out in the constitution,<sup>73</sup> whereas Article 11 allowed for the restriction of a plethora of fundamental rights. This article granted the power to impose curfews; prohibit any kind of assembly; prohibit or limit the distribution of any kind of publication or broadcasting; search persons and their property and, if necessary, seize goods of evidentiary value; make the carrying of identity cards

mandatory; as well as numerous other prohibitions deemed necessary for state security.

The state of emergency, which related to 10 of the predominantly Kurdish provinces in the southeast, was formally declared in the Turkish parliament on 19 July 1987.<sup>74</sup> Thereafter, rights and freedoms enshrined in the Turkish constitution became regulated by the State of Emergency Law. The duty of implementing the state of emergency legislation (OHAL) was vested in the office of the governor of the province or regional governor(s) by virtue of Article 14(1) of the law. These offices were granted substantial powers, with no provision for independent judicial review of their actions, a situation which “substantially contributed to the breakdown of the rule of law under OHAL.”<sup>75</sup> An example of the type of powers exercisable by the regional governor is Article 4 of Decree No. 285 (10 July 1987), which empowered the office to order the temporary or permanent evacuation of villages. Article 4 also provided that all private and public security forces, and the gendarmerie public peace command were placed at the disposal of the regional governor and that these security forces were subject to the law on the Procedure for Investigation of Civil Servants, under which they could not be prosecuted for acts committed in their administrative capacity without the permission of the administrative authorities. The administrative councils not only took up the investigation of criminal offences by members of the administration but were also empowered to decide whether or not to bring a prosecution, subject to automatic judicial review before the Supreme Administrative Court in cases where they decided not to prosecute. This function of the administrative councils has been the subject of much criticism.<sup>76</sup>

A further illustration of the unchecked power vested in the regional governor was Decree No. 430, enacted in 1990 to amend Decree No. 285. The amended decree conferred power on the regional governor to prevent any type of industrial dispute, to order general searches of private and public property, and to prohibit, confiscate, and close publishers disseminating materials likely to cause serious disruption to public order. Article 7 provided that the exercise of the powers conferred under the State of Emergency Law could not be retracted or annulled by any court. Under Article 8 a right of action lay for damages caused by unlawful administrative action but it excluded liability of the local governors or the regional governor for damage caused by acts or decisions connected with the exercise of emergency powers vested in them, effectively making the emergency civil administration, including the security forces, unaccountable for their actions.<sup>77</sup>

### *Anti-Terrorism Legislation*

On 12 April 1991, Act No. 3713 introduced the Law to Fight Terrorism,<sup>78</sup> which established a sweeping array of draconian powers in an effort to curb the

political violence in the southeast. For the purposes of this law, terrorism was given the broad definition of

any kind of act conducted by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal or external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat.<sup>79</sup>

In addition to providing the authorities with this wide-ranging definition of terrorism, the law introduced substantial restrictions on individual freedoms, of expression, liberty, and association in particular, and also stipulated that offences within the scope of the law would be tried in State Security Courts. These special courts were established to adjudicate on political and serious criminal cases deemed to threaten the integrity of the state or national security. The courts were governed by special procedures that afford fewer protections to defendants than procedures for ordinary Turkish courts and are comprised of a military judge on each panel.<sup>80</sup> The functioning and impartiality of State Security Courts has, since their inception, been criticized and in 1998 the European Court of Human Rights ruled that their composition violated the convention guarantee of an independent and impartial tribunal under Article 6(1) of the convention.<sup>81</sup>

Subsequent to the enactment of the Law to Fight Terrorism, its effect on basic liberties became apparent. Just a year after the law came into force, the Parliamentary Assembly of the Council of Europe, acting upon the results of inquiries carried out by its Political Affairs Committee and Committee on Legal Affairs and Human Rights, adopted a resolution on the human rights situation in Turkey, in which it stated that “very serious human rights violations, including torture and disappearances, continue to occur in Turkey.”<sup>82</sup> The resolution added “. . . the Assembly is deeply concerned about the escalation of violence in this region. It strongly condemns terrorist attacks, perpetrated mainly by the PKK (Kurdish Workers Party), as well as certain actions by the security forces and recalls that in a democratic state, any reply to terrorist provocation must remain within the rule of law.”<sup>83</sup> Among the recommendations adopted in the resolution were that Turkey amend its Anti-Terror Law<sup>84</sup> and lift the state of emergency.<sup>85</sup>

### *The Nature of the Rights Affected Under Emergency Rule*

Following the imposition of emergency rule in southeast Turkey in 1987, it was subsequently extended on more than 40 occasions, until its eventual lifting in November 2002. Whilst Turkey’s compliance with international obliga-

tions has improved, particularly due to efforts to join the European Union, nevertheless, serious human rights violations have been perpetrated by and on behalf of the state during the conflict in the southeast. This section examines the categories of rights that were most greatly affected by the legislation and the impact that their abrogation has had on the civilian population.<sup>86</sup>

### *Freedom of Expression*

Historically restrictions on freedom of expression have been endemic in Turkey. Although some advances were made in the 1961 constitution, limitations on the use of the Kurdish language and other forms of expression have been employed. According to Yildiz, the restrictions on non-violent expression in Turkey are “fundamentally linked to both her strict adherence to the notion of the homogenous and secular Turkish identity, and her elevation of the idea of the state.”<sup>87</sup> In 1983, Law 2932 prescribed imprisonment for those who conveyed any idea in a language that was not an official language of other nations. The simple use of the term ‘Kurdish’ was banned, as were expressions of Kurdish culture, such as song or dance or giving children Kurdish names.<sup>88</sup> In the years following the return to parliamentary rule in 1984, some progressive measures were introduced; left-wing groups that did not advocate violence were no longer perceived as such a profound threat and there were fewer prosecutions of their members.<sup>89</sup> Furthermore, in April 1991, Articles 141, 142, and 163 of the penal code, provisions which had criminalized advocacy of communism, Kurdish separatism, or religion-based government respectively, were repealed. This was followed by the revocation of Law 2932, although education or broadcasting in the medium of Kurdish remained illegal. A report by Amnesty International in 1996 contrasted the relative freedom to openly criticize and challenge the government engendered by these reforms with the “severe restrictions to freedom of expression which continue to be imposed on those issues which the state considers vital to its integrity: maintaining the dignity of the army and the security forces, the institution of military service and, above all, defeating Kurdish separatism.”<sup>90</sup>

Article 8 of the Law to Fight Terrorism introduced in 1991 criminalized the dissemination of separatist propaganda, with special penalties applicable to the publisher, editor, and author of such material. It stated that “[w]ritten and oral propaganda and assemblies, meetings and demonstrations aimed at damaging the indivisible unity of the Turkish Republic with its territory and nation are forbidden, regardless of the methods, intentions and ideas behind such activities. Those conducting such activities shall be punished with a sentence of between 2 and 5 years’ imprisonment and with a fine of between 50 million and 100 million Turkish liras.”<sup>91</sup> Such a draconian measure had a profound effect on the ability to publish material in Kurdish as all such material was now considered “separatist propaganda.” Although initially there were few prosecutions under Article 8, the number of detentions and prosecutions under the provision grew dramatically in 1993-94, all of which were justified on the grounds of state security.

Article 8 was widely criticized by non-governmental organizations (NGOs) but it also provoked much condemnation amongst leading politicians and even members of the government.<sup>92</sup> Although amendments were made to Article 8 in October 1995, separatist propaganda remained an offence punishable by imprisonment. It would take almost 10 years for real reform to permeate the freedom of expression restrictions with the implementation of the Sixth Harmonization Package in 2003.<sup>93</sup>

### *Freedom of Association*

From the inception of the 1982 constitution the right to form associations, particularly political ones, was limited.<sup>94</sup> Article 11(b) of the State of Emergency Law passed in 1983 authorized the prohibition of “any kind of assembly” as a measure that could justifiably be taken in the case of violence whereas in the definition of terrorism in the 1991 law, an organization was defined as including formations and associations, be they armed or unarmed.<sup>95</sup> Restrictions on freedom of association have always formed part of the Turkish bulwark against Kurdish nationalism. The military government’s Law on Trade Unions, the Law on Political Parties, and the Law on Associations were unambiguous with regard to promoting the idea of Kurdish nationalism or challenges to the ‘indivisible’ nature of the state. Kendal notes the unequivocal conditions set out in Article 89 of the Law on Political Parties: “No political party may concern itself with the defense, development, or diffusion of any non-Turkish language or culture; nor may they seek to create minorities within our frontiers or to destroy our national unity.”<sup>96</sup> Numerous political parties have been banned during the conflict<sup>97</sup> as Kurdish or pro-Kurdish parties have been viewed as tantamount to supporters of political violence. In March 1994, four DEP (Democracy Party) leaders were charged with supporting the PKK when they spoke in Kurdish and wore Kurdish colors during their inauguration in parliament. Intimidation and arbitrary raids on the offices of political parties sympathetic to the situation of the Kurds in the southeast have become commonplace during the conflict. In addition to the harassment endured by Kurdish political parties, Article 81(c) of the Law on Political Parties prohibits the use of Kurdish in electioneering.<sup>98</sup>

Law 2911 on Assembly and Demonstrations set out restrictions on the right to peaceable demonstration. Under this legislation, demonstrations must be authorized by the local governor who has an arbitrary power to refuse authorization. The penalty for holding an unapproved demonstration under this law was imprisonment of up to three years. Arrests, intimidation, and beatings by the police have frequently accompanied demonstrations.<sup>99</sup> As well as restrictions placed on political parties, suppression of the right to freedom of assembly has also come under the guise of restrictions on trade union membership and activity.<sup>100</sup> Despite some reforms in the area of trade union rights, as recently as 2002 complaints from public sector workers have been made, detailing severe burdens

being placed in the way of union membership by employers, including threats of dismissal and compulsory transfer.<sup>101</sup>

### *Torture*

The conflict in the southeast has produced numerous allegations of torture perpetrated by the Turkish forces on detainees. These claims have been substantiated both at regional and international levels by inter-governmental and non-governmental organizations, leading one NGO to state in 1996 that it was “a matter of record that torture is widespread and systematic in Turkey.”<sup>102</sup> The issue of torture is one that has been raised in many Turkish cases that have come before the European Court of Human Rights and in many of them the court has found Turkish authorities guilty of that practice.<sup>103</sup> In 1992, following a number of *ad hoc* visits to Turkey, the European Committee for the Prevention of Torture stated in light of information at its disposal that it could “only conclude that the practice of torture and other forms of severe ill-treatment of persons in police custody remains widespread in Turkey and that such methods are applied to both ordinary criminal suspects and persons held under anti-terrorism provisions.”<sup>104</sup>

Although it is clear that torture was systematically used by the police and gendarmes on those suspected of being political offenders, it has also been suggested that it was used to punish those suspected of being PKK sympathizers and even to intimidate detainees into becoming police informants.<sup>105</sup> Although the culture of impunity surrounding allegations of torture made against agents of the state might have dissipated somewhat over the past number of years, there is nothing to suggest that the practice has been eliminated. The 2002 World Report of Human Rights Watch included the claims of many lawyers and human rights defenders in Turkey that torture and ill-treatment had actually increased, while in the European Commission’s 2005 progress report on Turkey it was noted that further efforts were required to strengthen safeguards against torture.<sup>106</sup>

### *Fair Trial Rights*

International law dictates that a number of procedural guarantees must be adhered to when a suspect is arrested and brought to trial. It has often been the case, however, that in situations where the crime is political violence these minimum requirements are dispensed with in the effort to apprehend perpetrators. Turkey is no different in this regard and has in fact been largely reluctant to apply the standards set by international law and by Article 5 and 6 of the European Convention on Human Rights in particular, in dealing with alleged political offenders arising from the conflict in the southeast.

Article 11 of the Law to Fight Terrorism allowed for the incommunicado detention of suspects for up to 15 days. This period could be doubled in areas under a state of emergency by virtue of the extension of custody provision in Article 26 of the State of Emergency Law. It has been claimed that this inordi-



nately long detention period was designed to allow wounds inflicted by torture to heal as detainees reported having being interrogated in the first days of their detention.<sup>107</sup> Both the European Court of Human Rights and international human rights protection agencies have pointed to the clear lack of safeguards in place for the ill-treatment of detainees that prolonged detention invariably brings. Those detained on suspicion of political offences previously have had no guarantees with respect to access to lawyers or medical attention, despite Turkey's obligations to provide such minimum legal protections. There have also been many allegations that intimidation of defence lawyers and refusal of access to defendant's files is commonplace.<sup>108</sup> In addition to the violations of procedural rights at the pre-trial stage, the prosecutions of offences pertaining to political violence have been held in State Security Courts, whose lack of independence and impartiality was confirmed by the European Court of Human Rights.<sup>109</sup>

### *Destruction of Villages and Forced Evacuation*

Although there is no official acceptance that there was a systematic plan for the displacement of Kurds in the southeast, this policy, which began with the Law on Resettlement of 1934, was pursued throughout the duration of the current conflict. As the PKK has drawn its main membership and support from the peasant population of the villages, displacing villagers was seen as a method of combating the revolt. Reports detailing the evacuations describe them as violent and unlawful; villages were surrounded by security forces, troops, and village guards who burned equipment, livestock, and houses, often not allowing villagers to retrieve their possessions.<sup>110</sup> The violence and destruction used in the evacuation of villages means that now, even with the implementation of the Return to Village and Rehabilitation Project, some of them cannot be re-inhabited. The numbers of internally displaced persons (IDPs) in Turkey is difficult to gauge as no independent statistics have been recorded. In 1995, the United Nations High Commissioner for Refugees estimated that the number was in the region of two million whilst a fact-finding mission from the Helsinki Commission concluded that the number of displaced villagers exceeded three million in 1996.<sup>111</sup> The 2005 report of the European Commission noted that the situation of Turkey's IDPs "remains critical, with many living in precarious conditions."<sup>112</sup>

Forced evacuation has caused innumerable problems for those affected, among them a deterioration of physical and psychological health. Research conducted with migrants suggests that the majority experience difficulties in accessing basic services, such as clean drinking water, electricity, and heating.<sup>113</sup> The United Nations Guiding Principles on Internally Displaced Persons place responsibility with the national authorities to provide protection and humanitarian assistance to those displaced. Due to the failure of the Turkish state to protect such persons and implement an effective program for return, human rights agencies have assessed that the situation remains worrying and the Return to Village and

Rehabilitation Project has been described as “little more than an empty shell”; village guards, it is pointed out “still bear arms, kill their neighbours, and block returns in safety and in dignity. A substantial number of villagers have returned, but mainly on the strength of their own meagre resources, and only for the summer months because the government has not provided the infrastructure for them to settle permanently.”<sup>114</sup>

A cursory examination of the nature of human rights affected under the emergency rule in the southeast demonstrates that abuses have been perpetrated across a broad spectrum of rights. The following section examines what recourse those affected have had under international law and the improvements, if any, brought about by the lifting of the state of emergency and reforms instituted in the process of European Union accession.

### **Conflict in Turkey and International Law**

#### *The European Convention on Human Rights*

Although Turkey has ratified a number of international human rights treaties,<sup>115</sup> the implementation of the European Convention on Human Rights has had by far the greatest effect in terms of individual access to justice and, to a certain extent, on the dynamics of the conflict. Throughout the last two decades, the European human rights protection system has provided a vehicle through which victims of abuses in Turkey have been able to obtain some form of redress. The cases that have come before the court have highlighted the systematic nature of the violations and prompted the parliamentary assembly of the Council of Europe to send fact-finding missions to the region on a number of occasions.<sup>116</sup>

The European Court of Human Rights has found that Turkey violated the convention guarantee of the right to life under Article 2 in numerous cases, many of which have concerned extra-judicial killings. While the court has stopped short of holding that there was a practice among the Turkish authorities of violating Article 2 of the Convention,<sup>117</sup> it has found a violation of the article in a phenomenally large number of cases. The issue of state responsibility for ‘unknown perpetrator’ killings<sup>118</sup> has been a recurring theme in the cases that have come before the court as many applicants have alleged that killings have been carried out either by the security forces or with their full knowledge, and whilst the court has shied away from finding direct state involvement in unlawful killings, it has found that responsibility can be engaged where death is an unintentional result of deliberate state force.<sup>119</sup> Violations of Article 2 have also been found in a plethora of cases due to the lack of an independent investigation in situations of alleged state killings. The scale of this problem is evidenced by the fact that in 2005 alone the court found that this procedural element of Article 2 had been violated in 28 cases. With regard to the issue of disappearances, a problem that has been prevalent in southeast Turkey during the conflict, the court

was unwilling to find a violation of Article 2 in *Kurt v Turkey*,<sup>120</sup> where there was found to be insufficient evidence to prove that the applicant's son met his death in custody. In *Cakici v Turkey*,<sup>121</sup> however, "sufficient circumstantial evidence based on concrete elements"<sup>122</sup> in the case of the applicant's brother, who had been missing for four years and was officially regarded as being dead, was adequate to attribute his death to the state.

The volume of cases concerning Turkey's alleged violations of Article 3 of the convention has also been significant. Although Turkey now reputedly adopts a 'zero tolerance' approach to torture, this has not always been the case. One of the most prominent cases regarding torture to come before the court was that of *Aksoy v Turkey*,<sup>123</sup> where the court found that the treatment, including 'Palestinian hanging,' which the applicant had been subjected to, was deliberately administered for the purpose of extracting an admission or information and amounted to torture. In other Article 3 cases concerning Turkey, the court has held that rape by a state official amounts to torture<sup>124</sup> and that certain forms of treatment in custody that may not amount to torture, constitute inhuman and degrading treatment for the purposes of Article 3.<sup>125</sup>

Given the extraordinary restrictions on freedom of expression in Turkish law before the reform process it is little wonder that the court has found violations of Article 10 of the convention in more than 40 cases. Despite recent changes to legislation and adverse judgments from the court, freedom of expression remains severely limited in Turkey. The European Commission noted in 2004 that even the revised law "continues to be used to prosecute those who criticize the state institutions in a way that is not in line with the approach of the ECtHR."<sup>126</sup> Turkish freedom of expression guarantees remain so dubious that it has even been suggested that where previously charges would have been brought under Article 8 of the Law to Fight Terrorism, they are now simply brought under the Penal Code, Article 169 which punishes the aiding of an illegal organization and Article 312, which refers to inciting racial, ethnic, or religious enmity.<sup>127</sup> A pertinent example of the type of case concerning a violation of Article 10 is that of *Han v Turkey*<sup>128</sup> decided in September 2005. The applicant, a member of the People's Democracy Party (HADEP), was charged with disseminating separatist propaganda under Article 8 of the Law to Fight Terrorism for a speech he had made, in which he referred to the 'Kurdish nation' and 'Kurdistan,' and was sentenced to one year's imprisonment and a fine. The court, in finding for the applicant, concluded that the applicant's conviction was disproportionate to the aim of preventing terrorism and therefore could not be perceived as being necessary in a democratic society.<sup>129</sup>

Amendments to various laws have eased some of the restrictions placed on freedom of association in Turkey over the past number of years. Even with the implementation of the new reforms, the law nonetheless remains particularly strict in relation to political parties. Pro-Kurdish parties are still equated with

support for the PKK, which led to the Constitutional Court ordering the permanent closure of the pro-Kurdish HADEP party in March 2003, convicted of charges of supporting the PKK and committing separatist acts under Article 169 of the Penal Code.<sup>130</sup>

The European Court has found Turkey to be in violation of Article 11 in a number of cases. The 1998 case of *United Communist Party of Turkey v Turkey*<sup>131</sup> involved a party that had been dissolved immediately after being formed, and its founders and managers banned from holding similar office in any other political body. The European Court made the important determination in this case that there is nothing in the wording of Article 11 to prevent it applying to political parties<sup>132</sup> and held that its dissolution “ordered before its activities had even started and coupled with a ban barring its leaders from discharging any other political responsibility, is disproportionate to the aim pursued and consequently unnecessary in a democratic society. It follows that the measure infringed Article 11 of the Convention.”<sup>133</sup> More recently, in November 2003, the court found in *Socialist Party (STP) & Others v Turkey*<sup>134</sup> that the Constitutional Court had acted in violation of Article 11 in ordering the dissolution of the Socialist Party on the grounds that its program was liable to undermine the territorial integrity of the state. The court decisions concerning Turkey have had the effect of bringing the harassment of pro-Kurdish political parties to light. In its 2004 report, however, the European Commission noted that there was “no new developments” with regard to the execution of five judgments of the European Court concerning the dissolution of political parties.<sup>135</sup>

The majority of cases concerning Turkey that the court has examined have related in some way to the conflict in the southeast and indeed many of them concern human rights abuses perpetrated against Kurds. The impact of adverse decisions by the court have had the effect of raising the profile of the conflict and bringing the human rights abuses perpetrated by the Turkish authorities to the attention of the broader European community. They have also provided a yardstick by which the European authorities can assess whether or not Turkey is implementing the necessary reforms warranted by the decisions of the court and necessitated by its bid to become a member of the European Union.<sup>136</sup> The following section will look at the nature and implementation of the reforms engendered by this process.

#### *European Union Accession, Harmonization, and Reform*

The prospect of obtaining full European Union (EU) membership has provided the impetus for the implementation of a series of reforms aimed at harmonizing Turkish legislative practice with that of other EU countries. This process is one that began with tentative steps from 2001 onwards but was accelerated with the election of the Justice and Development Party (AKP) in a landslide victory at the November 2002 general elections. Whilst developments to ensure

greater enforcement of human rights are undoubtedly welcome, non-governmental organizations and commentators have sounded a cautionary note against relaxing scrutiny of Turkey's implementation of the reform packages.<sup>137</sup> On 17 December 2004, the EU ultimately decided to open formal accession negotiations with Turkey but this was not before member states had assured themselves that a number of advancements had been achieved and in particular that the conditions set out in the Copenhagen Criteria had been fulfilled.<sup>138</sup> Included in the criteria for membership was the requirement that the candidate country have achieved "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities." Whether the reforms implemented in an effort to comply with this criterion are genuine or merely seek to present a sanitized picture for the benefit of those deciding on accession will undoubtedly be judged on the impact that they are seen to have among ordinary civilians.

### *Lifting the State of Emergency*

The state of emergency was not lifted in its entirety until 30 November 2002, despite the fact that the PKK called a unilateral ceasefire in 1999 following the capture of its long-time leader, Abdullah Ocalan. According to one fact-finding commission that visited the region in 2002, when emergency rule had ended in most provinces, its lifting was "an act of enormous symbolic significance to the people of the region."<sup>139</sup>

In June 2003, almost a year after the lifting of the state of emergency, a further fact-finding mission found that serious violations of human rights continued to occur in the southeast. The report highlighted a number of problems; among the more serious concerns were the continued military oppression in the southeast, restrictions on freedom of expression and association, and an institutional opposition to reform.<sup>140</sup> The mission noted that the number of arbitrary detentions, torture, and ill-treatment appeared to have risen since the end of 2002.<sup>141</sup> Although the military presence had diminished somewhat — there were fewer military checkpoints in operation — those that remained were strategically placed so that they restricted the everyday movement of people.<sup>142</sup> In addition, the village guards remained armed and active despite being officially disbanded with the lifting of the state of emergency, "operating in a legal vacuum, outside any higher authority and with total impunity."<sup>143</sup> The nature of human right violations in the southeast continued to the extent that between January and July 2003, the Turkish Human Rights Association recorded 14 extrajudicial killings and 17 deaths in prisons.<sup>144</sup>

### *Implementation of the Harmonization Packages*

It is indisputable that there have been comprehensive improvements in the legislative protection of human rights in Turkey since the beginning of the acces-

sion process. The legislative amendments have largely been facilitated by the implementation of the so-called “harmonisation packages,” which have made positive reforms to a wide range of legislation. To date, there have been two major constitutional reforms, in 2001 and 2004, and eight legislative packages adopted by parliament between February 2002 and July 2004. New codes have also been adopted, including a Civil Code and Penal Code.

A significant development was the repeal of Article 8 of the Law to Fight Terrorism, which had severely limited freedom of expression.<sup>145</sup> The pervasively wide definition of ‘terrorism’ was also redefined as:

the criminal act committed by a person or persons as members of an organisation by using force and violence by method of oppressing, scaring, deterring, suppressing or threatening, in order to change the features of the Republic as prescribed in the Constitution, the political, legal, social, secular, economic order, to dismantle the individual unity of the state with its territory and nation, to endanger the existence of the Turkish State and the Republic, to weaken or destroy or take over the State authority, to destroy fundamental rights and freedoms, to harm the internal and external security of the State, the public order or the public health.

The second part of the article provides that where “two or more persons come together with an aim to commit the terrorist crime prescribed in the first paragraph, an organisation prescribed in this Law will be deemed to have been formed.”<sup>146</sup> The newly framed definition, although still not narrowly construed, is more in line with European practice than the previous classification.<sup>147</sup>

In principle the legislative reforms implemented in Turkey confirm its robust commitment to protecting fundamental rights. The right to freedom of expression was enhanced not only by the repeal of the Law to Fight Terrorism but also by the promulgation of the Press Law,<sup>148</sup> which regulates the printing and publication of printed matter, in June 2004. Article 3 attests to the freedom of the press, which includes “the right to acquire and disseminate information, and to criticise, interpret and create works.” Article 12 of the Law stipulates that the owner or editor of a periodical “cannot be forced to either disclose their news sources or to legally testify on this issue.” The traditional antipathy of the state toward broadcasts and education in the Kurdish language has also been relaxed through the implementation of the reforms. The adoption of the Sixth Harmonisation Package in June 2003<sup>149</sup> relaxed restrictions on broadcasting in the Kurdish language — an amendment to Article 4 of the Act on the Establishment and Broadcasts of Radio and Television Stations sanctioned the broadcasting, on both private and public radio, and television stations, in languages and dialects used by Turkish citizens traditionally in their daily lives. In the area of education, the Regulation on Teaching Different Languages,<sup>150</sup> for example, which came into effect in December 2003, regulates the teaching of dif-

ferent languages and dialects that the Turkish citizens use traditionally in their daily lives. Further reduction of the restrictions placed on freedom of expression was achieved with the adoption of the Seventh Harmonisation Package.<sup>151</sup>

Nevertheless, although the process engendered by potential accession to the EU was intended to bring freedom of expression guarantees into line with those of EU member states, this has not entirely been the case. The new Penal Code, which came into force on 1 June 2005, replaced Article 159 with a new Article 301, making it a crime to denigrate ‘Turkishness,’ the Turkish Republic, or the foundations or institutions of the state. It states:

- (1) A person who explicitly insults being a Turk, the Republic or Turkish Grand National Assembly, shall be imposed a penalty of imprisonment for a term of six months to three years.
- (2) A person who explicitly insults the Government of the Republic of Turkey, the judicial bodies of the State, the military or security organisation shall be imposed a penalty of imprisonment for a term of six months to two years.
- (3) Where insulting being a Turk is committed by a Turkish citizen in a foreign country, the penalty to be imposed shall be increased by one third.
- (4) Expression of opinions with the purpose of criticism does not require penalties.

Recent cases that have come to international attention concern prosecutions taken under Article 301. Orhan Pamuk was charged under the article for remarks made during an interview in February 2005 in which he referred to the 1915 massacres of Armenians and the killing of Kurds in southeast Turkey.<sup>152</sup> His prosecution for insulting ‘Turkishness’ came as a sharp reminder that Turkey has some way to go in terms of providing for freedom of expression and prompted calls for Article 301 to be repealed.<sup>153</sup> Although the charges against Pamuk were subsequently dropped in January 2006,<sup>154</sup> other trials under Article 301 are ongoing. Another recent case concerning Article 301 is that taken against Hrant Dink, editor of the bilingual Armenian Turkish newspaper, *Agos*, who was convicted of insulting Turkey’s national identity and given a six month suspended sentence for publishing a series of articles in which he called on diaspora Armenians to stop focusing on the Turks and focus instead on the welfare of Armenia.<sup>155</sup> Since the prosecution of Pamuk in 2005 as many as 80 others have been prosecuted under Article 301<sup>156</sup> leading to consternation in the European Parliament, which has called for the abolition or amendment of the provisions of the penal code “which threaten European free speech norms.”<sup>157</sup>

Greater protection for rights relating to associations and freedom of assembly guarantees have also been facilitated by the implementation of the Seventh Harmonisation Package. The new Associations Law<sup>158</sup> stipulates that legal per-

sons are entitled to establish associations without need to obtain prior permission (Article 3) whereas the provision in Article 312 of the old penal code restricting those convicted of criminal offences from establishing associations has been abolished (Article 4). With regard to peaceful assembly, Article 3 of the law on Demonstrations and Public Meetings<sup>159</sup> now stipulates that citizens have the right to hold peaceful meetings and marches without prior permission. By virtue of Article 17 of the law, demonstrations can only be banned where there is a “clear and imminent threat of a criminal offence being committed.” Nevertheless there have been numerous reports of banned assemblies and police brutality during peaceful demonstrations.<sup>160</sup>

In 2001, the Council of the European Union indicated that Turkey must “[s]trengthen legal provisions and undertake all necessary measures to reinforce the fight against torture practices, and ensure compliance with the European Convention for the Prevention of Torture” as a priority in its accession partnership with Turkey.<sup>161</sup> Since this decision, a number of reforms have been implemented and a purported ‘zero tolerance’ policy on torture adopted.<sup>162</sup> According to the provisions of Supplementary Article 7 to the Code of Criminal Procedure, set out in the Seventh Harmonisation Package, the investigation and prosecution of cases of alleged torture are to be treated as urgent and hearings of these cases may not be adjourned for more than 30 days, unless there are exceptional circumstances. In addition to this safeguard, Articles 94-96 of the revised penal code provided heavier penalties than previously for those found guilty of inflicting torture.

The vigor of the reforms on torture are such that it has been noted that Turkey’s formal protections are now among the strongest in Europe.<sup>163</sup> Nonetheless, despite the very evident commitments Turkey has made to eliminating torture on paper, there are numerous testimonies to indicate that this message has not filtered through to agents of the state. In the European Commission’s 2004 report on Turkey’s accession, it was noted that “[a]lthough torture is no longer systematic, numerous cases of ill-treatment including torture still continue to occur and further efforts will be required to eradicate such practice.”<sup>164</sup> It was reported in 2005 that cases of beatings, electric shocks, detainees being stripping naked, and death threats in police and gendarme custody continued to be a concern<sup>165</sup> and national non-governmental organisations in fact claim that the practice of torture remains systematic in Turkey.<sup>166</sup> Yildiz concludes that “torture levels are unacceptably high and the Turkish government has manifestly failed so far in its responsibility to eradicate the practice.”<sup>167</sup>

Improvements in the reduction of instances of torture come largely as a result of the implementation of new procedural safeguards for detainees. In January 2003, Law No. 4778 enacted a series of reforms strengthening the right of access to a lawyer in cases under the jurisdiction of the State Security Courts. In April of that year, a Human Rights Violations Investigation and Assessment



Centre was established within the Gendarmerie Command and the sixth reform package repealed provisions preventing lawyers from being present during statement taking when they are defending those being tried under the competence of State Security Courts. Changes in the rules of procedure with regard to State Security Courts<sup>168</sup> have also been enacted to eliminate incommunicado detention. Despite these reforms, it has been reported that there is still a lack of effective mechanisms to monitor the implementation of detention regulations and investigate patterns of abuse by the security forces.<sup>169</sup>

An interesting development with regard to the situation in the southeast has been the enactment of the Law on Compensation for Damage Arising from Terror and Combating Terror,<sup>170</sup> the purpose of which was to “define the principles and procedures pertaining to the paying of compensation to persons suffering losses caused by terrorist actions or activities carried out in the struggle against terrorism” (Article 1). Article 4 of the law provides for the establishment of commissions to assess claims upon receipt of applications, which has particular resonance for internally displaced persons as it offers the possibility for compensation for material losses suffered during the program of displacement instigated to counter PKK violence. The operation of the law has not been without criticism, however, a lack of independence of the assessment commissions; a failure to provide legal aid for the applicants; and a delay in processing claims have been outlined in one critical report, which concludes that the objective of the law “is not actually to compensate for damages suffered, but to appease the EU within Turkey’s accession negotiations.”<sup>171</sup>

## **CONCLUSION: IMPACT OF THE REFORM PROCESS AND PROSPECTS FOR PEACE**

It is without question that Turkey has successfully instituted a large number of legislative and administrative reforms in a very short period of time. The country is now a state party to all of the major international human rights instruments, the death penalty has been abolished,<sup>172</sup> and it would appear that there is progress being made in many areas, hastened undoubtedly by the bid for European Union accession.

Whether or not the reforms are actually being put into practice though can only be assessed from independent reports emanating from the region and assessments of international agencies. With that in mind it is clear that there is still much to be achieved in the way of implementation. In 2004, the European Commission noted that whilst significant progress took place on the ground, implementation of the reforms remained “uneven.”<sup>173</sup> In support of this claim it highlighted problems such as the continued influence exercised by the military through a series of informal mechanisms; the draft new Code of Criminal Procedure, the draft Laws on the Establishment of the Judicial Police, and on the Execution of Punishments had not been adopted; corruption remained a serious

problem in almost all areas of public affairs; cases of ill-treatment, including torture, continued to occur; the new penal code provided only limited progress with regard to freedom of expression and cases of prosecution for non-violent expression continued to arise; and there were continued restrictions on broadcasting and education in minority languages.<sup>174</sup> The report pragmatically concludes that “[t]he changes to the Turkish political and legal system over the past years are part of a longer process and it will take time before the spirit of the reforms is fully reflected in the attitudes of executive and judicial bodies, at all levels and throughout the country. A steady determination will be required in order to tackle outstanding challenges and overcome bureaucratic hurdles.”<sup>175</sup>

The decision of the European Council in December 2004 to open accession talks with Turkey would appear to evidence their confidence that the improvement in human rights protections committed to in a series of legislative and administrative reforms will continue to be implemented in a practical manner. Given the fact that the 2004 report on Turkey’s accession is quite critical of the lack of implementation of the reforms, the decision just two months after the issuing of the report by the commission was hailed by some commentators as being premature.<sup>176</sup> One year after the decision to open accession negotiations, the Commission’s 2005 report noted that further efforts were required in the areas of freedom of expression, women’s rights, religious freedoms, trade union rights, cultural rights, and the strengthening of the fight against torture and ill treatment.<sup>177</sup> In the Commission’s most recent report on Turkey’s progress toward accession, a number of areas of concern are highlighted. The commission noted a deterioration in the situation in the southeast and “widespread reports of excessive and arbitrary use of force by the security forces”<sup>178</sup> and expressed serious concerns about freedom of expression.<sup>179</sup>

It is manifestly clear that the prospect of EU membership has had the greatest influence on human rights standards in Turkey. The prospect of accession has had more of an impact than derisory European Court of Human Rights decisions, international condemnation, and non-governmental lobbying combined. It is thus imperative that the monitoring of the European bodies continues, to ensure that human rights standards in Turkey are eventually brought into line with international practice and respect for the Kurdish minority ensured. It is, after all, only through the realization of human rights protections for all citizens in the southeast that political offenders may eventually be persuaded that armed conflict is not the only way to advocate reform.

## Endnotes

1. David Wippman outlines that a conservative estimate of the number of people killed in ethnic conflicts since 1945 rests at 11 million. See D. Wippman, ed., *International Law and Ethnic Conflict* (Ithaca, NY: Cornell University Press, 1998), p. 5.
2. See A. Mack, ed., *Human Security Report* (Vancouver, BC: The Human Security Centre, 2005), p. 17, which states that “. . . in terms of battle-deaths, the 1990s was the least violent decade since the end of World War II. By the beginning of the 21st century, the probability of any country being embroiled in an armed conflict was lower than at any time since the early 1950s.”
3. See, for example, D. McDowall, *A Modern History of the Kurds*, 3rd ed. (London: IB Tauris, 2004); *The Kurds: A Nation Denied* (London: Minority Rights Publications, 1992) by the same author; P.J. White, *Primitive Rebels or Revolutionary Modernizers?: The Kurdish National Movement in Turkey* (London: Zed Books, 2000); M.B. Bishku, “The Kurds and the Turkish National State: The Interaction of Nationalism, Secularism and Islam,” *Studies in Contemporary Islam* 55, no. 1 (2003), p. 107; M.H. Yavuz “Five Stages of the Construction of Kurdish Nationalism in Turkey,” *Nationalism and Ethnic Politics* 7, no. 3 (2001), p. 1; and N. Entessar, *Kurdish Ethnonationalism* (Boulder, CO: Lynne Rienner, 1992). These are among the works relied upon in the writing of this section.
4. The Treaty of Peace Between the Allied and Associated Powers and Turkey Signed at Sèvres, 10 August 1920 (hereinafter cited as Treaty of Sèvres) in *The Treaties of Peace 1919-1923*, vol. II (New York: Carnegie Endowment for International Peace, 1924).
5. Treaty of Peace with Turkey Signed at Lausanne, 24 July 1923 (hereinafter cited as Treaty of Lausanne) in *The Treaties of Peace 1919-1923*, vol. II (New York: Carnegie Endowment for International Peace, 1924).
6. McDowall, *The Kurds: A Nation Denied*, p. 11.
7. For a definitive account of the Kurds of historical Kurdistan, see McDowall, *A Modern History of the Kurds*.
8. Point Twelve of Woodrow Wilson’s Fourteen Point Plan for World Peace, presented at the Paris Peace Conference, reproduced as an appendix in M. Macmillan, *Paris 1919: Six Months That Changed the World* (New York: Random House, 2001).
9. McDowall, *The Kurds: A Nation Denied*, p. 32.
10. For a historical analysis of Kurdish nationalism in Turkey, see P.J. White, *Primitive Rebels or Revolutionary Modernizers?: The Kurdish National Movement in Turkey* (London: Zed Books, 2000).
11. McDowall, *The Kurds: A Nation Denied*, p. 32.
12. *Ibid.*, p. 33.
13. *Ibid.*
14. Article 62, Treaty of Sèvres.
15. Macmillan, *Paris 1919*, p. 446.
16. McDowall, *The Kurds: A Nation Denied*, p. 35.
17. Michael M. Gunter, *The Kurds and the Future of Turkey* (New York: Palgrave Macmillan, 1997), p. 5.
18. One commentator attests to the fragility of the treaty, stating that it was signed by the Allies and Damad Ferid, representing the sultan’s government “in a showroom at the Sèvres porcelain factory on the outskirts of Paris: not a thing of beauty, but as easily smashed.” Macmillan, *Paris 1919*, p. 448.
19. See J. Allain, *International Law in the Middle East: Closer to Power than Justice* (England: Ashgate, 2004), p. 19. See also A. Mango, “Atatürk and the Kurds” *Middle Eastern Studies* 35, no. 4 (1999), p. 1; and O. Ali, “The Kurds and the Lausanne Peace Negotiations, 1922-23,” *Middle Eastern Studies* 33, no. 3 (1997), p. 521.

20. Ibid., (footnote omitted).
21. "Question of the Frontier between Turkey and Iraq: Report to the Council by the Commission instituted by the Council Resolution of 30 September 1924," Documents distributed to Council and State Members, League of Nations, C.400, M. 147, 20 August 1925, at p. 88, reprinted in Allain, *International Law in the Middle East*, p. 20.
22. The request for an advisory opinion from the court concerned the character of the council's decision-making power under Article 3(2) of the Treaty of Lausanne. Advisory Opinion, P.C.I.J. Reports, Series B, No. 12, 21 November 1925.
23. "Question of the Frontier between Turkey and Iraq: Decision of the Council," 16 December 1925, League of Nations, Official Journal, February 1926, Item 1651, at pp. 191-92, reprinted in Allain, *International Law in the Middle East*, p. 21.
24. Ibid., p. 22.
25. Statement made in reply to a journalist, Emin, in Izmit, reprinted in McDowall, *A Modern History of the Kurds*, p. 190. On Turkish nationalism, see generally H. Poulton, *Top Hat, Grey Wolf and Crescent: Turkish Nationalism and the Turkish Republic* (New York: New York University Press, 1997)
26. McDowall, *A Modern History of the Kurds*, p. 191.
27. Ibid.
28. Ibid.
29. Ibid., p. 192.
30. McDowall, *The Kurds: A Nation Denied*, p. 36.
31. K. Kemal and G. Winrow, *The Kurdish Question and Turkey: An Example of Trans-state Ethnic Conflict* (London: Frank Cass, 1997), p. 101.
32. For a definitive account of the Sheikh Said Rebellion, see R. Olson, *The Emergence of Kurdish Nationalism and the Sheikh Said Rebellion 1880-1925* (Austin, TX: University of Texas Press, 1989).
33. Kemal and Winrow, *The Kurdish Question and Turkey*, p. 101
34. See McDowall, *The Kurds: A Nation Denied*, p. 37.
35. See Kendal, "Kurdistan in Turkey," in G. Chaliand, ed., *A People Without a Country: The Kurds and Kurdistan*, 2nd. ed. (London: Zed Books, 1993), pp. 38 and 62. Kendal refers to this period as the "quiet years."
36. McDowall, *The Kurds: A Nation Denied*, p. 38.
37. Kendal, "Kurdistan in Turkey," pp. 38 and 63.
38. Ibid.
39. McDowall, *The Kurds: A Nation Denied*, p. 39.
40. Kendal, "Kurdistan in Turkey," pp. 38 and 65.
41. Ibid., p. 65.
42. Kendal notes that the coup had not been welcomed by the Kurdish population as they feared a return to the Kemalist style militarism. In describing the harsh tactics engaged in he outlines that "[o]ne of the Committee's very first measures had been to intern 485 Kurdish intellectuals and notables in a military camp established at Sivas, where they were held for four months. Fifty-five of them, those the authorities deemed most influential amongst the Kurdish population, were exiled to the western cities of Turkey for two years. . . . Another of the Committee's earliest decrees set out to ensure 'the Turkicization of the names of Kurdish villages and towns.' It also decided to set up 'religious boarding schools' in Kurdistan, where Kurdish children, separated from their own milieu at a very young age, could be 'Turkicized' . . . . Half a dozen radio stations were set up in Kurdistan to broadcast in Turkish, in the hope that this would deter the

- population from listening to the Kurdish language broadcasts from neighboring countries.” Kendal, “Kurdistan in Turkey,” pp. 38 and 65.
43. McDowall, *The Kurds: A Nation Denied*, p. 39.
  44. Kendal, “Kurdistan in Turkey,” pp. 38 and 66.
  45. Ibid.
  46. Ibid., p. 67.
  47. Ibid., p. 65. Kurds were generally referred to as “mountain Turks” by Turkish officials in an attempt to deny that they were ethnically distinct from Turks.
  48. The Turkish Workers’ Party had been founded in 1961 by trade unionists.
  49. McDowall, *The Kurds: A Nation Denied*, p. 40.
  50. Ibid.
  51. Ibid.
  52. White, *Primitive Rebels or Revolutionary Modernizers?*, p. 132.
  53. McDowall, *The Kurds: A Nation Denied*, p. 41.
  54. Kendal, “Kurdistan in Turkey,” pp. 38 and 70.
  55. Official Gazette, no. 12577, 14 February 1967, reprinted in McDowall, *A Modern History of the Kurds*, p. 410.
  56. See McDowall, *The Kurds: A Nation Denied*, p. 43-50. Kendal examines the subjugation of the Kurds as falling within the categories of cultural, political, and physical oppression. See Kendal, “Kurdistan in Turkey,” pp. 38, 72-79.
  57. White, *Primitive Rebels or Revolutionary Modernizers?*, p. 134.
  58. Ibid., p. 135.
  59. Ibid.
  60. C. More, *Les Kurdes Aujourd’hui. Mouvement National et Partis Politiques* (Éditions L’Harmattan Paris 1984), p. 188, reprinted in White, *Primitive Rebels or Revolutionary Modernizers?*, p. 136.
  61. Yildiz, *The Kurds in Turkey*, p. 16.
  62. Allain, *International Law in the Middle East*, p. 31.
  63. There is an abundance of literature dealing with alleged human rights abuses during the conflict. Some of the more pertinent non-governmental reports include: Amnesty International, “Turkey: A Policy of Denial,” AI Index: EUR 44/24/95; “Turkey: Forced Displacement of Ethnic Kurds from Southeastern Turkey,” *Human Rights Watch* 6, no. 12 (1994); Lawyers Committee for Human Rights, “Obstacles to Reform — Exceptional Courts, Police Impunity and Persecution of Human Rights Defenders in Turkey,” Report (Canada: Lawyers Committee for Human Rights, 1999), pp. 60-66; Amnesty International, “Turkey: The Duty to Supervise, Investigate and Prosecute,” AI Index: EUR 44/24/99 April 1999; Amnesty International, “No Security Without Human Rights,” AI Index: EUR 44/084/1996, 1 October 1996; as well as numerous reports of the Kurdish Human Rights Project.
  64. Notable exceptions are former Turkish President Turgut Özal, who argued that a federal solution was possible to the Kurdish problem and former Prime Minister Mesut Yılmaz who promised a political solution in 1996. See L. Zana, “Kurdish Cry of Protest Rises from Prison Cell,” *The Times*, 7 September 1994; and Gunter, *The Kurds and the Future of Turkey*, pp. 131-32. Gunter asserts that what is required are constitutional and legal guarantees recognizing and protecting the Kurdish cultural existence. He also notes that Abdullah Öcalan indicated that he would be satisfied with “genuine democratization.” On the possibility of Kurdish secession, see generally G.J. Ewald, “The Kurds’ Right to Secede Under International Law: Self-Determination Prevails Over Political Manipulation,” *Denver Journal of International Law and Policy* 22 (1993-1994), p. 375.

65. See Yildiz, *The Kurds in Turkey*, pp. 16-17.
66. The methods used by the Turkish forces in their response to the conflict have frequently been criticized by international non-governmental organizations. See, for example, Amnesty International, "Turkey: A Policy of Denial" AI Index: EUR 44/24/95.
67. See McDowall, *The Kurds: A Nation Denied*, p. 44.
68. McDowall, *A Modern History of the Kurds*, p. 424.
69. Ibid.
70. See "Turkey: Forced Displacement of Ethnic Kurds from Southeastern Turkey," *Human Rights Watch* 6, no. 1 (1994), p. 26.
71. See Ibid.
72. Act No. 2935: State of Emergency Law, *Official Gazette*, no. 18204, 27 October 1983.
73. Article 4.
74. A state of emergency was declared in the provinces of Bingöl, Diyarbakır, Hakkari, Bitlis, Mardin, Siirt, Tunceli, Van, Pyrnak, and Batman.
75. Yildiz, *The Kurds in Turkey*, p. 16.
76. See Lawyers Committee for Human Rights, "Obstacles to Reform," pp. 60-61; and Amnesty International "Turkey: The Duty to Supervise," pp. 28-29. The European Court of Human Rights held in *Gulec v. Turkey* (28 EHRR 121 [1998] at paras. 77-82) that the administrative councils did not provide an independent or effective procedure for investigating deaths involving members of the security forces.
77. See C. Buckley, "Turkey and the European Convention on Human Rights: A Report on the Litigation Programme of the Kurdish Human Rights Project," (London: Kurdish Human Rights Project, 2000), p. 5.
78. Act No. 3713: Law to Fight Terrorism, *Official Gazette*, 12 April 1991.
79. Article 1(1).
80. The courts were introduced into the modern judicial system in 1983 by virtue of Law No. 2845. Under Article 143 of the Turkish Constitution, they were established to deal with matters pertaining to the "indivisible integrity" of the state. Their function has since been adapted under Law No. 3842 of 1 December 1992 to deal with offences committed against the state, which includes offences involving arms or narcotics connected to "terrorism."
81. *Incal v. Turkey*, Application No. 41/1997/825/1031. See "Justice on Trial: State Security Courts, Police Impunity and the Intimidation of Human Rights Defenders in Turkey," Report of the Joseph R. Crowley Program/Lawyers Committee for Human Rights: Joint 1998 Mission to Turkey, *Fordham International Law Journal* 22 (1998-1999), p. 2129.
82. Parliamentary Assembly of the Council of Europe, Resolution No. 985 of 1992 on the Situation of Human Rights in Turkey, adopted on 30 June 1992, para. 9.
83. Ibid., para. 10.
84. Ibid., para.12(ii).
85. Ibid., para. 13(i).
86. This section does not attempt to cover all aspects of human rights violations in southeast Turkey during the conflict; merely a brief summary of some of the most common human rights abuses is included. Numerous NGOs have been reporting on the human rights situation throughout the conflict. See, in particular, the country reports of Amnesty International and Human Rights Watch. In addition, the London-based NGO, the Kurdish Human Rights Project, has consistently highlighted human rights abuses in the region in numerous reports since its establishment in 1992.
87. Yildiz, *The Kurds in Turkey*, p. 50.

88. *Ibid.*, p. 17.
89. See “No Security Without Human Rights,” Amnesty International; AI Index: EUR 44/084/1996, 1 October 1996.
90. *Ibid.*
91. Act No. 3713: Law to Fight Terrorism, *Official Gazette*, 12 April 1991, Article 8(1).
92. See “No Security Without Human Rights.”
93. The Sixth Harmonization Package, adopted by the Turkish Parliament on 19 June 2003, repealed Article 8 of the Law to Fight Terrorism. The reforms engendered by the harmonization packages will be discussed below.
94. See Kendal, “Kurdistan in Turkey,” pp. 38 and 77.
95. See Act No. 3713: Law to Fight Terrorism.
96. Kendal, “Kurdistan in Turkey,” pp. 38 and 77.
97. In March 2003, the Constitutional Court ordered the permanent closure of a pro-Kurdish party, HADEP (People’s Democracy Party). See Yildiz, *The Kurds in Turkey*, p. 60.
98. *Ibid.*, p. 60.
99. See “No Security Without Human Rights.”
100. See *Ibid.*
101. See L. Lustgarten and A. Kaza, *The Lifting of State of Emergency Rule: A Democratic Future for the Kurds of Turkey?* (London: Kurdish Human Rights Project, 2002), pp. 23-28.
102. “No Security Without Human Rights.”
103. See discussion below.
104. European Committee on the Prevention of Torture, CPT/Inf (93) 1 [EN], 15 December 1992.
105. “No Security Without Human Rights.”
106. European Commission, Regular Report on Turkey’s Progress Towards EU Accession, 2005, B 1.4.
107. “No Security Without Human Rights.”
108. Lustgarten and Kaza, *The Lifting of State of Emergency Rule*.
109. See *Incal v. Turkey*, Application No. 41/1997/825/1031.
110. “‘Still Critical’: Prospects in 2005 for Internally Displaced Kurds in Turkey,” *Human Rights Watch* 17, no. 2(D) (March 2005), p. 5.
111. Yildiz and Hughes, *Internally Displaced Persons*, p. 28.
112. European Commission, Regular Report on Turkey’s Progress Towards EU Accession, 2005, p. 39.
113. Yildiz and Hughes, *Internally Displaced Persons*, p. 33.
114. “‘Still Critical’: Prospects in 2005 for Internally Displaced Kurds in Turkey,” p. 35.
115. Of the seven core United Nations Human Rights International Human Rights Instruments, Turkey has ratified the Covenant on Economic, Social and Cultural Rights (23 December 2003); the Covenant on Civil and Political Rights (23 December 2003); the Convention on the Elimination of Racial Discrimination (16 October 2002); the Convention Against Torture (1 September 1988); the Convention on the Rights of the Child (4 May 1995); the Convention on Migrant Workers (1 January 2005); and acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (19 January 1986).
116. While cases concerning Turkey have been taken under all of the articles of the convention guaranteeing individual rights, the majority have concerned alleged violations of the right to life, freedom from torture, freedom of expression, and freedom of assembly.

117. In *Tanrikulu v Turkey*, the court stated that “the scope of the examination of the evidence undertaken in this case and the material in the file are not sufficient, even in the light of previous cases, to enable it to determine whether the authorities have adopted a practice of violating Articles 2 and 13 of the Convention.” Judgment of 8 July 1999, p. 121.
118. See Buckley, “Turkey and the European Convention on Human Rights,” pp. 103-10.
119. In *Ergi v Turkey* for example, the court found that state responsibility can be engaged where its agents “fail to take all feasible precautions in the choice of means and methods of a security operation mounted against an opposing group with a view to avoiding and, in any event, to minimising, incidental loss of life.” Judgment of 28 July 1998, p. 79.
120. Judgment of 25 May 1998.
121. Judgment of 8 July 1999.
122. Judgment of 8 July 1999, p. 85.
123. Judgment of 18 December 1996.
124. *Aydin v Turkey*, Judgment of 25 September 1997.
125. In *Tekin v Turkey*, Judgment of 9 June 1998, the applicant alleged that his treatment in custody — he had blindfolded, beaten, and detained for days without food — amounted to torture. The court held that the manner in which he had been treated, while not amounting to torture, constituted inhuman and degrading treatment. See Buckley, “Turkey and the European Convention on Human Rights, p. 126.
126. 2004 Regular Report on Turkey’s Progress Towards Accession, SEC(2004)1201 06/10/04, p. 37.
127. Yildiz, *The Kurds in Turkey*, p. 52.
128. Judgment of 25 September 2005.
129. Judgment of 25 September 2005, p. 33.
130. Yildiz, *The Kurds in Turkey*, p. 60.
131. Judgment of 30 January 1998.
132. Judgment of 30 January 1998, para. 24.
133. Judgment of 30 January 1998, para. 61.
134. Judgment of 12 November 2003.
135. See 2004 Regular Report on Turkey’s Progress Towards Accession, p. 31.
136. For example, the 2004 report of the European Commission referred to the fact that Turkey had “not yet taken all the measures necessary to comply with a group of 34 Judgments related to violations of the right to freedom of expression,” but had “made further progress in executing 55 Judgments relating to abuses committed by the security forces . . .” See 2004 Regular Report on Turkey’s Progress Towards Accession, p. 31.
137. See, for example “‘Still Critical’: Prospects in 2005 for Internally Displaced Kurds in Turkey,” p. 35, which criticizes Turkey’s implementation of the program to return internally displaced persons, agreed upon in the EU Accession Partnership of May 2003.
138. The criteria relating to enlargement of the union were formulated at the Copenhagen European Council in 1993, hence the “Copenhagen Criteria.”
139. Lustgarten and Kaza, *The Lifting of State of Emergency Rule*, pp. 7-8.
140. See M. Moriarty and G. Hartz, *In the Wake of the Lifting of State of Emergency Rule: Report of a Fact-Finding Mission to Southeast Turkey* (London: Kurdish Human Rights Project, 2003).
141. *Ibid.*, p. 10.
142. *Ibid.*, p. 15.
143. *Ibid.*



144. Human Rights Association, Human Rights Report, January-July 2003, reproduced as an appendix in Moriarty and Hartz, *In the Wake of the Lifting of State of Emergency Rule*, pp. 57-62.
145. Article 8 was repealed by virtue of Article 19 of Law No. 4928, Law Amending Various Laws, *Official Gazette*, 15 July 2003.
146. Article 20 of Law No. 4928, Law Amending Various Laws, *Official Gazette*, 15 July 2003.
147. For example, Article 1(1) of the UK Terrorism Act 2000 defines "terrorism" in part as "the use or threat of action where . . . the use or threat is designed to influence the government or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious or ideological cause." By virtue of Article 1(2), "action" includes "serious violence against a person," "serious damage to property," endangering "a person's life, other than that of the person committing the action," or creating "a serious risk to the health or safety of the public or a section of the public. . . ."
148. Law No. 5178, *Official Gazette*, 26 June 2004.
149. The Sixth Harmonisation Package was adopted by the Turkish parliament on 19 June 2003. See N.F. Watts, "Turkey's Tentative Opening to Kurdishness," *Middle East Report Online*, 14 June 2004, which details the "palpable 'Kurdification' of civil society in parts of the southeast."
150. Regulation on Teaching Different Languages, *Official Gazette*, 5 December 2003.
151. The Seventh Harmonisation Package was adopted by the Turkish parliament on 7 August 2003.
152. See Leader, "In Praise Of . . . Orhan Pamuk," *The Guardian*, 16 December 2005.
153. See Amnesty International, "Article 301 is a threat to freedom of expression and must be repealed now!" AI Index: EUR 44/035/2005 1 December 2005.
154. See I. Traynor, "Turkey Draws Back from Prosecuting Outspoken Novelist," *The Guardian*, 23 January 2006.
155. "Dink Convicted of Insulting Turkish Identity," *Turkish Daily News*, 8 October 2005.
156. See M. Freely "Justice on Trial," *The Guardian*, 23 September 2006.
157. See "European Parliament Critical of Slowdown in Turkey's Reform Process," *European Parliament Press Service*, 27 September 2006.
158. Associations Law, Law No. 5253, *Official Gazette*, 4 December 2004.
159. Law No. 2911.
160. See, for example, "Turkish Talks Held Amid Fury at Police," *The Guardian*, 14 March 2005, for a report of the attack on the march celebrating International Women's Day in 2005. Amnesty International reported that police used truncheons and pepper gas to disperse some 500 people who had gathered in Istanbul, which reportedly resulted in 63 individuals being detained and at least three people being hospitalized. AI Index: EUR 44/008/2005, 7 March 2005.
161. Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey (2001/235/EC).
162. See Yildiz, *The Kurds in Turkey*, pp. 43-49.
163. See "Eradicating Torture in Turkey's Police Stations: Analysis and Recommendations," *Human Rights Watch Briefing Paper* (2004), p. 2.
164. 2004 Regular Report on Turkey's Progress Towards Accession, p. 17.
165. See country report on Turkey in Amnesty International Report 2005, AI Index: POL 10/001/2005, 25 May 2005.
166. See Yildiz, *The Kurds in Turkey*, p. 49.
167. Ibid.
168. State Security Courts were abolished in 2004 but replaced by "Serious Felony" courts, which took over the majority of the functions of the old courts.

169. See country report on Turkey in Amnesty International Report 2005.
170. Law No. 5233, *Official Gazette*, 17 July 2004.
171. L. Claridge and S. Linzey, *The Status of Internally Displaced Kurds in Turkey and Compensation Rights* (London: Kurdish Human Rights Project, 2005), p. 43.
172. Turkey ratified Protocol 6 to the European Convention on Human Rights on 1 December 2003 and signed Protocol 13, abolishing the death penalty in all circumstances, in January 2004.
173. 2004 Regular Report on Turkey's Progress Towards Accession, p. 165.
174. *Ibid.*, pp. 165-67.
175. *Ibid.*, pp. 167-68.
176. Yildiz asserts that "[t]he European Commission's perspective on changes in Turkey, which is substantially followed by the Council, lacks depth and penetration as to the reality of the situation on the ground in Turkey and casts an unjustifiably positive light on Turkey's progress. The EU decision in favour of opening accession talks rewards the superficially dramatic changes that Turkey has effected, and wrongly intimates that the bulk of the human rights reform process is complete." Yildiz, *The Kurds in Turkey*, p. 71.
177. European Commission, Regular Report on Turkey's Progress Towards EU Accession 2005, B 1.4.
178. European Commission Regular Report on Turkey's Progress Towards EU Accession 2006, Brussels, 8 November 2006, SEC (2006) 1390, p. 21.
179. The commission stated that Article 301 of the Penal Code "needs to be brought into line with the relevant European standards. The same applies to other provisions of the Penal code which have been used to prosecute the non-violent expression of opinions and may limit freedom of expression. The potential impact of the anti-terror law on freedom of expression raises concerns[()]" European Commission, Regular Report on Turkey's Progress Towards EU Accession 2006, Brussels, 8 November 2006, SEC (2006) 1390, p. 14.