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Minority rights and self-determination of the Kurds in the era of Turkey's European integration process

A qualitative legal analysis on the effects of Turkey's accession process to the European Union on the human rights and the right to self-determination of the Kurdish minority

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Introduction

That of Kurds is a persecution that knows very few contemporary equivalents in the world. It has progressively become an internationally recognized ethno-political issue that affects the lives and fundamental rights of almost 40 million people spread across the Middle East or living in the diaspora around the globe. The plight of Kurdish minority, as we know it today, traces back to the dissolution of the Ottoman Empire, when in Sèvres Kurds were promised in 1920 the institution of an autonomous Kurdistan and a consequent referendum on independence, but were ultimately left empty-handed by the Treaty of Lausanne of 1923. Disillusioned and scattered among different newly emerged Middle Eastern countries, Kurdish people have ever since struggled for their self-determination as a nation without a state, while receiving only repressive responses from the central governments, which had (and still have) no interest in losing their territorial integrity and sovereignty.

Modern Turkey is where the present research will frame its inquiry and arguments. As other post-Ottoman countries, the Republic of Turkey had to deal since its very beginning with the "problem" of ethnic minorities asserting and claiming their own identity, which was in stark contrast with the ideology of nationalism that Kemal Atatürk carried out relentlessly throughout his administrations. Unlike Armenians, Greeks, Arabs, Jews and other communities residing in Turkey, the Kurds represented a major threat for the country, both because of their demographic numerosity and especially because of the specific political project of differentiation associated to their ethnic identity. *Vis-à-vis* claims of self-determination (firstly external, i.e. secession, and then internal, i.e. self-government), Turkish governments throughout most part of the 20th century opted for an iron-first politics of oppression, where minority management was not even remotely about integration, but instead about assimilation, aimed at eliminating any visible trait of non-Turkishness from society. This phenomenon goes under the name of "Turkification" and consisted of a wide range of restrictive laws, policies and other measures which altogether aimed at the forced annihilation of Kurdish culture and identity. In addition to this, the law enforcement made use of excessive force and extra-legal measures against those Kurds who opposed to such establishment or who were suspected to have links with the far-left militant organization PKK (Kurdistan Workers' Party) that is considered a terrorist organization by most countries of the world.

The PKK is ascribed to the broader Kurdish movement[1] that throughout the 1900s has risen and grown in Turkey, assuming now the features of a composite aggregate of people among whom there are activists,

[1] When I speak of the Kurdish movement, I refer to the broad political movement that includes many diversified actors, whose potential ideological and strategic differences I am fully aware of. The PKK, for instance, is *one* branch of the movement which uses violent and illegal means for claiming Kurdish rights to self-determination.

militants, politicians at all levels, who share the same political space generated by the huge grassroots' social, political and legal mobilization of the previous decades.

Much of the mobilization of Turkey's Kurdish movement will be here analyzed within the framework of Turkey's European integration process, which constitutes a turning point in Turkey's national management of minority rights and democracy in general.

The period between the late 80s and early 90s, in fact, offered the ideal conditions for the international community to focus their attention on Turkey's foreign and domestic politics, mainly for two reasons. First, in a post-Cold War climate where multinational entities such as Yugoslavia and the Soviet Union were dissolved and new ethnically heterogeneous states emerged, the so-called "international problem of national minorities"[2] became an issue of international concern, also with regards to the Kurds, who were facing in those very years a phase of unprecedented repression by the Turkish government and military. Secondly, Turkey wants to become member of the European Union (EU), which translated into the acceptance of a strict oversight – from the European institutions – on its conduct in a number of areas, among which democracy, rule of law and human rights. The EU accession prospects, in fact, entail that the candidate state commits to the fulfilment of a set of membership conditions through the enactment of reforms on a wide spectrum of fields. Özal-led government then, after having already recognized in 1987 the jurisdiction of the European Court of Human Rights (ECtHR) over its domestic judicial matters, entered a period of political reforms, where the aim was to establish a mutually beneficial dialogue with Europe in order to enhance the country's likelihood to attain the membership.

Among the European institutions appointed to the monitoring of Turkey's behavior, ECtHR has played a crucial role especially between the mid-90s and early 2000s, as its rulings served as benchmarks to assess the progress, credibility and commitment of Turkey's democratic reforms. As the contribution of Strasbourg's Court was of utmost importance in the overall assessment of Turkey's democratic consolidation process, the Kurdish question in particular largely benefitted from it. The plight of the Kurds in Turkey has been documented through a conspicuous number of cases filed by Kurdish applicants from the Southeast – mainly victims of unlawful and forced displacement by state officials and other related human rights violations – and it favored the rise of awareness about this issue internationally. The ECtHR provided legal remedies for the displaced Kurds of Turkey, producing a significant case law and meeting victims' rights to justice and truth. However, these doors closed rather soon, when in 2006 the Court – in distress because of an increased caseload – decided to declare inadmissible all Southeastern Turkey's cases of displacement,

Whereas other components of the movement belong to the civil society and carry out non-violent action and resistance, including legal action (such as lawyers and human rights activists) and political actions (such as Kurdish politicians and other members of civil society that actively claim Kurdish rights).

[2] See Chaszar E., *The International Problem of National Minorities*, Indiana University of Pennsylvania, 1988.

referring their settlement to Turkish domestic procedures. This episode has been welcomed as controversial among the scholarship, who define the pilot judgment as "premature, unjust and political" as it disregarded the intrinsic deficiencies of Turkish judiciary, leaving the victims at its mercy.

Research question

What the present work will attempt to provide is a comprehensive yet critical overview on this kind of dynamics, which are in their complexity deeply entangled with various implications of political, geopolitical, economic, social and legal nature. By doing so, I will try to answer a specific research question:

- What effect, if any, has Turkey's integration process in the EU had for the human rights of the Kurdish minority, including their right to self-determination?

The sub-questions that will support and complement the main research question are:

a) How did the rights of Turkey's Kurdish minority evolve over the past century?

b) What role have the EU and the ECtHR played in acknowledging and protecting the rights of the Kurdish minority?

c) What effects has this interaction had on the relationship between Turkey and the EU?

Structure of the thesis

The first chapter will retrace the early stages of modern Turkey's approach to minority rights, namely through the discussion of the assimilationist plan of Turkification promoted by Atatürk and the underlying national discourse on citizenship and Turkishness. Chapter 2 introduces the EU as the third actor of our legal-political analysis, which also acts as push-factor towards democratization and change in the context of Turkish accession process. In particular, the role of the European Court of Human Rights will be discussed, with reference to the Kurdish legal mobilization that characterized the late 1990s. Chapter 3 will then serve as an overview of the disruption occurred between EU and Turkey after 2005, when Turkey's commitment to minority rights and democracy was proved to be rather limited and "tactical". A final global assessment on the three actors' (Turkey, EU, the Kurds) respective roles, merits and "faults" will be provided, with a focus on Kurds' self-determination prospects which will then be followed by few conclusive remarks.

Methodology

The present work adopts a mixed-methods approach, in that it builds on a work of literature review, but also on a qualitative legal analysis which takes the shape of both a legal historical analysis and an institutionally-oriented one.

Firstly, an ethical and comprehensive search of academic peer-reviewed articles and book chapters was completed based on their focus on specific issues and their scientific angle. In addition to these sources, institutional documents have been consulted ranging from Turkish national legislation, to resolutions and reports drafted by EU institutions, case law of the European Court of Human Rights, and reports provided by international human rights organizations such as Human Rights Watch, Amnesty International, International Crisis Group.

While drawing on the existing scholarly writing, I attempted to adopt a multi-methodological outlook myself, where both an *empirical* and an *evaluative* approach were employed – together with few *normative* aspects - in the overall framework ascribable to the interdisciplinary studies of law and politics. This research is *empirical* in that it relates to Turkey's management of Kurds' minority rights - and its institutional behavior in general - as a historical contingency, susceptible to the influence of different political, social and cultural factors (i.e. for instance, the international pressure on its lack of democracy and rule of law).[3] Moreover, it is *evaluative* in that it seeks to "determine the degree of compliance [and] conformity of actor behavior with a human rights norm"[4]. Turkish conduct in terms of respect of human and minority rights, democratic procedure and rule of law was in fact under examination throughout the research, with the view to identify and analyze its mis-behavior *vis-à-vis* the European human rights system. The Strasbourg's court (and the EU in general) was subjected to an evaluative assessment too, with particular focus on its sudden policy of closure towards applications coming from Southeast Turkey. Finally, this research contains hints of normative approach in that it adopts the standpoint of the European (and international) human rights regime as the normative framework Turkey ought to conform to and comply with, thus defining any of its actions in conflict with such regime as *wrong.* A specific normative-evaluative theory named the Spiral Model, for instance, will be applied in the final part of Chapter 3, with the view to assess Turkey's degree of internalization of and compliance with the international human rights norms in the context of its modern republican experience, particularly in relation to Kurdish people.

[3] Langford M., *Interdisciplinarity and multimethod research*, in *Research Methods in Human Rights. A Handbook*, ed. Andreassen B. A., Sano H.O., McInerney-Lankford S., 2017, 172-173.
[4] *Id.*, 173.

The first three chapters, more broadly, shall be approached as a *historiography of human rights.* A legal-historical analysis[5] of the evolution of Kurdish minority rights in modern Turkey will in fact be provided, with a focus on the legislative journey that led to the contemporary condition of the Kurds and, in parallel, the evolution of the European Court's case law with respect to Kurds' human rights violations will also be discussed. Chapter 4, on the other hand, will lay out some final critical reflections on the individual roles played by the actors of our investigation over the decades of the European accession process. While doing so, the main theoretical perspectives inspiring the analysis are *realism* and *constructivism*, i.e. approaches that serve us to understand better under what conditions – within the realm of international law and international relations – sovereign governments (Turkey) and international organizations (the EU) choose to entertain a relationship based on a common ground of legal agreements.[6]

[5] Fully aware that law is by its own nature deeply intertwined with the social and political fabric of a state, the present research is considered legal history in that its primary focus is the evolution and functioning of legal ideas and institutions in a certain place (Turkey) and time in history (its modern republican experience).
[6] Simmons B., *International Law and International Relations*, in The Oxford Handbook of Law and Politics, ed. by Caldeira G. A., Kelemen R. D., Whittington K. E., 2008.

CHAPTER 1

THE KURDISH QUESTION IN MODERN TURKEY

> Our state is a nation state. It is not a multi-national state. The state does not recognize any nation other than Turks. There are other peoples which come from different races and who should have equal rights within the country. Yet it is not possible to give rights to these people in accordance with their racial status. (Constitution of the Republic of Turkey, 1924, Introduction)
>
> Today the Turkish villager is about to lose his existential self (…) There are brothers who have forgotten their language and talk another language. There are brothers who consider it an insult if you called them Turk. It Is our responsibility to construct their villages and to make our brothers talk, dress and live like us.
>
> (A. *Zaya*)[7]

The history of the Kurdish population covers a time frame of several centuries and a wide range of territories, making it one of the largest and most ancient "stateless" ethnic minorities ever existed in the Middle East and in the world.[8] However, the scope of the present research requires us to narrow down such broad chronology to a more recent time and space, namely modern Turkey during its Republican experience. After the end of World War I – and after the sad epilogue of 1920's Treaty of Sèvres – a new peace agreement was reached in Lausanne in 1923, proclaiming the sovereignty of the newly Republic of Turkey and delineating its borders. With the new geography being written, the territory which had always been (unofficially) known as Kurdistan has been affected by the modifications in its entirety. Ever since then, the population of the long-standing Kurdish nation has been divided among multiple Middle-Eastern states: mostly Turkey, Syria, Iraq and Iran.

[7] Zaya A. (1934), as cited in Jongerden, J., *The settlement issue in Turkey and the Kurds: an analysis of spatial policies, modernity and war*, 2007, Leiden, the Netherlands.

[8] In absence of verifiable statistics concerning the size of the population, I will refer to the data provided by Council of Europe, Parliamentary Assembly's report *The cultural situation of the Kurds*, Doc. 11006, 7 July 2006.

Throughout the decades, the growing claims for Kurdish rights to self-determination (be it intended as autonomy or independence) have given rise to the "Kurdish question": a mobilization against which the respective governments have reacted displaying different degrees of violence and repression.

This chapter will provide a historical overview of the main political and legislative climate vis-à-vis the Kurdish question in Turkey, from the beginning of the modern Republic – characterized by a "Kemalist approach" to the issue – to more recent times. More in particular, I will address the relationship between the Kurdish population residing in the country with the government; the perception of them vis-à-vis the idea of "Turkishness", and the concept of citizenship – as a highly ill-defined concept within the state narrative- since the earliest to the most recent times of the Republic's life. The purpose is to draw the logical and chronological line that historically has driven Turkish institutions in the adoption of discriminatory and abusive measures against a segment of its own population. By drawing upon some precious insights provided by authoritative scholars, I will attempt to frame the socio-political context where the Kurdish question has its roots, in order to have a solid foundation upon which to place – later on in the research – the additional pieces of the complex triangulated puzzle that is the Kurdish question in the context of EU-Turkey relations.

1.1 Kemalism: Kurds as "prospective Turks"

Mustafa Kemal Atatürk is known for being the founding father of the modern Turkish state. Since his takeover in 1922, the nascent republic rapidly took the shape of a highly nationalistic state, reflecting western-like features such as secularism, modernism, centralization of power, and providing itself with the proper machinery of a democratic republic.

In such process of nation-building, that of "Turkishness" became a distinctive and virtuous character to identify with. However, post-Ottoman Turkey was a great mosaic of peoples belonging to various ethnicities, religions and cultures, and this posed questions on what being a Turkish citizen really meant and how to reconcile this with other identities, especially the Kurdish one.

In Kemalist Turkey, the legal status of citizen alone was not sufficient to fulfill the meaning of Turkishness, being it a much more complex concept which also encompassed political and ethnic implications.[9] On the one hand, being Kurdish did not exclude *a priori* the possibility to be a Turkish citizen, but on the other a certain extent of adherence to the Turkish values and culture was required of them to be publicly showed.

[9] Yeğen M., *"Prospective-Turks" or "Pseudo-Citizens": Kurds in Turkey,* Middle East Journal, 63(4), (2009), pp. 597-598.

In other words, a Turkish national of Kurdish ethnicity could have technically been considered a Turk, at the condition that she or he did not endorse the ethno-political struggle that the Kurdish minority had been carrying out.

In 1924, however, a new constitution entered into force - replacing that of 1921 which was somehow more inclusive in the perception of the Kurds as an ethnic group *per se* – and led to a radical shift in the attitude towards the Kurdish minority (and the minorities in general).[10] The introduction reads: "(Our) state does not recognize any nation other than the Turks. There are other peoples (…) who should have equal rights within the country. Yet it is not possible to give rights to these people in accordance with their racial status."[11]. The new constitution still acknowledged the existence of different ethnic groups in Turkey, but declared that no particular rights would be accorded to such peoples on the ground of their ethnic identity. What are commonly referred to as minority rights within the current international human rights system were completely disregarded by the Turkish legal system, in clear contrast with the principles of equality and non-discrimination which Section V[12] of the same document appeared to be inspired by.

Along these lines, Yeğen defines the condition of Kurdish people in Turkey as being "prospective-Turks", i.e. eligible members of the ethno-political community in Turkey – having they a legal status of citizens – but not quite fully Turks.[13] The Kurdish resistance, seen in this light, was no longer a matter of ethno-political claims and pursuit of self-determination, rather it was reduced to a mere expression of backward reactionary politics, legacy of pre-modern social structures.[14]

How to reconcile an undisciplined segment of population with the nationalist values of Turkishness then? What policies to implement in order to merge a potentially subversive stratum of citizens (i.e. the prospective-Turks) into the broader group of citizens (i.e. Turks as such)?

Such questions built the foundations of what now goes by the name of "Turkification": a government-promoted architecture of assimilationist policies, laws and other measures that had the scope of erasing all the visible traces of cultural, ethnic, religious and linguistic differences among the population of Turkey, with the aspiration to amalgamate them all under one great Turkish identity. [15] From the mid-1920s to the 90s the forced assimilation program exercised – albeit with occasional discontinuities – a heavy degree of oppression, repression and discrimination against the Kurds, amounting to gross violation of human rights

[10] *Id.*, 598-600.
[11] Seref Gözübüyük ve Zekai Sezgin A., 1924 Anayasası Hakkında Meclis Görüsmeleri (Records of Assembly on 1924 constitution), Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayını, 1957), p. 7 (as cited in Yegen 2009)
[12] Mead Earle E., *The New Constitution of Turkey,* Political Science Quarterly, 40(1), (1925), 96-98.
[13] Yeğen, 2009, p. 599.
[14] *Ibid.*
[15] Kurban D., *Europe as an Agent of Change. The Role of the European Court of Human Rights and the EU in Turkey's Kurdish Policies,* German Institute for International and Security Affairs, RP 9, (2014). 7-9.

in a vast number of cases filed before the European Court of Human Rights (ECtHR) which I will discuss in more detail throughout the text.

The main strategy at the basis of such measures consisted in a sort of demographic reorganization of the territory, where the Kurds residing in the eastern areas of Turkey had to be forcibly displaced to the western areas and, accordingly, the Turks form the West resettled in the East. Furthermore, measures such as state-sponsored education plans or the prohibition of Kurdish language in public were implemented, in a political climate of generalized denial and repression, which will soon escalate – as will be addressed further below – to a carnage-like armed struggle between the Turkish military and the armed faction of the Kurdistan Workers' Party (PKK).

1.2 Assimilation: the Turkification of Kurds

The nascent Kurdish resistance found in the first few decades of the Turkish Republic a fertile ground for carrying out a number of rebellious acts against the government. [16] Even though relatively rudimentary in their organization and strategy, the insurgencies amounted to a sufficient threat in the eyes of the state and they added up to the already heated debate on the "flawed Turkishness" of some (prospective) citizens.

Right after the first insurgency in 1925, organs such as the Grand National Assembly, the Ministry of Internal Affairs and the General Staff issued reports[17] on the Kurdish situation in the country, and each document contributed to generate the first official and comprehensive program of compulsory measures of assimilation. Such program had been enforced conspicuously from the early '20s to the '40s; but from then on, due to a less tense national climate, less coercive means of assimilations began to be employed.[18]

1.2.1 Forced displacement and resettlement

The major component of such assimilation program consisted in the compulsory displacement of citizens of Kurdish ethnicity from the areas where they predominantly resided (i.e. Eastern and Southeastern Anatolia) and the resettlement thereof in other parts of Turkey (mainly the West), with the view to prevent

[16] The first of which occurred in 1925, at the hand of the religious leader Sheikh Said and the *Azadi* organization (see Olson R., *The Emergence of Kurdish Nationalism and the Sheikh Said Rebellion, 1880–1925*, Austin: University of Texas Press, 1989). Other two rebellions occurred again in 1930 and 1938.

[17] For a detailed overview of the means of forced assimilation used by the Turkish government I refer to Koçak C., *Umumi Müfettislikler* (General inspectorates), Istanbul: Iletisim Yayınları, 2003 (as cited in Yegen, 2009) who analyzed the data on the issue collected by the First General Inspectorates, i.e. the main bureaucratic body of the Kurdish-inhabited areas.

[18] Yeğen, 2009, pp. 600-606.

and overcome the high population density of Kurds in certain regions, and hence the eventual spread and sedimentation of their culture and language in the area.[19]

According to the authorities, the fact that the Kurdish population was there four times as numerous as the (ethnically) Turkish one represented in fact a significant menace to Turkish control and authority over those lands, and the fear that the Kurds could take control by force was rising.[20]

To "turkify" the Kurds, therefore, a thorough plan of demographic engineering was to be put in place, where for instance those considered rebellious Kurds from the government were displaced from the East and resettled into the Western regions alongside with their families, after having their properties confiscated and their tribes dissolved[21]. The same equation worked contrariwise too: a number of Turkish internal immigrants – or immigrants coming from the Balkans –, in fact, got placed into Kurdish-speaking territories and a number of other Turkish citizens got resettled into strategic spots of the villages (i.e. main roads).[22]

The rationale behind the action plan drafted by the Eastern Region Reform Commission (the appointed body of experts) was to render the Kurdish majority living in those areas a minority, by means of: a) dispersing them across the country; b) making the transportation facilities more adequate to the aim; c) regulating on the destinations of the mandatory conscription so that Kurdish soldiers would serve in non-Kurdish areas; d) introducing the practice of census in Turkey; and e) regulating on education and language.[23]

Assuring "unity in language, culture and blood", as stated in art. 11 of 1934 Settlement Law, represented the ultimate objective inspiring the assimilationist framework adopted by Turkey during the first part of its republican experience. Its Turkification project intended to "turkify" all the non-Turkish element of the population and territory and to transplant them into Turkish-characterized environments, at the price and compromise of disregarding fundamental rights of its nationals[24].

Broadly speaking, over the course of decades policies, a vast number of laws and regulations emanated by the Turkish government have aimed at assimilating the Kurdish population into the ethnically Turkish one.

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[19] *Ibid.*

[20] For such report from Turkish authorities see Bayrak M., *Kürdoloji Belgeleri* [Kurdology documents], Ankara: Özge Yayınları, 1994, pp. 233-270, as cited in Yegen, 2009.

[21] See Law nr. 1204 *(Law concerning persons being moved from the east to the west*) of 1927.

[22] Bayrak M., *Kürdoloji Belgeleri* [Kurdology documents], Ankara: Özge Yayınları, 1994, pp. 233-270.

[23] Bayrak, pp- 256-261.

[24] In light of the particular time in history that I am considering at this stage of the research, when I refer to "fundamental rights and freedoms" of people I refer to those provided by the Turkish domestic legal system (i.e. the Constitution), not to those included in the International Bill of Rights. However, it is not to be withstood that as soon as the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was being drafted, Turkey was one of the first countries to be signatory (1950) and to ratify it (1954), (https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures), meaning that since the very early stages of the international legal framework life, Turkey has showed numerous contradictions and inconsistencies in matters of human rights and the rule of law, qualifying itself as a highly problematic actor to entertain relations with.

However, not all of them have produced the same degree of effectiveness. Some of them have been reformed, some abrogated, but always with the view to reach a more successful and long-lasting assimilation.[25]

In the course of the review processes, for instance, new measures of a more intrusive and coercive nature had been introduced. In his report published in 1937 for instance, Inspector-General A. Özmen suggests a set of new policies encouraging mixed marriages between Turkish and Kurdish individuals. In particular, they aimed at marriages between Turkish civil servants (purposely sent to Eastern Turkey to serve their duty) and Kurdish girls residing in the area, and eventually at assigning lands to the aforementioned men who wished to settle there.[26]

The 1927 Settlement Law, moreover, has been reformed on the ground of its scarce effectiveness and success. The new law entered into force in 1934, along with the expectation of a more far-reaching and comprehensive program of displacement and resettlement, aimed at the turkification of all the elements that remained "unturkified" by the previous measures. Although its scope seemed to be highly structured and organized (it provided for the division of the Turkish territory into three different settlements zones, on the basis of the individuals' level of adherence to the Turkish culture[27]), data show that it was not as fruitful as hoped.[28] What needs to be highlighted, however, is the rationale behind the formulation of such reform. In its justification it reads: "(…) this law has shown the means to assimilate these kinds of people [those not adhering to the Turkish culture] into Turkish culture. (...) The Turkishness of everyone who claims to be Turkish must be clear and certain for the state."[29] In other words, the government required citizens to actively and publicly demonstrate their loyalty to the Turkish flag, through means such as speaking Turkish instead of Kurdish, dressing and behaving like a "Turk", under pain of coercive State intervention.

Overall, the State practices of displacement and resettlement in the name of cultural assimilation have significantly born down on the Kurdish population residing in the Southeastern regions of Turkey. They generated a massive wave of internally displaced people (IDPs) through means of forced eviction perpetrated by state officials, amounting to breach of what had not been yet formulated or universally

[25] Little and quite isolated initiatives that showed a sort of loosening in severity from the Turkish government in regards to the cultural assimilation of its Kurdish citizens have been enacted in the course of the decades (albeit readily revoked as soon as one menace to the authority legitimacy was perceived). The first shift is to be registered during the 1940s, when the Kurdish armed rebellion experienced in the 20s and 30s was far from being a real threat to the State and the general national climate reflected some sort of distention, due to a growing economic development and a degree of democratization in favor of the rights of minorities (Yegen, 2009). Consequently – and this will be discussed more accurately in the chapters below – the second "wave" of reforms took place in correspondence of Turkey's candidacy to EU accession.

[26] Mesut A., *Ingiliz Belgelerinde Kürdistan* [Kurdistan in British documents], Istanbul, Doz Yayınları, (1992) 263-286 (as cited in Yegen 2009).

[27] Republic of Turkey, *Law No. 2510* of 14 June 1934.

[28] Yeğen, 2009, pp. 603-604.

[29] Ceridesi Z., *TBMM*, 4(23-24), 8.

recognized as "human rights standards"[30], but that was to a certain extent enshrined in the core rights and freedoms of individuals in the Turkish Constitutions.[31] As the decades went by, however, variables such as the growth of Kurdish self-awareness and resistance, and Turkey's willingness to become member state of the European Union (EU) facilitated a wave of legal mobilization amongst Kurds victims. They progressively started to take legal action before a higher judicial body other than the rather "hopeless" Turkish domestic courts, i.e. the European Court of Human Rights, whose jurisprudence and contribution will be better elaborated on in the following chapters.

1.2.2 Language and education

Compulsory displacement and resettlement were not the only measures the Turkish government enacted to carry out its long-lasting project of Turkification. Alongside with the rights to housing, property, privacy, movement and other fundamental rights and freedoms, the domain of cultural rights too has been affected rather heavily, in particular those concerning language and education.

Part of the national repressive policies of assimilation aimed to mold citizens into a homogeneous unit that uniquely spoke Turkish, that had Turkish names, values, folklore, that lived in places named with Turkish names. In order to accomplish so, on the one hand, several laws and regulations were adopted with the view to restrict the public use of the Kurdish language[32]; and on the other hand, a number of boarding schools were established across the country – densely agglomerated in the Kurdish regions – with the view to provide for Kurdish (and all non-ethnically Turkish) girls and boys an education which could physically separate them from their original cultural environment.[33]

The measures concerning the naming of individuals provided that changes could be applied in multiple ways: by cutting off a name ending that could lead to an ethnical connotation, by keeping only one syllable of the original name and then adapting the rest to Turkish, or even by translating it completely into Turkish and thus denaturalizing it.[34] Such practice became officially ruled on in 1934, when the Surname Law

[30] It is not withstood here that the League of Nations laid the foundations for significant developments in terms of minority (and other human rights) protection after the World War. However, these developments did not lead to a comprehensive legal *corpus* that could be defined international human rights law, as the successor UN did. Cf. Buergenthal T., *The Evolving International Human Rights System*, The American Journal of International Law100(4), (2006), 783.

[31] Turkey's constitutional history encompasses four main stages, each marking the draft of a new Constitution: 1921, 1924, 1961, 1982 (alongside with a number of amendments).

[32] An interesting remark to make here is that the Turkish legislation on the use of Kurdish language has always showed to pay close attention to the way it was formulated. Not in one provision the "Kurdish language" *per se* was mentioned (as, according to Aslan (2009), it would have represented the official recognition of the existence of such language), however, it was well intended that precisely it was the main addressee.

[33] Üngör U. U., *The Making of Modern Turkey: Nation and State in Eastern Anatolia: 1913-1950,* in "Culture and Education in the Eastern Provinces", OUP Oxford (2012).

[34] Aslan S., *Incoherent State: The Controversy over Kurdish Naming in Turkey,* European Journal of Turkish Studies, Vol. 10 (2009).

entered into force by – among the various provisions - prohibiting to give newborns non-Turkish (i.e. Kurdish) names.[35] As stated in article 3, it was "forbidden to use surnames that are related to military rank and civil officialdom, to tribes and foreign races and ethnicities, as well as surnames which are not suited to general customs (…)". In other words, any Kurdish individual or family whose surname derived from their cultural tradition was legally required to change it, by "harmonizing" it with the Turkish customs and thus invigorating a common sense of Turkishness.[36]

The Turkification trend also extended to geographical names, in the pursuit of a "large-scale toponymical engineering", as documented by Aslan. Up to the 80s, in fact, almost the 70% of Turkish subdistricts and villages in the Southeastern regions were renamed, following the 1949 Provincial Administration Law[37]. By way of illustration, a village named Kürtşeyh (Kurdish Sheikh) was renamed to Çiçektepe (Flowerhill).[38]

An even more draconian law was passed after 1980 military coup and the Kurdish language was officially banned both in public and private life.[39] As read in article 2, "No language can be used for the explication, dissemination, and publication of ideas other than the first official language of the country, recognized by the Turkish state". In practical terms, those who spoke, published, broadcasted or even sang or performed in Kurdish would have been arrested and detained. It was particularly towards the end of 80s and throughout the 90s (i.e. when the Kurdish armed resistance grew in number and strength) that such law was used as a justification tool for the interrogation and deprivation of personal liberty of many PKK affiliates, sympathizers, and even non-related Kurds, with the backing of the notorious Anti-Terror Law of 1991.

The prohibition of the use of Kurdish posed by 1983 law was not only limited to the media dissemination, but also (and especially) to the education in schools. For people of the Kurdish minority (and, again, all the minorities) that were used to speaking Kurdish (or non-Turkish) on a daily basis within their social circles, to pursue and to provide an education in their own mother tongue became an infringement of the law. Kurdish children necessarily had to attend Turkish-speaking schools and they were offered to enroll in specific boarding schools established in Kurdish-speaking areas, where a holistic vision of Turkishness was conveyed, often through national education campaigns inviting to the attendance of formal schools.[40] Currently, it is still illegal – albeit with few exceptions – to teach Kurdish language in all levels of public education, and there are still some restrictions left on the utilization of Kurdish in publishing, performing and broadcasting. Especially after the 2016 attempted *coup,* a series of emergency measures has been

[35] Republic of Turkey, *Law No. 2525* of 21 June 1934.

[36] Aslan, 2009, pp. 4-5.
[37] Republic of Turkey, *Law No. 5442* of 10 June 1949.
[38] Aslan, 2009, pp. 4-5.
[39] Republic of Turkey, *Law 2932* of 22 October 1983 (then repealed in 1991).
[40] See *Girls, Off to School* and *Father, Send Me to School* campaigns, as cited in Yeğen, 2009.

enacted in Turkey, many of which targeting Kurdish media organizations, private language schools, and cultural initiatives, that have then been shut down.[41]

To conclude, retracing the main points of Turkish modern history in relation to the rights of its citizens of Kurdish ethnicity is crucial to have an understanding about how important the element of language has been (and it still is) as a political and cultural instrument to affirm nationalistic values and to claim the supremacy of an ethnicity over the others, amounting consequently to the classification of population into "a-class" and "b-class" citizens.

1.3 The rise of Kurdish resistance: Kurds as "pseudo-citizens"

The Kurds opposed themselves against the Turkish state's policies of assimilation. Kurdish ethno-political claims have progressively gained consensus among the community and this translated into a real struggle carried out on two parallel levels from the late 1980s. On the one hand the civil society, after decades of generalized unrest managed to transform such unrest into a social movement having its effects in an overall expansion of Kurdish political representation in the Turkish parliament.[42] On the other hand, the most radical far-left fringes of the movement (i.e. the Kurdistan Workers Party, or PKK) led a fifteen-year long armed conflict (from 1984 to 1999) against the Turkish government, at first claiming the independence of Kurdistan, but later retracting – under the wishes of their leader Abdullah Öcalan - into claims of autonomy and equal rights for the Kurds.

During the armed war, the clashes between the PKK and the Turkish military have led to tens of thousands of casualties – both among civilians and combatants – and great amounts of material damage at the expenses of the Kurdish population. Throughout the 80s and 90s, in fact, Turkey repeatedly proclaimed State of Emergency regimes across the country where martial law was enacted[43] and thus countless unpunished violations were committed against Kurdish civilians in the name of national security.[44] The major (in frequency, not in severity) instance of such violations is the forced displacement of civilians from their households that Turkish state officials systematically exercised in Kurdish villages (especially in the Anatolian mountains) with the objective to find PKK affiliates who might have been hiding there. For this

[41] See International Crisis Group's section on Turkey-related reports and briefings for more on government repression against the dissemination of Kurdish language.
[42] Yeğen M., *Turkish nationalism and the Kurdish Question,* Ethnic and Racial Studies, 30(1), (2006), 119-151.

[43] Republic of Turkey, *Law No. 2935* of 25 October 1983.
[44] Kurban, *Europe as an Agent of Change,* 2014.

reason, in 1984 a new judicial organ was appointed under the denomination of State Security Courts. [45] Their mandate imposed the application and enforcement of the State of Emergency laws: they have been particularly active in cases brought under the Anti-Terror Law of 1991 and they were mostly established in Kurdish-populated provinces.[46] The following year, in 1985, the so-called Provincial Village Guard System was introduced as well. Apart from being another weaponized organ instituted by the government with the aim to surveil, identify and then punish PKK members, what may sound appalling is that those hired to do so were actually Kurdish peasants themselves, paid for exercising power on their own community's members and eventually "snitch on" them, in the name of counter-terrorism. This last measure in particular is quite revealing on what the state's attitude was in those years. Not only was it engaging in a large-scale repression of political opposition and counter-terrorism operations, but its underlying objective was to dismantle a now too advanced Kurdish nationalism that could no longer be ignored.

Thanks to the rise of Kurdish resistance (both pacifist and militarist), in fact, the government was forced to recognize the existence of the Kurdish identity *per se* – without any longer hiding the entity of such reality by reducing it to the same level as the other minorities present in the country – and therefore it was forced to take action accordingly, being aware of their growing negotiation power as a political issue.

Over the period of the armed conflict, Eastern and Southeastern regions of Turkey have been affected by an enormous amount of violence, perpetrated both by the Turkish military and the PKK fighters. To the former are imputed actions such as forced and brutal evictions of civilians (often accompanied by the destruction of their properties and the surrounding environment)[47], extrajudicial executions and torture, enforced disappearances, press censorship and unlawful deprivation of journalists' and activists' liberty.[48] To the PKK's side, acts such as the killing of internal dissidents and "corrupted" politicians, killing of state officials and village guards and their families are attributed.[49]

As will be developed in the following chapters, the situation began to relax towards the second half of the 90s, as Turkey's aspirations to become member state of the European Union became more realistic, as it accepted to be subjected by the European Court of Human Rights jurisdiction, and when in 1999 the Kurdish PKK leader Abdullah Öcalan was captured and imprisoned in İmralı. Such opening continued in the 2000s,

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[45] See also Amnesty International, *Justice Delayed and Denied: The Persistence of Protracted and Unfair Trials for Those Charged under AntiTerrorism Legislation*, September 2006.

[46] Human Rights Watch, *Ocalan Trial Monitor. Backgrounder on Turkey's State Security Courts,* 28.05.1999.

[47] It is documented that from the end of 80s to the late 90s, one million of mostly Kurdish civilians have been coercively displaced by security forces from more than 3000 villages. (See Turkish Grand National Assembly, *Report by the Parliament Research Commission Formed with the Objective of Identifying the Remedies to be Undertaken on the Basis of Research into the Problems of Citizens who have Migrated as a Result of Evacuation of Settlements in East and Southeast Anatolia,* (1998), 11–13.

[48] Kurban, *Europe as an Agent of Change,* 2014.

[49] *Ibid.*

when the Turkish government passed (and at times repealed) certain laws in accordance to EU membership criteria that demanded proactive efforts towards the respect of minority rights.

To conclude – and to link back to the perception of Kurds in Turkey – it is of relevance to state that the meta-image of Kurdish people has changed throughout the decades in modern Turkey. In Yeğen's words, in fact, it shifted from a condition of "perspective-Turks", i.e. *de facto* Turkish citizens with the potential to fully internalize ethnically-determined elements of Turkishness, to a condition of "pseudo-citizens".[50] The term suggests an intrinsic inequality among the Turkish citizenry and Kurds are perceived as not being "real" citizen, but rather "pseudo", apparent, fake. According to Yeğen it is to be attributed to the growing consensus supporting the social and political movement rising within Kurdish long-standing ethno-political struggle, alongside with an increase in the active demonstrations of hostility against the Turkish state that have conveyed a profound sense of alienation and detachment from the Turkish political community.[51]

[50] Yeğen M., *"Prospective-Turks" or "Pseudo-Citizens",* 2009.
[51] *Ibid.*

CHAPTER 2

EUROPEAN UNION ENTERS THE INTERACTION

A CHANGE OF DYNAMICS

> As a candidate for membership, Turkey has attained recognition from its European neighbors that it belongs in the European club of states (…). However unlike in the case of other candidate countries, accession talks would not begin until Turkey completes a series of economic and political reforms.[52]

The present chapter will introduce the third actor (after Turkey and the Kurdish people) of our triangulated analysis. As the European Union and its organs became part of Turkish prospects and interest, not only Turkish domestic and foreign policy went through some changes, but the Kurdish question too, assuming different connotations and increasingly gaining international attention. To discuss the country's prospects and expectations of accession in the EU – and so its long-term commitment to fulfill the so-called Copenhagen criteria[53] – will lead us to a better understanding on the climate in which and the extent to which Kurdish minority's rights in Turkey have developed. Such development took place firstly through a very promising wave of legal proceedings in Strasbourg, which will be addressed in the first part of the chapter, then through a sort of backslide due to some Court's internal disfunctions and some legislative action taken accordingly by Turkey (i.e. the so-called Compensation Law), as I will discuss in the final paragraph.

Historically, its domestic politics has contributed to shape modern Turkey's international reputation as an authoritarian state rather than a democratic one. Up to very present days, the majority of political scientists agree on putting on Turkey the label of authoritarianism[54], or, more specifically, "competitive authoritarianism", i.e. as referring to a political regime that has the appearance of a democracy but is

[52] Yesilada A.B., *Turkey's Candidacy for EU Membership,* Middle East Journal, 56(1), (2002), 94-111.
[53] European Neighborhood Policy And Enlargement Negotiations, *Conditions for Membership.*
[54] Several global democracy indexes rank Turkey significantly low as it qualifies, for instance, as a "hybrid regime" (The Economist Intelligence Unit, *Democracy Index 2018*), or as "not free" country (Freedom House, *Freedom in the World 2018, Turkey Index*).

authoritarian in nature. [55] However, there have been hints of democratization throughout the country's recent past and they can link back to few common denominators. First, the political shift from monopartitism to a pluralist system has allowed the oppositions – among which pro-Kurdish parties and coalitions – to have a role in the political conversation. Secondly, what contributed to attempts of democratic consolidation in Turkey was the internationalization of Turkish domestic politics. Turkey's wish to be part of the EU, in fact, exposed the country to the oversight of a series of European economic, political, and judicial institutions. Among those, the EU and its organs (mainly the European Commission and the European Council) on the one hand, and the Council of Europe (with its Parliament and European Court of Human Rights (ECtHR)) on the other. This led to Turkey's engagement in a long-term condition where its behavior, laws, policies and measures – both on the domestic and international level – were subjected to the European supervision and judgment.

Although member of the Council of Europe since 1949 and signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) since 1950[56], Turkey decided to make a step forward in its integration journey and recognized in 1987 the jurisdiction of the ECtHR, thus granting Turkish citizens the right to file individual complaints to Strasbourg and accepting the obligation to implement its rulings. Overall, Turkey committed – at least on paper – to make the necessary steps in order to meet the accession criteria that would grant it the EU membership. Such commitment, as will be discussed below, has not always maintained a steady pace, nor has it always resulted in progress in fields such as rule of law, democracy and human rights. What Turkish governments managed to do, nevertheless, was undertaking the bare minimum of reforms which could suffice to keep the dialogue open with the EU, without necessarily transitioning to a real democracy.[57] This resulted in the official candidacy of Turkey as a member of the European Union in 1999. Ever since then, however, the accession has not yet constituted a realistic prospect for the EU.

[55] Steven Levitsky and Lucan Way from Harvard University coined the term "competitive authoritarianism" in 2002. In such political regimes, democratic institutions such as multipartitism and political elections are in place, however they have no real impact. Moreover, freedom of press, academic freedom and freedom of expression in general are seriously endangered, oftentimes elections are not free and fair and more broadly human rights are disregarded and often abused. See Levintsky S., Way L. A., *Elections Without Democracy, The Rise of Competitive Authoritarianism.*, Journal of Democracy, 13(2), (2002).

[56] Council of Europe Portal, *Treaty list for a specific State: Turkey,* https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/TUR

[57] Kurban D., *Europe as an Agent for Change,* (2014).

2.1 EU accession prospects

Over the decades of modernization – and particularly with the transition to multi-party system and therefore the strengthening of political opposition - Turkey faced multiple coup d'états, each followed by periods where a military regime was in force and human rights, more broadly, were put on hold, especially in the Southeastern regions, in the name of security and – later – "anti-terrorism".[58] Throughout the states of exception, the military abused its power by employing extra-legal measures against members of the Kurdish minority, such as enforced disappearances, torture, extra-judicial killings against whomever was suspected of belonging to, or of aiding or abetting the PKK. Clandestine segments within security forces were reported to engage in such practices, and this led the international community to freeze relations with Turkey.[59]

Poor human rights record in Turkey cannot be considered new; nevertheless, it started to represent an international concern in fairly recent times. There came a point, towards the end of the 1980s and the beginning of the 1990s when Turkish politics could no longer stay out of the international radar. As Kurban argues, what happened in Yugoslavia and in the Soviet Union – and in a number of other countries where ethnic minorities became more relevant in the political discourse - led to a generalized increase in sensibility towards minority rights.[60] As a consequence, initial steps were made at the international and regional levels, as in the case of the UN Declaration on the Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities (1992), and the Council of Europe's Framework Convention for the Protection of National Minorities (1998).

In this climate, the EU started to engage more soundly with the Turkish (-Kurdish) issue, mainly by exercising economic and diplomatic pressure on Turkey. The CoE deployed on-site fact-finding missions following 1980's bloody coup d'état[61] and then demanded Turkish recognition of the ECtHR judicial power as a condition for the re-stabilization of their relations [62]. In 1989, the European Economic Community (EEC) rejected Turkish request of admission on the ground, among the other things, of its repressive conduct against the Kurds[63].

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[58] See Karpat K.H., *Turkey's Politics: The Transition to a Muti-Party System*, Princeton Legacy Library, 1959 (2015 edition).

[59] Kurban D., *Shattered Hopes: When the European Court of Human Rights Shuts its Doors to the Kurdish displaced,* Council for European Studies, 44(1), (2014).

[60] Gürbey G., *The Kurdish Conflict in Turkey- (not) a Subject for the OSCE?*, Helsinki Monitor 12(1), (2001), 7-20.

[61] Dağı I., *Democratic Transition in Turkey, 1980–1983: The Impact of European Diplomacy*, Middle Eastern Studies, 32(2), (1996), 124–141.

[62] European Parliament, *Resolution on the Human Rights Situation in Turkey*, 23 October 1985", Official Journal of the European Communities, no. C 343/61, 31 December 1985.

[63] Commission of the European Communities. *Commission opinion on Turkey's request for accession to the Community*, SEC (89) 2290 final. Brussels: 20.12.1989.

It was under Turgut Özal's lead that Turkey officially recognized the jurisdiction of Strasbourg's Court in 1987, thus granting its citizens their right – as provided by art. 34 ECHR - to individual petition. With Özal Turkey entered a period of strategic commitment strengthening its connection with the EU. What led to the opening of the EU-Turkey dialogue notwithstanding the low standards of Turkish approach to democracy and human rights was a set of mutual interests and advantages that could benefit both actors, in a climate of *realpolitik*. To mention one, post-Cold War EU engaged in a project of expansion towards the formerly Soviet countries and Turkey represented, as a growing power in the region and its openness towards "Western" values, an interesting partner. On the other hand, Turkey saw in the EU an opportunity to ensure its economic, political and security position, as well as its relations with Western Allies.

In such context, and with the view of reaching a mutually beneficial relationship, negotiations for membership between Turkey and the European Union officially opened 1999.[64] However, in its report the European Commission stated that, unlike in the case of other candidates, accession talks with Turkey would not commence until Turkey enacted a set of reforms in order to meet the conditions for membership laid down in 1993 by the European Council.[65]

The Copenhagen Criteria set the political, legislative and economic thresholds below which a sovereign state is not eligible to become member of the European Union. The EU Commission ("the Commission") negotiates with the candidate member the conditions and timing of the latter's adoption, implementation and enforcement of all the rules enshrined in 35 different policy areas (i.e. "chapters"). The scope of such chapters covers three major fields: a) institutional stability with the aim to guarantee democracy, human rights – including minority rights – and the rule of law; b) functioning and competitive market economy; c) effective implementation of EU membership obligations.[66] Moreover, the Commission engages in a monitoring mechanism through the issue of regular progress reports on the basis of which conclusions about compliance (or non/partial compliance) are provided.

In the case of Turkey monitoring process, the ECtHR was one of the organs to retain the greatest degree of authoritativeness in the determination of the country's conduct (or misconduct). The Court's case law served in fact as benchmarks to assess the progress, level of commitment, and credibility showed by Turkey in the fulfilment of the accession criteria. Not to cooperate with the Court's rulings represented therefore too costly of an option for the Turkish government, which then engaged in a long-term project of more or less effective reforms.[67] Not to address the Kurdish question in its reforms would have been risky as well,

[64] Helsinki European Council 10th and 11th December 1999, *Presidency Conclusions*, available at: http://www.europarl.europa.eu/summits/hel1_en.htm

[65] European Neighborhood Policy And Enlargement Negotiations, *Conditions for Membership,* available at: https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership_en

[66] European Neighborhood Policy and Enlargement Negotiations, *Conditions for Membership.*

[67] Kurban D., *Europe as an Agent for Change*, p. 16.

in fact as soon as the Copenhagen Criteria monitoring phase started, the respect and promotion of its Kurdish citizens' rights became a clear indicator for Turkish membership prospects.

2.1.1 EU-encouraged reformism

In the context of the accession talks and under the critical eye of the European Union, Turkish government was forced to undertake a number of significant reforms, mainly in the area of human rights and more specifically of minority rights. However, despite the abrogation of some old laws and policies, the reformative efforts fell short on fulfilling the Copenhagen Criteria. It is argued that such efforts were not even real efforts, in that they had been put in practice to the minimum extent and they accomplished the minimum outcome, in order just to get past the required threshold without having to convert entirely into a democratic system.[68] However, on the other hand, few months after the recognition of individual petition right before ECtHR, the Turkish government declared a state of exception in the Kurdish-inhabited regions, generating a contradictory situation where military forces were given full discretion in what concerned "counter-terrorism" although the country had just subjected its behavior to EU oversight.[69] It is to be considered contradictory because, in fact, since 1984 (the year when the Kurdish-led PKK started to carry out armed attacks against military and civilian targets), Turkey has engaged in an equally belligerent response, with the hope that the EU could see its armed mobilization against the rebellious Kurds not as state violence but as counter-terrorism, and therefore as a key element in favor of integration.[70]

Overall, in virtue of executing the ECtHR's rulings and meeting the Copenhagen Criteria, successive Turkish governments enacted a series of reforms.

Between 2001 and 2002 capital punishment for peacetime crimes was abolished in Turkey (and fully abolished for all circumstances in 2004, in accordance with the Charter of Fundamental Rights of the European Union and with the ECHR). Furthermore, the main constitutional bans on the use of non-Turkish languages were lifted, allowing now (to a certain extent) the broadcasting activity and the delivery of some private language courses for such languages. The state of emergency was removed as well from almost all the Kurdish provinces of the country, with the promise of a complete lift by the end of 2002.

Although among European countries there were doubts about Turkey's sincere commitment to human rights and democratic values and although such reforms were considered for the larger part changes on paper

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[68] *Id.,* p.12

[69] *Id., p.16.* What is argued to be contradictory is not strictly the military abuse of power following the declaration of state of emergency *per se,* since the ECHR provides for derogations under art. 15. Turkey's behavior, therefore, does not constitute a legal contradiction, however, in the broader political context of European integration, Turkey's conduct is deemed contradictory on the ground that it disregards its political commitment to not engage in human rights violations under the Copenhagen criteria.

[70] Especially in the aftermath of 11th September 2001, the European Union provided a list of people, groups and entities involved in terrorist actions and therefore to be subjected to restrictive measures. Among those, the PKK was (and still is) considered a terrorist organization by the EU.

rather than actual commitments[71], in its 2002 progress report the European Commission enthusiastically concluded that the reforms were so striking that they "provide(d) much of the ground work for strengthening democracy and the protection of human rights in Turkey"[72].

Due to the same international pressure, in 2002 Turkey amended the 1991 Anti-Terror Law, effecting the release of almost 80 Kurdish political prisoners (politicians, journalists, human rights activists etc.), among whom was Leyla Zana: an internationally known Kurdish politician and activist that was sentenced to 15 years in prison for reciting her oath in Kurdish after being elected as a member of the Turkish Parliament in 1991.[73]

When the Justice and Development Party (AKP) led by Recep Tayyip Erdoğan came to power in 2002, a significant rise in the number and variety of the reforms was registered, in a climate of strong political will to accelerate the negotiations for the EU accession. For instance, the Party promoted revisions of the Penal Code and amended the constitution towards the recognition of international human rights law as the legal system retaining the supremacy over domestic law in cases of breach of Turkey's international obligations.[74] Progressively, the state of emergency was abolished in the remaining Kurdish provinces; the scope of the right to broadcast in Kurdish language was enlarged; and a legislative initiative that addressed the compensation of those displaced citizens who had lost their houses and lands during armed conflict against the PKK was passed.[75] What is known as Compensation Law represents a highly controversial issue within the context of EU-Turkey relations and accession prospects and it will be better elaborated further below, in par. 2.4.

Overall, it is argued that the reforms put in place by Turkey between the late 90s and the early 2000s were rather slow in pace and narrow in scope. No major change in the general mindset reflected by the state institutions has happened and no major commitment towards the protection of human rights – and especially minority rights – was translated into action.[76] However, the general ethno-political conflict that had been ongoing with the Kurdish armed forces had slowly faded, in particular following the capture and arrest of their leader, Öcalan, in 1999 and his announcement of long-term cease-fire. The cessation of violence in

[71] Zanon F., *The European Parliament: An Autonomous Foreign Policy Identity?* in "The Role of Parliaments in European Foreign Policy: Debating on Accountability and Legitimacy", ed. Barbe E. and Herranz A., (2005), 5.
[72] European Commission, *Turkey 2002 Progress Report*, p. 46.
[73] Piening C., *The European Parliament: Influencing the EU's External Relations*, paper presented at the 5th biennial ECSA Conference, Seattle, 30 May 1997.
[74] To get a more comprehensive overview of Turkey's reforms during this period, see Kurban D., *Confronting Equality: The Need for Constitutional Protection of Minorities on Turkey's Path to the European Union*, Columbia Human Rights Law Review, 35(1), (2003), 151–214.
[75] Kurban D., *Europe as an Agent for Change*, pp. 16-18.
[76] See chapter 3, paragraph 3.3.1 for an analysis where the Spiral Model is applied to the case of Turkey and its commitment towards human rights implementation during the reform period.

the Kurdish region and the EU-induced reforms gave momentum to democratization efforts, which encouraged the EU to take a more optimistic stance towards Turkey's commitment, in the hope that a peaceful resolution of the conflict could be eventually reached. In its 2004 report, in fact, the Commission concluded that "Turkey sufficiently fulfils the Copenhagen political criteria" and announced the opening of the negotiations for the accession the following year.[77]

The Kurdish issue remained nevertheless unsolved and notwithstanding the huge contribution given by the ECtHR to the victims of state violence their perpetrators remained unpunished. What had not been addressed during the reform era were the widespread structural inequality that determined a gap between ethnically Turkish and Kurdish citizens. A gap that self-fed (and still self-feeds) itself out of the assent of the authoritarian political regime it is deeply rooted into.

2.2 ECtHR and the Kurdish legal mobilization

The paragraphs above contextualize Turkey's acceptance of the ECtHR's jurisdiction in 1987 but it needs to be said that the filing of cases from Southeast Turkey was not immediate. On the contrary, they started to arrive rather late: firstly because the individual right to petition remained partially unknown in the beginning to Kurdish victims, lawyers and civil society; secondly because Turkish domestic courts used to dismiss cases regarding violence perpetrated by state officials, particularly in the Kurdish area, where a state of emergency was indicted in 1987, a few months after the recognition of right to individual petition.[78] It was since 1992 that, thanks to a close cooperation with some British lawyers from Essex, Kurdish people subjected to human rights violations by Turkish government officials filed a great number of cases before ECtHR.[79] Within a few years, the Strasbourg's Court became the place where human rights victims in Turkey sought redress.

2.2.1 Mid 90s – early 2000s: Strasbourg's open doors to displaced Kurds

With ECtHR's judgment on *Akdıvar et al. v. Turkey*[80] , a chain of legal actions started among the forcefully displaced Kurds who were (mainly) claiming return and compensation for their losses. At least one thousand people participated, either as claimants or witnesses, in ECtHR proceedings between the mid-90s

[77] Council of the European Union, *Presidency Conclusions*, Copenhagen European Council, 16 and 17 December 2004, no. 16238/04 REV 1, 1 February 2005.
[78] Kurban D., *Europe as an Agent for Change, pp. 9-10.*
[79] Kurban D., Erözden O., Gülalp H., *Supranational rights litigations, implementation and the domestic impact of Strasbourg Court jurisprudence. A case study of Turkey,* report prepared for the JURISTAS project funded by the European Commission et al.
[80] European Court of Human Rights, Akdivar and Others v. Turkey, 99/1995/605/693 , 30 August 1996.

and early 2000s.[81] Nonetheless, government officials called to account opted for non-cooperation, denying that unlawful conduct within security forces had ever taken place.

Litigation before the ECtHR substantially diverged from the dominant narratives of "national security" and denial and luckily the involvement of non-state officials (i.e. individuals, lawyers, ECtHR judges and other functionaries) led to the rise of an alternative reconstruction of events, playing in favor of the truth-seeking process.

Akdıvar case is a pioneer case, and along with the wave of cases from Southeast Turkey that followed (the Court ruled on another 175 cases and disposed friendly settlement in 69 others[82]), it brought to the general acknowledgment that starting from the early 80s some hundreds of thousands of Turkish-Kurdish citizens were displaced from their houses and villages, many of which were burned down or destroyed. Within these operations, a large number of individuals suspiciously disappeared, some got killed or severely injured.[83] None of the displaced applicants had received any form of reparation, compensation, or financial subsidies from the government, causing them to often live in conditions of extreme poverty, social marginalization and discrimination, on the top of which was the intensification of the war between the military and PKK, that entailed an even higher degree of extra-legal measures.[84]

The Kurdish legal mobilization of these times gives us a precious insight into the multiple overlapping human rights processes that were ongoing at the European level: i.e. within the Strasbourg Court, the Council of Europe and the EU – particularly in the context of Turkey accession – as they were deeply entangled within diplomatic-political circumstances.[85]

As Turkey's candidacy to the EU was officially declared, a conspicuous case law concerning state violence in Southeastern areas of the country had already grown, thanks to the effective mobilization of Kurdish lawyers who readily employed the individual petition mechanism that was now viable. As the proceedings

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[81] Çali B., *The Logics of Supranational Human Rights Litigation. Official Acknowledgement, and Human Rights Reform: The Southeast Turkey Cases before the European Court of Human Rights, 1996-2006*, Law and Social Inquiry, 35(2), (2010), 311-337.

[82] ECtHR, *Annual Report 2008*, pp. 67-81.

[83] For a broad and comprehensive overview of the ECtHR case-law and pending cases concerning human rights violations against the Turkish Kurds during the period in question, see the Press Service section on European Court of Human Rights website. Factsheets on the Court's cases compiled either by theme or by country are available respectively at: https://www.echr.coe.int/Pages/home.aspx?p=press/factsheets&c= and at https://www.echr.coe.int/Pages/home.aspx?p=press/country&c= .With respect to the country profile, relevant to us is the section entitled *Cases concerning the right to respect for family and private life (Article 8),* pp. 12-14; along with the closely related *Cases on prohibition of discrimination: violations of Article 14 taken together with Article 8 (right to respect for private and family life)* p. 19*;* but also *Cases concerning the right to liberty and security (Article 5),* pp. 8-9; *Cases concerning freedom of expression (Article 10),* pp.15-18; *Cases concerning freedom of assembly and association (Article 11),* pp. 18-19; *Cases concerning the protection of property (Article 1 of Protocol No. 1)* p. 20. Council of Europe website, *Press country profile on Turkey*. For a systematized list of specific law cases, see Çali B., *The Logics of Supranational Human Rights Litigation,* pp. 317-319.

[84] Çali B., *The Logics of Supranational Human Rights Litigation,* pp. 317-319.

[85] *Ibid.*

moved forward, the Court found a series of violations of the ECHR imputable to the Turkish state and therefore is was required to compensate the victims, in accordance with article 13 of the Convention establishing the right to an effective remedy, according to which "everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity".

In 1996, in correspondence to the first judgment (*Akdıvar*) related to the Kurdish conflict, the Court made an exception to its admissibility criteria and authorized the admission of dozens of applications without the prior exhaustion of all the available domestic remedies.[86] Aware of the applicants' "insecurity and vulnerability" deriving from their forced displacement and from the absence of any effective inquiry into the events, the ECtHR concluded that any potential decisions taken by Turkish domestic courts against the security forces would be "negligible" on the ground that an effective remedy was *de facto* non-existent in Southeastern Turkey.[87]

Within a few years, the legal and political mobilization of Kurdish civil society within the framework of the EU became an instrument of utmost importance for the raising of awareness about the several human rights violations committed by the state, as well as for the strengthening of the overall Kurdish movement, that thanks to ECtHR's open doors was now able to frame concrete rights demands for justice, equality and rule of law.[88]

2.3 "The Court's crisis": efficiency vs justice

The late 90s represented for the European human rights system both a great boost of success (thanks to the high rates of applications received and decisions issued across the whole Council of Europe's realm) and a rather hard time due to some disruptions in its internal functioning.

In the Cold War aftermath, the Council of Europe engaged in a project of eastbound expansion resulting in an inevitable increase in the Court's workload, given by the growing number of applicants. This led to a structural overload where the pending cases exponentially outnumbered the cases that could actually be addressed and the overall process slowed down, in particular in those cases where the defendant states were non-cooperative. Recourses coming from Southeast Turkey are a clear example, in that the government

[86] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms,* art. 35(1).

[87] ECtHR, Akdıvar and Others v. Turkey, 21893/93. For other instances of ECtHR decisions, see *Çiçek v. Turkey, Ipek v. Turkey, Aksoy v. Turkey.*

[88] Kurban D., *Europe as an Agent for Change,* pp. 15.17.

adopted a strategy of total denial of the alleged facts and it refused to provide the Court with the required documents.[89]

A project of reforms and amendments of ECHR's procedural clauses was deemed necessary, in order to make the human rights protection system more efficient.

2.3.1 Protocol n. 14

In 2000's European Ministerial Conference on Human Rights, it was agreed that a reform to the Convention system was necessary, with special regards to three areas: a) the prevention of violations on national level and improvement of domestic remedies; b) improvement of the filtering mechanism's efficiency and processing of subsequent applications; c) acceleration of the execution of Court's judgments.[90] The conference's final report gave rise in 2004 to Protocol no. 14.

Among the various amendments, the Protocol introduces a new admissibility clause requiring that the claimant must have suffered a "significant disadvantage"[91], without elaborating the concept any further and thus leaving the establishment of appropriate evaluation criteria to the Court on a case-by-case basis. In other words, the risk was that this gives the Court the power to strike applications out of its list without a thorough assessment of its merits.

Serious concerns were raised by human rights practitioners, who started to question the ethics underlying the whole ECHR Which value is pursued the most, justice or efficiency? Quality or productivity? As Altiparmak argues, sacrificing the former for the sake of the latter is not the ideal solution in the long-term as it risks to endanger the principles at the very core of human rights protection, especially if such conduct is representative of the overall philosophy behind the reform project enacted by the Council of Europe.[92]

2.3.2 Pilot judgment mechanism

Another noteworthy reform applied to the European human rights system was the introduction, in *Broniowski v. Poland*, of the pilot judgment procedure, i.e. "a technique of identifying the structural problems underlying repetitive cases against many countries [parties to the Court] and imposing an obligation [on them] to address those problems."[93]. The main criticism is that, although this new mechanism might be a very precious resource in cases where all applicants complain about the exact same domestic

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[89] Altiparmak K., *The European System for the Protection of Human Rights in Crisis,* Journal of European Criminal Law, 3(4), (2009), 6-7.

[90] Council of Europe, Steering Committee for Human Rights (CDDH), *Guaranteeing the long-term effectiveness of the European Court of Human Rights,* Report of the extraordinary meeting, Strasbourg, 1-4 April 2003.

[91] New Article 35(3)(b) of the ECHR, as amended by Article 12 of the amending protocol.

[92] Altiparmak K., *The European System for the Protection of Human Rights in Crisis,* pp.12-14.

[93] European Court of Human Rights, *Factsheet – Pilot Judgments,* available at: https://www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf

rule or practice, there is a lack of comprehensive criteria guiding the assessment of whether or not a violation is a systematic violation – or, worse, a severe and systematic violation.[94]

The cases from Southeast Turkey can serve as an instance. In June 2004 – one week after *Broniowski* – the ECtHR issued its pilot judgment in *Doğan et al. v. Turkey,* a case of Kurdish forced displacement. For the first time the Court identified in the internal displacement conducted by the Turkish state officials a structural problem, and instructed the government to take the necessary steps to resolve the situation.[95] In response, Turkey drafted in 2004 the so-called Compensation Law, instituting a domestic procedure that would provide compensation of material damages suffered by persons victim of the PKK-military armed conflict. It qualified in the eyes of the Court as an effective domestic remedy the exhaustion of which would render all the claims before the European Court inadmissible, therefore limiting the Kurdish victims' *de facto* access to justice.[96]

2.4 Turkey's Compensation Law: Strasbourg's doors close to displaced Kurds

With *İçyer* case being declared inadmissible, the remaining 1,500 applications concerning forced displacement and Turkish state violence from 1984 onwards were subjected to a mass rejection and referral to the hands of Turkish domestic judiciary.[97] At first, the implementation of the law and the indemnification of the victims seemed to be carried out attentively and responsibly by domestic courts. The government thus benefitted, by saving millions of euros in ECtHR-ordered reparation and by seeing its reputation ameliorated on the international level.[98]

However, this law soon disclosed its structural contradictions. On the one hand, it was in its own nature in stark contrast with ECtHR's case-law, because it only addressed material losses through pecuniary compensation. Generally, Strasbourg's past rulings had always stressed the importance of emotional damages and sufferings too.[99] On the other hand, all the applications were dealt with as they were civil proceedings, completely withstanding the ECHR provision on effective remedy, which requires a proper investigation into the facts and the prosecution of the perpetrators. As the years went by and Turkey felt like it gained ECtHR's trust, the implementation of the law started to be less accurate, with appointed

[94] Altiparmak K., pp. 17-18.
[95] Kurban D., *Shattered Hopes: When ECtHR Shuts its Doors to the Kurdish displaced,* p.26.
[96] Republic of Turkey, *Law no. 5233* of 17 July 2004.
[97] *İçyer v. Turkey,* Application No. 18888/02, 12/01/2006.
[98] Kurban D., *Shattered Hopes,* p.24.
[99] See in particular European Court of Human Rights, *Aksoy v. Turkey,* 18 December 1996, Application No. 21987/93, para. 113; and *Ayder and Others v. Turkey,* 8 January 2004, Application No. 23656/94 paras. 157-159.

national bodies slowing down their evaluation of applications, arbitrarily rejecting some, and progressively decreasing the amount of money provided.[100] Meanwhile, the Council of Europe did not carry out properly in-depth field supervision which could ensure that Turkish domestic remedies were actually effective and worth Strasbourg's act of confidence.[101]

What was the difference between *Akdıvar* and *İçyer* then? Both applicants were Kurdish civilians whose property or village had been burnt or destroyed by state security forces. Yet, one of them led to a general exemption from the duty to exhaust all the domestic remedies, on the ground that the human rights situation in Turkey was incompatible with the prospect of a domestic settlement of the case; and the other led to a pilot judgment of inadmissibility on the ground that the same human rights situation in Turkey was now effective and compatible with Strasbourg's standards.

In 1996 Strasbourg's door were wide open towards cases of displacement and violation of property, whereas by 2006 they shut decisively. What changed in this decade? Kurban argues that there were three main factors responsible for such change: namely timing, luck and the political context they happened to be filed in.[102] In 1996 the European Court showed a high level of flexibility in the application of its procedural rules, thus inviting thousands of displaced Kurds from Southeast Turkey to mobilize and invest hopes in the supranational litigation and settlement of their cases. Meanwhile, following some historical developments, the European system of human rights protection entered a structural crisis, which required the drafting of procedural amendments that could ease the disproportionately high case-load from the Court's shoulders. This resulted in a change of approach on the Kurdish question, which now goes towards a more a-political, a-historical, overall decontextualized analysis of Turkey's human rights tradition and its reform rhetoric, while ignoring the root causes of its human rights violations.[103]

[100] Ibid.
[101] Altiparmak K., pp. 22-23.
[102] Kurban D., *Shattered Hopes,* pp.24-25.
[103] Cizre U., *The Truth and Fiction About (Turkey's) Human Rights Politic*s, Human Rights Review, (2001), 55-77. Cizre's criticism on this issue will be explored further in chapter 3.

CHAPTER 3

EU-TURKEY CRISIS:

THE IMPACT ON KURDS' RIGHTS AND TURKISH DEMOCRACY

> Concrete measures announced as part of the democratic opening fell short of expectations and were not followed through. (…). Overall, the 2009 democratic opening, aimed at addressing the Kurdish issue in particular, was not followed through. Terrorist attacks intensified and have been/are consistently condemned by the EU. The detention of elected politicians and human rights defenders raises concerns. The truth about extra-judicial killings and torture in the south-east in the 1980s and 1990s has yet to be established following the due process of law.[104]

The previous chapter discussed the implications of the European Union's taking part in the Kurdish-Turkish issue, and more broadly in the relationship with Turkey as a state willing to become an EU member. The years between the mid-1990s and the early 2000s marked overall a period of dialogue and mutual support, where Turkey engaged in a project of reforms promoted by the EU with the view to strengthening areas such as democracy, rule of law and the respect of human rights in order to fulfill the membership conditions. After the official opening of accession negotiations in 2005, however, Turkish government drastically reoriented its domestic and foreign policy in such areas, by slowing the pace and decreasing (if not completely halting) the effectiveness of the reforms. This caused a disruption within EU-Turkey relations, and a stagnation in the country's democratic consolidation, in which the PKK and accordingly the security forces found fertile ground for resuming violence.

The present chapter will analyze the factors that led to such crisis and those that subsequently led once again to another overturn in Turkey's behavior, now towards a renovated spirit of democratization. In the second part, the application of the Spiral Model to the Turkish case will provide some critical assessment about whether and to what extent the Turkish government has internalized the human rights principles underlying its package of reforms.

[104] European Commission, *Turkey 2011 Progress Report,* pp. 41-42.

3.1 AKP halts EU-induced reforms and PKK resumes violence

The period between 1999 and 2005 in Turkey was characterized by a set of reforms advocated by the EU and aimed to the improvement of human rights and fundamental freedoms, such as the introduction of a new Penal Code, the abolition of death penalty, the lifting of the state of emergency, and measures in favor of freedom of association, speech and the expansion of minorities' cultural rights. In the context of the EU accession talks, the European Commission expressed sincere contentment regarding Turkey's seeming commitment to the Copenhagen criteria demands, and in 2005 it proclaimed the official opening of the negotiations. However, that same year – along with AKP's second term in government in 2007 – marks the start of a progressive halt in the production of new reforms and in the implementation and enforcement of the old ones, contributing to generate (or to bring back) a climate of impunity across the country and to prevent a sound sustainable human rights culture from consolidating.[105] This resulted in a significant increase in the number of cases filed by Turkish nationals before the ECtHR; cases that significantly outnumbered those rendered inadmissible by 2004 Compensation Law and that therefore could not be brought to Strasbourg.[106]

There are several factors behind such U-turn that Turkish government made. Firstly, during the years of EU-induced reforms Turkey enjoyed a considerable degree of support from the European institutions, therefore the government could tighten up the measures of constraint against the PKK militants (as well as the non-belligerent factions within the Kurdish movement), and yet escape the international blame by disguising such operations as measures of counter-terrorism, especially in the aftermath of September 11th.[107] On such wave of seemingly favorable room for *manoeuvre* accorded by the EU, after 2005 Turkey adopted few new reforms: this time in no way compatible with the Copenhagen criteria but, instead, restoring many of the undemocratic legacies of the past. One major instance is the amendment of the already reformed Anti-Terror Law, which now prescribed among the other things that: a) the sole action of claiming the same rights as the PKK should be defined as terrorist propaganda, and b) minors over the age of 15 should no longer be prosecuted in juvenile courts, but rather in regular penal courts.[108] This led to the

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[105] Aydın-Düzgit S., Fuat Keyman E., *EU-Turkey Relations and the Stagnation of Turkish Democracy*, Global Turkey in Europe, Working Paper 02, 2012, p. 7.

[106] Council of Europe, *50 Years of Activity. The European Court of Human Rights. Some Facts and Figures*, 2010, available at: https://www.echr.coe.int/Documents/Facts_Figures_1959_2009_ENG.pdf

[107] Kurban D., *Europe as an Agent for Change*, pp. 19-20.

[108] For further details about Turkey's reformed legislation on terrorism, see the European Union *Screening Chapter 24: Justice, Freedom and Security*, available at: https://www.ab.gov.tr/files/tarama/tarama_files/24/SC24DET_FIGHT%20AGAINST%20TERRORISM.pdf

prosecution and conviction of thousands of Kurdish civilians (even minors), lawyers, human rights activists and local politicians with terrorism charges, most of the times for merely participating to pacific demonstrations, such as *Newroz*[109] celebrations, pro-PKK marches, for quoting PKK-produced material, or just for pacifically demanding Kurdish self-determination and education in their mother tongue.[110] Due to the increasing attacks made by the PKK in response of such measures, the overall security in the country quickly escalated to higher levels of violence: security forces resumed to perform unlawful house raids, to forcefully evict civilians suspected of being affiliated with PKK and to arbitrarily hinder freedoms of association and assembly, until eventually the end of the ceasefire was declared and weapons laid down.[111] The European Union accordingly started to become highly critical in their progress reports, renewing a sentiment of skepticism about Turkey's realistic prospects to obtain the membership.[112] Within few years, the EU realized it did no longer have much leverage on Turkey's political choices, also due to the country's growing respectability as a rather wealthy secular country within the very much unstable Middle East, which soon led to a "mismatch" between the Turkey's thriving economic foreign policies and its rather stagnant democratic progress[113]. Turkey thus seemed not to be much enthusiastic to continue the EU negotiations anymore and, equally, the EU countries started to weaken their commitment and – especially in times of Euro financial crisis – their ability to keep tickling AKP's cooperation.[114]

3.1.1 The renewed conflict with PKK and the peace talks with Abdullah Öcalan

The positive trend of EU-embraced reforms was soon replaced by a downward spiral of violence and the intensification, accordingly, of both Turkish and Kurdish nationalisms. What changed from the end of 90s was – among the other things – the political cost of compliance with human rights and democracy-related reforms by Turkish government. 1999 opened a period of low political costs in these terms, thanks to the capture of Öcalan and thus the suspension of the separatist war. However, dynamics changed when the complex mix of factors discussed above led to the PKK's return to terrorist activities - both in Turkey and

[109] The Kurdish New Year.
[110] İlkiz F., *KCK Cases and the Judiciary Mechanism,* in *Perspective: Political analysis and commentary from Turkey,* 2(12).
[111]Çandar C., *Leaving the Mountain: How May the PKK Lay Down Arms? Freeing the Kurdish Question from Violence*, TESEV, Istanbul, 2012, p. 80.
[112] By 2012 Turkey had temporarily closed only one chapter (out of 33) and opened other 12. (Aydın-Düzgit S., Fuat Keyman E., *EU-Turkey Relations,* p. 2).
[113] Aydın-Düzgit S., Fuat Keyman E., *EU-Turkey Relations and the Stagnation of Turkey's Democracy,* pp. 3-4
[114] *Ibid.*

in Iraq[115] - and the consequent Turkish military response.[116] Clashes rose once again and so did the death toll in both factions. During the conflict, Turkish judiciary decided heavily against Kurds' political rights of association and assembly, ordering the dissolution of a number of political parties, such as the People's Labor Party (HEP), the Democracy Party (DEP), the People's Democratic Party (HADEP), or the Democratic Society Party (DTP).[117]

Albeit the armed conflict contributed to the further polarization of Turkish public opinion – with conservativism in constant growth[118] – this did not prevent the Kurdish political movement from increasingly take root among civil society. Some pro-Kurdish activists made it to municipal public office and then pursued a project of civil disobedience, by spontaneously reintroducing Kurdish language in some areas of usage[119], under the directives of Öcalan's model of democratic confederalism.[120]

Against this background – and with the mutual acknowledgment that a military resolution was not any foreseeable –throughout the years there have been attempts to peacefully resolve the conflict and the Kurdish question in general, from both sides.

I would like to stress the importance of the peace negotiations held directly with Öcalan, while detained in İmralı, rather than that of the "Oslo process"[121], or of the 2009 "Kurdish Opening" since neither of them turned out to be much beneficial for the end of the ongoing war.

Since the very beginning of 2013, delegations from both the AKP and the pro-Kurdish BDP started to regularly hold meetings with the PKK leader Öcalan in İmralı prison, where he was (and still is) serving his life sentence. Öcalan envisaged a tripartite peace process that submitted to the government through a written letter: a) first, the PKK would withdraw its troops from the territory, b) then, the government would grant full political and cultural rights to the Kurdish minority, and c) those who used to be PKK fighters

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[115] Especially after 2003 US-led invasion of Iraq, the country offered to the Iraqi Kurdish minority the opportunity to take advantage of the overall political instability and hence to experiment an autonomous government in the northern regions. Turkish Kurds supported this transition and established few bases on the mountains across the border.

[116] Marcus A., *Turkey's PKK: Rise, Fall, Rise Again?* World Policy Journal, 24(1), 75-84.

[117] Kogacioglu D., *Progress, Unity and Democracy: Dissolving Political Parties in Turkey*, Law & Society Review, 38(3), (2004), 433-462. See also ECtHR's caselaw regarding cases of party dissolution in Turkey over alleged links with PKK: https://hudoc.echr.coe.int/eng#{%22dmdocnumber%22:[%22878622%22]}

[118] For more detailed data see Çarkoğlu A., Kalaycıoğlu E., *The Rising Tide of Conservativism in Turkey,* Palgrave-Macmillan, New York (2009).

[119] Watts N., *Activists in Office: Kurdish Politics and Protest in Turkey*, University of Washington Press, Seattle (2010).

[120] Öcalan A., *Democratic Confederalism,* International Initiative, (2011).

[121] Between 2006 and 2011, secret negotiations between the Turkish government and the PKK took place in various European cities, each time with the mediation from a third party, be it a European country's government or intelligence. However, they soon collapsed because of government's firm statist positions and whistleblowing. For more on it see Ozkahraman C., *Failure of Peace Talks between Turkey and the PKK: Victim of Traditional Turkish Policy or of Geopolitical Shifts in the Middle East?,* Contemporary Review of the Middle East, 4(1), (2017), 60-66.

should be reintegrated in ordinary life.[122] Few days later, Öcalan made his historic gesture of announcing the official end of PKK's armed insurgencies and the withdrawal of their troops beyond the borders.[123] This would have been the first step of his proposed "roadmap".

The following paragraphs will deal with the Turkish government's response, the impact thereof, and few remarks on its political strategic commitment *vis-à-vis* the Kurdish question.

3.2 The "new Turkey" and the democratization package

The political context described above led Erdoğan's AKP, after a relatively long time (six months) since the declaration of ceasefire by PKK, to launch its "democratization package", namely a set of reforms which, among other things, slightly expanded on minorities' linguistic rights and opened the way to negotiations on the threshold in national elections. What this reform package provided was, namely: that politicians could now speak languages and dialects other than Turkish during their election campaigns; that teaching in languages and dialects other than Turkish was now legal in private schools; and that the nation-wide 10% electoral threshold would be susceptible to modifications, at the condition that it would be chosen between two pre-approved options.[124]

What in the beginning was perceived by the Kurds as the ideal time and space where they could finally see their long-standing human rights claims welcomed and met by the Turkish decision makers, once again did not lead to any favorable development in their recognition. On the contrary, the democratization package fell short of (if not failed to) meeting fundamental Kurdish demands. For instance, national self-determination or public education in Kurdish language were still outside the realm of possibility, the lowering of electoral threshold was still far from granting equal representation in Parliament for Kurds, and draconian norms such as those enshrined in the Anti-Terror Law (see par. 3.1) or the village guard system (see par. 1.3) were still in force.[125] Furthermore, as the European Commission observed in its 2013 Progress Report, "[m]any journalists, academics, students and human rights defenders remained in prison on criminal charges, including under Article 314 of the Turkish Criminal Code on armed organizations" (which the democratization package did not amend).[126]

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[122] SWP Comments 13/2013, Erdoğan and Öcalan Begin Peace Talks by Kevin Matthees and Günter Seufert, as cited in Kurban D., *Not a Roadmap for Peace. Erdoğan's Democratisation Package Defies Kurdish Expectations,* German Institute for International and Security Affairs, (2013).

[123] Euronews, *Full transcript of Abdullah Ocalan's ceasefire call,* 22.03.2013, available at: https://www.euronews.com/2013/03/22/web-full-transcript-of-abdullah-ocalans-ceasefire-call-kurdish-pkk)

[124] Kurban D., *Not a Roadmap for Peace*, pp. 3-6.

[125] Ibid.

[126] European Commission, *Turkey 2013 Progress Report,* p. 15.

Some scholars identified an interesting dynamic in the context of the reform-process in question. Differently from the previous big set of reforms that Turkish government invested in (i.e. the EU-induced reforms, which were strictly dependent on the demands of the European Commission's progress reports and on the European Court's rulings), this time the reform package is instead closely linked to the progress achieved in the peace talks with Öcalan. In other words, the recognition of Kurds' claims for rights was now perceived to be contingent on the results of unofficial and not so structured peace negotiations within Turkey - which equilibrium in terms of democracy was itself highly precarious -, and no longer on the more official channels of the EU, which now had lost much of its leverage on Turkey.[127] Therefore, if the fate of the reform process was already volatile at the time of the EU-induced reforms project, this is even more so now that the EU influence is not as strong as before, whereas the government's democratic demeanor is as uncertain as before. The human rights landscape in Turkey was in fact still largely unsafe for many, and hopes for a material improvement still remain more oriented towards an integration with global (and regional) human rights systems and processes (like those framed in the EU institutions) rather than national ones.[128]

3.2.1 Tactical concessions or "prescriptive status"? A spiral analysis

In this paragraph some critical considerations on Turkey's political commitment to human rights reforms (with particular regards to the Kurdish minority's rights) throughout the last decades will be provided through the lenses of the Spiral Model approach, i.e. a theoretical scheme for the assessment of a country's level of internalization and domestic implementation of human rights norms.[129]

There is a vast legal scholarship providing theoretical frameworks on how international human rights norms become integrated into states' domestic practice and it ranges between various fields of study such as, among the others, International Law, International Relations, Political Science, behavioral studies, Law and Sociology field.[130] After appreciating the insightful debate emerged during one of our academic courses, I have chosen to adopt the social constructivist theory suggested by Sikkink et al. (i.e. the Spiral Model) in that it provides a comprehensive outlook on the different forces – be them legal, normative, institutional, social, and/or cultural – that contribute to shape the way, but also the pace and the consistency[131] with which

[127] Kurban D., *Europe as an Agent of Change,* pp.23-24.
[128] Cizre U., *The Truth and Fiction About (Turkey's) Human Rights Politics,* Human Rights Review, Vol. 3, No. 55, 2001, p.55.
[129] For more about the theoretical framework, see Risse T., Ropp S., Sikkink K., *The Power of Human Rights: International Norms and Domestic Change,* Cambridge University Press, (1999).
[130] See Simmons (1998), Downs and Jones (2002), Koh (2005), Goodman and Jinks (2005), Woods (2009).
[131] It shall be noted that the process of human rights socialization in nation-states does not follow a given and fix path; on the contrary it is strictly dependent on the contingent and combined effect of a number of internal and external factors.

countries assimilate and internalize human rights norms. According to the model, the so-called "socialization process" a country may go through when it comes to its human rights politics are five. They represent a gradual *crescendo* of a country's incorporation of human rights in its practice and legal system and, conversely, the *decrescendo* of its levels of oppression and human rights abuses. Namely, the stages are:1) repression, 2) denial, 3) tactical concessions, 4) prescriptive status, 5) rule-consistent behavior.

If we had to apply the Spiral Model to Turkey's recent history[132], the first two of the five stages of norm internalization and implementation would be rather straightforward to spot. Through the 80s and early 90s, in fact, Turkey was still engaging – as a legacy of the prolonged phase of *repression* and *denial* that had interested the national human rights landscape throughout its republican life – in a plan of cultural assimilation against the Kurdish minority living mainly in Southeast Turkey. With the start of the armed conflict with the PKK militants in 1984, the severity of measures such as forced internal displacement, violations of linguistic rights, of the freedom of expression, assembly, association and information escalated even more rapidly. Contrarily to previous trends, however, governments operating in 80s and 90s have been able to "shrug some of the accountability off their shoulders" and thus dismiss any allegation of serious human rights violations by appealing to the "fight against terror".[133] This was of particular interest at the time because the European Union and its organs had become relevant and active interlocutors in the context of Turkey-EU accession talks. In such climate, human rights advocacy groups and civil society's voice in general were very weak, with the result that the Kurdish question kept lying outside of major European concerns for a few more years until the late 90s when, thanks to international pressure for complying with the Copenhagen criteria, Turkey had to enact a set of reforms mainly in the areas of democracy, rule of law, and the protection of human rights.[134]

It then entered, the third stage of the Spiral Model, i.e. the *tactical concessions* phase, where countries' vulnerability to external pressure (often exercised through "naming and shaming") gives them the momentum to adapt their domestic political discourse to the language of international human rights that is, in our case, that promoted by the European Convention on Human Rights. Significant steps have been taken by Turkish governments in this phase (that started in the end of 90s and, according to some, still goes on) for what concerns, for example, the partial and then absolute abolition of death penalty, the lifting on non-Turkish languages ban, the occasional release of some Kurdish politicians from prison, the emanation of the Compensation Law for the victims of displacement etc. What characterizes this stage according to the

[132] For the sake of this research, I will here consider only the period between the early 80s and the present times, since it corresponds with the entry of the European Union and its institutions as relevant actors in the scenario that I attempt to analyze. Needless to say, I am fully aware that the whole portion of time antecedent to the 80s has been for the modern Turkish state a dark period for the internalization, implementation and overall commitment to human rights. Chapter 1 of the present work provides a historical analysis of such period.

[133] Cizre U., *The Truth and Fiction About (Turkey's) Human Rights Politics,* pp. 66-72.

[134] *Ibid.*

authors of the theory – as well as what emerges from the specific case of Turkey – is the strategic, tactical nature of the changes. Most of the EU-induced reforms in Turkey have only been implemented with instrumental purposes, in the hope that international pressure would be lessened and a "human rights-friendly" reputation would be attained by the country. As broadly discussed in chapter 2, in fact, initiatives such as the Compensation Law turned out to be good in the beginning – just for the sake of gaining ECtHR's trust and render all displacement cases from Southeast Turkey inadmissible to Strasbourg – but ultimately detrimental to actual reparation of the victims. Moreover, widespread impunity of perpetrators of human rights abuses remained, as well as widespread repression of free speech, demonstrating that Turkey's steps towards the implementation of human rights did not follow a sincere internalization or habitualization of their underlying moral principles, but rather they were merely rhetorical actions carried out on the basis of an instrumental logic.[135]

Debate is currently open among scholars on whether Turkey has transitioned from *tactical concessions* phase to that of *prescriptive status,* i.e. when a country engages in substantial and sincere changes in its constitutional regime, behind the mobilization of now strengthened domestic human rights networks.[136] Overall, Turkish human rights and democracy scenario remains problematic and the Kurdish question is far from being resolved. Therefore, what most scholars certainly agree on is that Turkey – independent of whether it has or has not fully accomplished the transition to stage 4 of the Spiral model, i.e. *prescriptive status* – is still far from entering the fifth and last stage of the ladder, that of *rule-consistent behavior.*

[135] *Id.*, p.
[136] Risse T. et al., *The Power of Human Rights*, Introduction.

CHAPTER 4

A TRIANGULATED ASSESSMENT

THE ROLE OF TURKISH GOVERNMENTS, EU AND KURDS IN THE CONTEXT OF KURDISH SELF-DETERMINATION

> [T]he effective exercise of a people's right to self-determination is an essential condition or prerequisite (…) for the genuine existence of the other human rights and freedoms. Only when self-determination has been achieved can a people take the measures necessary to ensure human dignity, the full enjoyment of all rights, and the political, economic, social and cultural progress of all human beings, without any form of discrimination.[137]

The previous three chapters of the present work have served us as a combination of a legal history and a qualitative legal analysis aimed at answering our main question on how Kurdish minority rights in Turkey have been shaped and addressed throughout its modern republican experience, and more in particular in the context of the European integration process. What Chapter 4 will now seek to provide is an analytical reflection on the overall question and because of its multifaceted character, it will do so by breaking it down into the legal-political interaction among the three major actors involved. Namely, the first paragraph will deal with the Turkish government(s) and its long-standing hostility against the Kurdish minority living in the country: a hostility that ultimately it has not been able to disguise before the critical eye of the European institutions and that is one of the reasons Turkey is still not sitting at the EU table. Secondly, the role of the European organs – especially the European Court of Human Rights – will be assessed as they entered the human rights monitoring and enforcement process, in a sort of evaluation of merits and flaws vis-à-vis the Kurdish question. Finally, the third paragraph will be devoted to some considerations regarding the Kurdish movement and their right to self-determination. How did they evolve throughout the decades in Turkey?

[137] Gros Espiell H. (Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), *The Right to Self-Determination. Implementation of United Nations Resolutions*, New York, 1980 (E/CN.4/Sub.2/405/Rev.1), par. 59.

What are the future prospects of the pan-Kurdish project of self-determination in light of the most recent geopolitical events?

4.1 The role of Turkish government

Since the very early stages of Turkey's republican life, denial and discrimination against ethnic minorities have represented, to a larger or smaller extent depending on the period, the very nature of its domestic legal tradition. Some improvements in the areas of democracy, rule of law and human rights have been achieved – mostly in the hope to please the European institutions - nonetheless, a widespread position among numerous scholars is that Turkey, as of nowadays, cannot be considered a fully democratic country, due to those authoritarian features that are deeply rooted in it. By appealing to the supreme values of nationalism (cfr. "Turkification") and secularism[138], governments starting with Kemal Atatürk prioritized state interests over those of the individuals, thus often causing serious violations of human rights and freedoms, high rates of impunity and an overall climate of injustice especially among the minorities. Turkey's Kurds suffered from this authoritarian governance on a severe and continuous basis. Despite of the huge amount of repression of this era, however, there has been a moment when Turkish government actually showed hints of openness towards democratization and a better commitment to minority rights, mainly in the context of the European integration process. As seen in the previous chapter, Turkish EU-induced reformism overall failed to fulfill the Copenhagen criteria and therefore placed the country on (or chained it to) step 3 of the Spiral model (see par. 3.2.1), i.e. the stage of *tactical concessions*, where the country's commitment to human rights is not moved by good faith but is, rather, strategic and interest-driven.

Turkey's current stance on Kurdish minority rights is obviously not comparable to that of a hundred years ago: the most draconian restrictions have been lifted and this led to a progressive strengthening of the Kurdish movement, both in terms of the Kurds' ethnic identity – which, unlike what Kemalism had hoped – remained strongly separated from that of Turks – and in the political arena. Kurdish political mobilization has throughout the decades led to increased participation in Turkey's governance, both at local and national level. The pro-Kurdish People's Democratic Party (HDP) has experienced a significant growth in popularity

[138] It is to be noted that the principle of Turkish secularism has not always had the same connotations. Atatürk's input led to the constitutionalization of it (first through the amendment of 1924 Constitution, and then with an explicit statement in 1937 one), as it was considered a fundamental condition for a modern and progressive state. However, such model has been slowly overthrown when the AKP (represented by Erdoğan) took power in the early 2000s. Since then, it has paved the way for a greater conservativism and a (*de facto*) strengthened Muslim identity across the country.

over the past years, and now benefits of a good degree of political leverage over the electorate and a significant international legitimacy.

Kurdish political success today poses a great threat to AKP's undisputed credibility, bringing it to resume to highly repressive measures with the view to suffocate the Kurds' voice in politics and to eliminate opposition in general. Out of the 102 HDP local politicians that in 2014 won municipalities in the elections, for instance, 94 have been removed from office, some have been imprisoned in the following years (including the party co-president Selahattin Demirtaş) alongside with journalists and academics, and many others harassed and threatened to be jailed.[139]

The Kurdish question in Turkey is far from being resolved, and it will remain so in the foreseeable future, unless the very foundations of the legal and cultural framework of the country are subjected to some degree of change. Structural inequalities among the citizens did not succumb to the package of democratic reforms imposed by the EU; on the contrary, they endure intact and keep legitimizing Turkish cult of nationalism, at the expenses of human rights and rule of law. An ideal resolution of the Kurdish question, then, would require the internalization of a different and more constructive understanding of citizenship and ethnic diversity, both on the institutional and societal level. In this way, those citizens who adhere to a set of cultural norms that deviate from Turkish ones will not be automatically excluded from the equation or – as has happened in the past – subjected to the annihilation of their identity through assimilation; but rather they will be treated as self-determined people endowed with human dignity and therefore with a set of individual and collective rights, regardless their "Kurdishness".

4.2 The role of the European Union

There has been a time in Turkey's recent history where its domestic sphere progressively became a subject of international concern. Ever since 1987, its determined quest for European membership and integration into the regional economic and political processes has exposed the country to a period of oversight by the European institutions. Being the Copenhagen criteria a way too wide and demanding package of conditions, Turkey overall did not manage to fulfill them due to some domestic problems which have turned out hard to overcome. Democratic practice and minority rights are among the greatest domestic challenges.

[139] H.J. Barkey, *The Kurdish Awakening. Unity, Betrayal and the Future of the Middle East*, essay on "Foreign Affairs", March/April 2019 issue. Available at: https://www.foreignaffairs.com/articles/turkey/2019-02-12/kurdish-awakening

The role of the EU institutions in this EU-Turkey synergy has produced some rather positive and some less positive effects. Among EU's merits must be mentioned, above all, that of lifting the veil from the precarious human rights situation of Turkey in the 80s. Thanks to the European Commission's fact-finding missions on-site, more accurate data on mass forced displacement, destruction of property, abuse of power from law enforcement officials were collected and made public through annual Progress Reports. The climate of impunity connected to such acts was soon acknowledged by the international community, along with the dysfunctional judicial mechanisms which did not ultimately guarantee the victims' right to effective remedy, but rather safeguarded the state interests. The European Court of Human Rights, in this sense, played a crucial role as an impartial and neutral judiciary where Kurdish victims of abuse could seek justice. However, if we are to assess the Court's overall conduct, we cannot be uncritical about the change of policy it adopted around the mid-2000s in the frame of *İçyer* case. Such decision has been criticized by many scholars and activists for being "premature, unjust and political".[140] By issuing the pilot judgment according to which all cases concerning property rights and displacement in Southeast Turkey were considered inadmissible – and by accepting that Turkey's Compensation Law of 2004 constituted an adequate and effective remedy to victims – the ECtHR not too covertly disregarded the real problem underlying *İçyer* and other 1500 pending cases, i.e. the ethno-political Kurdish question. Damages to property were "just" the tip of the iceberg of state violence and human rights abuses against Kurds in the name of counter-terrorism. Referring these cases to a biased domestic judiciary not only made the Court a less viable and accessible option for the applicants of Southeast Turkey, but it undermined the principle of subsidiarity on which the European human rights regime is based.

Undoubtedly, the European institutions played a key role in the improvement of human rights and democracy status in Turkey in the past four decades. By introducing themselves as third party, they raised international awareness on the Kurdish dire conditions as a repressed minority and on Turkish dangerously nationalistic state narrative; furthermore, they induced the government to undertake a comprehensive set of reforms as the only way to access the EU. However, as of providing justice as a supranational impartial body, it showed significant flaws which ultimately adversely affected the weak and further empowered the powerful.

[140] Kurban D., *Protecting Marginalized Individuals and Minorities in the ECtHR: Litigation and Jurisprudence in Turkey,* in "The European Court of Human Rights and the Rights and the Rights of Marginalized Individuals and Minorities in National Context", ed. By Anagnostou D., and Psychogiopoulou E., Leiden, the Netherlands, (2010).

4.3 The role of Kurds

We are now to reflect on the last – yet not least in importance – actor of our triangulated analysis. Contrary to what some might think, Kurdish people are not a voiceless character being passively subjected to state oppression. This has not been the case either for the pan-Kurdish community under the governance of Iraq, Iran, Turkey and Syria, or for Turkey's national Kurds throughout the modern republic.

Moral, political and legal claims to their right to self-determination are to be considered a constant in Turkish-Kurdish recent history. Although severely targeted by the Kemalist assimilation policies, Kurds never surrendered to the government's plan to erase any non-Turkish element from their culture, names, villages and their future (see ch. 1): on the contrary, they fought back. Firstly, because of a rather germinal strategy of opposition – and also because opposition *per se* was not really contemplated in Turkish political system until mid-40s – some radical Kurdish groups used to make contestation against the government and the army, by carrying out armed insurrections, yet with poor results. However, this changed over the last decades of 1900s, and thanks to push factors such as: a) the raised international awareness about the Kurdish issue; b) the opening of the accession era (i.e. a period of international oversight on and democratization of the country); c) an increased access to justice thanks to the ECtHR, and d) the rise of a militant leading voice within a branch of the Kurdish movement (i.e. Öcalan), the Kurdish mobilization advanced significantly, both in its political and legal demands.

Kurdish claims to self-determination in Turkey varied throughout the decades, ranging from total independence (i.e. external self-determination) to political autonomy in the Kurdish-inhabited regions (i.e. internal self-determination). Nonetheless, Turkish central government always kept denying a Kurdish self-government firmly, even *vis-à-vis* a non-secessionist counter-proposal.

The principle of self-determination of peoples, notwithstanding its qualification as *jus cogens* in international law[141], is rather hard to apply in practice and highly dependent on political and geopolitical factors within the nation(s) of concern. In the case of Kurdish minority in Turkey, for instance, the sole fact that the Kurds are a people endowed with the right to self-determination does not automatically entail a right to secede from the state of Turkey or to unilaterally declare a Kurdish autonomous region within Turkey's borders, given the relevance of other international principles, such as territorial integrity, that need to be considered and which often conflict with such right.

Without digging any deeper into the legalistic aspect of this issue, it is interesting to highlight how Turkey's Kurds ultimately pulled through in the absence of a realistic imminent prospect of self-determination. A

[141] Self-determination is embedded in chapter 1 of the United Nations Charter, in common article 1 of the 1966 International Covenants, in chapter 15 of the Universal Declaration of Human Rights and in all major international and regional human rights treaties.

Kurdish political movement has progressively grown in size, legitimacy and consensus[142] in Turkey up to the very present days, where the HDP (Peoples' Democratic Party), for instance, is one of the biggest opposition groups is Turkish parliament, despite AKP-led government's efforts to prevent it. Especially after 2016 attempted *coup,* an increasing number of HDP politicians are accused of connections with PKK and often jailed on terrorism-related charges; moreover, freedom of expression, association and assembly in general are severely under attack.[143] The success that pro-Kurdish parties have experienced poses then a real threat to the ruling party's and Erdoğan's authority, and it would be little surprise if in the near future a Constitutional Court's decision declared the dissolution of HDP party[144], as it had happened before to its predecessors (see par.3.1.1).

Overall, it can be claimed that despite experiencing a century of severe state-repression and attempts to its conservation and transmission, Kurdish culture in Turkey has survived and emerged victorious. Kurds have developed governance skills, while cultivating their identity, cohesion and self-awareness as a nation within a nation. However, this does not stop to Turkey's borders, as it also applies to the Pan-Kurdish reality in its whole.

However adverse the existing statist and geopolitical forces that oppose to the formation of a unified Kurdistan are, Kurdish consciousness and its political aspirations are starting to coalesce again – for the first time since the Treaty of Sèvres – all across Turkish, Syrian, Iranian and Iraqi boundaries. However complex and imperfect, experiences such as HDP's electoral success in Turkey, KRG (Kurdish Regional Government) institution in Iraq, the alliance between the United States and the Syrian YPG/YPJ forces[145] in the Syrian context, the self-proclaimed democratic confederalism in Rojava[146] and others represent a significant revival of and a re-gained confidence – which also benefits from international legitimacy – in the Kurdish self-determination project.

A lot of serious obstacles are still in the way, making the building of a unified Kurdistan in Middle East not a viable and realistically foreseeable option yet, but at least the political conversation is open again, and

[142] The party mainly draws on the consensus of ethnically Kurdish voters living in Southeast Turkey, but also on members of other minorities', given the predominance it reserves to minority rights.

[143] Human Right Watch, *World Report 2019: Turkey.*

[144] This statements grounds on the personal – yet widely shared - assumption that Turkish judiciary is not independent power. As many episodes of both pre and post-2016 *coup* attempt history show, Erdoğan's government has made various steps to undermine the rule of law and the separation of powers, for instance by dismissing a number of judges and prosecutors that decided at all levels in favor of opposition groups, often (and again) on the grounds of terrorist affiliation, either to PKK or the so-called *FETÖ*, i.e. the political movement that takes inspiration from the cleric Fethullah Gülen, accused by the government to be the instigator of the failed *coup.* See Human Right Watch, *World Report 2019.*

[145] YPG are the People's Protection Units, which include YPJ, i.e. the Women's Protection Units. Together they constitute the primary mainly-Kurdish militia that operate in Syria, fighting against *Daesh* as well as other Syrian rebel groups and more recently against invading Turkish military forces too.

[146] More formally known as the Democratic Federation of Northern Syria.

this "Kurdish Renaissance"[147] that some refer to has actually the potential to re-question the long-disregarded claim for self-determination of one of the biggest ethnic minorities of the world.

[147] H.J. Barkey, *The Kurdish Awakening.*

Concluding remarks

In the present study, I have analyzed the evolution of Kurdish minority rights in the context of Turkey's modern republican experience, by conducting a legal historical analysis whose focus was posed on Turkey's European integration process, officially started in 1999 with the formal recognition by the European Council of its candidacy, but whose fate is still uncertain.

Undoubtedly, Turkey has made important steps in the management of Kurds' minority rights (and human rights in general) over the past century, going from a Kemalist approach of complete denial on the ground that "(the state) is not a multinational state" and therefore it "does not recognize any nation other that the Turks"[148], to a progressive – yet imperfect – openness towards the recognition of their basic rights and freedoms. Once unable by law to even speak their own language, now the Kurds can have all-level (private) education in their mother tongue, they can enjoy Kurdish broadcasting on mainstream national media and carry out political activity in Kurdish. Today the Southeastern regions of Turkey are no longer subjected to frequent arbitrary states of emergency and the military forces do not break into civilians' houses and destroy their villages out of reasons of "counter-terrorism" anymore, although a definitive peace agreement with the PKK is far from being reached.

Many are the *lacunae* that still persist within Turkish human rights regime. Although the so-called Anti-Terror Law has been subjected to revision, it still provides for legal grounds that enable the arrest and detention of individuals for non-violent actions under terrorism-related charges (e.g. Kurdish rights advocacy or peaceful demonstrations that are considered linked to PKK activities).[149] Moreover, the village guard system remains untouched and the generalized climate of impunity still shields state officials from accountability, recently leading the Council of Europe to define it as "a very serious, long-standing human rights issue in Turkey".[150]

Overall, there is no question that throughout the past decades Turkey has achieved a remarkable advance in addressing and managing the Kurdish question, thanks to a certain degree of reformative action however, it shall not be argued that the principles driving such reforms (i.e. human rights, democracy and the rule of law, among the others) have been duly internalized and institutionalized by the domestic legislative, executive and judicial powers of Turkey. In the context of EU-induced democratization effort in fact, Turkish government has undergone the bare minimum of reforms, enough to keep EU's doors

[148] Constitution of the Republic of Turkey, 1924, Introduction.
[149] Kurban D., *Europe as an Agent for Change, 2014.*
[150] Council of Europe, Report by Muižnieks N., Commissioner for Human Rights of the Council of Europe, (Strasbourg 26.11.2013).

open, without necessarily transitioning to a functioning democracy. By doing so, the structural inequalities that constituted the primary and primordial crux of the Kurdish people remained, hence relegating Turkey to the *tactical concessions* stage of the Spiral Model, meaning that its reformative actions were merely rhetorical and carried out with an instrumental logic. Instrumental in that they served the purpose of satisfying the European institutions during the process of accession, where the country was subjected to their more or less severe oversight on multiple internal issues. Some scholars criticize this particular EU role, arguing that such oversight has been at times "incoherent and uncritical"[151], or even "ahistorical and non-contextual"[152], by referring in particular to the European Court of Human Rights and its sudden policy turn in 2006 with *İçyer* case. In this sense, by issuing the pilot judgment that would refer all displacement cases from Southeast Turkey to Turkish domestic mechanisms, the Court would have taken a biased decision based on the assumption that it was dealing with a democratic regime, and thus largely disregarding the authoritarian nature of many aspects of Turkish political system. As a consequence, some argue, this inconsistent European supervision would have facilitated Turkey's unwillingness to enact a genuine democratic transition but, rather, indirectly would have encouraged it – also through EU's endorsement of Turkey's post-9/11 counter-terrorism policies – to continue its bad human rights practice, especially against the Kurdish opposition movement.

Certainly, the current Kurdish human rights situation in Turkey does not depend exclusively on the EU intervention in the 2000s, in that there are a number of other domestic political factors that played a relevant role in the way the Turkish government managed its domestic politics, such as: the increasing political and economic leverage that Turkey has as a potential leader in the Middle East; the rise and wide consensus of Erdoğan's AKP party as well as the lack of a viable opposition in parliament; the long-standing conflict with the PKK and the 2016 attempted *coup*, among the others. While acknowledging the impact of these factors, the great impact that the EU has had as an agent of change is not to be underestimated. As soon as the membership conditionality became a powerful and "credible carrot"[153] in 1999, European institutions could get Turkey to undertake a project of policy changes with the view to fulfill the Copenhagen criteria. By doing so, they parallelly introduced themselves as a third party to the Kurdish question, which thanks to the integration process – and to a particularly propitious time of global history – obtained a growing resonance internationally, raising general awareness about minority rights and Kurds' long-time struggle for self-determination.

[151] Kurban, Europe as an Agent of Change, 2014, p.28.
[152] European Commission, *Democratization and Transnational Human Rights Regimes: A Case Study of Turkey and the European Court of Human Rights* (DEMTUREUROPE), 2017, Factsheet.
[153] Celik A.B., Rumelili B., *Necessary But Not Sufficient: The Role of the EU in Resolving Turkey's Kurdish Question and the Greek-Turkish Conflicts*, European. Foreign Affairs. Review, 203(11), (2006), p. 207.

The Kurdish movement benefitted from Turkey's EU accession process primarily through a wave of legal mobilization that brought to the filing of a considerable number of cases before the ECtHR, thus reporting the state violence and the wide-range displacement practice to the international community. The Court was at its "most innovative, boldest and most receptive"[154] in the period between the mid-90s and early 2000s, when a great number of Kurdish applicants from the Southeast could seek truth and justice, while simultaneously discrediting the state's official narrative of denial. Strasbourg's contribution to the Kurdish question, along with that of the other EU institutions, rendered justice and legitimacy to the Kurdish movement of Turkey and its minority rights claims, thus making forceful cultural assimilation a no longer viable option for Turkish nationalist governments.

However, dynamics within the EU-Turkey relationship changed after accession negotiations were officially opened in 2005, shifting from a productive and mutually beneficial dialogue back to a climate of distrust and skepticism. The well-consolidated AKP in fact engaged in a progressive halt in the implementation and enforcement of the "old" EU-induced reforms as well as in the adoption of few new ones which this time were in no way compatible with the European standards but, instead, recalled many of the undemocratic legacies of the past. As a consequence, the EU renewed significant doubts about Turkey's realistic prospects of membership, soon realizing it did no longer have much leverage on Turkey's political choices, also due to the country's growing power in the Middle East.

As of nowadays, neither Turkey nor the European countries seem eager to continue the accession talks, especially after the severe deterioration of the overall democratic process and the widespread abuses of human rights following the 2016 attempted *coup*, which led the European Parliament to recently vote for an official freeze of the membership process.[155]

In conclusion, the current political situation in Turkey does not certainly offer the ideal conditions for sincere and deep-rooted human rights culture and tradition – also considering that the EU is temporarily out of the process – and the Kurdish people residing in the country have still a long way ahead before seeing their right to self-determination addressed. However, the pan-Kurdish movement have witnessed in these past few decades an unprecedented growth and legitimation on the international level, which gave them the input for renewing their long-standing political aspirations for not only an autonomous self-ruled region within the national borders of Turkey, Iraq, Iran and Syria, but also for a one and unified Kurdistan, however far in the horizon it may seem.

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[154] European Commission, *DEMTUREUROPE project factsheet.*

[155] Reihlac G., *EU parliament calls for freeze on Turkey's membership talks,* Reuters, 13th March 2019, available at: https://uk.reuters.com/article/uk-eu-turkey/eu-parliament-calls-for-freeze-on-turkeys-membership-talks-idUKKCN1QU2LE

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