

KHRP DRAFT REPORT: **EDUCATION RIGHTS IN TURKEY**

Executive Summary

This report takes an in-depth look at the education rights of Kurdish people in Turkey. Although there have been more general examinations of the Turkish education system within the framework of minority rights, few such studies have attempted to elucidate minority rights through the human rights paradigm of education. This report analyses the current situation as it relates to the Turkish law and the Constitution, comparing the rights that are presently available to the minimum standards required by international treaties and obligations to which Turkey is party. The report concludes that Turkish law fails to meet the requirements of these international obligations in several areas, including individual and minority rights relating to non-discrimination, identity, and culture; education rights, specifically higher education rights; rights of freedom of expression and association; and rights relating to pluralism and cultural understanding in education. The purpose of this report is to highlight these discrepancies in the hope of effecting change in Turkey and creating an environment where education rights are available to all students, including Kurds and other minorities.

Education as a Human Right

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages ... [and] shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the UN for the maintenance of peace (article 26, Universal Declaration of Human Rights, UDHR).

Throughout human rights discourse, education has played a central role as a right in and of itself and also as a means of achieving other human rights. The aims of education enshrined in the UDHR are recognised as essential to both the individual on a personal level, in terms of realisation of the self, and to the individual as a member of society at large. The relationship between the individual and society is further developed in the International Covenant on Economic, Social and Cultural Rights (ICESCR) Articles 13 and 14. Adding to the aforementioned aims of education in the UDHR, the ICESCR recognises that education is 'the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.'

Education is therefore essential in the creation of a participatory and democratic society. Pluralism is at the core of this envisaged society, with the European Court of Human Rights (ECtHR) affirming many times that there can be no democracy without pluralism.¹ Article 2 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol 1), prohibits the denial of the right to education, and is aimed at maintaining pluralism in education, which is essential for the preservation of a democratic society as conceived by the Convention.² Although 'individual interests should on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail; a balance must be achieved which ensures the fair and proper treatment of minorities and avoids abuse of a dominant position.'³

Ethnic Conflict and Minority Rights

The use of education as a tool for fostering pluralism has become a central tenet of international policy, particularly in the past 20 years. Following ethnic conflict in areas such as in Eastern Europe, Russia and Yugoslavia in the 1990s, minority issues were placed high on the agendas of human rights bodies. State unity prior to such conflict was accomplished by developing an all encompassing national identity. In many states, any

¹ ECtHR, Appl. No. 21237/93, *Socialist Party and others v. Turkey*, judgment of 25 May 1998, paragraph 41

² Patrick Thornberry and María Amor Estebanez, Minority Rights in Europe: A Review of the Work and Standards of the Council of Europe, (Council of Europe: 2004), page 61

³ Thornberry (2004), page 68

cultural, linguistic, religious or ethnic differences were considered conceptually distinct from the political identity of citizens, and were consequently excluded from public life. This was an attempt to create a neutral state, free from factions of allegedly competing minority interests. However, as Rodolfo Stavenhagen has pointed out, 'in most cases of open ethnic conflict in the world today, the State is not an impartial onlooker or arbiter, but rather a party to the conflict itself. Indeed, in multiethnic societies, the State is frequently either controlled by, or identifies strongly with, a dominant or majority ethnic [group].'⁴

Cultural, linguistic, ethnic and religious differences have often been suppressed in the public domain. Many states have enforced policies of assimilation on their national minorities to destroy their individual way of life. Assimilation, as defined by the linguistic academic Tove Skutnabb-Kangas, is a combination of the forced disappearance of distinctive features of a group (that is, the loss of specific elements of material and non-material culture and subjectively the loss of the feeling of belonging to a particular ethnic group) and the adoption by the group of the features of another culture. Such adoption replaces the features of the initial culture and replaces it with a subjective feeling of belonging to the second culture.⁵

Although most states contain many different ethnic, religious, cultural or linguistic minorities, which coexist in relative tranquillity, there is arguably a link between the repression of minorities through policies of assimilation and ethnic fragmentation, which often leads to conflict. States that enforce assimilation may experience resistance from minorities, in many cases through separatist activities. This may in turn encourage groups to mobilise around factors such as ethnicity, language and religion, giving rise to ethnic fragmentation and conflict.

To avoid future conflict, there has been a desire for an integrative approach to minority groups, whereby there is a voluntary mutual additive 'learning' of other cultures that in turn enables there to be a choice of inclusive group membership and diminishes the likelihood of ethnic fragmentation.⁶ As opposed to assimilation, this integrative approach encourages both the structural and substantive incorporation of minority groups into a polity, and as such leads to the formation of a more cohesive state. At the core of such integration rest the core rights of minorities to non-discrimination, to respect and maintenance of identity (be it religious, cultural, language or other) and of wider participation in civil, political and cultural activities. As paragraph 30 of the Organisation for Security and Co-operation in Europe's (OSCE) Copenhagen Document states, the respect for the rights of persons belonging to national minorities is an essential factor for peace, justice, stability and democracy in the participating states. In a similar vein, Article 2 of the Universal Declaration on Cultural Diversity declares that 'policies

⁴ Rodolfo Stavenhagen, Ethnic Conflicts and the Nation-State (Palgrave MacMillan: 1996), page ??

⁵ Tove Skutnabb-Kangas, page 123

⁶ Skutnabb-Kangas

for the inclusion and participation of all citizens are guarantees of social cohesion, the vitality of civil society and peace.’ Thus defined, cultural pluralism gives policy expression to the reality of cultural diversity. An essential part of a democratic framework, cultural pluralism is conducive to cultural exchange and to the flourishing of creative capacities that sustain public life.

Pluralist outcomes can be attained when states adopt an integrationist policy towards minorities in all of their operations, including education, which is a key institution in a modern state. This requires that both the content and the structure of education encourage minority participation, not only for individuals belonging to minority groups, but also for minority groups *per se*.

The right to education in the context of international pluralist doctrine contains two pillars of protection specifically for minority groups: the right to non-discrimination and the right to identity. The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities distinguished between these two forms of protection:

1. prevention of discrimination – to prevent any action which denies to individuals or groups equality of treatment which they may wish; and
2. protection of minorities – the protection of non-dominant groups which, while in general seeking equality of treatment with the majority, also wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority.

As the UN Committee on the Elimination of All Forms of Racial Discrimination recognises, there are two concepts of equality of treatment, reflected in formal and substantive protections. Formal equality of treatment requires ‘non-preference making’ by the state, that is, the state, in all of its actions, should not favour an individual or a group of individuals over another by virtue of factors such as ethnicity, language, sex or religion. Substantive equality of treatment requires positive state action. Individuals and groups of individuals are given the right to claim from the state such provisions as are specifically necessary to put them on equal footing with other members of society.⁷ Many individuals are automatically placed at a disadvantage by virtue of their differences (for example, they cannot speak an official state language) and therefore require additional resources to ensure that they can access the mechanisms of the state without having to sacrifice their individual or group characteristics and identity. In such circumstances, appropriate differentiation of treatment does not constitute discrimination.

⁷ *Report of the Committee on the Elimination of All Forms of Racial Discrimination*, Official Records of the General Assembly, Forty-Eighth Session, Supplement No 18 (A/48/18)

Legal provisions protecting both formal and substantive equality of treatment are predominantly granted to the individual, as opposed to a group of persons. Classic human rights instruments, such as the UDHR, protect all individuals and thus, all members of minority groups. However, originating in Article 27 of the International Covenant on Civil and Political Rights (ICCPR), the concept of protecting the rights and freedoms of persons because of their membership in a minority group was developed in international discourse. This paradigmatic shift will be considered in the next section through the examination of its manifestations, namely the changing protections that it has provided.

What Constitutes a Minority?

There are two sets of criteria pertaining to minorities: objective criteria and subjective criteria. In the case of objective criteria, members of a minority group share an identity based on factors like culture, ethnicity, religion or language, and lack power relative to the dominant group. The subjective criteria include, for example, the group's wish to be seen as an ethnic, religious or linguistic group within society. Individuals within the group are free to choose whether they wish to be part of the group, without suffering any detriment based on their choice.

These two sets of criteria have been combined to form a standard definition of 'minority' proposed by Francesco Capportorti, Special Rapporteur of the Sub-Commission on the Prevention of Discrimination:

A group which is numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing to those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

The OSCE and the Council of Europe have clarified this description by providing a five-point definition of a national minority. It is a group of persons within a state who:

1. reside in the territory of the state and are citizens thereof;
2. maintain long-standing, firm and lasting ties with that state;
3. display distinctive ethnic, cultural, religious or linguistic characteristics;
4. are sufficiently representative, although smaller in number than the rest of the population of the state or of a region of that state;

5. are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.⁸

Despite their self-identification as a 'constituent people' of Turkey, Kurdish people living in Turkey clearly fall within the conception of 'minority group' provided by international standards, enabling them to take advantage of the rights this bestows under Turkey's international obligations. The Kurds constitute between 20 and 30 percent of Turkey's population (13-15 million people).⁹ They have their own shared identity, formed around language, including Kurmanji and Zaza, culture, including music, poetry and the arts, and a history distinct from that of the Turks. The subjective criteria of the Kurdish people include historical memories made up of myths, particularly evident in the yearly festival or Newroz, and distinct cultural characteristics. Kurdish languages have become a particular marker of Kurdish group identity.¹⁰

The use of the term 'minority' to define Kurdish peoples has been used in international discourse for the past 20 years. Thus, Kurdish people should be entitled to the minority protections granted in international documents.

Special provisions for minorities in education can fall into the aforementioned categories of rights to non-discrimination and the right to identity. Both of these are necessary for the formation of a pluralist state.

International Provisions Relating to Non-discrimination and the Right to Identity

Turkey is party to a number of human rights instruments which create obligations in regards to the rights of Kurdish people, based on their status as a minority group and as individual citizens of the Turkish Republic. These include the Treaty of Peace with Turkey signed at Lausanne in 1923 ('Treaty of Lausanne'), the UDHR, the ICCPR (ratified by Turkey in 2003), the International Convention on the Elimination of All Forms of Racial Discrimination, 1969, (signed by Turkey on 13 October 1972) the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 ('ECHR'), together with Protocol 1 (ratified by Turkey on 18 May 1984). These will be considered in the following section. Turkey is also party to the United Nations' Convention on the Rights of the Child, 1989 ('CRC'), (ratified on 4 April 1995, though Turkey issued a reservation on Articles 17, 29 and 30 maintaining that the minorities protected are those identified in the Treaty of Lausanne) and the ICESCR (ratified in 2003).¹¹ These contain specific provisions relating to minority education and as such will

⁸ PACE Recommendation 1202 (1993), <http://assembly.coe.int/default.asp>

⁹ Human Rights Watch, *Prospects in 2005 for Internally Displaced Kurds in Turkey*, <http://www.hrw.org/reports/2005/turkey0305/index.htm>

¹⁰ Amir Hassanpour, *The Identity of Hewrami Speakers in Anthology of Gorani Kurdish Poetry*, Anwar Sultani (ed) (London: 1998)

¹¹ The ICESCR was ratified by Turkey in 2003

be considered in greater depth in Section X, when specific education provisions for individuals and minority groups are examined.

In addition to legally binding agreements, Turkey has agreed to international instruments of relevance to members of the Kurdish population, which create political obligations for Turkey. These include documents relating to the OSCE, and the United Nations' General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992 ('UNGA Minorities Declaration').

There are additional international human rights instruments which Turkey has neither signed nor ratified. However, the relevance of them to the international progression of minority education rights is such that their inclusion in this paper is necessary, particularly as there is significant domestic and international pressure on Turkey to ratify them. They include the Framework Convention for the Protection of National Minorities, 1994 ('Framework Convention')¹², the European Charter for Regional or Minority Languages ('European Charter'), 1988, and the International Labour Organization's ('ILO') Convention Concerning Indigenous and Tribal Peoples in Independent Countries, No 169.

Legally Binding International Obligations

The Treaty of Lausanne

The Treaty of Lausanne contains provisions which protect minorities. Although the narrow definition of 'minority' used by Turkey within the Treaty of Lausanne included only non-Muslim minorities (and hence Turkey's Kurdish population, which is largely of Muslim, fails to qualify), the provisions for education at least set the standard for some minority groups. Article 40 created the necessary conditions for the establishment of private educational, religious, charitable and social institutions. Paragraph 2 of Article 41 added to this by guaranteeing that where a sufficient proportion of Turkish nationals belonging to the relevant minority group reside, such minorities are entitled to receive an equitable share of out of the public funds of the state, municipal or other budget for education, religious or charitable purposes. Paragraph 3 further provided that the children of non-Muslim minorities have mother tongue education at primary schools, on the condition that the Turkish Government retains the right to enforce obligatory Turkish language instruction in those schools.

These articles recognise the collective rights of non-Muslim minorities. However if these were superseded by international recommendations (in particular the aforementioned general comments to the ICCPR) Kurdish people would have far greater protection in terms of education rights, as not only do they offer negative rights of non-interference, but also the further reaching potential of mother tongue language instruction. However,

¹² This is the most comprehensive of the Council of Europe instruments touching on minority rights.

this has not been achieved. Moreover, the Turkish state has issued reservations on other legally-binding obligations (most notably the CRC, the ICCPR) requiring the minority protections to be applied only to the minority groups recognised in Lausanne. Thus, Lausanne's definition of minority has had wider reaching implications on Muslim minorities in Turkey.

The Treaty of Lausanne also contains provisions that protect Kurdish individuals with respect to their Turkish citizenship. Article 38 requires that the Turkish government assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion. Article 39 (4) provides that no restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, the press or in publications of any kind or a public meetings. Article 39 (5) establishes that, notwithstanding the existence of the official language, adequate facilities shall be made available to non-Turkish-speaking nationals when they appear in court.

The Universal Declaration on Human Rights

The UDHR, which is not binding, has no articles relating specifically to the rights of minority groups, though it does protect all members of minority groups through general non-discrimination provisions. Article 2 provides that everyone is entitled to all the rights and freedoms set forth in the declaration, without distinction of any kind on the basis of race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 7 provides that all are equal before the law and are entitled without distinction to equal protection of the law. This, when combined with Paragraph I of Article 26, which provides that everyone has the right to free education, prevents member States from negatively interfering in education, for example by denying Kurdish children the right to attend educational institutions on the basis of their ethnicity or religion.

In respect of group rights there again are additional provisions that protect these indirectly by prohibiting state interference in the expression of group identity. Article 19 provides that everyone has the right to freedom of opinion and expression and that this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media. Paragraph 1 of Article 20 provides that everyone has the right to freedom of peaceful assembly and association. Article 12 prohibits arbitrary interference with an individual's privacy, family, home or correspondence, and grants everyone the right to the protection of the law against such interference or attacks. Moreover, Article 27 (1) encourages pluralism by guaranteeing individuals the universal right to free participation in the cultural life of the community, enjoyment of the arts, and sharing in scientific advancement and its benefits.

The International Covenant on Civil and Political Rights

The ICCPR established wider minority protections, though only for individual members of a minority group. Article 2 (1) stipulates that State Parties undertake to respect and to ensure that the rights recognised in the ICCPR are granted without distinction of any kind on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 contains a 'free-standing' non-discrimination provision which provides that all persons are equal before the law and are entitled, without any discrimination, to the equal protection of the law. Article 17 (1) provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. In its General Comment 16, the Human Rights Committee clarified 'the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.'¹³

Paragraph 1 of Article 19 guarantees the inviolable right to hold opinions, and Paragraph 2 establishes the right to freedom of expression. This encompasses the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media. Restrictions on this may be imposed, but must be 'provided by law', and must be justified as being 'necessary' to protect others' rights and freedoms or to protect national security. Articles 21 and 22 respectively guarantee the rights of peaceful assembly and the right to freedom of association with others. The permissible restrictions on these rights again must be provided by law and be necessary for, *inter alia*, the protection of national security or of public order.

The most important protection afforded to minorities is in Article 27, which provides that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall have the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. Although this is framed in the negative – members of linguistic minorities shall not be denied the right to use their own language – the United Nations Human Rights Committee (UNHRC), the body which oversees and interprets the ICCPR, has recognised that Article 27 creates an obligation for State to take positive measure in support of linguistic minorities: 'positive measures by states may also be necessary to protect the identity of a minority and the rights of [its] members to enjoy and develop their culture and language... in community with other members of the group.'¹⁴ Furthermore, in the General Comment Number 23 on Article 27 (which is not

¹³ The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Article 17): 08/04/88. CCPR General Comment 16, paragraph 4

¹⁴ General Comment 23, 8 April 1994, at paragraph 6.2.

legally binding) the UNHRC declared that ‘the protection of [the rights in Article 27] is directed to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole.’

Although the ICCPR fails to clarify what constitutes a ‘minority’, the General Comment of the Covenant (April 1994) asserted that states can no longer solely determine whether a minority is said to exist or not within its territory. A minority is fact and not law. However, it must be noted that Turkey issued a reservation on Article 27, which means that Kurdish people residing in Turkey are not protected by it. This has been criticized by several states, including Sweden, Portugal, Germany and Finland, as being incompatible with the object and purpose of the ICCPR. Indeed this runs against established customary law as codified by the Vienna Convention on the Law of Treaties, which holds that reservations incompatible with the object and purpose of a treaty shall not be permitted.

The International Covenant on Economic, Social and Cultural Rights

The ICESCR approaches minority rights to education, but through specific provisions for education, and as such will be considered fully in the next chapter. However, for minority groups in general, the ICESCR recognises the need for substantive provisions in the protection of equality of treatment. Article 2, paragraph 2, like Article 14 of the ECHR and Article 2 of the ICCPR, provides that States party to the ICESCR undertake to guarantee that the rights enunciated in the ICESCR (including the right to education encapsulated in Article 13) will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Committee on Economic and Social Rights states that according to the Limburg Principles, ‘without discrimination’ allows for

special measures taken for the sole purpose of securing adequate advancement of certain groups or individuals requiring protection in order to ensure their equal enjoyment of economic, social and cultural rights are not considered discrimination, provided that such measures do not lead to the maintenance of separate rights for different groups and are not continued after their objectives have been achieved. This applies, for example, to an affirmative-action program.¹⁵

Article 13, paragraph 3, provides that State Parties are to undertake to respect the liberty of parents to choose schools for their children other than those established by the public authorities, as long as they conform to such minimum education standards as may be laid down or approved by the State. It also allows parents to take steps to ensure the religious and moral education of their children in conformity with their own convictions. Article 15, paragraphs 1 (a) and (b) recognise the rights of everyone to take part in

¹⁵ United Nations Committee on Economic and Social Rights, Fact Sheet No 16 (Rev 1)

cultural life and to enjoy the benefits of scientific progress and its application. Paragraph 2 provides that the steps to be taken to achieve the full realisation of this right shall include those which are necessary for the conservation, development and diffusion of science and culture.

Article 15 (1) guarantees the right of everyone to take part in cultural life, to enjoy the benefits of scientific progress and its applications and to benefit from the protection of the moral and material interest resulting from any scientific, literary or artistic production of which he is the author. Paragraph (2) establishes that the steps to be taken by the State parties to achieve the full realisation of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. Paragraph (3) obliges the State parties to respect the freedom indispensable for scientific research and creative activity. Paragraph (4) provides that the State parties to the ICESCR recognise the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

The International Convention of the Elimination of All Forms of Racial Discrimination

Article 1 (1) defines racial discrimination as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. The Committee on the Elimination of Racial Discrimination further stated that the identification of members from a particular racial or ethnic group shall 'be based upon self-identification by the individual concerned.'¹⁶

Article 2 (1) requires that State Parties undertake to pursue policies to eliminate racial discrimination in all forms and to promote understanding between all races. Measures to be taken in pursuit of this goal include abolishing laws and punishing persons or groups who perpetrate discrimination. Article 5 provides that State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the rights of all persons, without distinction as to race, colour, or national or ethnic origin, to equality before the law, including the right to nationality, the right to freedom of thought, conscience and religion, the right to freedom of opinions and expression and the right to freedom of peaceful assembly and association (5(d)). The fundamental cultural rights to education and training and to equal participation in cultural activities are highlighted in Article 5 (e).

Article 7 provides that State parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with

¹⁶ UN Doc. Identification with a particular racial or ethnic group (Art.1, Para 1 & 4)22/08/90. CERD General Recommendation 8 (General Comments)

a view to combating prejudice which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups.

The European Convention on Human Rights

The ECHR has altered the structure of minority protection within participating states. Its implementation policy has enabled cases to be brought directly to the attention of the ECtHR without the requirement of a reference from a domestic court, though cases must pass through all domestic judicial stages before reaching the ECtHR. Article 34 (formerly Article 25) of the ECHR provides that petitions may be directly received from 'any person, non-governmental organization or group of individuals claiming to be a victim of a violation.' Although 'minorities' are not owed rights¹⁷ and can therefore not claim minority rights, the ECtHR has recognised other groups as permissible claim-holders. Applications have been accepted from churches, political parties, trade unions, societies, companies, professional associations, and charities as well as from individuals. The relevance of this provision for members of minorities is great; individuals who have suffered from state abuses no longer have to work within the state legal system. This ensures not only an independent and un-biased litigation procedure, but also, if a state is found to have violated rights, the standards derived from the ECtHR's judgments will be legally binding.

Article 14 of the ECHR contains the only specific reference to minorities, and may be raised only in connection with the alleged violation of another convention right. It prohibits discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.' Together with Article 2 of Protocol 1 ('in the exercise of any functions which it assumes in relation to education and teaching, the state shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions') it is a potentially powerful tool in ensuring non-discriminatory provision of education. In the *Valsamis* case¹⁸, the ECtHR held that there are 'some positive obligations on the part of the State.' The State must include provisions which respect the religious or philosophical convictions of the parents.

However, in the *Belgian Linguistics Case*¹⁹, the ECtHR interpreted Article 14 in the context of Article 2 of Protocol 1 in a stricter way. In this case, the applicants argued that 'philosophical convictions' should be interpreted to include the cultural and linguistic preferences of the parents, and that the failure of the state to provide instruction in one of the state languages was a violation of their convention rights. However, the ECtHR held that Article 2 of Protocol 1 does not guarantee a right to ensure that public authorities create a particular kind of educational establishment. The distinction based

¹⁷ Thornberry (2004); 67

¹⁸ *Valsamis v Greece* (App, 21787/93), Judgment of 18 December 1996; (1997) 24 EHRR 294, paragraph 27

¹⁹ *Belgian Linguistic Case* (No. 1), Judgment of 23 July 1968, Series A, No 6 (1979-80) 1 EHRR 252

on language was defensible on the basis that the state was pursuing a justifiable policy of promoting linguistic homogeneity in the region, and moreover that the measures adopted were not disproportionate to the requirements of public interest. Thus, the court has refused to interpret the right to education to include the right to education in one's own language: it has simply maintained that access to existing educational institutions must not be discriminatory. Moreover, the applicability of Article 2 of Protocol 1 is limited in Turkey as a result of Turkey's reservation at the time of ratification of the ECHR. Turkey's reservation was based on the provisions of its Law No. 6366, which provides that Article 2 of Protocol 1 shall not affect the provisions of Law No. 430 of 3 March 1924 relating to the unification of education.

Protocol 12 proceeds to develop rights to non-discrimination. The preamble recognises that state parties should 'take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination' which does not prevent measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for the measures. This requires that equal situations are treated equally and unequal situation differently, though it recognises that positive obligations may be limited. By providing exceptions to the causal link between formal non-discrimination and the protection of equality of treatment, the Court opens the possibility for more substantive provisions for the realisation of equality.

Following Turkish concerns regarding the application of Article 14 in the Parliamentary Assembly's draft, the committee of experts observed that 'permission [for] the imposition of certain restrictions in the interest of territorial integrity, was accepted by the Committee on the clear understanding that it did not permit a restriction on the rights of national minorities to express their views by democratic means.'²⁰ However, it must be noted that Turkey has not ratified this provision.

Although the ECtHR has not directly supported substantive minority provisions, 'the broad strengths of the Convention include the pluralist ambience which extends to forms of association, ideas and ways of life, and the commitment to pluralist democracy of which the Convention is itself an expression.'²¹ However, weaknesses still remain, particularly in regards to the failure of the ECtHR to provide concrete recommendations for States in particular situations. It stated in *Beard v UK* that,

There may be said to be an emerging international consensus amongst the contracting states... recognizing the special needs of minorities and an obligation to protect their security, identity and lifestyle... not only for the purpose of safeguarding the interest of the minorities themselves but to preserve a cultural diversity of value to the whole community... However, the Court is not persuaded

²⁰ Thornberry (2004); 40

²¹ Thornberry (2004); 68

that the consensus is sufficiently concrete for it to derive any guidance as to the conduct or standards which contracting states consider desirable in any particular situation.²²

The Convention on the Rights of the Child (CRC)

The CRC provides specific and comprehensive requirements for education, which will be considered in the next chapter. However, there are additional non-discrimination provisions, as well as other protections designed to ensure that States protect the best interests of the child.

Article 2 (1) provides that State Parties respect and ensure that the rights contained in the Convention are protected without discrimination of any kind on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status of the child, his parents or legal guardian.

Article 3 (1) provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

In terms of protection for members of minority groups, Article 30 provides that a child belonging to an ethnic or linguistic minority shall not be denied the right, in a community with other members of his or her group, to enjoy his or her own culture or to use his or her own language. However, upon ratification Turkey reserved the right to interpret and apply Article 30. Under Article 31(1) State Parties must recognise the right of the child to participate freely in cultural life and the arts. Paragraph 2 provides that State Parties shall respect and promote this right and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Political Obligations

Accession to the European Union

In June 1993 the Copenhagen European Council set out the political criteria for EU accession. These stipulate that candidate countries must have achieved 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities', and are known as the 'Copenhagen Criteria.' Moreover the

²² Beard v UK, paragraphs 104-105, ECHR

Accession Partnership identified short and medium-term priorities for legislative changes in Turkey. Among the short-term priorities with respect to the political criteria for accession were strengthening legal and constitutional guarantees regarding freedom of expression in line with Article 10 of the ECHR, strengthening legal and constitutional guarantees regarding freedom of association and peaceful assembly and encouraging the development of civil society, and removing any legal provisions forbidding Turkish citizens' use of their mother tongue in TV/radio broadcasting. Among the medium-term priorities with respect to the political criteria was a guarantee of full enjoyment by all individuals without discrimination and irrespective of their language, race, colour, sex, political opinion, physical belief or religion of all human rights and fundamental freedoms, ratification of the ICCPR and its first optional protocol and the ICESCR, ensuring cultural diversity and guaranteeing cultural rights for all citizens irrespective of their origin, and abolishing any legal provisions preventing the enjoyment of these rights including in the field of education. In respect of these priorities, the Council decided in December 2004 that through its harmonisation packages, Turkey had 'sufficiently fulfilled' the Copenhagen Criteria, though as mentioned earlier, reservations on Article 27 of the ICCPR and Articles 13 and 15 of the ICESCR limited the impact of these on the rights of Muslim minorities in Turkey.

The Regular Reports on Turkey's Progress Towards Accession, issued annually by the Commission on Turkey's Progress Towards Accession, explicitly criticise Turkey's failures to sign and ratify these two instruments in the context of its treatment of its Kurdish population. To date, every Regular Report has highlighted the shortcomings of domestic law and practice concerning the cultural and linguistic rights of the Kurds.

The 2000 Regular Report noted with concern that Turkey had still not signed the Framework Convention and still had not recognised minorities other than those enumerated within the Treaty of Lausanne. The report stated that '[r]egardless of whether or not Turkey is willing to consider any ethnic groups with a cultural identity and common traditions as 'national minorities,' members of such groups are clearly still largely denied certain basic rights. Cultural rights for all Turks, irrespective of their ethnic origin, such as the right to broadcast in their mother tongue, to learn their mother tongue or to receive instruction in their mother tongue, are not guaranteed... In addition, these citizens are not given opportunities to express their views on such issues.'

In its 2001 Regular Report, the Commission observed that in spite of constitutional amendments purporting to widen freedom of expression, the actual situation had still not improved for persons who belong to groups outside the scope of the Treaty of Lausanne, notably in relation to education and broadcasting. It also specifically commented upon the lack of progress in the area of mother tongue education.

In its 2002 Regular Report, the Commission observed that, despite the reforms introduced by the three reform packages there had only been a limited improvement in the ability of ethnic groups to express their linguistic and cultural identity. The 2003

Regular Report again criticized Turkey's implementation of reform packages purporting to improve cultural rights established in the Framework Convention and European Charter.

In the 2004 Regular Report, the Commission again noted that Turkey had not yet signed the Framework Convention or the European Charter for Regional or Minority Languages. Regarding minority rights, cultural rights and the protection of minorities, the Commission positively commented upon the lifting of the Constitutional ban on the use of the Kurdish language, the possibility of teaching Kurdish, as well as the greater tolerance towards the use of Kurdish, but stated that despite the significant progress there are still considerable restrictions on the exercise of cultural rights, particularly in the areas of education and broadcasting. Moreover, the commission noted that of particular hindrance to these rights were the reservations made by Turkey to articles in the ICCPR and ICESCR. These limitations prevent minorities, such as the Kurds, from being granted additional protection in the right to education and the rights of minorities. As regards the fight against discrimination, the Commission stated that progress since 1999 has been limited, particularly because additional protocol No. 12 to the ECHR on the general prohibition of discrimination by public authorities has not been ratified.

Given the repeated reference to Turkey's non-ratification of the Framework Convention and the European Charter for Regional or Minority Languages, it is appropriate to make reference to the provisions as contained in these as a convenient measure of Turkey's progress towards meeting the Copenhagen criteria with respect to minorities. These will both be considered shortly.

Despite the reservations over Turkey's progress in civil and political rights, as expressed in the Commission's report on Turkey's Progress Towards Accession's, on 6 October 2004 the European Commission concluded in its recommendation that Turkey had sufficiently fulfilled the criteria necessary to open accession negotiations. This was endorsed by the European Council on 17 December 2004. However, the Commission still continues to monitor Turkey's progress in human rights reform, particularly in relation to the adoption of the *acquis*, that is, the body of economic, social, administrative and environmental legislation that all member states of the EU must implement.

The Organization for Security and Co-operation in Europe

The OSCE has developed policies pertaining to substantive minority education rights. Although the OSCE is a political body whose provisions are not legally binding, it is a standard setting instrument whose importance is derived from the expression of normative values of the participating states.

In respect to national minorities, the OSCE has the aforementioned two pillars of protection, namely the right to non-discriminatory treatment in the enjoyment of rights, and the right to the development and maintenance of cultural identity through the

freedom to practice or use those special and unique aspects of their minority life (typically culture, religion and language).

The document of the Copenhagen meeting of the conference on the Human Dimension of the OSCE (1990) was in line with the first pillar by holding that minorities should have the right to maintain their ethnic, cultural, linguistic or religious identity, the right to seek voluntary and public assistance to do so in educational institutions and the right to not be subjected to assimilation against their will. Furthermore paragraph 35 requires OSCE states to respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities.

Specifically for minority language education, the Copenhagen conference promoted the idea that the attainment of multilingualism by national minorities is the most effective way of meeting objectives relating to their protection and integration. Rather than approaches whose objective is to teach the minority language only with a view to facilitating an early transition to teaching exclusively in the state language, the convention considered the extent to which both languages could be used in different phases of the child's education.

Adding to the provisions produced at Copenhagen, the Vienna document (1991) aimed to, among other things, promote the integration of ethnically marginalised groups into the school system. Importantly the Vienna document stressed that the lack of opportunities for minority groups to learn their mother tongue could restrict their access to education. It considered the use of mother tongue instruction as a means of integration, rather than of separation, believing that if members of minorities achieved a solid base in their mother tongue, they would also acquire confidence in approaching the state language. Furthermore it provided that the content of education should be subjected to principles of non-discrimination, being evaluated so as to eliminate all racist, ethnocentric, nationalistic and discriminatory notions, and that teachers should be trained to respect principles of tolerance. This document altered the policy of non-discrimination from a negative right to a positive right, thereby demanding positive state action to protect the equality of minorities.

The Hague Recommendations Regarding the Education Rights of national Minorities extended these rights even further, containing the most substantive provisions of the OSCE documents. Article 1 provides that bilingualism is a right of persons belonging to national minorities, and articles 11 to 13 recommend that mother tongue medium education be implemented at all levels, including through the employment of bilingual teachers whose dominant language is the minority language. In the explanatory note it was concluded that submersion-type approaches to education, where minority children are entirely assimilated into classes with children of the majority with the state language as the sole medium, are not in line with international standards.

The Hague Recommendations also focused on the right of minorities to participate in matters affecting them. Article 15 provides that 'states shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.' In respect of education, it would not be in accordance with The Hague Recommendations to allow decisions on educational curricula that affected minority interest to go ahead without appropriate minority participation. In addition to the Hague recommendations, a subsequent document known as the Helsinki document provided that all people have the right to participate fully in the political, economic, social and cultural life of the countries through democratic participation in decision-making and consultative bodies at the national, regional and local level. The necessary conditions of participation would include consultation over legislative measures, the involvement of minority representatives in the preparation, implementation and assessment of national and regional development plans and programmes likely to affect them directly. In essence, a more demand-sensitive (with a greater number of access points to decision-making) and less centralised education system would be required.

The United Nations General Assembly Minorities Declaration

This Declaration was adopted by the General Assembly of the UN, without a vote, on 18 December 1992. Being a declaration, it can only make recommendations and not bind state parties, though it affirms political commitment to certain issues, most importantly the substantive protection of the identity of members of minority groups.

Article 1 provides that States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.

Articles 2 through 4 substantively protect the identity of members of minority groups. Article 2 (1) stipulates that minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. This article also requires that these persons have the right to participate effectively in cultural, religious, social, economic and public life, the right to establish and maintain their own associations, and the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities as well as contacts with citizens of other States with whom they share national or ethnic, religious or linguistic bonds.

Article 3 provides that minorities are not subject to discrimination, and Article 4 ensures that states take measures where required to ensure that such persons may exercise fully and effectively all of their human rights and fundamental freedoms without any discrimination and with full equality before the law. Paragraphs 2 to 4 make a number of significant recommendations to State parties: to take measures to create favourable

conditions which enable such persons to express their characteristics and to develop their culture, language, religion, traditions and customs; to take appropriate measures in order to provide such persons with adequate opportunities to learn their mother tongue or to have instruction in their mother tongue; to take measures in the field of education in order to encourage knowledge of the history, traditions, languages and culture of the minorities existing within their territory.

Article 5 provides that national policies and programmes shall be planned and implemented with due regard to the legitimate interests of persons belonging to minorities. Article 2 (3) provides that persons belonging to minorities have the right to participate effectively at national and, where appropriate, regional levels in decision-making processes that concern them.

International Instruments to which Turkey is not yet Party

The Framework Convention

The Framework Convention, produced by the Council of Europe and which Turkey has not, to date, ratified, tried to convert the political norms of the OSCE into legal norms. It provides that states undertake 'to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity. Article 3, paragraph 1, establishes that the very persons belonging to a national minority shall have the right freely to choose to be treated or not to be treated as a member of the minority, and that no discrimination shall result from such a choice.

Most importantly, Article 4, paragraphs 1 and 2 provide that State Parties are to guarantee to members of national minorities the right to equality before the law and of equal protection of the law. The state parties must also take adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between members of national minorities and members of the majority. The essence of the measures in Article 4.2 of the Framework Convention is thus the correcting of conditions which impair the enjoyment of the rights in the Convention.²³ This provision effectively sanctions the use of measures of so-called 'positive discrimination' which may be necessary to ensure equality of treatment of disadvantaged members of society, such as members of national minorities.

Article 5, paragraph 2 requires state parties to refrain from policies or practices aimed at assimilating persons belonging to national minorities against their will.

²³ Thornberry (2004) p.101

In terms of language provision, Article 10 states that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing. It continues by providing that in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to create conditions facilitating the use of the minority language in relation to the administrative authorities.

As regards the use of minority languages in the education process, Article 13 provides that State Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language, and that in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities of being taught the minority language or for receiving instruction in their language.

In respect of the protection and promotion of minority identity through the content of education, Article 12 demands that state parties take measures in education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority. This recognises the value of fostering intercultural education by in creating a climate of tolerance. Furthermore, provisions for participation in wide areas of public and social life prevent decisions on educational curricula that affect minority interests going ahead without appropriate minority participation. Participation would include the following measures (Article 15):

- I. Consultation...when parties are contemplating legislation or administrative measures likely to affect them directly;
- II. Involving these persons in the preparation, implementation and assessment of national and regional development plans and programmes likely to affect them directly;
- III. Undertaking studies, in conjunction with these persons, to assess the possible impact on them of projected development activities;
- IV. Effective participation...in...decision-making processes and elected bodies both at national and local levels;
- V. Decentralized or local forms of government.

The Framework Convention attempts to find a balance between integration and separation. It 'suggests ways and means through which a balance is to be achieved between the separate domain of shared rights and responsibilities.'²⁴

The European Charter

The European Charter, which again Turkey has not signed nor ratified, is the second important 'minorities' instrument of the Council of Europe. Part 11 of the European Charter imposes a range of general obligations on States with respect to their 'regional or minority languages'. In essence, the European Charter provides that 'the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the ICCPR and according to the spirit of the ECHR. Underlying the European Charter is the recognition of language as an expression of cultural wealth, and the respect of the geographical area of each regional or minority language (Article 7.1 b). Within article 7 participants recognise the need for positive action for the benefit of regional or minority languages, the guarantee of the teaching and study of the languages, the provision by states of facilities for non-speakers of these languages to gain knowledge of them and the establishment of bodies to represent the interest of regional or minority languages. These bodies, be they NGOs, regional or local authorities should act as the bridge between the State and linguistic communities. The Charter supports the use of such organisations in the initiation of ideas, the maintenance of good relations between the state and local communities, the regulation of state policy and in their development of a suitable language policy in conjunction with the state apparatus. Furthermore the charter widens the discourse surrounding non-discrimination by recognizing that the application of special measures for regional or minority languages is not an act of discrimination against users of other languages (Article 7.2). Although the direct aims are to promote regional or minority languages and not linguistic minorities *per se*, the development of such rights clearly has direct implications on members of a minority group.

Article 8 of the European Charter supports the accommodation of minority identity in state education, and provides a framework of action for this. Recognizing the varying demand for minority or regional language instruction between states and regions, it gives state parties some discretion in determining the level of such educational provisions that it should offer. In respect of pre-school education, Article 8 provides that state parties shall make available such education in the relevant regional or minority languages, or make available a substantial part of pre-school education in such languages. In respect of primary and secondary education, state parties must either make it fully or substantially available in the regional or minority languages, or make the teaching of such languages an integral part of the curriculum. At all stages of education, Article 8 requires that state parties make arrangements to ensure the teaching of the

²⁴ A. Eide, *Possible Ways and Means of Facilitating the Peaceful and Constructive Solution of Problems involving Minorities*, UN Doc. E/CN.4/Sub.2/1993/34, section II

history and the culture which is reflected by the regional or minority language, and that they provide basic and further training to teachers required to use the language of instruction. Moreover, Article 8 requires state parties to establish supervisory bodies for monitoring the measures taken.

The ILO Convention 169 (the ILO Convention)

The ILO Convention, which Turkey is not a party to, protects the rights of indigenous and tribal peoples. The ILO Convention defines tribal peoples as those whose social, cultural and economic conditions distinguish them from other sections of the national community.²⁵ In relation to indigenous peoples, the ILO Convention applies to those who, 'on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.'²⁶ Parallel to the subjective definition of minority offered by Francesco Capportorti, Special Rapporteur of the Sub-Commission on the Prevention of Discrimination, the ILO Convention recognises that self-identification as indigenous or tribal is a fundamental criterion for determining the groups to which the provisions apply.²⁷

The ILO Convention has substantive protections for tribal and indigenous peoples. In respect of identity, Article 2 provides that state parties should not only ensure that such peoples benefit on an equal footing from the rights and opportunities which national laws grant to other members of the population, but should also promote the full realisation of their social, economic and cultural rights with respect for their social and cultural identity, their customs and traditions and their institutions.

Article 5 requires state parties to develop policies to mitigate the difficulties experienced by these peoples in facing new conditions of life and work. Narrowing the socio-economic gaps between these peoples and the national majority, as well as protecting their cultural and spiritual identity, are central aims of the ILO Convention. State parties are required by virtue of Article 6 to seek such aims through the co-operation and consultation with the peoples concerned.

In respect of education, Article 26 provides that state parties should ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community. This includes the requirement that programmes and services incorporate their histories, knowledge, value systems and socio-economic and cultural aspiration. Article 28 provides that wherever practicable, peoples concerned shall be taught to read and write in their indigenous

²⁵ ILO Convention No 169; Article 1, paragraph a

²⁶ ILO Convention No 169; Article 1, paragraph b

²⁷ ILO Convention No 169; Article 1 (2)

language, and that measures shall be taken to preserve and promote the development and practice of the indigenous languages. Article 31, which concerns the content of education, provides that efforts should be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of indigenous and tribal peoples.

Responsibility for Minority Rights

Flowing from international conventions and agreements, state parties are still the primary duty-holders in respect of the protection and promotion of minority rights: it is they who are legally or politically bound by them. As such, Turkey's failure to recognise Kurds as a minority group has meant in practice that they have been afforded few of the protections granted by international conventions and agreements. International mechanisms involved in the protection of minority rights do allow for a wide margin of discretion regarding the extent and method of their implementation. From state to state the situations of minorities vary considerably, and as such, international legal and political formulations are designed to enable the state to accommodate the particular minority circumstances. The Committee on Migration, Refugees and Demography recognised the need for a flexible approach (in reference to the Council of Europe's Framework Convention) to minority right protection when stating that,

[the] numerous conditions and reservations included in several articles ... ('if those persons so request,' 'where there is sufficient demand,' etc.) in fact mean that the Convention determines that practical decisions in the field of implementation of minority rights must be a result of constructive dialogue between national Governments and minorities.²⁸

This flexible and consultative approach demands that states adopt a 'best interest' approach to minority issues to enable the formulation of effective solutions to minority demands. The discretion afforded to states doesn't obviate the fact that there are clear obligations to pursue certain policies and achieve certain results.

The Individual's Right to Education

In line with the central educational aim of developing the human personality, Article 29 of the CRC demands that state parties direct education to:

²⁸ <http://assembly.coe.int>

- a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;
- b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the cultural values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own;
- d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- e) the development of respect for the natural environment.

To achieve such aims, the obligations placed on states in respect of education must include three levels: respect, protection and fulfilment. In its General Comment no. 13 on the right to education as enshrined in Article 13 of the ICESCR, the Committee clarified the content of these levels of obligation.

The obligation to respect requires State parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires state parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfil (facilitate) requires states to take positive measures that enable and assist individuals and communities to enjoy the right to education. Finally, state parties have an obligation to fulfil (provide) the right to education. As a general rule, state parties are obliged to fulfil (provide) a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realise the right themselves by the means at their disposal. However, the extent of this obligation is always subject to the text of the Covenant.²⁹

The Committee proceeds to qualify the conditions necessary for the states' provision of education. Although such requirements are not legally binding, they set norms that state parties should abide by so that the legally protected rights to education can be realised substantively. In the General Comment on Article 13, the Committee requires that education be composed of four essential features: availability, accessibility, acceptability and adaptability. Although the precise and appropriate application of these will depend upon the conditions prevailing in a particular state, they must nonetheless be respected

²⁹ The right to education (Art. 13): 08/12/99.E/C.12/1999/10. (General Comments), paragraph 47

and exhibited in order to ensure that education fulfils its primary aims, that is, the full development of the personality. These four essential features will display the following characteristics:

- (a) availability - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the state party. What they require to function depends upon numerous factors including the developmental context within which they operate. For example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on, while some will also require facilities such as a library, computer facilities and information technology;
- (b) accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the state party. Accessibility has three overlapping dimensions:
 - non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds;
 - physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (for example, a neighbourhood school) or via modem technology (for example, access to a 'distance learning' programme);
 - economic accessibility - education has to be affordable to all. Primary education must be available 'free to all', and state parties are also required to progressively introduce free secondary and higher education;
- (c) acceptability - the form and substance of education, including curricula, teaching methods, have to be acceptable (that is, relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents. This is subject to the educational objectives required and such minimum educational standards as may be approved by the State. a
- (d) adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings. This requires a high degree of participation by citizens in the formation of NGOs and trade unions. Furthermore it requires a

demand-led approach to education where the interest of the child is considered to be of primary importance.³⁰

The aforementioned ICESCR document provides substantive criteria for the realisation of an individual's right to education. However the content of it is not strictly binding, acting solely as an authoritative recommendation. As such, individuals, particularly those belonging to national minorities, are placed in a weak position regarding education, as they are at the whim of state parties who can interpret the right to education to suit their agenda. However, in addition to the right to education there are other legal rights which lend themselves to the substantive realisation of it, and which predominantly fall within the remit of the right to non-discrimination. These will be examined through the framework provided by the ICESCR's essential components of education.

Accessibility and Acceptability

For an education system to be acceptable, it must first be designed in the best interest of the child, so that s/he can develop her/his intellectual abilities to the greatest degree possible. Secondly, it must aim to create a pluralist society in which there are high levels of participation by individuals and groups of people. In all international documents which protect the right to education there are non-discrimination clauses which support the content of the whole document. Like Article 14 of the Universal Declaration, Article 2 of the ICCPR, and Article 14 of the ECHR, Article 2 (paragraph 2) of the ICESCR protects the right to education (Article 13) by providing that States guarantee that the rights enunciated in the ICESCR will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Non-discrimination is therefore conceived as an essential component in the realisation of the right to education. The UNESCO Convention against Discrimination in Education defines discrimination as 'a distinction, exclusion, limitation or preference which, being based on...language, has the purpose or effect of nullifying or impairing equality of treatment in education.'

Language

When the aims of education are combined with right to non-discrimination, topical questions arise regarding the education of children from minority groups. In terms of the acceptability of education, the most significant discussion concerns the inclusion of the minority language and culture in the education process. For this there are three levels of discussion: first, the effect that non inclusion of minority culture and language has on children from minority groups within the majority's education system, and how this

³⁰ General Comment 13 (The right to education), 8 December 1999, at paragraph 6

relates to non-discrimination provisions and the best interest of the child, second, the effect of such non-inclusion on the formal right to identity of both individuals belonging to minority groups and minority groups per se (i.e. does the state interfere in such rights), and third, how education should be adjusted to substantively protect the identity of members of minorities.

Language Protections Under the Best Interest of the Child and Non-discrimination Provisions

The main issue concerning the acceptability of education for members of minority groups concerns the language medium of instruction. Studies by linguistic theorists, most notably Skutnabb-Kangas, have claimed that education in non-mother tongue languages impedes and may even have a negative consequence on the child's cognitive and emotional development. This is because the natural cognitive development, beginning at home and continuing through the school years, comes to an end when the mother tongue is taken out of the learning process and an entirely new language is introduced. The mother tongue suddenly gets withdrawn from its role as the medium of personalisation at a point when it has not been fully grasped by the child. As it is through the medium of instruction that the child will be subject to and will acquire the disciplines involved in formal education (such as literacy, mathematics, etc.) this lack of proficiency will, at least until the child learns the state language, impede his ability to develop at the same speed as children from the majority group. As the UN Special Rapporteur on education cited, children whose mother-tongues are not Turkish are very likely to struggle to keep pace in reading and writing exercises and eventually to drag behind the class, falling out of favour with the teachers and finally dropping out of school.³¹ The effects of mono-lingual education in the state language also include the failure of minority children to develop feelings of self-respect, self-worth and self-reliance which are derived from success in the context of education.

Thus, not only primary socialization and intellectual development, but also emotional development, are maximised if the early years of schooling are delivered through the medium of the child's mother-tongue. The OSCE's Hague recommendations reflect this view stating that 'the first years of education are of pivotal importance in a child's development' and that 'educational research suggest that the medium of teaching at the pre-school and kindergarten levels should ideally be the child's language' (paragraph 11) Furthermore, 'research also indicates that in primary school, the curriculum should ideally be taught in the minority language' (paragraph 12). Mother tongue provisions are necessary, therefore, because, as the UN Special Rapporteur on education notes, 'the right to education entails adaptation to each child rather than forcing children to adapt

³¹ Report by Katarina Tomasevski, UNESCR Special Rapporteur on the right to education, Mission to Turkey, 3-10 February 2002

themselves to whatever education may be provided.³² An 'equal' baseline means serious substantive inequalities for those who aren't taught in their mother tongue.

At the Education for All Summit (1993), the resultant Delhi Declaration and Framework for Action supported initial instruction in the mother-tongue, because it 'may in some cases be necessary for the students to subsequently master a national language' that they will require 'if they are to participate effectively in the broader society of which they are part.' A strong base in the mother tongue aids the development of the state language. Thus, it is in the best interest of the state to provide mother tongue instruction so that in the long term children will have a better grasp of the national language, thereby facilitating greater integration and participation of minority groups in society. Mono-lingual education policies clearly display a preference for the linguistic majority over the linguistic minority (which is disadvantaged by a lack of proficiency in the chosen language). As UN Rapporteur Ammoun claimed in his Study on Discrimination in Education, 'compulsory teaching in a single language, and *a fortiori*, [the] prohibition of the teaching of the language and cultural heritage of a distinct group, have in some cases constituted a formidable instrument of oppression and discrimination, especially where the schools possessed by the group are closed or transferred to the dominant group against the will of the members of the distinct group.'³³ This forced transfer is firstly classed as assimilation, and therefore violates Article 5 (2) of the Framework Convention. Furthermore if there is no inclusion of the child's mother tongue in the educational process, s/he, in common with members of his/her minority group, will clearly be subjected to discrimination, as the education available to him will fail to provide him with equal capabilities. This arguably violates the non-discrimination protections provided by Article 2 (1) of ICCPR and Article 2 of the Universal Declaration and Article 14 of the ECHR, which stipulate that individuals are entitled to the equal protection of the law and that the state must protect all rights (including the right to education) without distinction of any kind, such as language. More explicitly, the Convention against Discrimination in Education specifies that 'the members of national minorities [have the right] to carry on their own education activities, including... the use or teaching of their own language, provided [that this does not] prevent the members of minorities from understanding the culture and language of the community as a whole and *from participating in its activities*'³⁴. Support, at a minimum, would involve the provision of additional language lessons for children whose mother tongue is not the medium of instruction in schools.

Language Protections Under Identity Provisions

³² Report by Katarina Tomasevski

³³ UN Rapporteur Ammoun (1957), Study on Discrimination in Education, UN Document E/CN.4/Sub.2/181/Rev.1

³⁴ 1960 Convention against Discrimination in Education, Article 5

In terms of minorities and language usage, a fairly wide agreement today is that ethnicity is 'a social construct based on a cluster of factors, language being the most common, and that its primary function is the assertion of a group's distinct identity.'³⁵ This distinct identity is both internal, that is, how an individual or a group identifies him/her/itself, and external, that is, how society identifies the members of a minority group. In terms of external identification, if a language is denied to a particular group or worse still, is faced with policies of destruction, then society may see the group's identity as inferior to that of the majority. After all language loss is not only a linguistic issue; it has more to do with power, prejudice, unequal competition and, in many cases, overt discrimination and subordination.

As well as constituting identity, language functions as the bridge between isolation and community; it is the means by which individuals operate in society. To be able to access economic resources and political power, an individual must be able to communicate with others. If an individual is unable to express him/herself as competently as others and, moreover, if other members of society discriminate against him/her because of this factor, s/he will be unable to function equally in society. S/he will be deprived of capabilities. For, 'choices of language, especially in the public sphere of governance, directly affect the enjoyment of not only culture but also access to important public goods, not to mention participation in governance itself.'³⁶ Such public goods include education, employment, benefits, and wider services provided by the state. This denial of equal access to education, and unequal standards of educational attainment between members of minorities and members of majorities, will inevitably lead to unequal access to jobs and political power by such groups and the subsequent intergenerational transmission of inequality. Indeed, a recent World Bank report suggested that the average income of adults with higher education is almost six times that of illiterate adults. Furthermore, the same report claimed that differences in education standards account for as much as 22 percent of total income inequality between households.³⁷

When language is perceived as a marker of group identity and as a determiner of access to political power and economic resources, then the probability of language conflict increases and ethno-linguistic groups may be mobilised around issues of language. Such inequalities are likely to foster feelings of resentment, hostility and in many cases separatism. Thus, the denial of language rights has wide implications on issues of national and international security. This fact is particularly ironic in the case of Turkey, seeing as it is on the grounds of national security that minority languages, most notably Kurdish, are denied.

³⁵ Skutnabb-Kangas (2000), p. 84

³⁶ Packer, minority languages through the work of OSCE institutions

³⁷ World Bank, Secondary Education Project, 16 February 2005

As education is a key institution in the apparatus of the modern nation-state, the debates surrounding minority languages must also incorporate the education system. 'Next to the family, education is the single most important agency for cultural reproduction, socialization and identity formation.'³⁸ Through education, both the methods of instruction and its ideological and cultural content can shape the perceived importance of cultures and languages. If a particular language and culture is pushed out of the sphere of education, it will be consigned to an inferior status. This will both affect the individual's sense of him/herself and of his/her ethnic, religious or cultural group, which will consequently foster bad civic relations. In order to avoid this, the culture, history and traditions of minority groups should be developed in a positive way, and not subject to the distortion which produces low self-esteem in the group and negative stereotypes in the community. Likewise 'linguistic and educational processes have also linked dominant language varieties inexorably to modernity and progress, while consigning their minority counterparts to the realms of primitivism and stasis.'³⁹ This will compound the problem of minority identity, as it will encourage minority citizens to favour the majority culture and distance themselves from their own group identity, thereby encouraging assimilation.

To avoid this situation, states accept the responsibility of dispelling the myth that monolingualism and mono-culturalism are synonymous with development and progress. This can only be achieved by actively encouraging multi-lingualism in its functions, most importantly through education. All languages should be given status in schools so that individuals do not have to reject their identity in order to climb some perceived hierarchy.

For the child, submersion in mono-lingual education will lead to the loss of mother tongue competency. As language is a defining criterion of ethnic identity, this will prevent the child's development of his own cultural identity, language and values, which are protected in Article 26 of the Universal Declaration. As Hillgruber and Jestaedt, from the UN Working group on Minorities, reported in the group's 3rd session, 'the right of persons belonging to minorities to learn and have instruction in their mother tongue is one of the cornerstones of their existence and identity.'⁴⁰ In line with Article 1 of The Hague Recommendations, the right of persons belonging to national minorities to maintain their identity can therefore only be fully realised if they acquire a proper knowledge of their mother tongue during the educational process.

An absence of mother tongue instruction will threaten the child's identity. This is in breach of Article 8 of the CRC which requires that state parties respect the right of the child to preserve his or her identity, including nationality, name, and family relations as recognised by law, without unlawful interference. Likewise, Article 30 stipulates that in

³⁸ Henrard (2000), p. 256

³⁹ May (2001), p.310

⁴⁰ Henrard (2000); 258

States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child shall not be denied the right, in community with other members of his or her group, to 'enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.' However, Turkey placed a reservation upon signature of the CRC which enables it to reserve the right to interpret and apply the provisions of Articles 17, 29 and 30 'according to the letter and the spirit of the Constitution of the Republic of Turkey and those of the Treaty of Lausanne. Professor Oguz Polat, who is known for his work on children's rights in Turkey, has viewed these reservations on the CRC as impinging upon the rights of Kurdish children, particularly in relation to mother tongue instruction.⁴¹ For the realisation of all children's right to education, Turkish reservations on the CRC should be withdrawn.

Furthermore paragraph 2 of Article 8 of the CRC demands that where a child is illegally deprived of some or all of the elements of his or her identity, state parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity. This again would support, additional mother tongue language classes at school. The loss of mother tongue competency will moreover have direct implications on the child's family, as the child will no longer be able to fully communicate with his parents, his family and his language community. This situation can arguably be viewed as being a state intrusion into the individual's private life, which is strictly prohibited in most human rights documents. Article 8 of the ECHR, Article 17 (paragraph 1) of the ICCPR, Article 2 of the UNGA Minorities Declaration, and Article 12 of the Universal Declaration all prohibit states from subjecting individuals to arbitrary or unlawful interference with his privacy, family, home or correspondence. Likewise Article 8 of the CRC requires that state parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.

Although these provisions have been interpreted to prevent the negative interference by state parties in private affairs, the state can clearly affect the private sphere of an individual's life, including his identity, by action within the public sphere. The distinction between public and private is not clear cut. Article 29 of the CRC goes some way to address this distinction when it requires that states provide for the development of respect for the child's parents and his or her own cultural identity, language and values. This does not simply require non-interference in the private life, but encourages substantive promotion of identity. Likewise, the Strasbourg institutions have accepted that Article 8 of the ECHR extends protection against measures which can threaten ethnic identity, encompassing those perpetrated both in private and in public.

Within schools and other educational establishments, individuals should be encouraged to develop their intellect and cultural values freely without unwarranted interference by the state. They must be able to speak and express themselves without fear of punitive

⁴¹ www.bianet.org, 25 November 2004, Mother tongue Problem in Children's Rights

action. Freedom of expression is protected in both non-binding and binding human rights instruments. Article 19 of the Universal Declaration and Article 10 of the ECHR, provide that everyone has the right to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas without interference by public authority. Although there is room for the state to apply restrictions to these freedoms (namely 'protection of national security and territorial integrity, and the prevention of disorder and crime'⁴²) it seems unlikely that a child expressing himself in a school would warrant such interference.

Specific Protections for Mother Tongue Instruction in Schools

Mother tongue education is essential for the acquisition of cultural techniques, the acquisition of the state language, the development of the personality and identity, the development of capabilities to access social and economic goods and for the ability to communicate with the family and community. In respect of the minority group, it is necessary for the protection of minority identity, the participation of minorities in society, and to avoid discrimination and exclusion of minorities which so often causes ethnic fragmentation. The consequences of non-inclusion are that the full development of the child is not realised, the identity of both the child and of the minority group is denied, the child and the minority group are discriminated on the basis of language, and the private life of the child is illegitimately intruded upon. These negative consequences, as discussed, are prohibited by major international treaties and conventions. Despite the clear and established link between the denial of mother-tongue instruction and the aforementioned consequences, there are relatively few international legally-binding which address mother tongue instruction itself.

The work of the Ad Hoc Committee responsible for the UN Convention on the Prevention and Punishment of the Crimes of Genocide, 1951 (the 'UNPCG') attempted to prohibit what it termed linguistic (and cultural) genocide, i.e. the forced destruction of a minorities language, including through education. In discussions around the UNPCG, the Committee provided an additional Article (3) which specifically approached linguistic rights of minorities, though it was rejected before the convention came into force. Article 3 prohibited;

Any deliberate act committed with intent to destroy the language, religion or culture of a national, racial or religious group on grounds of national or racial origin or religious belief, such as;

1. Prohibiting the use of language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group.

⁴² Convention on the Rights of the Child, Article 10.2

2. Destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group.⁴³

By this definition, assimilating minority groups into mono-lingual state schools where they cannot use their mother tongue, as well as preventing minority private schools and language schools constitutes linguistic genocide, though no legal protections are in force due to the rejection of Article 3 in the final convention. However, aspects of educational assimilation are prohibited in Article 2 of the UNCPG, which has been signed and ratified by Turkey. Paragraph (b) prohibits the state from causing serious bodily or mental harm to members of the group, and paragraph (e) prohibits it from forcibly transferring children of the group to another group. Arguably, by only providing education for minority children through the medium of the state language (thereby causing the loss of their mother tongue and the consequent loss of self-esteem and self-confidence), the State is forcing children to adopt the linguistic and cultural traits of the minority group. Boarding schools, where children are physically removed from their community and language group, moreover explicitly exhibit this, and cause emotional and cognitive harm on the child, thus violating provision 2 (b). Despite these violations there have not, as yet, been any cases brought against any state party for violating the UNPCG in relation to mother tongue language provisions.

There are provisions included in the OSCE's Hague Declaration, the Universal Declaration on Cultural Diversity (2001), the ILO Convention, and the Framework Convention, which provide more concrete protections for linguistic minorities, though the most comprehensive of which are not legally binding for Turkey (OSCE and the Framework Convention). The provisions included in these protect mother tongue instruction, whilst also stressing the need for adequate measures to ensure the integration of minorities into the state educational system, thereby preventing a system of segregation, where each group within a state is provided for separately. Such a system would preclude the positive effects of minority inclusion, and would facilitate fragmentation on the basis of language. A balance is therefore required between integration and separation to ensure the delivery of optimum benefits to both individuals and society at large. This is encouraged through the promotion of bilingualism of the minority mother tongue and the majority language.

Article 6 of the Universal Declaration on Cultural Diversity defines the role that languages should play in the field of education. Within education, it requires that there is a respect for the mother tongue of all children, and that linguistic diversity is encouraged at all levels of education, and that multi-lingualism is promoted from an

⁴³ Convention on the Prevention and Punishment of the Crime of Genocide, Secretariat Draft, First Draft of the Genocide Convention, [May] 1947 [UN Doc. E/447]

early age. The ILO Convention, like Article 13 of the Framework Convention, supports provisions for minority languages (or the languages of members of indigenous communities) in the state education system. Article 28 states that;

Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. Furthermore, adequate measures shall be taken to ensure that these people have the opportunity to attain fluency in the national language.

These provisions sanction the use of minority languages in the state education system. However, 'wherever practicable' again gives the state a wide discretion. In contrast to this, the OSCE's Hague Recommendations provide the most comprehensive guidelines for mother tongue instruction as it breaks down education into its composite levels. As the first years are of pivotal importance in the child's development, it recommends that pre-primary instruction should be wholly in the mother tongue. The acquisition of cultural techniques (literacy, mathematics, etc.) are all best facilitated by the mother tongue: bilingualism at this age is premature and could arrest the cognitive and emotional development of the age. At the primary level, education should ideally be instructed through the minority language or as a subject taught on a regular basis. This ensures a smooth development process through the mother tongue, alongside the establishment of a basic understanding of the state language.

A substantial part of secondary education should be in the mother tongue, though there should be a gradual increase in the number of subjects taught in the state language. Children will be confident with their own language, with the knowledge, values and identity developed through it, and will be equipped with the special skills that will facilitate their subsequent acquisition of the state language.

At the level of tertiary education, the Hague recommendations provide that members of minorities should have access to education in their own language when they have demonstrated the need for it and when their numerical strength justifies it. This need not be in the form of separate institutions for minority groups. Rather, minority language tertiary education can be made available to national minorities by establishing the required facilities within existing educational structures provided these can adequately service the needs of the national minorities in question.⁴⁴

Acceptability and the Content and Delivery of Education

As one of the roles of education is to erode the prejudices that are often at the root of discriminatory behaviour and institutional racism, it is essential that its content attempts

⁴⁴ OSCE, Hague Recommendations regarding the education rights of national minorities, www.unesco.org/most.htm

to improve understanding of and appreciation for the diverse ways of life in society. After all, it is at school that early learners in part become aware of their own cultural values and appreciate other cultures, becoming more open towards and interested in others. To this end, curriculum should be reformed to promote a realistic and positive inclusion of the minority or indigenous history, culture, language and identity. The difference and diversity can be acknowledged while at the same time commonalities, even among people with conflicting interests, can be highlighted.

This is protected in the Framework Convention (to which Turkey is not a party) which provides, in Article 12, that where appropriate, measures must be taken in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority. Article 2 of protocol No 1 of the ECHR requires that 'in the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the rights of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.' In *Campbell and Cosans v. United Kingdom*⁴⁵, the Strasbourg Court stated that the term 'philosophical convictions' meant 'such convictions as are worthy of respect in a democratic society ... and are not incompatible with human dignity'. The duty of respect owed by the state, as held by the court in *Valsamis v. Greece*,⁴⁶ 'is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the 'functions' assumed by the State. The verb 'respect' means more than 'acknowledge' or 'take into account'. In addition to a primarily negative undertaking, it implies some positive obligation on the part of the state: the state must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. However, upon ratification of the ECHR, Turkey issued a reservation in respect of Article 2 of Protocol 1 by reason of the provisions of Law No. 6366, which itself provides that Article 2 of Protocol 1 shall not affect the provisions of Law No. 430 of 3 March 1924 relating to the unification of education.

The element of acceptability must also take account of the disciplinary proceedings of education. In order to foster an atmosphere conducive to the development of the child intellectually, culturally and emotionally, and to the creation of citizens aware of human rights and the role of democracy, the education system must mirror the values of democracy and human rights. An education system which endorses punishment that is based on discrimination is in clear breach of human rights. The CRC develops this point in Article 28 (paragraph 2), which provides that states parties take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the Convention. This attempts to ensure

⁴⁵ *Campbell and Cosans v. United Kingdom*, Judgment of 25 February 1982, Series A, No. 48; (1982) 4 EHRR 293, paragraph 33 of the judgment

⁴⁶ *Valsamis v. Greece*, Judgment of 18 December 1996; (1997) 24 EHRR 294

that corporal punishment is not used within education, and furthermore that punishment is administered only on occasions where fair and known rules are broken.

Availability

The ECHR recognises the necessity of equal availability and accessibility of education, with Article 2 of Protocol 1 providing that 'in the exercise of any functions which it assumes in relation to education and the teaching, the state shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.' If supported by the non-discrimination provision in Article 14, at a minimum, this enables the establishment of private schools by groups. The availability of such institutions could not be denied by states. In respect of the state education, this article has been interpreted negatively (particularly as greater detail to education rights has been afforded in other documents such as ICESR). In the *Belgian Linguistics* case, the Court held that Article 2 does not in itself guarantee choice of the language of education and that its negative formulation means that state parties are not obliged to establish or subsidize any particular type of education.⁴⁷ However, the Court did emphasize that the state's pursuit of 'linguistic unity' would not provide objective justification for the prevention of private mother tongue education, and would amount to a violation of Article 2 of the First Protocol, and Article 8 of the Convention, in conjunction with Article 14.⁴⁸ Flowing from the decision in *Belgian Linguistics* 'the exercise of the right to education... requires by implication the existence and the maintenance of a minimum of education provided by the state, since otherwise the right would be illusory, in particular for those who have insufficient means.'⁴⁹ However, ECHR decisions have not yet supported the requirement of state-funded schools which provide non-state language medium of instruction.

In terms of availability, the Convention against Discrimination in Education goes far to protect non-discrimination. However, to date, Turkey has failed to ratify this Convention. Articles 1 to 4 require that the standards of education are equivalent in all public education institutions of the same level, and that the conditions relating to the quality of education is also equivalent. Furthermore, these articles prohibit a state party from depriving any person or group of people access to education of any type or at any level, from creating any restrictions or preferences based solely on the ground that pupils belong to a particular group and from any form of discrimination in the admission of pupils to educational institutions. Most importantly, Article 2 allows for separate educational institutions for minority groups without contravening the non-discrimination provisions.

⁴⁷ *Belgian Linguistics Case (No.2)* (1968) 1 ECRR 252

⁴⁸ *Belgian Linguistics Case (No.2)* (1968) 1 ECRR 252

⁴⁹ General Comment No. 13, The Right to Education (Article 13), UN Doc. E/C. 12/1999/10, 8 December 1999

When permitted in, the following situations shall not be deemed to constitute discrimination, within the meaning of Article 1 of this Convention:

- (a) the establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level;
- (b) the establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

The right of national minorities to establish and manage their own educational institutions is thus a given. Although the state has the right to oversee this process from an administrative perspective and in conformity with its own legislation, it must not prevent the enjoyment of this right by imposing unreasonable administrative requirements.

The provision of suitable education is not sufficient for the progressive realisation of the right to education. As primary education is compulsory, the state must ensure attendance by students so that drop-out rates are low and all children complete primary education. Traditionally, economic poverty has been the major contributor to low attendance figures for education. Parents whose education levels are low themselves often view their children as family income earners. Rather than allowing their children to attend school, which they may recognise as bringing greater financial rewards to the family in the long-term, parents are often keen for their children to seek employment as soon as possible. Children from such families therefore tend to drop out of school at an early age due to their families' economic situation. This problem is, in many areas, compounded by the availability of employment for children, predominantly in industry and service sectors of the economy.

In order to address this problem, states should adopt a two-pronged approach to boost attendance rates. Education should be positively promoted, by actively encouraging student attendance, be it through financial assistance to families, raising public awareness of the benefits of education, or the provision of additional information and guidance to students and their families. This should be backed up by preventative

measures against non-attendance. Child labour should be prohibited and a disciplinary system which punishes non-attendance be adopted.

These necessary services by the state are required in the CRC. Article 28 stipulates that states, with the aim of achieving the right to education on the basis of equal opportunity, should encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need, make educational and vocational information and guidance available and accessible to all children and take measures to encourage regular attendance at schools and reduce drop-out rates.

As educational information and guidance is not education *per se*, but rather, a public service provided by the state to both students and to their parents, whose knowledge of the state language is by no means a given, there are additional requirements for states in the provision of these services. Unless the parents can adequately receive the information, the provision of such services is meaningless.

The Hague recommendations of the OSCE recognise this problem when stipulating that states ensure that persons belonging to national minorities have adequate chances to use their language in communicating with administrative authorities, especially in regions and locations where they have expressed a desire for it. In line with other treaties, conventions and recommendations regarding what levels of state action are required, the Hague recommendations provide a sliding scale approach to the issue of administrative provisions. Ideally, the state should perform the higher end functions, though the lower end marks a necessary starting point. Moving from the lower to the higher end, administrative provisions should include:

1. making available widely-used official documents and forms for the population in the non-official or minority language or in bilingual versions;
2. acceptance by authorities of oral or written applications in the non-official or minority language;
3. acceptance by authorities of oral or written applications in the non-official or minority language, and response thereto in that language;
4. sufficient number of officers who are in contact with the public in place to respond to the use of the non-official or minority language;
5. the ability to use the non-official or minority language as an internal and daily language of work within public authorities.

Such provisions might not be financially viable in all situations. In countries such as Turkey, there exist numerous language groups, which if provided with such services

would create too big a financial and administrative burden for on the state. In order to provide a realistic approach, therefore, bodies have attempted to define when such provisions are necessary. For example, Article 13 of the Central Initiative Instrument for the Protection of Minority Rights deems that it is necessary 'whenever in an area the number of persons... reaches... a significant level.' Likewise Article 10 of the Framework Convention, which is in line with Article 10 of the European charter for Minority or Regional Languages, provides that in areas traditionally inhabited by members of national minorities or where members of national minorities live in substantial numbers, where such persons request and where such a request corresponds to real need, the state parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language when dealing with administrative authorities.

In respect of provisions that curtail non-attendance, most notably in relation to child labour, the ILO Worst Forms of Child Labour Convention No 182 recognises that child labour is to a great extent caused by poverty and that poverty is not alleviated without education. To prevent child labour (which generally prevents school attendance), the convention cites sustained economic growth, which leads to social progress, as a suitable long-term solution. In terms of eliminating child labour through education, Article 7 prevents the engagement of children in the worst forms of child labour, whilst stipulating that states provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration, mainly through education. This would include ensuring access to free basic education and, wherever possible and appropriate, vocational training for all children removed from child labour. Likewise Article 32 of the CRC requires that state parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with his/her education. Supporting this provision, paragraph 2 of Article 32 requires that states set a minimum age of employment and provide appropriate penalties to ensure effective enforcement of the restrictions.

Adaptability

Education policy is an integral part of broader domestic policy aiming to address socio-economic disparities. A recent report by the World Bank indicated that the poorest 20 percent of Turkish citizens command less than 5.3 percent of total income, whereas the wealthiest 20 percent represent 50.1 percent of it.⁵⁰ Furthermore, relative poverty in 2004 as measured by income was 23 percent,⁵¹ the highest figure for all the EU member states and countries embarking on the accession process. High levels of economic poverty, particularly in the south-east Turkey, are therefore a prominent feature of the Turkish

⁵⁰ World Bank, Secondary Education Project (16 February 2005)

⁵¹ Individuals achieved poverty status if their income is less than 60 percent of the median income in the country (Eurostat Report 2004)

system.⁵² Although these statistics are worrying, they are based purely on economic conditions and as such do not fully represent real disparities. As Amartya Sen puts it, poverty itself 'must be seen as the deprivation of basic capabilities rather than merely as lowness of incomes, which is the standard criterion of identification of poverty.'⁵³ Although income is tied into this schema, capabilities, as conceived by Sen, are not restricted to this, but rather is the freedom to choose the life that one values. Restrictions such as age, income, poverty, place of residency, health, education levels and social exclusion caused by factors such as language, ethnicity, religion etc. decrease the capabilities of individuals to pursue such a life. Thus, rather than merely aiming to provide individuals with basic needs, as advocated by Maslow's hierarchy of needs framework, Sen believes that it is by constructing an efficient entitlement system that states can provide the basic capabilities that are essential to poverty alleviation. These entitlements are multi-dimensional, requiring the accessibility and quality of health, education and other social services and are substantive by nature – they must adequately equip all individuals with equal capabilities. For example, a blind person will require additional entitlements to be capable of functioning on equal terms with a person with full eyesight. Because the starting point of capabilities varies between people within a state, the state mechanism must be sensitive to such differences. This must apply to regional disparities. For instance, inner-city poverty in Istanbul, with a service sector dominated labour market, feminization of work and wide ranging spatial dislocation, will require very different strategies compared to peripheral poverty in Diyarbakir, where unemployment is high.⁵⁴ Likewise, the education disparities between rural and urban citizens, between people living in the west and east of Turkey, and between men and women, are vast. In the 2000 National Census, 30.8 percent of rural women could not read or write, compared to 16 percent of urban women. Moreover, 39 percent of women living in the south-east of Turkey are illiterate. A blanket nationwide provision of social services would likely fail to remedy such wide disparities.

The state must therefore employ a decentralised approach to service provision, where decision-making is based on local particularities and can adapt to the changing economic, social and cultural factors. Local governments, with the aid of regional non-governmental organisations, are better situated to generate the necessary information about the nature of the problems to be solved and to design the proper institutional mechanisms for providing social services. This approach should also be applied to education policies. The Hague Recommendations support this by requiring in Article 6 that states endow regional and local authorities with 'appropriate competencies concerning minority education, thereby also facilitating the participation of minorities in the process of policy formation at a regional and, or, local level.' Moreover, the Hague

⁵² The eastern part of Turkey accounts for 37 percent of the population, but only 22 percent of GDP. In terms of GDP per head (the Turkish average is 100) those living in the east account for 60 percent of GDP per head, whilst inhabitants of the West, 78 percent. *Issues arising from Turkey's membership perspective, 2004*

⁵³ Amartya Sen (1999); 87

⁵⁴ Ayse Bugra & Caglar Keyder (2005), *Poverty and Social Policy in Contemporary Turkey*, Bogazici University Social Policy Forum

Recommendations advise that these authorities themselves should be representative of members of national minorities.

Institutions such as UNESCO have also recognised the need for a flexible approach to education, where education policy is adapted to the needs of individual students, which will in turn reflect the needs of the students' communities at large. In order to provide meaningful educational policies for students, where individuals can develop intellectually, emotionally and culturally, the state must be sensitive to students needs, they must know how to bring out such development.

This can be best achieved by active involvement of parents at local and regional levels and the effective participation of institutions representing interests, particularly minority interests. Likewise the aforementioned Paragraph 30 of the OSCE Copenhagen Document, and article 3 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities all underline the necessity for national minorities to participate in the decision-making process, especially in cases where the issues being considered affect them directly.

Article 4 of the UNESCO Declaration of the 44th Session further developed the idea of education as a participatory strategy. This article declared that;

We are convinced of the need to seek synergies between the formal education system and the various sectors of non-formal education, which are helping to make education for all a reality... of the crucial role that also falls in this context to out-of-school educational organizations... that an agreement on action between educators, families, those in charge of the media, political leaders, religious institutions, intellectuals, artists, employers, trade unions and students themselves is urgent and necessary so as to achieve the full implementation of the objectives of education for peace, human rights and democracy and to contribute in this way to the development of a culture of peace.

Article 7 of the Draft Plan of Action of the United Nations Decade for Human Rights Education (1995) developed this notion of participation further, providing that states shall seek to further democratic participation in the political, economic, social and cultural spheres and shall be utilised as a means of promoting economic and social progress and people-centred sustainable development.

The participatory approach to education can be achieved through several ways. First, children can be consulted and encouraged to participate in matters affecting them. Second, members of the teaching profession can be consulted about which micro-policies can best suit the local needs. Third, members of the community (either on an individual or a collective basis) can be brought into the decision-making process. This latter strategy will be explored in greater depth in the section concerning minorities.

Children's rights to participate in decision making are protected in several international documents. Children, like all individuals in a society, have the inalienable right to freedom of opinion, and rights that can only be subject to particular restrictions, such as freedom of expression and freedom of association. In addition to these rights that are available to all citizens, there are specific protections for children to be found in the CRC. Article 13 demands that the child shall have the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. Furthermore, Article 15 provides that state parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly. Both of these articles demand that no restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Children, therefore, have the freedom to form associations related to their education, to petition for changes to the system and to voice their opinions on all matters affecting them.

Teachers must also be consulted in regard to national education policies. In the 20th century, the most powerful teacher-led discussions on domestic education policies have occurred through teacher trade unions, as it is these organizations which have the greatest bargaining power vis-à-vis the state. Although there are no legal documents which enforce state consultation with such bodies during policy formation, there are in existence documents which protect trade unions from negative state interference. The most important provisions protecting trade unions can be found in instruments produced by the ILO. Articles 2 through 4 of the ILO Convention concerning Freedom of Association (No 87) provides that workers and employers have the right to establish and to join organisations of their choice without previous authorisation, that such organisations have the right to draw up their constitutions and rules, to elect their representatives in full freedom, and to organise their administration and activities to formulate their programmes. Furthermore, state parties are prohibited from interfering in these aforementioned rights, and from dissolving or suspending the activities of such organisations. This is in line with Articles 5 and 6 of the European Social Charter, which provide the right to organise and the right to bargain collectively.

Moreover, the ILO Convention (number 98) Concerning the Application of the Principles of the Right to Organize provides that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment, and against their dismissal or prejudice by reason of union membership or because of a participation in union activities outside working hours or, with the consent of the employer, within working hours. This convention prevents the state from targeting individual members of teaching unions.

Specifically for minorities, there are many international protections afforded to them in relation to participation in policy formation. Many international human rights documents, as mentioned earlier, furnish groups of persons with the right to association, to freedom of expression, and to freedom of opinion, all of which grant people equality of treatment in forming associations around the issue of education. Although the spirit of these documents is pro-participatory and pluralistic, these provisions place no *de facto* obligations upon the state to consult groups when formulating policy. However, to address this, there are additional provisions in place. The right of all persons to take part in the conduct of public affairs, without discrimination, is guaranteed by Article 25 of the ICCPR, Article 2 of the Universal Declaration, and Article 15 of the Framework convention. The OSCE's Copenhagen Document (paragraph 35) develops this further by requiring states to 'respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities.' Moreover, in the Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999), key recommendations were made to states to aid participation. These include:

- (a) constitutions should guarantee the right of persons belonging to all [national] minorities to take part in public life, including voting, being elected, participating in public office and freedom of association and expression;
- (b) administrative barriers to participation should be removed;
- (c) persons belonging to minorities should be made aware in their language of how to exercise their rights to participate in public life;
- (d) special arrangements should be made for persons displaced from their homes.

These international mechanisms both directly and indirectly encourage minority inclusion in education policy formulation. This conceptual development introduces a crucial step towards education for the future: programmes for education in and for human rights which are local, relevant and above all participatory should be emphasised in all future human rights standards.

Turkish Law and Practice

As discussed earlier, in international documents and conventions, the aims of education fall into two categories. First, education is the means by which individuals can develop intellectually, emotionally and culturally, and second, education can be seen as a tool for the strengthening of respect for human rights and fundamental freedoms which will promote understanding and co-operation on an international, national or local level.

Turkish legislation also recognises the dual aims of education, though it gives primacy to the role of education in the formation of a functioning society. Article 1.3 of the Basic Law of National Education, No 1739, requires that the primary goal of education in Turkey is:

to raise all individuals as citizens who are committed to the principles and reforms of Atatürk and to the nationalism of Atatürk as expressed in the Constitution, who adopt, protect and promote the national, moral, human, spiritual and cultural values of the Turkish Nation, who love and always seek to exalt their family, country and nation, who know their duties and responsibilities towards the Republic of Turkey which is a democratic, secular and social state governed by the rule of law⁵⁵

The second goal of education, however, does recognise the importance of individual development in education, providing that through education all individuals of the Turkish nation are raised as 'constructive, creative and productive persons who are physically, mentally, morally, spiritually and emotionally balanced, have a sound personality and character, with the ability to think freely and scientifically and have a broad worldview, that are respectful for human rights, value personality and enterprise, and feel responsibility towards society.'

This provision is limited by an additional requirement that demands that in the practice of education 'political and ideological provocations against Atatürk nationalism as expressed in the Constitution and participation in discussions of daily political affairs shall never be allowed.'⁵⁶ In education, as well as general Turkish political discourse, there are three prohibited ideologies recognised by Prime Minister Tayyip Erdogan; ethnic nationalism, religious nationalism and regional nationalism. The text at the front of every school textbook in Turkey manifests the essential ethos:

I am Turkish. I am upright. I am industrious. My aim is to protect little ones and to respect adults, to respect my Motherland and my Nation, to love my Nation with all my heart. I will advance the State and move it forward. You are the great Ataturk. We will continue to walk in the way you have shown us. I promise I will do this. I will sacrifice myself for the existence of Turkey. How happy is he who calls himself a Turk.⁵⁷

These nationalist statements combined with the aforementioned legal provisions clearly restrict the development of the individual by formulating an official Turkish identity:

⁵⁵ General Principles regulating the Turkish National Education System, <http://www.meb.gov.tr/stats/apk2001ing/Sectioni/1Generalprincipals.htm>

⁵⁶ General Principles regulating the Turkish National Education System, <http://www.meb.gov.tr/stats/apk2001ing/Sectioni/1Generalprincipals.htm>

⁵⁷ Country Information and Policy Unit, Turkey Country Report (2002), www.iru.gov.uk

this identity is Turkish, secular, western-oriented and, most importantly, politically obedient to the state.

Non-discrimination

Within the constitutional framework of the Turkish Republic, there is a general principle of equality. 'All individuals shall be equal before the law without any distinction based on language, race, colour, sex, political opinion, philosophical belief, religion, membership of a religious sect or other similar grounds.' This general principle is in line with non-discrimination principles set out in international conventions and declarations. Moreover, in May 2004 a constitutional amendment established, under Article 90, that in the event of a conflict regarding rights and freedoms between national law and international obligations, international agreements shall have precedence over national legislation. As such, Turkey is bound by the non-discrimination provisions included in Article 2 of ICCPR, and Article 14 of the ECHR. However, Turkey has not ratified nor signed other international conventions which contain such substantive protections.

Specifically for education there are provisions which appear to be in support of individual non-discrimination. 'Education institutions are open to all citizens [irrespective] of their sex, religion, language and race.'⁵⁸ This, at a minimum, guarantees access for all citizens to state education. However, it does not aim to prevent substantive inequalities. More importantly, it proceeds to prohibit any policies which positively attempt to do so. Article 10, paragraph 2, which provides that 'no privileges shall be granted to any individual, family, group or class,' and which must be applied without any qualifications or exceptions, precludes any form of affirmative action. This highlights what is arguably one of the most significant intentions in the Turkish educational system, namely that its underlying principle of non-discrimination is only formal. The Turkish state views itself as an impartial provider of services, and is incapable of recognising that its services are biased in favour of the majority. This approach to non-discrimination is contrary to that encapsulated in international documents which have stressed that for substantive equality to be realised, positive action may be necessary.

Furthermore, paragraphs 5 and 6 of the Preamble to the Constitution state that 'no protection shall be accorded to an activity contrary to Turkish national interests, the principles of the indivisibility of the existence of Turkey with its state and territory, Turkish historical and moral values, or the nationalism, principles, reforms and modernism of Atatürk.' This applies to the education provision in Law 2547. This combined with articles from the Penal Code⁵⁹ gives the Turkish state wide discretionary

⁵⁸ General Principles Regulating the Turkish National Education System, Para 1.3.1., Ministry of National Education

⁵⁹ Most notably Article 216 of the new penal code (which amended Article 312, paragraph 2) which allows for up to 3 years imprisonment for individuals who instigate a part of the people having different social

powers in the realm of non-discrimination as it provides vague restrictions to the realisation of this, particularly as there are no objective means for determining what is 'contrary' to such interests.

In terms of substantive protection for minorities, there are no provisions in place in Turkish domestic law, although Turkey is, as discussed, party to non-legally binding obligations generated by the OSCE and the UNGA Minorities Declarations, and legally binding obligations provided by the ICESCR and the CRC (though again Turkey issued reservations upon Articles 29 and 30).

The structure of primary and secondary education in the Turkish Republic

In Turkey, education of children under the age of 18 is provided by both the state and by private educational institutions. In the 2004-2005 scholastic year, within the total formal education system, 84.42 percent of the schools, 87.96 percent of the students and 88.28 percent of the teachers were in the public sector, the remainder being in the private sector.⁶⁰ The public education system is composed of 4 stages, namely pre-school, primary, secondary and higher (which will be covered in a later section). Services related to pre-primary education are given by nurseries, kindergartens, practical classes run by the Ministry of National Education and by day-centres, nursery schools, day-care houses, child care houses and child care institutions opened by various ministries and institutions for care or education purposes based on the provisions of ten laws, two statutes and ten regulations. Pre-school education for children who have not yet reached school age is optional, and as such was only attended by 16.1 percent of the age group (3-5) in the 2004-2005 scholastic year.⁶¹ This is well below the average of states in the same income group, which is 28 percent of the age group. The consequence of this low attendance rate is that the vast majority of students entering 1st grade neither have experience in a school environment nor have exposure to pre-literacy skills or other opportunities that children who attended pre-primary classes have.

Between the ages of 6 and 14 all children must attend primary schools for an uninterrupted period of eight years, which upon completion will enable them to be awarded with primary school diplomas. Primary education is considered 'a process which takes into consideration interest, maturation, talents and vocational values in accordance with the aims of Turkish National Education and contemporary education.'⁶² This period of education, being compulsory, requires 100 percent attendance, though during the 2004-2005 scholastic year the schooling rate was 97.4 percent.

class, race, religion, sect or region to hatred or hostility against another part of the people in a way dangerous for the public security.

⁶⁰ The structure of Turkish Education, www.meb.gov.tr

⁶¹ The structure of Turkish Education, www.meb.gov.tr

⁶² The structure of Turkish Education, www.meb.gov.tr

Secondary education is optional, with the state providing a three-year education at vocational, technical or general high schools, and is established to give students a minimum level of common knowledge, to get them acquainted with individuals' and society's problems and to look for solutions, to help them acquire the awareness to contribute to the socio-economic and cultural development of the country, and to prepare them for higher education, for a vocation, for life and for business in line with their interests, skills and abilities.⁶³ The most recent surveys conducted suggest that the total schooling rate for secondary education in 2004-2005 was 63.5 percent.⁶⁴ General High School Education, which accounts for 39.3 percent of the age group, includes general high schools, foreign language teaching high schools, Anatolian high schools, high schools of science, Anatolian teacher training high schools, and Anatolian fine arts high schools.

Vocational and technical education, accounting for 24.2 percent of the age group, aims to train young people in commercial and vocational fields and prepare them for higher vocational education. It is composed of technical education schools for boys, technical education schools for girls, trade and tourism schools,⁶⁵ religious education schools (or 'Imam-Hatip' or preacher high schools),⁶⁶ multi-program high schools, special education schools,⁶⁷ and health education schools.

Private educational institutions cover various types and levels of private schools and operate under law No 625, though are controlled by the Ministry of Education. Private Turkish Schools are established by legal persons who are Turkish citizens. Private Foreign Schools are established by foreign nationals and corporate bodies. Private Minority Schools are established by non-Muslim communities (Greek, Armenian and Jewish), and International Private Educational Schools are established either by individuals and corporate bodies of foreign nationality through a joint partnership with Turkish nationals, or by Turkish nationals or corporate bodies. Only foreigners can attend International Private Educational schools.

Private Minority Schools

Law No 625 allows for the establishment of minority primary and secondary schools. This is in line with Article 40 of the Treaty of Lausanne, which declares that minorities shall 'have equal rights in the establishment, administration and supervision of all kinds

⁶³ The structure of Turkish Education, www.meb.gov.tr

⁶⁴ The structure of Turkish Education, www.meb.gov.tr

⁶⁵ These schools train young people as skilled labourers in the following fields: commerce, tourism, bookkeeping, computer science, finance, marketing, banking, secretarial, insurance, exchange services, local administration, communication, etc. They learn a foreign language. The structure of Turkish Education, www.meb.gov.tr

⁶⁶ These religious schools were established under Article 4 of the Unification of Education Law No.1739, and are educational institutions which offer programs within the middle education system that prepare students both for higher education and for such positions as 'Imam' preacher.

⁶⁷ Special Education Schools provide education to handicapped children up to the age of 18.

of charity establishments, religious and social institutions, all types of schools and similar education and training institutions provided that the expenses are covered by them and they will be free to use their own languages and execute their religious ceremonies.’ Article 41 of that treaty goes even farther by providing that

‘in general (public) education, appropriate circumstances shall be provided by the Turkish government for the provision of education for the children of these Turkish citizens in their primary schools and in their mother languages in the provinces where non-Muslim citizens reside. This provision shall not obstruct the compulsory teaching of the Turkish language in the concerned schools by the Turkish government.’

However, this law, as with other regulations pertaining to rights of minorities refers only to the minority groups recognised by the Treaty of Lausanne. This only includes non-Muslim minority groups, and hence excludes groups of people including the Kurds. Moreover, as yet, the Turkish government has failed to provide any state education institutions where children from non-Muslim minorities are instructed in their mother tongue, presumably because the members of such minorities are numerically insubstantial.

For non-Muslim minority groups, such as the Armenians, the Greeks and the Jews, the aforementioned Law No 625, has enabled the establishment of private schools with their own language of instruction. At present there are 30 primary and 12 secondary schools for minorities, accounting for 796 and 2421 children respectively.⁶⁸ However, restrictions have been, and continue to be placed on these schools. Officially recognised minorities may operate schools under the supervision of the Ministry of Education, though such schools are required to appoint a Muslim as deputy principal. Reportedly, these deputies have more authority than their nominal supervisors.⁶⁹ Armenians and Greeks have also stated that the procedure for the approval of school textbooks is long and complicated, and the Greeks have encountered difficulties in the supply of Greek language teachers. Furthermore, in violation of the Treaty of Lausanne, the Syrian Christian minority has not benefited from this protection, despite their requests to be allowed to set up schools.⁷⁰

In the past, there were also strict rules governing the enrolment of pupils in schools on the basis of their religion. The Turkish authorities supervising the enrolment in these schools required that the father should be of the religion of the school in which the parents want to enrol the child, irrespective of the mother’s religion. However, since May 2004 children with non-Muslim mothers have been able to attend these schools.

⁶⁸ The Ministry of National Education Research, Planning and Co-ordination Board
NOTE: Figures are temporary data of 2004-2005

⁶⁹ US Department of State (2004), Country Reports on Human Rights Practices, Turkey

⁷⁰ Minority Rights Group 2004 Report

Non-formal Education

Within the formal education system, access to secondary and higher institutions requires the completion of primary education. However, for those individuals who have never attended school in the formal system, or who have left their studies prematurely (that is, without the primary diploma), there are additional non-formal vocational education institutions. The aims of these are to teach adults how to read and write, to provide basic knowledge, to develop individuals' knowledge and skills further, and to create new opportunities for improving their standard of living.⁷¹ In 2000-2001 there were 6,975 institutions educating 3,173,841 students.⁷² Students at these schools are thus able to gain the skills that they failed to acquire in the formal system. However, following the completion of these courses, students are unable to rejoin the formal education system further up the chain than where they left it. For example if an adult did not complete compulsory primary education, but succeeded in reaching the same education level as someone in the school system, he cannot attend any institutions of higher education. The Turkish system does not as such provide any horizontal flexibility between the formal and non-formal education systems.

Private Language Schools

Prior to 2002, Kurdish private language institutions were entirely prohibited. However, such language schools were given permission to open following the passing of the Law Regarding the Learning of Different Languages and Dialects traditionally spoken by Turkish Citizens in their Daily lives, which was part of the Third Harmonization Package of August 2002. They were, however, restricted by the Regulation Regarding the Learning of Different Languages and Dialects traditionally spoken by Turkish Citizens in their Daily Lives, which was published in the Official Gazette on 20 September 2002. The minister of Education, Tekin, emphasized that the regulation ensured that such languages would be taught in conformity with the interest of the Turkish state, stating that 'naturally, we will not allow the exploitation of these courses or the use of these courses as political tools.' This regulation, which applies to all language and dialect courses, established criteria regarding teachers, students, premises and syllabus in relation to the private language courses permitted following the Harmonization Package. The recommendation contained the following provisions:

Article 2 - language schools must ensure that classrooms are at a different location to those in which other languages are taught

Article 5 - the aims of the courses are... in accordance with the general aims and fundamental tenets [of the Turkish Constitution]

⁷¹ MONE, The Turkish Education System and Developments in Education, January 2001, www.ibeunesco.org/Intemational/JCElnatrap/Turkey.pdf

⁷² MONE, The Turkish Education System and Developments in Education, January 2001, www.ibeunesco.org/Intemational/JCElnatrap/Turkey.pdf

Article 6 - permission to open institutions and commence teaching must be sought from the ministry of Education [and may be attained only when the requirements within the Law on Private Education Institutes are fulfilled).

Article 7 - teachers must be Turkish citizens and must hold the standard teaching qualifications and will work under the auspices of the Ministry of Education. Other personnel must be Turkish citizens, must have graduated from primary school and must not have criminal convictions for any crimes – explicitly offences against the state – or have been deprived of public rights

Article 8 - students must be Turkish citizens and must have graduated from primary school. Those under eighteen years of age must have parental permission. Upper primary school children may only attend classes at the weekend or in the summer holidays, and must have parental permission.

Article 9 - the list of enrollees shall be given to the local directorate of national education at the beginning of every term.

Article 10 - the teaching programme to be used on the course shall be approved by the Ministry Article 11 Examination of courses shall be carried out by the ministry of National Education.

These narrow restrictions for private language courses enable the state to interfere in the operations of private individuals. Moreover, the regulations have severely undermined the spirit of international documents. By requiring that applicants for courses have graduated from primary school, the state prohibits a large proportion of adults, particularly women, from attending courses. In the 2000 census, 19.4 percent of the Turkish population and, more concerning, 39 percent of women in east and south-east Anatolia were found to be illiterate,⁷³ many presumably having failed to complete primary education. Until 1997, compulsory primary education was limited to 5 years, and prior to this the policy of enforcing attendance was not employed by the authorities. Individuals are therefore being penalized for the State's previous lack of education provisions. The punishment is the lack of opportunity to develop and learn about their language, and as such the right to identity of such individuals is threatened. The use of private courses to promote minority identity is further weakened, as it is early learners who are the most receptive to language acquisition. By requiring completion of primary education, such individuals, who are the key recipients of trans-generational transmission of minority identity, cannot be given access to education of their culture.

Following the issuing of the above regulations, many applications to establish Kurdish language courses were rejected on the basis of failing to adhere to the stringent criteria.

⁷³ Executive Committee for NGO Forum on CEDAW-TURKEY (November 2004), Shadow Report on the 4th & 5th Combined Periodic Country Report for Turkey

Suleyman Yilmaz, Director of the Kurdish Course in Diyarbakir claimed that whilst it takes two to three months for most private language schools to obtain government permits, it takes up to eighteen months for Kurdish language schools to acquire a permit.

In September 2002 Hasan Sukuroglu, director of the private language school 'English Fast' in Ankara attempted to establish Kurdish language centres but was forced to abandon his plans stating, 'it is not like teaching English; it is impossible to meet many of the established criteria.'⁷⁴ In particular, Article 2 of the regulations imposed a heavy financial burden on his, as well as other language schools, many of which were unwilling to make the huge financial investment of constructing new classrooms.

As part of the Seventh Harmonization Package of 8 August 2003, Article 23 amended Article 2 (c) of the law on Foreign Language Education and Teaching and the Learning of Different Languages and Dialects of Turkish Citizens so that the Council of Ministers could in the future decide which foreign languages might be taught without having to seek the permission of the National Security Council.⁷⁵ The economic barrier was lowered by the amendment to Article 2 of the Regulation of September 2002 which provided that such courses could be held at the facilities of existing language courses.

Despite these changes restrictions still proved to be immense obstacles to the opening of Kurdish language schools. In December 2002 Omer Kurt applied to the Sanliurfa Directorate of the Ministry of National Education to open the Kurdish Languages and Dialects Centre. The Directorate responded by telling Kurt to change the name to 'Private Urfa Local Languages and Dialects Centre'. Despite obeying this stipulation, his application was rejected on 3 March 2003, allegedly on the basis of the word 'centre'. After making the necessary amendment, Kurt was refused permission once again, this time due to the word 'Language'. Kurt applied a third time, under the title 'Kurdish Dialects Teaching Course.' He eventually received approval from the Directorate, subject to the unexpected reservation that only eighty students could enrol in the course.

Aydin Unesie began registration for his courses on 5 November 2003, but received notice that the absence of an emergency staircase violated safety regulations. Moreover, he was forced to widen the doors of his six classrooms by five centimetres when a preliminary inspection established that they failed to meet safety regulations. Likewise, bureaucratic obstacles were imposed on Hansek Guven at the Van private Kurdish Language Learning Centre. A sign, which was written in Kurdish was hung outside the Centre, was prohibited by the authorities, forcing Guven to change it to Turkish.

On 5 December 2003, the Ministry finally issued the Programme on Education in the Kurdish Language which established the curriculum fifteen months after the courses were legalised by the Regulation of September 2002. This finally enabled Kurdish

⁷⁴ Turkish Daily News, 9 October 2002

⁷⁵ Law 2923 of 14 October 1983, as amended by Law No. 4771 of 3 August 2002

language courses to operate. Six private schools started teaching Kurdish (Kirmanci dialect) in Van, Batman and Sanliurfa in April 2004, in Diyarbakir and Adana in August 2004 and in Istanbul in October 2004, with 2,027 people enrolled in the courses (and with 1,056 people having completed the programmes).

Additional Information on Why Schools Closed

Although the opening of language schools was very much welcomed, the problems that the schools continued to face proved insurmountable. On 1 August 2005, 8 language schools announced that there were closing due to bureaucratic hurdles, excessive financial burdens and demands for Kurdish to be part of the regular school curriculum, not just an additional private lesson. As Yilmaz claimed, 'the Kurdish people already know the language that we want to teach them. What they want is to be educated in that language in public schools and universities. Nowhere in the world have people learned a mother tongue by paying money.'⁷⁶ The financial burdens of tuition fees, which amounted to US \$75 a month for the Diyarbakir course, were simply too great for many. In the Diyarbakir course, the Director estimated that 70 percent of the students were unemployed. Many people could not afford this cost, and opted to continue learning Kurdish for free with their parents, family members and friends.

The Ministry of National Education

The task of realising the objectives of national education belongs to the Ministry of National Education (the MONE), which was formally established in 1933 by law 2287. Following the formation of the Turkish Republic in 1923, the government instituted the first education law (The Law for Consolidation of Instruction) which nationalised the four pathways for schooling: public, religious, private, and foreign. It also brought them under the control of the MONE. This law introduced a national curriculum, which standardised instruction across the country, and hence gave the MONE absolute control over all schooling in Turkey.

The MONE is allocated functions by law 3979 (1993), which requires that it undertake the following: planning, programming, executing, monitoring and inspecting all education and training services for pupils and teachers at the institutions of education; opening pre-school, primary education, secondary education and all other institutions of formal and non-formal education; granting permission for the opening of any and all other institutions of education (except for institutions of tertiary education); determining the degrees of equivalence for the institutions of formal and non-formal education opened by the institutions and organizations of other Ministries; and jointly preparing and approving their programs and regulations.⁷⁷

⁷⁶ Suzan Fraser, *Turkey's Kurdish Language Schools to Close*, Associated Press, 1 August 2005

⁷⁷ Duties of the Ministry of National Education (www.mnddd.com.tr)

The MONE is composed of four units: the Central Organisation, the Provincial Organisations, the Overseas Organisation and the affiliated organisations, of which only the first two are relevant to this study. The Central Organisation, led by the Minister for National Education, is charged with executing the services of education in compliance with education legislation and the government's general policy. Reporting directly to the Minister is the Board of Education and Discipline (which undertakes research, expresses opinions, and assists the minister in all decision-making related to education), the advisory and supervisory units, and the permanent councils. There are five permanent councils in operation: the National Education Council, the Council of Directors, the Council of Vocational Education, the Student Discipline Council and the Special Qualification Commission. With the inclusion of so many departments under the umbrella institution of the MONE, there is extremely centralised control of the education system in Turkey. Indeed, according to the Organisation for Economic Co-operation and Development (OECD), Turkey has the most highly centralised educational systems of the OECD member states.⁷⁸

The provincial arm of the Ministry is composed of 81 governors, whose roles are related to personnel, appointments, overseeing examinations, local programme development, private education and pre-primary education. Governors are appointed for a number of years by the central authorities in Ankara, to which they are directly accountable via a chain of responsibility extending from district governor to provincial governor and on to Ankara. The role of the governors is to represent the central authorities in the provinces. Although they are formally granted wide powers, they have weak *de facto* powers in the policy-making process, as none of the governors sit on the central policy-generating unit of the National Education Council. In effect, for any issue requiring a decision which is other than routine, a school principle has to communicate directly with Ankara, thereby bypassing the regional authorities.⁷⁹

The MONE does display similar characteristics and functions to parallel education ministries in other Western states. However, the MONE also has an additional role: it protects Atatürk nationalism. The MONE is responsible for raising citizens loyal to Atatürk's reforms and principles and Atatürk nationalism... adopting, protecting and furthering the national, moral, mortal, spiritual and cultural values of the Turkish nation. Furthermore, included in the portfolio of the Minister for National Education is the requirement that he execute the services of education in compliance with the national security policy.⁸⁰ The boundary between national security and education, as recognised by the UN Special Rapporteur for education, is thus fluid in Turkey.⁸¹ Turkish education

⁷⁸ D.H.Fretwell, & A.Wheeler (August 2001) Turkey; Secondary Education and Training. World Bank Secondary Education Series No 22858

⁷⁹ D.H.Fretwell, & A.Wheeler (August 2001) Turkey; Secondary Education and Training. World Bank Secondary Education Series No 22858

⁸⁰ National Education at the beginning of 2002, <http://www.meb.gov.tr/Stats/apk2002ing/apageol6.htm>

⁸¹ Report submitted by Katarina Tomasevski, UNESCR Special Rapporteur on the right to education, Mission to Turkey, 3-10 February 2002

policies and provisions cannot be justified purely in relation to their merit, but must also be in line with vague standards prescribed by national security policy. This process is most evident in the area of language of instruction. The prevention of Kurdish from being used as a medium of instruction within the education system is supported by its supposed threat to national security (by dividing the unity of the state and providing support for illegal organisations. Removal of the issue of teaching and learning foreign languages from academic decision-making to the jurisdiction of State Security Courts (which adjudicate cases of support for illegal organisations and threats to national security) threatens the efficacy of the structure of the Turkish education system.

Medium of Instruction -Primary and Secondary Schools

The language of instruction in educational institutions was determined by the 1982 Constitution: 'no language other than Turkish shall be taught as mother tongue to Turkish citizens at any institutions of training or education.' Specifically for mother tongue instruction, paragraph (a) of Article 2 of Law No 2923, the Law on Foreign Language Education and Training, provides that Turkish citizens may not be taught in a mother tongue that is any language other than Turkish. Moreover, paragraph (b) of Article 2 provides that lessons concerning Turkish republican reform history, Turkish language and literature, history, geography, social sciences, religious culture and morality and Turkish culture may not be taught in a foreign language, and that students may not be given research tasks or homework relating to these subjects in any language other than Turkish.

These laws therefore prohibit the use of minority languages as the medium of instruction at any level of Turkish state education. When considering that approximately 15 percent of the Turkish population have non -Turkish mother tongues (with approximately 7 percent speaking Kurdish and the remaining speaking Arabic, Armenian, Greek and Caucasian dialects⁸²), this monolingual policy fails to properly reflect the linguistic composition of the country. Linguistic minorities receive the whole content of their education in a second language. As the Hague Recommendations state, 'submersion-type approaches whereby the curriculum is taught exclusively through the medium of the State language and minority children are entirely integrated into classes with the children of the majority are not in line with international standards.'⁸³

Educational standards of children from minority groups are substantially lower than that of children whose mother tongue is Turkish. In Turkey, there are no additional provisions to enable non-Turkish speaking children to catch-up with their Turkish speaking peers, as required by Article 8 paragraph 2 of the CRC. As Amberin Zaman of the Economist noted, 'many children, by the time they reach school, still haven't spoken

⁸² UNHCR, 12 November 2002, Background paper on refugees and asylum seekers from Turkey

⁸³ Hague Recommendations concerning the Education Rights of National Minorities

a word of Turkish.⁸⁴ As such, these children are simply unable to understand and follow the classes in Turkish until they have learned the language. This is very difficult for Kurdish children to do since Kurdish is an Indo-European language which has nothing in common with Turkish, an Altaic language. In a survey conducted by the GocDer on Internally Displaced People (IDPs) (an estimated 3 million in Turkey), 19 percent of children under the age of 12 did not speak or understand Turkish at all, 46.8 percent understood Turkish to some degree but had problems in speaking, 29.5 percent knew enough Turkish to express themselves in daily life, and only 4.7 percent spoke Turkish as their mother tongue.⁸⁵ In the early, and arguably the most formative, years of education, the vast majority of these children are incapable of adequately absorbing the education provided by the Turkish authorities – they simply do not understand the information being presented to them. Their confidence in approaching education will moreover be destroyed, as will the positive identification of their own language. In fact 36.5 percent of the children surveyed by the Global IDP Project said that being unable to speak mother tongue at school was a problem. Not knowing Turkish was a problem for 30 percent, working and attending school, a problem for 9.2 percent, being abused because of ethnic origins, a problem for 6.4 percent, absence of school, a problem for 5.6 percent, being unable to afford educational expenses, a problem for 2.5 percent.⁸⁶ Although this survey was conducted only on IDPs, and hence not representative of the child population at large, the huge investment in additional schools seems to be ineffective when so many children are unable to advance by virtue of their status as members of non-Muslim minority groups. This is of particular concern in the cities which contain high numbers of migrated people from minority groups. For example, in Istanbul, it is estimated that there are up to 3 million Kurds.⁸⁷ Without the necessary provisions, these children are not compensated for their lack understanding of Turkish. They are unable to catch up with their Turkish speaking peers and thus, are not given access to the same quality of education as children whose mother tongue is Turkish.

First, this runs contrary to non-discrimination provisions contained in the UDHR and ICCPR, which prohibit discrimination on the basis of language. Second, this does not realise the primary goal of education, namely the full development of the child. Third, as education, is one of the means to social and economic power, Kurdish children are simply being deprived of the capabilities to access such resources and so live their lives as they please. This capability deprivation, as Sen puts it, is itself equated with poverty. Thus, through the denial of minority mother tongue education, the Turkish State is enforcing a trans-generational passing of socio-economic disadvantage as well as broader symptoms of poverty for minority groups.

⁸⁴ Interview with Ambarin Zaman (Economist), Lifeonline, www.tve.org/lifeonline/index

⁸⁵ Goc-Der (2001), The research and solution report on the socio-cultural conditions of the Kurdish citizens living in the Turkish Republic who are forcibly displaced due to armed-conflict and tension politics; the problems they encountered due to migration and their tendencies to return back to the villages.

⁸⁶ Global IDP Project (Jan 2002), Migration Survey

⁸⁷ Immigration and Refugee Board of Canada (November 2003), Country of Origin Research Situation of Kurds

Following Turkish education many children have lost their ability to speak their mother tongue. Indeed, the motivation for many children attending Kurdish private languages schools is to learn the language of their community. One attendee at the Diyarbakir Private Language Course said that 'the reason for why I have attended the course is that I want to speak to my parents in Kurdish.' This effect on the child's identity as well as the child's family life is of particular concern to Kurdish people living in cities, such as Istanbul, where they have few opportunities to develop their competence in Kurdish. The compulsory use of Turkish within schools combined with the limited use of Kurdish in big cities causes such children to lose their Kurdish competency. As already noted, language is a key component of identity. The denial of Kurdish and other minority languages by the Turkish state is a clear denial of the very existence of the identity of the speakers. This is in violation of international requirements, such as Articles 8 and 30 of the CRC, which protect the right of the child to not only preserve his identity, but also to enjoy his own culture and use his own language. Although Turkey is bound by Article 8, its reservation in respect of Article 30 precludes violation thereof.

Through mono-lingual education, the Turkish state is directly interfering with the individual's private and family life: children are simply unable to adequately converse with their family and members of their community in their mother tongue following full Turkish education. This is arguably a violation of Article 8 of the ECHR, Article 17 (paragraph 1) of the ICCPR, Article 2 of the UNGA Minorities Declaration, and Article 12 of the UDHR which all prohibit states from subjecting individuals to arbitrary or unlawful interference with his privacy, family, home or correspondence.

Additional Classes

Non-Muslim Turkish children whose mother tongue is not Turkish therefore cannot be taught through in their own language, as it is directly prohibited by law. However, in Turkish law there are no provisions that prohibit outright the instruction of Kurdish as an additional language class. The prevention of such classes has been justified on the grounds that firstly, Kurdish is not a foreign language, and secondly, that the inclusion of Kurdish in the education system threatens the indivisible integrity of the state. Article 42 of the Constitution allows for additional foreign language classes, but requires that the 'foreign languages to be taught in institutions of training and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law.' As with all rights granted in the Constitution, Article 42 is restricted by the broad reservations contained in Article 14, which provides that;

None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights. No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms embodied in the Constitution or to stage an

activity with the aim of restricting them more extensively that stated in the constitution. The sanctions to be applied against those who perpetrate these activities in conflict with these provisions shall be determined by law.

Foreign Language classes receive additional legal support in the Regulation of Foreign Language teaching, issued in the Official Gazette in 1985, based on the Law on the Learning of Foreign Languages (1983), which requires that foreign language courses be compulsory in secondary education institutions. Furthermore, the Board of Education's resolution no 144 (1997) and 32 (2000) require that students in the 1st, 2nd and 3rd grades of primary school are offered the opportunity of having foreign language activities, and that students in the 6th 7th and 8th grades have their laboratory activities and science course supported by foreign languages. As such, 'from the 1997-1998 academic year onwards, a weekly two-hour foreign language course has become obligatory, and a second foreign language for the fourth and the upper primary classes has been included among the selective courses.'

These requirements are a positive and a necessary step for Turkey's education provisions, as growing economic and political dependence on European countries requires a workforce with extensive language skills. It is felt that this will bring about a furtherance of greater practical integration with Europe, particularly with the realisation of the internal market. Within Turkey the creation of such a western-orientated workforce through changes to education policy has come to be seen as 'a praiseworthy symbol of change.'⁸⁸

The choice of which foreign languages can be taught is set out in Article 2 (c) of the Law on the Learning of Foreign Languages, which provides that 'Foreign languages to be taught in Turkey shall be determined on the decision of the National Council of Ministers, seeking the opinion of the National Security Council.' In 1992 the Council of Ministers determined that both 'state and private language courses may be given in Turkey only in the English, French, German, Russian, Italian, Spanish, Arabic, Japanese and Chinese languages.'⁸⁹ As mentioned earlier, Article 23 of the Seventh Harmonization Package of 8 August 2003 amended Article 2 (c) of this law, such that the opinion of the NSC is no longer required.

Despite Kurdish being frequently considered by the courts to be a foreign language, in the realm of education, the Council of Ministers has failed to qualify it for this definition (preferably calling it a 'dialect' of Turkish). As such it has been excluded from the possible subjects to be taught as a foreign language. Thus, stemming from these laws the only barrier to the teaching of at least some Kurdish, at least as a subject, 'is not

⁸⁸ Immigration and Refugee Board of Canada (November 2003), Country of Origin Research Situation of Kurds

⁸⁹ Edict No. 92/2788, 20 March 1992

constitutional or even legislative, but administrative: Kurdish could be taught as a 'foreign language' merely by virtue of a decision of the Council of Ministers.'⁹⁰

In August 2002 the Third Harmonization Package initially offered hope to those wishing to study Kurdish and other minority languages at school. This package adapted the Law on Foreign Language Education and Training of 1983, creating the Law on Foreign Language Education and Teaching of Different Languages and Dialects of Turkish Citizens to regulate the procedures pertaining to teaching foreign languages in educational institutes and schools instructing in a foreign language, and to regulate learning different languages and dialects traditionally used by Turkish citizens in their daily lives.

However, such possibilities were restricted by a crucial amendment which provided that private courses are subject to the Law on Private Educational Institutions No. 625 dated 8 June 1965, which requires obedience to Article 42 of the Turkish Constitution. As we have already seen, Article 42 provides that the choice of foreign languages is determined by law and also prohibits any courses that are against the indivisible integrity of the state and the fundamental principles of the Turkish republic. Even if the Council of Ministers deemed Kurdish to be a 'foreign language,' laws prohibiting courses that are against the vague indivisible integrity of the state' put the decision as to which courses provide such threats under the remit of the Courts, which dissolves the dichotomy between education and national security. The UN Rapporteur believes that the consequence of this is that students will employ a form of 'self-censorship so as not to risk crossing that fluid boundary, or taking a risk with the likelihood of victimization.'⁹¹ Self-censorship is, as noted at the 51st session of the UN Commission on Human rights, is contrary to provisions protecting freedom of thought: the individual should not be subject to pervasive ideology which undermines his ability to express his opinions, think or act freely.⁹²

The Need for Change

As seen in the preceding section, many international legal bodies have repeatedly stressed the general need for mother tongue education for minority children, though such bodies have not placed legal requirements specifically on Turkey for Kurdish language provisions. Despite the absence of these direct legal protections, many international organisations have encouraged Turkey come into alignment with international policy. Included in these bodies are the UN Special Rapporteur on

⁹⁰ Kurdish Human Rights Project (June 2002), Denial of a Language: Kurdish language Rights in Turkey; 36

⁹¹ Report submitted by Katarina Tomasevski, UNESCR Special Rapporteur on the right to education, Mission to Turkey, 3-10 February 2002

⁹² Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, to the Commission on Human Rights, 51st Session, paragraph 24, E/CN.4/1995/32 (1994)

Education, the European Commission against Racism and Intolerance,⁹³ and of Amnesty International,⁹⁴ and the Minority Rights Group,⁹⁵ all of which have recommended that the constitutional provision preventing mother tongue instruction be lifted, and moreover, that the Turkish authorities provide measures to enable non-Turkish speaking children to adequately follow classes taught in Turkish. In September 2004, the EU Enlargement commissioner, Guenter Verheugen, on a visit to the south-east of Turkey, stressed that Kurdish language education and broadcasting were areas that needed more attention. Although recognising that Turkey had 'taken steps' to start Kurdish language use, he emphasised that this was only the beginning and that more progress was required.⁹⁶

Domestic NGOs, politicians, academics, journalists, writers, Kurdish groups as well as members of the public have supported mother tongue education. This support is extremely strong. For example, a youth survey conducted by DIHA (a Kurdish news agency) in Tunceli, found that 93 percent of young people want education in their mother tongue. Traditionally, calls for mother tongue education have come from groups representing Kurdish people. For example, the Conference on the Kurdish Language, as part of the 2004 Literature Days organised by the Diyarbakir Municipality, issued a declaration supporting Kurdish language education from primary school up to university levels, as well as the establishment of Kurdish as an official language of Turkey. In December 2004, a letter titled 'What the Kurds want in Turkey' was published in the International Herald Tribune, and Le Monde (France). This was signed by 200 Kurds from Turkey, including the Tunceli Mayor, Songul Erol Abdul, the former Diyarbakir mayor Mehdi Zana, the former politician Leyla Zana, and a member of the Berlin State Parliament, Helm Evrim Baba. Among a comprehensive set of demands, it called for the preparation of a new Turkish constitution which recognises the existence of Kurdish people, guarantees the right to Kurdish mother tongue instruction in Turkish schools, and the right to the formation of Kurdish associations, institutions and political parties, and which supports Kurdish broadcasting and publication.

Recently the support base for the campaign for mother tongue education widened to incorporate other groups across Turkey. On 1 June 2005, the 'I demand education in mother tongue' campaign was initiated. The Confederation of Public Employees' Trade Union (KESK) in partnership with other groups opened two stands at Sanat Sokagi and Kosuyolu Park in Diyarbakir to collect petitions demanding the right to be educated in mother tongue, which would require amendments to Articles 3, 42 and 66 of the Constitution. By 15 August, 83,825 petitions had been gathered in Diyarbakir alone.⁹⁷

⁹³ European Commission against Racism and Intolerance (2004), Third Report on Turkey

⁹⁴ Amnesty International states that Article 42 of the Turkish Constitution violates international standards related to minority rights www.amnesty.org

⁹⁵ Minority Rights Group (July 2004), Minorities in Turkey, Submission to the European Union and the Government of Turkey, pg 42

⁹⁶ Turkey urged to expand Kurdish rights, www.aljazeera.com, 7 September 2004

⁹⁷ www.kurdishinfo.com - 15 August 2005

The role of mother tongue instruction in education is considered of utmost importance to the supporters of the campaign. As Kemal Taskin, a member of KESK noted, 'mother tongue adds to [children's] self confidence so they attend the classes with more punch.'⁹⁸ This is in line with what the UN Special Rapporteur called the 'wisdom of the Convention on the Rights of the Child, which has posited mother tongue education as the best entry for any child into the system of education, whatever the language of instruction may be.'⁹⁹ Moreover, contrary to the Turkish authorities' belief that mother tongue education would threaten the unitary structure of the state, Medina Alkpaya claimed that 'the obstacles and prohibitions set before education in mother tongue fuel conflicts and spoils the atmosphere of peace, so ensuring the non- appearance of conflicts and peace will be provided by education in the mother tongue.'

In terms of the trans-generational transmission of Kurdish language, mother tongue education is vital. This was recognised by the Metropolitan Mayor of Diyarbakir, Osman Baydemir, who stated that 'to be able to keep out languages and cultural possessions, those languages spoken in Turkey apart from Turkish should be boosted in public domains; otherwise, it is not possible to make Kurdish and like language schools come alive. Therefore, Kurdish should definitely be taught at official schools. People should have the chance to be able to learn Kurdish. Moreover, Kurdish should be given as an elective in western cities. To maintain a language, which has been ignored for decades is not possible with private courses.'¹⁰⁰ The current policy of Kurdish language exclusion is therefore not acceptable for language continuation. What is more, this policy is considered by some Kurds to be a policy of liquidation committed by the Turkish State.¹⁰¹

The consequences of the petition have yet to be seen. However, other NGOs' campaigns for mother tongue education have fared less well. In October 2003, the Migration and Humanitarian Assistance Foundation (GIYAV) was brought before the Adana State Security Court on the basis of its support for its work on Kurdish mother tongue, and multiculturalism. Supposedly, the work ran afoul of Article 169 of the Penal Code, which prohibits 'abetting and harbouring an illegal organisation'. Fortunately, it was acquitted, though only because of the reforms of this Article contained in the 6th harmonization package, which deleted the vague provision that made it illegal to facilitate the actions of an illegal organisation in any way.

The activities of the Kurdish Association for Democracy and Solidarity (Kurd-Der) were also brought to a stop in July 2005 due to the provisions included in its regulations such

⁹⁸ www.kurdishinfo.com - 15 August 2005

⁹⁹ Report submitted by Katarina Tomasevski, UNESCR Special Rapporteur on the right to education, Mission to Turkey, 3-10 February 2002

¹⁰⁰ Osman Baydamor in response to a question regarding the closure of the Private Batman Kurdish Course, 20 July 2005, www.kurdishinfo.com

¹⁰¹ Statement from the Conference on the Kurdish Language, part of the Literature Days organised by the Diyarbakir Municipality (December, 2004)

as 'education and training in mother tongue.' The Diyarbakir Second Court of General Criminal Jurisdiction ruled that such regulations were against the unitary structure of the Turkish State. In addition to this, the Union of Education and Science Workers, Egitim-Sen, has faced over a year of court battles following its support of mother tongue instruction. This union, which is affiliated with the Confederation of Public Sector Unions (KESK) was initially taken to court by the Ankara State Prosecutor for its statement that it would work for the right of individuals to receive education in their mother tongue. The court cases have not only demonstrated the mounting pressure for change, but also the Turkish authorities' inflexibility in implementing policies that will bring about a concrete inclusion of Kurdish in state education.

Individual supporters of Kurdish mother tongue education have also faced restrictions on their freedom of opinion and expression following statements and actions regarding this issue. Journalists have been particularly susceptible to violations of such freedoms. In fact, this issue combined with others, particularly relating to the Kurdish situation, have been restricted to such a degree that in 2004 Turkey was rated 113th in the press freedom index by Reporters Without Borders, an exceptionally low position for a country involved in European Union Accession.¹⁰² Ahmet Altan, a journalist writing from the national daily newspaper *Milyet* was fired following an article titled 'Would Turks have accepted this?' which highlighted the inequalities and discrimination facing Kurdish people in Turkey. In March 2005, Huseyin Aygin was charged with 'insulting the republic' and 'praising an action deemed crime by law' for defending the right to receive education in mother tongue during Newroz celebrations.¹⁰³

In December 2004 the Ankara Public Prosecutor launched a court case against the Chairman of Egitim-Sen, Alaattin Dinçer, and members of the Executive Board, Ali Berberoglu, Adnan Gölpinar, Fevzi Ayber, Emirali Simsek, Elif Alcgül and Nazim Alkaya in connection with the demonstrations which protested against the closure case of Egitim-Sen, on charges of violating the Law on Meetings and Demonstrations. The indictment alleged that the Governorate of Ankara gave permission for a demonstration on 9 July in Abdilpekçi Park, but that it was actually staged on 13 July in Sihhiye Square. On 27 December, Ankara Penal Court of First Instance No 13 started to hear the case. Alaattin Dincer testified to the effect that since the demonstration was too crowded, people had to use Sihhiye Square in addition to Abdilpekci Park and the police were informed of this. The police intervened in the demonstration in Sinop and Istanbul to protest the case on 8 December. In Istanbul, the police used tear gas against the demonstrators including Alaattin Dinçer and detained 56 people. Eleven people who gathered in front of the offices of the union on Ugur Mumcu Square were detained in Sinop. Vice-chair and spokesman for Security General Directorate Ramazan Er said in a press conference that 'police sometimes use excessive force during the social events', and

¹⁰² Reporteurs Sans Frontieres Freedom List, www.bianet.org (27 November 2004)

¹⁰³ Freedom of Expression Cases Continue (11 March 2005). www.bianet.org

an investigation was opened against the police officers in charge during the press statement conference by Egitim-Sen in Istanbul.

The Public prosecutor in Urfa also launched an investigation against 28 executives of Egitim-Sen in Urfa in connection with a demonstration organised on 9 December to protest the closure case against Egitim-Sen. The unionists were indicted for 'organizing the action on the evening and exceeding legal time limit.' Moreover, an administrative investigation was launched against 30 members of KESK who staged a sit-in-action and press statement on 11 September in Van to protest the closure case against Egitim-Sen. The investigation was reportedly launched based on the video recordings of police.

Content of education

In terms of the content of education, the Ministry of National Education dictates that children must study the essential subjects of Turkish language and literature, Turkish republican and reform history, Religious culture and morality, geography, history, science, mathematics, a foreign language, and human rights, which will give them a broad education. The delivery of the information, at times, will come through school textbooks. In relation to these, the Ministry of National Education (in December 2000) provided specific guidance as to what these should include and how they should be prepared.

In the preparation and implementation of textbooks in our education system of all grades and types and in all education activities, Ataturk's reforms and principles and Ataturk nationalism as expressed in the constitution shall be taken as the basis. Importance is attributed to protecting, developing and teaching the authentic national morality and culture without corruption within the universal culture... Political and ideological provocations against Ataturk nationalism as expressed in the constitution.

This single focus for the school textbooks fails to take account of multiculturalism in Turkey. Research conducted by the History Foundation shows that in general, Turkish school textbooks do not include positive information regarding history, culture and traditions of minorities. Worse still, the material included in textbooks has often included negative, prejudiced and discriminatory portrayals of minorities. The Circular issued by the Ministry of National Education in July 2002, referred to the 'unfounded allegations about the so-called Armenian Genocide'. This Circular was followed by another issued on 14 April 2003 that required the training of teachers regarding the 'unfounded allegations about the so-called Armenian Genocide and the allegations of the Greeks and Syrians.' The Circular also started a competition calling on students to write articles on the 'so-called Armenian Genocide.'

More recently, the history books for the 2003-2004 school even went so far as portraying minorities as untrustworthy, traitorous, and harmful to the state, and the compulsory

high school 'National Security and Citizenship' course included a video which depicted scenes of violence and words of hatred directed at the Kurds.¹⁰⁴ Furthermore, in April 2003 the MONE issued a circular requiring schools to organise conferences and essay competitions on controversial historical events related to the Armenians and Assyrians.¹⁰⁵ Many derogatory statements are found about the Roma and the Armenians in history books and the Greek language in linguistic books, as well as statements that the Turkish nationality and the Islamic religion are better than others.¹⁰⁶ Indeed, a study conducted in 2004 found over 4000 discriminatory phrases and pictures in school textbooks, including religious, ethnic, language, and gender negative stereotypes and references.¹⁰⁷ Assistant Professor Ayse Gul Altinay claimed that 'almost all excerpts reflect a homogenous nation that represents a 'single race' and a single culture. Saying that there are different 'races' within one nation is defined as separatism.'¹⁰⁸

These statements, phrases, and pictures not only discriminate against the minority communities living in Turkey, they also violate anti-discrimination provisions such as Article 14 of the European Convention which, when applied in conjunction with the right to education, respects parents' religious and philosophical beliefs in Article 2, Protocol 1. Moreover, some references, particularly to the Armenian Genocide, violate freedom of thought and expression as contained in Article 18 and 19 of the UDHR and Article 10 of the European Convention by stifling public debate and encouraging a form of self-censorship.

School textbooks are the means by which children learn about culture, about human rights, and society more generally, and as such the inappropriate material selected by the MONE for education causes children to be indoctrinated with discriminatory beliefs at an early age, which has terrible consequences for society at large. In regard to this, Turkey would benefit from adhering to Article 12 of the Framework Convention, which provides that States take measures in the field of education and research to foster knowledge of the culture, history and language of their national minorities and of their national majority. In the long run this would prevent the use of education as propaganda to perpetuate discrimination and violate a certain group's human rights whilst also eroding the prejudices that are often at the root of discriminatory behaviour and institutional racism.¹⁰⁹

¹⁰⁴ www.bianet.org

¹⁰⁵ 2004 Regular Report on Turkey's Progress Towards Accession, Commission of the European Communities, page 48

¹⁰⁶ *Human Rights in School Books: Results of Research*, History Foundation, 2003, p. 45. A secondary textbook referred to Roma in Sofia as 'just like ours, beggars who you can't get rid of,' p. 50. Another statement compared sounds in the Greek language to those made by snakes, page 71.

¹⁰⁷ Executive Committee for NGO Forum on CEDAW-TURKEY (November 2004), Shadow Report on the 4th and 5th Combined Periodic Country Reports for Turkey

¹⁰⁸ Turk-Soldier-Muslim: The Ideal Student, www.bianet.com (27 April 2004)

¹⁰⁹ Report submitted by Katarina Tomasevski, UNESCR Special Rapporteur on the right to education, Mission to Turkey, 3-10 February 2002

With pressure from the EU, the Turkish authorities have started to review discriminatory language in school books. In 2003 a book called 'The Gypsies of Turkey,' published by the Ministry of Culture, which included discriminatory statements, such as defining Roma as 'beggars, who have more than one partner, quarrelsome, running brothels,' was subsequently withdrawn. The discriminatory statements in the encyclopedia published by the MONE and the dictionary published by the Turkish Language Institution were removed in 2003. In March 2004, a regulation was issued in which it is stated that school text books should not discriminate on the basis of race, religion, gender, language, ethnicity, philosophical belief, or religion. In addition the inclusion of a 'Citizenship and Human Rights Education' course in the curriculum of students attending 7th and 8th grade classes from 1997 is a welcome change as it will not only increase individuals' awareness of their rights and duties, but will also foster a society that is more sensitive to the needs of others. However, changes in the law may not be sufficient for substantive alterations in the content of schoolbooks. As Assistant Professor Ayse Gul Alinay stated at the International Human Rights Education and Textbook Research Symposium, 'without reconceptualizing key concepts such as identity, nation and culture, it will be very difficult for us to question and change the nationalist and militarist approach that dominates textbooks.'¹¹⁰

Religious Culture and Knowledge of Morality classes are still compulsory for all school pupils, except for the Greek Orthodox, Armenian or Jewish minorities. However, Muslims who do not practice in the Sunni denomination of Islam, such as the Alevis, as well as Turks who have converted to Christianity still must attend the classes. Currently about one-third of Kurdish people are Alevi, and these Kurdish people constitute one-third of the Alevi population of Turkey, which amounts to approximately 12 million people.¹¹¹ The classes only give information on the Sunni religion, with nothing about Alevis and very little about religions other than Islam. The small amount of information about other religions includes incorrect or discriminatory statements, and has given religious and cultural groups cause for complaint. The Pir Sultan Abdal Culture Centre applied to the Turkish courts for the cancellation of this practice and following the rejection of this has appealed to the ECHR. By forcing children to attend these classes, the Turkish state is failing to respect the right of parents to ensure that education and teaching is in conformity with their own religious and philosophical convictions, thereby violating Protocol I (Article 2) of the European Convention.

Punishment

The CRC provides that states 'protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse while in the care of parent(s), legal guardian(s) or any other person who has care of the child.' Corporal punishment and, more generally, violence

¹¹⁰ Turk-Soldier-Muslim: *The Ideal Student*, www.bianet.com (27 April 2004)

¹¹¹ UNHCR (12 November 2002), Background paper on refugees and asylum seekers from Turkey

against children is also strictly prohibited in schools by Turkish law. However, reports on the Turkish Education system repeatedly draw attention to the use of corporal punishment within schools. In an Amnesty International report examining women and violence, it was reported that at school, 64 percent of children are beaten by their teachers or school managers.¹¹² Moreover the UN Special Rapporteur noted in her 2002 report that 'regardless of its formal prohibition, corporal punishment is reportedly used in Turkish schools.'¹¹³ Likewise Egitim-Sen recently reported that over a quarter of teachers routinely use corporal punishment, and 40 percent of children are beaten at school.¹¹⁴ This clearly is a cause for concern, particularly when punishment is based on discriminatory factors and when it violates freedom of thought and expression.

Development Programmes Relating to Education (Availability & Accessibility)

Until the 1990s, education in Turkey was massively underdeveloped, characterised by low attendance figures, high drop-out rates, and high levels of illiteracy, particularly in the east and south-east of the country. This was a result of two major, inter-related factors. First, the weak economy, which was highly reliant on agriculture, industry and a non-skilled workforce, combined with high levels of poverty throughout Turkey created conditions that made it economically favourable for families to have their children work rather than attend school. Levels of child labour were therefore particularly high. Indeed, even until 2003 it was estimated that the number of child labourers in Turkey was approaching 1 million.¹¹⁵ Second, the availability and quality of Turkish education was extremely poor. As a United Nations Development Programme (UNDP) report suggested, Turkish education suffered 'from an emphasis on rote-learning and centralized multiple-choice examinations, outdated curricula, a lack of educational facilities, a failure to encourage student initiative and independent thinking, poorly trained and poorly rewarded teachers, and large class sizes.'¹¹⁶ Moreover, in a survey conducted by the teachers union Egitim-Sen, it was found that 70 percent of teachers, students, and parents believe that there is no equality of opportunity in education and that the education system is undemocratic.

Furthermore, these two factors were linked to the most economically disadvantaged areas (which reflected high levels of child labour), which suffer the most from a lack of suitable education provisions. For example, the MONE statistics suggest that in 2002 the average class size in state primary schools, which is a key benchmark in the assessment

¹¹² Amnesty International (2 June 2004), Women confronting family violence

¹¹³ Report submitted by Katarina Tomasevski, UNESCR Special Rapporteur on the right to education, Mission to Turkey, 3-10 February 2002

¹¹⁴ Egitim-Sen (2004), The structural problems of our education system and proposals to solve the problem

¹¹⁵ US Country Report; Turkey (2004)

¹¹⁶ UNDP (2004), Country Evaluation: Assessment of Development Results; TURKEY

of education, were lower in the socio-economically advantaged areas of West of Turkey (32) than in the underdeveloped area of South-East Turkey (43).¹¹⁷

Since the mid 1990s, there have been several major projects to improve the standard of education throughout Turkey and specifically in the east and south-east regions. These projects can be divided into three types. First, there have been programmes designed to improve primary and secondary education provisions and create uniformity of standards across Turkey as a whole, which have required additional resources to tackle the lagging standards of the east and south-east. Second, in support of these development programmes additional laws have been introduced which have been aimed at preventing non-attendance of primary education. Third, with the backdrop of regional socio-economic disparities, there have been economic and social development programmes in the south-east that have incorporated education as a tool for change. By improving education provisions it is felt that the workforce will gain the necessary skills to effectively participate in economic, social and political matters affecting them. These latter educational provisions have therefore specifically fallen under the broader development programmes for the eastern regions of Turkey. These will be looked at in turn.

Programmes for Primary Education

In 1997 and with the financial assistance of the World Bank, Turkey initiated an eight-year Rapid Coverage for Compulsory Education Program (worth US\$300 million) in order to improve education standards of the population and labour force, which was by far the lowest of all the OECD countries,¹¹⁸ mainly as a result of low attendance rates and early drop-out rates. Prior to this programme, school attendance in urban areas was constrained due to inadequate classroom capacity and inadequate numbers of teachers. In rural areas, attendance was constrained by household poverty, public perceptions that educational quality in village schools was low, and parents' unwillingness to send their children – particularly, their daughters – to schools outside the village.¹¹⁹ To combat these problems, the government's strategy focused heavily on the construction of new schools and the investment in the teaching profession. Almost 104,000 new primary classrooms were built and more than 70,000 new primary school teachers were recruited, creating an additional capacity for more than three million basic education students. Furthermore, in order to improve access for children in rural areas, a variety of special schemes, including bussing, the establishment of boarding schools, consolidation or

¹¹⁷ www.meb.gov.uk National Education at the Beginning of 2002

¹¹⁸ Ilhan Dulger (2004), Turkey: Rapid Coverage for Compulsory Education – The 1997 Basic Education Program, World Bank Series

¹¹⁹ Ilhan Dulger (2004)

closure of some village schools, and the provision of free textbooks and school meals to students from low-income families were implemented.¹²⁰ The 2002 Social solidarity and assistance fund (SYDTF) distributed financial aid to families of students from the lowest 6 percent income group, and the government in conjunction with NGOs such as UNICEF and Amnesty International embarked on social programmes aimed at encouraging female participation in education.

Another service aimed at improving the availability and quality of education for children in rural areas includes boarding schools (YIBO), education with transportation (PIO) and scholarships. These schools were planned and opened in 1962 in accordance with Article 1 of the 'Regional Primary Schools Regulation' which itself is under the primary education and training Law No 222. This provides that 'regional schools with day-care and pension shall be opened where there are several villages close to each other, or in villages with houses or house groups spread over large areas, with no schools yet opened for various reasons.' In the year when the compulsory eight-year primary education was introduced, the number of YIBOs and PIOs was 153, but went up to 513 in 2001-2002, and the boarding capacity went up to 185,889. In the academic year 2001-2002, 630,000 primary school students were provided with the opportunity to have quality education with daily transportation. The travelling and nutrition costs of the students in Bussed Primary Education are paid by the MONE. In the academic year 2001-2002, scholarships were provided for a total of 106,445 primary and secondary school students, 41,816 of which were girls, 64,629 of which were boys. At the end of 2000, these students were paid 6,304,000 New Turkish Liras (YTL) per month and this figure was increased to 10,568,000 YTL in December 2001.

However, it has been claimed by many groups that YIBOs have been used as instruments of assimilation. The majority of children being sent to these schools are from areas in east and south-east Anatolia, and by virtue of the ethnic composition of such areas, from minority groups.¹²¹ In the 2001-2002 scholastic year, 158 regional boarding schools (out of 276 nationally), and 88,536 children (out of 139,639 nationally) were in east and south-east Anatolia. Instead of building local schools, where children can maintain contact with their parents and community, the Turkish authorities have concentrated on providing these boarding schools which separate the child from his community and language group. Without such contact, and due to the requirement that only Turkish is spoken in such schools, children rapidly lose their mother tongue capabilities. Turkish soon becomes their first language. As the Kurdish scholar Amir Hassanpour pointed out, 'boarding schools were established in order to isolate students from the greatest part of the year and to encourage them to forget their mother tongue.'¹²² This has had direct implications on both the individual's identity as well as the minority group at large. As Dr Kristiina Koivunen discovered in regards to YIBOs

¹²⁰ Ilhan Dulger (2004)

¹²¹ www.meb.gov.uk National Education at the Beginning of 2002

¹²² Amir Hassanpour (1992)

that 'Kurdish children are continuously supervised to ensure that they use only the Turkish language. Because of this practice, many educated Kurds have forgotten their mother tongue and have become involuntary speakers of only one language, Turkish.' Through such policy, moreover, Turkish has become associated, inexorably with modernity and progress; children are shown that it is through Turkish that their personal career ambitions can be realised. Kurdish is painted as the language of the village, something to be left in pursuit of individual goals, to be consigned to the realms of the primitivism. The result of YIBO education is effectively that the schools forcibly transfer children from one group to another physically, culturally and linguistically.

These characteristics of YIBOs clearly fall into the ambit of assimilation, and thus violate not only the spirit of international documents, but also specific laws, such as Article 8 of the CRC, Article 27 of ICCPR, which protect the right to identity, arguably Article 2 (e) of the UNCPCG, which forbids forcibly transferring children of the minority group to another group, and Article 2 (b) of the same convention which prohibits causing serious mental harm to a minority group. Additionally, if a child is prevented from communicating with his parents following Turkish language submersion, then the State is violating Article 8 of the ECHR, Article 17 (paragraph 1) of the ICCPR, Article 2 of the UNGA Minorities Declaration, and Article 12 of the UDHR which prohibit states from subjecting individuals to arbitrary or unlawful interference with his privacy, family, home or correspondence.

Instead of YIBOs, local schools, which integrate Kurdish children rather than assimilate them, should be built. This is supported by the Trade Union for Education and Science Workers. Metin Cakir, the Head of the Van branch represented this position by stating that 'it's not right to integrate Kurds with the Turkish society through boarding schools. The view of our trade union is that the Kurds must have education in their mother tongue and integration should take place in this context.'¹²³

Preventative measures

Turkey has, in the past suffered from high rates of child labour. In 1997 the five-year primary education diploma was replaced with an eight-year one to encourage attendance. The primary education diploma is essential for employment opportunities. Thus, by extending the length of it the authorities have enforced education attendance on children up to the age of 13, bringing Turkish policy in line with EU states, whose average compulsory education lasts between 8 and 12 years.

This change has been accompanied by a greater emphasis on directly preventing child labour. Turkish law prohibits the full-time employment of children younger than 15 and prohibits children under 16 from working more than 8 hours a day. Children who attend school are prohibited by law from working more than 2 hours per day or 10 hours per

¹²³ Lifeonline, Yaprak transcript, www.tve.org/lifeonline/index

week. Despite these provisions child labour, particularly in the Kurdish regions, is widespread. The State Statistical Institute reported that the number of child labourers between the ages of 12 and 17 dropped from 948,000 in 2003 to 764,000 during the year; however, some observers claimed that the actual number of working children was rising, with Egitim-Sen estimating that 1 million children between the ages of 5 and 14 (out of a national 13.2 million) were working in agriculture, services, industry and trade.¹²⁴ An informal system provided work for young boys at low wages, for example, in auto repair shops. Girls rarely were seen working in public, but many were kept out of school to work in handicrafts, particularly in rural areas. According to the Labour Ministry, 65 percent of child labour occurred in the agricultural sector. However, some observers maintained that the bulk of child labour had shifted to urban areas, such as Istanbul and Diyarbakir, as rural families migrated to these cities. Child labour therefore particularly afflicts internally displaced people, most notably the estimated 1 million Kurdish people who have been forced to leave their villages as a result of the conflict in the south-east. Surveys conducted by the Social Services Directorate found that around 68 percent of children who work on the streets do so because their families need the money, 23 percent do so to earn money for their expenses, and 9 percent do so because their family forces them to. Nearly 60 percent of the children surveyed expressed that they did not want to work, and would prefer to go to school.¹²⁵ To combat such high figures through the Labour Ministry, the Government allocated US\$15 million (20.3 trillion YTL) for programs to eliminate child labour during the year. Children registered with one of the 346 Ministry of National Education Training Centres are required to go to the centre once a week for training, and the centres are obliged by law to inspect their workplaces. Under the auspices of the Southeast Anatolia Development Project, the Regional Development Administration and the Directorate of Social Services, additional centres were established for working children in Diyarbakir, Golcuk and Adapazari, areas which are particularly afflicted by high levels of child labour. In June 2004, the Labour Ministry issued regulations on child employment that identified specific jobs that could threaten the physical or mental well-being of children, thereby curtailing the number of children joining such professions.

Results

The quantitative results of the primary education programmes have been considered to be extremely successful, with the net enrolment for Grades 1-8 increasing from 85.63 percent in 1997 to 96.30 percent in 2002. By 2003, statistics produced by the Ministry of National Education suggested that the net enrolment rates at primary education institutions in Turkey were 95.7 percent for girls and 100 percent for boys. Furthermore,

¹²⁴ Egitim-Sen (August 2004), The structural problems of our education system and proposals to solve the problem. (From www.bianet.com 01/09/2004)

¹²⁵ Social Services Directorate Survey (May 2004), Poverty pushes children onto streets (www.bianet.org - 07/05/2004)

the enrolment of girls in rural areas increased by 160 percent in the first year of the programme in the nine provinces with the greatest gender disparity.¹²⁶

However, the accuracy of these statistics has been brought into question. First, a UNICEF report released in 2004 indicated that, in the rural areas of some provinces, over 50 percent of girls between 7 and 13 and over 60 percent of girls between 11 and 15 still do not attend school due to traditional family values in rural areas placing a greater emphasis on education for sons than for daughters.

Second, the UN Rapporteur for Education had reason to believe that these statistics failed to account for children whose names were not registered at birth, and thus did not count on government statistics. In a report under the CRC, it was acknowledged that there are 'children who do not have an identity card and who are not registered on the civil registries.'¹²⁷ Although there have not been any recent fact-finding surveys into this phenomenon, in 1998, 37 percent of infants and 22 percent of children up to 4 were not registered at birth. These children, whose existence is denied, tend to be deprived of their rights more easily than others and moreover tend to be from rural areas of the south-east where high numbers of minority groups reside. This is concerning as the lack of statistics regarding their existence suggests that the 'process of exposing and eliminating discrimination has yet to begin.'¹²⁸

Third, there appears to be no data on completion rates, as opposed to enrolment rates, of Turkish primary education. As one of the aims of recent policy has been to decrease drop-out rates, the lack of reliable statistics concerning the results must question the efficacy of the programmes. Finally, there are no statistics at all on the education of minority children. This makes it difficult to analyse whether new policy has been effective in improving the disparities in educational standards between members of minority groups and members of the majority. Instead, the examination of the results of minority children must be deduced from regional data (for example, from the south east where most Kurdish people live), which is clearly an inaccurate method of inquiry.

It is also a fact worth noting that precise, continuous and detailed information is necessary for the successful implementation of laws and policies. If Turkish authorities cannot generate accurate data, it seems unlikely that a needs based policy can be formulated or later implemented.

Qualitatively, it is more difficult to assess the effects of the recent educational reforms on minority groups within Turkey. An increase in attendance clearly has positive benefits

¹²⁶ Ilhan Dulger (2004), Turkey: Rapid Coverage for Compulsory Education the 1997 Basic Education Programme, World Bank Series

¹²⁷ Report submitted by Katarina Tomasevski, UNESCR Special Rapporteur on the right to education, Mission to Turkey, 3-10 February 2002

¹²⁸ Report submitted by Katarina Tomasevski, UNESCR Special Rapporteur on the right to education, Mission to Turkey, 3-10 February 2002

on the education standards of new attendees. However, in many areas, the existing educational infrastructure has not been not developed enough to absorb all of the new pupils. Additional teachers, often the targets of PKK attacks during the 1984-1999 armed conflict, have failed to be recruited to the East and South-East the result of which is that new and existing schools are struggling to cope with the increasing numbers. Indeed, Dr Ziya Selcuk, Head of Turkey's Board of Education claimed that of the 35,000 schools providing eight years compulsory education, only one third have got the desired standards, with the others having classes of 50 to 60 students.¹²⁹ Class sizes in some rural schools may even exceed this level. Kenan Akcakola, a teacher in the Van province, stated that some of his teacher friends in the province have to take care of 120 children because other teachers are unwilling to move to remote mountain villages.¹³⁰ Some children are deprived of the right to education because of a lack of teachers. In the 2004-2005 scholastic year, Bitlis received 130 teachers instead of the 1200 required. According to a report by the representative office of KESK, 566 students could not attend school in Yuksekova, Hakkari as there was only one school.¹³¹ The Van branch of the Education Union Lezgin Bozkurt's chairperson reported that there were no schools in the towns of Bahcesaray, Caldiran, Muradiye, Ercis, Baskale and Ozalp. As a result, in November 2004, 53,000 children (ages 6-14) didn't go to school in Van county (17,000 of which were from Van's provincial centre).¹³² A report produced by Egitim-Sen and presented to the Education Minister, Huseyin Celik in August 2004, found that there was a nationwide shortage of 3,000 schools and 10,000 classrooms.¹³³

To increase the number of teachers in the south-east, there is a compulsory period of service for all new teachers in rural areas. However, this means that 'the newly appointed teachers are interns with no experience who have just finished studies -- they complete 2-3 years, compulsory service in the region and then return to their own cities and regions, in the West. The number of experienced teachers who can give good education to those children is very small – only a few of the teachers from this region stay here. ... The region is like a testing ground, teachers are sent here to gain experience with the children of this region.¹³⁴ A more effective teacher recruitment programme must be employed to ensure that the shortfall of teachers, which Egitim-Sen claims is 106,000 nationwide, is overcome.¹³⁵ This may be problematic considering the few incentives on offer for teachers. The current salary is 650 YTL, which when considering that the poverty line for a family of four is 1,500 YTL is strikingly low, and hardly likely to attract

¹²⁹ Lifeonline, Yaprak transcript, www.tve.org/lifeonline/index

¹³⁰ Lifeonline, Yaprak transcript

¹³¹ www.roj.org.tr Bulletin, 24 December 2004

¹³² www.roi.tv, 21 Nov 2004

¹³³ Egitim-Sen (August 2004), The structural problems of our education system and proposals to solve the problem.

¹³⁴ Interview with Metin Cakir, Head of Trade Union for Education and Science Workers, Van Branch, Lifeonline, www.tve.org/lifeonline/index

¹³⁵ Interview with Metin Cakir

students to the vocation.¹³⁶ Furthermore, the lack of monetary benefits for teachers has led to the recruitment of graduates of poor academic credentials. As the UN Rapporteur on education stated 'treating teaching as a low-paid temporary alternative for jobs that graduates may aspire to but cannot obtain, or as a wife's job supplementing her husband's salary, does not provide the foundations for the quality and commitment of teachers that all Governments want for their young generations and all parents for their children.'¹³⁷ Stemming from a lack of government expenditure directed towards education, which was only 8.4 percent of the government budget (in comparison with an average of 10 percent for EU countries), this is clearly an obstacle to substantive developments in the quality of Turkish education.

Programmes for Secondary Education

Following the apparent successes of the Rapid Coverage for Primary Education programme, the Turkish government aimed to increase the poor secondary education attendance figures. In March 2005, the World Bank approved a US\$105 million Secondary Education Project Loan for Turkey. Although this project has yet to commence it is intended to support the following:

1. curriculum reforms in general and vocational education;
2. strengthening career guidance and counselling programmes; and
3. accessing and benchmarking Turkey's education programmes and institutions to national and international norms to improve the quality and relevance of secondary education.

Adaptability

Adaptability, as discussed, requires the state to be sensitive to the best interests of the child, and of the community from which the child comes. Sensitivity in this respect requires a decentralised system, with high levels of participation by students, parents, communities, teacher trade unions as well as bodies which represent members of the community.

As mentioned earlier, at present the Turkish Government relies on a heavily centralized management structure, which also applies to general and vocational education. The 81 provinces which are headed by a centrally appointed Governor mostly play an administrative role with limited decision-making power, and are more representative of the central government interests than of local interests. There are also decentralised authorities directly elected by the population, the main ones being the mayor and

¹³⁶ Interview with Metin Cakir

¹³⁷ Report submitted by Katarina Tomasevski, UNESCR Special Rapporteur on the right to education, Mission to Turkey, 3-10 February 2002

municipal council for a municipality (belediye) and the village or neighbourhood head (muhtar). Every locality (including areas within large cities) with over 2,000 inhabitants is entitled to elect a mayor and municipal council. In the local elections of April 1999 HADEP won the municipalities of the major centres of Diyarbakir, Aôri, Batman, Bingöl, Halckâri, Siirt and Van, as well as some 20 districts and nine towns. These officials, by virtue of the electoral system, are sensitive to the needs of their local communities. For example, Diyarbakir mayor, Osman Baydemir (HADEP), is a supporter of mother tongue instruction for Kurdish people. However, the mayor enjoys limited powers in areas including infrastructure (public transport, water and gas supplies, etc.) and public works (parks and gardens, pavements, refuse collection, etc.), and is granted no formal powers in education. As such, the local educational needs of an area fail to be represented in Ankara and, in some cases, mayors and provincial or district governors find themselves at odds with one another, with the former being more representative of local interests and the latter of central government interests.

In June and July 2004, parliament adopted a package on the reform of the public administration. This included in particular a Framework Law on Public Sector Reform, a Law on Special Provincial Administration, as well as a Law on Municipalities and Metropolitan Municipalities. Taken together, the purpose of the four laws was to reform the division of competences and duties between the four levels of administration (central, provincial, metropolitan and municipal) and to improve performance. In principle, this wide ranging and ambitious set of reforms aimed to convert the country's centralised, hierarchical and secretive administrative system into a decentralised, participatory, transparent, responsive and accountable model. Furthermore, the Administrative Procedure Draft Law attempted to set standard procedures in administrative actions, stipulating that the participation in administration was a right of the people.¹³⁸ However, despite devolving power in areas including health, culture and tourism, industry and trade, social services and youth directorates, these laws determined that national education, as well as justice, national defence and social security would remain in central government. Education thus remains highly centralised.

However, apart from the law on Metropolitan Municipalities, the reforms could not enter into force as several articles under these laws were vetoed by the President on the grounds that they violate the relevant constitutional provisions, in particular those related to the unitary character of the public administration. Remaining, therefore, is a system where important decisions concerning education are made within the MONE. For example, the legislation of the 1997 basic education programme was 'prepared by a small group of ministry administrators with no public consultation or debate'.¹³⁹

¹³⁸ 2004 Regular Report on Turkey's Progress Towards Accession, Commission of the European Communities

¹³⁹ Ilhan Dulger (2004), Turkey: Rapid Coverage for Compulsory Education the 1997 Basic Education Programme, World Bank Series

Ambarin Zaman of the Economist viewed this as an obstacle to real improvements in Turkish education. She believes that 'what the government needs to do is operate at a very grass roots level rather than imposing these grand, national strategies from Ankara. It needs to get the local governments and NGOs much more involved—NGOs that would be able to prove to the girls and their families that as a result of education they can improve their lives.'¹⁴⁰ Devolution of power must also be matched with greater financial independence for local authorities to initiate new programme. This is particularly necessary following a period of increasing financial control of Ankara on government spending.¹⁴¹

Turkish legislation related to education also aims to encourage participation. Amendment 4359 to Law 3797 (53/56/61/62) attempts to build bilateral democratic relations in the working life of educational institutions. This provides that educational unions are consulted on their opinions and suggestions for all legislation prepared in relation to personnel and education policies. Furthermore, it ensures that personnel activities must be undertaken to support the functionality of educational unions in order to get public opinion to influence the management and give the required importance and priority to education.

Turkish law, moreover, allows unions to conduct their activities without interference. Industrial workers and civil servants have the right to bargain collectively, and approximately 1.3 million workers, or 5.4 percent of the workforce, are under collective contracts. The law requires that, in order to become a bargaining agent, a union must represent 50 percent plus one of the employees at a given work site and 10 percent of all the workers in that particular industry. This requirement favours established unions, particularly those affiliated with Turk-Is, the confederation that represented approximately 80 percent of organised labour. However, Turkish law prohibits strikes by civil servants, including teachers, and furthermore prohibits any form of association if it runs contrary to the constitution and threatens national security. This clearly infringes upon the bargaining power of teaching unions, whose position is already weak as a result of Turkey's failure to ratify Articles 5 and 6 of the European Social Charter.

The teachers union, Egitim-Sen, recently experienced first-hand the shortcomings in Turkish trade union law. In June 2004, the Ankara State Prosecutor opened a case at the Labour Court in Ankara calling for the closure of Egitim-Sen on the basis of its refusal to remove from its statute the statement that it would work for 'the defence [of the right] of individuals to receive education in their mother tongue.' The Ankara State Prosecutor justified the closure by claiming that it was in accordance with the Law on Public Servant's Trade unions which stipulates that the activities and administration of such trade unions may not be contrary to the constitution. However, Egitim-Sen's delivery of

¹⁴⁰ Lifeonline, Yaprak transcript, www.tve.org/lifeonline/index

¹⁴¹ In 1955, 22 percent of government expenditure was allocated to local governments, but by 1996 the figure was only 12 percent

the statement (which the law is directed towards) was in obedience of the Law on Public Servant's Trade unions and of the constitution. Rather, by conflating the content of the statement (which is protected by freedom of expression) with its delivery, the Ankara State Prosecutor claimed that the demand for mother tongue education itself ran contrary to Article 42 of the Constitution, as well as threatened national security. Despite these assertions, in September the court rejected the request for closure, rightfully citing freedom of association and expression as provided by the ECHR. However, this was not the end of the story. In November, the Court of Appeals overturned this ruling, concluding that limitations on the right to freedom of association and expression were, in some situations, permissible in order 'to prevent activities contrary to the unitary structure of the country as a compulsory precaution with the aim of protecting national and public security, and protecting public order.'

On 10 December 2004 a new trial was opened, and in February 2005 the Ankara Labour Court confirmed its first ruling, only to have the Attorney General of Ankara bring the case before the Supreme Court for a final ruling. This happened in May, when the Supreme Court reversed the Labour Court's decision, thereby calling for the closing down of Egitim-Sen. With the possibility for a domestic retrial thwarted, Egitim-Sen applied to the ECtHR. Egitim-Sen removed the relevant provisions from its statute in the hope it would not be closed down. This case, which is not isolated, highlights the separation between the central mechanisms of the state and NGOs which attempt to influence government policy. Egitim-Sen, being the largest education trade union in Turkey, should be consulted in regards to education policy seeing as its members, teachers, are the most sensitive to the needs of children. This consultation requires freedom of expression, and like freedom of expression can be legitimately restricted in some circumstances; trade unions must not be censored by the government when delivering opinions. The 4th World Congress of Education International directly supported this, producing a resolution on the 'illegal attack' on Egitim-Sen.¹⁴²

Likewise, individuals expressing opinions on education must not be silenced or penalized in any way. In the 2004-2005 scholastic year, seven teachers who were members of Egitim-Sen were transferred to other schools for their 'involvement in union activities', i.e. their support of the mother tongue education campaign.¹⁴³ In June 2003, the authorities arrested and indicted teacher Hulya Akpinar for comments made at a conference in the Kils province on the Armenian massacre, whilst 6 other teachers were charged and temporarily dismissed from their jobs, though acquitted in December 2003 by the Kilis Court.¹⁴⁴ By dismissing teachers and posting them away from their homes as a disciplinary measure, which Amnesty International reported was a common feature of Turkish policy,¹⁴⁵ the authorities have violated the rights to freedom of association, as

¹⁴² www.ei-ie.org

¹⁴³ Tolerance towards basic rights and liberties (11 March 2005), www.bianet.org

¹⁴⁴ US Department of State (2003), Country Report: Turkey

¹⁴⁵ Amnesty International (2004), Country Report; Turkey

protected in Articles 2 to 4 of ILO Convention Number 87, Article 10 and 11 of ECHR, and freedom of expression, as protected in Article 18 of the Universal Declaration.

There are more positive signs that the Turkish government recognises the value of a needs based approach to education. In the General Principles regulating the Turkish Education system it is stated that the 'national education service shall be arranged in accordance with the desires and abilities of Turkish citizens and necessities of Turkish society.'¹⁴⁶ Moreover special attention is assigned to the role of the family in the education process. Article 1 (paragraph 3.13) of these general principles declares that 'in order to contribute to the operation of education institutions, co-operation shall be established between the school and family.' Furthermore in support of this it provides that school-family unions should be established at schools. However, rather than being local ad-hoc associations, these unions 'shall be arranged by a regulation to be issued by the Ministry of National Education.' Thus, again the state maintains its centralized and inflexible control over policies supposedly favouring decentralisation and accountability. Problems have also arisen with regard to the consultation of parents from minority groups as many of these parents, as discussed earlier, are illiterate and speak little or no Turkish, and as such require extra provisions to be able to participate in decision making process. In terms of using a minority language in public services, Article 3 of the Turkish Constitution states that the language of the Turkish state is Turkish. This, despite no direct prohibition of non-Turkish languages, has been interpreted by the Turkish authorities to mean that no language other than Turkish can be used when dealing with public services. This particularly concerns members of minority groups, especially Kurdish people, living outside of the core of areas where their language is spoken. In the core Kurdish areas, despite Turkish law requiring the use of only Turkish, there generally are sufficient opportunities for monolingual Kurdish people to speak Kurdish in communicating with authorities, due to the high numbers of Kurdish speakers working for the authorities. However, in western cities such as Istanbul the prevalence of Kurdish speakers is reduced, and there are no translating provisions on offer. This runs contrary to Article 10 of the European Charter as well as the Hague Recommendations, which provide that if there is a substantial number of members of a national minority and there is real need, then States should make it possible to use the minority language when dealing with public authorities. It must be said that both in the Kurdish areas and in the larger cities of Istanbul, Izmir and Ankara, there are substantial numbers and clearly a real need for such provisions. Indeed, in a poll conducted by DIHA in 1993, 13 percent of Istanbul's population claimed Kurdish roots, 3.9 percent considered themselves Kurds, and 3.7 percent identified themselves as 'Turks with Kurdish parents.'

The need for additional language provisions has been recognised by many organisations. The European Commission for Racism and Intolerance in its 3rd Report on Turkey encourages the Turkish authorities to find ways of facilitating communication

¹⁴⁶ General Principles Regulating the Turkish National Education System (Article 1.3.2)

between Kurdish speakers and the authorities. More importantly, the Turkish Government's Human Rights Consultation Board report of October 2004 found that legal restrictions on the use of minority languages violated the country's commitments under the 1923 Lausanne Treaty to provide Turkish nationals the right to use any language in the press, commerce, religion, public meetings, and private life without restriction. In response to this, a number of Government officials harshly criticised the report. President Abmet Necdet Sezer issued a warning that the unitary structure of the state was an untouchable issue and the Deputy Chief of Staff, General Ilker Basbug, was reported as stating that 'The Turkish Armed Forces cannot accept any debate over the unitary structure of the Turkish state, an untouchable provision of the Constitution.'¹⁴⁷ What is more, Ankara prosecutors opened an investigation against the report's principal authors, though there have been no developments in the case so far.¹⁴⁸

At present there are few structural mechanisms in place which formally incorporate minority groups in the more general decision making process. In January 2004, the government abolished the 'Secondary Committee for Minorities' established with a secret decree in 1962 in order to carry out security surveillance on minorities. A new institutional body, the 'Minority Issues Assessment Board' was set up in order to address the problems of non-Muslim minorities. The Board is composed of representatives of the Ministries of Interior, Education, Foreign Affairs and the Ministry of State responsible for the Directorate General of Foundations, and does not include representatives of the military and intelligence agencies. However, the department for minorities established within the Security Directorate of the Ministry of the Interior is still responsible for relations with minorities, and moreover, as the US 2004 country report for Turkey indicated, the new board failed to make any serious efforts to address the concerns of non-Muslims.¹⁴⁹ Minorities continue to be subject to certain discriminatory practices. Members of minority communities reportedly face difficulties in gaining access to senior administrative and military positions. Likewise, the 10 percent national threshold for parties in national elections to qualify for seats in government has precluded regional parties, which have strong support in only a small section of the country, from accessing parliament. Such restrictions have created too few opportunities for members of minorities to shape policy that affects them.

Higher Education

The rights pertaining to higher education differ from those of primary and secondary education, reflecting the underlying differences in the aims and outcomes between universities and schools. Higher education learning outcomes for the individual include active thinking skills, intellectual engagement and motivation, a variety of academic skills as well as economic mobility. The psychologist Erik Erikson, in a series of seminal

¹⁴⁷ Turkish Daily News, 'Minority Phobia Haunts Turkey', 7 November 2004

¹⁴⁸ US Department of State (2004), Country Report: Turkey

¹⁴⁹ US Department of State (2004), Country Report: Turkey

essays, argued that late adolescence and early adulthood are the unique times when a sense of personal and social identity is formed. He theorised that identity develops best when young people can experiment with different social roles before making permanent commitments to an occupation, to intimate relationships, to social and political groups and ideas, and to a philosophy of life.¹⁵⁰ A curriculum and learning environment that exposes students to knowledge about race, ethnicity, culture, and language will foster a learning environment that supports active thinking and intellectual engagement.

Democracy outcomes resulting from educated individuals include citizenship engagement, racial and cultural understanding, and judgment of the compatibility among different groups in a democracy. Students educated in diverse institutions will be more motivated and better able to participate in a heterogeneous and complex society. Community and democratic citizenship are strengthened when undergraduates understand and experience social connections with those outside of their often parochial 'autobiographies', and when they experience the way their lives are necessarily shaped by others.¹⁵¹ Heterogeneity within any society is extremely valuable: unity can be achieved through differences and a unity based on differences is more likely to thrive than a unity based on homogeneity.

In addition to aiming at the aforementioned learning and democratic outcomes, higher education institutions are in themselves essential pillars of civic society. Members of the academic community, being at the forefront of their respective fields, provide research and development that progress the knowledge of society. Academic institutions provide the impartial arena for public debate within the context of scholastic excellence, the powerhouse for academic research, and in many cases are the arenas where individuals perform essential checks and balances on the state through independent studies on government activities. Besides being officers of an educational institution, academics are citizens, members of a learned profession, and intellectual shapers of society.

Although discussions concerning primary and secondary education treat teachers primarily as employees of the state, debate surrounding academic freedom must at times dissolve the dichotomy between teachers and students, for the employees of the academic community are actors in the education process in addition to being the providers. The rights involved in higher education cannot be simply assigned to the students, but must be applied to members of the academic community at large. Higher education rights cannot primarily be examined through the relationship of individuals vis-à-vis the state (as with primary and secondary education). Rather, there must be a more comprehensive analysis through the three way relation between the state, higher education institutions, and members of the academic community (both in an individual and collective capacity).

¹⁵⁰ Erikson, E (1946) Ego Development and Historical Change. *Psychoanalytic Study of the Child*

¹⁵¹ Guarasci, R & Comwell, G (1997), *Democratic Education in an Age of Difference*

As discussed one of the aims of primary and secondary education is to create equal opportunities for all children, and as all citizens have the right to state funded primary and secondary education, these forms of education do require a high degree of consistency in respect to both their content and their delivery. In order to achieve this, the system must be relatively centralised, with, among other things, the content of the syllabus, the financing of education, the training of personnel and the examinations provided, or at least overseen, by a national ministry of education. However, higher education is not compulsory for citizens and, furthermore, choice over the content of higher education is given to students. This choice is provided by the institutions themselves, and as such the state is devoid of direct responsibility for syllabus selection. Rather, it should be only the indirect provider of higher education, overseeing rather than originating education. Its functions therefore include solving co-ordination problems, determining whether such education meets the required standards and exerting some control over the financing of universities and other institutions.

The indirect control of the state over universities gives rise to different sets of rights that minority groups can claim from the state. Private universities, being at the whim of market forces, have few responsibilities (except for non-discriminatory provisions) concerning minority inclusion. On the other hand, state universities, which are arms of the state, are subject to more requirements. These will be considered shortly.

International Commitments

What is the function of the state in higher education? What rights vis-à-vis the state are individuals and groups entitled to?

The UN Committee on Economic, Social and Cultural Rights recognises that higher education should include the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms at all levels. However, what these elements consist of is different from that of primary and secondary education.

Accessibility

The right to education is contained in the UDHR A26 (1) provision that 'everyone has the right to education'. While primary education is compulsory and free for all, secondary education 'shall be made generally available and accessible to all, higher education shall be made equally accessible to all, on the basis of capacity,' This provision, as with all articles contained within the UDHR, must not be contrary to the non-discrimination proviso of Article 2, which prohibits any distinction based on race, language, religion, political or other opinion, national or social origin, property, birth or other status. Therefore, the application procedure for institutions of higher education, which assesses whether the capacity of individuals is sufficient for their access to them, should be in line with this provision. Likewise, as education is a public service it qualifies for Article 25 of

ICCPR which guarantees to an individual access, on general terms of equality, to public services in his country.'

In line with rights to primary and secondary education, equal access to education is not sufficient for the fulfilment of the right the education. Traditionally, freedom of inquiry has been considered necessary for the search for truth and the advancement of knowledge that is at the core of higher education. This is reflected in declarations by the UN Committee on Economic, Social and Cultural Rights (UNECSR) which recognise that academic freedom (including freedom of inquiry) is a pre-requisite for the fulfilment of the right to education, 'the right to education can only be enjoyed if accompanied by the academic freedom of staff and students.'¹⁵²

The Committee proceeds to define academic freedom as 'members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation of writing. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear or repression by the state or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognised human rights applicable to other individuals in the same jurisdiction.'

Academic freedom contains two pillars of protection, namely institutional autonomy and individual rights of members of the academic community. Institutional autonomy is the collective right of the academic community to maintain independence from the state. Historically, there has been a struggle for university autonomy, arising from the belief that a university can best serve the needs of society when it is free to do so according to the dictates of the intellectual enterprise itself. As the UNCESCR observes, 'the enjoyment of academic freedom requires the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities.'¹⁵³ Threats to this autonomy can come both from outside of the institution, originating in the mechanisms of the state, and also from within, when either the members of the staff enforce restrictive policy or when there is a potent pattern of orthodoxy which infuses academic activities causing a form of self-censorship by academics. State interference can occur in many forms. The UNESCO Convention on the Recognition of Qualifications Concerning Higher Education in the European Region (Lisbon 1997) recognises this. It declares that institutions should be able to select, admit and discipline students, select and appoint faculty and staff, set and control curriculum, establish organisational arrangements for the carrying out of academic work, create programs and direct resources to them, and certify completion of

¹⁵² ECSCR Committee, Gen.Com. no, 13, paragraph 1

¹⁵³ ECSCR Committee, Gen Corn no 13 paragraph 40

a programme of study and grant degrees. Any state action which runs counter to these conditions will diminish university autonomy and defeat the purposes of higher education.

Individual rights to academic freedom can be applied to all members of the academic community. They allow educators and students as individuals to 'engage in the pursuit and dissemination of knowledge and to participate in the formation of educational policy.'¹⁵⁴ To realise the rights to such academic freedom, individuals must have the right to freely express opinions, to freely form associations, and freely engage in the pursuit of knowledge.

Freedom of expression is guaranteed in both the UDHR (Article 19) and in Article 10 of the ECHR, which provide that everyone has the right to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas without interference by public authority. The ECHR accepted that Article 10 could legally be restricted by state parties if it was connected with legitimate aims, namely the protection of national security and territorial integrity, and the prevention of disorder and crime.¹⁵⁵ However, the ECtHR has repeatedly stressed that exceptions to a principle must be construed narrowly, and as such only on the basis of the following linked considerations: first, when the interferences are proportionate to legitimate aims pursued and when the reasons for it are relevant and sufficient restrictions are permissible; second, the limits of permissible criticism are wider with regard to criticizing governments than with criticizing private individuals; and finally, where remarks incite to violence 'against an individual or a public official or a sector of the population' the state enjoys a wider margin of appreciation.¹⁵⁶ From decisions flowing from cases brought under Article 10, these considerations have required the Court to look to the contextual setting in which words were uttered rather than just the words themselves. If the words uttered present no 'clear and present danger' of violence ensuing, then restrictions to freedom of expression are not valid and a violation of rights is being perpetrated.

Freedom of expression therefore firstly protects the content of academic education. Students and members of the academic community must be able to freely engage in the examination of any subject so long as it is not contrary to the aforementioned standards. Furthermore, freedom of expression must also protect the individual's private use of any language, for language is not only a means of expression but also an expression *per se*. An individual may not be able to fully express him/herself without the use of his mother tongue, language itself being a manifestation of one's identity. Although under the human right to freedom of expression mother tongue instruction is not guaranteed as it

¹⁵⁴ Human Rights Watch, Memorandum to the Turkish Government on Human Rights Watch's Concerns with Regard to Academic Freedom in Higher Education, June 29 2004.

¹⁵⁵ Article 10.2

¹⁵⁶ Article 10; Judgement, paragraphs 44-50

requires positive state action, it is unlikely that the use of a language in a public setting is a sufficient threat to national security to constitute its prohibition. The use of Kurdish in the university setting, as such, is arguably protected by the right to freedom of expression as long as the content of the speech does not threaten national security. Freedom of opinion is protected in Articles 18 and 19 of ICCPR, and in contrast to freedom of expression, it cannot be restricted by law. Article 18 recognises that 'everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.' Furthermore, as noted by the UN Special Rapporteur at the 51st session of the U.N. Commission on Human Rights on December 13, 1994, freedom of thought should not be subject to self-censorship, that is, the individual should not be subject to pervasive ideology which undermines his ability to express his opinions, think or act freely.¹⁵⁷

In 2000, the Special Rapporteur also presented a Thematic Report of Opinion and Expression which took notice of actions taken by governments in relation to academic freedom. He found the following actions contrary to the freedom of expression and opinion:

Suppression of research on such controversial topics as a national independence movement that was active in the past, a ban on campuses of any independent organizations that are considered political; refusal of permission to hold a seminar on human rights; state-supported harassment of independent libraries that were established to provide access to materials to which there is no access in state institutions; charges of having published a play that was considered blasphemous; charges against and conviction of the head of a political science department, who was also a contributor to a student magazine, for having defamed the religion of the state.¹⁵⁸

Articles 21 and 22 of the ICCPR and Article 11 of the ECHR guarantee the right to persons to peaceful assembly and the freedom of association. The right of persons to act 'in community' with other members of their group their right to establish and manage their own NGOs, associations and institutions is essential for the functioning of civic society. In respect of the formation of associations around minority issues, Article 27 of ICCPR, provides that in those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall have the right, in community with other

¹⁵⁷ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, to the Commission on Human Rights, 51st Session, paragraph 24, E/CN.4/1995/32 (1994)

¹⁵⁸ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, to the Commission on Human Rights, 56th Session, paragraph 37, E/CN.4/2000/63 (2000)

members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. These provisions allow for the formation of societies and organisations which represent minority interests on university campuses.

In addition to the right to the private use of a minority language in a public setting, there are provisions relating to the promotion of minority languages in the higher education system. The Hague Recommendations state that minority language tertiary-level education, including vocational schools, should be possible 'when persons belonging to the national minority in question have expressed a desire for it, when they have demonstrated the need for it and when their numerical strength justifies it' to ensure that 'students are able to practice their occupation both in the minority and the state language'. Regarding the curriculum, the OSCE recommends that state educational authorities should ensure that the general compulsory curriculum includes the teaching of the histories, cultures and traditions of their respective national minorities.

Turkish provisions

The aims of higher education provided by the 1982 constitution and the Law on Higher Education (Number 2547) are to educate students so that they will be loyal to Ataturk reforms and principles, will be objective, broad-minded and respectful of human rights, and will develop in a balanced way, physically, mentally, psychologically, morally and emotively. Furthermore, higher education should educate students to be good citizens contributing to the country's development and welfare, and at the same time acquire the necessary knowledge and skills for their future vocations. As with primary and secondary education, loyalty to Ataturk's reforms and principles involves subscribing to a narrow form of ethnic nationalism. This ideological precondition conflicts with the free social and political inquiry that are traditionally essential functions of a university whilst simultaneously permitting university or state authorities to use such restrictive (but vague) prescriptions to persecute staff for ideological and political enquiry that questions or runs contrary to orthodox patterns.

Structure

The Higher Education system in Turkey is defined as all post-secondary programmes with duration of at least two years. Universities, faculties, institutes and four-year schools are founded by law, while two-year vocational schools, departments, and divisions are established by the Council of Higher Education (HEC). At the undergraduate level, higher education is provided by 53 state universities, including 2 state higher institutes of technology, and 23 private universities. The average attendance rate at higher education institutions is low in Turkey, accounting for only 29 percent of the age group (in comparison with an average rate of 43 percent for EU member states).¹⁵⁹ The majority of students attend state institutions with private universities

¹⁵⁹ National Programme for the Adoption of the Acquis, www.europa.net

accounting for only 6 percent of all placements in higher education.¹⁶⁰ The Higher Education Law No. 2547 governs the entirety of the Turkish higher education system. All universities are subject to the same law and regulations, even the private universities that were established post-1984.

Law No. 2547 dictates that the supreme authority for the regulation of higher education is the HEC which is a 21-member public body responsible for the planning, coordination and supervision of higher education within the provisions set forth in the Higher Education Law, and the Turkish Constitution. Seven of the members are appointed directly by the President of the Republic (who gives priority to former rectors), seven are nominated by the Inter-University Council and appointed by the President of the Republic, and seven are elected by the Government. All members serve a renewable term of four years. From this council, nine members are elected to form the executive board which performs the day-to-day functions of the Council.

In addition to the HEC there are four other upper administrative bodies in the field of higher education. First is the Inter-University Council (UAK), composed of the rectors of all universities and one member elected by the Senate of each university, which acts as an academic advisory and decision-making body for nationwide policy. Second is the Turkish University Rectors' Committee (TURC), which consists of all university rectors, and gives advice to the President of the HEC. Third is the Center for Student Selection and Placement (OSYM), which is a central body responsible for the admissions procedures for higher education institutions. Last is the Higher Education Supervisory Board, which is responsible for supervising the activities of universities to ensure conformity with the aims and principles of Law 2547, and for carrying out investigative procedures of and disciplinary proceedings against students and members of staff at higher education institutions.¹⁶¹

Accessibility & Availability

Higher Education should be available accessible to all citizens upon merit and free from discrimination. In Turkey, there are currently 1,779,731 students at higher education institutions. However, the places available at university are low in comparison with the number of applicants. In 2002, for example, around 1.5 million students (36.4 percent of whom were high school seniors, the remainder being repeat takers) took the Central University Entrance exam. Of these applicants only 175,000 (11.5 percent) were placed in

¹⁶⁰ Insan Tunali, General vs Vocational Secondary School Choice and Labour Market Outcomes in Turkey, www.erg.org.eg/tenthconf/labour presented.Tunali.pdf

¹⁶¹ Higher Education Act, Law Number 2547, (4 November 1981), Official Gazette No: 17506, November 6

a 4 year programme, and 193,000 in a 2 year programme.¹⁶² This testifies to the competitiveness within the education system.¹⁶³

Turkish universities are free to determine the number of students to be admitted to graduate-level programmes, as well as admission requirements in line with the general rules and regulations adopted by the Inter-university Council. However, the numbers of students to be admitted to the Bachelors' and the Associates' programmes are determined annually by the Council of Higher Education upon the recommendations of universities.

Article 10 of the Law on Higher Education No. 2457 establishes the Student Selection and Placement Centre, which determines the examination principles of university entrance, prepares, administers and evaluates the examinations, and on the basis of the results and the student's preference, will place the student candidates in universities and other higher education institutions. The application procedure that this body has selected creates a candidate scoring system which combines the candidate's results from the university exam, a single session examination consisting of two tests prepared to measure verbal and quantitative abilities, with the co-efficient (grade point average) of the candidate's school in the chosen subject. If a candidate has graduated from a school which has a high co-efficient in his field of study (the highest contribution being 0.8), his/her chances of acceptance to a university increase. Vocational schools, particularly religious schools, have lower co-efficients for the majority of subjects by virtue of their specialization, but a high co-efficient for the main subject (such as theology for religious schools). Furthermore, if a candidate wishes to change subjects from the one that s/he majored in at school (which many graduates of vocational schools do), the co-efficient used drops to 0.24. Thus, the system incorporates bonuses for candidates who continue studies in their high school specialisations and sets limitations for those who do not.

For many Kurdish young people this system is not adequate. As the preceding section shows the standard of primary and secondary education for Kurdish children residing in the south-east of Turkey is substantially lower than that for children from the majority, particularly those in the west of the country. Indeed, over 70 percent of teachers, students and parents do not believe that the education system provides equality of opportunity for students.¹⁶⁴ The level playing field of secondary education necessary for a standard session examination is therefore not created. To ensure real equality of access, a temporary compensatory mechanism should be adopted, in line with other western states, which would take account of the inherent inequalities of educational standards.

¹⁶² Insan Tunali, General vs Vocational: Secondary School Choice and Labour Market Outcomes in Turkey, www.erf.org.eg/tenthconf/labor_Presented.Tunali.pdf

¹⁶³ Report submitted by Katarina Tomasevski, UNESCR Special Rapporteur on the right to education, Mission to Turkey, 3-10 February 2002

¹⁶⁴ Egitim-Sen (August 2004), The structural problems of our education system and proposals to solve the problem.

Furthermore, in the south-east, the education system has adapted to the local job market, which is based on agriculture, industry and technical professions. As such, there are higher numbers of vocational high schools and training schools which are awarded low grade point averages in the university entrance system. Indeed, of the 214 boarding training schools in Turkey, 121 are in this region.¹⁶⁵ Moreover in the east and south-east there are higher numbers of children who come from economically disadvantaged backgrounds. Studies have shown that children from more humble backgrounds opt for vocation schools, based on the premise that parental investment decisions in education hinge on the tension between the short and long run needs of the household. Vocational schools offer shorter term educational investments for families. However, those children who are placed in vocational and training schools (mainly out of economic considerations) but who wish to apply for university are faced with a sizeable barrier when applying to university. Although there are no minority-based statistics, by virtue of the residency of so many Kurdish people in the south-east of Turkey, it is far from inconceivable that Kurdish children are subject to discrimination in the application procedure on the basis of their choice of education.

In May 2004, the Higher Education Board Bill attempted to amend the high-school coefficients for all schools to enable graduates of vocational schools (including clerical training schools) to choose a broader range of academic concentrations at undergraduate levels, and also to be put on an equal footing with students from conventional high schools. However, the Office of the Chief of General Staff believed that this would enable more students with religious training to enter tertiary education, dissolving the constructed dichotomy between state and religion. This, he asserted, would 'damage the principles of the unity of education and the principles of secular education' and further stated that 'for this reason rectors and institutions that are attached to the fundamental characteristics of the Republic cannot be expected to accept this draft law.' However, only eight percent of vocational education students graduate from religious schools¹⁶⁶ and most families that enrol their children in Imam-Hatip schools do so to expose them to more extensive religious education, not to train them as imams. A study conducted revealed that only nine percent of Imam-Hatip high school graduates choose theology at university entrance.¹⁶⁷ The current system effectively prevents these children from attending university except to study theology, which most choose not to do.

This debacle again saw the interference by the military in higher education. In line with the Office of the Chief of General staff, President Sezer vetoed this law on the grounds that it was contrary to the constitutional principle of secularism. Re-emerging on the public platform in May 2005, this bill was supported by Prime Minister Erdogan, who claimed that preventing the passing of the bill was tantamount to a division of regular high schools and vocational schools and that by espousing it, the HEC was 'engaged in

¹⁶⁵ Tusad report

¹⁶⁶ David Phillips (Sep/Oct 2004), Turkey's Dream of Accession, Foreign Affairs

¹⁶⁷ Baloglu (1990); *Turkiye'de Egitim: Sorunlar ve Degisime Yapisal Uyun Onerileri*

unfair discrimination.¹⁶⁸ However, YOK and rectors from universities considered such interference by the legislature as impinging the right to academic freedom. In July 2005, YOK, going against the Prime Minister's wishes, decreased the co-efficient for vocational schools from 0.24 to 0.08,¹⁶⁹ making it even harder for vocational school graduates to switch fields of study.

In terms of access to universities, students from economically disadvantaged backgrounds must be able to have sufficient financial means to attend universities. In Turkey, a great majority of the students receiving a higher education are receiving Education and Contribution (Expenses) loans from the Higher Education Credit and Dormitories Institution (Yurt-Kur), a central body which co-ordinates the allocation of all loans. Dormitories are provided to meet the accommodation needs of students who, out of necessity, must move away from their homes for the duration of their degree or course. The monthly student loans and loan allocation quotas are increased annually and it is ensured that more students benefit from this opportunity every year. At present, a total of 448,862 students at associate, bachelor, master and doctorate degree levels are receiving education loans and 404,366 students receive supplementary loans. A total of 182,756 students including 101,003 female and 81,753 male students benefit from dormitory services that include 190 dormitories, located in 75 provinces and 57 counties. This is extremely important for Kurdish students, particularly those living in rural areas of the south-east that do not live in close enough proximity to universities. However, the dependency of students on the state for financial assistance is a cause for concern in some situations, as the state can withdraw the funds as a form of punitive action for certain types of behaviour. This will be considered in again later.

Academic Freedom

Turkish Provisions Relating to Institutions

Under the Law on Higher Education Number 2547 and the 1982 Constitution, the Higher Education Council (HEC) was given broad powers in the education system of Turkey. The HEC supervisory board was initially composed of 22 members, 7 members assigned by the President of the Republic, 7 by the council of ministers, 7 members by the University Board and a further member by the National Security Council (NSC). This member was also a member of the HEC's nine-member Executive Council. By including a representative of NSC in the HEC, the military played a strong role in education policy. The national security agenda proved often to go contrary to the best interests of the academic community, and with institutional clout, was able to push forward its policies at the expense of higher education. Most notably, by conceptually linking the use of anti-state expression, speech and association of students and academics to acts of terrorism, the NSC through the decrees of YOK were successful in prohibiting the associations,

¹⁶⁸ Turkish Daily News, June 25 2005

¹⁶⁹ Turkish Daily News, July 16 2005

speeches, research and the dissemination of knowledge necessary for the essential functioning of higher education institutions. However, in May 2004, this NSC-represented member was removed from the HEC supervisory board following constitutional changes designed to fulfil the EU's conditions for candidacy. This was a great step forward in reducing military control of civilian affairs. There is still a long way to go. The NSC maintains informal contact with members of YOK, and still is able to shape education policies. For example, the aforementioned controversy regarding the application procedure of tertiary education institutions highlighted how the NSC influences education policy on the basis of national security concerns.

The HEC is still a highly centralised body, with a strong presence in almost all areas of higher education. According to the Law 2547, the functions of the HEC include preparing short- and long-term plans for the establishment, development, and realisation of educational activities of the higher educational institutions, seeing to the training of the teaching staff . . . according to the aims, goals and principles set forth in this law; supervising efficiently the resources allocated to universities within the framework of these plans and programs; and promoting continual and harmonious co-operation and co-ordination among the institutions of higher education. Such functions are in line with other higher education bodies in other states. Although universities are supposedly free to determine the content, grading systems, teaching methods and degree requirements of courses, the opening of a degree programme at any level is subject to ratification by the HEC. Moreover courses in History of Turkish Revolution and Turkish have strict guidelines regarding the aforementioned provisions. Foreign languages and 'traditionally spoken dialects' have additional requirements, which will be examined later.

Academic and administrative staff in state universities have civil servant status, but are appointed exclusively (except for the positions considered later) by the universities in line with requirements dictated by the HEC. However, Law 2547 endows the HEC with powers that are extremely intrusive on the autonomy of institutions of higher education. Article 7 (paragraph I) of Law 2547 empowers the HEC 'to conduct and decide upon disciplinary proceedings concerning rectors, to initiate the regular proceedings for the dismissal or transfer on a probationary status to another institution of higher education of those faculty members who fail to carry out in a satisfactory manner their duties as specified in this law or who act in a manner incompatible with the aims, fundamental principles and prescribed order as indicated in this law.' This, combined with the constitutional provision providing that the HEC 'direct the teaching... and steer the scientific research in Higher Education Institutions' gives the upper hand to the HEC in all faculty appointments, budgets, curricula and research priorities relating to higher education. As the aims and fundamental principles of higher education, as we have seen, are highly nationalistic, academics who question the legitimacy of the state or of state policy have their livelihood threatened by the possibility of dismissal or of transfer to another institution by the HEC. If academics lose their jobs due to political infractions

they may be banned from holding any position in the public sector, be it in education or not.

In addition to Law 2547, there are the public finance laws, which stipulate in great detail the procedures to be followed in the preparation of annual budgets, procurement, and auditing of expenditures, to which all public agencies are subject. This indirect governance also covers the allocation of both academic and administrative staff positions to state universities. Hence, state universities, being dependent on the governmental decisions on those two issues, do not enjoy financial and administrative autonomy, which is clearly in breach of the UN Special Rapporteur's conditions for institutional autonomy.

The selection of University Rectors is also provided by Law 2547. Rectors are the most powerful representatives of universities, chairing the decision-making bodies such as the Inter-University Council. The right to institutional autonomy requires that Rectors are representative of the institution as a whole. In Turkey, the process of electing rectors in State universities initially appears to be in line with this, with members of an institution entitled to vote for their choice candidate. However, these choices are then given to the HEC, which will send 3 names irrespective of the number of votes to the President of the Republic, who will personally select the Rector. The term of office is four years, at the end of which a Rector may be re-appointed by the same means, for a maximum of two terms of office. The Rector's appointment therefore interferes with institutional autonomy, as the successful candidate will not automatically be the one who receives the highest number of votes. This initial impediment to institutional autonomy is compounded by the Rectors' powers to appoint members of the university. The Rector directly appoints the vice-Rectors and the Institute and School Directors, whilst nominating three candidates from which the HEC will elect a Dean of the University. Furthermore, the Senate, which is the central decision-making body in a university, is composed of the Vice-Rectors, the Deans of each faculty, a teaching staff member elected for a term of three years by the respective faculty board and Directors of the Graduate Schools and Schools of Higher Education attached to the office of the Rector. This dense hierarchical appointment structure is extremely centralised with few procedures pertaining to accountability. Moreover, being so centralised the system fails to be demand-sensitive, relying more upon government directives than on the needs of individual institutions.

The Law on Higher Education also sets out the duties of the Executive Committee of Higher Education. This consists of 9 people, none of whom can be judges though this body performs the function of High Committee of Discipline. This involves judging cases brought against students or academics by institutions, and issuing penalties and punishments. Such punishments include the suspension and expulsion of students from institutions, the withdrawal of grants and loans from students, the transferral of academics to other institutions, and the dismissal of academics from their institutions. The grounds for punitive action are wide and vague. For academics, they include

perpetrating ideologically-motivated crimes aimed at abolishing rights and freedoms stated in the Constitution, abolishing the indivisible unity of the state, interfering with the peace and order of the institution, and the involvement or encouragement of the boycotting and obstructing of the activities of institutions.¹⁷⁰ For students, crimes include all of the above, plus assaulting the honour and dignity of university personnel, behaving disrespectfully, and participating in anarchic or ideological actions.¹⁷¹ If students or teachers are involved in the above activities, faculty deans are authorised to investigate the violations, and to directly give punishment or to refer the case to the disciplinary committee. However, in Law 2547, which provides the criteria for ‘crimes’, there are no concrete examples of what constitute these. Instead, the vague language lends itself to interpretation, which in many cases has been used in the past to punish students and academics for seemingly innocuous activities. For example, the campaign for optional Kurdish lessons, which took the form of mass petition collection (over 16,000 students signed the petitions), saw, between November 2001 and July 2002, 2,414 inquiries opened against students, 1,350 student suspensions and 95 student expulsions.¹⁷² Moreover, according to the Human Rights Association (IHD), from January to August 2002 police detained 3,621 students or parents from the same campaign, and of those detained 446 were charged with violating the Penal Code. The basis of this response was that the student campaign was initiated by an illegal organisation (the PKK), and that these students were either members of, or supported an illegal organisation whose aims were to promote separatism, thereby violating sections 168 and 169 of the Penal Code. This campaign, which will be examined in greater detail later, highlighted the swift and harsh measures by YOK and the Turkish authorities, who were able to violate the students’ rights to freedom of association and expression by constructing a link between the movement and the PKK.

In August 2002, students detained for submitting petitions began to be released following an NSC meeting which authorised their return to universities, and many cases that went to trial resulted in acquittal. However, within Universities, harsh punitive action was still carried out. Kocatepe University in Afyon western Turkey, suspended 24 students in January 2002 for two terms for submitting petitions. The students objected to their suspension at Denizli Administrative Court, but on December 23, 2002, the court rejected their case.¹⁷³

In April 2002, the Dicle University Disciplinary Board suspended Ahmet Turhan, a student of the Law Faculty of Dicle University in Diyarbakir, from the university for one year for submitting petitions calling for optional Kurdish courses. Turhan had earlier been sentenced to three years and nine months of imprisonment for ‘supporting an armed organization’ and for submitting the petitions. In January 2003, Diyarbakir

¹⁷⁰ Article 53, Higher Education Law Number 2547

¹⁷¹ Article 54, Higher Education Law Number 2547

¹⁷² www.bianet.org, Kurdish Students will Return to School, 26 August 2002

¹⁷³ Human Rights Watch, Memorandum to the Turkish Government on Human Rights Watch’s Concerns with Regard to Academic Freedom in Higher Education, June 29 2004.

Administrative Court ruled the expulsion unlawful, and Turhan returned to his course, pending his appeal against the prison sentence. In May 2003, however, Turhan was expelled from the university on the grounds of his criminal conviction at first instance. The EEC disciplinary regulation requires that any person who has committed 'crimes against the state' be dismissed. Turhan successfully appealed against the prison sentence and is now on trial in a local criminal court under article 312 of the Turkish criminal code, on the pretext that the petition amounted to incitement to racial hatred. If he is again sentenced, Turhan will be permanently barred from registering at any higher education institution.

In January 2003, Abdurrahim Demir was expelled from Dicle University following his conviction and sentence to three years and nine months of imprisonment for 'supporting an armed organization', allegedly evidenced by his submission of 1,540 petitions for the addition of Kurdish courses to the curriculum in January 2002. Demir's appeal was also successful, and he is also on trial under article 312 of the Turkish criminal code.¹⁷⁴

The use of punishment to restrict academic freedom is widespread. Indeed, in January 2005 alone, 12 students and teachers were prosecuted and punished, 115 students were prosecuted, 196 students were taken into police custody and three were arrested. In February 2005, two students and teachers were prosecuted and punished and 34 students were prosecuted. This not only directly erodes institutional autonomy, but also threatens academic freedoms by virtue of the supposed misdemeanours that punitive treatment can be used against. In June 2004, Professors Şebnem Korur Fincancı and Sermet Koç were removed from their positions as heads of the two faculties of Forensic Medicine at hospitals attached to Istanbul University. They had expressed theft concerns about the lack of independence of the Forensic Medical Institute to the press. Şebnem Korur Fincancı had previously been removed from her duties at the Institute for writing a report in which she concluded that an individual had died in custody as a result of torture. Mustafa Eberliköse, a student at Blacksea Technical University, was dismissed from the university for two semesters on the grounds that he participated in the 'Democratic University Assembly' in 2003 in Istanbul. The university reportedly had no evidence against Eberliköse other than a letter written by the Istanbul Security Directorate.¹⁷⁵

The decisions taken by the Committee of Discipline are moreover obliging, there is no authority for objecting to the decisions of this committee, and the decisions are put into practice directly. In addition, Law 2547 furnishes the HEC with immunity from prosecution. This is in clear breach of international policy. First, judicial independence from the state is a requisite of a fair judicial system. This does not exist in the

¹⁷⁴ Human Rights Watch, Memorandum to the Turkish Government on Human Rights Watch's Concerns with Regard to Academic Freedom in Higher Education, June 29 2004.

¹⁷⁵ Turkish Human Rights Foundation, November/December 2004 Report, Amnesty International Report

aforementioned system, where government representatives who have no legal training sit on the committee. Second, in all justice systems the right to a re-trial is a given, yet, again, this is not provided. As such, there are no mechanisms for accountability of the disciplining of students or academics.

Turkish provisions relating to individuals

Many academics within Turkey, as in the case of other countries, publish their work. Indeed, most of the research in Turkey is conducted in higher education institutions.¹⁷⁶ This is either done in conjunction with or independently of the education institution to which they belong. For universities, publishing the material of academics is not only a source of revenue, but is indicative of their position at the vanguard of the intellectual movement within society. Within society, published works increase the dialogue around particular topics, encourage further investigations into topical subjects, as well as educate members of society who do not have access to the institutions. The right to publish is also a necessary component of the job of academician.

Article 130 of Constitution provides that universities, members of the teaching staff and their assistants may freely engage in all kinds of scientific research and publication. Likewise, Article 42 of the Constitution prevents any state intrusion into the activities of education, instruction, research and investigation. If the number of publications in reputable international journals is taken as an indicator of the research work, Turkish higher education institutions have shown a continuous remarkable success by moving from 40th in 1990 to 21st in 2003 among world states ranked with respect to the number of publications in journals.¹⁷⁷

Leaving aside the quantitative developments in publishing, there are still qualitative shortcomings with the current system. As with all freedoms contained in the constitution, the rights to freely engage in research and publication are subject to limitations. The exercise of these freedoms may be restricted to protect national security, public order and public safety, the basic characteristics of the state, preventing crime, ensuring the proper functioning of the judiciary and other reasons. Likewise, the new Penal Code enables the state to restrict the freedoms of those who publicly denounce their nationality, the Turkish Republic or Parliament. Many of these restrictions are clearly valid. However, the indeterminate concepts of 'national security', 'public order and public safety', 'indivisibility of the State' endow the HEC, which ultimately controls what material can be published, with extremely strong discretionary control over the right of academics to freely engage in research and publishing.

From the 25-27 of May 2005, an academic conference on the Armenian Genocide was planned by Bilgi, Bogazici and Sabanci Universities. However, this had to be postponed

¹⁷⁶ National Bologna Report of Turkey 2004-2005 <http://www.yok.gov.tr/english/index_en.htm>

¹⁷⁷ National Bologna Report of Turkey 2004-2005 <http://www.yok.gov.tr/english/index_en.htm>

due to intense hostility from the authorities. Justice Minister Cemil Cicek accused the academics of treason, and stated that the conference was 'a stab in the back to the Turkish Nation.'¹⁷⁸ Moreover, he declared that were he to have the power, he would prohibit the conference. By claiming that organisers were disloyal to the state, Cicek (along with other commentators) were able to employ indirect control over the proceedings, manipulating the situation to force academics into a form of self-censorship, which violates freedom of expression and opinion. The University Rector Professors Ayse Soysal (Bogazici University) and Tosun Tczioglu (Sabanci University) felt obliged to postpone the conference to 23-25 September.

In terms of independent publishing, a route which many academics take, there have been some positive changes. The Press Law, which was used to force publishing houses and journals to close down, by imposing heavy fines on such grounds as 'failure to notify the authorities on time about the address or editor changes' and 'delay in delivering the copies of books and magazines to the Public Prosecutor' has been changed. The most important change is the implementation of spirit of ECHR Article 10 into this law, under Article 3, reading 'the press is free. This freedom covers getting, disseminating, criticizing and interpreting information and creating a work. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'

Likewise the use of Article 312 (2) of the Penal Code, 'incitement to hatred on the basis of class, religion or race', which had been used as a means of penalising writers who support minority issues, was reduced following a public statement by the Attorney General for the Supreme Court of Appeals, resulting in the acquittal of several writers including Selma Kociva and Omer Asan. However, as the International Publishers Association states, the 'misconceived interpretations of national security are [still] obstacles to freedom to publish and freedom to write.'¹⁷⁹ In May 2003, the Istanbul Court convicted editor Baris Baksi, and writer, Zulfikar Yildirim, for an article published on the Kurdish issue. This article was alleged to be tantamount to incitement to violence, and as a result the men were convicted, received a hefty fine, and the journal was closed for 15 days.¹⁸⁰ The prevalence of the use of this condition is demonstrated in the number of books that are prohibited under it, as well as other provisions. In 2004, according to the report of the Turkish Publishers Association, 43 books were banned and 37 writers and

¹⁷⁸ Turkish Daily News, 17 May 2005

¹⁷⁹ International Publishers Association, New Turkish Penal Code: A long way to freedom of expression

¹⁸⁰ US Department of State; 2003 Country Report; Turkey

17 publishers were put on trial. The main reasons for this were the Kurdish question, obscenity, and expressing opinions regarding the practices of the state and its officials.

Despite these changes, academics still work within the civil service, and as such, are subject to laws and restrictions on civil servants, for example, the Law on Public Servants. In January 2000, the HEC ordered Istanbul University to start a disciplinary investigation against law faculty Professor Bülent Tanör for authoring the landmark report *Perspectives on Democratization in Turkey* published by the Turkish Businessmen and Employers' Association (TUSIAD). The investigation focused on alleged irregularities in Professor Tanör's efforts to notify the University of this work, but was widely perceived as politically motivated. The report was critical of Turkish law, the constitution, and the education system. It made many recommendations that at the time were deeply offensive to the then-government, but have since been adopted in legislative and constitutional changes.

In the past, the Turkish State had wide powers vis-à-vis the individual in terms of freedom of expression. Articles within the Anti-Terror Law, the Penal Code as well as the aforementioned Press Law were used liberally to prosecute individuals for non-violent forms of speech. Within the Anti-Terror Law, Section 8 prohibited written and spoken propaganda, meetings, assemblies and demonstrations that were 'aimed at undermining the territorial integrity of the Republic of Turkey or the individual unity of the nation.' Section 7 prohibited propaganda in connection with the [terrorist] organisation in a way that encouraged the resort to violence or other terrorist means.

Section 312, paragraph 2 of the Penal Code was used regularly to prosecute anyone who 'incites the people to hatred or hostility on the basis of a distinction between social classes, races, religions, denominations or regions', with prison sentences of between 6 months and 2 years. This was used as a means to penalise writers who expressed support for minority issues. Furthermore, section 159 of the Penal Code required that 'whoever overtly insults or vilifies the Turkish nation, the Republic, the Grand National Assembly, or the moral personality of the Government, the Ministries or the military or security forces of the State or the moral personality of the judicial authorities shall be punished by imprisonment of one to six years.' Article 169 restricted freedom of expression if it was used to aid and abet terrorist organisations. This was used liberally, and particularly to justify harsh measures taken against students who expressed their minority identity and against students who demanded Kurdish language and literature inclusion in institutions of higher education.

In November 2004, the Yildiz Technical University Rectorate launched disciplinary investigations against twenty students with the charges of 'dancing, playing instruments, singing Kurdish songs and opening stands and placards in order to protest against the HEC.' Supposedly, these students were supporting an illegal organisation. Öner Çelik, student at Çukurova University, was detained on the grounds that he shouted slogans when President Ahmet Necdet Sezer came to Balçali Campus of

Çukurova University on 7 October for the opening ceremony of the 2004-2005 academic year. Likewise, the students Eray Sengül and Cem Atakan Sen were detained on the grounds of shouting slogans during the opening ceremony of the 2004-2005 academic year at Ege University. Fevzi Demir, student at Erzurum Atatiirk University was dismissed permanently from the school on the grounds that he participated in 21 March Newroz celebrations. Seventeen students were dismissed for differing periods. Fevzi Demir stated that demonstrations were held in a remote place from the school and no investigations were launched by the public prosecutor.

Article 169 of the Penal Code has been used to suppress the aforementioned mother tongue petition campaign despite the right to submit petitions being protected by Turkish Law. In 2002, Justice Minister Hickmet Sani Turk stated that submitting petitions was driven by the PKK: 'By provoking people, the terrorist organization is forcing them to submit petitions. They want to take the issue to the ECtHR and put this in the world spotlight.' By conflating legitimate peaceful demands of students for additional university provisions with acts of terrorism, the Turkish authorities could justify the use of harsh penalties on students under the Penal Code. Following pressure from European bodies, most notably the EU, there have been amendments to these laws to remove restrictions on the freedom of expression.

As part of a Harmonization Package, Article 312 of the Penal Code was amended (to form Article 216), preventing convictions under this article unless an individual's 'incitement to enmity and hatred' constitutes a clear and close danger. However, the new Article 216 allows for up to 3 years imprisonment for individuals who instigate a part of the people having different social class, race, religion, sect or region to hatred or hostility against another part of the people in a way dangerous for the public security. Conviction under this Article is possible as long as the 'incitement to enmity and hatred' constitutes a 'clear and close danger,' which still conflicts with ECHR standards.

The new penal code, which was adopted on 27 September 2004 and came into effect in June 2005, attempted to change provisions conflicting with EU Accession standards. Article 159 of the old penal code was replaced with Article 301 which makes it a crime to publicly denigrate Turkishness or the Government of Turkey. A supposed violation of this article was used by the Kayseri Bar Association's Attorney to file charges against the novelist Orhan Pamuk, who in February 2005 commented in the Swiss newspaper *Tagensanzeiger* that 30,000 Kurds and 1 million Armenians were killed in Turkey.¹⁸¹ As a result of confusion over whether Pamuk should be tried under Article 159, which was current law when Pamuk made his statement, or under Article 301 when the charges were filed, proceedings were adjourned to refer this question to the Ministry of Justice. Importantly, Article 159 required the Ministry of Justice to give its permission for trials, while Article 301 had no such requirement. In response to mounting international and domestic pressure, the Ministry of Justice declared it would not give its permission to

¹⁸¹ www.cianet.com

allow the trial to proceed (thereby using Article 159), and so the case against Pamuk was dropped in February 2006. Although this decision should be welcomed, the use of the ministerial discretion contained in the old Article 159 to secure an acquittal simply relied upon a legal technicality and failed to alleviate the effect that this article has on freedom of expression. Most notably with the high-profile case of the writer and *Radikal* journalist Perihan Magden, Article 301 is still being used to stifle public debate and freedom of expression. Magden, who defended the principle of conscientious objection in a December 2005 newspaper column, is facing prosecution under Article 305 following a complaint made by the Turkish Military. She was arrested in April 2006 and her trial was set for late July of that year.

Moreover, the new Penal Code criminalises the discussion or even recognition of particular issues, wholly violating freedom of thought and expression. Article 305 prohibits ‘acts against the fundamental national interest’, with the explanatory note giving examples of statements which may constitute such an act. Included amongst these are statements that the Armenian genocide occurred, or statements in support of the withdrawal of Turkish forces from Cyprus. Makers of such statements may be convicted and spend between 3 and 10 years in prison.

As part of the reform package the use of article 8 of the Anti-Terror Law to prohibit non-violent use of speech has been lifted resulting in the release of many prisoners (by April 2004, 2204 persons had been acquitted). In May 2004, there were 5,809 individuals in prison from Article 8 convictions though this was a marked improvement on previous years (2000 (8,657), 2002 (7,745), 2003 (6,137)).¹⁸² Despite improvements in the restrictive use of Article 8, a further modification of this law is nonetheless required as its present wording ‘opens the door to arbitrary action by the state against individuals for ‘crimes of expression of thought [or] for having expressed opinions which... could be interpreted as incitement to separatism.’¹⁸³ Moreover the use of Article 7 of the same law and Article 169 of the Turkish Penal Code (‘aiding and abetting terrorists’) in its place has caused much concern.¹⁸⁴ Indeed, in 2004 the US Department of State claimed that individuals could not criticise the state or government of Turkey publicly without fear of reprisal, and that the government continued to restrict expression by individuals sympathetic to some religious, political, and Kurdish nationalist or cultural viewpoints.

Throughout 2004, active debates on human rights and government policies continued, particularly on issues relating to the country’s EU accession process, the role of the military, Islam, political Islam, and the question of Turks of Kurdish origin as ‘minorities.’ However, persons who wrote or spoke out on such topics risked

¹⁸² EU 2004 Regular Report on Turkey’s Progress Towards Accession

¹⁸³ Parliamentary Assembly, Resolution 1256 (2001)

¹⁸⁴ Muge Gursoy Sokmen, *Metis Publishers, Turkey*, Speech (in a shorter version) delivered on 21 June 2004, at the 27th Congress of International Publishers Association in Berlin.
www.bianet.org/2004/08/01_eng/news38306.htm

prosecution.¹⁸⁵ In fact, the number of cases against Turkey brought to the ECtHR in violation of the right to freedom of expression increased from 2004 to 2005. In 2004, the court fined Turkey US\$166,000 for violating Articles 10, 6(1), and 2 of the ECHR, while in the first 6 months of 2005 this amount was US\$370,000.

Domestic prosecutions against persons expressing their opinions or reporting on controversial issues, including on minorities or Armenian or Kurdish issues and human rights violations, remain a state policy. According to HRA, in 2004 693 persons were sentenced to prison terms and fines for expressing their views, compared to 454 in 2003, while new cases were launched against 467 persons out of 2,488 persons subject to investigations for the same reason in 2004, compared to 1,706 persons in 2003. The government prohibited or confiscated nine books or publications in 2004, compared to 285 in 2003. Furthermore, in 2004 the authorities detained one journalist in prison, arrested 39 journalists, physically attacked 14 journalists, and censored 5 media institutions.¹⁸⁶

Law 2547 permits punitive treatment of academics and students for political orientation. Until the passing of a constitutional amendment in July 2002, university professors had not been allowed to become members of political parties. This amendment, although allowing for participation at the central levels of government, still prohibits the participation by professors at local levels. Furthermore, university professors and students cannot become members of an association without permission from rectors. In November 2004, Kamil Murat Demir, a student at Akdeniz (Mediterranean) University in Antalya, was dismissed for 20 days for having participated in a Labour Day meeting organized by the Confederation of Unions in the Public Sector (KESK) on 1 May 2004. Hüseyin Aydın, a student at Diyarbakir Dicle University, was dismissed from the university for one month on the allegation that 'he invited mayor candidate Osman Baydemir before the local elections on 28 March 2005.'¹⁸⁷

In respect of freedom of association, in January 2003 the provision that prohibited founding an association 'to protect, develop or expand languages or cultures other than the Turkish language or culture or to claim that they are minorities based on racial, religious, sectarian, cultural or linguistic differences' was removed. This allowed for the use of languages other than Turkish in the non-official activities of associations. However, in October 2004 a report produced by the Government's Human Rights Consultation Board found that legal restrictions on the use of minority languages that still existed violated the country's commitments under the Treaty of Lausanne to provide Turkish nationals the right to use any language in the press, commerce, religion, public meetings, and private life without restriction.¹⁸⁸ A number of Government officials

¹⁸⁵ US Department of State (2004), Turkey Country Report

¹⁸⁶ Reporteurs Sans Frontiers (2004); Turkey Annual Report, www.rsfsf.org

¹⁸⁷ Turkish Human Rights Foundation; October 2004 Report

¹⁸⁸ US Department of State (2004), Turkey Country Report

harshly criticised the report and Ankara prosecutors opened an investigation against the report's principal authors Professor Dr Basin Oran and Professor Dr Ibrahim Karoglu. To date, there have been no developments in the investigation.

In July 2004, the new Law on Associations was adopted by Parliament. This removed the requirement for prior permission from state bodies for any public assembly or meeting, and lifted all restrictions on student associations. Structurally, it created the new Department of Associations, thereby transferring the competencies previously falling under the responsibility of the police to citizens. These amendments have been a great step towards meeting international human rights standards and have been strengthened further by additional state originated recommendations. For example, except in cases where there is a request from authorities, NGOs' activities are no longer subject to video recording, though in practice it is still very common. Furthermore, security forces are, in theory, prevented from using disproportionate force against demonstrators.

However, there are still conditions attached to provisions relating to freedom of association. In June 2004, the Ministry of the Interior issued a circular that allows Governors to restrict public activities in the interest of public safety and to regulate the use of slogans and the text of banners. Throughout 2004 it was reported that significant prior notification to authorities was required for a gathering, and authorities could restrict meetings to designated sites.¹⁸⁹ In addition, the authorities have used small violations of various laws to justify the restrictions on activities that they believe run contrary to national interest. In November 2004, members of the Socialist Platform for the Oppressed were detained in Diyarbakir after a press conference concerning the HEC. Claiming that no prior permission had been sought for the distribution of leaflets, the authorities were able to detain five members and the public prosecutor issued a search warrant against 15 people. It appeared that the authorities were simply searching for a suitable excuse to restrict the activities of this organization, whose policy objectives were not in line with the Turkish state agenda.¹⁹⁰

Freedom of assembly and demonstration is provided by the Constitution. Under Law No. 2911 of 6 June 1983 on Assembly and Demonstrations, no authorisation is needed to hold a demonstration, but written notice of a demonstration must be submitted to the Governor of the relevant province or district at least 48 hours in advance if it is to be held outside the headquarters of an organisation (the same rule applies to the distribution of pamphlets, giving of press statements and issuing of publications). The governor issues the organisers with an acknowledgement of receipt, which is sufficient for the demonstration to take place. However, planned demonstrations are often stopped from going ahead by the Governor. Law No 2911 enables Governors to ban a demonstration on the basis of disrupting public order, national security, activities against the character of the republic, potential use of force, and threatening the indivisible unity of the Turkish

¹⁸⁹ US Department of State (2004); Turkey Country Report

¹⁹⁰ Turkish Human Rights Foundation; November!/December 2004 Report

State. Furthermore, authorities have appeared to quietly condone antagonistic police action at demonstrations. People involved in peaceful demonstrations have often faced hostile police forces that make arbitrary arrests, and attempt to disperse protesters with an illegitimate use of force. However, in August 2004, the Interior Ministry issued a circular directing Governors and law enforcement authorities to take measures to avoid the use of excessive force in responding to demonstrations. The circular instructed authorities to identify the root causes of excessive force, working with NGOs and other civil institutions as necessary, and to punish law enforcement officials who engage in the practice.¹⁹¹ Despite this, the excessive security measures, the high number of arrests at demonstrations and the negative attitudes of the police towards demonstrators have been maintained, often leading to tensions. According to HRA, in 2004 eight demonstrations and meetings were banned and the security forces used excessive force in 124 demonstrations and meetings. More than 500 demonstrators, including political and minority activists, human rights activists, students and journalists, were wounded during intervention in these actions.

On 12 April 2004, students in Ankara protested against the HEC and NATO. No permission had been sought for this, but the demonstration was peaceful. Riot police arrived to disperse the protestors, using a disproportionate amount of force, which included punching and kicking. In all, 71 students were detained in the Ankara Police Headquarters, of whom 51 were charged with violating Law 2911 on Meetings and Demonstrations, though they were later released. In April, Istanbul police reportedly prevented students from marching in Taksim Square to protest the Higher Education Council. Police allegedly beat students with truncheons, used tear gas, and detained 48 demonstrators.¹⁹²

On 5 November 2004, over ten students were arrested after participating in a meeting to protest against the HEC on Sakarya Avenue, Ankara. The grounds for their detainment was a poster of Ocalan which they carried, and for two students, Dilek Aktag and Ihsan Altay, the charge was 'being a member of an illegal organization.' On 6 November, further demonstrations were staged against the HEC in many cities in Turkey. Quarrels broke out in Ankara and Istanbul between the police and the demonstrators. In Ankara, students gathered in Kurtulus Park wanted to march to Kizilav Square, but the police did not allow them. A fight with sticks and stones ensued, with the police using tear gas and pressurised water to disperse the crowd. The fight resulted in 50 students being detained and 42 people put on trial under Law No 2911.

The police also forcibly dispersed the students in Istanbul who gathered in Beyazit Square. Some 10 students were detained and Vedat Arik, a correspondent with the daily Cumhuriyet, was wounded during the incident. In response to these protests against the HEC in Ankara and Istanbul, Prime Minister Recep Tayyip Erdogan stated 'I do not find

¹⁹¹ US Department of State (2004); Turkey Country Report

¹⁹² US Department of State (2004); Turkey Country Report

the demonstrations democratic. I do not find them the true way of searching for rights. These are not the necessary ways to be used for searching for freedom, freedom of thought...You have seen the patience of our security forces. Their patience has also a limit.¹⁹³ Erdogan's defence of the police hardly seems to be in line with his support for extended rights of freedom of expression, association, and assembly. Indeed, the Chairman of the Bar Associations of Turkey (TBB) Özdemir Ozok criticised the Prime Minister Recep Tayyip Erdogan for defending the police. Ozok claimed that the rights and the freedoms of police are also limited and as such they should not use violence to harm the demonstrators.¹⁹⁴

On 6 December 2004, the police intervened in a press conference held in Görükle Campus of Bursa Uludag University, which was arranged to protest in the disciplinary investigations against students who joined the protest demonstration against the HEC in November 2004. The police dispersed the group by using truncheons and detained some 40 persons including EMEP General Execution Committee member Sinan Ceviz and Selçuk Yilmaz, EMEP Chair for Inegol district in Bursa.¹⁹⁵

The formation of student societies is not directly prohibited under Turkish law. However, students face disciplinary penalties if they are involved in activities which aim to upset, obstruct or boycott higher education's study order or peace or which aim to slow personnel's works by ideological and political purposes.¹⁹⁶ The disciplinary system itself, as discussed earlier, has both broad powers against students and little accountability. As such, this restricts the activities of many societies, whose members have to operate in fear of punitive action being brought against them by the disciplinary committee. Interior affairs minister Abdulkadir Aksu claimed that university students had been involved in 460 criminal incidents in the 2004-2005 scholastic year, most of which concerned hanging posters, distributing announcements, stringing banners and holding press conferences. He furthermore claimed that most students 'who start or provoke such incidents were for the most part followers of illegal groups.'¹⁹⁷ Although there are few recent surveys conducted on the numbers of students either temporarily or permanently excluded from individual institutions of higher education, the figures for 2002 go some way to exposing the depth of the problem. In a report conducted by the Human Rights Foundation of Turkey into expulsions and suspensions in the 2002-2003 scholastic year, there were 30 expulsions and 33 suspensions from Istanbul University, 23 expulsions and 80 suspensions from Marmara University, 20 expulsions and 14 suspensions from Malatya Inonu University, 23 expulsions and 408 suspensions from

¹⁹³ Turkish Human Rights Foundation; November/December 2004 Report

¹⁹⁴ Turkish Human Rights Foundation; November/December 2004 Report

¹⁹⁵ Turkish Human Rights Foundation; November/December 2004 Report

¹⁹⁶ Turkish Human Rights Foundation; November/December 2004 Report

¹⁹⁷ Turkish Daily News, August 10 2005

Van 100th Year University, 9 expulsions and 408 suspensions from Hatay Mustafa Kemal University, and 21 expulsions and 66 suspensions from Cukurova University.¹⁹⁸

In February 2005, the Turkish parliament granted amnesty to 677,000 men and women who had been expelled from university over the previous five years.¹⁹⁹ This was a significant move. However, students are still nonetheless unfairly punished for lawful actions. In June, an investigation was launched against the students in connection with the 'Spring Festival' organised on 20 May in Trakya University. The Disciplinary Council of the university decided to dismiss 35 students for one year, 18 students for one semester, and 11 students for a month. Security forces had intervened during the festival on allegations that Abdullah Ocalan's posters had been put up and detained many students, of whom 20 had been arrested. 12 students of Kocaeli University were temporarily dismissed from the school on the grounds that 'they distributed unauthorised leaflets and opened a desk.' Çağdas Yilmazer was dismissed for one semester, Ozcan Titer, Ekin Günes Saygili, Ufuk Atalay, and Ersen Tek were dismissed for one month, and M. Akif Kosar, M. Burak Ovür, Cem Keser, Selçuk Vayiç, Deniz Sahin, Ozkan Yilmaz, and Çağlayan Bozaci were dismissed for one week.²⁰⁰

In respect of general structural provisions intended to promote and enforce Human Rights, several new bodies have been created through recent legislation. The Reform monitoring Group, the Human Rights Presidency, the provincial and sub-provincial Human Rights boards, the Human Rights Advisory Committee, and the Human Rights Investigative board were established to encourage a comprehensive incorporation of human rights into the activities of the state. The Reform Monitoring Group has, since September 2003, examined a number of human rights violations and has resolved problems raised by foreign embassies and NGOs. The Human Rights Advisory Committee, which deals with complaints against public institutions, has held some exchanges, but its impact has been limited, particularly following the hostility to the report it published in 2004 (discussed earlier). It received 791 complaints between October 2003 and June 2004, of which it has dealt with only 322. In February 2004, 25 NGO and university members of the board released a public letter to the state minister responsible for human rights, criticising the minister and the Human Rights Presidency for not consulting the board on any issues relating to the reform process and the affairs of the board itself. The government displayed contempt for the Human Rights Advisory Board after the adoption of a report on minority rights that admitted the existence of official discrimination against minorities. Fourteen academics and NGO representatives were notified that they were dismissed from the board as of February 2005. In March 2005, the head of the board resigned and criticised government insincerity on human rights reform.

¹⁹⁸ Human Rights Foundation of Turkey

¹⁹⁹ Turkey grants student amnesties, BBC News, 23 February 2005

²⁰⁰ Turkish human rights foundation; November/December 2004 Report

The provisional and sub-provincial human rights boards, which are supposed to serve as fora for the exchange of ideas between the government and NGOs, widened their activities (increasing the number of cases from 859 in 2003 to 931 in 2004). However, this is a minor increase, particularly as NGOs have increased their activities. Furthermore, they encouraged greater participation by civil society representatives in the national protection of human rights or said they did. NGOs said that they found it impossible to participate in the boards' work in reality, although by maintaining Governors as the chairmen of each board, the independence from the central authority has been questioned. In fact, the Human Rights Association and Mazlom-Der have refused to participate in the boards as a result of this lack of institutional independence.²⁰¹ The Human Rights Investigative Board, a special body to be convened only in cases where lower-level investigations are deemed insufficient by the Human Rights Presidency, has never been convened.

Turkish Provisions Relating to Minority Languages

Higher education, as with primary and secondary education, is subject to Article 42 of the constitution which provides that no language other than Turkish may be taught as a mother tongue to Turkish citizens at any institutions of training or education. Furthermore Paragraph (a) of Article 2 of Law No. 2943, the Law on Foreign Language Education and Training, provides that Turkish citizens may not be taught their mother tongue in any language other than Turkish. However, in 14 universities (Atılım, Bahcesehir, Beykent, Bilkent, Bogazici, Içik, Istanbul Bilgi, Izmir Economics University, Izmir Institute of Higher Technology, Koc, Sabanci, Yasar, Yeditepe and METU, the language of instruction is English, while at one university (Galatasaray), the language of instruction is French.

Law 2943 allows for additional language classes in institutions of higher education. Paragraph (c) of Article 2 provides that foreign languages that may be taught in Turkey shall be determined by a decision of the Council of Ministers, after having obtained the opinion of the National Security Council. Kurdish, as yet, has not been defined as a foreign language, and hence cannot be taught alongside other languages such as Greek, English, French, and Russian.

Specifically for Kurdish, until 2001, statements and publications 'in a language prohibited by law' were prohibited under Articles 26 and 28 of the Constitution, which created a basis for restricting expression in the Kurdish language in all areas of society, including education. As part of the alignment process with the EU, Articles 26 and 28 were removed in the amendments of October 2001, which enabled Kurdish to be legally spoken. This reform provided the impetus for the campaign for Kurdish language lessons in educational institutions.

²⁰¹ Turkish human rights foundation; November/December 2004 Report

The 2002 Law on Foreign Language Education and Teaching and the Learning of Different Languages and Dialects of Turkish Citizens opened up the possibility of learning Kurdish in educational institutions. Article 1 declares that 'the purpose of this law is to regulate the procedures pertaining to the teaching of foreign languages in educational institutes, schools instructing in a foreign language and the learning of different languages and dialects traditionally used by Turkish citizens in their daily lives.' Most importantly, paragraph (C) provided that private courses subject to the provisions of the Law on Private Educational institutions No. 625 dated 8.6.1965 can be opened to enable the learning of different languages and dialects used traditionally by Turkish citizens in their daily lives. However, this article was followed by a limitation: 'the teaching of courses, the content of which is against the principles of the state and indivisible integrity of the state with its country and nation, is not permitted. The National Education Ministry will adopt regulations for the holding and supervision of the course.' The narrow conditions of this law, most significantly that it is subject to the provisions of the Law on Private Educational institutions, again show the cross-over between national security and education policies, and prevent the Kurdish language, which is still regarded as a medium of terrorists, from being taught as a foreign language. As Justice Minister Hikmet Sani Turk said in relation to the petition for Kurdish classes, 'by provoking people, the terrorist organization is forcing them to submit petitions.' By forming this link between the legitimate demands of the people and the demands of the PKK, the threat to national security of Kurdish classes has ostensibly been established.

Administrative and illegitimate legal restrictions on the inclusion of Kurdish in higher education curriculum at present therefore preclude its development. This clearly violates not only international instruments such as the Hague Recommendations and the Framework Convention, but also show total disregard for the spirit of Turkey's recent programme of reforms. Most notably, the six and seventh reform packages have supported the expedient withdrawal of the military from civilian matters. However, using a supposed 'threat to national security' as justification for non-provision of Kurdish classes, the security forces again feature in the functioning of civilian institutions. Moreover the threat to national security is based on the premise that national integrity is synonymous with linguistic unity. Yet, as the ECtHR noted in the Belgian Linguistics Case, 'the state's pursuit of 'linguistic unity' would not provide objective justification for the prevention of private mother tongue education, and would amount to a violation of Article 2 of the First Protocol and Article 8 of the Convention, in conjunction with Article 14.²⁰² Although this was in reference to private mother tongue instruction, this quite feasibly could be applied to universities, particularly as they are supposedly quasi-autonomous institutions.

There is further hostility to the introduction of Kurdish language studies, resting on discriminatory and unfounded attitudes towards the Kurdish language itself. According

²⁰² European Court of Human Rights, Belgian Linguistics Case (No.2) (1968) 1 ECRR 252

to Nurset Aras, a professor of medicine and rector of the University of Ankara, 'Kurdish is not a true language. It is not adequate for academic education.'²⁰³ This is in line with a deliberately propagated belief by the state that Kurdish is purely a dialect. Kenan Evren, the Chief of the Turkish General Staff who led the military coup in 1980 once stated that 'there is no such thing as Kurd. The word 'Kurd' is derived from the noise that our people, who have been living in our country's South-East, make when walking in the snow.'²⁰⁴

Following the passing of the Law on the Teaching of Foreign Languages and Dialects Traditionally spoken by Turkish citizens in their daily lives, students across Turkey collected petitions in support of the inclusion of Kurdish as a foreign language at universities. By August 2002, 16,000 students had signed the petitions, and universities turned down 7,000 petitions.²⁰⁵ The basis for the rejection of Kurdish as a subject for universities, is that it violates article 42 of the constitution. However, Article 42 only prohibits Kurdish as the medium of instruction. It is in fact only the Council of Ministers decision over the possible selection of Kurdish as a foreign language that is preventing the additional lesson of Kurdish (that is, the prohibition has an administrative and not a legal basis). It is also problematic to have Kurdish identified as a 'foreign language' to be taught when it actually is the first language of many citizens.

Furthermore, there is as yet no possibility of studying Kurdish literature at Turkish universities. Academics are unable to research either Kurdish language or literature. As Hasan Kaya, chairman of the Kurdish Institute, stated, 'no Turkish academics are allowed to participate in Kurdish-language research, but a few foreign scholars come [to Turkey] regularly and quietly carry out their research.'²⁰⁶ Research conducted by foreign academics is beneficial to the Kurdish language, but it is in short supply. For example, in the United States, of the experts on Middle Eastern Studies only 10 are recognised as experts on Kurdistan (in comparison with 430 on Iran, 264 on Turkey, and 257 on Syria). Work conducted in foreign universities simply does not have the depth or breadth necessary for what is the 40th most used language in the world. Research must be permitted in a country where it is used.

When work has been conducted in Turkey, the authorities have severely punished the author. In 1992, Edip Polat, a Kurdish biologist, published a book entitled *The Kurds and Kurdistan in the Language of Science* in which he criticised the official ideology as regards biology that insisted on giving Turkish names. The book included details of plants and animals found in the region and gives their Latin names, adding 'kurdicum' where a particular species is found only in the Kurdish region. He was charged under section 8 of the now repealed Anti-Terror Law with propaganda against the integrity of the state.

²⁰³ Network for Education and Academic Rights, *Kurdish students still continue to face oppression*

²⁰⁴ TOSAV (2000) A proposal for the Democratization of the Political System and Solution of the Kurdish Problem in Turkey. www.journalofdemocracy.org

²⁰⁵ www.bianet.org, Kurdish students will return to School, 26 August 2002

²⁰⁶ Network for Education and Academic Rights, *Kurdish students still continue to face oppression*

Despite being acquitted twice by the State Security Court, which accepted his defence that this was a purely scientific work and the elements of the crime were not made out, he was ultimately convicted and sentenced to a year in prison and a fine. This action clearly violated not only Article 27 of the Turkish Constitution, which provides that 'everyone has the right to study and teach freely, explain, and disseminate science and arts and to carry out research in those fields,' but has also forced self-censorship upon later academics, who fear a similar fate will befall them if they publish work on Kurds, Kurdish or Kurdistan.

The progress in literature studies has been limited to extra-curricular university provisions at one university. The Bosphorous University in Istanbul has a Kurdish Literature Commission under the Turkish Literature Commission, which has been operating for two years and is funded by the university administrative board. Once a year this body produces a Kurdish-Turkish magazine called 'Yazinca', which is published in a book format. To date, this organisation has encountered little opposition from the Turkish authorities, many people claiming as a result of the Bosphorous University's position as one of the premier universities of Turkey. Although this society's presence in Bogazici University is very much welcome, it is an exception. As such, it hardly seems that Turkey is adhering to international standards, for example those provided by the Hague Recommendations, which require that States encourage and promote the inclusion of the history, culture and language of minority groups.