

‘Review and Progress of EU Accession’: Speech Delivered by KHRP Executive Director Kerim Yıldız at the Fifth International Conference on the EU, Turkey and the Kurds, European Parliament, Brussels, 28-29 January 2009

Introduction

Ladies and Gentlemen, I want to welcome you all and thank you for coming. This conference is important because although it has been over 6 decades since the end of the Second World War, civilians today continue to pay a devastating price during times of armed conflict. Throughout the past year, as the battles between the Turkish state and the PKK have intensified, innocent men, women and children have suffered not just death and grave injury but also the loss of their property and livelihoods. Both Turkey and the PKK have a responsibility to work towards a peaceful and enduring resolution to this ongoing conflict. However, the European Union also has an obligation to call attention to the suffering and injustices being endured on both sides and to demand the real action and lasting reforms necessary to encourage political dialogue and a peaceful conclusion to this long ongoing conflict.

Today I would like to highlight some of the major events and the most serious ongoing challenges that continue to plague the Turkish state in relation to its accession to the European Union and to discuss the responsibility of all parties involved to find lasting solutions. The European Union must begin to play a more constructive role in helping Turkey to continue making reforms, which enable it to live up to European standards of human rights protection, democracy and the rule of law.

Cross-border operations

The intensification of cross-border operations by the Turkish military into Kurdistan, Iraq continues to result in widespread destruction and the displacement of civilians into refugee camps. Since these military interventions were authorized by the Turkish Parliament they have had little if any effect in damaging the PKK and have enjoyed very little support. As in the past, Turkey’s use of force in dealing with the PKK has created an atmosphere where dialogue and reform are increasingly not possible. Despite last year’s EUTCC Resolution, which called on the PKK and the Turkish military to stop “all hostile military operations”, aerial and artillery bombardments of Kurdistan, Iraq have continued at regular intervals, with little reaction from EU countries or the larger international community.

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In the past year I have travelled to Kurdistan, Iraq and have seen first hand the destruction and devastation caused by the Turkish bombings. The loss of property and livestock and the displacement of whole villages is an avoidable and unacceptable consequence of these bombardments. The civilian and environmental toll of these operations is overwhelmingly clear and more must be done to ensure that they do not continue.

The London based KHRP has submitted a number of cases to the ECtHR on behalf of victims of these cross border attacks. These cases represent clear violations on the part of Turkey of the right to life and the right to respect for private life and home. There has been no effective investigation by the Turkish authorities into allegations of suffering and ill treatment. Moreover, it is unclear what, if any, domestic remedies are available to the victims of the attacks. Unfortunately, many civilians have become victims of a conflict that they did not ask for and cannot control.

Although some in the international community have expressed concern, more needs to be done or the use of force will persist. Turkish attacks not only violate international law but breach several rules of the UN charter as well. These include Iraqi state sovereignty and the UN announcements regarding the peaceful relations between countries and the non- use of force against one another.

Turkey's actions are also in violation the Geneva Convention as the conflict has had devastating effects on the life and livelihood of innocent civilians, both in Turkey and Iraq. Both Turkey and the PKK have a responsibility to abide by international humanitarian law and to do all in their power to avoid the targeting of civilians. The seemingly indiscriminate attacks amount to a serious breach of international law and the failure to conduct military operations with a sense of proportionality and with no advanced warning to the civilian population in my opinion can be seen as the most explicit violation of human rights committed by the Turkish authorities in the period between 2007 and 2008.

The EU needs to forcefully and continuously insist that Turkey refrain from using military operations and instead engage in dialogue and negotiation to begin to bring an end to the violent conflict and heal

wounds on both sides. The continued use of military force impedes implementation of much needed reforms, reforms that are called for in the Copenhagen Criteria and which the European Union itself has declared necessary for Turkish accession.

Additionally, cross-border operations have provided a justification for maintaining temporary military security zones in southeast Turkey, which give the military greater direct control of certain regions. This is worrying as such arrangements create an atmosphere where the 2006 Anti-Terror Legislation and resulting cases of ill treatment are regarded as justified in the self-defence of the Turkish state. The silent approval of the European Union has allowed Turkey to resist finding a political solution in regards to the Kurdish issue.

IDPs

The escalation of the conflict in the Kurdish region and particularly those operations carried out close to and across the border with Iraq, has slowed progress for the approximate 3.5 internally displaced persons in Turkey. Millions were displaced during the period of intense conflict between the Turkish government and PKK in the 1980s and 1990s; with some displaced by fear of the conflict, and others moved as part of a deliberate state policy to integrate Kurdish people. Although the Turkish government made considerable effort to address the IDP situation after 2004, the 2008 EU Commission Progress Report on Turkey stated that Turkey has lacked an 'overall national strategy to address the situation of IDP's.'¹ The Report finds problems with the law on Compensation and points out that IDP's continue to suffer from economic and social marginalization. KHRP can find little in the way of progress since our report on the subject in 2006. The security situation, lack of basic infrastructure and limited employment opportunities make returning home impossible for many IDP's.

The situation of IDPs was dealt another blow with the decision of the European Court of Human Rights in the case of İçyer v. Turkey in January. The Court rejected an application for compensation by a Turkish IDP on the grounds that the domestic mechanisms represented by the 2004 compensation law were adequate to deal with his case. This led to all similar cases pending review by the Court

¹ European Commission 2008 Progress Report, 5 November 2008, SEC (2008) 2699, p. 28.

being thrown out and, subsequently, to deterioration in the quality of applications under the Compensation Law. This resulted in substantially reduced amounts being awarded to IDP's.

Freedom of Expression and Association

The reform of Article 301 of the Turkish Penal Code has attracted considerable attention but has, in reality, been one of many reforms that are far less extensive than is necessary to bring about real change. The impact of amending the article so that it criminalises "insulting the Turkish nation" as opposed to "insulting Turkishness", seems little more than cosmetic, and leaves in place the ban on insulting "the Republic or the Grand National Assembly of Turkey", "the Government of the Republic of Turkey, the judicial institutions of the State" and "the military or security structures". The ability of the Turkish state to prosecute speech that is critical or questioning of the political or military establishment is considerable and remains a threat to free speech in Turkey.

Article 301 is just one of a host of anti-freedom of expression provisions within the Turkish Penal Code and Anti-Terror Law, and have been used frequently during 2008 to punish those making statements not approved by the establishment. Other provisions have led to prosecutions under laws banning 'targeting public officials who are part of anti-terror activities'; 'provoking people to hatred and hostility, or denigration'; 'alienating people from military service'; praising crime and the criminal'; 'doing propaganda for an illegal organization through the media'; and 'publishing the comments of a terrorist organization'.²

The case against Leyla Zana, who was sentenced to 10 years in jail in December 2008 under Article 314/2 of the Turkish Penal Code which criminalizes being a member of a terrorist organization, is one example of how Turkey continues to restrict freedom of expression.

Another example is the ongoing trial in the murder of Hrant Dink, who was killed in 2007. Dink was prosecuted three times under Article 301 and had received death threats, which were given little

² *BIA Quarterly Report Released: State's Security Hijacks The Freedom of Expression* – www.bianet.org
2 November 2008

attention by authorities. It is widely believed that the Turkish security forces were in some way involved in Dink's death. The trial is seen by many as a critical test of Turkey's judicial independence.

On a positive note, following an amendment to the broadcasting law in June 2008, the government began discussing the creation of a state-controlled TV channel broadcasting entirely in Kurdish. Turkish Radio and Television's (TRT) new Kurdish-language channel, TRT-6, went on the air on January 1, 2009. While this must be considered a major step forward, some restrictions and doubts about the project remain. For instance, current laws would still not allow the station to legally broadcast educational or children's programming. Additionally, there is widespread concern that the station will simply be used as a tool to broadcast government propaganda. Many in the Kurdish region are suspicious that the AKP government has established TRT-6 just before the local elections in March 2009.

Although legal, no private Kurdish language schools currently exist. As public schooling in Kurdish remains illegal, many children are denied the right to a proper education. In addition, access to public services in languages other than Turkish remains an issue. These rules effectively discriminate against anyone who does not speak Turkish and disproportionately hurt the Kurdish population.

Despite some promising developments in other areas, freedom of association and assembly remain heavily restricted. People taking part in political demonstrations, trade unions or other activities critical of the government or dealing with taboo subjects are often met with police harassment, violence and detention.

Party closure cases

In March 2008 the Chief Prosecutor of the Supreme Court of Appeals launched a closure case against the governing AKP. The charges claimed that the party had become the focus of "anti-secular activities" and was in violation of the constitution. These charges were closely related to the party's efforts to relax the ban on wearing a headscarf in universities. Although the Constitutional Court fell short of the majority necessary for closure, the AKP government's state funding was cut in half.

However, the case for closure against the pro-Kurdish Democratic Society Party (DTP) remains ongoing. The case alleges that the DTP has links with the PKK. The Public Prosecutor has asserted that all DTP members should be banned from political activity for a minimum of 5 years. Closure of the DTP thus threatens to disenfranchise and alienate a large proportion of Turkey's Kurdish population. The closure has been widely condemned by observers and is based predominantly on non-violent statements and speeches made by party officials. The case has been drawn out and, it has been suggested, is being delayed until after the spring elections this year to avoid public sympathy for the DTP and may give the party's pro-Kurdish candidates an electoral boost.

Torture and Ill-Treatment

Turkey has made efforts to combat the use of torture, which have included reducing the pre-trial detention period and providing detainees access to medical examinations and legal counsel. However, despite these changes, torture and ill treatment remain a problem in Turkey. What is more, the anti-terror law has rolled back some of the fundamental protections that prevent torture, and indeed has led to an increased reporting of torture on police premises. Further, inadequate implementation of legislation, legislative loopholes and a surviving mentality conducive to the practice of torture ensure that the use of torture continues. When reported, instances of torture are often not properly investigated and the perpetrators go largely unpunished.

Although Turkey signed the Optional Protocol to the UN Convention against Torture in 2005, it has yet to ratify it. Turkey has also failed to implement independent inspections of detention facilities despite a recommendation from the Council of Europe's anti-torture committee³ and has all but ignored the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) regarding the detention of Abdullah Öcalan on Imrali Island.⁴ Turkey would be wise to recall that isolation of prisoners does little to mitigate their reputation and, as was the case

³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Report to the Turkish Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7-15 September 2003, Strasbourg, 18 June 2004, § 40.

⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Report, 6 September 2006.

with Robben Island in South Africa and Guantanamo Bay in Cuba, can have devastating effects on international opinion.

Another obstacle to achieving an acceptable level of respect for human rights in Turkey has been the poor implementation of European Court of Human Rights (ECtHR) case law. The Turkish constitution requires that the judgements of the ECtHR supervene over the decisions of national judicial bodies. This should be an extremely important tool for transforming the jurisprudence of Turkish courts and the policies of the Turkish government; however, to date this has not been the case. The Turkish state has often failed to ensure implementation of ECtHR judgements; as the 2008 EU Commission Progress Report notes “a considerable number of ECtHR judgements are still awaiting enforcement by Turkey”. Areas in which implementation has been lacking include laws on conscientious objection, control of the security services, remedy of abuses, and freedom of expression.

What the EU needs to do better

Although the EU has played an important and valuable role in Turkish reform over the last decade it has failed to radically advance the human rights situation in Turkey in the way that many of us hoped it might. Particularly significant has been the EU’s failure to highlight the importance of resolving the Kurdish issue and the conflict in the southeast of Turkey. If Turkey is to deepen its democracy, improve its human rights situation and achieve EU membership, the problems I have highlighted here today will need immediate attention.

The EU must no longer accept at face value Turkey’s assessment of the PKK insurgency in the southeast and must push for a political solution to what is, essentially a political problem. For instance, in this year’s EU Commission Turkey report considerable emphasis was placed on the Turkish government’s pledges to increase the funding for the Southeastern Anatolia Project, with seemingly less attention being paid to issues like language rights, and none at all to proposals that have been suggested by some opposition party politicians and civil society groups for greater devolution of power to the regions in order to cater for Kurdish cultural differences.

The ongoing conflict between the Turkish state and the PKK has caused a great deal of suffering and economic damage to those living in the Kurdish region. The conflict must not be seen as merely a

question of state security, but as the right to one's ethnic identity. The existence of similar problems in Iran, Syria and Iraq, all of which have attempted to suppress the Kurdish identity, indicates that ethnic identification is a very important factor in unrest in the southeast of Turkey.

Given the importance that the EU attaches to improving the human rights situation in Turkey, it is extremely important that they acknowledge the Kurdish problem in Turkey. A large proportion of the human rights violations that occur in Turkey are related to the Turkish establishment's distrust and suppression of ethnic pluralism. The time has come to not just manage Turkey's conflict with its Kurdish population, but to move towards resolving it.

The EU must do a number of things:

Firstly, it must cease to underplay the severity of the conflict in the southeast of Turkey and Northern Iraq. In the 2007 and 2008 Progress Reports the Commission seriously underemphasised the extent to which there has been an escalation in the violence in the past couple of years; failing to address the fact that it is once again a fully blown conflict. The EU has also failed to address the issues raised by Turkey's cross-border operations into Kurdistan, Iraq. The reality of the conflict must urgently be publicly acknowledged and the EU must bring its full influence to bear on Turkey to begin a dialogue with the PKK and move towards lasting conflict resolution.

This situation is inevitable so long as the EU fails to acknowledge the political nature of the Kurdish issue, and it is also extremely damaging for the EU and for Turkey. It risks undermining the EU's reputation as an honest and ethical arbiter of regional issues, creating resentment amongst Kurds.

Most importantly, without the external impetus and support provided by the EU, political leaders in Turkey seem unlikely to act forcefully on the Kurdish issue given the political risks attached to altering the status. Thus it seems likely that only once the EU explicitly lets it be known that achieving a political resolution to the Kurdish issue is vital to Turkey's chances of achieving membership of the EU will the issue begin to receive the energy and attention from within Turkey that is required to achieve a resolution. The European Union should identify

and promote a set of legislative changes and judicial and administrative targets necessary for Turkey to put itself in compliance with the political and human rights criterion for accession as outlined by the Copenhagen Criteria. For example changes need to be made in to increase civilian control of the Turkish military; Constitutional reforms are in order to ensure that closure cases like those against the AKP and DTP do not disrupt Turkish democracy; Judicial reform is necessary to ensure that judges and prosecutors are carrying out their duties in a fair and unbiased manner;

And the rights to freedom of expression and association must be respected. Although not a comprehensive list of necessary reforms, these issues help make clear that the EU can and should be doing more to urge and assist the Turkish state in achieving the progress necessary for accession. It must make clear that meeting the Copenhagen Criteria is absolutely vital and non-negotiable to order to move toward accession. The EU must be open and honest in discussing the ways in which Turkey currently fails to live up to the democratic and human rights standards of the Copenhagen Criteria, and explicit in identifying what changes need to be made in order to bring the country into compliance. This kind of precision and consistency is required in order to ensure that the EU's rigorous human rights standards do not end up degraded.

Conclusion

This conference comes at an important moment in the development of Turkey's relationship with the EU. Within the EU it is vital for both Europe and Turkey that all the relevant players unite around the membership criteria. It is equally important that the EU adopts an activist stance when it comes to encouraging Turkey to pursue the reforms necessary to meet that criteria, providing the right rhetoric, incentives and encouragement to help push reforms through. In Turkey the momentum for reform needs to be regained after a period in which the pace of progress has slowed.

It remains vital that the current Turkish state policies of conflict and confrontation in response to the Kurdish Problem be replaced by dialogue and engagement. To achieve this it seems likely that Turkey will need the assistance of the EU, which must acknowledge the severity of the problem and act constructively by providing a forum for dialogue. The EU must be firm in its stance against the Turkish

military action and insist upon a political approach. Turkey is unlikely to recognize the rights of its Kurdish population without international pressure, and the EU should use accession negotiations as an opportunity to engage Turkey and urge substantive reforms in order to move toward peaceful resolution of the conflict.

The ongoing conflict between the parties has been accepted largely because of the language of the 'War on Terror.' With many international figures, including Gordon Brown and President Obama, now questioning that language and the logic it flows from, Turkey has a unique opportunity to be at the forefront of a new era in conflict resolution. By reaching out to its Kurdish population and working to instil trust in government and establish true democracy, Turkey will begin moving towards reconciliation. The EU must demonstrate its global leadership by committing to all the ideals enshrined in the ECHR and other international human rights conventions, and assist Turkey in reaching its goal.

It is important that both Turkey and the EU remain committed to the accession process. Those national governments that suggest that Turkey is too large, too poor or too distant to become a full member should be opposed and condemned. The impression that the EU is not committed to accession is likely to result in declining Turkish reform.

All parties in the conflict, as well as the EU, have to realize that the conflict cannot be resolved by security measures alone. A space for dialogue – a hearts and minds approach, if you will – needs to be created to address the root causes of the alienation between the Kurdish and Turkish populations. Regardless of the difficulties, we all must continue to move towards resolution. As one famous international figure once said, " The good news is there is a light at the end of the tunnel. The bad news is there is no tunnel." This means that as long as there is a channel for communication between parties, there is always hope of compromise and resolution.

Finally, it is my belief that this conference will help assist in advancing the three-way rapprochement that is necessary between the Kurds in Turkey, the Turkish state and the EU, through frank, open and constructive discussion of the relevant issues.