

University of Vienna

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Doctoral Thesis

Proposal

Topic:

Counter-terrorism in Turkey vs. human rights
Role of the ECtHR and the EU in tackling human rights violations in
Turkey

(Working Title)

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I. Introduction

1. PKK and counter-terrorism measures in Turkey

Modern Turkey brought a concept of a new Turkish identity, roots of which can be found in westernization and modernization. Mustafa Kemal Atatürk, “*the Father of the Turks*”, planned to establish a state with pillars based on undeniable, indivisible territorial and national integrity. The result was a centralized and security-oriented nation-state with strong armed forces and no officially recognized minorities, except non-Muslim religious minorities, whose rights had been recognized in the Lausanne Treaty of 1923.¹ All people living in the Turkish territory were united under a “*citizenship-umbrella*”² and forced to see themselves as Turks. The nation-concept intended to make the citizenry “*Turkish in language and nationality, secular in orientation, and obedient to the state.*”³ This concept has been embodied in giant signs engraved on hillsides in many Turkish cities and villages: “*Ne mutlu Türküm diyene.*”⁴ The idea of a single Turkish identity led to forcible assimilation and no tolerance towards ethnic minorities.⁵

The nation-state model under the Kemalist dogma clearly failed to respond to Kurdish demands of ethnic nationalism. Minority and cultural rights in Turkey were often presented in the press „*as offensive and divisive of the country*“⁶ and as an „*adversarial agenda against*

¹ Greek and Armenian Christians and the Jewish community, totalling less than 0.2 per cent of the population. The Lausanne Treaty included no reference to non-Turkish ethnic minorities. See *Yildiz, Kerim*, The Human Rights and Minority Rights of the Turkish Kurds, pp. 163-181, in *Fottrell, Deirdre and Bowring, Bill*, Minority and Group Rights in the New Millennium, 1999, p. 163.

² *Erdogan, Birsen*, Turkey’s Compliance with EU Human Rights Norms, pp. 225-245 in *Brosig, Malte*, Human Rights in Europe: A Fragmented Regime?, 2006, p. 225.

³ *Ergil, Dogu*, The Kurdish Question in Turkey, *Journal of Democracy*, Vol. 11, No. 3, 2000, p. 123.

⁴ “*Happy is He Who Can Call Himself a Turk.*” Atatürk’s famous slogan. See *Washburn, Dennis and Reinhart, Kevin A.*, *Converting Cultures, Religion, Ideology and Transformation of Modernity*, 2007, p. 320.

⁵ Turkey’s general staff continues to consider Turkish citizens who see themselves anything but a Turk as state enemies. See *Giraldi, Philip*, Turkey and the Threat of Kurdish Nationalism, *Mediterranean Quarterly*, Vol. 19, No. 1, 2008, p. 35.

⁶ *Sezgin, Dilara and Wall, Melissa A.*, Constructing the Kurds in the Turkish Press: A Case Study of *Hürriyet Newspaper*, *Media, Culture & Society*, Vol. 27, No. 5, 2005, pp. 790.

Turkey,"⁷ whereas the political problems faced by Kurds in Turkey were simply denied.⁸ Every expression of the Kurdish identity was outlawed by the means of legal provisions.⁹ The denial of Kurdish cultural identity generated widespread discontent and frustration among country's Kurds. Subsequently, a Marxist-led group, the Kurdistan Workers Party, PKK, was established by Abdullah "Apo" Öcalan in 1978. The organisation launched its first terrorist attack in 1984 and started to wage a war against the Turkish state.¹⁰

In liberal circles, PKK terrorism is attributed to Turkish oppression of Kurds. According to the Special Rapporteur of the UN Commission on Human Rights, „*violation of human rights, humanitarian law and basic principles of the (UN) Charter, are among the major causal factors of terrorism.*“¹¹

The Turkish government believed that eradicating the "*cancer of terrorism*" would end the conflict.¹² In its fight against terrorism, the country opted for a repression,¹³ rather than a prevention strategy.¹⁴ Three main lines were followed: Firstly, in 1985, the ANAP (Anavalan Partisi, Motherland Party) government introduced a system of civilian militias to supplement gendarme operations. Secondly, in 1987, a state of emergency in ten provinces in the south-east of the country was introduced. These provinces were: Bingöl, Diyarbakır, Elazığ, Hakkari, Mardin, Siirt, Tunceli, Van, Batman and Sırnak.¹⁵

⁷ *Sezgin*, (supra note 6), p. 791.

⁸ Minority rights were linked to separatism and terror support, freedom of expression amounted to disloyalty. See *Patton, Marcie J.*, Turkey's Tug of War, Middle East Report, No. 239, 2006, p. 45.

⁹ These provisions aimed to reach assimilation. Later on, they were justified as an inevitable reply to terrorism. See *Yildiz*, (supra note 1), pp. 168, 169.

¹⁰ *Ergil*, (supra note 3), p. 127.

¹¹ Special Rapporteur of the UN Commission on Human Rights and Terrorism, Report on Terrorism and Human Rights, Preliminary Report, prepared by K.K. Koufa, UN Doc. E/CN.4/Sub.2/1999/27, 7 June 1999, para. 130.

¹² *Rouleau*, Eric, Turkey: Beyond Atatürk, Foreign Policy, No. 103, 1996, p. 71.

¹³ In the form of military reaction and Anti-Terror legislation. "*Turkey, then, has not been able to avoid the vicious circle of terror-repression-terror.*" See *Rouleau*, (supra note 12), p. 72.

¹⁴ Prevention strategy underlines the importance of a comprehensive human rights program, along with democracy and social justice. *Schorlermer, Sabine*, Human Rights: Substantive and Institutional Implications of the War against Terror, EJIL, Vol. 14, No.2, 2003, p. 267.

¹⁵ *Robins, Philip*, The Overlord State: Turkish Policy and the Kurdish Issue, International Affairs, Vol. 69, No. 4, 1993, p. 664.

The civil state of emergency was invoked under Article 120 CRT of 1982¹⁶ in connection with Article 3 (1) of the State of Emergency Law No. 2935.¹⁷ Thirdly, a legal framework, the Anti-Terror legislation, was enacted in 1991.¹⁸

According to Article 15 CRT of 1982, fundamental rights and freedoms may be suspended in times of state of emergency.¹⁹ Furthermore, the Council of Ministers, chaired by the President of the Republic, may in times of state of emergency issue decrees having the force of law.²⁰ Regional governors were granted extensive powers by decrees having the force of law, which restricted fundamental rights and freedoms in accordance with Article 15 CRT.²¹

The state of emergency was used to justify immense human rights violations, many civil and political rights provided for in the Turkish Constitution and laws were disregarded.

¹⁶ The Turkish Constitution, CTR of 1982. After being drafted by the Consultative Assembly, the Constitution of the Republic of Turkey was accepted by 92% of the Turkish public in a referendum on 7 November 1982. [Published in the Official Gazette on 9 November 1982, No. 17863], available at http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf.

¹⁷ State of Emergency Law (Olağanüstü hal kanunu) No. 2935 (1983), [Published in the Official Gazette on 27 October 1983, No. 18204], available at <http://www.legislationline.org/documents/action/popup/id/6974>.

¹⁸ The Anti-Terror-Law No. 3713 (1991), [Published in the Official Gazette on 12 April 1991]. Available at <http://www.legislationline.org/documents/action/popup/id/6975>.

¹⁹ In times of state of emergency, „*fundamental rights and freedoms can be partially or entirely suspended, or measures may be taken, to the extent required by the exigencies of the situation, which derogate the guarantees embodied in the Constitution, provided that obligations under international law are not violated.*” Article 15 CRT of 1982, as amended on May 22, 2004.

²⁰ Article 121 CRT of 1982 in connection with Article 4 of the State of Emergency Law No. 2935.

²¹ „*The main thrust of this package of measures was to increase the punitive effect of measures that could be applied to the region, and to restrict the flow of information by imposing increased restrictions on the media.*” See Robins, (supra note 15), p. 664. E.g. the Decree with Force of Law No. 430, giving the Minister of Interior the power to ban publications in the affected regions. [Published in the Official Gazette on 16 December 1990, No. 20727], Decree available at <http://www.legislationline.org/documents/action/popup/id/6972>.

Article 1 Force of Law No. 430 stipulates that „*...governor in a region under a state of emergency may prohibit, or subject to the obtaining of prior permission, the printing, duplicating, publishing or distribution of any printed work, book, magazine, newspaper, brochure, poster or other similar printed matter, and the entry into and distribution within the region of those that are printed or duplicated outside the region, which are likely to cause a serious disturbance of public order in the region or agitation among the population of the region, or to prevent the security forces from discharging their duties properly by falsely depicting the activities in the region or reporting untruthful news...*”

As Christian Rumpf stated: “Under this legislation, enjoyment of individual rights has been reduced to a very low level; in violation of the Constitution, judicial review of any act of the administration or responsibility of public servants in the field of emergency issues have been excluded.”²²

Moreover, in its ambition to defeat terrorism, the country found itself engaged in a form of state terrorism. Even though state terrorism is not recognized in international law, the International Bar Association stipulates that “it [is] vital to acknowledge that the use of violence to instill terror among civilians is not exclusively the preserve of the non-state actor.”²³

“Extra-legal methods of oppression” such as intimidation, torture and inhuman or degrading treatment, disappearances, extra-judicial killings and destruction of properties were reported. Forcible evacuation and destruction of more than three thousand villages accompanied by abuses of human rights perpetrated by the Turkish security forces brought as a consequence about three million Kurds who had to take refuge without being compensated for their losses.²⁴ This process was later on justified by the need to fight the PKK having their bases in many of the villages. Many villagers were required to fight Kurdish guerrillas, otherwise they would not be able to keep their homes. The inhabitants had to decide whether to join the village guards as Turkish collaborators or fail to take up arms against the PKK and become refugees.²⁵

²² Olson, Robert W., *The Kurdish Nationalist Movement in the 1990s, Its Impact on Turkey and the Middle East*, 1996, p.180.

²³ International Bar Association, *International Bar Association, International Terrorism: Legal Challenges and Responses*, 2003, p. 3.

²⁴ Yildiz, (supra note 1), p. 164.

²⁵ McKiernan, Kevin, *Turkey’s War on the Kurds*, *Bulletin of the Atomic Scientists*, Vol. 55, No. 2, 1999, p. 31.

2. Turkey and the EU

Turkey filed for the full membership in the EU in 1987.²⁶ According to the Copenhagen political criteria, membership requires that the candidate country has achieved “*stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities*”.²⁷ Turkey’s candidacy status was officially affirmed at the Helsinki summit in 1999. The EU decided to open the accession negotiations with Turkey after the European Council had affirmed the progress made by Turkey in its reform process towards fulfilling the Copenhagen criteria in 2004. Subsequently, a framework for negotiations was developed. Turkey opted for harmonisation packages in order to bring its legislation in line with the EU standards. The revision was carried out progressively.

With regard to the counter-terrorism in Turkey, the EU stressed that “*the fight against terrorism must be conducted with due respect for human rights and the rule of law...*” and called for a political solution.²⁸

II. Research topic and methods

Since 2002, the AKP (Adalet ve Kalkınma Partisi, Justice and Development Party) government has taken extensive steps towards the EU membership by enhancing fundamental freedoms.²⁹ The process was often being opposed by conservative nationalists in the judiciary, holding strongly on the state-centred political model seeing liberal democracies as „*havens for terrorists*.“³⁰

²⁶ European Commission, Report on Turkey’s Progress Towards Accession, 1998, p.18, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/turkey_en.pdf, p. 5.

²⁷ Europa Glossar, Accession Criteria, available at http://europa.eu/scadplus/glossary/accession_criteria_copenhagen_en.htm.

²⁸ Meeting of the EC-Turkey Association Council in April 1997. See European Commission, Report on Turkey’s Progress Towards Accession, 1998, (supra note 33), p. 10.

²⁹ E.g.: Between February 2002 and July 2004, Turkey enacted eight harmonisation packages, changing 218 articles of 53 different laws. See Turkish Ministry of Foreign Affairs, Relations between Turkey and the European Union, available at <http://www.mfa.gov.tr/relations-between-turkey-and-the-european-union.en.mfa>, last retrieved 30 March 2011.

³⁰ Patton, (supra note 8), p. 42.

Although the EU accession negotiations have moved Turkey further to a liberal democracy with minorities enjoying more cultural and political rights, it is highly controversial, whether Turkey fulfils the Copenhagen political criteria.

With regard to Turkish counter-terrorism measures, the European Court of Human Rights (ECtHR) found the country guilty of many violations of fundamental rights and freedoms perpetrated by state actors. The implementation of the judgments have been criticised as Turkey often failed to comply with the latter.

Research topic:

In my thesis, I will conduct a research on the role of the EU and the ECtHR in tackling “state terrorism” and in improving the situation of minorities with reference to Turkey.

This paper proposes to explore this topic by addressing, in particular, the following topics:

- *Sections 1 and 2 of my thesis will investigate the historical evolvement of the “Kurdish issue” and discuss the interaction of discrimination of minorities and the emergence of terrorism.*
- *Sections 3 and 4 will analyse the counter-terrorism measures taken by the Turkish government and examine their conformity with the European human rights standards. Human rights abuses perpetrated by state authorities will be discussed with reference to the ECtHR’s jurisdiction.*
- *Section 5 will address the implementation of the ECtHR’s judgments in Turkey. Moreover, with respect to the accession negotiations of the EU with Turkey, I will examine the most important law amendments with regard to minority rights and identify possible needs for further reforms.*

Research methods:

Detailed research will be pursued by

- elaborating on the legal system in Turkey
- examination of the ECtHR case law
- analysis of the undertaken political reforms

The law amending packages will be considered on the basis of progress reports of the European Commission, reports by Maarti Ahtisaari and Albert Rohan, observations, reports and recommendations of various international organisations.

III. Preliminary table of contents

1. Introduction: Definition of the Turkish nation and minority rights in Turkey

1.1. Historical review: From Ottoman Empire to the Turkish state

1.2. The concept of the Turkish nation and territory

2. PKK terrorism

2.1. Historical development of the “Kurdish issue” - “Ne mutlu Türküm diyene”

2.2. Minority rights of the Turkish Kurds

2.3. Emergence of the PKK (Partiya Karkeren Kurdistan)

3. Turkish policies and actions toward PKK vs. state terrorism

3.1. Anti-Terror Law

3.2. Suspension of fundamental rights and freedoms

3.3. Use of force

3.3.1. Military operations in Turkey

3.3.2. Military operations in northern Iraq

3.4. Role of the Turkish military

3.4.1. National Security Council

3.4.2. State Security Courts

4. Counter-terrorism in Turkey and ECtHR’s judgements

4.1. Right to life

4.2. Prohibition of torture

4.3. Freedom of expression

4.4. Political participation

4.5. “Kurdish issue”

5. Reform process in Turkey

5.1. Implementation of judgments of the ECtHR

5.2. The EU accession negotiations

5.3. Reform process

6. Conclusion

Bibliography

IV. Research plan

The subsequent legal research should progress in the following manner:

September 2010 - December 2010:	<ul style="list-style-type: none">- First research on the dissertation topic- Further research on<ul style="list-style-type: none">- The Turkish legal framework- Case study- Reforms
January 2011- June 2011:	<ul style="list-style-type: none">- Presentation of the dissertation project in the seminar of Professor Tretter- Composition and submission of the exposé- Conclusion of the dissertation agreement- Completion of required curriculum lectures
June 2011- January 2012	<ul style="list-style-type: none">- First draft of the doctoral thesis
February 2012	<ul style="list-style-type: none">- Revision of the first draft
March 2012- May 2012	<ul style="list-style-type: none">- Second draft of the doctoral thesis
June 2012	<ul style="list-style-type: none">- Revision of the second draft
October 2012	<ul style="list-style-type: none">- Expected finalisation

V. Resources

The libraries of the University of Vienna and the Bilkent University and legal databases will serve as major resources.

VI. Preliminary bibliography

Books and articles

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