

Recognition of linguistic rights?

The impact of pro-EU reforms in Turkey

Fact Finding Mission

September 2005

RECOGNITION OF LINGUISTIC RIGHTS?
THE IMPACT OF PRO-EU REFORMS IN TURKEY

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KURDISH HUMAN RIGHTS PROJECT
BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES
EU-TURKEY CIVIC COMMISSION

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Kurdish Human Rights Project (KHRP) is an independent, non-political, non-governmental human rights organisation founded and based in London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living within the Kurdish regions, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people.



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Foreword

This report presents the findings of a fact-finding mission to Turkey sent by Kurdish Human Rights Project (KHRP) and the Bar Human Rights Committee of England and Wales (BHRC) in July 2005 to investigate the current status of protection for linguistic rights. The mission held numerous interviews including with representatives of human rights organisations, media, bar associations, political parties, unions and organisers of linguistic courses.

The mission investigated the practical implementation of linguistic rights and mother tongue legislation enacted by the Turkish government in an effort to meet EU pre-accession criteria. The mission examined the efficacy of the new language courses in Kurdish, as well as assessing overall linguistic freedom and the progress of court cases against high profile unions.

The mission found that despite claims by the Turkish Government that reforms now allowed for linguistic freedom, the actual implementation of these reforms was scattered and ineffectual in practice. Other laws were often used to thwart the limited progress made by liberal reforms. Some of the new legislation was found to be actually more restrictive in practice than previous legislation. Overall, linguistic rights are still severely limited in Turkey, and the expression and use of these rights often invites scrutiny, suspicion and legal harassment from the authorities.

The mission found that legislative reforms have resulted in a piecemeal application of laws regarding linguistic rights. While associations and unions may now use Kurdish in their daily lives, they are still required to use Turkish in official communications. They are not allowed to include a commitment to mother tongue education in their constitutions. Meanwhile, reforms have now lifted restrictions on broadcasting in “other languages” that had previously outlawed the use of Kurdish; nonetheless, current provision for the Kurdish population consists of 30 minutes of broadcasting, once per week.

In the field of education, linguistic courses in “local dialects” are allowed, but the requirement that they be commercial in nature, teach only language and not educate in the language, and bureaucratic obstacles to their opening has resulted in

the closure of these courses.

Elsewhere, the legal harassment of individual members of associations, unions and political parties for giving press releases or speeches in Kurdish is pervasive. Individuals are most commonly prosecuted for “opposition to Law on Meetings and Demonstrations No. 2911” and for being “separatist” under Article 216 of the new Turkish Penal Code. Many associations and unions face closure for breaching the Turkish Constitution. These legal cases act as a drain on the resources of the associations and unions, and make their existence economically strained.

We hope this report will assist the Turkish government and the EU to address seriously the issues raised by the denial of linguistic rights and ‘mother tongue’ education, and their importance to preserving a pluralist and multicultural society.

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Introduction

For most citizens of the world, the right to speak and write in their mother tongue, the language of their parents and forefathers is a commonly accepted right. For the Kurds of Turkey, however, this is a right that has long been denied, and for which they have been persecuted for decades. The ability to speak in Kurdish was only recently granted, and is still significantly limited in practice.

The main concentration of Kurds is in the mountains of the Zagros range where Iran, Iraq and Turkey meet.¹ The Kurds are descendants of Indo-European tribes who settled among the aboriginal inhabitants of the Zagros Mountains in various epochs, but most probably during the second millennium BC.² This region has been referred to as 'Kurdistan' since the Turkish Saljuk Prince Saandjar created a province by that name in the twelfth century.³

This region was most recently carved into four political boundaries in the aftermath of World War One into the nation-states of Turkey, Iraq, Iran and Syria. The Kurds form potent minorities in each of these countries, and as a result, have faced persecution and discrimination in much of the region. In particular, Turkey views the expression of minorities to be a threat to the integrity of the nation-state and Turkish identity, and as a result has systematically repressed Kurdish identities since the founding of the State.

The Turkish state was founded in the Treaty of Sèvres in 1920. However, modern-day Turkey and the present borders are the result of the 1923 revolution by Mustafa Kemal. Kemal, later known as Atatürk, believed that different minority and ethnic aspirations were to blame for the fall of the Ottoman Empire, and consequently he resolved to create a highly centralized, secular nation-state, the territorial integrity of which was to be ensured by a new, purely Turkish national identity.⁴ As a result, while the Treaty of Sèvres specifically recognized the Kurds and the role they

1 DAVID McDOWALL, *A MODERN HISTORY OF THE KURDS*, 6 (I.B. Tauris, 1996)

2 *Id.* at 7.

3 KERIM YILDIZ AND GEORGINA FRYER, *THE KURDS: CULTURE AND LANGUAGE RIGHTS*, 13 (Kurdish Human Rights Project, 2004).

4 YILDIZ AND FRYER, *supra* note 4 at 18.

would play in a new nation-state envisioned by the Allies, the Treaty of Lausanne, concluded between the Allies and Turkey on 24 July 1923, contained no mention of a Kurdish state.⁵ This omission was the harbinger of future Kemalist efforts to install a homogenous population in Turkey.

A series of Constitutions, laws, decrees and governmental policies entrenched a Turkish national identity which allowed no room for dissenting minority voices, in direct contravention of Article 39 of the Treaty of Lausanne.⁶ For example, the 1924 Constitution established state control of identity, which stated that “[i]n Turkey, from the point of view of citizenship, everyone is a Turk without regard to race or religion.”⁷ In March 1924, an official decree banned all Kurdish schools, organisations and publications.⁸ The use of the words “Kurds” and “Kurdistan” were banned and references to them removed from Turkish history books and publications.⁹ The 1924 Act of Unification of the Education System placed all schools under state control. Celebrating the Kurdish New Year of Newroz was illegal and punishable by long term imprisonment. Kurdish folklore was banned and gramophone recordings of music were destroyed.¹⁰ From 1938 onwards, the Kurds were referred to only as “Mountain Turks.”¹¹ This systematic denial of minority rights and Kurdish expression was designed to entrench Atatürks’ vision of a secular, homogenous state.

Such repressive measures were met with resistance by the Kurdish peoples, and the first great Kurdish rebellion occurred in 1925, which was led by Shaikh Said and members of the Kurdish intelligentsia and religious leaders, as well as members of the military.¹² Such a rebellion on the part of the Kurdish minority coalesced the Turkish authorities’ attention on controlling and repressing Kurdish identity. It prompted the formulation of policies specifically aimed at destroying Kurdish identity, and in doing so, catalysed the emerging trend towards an authoritarian style of governance which has characterised Turkish/Kurdish relations ever since.¹³

Evidence of this growing dichotomy and repression of the Kurdish minority can be found in the Turkish Penal Code which was first enacted in 1 March 1926. Articles 141 and 142, the relevant forms of which persist even today, prohibited

5 *Id.* at 19.

6 *Id.* at 21.

7 YILDIZ AND FRYER, *supra* note 4 at 20.

8 CATHERINE PIERSE, CULTURE AND LANGUAGE RIGHTS OF THE KURDS, 6 (Medico International and KHRP, 1997).

9 *Id.*

10 YILDIZ AND FRYER, *supra* note 4 at 21.

11 PIERSE, *supra* note 20 at 6. As recently as 1989, so called “scientific” reports were circulated, which alleged that the Kurdish languages were in fact crude dialects of Turkish.

12 *Id.*

13 *Id.*

organisations and propaganda “seeking to destroy or weaken nationalist feeling.” Atatürks’ language revolution instigated the passage of the Law on the Adoption and Application of the Turkish Alphabet which was passed in November 1928 and is still in force today. Article 2 obliges all companies, associations, private societies and state run establishments to conduct their written correspondence using the Turkish alphabet. Article 4 provides that all notices, proclamations, advertisements, newspapers, publications and magazines must be printed in Turkish. This had the effect of making the use of Kurdish illegal, because the Kurdish languages require the use of the letters q, w and x, which are not present in Turkish.¹⁴ Further measures included passage of Law No. 7267 of 1959 which provided that “[v]illage names that are not Turkish and give rise to confusion are to be changed in the shortest possible time by the Interior Ministry after receiving the opinion of the Provincial Permanent Committee.”¹⁵ This law is still in force today in practice. Personal names were also regulated by the Surname Regulation of 1934 which was used to prohibit the registration of children under Kurdish names.¹⁶

There have been, and continue to be, many restrictions on freedom of expression as well, particularly in the media, and particularly for Kurds. The Penal Code, first enacted in 1926, has been interpreted to severely regulate freedom of expression. For instance, paragraphs 141 and 142, mentioned above, prohibit organisations and propaganda “seeking to destroy or weaken nationalist feeling”. This has been interpreted by the courts as including non-violent expressions of Kurdish identity, such as Kurdish poetry, music and folklore.¹⁷ Paragraph 140 prohibits the publishing in a foreign country of untrue, malicious or exaggerated rumours or news about internal situation.¹⁸ Paragraph 312 allows “no incitement to racial, ethnic, or religious enmity.”¹⁹ All of these provisions have been used to suppress the discussion of Kurdish ideals, or enforced as harassment or persecution. Such repressive legislation is worse in predominantly Kurdish areas. The mainly Kurdish southeast had been under martial law or state of emergency since 1978.²⁰ This was lifted in November of 2002. The legislation allowed for heavy censorship of newspapers and publications.

Such legislative enactments closely parallel the incidents of Kurdish uprisings. With each successive Kurdish rebellion, Turkish military and legislative responses became harsher. Kurdish uprisings in 1925, in 1930 and again in 1936 established

14 YILDIZ AND FRYER, *supra* note 4 at 22-23.

15 *Id.*

16 *Id.*

17 PIERSE, *supra* note 20 at 7.

18 PIERSE, *supra* note 20 at 7.

19 *Id.*

20 Human Rights Watch World Report 2003, accessed on 7/12/05 at <http://www.hrw.org/wr2k3/europe13.html>.

the Kurds in Turkish minds as the primary threat to the existence of the Turkish state.²¹ “[A]fter the great Kurdish nationalist revolts. . . a systematic policy aiming at detribalization and assimilation of the Kurds was adopted. . . Everything that recalled a separate Kurdish identity was to be abolished: language, clothing, names.”²² Since establishment of the state in 1923, there have been 28 uprisings.²³ The most recent uprising by the paramilitary “Partiya Karkaren Kurdistan” (PKK), underway since 1984, has claimed almost 30,000 lives.²⁴ According to Turkish Government sources 3,185 Kurdish villages have been evacuated and up to three million people have been internally displaced from the southeast. Such a violent history has resulted in a “race to the bottom” in which Kurds revolt against repressive military and legislative actions, and the Turkish government in turn reacts with even more repressive measures.

Speaking Kurdish, singing in public and publishing in Kurdish was totally banned in Turkey until legislation passed in 1991 resulted in the abolition of the law restricting the use of languages other than Turkish.²⁵ However, such legislation did not allow the language to flourish in practice. In 2001, an amendment to the Constitution allowed for publishing in Kurdish, and amendments in 2002 reiterated this right and allowed for limited broadcasts in Kurdish. However, in 2002 more than 1,300 students were detained by police for circulating petitions which requested optional courses in the Kurdish language, and more than 200 students were accused of violating anti-terrorist laws.²⁶ Kurdish language courses were allowed to be opened in 2003, yet education in public schools in Kurdish is still not allowed. On paper, the Kurds are allowed to speak and learn the Kurdish language, but in practice this

21 PIERSE, *supra* note 20 at 6.

22 Edip Yüksel, *Yes, I am a Kurd*, 7 J. Int'l L & Prac. 359, 363 (1998).

23 *Id.* However, Ahmet Kahraman, in his book *Kürt İsyanları*, disputes the number of actual rebellions. Kahraman states that “although according to the Turkish official record, there were “no Kurds”, yet for whatever reason non-existent Kurdish rebellions of 1920-1940 were made to “exist.” They were given numbers, 1, 2, 3, though to 28 with the PKK movement and the tragic effort at resistance in Dersim to the expeditions organised in year 1984 the total reached 29. Those who follow the trail numbered by official history and those who look into the nooks and crannies in an analytical way will see that a great majority of these rebellions were in fact “imaginary.” As a result, those fleeing from the bloody whirlwind of “suppression and retribution” were called “rebels.” Even if the definition of a rebellion is broadened, the number of real uprisings is 3, not 29.” Publication of this book in English is forthcoming.

24 This conflict has involved crimes committed by both sides. The PKK attacked Kurds who joined the village guard system as traitors or collaborators. In the late 1980s and early 1990s, the PKK executed many captured village guards, and massacred village guard communities, including women and children. When the PKK slipped away into the mountains after an attack, the Turkish gendarmerie and village guards would immediately launch brutal operations against any non-village guard communities in the vicinity. Mass detentions and interrogation under torture were commonplace, and sometimes there were reprisal massacres.

25 Council of Europe: Parliamentary Assembly, Resolution 985 (1992) on the Situation of Human Rights in Turkey. Text adopted by the Assembly on 30 June 1992 (10th Sitting).

26 Burton Bollag, “In Turkey, Kurds are arrested for trying to study their own language.” *Chronicle of Higher Education*, July 16 2002.

right is severely hindered. “I can speak Kurdish, but I can’t read Kurdish poetry or literature,” says Hüran Ece, a student of archival science at Marmara University in Istanbul. “Unless we can study it,” he says, “Kurdish language and culture will disappear.”²⁷

²⁷ *Id.*

Overview of Reforms Affecting Linguistic Rights

Since 2001, Turkey has undertaken several reforms, including amending the Constitution twice, instituting eight harmonisation laws between 2002 and 2005. These harmonisation laws amended segments of various laws which affected linguistic rights. The pertinent amendments are set out below.

There have been two major constitutional reforms in Turkey, which took place in 2001 and 2004. The first constitutional reform in 2001 provided many significant changes to the 1982 Constitution regarding linguistic rights. By contrast the 2004 Constitutional reforms only had one relevant provision regarding language rights.

The 2001 Constitutional Reforms affecting linguistic rights modified Articles 26 Freedom of Expression and Dissemination of Thought; 28 Freedom of the Press; 31 Right to Use Media Other Than the Press Owned by Public Corporations; and 34 Right to Hold Meetings and Demonstration Marches. The 2004 Constitutional reforms only affected Article 30 pertaining to Protection of Printing Facilities and did not affect linguistic rights.

Article 26 on Freedom of Expression and Dissemination of Thought was significantly revised from its 1982 form. The 1982 version of the article prohibited expression or dissemination of thought in languages prohibited by law. Further, the article held that regulation would not be interpreted as restrictions of freedom of expression and thought unless they prevented the dissemination of information and thought. By contrast, the 2001 amendments removed the prohibition against freedom of expression in languages prohibited by law. The amendments also removed the limiting language stating that a restriction of freedom of expression has only occurred if there is also a restriction on dissemination of information and thought. However, while removing some restrictions the 2001 version of the Constitution added to permissible restrictions of freedom of expression and thought by including restrictions for purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State within its territory as well as the earlier provisions regarding crime and state secrets.

Article 28 relates to Freedom of the Press. The 1982 version of this article was quite similar to the 2001 version, with the exception that the 2001 version omitted the provision which disallowed publication in a language prohibited by law. The article generally holds that the press is free and not censored. However, the article continues to hold that it is illegal to print, write or publish any articles which threaten the internal or external security of the State or the indivisible integrity of the State or its territory and nation, which tend to incite offence...and such a person shall be held liable under the law.

Article 31 pertaining to the Right to Use Mass Media Other Than the Press Owned by Public Corporation similarly experienced only minor changes in the 2001 Constitutional reforms. The article remained the same except for changing the restrictions from grounds set forth in Article 13, which states allowable restrictions on freedoms, to specifically setting forth grounds of restrictions for national security, public order, public morals, or the protection of public health. In effect the new provisions seem to allow for a broader interpretation of what constitutes a threat to the government, and may allow for increased restrictions on rights.

Article 34, the Right to Hold Meetings and Demonstration Marches, was perhaps the article that faced the most changes between the 1982 Constitution and the 2001 Constitutional amendments. The 1982 article allowed the administrative authority to determine the site and route for the demonstration and allowed for cancellation or postponement if there was a "strong possibility that disturbances may arise which would seriously upset public order." Further, the 1982 article did not allow associations, foundations, labour unions and public professional organisations to "hold meetings or demonstration marches exceeding their own scope and aims."

The 2001 amendments omitted the provisions which required the administrative authority to set the site and route of marches, as well as the language which barred organisations from meetings which exceeded their scope or aims. Restrictions were stated as only allowed on the grounds of national security, public order, prevention of crime commitment, public health, morals or for the protection of the rights and freedoms of others.

The second harmonisation package, approved on March 26, 2002, removes many restrictions on language and lifts restrictions on freedom of association. The prohibitions against "language forbidden by law" were removed from Article 16 of the Press law. In addition, the Act on Associations, Article 5, was amended to remove the prohibition on the establishment of associations for the purpose "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." However, while associations may now use other languages besides Turkish and express other cultures as provided for in the amendments to

Article 6 of the Act of Associations, the “official business” of their organisations must still be conducted in Turkish.

The third harmonisation law, adopted on August 3, 2002, made amendments to the Law on the Establishment and Broadcasting of Radio Stations and Television Channels. This amendment stated that:

“Although Turkish will be the basis of TV and radio broadcasts, broadcasts in different languages and dialects used by Turkish citizens in their daily lives is made possible. Furthermore, it has been emphasized that such broadcasts cannot be against the fundamental principles in the Republic enshrined in the Constitution and the indivisible integrity of the state with its territory and nation.”

This allowed Kurdish and other languages to be broadcast on TV for the first time in Turkey, though the regulation limited that application of the harmonisation law to 30 minutes per week.

The provisions of the 6th Harmonisation law, enacted on July 15, 2003, pertaining to freedom of expression and association dealt mainly with easing restrictions on broadcasting, particularly in another language. This is similar to the provisions of the 3rd harmonisation law, except this amendment specifically states that “both private and public radio and television stations are to undertake broadcasts in languages and dialects used by Turkish citizens traditionally in their daily lives.”

The 7th harmonisation package was passed on July 30, 2003 and allowed for the opening of private language courses in other languages. The harmonisation law states: “In training and educational institutions Turkish citizens cannot be taught any language other than Turkish as their mother tongues. However, private courses can be established...in order to enable the learning of the different languages and dialects used traditionally by Turkish citizens in their daily lives.” The law stipulates that establishment and supervision of these classes shall be detailed in a regulation to be issued by the Ministry of Education. In addition, the law limits the teachings to those which are not “contrary to the basic characteristics of the Republic as stated in the Constitution and the indivisible integrity of the State with its territory and nation.”

Linguistic Rights

Human Rights Organisations

The mission met with a variety of human rights organisations including: Human Rights Association (İHD) in Batman and Ankara; KÜRD-DER, in Diyarbakır and Ankara and Mazlum-Der, in Batman. These associations discussed the implementation of linguistic reforms, difficulties they faced regarding the use of Kurdish in their organisations, and their views on future directions for linguistic rights. In general, associations may publish in Kurdish and other languages with only minor difficulties, however they still face persecution from officials if they hold press conferences or give speeches using even a couple of words of Kurdish. These associations generally experienced legal harassment in the form of cases against individual members, usually for opposition to the Law on Meetings and Demonstrations No. 2911.

Many of the associations have successfully published in the Kurdish language. For example, İHD Batman Branch publishes leaflets in Kurdish, Turkish and English entitled “Are you aware of your rights?” In addition they have published books, have banners in Kurdish and held their first conference in Kurdish in 2003.²⁸ The other associations interviewed either already published in Kurdish or had plans to publish similar magazines and leaflets.

The problem facing the associations was either intense scrutiny of their Constitutions, such as KÜRD-DER, or objection to their speaking activities in Kurdish. As a result, all the associations faced legal harassment from the government, which has the effect of draining their resources to carry on their activities.

KÜRD-DER has one branch in Diyarbakır and one in Ankara. The Diyarbakır branch is currently facing a case to close the association because they refused to take requests concerning the Kurdish people out of their Constitution. As a result, on the 12 July 2005 a case was opened against them under Article 60 of the Law on Associations and Article 3 of the Constitution. The next hearing is on the 18th of August, 2005. In addition, one of the branch directors, İbrahim Güçlü, states

28 FFM interview with Saadet Becerikli and Muzaffer Çınar, Batman, June 27, 2005.

that any time a member of the association gives a speech in public or holds a press conference, a case is opened against them. As a result, there are currently 6-7 cases opened against the 11 board members present. "Being Turkish gets you everything, being Kurdish gets you nothing," Guclu states.²⁹

The Ankara branch of KÜRD-DER is also facing a case against them for the provision in their Constitution which states that their association conducts activities "in favour of the individual and collective rights of the Kurdish people." The public prosecutor believes that the commitment to the "collective rights" of the Kurdish people is a violation of the Turkish Constitution. KÜRD-DER Ankara has many plans for activities including a Kurdish language and folklore course, theatre department and has prepared a project to address honour killings of women. The implementation of these activities will depend on the outcome of the current case against them.³⁰

Further examples of legal harassment of human rights organisations' ability to exercise linguistic rights include the case opened against Saadet Becerikli, President of İHD-Batman, and five other members of the branch. Members of the association attended a meeting for World Women's Day this spring, entitled "Women and Life." The public prosecutor began investigating those who had attended. In response, the association held a press conference publicising this investigation. As a result of this press conference, a case was opened against them for opposition to Law No. 2911 on Meetings and Demonstrations. The prosecutor is asking for 3 months to 1 year imprisonment, and the case will go to trial in October.³¹

Other concerns regarding linguistic freedom included the ability of non-Turkish speaking Kurds to obtain a qualified interpreter in court. Murat Çiçek, acting president of Mazlum Der- Batman, stated that even though there are qualified people available who have a certificate from a Kurdish Language Course, the judge instead appoints random people to interpret for the accused and invariably these people make many mistakes in the translation, mistakes which do not further the presumption of innocence for the accused.³²

The ability of the associations to publish in Kurdish is a positive result of the 2nd Harmonisation Law in 2002 which removed the prohibition against "publishing in a language prohibited by law," from Article 16 of the Press Law. However the continued legal harassment for speaking in Kurdish acts as a significant repression of freedom of expression which is guaranteed by Turkey's international obligations,

29 FFM interview with İbrahim Güçlü, one of three leaders, and KÜRD-DER members, Diyarbakır, July 25, 2005.

30 FFM interview with İhsan Güler, Chairman of the Association, Ankara, July 29, 2005.

31 *Supra* note 29.

32 FFM interview with Murat Çiçek, President of Mazlum-Der Batman Branch, Batman, July 27, 2005.

and Article 26 of the Turkish Constitution which guarantees that “everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively.”³³

In addition, the scrutiny of KÜRD-DER’s constitution and its commitment to collective rights of Kurdish peoples should be allowed after the 2nd Harmonisation Law, 2002, which removed the prohibition for 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.]” Application of this harmonisation law should allow such associations as KÜRD-DER, without older legislation acting as a bar to the rights granted in the new harmonisation laws.

Solutions for future improvements were varied, but in general the associations all agreed that reforms with more impact were needed. “Legislative changes won’t help, we need to change the Constitution,” Mazlum-Der President Çiçek states, “Citizenship should be argued and we need more democracy.” KÜRD-DER Ankara branch calls the recent legislative branches positive, but calls for continued changes and more practical implementation. In particular, members focus on changes in the Constitution. Such changes would include acknowledgement and protection of the Kurdish people in the Constitution; the provision of the Constitution which states that only Turkish people live in the region should be removed; and a general acceptance of Kurdish people as one of the main social entities together with Turkish and others of the country, guaranteed in the Constitution.

Media

The new reforms have made changes in Turkish laws to allow publishing and broadcasting in Kurdish. The mission was curious to see the actual effect of these reforms and to what extent they had been implemented. The mission interviewed GÜN-TV in Diyarbakır, an alternative news station, the Kurdish newspaper *Azadiya Welat*, also in Diyarbakır, and the Batman Journalist Association. The mission found that broadcasting in Kurdish was extremely difficult in practice, and that while journalists may publish in Kurdish, they were regarded with suspicion and frequently prosecuted in court for their activities.

The 2nd Harmonisation Law in 2002, which removed the prohibition against “publishing in a language prohibited by law,” from Article 16 of the Press Law, now allows publishing in Kurdish. However, the recently enacted Turkish Penal Code on June 1, 2005, acts as a hindrance, specifically on the media. This has caused concern

33 CONSTITUTION OF THE REPUBLIC OF TURKEY (2001), Art. 26.

for the journalists the mission spoke with. The Batman Journalist Association noted that the new penal code changes some provisions that had previously called for fines to imprisonment. And while the 2nd harmonisation law allows for publishing in Kurdish, 12 journalists were investigated because they used the letter “w” in their writings, a letter found in the Kurdish alphabet, but not the Turkish alphabet. Further, Azadiya Welat noted that while the new penal code calls for cases against the media rather than outright banning, this makes it much harder to publish in an economic sense. This specific newspaper has had to re-establish itself 3 times in the 12 years it has been in existence, and had 25 cases against them in that 12-year period.³⁴

In addition, publishing in Kurdish brings deep suspicion of separatist activities upon journalists and their readers. Azadiya Welat reports that they are frequently prosecuted under Old Turkish Penal Code 312, or new 216 which states that it is against the law to “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.” Where the Old 312 provided punishment in the form of 3 months to 1 year imprisonment and 50-500 lira fine, the New 216 punishment for conviction includes 3 years imprisonment, which is to be increased by half if through the media. The new penal code increases punishment threefold, with even more prison time for media personnel.³⁵

The 3rd Harmonisation Law, 2002, first provided for broadcasts in languages other than Turkish. The Law on the Establishment and Broadcasting of Radio Stations and Televisions Channels was modified to provide that “although Turkish will be the basis of TV and radio, broadcasts in different languages and dialects used by Turkish citizens in their daily lives is made possible.” This was further modified in the 6th Harmonisation Law, 2003, by amending the above sentence further to read “[i]n addition, public and private radio and television corporations may broadcast in different languages and dialects used traditionally by Turkish citizens in their daily lives.” Such language had great promise for broadcasts in Kurdish.

However, the implementation of these laws, and the accompanying regulations, has significantly limited the application of the above laws. For instance, broadcasts in Kurdish, or other languages, are allowed for only one 30-minute interval per week. In addition, this 30-minute broadcast is usually aired at 6am, an inconvenient time for a population of 20 million, states Nazmi Gür, Vice President of DEHAP.³⁶

34 FFM interview with Journalist Adil Zozani, Editorials editor Azad Za and Financial advisor Amed Piran of Azadiya Welat, Diyarbakır, July 26, 2005.

35 TURKISH PENAL CODE (2005), Art. 216.

36 FFM interview with Nazmi Gür, Vice-President of DEHAP, Ankara, July 29, 2005.

Additionally, getting a broadcast licence in the first place is difficult. GÜN-TV applied for broadcast license in Kurdish to the Chamber of Permission on the 23 of March 2004. They have waited a year to get an answer to their application, but didn't receive one, though licenses were granted to national TV stations. The government has told them to wait until September 2005 to get an answer. The process for application itself was difficult, with requirements that the application state the content of each program and who will present the program.³⁷

GÜN-TV has also experienced legal harassment, with an excess of 60 cases filed against them since 2001 when the TV station was founded. Most of the cases have resulted in acquittals or fines, but some have more serious implications. For example, in September of 2004 broadcast of the station was suspended for one month because in a live program entitled "Local Authorities Debating" the ex-head of the Diyarbakır Municipality said "Kurdistan." In addition, the new Press law requires that if a program is found objectionable, the program must be suspended and in its place the station must air a documentary on Turkish nationalism.

Such legal harassment has resulted in significant self-censorship. The News Director, Deniz Gördük says he checks everything they write so that the station is not closed down. Since the enactment of the reforms, problems have doubled for media stations, he states. As a result, they write in a round about way and are not as direct as they used to be. In addition to legal harassment, GÜN-TV has videotapes of violence of the police toward GÜN-TV journalists and cameramen. Director of Advertising Seyfettin Önder states that the minute anyone starts to work for GÜN-TV they become a target of the Police. "I hope one day sadness will turn to happiness, because people have suffered here for hundreds of years and need to taste happiness," concludes Deniz Gördük.

The media bodies the mission met with support EU integration and advocate for more far-reaching reforms. "We support EU integration," says a member of the Batman Journalist Association, "because if ascension is gained, many freedoms will come because of this. We don't want to return to a period of conflict. Though there have been minor problems in the new reforms, they have made great gains in general for journalism and we want this to continue."³⁸ Others are not so positive about the reforms. When asked what was needed for future actions, journalists for Azyida Welat in Diyarbakır said that more democracy and real reforms were needed. "They don't name the Kurdish issue," says Journalist Adil Zozani, "They need to define the problem with its own name."

37 FFM interview with Director of News Deniz Gördük, Director of Advertising Seyfettin Önder, and Financial Officer Zelal Özleyen of GÜN-TV, Diyarbakır, July 26, 2005.

38 FFM interview with President of the Batman Journalist Association, July 28, 2005.

Bar Associations

As semi-official public institutions, Bar Associations in Turkey have relatively more freedom than other associations. Bar Associations are given permission by law to protest Human Rights violations, and are the only association to receive this right by law. In addition, Bar Associations cannot be directly sued by the government, though individual members can be. In general, the two Bar Associations interviewed by the mission, Diyarbakır Bar and Batman Bar, were positive about the new reforms, though state that there should be more changes to fully implement rights.

Both Bar Associations were free to publish in Kurdish. For example, the Diyarbakır Bar Association publishes a variety of leaflets, including those on women's rights, in both Turkish and Kurdish. The Batman Bar Association also reported that they hosted a conference about land mines in which the speaker gave his speech in Kurdish. Neither Bar Association experienced difficulties in either of these pursuits.

However, members of the Diyarbakır Bar Association also experienced significant legal harassment. According to the President of the Diyarbakır Bar Association, Sezgin Tanrıkulu, there are not less than 100 members of that bar being tried in Turkish courts. He himself has six to seven cases currently filed against him, and Meral Daniş Beştaş, a member of the Board of Directors, also has eight cases currently filed against her. Members are usually accused of being separatist for their activities in human rights, Tanrıkulu reports, including charges under the Old Turkish Penal Code 168, or new 314; old Article 8 of the anti-terror law, or now Article 7; and for Abuse of profession under Articles 230 and 240 of the old Turkish Penal Code.³⁹

Regarding the recent legislative reforms, the Diyarbakır Bar noted many positive changes. For example, the articles have been decreased and some of the crimes in the old laws are not included in the new laws. The realm of lawyers has been expanded more and there is a change for the better in the treatment of the police towards suspects. However, they also note that the new Turkish Penal Code could be more restrictive than the old Penal Code.

Pertaining to mother tongue legislation, the Bar Members note that while there have been positive changes the legislation still doesn't guarantee the right to express oneself in mother tongue. In addition, the legislation refers to "traditional languages used by Turkish citizens traditionally," "foreign languages" or "local dialects." Members of the Diyarbakır bar view this treatment of mother tongue with

³⁹ FFM interview with Director Sezgin Tanrıkulu, General Secretary Zülal Erdoğan, and Members of the Board of Directors Meral Daniş Beştaş and Halit Advan of the Diyarbakır Bar Association, July 26, 2005.

dissatisfaction, especially when the Kurdish language is used by millions of people and is still not directly acknowledged by the government.

Members of the Batman Bar Association, whose offices are located in a complex of governmental buildings and closely guarded by police, were more positive in general about the course of reforms. Members stated that the reforms were being enacted so fast that there were bound to be some car crashes, but that was to be expected, and in general they were positive about the reforms.⁴⁰

The members were slightly more critical about legislation concerning mother tongue and linguistic rights however. “We have come from a period when the Kurdish language was denied,” stated Sedat Özevin, Vice-President of the Bar Association. “Recently it has become at least partially accepted. However, if we don’t make the language live in a state institution, don’t feed it, it has no chance to survive.” Since the private language courses require that students pay for the education, and eligible students must have completed at least primary education (to the age of 11) and either graduated with a secondary education (at age 17) or have dropped out, before they may take a Kurdish language course.⁴¹ As a result, these language courses do not have the goal of teaching fundamental principles in “local dialects” but the teaching of a language that the students already know. “It is an ethical problem,” the members concur, “in order to have the Kurdish language develop, universities must have courses in it. We have courses in Latin and other dead languages, but not courses about living languages.”

Political Organisations

The mission met with three branches of the Democracy Party (DEHAP) in Diyarbakır, Batman and Ankara. DEHAP’s objective is to be a representative of all people, not just the Kurds, though they are portrayed as a pro-Kurdish organisation. All political parties in Turkey are forbidden to use any language other than Turkish for their propaganda and official activities, so even political parties operating in Kurdish-only speaking regions must use Turkish in official actions. In general, DEHAP members in all branches experienced significant legal harassment under opposition to Law. No. 2911 for speaking a couple of words in Kurdish. Members were also generally positive and supportive of EU ascension process, but believed that the legislative reforms need to have more practical effect, and that change must come from within Turkey, rather than external powers.

40 FFM interview with Sedat Özevin, Vice-President, Ahmet Sevim, General Secretary, and Rıdvan Eroğlu, Treasurer of the Batman Bar Association, July 28, 2005.

41 Regulation on Teaching Different Languages, Official Gazette December 5, 2003, NO. 25307, Article 8: Principles of Acceptance and Registration.

Under the Law on Political Parties No. 2820, Article 81 states “political parties shall not claim they are minorities having nation or language differences in the country of the Republic of Turkey.”⁴² As a result, speaking in Kurdish, even as little as one word, at official party functions, press conferences or political propaganda is illegal. Consequently, all branches of DEHAP interviewed by the mission as a branch or individual members were facing numerous cases for using Kurdish at official functions. Feyzi Yazar, one of the Chairmen of the Diyarbakır branch reported that there were “thousands” of cases against DEHAP members, usually under Law No. 2911 Meetings and Demonstrations.⁴³ The Batman Branch of DEHAP made a tent of peace to protest the recent increase in pressures on Kurdish peoples and the political party itself. The people who attended it had a case opened against them on July 23, under opposition to Law No. 2911. In other Kurdish areas, a member of DEHAP was imprisoned for 6 months because she said “I” in Kurdish at an official function.⁴⁴ Other cases include the case against Handan Çağlayan, DEHAP Vice President in Urfa who received a sentence of 8 months imprisonment and a fine for saying “Hello my sisters” in Kurdish. Her case is pending in front of the Turkish Supreme Court, reports Nazmi Gür, DEHAP Vice President in Ankara. In addition, there are currently 60 cases pending against the DEHAP president in Ankara for saying “hello” or “Rojbaş” in Kurdish, versus “merhaba” which is used in Turkish.⁴⁵

DEHAP branches were also unanimous in their support of the EU accession process for Turkey. Feyzi Yazar of the Diyarbakır DEHAP branch views the EU as a positive step and as possible means to solve Turkey’s problems. But DEHAP members clearly don’t view the EU as the sole actor in this regard. Yazar goes on to state that “[w]e regard the EU as an external political power. Turkey is the one who will solve this problem [Kurdish issue], not the EU.” Nazmi Gür of Ankara DEHAP agrees, and is against the Kurdish Issue being used as a negotiating card for Turkey’s ascension to the EU. “We want to be at the table, we want to participate in negotiations,” Gür states. Members view Kurdish involvement in the negotiations as a necessary step to solving the Kurdish problem completely, versus being made a single item on the agenda to be bargained over.

DEHAP members in all branch locations agreed that the new legislative reforms did not have enough application in practice. Nazmi Gür in Ankara states that 30 minutes of broadcast time per week in Kurdish is nothing, because there are already 4 satellite channels available. In addition, he reports, these 30 minute programs are not prepared by Kurds, but by the Turkish state. All 3 branches were universal

42 Law on Political Parties, No. 2820 (1982). Art. 81(b).

43 FFM interview with Feyzi Yazar, DEHAP Diyarbakır Branch, Diyarbakır, July 25, 2005.

44 FFM interview with members of DEHAP Batman Branch, Batman, July 27, 2005.

45 FFM interview with Nazmi Gür, VP of DEHAP, and Tuncer Bakırhan, President of DEHAP, Ankara, July 29, 2005.

in calling for more implementation of mother tongue legislation, in particular education in Kurdish in the public schools with the support of the State. In order to fully implement minority rights, Gür calls for Turkey to fully implement Article 39 of the Lausanne Treaty which provides a framework for minority rights. In addition, Gür states the need for Turkey to fully implement the ICCPR without reservations, and for the government to ratify the UN Minority Rights Treaty.

The reforms, DEHAP members concluded, are not radical or far reaching enough. Feyzi Yazar, Chairman of DEHAP Diyarbakır says there need to be more dramatic changes, and the people need more rights both politically and socially. Most important, he stresses, is the path to Democracy and the public choice of democracy. “The world is getting smaller and closer, we need sensitivity of America and EU people towards the Kurdish problem,” Yazar says, “Most importantly we need to build up public opinion of the people against oppression.”

Trade Unions

The mission met with two unions: Eğitim-Sen, Teachers Trade Union, branches in Diyarbakır, Batman and Ankara; and BES, Office Employees Trade Union, branches in Diyarbakır and Ankara. Both unions had similar concerns regarding cases against them for closure of the Unions, their role as opposition voices in the government, difficulties competing with governmental unions, harassment of members, and called for more democratic reforms and peace.

Eğitim-Sen, a teachers trade union, was founded in 1995. It is the biggest union in Turkey, made up of over 200,000 members. “Eğitim-Sen has supported basic human rights since the day they were founded,” reports Union President, Alaaddin Dinçer. The Union is a member of Education International, and also has links with Unions in England. The Union and its members have expressed sensitivity to the Kurdish Issue, and report human rights violations in the Kurdish region. This sensitivity has resulted in harassment from the government. “In the past, many members were killed and executed under police custody,” Dinçer states, “many members exiled and forced to leave a place.” Exile of Union members to other places continues, according to Eğitim-Sen executives. For example, on June 7, 2005 in the city of Urfa members of Eğitim-Sen Board of Directors were exiled to other places in Turkey.⁴⁶

One of the reasons for the timing of this particular fact-finding mission was to interview member branches of Eğitim-Sen about the closure case against them for including a commitment to Mother Tongue education in the constitution of the

46 FFM interview with Alaaddin Dinçer, President, Emiralı Şimşek, General Secretary, and Ali Berberoğlu, Organisational Secretary of Eğitim-Sen Headquarters, Ankara, July 30, 2005.

Union. This article caused controversy in 2002 and an investigation was opened against Eğitim-Sen at that time. However, with the passage of new reforms, the investigation was closed.

On the 27 of June 2003, the Chief of General Staff of the Military sent a letter to the Ministry of Labour and Social Security concerning Article 2 of Eğitim-Sen's Constitution with its commitment to education in the mother tongue. The letter from the Chief of Staff referred to Articles 3 and 42 of the Turkish Constitution, and stated that Eğitim-Sen's constitutional commitment was illegal under the Turkish Constitution. The letter finished by saying "Therefore we request you to take necessary steps to correct this constitution."

Copies of this letter were sent to the Prime Ministers Office, Minister of Interior, Minister of Education, Minister of Justice, General Secretary of National Security, and the Ankara Governor's office. On the 15th of July, a letter was sent from the Ankara Governors office to the public prosecutor with the above letter and relevant information. Subsequently, the official investigation into Eğitim-Sen began.

This chain of events raises questions about the true nature of the Turkish government. Article 1 of the Turkish Constitution proclaims that "The Turkish state is a Republic."⁴⁷ In continuity with this structure, the Preamble of the Constitution states that the Turkish state embodies:

The principle of separation of powers, which does not imply an order of precedence among the organs of state, but refers solely to the exercising of certain state powers and discharging of duties which are limited to cooperation and division of functions, and which accepts the supremacy of the Constitution and the law.⁴⁸

This commitment to the separation of powers is brought into question by the previous chain of events which appears to show a significant amount of collusion between the military branches and the executive branch of government, and eventually with the judiciary.⁴⁹

47 CONSTITUTION OF THE REPUBLIC OF TURKEY (2001), Pt I, Art. 1.

48 CONSTITUTION OF THE REPUBLIC OF TURKEY (2001), Preamble. Emphasis added.

49 These are not the only allegations of military involvement in government. GÜN TV reports that military tactics such as burning down forests (Bingöl and Tunceli) are increasing. In those instances, GÜN reports, no government officials took any action, so the villagers fought the fires themselves. The situation is getting worse, states GÜN-TV. The Batman Bar Association is worried about news that military intelligence is preparing a new Anti-Terrorist law. Azadiya Welat journalists reported that in a recent press release, the military targeted their newspaper and Free Agenda, another newspaper. Now they fear bombings in their office as has happened in the past when the military targets a paper. Egitim Sen reports that on July 17, 2005, the military held a de-briefing and told the Press how to talk about the Kurdish Issue. After that de-briefing, Union members say, they

As a result of this military opinion, says Dinçer, a new investigation into the Union began in 2004, and a case was opened against the Union by the Ankara Prosecutor on 10 June 2004 for breach of the Turkish Constitution. The Prosecutor contended that since the Turkish Constitution states that “No language other than Turkish shall be taught as mother tongue to Turkish citizens at any institutions of training or education,” Eğitim-Sen’s commitment to every citizens right to education in their mother tongue is against the Turkish Constitution, and therefore illegal.⁵⁰

The closure threat seemed to be over, and many praised the liberalization and success of the reforms when the Ankara Second Labour Court found in favour of Eğitim-Sen and dismissed all charges on 15 September 2004. However, this decision was brought before the Supreme Court, which rejected the ruling and sent the case back to the Second Labour Court in November of 2004. The Second Labour Court heard the case again on the 21st of February 2005, and affirmed its earlier ruling in favour of Eğitim-Sen. The Prosecutor appealed this decision to the Supreme Court of Turkey, and on the 25th of May 2005, the Supreme Court ruled that Eğitim-Sen’s constitutional commitment to mother tongue education for all citizens was in breach of Article 42 of the Turkish Constitution.⁵¹

In response, Eğitim-Sen appealed to the European Court of Human Rights on 3 June 2005. In addition, on 3 July 2005, during an Eğitim-Sen Extraordinary Congress, the majority of the delegates voted to remove the commitment to mother tongue from the Unions’ constitution. The Union hopes that by removing the offending article, that when the case goes back to the local court in September that the court will find there is no longer any legal reason for closure of the Union.

Reactions of Eğitim-Sen members to taking this provision out of the constitution have been varied. “Some didn’t feel it was right to take the article out of the Constitution,” Dinçer said, “Some confirmed, some didn’t. Most realised that it was a forced decision.” Eğitim-Sen Batman branch officials said that they were totally against removing the article from the Union constitution, but realised it was a necessary step for the Union as a whole to survive.

While the fact-finding mission was in Turkey, the Supreme Court decision on Eğitim-Sen was released. In addition to rejecting the lower courts decision in favour of the Turkish Constitution, the Supreme Court held that Articles 10 and 11 of the European Convention of Human Rights were not violated.⁵² The court reached this

can see significant change for the worse in the attitude of press members.

50 CONSTITUTION OF THE REPUBLIC OF TURKEY (2001), Pt. II, Ch.III, Art. 42(9).

51 “The Supreme Court of Turkey has decided to close down Teachers Union” June 10, 2005. Accessed on August 8, 2005. Found at < <http://www.emep.org/trade/Egitim-Sen.html>.>

52 A transcript of the decision is available from KHRP

decision through a series of steps.

First the Supreme Court referred to Article 90 of the Turkish Constitution which pertains to Ratification of International Treaties. Paragraph 3 sets out the requirements for implementation of International Agreements depending on whether they are self-executing or non-self executing agreements. Paragraph 5 of the article then states that International agreements duly put into effect carry the force of law. Turkey signed the ECHR in 1950 and then, as it is a non-self executing treaty, ratified the convention in 1954, making the ECHR a force of law according to Article 90 of the Turkish Constitution. The Turkish Supreme Court concludes that as a result of this article there “is a need for interpretation of international conventions together with the Constitution.”

Next the Supreme Court determined that the Turkish Constitutional Articles 3 and 42 rely on a premise of the indivisible unity of the Turkish State, and that Turkish mother tongue is part of that indivisible unity. The relevant provisions of the Constitution state:

Article 3:

The Turkish state, with its territory and nation, is an indivisible entity. Its language is Turkish.

Article 42:

No other language than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education. 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. The provisions of international treaties are reserved.

These provisions, according to the Supreme Court, state that Turkish is the mother tongue of Turkey, and this protects the indivisible entity of the state.

The Supreme Court then determined that mother tongue linguistic rights implicate the indivisibility of the nation. “Mother tongue is not compatible with the Constitution because other languages and accents do not only belong to one culture, or one language, but an uncountable number of languages in one state.”⁵³ Therefore, for the Turkish government to allow for more than one mother tongue,

53 Unofficial translation, Eğitim ve Bilim Emekçileri Sendikası Gen.Mer. vekili Av. Zuhal Çolak, May 25, 2005.

would threaten the indivisibility of the nation. Threatening the indivisibility of the nation is a threat of large enough magnitude to abrogate the rights of freedom of expression and thought and trade union rights set out in the Turkish Constitution in Articles 25, 26 and 51, according to the interpretation of the Supreme Court.

The Court then states that this interpretation does not conflict with Articles 10 or 11 of the ECHR, because it fits within the exceptions stipulated under those articles. The Articles in question are set out below:

Article 10:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. 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 rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or moral s or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

The Supreme Court of Turkey regards allowing mother tongue education for

other languages besides Turkish as a threat to national integrity. Further, they have interpreted the exceptions under Articles 10 and 11, which list preservation of territorial integrity as an acceptable reason to abrogate the rights of freedom of expression and association, as applicable to the current case. Therefore, concludes the Court, Turkish national law is compatible with international conventions.⁵⁴

In prior cases involving Article 10, the ECHR has been very critical of the application of 10(2) exceptions. The Court applies a strict three part test in its analysis of 10(2), including whether the limitation is “prescribed by law,” fulfils a “legitimate aim,” and is “necessary to a democratic society.” The prohibition on other mother tongues is in the Turkish Constitution, and is thus arguably prescribed by law, and the preservation of “territorial integrity” recognized as a legitimate aim under 10(2). The question arises, then, on the third prong of the Courts test.

The issue before the ECHR will be whether a ban on mother tongue in languages other than Turkish is “necessary to a democratic society.” The court has stated that “the adjective “necessary”, within the meaning of Article 10 § 2, implies the existence of a “pressing social need.” This inference, the Courts analysis proceeds, must be looked at in the light of the case as a whole, and must determine whether the interference at issue was “proportionate to the legitimate aims pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient.”⁵⁵

The ECtHR has heard a variety of cases on the application of Article 10(2), but the cases from Turkey will be the most relevant, particularly those regarding the political situation in the south-east region of Turkey. In *Zana v. Turkey*, the court found no violation of Article 10 for the sentence of the former Mayor of Diyarbakır for comments he made to the press about the situation in the south-east. The Court found that the governments’ imposition of a prison sentence and fine were proportionate because of the nature of the comments in a politically charged atmosphere and the status of the person who made the comments, made restriction of his freedom of expression rights acceptable under Article 10(2).⁵⁶ However, in *Karataş v. Turkey*⁵⁷ and *Okçuoğlu v. Turkey*,⁵⁸ the Court found a violation of Article 10 for prosecution of a poet and a journalist, respectively, for comments that Turkey

54 Unofficial translation, Eğitim ve Bilim Emekçileri Sendikası Gen.Mer. vekili Av. Zuhal Çolak, May 25, 2005.

55 This legal analysis is taken from a synthesis of cases in which the Court has analysed Article 10(2), including: *Karataş v. Turkey* (8 July 1999) (violation Article 10); *Zana v. Turkey* (25 November 1997) (no violation of Article 10); *Fressoz and Roire v. France* (1991) (violation of Article 10); *Okçuoğlu v. Turkey* (8 July 1999) (violation of Article 10).

56 *Zana v. Turkey*, Appl. No. 69/1996/688/880, Grand Chamber, 25 November 1997.

57 *Karataş v. Turkey*, Appl. no. 23168/94, Grand Chamber, 8 June 1999.

58 *Okçuoğlu v. Turkey*, Appl. No. 24246/94, Grand Chamber, 8 June 1999.

viewed as threats to the indivisible integrity and national security of Turkey. In particular, the Court in these instances focused on the severity of the punishment in relation to the potential “pressing social need.”

With regard to the Eğitim-Sen case, and the banning of mother tongue for all languages other than Turkish, the Court will have to weigh the detriment to the “indivisible integrity” of Turkey against the violation of a significant portion of the populations’ right to freedom of expression. The court will also need to take into account that, unlike the above mentioned cases which took place in the late 1990s, the political situation in the south-east is much improved, and that the state of emergency legislation was lifted completely from the region in 2002.

The Supreme Court decision will be appealed to the ECHR. In the mean time, the decision will go back to the local court which is on vacation until 5th of September. If the case reaches the courts before then, a temporary court will hear the case. Dinçer is hopeful that since the Union took out the commitment to mother tongue that the lower court will not close them down. However, he says, if the local court decides against Eğitim-Sen, then they will appeal to the Supreme Court. In addition, he states, if the ECtHR decides in favour of Eğitim-Sen, and that Turkey’s actions violate Articles 10 and 11 of the ECHR, then they will put the articles back into their constitution. Regardless, a new Union will be formed, Eğitim-Bilim Çalışanları Sendikası, which contains a commitment to mother tongue education in its constitution.

The commitment to mother tongue education does not have political motivations for Eğitim-Sen. As a teachers union, its members are committed to the betterment of education and the quality of learning of their students. The Batman branch of Eğitim-Sen, whose board of directors is made up of both primary and secondary school teachers, states that it is hard for Kurdish children to learn in Turkish, because they first have to translate from Kurdish to Turkish before they can learn what is being taught. One primary school teacher said that out of 41 students in his class, only 2 or 3 know Turkish when they first go to school, and that is only because they are from a wealthier family that has a TV. Even those 2 or 3 students can only understand Turkish, not speak it, so it is still difficult for them. This frustrates the students, and as a result they have problems and become aggressive, sometimes even leaving school. It is hard for the children to express themselves in Turkish, the teachers’ state, but they themselves are forbidden to speak Kurdish with the children. One of the teachers in Batman was exiled to another part of Turkey because he let the children sing a Kurdish song at the end of the semester.⁵⁹

All members of Eğitim-Sen are concerned about the exile of teachers to other areas

59 FFM interview with members of Eğitim-Sen Batman Branch, Batman, July 27, 2005.

of Turkey. A possible new law, which would force teachers in the Kurdish areas to work in other parts of Turkey and bring Turkish teachers into the Kurdish areas, is a cause of great concern for members of the Union. "All education should be in Turkish and Kurdish," state members of the Diyarbakır branch, "This will facilitate dialogue and peace."⁶⁰

Eğitim-Sen is not the only Union to face scrutiny of their constitution as a result of commitment to mother tongue education in Turkey. Büro Emekçileri Sendikası (BES) is an Office Employees Trade Union in Turkey. Founded in 2002 after the new reforms, BES supports human rights in general, and also has a provision supporting mother tongue education in their constitution. As a labour Union, the aim of BES, according to President Bülent Kaya, is to defend the idea of living in a social and cultural sense, not just economic. Many different languages and cultures are represented in their Union, Kaya states, and as a result they support mother tongue for Turkish, Kurdish, Greek and Armenian.⁶¹

However, despite this commitment, BES, and other unions, can't publish or hold official meetings in any languages other than Turkish. BES uses Kurdish in banners and posters, but not in Press releases, or in public. In order to avoid problems, Kaya says they practice self-censorship of statements and activities. On a more personal level regarding language rights, Bülent Kaya had applied to for a Kurdish name, Berxwedan, but this application was rejected. In addition, 2 other members of the board applied for names Welat and Dijwan, but their applications were also rejected.

The previous BES constitutional article had stated that the Union "mother tongue and teaching." As a result of the Eğitim-Sen case, they have changed the constitution to state "we support mother tongue." The previous constitutional article was under investigation, along with Eğitim-Sen, in 2002. However, that investigation was closed at the same time the investigation into Eğitim-Sen was closed. Recently, in March of 2005, a new investigation into the BES constitution was opened. Kaya says a case will probably be opened against them shortly, now that the Eğitim-Sen decision has come down. BES has since proposed removing the article from their constitution in an effort to keep their union open.

BES members also experience pressure on an individual level. Frequently cases are brought against members under old Turkish Penal Code 312 (new 216) which makes it illegal to "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

60 FFM interview with İhsan Babaoğlu, President, and Abdullah Karahan, legal secretary of Eğitim-Sen, Diyarbakır Branch, Diyarbakır, July 26, 2005.

61 FFM interview with Bülent Kaya, President and other members of BES, Ankara, July 29, 2005

in a way dangerous for the public security.” “Whoever expresses thoughts about democratic peace and the Kurdish question is subject to cases,” union member’s state, “and because we are union members, they separate us from our families and send us into exile.” President Bülent Kaya currently has 4 cases against him, under Penal Code article 312 and for opposition to the anti-terrorist act. The Secretary of the Union currently has 2 cases opened against him under article 312, and one of the members of the board of directors has 3 cases against him for opposition to Law No. 2911 on Meetings and Demonstrations.

BES members were critical of the new reforms. “The new legislative changes in the law of Unions are stricter than before, with new obstacles and hardships. KESK (explain who they are) is the only opposition type party that wants democracy in Turkey. As a result, Associations and Unions form the primary opposing force in Turkey,” state members of the Diyarbakır branch. According to these members, the new Law of Unions provisions regarding associations are stricter. They can have members, but can’t take part in agreements with firms and corporations. In addition, Unions aren’t allowed to strike, and if they do strike, there is punishment. Many people are afraid to join Unions, BES members’ state, because of the suspicion that accompanies membership in Unions.

A further problem, members of the BES-Diyarbakır branch report, is that the government can also form Unions. Government founded unions clash with BES, and government Unions have more rights than BES in general, they state. “Memur-Sen, a Union close to the government, can see the Prime Minister whenever they want,” says BES Chairman in Diyarbakır, “We’ve been waiting two and a half years and still can’t see the Prime Minister!”⁶²

Solutions proposed by both Eğitim-Sen and BES call for an increase in democracy. Eğitim-Sen calls for government acceptance that Turkey is a multi-cultural and multi-lingual state. As a result, member’s state, the Constitution and laws should accept the existence of non-Turkish citizens, and allow education to be in Turkish and Kurdish as this will facilitate dialogue and peace. BES members agree that democracy and peace is the best course. In addition, BES members believe that a committee should be formed for war crimes for both Kurdish and Turkish.

Kurdish Language Courses and Publishing Institutions

The fact-finding mission met with Kurdish language courses and publishing houses in Diyarbakır and Batman, which included the Kurdish Institute in Diyarbakır; Co-directors of the Kurdish Language Course, Mr. Alpkaya and Mr. Tümer; and

62 FFM interview with BES Diyarbakır Branch, Diyarbakır, July 25, 2005.

the Kurdish Language Course in Batman, represented by Mr. Üneşi. Determining the effectiveness and success of the newly opened Kurdish language courses was a primary aim of the mission. All of the people the mission met with said that the courses were economically unfeasible, and they faced a great deal of harassment from the government to even open the courses. In addition, the language courses themselves were ineffectual, all reported, since members of the Kurdish population don't wish to pay to attend a course to learn a language they have known since birth, but rather to be educated in that language. As a result, all the language courses were facing lack of interest in the courses from the general population. All of these problems were borne out when days after the mission left Turkey, the owners of the Kurdish Language Courses announced on August 1, 2005 that they were closing all of the language courses citing lack of interest, government support, bureaucratic hurdles and economic difficulties.

The language courses were the product of the 2002 reforms. They were initially seen as evidence of Turkey's liberalising process to allow courses in a language that had been banned in entirety only 15 years ago. Since 2002, seven language centres had opened, mostly in the predominantly Kurdish southeast, and one was in the process of completing bureaucratic procedures before opening. So far 2,027 people had enrolled in the course, and of those 1,056 graduated.⁶³

The Kurdish Institute in Diyarbakır was founded to publish books in Kurdish, including providing the curriculum for the local language course. Their publishing's include books about the characteristics of Kurdish culture, and they are proudest of their Turkish/Kurdish dictionary. The name "Kurdish Institute" is an unofficial title, since they legally cannot have this name. The Institute was founded in Diyarbakır in December 2003. They have applied 3 times to the Minister of Commerce to have the name Kurdish Institute, but were rejected each time, and the police took down the sign on the building. The state has said that they can unofficially be known as the Kurdish Institute, but not officially.⁶⁴

Director of the Kurdish Institute, Mr. Nesip Gürtekin, is also a teacher in the Diyarbakır Language Courses. As a result, he has seen the effect of the new reforms not only on publishers of Kurdish books, but also on the use of those books in the language courses. Gürtekin reports that after the establishment of the language courses, the Minister of Education wanted a copy of the programs which listed which books would be used and what was to be taught. After they sent him the list, 90% of the books on the list were either banned outright, or given the alternative of including a sentence saying "the Kurdish language has been assimilated by the

63 "Kurdish Language Centers Close in Turkey, citing lack of Interest." Associated French Press. August 1, 2005.

64 FFM interview with Nesip Gürtekin of the Kurdish Institute, Diyarbakır, July 25, 2005.

Turkish language for 80 years.” When the Institute refused to include such sentences, the books were banned; this is what happened with the Turkish/Kurdish dictionary. Now a Commission under the Ministry of Education decides which books are to be used as course materials.

Mr. Gürtekin is also facing a case against him for his role in the Kurdish language courses. The case was opened on 22 August 2004 under Article 526 and 647 of the Penal Code and CMUK, when Gürtekin attended the opening of the first language course, where it seemed he was the manager because he was the only director present. The police filed a report and said he didn’t give them 48 hours advance notice. They made him sign the report and sentenced him to 3 months in prison, but changed the sentence instead to a fine of 800ytl. Mr. Gürtekin appealed, and is to have received an answer in early August 2005. “The police said my actions were illegal, even though I’m not the owner of the course. They don’t care, they charged me anyway,” says Gürtekin.

For future directions, Gürtekin remains cautiously positive. “We need to publish more,” he says, “We don’t have hope that they will give us something, but we have hope we will get something.” Regarding the EU ascension process, Gürtekin views it as positive because it’s a democratic community. “However,” he cautions, “if Turkey enters the EU, it needs to enter not only on paper, but also in practice, and needs to answer the Kurdish question.”

The Diyarbakır Kurdish language courses were held in the same building as the Kurdish Institute. Co-owners of the language course, Mr. Medeni Alpkaya and Kemal Tümer, took the mission on a tour of the now empty classrooms. The purpose of the courses, they state, is to teach the Kurdish language, not only to Kurdish peoples, but for anyone who wants to learn; their doors are open for everyone. In addition it is their goal to have Kurdish in public schools, not just private language courses. To that end, they have started a petition called “I want to learn my Mother Tongue.”⁶⁵

The petition went from city to city, and was completed successfully Alpkaya says. The only problem they encountered was in the city of Bitlis, where local authorities banned the campaign without citing a legal basis. The petition called for changes to Constitutional Articles 3, 42 and 66, which are regarded as obstructions to Mother Tongue in any other language but Turkish.⁶⁶

65 FFM interview with Meden Alpkaya and Kemal Tümer, co-directors of the Diyarbakır Kurdish Language Course, Diyarbakır, July 25, 2005.

66 The petition objected to Articles 3, 42 and 66 of the Turkish Constitution. In relevant part they state:

1. Article 3(1): [The Turkish State]...Its language is Turkish.
2. Article 42(9): No other language than Turkish shall be taught as mother tongue.

The language courses consisted mainly of Kurdish people, not foreign students wishing to learn Kurdish. The students thus already knew Kurdish, but were attending the classes because it was the first time such courses were allowed. There were 3 periods of classes and around 150 students in each session. The sessions would last 2.5 months, and a complete session consisted of 80 hours total.

There were many obstacles to effectively opening and running the course, Alpaya and Tümer report. Before opening the inspectors found problems with the building such as the doors were too narrow, or the toilets not the proper type. Getting the course and all the paperwork approved took a long time as well. “We filled out all the paper work, and then tried for 3 months to get approval,” said Tümer, “we finally got approval because we threatened to complain to the EU about the delay.” In addition to the delays in opening, the courses also face economic challenges. Since the courses are private and semi-commercial, they are required to be paid for the courses. However, the people are usually too poor to pay. So as a result, the courses face constant struggles to stay open economically. In addition to economic problems, people who attend and obtain a certificate from the language courses are regarded as members of separatist organisations and then under suspicion from authorities. All of these challenges made the success of the language courses extremely difficult.

The courses in Batman had similar course options, as well as similar difficulties in opening and running. The Batman language course applied to open the course on 17th April 2003. They were finally able to open the course on April 1, 2004, nearly a year later. This was in stark contrast to the school for driving licences, which is located in the same building, which received approval and was open 20 days after the application date.⁶⁷

The Batman courses faced similar difficulties to opening as the Diyarbakır branch experienced. Inspectors declared that the doors to the school were too narrow as well, so they delayed the opening until they were widened. The name of the school was required to be in Turkish, not in Kurdish, and even using Turkish they were not able to name the course what they wanted. They applied for the name “The Kurdish Language Course and its Dialects” but the name they were allowed in Turkish was “Private Language Kurdish Course of Batman.” The school was also required to give a certificate in Turkish after the students graduated from the Kurdish language course. In addition, the teachers were pushed to teach the Kurdish language in daily use at a lower level, so they were not able to use a similar level of Kurdish in courses, as they would be able to use Turkish.

3. Article 66(1): Everyone bound to Turkish State through bond of citizenship is a Turk.

67 FFM interview with Aydın Üneşi, Teacher and co-owner of Batman Language Course, Batman, July 27, 2005.

The courses in Batman lasted 2.5 months, and 10 weeks equalled one semester, with 180 hours total. The school completed 4 semesters prior to the missions visit in July 2005. The course had a total of 250 graduates. Mr. Üneşi explained the gradual attrition of students, reporting that initially 90 students signed up for the first course, but only 70 graduated. Attendance has diminished since then, since last semester 50 signed up, but only 30 graduated. Mr. Üneşi said that 480 people listed interest, but in actual fact the numbers were lower. Part of this, he explained, is that they are language courses for people who have already completed school, with 60-70% being university graduates.

Mr. Üneşi explained the inherent problems in the structure of the language courses. “The Kurdish language courses have the status of commercial institutions which need to make money, but there is no way to succeed teaching only the Kurdish language to a poor population that already knows the language,” Üneşi states. “Kurdish language should be inserted as an area of knowledge in Universities or in private language courses supported by the government. There needs to be an academic background, because otherwise commercial institutions won’t work. Another option,” Üneşi continues, “is to have Kurdish taught in schools with government support. If this is not done,” he cautions, “the language won’t flourish in this soil.”

Individually there are also pressures applied to teachers of the language courses. Mr. Üneşi taught religion in public schools for 15 years, before he left the public schools and began to teach Kurdish. He was exiled from Batman to Yozgat for one year in 2000. There have been about 60 cases filed against him from 1996-2003, 10 of the 60 for speaking Kurdish in speeches.

The reforms have had little impact in practice as far as Mr. Üneşi is concerned. “Yes, the Kurdish language courses are open,” he says, “but it is my natural born right to have my language taught freely. I don’t think I ask for much.” Specifically, Mr. Üneşi is critical of Kurdish people having to pay for private courses in their own language, when their tax monies go to public schools where only Turkish is taught. “I think it is my right to have my own language taught in my own schools without a money exchange,” he says.

The closure of the Kurdish language courses were formally announced on August 2, 2005 by the owners and directors. In a press release from the founders, they stated reasons for closure ranging from little interest in the courses they were allowed to offer, to commercial difficulties and bureaucratic obstacles. Founding any private course would in general take 2-3 months, but the process for founding Kurdish language courses took on average 18 months. In the statement, the representatives also drew attention to the fact that there is no other place on earth where people have to pay to learn their mother tongue. The representatives also stated that the

government did not support the courses with flexible legislation and materials to run the courses.⁶⁸ “The Turkish government allowed the child (Kurdish language courses) to be born, but didn’t give the necessary conditions for this child to live,” mourns Üneşi, “Since there are no necessary conditions for the survival of the child, we will kill it with our own hand, and shut down the course. Now the government will say there is not much interest in the Kurdish language.”

68 “Private Kurdish Language Courses Close Down.” Press release in the *Özgür Politika* (Free Politics), August 2, 2005.

Conclusion

Turkey has made great strides forward for a country where the use of Kurdish and other minority languages was completely banned less than 15 years ago. The country's efforts in this regard are to be commended. However, while the legislation looks promising for the realisation of linguistic rights, the mentality and practice still form significant barriers to the implementation of the legislation. In addition, many of the "liberal" legislative amendments place additional restrictions on linguistic freedom. In order for there to be true linguistic freedom in Turkey, the State must embrace its multi-linguistic composition rather than viewed it as a threat to be hampered.

Recommendations

Regarding the Conception of the relationship between the State and its minorities

- Formulate and practically implement a conception of the State in which minorities may be recognised without necessarily compromising the territorial integrity of the state.
- Recognise that the protection of minorities is integral to the protection of territorial integrity of the state and as such is fundamental to ensuring both domestic and international security.
- Fulfil basic democratic requirements concerning the accommodation of minorities such as those formulated by the EU Arbitration Commission for Yugoslavia in 1991 and reiterated in subsequent international and regional instruments.

Regarding accommodation of heterogeneous populations

- Abandon outdated cultural and linguistic policies seeking to implement nationalist ideology by promoting the idea of one official identity to the exclusion of others.
- Revise the official interpretation of the concept of the minority so that all minority groups may benefit from appropriate recognition, tolerance and assistance.
- Commission and publish objective and accurate research into the composition of their populations in order to ascertain the existence, features and practical needs of different minority groups.
- Abandon the notions that non-discrimination is achieved by ignoring relevant differences, and that accommodating the ethnic and linguistic features of minorities constitutes discrimination.

Regarding International Obligations and Commitments

- Honour the provisions of international and regional instruments which guarantee the cultural and linguistic rights of Kurdish citizens both as individuals and members of an ethnic and linguistic minority.
- Respect, protect and fulfil the cultural and linguistic rights of the Kurds in ways appropriate to the needs of their Kurdish populations. These needs must be accurately ascertained via meaningful dialogue with the Kurds.
- Implement the right to freedom of expression, as enshrined in Article 19 of the ICCPR in a way that enhances the right of Kurds to enjoy their culture and use their language as enshrined in Article 27 of the ICCPR.
- Cooperate with international monitoring mechanisms, such as the special procedures which operate under the auspices of the United Nations, by giving accurate information regarding the ethnic composition of the population and the implementation of constitutional and other legal provisions which purport to protect the Kurds' right to express their cultural and linguistic identity.
- Facilitate the use of the Kurdish language in relations to all public services and judicial and administrative authorities.
- Consider giving the Kurdish language de facto joint official status in the

Kurdish provinces

- Cease criminalising the peaceful expression of cultural and linguistic identity.
- Tolerate and positively assist private associations to cultivate, develop and disseminate information relating to all aspects of minority culture and to operate free from judicial and extra-judicial impediments.

Regarding the Media

- Ensure that the public media provides a public service to all sections of the population.
- Tolerate and positively assist attempts by the private media to represent and accommodate the demographic composition of the country. Engage with those involved in the private media, including representatives of minority media, in order to review and formulate policy in this area.
- Pass legislation preventing the formation of monopolies which exclude minorities from the private media.

Regarding the Education System

- Ensure that the public education system provides a service which allows all participants to develop to their full potential. The universal accessibility of education must not be undermined by discrimination based upon the ethnic identity of Students. Education must be acceptable to members of ethnic minorities who wish to learn about their culture as well as the official or dominant culture of the state. It must be recognised that the cultural diversity of the population and the potentially beneficial role played by this feature in the functioning society.
- Ensure that public education provided in the Kurdish region is of the same standard as that provided elsewhere in the country. Teachers should be recruited from the local population so that they are familiar with and respectful of the culture and language of their pupils. At primary level Kurdish must be the medium of teaching and instruction in the language must also be provided, if necessary in parallel with the official or dominant language.
- Consider how best to promote awareness and tolerance of the composition of population within the public education system.

- Maximise the availability of education appropriate to the needs of members of minorities by allowing and assisting them to establish and operate private schools.
- Provide official recognition for the qualifications issued by private minority schools so that their award may lead to further education and employment.

For the Government of the Republic of Turkey

- Draft a new Constitution which is free from outdated references to Atatürk's conception of the Turkish state, and which does not implement his Reform Laws.
- Abandon the narrow formulation of national minority found with in the Treaty of Lausanne of 1923.
- Remove reservations to provision in international instruments which have been deposited upon ratification with the intention of limiting the cultural and linguistic rights of the Kurds in terms of the Constitution and the Treaty of Lausanne. Notably Article 27 of the ICCPR, Articles 13 and 15 of the ICESCR and Article 17 and 20 of the CRC.

To the European Union

- Continue to exert pressure upon Turkey to implement in good faith all legal reforms made pursuant to the Copenhagen political criteria for accession to the EU in the area of minority rights.
- Rigorously evaluate Turkey's attempts to accede to the EU on the basis of actual changes in practice, rather than solely considering formal reforms made to laws. This is mandatory if Turkey's practical progress and political will are to be accurately assessed during this critical period. Also, this alone will ensure that the EU retains its integrity as an institution committed to ensuring the protection of human rights.

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