EU MEMBERSHIP CONDITIONALITY AND DEMOCRATIZATION IN TURKEY: THE ABOLITION OF THE DEATH PENALTY AS A CASE STUDY

AMICHAi A. MAGEN

This study explores when and how international organizations and the norms they seek to promote have impacted democratic legal reforms in Turkey. Empirically, the study examines the constitutional reforms undertaken by the Turkish state between October 3rd 2001 and January 23rd 2003 – with the abolition of the death penalty examined in-depth as a case study. Drawing upon data derived from primary and secondary sources, a survey of Turkish, European and American press coverage and interviews with Turkey experts from five different countries (see “Note on Methodology”, Annex I), the study makes three main findings:

First, the recent reforms represent a symbolically and substantively significant effort to further democratic consolidation and promote human rights protection in Turkey.

Second, as the case study analysis of the death penalty issue illustrates, Turkey’s strong desire to accede to the European Union (EU) played a determinative role in the recent domestic reforms.

Third, EU membership conditionality greatly impacted the domestic political debate surrounding the recent reforms (at both the popular and elite levels). In the case of the abolition of the death penalty, where domestic opposition for reform was quite strong, the policy outcome was nevertheless compatible with EU norms, rather than with the preferences of dominant domestic actors. Thus, membership conditionality can powerfully impact internal political dynamics and shape policy outcomes.

SECTION I: INTRODUCTION & CONTEXT

This section provides the theoretical and practical context within which the data presented in the thesis should be understood and evaluated. It posits the contribution made by this study, within the evolving body of scholarship on the external influence of international rules and institutions on domestic democratization processes, explains the link between the abolition of the death penalty and European notions of democratization, and outlines the challenges to democratic consolidation in Turkey.

Section II begins the presentation and analysis of the data collected as part of this research project. It provides a factual account of the constitutional and subsequent legal reforms undertaken by the Turkish Parliament (The Grand National Assembly of Turkey) over the last eighteen months. While these reforms have been hailed by

1 The term “membership conditionality” is used by the author to refer more accurately to a specific type of political conditionality, employed by the EU in the process of community enlargement. It is explained more fully in Section III of this thesis. The term “political conditionality” was offered by several commentators to describe the EU’s impact on democratization in southern Europe in the late 1970s and East Central Europe in the 1990s. See: K. Smith, The Use of Political Conditionality in the EU’s Relations with Third Countries: How Effective?, 3.2. EUROPEAN FOREIGN AFF. REV. 256 (1998); P. C. Schmitter and I. Brouwer, Conceptualizing, Researching and Evaluating Democracy Promotion and Protection, EUROPEAN UNIVERSITY INSTITUTE WORKING PAPER SPS NO. 99/9 (1999).
human rights organizations and the press, they have so far received scant academic attention. Given the novelty of the reforms and the limited scope available, the study confines itself to addressing legislative and policy outcomes, without assessing the degree to which the reforms are implemented or what their actual day-to-day impact on Turkish democracy and human rights is likely to be.

Section III goes on to substantiate the claim that Turkey’s desire to become a member state of the EU is a determinative explanatory factor in the recent reforms. The section provides a detailed examination of the death penalty issue, to address competing explanatory variables emanating from other international actors. The analysis employs both substantive and chronological process tracing, in order to demonstrate the strong correlations between specific EU demands for democratic reforms, and Turkish compliance with these demands. Information derived from interviews and press sources is used to supplement the documentary material presented.

Section IV explores the internal debate surrounding the death penalty issue in Turkey. Utilizing chronological and contextual descriptive analysis of the main aspects of the domestic dynamics (at both elites and popular levels), it suggests that EU membership conditionality did not only greatly impact the nature of the internal debate, but managed to ameliorate domestic opposition to abolition, and achieve policy outcomes compatible with EU norms – rather than with the preferences of dominant domestic actors. Finally, some conclusions are made, relating the empirical findings of the study to the wider issue about the actual and potential role of regional and international institutions in promoting democratic consolidation in countries in transition, and suggesting possible avenues for future research. The findings of this study, therefore, have potentially significant theoretical and practical implications for the future integration of Turkey into western structures, for the EU’s democracy and rule of law promotion policies, as well as for other actors seeking to promote democracy world-wide.

**International Organizations and domestic democratic reforms: the state of knowledge**

Until fairly recently, there has been strikingly little systematic research on the effects of international organizations on domestic democratic reforms. The precise reasons for this are beyond the scope of this study. Still, it appears that the historical tendency of international lawyers, international relations theorists and political scientists to maintain a rather strict dichotomy between domestic politics, on the one hand, and the international sphere, on the other, goes some way towards explaining (though not justifying) the unfortunate gap in research. As Andrew Moravcsik and Tony Smith have aptly argued, for various historical, intellectual, institutional and methodological reasons, international lawyers, comparative politics analysts and international relations theorists have constructed three separate, independent and self-contained

---

universes, with distinct languages, different actors and specific rules of the game.\(^3\) Thus, Comparativists “often ignore international factors, or considers them as part of the context only”\(^4\). Similarly, as Robert Putnam’s critique of classical theories of international relations highlights, the lack of coherent discourse between students of domestic and international politics has created a situation where: “Domestic politics and international relations are often somewhat entangled, but our theories have not yet sorted out the puzzling tangle”.\(^5\) For their part, International lawyers have tended to direct their attention to the task of explicating and examining norms of state international behaviour; often taking as a given that these norms would be applied and have an impact within domestic systems. As Louis Henkin observed, international lawyers, for the most part, have operated under the assumption that “almost all nations observe almost all principles of international law and almost all of their obligations almost all the time”.\(^6\) In the same vein, Abram and Antonia Chayes note that international lawyers tend to “operate on the assumption of the general propensity of states to comply with international obligations”, without seeking to understand the process and effects of internalization of international rules within domestic systems.\(^7\) As late as 1997 the eminent scholar Robert Keohane described international relations and international law as “two optics”, noting that “there remains great differences in how observers interpret what they see.”\(^8\) While in the last few years increasing attempts are being made to bridge the gap between the three disciplines, much needs to be done to begin to rectify the historical legacy of neglect.\(^9\)

Given this wider intellectual topography, it is perhaps less surprising to discover that there has been little systematic research on the actual effects of international organizations and the norms they seek to promote, on domestic policy and legal reforms. As Hakan Yilmaz recently argued, the dismissal of international factors has been particularly striking in the context of countries undergoing transition to democracy or its subsequent consolidation.\(^10\)

---


\(^6\) L. Henkin, *HOW NATIONS BEHAVE: LAW AND FOREIGN POLICY*, 47 (2\(^th\) ed. 1979)


Indeed, the vast majority of analysis relating to democratic transformation and consolidation prior to the 1990s, was domestically oriented. In the 1960s and 70s, the pre-eminent emphasis was on the role of economic modernization, coupled with restructuring of social and class alliances, in precipitating particular changes in domestic political structures.\textsuperscript{11} Particularly influential at this period was Robert Dahl’s closed model of democratic transition, which predicted that internal factors would bring about democratic change where the internal costs of suppression exceeded the internal costs of toleration.\textsuperscript{12} Through the 1980s the dominant approaches to democratic change tended to focus on the autonomous agency of local and national political actors, and the formation of elite bargains and pacts for democratic transition. The seminal work on democratization in Southern Europe – O’Donnell, Schmitter and Whitehead’s Transitions from Authoritarian Rule – written in 1986 explains democratic transitions almost exclusively in terms of domestic elite bargaining and negotiated strategic pacts.\textsuperscript{13} In the same volume, Laurence Whitehead devotes a chapter to “International Aspects of Democratization”, yet he attaches only ancillary importance to international factors; finding that in southern Europe the international setting “seldom intruded too conspicuously on an essentially domestic drama”.\textsuperscript{14}

The key role attributed to transnational civil society networks in bringing down communist regimes in Central and Eastern Europe, the emerging globalization debate and the growing realization of the need for political comparativists, international relations theorists and international lawyers to speak with each other, have all combined to bring international dimensions of democratization to the fore in the early 1990s.\textsuperscript{15} Against this background, it was increasingly recognized that the role of international factors, with their various aspects and complexities, had not received adequate attention in studies of democratic and rule of law reform. In 1991 Geoffrey Pridham described the international context as ‘the forgotten dimension in the study of democratic transition.” As he explained, “growing work on this problem, both theoretical and empirical, has continued largely to ignore international influences and effects on the causes, processes and outcomes of transition.”\textsuperscript{16} In the aftermath of the Cold War, as donor governments and international organizations began to engage in democracy and rule of law promotion in a more systematic manner, calls for better theoretical and practical understanding of how the actions of external actors might interact with domestic structures and overarching norms to produce internal change became more vociferous.\textsuperscript{17} Still, much of the comparative literature in the early and

\textsuperscript{11} See for example: JOSEPH SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY (2\textsuperscript{nd} ed.1947).
\textsuperscript{12} R. DAHL, POLYARCHY, PARTICIPATION AND OPPOSITION (1971).
\textsuperscript{13} G. O’DONNELL, P. C. SCHMITTER AND L. WHITEHEAD (EDS.), TRANSITIONS FROM AUTHORITARIAN RULE (1986).
\textsuperscript{17} See for example: G. Pridham, \textit{The International Dimension of Democratization: Theory, Practice and Inter-Regional Comparisons}, in BUILDING DEMOCRACY?: THE INTERNATIONAL DIMENSION OF
mid 1990s followed traditional approaches and assumptions that tended to underplay the role of international factors. In a 1995 study Remmer emphasized that the problem remained, asserting that: “Instead of grappling with the important role played by international forces in the democratization process, comparativists have continued to build frameworks that explain regime outcomes purely in terms of domestic political forces and processes.”

Whether they were explaining the initial change in regime type or the subsequent consolidation of democracy, commentators on East-Central Europe and Turkey alike, directed their attention to domestic factors and concerns; often describing, evaluating or criticising changes in democracy and legal reform in terms of political culture and civil society, electoral and party systems or patronage and negotiated pacts between elites.

From the early to late 1990s, theorists in the fields of comparative politics and international relations began constructing analytical frameworks intended to bridge the growing gap between the traditional scholarly approaches and emerging realities. In this context, three main interdisciplinary models were created to address the issue of internal-external linkages in democratization. Focusing on the transition of Spain, Portugal and Greece to democracy in the 1970s and 80s, Laurence Whitehead and Geoffrey Pridham introduced the concepts of “democratization through convergence” and “democratization through system penetration”, respectively. A third model,


developed by Douglas Chambers, was based on the experience of Latin American countries. Whitehead’s democratization through convergence occurs where an authoritarian country goes through a process of joining a pre-existing community of democratic states without losing its national sovereignty (such as the experience of Spain, Portugal and Greece while they integrated into the European Community). According to Whitehead’s notion of regime convergence, the key actors involved in regime change and democratic consolidation are overwhelmingly internal, but their strategies in undertaking democratic reforms are sometime strongly shaped by the pressure of externally designed institutions and rules. Pridham’s concept of system penetration is similar to Whitehead’s notion of regime convergence, but he places an emphasis on long-term external factors that “penetrate” a given domestic system and affect the background conditions in which essentially internal democratic processes occur. Hence, according to Pridham, even where there is no immediate external factor at the material time of change, the long-term impact of external actors and the degree of “system penetratedness” needs to be accounted for in the process of regime change. Chambers’ theoretical framework is rather different. According to his view developed against the background of the authoritarian breakdown of Latin American countries in the 1970s and 80s - international institutions that become “built in” to a country’s domestic structure over a period of time affect domestic political change. When internationally based actors have a significant presence within a domestic system, the result is what Chambers describes as “internationalized domestic politics”; “internationalized” because of the presence of external actors, but “domestic” because these actors influence local decisions – rather than foreign policy or interstate relations.

All three models are still at the stage of exploration, and require further theoretical development, refinement and case study analysis. While these authors attempt to build theories and direct attention to the study of international factors, they do not engage in systematic testing of the actual effects of international forces on domestic dynamics. As Robert Putnam asserts, our understanding of the interaction between international actors and domestic politics can only be described as a “metaphor” that serves as a basis on which an “algebra” needs to be constructed. This challenge is only lately beginning to be met, with a number of scholars exploring more fully the effects of certain international institutions on domestic policy choices. In this context, it is increasingly recognized that the study of international and regional organizations is likely to be profitable to those engaged in democracy promotion, since such organizations can offer certain incentives – such as membership – that states, powerful as they may be, cannot. A small number of scholars have started the

---


25 Id. at 1-7


laborious task of generating empirical knowledge about why and when countries respond to external incentives (both positive and negative) in compliance with democratic and rule of law norms. Still, the vast majority of studies assume that external actors can have an effect on the course of democracy within domestic systems, without testing the assumption or seeking to understand actual the nature of the effect. Many of these most recent endeavours focus on the role of European regional organizations, and specially the European Union (EU), in the democratization process of the formerly communist states of Central and Eastern Europe (CEEs); either in the early stages of regime change or as part and parcel of their eventual integration into the EU as full members. A related, but so far separate body of scholarship now explores the effects of “Europeanization” on EU Member States themselves. A third sub-branch of the literature touches on democracy promotion efforts within EU-led regional programs, such as the Euro-Mediterranean Partnership (EMP) established as part of the 1995 Barcelona Process, and the Cotonou (previously Lome) Convention – governing relations between the EU and the African, Caribbean and the Pacific countries (ACP).


31 For a good review of the emerging literature on “Europeanization” of nation-states in Europe see: L. Morlino, What we know and what we should know on Europeanization and the reshaping of representation in southern European democracies, (November 2002) (unpublished manuscript, on file with author). See also: E. ODDVAR ERIKSON AND J. FOSSUM (EDS.), DEMOCRACY IN THE EU: INTEGRATION THROUGH DELIBERATION? (2000); J. P. Olsen, The Many Faces of Europeanization, 40.5 J. COM. MARK. STUD. 921-952 (December 2002); J. Checkel and A. Moravcsik, Forum Section: A Constructivist Research Programme in EU Studies, 2.2 EUROPEAN UNION POLITICS 219-249 (2001); J. Checkel, Why Comply? Social Learning and European Identity Change, 55.3 I.O. 553-588 (summer 2001). Much of this innovative work has been undertaken by the “Advanced Research on the Europeanization of the Nation State” (ARENA) think-tank at Oslo University (see http://www.arena.uio.no/).

Since Turkey did not become an official candidate for EU membership until December 1999, and has not yet been given a date for the commencement of accession negotiations, it has been largely excluded from these sets of discourse. Indeed, even very recent studies of Turkish democracy have generally persisted in following traditional, domestically oriented, approaches. Turkish and foreign commentators engage in historical explanations for the rise of nationalism, republicanism and statism in modern Turkey. They explore the vicissitudes of Turkey’s tumultuous political life, addressing Islamic-secular tensions, human rights abuses linked to Turkey’s Kurdish minority, military-civil government relations, problems of party fragmentation and political patronage, and gender issues. Several studies engage in the evolving nature of EU-Turkey interstate relations; others weigh the odds of Turkey’s eventual integration into the “Christian club”.

33 A notable exception is Ihsan Dagi’s largely historical commentary on the effects of Turkey’s Western links on Human Rights and democratization in Turkey. See: I. Dagi, Human Rights and Democratization: Turkish Politics in the European Context, 1(3) SOUTHEAST EUROPEAN & BLACK SEA STUD. 51-68 (September 2001).


40 For a good review of the literature see: C. Brewin, Turkey and Europe After the Nice Summit, T.E.S.E.V. (2002) (available at: http://www.tesev.org.tr/engnew/publication/monographs_brewin.php) (last cited: October 26, 2002). See also: G. AVCI, Putting Turkish EU Candidacy into Context, 7 EUR. F. AFF. REV 91-110 (2002); B. Kuniholm, Turkey’s Accession to the EU: Differences in European and US Attitudes, and challenges for Turkey, 2 TURKISH STUD. 25-54 (2001); M. UGUR, THE EU AND TURKEY: AN ANCHOR/CREDIBILITY DILEMMA (1999); B. Buzan and T. Diez, The EU and Turkey, 41
actual effects of this external entity on Turkey’s domestic system remain understudied and poorly understood.

Following the decision taken by the European Council Copenhagen summit on December 12\textsuperscript{th} 2002 to extend full EU membership to ten new members in Central and Eastern Europe, the attention of European policy-makers and commentators alike is beginning to shift towards the newly drawn frontiers of Europe – including the Balkans, the Caucuses, North Africa, Eastern Mediterranean and the Middle East.\textsuperscript{41}

Together with Russia and the Ukraine, Turkey is the next “big outsider” for Europe to contend with, and there is little consensus on the strategy it should adopt in trying to facilitate democratic consolidation and further integration of Turkey into western structures. Furthermore, Turkey’s geopolitical value to the west is undeniable, and appears to be growing.\textsuperscript{42}

Standing at the nexus of three areas of increasing strategic importance to the United States and Europe – the Caspian region, the Balkans and the Middle East – whether Turkey becomes a liberal and consolidated democracy, entrenched in western structures and norms, or whether it turns inward looking and more nationalistic, will carry far-reaching consequences not only for Turkey itself, but for the U.S., Europe and other adjacent regions.\textsuperscript{43}

\textbf{The Abolition of the Death Penalty: A sign of democracy in Europe}

It is now the explicit policy of European regional organizations concerned with democracy and human rights promotion that capital punishment “has no place in civilized, democratic societies governed by the rule of law.”\textsuperscript{44} This perception of the link between abolitionism and democracy (understood in the comprehensive,

---


\textsuperscript{43} For an excellent recent exploration of Turkish strategic importance and the likely effects of domestic factors on Turkish foreign policy see: F.S LARRABEE AND I. O. LESSER, TURKISH FOREIGN POLICY IN AN AGE OF UNCERTAINTY (2003).

\textsuperscript{44} COUNCIL OF EUROPE, PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE (PACE), Resolution 1187 (1999), EUROPE: A DEATH PENALTY FREE CONTINENT.
substantive sense of the term) is not unique to Europe. It is also used as a major criterion in international indicators of development – foremost in the United Nations Development Program’s Human Development Index and other, non-official assessments such as the Interdisciplinary Research Program on Causes of Human Rights Violations (PIOOM). As William Schabas’s recent comprehensive study of the abolition of the death penalty in International Law asserts: “Abolition of the death penalty is generally considered to be an important element in democratic development for States breaking with a past characterized by terror, injustice and repression”. This has been the case in post-Communist countries, for example. There, the abolition of the death penalty provided a specific test of the domestic transition from authoritarianism to democracy; one that unlike other indicators (torture, freedom of expression, protection of minority rights) is distinctly measurable. The linkage between abolitionism and democracy – which is, as explained later on, pervasive in Europe and among some international organizations – is clearly absent from American notions of democracy. The reasons for this disparity between America and Europe go to the heart of modern ideological differences between the two, and are beyond the scope of this study. What matters, for our purposes, is that democratization processes that include abolitionism can be correctly described as constituting part of “Europeanization”; at least in the sense that they are distinguishable from American led democratization efforts. The logic of focusing on the abolition of the death penalty in Turkey is, therefore, twofold: it provides a clearly traceable and measurable policy choice, and it excludes the influence of at least one major international player involved in other human rights issues in Turkey – namely the United States – suggesting a degree of European influence, of “Europeanization”, in Turkey.

**Whither Turkish democracy?**

Recent commentaries on the condition of the Turkish polity describe it as an “imperfect democracy”, as “existing in a grey area”, as “contradictory” and “uncertain”, a “pseudo-democracy”, a “double-faced state” and an “ambiguous

---

49 See: P. B. EVANS (et al., eds.), *DOUBLE-EDGED DIPLOMACY* (1993)
These characterizations are generally not meant as dubious eulogies, but seek to capture the fact that Turkey is today what Larry Diamond’s 2002 typology of state regimes labels a “hybrid regime” - combining democratic with authoritarian elements. This ambiguity is commonly reflected in the observations of both domestic and foreign monitors of Turkish democracy.

According to the 2001-2002 Freedom House Survey database, Turkey is ranked as a “Partially-Free” state – scoring 4/5 on the combined political rights/civil liberties scale. The 2002 United States Department of State Country Report describes Turkey as “a constitutional republic with a multiparty Parliament”, but qualifies this immediately by noting that the military exercises indirect control over government policy “in the belief that it is the constitutional protector of the State.” Regarding human rights in Turkey, the report goes on to observe that: “The government

---

57 Drawing upon ‘The 2001 Freedom House Survey’ Larry Diamond classifies regime types into six categories, achieving a more nuanced understanding of regime types than the traditional democratic-authoritarian dichotomy allows. The six types are: (1) Liberal Democracy; (2) Electoral Democracy; (3) Ambiguous Regimes; (4) Competitive Authoritarian; (5) Hegemonic Electoral Authoritarian; (6) Politically Closed Authoritarian. See: L. Diamond, *Elections Without Democracy: Thinking About Hybrid Regimes*, 13.2 J. Democ. 21-35 (2002).
59 Freedom House’s ‘Annual Survey of the Progress of the Freedom’ monitors the progress and decline of political rights and civil liberties in 192 nations. The survey’s concept of freedom encompasses two general sets of characteristics, grouped under political rights and civil liberties. Political rights are understood to mean the rights that enable people to participate freely in the political process, which is the system by which the polity chooses authoritative policy makers and attempts to make binding decisions affecting the national, regional, or local community. This represents the right of all adults to vote and compete for public office, and for elected representatives to have a decisive vote on public policies. Civil liberties are understood by Freedom House to include the freedoms to develop views, institutions, and personal autonomy apart from the state. The survey assigns each country under consideration two numerical ratings, one for political rights and one for civil liberties. These two ratings are then averaged to determine an overall status of “Free,” “Partly Free,” or “Not Free.” The survey rates political rights and civil liberties separately on a scale of 1 to 7, with 1 representing the most free and 7 the least free. A country is assigned to a particular rating based on the individual survey authors’ responses to a series of checklist questions, input from a variety of domestic and international NGOs and the findings of an expert survey team. See A. Karatnycky, *The 2001 Freedom House Survey*, 13.1 J. Democ. 99 (January 2002). For the full text of the 2001-2002 survey results, commentary and analysis see: Freedom House, *Freedom in the World 2001-2002: Essay, Tables & Charts* (available at: [http://www.freedomhouse.org/research/freeworld/2002/essays.htm](http://www.freedomhouse.org/research/freeworld/2002/essays.htm)) (last cited: February 19 2003). See also Freedom House’s Country Report on Turkey (2001-2002) (available at: [http://www.freedomhouse.org/research/freeworld/2002/countryratings/turkey.htm](http://www.freedomhouse.org/research/freeworld/2002/countryratings/turkey.htm)) (last cited: February 19 2003).
generally respected its citizen’s human rights in a number of areas; however, its record was poor in some areas, and several serious problems remained”. Similarly the 2001 European Union’s Regular Report notes that: “The basic features of a democratic system exist but Turkey is slow in implementing the institutional reforms needed to guarantee democracy and the rule of law”. Thus, the weaknesses of Turkish democracy are evident to external observers as well as domestic ones.

To better grasp the factors which have prevented democratic consolidation in Turkey, this analysis adopts Juan Linz and Alfred Stepan’s definition of democratic consolidation. The advantage of this definition is that it avoids the drawbacks inherent in the alternative minimalist and maximalist approaches to democratic consolidation. Linz and Stepan assert that in addition to a functioning state apparatus – which is a sine qua non of a consolidated democracy:

“five other interconnected and mutually reinforcing conditions must also exist or be crafted for a democracy to be consolidated. First, the conditions must exist for a free and lively civil society. Second, there must be a relatively autonomous and valued political society. Third, there must be a rule of law to ensure legal guarantees for citizens’ freedoms and independent associated life. Fourth, there must be a state bureaucracy that is usable by the new democratic government. Fifth, there must be an institutional economic society.”

In all five domains Turkey exhibits some characteristics that suggest a trend towards democratic consolidation and others that are likely to impede it. Hence, any progress

---

61 Id. at 2.
64 J. LINZ AND A. STEPAN, PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION 6-7 (1996). Democratic consolidation, to borrow Adam Przeworski’s apt description means that democracy ‘becomes the only game in town, when no one can imagine acting outside the democratic institutions, when all the losers want to do is to try again within the same institutions under which they have just lost’. See: A. PRZEWORSKI, DEMOCRACY AND THE MARKET: POLITICAL AND ECONOMIC REFORMS IN EAST EUROPE AND LATIN AMERICA 26 (1991). For a summary of the existing literature on classifications of democracies see: Leonardo Morlino, What is a “Good” Democracy?: Theory and Empirical Analysis, (November 2002) (unpublished manuscript, on file with author).
towards democratic entrenchment and consolidation in Turkey would have to address at least some of these impeding characteristics. Furthermore, as İhsan Dagi recently argued, in the specific case of Turkey many of the existing shortcomings of democracy are to a large extent generated from the historically specific legacy of Kemalist republicanism; with its state-led public life and emphasis on secularism, national unity and territorial integrity. This “strong-state tradition” theme underlies several key barriers to democratic consolidation in Turkey, and should be borne in mind throughout the following paragraphs.

**Free and lively civil society**

With regards to the existence of a free and lively civil society, Turkey has traditionally held a comparative advantage over post-communist democracies, and certainly fares well by the standards of adjacent regions – especially the Middle East and Caucuses. The single party rule of the Republican People’s Party (RPP) – that ruled the Republic of Turkey from its inception in 1923 to 1946 – represented an authoritarian, but not a totalitarian regime. It tolerated limited pluralism, without suppressing expressions of civil society that acted in non-political spheres. At the same time, however, civil society organizations such as voluntary associations, foundations, student organizations and religious groups, have been subject to severe restrictions, particularly following the 1980 military coup. The 1982 constitutional order – which was effectively installed by the military – banned all types of political activity by all entities other than officially recognized political parties, and prohibited interaction between political parties and institutions such as trade unions, voluntary associations, religious and professional organizations and student groups. Severe restrictions on public demonstrations and marches were also imposed. Many of the more draconian restrictions were gradually eroded or removed during the 1980s and 90s. The recent constitutional reforms explored in Section II have now lifted several remaining restraints on freedom of association and expression, and may signal a period of revival for non-governmental groups. However, to date civil society is yet to make extensive impasses into an overwhelmingly centralized state decision making apparatus, which admits relatively little input from such organizations. Similarly, the tradition of strong state authority and concern about threats to the unitary character of the state (read as Kurdish separatism) have made discussion of decentralization – especially forms of regional autonomy – anathema for Ankara. In contrast with advanced western countries, private sector institutions, such as think-tanks and business associations devoted to discussion, analysis and lobbying, have emerged only very recently in Turkey, and their influence is still uncertain. The degree to which Turkish professional, social and economic associations will be allowed to function and influence government policy will be an important factor in shaping the future of Turkish society and prospects for democratic consolidation.

---


67 The Turkish Industrialists and Businessmen’s Association (TUSIAD) has recently emerged as a source of policy analysis and commentator on various economic and social aspects of Turkish society. (see: [http://www.tusiad.org](http://www.tusiad.org)). Also the Istanbul based Turkish Economic and Social Studies Foundation (TESEV), originally established in 1961, has become more active and influential in critiquing government policy, putting forward proposals for domestic reforms and advocating for closer Turkish-EU relations. See: [http://www.tesev.org/eng](http://www.tesev.org/eng). Sabancı University in Istanbul has recently formed the Istanbul Policy Center, which is becoming more influential.
**Political society**

Having made the transition to party elections in the 1940s, Turkey now has a fairly long history of competitive multiparty politics. Following the basic logic of Samuel Huntington’s observation that “a longer and more recent experience with democracy is more conducive to democratic consolidation than is a shorter and more distant one”, Turkey’s long term experience with democracy should indicate a trend towards consolidation. In this respect also, Turkey fares favourably when compared with the vast majority of its eastern, northern and southern neighbours, and it defies characterization as a “third wave” democracy – in contrast with post-communist central and eastern Europe. Yet Turkish democracy has been interrupted by military interventions four times in just over four decades – in 1960, 1971, 1980 and 1997. The Turkish military has acted as the loyal custodian of the Kemalist legacy, seeing its mission as not only to defend the territorial integrity of the Turkish state against external threats, but also to protect it against internal challenges. Each time the military intervened, the soldiers quickly returned to the barracks and civilian government was restored. But the military has been able, partly through constitutional design, to determine the parameters within which democracy would operate, and today many Turks are still concerned that the Turkish military’s influence is a serious impediment to the democratization and modernization of Turkish society.

The military’s power is institutionalized through a variety of organizations, the most important of which is the National Security Council (NSC). Although technically the NSC makes only “recommendations” to the executive, its recommendations can be tantamount to orders. Also, the NSC has exerted continual influence through control of the State Security Courts that handle matters considered a threat to national security. Thus, the composition and actual behaviour of the NSC are pivotal to the direction of civil-military relations. Very recently, some Turkish commentators have begun to suggest that there is now a genuine debate within the military about the future role of their institution in Turkish society and the need for greater civilian control over security forces. The degree to which such changes are achieved will be critical to the direction of Turkey as a democracy, as well as to its prospects for integration into Europe.

Another main barrier to consolidation of democracy has been the limitations imposed on political participation. In the most recent instance of military intervention, in 1997, the military forced the ouster of Prime Minister Mecmettin Erbakan, head of the Islamist Refah (Welfare) Party, in what was widely acknowledged by Turkish and foreign commentators to be a “silent coup”. Since the state is perceived by the

---


69 The term “third wave” democracy was coined by Samuel Huntington to relate to the phenomenon of post-Cold War democratization in numerous countries. See SAMUEL HUNTINGTON, THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY.

70 On the effects of military coups on successive Turkish constitutions, including the present, 1982 constitutional order see: E. OZBUDUN, CONTEMPORARY TURKISH POLITICS: CHALLENGES TO DEMOCRATIC CONSOLIDATION 49-73, 105-125 (2000).

security establishment as being threatened not only by hostile nations abroad, but also by the domestic populace – in particular by “reactionaries” (Islamists) and “separatists” (the Kurds) – political participating by these groups have been curtailed, and their leaders harassed, prosecuted or worse. Through the 1980s and 90s Turkey’s Islamist movements – Refah and its successor Fazilet (“Virtue”) have been legally banned for threatening the republican, secular nature of the state. Similarly, political parties seeking to represent Turkey’s Kurdish minority – such as the People’s Labor Party (HEP) and the Democracy Party (DEP) – have been repeatedly prevented from competing in local and national elections, or failed to reach Turkey’s restrictive 10 percent electoral threshold. The degree to which restrictions to party political participation are removed will be important in determining the course of Turkish democracy and the extent of its consolidation.

Rule of law and fundamental freedoms

As in the sphere of electoral politics, Turkey maintains an advantage over many new democracies in having a history of constitutionalism and rule of law. The origins of the rule of law tradition in Turkey can be traced back to the 1830s at least - when the progressive Imperial Edict of 1839 codified guarantees for the life, property and honor of the Sultan’s male subjects, and recognized the principle of equality before law for all, regardless of religion. In 1876 the Ottoman Empire became the first Moslem jurisdiction to proclaim a constitution, with a partially elected parliamentary assembly. More recently, the 1980 constitutional order gave rise to an independent judiciary led by a strong Constitutional Court. Judges are provided secure tenures and pay. Judges and public prosecutors may be disciplined only by the Supreme Council of Judges and Public Prosecutors; composed mainly by senior judges and appointed by the President of the Republic. However, Turkey is not free of significant limitations to the rule of law. In comparison to European standards, the range of fundamental rights guaranteed by law in Turkey is limited. For instance, until the recent constitutional reforms in October 2001, the Turkish Constitution did not contain any provisions guaranteeing a right to a fair trial. Popular sentiment views the judiciary as occasionally failing to act in an independent and consistent manner. This sense is exacerbated by a crippling backlog of cases in Turkish courts, which undermines access to justice and erodes public confidence in the judiciary.

More importantly still, from a human rights and democracy perspective, is the continued existence of State Security Courts, which exercise jurisdiction over cases involving subversive activity, such as “separatist” and “terrorist” offences. The State

---

72 Just prior to the 1994 municipal elections the Turkish government accused the Kurdish “Democracy Party” (DEP) of being a political arm of the PKK, leading the Turkish Parliament to revoke the immunity of some of its members. Several were subsequently prosecuted and served prolonged jail terms. One DEP member of parliament, Mehmet Sincar, was assassinated in September 1993, possibly by undercover Turkish forces.


74 The Turkish judicial system comprises a Constitutional Court, a Council of State, a Supreme Court, a Court of Jurisdictional Disputes and a general system of courts of first instance. The system is two tiered, and the Supreme Court performs the function of a High Court of Appeal. There are also State Security Courts and Military courts.

75 Interview with Selim Levy, Lecturer in Law, Faculty of Law, Istanbul Bilgi University, Istanbul, January 21 2003; Interview with Nathalie Tocci, Researchers, EU-Turkey Project, Centre for European Policy Studies (CEPS), Brussels, October 18 2002.

76 As of December 2002 there were 1,153,000 criminal cases and 548,000 civil cases pending.
Security Courts’ special rules of criminal procedure provide fewer protections of fairness and due process: hearings may be secret, legal representation denied and periods of detention without trial may be longer than in ordinary criminal cases.  

Perhaps the greatest obstacle to the prevalence of democratic norms in Turkey, and the most infamous, has been its poor human rights record. Major human rights abuses have emanated from strong assimilationist policies pursued by the state since the establishment of the Republic in 1923, particularly with regards to the country’s Kurdish population, and from hostilities between the Turkish government and the Kurdistan People’s Party (PKK) in the years 1984 to 1999. Numbering approximately 12 million people, the Kurds are the largest ethnic minority group in Turkey, and the only substantial linguistic minority in the country. Kurdish speakers constitute a majority in many eastern and southern provinces, but fifty percent of Kurds live in western parts of Turkey, especially in large cities, and many are well integrated into Turkish society at large. Although it has recently been estimated that Kurdish is the mother tongue of as many as one in five inhabitants of Turkey, until the latest reforms were enacted, the government has maintained a strict prohibition on the teaching of Kurdish in schools and the broadcasting of Kurdish language in television and radio programs. This policy is reflective of the Turkish government’s fear of Kurdish separatism. The approach of the Kemalist state elites to the Kurdish problem has essentially been that recognizing a distinct Kurdish identity, cultural rights or their public expression, represents a potentially dangerous derogation from the unifying principles of state-imposed “Turkishness”. The restrictions imposed on “separatist”

---


79 Other national minorities include: 50,000 Armenian Orthodox Christians; 25,000 Jews; 15,000-20,000 Syrian Orthodox Christians (Syria); 5000-7000 Yezidies and 2000-3000 Greek Orthodox Christians. See: N. Oktem, Religion in Turkey, 2002 B.Y.U.L. REV. 371-403, 373 (2002).


81 As Ziya Onis observes: “any discussion of cultural rights or cultural autonomy is out of the question. The logic of this argument is based on the fact that there is an obsession on the part of the elite, which may not be justified given the present level of economic development and political integration in Turkey, concerning the possibility of territorial disintegration. This perspective has historical roots dating back to Turkey’s War of Independence during the 1920s, when the boundaries of contemporary Turkey were salvaged with great difficulty from the imperial powers following the disintegration of the Ottoman Empire in the late nineteenth and early twentieth centuries”. Z. Onis, Turkey, Europe and Paradoxes of Identity: Perspectives on the International Context of Democratization, 10.3 MEDIT. QUART. 107-136, 131-132 (1999).

82 The Turkish approach to the Kurdish issue is also animated by deep-seated historical memories regarding threats to the integrity of the Ottoman Empire at the end of the 19th century, and reflects the popular belief, exacerbated by the 1920 Sevres Treaty in which the Western powers decided to dismantle the Ottoman Empire and agreed on the establishment of an independent Kurdistan. Although the treaty was never implemented, its memory remains etched in the national memory and psyche. Interview with Professor Ephraim Inbar, Director of the Begin-Saddat Center for Strategic Studies at
activity and thought were justified in the past on the grounds that Turkey faced serious terrorist threats from the PKK. Other groups outside the official mainstream—including Islamist activists, ethnic and cultural minority groups, intellectuals and journalists—have also been subjected to abuse for alleged aid to separatists and subversives. The diminution of the armed violence by the PKK, following the capture of its leader, Abdullah Ocalan, in 1999, provides the Turkish government with an opportunity to press forward with reforms in the field of democratization and human rights. The usefulness of such reforms will also depend on effective prevention of torture and improvement of conditions in detention centers and jails (particularly in the notorious maximum security F-type jails), greater freedoms of thought and expression, and more stringent sanctions being applied in practice to those who commit human rights violations. Progress in these directions may be seriously hampered, or even reversed, in the event of an increased Turkish apprehension about Kurdish separatist aspirations—such as may result from the war in Iraq.

State bureaucracy and government

Democratic consolidation may be undermined not only by state incapacity, but conversely, by an overly powerful state tradition and institutionalism. Turkey is an example of a “strong state” par excellence—that is a society in which the survival and wellbeing of the state, and the notion of state sovereignty is very highly developed. The Republic of Turkey inherited from the Ottoman Empire a centralized and highly bureaucratic state apparatus. The output structures of modern Turkey (particularly the armed forces, the police and the civil service) have been so highly institutionalized that the overdevelopment of the state machinery have stunted the emergence of private spheres of action and expression, and a more balanced relationship between government and civil society. Hence, over-institutionalization of the state machinery, couple with weak institutionalization of the input structures (interest groups, political parties and civil society) may constrain prospects for democratic consolidation. Undoing this tradition and allowing the creation of the space for society and individual rights, is central if Turkey is to make the transition to liberal democracy. Yet this requires a reorientation of deeply entrenched world-views and power interests, with high symbolic and material costs for Turkish elites.

Bar-Ilan University, January 12, 2003; Interview with Professor Ehud Toledano, Chair of Ottoman & Turkish Studies, Faculty of History, Tel-Aviv University (January 19 2003)

83 See human right reports cited at note 78. See also: President of Turkish Court of Appeals Argues for Democracy, 142 TURKEY UPDATE, September 6 1999; The French Press Agency, European Rights Council Faults Turkey on Abuses, June 10 1999.


86 Interview with Professor Ehud Toledano, Chair of Ottoman & Turkish Studies, Faculty of History, Tel-Aviv University (January 19 2003).


88 Interview with Professor Ehud Toledano, Chair of Ottoman & Turkish Studies, Faculty of History, Tel-Aviv University (January 19 2003) Interview with Selim Levy, Lecturer in Law, Faculty of Law, Istanbul Bilgi University, Istanbul (January 21 2003). See also: H. Yavuz, Turkey’s “Imagined Enemies”: Kurds and Islamists, WORLD TODAY 99 (April 1996); I. Dagi, Human Rights and Democratization: Turkish Politics in the European Context, 1.3 SOUTHEAST EUROPEAN & BLACK SEA
**Economic society**

Finally, regarding the existence of an “economic society”, Turkey again possesses mixed characteristics, and is situated advantageously when compared with its southern, eastern and northern neighbours. As Linz and Stepan assert, modern consolidated democracies do not exist in either a command economy or a pure market economy. Rather they require a set of crafted and socio-politically accepted norms, institutions and regulations – which is what they mean by “economic society” – to mediate between state and market. Even under the most liberal conditions, markets require regulatory supervision by the state (in the form of corporation and stock market rules, the protection of property rights, regulated standards for measurement and consumer safety and so forth).

Turkey has a long tradition of such regulatory supervision. If anything, from the inception of the modern Republic to at least the mid-1980s, the Turkish economy has displayed overregulation by the state of economic activity. The tradition of strong statism produced a large public sector, coupled with extensive state involvement in industrialization – particularly in areas where availability of private capital was insufficient or where private investors were scarce – and regulation of private markets. The private sector grew steadily after the transition to electoral democracy in the 1940s, and from the early 1980s some important steps, led by Prime Minister Turgut Ozal, were taken to increase the role of market forces in the conduct of the economy. Still, the state continues to play a predominant role in the formulation of economic policy, with relatively (albeit increasing) input from the private sector. The financial crises of November 2000 and February 2001, exposed worrying signs of structural fragility in the financial sector, which has been plagued by corruption and political favouritism; prompting a series of IMF and World Bank rescue packages, tied to a stringent programme of fiscal austerity, privatization and banking sector reforms. EU conditions for eventual Turkish membership, also include extensive, detailed programmes for structural, economic, fiscal and state-capacity reforms, notably in agricultural and traditional-industrial production. The ongoing economic crisis has been particularly painful in the more modern and urban regions, with Istanbul being particularly hard hit. During 2000 the Turkish lira lost almost fifty percent of its value, and nearly sixty-five percent by October 2001. Over the last three years also, unemployment mounted rapidly in the private sector, affecting many younger, urban Turks and causing the collapse of small and medium-size enterprises across the country. The cumulative effect of these economic woes has already produced social unrest and angry calls for extensive reforms, especially the fighting of corruption and cronyism. It is still early to judge what effects will IMF, World Bank and EU led economic reforms have on Turkish democracy. Changes in one sector in particular, the banking sector, are likely to have enormous implications for domestic politics, since the old system of patronage using state-controlled banks has been the basis for funding of Turkey’s leading political parties.

---

89 J. LINZ AND A. STEPAN, PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION 11-12 (1996)
90 Interviews with: Professor Yeni Fikir Sokak, lecturer in International Business and European Law, Marmara University, Istanbul (January 23, 2003); Professor Ephraim Inbar, Director of the Begin-
It is within this broad context that the constitutional and legal reforms undertaken by Turkey in the last eighteen months should be understood and evaluated.

SECTION II: RECENT LEGAL DEMOCRATIC REFORMS

Over the last eighteen months Turkey has undertaken the most comprehensive constitutional reforms in the history of its existing constitutional order. On October 3rd, 2001, at the end of a two-week extraordinary session of the Grand National Assembly, the Turkish Parliament adopted a reform package, amending 34 articles of the Constitution. Proposed changes to 3 articles did not meet the three-fifths majority needed to pass a constitutional amendment, and were therefore rejected. Subsequent to the October 2001 reforms, three “adjustment packages” were adopted by the Turkish Parliament – in February, March and August 2002. Of the three, the latter – sometimes referred to as the “mini-democracy package” – is the most significant. These legislative packages are intended to begin implementing the

91 Turkeys current constitutional order was established in 1982, following the last military coup, which took place in 1980. Since then there have been several attempts to reform the constitution, but only three amendments were actually made. The first took place on May 18 1987, the second in March 1994 (with Article 133 amended) and the third, and most significant, took place on July 23rd 1995. None of the previous reforms were as extensive as the October 2001 reforms. For details and commentary on the history of Turkish constitutional amendments see: E. Ozbudun, Contemporary Turkish Politics: Challenges to Democratic Consolidation 49-73 (2000). The texts of previous amendments and a full, up-to-date text of the Turkish Constitution is available at: http://www.tbmm.gov.tr/anayasa/constitution.htm. On the Turkish legal system and hierarchy of laws see: O. Duzel, National Legal System in the Republic of Turkey, Republic of Turkey Prime Ministry Secretariat General for EU Affairs (February 2002) (available at:http://www.euturkey.org.tr/abportal/content.asp?CID=2074&VisitID=25103EAF-8FAA-4BA3-A55B-C26FD5DCCAF51&Time=5840) (last cited: January 12 2003).


93 The amendment bill contained proposed changes to 37 articles of the Constitution. Three were ultimately rejected. One amendment that failed would have made it easier to lift parliamentary immunity from deputies suspected of corruption or other wrongdoings. Two further proposed amendments would have made it harder for politicians banned from participating in elections to return to politics. The latter two were viewed as targeting, in particular, two popular Islamists – Necmettin Erbakan (who served briefly as Prime Minister in 1997 before his Welfare Party was banned) and Recep Tayyip Erdogan, the current Turkish Prime Minister.

94 These are Laws No. 4744, 4748 and 4771, respectively.

95 The first adjustment package (Law No. 4744 Amending Some Laws) passed on February 6, 2002. This law amended articles 159 and 312 of the Turkish Penal Code, articles 7 and 8 of the Anti-terror Law, article 16 of the Law on Establishment and Trial Procedures of the State Security Courts as well as articles 107 and 128 of the Code of Criminal Procedure. The second adjustment package (Law No. 4748 Amending Various Laws) was adopted on March 26, 2002. This law amended the Provincial Administration Law, the Press Law, the Civil Servants Law, the Political Parties Law, the Associations Law, the Law on Meetings, Demonstrations and Marches as well as the law on Establishment and
constitutional changes, adapting various laws, bylaws and administrative ordinances. The reform package of August 2002 also contains measures going beyond what was envisaged in the October 2001 constitutional amendments. Two further clusters of reforms were enacted by the new government, following the November 3rd 2002 elections – in which the Islamist Justice and Development Party (AKP) overwhelmingly defeated Bülent Ecevit’s coalition government. The main changes introduced by these reforms are outlined in the rest of this section. The outline does not pretend to offer an exhaustive description of the reforms, but is merely intended to place the abolition of the death penalty issue in its proper legal context.

**Freedom of Thought & Expression**

A number of changes relating to freedom of thought and expression were made in the constitutional text. Under the 1982 Constitution, anti-state “thoughts and opinions” were criminalized, leading to the trial and punishment of dozens of intellectuals, journalists and public figures – including Turkey’s Prime Minister and ruling party (the AKP) leader, Recep Tayyip Erdogan. The fifth paragraph of the preamble, which previously excluded legal protections from those who harbour thoughts and opinions contrary to Turkish national interests, Turkey’s national and territorial integrity and the modernism of Atatürk, has now been amended to ensure that only “activity” that is in violation of these provisions are subject to this exclusion.

Article 13, which previously tolerated restrictions of the fundamental rights and freedoms contained in the Constitution, was amended to curtail these restrictions. Restrictions of freedoms previously defended in the name of protecting the indivisible integrity of the State, have been removed. In the amended version, fundamental rights and freedoms may be curtailed “only on the basis of specific reasons listed in the relevant articles of the Constitution without prejudice to the values defined therein and only by law.”

Article 14, which previously provided that none of the rights and freedoms embodied in the Constitution may be exercised with the aim of “endangering” the nature of the Turkish state as a Republic or to establish an alternative system of government, was amended, and the “endangering” caveat narrowed. The new Article 14 provides that these rights and freedoms may not be relied upon “for activities undertaken with the aim of destroying the democratic and secular Republic based on human rights.”

With regards to legislative changes pertaining to freedom of thought and expression, the first adjustment package, adopted in February 2002, amended Article 159 of the

Responsibilities of the Gendarmerie Command. A new Civil Code was also adopted following the constitutional amendments. It entered into force on January 1, 2002 and introduced improvements in the area of freedom of association and the right to assembly, as well as gender equality and child protection. For commentary see for example: Financial Times, *Turkey inches forward on human rights*, January 21, 2002; Turkish Daily News, *Parliament Holds Back on EU Reforms: Full Approval of the Reform Package is not possible under Turkish laws before President Sezer approves separate constitutional changes*, December 13 2002.


Erdogan became Prime Minister of Turkey on March 12 2003.

See paragraph five of the preamble.

See the amended text of Article 13.

See the amended text of Article 14. My emphasis – A.M.
Turkish Penal Code (titled: “insult to the State and to State institutions and threats to the indivisible unity of the Turkish Republic”) reducing prison sentences and abolishing fines imposed for criticising Turkish laws.\(^{101}\) In the third adjustment package, adopted in August 2002, the scope of Article 159 was narrowed, so that written, vocal or visual criticism of the military, state institutions, Parliament, the government, the justice system or Turkish identity are no longer subject to penalties unless they are intended to “insult” or “deride” those institutions.\(^{102}\) The scope of the “incitement to hatred” offence, in Article 312 of the Penal Code, was also narrowed in the first adjustment package.\(^{103}\) The first package of reforms also amended Articles 7 and 8 of the Anti-Terror Law, reducing sentences for certain offences, and shortening bans on television and radio broadcasts judged to be “propaganda” that may encourage “terrorist methods”. However, it also introduced the notion of “propaganda in connection with the [terrorist] organization in a way that encourages the use of terrorist methods” and sentences for such offences were increased. The third reform package, of August 2002, modified the Press Law by replacing prison sentences for crimes related to the press with heavy fines.\(^{104}\)

**Protection of private life and privacy**

The October 2001 Constitutional reforms narrowed the exceptions to the principle enshrined in Article 20 (that privacy of individual and family life cannot be violated). Previously, this article permitted “exceptions” to the principle, where these were “necessitated by judiciary investigation and prosecution”. These general exceptions have been repealed. However, a list of specific grounds for restricting the right to privacy, were added to the second paragraph of this article. The right to privacy can now be restricted only where there is a judicial decision or a written order by an authorized agency, on one or several of the grounds of national security, public order, prevention of crime, protection of public health and morals, or the protection of the rights and freedom of others. These restrictions are commensurate with the provisions of Article 8 of the EHCR.\(^{105}\) In addition, where a decision to violate a person’s privacy has been taken by an authorized agency, the decision must now be made in writing and is subject to judicial review within 24 hours. Any seizure is subject to judicial approval within 48 hours from the time of the seizure, otherwise it is automatically lifted. Articles 21 and 22 of the Constitution, dealing with the inviolability of the domicile and freedom of communication, respectively, were amended with substantively identical changes being made to those undertaken vis-à-

---

\(^{101}\) For example, the maximum penalty for offences under this article was reduced from six to three years imprisonment.


\(^{103}\) The definition of “incitement” was made narrower through the notion of incitement “in a way that may be dangerous for public order”.

\(^{104}\) The high levels of these fines (ranging from 1 billion Turkish Lira (TL) to 100 billion TL) prompted President Sezer to ask the Constitutional Court, on August 14 2002, to abrogate this amendment, on the grounds that they are disproportionate and in violation of the constitutional principle of freedom of the press and dissemination of thought.

\(^{105}\) Article 8 ECHR – “Right to respect for private and family life” – paragraph 2 provides: “There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”.
vis Article 20. The ability to restrict a citizen’s right to leave the country on account of the national economic situation has been cancelled.

**Language & Cultural rights**

Further constitutional changes were made to remove the previous ban on use of prohibited languages and dialects in publications and daily life. The third paragraph of Article 26 – which provided that “No language prohibited by law shall be used in the expression and dissemination of thought.” – has now been removed. Similarly, the second paragraph of Article 28 – which prescribed that “Publications shall not be made in any language prohibited by law” – was deleted. Thus, the principle banning the use of Kurdish language in publications, broadcasting and education was removed. However, these constitutional amendments did not sanction the use of previously banned languages per se. The second paragraph of Article 26 of the Constitution, now provides that the exercise of the freedom of expression and dissemination of thought may be restricted on several grounds, and an addition to the last paragraph of Article 26 provides that: “The formalities, conditions and procedures to be applied in the exercise of the right to freedom of expression and dissemination shall be prescribed by law.” Furthermore, Article 31 was amended to include specific and exclusive grounds for restricting the right of the public to use media owned by public corporations other than the press.

In beginning to implement these constitutional changes, the first reform package brought changes to Article 8 of the Anti-Terror Law, reducing the maximum closure period for radio and TV channels for “propaganda against the unity of the State” from fifteen to seven days. In the third reform package, the High Audio-Visual Board (RTUK) Law was amended to allow for “broadcasts in different languages and dialects used traditionally by Turkish citizens in their daily lives.” In addition re-transmission of foreign broadcasting became legal. In both cases, implementation of these changes is subject to adoption of detailed regulations by RTUK’s Supreme Board. Censorship of Internet content remains, and in some cases has been tightened by these reforms. However, in practice, the ban on re-broadcasting of BBC World Service and Deutsche Welle programs, has been lifted.

---

106 I.e. the general exceptions to the right are removed, and replaced with a list of specific restrictions, in line with Article 8 ECHR. A “writing” requirement and judicial review safeguards are introduced. Any seizure is subject to judicial approval within 48 hours from the time of the seizure, otherwise it is automatically lifted.

107 See Article 23, as amended.

108 The scope of the term “expression and dissemination” extends to speech, writing, broadcast or any other media (radio, television, cinema, internet etc.). See Article 26, paragraph 1, as amended.


110 These grounds are: for the purpose of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.

111 The amended second paragraph of Article 31 (titled: “Right to Use Media Other than the Press Owned by Public Corporations”) now reads: “The law shall not impose restrictions preventing the public from receiving information or forming ideas and opinions through these media, or preventing public opinion through these media, or preventing public opinion from being freely formed, on grounds other than national security, public order, public morals, or the protection of public health.
Following the amendment of Article 26 of the Constitution, the third reform package amended the Law on Foreign Language Education and Teaching. It provides for the possibility of learning and teaching different languages and dialects traditionally used by Turkish citizens and of opening classes for that purpose, on the condition that it does not violate the “indivisible integrity of the state” – a clear reference to fears of Kurdish separatism. Following the adoption of this amendment, a number of court cases against students who had advocated for optional Kurdish language courses at university level, were dropped. A number of Istanbul based language schools have received permission to teach Kurdish.

**Political participation & representation**

The constitutional amendment of October 3rd 2001 introduced a number of changes expanding rights of political participation and making it harder to disband ethnic or religious-based political activity.¹¹² A revision to Article 67 narrowed the categories of persons excluded from voting in elections and referenda.¹¹³ The reforms also prescribed a series of criteria that need to be met before the dissolution of a political party could be justified. The fourth paragraph of Article 68 provides that the statutes, programs and activities of political parties may not “be in conflict with” the independence of the state, its indivisible integrity, human rights, the principles of equality and the rule of law, and the principles of democracy and secularism.¹¹⁴ Prior to its amendment, Article 69 provided only that a decision to dissolve a political party shall be made by the Constitutional Court, where the court decides that the statutes and programs of the political party violate these provisions. Following the amendment, the dissolution of a political party may only take place where its actions, in violating of the provisions in the fourth paragraph of Article 68, are:

“carried out intensively by the members of that party or the situation is shared implicitly or explicitly by the grand congress, general chairmanship of the central decision-making or administrative organs of that party or by the group’s general meeting or group executive board at the Turkish Grand National Assembly or when these activities are carried out in determination by the above-mentioned party organs directly”.¹¹⁵

Thus, the new provision introduces criteria that need to be met before the Constitutional Court may deem a political party dissolvable. These criteria include the frequency and intensity of actions taken by party members and the degree of approval of these actions by core party organs.¹¹⁶ Further, a newly inserted paragraph in Article 69 now provides alternatives to dissolution. Instead of ordering the dissolution of a political party – which was the only available instruments at the hands of the

---


¹¹³ Previously all conscripts serving in the armed services, students in military schools, detainees and convicts in prisons were unable to vote. Now only convicts held in penal institutions (with the exception of “those sentenced for negligence”), privates and corporals serving in the armed forces and students in military academies are prohibited from voting. See Article 67.

¹¹⁴ See Article 68 paragraph 4.

¹¹⁵ See Article 69 paragraph 7.

Constitutional Court prior to the amendment – the court may now take decisions to “fine” a party by depriving it of State funds, either fully or partially, depending on the gravity of the party’s activities. Another measure that makes it more difficult to dissolve a political party was introduced in Article 149 – which governs the Constitutional Court’s functioning and trial procedure. The gravity of dissolving a political party is now equal to that of constitutional amendments. Paragraph one of Article 149 provides that ordinarily the Constitutional Court shall convene with its president and ten members, and shall take decisions by absolute majority. However, decisions of annulment of constitutional amendments and closure of political parties require a three-fifths majority. The constitutional changes introduced regarding political parties began to be implemented in the second reform package, adopted in March 2002. The reform amended Article 101 of the Political Parties Law, in line with Article 68 of the Constitution, making it more difficult to close down political parties.

**Freedom of Association**

The October 2001 introduced several changes designed to liberalize rules regarding the formation and behaviour of associations. The second paragraph in Article 33 – that previously required those wishing to establish an association or foundation to obtain a government permit to do so – was deleted; thereby easing restrictions on the establishment of associations and foundations. The general restrictions imposed on associations have been replaced by a closed list of restrictions, in the absence of which no others can be lawfully imposed. Following the amendment to Article 33, the second reform package introduced changes to the Law on the Establishment of Associations, removing restrictions on contacts with foreign counterparts, restricting the grounds for banning associations and lowering the age for an organizer of an association from 21 to 18 years.

---

117 See Turkish Constitution, Part II “Judicial Powers”, Article 149.
118 See Article 149 paragraph 1. The previous majority needed for constitutional amendments was two-thirds.
119 A number of cases pertaining to the closure of Islamic and Kurdish parties are still pending before the Turkish Constitutional Court and the European Court of Human Rights. Following the EctHR judgement of July 31 2001 that the closure of the Welfare Party (Refah Partisi) was not in violation of the ECHR, the Party requested that the case be referred to the Grand Chamber of the EctHR, under Article 43 of the ECHR. A hearing took place on June 19 2002, and judgement is still pending. A closure proceeding against the Kurdish political party, the People’s Democracy Party (HADEP), initiated in 1999, is pending before the Turkish Constitutional Court. Its successor, the Rights and Freedoms Party (HAK-PAR), founded in February 2002, is also facing a closure case on the grounds that its manifesto and programs contain elements “contrary to the indivisible unity of the State and the nation.” Earlier, in Selim Sadek & Others v. Turkey (Applications nos. 25144/94, 26149/95 to 26154/95, 27100/95 and 12101/95) the applicants complained to the ECHR that with the dissolution of their party (DEP), they have been deprived of their parliamentary mandates. The ECHR ruled, in June 2002 that there had been a violation of Article 3 of Protocol No. 1 (“right to free elections”) of the European Convention.
120 Prior to the amendment the fourth paragraph of Article 33 read: “Associations shall not contravene the general grounds of restriction in Article 13, nor shall they pursue political aims, engage in political activities, receive support from or give support to political parties, or take joint action with labour unions, with public professional organizations or with foundations.” The new text reads as follows: “Freedom of association may only be restricted by law on the grounds of protecting national security and public order, or prevention of crimes or protecting public morals or public health.”
121 See Articles 7, 11 and 12 of the Law on Establishment of Associations. However, while these restrictions were removed from this law, some were inserted into the new Civil Code, which came into force in January 2002.
third reform package further revised the Law on Associations. The amendments transferred administrative authority for supervising associations from the Directorate General for Security to a new body established within the Ministry of Interior, and a number of restrictions on the permitted scope of associations’ activities has been removed.\(^\text{122}\) The third reform package also replaced the old “on-site inspection” procedure for supervising the activity of foundations and associations with a less intrusive written declaration procedure.\(^\text{123}\) Amnesty International was given permission to open a branch in Turkey, in March 2002. Still, the exercise of freedom of association is still subject to considerable restrictions.\(^\text{124}\)

**Freedom of peaceful demonstration**

Following the October 2001 reforms, the right to hold unarmed and peaceful meetings, demonstrations and marches, may now only be restricted on grounds of national security, public order for the prevention of crime or the protection of public morals and health. The second paragraph of Article 34 – which prior to the amendment provided that:

> “The competent authority designated by law may prohibit a particular meeting and demonstration march, or postpone it for not more than two months in a situation where there is strong possibility that disturbances may arise which would seriously upset public order, where the requirement of national security may be violated, or where acts aimed at destroying the fundamental characteristics of the Republic may be committed.”\(^\text{125}\) – has been removed. Similarly, the fourth paragraph of Article 34 – which provided that: “Associations, foundations, labour unions and public professional organizations shall not hold meetings or demonstration marches exceeding their own scope and aims.” – was deleted.

In the third reform package, the time limit for advance notification to the authorities regarding the organization of a public meeting has been shortened from 72 to 48 hours.\(^\text{126}\) However, foreigners participating in meetings or demonstration marches in Turkey, must still receive prior permission from the state.\(^\text{127}\) An amendment to Article 51 of the Constitution removes several grounds on the basis of which a labour unions and workers associations could previously have been suspended or dissolved, thus extending the scope of the right to organize labour unions.\(^\text{128}\) Article 55 has been amended to ensure that in setting the national

\(^{122}\) For example, the repeal of Article 39 of the Law on Associations removed the prohibition on civil servants from founding associations.

\(^{123}\) Articles 45 and 47 of the Law on Associations, as amended.

\(^{124}\) For example, under the amended law, associations formed by university students may only deal with educational matters, and the restrictions imposed by Article 5 of the Law on Associations (“it is forbidden to found an association for the purpose of engaging in any activity on the grounds of or in the name of any region, race, social class, religion or sect”) remains in place.

\(^{125}\) The same paragraph provided that: “In cases where the law forbids all meetings or demonstration marches in districts of a province for the same reasons, the postponement may not exceed three months.” This provision was also removed.

\(^{126}\) Article 10, Law on Meetings and Demonstration Marches.

\(^{127}\) Article 3, Law on Meetings and Demonstration Marches.

\(^{128}\) Interview with Professor Yeni Fikir Sokak, Professor of European Law, Marmara University, Turkey (January 15 2003).
minimum wage, the government will take into account the living conditions of workers, and not only the state of the national economy.\footnote{129}

\textbf{Minority property rights}

Whether recognized by the 1923 Treaty of Lausanne or not, non-Moslem religious communities have encountered difficulties regarding lack of legal personality and property rights.\footnote{130} In an effort to remedy inequities relating to property rights of religious minorities, the third reform package introduced amendments to the Law on Foundations, allowing “Community foundations”, as of August 2002, to acquire and dispose of property, and to register such property as they already own. This change is in alignment with Article 14 of the ECHR and with the right to property provision of Article 1 of Protocol No. 1 of the same Convention.

\textbf{Involvement of Security Forces in political life}

The 1982 Constitution contained a special clause, exempting laws and decrees enacted in the aftermath of the 1980 military coup, from judicial review by the Constitutional Court. This barrier to allegations of unconstitutionality has now been removed.\footnote{131} In addition, the amendments increase the number of civilian members of the NSC from five to nine, compared with five military members. Prior to October 2001 the National Security Council was composed of the President of the Republic (acting as Chairman), the Prime Minister, the Chief of Staff of the armed forces, the Ministers of National Defence, Internal Affairs and Foreign Affairs, the Commanders of the Army, Navy and the Air Force and the General Commander of the Gendarmerie. Following the constitutional amendment to Article 118, the NSC’s civilian contingency is increased by four (three Deputy Prime Ministers and the Minister of Justice), giving elected officials a clear majority for the first time. A further amendment to Article 118 now emphasises that the views and opinions of the NSC are advisory, rather than obligatory.\footnote{132} A further change relating to military involvement in civilian life was undertaken in July 2002. Emergency rule (OHAL), which continued for 15 years in the predominantly Kurdish provinces of southern and eastern Turkey, came to an end; with its lifting from Hakkari and Tunceli on July 30 2002 and from Diyarbakir and Sirnak on November 30, 2002.\footnote{133}

\footnote{129} The third paragraph of Article 55, as amended, now reads: “In determining the minimum wage, the living conditions of the workers and the economic situation of the country shall be taken into account.”\footnote{130} The religious minorities protected under the 1923 Lausanne Peace Treaty are Greeks, Armenians and Jews.\footnote{131} The last paragraph of Article 15 which provided that “No allegation of unconstitutionality shall be made in respect of decisions or measures taken under laws or decrees having the force of law enacted during this period or under Act No. 2324 of the Constitutional Order” has been deleted. This amendment now enables laws and decrees enacted between September 12 1980 and December 6 1983 to be brought before the Constitutional Court on grounds of unconstitutionality.\footnote{132} An amendment to Article 118 of the Constitution replaces the phrase “its views on taking decisions” in the third paragraph with “the advisory decisions it has taken and its views on the advisory decisions”, thereby emphasising the advisory role of the NSC. Similarly the phrase “give priority consideration to” in the third paragraph is replaced with the less obligatory phrase “take into consideration”.\footnote{133} Emergency rule was imposed on thirteen provinces since July 19 1987, under Decree No. 285, in response to terrorist attacks by the PKK. Diyarbakir and Sirnak were the scene of some of the heaviest fighting between Kurdish separatists and Turkish forces. For commentary see: Turkish Daily News, \textit{Turkey has taken giant Step to improve Human Right Issues}, January 2, 2003; J. Dymond, \textit{Turkey lifts last state of emergency}, BBC News, November 30 2002 (available at: \url{http://www.bbc.co.uk/2/hi/europe/2529853.stm}) (last cited: March 5 2003); Turkishpress.com,
Access to Justice, Detainee rights & Prevention of Torture

The October 2001 reforms introduced, for the first time in Turkey’s history, a constitutional right to a fair trial. Protections for pre-trial detention have also been strengthened. Whereas prior to the amendment, the fifth paragraph of Article 19 provided that persons arrested or detained shall be brought before a judge within forty-eight hours and in cases of “offences committed collectively” within fifteen days, the length of lawful detention for the latter category of cases has been reduced to four days. Thus, pre-trial detention periods in police custody (where acts of torture are most common) is reduced to four days – with the possible extension of three days in the provinces still under emergency rule. Whereas prior to the amendment of Article 19 it was possible for the detaining authorities to delay notifying the next of kin of the person arrested or detained of his whereabouts in cases of “definite necessity pertaining to the risks of revealing the scope and subject of the investigation”, this possibility has now been removed, and the detainees family must be notified of his arrest immediately and in all cases. Following the amendment, in the first reform package, to Article 16 of the Law on the Establishment and Prosecution Methods of the State Security Courts, detainees who fall within the jurisdiction of these courts have the right of access to legal counsel after 48 hours in detention.

Two other amendments were made to address problems of torture. In the second reform package, Article 13 of the Civil Servants Law was amended, making civil servants found guilty of torture and ill-treatment personally liable to pay the compensation stipulated by the European Court of Human Rights. Prison sentences imposed in cases of torture cannot now be commuted to fines. The deterrent effect of this measure remains to be tested. The third reform package amended the Law on the Duties and Competencies of the Police, limiting their discretionary authority and providing some safeguards against possible abuses.

An amendment to Article 40 of the Constitution now obliges the State to “indicate in its transactions” the range of legal remedies available to a person who feels that his constitutional rights and freedoms have been violated, and to indicate which authorities are responsible for handling the complaint, as well as any time limitations imposed on the right to apply for redress.

In the third reform package, Turkey introduced the possibility of retrial for criminal and civil cases, to comply with the rulings of the European Court of Human Rights.
The provision will only apply to judicial decisions taken pursuant to applications made to the European Court after August 2003.\textsuperscript{140}

\textbf{Gender equality}

The amendments made in October 2001 created a constitutional obligation to respect and promote equality between men and women. To Article 41, which provides that the family is the foundation of Turkish society, an extension has been added, establishing that this fundamental unit on society is “based on the equality between the spouses.”\textsuperscript{141} In Article 66, the sentence “The citizenship of a foreign father and a Turkish mother shall be determined by law”, has been repealed on the grounds that the provision violated the principle of equality between men and women.\textsuperscript{142}

Following the constitutional amendments, the new Civil Code, which entered into force on January 1, 2002, abolished the concept of “head of the family” and the principle of equal opportunities in family life was introduced. In particular, reforms were made in the Civil Code, with the aim of guaranteeing equal rights and protections for the spouses. Maternal rights to pregnancy and childbirth expenses, in the event that the father refuses to recognize the child, were extended. Goods acquired during marriage will now be shared equally between spouses.\textsuperscript{143}

\textbf{Abolition of the Death Penalty}

The October 2001 constitutional reform package, amended Article 38 – “Principles Relating to Offences and Penalties” – introducing a seventh paragraph which provides that: “The death penalty may only be imposed in time of war, imminent threat of war and for crimes of terrorism”. Thus, the amendment banned the use of the death penalty for all “ordinary crimes” in peacetime, but not for “terrorist” crimes. As part and parcel of the alteration to the same constitutional Article, a paragraph invalidating evidence obtained through “illegal methods” from being relied upon in legal proceedings has been added. This is meant to safeguard against the use of evidence obtained through torture or maltreatment.\textsuperscript{144} A ninth paragraph was inserted into Article 38, establishing that no one shall be deprived of liberty on the grounds of being unable to fulfill a contractual obligation.

A year later, in the August 2002 reform package, Turkey went further, adopting a higher standard of abolitionism. By removing “crimes of terrorism” from the categories of activities for which the death penalty could be applied, the third reform package abolished capital punishment in peacetime. Hence, the death penalty can now be applied only in times of war or imminent threat of war. This has brought the

\textsuperscript{140} The significance of this reform is compounded by the number of cases alleging mistreatment and unfair trials in Turkey. Between October 1, 2001 and June 30, 2002 alone, 1874 applications regarding Turkey were made to the European Court of Human Rights. Of these, the majority (1125) were related to Article 6 of the ECHR (“right to a fair trial”). 304 were concerned with Article 5 (“the right to liberty and security”) and 246 applications were made under Article 3 (“prohibition of torture”). 104 pertained to Article 11 (“freedom of assembly and association”) and 95 to freedom of expression (Article 10). For detailed information about Turkey and the ECHR see site of the ECHR at: http://www.echr.coe.int. Turkish leaders have been quick to emphasize that PKK leader Abdullah Ocalan will not benefit from this revision. See for example: Turkish Daily News, Justice Minister Cicek Says Yes to Leyla, No to Ocalan, January 27 2003.

\textsuperscript{141} See paragraph 1, Article 41, as amended.

\textsuperscript{142} Interview with Professor Yeni Fikir Sokak, Professor of European Law, Marmara University, Turkey (January 15 2003).

\textsuperscript{143} This latter amendment only applies to marriages entered into after the adoption of the new Civil Code.

\textsuperscript{144} This amendment only applies to marriages entered into after the adoption of the new Civil Code.
Turkish position vis-à-vis the death penalty in line with European Convention for the Protection of Human Rights and Fundamental Freedoms’ Protocol No. 6, though not with Protocol No. 13 of the same Convention.\textsuperscript{145} On January 15 2003, Turkey signed Protocol No. 6.\textsuperscript{146}

\textbf{Reactions to the reforms}

A survey of domestic and international reactions to the reforms outlined above yields two main conclusions. The first relates to the significance of these recent changes for furthering Turkish democracy, and the second concerns the crucial role of the EU in bringing them about.

Within the country itself, the passage of the reforms was widely hailed by pro-western politicians and the mainstream Turkish media. Turkish Ambassador Volken Vural, the country’s top bureaucrat for EU affairs, declared on August 5 2002 that the passage of the third adjustment package has earned Turkey “the right to begin EU membership talks”\textsuperscript{147}. In a similar vein the Turkish Daily News stated that the August 2002 adjustment package was a “Landmark” event,\textsuperscript{148} and later asserted that: “Following constitutional reforms in October last year three sets of reform packages were adopted in February, March and August 2002. The adoption of these reforms demonstrates the determination of the majority of Turkey’s political leaders to move towards further alignment with the values and standards of the European Union”\textsuperscript{149}. At the 2002 summary of political events, the paper concluded that: “Thanks to its ambition to become a member of the European Union, Turkey has achieved a number of human rights developments in 2002”\textsuperscript{150}. This linkage between the reforms achieved from October 2001 to January 2003 is consistently assumed by the Turkish press, which regularly refers to the legislation passed as “EU adaptation law”\textsuperscript{151} and “EU reform package”.\textsuperscript{152}

Outside Turkey, the Financial Times described the reforms as a “watershed” and as “the dawn of a new era”.\textsuperscript{153} In its leader of August 6 2002, the paper went on to argue that: “No one should underestimate the importance of the package of human rights reforms approved by the Turkish parliament last week. The present EU member states should be generous in their welcome, even though some still harbour serious reservations about full Turkish membership.”\textsuperscript{154}

\begin{footnotesize}
\begin{itemize}
\item[145] The content and meaning of these protocols are discussed in detail in Section III of this thesis.
\item[147] Turkish Daily News, \textit{August 20002 Reforms passed, political activity picks up as Ozkok becomes new military leader}, September 8 2002.
\item[151] Turkish Daily News, \textit{Top court to hear demands to cancel certain EU reforms}, December 2002; Turkish Daily News, \textit{Cabinet Approves EU Adaptation Package}.
\item[154] Financial Times, \textit{Leader: Turkey’s Turn}, August 6 2002.
\end{itemize}
\end{footnotesize}
The 2001 U.S. Department of State Report on Human Rights Practices describes the October 2001 changes as “an extensive constitutional reform package that aims to improve human rights”. Similarly, the Freedom House indicators of levels of protection of political rights and civil liberties were upgraded following the reforms, acknowledging the improvements achieved in Turkish democracy. The European Union, also welcomed the reform packages, and linked them to Turkey’s new status as a candidate for membership. On 27 November 2002 European Parliament Speaker Pat Cox linked Turkish reforms to future progress on Turkey’s integration into the Community:

“Turkey has realized important reforms. We have to promote and support this. I don’t know whether the result that will be accepted in Copenhagen will satisfy Turkey or not…there are very positive developments in Turkey. Turkey has not realized these types of crucial reforms until now. Turkey has had candidate status since 1999”.

In a meeting between Danish Prime Minister Rasmussen (the then EU President was Denmark) and Turkish Deputy Prime Minister Yilmaz, on August 20 2002, the Danish PM praised Turkey’s “recent human rights reforms” and told Yilmaz that the EU would make a final determination on whether Turkey has fulfilled the political requirements for membership talks to begin, before the 2002 Commission progress report was due to be published on October 16 2002. The EU’s response was cautious, however. On August 5 2002 EU officials stated that they wanted clarifications from the Turkish government about how the reforms adopted by Turkey in a bid to join the EU will be applied in practice, particularly in the areas of religion, broadcasting and education in the Kurdish language.

In a rare step, Amnesty International issued a statement describing the reforms, and in particular, the abolition of the death penalty in Turkey as a “positive step by the Turkish Parliament”. Similarly, Human Rights Watch, which is normally highly critical of Turkey, also acknowledged the reforms to be an important step

---

158 Cited: Turkish Daily News, Cox says Turkey should continue reforms, November 27 2002
159 Turkish Daily News, August 20002 Reforms passed, political activity picks up as Ozkok becomes new military leader, September 8 2002.
forward. In an open letter to Turkish, Greek and EU leaders, dated January 29 2003, Human Rights Watch acknowledged that:

“In the past twelve months Turkey has achieved a series of symbolically and practically important reforms. The repeal of the death penalty in the August 2002 reform package was an important and welcome contribution to the worldwide campaign for abolition of capital punishment and the European project of making the continent an execution-free zone. The same package eased restrictions on broadcasting and education in minority languages—a significant departure from the previous official policy of denying Turkey's multicultural reality. The legal reform package adopted 23 January was a further welcome step. It will ultimately grant a retrial to the four imprisoned former deputies of the Democracy Party (DEP), as well as to others who have received past judgments from the European Court of Human Rights (ECHR), holding that their fair trial rights were violated by the Turkish courts”.

While it is too early to predict the full impact of the 2001 and 2002 reforms on Turkish democracy and human rights standards – and much will depend on their longer-term systemic internalization and implementation – the Turkish reforms of the last eighteen months have been rightly understood as symbolically and materially important efforts to promote democratic consolidation in Turkey. Clearly, the mere adoption of these laws, or even their scrupulous implementation, will not in themselves bring about consolidated entrenchment of liberal democracy. However, bearing in mind the short falls in Turkish democracy explained in Section I, and the trend set by the 2001 to 2003 reforms, it is submitted that they constitute a potentially momentous shift in domestic policy. This aspect is further explored in Section IV. At this point in the analysis, a different question arises. For while both domestic and international commentators acknowledge the importance of the reforms and link them to EU influence on Turkey, they do not explain how and when this external source of influence has been able to facilitate the reforms. Furthermore, they do not undertake a systematic study of other potential sources of pressure on Turkey to democratize. The following Section goes on to address these neglected aspects, with particular reference to the death penalty issue.

162 Interviews with Jonathan Sudgen, Researcher (Europe & Central Asia Division) and with Peter Bouckaert, Senior Emergencies Researcher, Human Rights Watch, Washington D.C., October 23 2002.
SECTION III: EXTERNAL SOURCES OF PRESSURE – EFFECTIVE WHEN AND HOW?

The argument developed in this section is that EU pressures in the form of membership conditionality, is indeed a primary determinative factor driving the recent democratic and human rights reforms in Turkey. While this has been acknowledged by Turkish and foreign officials and press, such sources do not explain the conditions under which external pressures have been able to influence Turkish decision-makers to reform. Partially through a detailed examination of the death penalty issue, this section explores the conditions under which the EU has been able to affect Turkey in this regard, and suggests that normative based demands for reforms that were not backed by membership conditionality incentives and threats, have generally been ineffective; whereas EU membership conditionality strategies have been much more successful in attaining compliance with external demands for reforms.

The analysis also reveals that Turkish decision makers have not responded in similar fashion to demands made by other international and regional actors, such as the United Nations (UN), Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe (CE). This phenomenon raises questions about the conditions under which regional and international organizations might be more or less effective in influencing internal change. The section begins by demonstrating the chronological and substantive correlation between EU demands for political and human rights reforms in Turkey, and Turkish response to such demands. It then goes on to address some of the competing explanatory variables that arguably could have facilitated the abolition of the death penalty in Turkey, without EU involvement.

EU-Turkey Relations: influence when and how?

Although Turkey has been part of the European state system since the 19th century – when the Ottoman Empire was included in the Concert of Europe – and in the Cold War European security architecture – when the Republic was included in NATO and the CSCE – it was never considered fully “European”, since it was perceived not to share Christian Europe’s values and norms.\textsuperscript{164} As Iver Neumann observed “Although ‘the Turk’ was part of the system of interstate relations, the topic of culture denied it equal status within the community of Europe.”\textsuperscript{165} With the demise of the Ottoman Empire and the formation of the Turkish Republic in 1923, Turkish elites began to import European ideas, laws and institutions.\textsuperscript{166} This “Europeanization” process was spurred by Ataturk’s extensive modernization policies, which saw the replacement of the Ottoman system with modern (read European), secular institutions and practices as essential for Turkey’s survival, and after the Second World War, by Turkey’s entry

\textsuperscript{164} At the 1856 Paris Peace Conference, Europe’s great powers viewed the territorial integrity of the Ottoman Empire to be essential for European stability. During the Cold War Turkey was considered a bulwark against Soviet expansionism in the Middle East and Eurasia. For a detailed discussion of the identity issue see: I. NEUMANN, USES OF THE OTHER: THE “EAST” IN EUROPEAN IDENTITY FORMATION (1999); Z. Onis, Turkey, Europe and the Paradoxes of Identity: Perspectives on the International Context of Democratization, 10.3 MEDITERRANEAN QUART. 107-136 (1999).


\textsuperscript{166} This process included the abolition of Islamic law, the adoption of the Swiss Civil Code, adoption of a Latin alphabet, rejection of Islamic dressing style etc. See: J. REDMOND, THE NEXT MEDITERRANEAN ENLARGEMENT OF THE EUROPEAN COMMUNITY: TURKEY, CYPRUS AND MALTA? (1993).
into NATO, the CSCE, OECD and CE.\footnote{Turkey became a member of the OECD in 1948, of the CE in 1949, of NATO in 1952 and of the CSCE in 1975. See in particular: B. LEWIS, THE EMERGENCE OF MODERN TURKEY 234-293 (1961). On the history and meaning of Turkey-Western security relations see: I. O. Lesser, \textit{Western interests in a Changing Turkey}, in Z. KHALILZAD, I. O. LESSER, F. STEPHAN LARRABEE, \textit{THE FUTURE OF TURKISH-WESTERN RELATIONS: TOWARDS A STRATEGIC PLAN} 1-26 (2000); H. BAGCI, J. JANES AND L. KUHN-HARDT (EDS.), \textit{PARAMETERS OF PARTNERSHIP: THE US-TURKEY-EUROPE} (1999); M. MUFTULER-BAC, \textit{TURKEY’S RELATIONS WITH A CHANGING EUROPE} (1997).} Within this Cold War context the then European Community (EC) concluded, in 1963, an Association Agreement with Turkey (the “Ankara Agreement”).\footnote{Turkey applied for associate membership in the EEC in 1959, sixteen days after the Greek application was lodged.} Although Article 28 of the Agreement envisaged the possibility of eventual Turkish membership in the Community (thus confirming Turkey’s basic eligibility), its substance was essentially limited to trade matters, and did not trigger closer political ties or normative harmonization between Turkey and the EC. Through the 1960s and 70s, the Community defined itself largely in economic terms, and was generally not concerned, or empowered, to engage in democracy or human rights promotion in neighbouring countries. This orientation also de-emphasised the importance of democratic credentials for those Western European countries that became members of the EC in the 1970s and early 1980s (Denmark in 1973, Ireland and the UK in 1981). In addition, Turkey’s protectionist economy and political instability distinguished it unfavourably from the pattern of economic and political development in the rest of Europe, particularly Spain, Portugal and Greece.\footnote{For a detailed discussion of this period and its impact on Turkey see: S. Elgun Kahraman, \textit{Rethinking Turkey-European Union Relations in the Light of Enlargement}, 1.1 TURKISH STUD. 1-20 (2000).} In particular, the 1971 and 1980 military coups meant that Turkey remained firmly outside the process of “Southern enlargement” which eventually brought Greece (1981), Spain and Portugal (both in 1986) into the EC as full members. The 1980 coup and the Kurdish issue did produce some condemnations from the EC, but these were not linked to any specific EC demands for reforms, and had little effect on Turkish decision makers in the early 1980s.\footnote{Interview with Professor Refik Ezran, Bogazici University, Istanbul (January 22, 2003); interview with Nathalie Tocci, Researchers, EU-Turkey Project, Centre for European Policy Studies (CEPS), Brussels (October 18 200).}

The Southern Enlargement represented the first instance in which the Community gave priority to the democratization and stabilization of neighbouring countries. Concerned with the authoritarian legacy of Greece, Spain and Portugal, it introduced additional criteria for membership for future members, including adherence to democratic principles, respect for human rights and the rule of law. Thus, it was only in the 1980s that the EC began to transform itself from being primarily an economic club of Western European industrialized countries, to a regional community formally aware of its sharing common democratic norms, values and practices.

In this context, intra-EU preoccupation with democratization and human rights issues were to a large degree a reaction to the external challenges of enlargement. Within the EU itself, the death penalty issue was first raised in the early 1980s by the European Parliament (EP), when a non-binding resolution called for abolition of the death penalty.
penalty in the Community, as being contrary to human rights.\footnote{171} In 1986 the Parliament urged Member States to ratify Protocol No. 6 of the ECHR, and in a March 12 1992 resolution the EP again referred to this normative standard as the one to which Member States should adhere.\footnote{172} The same resolution also stated that the EP “hopes that those countries which are members of the Council of Europe who have not done so, will undertake to abolish the death penalty”. Among the countries falling into that category, the resolution called on Turkey to abolish the death penalty for both ordinary and exceptional crimes. This form of normative pressure did not produce a response from Turkey at the time.\footnote{173}

As Refik Ezran notes, this shift in European policy went largely undetected in Turkey, which continued to emphasize the economic benefits of EC membership, while underplaying the political changes inherent in joining a fast integrating community.\footnote{174} On April 14 1987 Turkey formally applied for EC membership, despite being discouraged from doing so by the EC.\footnote{175} While Turkey’s basic eligibility was reaffirmed by the EC, its application was ultimately rejected in December 1989, on various economic, social and political grounds.\footnote{176} In this context, it is noteworthy that while in preparing its application the Turkish government focused mainly on economic and security factors, it also decided to promote its image as a democracy by accepting, for the first time, a compulsory jurisdiction and a right of individual petition to the European Court of Human Rights (ECHR).\footnote{177} This represents the first example of Turkey responding to the evolving normative dimension of the Community, in an effort to be included within it.\footnote{178} It also marks the beginning of a pattern – repeated in the 2001, 2002 and 2003 constitutional amendments – whereby

\footnotesize

\begin{itemize}
\item 173 Interview with Turkish diplomat and lawyer, who did not wish to be identified. Interview conducted January 9, 2003. The testimony was corroborated through a survey of Turkish documents and literature on the issue.
\item 174 Interview with Professor Refik Ezran, Bogazici University, Istanbul (January 22, 2003). From the early 1980s, Prime Minister Turgut Ozal led extensive market liberalization reforms in Turkey. This encouraged Turkey to advocate for inclusion into the EC on economic grounds, and to underplay political and human rights problems.
\item 176 See: European Commission, Opinion on Turkey’s Request for Accession to the Community, SEC(89) fin./2, December 20, 1989. For a detailed discussion of European and Turkish considerations regarding Turkey’s application for membership see: H. Kramer, \textit{Turkey and the EU: A Multi-Dimensional Relationship}, in V. MASTNY AND R. CRAIG NATION (EDS.), \textit{TURKEY BETWEEN EAST AND WEST: NEW CHALLENGES FOR A RISING REGIONAL POWER} 203-232 (1996)
\item 177 Turkey recognized the right to individual petition under Article 25 of the European Convention on Human Rights (ECHR), and the compulsory jurisdiction of the European Court of Human Rights (ECHR), effective in 1991.
\item 178 Interview with Professor Refik Ezran, Bogazici University, Istanbul (January 22, 2003); interview with Nathalie Tocci, Researchers, EU-Turkey Project, Centre for European Policy Studies (CEPS), Brussels (October 18 200). 
\end{itemize}
the actual timing of democratic and human rights reforms is closely connected to critical dates in the process of accession.179

From the perspective of Europe, as Mehmet Ugur asserted, from 1987 onwards the EU has been more vocal about democracy and human rights issues in Turkey, because of Turkish application for membership and the increased activism of the EU in these spheres that followed the collapse of the Soviet bloc and the commencement of the process that would eventually bring Central and Eastern European countries (CEEs) “back to Europe”, through integration into the EU system.180

The challenge of preparing the CEEs for EU membership marks both a vital watershed in the EU’s thinking about the promotion of democracy, human rights and the rule of law (including the death penalty issue), and an important turning point in its attitude towards Turkey. At the June 1993 Copenhagen summit, the EU prescribed, for the first time, a set of clear political criteria that all future members would have to attain, as a precondition for accession. Regarding the political criteria for membership, the CEEs were told they may accede as soon as: “the candidate country has achieved stability of institutions, guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”.181

The strategic decision to include the CEEs and the laying out of the “Copenhagen criteria” significantly impacted Turkey’s quest for membership in three main ways. First, Turkey suddenly found itself relegated to the back of the enlargement queue, sidelined by a bloc of new candidates that only a few years earlier were on the wrong side of the East-West divide, but which were considered to be politically and culturally part of Europe. The Copenhagen summit acknowledged that membership of the CEEs – but not Turkey – was a major policy objective of EU policy. Thus, the “cultural dimension” of the Community was accentuated, and Turkey’s political “otherness” highlighted further. Instead, economic, rather than political integration, was advanced; an agenda that resulted in a long-promised Customs Union between the EU common market and Turkey coming into effect on December 31, 1995.

Second, the Copenhagen criteria effectively raised the bar for membership, adding a set of explicit political criteria that previously were not formally demanded. Finally, the mammoth task of overhauling the economic and political structures of the CEEs, coupled with an intensifying constitutional debate and preparation for monetary union within the EU itself, presented a crowded agenda for the EU and indicated to Ankara that no steps towards greater inclusion of Turkey were likely to be taken in the immediate aftermath of the 1993 summit.182

The EU’s Luxembourg summit (December 1997) further exacerbated the differentiation between CEE candidates and Turkey. While confirming once again

179 This point is also made with regards to protection of minorities in Turkey, in K. Kirisci, Evaluating the Question of Minorities in Turkey in the light of Turkish-EU Relations, in B. DUNER (ED.), TURKEY: THE ROAD AHEAD? 112-113 (2002).
182 Interview with Michael Emerson, Director of Southern Europe Research Program, Centre for European Policy Studies (CEPS), Brussels (October 18, 2002); Nathalie Tocci, Researcher, EU-Turkey Project (CEPS) (October 18 2002).
Turkey’s eligibility for membership, it effectively singled Turkey out as the only applicant country which was not granted candidacy status. Instead a “strategy to prepare Turkey for accession” was set out, designed for “bringing it closer to the European Union in every field”. The centerpiece of this new strategy was the conduct of annual “Progress Reports” (PRs) by the Commission, to monitor Turkey’s progress towards fulfillment of the criteria for accession.

As part and parcel of the decision to launch a formal accession process with ten CEEs and Cyprus, the emphasis on political criteria for membership was again heightened, and more advanced integration instruments were created to monitor the compliance of candidate countries with democratization and human rights standards – including “Accession Partnerships”, regular reports prepared by the Commission, greater pre-accession aid and participation by candidate states in some Community programs. Aware of its increasingly awkward and strained relations with Turkey, the EU sought to assuage Turkish anger by setting up a “pre-accession” strategy, ostensibly designed to assist it in preparing for eventual membership.

Turkey’s “Luxembourg exclusion” provoked anger in Ankara and led to a rapid and sharp deterioration in Turkey-EU relations. In the aftermath of the summit, Turkey froze political dialogue with the EU, and it became common to hear voices in Ankara and Istanbul that underplayed the importance of Europe to Turkey’s future and called for the need for Turkey to diversify its foreign policy ties. Importantly, during this period we find no evidence of any meaningful discussion within Turkey about the death penalty issue. Neither did the two year period between the Luxembourg and Helsinki summit (1999) produce any significant reforms in other areas concerning democracy and human rights.

Within the EU meanwhile, the heightened preparations for the accession of new members from among the CEEs, resulted in greater attention to questions of human rights and democracy. The adoption the Amsterdam Treaty in October 1997 – which came into force on May 1 1999 – created for the first time an express legal basis authorizing the EU to speak on behalf of its Member States on the issue of the death penalty. Hence, Turkey was included in the enlargement process itself but not in the pre-accession process along with the other CEEs, Malta and Cyprus. Neither was it offered an official candidate status or a timetable for accession negotiations. The EU also linked progress towards accession with issues not specified in the Copenhagen criteria, such as resolution of Turkey’s differences with Greece over disputed Aegean islands and airspace and the settlement of the Cyprus issue.

183 Hence, Turkey was included in the enlargement process itself but not in the pre-accession process along with the other CEEs, Malta and Cyprus. Neither was it offered an official candidate status or a timetable for accession negotiations. The EU also linked progress towards accession with issues not specified in the Copenhagen criteria, such as resolution of Turkey’s differences with Greece over disputed Aegean islands and airspace and the settlement of the Cyprus issue.

185 The 1998 Cardiff Council summit requested that the Commission prepare these reports. Since November 1998 Regular Reports have been issued, supervising, with ever increasing detail, Turkey’s compliance with EU standards. Among the political criteria checked are “Democracy and the rule of law (these are subdivided into sub-section on the Parliament, Executive, the Judicial system, the National Security Council), “Human Rights and Protection of Minorities” (divided into civil and political rights, economic, social and cultural rights, minority rights and protection of minorities) and the Cyprus issue.


188 For a detailed analysis of the consequences of the Luxembourg summit for EU-Turkey relations see: B. Buzan and T. Diez, The European Union and Turkey, 41.1 SURVIVAL (April 1999); P. R. Hugg, The Republic of Turkey in Europe: Reconsidering the Luxembourg Exclusion, 23 FORDHAM. INT’L L.J. 606-706 (March 2000).
penalty. The Final Act of the Intergovernmental Conference (IGC), which resulted in the Amsterdam Treaty, contains a number of declarations, the first of which relates to the abolition of the death penalty. The text of the declaration posits the issue of death penalty abolition within the wider aspirations of the Union to be “founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States”. In addition, the declaration once again refers to Protocol No. 6 ECHR as the standard of normative compliance on the death penalty issue.

The EU’s internal commitment to abolition was reaffirmed in its Charter of Fundamental Rights, adopted in December 2000, at Nice. The Charter represents a codification of human rights norms accepted by all Member States, but is not a legally binding document. Article 2 (titled: “Right to life”) provides that: (1) Everyone has the right to life; (2) No one shall be condemned to the death penalty, or executed.

Once again internal developments produced external effects. The signing of the Amsterdam Treaty and its declaration on the death penalty prompted the EU to adopt a more robust external policy in its relations with third-countries – not only vis-à-vis candidate states. On June 3 1998, the General Affairs Council of the EU adopted “Guidelines for EU Policy Towards Third Countries on the Death Penalty” the goal of which is to “work towards universal abolition of the death penalty as a strongly held policy view agreed by all EU member states” and “Where the death penalty still exists, to call for its use to be progressively restricted and to insist that it be carried out according to minimum standards”. The Guidelines also provide for the issuing “General Demarches” on the death penalty that include “The EU’s call for universal abolition of the death penalty, or at least a moratorium.” Subsequent to the publications of the Guidelines, the EU initiated a number of actions on the subject at

---

190 The “Declaration on the Abolition of the Death Penalty” provides: “With reference to Article F(2) of the Treaty on European Union, the Conference recalls that Protocol No. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and which has been signed by a large majority of the Member States, provides for the abolition of the death penalty.

In this context, the Conference notes the fact that since the signature of the abovementioned Protocol on 28 April 1983, the death penalty has been abolished in most of the Member States and has not been applied in any of them.”
191 The principle that all members of the EU must be democracies was first made explicit in the Treaty on European Union (TEU), signed at Maastricht (1992). Article F(1) of the TEU provided: “The Union shall respect the national identities of the Member States, whose systems of government are founded on the principle of democracy.” Article F(1), renumbered Article 6, was amended in the Amsterdam Treaty (1997) as follows: “The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.”
193 EU, The Council, Guidelines to EU Policy Towards Third Countries on the Death Penalty, June 3 1998 (available at: http://www.eurunion.org/legislat/deathpenalty/guidelines.htm) (last cited: March 5, 2003). The Guidelines contain a list of minimum standards to be used in evaluating the policies of third countries on the issue. In addition the Guidelines call for human rights reporting by the EU Heads of Missions to include the issue of the death penalty in their periodical reports.
194 Id. note 193.
the UN Commission for Human Rights in 1999 and 2000. Two demarches to the United States were made by the Presidency of the EU on the matter in 2000 and 2001, and prominent EU leaders have made public statements condemning the use of the death penalty. In a Commission Communication to the Council from May 2001 the position of the EU is summarized as follows:

“The EU’s commitment to the abolition of the death penalty was reaffirmed in Article 2 of the EU Charter. It is a requirement for countries seeking EU membership. It is a high profile policy that the EU pursues in international human rights for a and in dialogue with all countries, regardless of the nature of the EU’s relationship with them.”

In this sense, as Stephen Silvia and Aaron Sampson recently argued, it is Europe, rather than America, that is exceptional in being “the only entity with an explicit project to define regional values backed by significant material incentives”.

The EU’s concern about deteriorating relations with Turkey, a more pro-Turkish position taken by the SDP/Green coalition in Germany, Turkish-Greek rapprochement, US pressure and outpouring of sympathy following the August 1999 earthquake in Anatolia (in which more than 15,500 people died), all combined to bring about a reversal in EU policy in December 1999. At the Helsinki summit, the EU officially accepted Turkey as a candidate state and stating that: “Turkey is a candidate State destined to join the Union on the basis of the same criteria as applied to the other candidate States.” However, the EU made it clear that it was not prepared to open actual accession negotiations with Turkey, until Ankara has fulfilled the Copenhagen criteria, particularly in the area of democracy and human rights. The

---


200 Financial Times, Drive for Political Change Emerges in Turkey, September 9, 1999; Financial Times, Despite Ecevit’s visit to the US, Ankara really needs a lasting marriage with the European Union, September 27, 1999.

201 Presidency Conclusions, Helsinki European Council, 10 and 11 December 1999, paragraph 12.
credibility of EU conditionality in this context was by this time well established and known to Turkish decision-makers, who have studied the similar process underwent by the CEEs from the mid-1990s. 202 Regarding the death penalty issue in particular, although in 1992, 5 of the then 12 Member States still retained legislation that provided for the death penalty, by the time Turkey became an official candidate for eventual EU membership, in December 1999, the death penalty has been abolished in all 15 Member States, as well as in the other 12 candidate states for EU membership. 203 According to a Turkish official interviewed, this factor also strengthened the credibility of EU demands for abolition. 204

During this period, EU pressure on Turkey regarding the death penalty issue intensified, prompted by the death sentence imposed on PKK leader Abdullah Ocalan. In July 1999, the European Parliament called upon Turkey to commute the sentence, stating that his execution could impede Turkey’s admission to the EU. It also called upon the Turkish government to alter its de facto moratorium on capital punishment into a formal de jure abolition. 205 A delegation of the Parliament attended proceedings in the Ocalan case, and stated that “the death penalty was unacceptable as contrary to the norms and standards of the Council of Europe”. 206 Still, no plans for legislative reforms in this vein were put forward in Turkey, and several angry statements were made by Turkish officials, denouncing the comments of the European Parliament as “meddling” with Turkey’s “sovereign prerogative” to fight Kurdish “terrorism”. 207

The “Helsinki inclusion” of December 1999 has been widely viewed by both European and Turkish officialdom as opening a qualitatively new chapter in Turkey-EU relations. What matters for our purposes, is not whether this will prove true in the longer run, but the perception in Turkey and Europe in the aftermath of the Helsinki summit. As a consequence of Turkey’s new status as a candidate state, the Nice summit (December 2000) approved an Accession Partnership document for Turkey. 208

The Accession Partnership (AP), which was declared on March 8, 2001, identified short and medium term priorities, as well as intermediate objectives, on which Turkey must concentrate as a precondition for qualifying for membership. It also set up monitoring mechanisms to evaluate progress towards achieving the objectives and priorities set out in the AP. In effect, therefore, the AP constitutes the “roadmap” for Turkey to follow in its bid for membership.

Among the political criteria set out by the AP were two statements relating to the abolition of the death penalty. Paragraph 4.1 (“Short-term” 2001) provided that during 2001 Turkey must “Maintain de facto moratorium on capital punishment”. Among the Medium-term political criteria for accession, prescribed in paragraph 4.2 of the AP: “Abolish the death penalty, sign and ratify Protocol No. 6 of the European Convention of Human Rights.”

In response to the AP, the Turkish government announced its own National Program for the Adoption of the Acquis (NPAA), on March 19 2001 – as required of all candidate states. In the introduction to its NPAA, the Ecevit coalition government declared that: “membership in the EU is a conscious choice for Turkey, promising new horizons in the nation’s progress towards the highest contemporary standards” and promised that: “Turkey will accede to all relevant international conventions and take the necessary measures for their effective implementation for further alignment with universal norms manifest in the EU acquis and the practices in EU Member States, particularly in the areas of democracy and human rights.” In section 2 of the NPAA (“political criteria”) the Turkish government stated that “as of 2001” it will:

“speed up the ongoing work on political administrative and judicial reforms and will duly convey its legislative proposals to the Turkish Grand National Assembly. The goal is to strengthen, on the basis of Turkey’s international commitments and EU standards, the provisions of the Constitution and other legislation to promote freedom; provide for a more participatory democracy with additional safeguards; reinforce the balance of powers and competences between State organs; and enhance the rule of law. In the context of the reform process regarding democracy and human rights, the review of the Constitution will have priority. The constitutional amendments will establish also the framework for the review of other legislation.”

The correlation between the requirements of the EU’s Accession Partnership, the Turkish National Program and the constitutional amendments adopted by the Turkish Parliament in October 2001, is presented in the following summary chart:

---

210 The National Program for the Adoption of the Acquis, Section 1.1 (unofficial translation).
211 Id. note 210, Section 2.
<table>
<thead>
<tr>
<th>Subject of reform</th>
<th>Accession Partnership requirement</th>
<th>National Program provision</th>
<th>Constitutional amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freedom of thought and expression</td>
<td>Strengthen legal and constitutional guarantees for the right of freedom of expression in line with Article 10 ECHR. Address in that context the situation of those persons in prison sentenced for expressing non-violent opinions.</td>
<td>The Turkish Constitution and relevant provisions in other legislation will be reviewed in order to enhance the freedom of thought and expression, in the light of the criteria referred to in Article 10 ECHR, including those concerning territorial integrity and national security.</td>
<td>Fifth paragraph of the preamble; Articles 13, 14, 20, 21, 22, 23, 28 69, 149.</td>
</tr>
<tr>
<td>Cultural life and individual freedoms</td>
<td>Remove any legal provisions forbidding the use by Turkish citizens of their mother tongue in TV/radio broadcasts. Promote equality between men and women.</td>
<td>The official language and the formal educational language of the Republic of Turkey is Turkish. This, however, does not prohibit the free usage of different languages, dialects and tongues by Turkish citizens in their daily lives. This freedom may not be used for the purposes of separatism and division. Reinforce in the Constitution the principle that men and women have equal rights.</td>
<td>Articles 26, 28, 31. Regarding gender equality: Articles 41, 66, 74.</td>
</tr>
<tr>
<td>Freedom of Association and Peaceful Assembly and Civil Society</td>
<td>Strengthen legal and constitutional guarantees of the right to freedom of association and peaceful assembly and encourage development of civil society</td>
<td>Enhance constitutional safeguards for non-governmental organizations and the institutions for social and economic democracy. Review any restrictions there may be on rights of labour unions and employers’ associations, and the relevant articles of the Constitution regarding the right to go on strike on justifiable grounds</td>
<td>Articles 33, 34, 51</td>
</tr>
<tr>
<td>Pre-trial detention</td>
<td>Further align</td>
<td>Review, in the medium</td>
<td>Article 19</td>
</tr>
<tr>
<td>Topic</td>
<td>Action</td>
<td>Article Amendments</td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
<td>--------------------</td>
<td></td>
</tr>
<tr>
<td>The functioning and efficiency of the judiciary</td>
<td>Improve the functioning and efficiency of the judiciary, including the state security courts in line with international standards. Strengthen in particular training of judges and prosecutors on EU legislation, including in the field of human rights.</td>
<td>19/6 of the Constitution, Articles 36 and 40 amended.</td>
<td></td>
</tr>
<tr>
<td>Abolition of the death penalty</td>
<td>In the short term, maintain a moratorium, in the medium term, abolish the death penalty, sign and ratify Protocol No. 6 ECHR. According to the Constitution of the Republic of Turkey only the Turkish Grand National Assembly is authorized to take the decision to enforce a sentence of capital punishment. The Turkish Government respects the practice of not infringing upon the essence of the right to life, upheld since 1984. (…) The abolition of the death penalty in Turkish law, its form and its scope will be considered by the Turkish Grand National Assembly in the medium term.</td>
<td>Article 38 amended.</td>
<td></td>
</tr>
<tr>
<td>Civilian-Military relations</td>
<td>In the medium term, align the constitutional role of the National Security Council as an advisory body to the Government in accordance with the practice of EU Member States. The National Security Council, which is a constitutional body, has the status of a consultative body in areas of national security. Relevant articles of the Constitution and other legislation will be reviewed in the medium term to define more clearly the structure and the</td>
<td>Article 118.</td>
<td></td>
</tr>
</tbody>
</table>
EU pressure on Turkey to abolish the death penalty did not end with the October 2001 constitutional amendment. Recall that since 1998 the EU explicitly demanded of all candidate states to sign and ratify Protocol No. 6 of the European Convention on Human Rights, as the requisite standard of compliance regarding this issue. Partially because of domestic difficulties (that are explored in detail in Section IV), the Turkish government did not proceed to adopt this standard independently. Nor did it put forward legislation that would bring it into line with EU demands until the run up to the December 2002 EU Copenhagen summit, where the Turkish government saw the possibility that its goal of obtaining a date for beginning of accession negotiations might be achieved. Meanwhile, the EU maintained its pressure consistently.

On March 14 2002 EU Commissioner responsible for enlargement, Guenter Verheugen visited Ankara and stated that although the October 2001 were an improvement “in the Turkish context”, they were “inadequate from the European perspective”. Referring to retention of the death penalty for terrorist crimes he stated that “We expect the next steps will address issues that were not addressed in areas like the death penalty”. Verheugen linked compliance on these issues with progress towards accession, stating that “the negotiation process and the timing are completely related to the progress seen in the country.”

Once again, therefore, Turkish response to EU demands for reform came about in the context of a calculation that immediate and significant progress on the road to accession may be made. This pattern of behaviour in August 2002 was reminiscent of the October 2001 reforms, where in anticipation of the Commission’s 2001 annual “progress report” that was due to be published in November, the Turkish government rushed the 34 article reform package through the Parliament. As the Financial Times Leader of October 5th 2001 noted: “approval of the constitutional amendments was rushed through the Parliament – after months of inaction – because of the pressure of the EU negotiating process: a “progress report” is due to be published in November. That shows the prospect of EU membership is driving the moves towards greater political liberalization in Turkey.”

With the analysis of EU-Turkish dynamics addressed, we now turn to examine alternative sources of international pressure on Turkey to abolish the death penalty.

**Death Penalty Abolition in International Law: No Ius Commune**

Contrary to the wishes of some well-meaning human rights activists and commentators, international law does not currently require nation-states to abolish the death penalty in their domestic legal systems. As one observer recently put it:

---

212 Turkish Daily News, *Turkey and the EU: Heading for a break?*, March 14 2002
“international human rights norms have not yet developed consensus regarding the abolition of the death penalty.”

This point – which otherwise might appear almost trite – is important to bear in mind when seeking to identify international sources of pressure on Turkey to comply with abolitionist standards.

The relative newness and weakness of modern human rights law, coupled with the arguments of retentivist countries that international intervention on such a sensitive matter as capital punishment constitutes unmerited interference with national sovereignty, have prevented the emergence of a strong abolitionist corpus juris at the global level. Indeed, international human rights law has evolved in a manner that favours ever-tighter restrictions on the use of the death penalty, rather than its outright abolition. In this vein, several resolutions of the UN General Assembly have called for the gradual and progressive restriction of the number and types of offences for which capital punishment may be imposed. Similarly, the International Covenant on Civil and Political Rights (ICCPR) – which was adopted by the UN General Assembly in 1966 and came into force on March 23 1976 – and the 1984 Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (ECOSOC Safeguards), call on countries to restrict the use of the death penalty to the most serious offences. A number of international instruments contain specific standards about crimes for which the death penalty should not be used. Thus, for example, the death penalty is conspicuously absent from the mandates of the international criminal tribunals for the former Yugoslavia and United States practices capital punishment while the international trend is towards abolition


217 Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty, GA Res. 44/128.


219 International Covenant on Civil and Political Rights, adopted December 19, 1966, UN Doc. E95-2 (1978), 999 UNTS 171, 175 (entered into force March 23 1976) (herein ICCPR). Article 6(2) ICCPR provides that “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime…” Article 1 of the ECOSOC Safeguards provides that “In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes, with lethal or other extremely grave consequences.”

220 At the regional level, where abolitionist instruments are most advanced, Article 4(4) of the American Convention on Human Rights (ACHR) for example states that the death penalty shall not be imposed “for political offences or related common crimes”. At the global level see for example UN Doc. No. CCPR/C/79/Add.5, paragraph 8, where the ICCPR Human Rights Committee statement that the imposition of the death penalty for offences which cannot be characterized as the most serious, “including apostasy, committing a third homosexual act, illicit sex, embezzlement by officials, and theft by force, is incompatible with Article 6 of the Covenant”. Similarly, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions statement that the death penalty “should be eliminated for crimes such as economic crimes and drug-related offences”, UN Doc. No. E/CN.4/1997/60, paragraph 91.
and Rwanda, as well as from the 1998 Statute of the International Criminal Court, which is designed to punish what are arguably the most heinous crimes of all – genocide, crimes against humanity and war crimes.221 International standards have also been put forward with the purpose of excluding certain categories of people from being potentially subject to capital punishment. Juveniles, the elderly, the mentally handicapped, pregnant women and new mothers in particular, have been accorded special protections in various international instruments.222 Still other international human rights treaties have introduced procedural safeguards to ensure that those tried for crimes that carry the death penalty receive a fair trial and have the right to appeal their sentence.223

However, with the sole exception of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (the Second Optional Protocol) – which was adopted by the UN General Assembly in 1989 and entered into force on July 11 1991 – there is currently no international instrument, at the global level, which requires its signatories to completely abolish the death penalty.224 In the closing months of 1994 the UN General Assembly was presented with a proposal to call for a worldwide ban on capital punishment by the year 2000. However, the idea was rejected at committee level, and did not survive long enough to be debated before the General Assembly.225 Turkey, which did not yet sign the ICCPR partly because of the restrictions imposed on the use of the death penalty by Article 6 ICCPR, has consequently avoided the more exacting standard of compliance suggested by the Second Optional Protocol.

**Death Penalty Abolition in Europe: Ius gentium**

Whereas at the global level, the abolition of the death penalty has not gained universal normative acceptance, within the domain of a number of regional human rights systems, more exacting rules regarding death penalty abolition have been

---


222 The exclusion of juvenile offenders (generally accepted as persons under the age of 18 at the time of the offence) is now very widely accepted, except in the U.S. See: N. Demleitner, *The Death Penalty in the United States: Following the European Lead?* 81 OR. L. REV. 131-159 (Spring 2002). The prohibition of sentencing juveniles to death has been set out in Article 6(5) ICCPR, Article 4(5) ACHR, Article 3 of the ECOSOC Safeguards, Article 37(a) of the Convention on the Rights of the Child, as well as the 4th Geneva Convention of 1949 Relative to the Protection of Civilians. The exclusion of the elderly (generally accepted as persons over the age of 70) pregnant women and new mothers is established variously in the ICCPR and the ECOSOC Safeguards. Regarding the mentally handicapped, Article 3 of the ECOSOC Safeguards provides that the death penalty shall not be carried out "on persons who have become insane". For commentary see: L. Kurki, *International Standards for Sentencing and Punishment*, in M TONRY AND R. FRASE (EDS.), *SENTENCING AND SANCTIONS IN WESTERN COUNTRIES* 331-347 (2001).

223 Procedural safeguards to be followed in all death penalty cases have been set out in Article 6 of the ICCPR and articles 2, 4, 5, 6, 7 and 8 of the ECOSOC Safeguards.


In particular, the Inter-American Human Rights system of the Organization of American States (OAS) and the European human rights system, are the only two regional systems to have produced conventions calling for the outright abolishing of the death penalty among their respective member states. The former regional system does not concern itself with Turkey. Within the European system—the significant actors, other than the EU itself, that are capable of exerting any meaningful forms of pressure on Turkey to abolish the death penalty are the Organization on Security and Cooperation in Europe (OSCE) and the Council of Europe (CE).

**The Organization for Security and Cooperation in Europe (OSCE)**
The OSCE (formerly CSCE) has exerted little meaningful pressure on Turkey to abolish the death penalty. Formed in June 1973 as part of the Helsinki Process, the OSCE was originally designed to serve as a forum for dialogue and negotiation between rival countries of the NATO and Warsaw pacts. As such, all OSCE decisions, declarations and other documents represent voluntary political undertakings and carry no legally binding authority. Furthermore, as long as the Cold War lingered on, the question of capital punishment—like many other human rights issues—was not considered an item to be placed on the organization’s real agenda. Indeed, the OSCE did not address the issue of capital punishment until 1989—by which time Turkey was maintaining a de facto moratorium on executions.

---


228 Another important regional organization is of course NATO. In recent years a number of statements have been made linking membership in NATO to the spread of democracy. (For example, former U.S. Ambassador to the U.N., Jeane Kirkpatrick stated that: “There is...only one reliable guarantee against aggression. It is not found in international organizations. It is found in the spread of democracy. It derives from the fact that true democracies do not invade one another and do not engage in aggressive wars...Preserving and strengthening democracies in Central and Eastern Europe should be the United States’ central goal and top foreign policy priority in Europe, in my opinion. Membership in NATO will help achieve those goals and strengthen the alliance.” Quoted in U.S. Congress, *The Debate on NATO Enlargement, Senate Committee on Foreign Relations, 105th Cong. 1st sess. 49* (October 1997)). However, since NATO is not concerned with the death penalty issue and has never exerted pressure on Turkey to abolish the death penalty, it is excluded from the discussion about European regional actors in this context. On NATO and democratization see: D. Reiter, *Why NATO Enlargement Does not Spread Democracy*, 25:4 Int’l Security 41-67 (2001). On Turkey and NATO see: A. L. Karaozmanoglu, *NATO Enlargement and the South: A Turkish Perspective*, 30:2 Security Dialogue 213-224 (1999).


230 The OSCE is the world’s largest security organization, comprising of 55 participating states. For information about the OSCE see: [http://www.osce.org](http://www.osce.org).


232 Turkey is a founding member of the OSCE. It signed the Helsinki Final Act on August 1, 1975 and the Charter of Paris on November 21 1990.
The first references to appear in OSCE documents regarding the question of capital punishment are contained in the Vienna Concluding Document of 1989 and the 1990 Copenhagen Document. While these documents introduced the matter of the death penalty to the catalogue of OSCE “Human Dimension” commitments, the substantive requirements they contain are weak – and do not amount to a demand for abolition. In the two documents, the participating states merely noted that capital punishment has been abolished “in a number of them”, and committed themselves: to impose the death penalty “only for the most serious crimes in accordance with the law imposed at the time of the commission of the crime and not contrary to their international commitments.”; to keep the question of capital punishment under consideration and to co-operate on the issue within “relevant international organizations”; to exchange information on the question of the abolition of the death penalty and to make available to the public information regarding the use of the death penalty. These commitments were subsequently reaffirmed at the OSCE’s Moscow Meeting (1991), the Helsinki Summit (1992) and Budapest Summit (1994), but no additional ones were made. Still, some normative pressure to abolish the death penalty has emanated from various OSCE meetings throughout the 1990s, though none that targeted Turkey in particular. The issue was raised at the implementation meetings in 1993 and 1995, but again there was no significant evolution in the Organization’s position. At the 1997 Implementation Meeting a recommendation on abolition was adopted, but it merely called on the participating states to “consider introducing measures aimed at facilitating the exchange of information on the question of the abolition of capital punishment...”.

At the 1998 Implementation Meeting a recommendation was put forward to urge all OSCE countries to abolish the death penalty (with specific concerns raised regarding the execution of juveniles and the mentally retarded). During the 1999 Review Conference, held in Vienna and Istanbul, steps towards the abolition of the death penalty taken by several OSCE participants were noted. The conference produced numerous calls for the abolition of the death penalty, but most of these were confined to the establishment and maintenance of a moratorium on executions.

In an official survey prepared by the OSCE’s Office of Democratic Institutions and Human Rights (ODIHR) in March 2000, the Organization records that as of December 31 1999, 15 out of its 55 participating states, including the U.S., had not completely abolished the death penalty. Regarding Turkey, it merely describes the legal reality in the country prior to abolition, and does not contain a single word of disapproval or suggestion that Turkey should formally abolish the death penalty. The survey summarises the policy of the OSCE on capital punishment, stating that: “There

---

234 Document of the 1990 Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, paragraphs 17.7 and 17.8.
238 The fifteen noted are: Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Kazakhstan, Kyrgyzstan, Latvia, Malta, the Russian Federation, Tajikistan, Turkey, Ukraine, the United States and Uzbekistan. See: OSCE/ODIHR, THE DEATH PENALTY IN THE OSCE AREA: A SURVEY (2001)
has never been a formal consensus within the OSCE concerning the abolition of capital punishment, and countries that apply the death penalty with stringent procedural safeguards and due process of law do not violate OSCE commitments.\textsuperscript{239}

\textbf{The Council of Europe (CE)}

A more compelling argument could, \textit{prima facie}, be made in favour of the view that if any external actor has been responsible for influencing Turkey’s decision to abolish the death penalty, it is the Council of Europe (CE), rather than the EU. Indeed, the CE has served as the institutional framework within which much of the modern European regional system of human rights was developed, and has led the campaign to make Europe a “death-penalty-free zone”.\textsuperscript{240}

In the aftermath of the Second World War and in response to Winston Churchill’s call for a “kind of United States of Europe”\textsuperscript{241}, the Council of Europe was established in 1949 to provide a regional framework that would promote democracy and the rule of law, as well as the “maintenance and further realization of human rights and fundamental freedoms.”\textsuperscript{242} In contrast to the EU, which was originally meant to provide peace through economic integration, the CE was from its inception intended to be a “community of values guided by the ideas of democracy, rule of law and human rights”.\textsuperscript{243}

Further, the Council has been applying normative and political conditionality pressures regarding the death penalty issue (on both participating states and prospective members), for considerably longer than either the EU or the OSCE. Capital punishment first appears on the agenda of the CE in 1957.\textsuperscript{244} By 1962 it endorsed a major report condemning the use of the death penalty\textsuperscript{245} and in 1973 the Consultative Assembly of the CE prepared a draft resolution which asserted that the death penalty must be considered inhuman and degrading, and therefore contrary to Article 3 of the ECHR.\textsuperscript{246} The draft resolution encountered staunch opposition, inspired largely by Conservative British delegates, who invoked growing problems with terrorism and argued that the death penalty was still necessary as a deterrent for such “new crimes”.\textsuperscript{247} The matter was put aside for a number of years, but was revived in 1979 by the Committee of Legal Affairs and by the Conference of European Ministers of Justice in 1980.\textsuperscript{248}

\textsuperscript{239} OSCE/ODIHR, THE DEATH PENALTY IN THE OSCE AREA: A SURVEY (2001)


\textsuperscript{241} The Speech was delivered at Zurich University on September 19, 1946, in R. JAMES (ED.), WINSTON CHURCHILL – HIS COMPLETE SPEECHES 73-79 (1973).

\textsuperscript{242} Article 1, Statute of the Council of Europe, May 5 1949, European Treaty Series 1. For an historical overview see the Council of Europe’s informative website, at: http://www.coe.int/portalT.asp (last visited: March 10, 2003).


\textsuperscript{244} The matter was first raised in the European Committee on Crime Problems, an institution of the Council of Europe. See: W. SCHABAS, THE ABOLITION OF THE DEATH PENALTY IN INTERNATIONAL LAW 279 (3rd ed., 2002).

\textsuperscript{245} M. Ancel, The Death Penalty in European Countries, COUNCIL OF EUROPE (1962).

\textsuperscript{246} Council of Europe, Consultative Assembly, Doc. 3297.


\textsuperscript{248} This "revival" came after a failed attempt to reintroduce capital punishment in England and Wales in 1977 and a powerful declaration against the death penalty produced by an Amnesty International
In 1979 the Committee of Legal Affairs, led by Swedish rapporteur Carl Lidbom, produced a report calling for Article 2 ECHR to be amended in order to require CE member states to abolish capital punishment. At the same time it also presented draft Resolution 727 to the Parliamentary Assembly, urging the legislatures of all retentionist Member States (including Turkey) to abolish the death penalty for crimes committed in peacetime. Lidbom argued before the Assembly that retention of the death penalty was contrary to Human Rights law, and pointed out that with the exception of France and Turkey, in the seven of the (then) twenty-one members of the Council of Europe that retained the death penalty on their statute books, it has not been applied in practice for many years.

Turkish members of the Assembly responded with varying degrees of opposition to the propositions. Turkish representative Karamollaoglu declared his outright rejection of draft Resolution 727. Another Turkish representative, Aksoy, said he supported the idea of abolition “in principle”, but that the proposed resolution, as drafted, it did not account for the particular circumstances of Turkey. Aksoy submitted that differing economic, social and political circumstances prevented the imposition of a uniform standard across CE Member States. He asserted that if Turkey was in the position of the Swiss, Norwegians, Swedish, Austrians or Germans, he would wholeheartedly support the total abolition of the death penalty, yet in a country like Turkey – where political turmoil and terrorism are rife – the outright abolition of the death penalty was impossible. Aksoy submitted an alternative draft recommendation, which he saw as giving effect to these circumstances. Amendment No. 2 to Document 4509 read:

“Recommends that the Committee of Ministers amend Article 2 of the European Convention on Human Rights to the following effect:

i. The death penalty shall be abolished in the member states of the Council of Europe.

ii. The death penalty may, however, be kept during peacetime for organized murder in those member states in which people are frequently assassinated by terrorist acts because of their political opinions and where the right to life of all people is thus seriously threatened.”

Aksoy was not, however, present at the time when Resolution 727 was voted on, and his proposed amendment was withdrawn.

Given the difficulty in rallying support for an amendment to Article 2 ECHR that would abolish the death penalty in all CE member states, the proponents of abolitionism in the CE shifted their approach. In 1980 two committees – the Steering Committee on Human Rights and the European Committee on Crime Problems –
prepared a joint opinion, recommending that an optional Protocol be added to the ECHR. During the committee meetings the United Kingdom and Turkey were the only two member states to manifestly oppose the idea of any protocol. Turkey justified its position by claiming that its own internal social and political circumstances prevented it from abolishing the death penalty. Despite British and Turkish opposition, the CE’s Steering Committee on Human Rights was mandated by the Committee of Ministers to prepare a draft protocol concerning the abolition of the death penalty “in time of peace”. The text of the protocol was adopted by the Committee of Ministers in December 1982, and on April 23 1983 Protocol No. 6 to the ECHR was signed by twelve CE member states.\footnote{254} The protocol came into force on March 1 1985.\footnote{255} As already indicated, Turkey did not sign Protocol No. 6 until January 15 2003.

The failure of the Council of Europe to get Turkey to comply with the norm imbued in Protocol No. 6 cannot be attributed to lack of effort on its part. Throughout the latter part of the 1980s and the 1990s, the CE has become increasingly committed to the abolition of the death penalty, viewing it as “the litmus test for belonging to a civilized European family of states”, and deeming it one of the “top priorities” of the organization.\footnote{256} This has been reflected in numerous CE official statements and resolutions.\footnote{257} For example, in 1994 the Parliamentary Assembly adopted a Resolution calling upon all Member States that have not yet done so to ratify Protocol No. 6, and praised Greece, which abolished the death penalty in the previous year for all crimes committed in wartime, as well as in peacetime.\footnote{258} In Resolution 1187 (1999) of May 26 1999, the Parliamentary Assembly reaffirmed earlier resolutions, stating that the death penalty “has no place in civilized, democratic societies governed by the rule of law.”\footnote{259} Similarly, Resolution 1253 (2001) of the Parliamentary Assembly – which is concerned with the death penalty in countries that hold observer status in the CE (including the U.S. and Japan) – declares that:

“The Parliamentary Assembly of the Council of Europe reaffirms its complete opposition to capital punishment. The Assembly considers that the death penalty has no legitimate place in the penal systems of modern civilized societies, and that its application constitutes torture and inhuman or degrading punishment within

\footnote{254}{Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty, Strasbourg, April 28 1983, European Treaty Series 114. The original signatories were: Austria, Belgium, Denmark, France, Germany, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and Switzerland.}
\footnote{256}{President of the Council of Europe, Daniel Tarschys, January 20 1990, quoted in Foreign Broadcast Information Service (FBIS), East Europe, March 5 1999.}
\footnote{257}{Parliamentary Assembly Document 3297 (1973); Parliamentary Assembly Document 4509 (1980); Parliamentary Assembly Resolution 727 (1980); Parliamentary Assembly Recommendation 891.}
\footnote{258}{Council of Europe, Parliamentary Assembly Resolution No. 1044 (1994), October 4 1994.}
\footnote{259}{PACE Resolution 1187 (1999), Europe: A Death Penalty-free Continent, OFFICIAL GAZETTE OF THE COUNCIL OF EUROPE (May 1999).}
the meaning of Article 3 of the European Convention on Human Rights.”

Thus, the CE has consistently applied normative pressure to both Member States and non-Member States.

However, for the reasons outlined below, such normative pressure has generally evaded Turkey – and was directed instead towards countries such as Albania, Belarus, Latvia, Russia and especially Ukraine, who between the years 1996 and 2000 either continued executing prisoners or were deemed by the CE to be otherwise in contravention of their commitments. The sole exception identified to this general picture came in February 1999, when President of the Parliamentary Assembly, Lord Russell-Johnson visited Ankara to discuss with Turkish authorities the conditions of Abdullah Ocalan’s detention and trial conditions, and called for “the speeding up of parliamentary procedure to amend the Turkish laws on the death penalty”.261

Since the 1993 Vienna Summit – which defined the political criteria for accession to the CE and established an improved monitoring procedure262 – the Council has employed membership conditionality to try to influence the formerly communist countries of Central and Eastern Europe who were seeking admission to “democratic” and “European” regional organizations, to abolish the death penalty.263 Following the recommendation of a 1994 report by rapporteur Goran Franck, the CE Parliamentary Assembly adopted Resolution 1044 (1994) on October 4 1994, for this purpose. In practice the Resolution prescribed that countries seeking admission to the CE as full members must institute a de facto moratorium of executions at the time of accession and demonstrate a “willingness” to sign and ratify Protocol No. 6 of the ECHR. As Rick Fawn recently argued:

“The test of the compliance of countries to abolition of the death penalty is worthwhile because membership of the Council of Europe is significant in its own right, for it is seen as the hallmark of a society being democratic and European. Of more practical significance, the Council of Europe is also the starting point for post-communist countries to seek entry into other, more materially beneficial institutions, such as the European Union and North Atlantic Treaty Organization.”264

With the sole exception of EU accession, the same logic cannot be applied to Turkey. As a country that has been a full member of the CE since April 13 1950 (three months earlier than newly democratic Germany) and NATO member since 1952, the CE’s

261 See: Council of Europe Press Office, Ocalan: Parliamentary Assembly President to visit Turkey next week, February 19 1999.
262 For background on the Vienna Summit and details of these procedures see the memorandum prepared by the Secretary General’s Monitoring Unit, Monitoring Procedure of the Committee of Ministers on the Theme of Capital Punishment, CM/Monitor (2000)3, AS/Inf. (2000)2.
membership conditionality policy did not apply to Turkey. In addition, since by 1994 Turkey has been maintaining a de facto moratorium on executions for a decade, it did not stand out as being in violation of its CE membership obligations, and was essentially viewed by the CE as being in compliance with the standards required by Resolution 1044.

Furthermore, the legitimacy and credibility of CE membership conditionality with regards to the abolition of the death penalty, has been undermined by a number of factors, so that its persuasive value has been diminished. First, in adopting Resolution 1441, the Assembly decided that the “willingness to ratify” Protocol No. 6, but not signature or ratification itself, was to be a pre-requisite for CE membership. Subsequent to accession, candidate states were to ratify the abolitionist protocol within three years, but doing so was not made a strict requirement for admission itself. Subsequent CE statements and decisions reaffirmed this lower standard of compliance. For example, a Committee of Ministers decision from January 16 1996 asks that the CE “encourage” member states that have not abolished the death penalty “to operate de facto or de jure moratorium on the execution of death sentences.” However, it does not explicitly link such a moratorium with accession deadlines or identify it as a specific membership requirement. Similarly, Parliamentary Assembly Resolution 1302 (1996) recommended that “the attitude of applicant states towards the death penalty” be “taken into account” when the Council of Europe deliberates granting admission. Second, in its decision of January 16 1996, the Committee of Ministers decided that the immediate political priority vis-à-vis countries that by then have already applied for admission (such as the Baltic republics, Moldova and Bulgaria) was moratoria on executions, to be consolidated later by complete abolition of the death penalty, over a period of a few years. By contrast, those countries (like Armenia and Azerbaijan) that applied for CE membership after August 1996, were subjected to higher standard of having to ratify Protocol No. 6 ECHR prior to formal accession. These varying standards led to accusations that the CE was “moving the goal posts”, creating contradictory requirements and sending mixed signals to applicant states.

More significantly still, as the CE was in a phase of rapid expansion during the 1990s, it admitted several new members that not only retained the death penalty on the statute book, but still imposed it. In this context, the relationship between the CE and Ukraine has been particularly problematic. On joining the CE in November 1995, Ukraine pledged to impose a moratorium on the use of capital punishment. The

266 For detailed commentary on this subject see: R. Wohlwend, The Effects of the Parliamentary Assembly of the Council of Europe, in COUNCIL OF EUROPE, THE DEATH PENALTY ABOLITION IN EUROPE 55-69 (1999); P. Hodgkinson, Europe – A Death Penalty Free Zone: Commentary and Critique of Abolitionist Strategies, 26 OHIO NORTHERN U. L. REV. 625-665.
267 Point 1 of the Decision of the Committee of Ministers, January 16 1996.
269 See: R. Faww, Death Penalty as Democratization: Is the Council of Europe Hanging Itself? 8.2 DEMOCRATIZATION 69-96 (Summer 2001).
270 Those countries that applied for membership after August 1996 (such as Armenia and Azerbaijan) were subjected to tighter political conditionality requirements. For these countries de jure adoption of Protocol No. 6 was made a pre-condition for accession.
Parliamentary Assembly had made its announcement in favour of Ukrainian membership conditional on Ukraine putting “into place, with immediate effect from the day of accession, a moratorium on executions”. In 1996 the Assembly admonished Ukraine for not honouring this commitment, and warned it of consequences that would ensue in case of further breaches. During that year, the official records of the Ukrainian Interior Ministry documented 170 executions. Following reports that Ukraine had clandestinely executed a further thirteen people in 1997, CE officials expressed their distrust of the promises made by the Ukrainian authorities, and several motions threatening the annulment of the Ukrainian delegation’s credentials were put forward and pursued. The matter was only resolved after the Ukrainian Constitutional Court ruled the death penalty to be unconstitutional and effectively compelled Ukraine’s legislator to enact a law abolishing the death penalty – which it eventually did on February 22, 2000. Similarly, between 1997 and 2002, the Council also challenged Albania, Belarus, Latvia and Russia, over their commitment to abolish the death penalty. During this time, therefore, Turkey has not attracted significant attention from CE sources regarding the death penalty.

The final indication that the CE has not been instrumental in persuading Turkey to abolish the death penalty, relates to the standard of compliance that it now seeks from its Member States. In this context, it is useful to recall that Turkey has agreed to abolish the penalty in peacetime; the exact normative standard prescribed by Protocol No. 6 ECHR and demanded by the EU, as a precondition for commencing accession negotiations. It has retained the possibility of applying sanction of death during times of war or imminent threat of war. In contrast, the CE has now gone on to propose a higher standard of compliance with abolitionist norms. At the CE’s Ministerial Conference – held in Rome in November 2000, to commemorate the 50th anniversary of the adoption of the ECHR – a resolution was adopted calling upon the Committee of Ministers to “consider the feasibility of a new additional protocol to the Convention which would exclude the possibility of maintaining the death penalty in respects of acts committed in time of war or of

271 Council of Europe, Opinion No. 190 on the Application by Ukraine for Membership of the Council of Europe.
274 See for example report of rapporteur Renate Wohlwend, Honouring the Commitments by Ukraine to Introduce a Moratorium on Executions and Abolish the Death Penalty, Document No. 7974, December 23 1997.
275 See for example: warning delivered by the Parliamentary Assembly, Resolution 1097 (1996) paragraph 2; Resolution 1112 (1997); Resolution 1145 (1998); Resolution 1194 (2000).
276 See: Parliamentary Assembly Resolution 1111 (1997), suspending Belarus’s special guest status following the adverse constitutional changes introduced by President Lukashenko, and criticising Russia for reports of continued executions. See also: Council of Europe Press Release, Russia and the death penalty, May 31 2001 (available at: http://www.coe.int/t/e/communication_and_research/pr/e_cp387) (last cited: March 13 2003); Council of Europe Press Release, Belarus executions – Council of Europe Secretary General calls for death penalty ban, March 8 2002 (available at: http://www.coe.int/t/e/communication_and_research/pr/e_cp128); R. Fawn, Death Penalty as Democratization: Is the Council of Europe Hanging Itself? 8.2 DEMOCRATIZATION 69-96 (Summer 2001).
imminent threat of war.” Sweden took up the initiative and presented a draft Protocol in December 2000, which essentially removes the derogation contained in Article 2 of Protocol No. 6 – thus abolishing the death penalty in all circumstances. The draft Protocol was adopted by the Committee of Ministers on February 21, 2002, and was opened for signature by the Member States, in Vilnius, on May 3, 2002. On that day 36 of the 44 Member States signed Protocol No. 13 ECHR. Turkey was not represented at the Vilnius event, and did not sign Protocol 13. To date Turkey has not made any indication that it intends to sign Protocol 13 in the future. It remains to be seen whether Turkey will adopt a more stringent abolitionist standard than it was strictly required to do by the EU.

**Chart No. 2:**

**Human Rights Conventions requiring abolition of the Death Penalty: Turkey’s compliance record**

<table>
<thead>
<tr>
<th>Adherence to the following conventions and protocols</th>
<th>International actor seeking compliance with norm</th>
<th>Convention signed/ratified?</th>
<th>Open for signature/ratification. Timing of actual signature/ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Covenant on Civil and Political Rights, Optional Protocol No. 2</td>
<td>United Nations</td>
<td>No</td>
<td>1989 ---</td>
</tr>
<tr>
<td>Protocol No. 6 European Convention of Human Rights</td>
<td>Council of Europe (since 1983) and the European Union (since 1999 – linked to candidacy status)</td>
<td>Yes</td>
<td>1983 2003 (signed)</td>
</tr>
<tr>
<td>Protocol No. 13 European Convention of Human Rights</td>
<td>Council of Europe</td>
<td>No</td>
<td>2002 ---</td>
</tr>
</tbody>
</table>

**Chart No. 3:**

**Instruments of influence and communication: European Organizations**

<table>
<thead>
<tr>
<th>EU</th>
<th>CE</th>
<th>OSCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>The annual Council summit decisions about enlargement</td>
<td>Secretary General can visit and/or make statements</td>
<td>Secretary General can visit and/or make statements</td>
</tr>
<tr>
<td>Presidency and Commissioners make declarations on specific</td>
<td>Council of Ministers can discuss specific issues, make</td>
<td>Comments by country holding OSCE presidency</td>
</tr>
</tbody>
</table>

---

277 Resolution IIB, paragraph 14(ii).
278 Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances.
279 The signatory countries are: Andorra, Austria, Belgium, Bosnia-Herzegovina, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovenia, Spain, Sweden, FYROM, Ukraine and the UK. Ireland, Malta and Switzerland signed and ratified Protocol No.13 ECHR.
issues ("Demarches") | statements/press releases | Occasional fact finding teams
--- | --- | ---
Regular, detailed Commission reports | Parliamentary Assembly can criticize a country through adoption of resolutions (may be collective or by a few countries only) | 
Comments by senior officials with influence on the enlargement process | 
European Parliament can commission detailed studies on any issue, can criticize a country by adopting resolutions, can participate in inter-parliamentarian committees | Some legal advice and democracy promotion programs | Democracy promotion programs, seminars and workshops | Can provide expert advice on legal reform, capacity building and implementation | 
Association Agreement institutional structure provides forum for meetings at Ministerial, senior-official and expert level | European Court of Human Rights, while much slower, can be used to address countries’ violations of commitments | Can withhold trade and aid benefits and privileges | 

**Chart No. 4:**

*Typology and variation of institutional involvement*

<table>
<thead>
<tr>
<th>EU</th>
<th>CE</th>
<th>OSCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can offer membership (with higher levels of prestige and prosperity)</td>
<td>Yes</td>
<td>No (already admitted)</td>
</tr>
<tr>
<td>Can reward candidate country with intermediary steps to membership (inclusion in programs, financial aid, expertise)</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Can increase prosperity via trade, loans, aid etc.</td>
<td>Yes</td>
<td>Not directly</td>
</tr>
<tr>
<td>Can influence decisions of other international institutions (IMF, World Bank) who in turn may increase prosperity</td>
<td>Yes</td>
<td>Sometimes</td>
</tr>
<tr>
<td>Can offer advice and expertise on law reform</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Democracy and Human Rights at core of institution</td>
<td>Some (increasing)</td>
<td>Yes</td>
</tr>
</tbody>
</table>

**SECTION IV: DOMESTIC DYNAMICS AND INFLUENCE ON THE INTERNAL DEBATE**

Having dealt with the range of external pressures on Turkey to abolish the death penalty, and explored the circumstances and conditions in which such pressures by international organizations have been variously effective, this section returns to
analyse the main domestic features of the death penalty question in Turkey. The purpose of the discussion is dual: first, to consider whether Turkey’s signature of Protocol No. 6 ECHR could faithfully be explained with primary reference to EU membership conditionality, rather than alternative domestic considerations (the alternative international considerations having been addressed already).

The picture emanating from the data collected regarding this question is predictably somewhat mixed; but the overwhelming indication is that the prospect of progress towards EU accession, coupled with credible membership conditionality in the areas of democratic and human rights, played a determinative role in the process leading to the adoption of the reforms. On the one hand, the ending of hostilities between Turkish forces and the PKK following the capture of PKK leader, Abdullah Ocalan, and the outpouring of sympathy and aid to Turkey (notably by Greece), following the September 1999 earthquake, created an atmosphere in Turkey that was conducive to reform. At the same time, however the period surrounding the October 2001 and August 2002 decisions by the Turkish Parliament, demonstrates some powerful domestic opposition to abolition, at both elite and popular levels. Much, but not all, of this opposition is linked, directly or indirectly, to the trial and sentencing to death of Ocalan in 1999-2000 and, after September 11th 2001, to renewed fears about terrorism and a tougher security discourse in Turkey.

Second, to better understand why the policy outcome (i.e. abolition) was nevertheless achieved – in compliance with EU norms, rather than with the preferences of some dominant domestic actors – the discussion explores the impact which the perceived prospect of Turkey’s inclusion in the EU, particularly in the run up to the Copenhagen Council summit in December 2002, had on the Turkish public and political representatives. This sphere of inquiry is thus concerned not with when membership conditionality can impact domestic policy, but how it might do so, and what shape might this impact take.

The domestic analysis begins with an examination of the actual significance of abolition for Turkish society, in legal, political and cultural terms. Understanding the various meanings that the abolitionist reforms undertaken in October 2001 and August 2002 carry, is central for an accurate assessment of the costs, material and symbolic, of this shift in policy - at both political-elite and popular levels. This assessment of costs is, in turn, a precondition for understanding the true impact of EU membership conditionality on the domestic context.

The significance of abolition

At first glance, the decision to abolish the death penalty, as endorsed by the Turkish Parliament, may be interpreted by some as a “low cost”, almost technical piece of reform. After all, Turkey has maintained a de facto moratorium on executions since October 25th, 1984.280 However, as the following paragraphs suggest, such a reading would be seriously distorted; missing the real material and symbolic significance of abolition in Turkey, with its various aspects and layers. Certainly, the abolition of the death penalty is not the only important change achieved by the October 2001 to

January 2003 set of reforms; and in the longer term other clauses may well prove to be more significant to human rights and the consolidation of democracy. However, given the novelty of the reforms and the need for extensive implementation and monitoring for many of them, their analysis remains to be undertaken in future work.

The implication of abolishing the death penalty can be understood in universal, humanity-wide terms, as well as within a particularistic national context in which it takes place. At the universal level, the de facto and de jure abolition of the death penalty is a momentous occasion in the life of any human society. Few issues are as ethically charged and as politically delicate, as the enormous literature on the subject clearly shows. In the words of one Council of Europe member: “Of all the struggles for the development of human rights and for the respect of human dignity, the one to abolish the death penalty seems the hardest to win.”

This is not only because of the fundamental primacy of matters of life and death in moral and political discourse, but because the death penalty is not simply about death. It is about death decreed and administered by the state, on behalf of the entire community, against an individual member of the community. Thus, the death penalty issue goes to the very heart of relations between state, society and individual; between the governing and the governed.

While abolition carries with it a powerful universal message, the material and symbolic significance of abolition varies from country to country. In France it marked the end of a long incremental process away from guillotine politics. In Central and Eastern Europe, it became synonymous with the demise of communist repression and the dawn of a new democratic era. In South Africa it was symptomatic of the end of Apartheid. In Rwanda and Bosnia-Herzegovina it is intertwined with broader international efforts at post-conflict reconciliation and reconstruction. In Turkey, it is reflective of the country’s willingness to harmonize its domestic human rights and democratic standards with those of EU member states, to “Europeanize” further, in order to gain admission to the EU as a full member. Indeed, the decision to abolish touches on several internal aspects of political culture and power dynamics in Turkey, all relating to nature of Turkish society and its future.

Since the foundation of the Republic of Turkey in 1923, at least 588 people have been executed in Turkey for ordinary and political crimes. As Mehmet Semih Gemalmaz recently showed, from 1920 to 2001 there has been both a “vertical expansion” in reliance on the death penalty – i.e. an increase in the use of death penalty provisions in successive Turkish constitutions – and a “horizontal expansion” – defined as “the enlargement of the applicability of death penalty provisions either in basic criminal codes or relevant laws…”. Historically, the tendency has been towards an expansion of the number and type of legal provisions that carried with them the death sentence. As Gemalmaz concludes: “Among the laws that set out the death penalty, there is a trend to increase the number of provisions extending the scope and making the applicability of capital punishment easier and/or mandatory.”

In terms of historical legal development, therefore, the October 2001 and August 2002 reforms, represent the breaking off of a long-term trend marked by increased use of the death penalty.

Furthermore, while there has been a de facto moratorium on executions since 1984, Turkish courts have continued to impose death sentences on convicted persons. Beginning in 1920 the final say regarding implementation of death sentences has been a prerogative of the Grand National Assembly – the Turkish parliament – not the courts. Once condemned to death by a court, a prisoner’s file is sent for the approval of parliament, which is authorized to approve it by a legislative act. Since 1984 parliament generally did not vote on death sentences brought before it for approval, but it has retained the power to do so; wielding the threat of execution over each and every prisoner condemned to death by a civil or military court; a situation which in itself is considered by human rights activists to constitute cruel and inhumane treatment of prisoners.

According to Amnesty International figures, in 1996 at least 10 death sentences were passed by Turkish courts. In 1997 at least 48 death sentences were passed. In 1998 the figure was 21. In the first six months of 1999, 7 new death sentences were passed by Turkish courts, including the death sentence against PKK leader Abdullah Ocalan, his former deputy and the latter’s brother. During this period the number of files pending before parliament was even greater. In 1991, 254 death row files came before parliament. In January 1997 there were 118 prisoners under a death sentence. In June 2000 the Minister of Justice stated that 74 individual case files were pending before parliament. As late as August 22nd 2001, Turkish dailies reported that the
number of pending cases pending before parliament has increased to 65, covering a
total of 116 prisoners on death row.\textsuperscript{296} In September 2002 an Amnesty International
report recorded that as of July 2002 at least 36 death sentences had been passed in
2002, of which only three were for criminal offences.\textsuperscript{297} On the day prior to formal
abolition, the Washington based Turkish Times reported 50 death row inmates.\textsuperscript{298}
Clearly, for many in Turkey, the formal abolition of the death penalty has not been a
matter of technicality.

Another legal aspect concerns the constitutional nature of abolition (as well as all
other October 2001 reforms). As Turkish affairs expert, Amikam Nachmani observes:

“To grasp the significance of [abolition]…you also need to
remember that it was done by a constitutional amendment, and to
realize the tremendous sensitivity surrounding any kind of
constitutional change in Turkey. A review of the Constitution
opens up for debate the legitimacy of the 1982 Constitution, its
military origins etc…This is very uncomfortable for the Turkish
government, as well as for the military…Also, once you open for
debate some constitutional articles, why not discuss others? It
makes the government vulnerable and it upsets the fragile balances
that keep Turkey coherent. This is why the Turks have had so few
constitutional changes since 1982, and shows that these EU
reforms are so important for the Turkish, that they are willing to
risk such a constitutional debate.”\textsuperscript{299}

This statement is corroborated by other expert testimonials, both inside and outside
Turkey.\textsuperscript{300} For instance, one senior Israeli diplomat also emphasised the
precariousness of the recent constitutional reforms:

“The amending of the Constitution is the most difficult thing for
the Turks. The Turkish Constitution is the basis of its democracy,
the legacy of Ataturk. The Constitution is important to the Turks,
and changing it involves a lot of discomfort and pain…The
liberals, the pro-Europeans, they also fear changing the
Constitution, because there are constant tensions between the
legacy of Ataturk and various other forces, Islam, the ultra-
nationalists.”\textsuperscript{301}

But perhaps the most significant aspects of abolition are embedded in the complex
collective psychology and symbolic meaning attributed to it in Turkish political

\textsuperscript{296} Milliyet, August 22 2001, 19; Radikal, August 22 2001, 5. The Turkish Times reported a lower
figure of 50 death row prisoner

\textsuperscript{297} Amnesty International, Turkey: Briefing on the present state of human rights development during
the pre-accession process, EUR/44/041/2002, 4.

\textsuperscript{298} The Turkish Times, August 1, 2002

\textsuperscript{299} Interview with Dr. Amikam Nachmani, Department of Political Science, Bar-Ilan University, Israel,
January 10, 2002.

\textsuperscript{300} For a detailed discussion of the politics of constitutional change in Turkey see: E. OZBUDUN,

\textsuperscript{301} Interview, Gilead Cohen, First Secretary (Political), Israeli Embassy, Ankara (1998-2001). January
11, 2002.
culture. As Soner Cagaptay, Director of the Turkish Research Program at the Washington Institute for Near East Policy asserts:

“The abolition of the death penalty in Turkey holds a strong iconic quality. It means far more than any ordinary legal reform, because it is above all a symbolic choice of direction, indicating a shift in the state’s mentality…[It is] a watershed, signalling to Turkish society, Europe and the world at large that Turkey is changing, that politics in Turkey is undergoing a process of maturation…of accepting the new European practices of human rights over traditional nationalist politics…opening up and letting go of the authoritarian past.”  

This “package of meanings” is made up of a multitude of interrelated, often interdependent, political and cultural factors. For almost eighty years Turkey has been characterized by an extreme “strong state” mentality, in which the state apparatus is pervasive in all aspects of life. The model of Turkey as a secular, Western-oriented society was promoted – very successfully – from the top down, implemented through powerful state institutions, wielding an array of political, security and economic instruments. According to several experts, the availability of the death penalty in the hands of the state epitomized the pervasiveness of state control and ability to administer its will. As one expert in Turkish affairs put it:

“[Although] the Parliament did not use this punishment for some time, it was there, like a sword hanging on the wall… For us the death penalty was a brutal example of a bigger weakness with the Turkish state, that is its ability to interfere in areas of political and private life. Abolishing the death penalty is a positive step. It shows that maybe the military and other central government elements are accepting that there should be areas of life where the state will not be able to step in.”  

The linkage made in this statement between the role of the military and the death penalty, is strongly reinforced by historical experience. As a 1999 Amnesty International report on the death penalty in Turkey asserts: “In recent Turkish history there has been a tendency for executions to follow military coups”. Indeed, as Gemalmaz argues, the use of capital punishment in Turkey has been, to a great degree, intertwined with political upheaval and violence: “It may be speculated that, if the three military take-overs had not been experienced over the last forty years, there would indeed have been a limited application of capital punishment.”

The employment of the ultimate sanction by the military, as means of political control, reached a climax following the 1960 coup, when Prime Minister Adnan Menderes and two of his ministers, were publicly hanged. After the 1971 coup, three...

---

303 Interview with Dr. Amikam Nachmani, Department of Political Science, Bar-Ilan University, Israel, January 10, 2002.
305 Mehmet Semih Gemalmaz, Id. note 287, at 111.
leaders of a radical student group were executed. Between 1973 and 1980 a de facto moratorium on executions existed, with death sentences continuing to be passed by courts, but not confirmed by Parliament. This moratorium – formally identical to the situation prior to the October 2001 and August 2002 reforms – ended abruptly after the military coup of September 12 1980. Between October 1980 and October 1984, 50 people were executed; 27 having been convicted of politically related offences. The vast majority of these were tried and convicted by military courts, which did not meet international standards of fairness. Given this history, it is not surprising that the formal abolition of the death penalty is associated in the minds of those interviewed, with more democratic civil-military relations. As one Turkish academic put it:

“Since the use of the death penalty is historically linked to military intervention and removal of political opposition, the removal of the death penalty itself sends a positive message that the army is now ready to forgo some powers. We will have to see if this proves to be true in the long run, but one thing is real… because there was this long debate in Turkey about removing the death penalty from the law, and a decision was made to do this in fact, the new law will act as a protection against use of the death penalty even if the political situation becomes unstable again. It was very hard to abolish the death penalty, but returning it will be even harder. This will mean a war on democracy for us.”

Although evidence regarding this question remains scarce, the military is reported to have objected to some key aspects of the recent reforms, including the abolition of the death penalty, and the removal of bans on use of Kurdish in broadcasting and education. To the degree that military opposition to constitutional reform was genuine, the fact that the Turkish Parliament nonetheless went ahead with them is remarkable, and may represent a genuine shift in military-civilian relations.

Another complex set of concerns, in this context, relate to religious-secular relations in Turkey. While the practice of capital punishment is by no means greeted with unanimous and unqualified support throughout the Moslem world, almost all countries with an overwhelmingly Moslem population are retentionist in practice and/or in law. As Robert Postawko recently noted: “In general, Muslim nations recognize the validity of the death penalty, and many frequently impose it.” The propensity to accept the death penalty is most commonly justified on religious and cultural grounds. For instance, in the 1994 debate on a draft resolution against the death penalty, introduced by Italy in the UN General Assembly, Sudan described capital punishment as a “divine right according to some religions, particularly

306 Interview with Selim Levy, Lecturer in Law, Faculty of Law, Istanbul Bilgi University, Istanbul, January 21 2003
308 See: R. Postawko, Towards an Islamic Critique of Capital Punishment, 1UCLA J. ISLAMIC AND NEAR EAST LAW 269-320 (Spring/summer 2002).
310 R. Postawko, Id. note 309, at 269.
Islam.” Similarly, during the 1998 Rome Diplomatic Conference, Islamic states allied, *en masse*, to oppose the exclusion of the death penalty from the proposed text of the Statute of the International Criminal Court, making frequent reference to the Shari’a and implying that countries from “the North” were attempting to impose their own values in international criminal justice. Sixteen Arab and Moslem countries tabled an explicit proposal that would have sanctioned the use of the death penalty by the ICC. Indeed, the campaign against gradual abolition of capital punishment at the global level has been spearheaded, particularly in the last two decades, by Islamic states. As the eminent expert on the death penalty in international law, William Schabas observes: “without any doubt, the core of the campaign that fights further progress of international law in the area of abolition of the death penalty lies with so-called Islamic states.”

Although a fundamental tenet of Kemalist Turkey has long been its secular nature (and many Turks would strongly object to the idea that Islamic law has any role whatsoever in contemporary Turkish society), over the last decade in particular, Islamism and its role in internal political structures and culture, has become a question of great significance and sensitivity in Turkey. The place of Islamic law and values are naturally subject to debate and discussion in a country whose population is ninety-nine percent Moslem, and where many are uncertain about their country’s future orientation and political character. The striking rise in the electoral fortunes of the Islamic Refah Party in the mid-1990s, first at the local and then as the national level, has heightened sensitivity to any subject of symbolic or other public significance that may be linked to religious-secular tensions. In 1996 a Refah-led coalition took power in Turkey. During that period the traditional secularism in Turkey appeared to be threatened and Turkish society was increasingly polarized along a religious-secular fault-line. Refah’s appeal, at this time, went well beyond the issue of religion, to include social-economic populism, anticorruption and anti-elitism campaigns, and most importantly perhaps, Turkish nationalism – often fuelled by rhetoric about the need for greater emphasis on Islamic values, principles and even laws. Although by the time of the 1999 General Elections (which brought to power the secular coalition led by Bulent Ecevit that would later carry out the October 2001 and August 2002 reforms) the political pendulum has swung, with the Islamists performing poorly at the national level, sensitivity about issues that might be interpreted by the Islamic movement as being “none-Islamic” (read by some as “anti-Islamic”) remained high. This sensitivity was exacerbated by the military (secularists) forcing from power of Prime Minister Erbakan in 1997 and by the acute economic crisis of 2001-2002 that caused hardship particularly among Turkey’s rural and working classes – from which the Islamists derive their main support basis. At the popular level, also, the Islamists clearly overlap with the nationalist camp; expressing concerns about further integration with Europe. As a recent opinion poll shows: “fear of loss of religious

311 UN Doc. A/BUR/49/SR.5, paragraph 13.
313 The proposal was submitted by Algeria, Bahrain, Comoros, Egypt, Iran, Iraq, Kuwait, Libya, Nigeria, Oman, Qatar, Saudi Arabia, the Sudan, Syria, United Arab Emirates and Yemen. See: UN Doc. A/CONF.183/C.1/WGP/L.11 (1998).
values and of national identity were the two biggest disadvantages associated by the public with EU accession."²³¹⁶

For a multitude of reasons, therefore, religious-secular tension was an ever-present undercurrent during the period of reform; thus increasing the costs for national politicians, aware that their endorsement of EU instigated reforms could be perceived as not only anti-nationalist, but as anti-Islamic as well. According to several experts interviewed, the move to abolish the death penalty (as well as some of the other reforms proposed) was interpreted by a many in the Islamist camp, as constituting a shift away from the position of other Islamic states on the issue of capital punishment. As one academic interviewed noted:

“The sentiment among many believing Moslems was that the reforms were moving Turkey again from some traditional values of their culture, and trying to replace them with foreign values that are not suitable for believers...[they] felt that the European demand to abolish capital punishment, like the new constitutional principle of absolute equality of women, was interference in cultural aspects of life that are taking [Turkey] away from then national sovereignty and their Islamic values.”²³¹⁷

That the Turkish Parliament endorsed these reforms is indicative of a preference for modern over traditional values. As the Financial Times commented, following the October 2001 constitutional amendments: “It is true that much remains to be done. But Turkey is changing. The moves are a reminder that an important country with a huge Muslim majority does not want to follow the teachings of a handful of fundamentalist fanatics. It wants to be a place where universal values reign.”²³¹⁸

**From the capture of Ocalan to Abolition**

We now turn to examining Turkey’s internal discourse regarding the death penalty, especially in the time-frame surrounding the change of policy achieved in October 2001 and August 2002. Unlike other areas of reform (minority rights, political participation, freedom of expression etc.) demarcating the beginning of the death penalty discourse is straightforward, since it essentially emerged with the capture and trial of PKK leader, Abdullah Ocalan, in February 1999. As Cagaptay asserts:

“Until the Ocalan trial in 1999, the question of the death penalty was generally a non-issue for the Turkish public. Yes, there were fringe groups, mainly on the very far left, communists and intellectuals, that protested against the passing of death sentences by Turkish courts...[But] because no one has been executed since 1984, there was no visibility for this issue.”²³¹⁹

³¹⁷ Interview with Professor Ehud Toledano, Chair of Ottoman & Turkish Studies, Faculty of History, Tel-Aviv University (January 19 2003)
Similarly, Selim Levy, of Bilgi University in Istanbul, explains that:

“Before Turkey finally caught Ocalan and brought him to [trial], there was no real debate about death punishment in Turkey. Even human rights groups did not see this as important to fight for. Instead they criticised prison conditions, disappearances and freedom of for journalists to criticize the military…We did not think about the death penalty apart from Ocalan.”

Furthermore, when a public debate regarding the death penalty did emerge in 1999, it was almost exclusively defined by the “Ocalan affair”; revolving around the persona of the condemned PKK leader, and later by European demands that his life be spared as a test to Turkey’s adherence to European human rights standards and principles:

“The questions that were raised about the death penalty issue were not legal, moral or philosophical. There was no debate about the morality of the death penalty or its usefulness to criminal justice...[Following the trial of Ocalan] the question of the death penalty was confined to whether he should be saved from hanging...why he should and why he shouldn’t occupied politicians, the [news]papers and the public. It was a frenzy...The debate changed after the EU warned Turkey not to execute Ocalan, but it was still centred on him.”

Given the intimate link between the “Ocalan affair” and internal dynamics surrounding the death penalty question in Turkey, the following paragraphs provide a dense description of occurrences leading up to his capture and trial, as well as the aftermath of that trial, when Turkey came under intense European pressure to commute the sentence and abolish the death penalty altogether. Importantly, no such pressure was placed on Turkey by the United States. Indeed, the U.S. government welcomed the capture and proposed trial of Ocalan, describing him as “an international terrorist that should be brought to justice”.

The narrative is intended both to supplement the preceding discussion about the material and symbolic significance of abolition, and to explore the evolving positions of the key actors involved, from the emergence of the public debate about the death penalty, in 1999, to its final abolition.

For decades, Abdullah Ocalan (“Ocalan” meaning “Avenger” in Kurdish) personified Turkish fears of Kurdish separatism and the subsequent territorial disintegration of the country. As Turkey expert, Nathalie Tocci, observes: “The loss of Ottoman territories in the Balkans and Middle East, and the Greek military intervention in Anatolia consolidated a fiercely defended idea of a unitary Turkish state. Ocalan’s armed

320 Interview with Selim Levy, Lecturer in Law, Faculty of Law, Istanbul Bilgi University, Istanbul, January 21 2003.
struggle represented the most serious challenge to this imposed unity...He was really seen as the nemesis of Turkey.**

In 1978 Abdullah Ocalan, formed the radical Kurdistan Workers Party (PKK), with the intention of establishing, by force, a separatist Kurdish state in the predominantly Kurdish populated provinces of southern Turkey. Since the early 1980s Ocalan’s PKK has conducted a ruthless guerrilla campaign against the Turkish state, launching attacks of forces and civilians from bases within Turkey’s south-eastern provinces, Syria and Lebanon’s Bakka Valley. In return Turkish forces have retaliated with force, which often resulted in gross violations of minority and individual rights. In the 1980s the PKK’s Peoples Liberation Army of Kurdistan (ARGK) frequently engaged in the killing of whole families. Relatives of security forces personnel were deliberately targeted. Some 90 teachers alone were killed by the PKK between 1984 and 1995, on the grounds that state education was conducted only in Turkish. Reports from various sources indicate that at least 400 Turkish civilians were killed by the PKK from 1993 to 1995 alone. Kurdish terrorism was not confined to Turkey. In 1986 a senior PKK leader, Semdin Sakik was found responsible for the murder of Swedish Premier Olof Palme, whom the PKK saw as responsible for extraditing several Kurdish activists. The German government has issued several arrest warrants against PKK members, including Ocalan, following the murder of several Turks in Germany. Overwhelming evidence has compelled the European Court of Human Rights to brand the PKK a terrorist organization. Abductions and killings of non-combatants continued until Ocalan’s capture in February 1999. All in all the conflict between the Turkish government and the PKK has resulted in the death of some 37,000 people. According to the official Turkish count 4,472 civilians and 5,346 members of the security forces (including 1,225 village guards and 247 police officers) were killed in 15 years of violence.

Following a closely watched chase in Italy, Russia, and finally Kenya, Turkish security forces located and seized Abdullah Ocalan in Nairobi on February 15th 1999. Prior to being captured in Kenya, Italy refused to extradite Ocalan to Turkey – on the grounds that doing so would be contrary to its international commitments not to extradite prisoners to countries possessing the death penalty on the statute book. This precipitated great public anger in Turkey, which included the boycotting of Italian goods and the burning of several businesses owned by Italians in Turkey.

From the moment news broke out of Ocalan’s capture by Turkish forces, the question of the death penalty in Turkey became synonymous with Ocalan. The Kurdish rebel’s****

---

**Interview with Nathalie Tocci, Researchers, EU-Turkey Project, Centre for European Policy Studies (CEPS), Brussels (October 18 2002).


**** Zana v. Turkey (Case 18954/91) 1997 Vol. VII no. 57.

***** See Amnesty International, EUR 44/40/99, 4-5.


******* For commentary see: The Guardian, Bonn urged to seek trial of Kurd rebel, November 25 1998.

******** See for example: The Guardian, World’s most wanted: the row over the extradition of Kurdish guerrilla leader Abdullah Ocalan has pitched Italy and Turkey into a diplomatic war, November 25, 1998.
initial interrogation, which took place on the plane that brought him from Kenya, was broadcast the next day on national television, prompting vociferous calls for his speedy trial and execution.\textsuperscript{330} In the opinion of several experts on Turkish affairs, the initial perception of state elites, and the military in particular, was that the execution of the PKK’s top leader would be strategically advantageous for Turkey, since it would constitute a fatal blow to PKK as a whole, and even to the quest for Kurdish independence itself.\textsuperscript{331} This perception was reflective of Ocalan’s mythical standing among Kurdish separatists. As Amikam Nachmani argues: “Ocalan is in many ways a symbol of Kurdish struggle as a whole. The thinking among the Turkish government was that by crushing him, by publicly executing him, they would be crushing the whole PKK.”\textsuperscript{332} The strategic view was even shared and publicly endorsed by left-leaning Prime Minister Bulent Ecevit who, shortly after Ocalan’s capture, stated that it would “definitely” deal with the “so-called Kurdish question”.\textsuperscript{333}

In this atmosphere, voices of any real weight, calling for leniency in Ocalan’s case, let alone the formal abolition of the death penalty, were essentially absent. “For the last three years, speaking out against the death penalty meant advocating for Abdullah Ocalan, the arch terrorist, to be saved” explains Soner Cagaptay. “This was anathema to the huge majority of Turks, whether they were ordinary citizens, journalists and of course politicians...Until the issue was transformed into a choice between killing Ocalan and obtaining EU membership, it was almost inconceivable for mainstream politicians to support reprieve for Ocalan.”\textsuperscript{334}

The trial of Ocalan became a national spectacle. It was televised and widely watched by the Turkish population. “During the trial Turkey became hysterical” says Gilead Cohen.

“At the trial, emotional scenes were viewed by all, inside and outside the court...Relatives of dead soldiers, policemen and terror victims who were killed by the PKK testified in court. It was very emotional, raising again and again the memories of the war, of the last fifteen years...The public sentiment that Ocalan deserves to die was very very strong.”\textsuperscript{335}

Indeed, at the time of Ocalan’s capture and trial, a majority of members of the Turkish Parliament are also thought to have supported the campaign to put Ocalan to death.\textsuperscript{336}

Before examining the circumstances surrounding the trial, appeal and the eventual shift in policy concerning the death penalty, two contextual points are noteworthy.

\textsuperscript{331} Interview with Turkish diplomat and lawyer, who did not wish to be identified. Interview conducted January 9, 2003.
\textsuperscript{332} Interview with Dr. Amikam Nachmani, Department of Political Science, Bar-Ilan University, Israel, January 10, 2002.
\textsuperscript{333} Ian Black, \textit{Ocalan must not die: We should urge Turkey to rethink policies on the Kurds}, The Guardian, June 30, 1999.
\textsuperscript{334} Interview with Soner Cagaptay, Director of Turkish Program, The Washington Institute for Near East Policy, (February 2nd, 2003)
\textsuperscript{336} Cited in: The Guardian, \textit{EU warns Turkey to spare Ocalan: Don’t expect to join if Kurdish leader is executed, Ankara told}, November 26, 1999.
First, while the trial was still pending before the Turkish courts, Ocalan’s lawyers filed a petition on his behalf before the European Court of Human Rights, asking that the Court ensure that the proceedings conducted by the National Security Court be scrutinized to ensure that they complied with standards of fairness required by Article 6 of the ECHR. The European Court issued this provisional measure on March 4, 1999. The involvement of the ECHR in what so far was a largely domestic drama, would later become material in influencing the policy choices of Prime Minister Ecevit.

Second, in June 1999, Bulent Ecevit, the leader of the Democratic Left Party, formed a new coalition government, following general parliamentary elections. From its inception, the coalition was precariously balanced between formerly implacable enemies, the social-democratic Democratic Left Party and the ultra-nationalist National Action Party (MHP). With Ecevit’s social-democratic left gaining only a few more seats in Parliament than its rival MHP, pursuing democratic reforms, in pursuance of EU pressures became more difficult. Furthermore, in its 1999 electoral campaign, the MHP made the prospective hanging of Ocalan a part of its party manifesto. As one expert points out:

“The MHP campaigned on an ultra-nationalist, anti-separatist platform. During [the 1999] campaign they promised the voters again and again, that when the Ocalan file came before Parliament, they will be there to make sure that Parliament approves his hanging…After the elections they promised to hang Ocalan 127 times, one time for every seat they had in Parliament.”

On June 29, 1999 Ocalan was sentenced to death by the Second State Security Court, for “terrorism” and “separatism”. The Chief Judge, Turgut Okyay, described Ocalan as a man who murdered “babies, children, women and the elderly” and concluded that “His activities constitute a serious, immediate and great danger to the state”. Following the verdict of death large crowds took to the streets all around the country to rejoice. Prime Minister Ecevit stated publicly that the court’s decision was fair and that Ocalan would be hanged. “I hope this verdict is auspicious for our people”, he said.

Following the ruling of the State Security Court, the European Court of Human Rights was petitioned by Ocalan’s lawyers to issue provisional measures to suspend the execution until the case had been adjudicated on its merits before it. The European Court decided to reject the petition, preferring to await determination of the appeal. The death sentence imposed on Ocalan was confirmed on November 25 1999 by the Court of Cessation. Once again, popular sentiment in Turkey was strongly in favour of carrying out the death sentence. Upon hearing the verdict of the appellant Court, a large crowd marched on Parliament in Ankara chanting “hang him” and “yes to execution”.

---

339 Pursuant to Article 125 of the Turkish Penal Code.
340 Cited in: The Guardian, Ocalan sentenced to hang, June 30, 1999
On November 30 1999, two weeks before the EU’s Helsinki summit, the European Court of Human Rights requested Turkey “to take all necessary measures to ensure that the death penalty is not carried out so as to enable the Court to proceed effectively with the examination of the admissibility and merits of the applicant’s complaints under the Convention”\(^{343}\). In the days running up to the Court’s determination, some 15,000 Kurdish supporters of Ocalan and 3000 Turkish protesters camped outside the Strasbourg court, and had to be separated by French police. Inside the Court tempers also run high as the relatives of Turkish soldiers “martyred” in the war against the PKK observed the proceedings.\(^{344}\) Ocalan’s lawyers, aware of the mounting pressure from Europe on Turkey to abolish the death penalty, made a point of emphasising this issue during the trial. For example, the British lawyer leading Ocalan’s defence, Sir Sydney Kentridge, told the European Court that “In the year 2000 the infliction of the death penalty is an inhuman and degrading treatment...Save for Turkey, and even that is not certain, there is now a complete consensus [against the death penalty] in Europe.”\(^{345}\) Still, prior to the December 1999 summit, popular support for Ocalan’s execution continued unabated, and Turkish leaders continued to express their opposition for leniency in Ocalan’s case. For instance, as late as October 7, 1999, the leader of the political party considered most pro-European, Prime Minister Ecevit, stated that he will not be making “any concessions to Kurdish separatists”.\(^{346}\) This, despite the fact that in October and November 1999, an official EU statement warned that its relations with Turkey “would suffer” if Ocalan was executed.\(^{347}\)

All in all, therefore, domestic preferences at the time of Ocalan’s capture, trial and appeal, were strongly in favour of retention and use of the death penalty. Despite normative-based protests from Europe, the Turkish leadership (tied up in a coalition government with the MHP) and checked by strong public opinion against any show of leniency towards Ocalan, maintained its pro-retentionist line. As the following excerpt from an August 1999 Amnesty International report indicates, there was genuine concern among external human rights monitors that the execution of Ocalan would be carried out, leading to a more general reinstatement of the death penalty in Turkey:

“In view of the current political atmosphere in Turkey and the balance of power in parliament, and as an effect of the deep wounds caused by the 15-year armed conflict between the security forces and the PKK, it is feared that Turkey may be set to take a step backwards and resume executions after a 15-year de facto moratorium. If Abdullah Ocalan’s execution goes ahead and thus removes the psychological barrier created by 15 years of refraining from the implementation of death sentences, the door would be open for the execution of many others – in particular those already sentenced to death or standing trial in State Security Courts for politically motivated offences”\(^{348}\)

---

\(^{343}\) Ocalan v. Turkey (Case No. 46221/99), Interim Measures, November 30, 1999.

\(^{344}\) See: The Independent, Ocalan begins appeal against death sentence, November 22, 1999.

\(^{345}\) The Independent, Ocalan begins appeal against death sentence, November 22, 1999.

\(^{346}\) The Financial Times, Kurdish concessions ruled out, October 8, 1999.


\(^{348}\) Amnesty International, Turkey: Death Sentence after unfair trial: The case of Abdullah Ocalan, AI Index: EUR 44/40/99
Certainly during this period, there was no Turkish initiative to legislate for the abolition of the death penalty.

In the summer of 1999, a number of events took place, which precipitated a shift in Turkey’s domestic political discourse, and resulted in calls for greater democratic reforms. While these events do not address the death penalty issue directly, they constitute an important contextual aspect of the changes that were to come. The earthquake of August 17, produced both anger at the Turkish government for its seeming helplessness in preventing the humanitarian disaster and managing relief efforts effectively, and comparisons being made between Turkey and the (mostly European) societies that sent financial and other assistance, to help Turkey recover from the earthquake – comparisons in which Turkey was widely portrait by the media as being relatively backward. As Selim Levy put it:

“The earthquake highlighted the necessity for state reforms in Turkey...[It] created a feeling among the population and the elites that the state was responsible and that it failed the people...This created pressures for radical reforms, although what those reforms should be was not clear...We wanted to become more organized, more European.”

These negative reasons for reforms were, therefore, coupled with tangible, symbolically laden models in the shape of European societies, which appeared to be better equipped to deal with crisis and reconstruction. At the same time, the sympathy and aid provided to Turkey by many European countries in the aftermath of the disaster, seemed to have softened Turkish attitudes about the outside world, and facilitated at atmosphere of greater acceptance of “foreign” involvement in Turkey’s domestic affairs.

The earthquake and its aftermath marked an important threshold in the gradual rapprochement between Turkey, and its traditional foe, Greece. Most importantly, in this context, under the leadership of Greek foreign minister, George Papandreou, Greece’s longtime opposition to Turkish EU membership was effectively reversed by late summer, triggering among Turkish decision-makers, a realistic sense that the Luxembourg rebuff might be overturned, and that Turkey may be able to make progress on the road to accession. This, again, reinforced positive incentives for democratic reforms demanded by the EU, notably in the 1998 Regular Report on Turkey. As the Financial Times reported on September 9th, 1999:

“A wave of hope has swept over Turkey in recent days that their country may be about to enter the new millennium with greater freedoms and democracy and a reformed constitution. In part, the impetus has emerged from the rubble of last month’s devastating earthquake. It appears to have broken a log jam in relations both with Greece – Turkey’s traditionally hostile neighbour – and with

349 Interview with Selim Levy, Lecturer in Law, Faculty of Law, Istanbul Bilgi University, Istanbul, January 21 2003.
the European Union...democratic change would occur even faster if the EU made Turkey a full candidate for membership – to be decided at an EU summit in December.”

The EU’s decision to make Turkey an official candidate for membership, marks a pivotal point in the domestic debate. Following the decision, a wave of optimism about the future of EU-Turkey relations produced impassioned calls for democratic and human rights reforms, and a heightened degree of acceptance that the Turkish state will have to “pay the price” of admission. The flavour of this shift in the domestic discourse is perhaps best reflected in the reaction of the mainstream Turkish press to the Helsinki decision. The lead editorial of Turkey’s most influential daily, *Hurriyet*, of December 13, 1999 is illuminating in this regard. In it, Tufan Turenc wrote:

“Turkey should become a country in which the legal order works perfectly. Justice has to work in a fair and timely manner. All things disrupting our social life should be eliminated. The outdated mentality existing within the administration should be radically altered...the state system should be arranged in such a way as to not allow corruption. Entrepreneurs should be supported. This list can go on and on. However, Turks are able to overcome all difficulties. The Prime Minister said that Turkey would reach the target set sooner than the date set because he was relying on the determination of Turkish society. What Ecevit is envisioning is not a dream. All the world will see that we will achieve this goal.”

A second article in the influential, *Milliyet* daily, displays a similar mixture of pre-millennial enthusiasm and challenge:

“It is of great importance for Turkey to join this union, which may become a new superpower in the next century, at the very last minute. Candidacy status is most certainly a significant milestone on a long and winding path. However, we have before us a difficult hill to climb. Serious measures have to be taken concerning the areas of democracy and human rights which may cause disputes. Ankara has to make changes to her foreign policy and has to display a co-operative approach, especially on the issue of Cyprus and the Aegean...Is Turkey ready to evaluate her domestic and foreign problems under a totally different light? How determined is she to introduce radical new strategies and solutions? If Turkey want to enter the 21st century as a prosperous country integrated within the Western world and reaching its standards, she will accomplish what is required for this purpose. Otherwise, EU

352 Interviews with: Michael Emerson, Director of Southern Europe Research Program, Centre for European Policy Studies (CEPS), Brussels (October 18, 2002); Nathalie Tocci, Researcher, EU-Turkey Project (CEPS), October 18 2002; Turkish diplomat and lawyer, who did not wish to be identified. Interview conducted January 9, 2003.
Most evocatively perhaps, the normally restrained Turkish Daily News, described the Helsinki decision as “the dawn of a new era for Turkey”, and called on Turks to do what is necessary to fulfil the criteria of membership: “However, if we want accession talks to start we will have to fulfil some conditions, such as sorting out our problems with Greece and helping to find a solution to the Cyprus dispute, beside fulfilling the Copenhagen criteria, which require genuine democratic reforms in Turkey.” To achieve this, Editor Inur Cevik argued, Turkey must depart from its deeply ingrained resistance to external involvement in its affairs, and be prepared to comply with the European Union’s conditions for membership:

“Are we prepared to put aside our prejudices about the Europeans who, some of us feel, are ready to interfere in our internal affairs and divide, or incapacitate our country? As from today we all have to be prepared for our prospective European partners and the European Commission to have a stronger say over anti-democratic policies in Turkey. Will those who could not stomach the calls for change and reform by the Chief Justice of the Supreme Court of Appeals be able to digest future European calls for political reforms?”

Granting of candidacy status to Turkey precipitated an almost immediate shift in the attitude of Turkey’s political elites regarding the Ocalan case. On December 23, President Suleyman Demirel urged the Turkish parliament to delay any vote on Ocalan’s fate, warning that hanging him would now harm “Turkey’s highest interests”. On January 13, 2000, aware of the need to keep the nationalist MHP inside his coalition and not upsetting public expectations of retribution against Ocalan, while at the same time not undermining the pro-Turkey momentum generated at Helsinki, Prime Minister Ecevit sought to postpone a final decision regarding execution. He therefore asked Parliament to put off its ruling until the European Court of Human Rights has delivered its verdict in Ocalan’s petition; a process that was estimated could take up to two years. This change in elite attitudes was not confined to the death penalty issue, but is reflective of a broader acceptance by Turkey, of EU conditionality, regarding the Cyprus conflict and Kurdish minority rights, for example.

In all these cases, Ecevit was legitimately concerned about the possibility of a nationalist backlash against reforms that were (rightly) viewed by his largest coalition partners, the ultra-nationalist National Action Party (MHP), as acceptance of EU involvement in sensitive domestic and national-foreign policy matters. This

---

355 Turkish Daily News, Editorial – We need much patience and national harmony, December 13, 1999. The reference to the Chief Justice of the Supreme Court relates to Sami Selcuk, who in September 1999 described the 1982 Constitution as having a legitimacy that is “close to zero” and called on Turkey’s political leaders to carry out extensive democratic and human rights reforms.
356 Quoted in: The Independent, Ocalan’s death sentence appeal is turned down, 31 December 1999.
357 Regarding the shift in Turkey’s position on Cyprus, see for example: The Financial Times, Cyprus leaders reach breakthrough accord, December 4, 2001. On the effects of the Helsinki decision on Kurdish-Turkish relations see for example: The Independent, PKK renounces arms and turns to party politics, February 10, 2000.
opposition was to intensify in the run up to the October 2001 and August 2002 votes. In addition, Ecevit’s decision to wait for the review of the European Court before sending the case to Parliament to approve Ocalan’s death sentence, resulted in some dramatic public protests against the government. As the Guardian reported on January 14, 2000:

“The 67-year-old mother of an officer killed fighting Kurdish rebels and the brother of a dead soldier set themselves alight yesterday, in protest at the Turkish government’s decision to delay the execution of the jailed separatist leader Abdullah Ocalan. Their attempted self-immolation in an Istanbul cemetery, reflecting the fury felt by many relatives of those who died during the 15-year war in south-east Turkey, came as Europe heaped praise on the prime minister, Bulent Ecevit, for granting the reprieve.”

Despite these events, however, at the popular level attitudes were altering as well, as the Helsinki decision linked progress towards accession with democratic and human rights reforms, thus producing both an expectation for such reforms and an awareness of the benefits that could await Turkey in adopting changes required by the EU. “After the Helsinki decision, and more and more through the year 2000 it became clear to everyone in the public that Turkey was now confronted with a basic choice”, says Nachmani:

“…executing Ocalan would destroy the good will shown to Turkey by Europe and be considered by the EU as a sign that we are not ready to be members…On the other hand, saving [Ocalan] from hanging would be a positive step towards membership…[It would be] a big change in political behaviour. The question was clear, which direction will Turkey go in, nationalist or Europeanist?”

Framing the question of Ocalan’s execution as a choice between a future in Europe or outside it, produced a fundamental shift in both elite and public attitudes. The reasons for this lie in the levels of support for Turkey’s membership in the EU among the public at large and especially by Turkish elites; as well as the perceived benefits of EU membership. Both Turkish and European polls demonstrate consistently that approximately two thirds of the general Turkish population support the goal of EU membership. For example, research for “Turkey-EU agenda 2002” carried out by the Turkish-European Foundation in February 2002, indicates that 68 percent of the Turkish public supports the goal of EU membership. Among the wealthier and more highly educated, support for EU membership is even higher. In an extensive poll conducted by Bilgi University in February 2000 among Turkish elites (defined by the pollsters to include journalists, academics, businessmen and government officials) the vast majority were in favour of Turkey joining the EU as a full member: 32 percent were strongly in favour, 54 percent were in favour and only 12 percent were opposed.

---

359 Interview with Amikam Nachmani, Department of Political Science, Bar-Ilan University, Israel, January 10, 2002.
360 Turkish Daily News, Turkey and the EU: Heading for a break?, March 14 2002
Regarding the actual possibility of Turkey joining the EU in the next ten years: 52 percent said that it was highly likely or likely; 43 percent responded that it was either very unlikely or unlikely and 5 percent were undecided or didn’t answer the question. So while, the number of people who view the possibility of actual membership as realistic is considerably lower than the number who support EU membership, it is still a majority.

Both the Bilgi University poll and the Turkish-European Foundation study suggest that the perceived benefits of EU membership are material (read economic-social) and more symbolic (westernization, prestige and being considered “European”). As the latter study concludes: “The majority of Turkish citizens see the EU as the solution to the country’s grave economic problems as well as the culmination of its national mission to modernize and Westernize.”

Similarly, as the Bilgi University study asserts:

“When asked in an open-ended question what would be the best thing about Turkey being admitted as a full member, the general emphasis in the responses was on social/economic development. As one bureaucrat argued, ‘the regional differences within Turkey will disappear; standards will increase; the level of development will increase, including education, health, everything’. The importance of the establishment of European credentials was the second most frequent response. Several quotes illustrate this concern, for instance ‘Its benefits will be in terms of westernization, prestige and Turkey’s being considered as a European country’. Similarly, ‘it will facilitate us to think like a European; our lifestyle will be more European’. Finally ‘to be within the EU, to be a member of the EU – it puts you in another class in many different dimensions.’

Still, by the time of the parliamentary debate over the October 2001 constitutional package, only a partial move towards abolition could be realistically attained by the pro-European political parties. Previous statements by Ecevit in favour of hanging Ocalan, the precariousness of the coalition government and lingering public support for Ocalan’s execution, all weighed heavily against mounting European pressures for reform.

Ultimately, the government managed to carry its agenda for reform, with all three political parties in the coalition, the social democrats, Islamists and nationalists voting for the package of reforms, in an atmosphere of intense media calls for reforms.

The events of September 11, 2001 could have further enhanced domestic difficulties. A number of experts interviewed, expressed the view that the new anti-terror campaign opened in the aftermath of September 11, created a set of dynamics where concern for democracy promotion policies in Turkey could have become subordinate to perceived needs to counter the threat of international terrorism; where the US and

361 L. McLaren, *Turkey’s eventual membership in the EU: Turkish elites perspective on the issue*, 38.1 J. COMM. MARKET. STUD. 117-129 (March 2000).
362 Turkish Daily News, *Turkey and the EU: Heading for a break?*, March 14 2002
363 L. McLaren, Id., note 363, at 125.
other western governments seeking anti-terror cooperation may be more willing to overlook human rights abuses and anti-democratic practices, and reduce pressures for reform. “That the October 2001 reforms and the later legal reforms implementing them were achieved right after September 11 is really amazing” says Professor Ephraim Inbar, Director of the Begin-Saddat Center for Strategic Studies at Bar-Ilan University. 364 Saban Kardas makes a similar point in a recent article, asserting that:

“Turkey’s special relationship with the EU is offering strong incentives to maintain the momentum for the domestic reforms towards democratization and human rights, in spite of setbacks in the process… Despite the initial arguments that developments leading to September 11 proved Turkey’s approach to rights and liberties, which was no doubt restrictive, reformist liberal-democrat forces continued to dominate the latest discussions. It is legitimate to claim that the determination to carry the reforms through derives its particular strength from the need to satisfy the demands put on Turkey by the EU in order to fulfill the Copenhagen criteria. The Turkish case, therefore, shows the power and relevancy of the EU’s democracy promotion policies vis-à-vis Turkey, which were able to counterbalance the trends of post-September 11 setting.” 365

Following the October 2001 reforms, the issue of the death penalty – together with other items on the EU’s human rights agenda – took a less prominent place on the public agenda, as fiscal woes and unemployment became issues of primary concern. Still, in December 2001 Deputy Prime Minister, Mesut Yılmaz, who was designated by the Ecevit coalition government to coordinate EU-Turkey relations, stated that 2002 will be a year in which Turkey will concentrate on “completing reforms in laws and adapting to EU norms”, and that during 2002 Parliament will “work hard” to “complete all the reforms listed in the short term target section of the National Program” 366 Yılmaz also said that with the realization of the intended reforms Turkey aims to enter 2003 as a country that has “solved its economic problems and opened full membership talks with the EU” and that Turkish Parliament will work to comply with EU demands for further reforms.

In the summer of 2002 the issue of EU related reforms emerged again in force, as talk began in Brussels and Ankara on the possibility of a significant breakthrough in Turkey’s status, and even the prospect of accession negotiations being commenced: “Once again, the question of the death penalty and other reforms was raised in the run up to a European summit”, explains Soner Cagaptay. “There was a feeling in Turkey in June and July that real progress might be made in the next summit planned…of course by then the Ecevit coalition was breaking apart and by July it was clear that we were going to elections soon.” 367 The Social Democrats, still the largest party in

364 Interview with Professor Ephraim Inbar, Director of the Begin-Saddat Center for Strategic Studies at Bar-Ilan University, January 12, 2003.
365 S. Kardas, Human Rights and Democracy Promotion: The Case of Turkey-EU Relations, 1.3 TURKISH J. INT’L RELATIONS (fall 2002).
366 Turkish Daily News, Yılmaz says 2002 will be key year in adapting to EU, December 28, 2001
367 Interview with Soner Cagaptay, Director, Turkish Research Program, Washington Institute for Near East Policy, April 21, 2003.
Parliament wanted to capitalize on the overwhelming public support for progress towards EU accession, and at the same time strengthen its own electoral prospects (the general elections took place on November 3rd 2002) by making a very public show of pro-democratic reform efforts that would be welcomed in Europe. In addition Ecevit realized that by pushing for EU demanded reforms, he would be putting the onus on the MHP and the Islamists, since their opposition to reforms would be associated with an unpopular anti-EU, anti-western stance.

This presented the MHP with a dilemma. As election fever gripped the country, the nationalists, who once again ran on a party political platform committed to the execution of Ocalan, opted to vote against the reform package submitted by the Social Democrats in August. The Islamists, on the other hand were split. A majority voted for the reform package, while the more nationalist minority voted with the MHP. The August 2003 reform package passed with a small majority.

Following the November 2002 general elections, the new Prime Minister, Abdullah Gul, promised to continue with reforms, stating that a package of human rights reforms would be ready before December 2002 EU Copenhagen summit. Similalry, the new Justice Minister, Cemil Cicek, promised that the new government will complete the reforms started by the former government, adding that “We are sincere in our wish to be an EU member country”. Days after taking office Cicek reassured the EP-Turkey joint parliamentary committee that the new government will promote democratization, human rights and freedoms.

**CONCLUSIONS**

On the basis of this study alone – which examines in detail one area of policy in one country – it is inadvisable to draw any generalized conclusions about: (1) the circumstances in which international organizations are likely to be more or less effective in achieving compliance with certain rules and norms; (2) the impact of external actors on domestic legal democratic reforms. To do so, would require time and resources that are beyond its scope. Nonetheless, based on the evidence presented and analyzed here, some concluding remarks can be made about both issues.

First, the study suggests that in the case of Turkey, at least, democratic consolidation and the human rights reforms are unlikely to occur as a result of externally produced normative pressure alone. We have seen that Turkey has tended not to be significantly motivated by reports and statements emanating from external actors, when these have not been backed up by strong incentives and the prospect (real or imaginary) of obtaining desired tangible goods. The “objective value” represented by the benefits of closer relations with the international organization is important. Thus, this study proposes that international organizations can maximize their influence on internal democratic reforms by developing and maintaining powerful incentives (economic, political, security) which they can withhold or grant to countries, on a conditional basis.

---

368 Turkish Daily News, *Parliament holds back on EU reforms: full approval of the reform package is not possible under Turkish Laws before President Ahmet Necdet Sezer approves separate constitutional changes*, December 13 2002
369 Turkish Daily News, *Cox says Turkey should continue reforms*, November 27 2002.
Of course not all international organizations are “created equal” regarding the type and extent of incentives they can offer. In this context, EU-Turkey dynamics stand apart from Turkey’s relations with the UN, CE and OSCE, since the incentives (material and symbolic) created by the prospect of EU membership are more valuable to Turkey, and therefore more powerful, than those offered by these other international organizations.

From a policy perspective, this suggests that to increase the influence capacity of international organizations (regional and global) on internal domestic structures and modes of behaviour, international organizations need to think about both increasing and strengthening their “repertoire of incentives”, and being more careful about the allocation of goods they hold (trade benefits, political legitimacy, prestige etc.). In other words, inclusion in the international community should gradually become more a matter of privilege, reserved for those who adhere to democratic norms, rather than a matter of right. A concerted effort by private and public international organizations, in this direction, may produce a significant favourable democratic impact on a significant number of countries.

This leads me to a second concluding remark. The fact that Turkey is not already a member of the EU (again, in contrast with the UN, CE, OSCE and NATO) provides the EU with leverage that the others lack. In other words, EU influence is strengthened not only by its objective value for Turkey, but also by it being “the ultimate prize”; a mark of legitimacy and modernity, which is not easily attainable. The EU’s grass is greener, precisely because it is on the other side.

One view on this situation is that EU leverage over Turkey will last only as long as Turkey remains a candidate, but is not actually admitted as a full member. According to this realist perspective, Turkish legal reforms do not constitute an internalization of “European norms”, but are essentially a technical, calculated policy choices by nationally self-interested domestic elites seeking the tangible benefits of membership. According to this view, the October 2001 to January 2003 reforms do not suggest a process of normative convergence on the part of Turkey with EU Member States. There is no “socialization”, no genuine “Europeanization” of Turkish democracy.

On the other hand, a more constructivist reading might be that we are witnessing a process (conscious or otherwise) of such Europeanization in Turkey; and that even if existing state elites are unlikely to be quickly “socialized” into “European norms”, succeeding Turkish elites, growing within the EU governance system, will gradually internalize “European values”. According to this perspective the recent reforms are significant, not so much for their legal substance, but because they point to a normative shift in Turkish policies and attitudes – ones that are indicative of democratic consolidation.

Deciding between these competing readings of the recent reforms is important, because if the former, realist interpretation, is correct, then Turkish admission into the EU is likely to end effective EU democratic containment of Turkey, and might produce a backlash that may destabilize the entire regional system. Given the newness of the legal reforms and the fact that full implementation will require time, it is impossible to determine which one of these two meta-directions, if at all, will be pursued. Still, it is possible to suggest something about the form of the process which is likely to be more successful, from the perspective of the EU. Namely, external influence appears to be increased where incremental steps are taken towards an appealing “end point” (in this case, EU membership). Reciprocity-based incremental progress is likely to maximize effectiveness for a number of reasons. It makes
monitoring compliance easier. It can build trust between external and domestic agents, and enhance the credibility of the external actor. It may help pro-reform state elites make the demanded reform appear more palatable to domestic constituencies, as reform is stretched over time and is complemented by reciprocal benefits.

It is questionable, however, whether such an incremental strategy is likely to succeed where domestic elites have little confidence in the “end point” being achievable, or where the prospect of reward for compliance becomes too distant or uncertain. “reality value” is therefore an important component of the process. In the case of Turkey, it appears that the Ecevit and now the Erdogan governments believe that the prospect of eventual EU membership is realizable, and that it is worth the efforts of reform. Should this basic confidence in the process evaporate – either because of domestic circumstances or EU signalling – it is suggested that EU influence is likely to be seriously undermined. In this context, the EU should be mindful to provide incentives “along the road” (such as gradual inclusion in certain EU programs or increased financial assistance tied to reforms) and not just at the end of the road – the length of which is still unclear. At the same time, to avoid the breakdown in trust that occurred in Luxembourg (1997), careful management of expectations on the part of the EU, and on the part of Turkey’s leadership is likely to be important to maintaining the momentum of reform over the next few years. As was decided in the December 2002 Copenhagen European Council summit, the next major checkpoint will occur in December 2004, when a decision will be taken on whether to open formal accession negotiations with Turkey immediately, or postpone again. By then, the EU expects Turkey to have undertaken major reforms in such sensitive domestic matters as human and minority rights, anti-corruption measures, and civilian-military relations. In addition, to keep things on track, it is likely that some substantial progress is needed on Greek-Turkish disputes over Cyprus and the Aegean Islands. To maintain the momentum created at Helsinki (1999) will therefore require not only serious commitment on the part of the Turkish government, but rapid progress on the ground in some difficult matters of domestic and foreign policy.

In conclusion also, two other dimensions – which are of general interest to the study of the role of international organizations in domestic democratic change – may be mentioned. The first can be termed “constructive boundary lifting” and the second can be described as “regional democratic anchoring”. Both these points are noted as possible areas of future research.

By “constructive boundary lifting” we refer to a situation where in the process of inclusion in a regional community, the institutional, normative and even physical boundaries that separate the sovereign nation-state from the neighboring regional community, are gradually eroded or removed altogether. Incremental inclusion in a regional community appears to facilitate a qualitatively distinct process where the norms and institutions of the community are internalized in a systematic, controlled manner within domestic systems. Through having to internalize the *acquis communautaire*, to adjust its institutions and governance practices to that of the EU, a candidate country is made to lift pre-existing boundaries between itself and the community, and to replace pre-existing institutions and practices, with new ones. The process is constructive in the sense that what we are witnessing is not simply “boundary lifting” (which occur for instance where a country is conquered and its territory annexed to another). Rather, a controlled process of adjustment occurs, whereby there is a simultaneous lifting of institutional and normative boundaries (facilitated by incentives) and an exportation of community modalities, laws and
structures into the candidate state. The legitimacy of the EU’s intrusion in the domestic affairs of the candidate country appears to be strengthened, in the eyes of domestic elites, by the fact that ostensibly what is taking place is extension of the community to include that candidate country. The very notion of inclusion in a community of states, which entails sharing economic and political institutions and destinies, appears to provide a degree of legitimacy to external demands for internal reforms, since the boundaries between the “I” and “Thou” are blurred. This phenomenon also has important consequences for the study of sovereignty.

“Regional democratic anchoring” refers to the process whereby as part and parcel of preparing for accession to a regional community, the candidate state is required to “anchor” itself in a matrix of regional institutions, treaties and programs. We have seen that on the issue of the death penalty, the EU requires that candidate countries tie their domestic legislation to the standard prescribed by Protocol No. 6 of the ECHR. In this case, the “anchor” is the Council of Europe administered European Convention on Human Rights – which also involves acceptance of the jurisdiction of the European Court of Human Rights. In other areas, candidate countries are asked to adjust their laws to regional standards and to accept commitments under various international human rights and other treaties. Some of these commitments involve, in themselves, submission to outside monitoring. For example, in the area of money-laundering, candidate countries are obliged to prescribe to the standards set by the UN led Financial Action Task Force (FATF) and to its monitoring system. Once again here, the legitimacy of the demand for compliance appears to be bolstered by the fact that the standard demanded is one that is already shared by the existing members of the community to which the candidate state seeks admission (as opposed to the standard of a dominant national actor), thus lowering somewhat the internal domestic costs of compliance. This is an essentially and intensely social process.

With regards to the impact of external actors on the domestic political debate, a few points are noteworthy. First, this area of inquiry appears to be the most understudied by the existing literature, and requires careful consideration by political scientists, lawyers and IR theorists. Second, through looking at the internal debate over the death penalty issue in Turkey in the last three years, we observe that the existence of a powerful external actor, like the EU, determines to a considerable degree the agenda and tone of the debate. First, public discourse over the prospect of abolition has tended to focus almost entirely on the relative merit of executing Abdullah Ocalan, versus the adverse costs that such a step would carry for Turkish-EU relations. The prospect of progress on the road to accession, therefore, became a dominant theme and counterweight to domestic retentionism. This has meant that unlike other abolitionist countries, Turkey did not conduct a genuine domestic debate on the morality, criminal justice ramifications and other normative aspects inherent to the death penalty issue. What the longer term significance of this reality will be is hard to predict. One possibility would be that in the long run, the policy choice will be viewed as having been “forced upon” Turkey by external conditionality, and its credibility undermined. Certainly the internal dynamic surrounding the death penalty debate does not bode well, if the aim has been the genuine internalization of abolitionism as a normative choice, supported as a value by broad constituencies in the population. A third observation is that the prospect of EU membership, if credible, can act to empower pro-reform domestic elites. The conduct of Prime Minister Ecevit in 2001
and 2002 is illustrative in this regard. Using reference to external actors, Ecevit was both able to defer making difficult decisions regarding the Ocalan case, when the case was referred for review by the European Court on Human Rights. More generally, domestic elites can use membership conditionality as leverage, to defuse, or at least ameliorate, domestic opposition to reform, by arguing that these constitute the price that needs to be paid for accession and that their “hands are tied” by external constraints. Once again, this dynamic holds democratic dangers as well as opportunities. If the reforms are presented as being reluctantly accepted, without real reference to their inherent justification and value, they may be less likely to be accepted as genuine and legitimate.

As a Moslem country and a democracy, Turkey’s internal wrestling over its political place and identity is of growing interest to commentators. Just as Turkey’s importance as a key geo-strategic entity, on the axis between East and West, is undeniable, so the question of whether Turkish democracy and its anchoring in western regional structures will succeed, is of central importance to Europe and beyond. The future of EU-Turkey relations will not only shape Turkey’s relations with “the West”, but will determine what kind of West there will be.