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‘THE KURDISH QUESTION IN TURKEY FROM THE EUROPEAN UNION PERSPECTIVE’

Joint Master’s Programme European Studies Master’s Thesis

Antalya / Hamburg, 2012

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Akdeniz Üniversitesi
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LIST OF ABBREVIATIONS

AKP	Adalet ve Kalkınma Partisi/ Justice and Development Party
ANAP	Anavatan Partisi/The Motherland Party
APD	Accession Partnership Document
BDP	Barış ve Demokrasi Partisi/ Peace and Democracy Party
CHP	Cumhuriyet Halk Partisi/ Republican People's Party
CoE	Council of Europe
CUP	The Committee of Union and Progress
DDKD	Devrimci Demokrat Kültür Derneği/Revolutionist Democrat Culture Organization
DDKO	Doğu Devrimci Kültür Ocakları/ East Revolutionist Culture Organization
DEP	Demokrasi Partisi/ Democracy Party
DGM	Devlet Güvenlik Mahkemesi/ State Security Court
DP	Demokrat Party/ Democrat Party
DSP	Demokrat Sol Parti/ Democrat Left Party
DTP	Demokratik Toplum Kongresi/ Democratic Society Congress
EC	European Community
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities
HADEP	Halkın Demokrasi Partisi/ People's Democracy Party
HEP	Halkın Emek Partisi/ People's Labour Party
HSYK	Hakimler ve Savcılar Yüksek Kurulu/ The Supreme Board of Judges and Prosecutors
ICCRP	International Covenant on Civil and Political Rights
KCK	Koma Civakêken Kurdistan/ Union of Communities in Kurdistan
MHP	Milliyetçi Hareket Partisi/ Nationalist Movement Party
NGO	Non Government Organization

NUC	National Unity Committee/ Ulusal Güvenlik Konseyi
OHAL	Olağanüstü Hal/ Martial Law State of Emergency
OSCE	The Organization for Security and Cooperation in Europe
PKK	Partiya Karkêren Kurdistan/ Kurdistan Workers' Party
TKP	Türkiye Komünist Partisi/Turkish Communist Party
UN	United Nations

SUMMARY

Today, the Kurdish Question is still one of the most important problems of Turkey. This problem is also a barrier in front of Turkey to become a member of the EU. If we look at the progress reports, which are released by the EU Commission annually, we can see the importance of the problem in terms of the EU. Because the EU has some values and says quite definitively that if one country wants to become a member of the Union, it has to protect these values. As known, Turkey is a country, which wants to be a member of the Union. In this context, there are some rules that are determined in the Copenhagen Criteria, which Turkey has to fulfill. The EU owed its existence to the values of the European Union. These values are such ones as democracy, respect to human rights, minority rights and freedom of expression which are defined in the European Convention on Human Rights. We also know that, all the states parties to the European Convention on Human Rights have integrated the European Convention on Human Rights with their national legislation. In this way, the European convention on human rights has gained the status of becoming a part of the internal legal system and become binding for the national courts and entire public authorities. The following result comes out from this: the European convention on human rights is binding for each state party and if a decision taken by the national courts is reversed by the European court of human rights, the decision of the European court of human rights will be valid. In this context, since Turkey is one the state parties of the European convention on human rights, we will discuss the situation of Turkey regarding Human rights and minority rights. In this sense, in general, I will try to find answer 'how the intention of Turkey to became a member of the EU help the Kurdish question to be solved' in the light of the EU's value. During analyzing my thesis this question is to be my guide question.

Keywords: Kurdish Question, European Union, Turkey, Turkey's accession to EU, European Court of Human Rights, Progress Reports, Freedom of Expression, Minorities Rights, Human Rights

ÖZET

AVRUPA BİRLİĞİ PERSPEKTİFİNDEN TÜRKİYE'DEKİ KÜRT SORUNU

Bu gün Kürt sorunu hala Türkiye'nin en önemli sorunlarından bir tanesidir. Bu problem aynı zamanda Türkiye'nin Avrupa Birliğine Üye olması önünde de bir engeldir. Eğer biz Avrupa Birliği Komisyonunun her yıl yayınladığı ilerleme raporlarına bakarsak, biz sorunun Avrupa Birliği açısından önemini görebiliriz. Çünkü Avrupa Birliği bazı değerlere sahiptir ve gayet açık bir şekilde söylüyor ki 'eğer bir ülke birliğe üye olmak istiyorsa bu değerleri korumak zorundadır. Bilindiği gibi, Türkiye, Avrupa Birliğine üye olmak isteyen bir ülkedir. Bu bağlamda, Türkiye'nin Kopenhag kriterlerinde belirtilmiş bazı kurallara uymak zorundadır ki Avrupa Birliği varlığını bu kriterlere borçludur. Bunlar Avrupa İnsan Hakları Sözleşmesinde tanımlanmış; Demokrasi, insan haklarına saygı, azınlık hakları ve ifade özgürlüğü gibi haklardır. Bilindiği gibi Avrupa insan hakları sözleşmesine taraf olan bütün devletler Avrupa insan hakları sözleşmesini ulusal mevzuatlarıyla bütünleştirmişleridir. Bu şekilde Avrupa insan hakları sözleşmesi iç hukuk sisteminin bir parçası niteliğini kazanmış ve ulusal mahkemeler ve bütün kamu otoriteleri için bağlayıcı hale gelmiştir. Bundan şu sonuç çıkmaktadır; Avrupa insan hakları sözleşmesi taraf olan her ülke için bağlayıcıdır ve eğer ulusal mahkemelerin aldığı bir karar Avrupa insan hakları mahkemesi tarafından bozulursa Avrupa insan hakları mahkemesi kararı geçerli olacaktır. Bu bağlamda Türkiye de Avrupa insan hakları sözleşmesinin bir tarafı olduğu için, Türkiye'nin İnsan Hakları, azınlık hakları gibi konularda ki durumunu tartışacağız. Yine bu bağlamda, genel olarak 'Türkiye'nin Avrupa birliğine aday olma hedefinin Kürt sorununu çözme konusunda nasıl bir yardımı olabilir' sorusuna cevap vermeye çalışacağım. Bu soru tez boyunca bana yol gösterici olacaktır.

Anahtar Kelimeler: Kürt Sorunu, Avrupa Birliği, Türkiye, Türkiye'nin AB'ye Katılımı, Avrupa İnsan Hakları Mahkemesi, İlerleme Raporları, İfade Özgürlüğü, Azınlık Hakları, İnsan Hakları

INTRODUCTION

While establishing the modern Republic of Turkey, Atatürk described the objective of the Republic as ‘to reach the level of contemporary civilizations’, which is today represented by the European Union. Article 6 of the EU Treaty says that ‘'The European Union is founded on the principles of freedom, democracy, respect for human rights and fundamental freedoms and rule of law’. In this context, the Kurdish issue stands as the biggest obstacle in front of Turkey who aims ‘to reach the level of contemporary civilizations’ and wants to be a member of the European Union as well. In this thesis study, we tried to question the relationship between the Kurdish issue and the purpose of reaching contemporary civilizations which is today represented by the European Union that respects fundamental human rights and freedoms and bases on democracy and rule of law. In other words, if Turkey becomes a member of the European Union, how will this contribute to the solution of the Kurdish problem?

Before anything else, we briefly tried to understand the background of the issue. In this sense, there was a need to answer the question 'Who are the Kurds' because of the fact that the denial of the Kurdish people constitutes a part of the problem in this respect. This study consist of three part. The first part questioned the root of the problem. Under this title, we will try to seek an answer to the questions when the Kurdish problem arose and which politics gave way to this problem. In this respect, we will need to briefly analyze the period of Ottoman Empire since the origins of this matter go back to this period. This point of view will help us understand the present of the matter. In this sense, we examined the three main phenomenon as a reasons for the problem, which are; efforts made for centralization, nation state and constitutional problems. As we know, the Kurdish revolts began during the Ottoman Empire period and continued during the Republican period as well. Again we know that there was an unproblematic period starting from 1500s until the beginning of 1800s when Kurds were put under the Ottoman Empire sovereignty. This section briefly questioned the following points; what are the reasons of the fact that a period of more than 300 years passed without any trouble and what are the reasons for the emergence of the problems after a 300-year period? More importantly, are there similarities between the problems of that and this period? In other words, can the smooth and troubled terms offer a perspective to a solution of today’s existing problem? We also discussed the establishment period of the Republic with this consideration. The issue was one of the biggest problems during the early years of the Turkish Republic, the inheritor of the Ottoman Empire. It was such a realistic idea to create a nation-

state basing on a single nation after a multinational empire. The implementations of the Republic's founders to achieve this goal will doubtlessly help to understand this day of the issue. Also in this chapter we will go on into more detail while examining the implementation of the nation-state project and the effects of this process on the constitution in more details.

The second part of the thesis as a whole addresses Turkey's EU adventure; it questions Turkey's relations with the EU and the political developments experienced in Turkey in this respect since Turkey's application to the European Union. This part also examines Turkey's reforms made within the framework of accession partnership documents after the Helsinki summit, when Turkey's candidacy was accepted. Meanwhile, the study approaches the course of the Kurdish question and the results of the efforts given for democratization through the law of harmonization code of the EU. The study also mentions the military coups staged in Turkey since the application to the EU while examining the depredation created by the military authority on civilian politics. As well as provoking the Kurdish issue, this military effect has also been an obstacle to democratization in the country. we also emphasized the importance of the European Union with an aim to break the military authority.

In the third part of the thesis, the question was approached from the respect of the European Union in particular and from the European respect as a whole. In other words, what is the European Union and the European standards and how would Turkey's candidateship in the EU contribute to the solution of the Kurdish question? In this context, we analyzed both the Copenhagen criteria, which are supposed to be fulfilled for membership in the EU, and the annual regular reports of the European Commission, while addressing the European perspective in line with the Commission's recommendations and reviews in these reports. Again, in this context, the solution of the problem was questioned on the basis of clauses of the international agreements that the Commission refers to. We handled the clauses of the following agreements on this basis; European Convention on Human Rights, Framework Convention for the Protection of National Minorities, relevant agreements of the Organization for security and cooperation in Europe, UN Covenant on Civil and Politic Rights and European Charter of Local Self Government. Again, in this sense, this part tried to handle the matter from the perspective of the European Union by means of analyzing relevant views of the European Court of Human Rights (EC+HR) which makes decisions basing on the European convention on human rights. In addition, the part under the title 'The positive effects of Turkey's candidacy to European union on the Kurdish issue' analyzes the efforts made by Turkish legal system for democratization through the law of harmonization code of the EU. Thus, despite all the deficiencies, I tried perceptibly to define the importance of

membership in the European Union. Again in this part, with a respect to a solution to the problem, the Basque model was compared with the demands of the Kurdish politics. In the conclusion, I tried to summarize the results that I reached during my researches made to write this thesis.

CHAPTER I

1. BACKGROUND OF THE PROBLEM

1.1. Kurds

The Republic of Turkey, which was founded on the concept of nation-state, has always denied the existence of Kurds. The regime's main argument was that Kurds were the mountainous Turks. So, who are the Kurds? This question needs to be answered in this sense.

The Kurds are an ancient race who have inhabited contiguous mountainous regions that now fall mainly into the eastern part of modern Turkey, the north and eastern part of Iraq and the north-east of Iran. For some 3000 years (or longer, some historians claim) retaining their own language, customs and culture (O'Balance,1996 ,p. 1). Although Kurds live in the Republics of Armenia, Azerbaijan, in Syria and also in Khurasan in eastern Iran, or in cities Like Istanbul, Ankara, Tabriz and Tehran, the majority still lives in the mountains and plateau regions where the state of Turkey, Iran and Iraq meet (McDowall, 1996, p.5). The first use of name 'Kurds' dates back to the seventh century AD, when the advancing Islamic armies invaded the living areas of Kurds who were first named as 'Kurds' by the Arabs in the area (O'Balance, 1996,p.1). The term of Kurdistan was used the first time by the Turkish Seljuk prince Saandjar in the 12th century (Yıldız and Breau, 2010, p.5).

Despite the lack of precise figures about the Kurdish population due to a state of denial, undercounting for political reasons by countries with Kurdish minorities, the regional spread of Kurdish populations can only be estimated. According to David McDowall the percentage of Kurds in Turkey is around 19 percent (McDowall, 1996, p.5). Some sources give different figures about the issue since there is no certain data available. For example, Kerim yıldız and Susan Breau point out in their book, 'Kurdish conflict' that the current number of Kurds is araund 15 to 20 million which constitutes around 23 per cent of Turkey's population of 69 million. In this sense, it can be mentioned about the 1965 census which was taken in Turkey. The first and certainly the most recent, people were asked to identify their mother tongues in this census. According to this survey, some 2,2 million claimed Kurdish as their mother tongue and 1,2 million said it was their second language and also 150.000 people said that Zazaki was their mother tongue (Barkey and Fuller, 1998, p.62). Considering that Turkey had a population of 31 million in 1965 we can say that Kurdish population in Turkey was about 13 per cent in that date. However, 'the problem with such surveys is that they are more likely to

underestimate the numbers because some respondents, fearing the state employed questioner, don't always tell truth. In addition, there are many Kurds who have lost the use of Kurdish but consider themselves to be Kurds, or who have, over time, regained Kurdish identity'(Barkey and Fuller, 1998, p.62).

The Kurdish population in Iraq is estimated to be 5 million, from 20 per cent of the Iraq population, in Syria 1 million (9 percent) and in Iran between 7-9 million (15 percent),((Yıldız and Breau, 2010, p.5).

As can be seen from the data given above, Kurds in Turkey form the largest population, both numerically and as percentage of the national population.

1. 2. Historical Origins Of The Kurdish Problem

Under this title, we will try to seek an answer to the questions when the Kurdish problem arose and which implementations caused this problem. We will in this respect need to briefly analyze the period of Ottoman Empire since the origins of this matter go back to this period. This point of view will help us understand the present of the matter. When we look at the historical origin of the Kurdish problem, we can speak of three root causes which are; efforts made for centralization, nation state and constitutional problems.

1. 2.1. Efforts Made for Centralization

The effort of centralization refers to the followings in this thesis study; the governance of the Kurdish region belonged to Kurds in the period of the Ottoman Empire. In other words, there was a decentralist government and Kurds had a kind of autonomy. This thesis study described the Ottoman Empire's attempt to govern the Kurdish region from Istanbul as the effort given for centralization. Let's try to summarize what we mean with this expression through a short historical perspective.

When we examine the relations of Kurds and the Ottoman Empire, we can say that there existed a domination struggle between the Ottoman Empire and Saffavi in the period of Yavuz Sultan Selim. The Ottoman Empire won the battle of Chaldıran in 1514 thanks to the assistance provided by Kurds in this period. (Tan, 2009, p.74) This battle was followed by the signing of an agreement (Amasya agreement,1514) between Yavuz Sultan Selim and Kurds which assured that Kurds would be independent in their internal affairs and lend assistance to the Ottoman Empire in the event of a war. In the same way, Kurds would be

protected by the Empire in case of an attack targeting them. In accordance with this agreement, İdrisi Bitlisi, who had before the battle of Chaldıran ensured unity among Kurds and promised their fight on the side of Ottoman Empire during the battle, was declared by Yavuz Sultan Selim as the commander of the Kurdish side (Ozer, 2010, p.120,122, Tan,2009,p.78-80). Then by, a similar agreement was signed between Kurds and the Ottoman Padishah Kanuni Sultan Suleyman in 1536. In accordance with this agreement, the Kurdish region was confirmed as the property of Kurdish lords ruling the region (Heper, 2008, p.72).

When we analyze the history more carefully, we will see that Kurds and the Ottoman empire didn't have any problems for about 300 years as of this date, when the agreement signed. The Kurdish region was governed by Kurds who themselves were collecting taxes during this period. They just gave a certain amount of taxes to the Ottoman Empire every year. In other words, they had a kind of autonomy. With the expression of Metin Heper, the Ottoman Empire as much as possible allowed Kurds to govern themselves. according to Heper, this situation was a result of the fact that The Ottoman Empire was following a realistic policy (Heper, 2007,0p.38).

The relations between the Empire and Kurds however started to retrogress in the early 1800's when the term's Padishah Mahmud II tried to pass to a centralist system with the impact of westernization. There was an effort to govern the region of Kurds from Istanbul. Governors were appointed to the region from Istanbul and taxes were collected by government officials sent to the region. As of this date, Kurds rebelled against this new practice because they thought they had lost their autonomy (Ozer, 2010, p.160-164). Among these rebellions are also Bedirhan uprising (1843), *Ezdin* Shêr *revolt* (1854) and Sheikh Ubeydullah *Rebellion* (1880).

The efforts of centralization on the Kurdish issue could, briefly, be summarized as we mentioned above. We also need to draw attention to a similarity in this regard. The matter of historical westernization shows parallelism with the present thought "Turkey can't be governed from Ankara" that Kurdish politicians often voice today.

1. 2. 2. Nation State

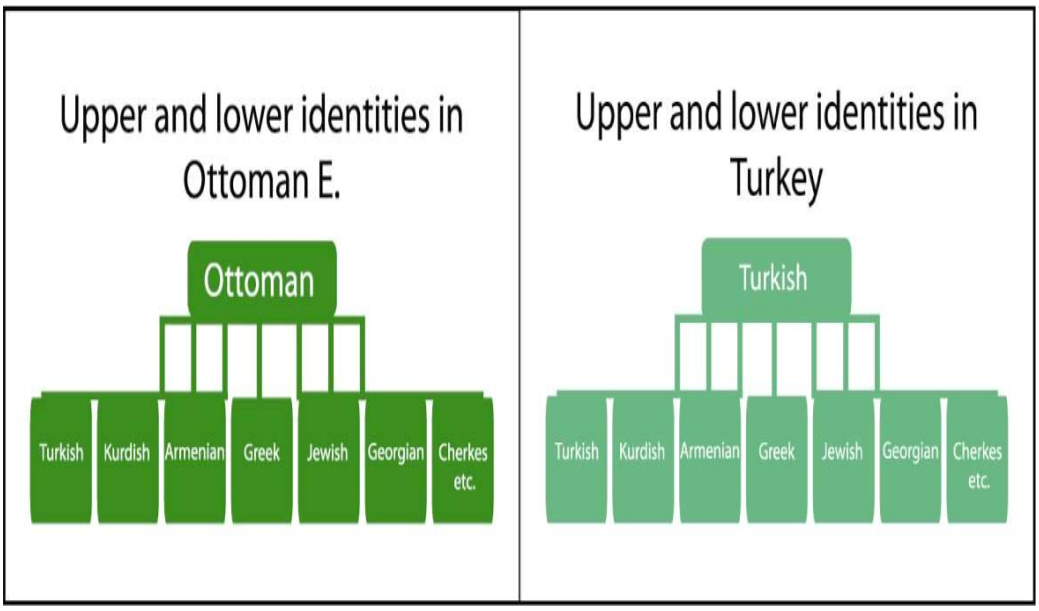
The reason why this thesis study addresses the nation-state ideation as one of the reasons of the Kurdish issue is related with the fact that the Turkish Republic state, which was built on the heritage of the Ottoman Empire, defines everyone living in Turkey as a Turk as well as denying the existence of all other nations. However, the Turkish Republic was constituted of

various races, languages and cultures as it inherited from the Ottoman Empire. Under the title of nation state, this thesis defines the effort of turkicizing all these different languages, races and cultures as the effort of forming a nation state. The most important point here is the fact that all identities except for Turkish have been denied in this process. Now we will try to review this process in terms of history more closely.

As is known, the Turkish Republic was founded as a nation state. The idea of a nation state was as a matter of fact widely discussed under the leadership of Committee of Union and Progress in the latest period of the Ottoman Empire. We can shortly summarize the Committee of Union and Progress' process of nation state as follows; The Committee of Union Progress (CUP) primarily adopted the idea of Ottomanism to stop the collapse of the Ottoman Empire however they later abandoned this idea in the face of independence demands of nations such as the Serbs, Croats, Bulgarians and Christians within the empire. Because Ottomanism was an idea which aimed to unite all peoples and religious groups that constituted the Ottoman Empire. However, this idea was defeated by the effect of the nationalism idea and the independence declaration of the Christian peoples that we mentioned above. Members of the Party therewith began to defend the thesis of Pan-Islamism in order to save the empire, however this theory also collapsed particularly when Arabs declared independence. With the independence declaration of Arabs, the idea of Pan-Islamism was also abandoned for intending to prevent the downfall of the Ottoman Empire by uniting Muslim peoples that constituted the Empire. The idea of 'Turkism' thereupon became the single idea advocated by the members and supporters of this party. In other words, members of the Committee of Union and Progress were of the opinion that the idea of Ottomanism was no more effective after the independence declaration of the Christian peoples, and in the same way the idea of Pan-Islamism was no more effective after the independence declaration of Arabs. They therefore resorted to 'turkicize' everyone left there. In short, the transformation of the Committee of Union and progress developed in this way (Tan, 2009, p.117).

However, the main purpose of the new government was to create a single nation from a multinational empire. In this line, the existence of other nations was denied and everybody was accepted as Turk while a fast process of "turkification" began in the society. In the following chapters we will examine the implementation way of the nation-state project and the effects of this process on the constitution in more details but to further concretize the subject, we will firstly have a look at the lower-upper identity description during the process between the periods of the Ottoman Empire and the Republic.

"Ottomanism" was the upper identity in the period of the Ottoman Empire and all other identities, Turks, Kurds, Armenians, Jews and Georgians were the lower identities. As of the beginning of the Republic period, the nation state in other words, Turk became an upper identity while all others again remained as lower identities. The table below by Baskın Oran shows the situation which Oran himself finds troublesome;



Oran considers this situation as troublesome because of the fact that the upper Turkish identity represented a single identity and denied other subgroups (Oran, 2010, p.3). We will touch this subject in more detail but now we will have a look at how the nation-state project was expressed on official reports in the history of the Republic. This review will give us an idea as to how the process of turkification was implemented. Separately, some statements made by the rulers of Republic throughout the Republic's history will also give as an idea as to the bases that the Republic was founded on. Let us examine the "Turkification" process of the Republic; in other words, creating a nation state from an empire. Our purpose is to analyze the process of Turkey's becoming a nation state on basis of the official reports.

The report of the east reform plan was on 24 September 1925 prepared by the council of ministers and with a "confidential" sign[1]. According to this report; Turkey was divided into five general inspected regions and the regions where the Kurdish people are densely populated were included in the 5th inspectorships region. This reform plan ruled the followings; 1-persons, families and groups would be forced to migrate to the west if they were

[1] This report consisted of totally 27 articles; we dealt with those related to the turkification efforts and our topic. More detailed information and the entire reports can be found in the book of Belma Akçura titled 'Devletin Kürt Filmi' (Kurdish Film of the State). Additionally, this plan was prepared after the Sheikh Said revolt.

not seen appropriate by the government, 2- those who would use a language other than Turkish in the mentioned provincial centers and townships, state institutions, bazaars and markets would be punished 3- Kurds won't be appointed to military and civil courts as judges. 4- idealist and skilful Turkish officials would be sent to the east and Kurds wouldn't be appointed to civilian and military courts as even secondary official (Akçura, 2009, p.58).

The settlement law issued in 1934 stated that the nomads disloyal to the Turkish culture would be sent to the towns, but not in masses (Akçura, 2009, p.59).

Again, among these reports, we can mention the Kurdish report prepared by Ismet Inönü, the first prime minister and second president of the Turkish Republic, following he detailed survey in the Kurdish region with the order of Atatürk in 1935. In the report he presented to Atatürk, İnönü stated that; 'Concerning the regions populated by Kurds, I can say that these people is eager to be Turks and we should therefore give more efforts in this respect'. Again, in this report, İnönü said that they could use the Arabs against the Kurdish if western states like France instigated the Kurdish people in the regions where Arabs were densely populated such as Mardin and Siirt. İnönü also stated in the report that the Republic was based on the military foundations and the most important guarantee of the Republic was the army (Akçura, 2009, p.78).

Again, in 1936, Celal Bayar, (the third president of Turkey) prepared a report about the Kurdish people upon the request of Atatürk and İsmet İnönü. In this report, Bayar stated that the Turkish armed forces was the greatest power to dominate the region which - he noted- had not been taken under full control yet. Additionally, Bayar stated that those living in the region should not be officially called "Kurdish". Bayar also stated in this report that the people were not landowners and that there were aghas (lords) who owned the lands. On this issue, he made the following determination, "if people became landowners, their degree of loyalty to the state would increase" (Akçura, 2009, p.96).

Finally, we can in this respect mention a Kurdish report which was prepared by the "Eastern Group" established after the 27 May 1960 coup d'etat. This plan was very similar to the plan prepared in 1925 at many points but it also consisted of broader proposals concerning efforts for turkification. For example, according to this plan, the Kurdish would be taught that they were Turks, means such as radio, theatre would be used for this purpose, 2- The intellectual environments in the world would be told that there was no Kurdish problem in Turkey, 3- a Turkish institute would be established on short notice within the body of a university and it would be proved in these institutes that 'Kurds are, in reality, Turks' (Muller, 1996, p.175). Again, in this report, it is remarkable that the Kurdish people were

mentioned as “those who think themselves as Kurds”.

In all these reports, it is seen that the Republic has made an effort of creating a nation since the very beginning of its foundation. While doing this, it is clear that political powers tried to “Turkify” the Kurdish people who are the most important components of the Republic. Again on this issue, we will have a look at various statements of the rulers beginning from the first years of the Republic. Additionally, we will also look at the implementations made on the way of becoming a nation state.

The 1930s witnessed a range of cultural measures designed to emphasize the cultural homogeneity of the Turkish People. As distinct from Ottoman and Islamic culture, history books were rewritten to praise the achievements of the Turks. Institutions were established to defend the superiority of Turkish culture over other cultures; such as the Turkish Historical Society established in 1931 and the Turkish Language Associations in 1932. These institutions also raised some absurd theories such as ‘sun language theory’ which argues that all languages were originated in the Turkish language. Turkish history thesis argued that the Turks originated from central Asia and migrated to different parts of the world spreading civilization. Continuity was established between the Turks living in Anatolia and their ancestors in Central Asia by arguing that all previous ancient civilization in Anatolia, including the Hittites and the Sumerians, were Turkish-inspired (Kirişçi and Winrow, 1997, p.102). In addition, it was argued that by these theories, those who thought of themselves as Kurds were in reality Turks. Kurdish people were defined as mountain Turks. According to the ‘mountain Turks’ theory, Kurds are not as a separate nation but ‘mountain Turks’ whose names arose from the sounds (kart-kurt) coming from their shoes while walking in the snow. Interestingly enough, these studies were made on behalf of science. The quotes by Atatürk is quite remarkable in this context; ‘Happy is he who is a Turk’. This statement can surely be commented in different ways, but it would not be wrong to read it like this: the precondition of the happiness in Turkey is to be Turk. Another well-known statement of Atatürk is like that; ’one Turk equals the whole world’. Including Kurdish territory and all cities, both sentences were written everywhere in big sorts. The same implementations continue today as well.

When we follow the footsteps of the Kemalist regime with the impact of the statements made by the authorities in different periods, we will see that these remarkable statements may give us some idea about the concept of the Kemalist regime.

Ataturk’s successor Ismet Inönü succinctly summarized the official position in 1925 as follows: ’’we are frankly nationalist and nationalism is sole factor of our cohesion. Other

components have no influence in the face of Turkish majority. We must "Turkify" the inhabitants of our land at any price, and we will annihilate those who oppose the Turks of 'le turquisme' (Barkey and Fuller, 1998, p.10). In 1930 Mahmut Esad Bozkurt, the minister of justice, stated that: 'I believe that the Turks must be the only lord and the only master of this country. Those who are not of pure Turkish can have only one right in this country, the right to be servants and slaves' (Beşikçi, 1998, p.67). In 1960, when General Cemal Gürsel removed the civilian government and declared himself president, he said in his speech in Diyarbakir like that: 'there are no Kurds in this country. Spit in the face of him who calls you a Kurd' (Gunter, 2008, p.65).

After analyzing the implementation of the nation state over the following the official reports and statements made by government of the Republic, It could be useful to make a comparison between France and Turkey in order to understand the present since both countries are nation state. In his article 'matter of unitary state in France and Turkey' (Fransa'da ve Türkiye'de Üniter devlet Sorunu), Baskın Oran briefly makes a comparison between the nation-state model practiced in Turkey and France. There are two France according to Oran; one of them is the France of today, and the other is a France which tried to assimilate all subgroups in the history. However, the France of today is a country which respects lower and cultural identities for the last 50 years. Oran tries to prove this situation with the following facts; France is a country that has denied minorities along the history but recognizes collective minority rights today. Furthermore, the country has granted this right in the regions at the border of Germany and Spain, as well as in the island of Corsica. Besides, this right was assured by the constitution as well. To give an example, the 75-1 Article of the French Constitution rules that; 'Regional languages are included in the common heritage of France'. (Les langues regionales appertiennent au patrimoine de la France) (Oran, 2010, p.4).
To go back to the table above; in Oran's opinion, the presence of Ottoman as an upper identity didn't constitute a problem because there is no race with the name 'Ottoman'. Similarly in France which recognizes lower identities, the French upper-identity may not constitute a problem because there is no race with the name 'French'. However, the situation isn't the same in Turkey where the 'Turkish' upper-identity is troublesome for representing the Turkish race and based on refusing other lower identities. In other words it modeled itself on the historical experience of France. In this respect, Oran grounds the basic source of the Kurdish problem on this change in upper identity respect in the process of change from Ottoman Empire into Republic. In other words, the basic source of the problem is the fact that the upper Turkish identity represents a race and more importantly refuses the Kurdish identity

and others (Oran, 2010, p. 2-3).

Oran also presents an opportunity to see the ongoing troubles within the scope of nation-state implementations in Turkey by analyzing the present standpoint of France where the nation state concept was first born in the world. For instance, two minority groups in France have special minority rights in their territories today; the region of Alsace- Moselle and the island of Corsica. In Alsace- Moselle regions, people face no legal obstacles in front of receiving mother-tongue –Alsatian language- education at kindergartens and primary schools. Some schools at the same time provide bilingual education in Alsatian language and France. The Alsatian language is a different dialect and quite similar of the German language. In Oran's opinion, it is quite significant that France grants this right in a region which is located at the border of Germany with whom it experienced numerous troubles along the history. Still, it is to be noted here that some laws on local unions in this region are in German language, which means that union laws were formed in accordance with the German civil law, not the France law (Oran, 2010, p.10-11).

The situation is much advanced in Corsica Island which has a board of executive organ and a special status. Corsica Island has two official languages; Corsican and French. At this point, it would be useful to remind that the expenses of schools in Basque region which provide mother-tongue education are covered by the state by 70 % (Oran, 2010, p.13).

In a speech in 1981, President Mitterrand said the followings to summarize the process of France, the nation-state project's birthplace; 'France in the past needed a powerful and centralist government so that it could be founded. However, as to the France today, it has become compulsory for the political power to be replaced by local governances to prevent the country's dispersion' (Oran, 2010, p. 4).

Oran comes to the following conclusion when comparing the nation-state models of France and Turkey; Turkey's insistence on the idea of nation-state is very meaningless while even France, the cradle of the idea of nation-state, is already dropping this idea in the current period. Oran, defending that nation-state is fundamentally a troublesome idea, thinks that this idea has already expired today. As in the example of France, the protection of cultural identities is the mostly appreciated and a contemporary consideration.

To sum up, it is seen that the governing idea of the Republic throughout its history has been to form a single nation from a multinational empire. This idea was therefore built on the denial of other races and beliefs; which is obviously expressed on both official reports and in the statements of rulers of the Republic. Among the restrictions made within the scope of the nation-state project throughout the Republic history are the bans on the Kurdish language,

Kurdish singing and Kurdish local dresses under the title of modernization. As of the first years of the Republic, objections were raised, by Kurds in particular, against the nation-state project. These objections which mostly turned into rebellions also included significant examples such as Sheikh Said, Ağrı and Dersim rebellions.

We tried to summarize the construction of the nation-state briefly. The Constitution was also enacted basing on these opinions.

1. 2. 3. Constitutional Problems

The effort of creating a pure Turkish nation was the main purpose of the Republic starting from the constitutions made in first years to the 1982 constitution. Let's look at the reflection of this opinion on the constitutions.

On 21 January 1921, the constitution (Teşkilatı Esasiye), which was accepted as the first constitution of Turkey ruled that: "sovereignty unconditionally belongs to the nation." Here, regarding the question of "which nation", those who prepared the 1924 constitution explained the issue as follows. "Our state is a national state. The state does not recognize any other nation other than Turks. The country also consists of people from different races who have equal rights and laws as well, however it is not permissible by law to grant rights to people in accordance with their racial circumstances or to make statements in line with this sense." By making more emphasis on Turks 1961 constitution in article 4 states as follows, 'Sovereignty unconditionally belongs to the Turkish nation' (Akçura, 2009, p.60).

In 1961, Article 1587, which anticipates the change in the names of the Kurdish and Armenian village names exactly says, "The names of non-Turkish, Kurdish and Armenian village and place names do not fit the Turkish national culture, moral values, traditions and customs, and they hurt the public"… (Akçura, 2009, p.61).

Another problem that arose with the 1961 Constitution was the foundation of the National Security Council. According to this, National Security Council was formed by the prime minister, the foreign affairs and national ministers, the domestic affairs minister, the chief of general staff and four force commanders under the presidency of the President. The council was assigned with the task of consulting the government about the threats regarding the security of the country. Concordantly, with the 1961 Turkish armed forces internal service act, it was given the responsibility of defending both the land and the Republic against foreign and domestic dangers. With this military code, the military was also assigned to protect the land against foreign and domestic dangers "by using force if necessary". Metin Heper, who

commented on this situation, says that, with the 1961 Constitution, “the custody role of the military on the regime was institutionalized’ (Heper, 2011, p.311).

Again in the 3rd and 4th items of the 26th Article of the 1982 Constitution, “No language prohibited by law may be used in the expression and dissemination of thought. Any written or printed documents, phonograph records, magnetic or video tapes, and other means of expression used in contravention of this provision shall be seized by a duly issued decision of judge or, in cases where delay is deemed prejudicial, by the competent authority designated by law". The 2nd item of article 28 says, “Nothing can be broadcast with a language prohibited by law”. Again the 9th item of Article 42 says “No language other than Turkish can be used and taught as the mother tongue of Turkish people in the educational institutions". Also article 66 says that ‘everyone bound to the Turkish state through the bond of citizenship is a Turk.’ In this point, the term of ‘Turk’ is important. Because, it is argued that the term of Turk does not refer to any races. But according to Baskın Oran, that concept of Turk described in the constitution refers to the Turkish race with the following examples. 1. İstanbul no. 2 administrative court used the expression ‘foreign national Turkish citizen’ for a Turkish citizen belonging to Rum Orthodox religion in April 1996. 2. While listing those who can sabotage in Turkey in paragraph j of Article 5 of the regulations on the protection against sabotage in 1998, the expression ‘domestic foreigners inside the country’ is used and according to Oran, this is an obvious discrimination. 3. According to Article 24 of the law no 625, which was in effect until 2007, the qualification of the person who will work at minority schools as deputy manager must include the following: ‘of Turkish origin and citizen of Turkey’. As can be seen, to be a citizen of Turkey is not enough. This person needs to be of Turkish origin. Besides Baskın Oran drew attention to the fact that one of the former ministers, Şerafettin Elçi, was kept in prison for 30 months since he said ‘there are Kurdish people in Turkey and I am Kurdish too’ and came to conclusion that in practice Kurdish people are not included in Turkish people (Oran,2011). Furthermore, Baskın Oran claims the word “Turk” is used to refer only one race and it is a separatist word reminding that while Meral Akşener was interior minister, she used the expression “Armenian posterity” for Abdullah Öcalan (Oran, 2006, p.150). In addition Oran says that it should be used ‘Türkiyeli’ (from Turkey) instead of Turkey nation. Historically, this term was used By Atatürk at first during the war of independence. At the present, this term is used by Abdullah Öcalan. in this respect, Baskın oran consider the concept of ' Türkiyeli, from Turkey' as more appropriate to be used in Turkey on the grounds of being more extensive (Oran, 2011).

1. 2. 3. 1. The Problematic of Freedom of Expression in the Constitution: Article 301 and Other Relevant Articles

The Constitution also considerably restricted the freedom of expression which is one of the fundamental freedoms. The biggest obstacle to freedom of expression is Article 301 which still contains serious problems despite the amendment in 2008. The Article is very open to interpretation and therefore has a restrictive feature on the freedom of expression.

Article 301 of Turkish Criminal law is the main article, which is argued mostly in terms of freedom of expression in Turkey. This article regulates the crime of 'insult to Turkishness'. In spite of the amendments made in this article in 2008, many intellectuals still stand trial for expressing their different opinions. The former version of the Article 301 says that '(1) A person who publicly denigrates Turkishness, the Republic or the Grand National Assembly of Turkey, shall be punishable by imprisonment of between six months and three years. (2) A person who publicly denigrates Government of the Republic of Turkey, the judicial institutions of the State, the military or security organizations shall be punishable by imprisonment of between six months and two years. (3) In cases where denigration of Turkishness is committed by a Turkish citizen in another country, the punishment shall be increased by one-third (4) Expression of thought intended to criticize shall not constitute crime'.

With the amendments made in 2008, the new article of 301 says that: (1) A person who publicly denigrates the Turkish People, the State of Turkish Republic, the Grand National Assembly of Turkey, the Government of Turkish Republic, the judicial institutions of the State, shall be punishable by imprisonment of between six months and two years. (2) A person who publicly denigrates the military or security organizations shall be punishable in accordance with the provision of the first paragraph. (3) Expression of thought intended to criticize shall not constitute crime. (4) The investigation for this offence is subject to the permission of the Minister Of Justice.

Crime of 'insult' and 'weakening the government agencies were included in the regulation before 2008. With the latest amendment, 'crime of insulting" was replaced with those crimes (Hainrich Böll Stiftung Derneği). Moreover, the crime described as denigrating Turkishness was amended as insulting the Turkish People.

The reason why the concept of 'denigrating Turkishness' was amended as 'insulting the Turkish people' is the argument which accepts that 'Turkish people' does not address to any

races in Turkey, particularly by an official ideology. Baskın Oran says that “we can understand there is no difference between the words “Turk” and “Turkish nation” if we try to understand why Turkey refuses a Kurdish state, which will be founded in the north of Iraq”, and adds “for that reason the amendment made in Article 301 makes no sense” (Oran, SETA, April 28,2008.). Another important point to be considered in this respect is about the freedom of expression, which are the core rights of the other rights. The press release made by the bar Association of Diyarbakır on 18 April 2008, draw attantion to the issue of freedom of expression in Turkey and the articles, which pose a problem for freedom of expression, were listed as follows. The press release also mentioned the problems related to the implementation and reflected the discomfort felt due to the unclearness of the articles.

When the other regulations in Turkish criminal law are taken into consideration, there is no need for Article 301. Besides, it should be known that Article 301 of the Turkish criminal law is not the only obstacle to freedom of expression.

Apart from the Article 301, the Articles 215,220/8, 222,228 and 318 of the Turkish penal code are also problematic articles that stand before the freedom of expression. The Article 215 says that; 'people praising crime and criminals are sentenced to imprisonment up to two years'. The section 8 of Article 220 says that; ‘people making propaganda for the organization or its purpose are sentenced to imprisonment between one to three years and the sentence is increased by half in case of committing this crime by means of press and broadcasting’. While the Article 222 says that; ‘people acting contrary to the obligations of the law dated 1 .11.1928 concerning compliance and application of Turkish letters are sentenced to imprisonment between two to six months’, similarly, Article 318 says; ‘people making propaganda in a way to turn people against the military are sentenced to imprisonment between two to six months and the sentence is increased by half in case of committing this crime by means of press and broadcasting’. (Bianet, December 12,2010)

When we examine these items, we can say that using the letters q, w, x in the Kurdish alphabet is considered a crime according to the Article 222 of the Turkish Penal Code. However, on the other hand, an official state television in Turkey which broadcasts Kurdish 24 hours a day can use these letters in the broadcast. In brief, courts consider this situation a crime when citizens use these letters but they don’t consider it a crime when the state itself uses them. It should be noted that one of the main criticisms regarding these articles is that courts can interpret them according to the political atmosphere. Again in this context, the European Commission's progress reports issued in 2009 (European Commission Official report, p.17) and 2010 (European Commission Official report, p.20) drew attention to this

problem and determined that the Articles 215 and 318 of the Turkish penal code were problematic as they constituted an impediment to the freedom of expression and constricted freedoms.

Meanwhile, some steps were taken in this regard with the amendments made in the anti-terror law in 2003. As an example to these amendments we can show the abolishment of the Article 8 which imposed sentence for 'staging demonstration and march with written and oral propaganda aimed at damaging the indivisible unity, territory and nation of the state of Turkish Republic'. The area of freedom of expression was thereby expanded through this amendment. However, some amendments made in the anti-terror law in 2006 once again constricted the area of freedom of expression (Aytar, TESEV, p.2). These amendments briefly are as follows;

Article 5 increases the sentences given to the press and authorizes judges and prosecutors to suspend periodical broadcasts up to one month. Separately, Article 6 increases the sentences given to the press on charges of "aiding the propaganda of terror organizations" and holds the owner of periodical broadcasts particularly responsible in such crimes. In addition, Article 6 also imposes sentence for wearing a mask and carrying the icons and uniforms of terror organizations and increases the penalties in such cases if the crimes are committed by associations, foundations, political parties, trade unions and professional associations in educational institutions and dormitories. Again the Article 9 reduces the number of lawyers to one to be hired by suspects and authorizes judged to deny permission for suspects to meet their lawyers for 24 hours. It also authorizes judges to allow the participation of a government official in the talks between the suspects and their lawyers (Aytar, TESEV, p.4).

Here it would be useful to clarify that one of the biggest problems concerning these articles is the way they are interpreted by courts which may read these articles according to the political atmosphere in Turkey. From this point forth, many circles in Turkey express that these articles aren't clear enough. To give an example, a person who wears a combination of yellow, red and green (colors of the Kurdistan flag) can very easily be interpreted as a member of a terrorist organization by the courts, in accordance with the Article 6. (Aytar, TESEV, p. 6).

1. 3. Conclusion

Following the analyze of the Kurdish problem's origins, efforts for centralization, nation state and constitutional problems, I came to the following conclusions;

1- The Kurdish problem doesn't appertain to the Republic period alone because the problem arose in the period of Ottoman Empire owing to the effectiveness of an effort to change into a centralist system. The Ottoman Empire and Kurds didn't have a trouble for 300 years and rebellions didn't arise until the empire tried to dispossess Kurds of their autonomy.

2- The Republic is grounded on the bases of nation-state which was shaped on the denial of other nations, cultures, languages and beliefs, as understood from official reports and statements made by the rulers of Republic as well. Besides, a process of Turkification began, targeting all other subgroups. These implementations caused Kurdish revolts in the very first years of the Republic. As seen in the example of France; even a country which is the nation-state project's birthplace, has tendency to abandon these implementations today. Minority groups were granted some cultural rights, which mean that respect to cultural identities made progress. Within this framework, the strict practice of nation-state is quite away from being a contemporary regime today.

3- The constitutions enacted throughout the republic history were all based on the sense of a nation-state. In other words, these constitutions were enacted to serve for the process of Turkification.

4- The freedom of expression restrictive articles of the Turkish penal code are criticized on the progress reports of the European Commission as well. It is therefore unavoidable for Turkey, as a member country, to make reforms in with the reviews of the European Commission.

5- In contradistinction to the allegations by some segments, the concept of Turkish represents a single race, which could be understood from the practices of the Republic as well. Meanwhile, to seek the reason of 30-year-old conflict between the PKK and the state in these implementations will also help us to understand the source of the problem. Tens of thousands of people lost their lives, thousands were forced to evacuate their villages and millions had to migrate from their homelands owing to this conflict process. It is therefore of vital importance to give an effort to understand this process. In this respect, getting to the bottom of the matter plays a key role at the point of solving the problem.

CHAPTER II

2. MEANWHILE IN TURKEY: A EUROPEAN UNION ADVENTURE

2.1. Introduction

The EU-Turkey relationship has been complex and hard from the first day. The relationships were stopped several times from the period when the first talks on the association started in 1959 to the period when the negotiations for the membership started in 2005 and hard times were spent. It should not be forgotten that there happened three coup d'etats during this period. Additionally, apart from the coup d'etats, the army intervened either to civil politics as it did on 28 February 1997, or tried to design the politics for the presidential elections on 27 April 2007. During these periods when democracy was put on the shelf, the relationship of the EU with Turkey took a major blow. At the same time during these periods very serious human rights violations were experienced. If we think of the Kurdish problem mainly as a human rights problem, a problem of democratization, a problem of minorities, it is clear how vitally important this process regarding Kurdish problem is. As it is known, the Copenhagen criteria, which candidate countries have to fulfill, guarantee democracy, rule of law, human rights and minority rights. These are the conditions Turkey must fulfill to be a member of the EU and the same conditions are valid for the other candidate countries. In addition, these conditions are not subject to any deal. On the other hand, the membership for the EU is seen as an important goal to reach the level of modern civilizations and become modern, which was put forward by Atatürk during the first years of the Republic (Gunter, 2008, p.93).

2.2. Relation Of Turkey With The EU

Turkey expressed an interest in institutionalizing its relation and becoming an associate member of the EU in the late 1950s. Turkey applied for associate membership in 1959 and in 1963 it signed an association agreement, Ankara agreement, which was intended to pave the way for full membership. Ankara agreement went into effect in 1964 (Joseph, 2006, p.3). According to this agreement, when the relations of Turkey with the EU have 'advanced for enough to justify envisaging full acceptance by Turkey of the obligation of the (EC) treaty, the (EC) shall examine the possibility of the accession of Turkey to the European

Community.' (Ankara Agreement, article 28) in 1971, additional protocol which was aimed strengthening of their economic and political relation between the EU and Turkey, was signed. After the two Mediterranean enlargement of the EU in 1980s – accession of Greece in 1981 and of Portugal and Spain in 1986- Turkey applied for full membership in 1987 (Joseph, 2006,p.4). A major step toward the EU accession came when, in 1995, 'Turkey-EU customs Union' was agreed. 'This agreement allowed Turkey preferential access to European single market, and projected that Turkey would receive 470 Million US dollars in adjustment funds between 1996 and 2000' (Yıldız and Muller, 2008, p.22).

Helsinki summit, 1999, has a very important place regarding Turkey's relations with the EU. In the final declaration of this summit, the European Parliament announced that it supported the candidacy of Turkey to the EU with majority (Esen, 2009, p.79). Another milestone in Turkey's European course was the publication in October 2004 of the positive 'recommendation of the European Commission on Turkey's Progress towards Accession'. The recommendation stated that accession negotiation can be opened with Turkey. This was the first time an EU institution clearly recommended the opening of accession negotiations. Two months later, the Brussels European Council adopted the recommendation of the Commission and decided for the opining of accession negotiations on 3rd October 2005 (Joseph, 2006, p.4). In this way, the accession negotiations were launched on 3rd October 2005. Determining the negotiations date was the first tangible step taken by EU towards Turkey's membership exactly 40 years after Ankara agreement. In 2008, Accession Partnership Document (APD) was released by the Council. The APD is final official document that contains the 'principles, priorities, and conditions' regarding Turkey's accession. This document prepared in accordance with Copenhagen Criteria (1993) and Negotiation Framework Document (2005), which regulate the accession criteria. Especially, the short term measures, which Turkey has to fulfill, contain some political reforms. These are; strengthening democracy and the rule of law, ensuring Civilian oversight of the security forces, and reforming judicial system. According to APD, until the end of 2012, Turkey has to strengthen public administration in a way ensuring efficiency, accountability, and transparency. Turkey also has to desolve powers to local administrations and provide them with adequate resources. In addition, Turkey has to ensure the ratification of the optional Protocol to the UN convention against torture; compliance with the ECHR (European convention on Human Rights), and full execution of the judgments of ECtHR (European Court of Human Rights). Again the APD emphasized that Turkey has to ensure cultural diversity and promote respect for and protection of minorities in accordance with the ECHR

and principles laid down in the Framework Convention for the Protection of National Minorities and in line with the best practices in member state. At the same time Turkey has to guarantee legal protection of minorities regarding to cultural rights and in this context Turkey has to remove remaining legal restrictions on TV broadcasting in languages other than Turkish and support for the teaching of languages other than Turkish (Kepenk, 2009, p.320). As can be seen the APD drew attention to 'Framework Convention for the Protection National Minorities, UN convention, ECHR and ECtHR while reminding Turkey homework. From this point of view, when we examine the EU perspective about Kurdish question we will refer to these convention

2. 2. 1. Kurdish Problem in Turkey during the EU Candidacy

Let's look at the reforms which made by Turkey during the EU accession process. This is to say; the EU's role in solving the Kurdish question. This process can be called as a democratization process and, in this sense, is directly relevant Kurdish issue. Turkey responded with a national program to the Accession Partnership Document, announced by the EU in Helsinki 1999 – this document was a road map in that it included the assignments Turkey had to fulfill based on the Copenhagen criteria. In this context, Turkey tried to respond to this process with 7 harmonization packages during the years 2001 and 2003. Several reforms were carried out. Among these were the reforms related to Kurdish problem, which was a sensitive issue in the public opinion, in particular and an issue of democratization in general. For instance, in the first two-harmonization packages accepted in February 2002, several amendments were made in the laws such as Turkish penal code, the law to fight terrorism, the press code, state security courts law, and meeting and demonstration law. For example in the press code the statement "forbidden language" was abolished. In August 2002, with the third harmonization package approved by the Turkish Grand National Assembly, the right to publish in Kurdish was granted and death penalty, discussed as "Apo issue" in the public opinion, was abolished. The reforms made till this date were the reforms made during the Ecevit period (as it is known the Ecevit government was a coalition government and this coalition included DSP-ANAP and MHP).

In 2002, the process was continued when AKP came to power. On 3rd December 2002, with the change made with the fourth harmonization package, personal rights and freedoms were expanded largely. Finally, with the seventh harmonization package, several reforms were made such as freedom of thought and expression, change in the structure of the national

Security Council and its becoming civil. According to this, the structure of the National Security Council was changed as part of the harmonization period to Copenhagen criteria. According to this, the military members were excluded from the State Security Court, and the number of the civilian members in the National Security Council was increased. More importantly, National Security Council was defined as "opinion presenter", not as "precaution proposer". Also, the condition proposing that the government must prioritize these opinions was abolished. In return for this, the EU welcomed these changes with pleasure and on 16-17th December 2004 in Brussels, 'the EU state and government presidents accepted to start the negotiations with Turkey on 3rd October 2005. in the first years when AKP come to power, the AKP government in charge gave the impression that it will be the leader of the membership process and achieved a great breakthrough by securing the decision by the EU presidents and heads of the government on 17th December 2004 and the related initiation of accession talks the Accession Conference on 3rd October 2005. Nevertheless, AKP 's love for EU grew thin in time' (Kepenk, 2009, p.331). In order to understand this, it should be examined AKP' s propagandas for coming to power in 2002 before general election. AKP always referred to the EU process in 2002 general election and also when it made the reforms, which mentioned above, he took heart from the EU. But especially in 2011 general election, AKP did not refer to the EU at all. However, AKP did some reforms from 2005 to present. For instance, in 2009, a Kurdish TV, TRT-6, broadcasted full time. Again in 2010 Constitutional referendum on a number of changes to the constitution was hold in Turkey. The changes were aimed at bringing the constitution into compliance with the European Union standards. Supporters of Turkish EU membership hope constitutional reform will facilitate the membership process. According to these new amendments,

'*Provisional Article 15 of the Constitution, which provided protection to coup leaders, will be abolished. The amendments will allow the leaders of the 1980 coup to be sent to court. Military officers who commit crimes against the state, such as preparing coup plans, will be tried in civilian courts. Military personnel who are dismissed from the Turkish Armed Forces will have the right to appeal to the judiciary, the right to legal remedies and the right of defense.*

Personal information such as names, photographs and ID information will be kept private. This kind of information will be stored only if the individual agrees to it, and individuals believing their personal information is being misused will be able to hold relevant entities accountable.

Problems between the state and citizens will be resolved by way of an Ombudsman without having to go to court. If citizens are not satisfied with judicial decisions, they will be able to directly petition the Constitutional Court.

Since the structure of the Constitutional Court will change, closing down parties will not be as easy as it used to be. Deputies will not be banned from politics if their party is closed down, but will keep their seats for the normal term.

Parliament will choose some of the members of the Constitutional Court. The number of Constitutional Court members will be expanded. Parliament will appoint three members while the president will appoint 14 members. The Constitutional Court will obtain a more democratic structure, consisting of two parts and functioning as a general assembly.

The Supreme Board of Judges and Prosecutors (HSYK) will increase in number from 7 to 22. Members will no longer be elected only by the Supreme Court of Appeals and the Council of State. A total of 11 judges from around 13,000 judges will be appointed to the board to represent judges on the bench.

Dismissed judges will be able to appeal to the judiciary. The HSYK's decisions, like YAŞ decisions, will be open to judicial review. Prosecutors and judges dismissed by the board will be able to challenge dismissal decisions in court.

All citizens will be able to file a petition with the Constitutional Court. This is now only possible at the European Court of Human Rights.

Besides the President, the ministers and other senior government officials, the chairman of the parliament and the supreme commander of the Turkish army can now also appear in the Supreme Court (Yüce Divan)'[2].

The AKP's falling wide of the mark in 2007 about the European Union was often discussed in the public opinion. The justification for this claim was shown the standstill of the reforms made for adaptation to the European Union. In addition, the AKP leader and Prime Minister Recep Tayyip Erdogan's avoidance from making a mention of the EU during the most recent 2011 election propaganda can also be evaluated in this context. There are also some arguments that the AKP government used the EU standards at the beginning to establish its own authority but later diverged from the EU target after strengthening its authority. (For example, the AKP was putting up a struggle against the army in this way and to get public support, it was saying 'because the EU wants it'. So, it found opportunities to make reforms, which enabled it to gain strength against the army and to weaken the military impact on civil

[2] For more information please see official websides republic of Turkey- prime ministry.

politics through the reforms it made. The best example in this regard was to enable the prosecution of soldiers in civilian courts.) These critics take the weakening of the military authority positive but argue that the AKP government would move towards a civilian dictatorship but for the EU standards that are the only assurance against this argument.

Finally, the speech made by the Prime Minister Recep Tayip Erdoğan in the parliamentary Assembly of the Council of Europe on 13th April 2011 worried the scholars who support the EU process in Turkey. The AKP government, which made serious constitutional and legal reforms within the framework of the harmonization to the Copenhagen criteria between 2002 and 2005, was accused of doing nothing on this issue after 2005. For this reason, this speech got reactions by the democratic and liberal environments. As it is known, during the question-answer part, when a question was asked about the collection of the book titled "Imam's Army" the preface of which was written by Ahmet Şık before it was printed and the arrest of Ahmet Şık, the prime minister Erdoğan, tried to explain the collection of this book by giving an example about a bomb and said "a bomb is not dangerous during its manufacturing period, but it can be very dangerous afterwards." Additionally, during this speech, upon a question about the 10% election threshold, the prime minister said "the election threshold was not brought by our party, it was present before we came to power, besides we ask this issue to our people, we do not ask it to anyone else" and he got reactions from particularly Kurdish politicians and democrats. These speeches of the prime minister were evaluated as "messages towards internal public opinion due to the approaching elections" by the most optimistic environments. Publishing a report, Reporters without Borders for press freedom (RWB) condemn this approach of Erdogan (Reporters without Borders, June 2011).

During this period that is between the years 1999 and 2005 a ceasefire was announced by the PKK. During this period, PKK followed the process by getting its gunned militants out of Turkey. It broke the ceasefire in 2005 and started its activities again. Here, many analysts commented the following. Between the years 1999 and 2005 when PKK announced ceasefire, the things that had to be done by the government were not done and therefore, a very important opportunity was lost. Another view was that beginning of the questioning of PKK's legality along with democratization created panic in the organization, therefore the organization started its activities again. Here the point that should be analysed carefully is that. How will be the solution to be developed? Copenhagen criteria were often the criteria referenced both by PKK and civil Kurdish politicians within the framework of the EU

membership[3]. Even these environments stated several times that the membership for the EU would provide democratization, therefore everyone would have a claim in a democratic country, and thus it would provide important contributions to the solution of the Kurdish problem. However, the main problem here is that while this problem is being solved what will happen to the PKK cadres, members. In my opinion, PKK saw this solution would be developed by the purge even if Turkey got democratized during this process and disturbed by this situation. It is necessary to point this out at this point that PKK issue or in general sense Kurdish issue, is a result of the implementations based on denials within the framework of the nation state policies of Turkey. This problem, as tried to be explained above, came up as a result of implementations in which different elements are refused within the scope of the idea of a nation state which has a background and in which democracy, freedom of expression and fundamental rights and freedoms are not applied. That is to say, the problem belongs to the period when there was no democracy. In that case, what will you do to those people who revolted in that period? Here it is also necessary to draw the attention to another point. Is a solution without PKK possible? Actually, it does not seem possible due to two reasons. First, as mentioned above, accepting PKK legal despite its several mistakes as due to its more than 30-year struggle among the Kurdish people as a result of the policies the state implemented during the republic. That is, what PKK has said has in some way responses in the society. It is at least so in the large part of the society. Within this framework, a large part of the Kurdish people thinks that the rights were granted owing to PKK. Second, the region still has a very strong tribal structure by its structure. During the period of fight, death of more than 40,000 people, arrest of hundreds of thousands of people, millions of people's becoming refugees caused to create a link between the people in the region and PKK and it should not be forgotten that in the tradition of the tribes there is a sociological reality called "blood feud". The families whose children were killed in the mountains or were imprisoned or tortured perceive this problem in the form of a blood feud with the state. In this context, each new corpse makes the solution of the problem harder because due to the structure of the tribes that corpse cause not only a family but also a much larger group, in other words the members of the tribe, to get affected. From this aspect, it should be kept in mind that a solution to be developed about the purge of PKK will not be realistic.

[3] For example in 2000, A public signed by over 200 Kurdish politicians and intellectuals stated that 'the European process offers both Turks and Kurds new and promising prospects, and give then a chance for reconciliation on the basis of peaceful resolution of the Kurdish Question, with due respect for existing borders (Tocci, 2006, p.131).

2.3. Military Coups In Turkey

We also need to say some words about the impact of the military authority on civil politics. In fact military tutelage could be as the source of all the pressures. We need to consider that the first multi-party election in Turkey was held in 1950, when the army seized the government (1960), and since that day, soldiers have always been closely involved in the governance in different ways. In a sense, the army always considered itself as 'the real owner' of the country.

Thus, they intervened in the government in each case they thought in their own way that the country was being ruled wrong. This meant the suspension of all the freedoms in this country as well as a major blow to the freedom of expression.

The emergence of the PKK and the existence of Kurdish question can't be considered as a separate course with the applications mentioned above. The military coup of 1980 and the intolerability of the human rights violations caused by this military coup had an impact on the strengthening of the PKK and mustering up support.

When we examine the European Union accession process of Turkey or Kurdish problem in Turkey, the fundamental phenomenon that should not be overlooked is that there had been three military coups in Turkey in this period. These are 1960, 1971 and 1980. After the 1960 coup all DP (Democrat Party) deputies were arrested and it was announced that power was in the hand of 'National Unity Committee' (NUC) headed by General Cemal Gürses who was appointed as head of the state, prime minister and minister of defense. The military government arrested some 485 Kurdish notables and detained them for several months; and 55 most influential Kurds- 54 of them were the members of DP- were exiled to western Turkey for five years (Tan, 2009, p.339). On 16 September 1961, Adnan Manderes, prime minister, Fatih Rüştü Zorlu, Minister of Foreign Affairs, Hasan Polatkan, minister of Finanace, were executed. In addition, as mentioned above, by law no. 1587 the NUC started to change Kurdish place names into Turkish, on grounds of 'names which hurt public opinion and are not suitable for our national culture, moral values, traditions and customs. Also the NUC enacted another law foreseeing the establishment of regional boarding schools. According to McDowall, the reason for the establishment of these schools was to assimilate Kurds (McDowall, 1996, p.404). On March 12, 1971, the army intervened and took the control of the country again. Martial law was announced. The reasons for military coup explained by the army as follow; the rise of the extreme leftist and urban guerrillas; the response extreme rightist and 'those wants dictatorship', and the separatist question in the

East where number of weapons had been found. According to Van Bruinessen, during 1970s, Kurdish organization proliferated and became more radicalized. He explain this situation with two reasons;' the Turkish left, formerly the closest ally of the Kurdish Movement, shied away from the Kurdish question and took at best a patronizing attitude 'and second factor was the weakness of the central government between 1975 and 1978 (Bruinessen, 1992, p.32). As a result, in 1973 the army allowed a general election and returned to civil administration but political radicalization increased in the country (Mcdowall, 1996 p.410). On 12th September 1980, another military coup occurred in Turkey. With the military coup the army made a radical 'cleansing' in the country. Together with mass arrestment and military operations, all the political operations as well as Kurdish organizations were demolished. In Bozarslan words, 12th September perceived 'kurdishness' as a disease which will be cured by medicine of 'Kemalism' (Bozarslan, 2002, p.861). It is estimated that over 500,000 people were detained in the wake of the 1980 coup, only half of which formally arrested, and almost all were tortured. The Kurdish population of Turkey was particular target of state oppression throughout this period, as they were portrayed as a collective threat to state unity. The use of the term 'kurdish' was totally banned in 1983, as were the use of Kurdish Language, Kurdish folk songs and giving children Kurdish names (Yıldız and Breau, 2010, p.11).

Also during the Republic history, armed forced intervened many times to Turkish politics directly or indirectly and was effective on politics. Intervention of Turkish armed forces to politics on the 28th of February 1997 defined as a 'postmodern military coup[4]' by some societies (McCombs and Yüksel, p.383). As it is known, that process had been started by the decision of National Security Council and its reason was announced as conserving the government against reaction. That period which has gone down in history of Turkish politics as 28th February process, caused fundamental changes. The Refahyol government, which was the political power of that period, and it was also a coalition government, had to give up the political power and that period have left deep traces in many fields such as educations, law, politics, and etc. Moreover, the declaration which was made on the 27th of April 2007 on the official internet site of Turkish General Staff has gone down in history as a e-coup[5]. As it is known, after the general elections on the 3rd of November 2002, justice and Development

[4] This definition is used firstly by the newspaperman Cengiz Çandar, and then this definition was accepted by large societies.

[5] Through this declaration General Staff declared some explanations related to presidency on behalf of Turkish armed forces, those explanations were accepted by large societies as the intervention of armed forces to politics, and at the same time were considered as a treat. Because this declaration fundamentally stated what kind of president was desired by armed forces.

Party, AKP, they identify themselves as conservative democrats, came into political power alone. In that period, there also occurred very important changes other than Turkish Armed Forces' intervention efforts such as the e-coup. It is possible to say the most important of them is Ergenekon operations and case that has been recently carried on.

When it is looked at recent times of Turkey, the events occurred in political power period of Justice and Development party that came into political power alone after the elections made on the 3rd of November 2002, were interesting in terms of the relationship between armed and civil politics. Here, we have to talk about Ergenekon operations that recently carried on Turkey.

In the present situation of the operations that has started with an ordinary denunciation, asserted claims are really awful. The reason of the awfulness of these claims is not only that some army officers in Turkish Armed Forces made military coup plans, but also the method they had thought to use in order to attain their goal. Accordingly, these army officers planned to arranged some assassinations against some non- Muslims in Turkey and they thought to propagate those events as if done by Muslim groups. In addition, through bombing some museums, schools and mosques thereby bringing disorder, they tried to set the stage for the military coup by making it seem as if the government can not rule the country. Still, these are only claims and the court process continues, but great amount of ammunition that can arm a whole army such as weapons, bombs were obtained in the excavations based on many outline drawings within the scope of these operations. In addition, there had been some events in Turkey to promote doubts such as Hrant Dink's event, who was a Turkish Armenian editor, journalist and columnist, killed by Turkish nationalist Ogün Samast, and the event of Malatya, which had been in Malatya, and three employers of the bible publishing house were attacked, tortured and murdered by a five assailants. In the frame of Ergenekon case 32 general Turkish armed forces is standing trail as under arrest (Elma Haber,18 June,2011). All the people living in Turkey wait for the result of these operations and also the result of ongoing trial with wonder, but it is certain that the power struggle between military authority and political power is also Turkey's democracy struggle.

When it is considered all of these, the history of the Republic of Turkey is also the history of military coups. While assessing the Turkey situation, if we disregard the effect of military authority on civil politics, we can not comprehend the matter exactly. It is not difficult to say these military coups and governments had provoked Kurdish struggle and upraising because during these period violation of Human rights and pressures happened intensely. Consequently, as a reaction, the stress of 'Kurds' and 'Kurdishness' had corresponded in

some way responses in the Kurdish society. The effect of military coup on civil policy so much that, For instance, if a person, who does not know Turkey, visits Turkey for a week and watches the Turkish television, he/she would think that this country is at war. Because sometimes for several times a week the chief of the general staff mostly make statements on the issues which falls outside the sphere of his duties. Probably this matter would be difficult to understand for a person living in a democratic country. Again within Turkey, we should also state that first elections of the Republic of Turkey which was established as a successor of Ottoman Empire in 1923 had been made in 1950 and since that date 3 military coups occurred Turkey's constitution was established as a result of the military coup of 1980. So, today Turkey is governed with a military constitution.

In this sense, it should be mentioned that, the area where Kurdish people live in, had been governed by the Emergency Law (OHAL) since 1987. This implementation went on up to 2002. 'OHAL provided for the establishment of an emergency civil administration and the appointment of a regional governor in which of powers of the state of emergency administration were vested. Considerable licence was granted to this office, and there was no provision for independent judicial reviews of its actions; a situation which substantially contributed to the breakdown of the rule of law under OHAL' (Yıldız and Muller, 2008, p.16). In this period, state security forces targeted both PKK and the Kurdish rural communities, and security operations in Kurdish villages were accompanied by arbitrary arrests, looting of moveable property, beatings, torture and disappearances (Yıldız and Muller, 2008, p.16). In addition, With the Village Guard's system comprised locals kept under the pressure. Some of These Village Guards became a gang in the process of time and they became a part of the problem. For example, Susurluk scandal[6] display that they involved various illegal activities including drug smuggling, murders, and assassinations (Gunter, 2008, p.112). When it is considered all of these, it can be said that Turkey is a country were has still a very strong military reflexes and it has governed according to this until recently. In this regard, it can be said that, the candidacy process to the EU is vital for Turkey. The reason for that, Turkey could not transform itself because of military authority. As mentioned above, all the arrangements or reforms made were thanks to the EU because in the case of objection, the politicians who are in power are overcoming this situation by showing EU's standards as a

[6] The Susurluk scandal was a scandal involving the close relationship between the Turkish government, the armed forces, and the organized crime. The Scandal surfaced with a car crash on 3 November 1996, near Susurluk, in the province of Balıkesir. The Victims included the deputy chief of the Istanbul police, a Parliament deputy who led a powerful Kurdish tribe and leader of Grey Wolves.(who was contract killer on Interpol's red list) Sedat Bucak, leader of tribe, Parliament deputy, was also leader of Guard.

reference. In this way they could get support of the public opinion. The EU process is also a trump card in the hand of EU supporters when ruling party did an implementation out of EU standards or democracy. This idea has supported in Turkey by a lot of thinkers, journalists and academicians, in particular, those who are supported the membership of Turkey to EU. Shortly, according to this idea, this process will be developed the process of Turkey's democratization.

2. 4. Conclusion

We can say that Turkey went through a hard EU accession period. The process which began in 1959 entered in a new process when the European Parliament by majority of votes announced its support to Turkey's membership process at Helsinki Summit in 1999. As of this date, the European Commission gave recommendations to Turkey through the progress reports published regularly each year and reminded of necessary reforms to be made. Separately, the accession partnership document which was published by the European Council in 2008, listed the reforms that Turkey was supposed to make in respect to its accession to the European Union.

Within the scope of the Copenhagen Criteria, both progress reports and the accession partnership document put forward the following reforms to be made; strengthening of democracy, rule of law, strengthening of civil politics against military authority, effectiveness and transparency in governance, strengthening of local governances, fair trial, respect for human rights and minority rights, zero tolerance to torture, wholesome implementation of the decisions ruled by the European Court of Human Rights.

Meanwhile, these reports also urge Turkey to sign some international treaties and to act in compliance with the following agreements; Framework Convention for the protection of National Minorities, UN convention, International Covenant on civil and political Rights and European Charter of Local self-Government.

All conventions referred above by the European Commission and Council of Europe will no doubt make contribution to the advancement of democracy in Turkey. Separately, as we mentioned many times, these conventions are of major importance for Turkey in terms of solving the Kurdish problem which is a matter of lack of democracy in the country. This reality will be seen better when we have a look at the reforms made within this process. For instance, Turkey removed the expression of 'banned languages' from the constitution in virtue of the EU process. Among other reforms made in this process were to amend the structure of

the state security court in favor of civilians, to remove the death penalty and to realize a TV broadcast in Kurdish. Within the framework of the EU harmonization, the referendum in 2010 and several constitutional amendments are also remarkable in terms of strengthening of democracy in Turkey. These amendments for example enabled the trial of military officials who staged a coup or made an attempt on it. Similarly, the constitutional regulation, which didn't propose the banishment of deputies from politics in the event that their parties are closed, has also been a positive amendment for Kurdish politicians who often faced ban on doing politics when their parties were closed.

In this regard, the military coups staged in Turkey within the period of membership to EU, the constant pressure of military authority on civil politics and the interruption of democratization process in Turkey have frozen the relations with the EU and deepened the Kurdish problem.

CHAPTER III

3. EUROPEAN PERSPECTIVE AND KURDISH QUESTION

3. 1. Introduction

In this section, we will discuss what kind of contributions the process of Turkey's accession to the EU could make to the solution of the Kurdish problem. In this context, we will try to reveal the perspective of the European Union's constitutive treaties towards democracy, respect for human rights, freedom of expression and minority rights (mentioned as EU values afterwards). For this reason, it is of importance to know the perspectives of the Treaty on the European Union and European Court of Justice, which are the primary and secondary regulations of Acquis Communautaire that forms the European Union law. At this point, we will try to analyze the European Union's judicial opinions about the abovementioned subjects together with the decisions of the European Court of Human Rights (ECtHR), as Turkey is still not a member of the EU. As is known, European Court of Justice (ECJ) takes the decisions made by the European Court of Human Rights into account. Turkey is a member of the Council of Europe and the decisions made by the European Court of Human Rights about Turkey are obligatory and need to be predicated on in a conflict situation for being above Turkey's internal law. In this context, the ECtHR's decisions concerning the below mentioned EU values are of importance in terms of understanding the European Union's perspective towards the solution to the Kurdish problem. When examining the Accession Partnership Document, it will be seen that the European Union has warned Turkey for the full implementation of the ECtHR's decisions. Again in this context, we will handle the approaches of the European Convention on Human Rights and the Framework Convention for the Protection of National Minorities to which the EU refers on the Accession Partnership Documents issued for Turkey. Presenting the required reforms in Turkey on the Accession Partnership Documents, the EU also evaluated the performance of Turkey with regular reports as well. In this sense, regular reports will give an important idea in terms of seeing Turkey's inadequacies on the way to the EU. Before anything else, there are Copenhagen Criteria that need to be fulfilled by the countries intending to be a member of the EU. As a candidate country, first and foremost, Turkey is obliged to comply with these criteria. In this section of the thesis, we will in short try to answer the following questions; If Turkey became a member of the EU, what kind of a course would the Kurdish issue follow within the framework of the

EU criteria? In which way would the EU values contribute to this problem? Within the framework of the values defended by the EU, could concepts such as more democracy, more respect for human rights and minority rights be helpful to solve the Kurdish problem?

3. 2. Copenhagen Criteria

Turkey, as a candidate country, is obliged to comply with the Copenhagen criteria that can't be a matter of negotiation for a candidate country. It will be useful to mention the Copenhagen criteria as Turkey's necessity to fulfill especially the conditions under the title political criteria will be instructive in the solution of the Kurdish problem.

The European Council summit in Copenhagen in the year 1993 adopted the standpoint that 'for membership, the candidate country must have ensured democracy, Rule of law, human rights and protection and respect for minority rights'. Article 6 of the 1999-Amsterdam Treaty says that; 'The European Union is founded on the principles of democracy, respect for human rights and fundamental freedoms and the rule of law'.

The criteria adopted in Copenhagen for candidate countries under the title political criteria are as follows; 1) presence of a stable and institutionalized democracy, 2) a state of law and Rule of law, 3) respect for human rights, 4) protection of minorities (Aktan, 2002).

The mentioned and evaluated points for democracy and the rule of law are; presence of a constitutional guarantee to include political pluralism, freedom of expression and religion; presence of democratic institutions, independent judiciary and constitutional establishments to ensure the usual processing of various state departments; implementation of free and fair elections to enable various political parties to alternately come to power and to recognize the role of opposition (Aktan, 2000).

In relation to human rights, it is important to accede to the EU's Convention for the Protection of Human Rights and Fundamental Freedoms. The basic references on respect for minorities base on the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) and the Recommendation No. 1201 which was approved by the Parliamentary Assembly of Council of Europe (Aktan, 2000).

It is clear that the above mentioned Copenhagen criteria are of vital importance at the point of solving the Kurdish problem. To express how important it is for Turkey to comply with Copenhagen criteria and to be a member of the EU, Ahmet Altan compares two reverse decisions made by Turkish courts and makes the evaluation; A local newspaper in Bolu wrote 'We shall kill five Kurds for each soldier killed by the PKK', which was evaluated by the

court as a freedom of expression. On the other hand, after the 2011 general elections, Diyarbakır deputy Hatip Dicle was found guilty and put in jail on charges of making propaganda for the terror organization in connection with his statements to a news agency 'The PKK will use the right of self defense if the army continues the operations'. Drawing attention to the criteria, Altan says; If our laws conformed to the EU standards, the courts wouldn't give different decisions for 'Turks' and 'Kurds'. Hatip Dicle would never be sentenced and stripped off of his mandate because of his statements and Turkey wouldn't be living this crisis now (Altan, Taraf, 25 July, 2011).

3. 3. The General Perspective Of The EU Regarding Human Rights And Minority Rights

To analyze the European Union's perspective to human rights and minority rights, as we tried to point out above, we will view the European Convention on Human Rights, which is binding for the EU, and the conventions to which the European Commission refers on Turkey's annual regular reports. In this context, we will try to understand how Turkey's European Union accession process will affect the Kurdish issue. In other words, if Turkey becomes a member of the EU, in which way will this case be useful in the solution of the Kurdish problem? For this reason, it is important to examine the European Union's point of view to the subjects such as basic human rights and minority rights. In this context, we will examine the EU perspective from two aspects; minority rights and fundamental rights.

In Article 2 of the European Union Treaty, published in the Official Gazette on 30th March 2010, the European Union sums up its perspective about democracy, human rights and minority rights as follows; ''The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail'.

Regarding minority rights, the fundamentals that determine the general principles of the EU law are ground on some international agreements. These are;

'The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM – adopted unanimously among all United Nations [UN] member states, 1992).

- Article 27 of the International Covenant on Civil and Political Rights (ICCPR), which grants members of ethnic, religious and linguistic minorities the right to practice their culture and religion, and to use their language in community with other members of their group.

- The concluding document of the Copenhagen Meeting of the Commission on Security and Cooperation in Europe (CSCE – now the Organization for Security and Cooperation in Europe [OSCE] 1990), agreed by unanimity, which sets out rights for minorities across the CSCE region.

- The General Recommendations of the OSCE High Commissioner on National Minorities, which sets out how the OSCE's and other minority rights standards should be applied in practice, with particular reference to the prevention of conflict.

- The Council of Europe (CoE)'s Framework Convention for the Protection of National Minorities (FCNM). Forty-two out of the CoE's forty five member states have signed this; Turkey has refused to do so despite repeated requests by the Parliamentary Assembly.

- The European Court of Human Rights (EC+HR), in many ways the leading guardian of European human rights standards, has stated that: 'respect for [minorities] is a condition sina qua non for democratic society' (*Gorzelik v. Poland*, 2004)' (Kaya and Baldwin, 2004, p.4).

As is known, with an amendment in Article 90 of the constitution within the framework of harmonization with the EU law, Turkey agreed in 2004 that international treaties are supreme the domestic law and to ground on the provisions of international agreements in case of a dispute. In this context, Turkey's legal status in the face of these agreements can be summarized as follows; Turkey is a member of the United Nations and the Organization for Security and Cooperation in Europe (OSCE). At the same time, as a member of the Council of Europe (CoE), decisions by the European Court of Human Rights (EC+HR) are binding for Turkey. However, despite the warnings of the CoE, Turkey still has not signed the Framework Convention for the Protection of National Minorities (FCNM)[7]. Despite signing the International Covenant on Civil and Political Rights (ICCPR) again in 2004, Turkey doesn't keep on the right side of this covenant on the matter of Kurdish question (Kaya, 2007, p.6). Here, we need to call attention to the point that Kurds are not at a minority status in accordance with the Lausanne Agreement. As is known, the Treaty of Lausanne regarded only the non-Muslims as 'minority'. This situation prevented Kurds from availing themselves of the rights accorded to minorities by international treaties. Signing the Treaty of Lausanne, the Turkish delegation expressed that the Kurds are not a minority in Turkey, but the 'essential

[7] Here, it is worth noting that this convention wasn't signed by France either, one of the most important countries in the European Union

element' forming the state. They even emphasized that it would be an insult to call them 'minority'. Today as well, all political Kurdish movements, including the PKK, oppose to be regarded as minority (Gelawej. Net, Tarık ziya ile söyleşi, 2010). Although the concept of minority as a content evokes a negative meaning for deriving from the word ‘minor’ (less, little), it refers to a legal status in international law. Kurds would probably not face so many difficulties if they had been regarded as minority in the Lausanne Agreement. As a result, throughout the history of the Republic, Kurds didn’t benefit from basic rights as an essential element, or from minority rights within the framework of the law of minorities.

Now, we will try to examine the European Union standards on minority rights more closely. Regarding the right for education in mother tongue, the European Convention on Human Rights (protocol 1, Article 2) states: ‘No person shall be denied the right to an education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions’

Again, the Hague recommendations of the Organization for Security and Cooperation in Europe (OSCE) strongly recommend that member states provide the opportunity for education and training in mother tongue (Kaya and Baldwin, 2004, p.8). The articles no 13 and 14 of the Framework Convention for the Protection of National Minorities (FCNM) guarantee minorities the basic right to establish and maintain their educational institutions, organizations or associations, to ensure that they have adequate opportunities for the teaching both of and in their mother tongue. Also FCNM suggest that this right to be taught and receive instruction in minority languages applies also to the national (public) education system where there is sufficient demand (Kaya and Baldwin, 2004, p.8).

When examining the Turkish law, the article 42 of the constitution bans education and training in a language other than Turkish in Turkey. Although this article of the constitution remained the same, 'learning of different languages and dialects used in everyday life in Turkey' was enabled in 2002 through a law amendment made within the scope of adaptation to the European Union. This framework enabled the establishment of Kurdish language courses and Kurdish institutes at universities. However, although this is the theory part, it should be noted that there are still many problems in the practice. For example, Oktay Eriman, a teacher, was transferred from Batman city centre to another school in Gercüş, for asking students to memorize a poem in Kurdish about peace. Calling for education in your first language can still be grounds for prosecution. The Ankara Public Prosecutor began a case for the closure of the Trade Union of Education and Science Labourers (Eğitim-Sen) on 10

June 2004, because the Union's statute has 'education in mother tongue' as an objective. According to the Public Prosecutor this constitutes a violation of Articles 3 and 42 of the Constitution (Kaya and Baldwin, 2004, p.11).

At this point, we should note the main source of the discussions held in Turkey on this issue. The state says that different languages can be learned but not taught. The Kurdish side insists that they need to have the right for education and training in their mother language.

Article 15 of the Framework Convention for the Protection of National Minorities, Article 25 of the International Covenant on Civil and Political Rights and Article 5 of the Convention on the elimination of all forms of Racial Discrimination contain clear provisions regarding the participation of minorities in politics. In addition, the Copenhagen document of the Organization of Security and Cooperation in Europe requires the following in the 35th paragraph 'respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities' (Kaya and Baldwin, 2004, p.12).

Again in 1999 and 2001, the OSCE made advisory jurisdictions about the most ideal way of the participation of minorities in politics. These are;

'Constitutions should guarantee the right of persons belonging to all [national] minorities to take part in public life, including voting, being elected, participating in public office and freedom of association and expression.

- No restriction on the use of any language connected with elections should be authorized (whether in registration, participation, political parties or election campaigns).

- Administrative barriers to participation should be removed.

- Persons belonging to minorities should be made aware in their language of how to exercise their rights to participate in public life.

- Special arrangements will need to be made for persons displaced from their homes.

- High numerical thresholds for representation in the legislature will discourage minority representation. This can be prevented by either reducing the numerical threshold for all parties or ensuring it does not apply to parties representing national minorities (as is the case in Germany and Poland)' (Kaya and Baldwin, 2004, p.12).

When examining the Turkish legal system in the light of this information, we see that there still exists a 10 percent electoral threshold. The Kurdish party (not mentioned specifically by names as the parties defending Kurds are often closed by courts), receiving around six percent of the votes because of the election threshold, could not be represented in the Turkish

parliament for a long time. However, in 2007 and 2011 elections, they were able to enter the parliament by participating in the elections with independent candidates.

In addition, the article 81 of the law of political parties says that 'the existence of minorities basing on national or religious culture, sect, race or language cannot be asserted on the territory of the Republic of Turkey'. Many political parties in Turkey were closed because of this article. In the Case of the Socialist Party and Others vs. Turkey, the European Court of Human Rights convicted Turkey of the decisions made basing on this article. With a law amendment in 2010, Turkey lifted the ban on political parties to make propaganda in mother tongue.

When looking at the European standards regarding the freedom of expression which is a basic right, Article 10 of the European Convention on Human Rights, Article 19 of the ICCPR and Article 9 of the FCNM express that freedom of expression is a fundamental right. Freedom of expression is a basic right. Because without freedom of expression you cannot claim any demand concerning other fundamental rights. So, there needs to be freedom of expression in a country to demand a right there. In this sense, freedom of expression, a right to which the European Union pays great attention, also includes freedom of the press of which Turkey was convicted many times by the European court of human rights. Therefore, the subject will be mentioned in more detail in the coming part within the framework of the decisions by the European court of human rights regarding freedom of expression. Although broadcast in different languages and dialects was allowed with an amendment to the Turkish law in 2004 and the TRT 6 (state TV) broadcasts 24-hours in Kurdish since 2010, there are still many obstacles to Kurdish broadcast and publication.

Again Article 8 of the European Union Convention on Human Rights guarantees the protection of private and family life. In this context, the basic principle of European law is the refusal to racial discrimination of all kinds. Rights such as to name children in mother-tongue, giving names to places in mother-tongue and self-defence in mother-tongue are ensured in this sense. For example, in the case konstaninidis v stadt Altensteigstandesamt (case C 168/91, 1993 CMRL 401,) ECJ stated that 'it is contrary to the (then) EEC Treaty to oblige persons to change the spelling of their names when the pronunciation of their names is thereby modified. (Kaya and Baldwin, 2004, p.22).

Similarly, OSCE Recommendations express the responsibilities of the state within the framework of national minorities' right for language that 'authorities should: ensure the right to acquire civil documents and certificates both in the official language or languages of the state, and in the language of the national minority in question from regional and/or local

public institutions; keep the appropriate civil registers provided by the regional and/or local public institutions in the language of the national minority; provide minorities adequate possibilities to use their language in communications with administrative authorities, especially in regions and localities where they have expressed a desire for it and where they are present in significant numbers; ensure that public services are provided in the language of the national minority; adopt appropriate recruitment and/ or training policies and programmes; in regions and localities where persons belonging to a national minority are present in significant numbers, ensure that elected members of regional and local governmental bodies can use the language of the national minority during activities relating to these bodies' (Kaya and Baldwin, 2004, p.23).

Regarding the use of native language in judiciary, we can show Article 14 (3,a) and (f) of the ICCPR and Article 5 (2) and 6 (3) of the ECHR as examples. Again in this context, OSLO Recommendations say; if a significant minority lives in a region, they have the right to express themselves at court in their native language and the state should provide conveniences such as providing an interpreter (Kaya and Baldwin, 2004, p.23).

Again, the Hague recommendations of the Organization for Security and Cooperation in Europe (OSCE) strongly recommend that member states provide the opportunity for education and training in mother tongue. Article 13 and 14 of the Framework Convention for the Protection of National Minorities (FCNM) emphasize this right similarly (Kaya and Baldwin, 2004, p.23).

Again Article 11 of the FCNM guarantees the use of region names in mother tongue. Similarly, the Oslo Recommendations express that the state should allow national minorities to name their Lebensraum in accordance with their mother tongue and traditions.

When considering the Turkish law in the light of this information, it can be said that; Kurds could not give names to their children in mother tongue until 2004 when this opportunity was enabled with an amendment. However, according to a circular issued by the interior minister in 2003, the names must consist of the Turkish alphabet letters. For this reason, the names containing the Kurdish alphabet letters w, x and q, which don't exist in the Turkish alphabet, are still prohibited to use. Again, publishing banners and announcements including these letters is also not allowed. It is worth noting here that this ban is applied only on the publications in Kurdish, not in any other foreign languages. In fact, there isn't any constitutional and legal ban related to the use of native language in public service. However, Article 3 of the constitution says that 'the state language is Turkish', which enables the state

authority comment this article as ‘not any language other than Turkish can be used in public service (Kaya and Baldwin, 2004, p.24).

In respect of the use of native language at courts, Article 252 of the Turkish criminal code allows it but in practical terms there are serious obstacles in front of self-defence at court in mother-tongue. For example, the KCK case couldn’t be started as the detainees’ demand to express themselves in their mother tongue, Kurdish, was refused by the court every time till the 23rd trial of the case[8]. In respect to basic human rights and minority rights, we will first present the perspective of the European Union and the Europe in general and then view the relevant applications of the European Court of Human Rights.

3. 4. European Court Of Human Rights’ Decisions Regarding The Issue

Democracy, respect for human rights, minority rights and freedom of expression in the European Convention on Human Rights are the basic values that make up the European Union. As is known, all the states that are party to the European Convention on Human Rights have integrated the Convention with their national legislations. In this way, the European Convention on Human Rights has become a part of the domestic legal system and binding for national courts and all public authorities. The conclusion drawn here is; the European Convention on Human Rights is binding for all party states and if a judgment taken by national courts is reversed by the European court of human rights, the decision made by the ECtHR will be valid. Turkey is a country which is party to the European Convention on Human Rights. For this reason, the decisions made by the European Court of Human Rights, which gives a ruling in accordance with the European Convention on Human Rights, are important in terms of knowing about Turkey’s situation on the subjects of fundamental rights and minority rights and understanding the EU's perspective on these issues. Turkey has still a

[8] This problem still continues. The KCK (People’s Union of Kurdistan) case began with the operations in 2009 and many Kurds were arrested until today within the framework of these operations. The detainees include about 3000 members of the Democratic Society Party; mayors, administrators and six deputies who were elected in 2011 general elections. According to the KCK indictment, the KCK is the urban structuring of the PKK (Kurdistan Workers Party). However, the detainees and the DTP remark that the KCK is a legal organization which aims to enable a greater democratic participation of the people in the governance in cities and villages.

serious problem about the violation of Human rights. It can be seen this reality in the ECtHR decision (see http://www.state.gov/documents/organization/160479.pdf)[9].

3. 4. 1. Fundamental Rights

Within the framework of basic rights, we will analyse jurisprudences of the European Court of Human Rights regarding the freedom of expression, right to life, right to a fair trial, prohibition of torture and ill-treatment. In this context, we will try to concretize the situation by exemplifying the court's some decisions about Turkey.

3. 4. 1. 1. Freedom of Expression

The freedom of expression is primary in fundamental human rights and freedoms and it is the basis of all other rights and freedoms as a right need to be discussed before demanding. In this regard, we will focus wider on the freedom of expression. When we look at some of the decisions of the European Court of Human Rights about Turkey, we will see that there are very serious problems in Turkey related to the freedom of expression. This situation could also be the source of the Kurdish problem because you can't hold a free discussion without a free expression and there can't be a free thought without a free discussion. In an environment without free thought, conflicts are inevitable.

The Article 10 of the convention, which regulates the freedom of expression, consists of two paragraphs. While the first paragraph defines the freedoms to be protected, the second

[9] The report released by Human Rights Watch in 2010 shows that the human rights violations in Turkey continued in 2010 as well. Among these significant violations are; freedom of expression, long period of detention, pressures on Kurdish politicians, freedom of organization, freedom for meeting and demonstrations, excessive force use of police in areas and ill-treatment in detention. The report, for example, draws attention to the arrest of many BDP members within the framework of KCK operations and assesses the situation as an attempt to suppress a legal political party[9]. Turkey also has the first place on the list of the states that violated the European Convention on Human Rights the most in 2010, with a rate of 18.55 percent. Turkey is followed by Russia with 14.48 percent, Romania with 9.54 percent and Ukraine with 7.27 percent. Most of the violations in Turkey in 2010 pertained to arrests (80 arrest warrants). It is followed by the violations of fair trial (42) and the property right (30). There are also 32 times violation due to torture and ill-treatment and 24 due to inefficient investigations about officers.)

one defines in which circumstances a limitation can be made. Accordingly, freedom of expression is defined as follows in the first paragraph. 'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises'. The first paragraph guarantees three elements of freedom of expression. 1. Freedom to hold opinions 2.Freedom to receive information and opinions 3.Freedom to impart information and ideas (Macovei, İnsan Hakların el Kitapları, no:2, p. 12).

The second paragraph of the Article 10 defines the restrictions (limitations) related to freedom of expression as follows. 'The exercise of this freedoms, since it carries with it duties and responsibilities, may be subject to some formalities, conditions, restrictions, or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for prevention of disorder or crime, for the protection of health or morals, for the protections of reputations or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'. The point, which requires attention here, is that any restrictions, constraints, limitations or any kind of interferences on freedom of expression can only be applied for some usages of it. The content of the right to freedom of expression can never be changed (Macovei, Ibid, p.9). In this respect, the Article 17 can give us an idea: 'nothing in this convention may be interpreted as implying for any state, group or person any rights to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or their limitation to a greater extent than is provided for in the convention'.

As it is seen, the European Convention on Human Rights has tried to prevent the misuse of the article and been based on expanding the limits of freedom of expression. The following evaluation of the second paragraph of Article 10 will not be wrong. If paid attention, it is seen that when one of the circumstances, cited in the second paragraph, occurs, national authority is not held responsible to interfere but only have been given an opportunity to do so (Macovei, Ibid, p.56).

Protection and determination of the limits of freedom of expression is a very delicate issue. Of course, one of the most important means of freedom of expression is press. Now, we are will try to understand the European Union's understanding considering some decisions made by the European Court of Human Rights. Firstly, let us go through the decisions made by the court related to the necessity and reasons for the protection of press

freedom. First, freedom of press is a must for democracy and the right to receive information. According to the European Court of Human Rights, press has a right to express any kind of opinions as a part of their job and public has the right to learn these (Case of sürek v. Turkey, no:26682, July 08,1999).

Secondly, states should respect to freedom of information act with public's different points of view. In this respect, when we consider the case of Sürek and Özdemir/Turkey, even though the mentioned people were sentenced by the state security court of Turkey due to their interview with the PKK leader, ECtHR stated that this decision was made without taking care of the public's right to receive information (Case of Sürek and Özdemir v. Turkey,23927/94 and 22277/94, July 08,1999).

Thirdly, ECtHR has given the duty to provide the right to freedom of expression to the state. Even though Özgür Gündem newspaper, publishing in Turkey, was attacked many times, responsible authorities in Turkey did not conduct an investigation. Hereupon, in the case, which was sent to ECtHR, ECtHR stated that the state's not interfering to the exercises on freedom of expression is not sufficient and that the state must play an active role in providing freedom of expression (case of Özgür Gündem v. Turkey, no:23144/93, March 03, 2000).

As regards to the issue of limitation, we can talk about the following principles. An interference can be possible when the below mentioned three conditions come together as per the second paragraph of Article 10. 1. Interference must be prescribed by laws. That is, its form, conditions, terms and sanctions must be prescribed by laws. 2. Interference must be intended to protect one or more conflicts or values mentioned below: National security, public safety, maintaining public order and prevention of crime, protection of health, protection of reputation or rights of others, prevention of disclosure of information received in confidence and maintaining the authority and impartiality of the judiciary 3. Interference must be necessary in a democratic society (Macovei, Ibid, p.54).

When we consider some of the decisions made by ECtHR in the light of these principles, we see that EC+HR always endeavours to expand the scope of freedom of expression. For instance, İncal – in Turkey case in 1993 as a member of People's Labour Party, which was closed by the Constitutional Court of Turkey, distributed leaflets including severe criticism regarding the policy of Turkish government and a call for Kurdish people to unite. The leaflet invited people to struggle against the campaign titled 'Expel of the Kurdish', which was launched by gendarme and municipalities and described this campaign as "a dimension of a particular war against the Kurdish in the country". Hereupon, İncal was sentenced to six

months in the case in Turkey. In the case sent to the ECtHR and the Turkish Government has claimed that 'İncal provoked the public and encouraged them for a rebellion convincing people she was a victim of the particular war'. Yet, the court did not share the same idea with the Turkish government and after stating that freedom of expression was precious for everybody, they emphasized that this freedom was more precious especially for political parties and their active members (Case of İclal v. Turkey, no:41/1997/825/1031, June 09, 1998). Another example showing that the ECtHR always uses its judicial power in favour of freedom of expression is the case of Sürek/Turkey. In an article written by a Turkish citizen, Kemal Tekin Sürek in a weekly magazine called Gerçek, Kurdish national liberty struggle was described as a liberation struggle against the Turkish Republic and he said we would like to struggle for liberty all together. In this context, the writer was calling for armed struggle. The ECtHR found the decision of the Turkish government right regarding this issue since he encouraged violence with his statements and that was not inconsistent with Article 10. The description of the Turkish state in his article as the real terrorist and enemy was considered as "the reflection of a rooted manner of one side rather than a call for violence" and this statement was evaluated within the framework of "freedom of expression" (Case of Sürek v. Turkey, no:26682, July 08,1999).

When we look at not only international reports but also decisions made by the ECtHR, we can say that Turkey does not have a very pleasant situation on this issue. For example, in the ranking, which was conducted by the International Organization of Reporters without Borders on 20th September 2010, Turkey was ranked 138th place out of 178 countries regarding World Press Freedom (Evrensel Gazetesi, 18.02.2011). Again, according to the reports of Organization of Reporters without Borders the situation of Turkey in this field gets worse each year. For example, while Turkey was ranked 102nd out of 173 countries in 2008, it was ranked 122nd out of 175 countries in 2009 (Cumhuriyet gazetesi, 28.01.2011), (Press statement of president of ECHR, 28, 01, 2011).

We can say that report of Turkey is not so good when we look at the decisions of the EC+HR. EC+HR sentenced Turkey in 278 cases in 2010 for violating at least one of the articles of European Convention on Human Rights. Russia with 217 cases, Romania with 143 cases, Ukraine with 109 cases, and Poland with 107 cases followed Turkey. Therefore, Turkey has become a country which has been sentenced by the European Court of Human Rights at the most. Turkey also ranked first with 356 condemnation decisions in 2009 (Türk Hukuk Enstitüsü, 28.01.2011). Again, in 2006, 35 of 62 thought crimes resolved by the EC+HR belonged to Turkey. It is also seen here that Turkey is well ahead in this field as

well. Turkey is followed by Austria with 7 cases and Switzerland with three cases (Türk Hukuk Enstitüsü, 28.01.2011).

We can list the laws, which made Turkey sentenced by the ECtHR, due to violation of freedom of expression: the former law on the emergency state, the former law to fight terrorism, the law to protect Ataturk and decisions made by State Security Courts closed in 2003. The state of emergency was completely abolished on 1st December 2002 and the State Security Courts were closed in 2004. The law to fight terrorism is still one of the most problematic laws. Similarly, the Article 301 of the Turkish criminal law, which regulates the insult to "Turkishness" as a crime is an article that is discussed since it is open to interpretations, and it seems that in the future Turkey will mostly be sued in the European Court of Human Rights for this article of the law (Türk Hukuk Enstitüsü, 28.01.2011). This situation takes place almost in every progress report published by the European Commission annually. (for more information see European commission's progress report on Turkey,2008,2009,2010).

3. 4. 1. 2. Right to Life

Article 2 of the European Convention on Human Rights is about the right to life. Basing on the Convention bodies interpretations about Article 2, we can say that states have 'negative' and 'positive' liabilities concerning the right to life. While the negative liability orders 'not to kill!' except for the lawful purposes proposed by the Convention, the positive liability requires the state to take preventive measures to protect the right to life, even if the security forces are not involved in the killing event. In broad terms, measure requires the state (a) to protect a person in case of a real and unavoidable danger, (b) to make a rapid and extensive investigation in case of a killing event despite everything. The states which are party to the Convention but do not fulfil the obligations, are deemed by the EC+HR to have violated Article 2 the Convention (Çiçekli and Eryılmaz and Yılmaz, 2007, p.38).

Claims related to such violations in Turkey were usually brought forward in the South eastern Anatolia Region a result of the military operations conducted against the PKK. An example to be given in this context is the *Simsek and Others vs. Turkey (*Case of European Court of Human Rights, July 26, 2005, Case of Şimşek and Others v. Turkey, no:35072/97 and 37194/9, judgment, Strasburg) application to EC+HR by the families of people who lost their lives in the events that broke out in Gazi District and Umraniye in 1995. Applicants claim that 17 people lost their lives during the demonstrations due to the fire opened by police

purposely or paying no attention to demonstrators' lives, while police also applied overmuch and disproportionate force.

According to the government, the used force is proportionate and necessary. In this context, the police, threw Molotov cocktails and stones, first warned the demonstrators verbally and then used high-pressure water and sticks. However, fire was opened into the air when demonstrators weren't dispersed.

Not contented with the government's explanations regarding these implementations which led to the deaths of seventeen people, the ECtHR drew attention to the balance to be regarded between the intended purpose of police applications and the means used in reaching the intended purpose, pointing out that police operations are to be planned with maximum sensitivity. As to the case, the ECtHR concluded to investigate the validity of the fatal force applied on the relatives of applicants and to consider whether the operation was planned and conducted in a way of reducing the risks to the lives of the demonstrators as much as possible.

As a result, considering the conditions of this case, it was concluded that Article 2 of the Convention was violated by using a force a lot more than that proposed in the article which caused the deaths of 17 people (Çiçekli and Eryılmaz and Yılmaz, 2007, p.39).

Another extent of the positive obligation is that the state is to take the necessary measures to protect the lives of individuals. For example, in *Mahmut Kaya vs. Turkey* decision (Case of European Court of Human Rights, March 28, 2000, Case of Mahmut Kaya vs. Turkey, no: *22535/93*, judgment, Strasburg), the murder of a doctor and a friend of him who had been threatened with death for helping a PKK member, the ECtHR concluded that the state violated the right to life for failing in taking the necessary measures against real and inevitable threats to the lives of these persons.

In *Tanis and Others vs. Turkey* decision (Case of European Court of Human Rights, August 2, 2005, Case of Tanış and Others v. Turkey, no: *65899/01* judgment, Strasburg), the responsibility of the state came to the agenda with the disappearance of HADEP Silopi District Chair and Secretary. Applicants asserted that the mentioned persons were murdered by the state as a result of extrajudicial execution. The government's defence before the Court claimed that the related persons went to the gendarmerie station at the day they disappeared but left the station after half an hour, as shown by their signatures on the record book. It was argued that with a letter, which was found in a vehicle entering Turkey from Iraq, it was understood that there persons were in Northern Iraq.

As a result, the ECtHR delegation confirmed that the statement about Tanıs and Deniz's situation after coming to Silopi Gendarmerie Command wasn't reliable and reasonable. Thus,

considering the consistent information that these persons were threatened by the gendarmerie, that they were attempted to be kidnapped in the same day they disappeared and that there is still no information about the fate of these persons for four years, the Court decided on violation of Article 2 of the Convention (Çiçekli and Eryılmaz and Yılmaz, 2007, p.40).

Besides, the lack of a criminal investigation into the incident and abortive administrative investigations about the gendarmerie commander and other officials reveal the lack of an effective investigation about the event. Therefore, due to the lack of an effective investigation, the Court decided that article 2 of the Convention was violated.

According to a. 2 of the European Convention on Human Rights, the state is obliged to explain the situation about the deaths of persons who are found dead inside or outside when under the control of the state (in detention or in prison for example). For instance, in the *Süheyla Aydın vs. Turkey case* (Case of European Court of Human Rights, May 24, 2005, Case of Süheyla Aydın and Others vs. Turkey, no: *25660/94,* judgment, Strasburg), the applicant claimed violations of the right to life and the prohibition of torture by state officials whom she held responsible for the murder of her husband Necati Aydın, Chairman of Tüm Sağlık Union, in 1994. the Court, in consideration of the government's failing in announcing the identity of police officers who accompanied Aydın and presenting his release document, concluded that the government couldn't prove Aydın's release. Therefore, according to the Court, Aydın was held in custody after that date as well and it is the government's obligation to explain how Aydın was killed when under the control of the state authorities. And the state is responsible for the death for failing to come up with an explanation.

On the other hand, the government neither carried out a significant investigation at the scene where Aydın's body was found and performed a complete autopsy nor did it carry out an effective enquiry for the clarification of the event. In this respect, (due to the lack of an effective investigation) Article 2 was violated (Çiçekli and Eryılmaz and Yılmaz, 2007, p.41).

In cases regarding the right to life, the Court also convicted Turkey of violating Article 38 of the Convention for not providing the necessary convenience. For example, in *Tanis and Others vs.* case, the Court remarked that Turkey created some difficulties during the process of determination of facts. In addition, the Court specified that some of the documents on the investigation file weren't given to them, confirmed that Turkey violated Article 38 of the Convention for not providing the necessary convenience during the process of determination of facts (Çiçekli and Eryılmaz and Yılmaz, 2007, p.41).

3. 4. 1. 3. Prohibition of Torture and ill-treatment

The prohibition of torture and ill-treatment, which is guaranteed by Article 3 of the European Convention on Human Rights, is an absolute ban without any exception in the Convention protection system. According to Article 15 of the Convention, while the restriction of many basic rights and freedoms is possible in exceptional circumstances, restriction of the prohibition of torture or ill-treatment can't be a matter of discussion. Contracting states have authority to temporarily suspend Article 3.

According to article 3 of the Convention, the state is obliged to make a convincing explanation of how the person died when under the control of the state. According to the permanent jurisprudence, of the Court, in the event of determination that a person got wounded during detention, the state will be obliged to disclosure reasonably as to what happened to that person who was healthy before detention and wounded when released. For example, in *Aksoy vs. Turkey* decision, Turkey failed to make an alternative explanation to the Court who pointed out that the applicant's undergoing a treatment after the detention where his both arms became unusable could be a result of a compulsion such as Palestinian hanging.

The Court hasn't found the State's explanations about the injury credible and consistent in some cases. For example, in *Biyan vs. Turkey* case, the applicant claimed to have been tortured in custody. His physical examination revealed wounds and scratches in different parts of the body. The applicant was made to sign a report which wrote that the applicant himself made the wounds on his body. The government argued that the applicant injured himself with the button of his jacket and fly of his trousers. However, the Court did not find the explanations convincing and concluded that Article 3 had been violated due to inhuman and degrading treatment (Çiçekli and Eryılmaz and Yılmaz, 2007, p.43).

3. 4. 1. 4. Right to a Fair Trial

The right to a fair trial is important for being one of the areas where Turkey is convicted the most by the European court of human rights. According to the court's jurisprudences, the rights ensured by Article 6 of the European Convention on Human Rights concerning legal and criminal proceeding include the followings;

- The trying court must be established by law.
- The court must be independent. The executive power and the parties must not have any pressure or influence on the court. The court's structure, the way in the appointment of

members and the period of appointment are of importance in assessing whether the court is independent or not.

- Members of the Court mustn't behave prejudiced and sided. Should they do, if they vote for prejudge for example, the judge will issue a denial. For this purpose, the identity of the judges has to be disclosed to the parties.

- As a rule, the trial must be open to the public. If required, the parties must be able to renounce this right. Decision must be disclosed in a public session

- The trial should be completed within a reasonable period of time; factors such as the complexity of the case, the defendant's special situation, the attitude of the investigation and prosecution as well as the situation of the accused must be taken into account in assessing the reasonableness of the trial duration.

Factors such as intensiveness of the court procedures and underemployment are not valid excuses in accounting the length of the case. The duration is calculated basing on the period of time between the moment of the first procedural act (the time of capture) and finalization of the sentence.

Apart from these, in connection with a criminal investigation, everyone

- has the right to be presumed innocent until proven guilty. This right also includes the right to remain silent.

- The conviction judgment cannot be based upon the silence of accused alone. However, if other material evidences indicate the crime of the defendant, his/her silence could be based against the accused.

- The responsibility of proving belongs to the counsel for the prosecution.

- People must not be condemned without being proved to be hundred percent guilty. In case of doubt, the accused should benefit.

- No one can be declared guilty by public officials (minister, governor, prosecutor or police) and by the media before being condemned

- Evidences obtained by torture cannot be used against the accused.

- The suspected and the accused, to be able to perform self-defence, must be notified about the qualification and cause of the accusation (even depends) in a shortest time in a language he/she understands.

- If the accused is found deprived of financial means for self-defence or hiring an advocate and court welfare is needed, he/she must be able to take advantage of free advocacy assistance.

- The accused has the right to demand the interrogation of witnesses of the allegation, hearing of witnesses for the defence under the same conditions as witnesses for the allegation (cross-query and direct query).

-In the event that the defendant does not understand or speak the language used in the trial, he/she must be able to take advantage of translator assistance without paying. This right for translation also includes the translation of all present written documents against the defendant.

However, all of the translation doesn't have to be written. This right does not include the right to request the execution of the trial in the language requested by the defendant.

- Trial mustn't be executed in absence of the defendant who must listen to all the evidences put forward against him and be able to make self-defence if necessary.

- The court's decision must be justifiable.

- Losses suffered by victims of terror crimes must be met by the state (Çiçekli and Eryılmaz and Yılmaz, 2007, pp.37-43).

3. 4. 2. Minority Rights

It will be good to remind the subject before analysing the perspective of the European Court of Human Rights; According to the Lausanne treaty, Kurds aren't accepted as a minority. This means that Kurds aren't regarded as a minority in the international law. We tried to explain above that this is a situation to the detriment of Kurds. In the light of this information, reminding the European standards, we will try to figure out the subject from the perspective of the ECtHR. The European Convention on Human Rights doesn't directly protect minority rights but Article 14 prohibits discrimination on the basis of belonging to a national minority, besides other things. Additional Protocol No. 1 of the Convention which is binding for Turkey as well protects the right for an education and calls for respect for the rights of parents (Kaya, 2007, P.7). Additional Protocol No. 12 of the Convention prohibits discrimination in the use of all the rights ensured by the contracting state law. However, Turkey has still not adopted the protocol (Kurdish Human Right Project, 2011, p.6).

The Council of Europe's Framework Convention for the Protection of National Minorities is the only existing binding document dedicated to the protection of minorities. The Convention ensures the rights for equal access to education, learning minority cultures at schools, education and training in mother-tongue. Approved by 39 states member of the Council of Europe, the Convention wasn't approved by four countries and Turkey is one of the four countries. Organization for Security and Cooperation in Europe provides

recommendations on the protection of minorities through the High Commissioner on National Minorities which was created in 1992 as a conflict preventive measure. The Hague Recommendations regarding the Education Rights of National Minorities has drawn the scope of the education rights of minorities in detail. Turkey is among the OSCE participating states and therefore depends politically on the OSCE standards (Kaya, 2007,p.7).

The situation is not different when we look at the standards of the European Union. The European Union Charter of Fundamental Rights demands respect for the beliefs of parents and ensures the rights for education as well. The Charter was also included in the Treaty of Lisbon which requires member states to respect the cultural and linguistic diversities. Article 6 of Consolidated Version of the Treaty establishing the European Community stipulates all member states to respect human rights. Article 13 of the Treaty prohibits discrimination and Council of the European Union, on the basis of this provision, adopted the Racial Equality Directive which gives protection against discrimination in education as well as other rights. Copenhagen criteria, adopted by the Council of the European Union, also assure minority rights. Turkey must reach these standards to become a member of the EU (Kaya, 2007,p.7).

When we look at the ECtHR decisions related to education in mother tongue in this context, we can say that 'The ECtHR have had a limited impact on protecting minority language rights in education. The European Commission of Human Rights had ruled that the right to freedom of expression does not 'guarantee linguistic freedom as such' and does not guarantee the right to use the language of one's choice specifically in relation to administrative matters. The ECtHR has also held that the universal right to an education (enshrined in Article 2 of Protocol No. 1), read in conjunction with the prohibition against discrimination (enshrined in Article 14), does not guarantee the right to obtain instruction in a language of one's choice but rather secures the more limited right to education without discrimination on the grounds of, for example, language' (Kurdish Human Right Project, 2011, p.7).

But still, considering the two decisions of the ECtHR in 2007 and 2009, the Court has made signs that the Court's approach to these issues will change into positive in the future because, according to Kerim Yıldız, the European Charter for Regional or Minority Languages had still not been ratified when the ECtHR made decisions not ensuring about education and training in mother-tongue. Therefore, the Court may give different decisions today relating the subject. For example, in the decisions in 2007 and 2009, the ECtHR Yıldız explained his idea as follows; there have been some signs of progress with regards to Article 10 (freedom of expression). The ECtHR found Turkey in breach of Article 10 for banning the

production of a play conducted in Kurdish. The ECtHR has also held that, having assumed responsibility for the provision of Greek primary schooling, the failure of the Turkish authorities in northern Cyprus to continue such schooling at secondary level violated the right to an education under Article 2 of Protocol No.1. A similar judgment was held in Irfan Temel and Others vs. Turkey where Turkey was found in breach of the same provision for suspending 18 students from university for requesting the introduction of Kurdish language lessons. All these cases may suggest willingness on the part of the ECtHR to extend the ambit of these provisions and guarantee mother-tongue education in the future (Kurdish Human Right Project, 2011, p.7).

Relating the freedom of organization, the ECtHR has found the Turkish jurisdiction unfair in all the cases that were closed by Turkish courts and taken to the Court. The ECtHR considered the reasons for closing incongruent to Article 11 of the European Convention on Human Rights. In this regard, we can examine the Court's decisions on the closure cases of People's Democracy Party (HADEP) (HADEP and Demir v. Turkey, no:28003/03, 2010) and the EMEK (Labor) Party (Emek Partisi and Şenol v. Turkey,no:39434/98, 2005). The Court found Turkey unfair in both cases and concluded that Turkey violated Article 11 of the European Convention on Human Rights which guarantees freedom of association.

Regarding freedom of belief, a decision taken by the ECtHR in 2007 can be taken as precedent. The case was opened against compulsory education of religion by a Turkish Alewi citizen Hasan Zengin. Demanding his daughter's exemption from religion lessons given in the direction of Sunni teachings, Hasan Zengin took the case to the ECtHR when his demand was rejected by Turkish courts. Therewith, the ECtHR found the application contrary to Article 2 of additional Protocol No. 1 to the European Convention on Human Rights (Hasan and Eylem Zengin v. Turkey, no:1448/04, 2007). Although this decision was assessed as a victory of law by certain circles in Turkey, the Turkish Ministry of Education didn't comply with the decision, giving justification that the curriculum was changed after the ECtHR's decision (Kaya, 2007, p.23).

When carefully examining the above mentioned decisions of the ECtHR, it is obvious that these decisions offered a major contribution to Turkey's democratization process. Concerning the mentioned cases where the ECtHR sentenced Turkey, it will not be difficult to presume that Turkey will overcome many problems if we consider that the problems in Turkey that constitute the basis of these cases are solved in accordance with the perspective of the ECtHR. Moreover, compliance with EU standards is of vital importance for Turkey who is preparing to make a civil constitution. At this point, basing on the Commission of Europe's annual

regular reports on Turkey, we will look how Turkey seems from Europe. These reports will also present the European perspective about problems and solutions.

3. 5. Progress Reports On Turkey

Since 1998, the European Commission has published regular reports on Turkey which present the situation of Turkey within the framework of the Copenhagen criteria. These reports will also give an idea about the European perspective's proposals for the solution to the Kurdish question. In other words, we will look at the problem from Europe because these reports not only reveal Turkey's deficiencies but also give suggestions within the framework of European standards about what needs to be done. Again these reports followed the changes in Turkish domestic law closely within the framework of harmonization with the European Union and revealed the right and wrong steps.

A report released in 1998 criticizes the structure of the national Security Council and the points out that this council inflicts pressure on civil politics. Besides, state security courts are also indicated as contrary to the European Convention on Human Rights. In this report, the European Commission addressed to some international conventions, as mentioned above, and for instance remarked that Turkey still hasn't signed the Framework Convention for the Protection of National Minorities. Separately, the report indicated that there are serious problems in areas such as the protection of political rights, free organization, extrajudicial execution and freedom of expression. In this context, Article 7 and 8 of the anti-terrorism law and Article 158,159,311 and 312 of the criminal code were highlighted as serious problem articles. The report also underlined that Kurds, who clearly or politically introduce their ethnic identity, face with a very serious risk of prosecution.

In the 1999 regular report, the Commission drew attention to the10 percent electoral threshold and remarked that this application causes the no recognition of about five million votes in the parliament. The (replacement of the military judge by a civilian one) reform of the State Security Courts (SSCs) in the judicial system was welcomed but the presence of National Security Council was criticized in the report. Drawing attention once more to the problems on issues such as freedom of expression, freedom of organization and torture, the report stated that Turkey must act in accordance with the contracts such as the framework convention for the protection of national minorities and the European Charter for Regional or Minority Languages.

The report released in 2000 criticized the on-going impact of the military authority on civil politics and emphasized that situation is still very bad in Turkey on the subject of torture. The report also mentioned the deficiencies in the areas of freedom of expression and organization in the closure case against the pro-Kurdish HADEP party.

The report in 2001 welcomed the amendments made concerning the establishment purpose of the National Security Council but pointed out to the need to wait about how the implementation would progress. With the amendment in the NSC law, the council's decisions have advanced from "to be considered primarily" to "recommended decisions". Again this report welcomed the amendments made in Article 13 and 14 of the constitution related to the freedom of expression, demonstrations and meeting. In addition, with regard to the abolition of all kinds of discrimination, the report criticized the absence of any progress in relation to agreeing on some human rights aspects such as the United Nations Charter, the International Covenant on social and cultural rights and the International Covenant on civil and political rights.

In the 2002 progress report, the commission criticized the prosecutors attitude as follow; 'In spite of the amendments to the provisions on freedom of expression (Articles 159, 312 and Article 8 of the Anti-terrorist law), there has been a certain tendency by prosecutors to use other provisions of the Penal Code, which were left unchanged by the harmonization packages, to limit freedom of expression. This is particularly the case for Article 169 (support for illegal armed organizations) that was applied to students petitioning for optional language courses at university'.

In addition the commission take attention that Turkey has not signed the Council of Europe Framework Convention for the Protection of National Minorities.

Another important point was implementation of the Turkey about EC+HR decision. 'Turkey's failure to execute judgments of the European Court of Human Rights (ECtHR) remains a serious problem. There are, for example, 90 cases where Turkey did not ensure fully the payment of just satisfaction ordered by the Court and 18 cases, related to the exercise of freedom of expression, where the authorities did not erase the consequences of criminal convictions violating the ECHR'.

In the 2003,2004,2005,2006 progress report the Commission welcome the amendments which was made by Turkey in the framework of compliance with European Union standards but the report criticized lack of freedom of expression, the problem about the minority rights, the pressure on the minorities press and doubt about the implementation of these amendments.

The report in 2008 remarked that the amendment made in Article 301 of the Turkish penal code to strengthen the freedom of expression attached the condition of receiving permission from the ministry of justice to open a criminal case which however did not work in practice, because it was verified in figures that a large part of the applications were approved by the ministry.

Similarly, in the report of 2009, they found the amendment in Article 301 as a positive step but not enough. Moreover, the other articles of the Turkish criminal law, which restrict freedom of expression, were referred and was said that Articles 215, 216 and 217 of the Turkish criminal law and the law to fight terrorism caused to file suits even when the expressions about the Kurdish problem did not address to any violence. In 2009 progress report, the commission drew attention that the phrases like "public interest" and "encouragement for violence", which can be interpreted broadly, were interpreted by the Turkish judges and prosecutors in a way contradictory to the European Convention on Human Rights. The Article 318 of the Turkish criminal law, which arranges the issues on discouraging people from performing military service, was also criticized in the report. Again, in 2010 progress report, the Articles 215 and 301 articles of the Turkish criminal law were drawn attention and those articles were described as obstacles for the freedom of expression. Besides, the pressure on the minority press was stressed, and within this context, it was drawn attention in the report that AZADİYA WELAT newspaper, which broadcasts in Kurdish, was closed for a few times and frequent closure of internet sites was described as an evidence of the problem in freedom of expression. At the same time, the commission remarked that all the for mentioned articles of the Turkish criminal law functions in an obstructive way for to exercise freedom of expression.

When carefully examining the reports published since 1998, the reforms the Commission demands to be performed are; removal of all obstacles to freedom of expression, to the right to meeting and demonstrate and to the right for organization, zero tolerance for torture, elimination of the military authority effectiveness in civil politics, expansion of the areas where minorities express themselves, removal of pressures on Kurdish politicians and termination of the pressures on the freedom of press and on the Kurdish media. In addition, these reports often emphasized the need for the training of Turkish judges and prosecutors who, despite some positive reforms, were determined not to be interpreting laws on the side of freedom. These assessments, which were made in the context of some international conventions, underlined that if Turkey is a state party to these contracts, it is supposed to act accordingly; if not, it should be a party, because these are the conventions that determine

European standards. Therefore, we mentioned these contracts on human rights and minority rights under the title of the European Union perspective above.

Again these reports supported and encouraged Turkey about each step taken and each reform made within the framework of harmonization with the EU. The report also criticized and warned the Government about all kinds of human rights violations in Turkey as well as accusing Turkey of not being willing in relation to the EU. In this regard, these reports are like Turkey's mirror as they have, reminding of contemporary values, presented the things to be done by Turkey in terms of democratization and the Kurdish question and been a guide in this aspect.

3. 6. Positive Impact On The Kurdish Question By Turkey's Candidacy Process To The European Union

When examining the reforms made by Turkey within the framework of the EU harmonization, it will be understood how important this process is for the solution of the Kurdish issue. All the reforms during this process were made in order to comply with to the EU. Lots of amendments were made in 2001 within the scope of harmonization packages but here we will focus on the regulations that directly concern the Kurdish issue. For example, the prohibition on broadcast in Kurdish was removed with an amendment in 2001 in Article 28 of the Constitution which said ‘it is forbidden to broadcast in any language banned by law’. Article 34 of the ‘law on meetings and demonstrations’ was amended and harmonized with Article 11 of the European Convention on Human Rights. With another amendment in Article 118 of the Constitution, the structure of the national security committee was changed into a structure consisting mostly civilians. Besides, the council’s decisions, regarded earlier as “to be considered primarily”, were accepted as 'recommended decisions' (Altıntaş, 2008, p.4).

With an amendment in 2002 in Article 15 and 17 of the Constitution, death penalty was completely abolished. The adding in Article 90 remarked that international conventions will be valid in case of a conflict between domestic law and international agreements[10] (Altıntaş, 2008, p.4).

[10] This is a very significant amendment because judges can now make decisions in line with the European Court of Human Rights, showing a decision of the Court as a reference. Although some decisions have been taken in this manner so far, there are still serious problems in practice. For example, in the Hatip Dicle case which caused a crisis after the 2011 elections, Hatip Dicle wouldn’t have been put in prison and there wouldn’t have been a crisis if the court had made the decision in reference to the EC+HR decisions. Even this incident alone shows how important the European Union process is.

Showing regard to the criticism in the regular report in 2003, nomination of the General Staff in the formation of the Board of Higher Education (YOK) was revoked on the grounds that 'military representatives mustn't appear in civil institutions'. Again in line with the criticism in the progress report in 2004, State Security Courts were closed as well (Altıntaş, 2008, p.5).

In addition, some changes were made in the Turkish penal code during this period within the framework of harmonization with the EU. In 2003 for instance, Article 159 and 312 of the Turkish criminal code and Article 7 and 8 of the Anti-Terror Law were rearranged in order to expand the scope of freedom of expression. It is worth noting at this point that one of the greatest legal tools to restrict freedom of expression, Article 8 of the Anti-Terror Law which bans "marches and demonstrations with written and verbal propaganda against the indivisible unity of the Turkish Republic", was abolished in 2001. But in 2006, when the PKK again started armed actions, the AKP government again made freedoms-restricting arrangements resulting from the pressures from the army. For example, Article 6 uses an obscure phrase like 'those assisting the propaganda of terrorist organizations' and the sentences given to this crime were increased. Similarly, sentences were also increased for those who wear uniforms with emblem and signs of the terrorist organization. In a statement on May 1, 2006 regarding this arrangement, the Human Rights Association defined the law as an 'attack on rights and freedoms' (Aytar,TESEV, p.7).

With an amendment in the law on radio and television institutions in 2002, restrictions were lifted from the 'the right to broadcast in different languages and dialects' used traditionally by Turkish citizens in everyday life (Altıntaş, 2008, p.4). Thus, radio and TV broadcast in Kurdish was enabled in 2002 when at the same time an amendment allowed 'the renewal of trial' in accordance with the EC+HR's decisions in criminal and civil cases.

In 2003, an amendment made in the law on population registration removed the restrictions on the subject of 'names incompatible with the national culture, customs and traditions', which enabled to give a Kurdish name to children. Again an amendment in 2003 allowed the opening of private courses for the learning of different languages and dialects, which also allowed for Kurdish private courses (Altıntaş, 2008, p.9). The change made in Article 145 of the Constitution in 2010 enabled the trial of military personnel in civilian courts. Accordingly, army members who commit crimes against the state security, constitutional order and the process of this order' will be tried in civilian courts. This article is also important in terms of breaking the army's impact on civilian politics. Similarly, Article 15 of the constitution, which

protects performers of the 1980 military coup, was removed, enabling the prosecution of stagers of the coup (İktisadi Kalkınma Vakfı websayfası, Anayasa Değişiklik Paketi).

Today, Turkey is still ruled by the constitution of 1982 military coup. Besides, many articles of the 1982 constitution have been amended so far, while the changes in the European Union harmonization packages were based on European Union standards. As mentioned in the regular reports by the European Commission, Turkey still has many deficiencies. However, changes made within the harmonization with the European Union are promising for the solution of the Kurdish issue, which proves that this process is of vital importance. As stated by the Council, Turkey is still hesitating to sign some contracts that form the European values. This unstable attitude is reflected in the amendments made in Turkey's domestic law. For example, as mentioned above, a new step was taken following the improvement made in the Anti-Terror Law. The abolition of state security courts in 2004 and their replacement by the foundation of special authority courts can be shown as an example to this situation. According to many people, these special authority courts serve as State Security Courts (Kocasakal, Sondakika com.,02,07,2011). Moreover, despite all the regulations made, Turkey’s report card on human rights and democracy is not very good in the reports published by the European Commission as well as respectable international human rights organizations.

There may be several reasons for this. For example, as mentioned in the reports of the Council of Europe, the issue of training of Turkish judges and prosecutors (mental preparation for the EU standards) could be a part of these problems. However, the biggest problem seems as the inevitability in preparing a new democratic, pluralist and participatory civil constitution at the standards of the European Union which must correspond to contemporary norms, protect human rights and minority rights and most importantly protect the individual against the state.

So far, we have tried to determine the standards to be met by Turkey in the areas of basic human rights and minority rights to be able to join the European Union. We grounded on the decisions taken by the EC+HR and international contracts mentioned in the regular reports of the European Commission. These contracts are; European Convention on Human Rights, the Framework Convention for the Protection of Minority Rights, Organization for Security and Cooperation in Europe (Helsinki Final Act- OSCE, the Copenhagen Document, the Charter of Paris), the Universal Declaration of Human Rights, Council of Europe Framework Convention for the Protection of National Minorities, the Charter of Fundamental Rights of the European Union, the Copenhagen Criteria, the European Charter for Regional or Minority Languages, the International Convention on Civil and Political Rights, etc. Some of these

contracts are still not signed by Turkey who however still has serious problems in practice regarding the contracts it signed, as we mentioned above. In this sense, if Turkey reaches the standards promised in these agreements, it is clear that it will be able to solve the problems on subjects such as basic human rights, democratization and minority rights. In this respect, we can see the Kurdish question as a matter of inability to reach contemporary, universal and democratic values. Should Turkey reach the level of preparing a constitution in conformity with the above-mentioned values, the only matter will be the governance system of the state. In other words, will the state be ruled by a centralized or decentralized system? At this point, we will try to find answers to this question again within the framework of contemporary norms.

3. 7. Some Discussions On The Resolution, The Basque Model And Democratic Autonomy

How can living together be enabled in an environment when even the PKK, which emerged with the idea of an independent Kurdistan, has given up the idea? What kind of a solution is recommended by the parties to the discussion and how possible are these recommendations in practice in Turkey? Of course, to answer these questions, we can benefit from the implementations in some countries with similar problems. For example, the Basque model in Spain has always been discussed as a model for Turkey. As is known, Spain is a country ruled by the kingdom and for the moment it consists of 17 autonomous regions. Separatist organization ETA emerged as a response to the period of Franco's dictatorship. However, with the new democratic term in 1978, cultural, ethnic, religious and linguistic diversities were adopted and put under protection in the concept of status of minorities. The 78 Constitution didn’t explicitly use the minority phrase and didn’t consist of the name of any minorities. However, minorities were implicitly included in constitutional arrangements with the recognized status of autonomy and the emphasis on cultural and linguistic diversity. Article 2 of the Constitution laid emphasis on national unity in the presence of the autonomous communities that were given comprehensive authorities (Özer, 2010, p.702).

"The Constitution is based on the indivisible unity of the Spanish nation and the common and unbreakable homeland. It recognizes the constituent nations and regions’ right for autonomy and ensures solidarity between them’ (Özer, 2010, p.702). In this context, the constitution appealed to separate identities with the emphasis on "constituent nations”.

Spain has confirmed the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities[11]. The European Charter was ratified on 9 April 2001 and entered into force in August of the same year. In the European Charter Declaration submitted for the approval of the European Charter remarked that the official languages in Basque Country, Catalonia, Balearic Islands, Galicia, Valencia and Navarra autonomous communities and the traditional languages protected by the autonomous status of the communities will be accepted as regional or minority languages (Tan, 2009, p.548).

According to the valid autonomy law in Spain, the Oskara language (spoken in the Basque region) has the same status with Spain in the Basque region. The Oskara language is also used in public sphere and official relations. The government in the Basque Autonomous Region is required to train Officers knowing this language. While both the Oskara language and Spanish language are allowed in the parliament, it is unconstrained to speak the Basque language in judiciary. It is also unrestricted to make all kinds of radio and television broadcasts in the Basque language. At the same time, it is optionally enabled to get primary and secondary education in the Oskara language. Besides, education in the Basque language is available at universities in the branches of philosophy, geography, history, language and educational sciences. Road, city and village names are written in two languages. After briefly explaining the Basque model, we will look what the Kurds demand.

In an environment where Kurds have a phobia of being assimilated and Turks bear a phobia of being divided, the basic needs to find solutions to the Kurdish question, the biggest problem in Turkey, are for the freedom of expression as first and foremost and for the discussions of these ideas freely. Having tried to present the on-going problems in this regard, we will now look at discussions in Turkey about the issue keeping in mind that the first condition is the freedom of expression.

According to Altan Tan, an ethnic federation is neither possible in Turkey nor appropriate to the realities of Turkey because approximately 60 percent of the Kurdish population lives in the west. In addition, there is a very high level of economic cooperation between Kurds and Turks who similarly get married with each other to a significant extent. Altan Tan said that a federation system based on geography might be possible instead. Tan explains this as follows; 'The problem is to democratize the whole Turkey. Hakkâri should have schools training in

[11] Framework Convention was signed on 1 February 1995, approved on 1 September 1995 and come 1 February 1998 into force.

Turkish and Istanbul should have schools training in Kurdish. People should go to school they want'.

Again, the PKK leader Abdullah Ocalan also says similar things; "The democratic autonomy model we put forth bases on democracy, not the ethnicity of Kurds, Turks or Arabs alone. For example, a democratic autonomy could be built in Hatay and Adana where Arabs can predominantly express themselves. Our Democratic Autonomy isn't based on a single belief, it bases on peoples, different social bases, social classes and social groups. The mentioned Democratic Autonomy concerns not only Kurdistan but also the Aegean, Black Sea, Central Anatolia Regions" (Fıratnews.com, 14 October,2010). Noting that Turkey could be divided into 20-25 regions within this framework, Ocalan says that a self-governance could be determined in accordance with particular conditions of the region.

The 8th November 2007 dated Democratic Society Congress (an umbrella structure consisting of Kurdish parties and Kurdish politicians and later adopted by the Peace and democracy party as well. The DTK is a non-governmental organization that invites the Turkish left, liberals and democrats to the meetings as much as possible. In the KCK indictment it was claimed to be in a direct liaison with the PKK) described the democratic autonomy as follows;

1- 'Proposes a radical reform to ensure democratization in Turkey's political and administrative structure.
2- Bases on the self- sufficiency considering that problems can't be solved by changing the state system alone.
3- Progresses on the philosophy of local empowerment and enabling the people to have a voice in speech and decision in the methods to be developed for solving the problem.
4- Defends democratic participation and based on the parliamentary system in all local units to include the public in decision-making process.
5- Defends a regional and local structure to enable the free expression all cultural differences rather then understanding of an absolute 'ethnic' and 'land'- oriented autonomy.
6- Proposes the creation of democratic self- governance in each regions and autonomous unit with its own colors and symbols in company with validity of 'flag' and 'official language' for all Turkey's nation.
7- Democratic self-governance is organized as 'regional assembly' and the member of assembly are defined as 'regional assembly representative'. The assembly elects the council president and executive board members, to conduct works in their fields,

separately. President and executive committee members are proposed to be responsible for execution of the decision made by the assembly.

8- Each of the regions will be mentioned with the special name for that region with the name of the largest province in jurisdiction of the regional assembly.

9- In the democratic Autonomy model, provincial governors are responsible for implementing the decision taken by both central government and the regional executive committee. The provincial organization of the minister will also be subject to the same procedure. Other administrative structures such a provincial Councils Municipalities Neighborhoods will continue to exist' (Sol Haber Portalı, 06.08.2011).

Also giving various examples in this declaration regarding mother-tongue education in Europe, referring to the Valencia declaration which was announced by the EU in 2007 in order to strengthen local governments, the DTK calls attention to the increasing importance of local governments within the EU (Sol Haber Portalı, 06.08.2011). At this point, the European Charter of Local Self Government, which is proposed by the Council of Europe and was signed but put a reservation to Article 8 by Turkey, can offer a contribution to the solution. The main purpose of this contract is to ensure the political, administrative and financial autonomies of local governments[12].

In short, the political parties that represent the Kurdish politics demand the empowerment of local governments, recognition of mother-tongue education and training in these local

[12] The articles that Turkey put a reservation to are as follows: Article 4.6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.
Article 6.1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
Article 7.3.Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.
Article 8.3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.
Article 9.6. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
Article 9.7. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.
Article 10.2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
Article 10.3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.
Article 11. Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

governments and a democratic self-governance where the people can take a more effective part in decision-making processes. Within their demand, they say that this system must never base on an ethnicity. In this respect, it has serious similarities with the Basque model in Spain.

In addition, there are many officially well-known autonomous regions in Europe with very different forms and degrees of autonomy from each other; the Aland Islands in Finland, Faroe Islands in Denmark, 17 different regions, prominently Galicia, Basque and Catalonia, in Spain, Scotland, who elected their own parliament for the first time in 1999 after the year 1707, Autonomous South Tyrol in Italy which is the country's richest region in terms of tax revenues, Azores and Madeira in Portugal, the German Region in Belgium which was recognized with the change over the federal system from the status of a unitary state but yet not regarded at the equal status with the Walloons and the Flemish, Gagauzian region in Moldova and Crimea in Ukraine.

It is worth remarking again that the most important part of solving the problem consists of being able discuss freely on the models for a solution after the relief of Turks from the phobia of being divided and Kurds from the phobia of being assimilated and the provision of an environment for freedom of expression at EU standards. Today there are unfortunately still many problems in Turkey due to the lack of freedom of expression. For example, the crisis emerging after the 2011 elections results from Hatip Dicle's words 'PKK has the right to make self-defence if the state continues to carry out operations'. A crisis broke out, demonstrations were made in many places, people died in demonstrations and the PKK re-launched acts when Dicle, who was elected but sentenced to 1 year eight months imprisonment because of this expression, was stripped off of his legal mandate after being elected. However, as we expressed above, the EC+HR has given many decisions on similar issues and the Court holds an extensive framework for the freedom of expression when political parties come into question. In the words of Ahmed Altan, 'Dicle wouldn't be imprisoned and this crisis wouldn't have been lived and if Turkey were a member to the EU' (Altan, Taraf, 25 July, 2011).

So, a democracy at European standards will primarily enable the discussion of the problem and then offer prescriptions for the solution within the framework of fundamental rights and freedoms and minority rights. The remaining problems, in other words the political system problem (the matter how the state will be governed), and the problems caused by the environment of conflict which has continued for nearly 30 years now are completely technical problems. At this point, it is a dominated thought in the Turkish public opinion that the

silence of weapons is the precondition for a democratic solution. But in this respect, PKK circles also demand a constitutional guarantee and being included in the settlement process.

If the solution is wanted, the relevant samples in the world, such as ETA and IRA, can be examined in this sense. The Basque model can also be a good answer to the question how the state will be governed. Basing on the Basque model in this context, specific solutions can also be developed for Turkey. There is also one more point that should be clarified at this point. Holding up Spain as an example, Turkey may try to treat the question by discussing the issue with its legal political representatives, as Spain did earlier. As is known, the negotiations in Spain were made with the elected political legal wing of ETA, not with the organization itself. In this context, Turkey can also conduct these negotiations with the elected legal Kurdish party. Spain is a good example in this regard.

3. 8. Conclusion

With a careful research on the background of the Kurdish problem which began during the Ottoman Empire and continued in the period of Turkish Republic as well, a researcher can easily conclude that the cause of the Kurdish question is the Ottoman Empire's attempt for westernization[13]. In other words, the Kurdish problem was posed by the attempt to implement a central government with the effect of westernization as of the period of Mahmud II in the Ottoman Empire. Kurds, who had an autonomous government until that date, rebelled when they were deprived of their self-governance. The new Republic of Turkey, which was afterwards founded on the heritage of the Ottoman Empire, adopted the idea of nation-state as a principle again with the effect of westernization. In this context, with all its establishments and institutions, the republic tried to create a monist nation from a multicultural, multilingual, multinational, multi-religious society, which was the heritage of the Empire. It should be noted here that the centralist governance (where the state rules everything from a single

[13] The reforms in the last period of the Ottoman Empire were made in an effort to become westernized. In the same way, the Turkish Republic's founding cadre targeted western civilizations while building the nation-state project and they defined it as westernization while founding the new republic on the grounds of a nation-state. Despite the fact that the concept of nation-state emerged at the end of the French Revolution and it is a concept of western origin, it hasn't been gained acceptance or implemented by all western states. The rulers of the Ottoman Empire and the Republic called the reforms made for the nation-state as 'westernization'. In short, when we use the concept of the westernization, we marly talk about the perceptions in Turkey.

centre) and the nation-state, which were consider right for that period, are no more acceptable ideas. The best example is the European Union in this regard. As we tried to explain above at length; the European Union, which is founded on values such as democracy, equality, rule of law, is an association where mostly local governments have a voice and minority rights are protected at a high level. At this point, the critical question is; if we consider the European Union as a project of 'westernization' and 'reaching the level of contemporary civilizations' targeted by Ataturk in founding the republic, can the Kurdish issue, which fundamentally arises from the idea of westernization, can reach a solution with more westernization (i.e. being member to the EU)? In our opinion, the answer is 'yes' due to second reasons. The first reason is the steps taken by Turkey towards solving the Kurdish question and the efforts given for democratization after Turkey's being a candidate to the European Union. For example,

1- the Kurdish people, whose existence was denied until mid-1990's, today have a television which broadcasts 24 hours a day, the right to open special courses in their own language and Kurdish language departments at universities.

2- The impact of the military authority has weakened on civilian politics, which has made politics become a more democratic area where civilians have the right to speak now. The most striking example in this respect is the change in the structure of the national Security Council and the amendment made to enable military officials being tried at civilian courts.

3- With the change in Article 90 of the Constitution, international conventions that Turkey is a party to were practiced in domestic law and it was remarked that international treaties will be the base in case of a conflict. Thus, citizens abused in domestic law seek his rights at the EC+HR.

The second reason for our answer 'yes' is the obligations of Turkey not fulfilled due to the 'unstable' performance shown to become a candidate to the European Union and some contracts not signed by Turkey. If Turkey acts in accordance with agreements it approved, or if it signs the yet unsigned contracts, it will have taken very important steps at the point of solving the Kurdish problem. For example;

1- Regarding the basic rights such as freedom of expression, Turkey is the country convicted the most by the ECHR. In this respect, its constitution and laws are still very far from the European Union standards.

2- We can give the following examples regarding Turkey's unstable attitude; a) the positive change made in the anti-terror law in 2003 and the re-change of this article in 2006 to a restriction of freedom of expression , b) abolishment of State Security

Courts and its replacement with special authority courts which had a function similar to SSC's.

3- Turkey's not signing some international conventions referred in Progress reports of the Council of Europe. Turkey has still not signed the Additional Protocol No. 12 of the European Convention on Human Rights which prohibits all kinds of discrimination, the Council of Europe's Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. Turkey has ratified the International Covenant on Civil and Political Rights but put a reservation to the minority-related articles. A determined adoption of these conventions will both take Turkey closer to EU standards and will be very useful at the point of solution to the Kurdish problem.

4- Despite being a party to some conventions, Turkey doesn't act in accordance with these conventions. For example, it is accedes to the European Convention on Human Rights whose Article 10 prohibits the restriction of freedom of expression and Article 14 all kinds of discrimination. Article 10 is the clause of which Turkey is convicted the most by the ECHR. Turkey is also a party to the Organization for Security and Cooperation in Europe but doesn't fulfil its articles relevant to minorities. Regular reports prepared by the European Commission draw attention to this situation. (See the 2009 progress report). The Copenhagen criteria, which have to be fulfilled by Turkey to become a member to the EU, can also be evaluated in this context. The best evidence to Turkey's nonfulfillment of its responsibilities is the fact that Turkey is the country convicted the most by the European court of human rights.

The conclusion I have drawn in this thesis study is that Turkey can solve the Kurdish problem to a great extent if it can reach the European Union standards mentioned above. The European Union criteria and the decisions of the EC+HR are a chance for Turkey which is on the verge of making a civil constitution. A constitution in line with these extends will pave the way for Turkey. As to the political system to rule the country, Turkey should give a decision in accordance with its own truth, which could in our opinion be the Basque model in Spain that seems the most appropriate solution when we examine the Basque model and look at demands of Kurdish politicians.

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Declaration of Authorship

I declare that this thesis and the work presented in it are my own and have been generated by me as the result of my original research.

None of the part of this thesis has previously been submitted for a degree of any other qualification at this University or any other institution.

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