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## Positon Paper

# Amending the Turkish Constitution to solve The Kurdish Question



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The Turkish Prime Minister, Recep Tayyip Erdogan, needs to institute a new constitution before next autumn as the current system does not allow him to stay in power with sufficient authority or to address the Turkish nation's framework for resolving the Kurdish issue. Erdogan's opportunity lies in the link between constitutional amendment and solving the Kurdish issue.

Murat Yetkin, a leading newspaper commentator for Hurriyet Daily News, wrote an article on 18 February 2013 regarding the recent ongoing political process to resolve the Kurdish issue in Turkey. In it he compared Erdogan to the U.S. President Abraham Lincoln, saying that Lincoln himself took the major step towards the abolition of slavery. While, for the USA, the cost of that step was a civil war in the mid-nineteenth century, Erdogan is about to forge a peaceful end to the war with Kurdish separatists - led by the Kurdistan Workers Party (PKK) - against the Turkish state. There are significant differences between African Americans and the Kurds in Turkey. Yetkin certainly recognises these, but the comparison relates to the extent of their resolve, and its impact on the unity and identity of the nation. In fact, the solution of the Kurdish issue in Turkey could have repercussions far beyond the borders of the Turkish Republic. Just as there is a Kurdish issue in Turkey, so there are others in Iraq, Syria and Iran. Although progress has been made with the Kurdish issue in Iraq, this progress has not seen a complete and lasting solution.

But the political process to resolve the Kurdish issue in Turkey is still in its infancy and, as pointed out by Turkey's Speaker of Parliament, Cemil Çiçek, on 22 February 2013, 'Only a few who do not exceed the fingers of one hand know the details of what's going on.' More importantly, there is a close connection between the Kurdish issue and to the process of drafting the new Turkish constitution, which the prime minister feels is not preceding as fast as desired. So what is really happening with the Kurdish issue in Turkey? Will Erdogan succeed this time, after a long series of stalled attempts, to create a real, permanent solution to this thorny and painful issue? And, why is resolving the Kurdish Issue integrally linked to drafting Turkey's new constitution?

### **Perpetual stumbling's**

Since its founding as a Republic, nothing has burdened Turkey, as a state and a nation, as much as the Kurdish issue. The first Kurdish uprisings were launched against the Kemalist regime in the 1920s but the nature of those uprisings was a combination of nationalism and Islamism. During the following decades, the grip of the Turkish state became more severe and intense. In the 1970s, manifestations of national discontent began to emerge again. In 1978, according to the party's official account, a group of young Kurds, led by Abdullah Ocalan, established the PKK. After four years, the party held its second conference in Syria where it adopted a decision to initiate armed activity. Two more years passed before the start of the party's actual military activity in 1984.

The PKK was born in the revival period of the Marxist left in Turkey, and there was no surprise that the party adopted a socialist-Marxist orientation. Despite its other demands, which reflect the Turkish Kurds' sense of injustice and marginalisation, the party did not find public sympathy in the Kurdish environment that was Islamic-oriented and observant. The party also benefited from the extreme violence perpetrated by the military regime after the 1980 coup. The regional support for the party came from the Kurdish enclave in northern Iraq, which had escaped Baghdad's control since the 1980s, from Syria under Hafez al Asad, which was characterised by its own strained relations with Turkey at the time, and among Palestinian resistance organisations in Lebanon.

Since 1984 the party pledged to fight a fierce war in the Kurdish-majority areas in south and south-eastern Turkey against the Turkish army and security forces and against Islamic opposition groups in the Kurdish areas, as well as sometimes against the general population in major Turkish cities. The estimates indicate that in over twenty-nine years more than 50 000 people, both Turks and Kurds, have died. The war caused serious economic harm and became a great obstacle to development programmes structured for the southern and eastern provinces. Although the war, during the years of military rule

in the 1980s, was marked by a deepening of hostility, especially at the level of the destruction of Kurdish villages, the displacement of populations and the particular undertakings by the Turkish military to murder suspected Kurdish activists without trial, the attempts of the Turkish state to reach a negotiated solution to the Kurdish question did not stop.

The first of these attempts, pledged by President Turgut Ozal, was between 1991 and 1993. It began with the abolition of the total ban on the use of the Kurdish language, altering it to a partial ban. Ozal, who is of Kurdish origin, also agreed to launch indirect negotiations with the PKK leadership. Some Turkish circles believe that there was a direct link between Ozal's sudden death in 1993 and his efforts to resolve the Kurdish issue. In 1997, Islamist Prime Minister Necmettin Erbakan, again attempted to open channels of negotiation with the PKK, but Erbakan's authority over the military and security establishment was not at a level that allowed him to quickly advance a peaceful path. Also, his government did not last longer than a year.

In February 1999, Turkish intelligence, with U.S. assistance, was able to arrest Abdullah Ocalan in Nairobi and transfer him to Turkey where he was tried and put in solitary confinement on the island of Imrali, where he remains imprisoned under a life sentence.

Ocalan had lost his safe haven in Syria after Turkey threatened war. He travelled for a few years in a number of countries, avoiding Turkish legal prosecution and the security forces. It is somewhat astonishing that the government of Bulent Ecevit started negotiations with its prized prisoner immediately after his trial.

That stage of the negotiations failed in its attempt to find a solution for several reasons, the first of which was that the Turkish state did not always represent a single political position. Besides opposition from a popular sector, it was still influenced by national a perception that is Turkey representing the Kemalist Republic. Among the army, the gendarmerie and security groups, there were various ultra-nationalists who were highly influential and were not willing to recognise the Kurdish identity, and acted to resolve the conflict by force, regardless of the cost or how long the war dragged on. Although Ocalan was always considered - and is still considered - as one of the most prominent and influential leaders of the Party, the party evolved into a multi-organisational group that was no longer solidly centralised. This evolution allowed regional and international forces with diverse interests to exert differing influence upon various wings of the party to serve their own agendas. The party became, at various junctures, a tool for achieving the objectives of Syria, Iran, Israel and Iraqi-Kurdish groups and perhaps even that of Western powers, in their conflict with Turkey. This, in addition to the presence of leaders in the party who were no less radical than the radical Turkish nationalists, led it to imagine that it is possible to divide Turkey by force.

### **Dismantling the complex Kurdish threads**

In November 2002, the Justice and Development Party (AKP) took control of the country. During the early years, the government of the AKP did not enjoy sufficient strength to deal with the Kurdish question. It had to deal with challenges that were more pressing, from the deteriorating economic situation of the country and America's policy of war and conquest in the neighbouring region, to cries of Kemalist secular forces within the body of the state institution and the judiciary to overthrow the party and its government. In 2007, Erdogan won his second election, and Abdullah Gul became the secondary figure in the AKP, as the country's president. There was no doubt that Erdogan's second government showed greater self-confidence.

The Kurdish issue was never far from the mind of the prime minister. It is known that Erdogan, since the years of his leadership of Istanbul's Metropolitan Municipality in the mid-1990s, formed a working group to find a comprehensive and lasting solution to the Kurdish question. Erdogan came from an Islamic partisan background. The parties formed by the Turkish Islamist leader Necmettin Erbakan were always popular and had noticeable influence in the predominantly Kurdish provinces. It is believed that Erdogan

gave the green light to start negotiations with the PKK in Oslo in 2008, which were then organised by Norwegian civil society group. The Norwegian negotiations continued until July 2011, when the PKK ended its truce with the state and launched a bloody attack on a Turkish military target. This coincided with the detection of the Norwegian channel of negotiation. It was later discovered that Dr. Hakan Fidan, head of the Turkish intelligence since May 2010, led the negotiations from the Turkish side.

Fidan graduated in political science from the University of Maryland in the United States, and previously served as an officer in the army. He has also held various positions in the Turkish state apparatus, including membership in the Turkish delegation to the NATO headquarters and was appointed as a permanent representative of the International Organization for nuclear energy. Since his undertaking of the secretariat of the Prime Minister's Office, Fidan was considered one of Erdogan's trusted figures even though he rose to the cabinet office from the ranks of the state bureaucracy and not as a political appointee, just as a large number of employees working alongside Erdogan and in the ranks and leadership of the AKP had. This includes the current interior minister. Fidan comes from the province of Van in eastern Kurdistan. Fidan did not receive the Kurdish mandate before assuming the presidency of the intelligence, but continued to manage this thereafter.

In Turkey, it is commonly thought that the current political process began at the end of December 2012. However, it is certain that this process was launched much earlier. There are many indications that the Turkish prime minister has a deep conviction that there is no solution to the Kurdish issue and the war led by the PKK, except through negotiations and by rebuilding the state and its relationship with the people legally, constitutionally and politically. Erdogan has stepped up his anti-PKK rhetoric since the third victory of the AKP in the 2011 elections and launched an ongoing military operation against the resistance bases of the PKK in the province of Hakkari and the Kandil Mountains that border Iraq. Through this, Erdogan earned the trust of the people in the battle against the separatists. At the same time, Erdogan adopted a strategic policy of rapprochement with the Kurdistan Regional Government in northern Iraq, whose cooperation is necessary for any solution or for a military confrontation with the PKK. While the Turkish army achieved noticeable successes in undermining the capabilities of the military wing of the PKK, the Turkish Prime Minister entrusted the head of his intelligence service with the mission of establishing dialogue with Ocalan.

It is believed that, since the spring of 2010, Fidan has undertaken many visits to Ocalan in his place of imprisonment on the island of Imrali. Some of these were openly acknowledged whilst others were not. It is clear that Fidan, who is known for his high cultural embodiment, his deep knowledge of Islam and Turkey's history, was able to gain the confidence of the Kurdish leader. Ocalan's prison conditions subsequently improved in concurrence with the progress of the relationship between the parties. In July 2012, for the first time, Ocalan phoned Leyla Zana, a deputy in the Turkish parliament for the Kurdish Peace and Democracy Party, which is seen as a political façade for the PKK, and asked her to participate in the negotiations with the Turkish government. The call was, perhaps, the first indication that Ocalan saw his dialogue with Fidan as a path of negotiation.

On 3 January 2013, in another unprecedented event, the Turkish public was surprised to see that two Kurdish deputies; Ayla Akat Ata, for the Peace and Democracy Party (BDP), and Ahmet Turk, the independent MP and one of the most prominent Kurdish political figures in the country, both visited Ocalan in prison. All visits to Ocalan were sanctioned by the government, including visits by his lawyer. It was clear that there was a political motive behind the visits of the MPs. Through this, since the beginning of January 2013, the dialogue between Fidan and Ocalan began to shift towards concrete action. Turkish military operations against armed PKK members and its military bases continued but the party's military activities declined to a large extent. Statements by the Turkish Prime Minister were issued expressing that the PKK's militants should leave the country or lay down arms before military operations would stop.



It is not possible to predict what has been agreed upon between Fidan and Ocalan, but Selahattin Demirtaş, Co-Chair of the Peace and Democracy Party, declared on 21 February 2013 that Ocalan had handed the Turkish government a draft road map to resolve the Kurdish issue as a whole, and that his party would receive a copy of the proposed road map when the party's candidates made their second visit to Ocalan on 23 February. Demirtaş said that any agreement between Ocalan and the leadership of the PKK in the Kandil mountains would be binding to his party, the Peace and Democracy Party, noting that negotiations were underway with Ocalan only, and that there were no other negotiations between the Turkish government and the leaders of the PKK in Europe or the Kandil Mountains. Also, significantly, Demirtaş stressed that the Kurdish side was not willing to make concessions regarding language and or cultural rights but this requirement should be reviewed in the details.

At the same time, in the third week of February 2013, Erdogan began to tour the predominantly Kurdish provinces in the south of the country during which he intended to promote the peace plan. Erdogan delivered, as usual, a rousing speech in the city of Mardin, which is demographically mixed. In his speech, he evoked history and Islamic values and attacked racial fanaticism with an unprecedented sternness. Perhaps the speech of the prime minister, who is now regarded as the most powerful leader of the Turkish Republic since Mustafa Kemal Attaturk, will reveal his plans to resolve the Kurdish issue and redefine the Republic and its citizens. On 22 February, Erdogan's government presented the fourth judicial amendments which, upon approval, are believed to pave the way for a fundamental change in the procedures relating to charges and litigation and would allow for the release of thousands of prisoners of the illegal Union of Kurdistan Communities (KCK), which is affiliated to the PKK. It had long been targeted by the Turkish security services and the judiciary.

However, even assuming that Ocalan conceded enough to the Turkish government to launch a process of a peaceful settlement of the war and the Kurdish issue in Turkey, and even if the judicial amendments provided the prime minister an opportunity to take concrete reconciliatory action between the state and Kurdish nationalistic organisations - both legal and illegal - it is not possible for Erdogan to embark with great depth on a solution without substantial amendments to the constitutional structure of the country. How can, for example, the problem of the status of the Kurdish language be resolved, or citizenship be redefined in a manner that eliminates Turkish nationalism without a new constitution?

### **The road to a new constitution**

The Commission for Constitutional Agreement, set up by the Turkish parliament to draft a new constitution after an agreement between the four parliamentary parties, began between October and November 2011, but did not actually begin work until May 2012. The commission was supposed to finish its work by the end of 2012, but had by then only completed 103 articles. It agreed on thirty-one of these. Before the end of 2012, the president of the commission and the Speaker of Parliament, Cemil Çiçek, requested the extension of the work of the committee, especially after Erdogan threatened that the AKP would independently engage on drafting the constitution. In the end, the commission was given an extension until April 2013, but very few believe that the new draft of the constitution will be ready before then.

The committee's tardiness is due to several factors. Firstly, the main opposition parties, especially the Republican People's Party (CHP), did not at all want a new constitution for the country, and their representatives in the committee dragged their feet so as to impede progress.

Secondly, the AKP wants to change the structure of power in the country to a presidential government system, which finds no support from either the Republican People's Party (CHP) or the MHP (The Nationalist Movement Party), which is a far-right political party, since both of them believe that changing the structure of government is

intended to pave the way for the rise of Erdogan to the presidency next year, and to the leadership of Turkey until 2022.

Thirdly, in addition to changes related to resolving the Kurdish issue, the AKP is pushing other major altering processes in state institutions, including the judiciary and the army within the pyramid of power. In short, Erdogan needs a new constitution before next autumn, and in particular needs the new constitution to reflect his vision for the regime, which is Turkey as a united nation. Both issues are interconnected, and both would grant him an additional opportunity to lead the country to become the Turkey that he wants. This is his last term as prime minister, according to the party's internal rules, and without a change of regime structure, he will not be able to become executive president with sufficient powers if he is contested for the position next year. Without a change in the state structure and defining of nationhood and citizenship, he will not be able to reach a comprehensive and lasting solution to the Kurdish question.

In case the Commission for Constitutional Agreement cannot complete its mission within the next two months, the AKP could pull back, causing it to halt its task of providing an independent draft constitution to parliament. It prefers to oppose the CHP and the MHP to approve the final draft constitution in parliament. This needs to be supported by 367 of the total 550 members. For the approval to present it as a referendum, it requires the support of 330 members. The AKP have the support of only 325 deputies. Perhaps a few among them might refrain from supporting the project for one reason or another. But Erdogan can obtain the support of Kurdish candidates from the Peace and Democracy Party who number about twenty-nine to ensure bringing the project to a referendum, while perhaps some candidates from the CHP and the MHP may also defect.

It is still unclear as to which option Erdogan will select, meaning that he could wait for the Commission for Constitutional Agreement until they finish their task, no matter how long it takes, or he could decide to proceed to parliament with a view to unilaterally draft a constitution. What is certain is that he has only weeks, and not months, to decide.

### **Historic opportunity**

One of the Turkish officials, who had had an opportunity to look at some minutes of the meetings with Ocalan, says that the Kurdish leader, in one of the meetings, called for opening the border between Turkey and its Arab neighbours in Iraq and Syria. Ocalan is aware and perhaps still hoping, that the Kurdish issue extends beyond the borders of Turkey to the Kurds in Iraq, Iran and Syria. He may still be convinced that the nationalistic aspirations of the Kurds would not necessarily require an independent state for achievement, but rather just lifting the barriers and ensuring communication between Kurdish groups. This, of course, is a long-term goal, but no one at this stage can ignore the regional dimension of the Kurdish problem.

The Kurds are located in Turkey, Iran, Iraq and Syria, and in spite of the disparity between the conditions, the size and the circumstances of the Kurds in each of these countries, all the Kurdish groups are witnessing national mobilisation to some or other degree. What can be inferred is that the solution that Turkey seeks only responds to some of the linguistic and cultural demands of the Turkish nationalist movement in order to guarantee the unity of the Turkish state at the same time. To what extent could this become an ideal solution? And to what extent will Turkey, a country with more than half a Kurdish population, have an influential position in the Kurdish movement as a whole? For example, sister parties of the PKK emanated in Iran and Syria. Will Turkey exercise any degree of influence on these?

This is on a medium to long-term scale. As for the closest timeframe, both parties - the AKP government and Ocalan's - must deal with the immediate challenges of the desired solution. There are legal and constitutional challenges that must be overcome by the Turkish state, and there are sectors of Turkish public opinion, which have to be persuaded about the solution and its legal and constitutional consequences. On the other hand, despite the strength and symbolic leadership of Ocalan, the PKK has moved closer

to this position than it has to being considered a staunch party. Perhaps the assassination of the three Kurdish activists in Paris on 9 January indicates the degree of the differences within the party around the current negotiations with the Turkish government, and the extent to which these differences may reach. In other words, can Ocalan ensure the loyalty of the majority in the party and align it towards the desired solution? To what extent can he neutralise the influences of the regional countries that do not wish to see a Turkish solution to the Kurdish problem, which exist within the ranks of the PKK?

Certainly, Turkey now stands in front of an unprecedented historic opportunity to reach a peaceful and mutually acceptable negotiated solution to the Kurdish problem which would put an end to policies of marginalisation, exclusion and forced assimilation as well as war, terrorism and death at the same time.

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