



## **Turkey's Kurdish Conflict: An Assessment**

**September – December 2014**



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## Foreword

This assessment is a continuation of the Democratic Progress Institute's (DPI) ongoing evaluation of the Turkey's current Kurdish resolution process. It forms part of the Institute's research in relation to our Turkey programme. The focus of this assessment is on key developments that have taken place in Turkey from September to December 2014; completing DPI's 2014 evaluation. The objective, in publishing this evaluation, is to provide an overview or 'snapshot' of developments on the ground during this period. Particular focus is given to recent events relating to Kobane and the Kurds in Syria; a topic which has received much attention both in the region and internationally over recent months. In its analysis of these events, this evaluation aims to assess and analyse Turkey's response to the Kobane related events, as well as their impact on the resolution process as a whole. Other key issues addressed include the recent legislative reforms seen in Turkey relating to security and police powers; the likely impact of such reforms, and the international norms and principles that are relevant. With the fast approaching elections due in the summer of 2015, this evaluation also explores issues relating to the election threshold for parliamentary representation, and discusses the recent decision by Turkey's Constitutional Court, which ruled against lowering the threshold.

Over recent months, Turkey has faced new challenges in relation to the resolution process, with events in Kobane triggering widespread unrest, and drawing attention once more to the fragility of the process. In addition to issues within Turkey itself, these regional developments have also contributed to the fragility of the process, and are likely to continue to have a significant impact. The recent advances of the Islamic State (IS) are affecting the region as a whole, and bring the question of Rojava (the Kurdish region of Syria) in particular, into even greater consideration. These issues will continue to be crucially interconnected to Turkey's process, and must not be ignored if developments are to be kept on track, and for opportunities for dialogue to continue.

Polarisation within society remains strong, and recent events have demonstrated the clear need for a process of any kind to be inclusive – taking into account every aspect of society within Turkey – and for the public to feel ownership of it, something which is sorely lacking at present. Harsh rhetoric from both the government and the Kurdish movement has only increased this polarisation, and the looming elections have added to tensions.

In addition to issues of inclusivity, issues of process and of substance must also be addressed if the process is to continue on track. While the elections are likely to preclude any significant substantive steps from being taken in relation to the process, it is important for confidence building measures to occur on both sides, in order to maintain the trust and momentum needed to move things forward.

While steps such as the recent Framework Law represent progress, legislative reform is necessary to ensure the implementation of such laws, and to avoid a stalling of the process.

This overview of recent events forms part of an ongoing series of assessments relating to Turkey, undertaken by various experts, both nationally and internationally. Further assessments of this kind will continue to be published by the Institute on the resolution of the Kurdish Conflict in Turkey.



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## Kobane Crisis

### Background

The political situation in Turkey has grown increasingly tense over recent months, with unrest arising out of protests, demonstrations and public statements being made by various actors throughout Turkey (in particular in the largely Kurdish South East) and internationally, relating in particular to the situation in Kobane (Arabic name Ain al-Arab), a self declared canton of Rojava (the de facto autonomous Kurdish region of Syria) which has been under siege by IS since the Summer of 2014, and Turkey's policy in relation to events there. Fighting over the town began to escalate towards the end of September, with shells from Kobane landing in Turkey on 26 September, and the fighting in the town observable from behind the Turkish border.<sup>1</sup>

Recent protests have seen the loss of lives, scores of injured people including police officers, hundreds of temporary detentions<sup>2</sup> and the destruction of public buildings across 35 different cities in Turkey (including Ankara and Istanbul), have only served to confirm that the resolution of the Kurdish Question in Turkey is inextricably linked to, and interconnected with the situation in Syria's Rojava; of which the wider public is becoming increasingly conscious.

In Europe, demonstrations took place in Berlin and other German cities, some of which turned violent,<sup>3</sup> as well as in Austria, Finland, France, the Netherlands, Norway and Sweden.<sup>4</sup> In Brussels, protestors broke through the doors of the European Parliament.<sup>5</sup>

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<sup>1</sup> Hunter, I, "Shells fall on Turkey as battle for border town of Kobane rages," *The Independent*, 26.09.2014, last accessed on 14.01.2015, <http://www.independent.co.uk/news/world/middle-east/shells-fall-on-turkey-as-battle-for-border-town-of-kobane-rages-9758914.html>.

<sup>2</sup> International Crisis Group, 'Turkey and the PKK: Saving the Peace Process', *Crisis Group Europe Report* No.231, 6 November 2014. <http://www.crisisgroup.org/~media/Files/europe/turkey-cyprus/turkey/234-turkey-and-the-pkk-saving-the-peace-process.pdf> (Last accessed 01.01.15)

<sup>3</sup> BBC News, "Turkey Kurds: Kobane protests leave 19 dead," BBC News (08.10.2014), accessed on 13.01.2015, accessed at <http://www.bbc.co.uk/news/world-middle-east-29530640>.

<sup>4</sup> Huffington Post UK, "Kurdish Protestors Clash With Turkish Police Over Islamic State's Advance On Kobane," (09.10.2014), accessed on 13.01.2015, accessed at [http://www.huffingtonpost.co.uk/2014/10/09/kurdish-protesters-clash-with-turkish-police-over-islamic-states-advance-on-kobane\\_n\\_5959262.html](http://www.huffingtonpost.co.uk/2014/10/09/kurdish-protesters-clash-with-turkish-police-over-islamic-states-advance-on-kobane_n_5959262.html).

<sup>5</sup> BBC News, "Kurds protest against Turkey as IS advances on Kobane," BBC News, (07.10.2014), accessed on 14.01.2015, accessed at <http://www.bbc.co.uk/news/world-middle-east-29518448>.

## **Kobane: Turkey's response**

The recent unrest in Turkey has been a likely possibility for some time, since the advancement of IS into Syria's Rojava, which shares a border with both Turkey and Iraqi Kurdistan. The Turkish government had begun to close its border with Syria on 20 September<sup>6</sup> and, besides not providing military protection to the town, were actively preventing its Kurdish population from joining the fight against IS. In the border town of Suruç, for example, the Turkish border police are reported to have stopped around 300 Kurds.<sup>7</sup> Previous protests had taken place,<sup>8</sup> but the October rallies, and corresponding clashes, were of a larger scale. The level of discontent and of public demonstration has been compared with the Gezi events of 2013. However, these protests have clearly had a more organised, coordinated and disciplined element, and have been on a much larger scale than those relating to Gezi, with a significantly larger number of deaths and injuries occurring.

The Kobane related events or 'uprising' began on 6 October 2014, and came after a call from the Kurdish movement – including the Group of Communities in Kurdistan (KCK) and the People's Democratic Party (HDP), to their supporters in Europe and Turkey, urging the public to show their support for the Kurds of Kobane by taking to the streets in protest of Turkey's policy of inaction in the face of the threat to Syria's Kurds. Neither party was equipped to manage the incidents that ensued, in part, no doubt, due to the rising outrage felt by the Kurds taking part in the protests. Reports indicate that following the initial protests of October, 49 lost their lives, 148 were injured and well over 350 arrested in Turkey as a consequence (the number has since increased). The failure on both the part of the Kurdish movement and that of the government, to manage the events, and the harsh rhetoric adopted by both sides, has only served to increase the space for spoilers to Turkey's process, to operate. On the announcement of Turkey's aim to create a "buffer zone" in

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<sup>6</sup> BBC News, "Turkey clamps down on Syria border after Kurdish unrest," BBC News, (22.09.2014), accessed on 14.01.2015, accessed at <http://www.bbc.co.uk/news/world-middle-east-29306088>.

<sup>7</sup> BBC News, "Kurds protest against Turkey as IS advances on Kobane," BBC News, (07.10.2014), accessed on 14.01.2015, accessed at <http://www.bbc.co.uk/news/world-middle-east-29518448>.

<sup>8</sup> Hunter, I, "Shells fall on Turkey as battle for border town of Kobane rages," The Independent, (26.09.2014), accessed on 14.01.2015, accessed at <http://www.independent.co.uk/news/world/middle-east/shells-fall-on-turkey-as-battle-for-border-town-of-kobane-rages-9758914.html>.

Rojava, which would run along the Turkish – Syrian border and would represent Turkey's first entry into the war in Syria,<sup>9</sup> statements were issued by the Kurdish movement and its imprisoned leader Abdullah Öcalan that this would amount to a declaration of war against the Kurds and that the fall of Kobane to IS would indicate the end of the peace process in Turkey.<sup>10</sup> At the same time, statements were issued by President Erdoğan, comparing IS to the Kurdistan Worker's Party (PKK),<sup>11</sup> and claiming that any Kurd fighting in Kobane is equal to IS itself, threatening anyone fleeing with detention as they would be regarded as members of the PKK or YPG. This stance has resulted in the detention of hundreds of civilians attempting to cross into Turkey, on the grounds that they have links with the PKK. Such harsh rhetoric and action is reminiscent of that used in past, conflictive eras in Turkey, and has had the effect of exacerbating the situation and of further polarising an already disparate public, leading to a widespread sense of the process being at 'breaking point'.

During the unrest, Government party buildings have been burned down and attacked, with protesters refusing to obey the decisions of local governors and violating curfews, which authorities declared in six provinces, including Diyarbakir. The increasing intensity of the situation (which continues at the time of writing) indicates that the Government's control over the Kurdish areas of Turkey has lessened, and demonstrates a renewed absence of fear of the kinds of prosecutions and persecutions which took place in the 1990s.<sup>12</sup>

Certainly this ongoing unrest can be said to have been triggered on the Kurdish side by a number of factors including: the rhetoric of the Government; what is perceived to be as unacceptable conditions being attached to potential assistance from the Turkish Government in relation to the Kurds of Syria; and a subsequent failure to carry through with promises that were made. The Syrian Kurdish Democratic Union Party (PYD) alleged that the Turkish Government initially outlined conditions for the provision of assistance in creating a

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<sup>9</sup> Joshi, Shashank, 'What will Turkey's price be to its support against Isil?', The Telegraph, 9 December 2014. <http://www.telegraph.co.uk/news/worldnews/europe/turkey/11280713/What-will-Turkeys-price-be-for-its-support-against-Isil.html> (last accessed 12.12.14).

<sup>10</sup> Lowen, Mark, 'Turkey's fear of a reignited Kurdish flame', BBC News, 8 October 2014. <http://www.bbc.co.uk/news/world-middle-east-29542040> (last accessed 12.12.14)

<sup>11</sup> The Guardian, 'Turkey will not cooperate in US support for Kurds in Syria, says Erdoğan', 19 October 2014. <http://www.theguardian.com/world/2014/oct/19/turkey-will-not-cooperate-us-support-kurds-erdogan> (last accessed 12.12.14).

<sup>12</sup> The height of the Kurdish Conflict.

safe corridor between Kobane and other cantons (*de facto* autonomous regions governed by the PYD) in Rojava which would allow for Kurdish fighters in Kobane to receive vital assistance from within their own ranks. These conditions, which are said to have included: the requirement that the PYD distance themselves from the PKK and declare their stance on the Assad regime;<sup>13</sup> a requirement that they enter into a power sharing agreement with other Kurdish groups particularly those close to the Kurdistan Democratic Party (KDP) in Iraq; and a requirement that they join the Syrian National Council (SNC), were all rejected by the PYD. Following this rejection, the Turkish Government agreed to provide assistance in creating this safe corridor.

A complicating factor which is extremely worrying for Turkey and the international community, is the presence of a significant number of IS fighters within Turkey. Reports indicate that these groups are very organised and have strong capacity to act at any time on Turkish soil.<sup>14</sup> This explains in part, the caution which the Turkish Government adopted regarding action towards IS in Syria and Iraq. The possibility of reprisals on the part of IS if Turkey were to take a more concrete stance against them, could increase. In June, IS captured 49 Turkish consulate staff (46 Turks and three Iraqi nationals) in Mosul, the second biggest city in Iraq, until 20 September when they were released, according to the Government of Turkey, purely as a result of diplomacy. Allegations relating to the circumstances of the release however, have included claims of a 'swap deal', in which Ankara exchanged European jihadis for its diplomats.<sup>15</sup> Such claims echo the view that Turkey is exercising extreme caution in relation to IS and its presence in neighbouring Rojava, for fear of negative consequences on its own territory, an approach which has implications for its relations with the Kurds and for the solution process.

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<sup>13</sup> Middle East Online, 'Why Turkey allowed Peshmarga passage to Kobane', 15 November 2011. <http://www.middle-east-online.com/english/?id=68928> (last accessed 02.01.2011)

<sup>14</sup> Yeginsu, Ceylan, 'ISIS draws a steady stream of recruits from Turkey', *The New York Times*, 15 September 2014. [http://www.nytimes.com/2014/09/16/world/europe/turkey-is-a-steady-source-of-isis-recruits.html?\\_r=0](http://www.nytimes.com/2014/09/16/world/europe/turkey-is-a-steady-source-of-isis-recruits.html?_r=0) (last accessed 02.01.14)

<sup>15</sup> Letsch, Constanze and MacAskill, Ewen, 'Turkey freed British jihadis in swap deal for Isis hostages – reports', *The Guardian*, 6 October 2014 <http://www.theguardian.com/world/2014/oct/06/turkey-britons-swap-deal-isis-hostages-reports> (last accessed 12.12.14)



## **Huda Par: a spoiler to the process?**

One of the main parties to the clashes that have take place as a result of events in Rojava, is the Free Cause Party, or Hur Dava Partisi (often shortened to Huda-Par and literally translating as ‘The Party of God’). The Huda-Par was established as an independent party on December 17<sup>th</sup> 2012. Its founders hail from the banned NGO Mustazaf Der, which supported the Kurdish Hezbollah (Shi’a Islamist militant group based in Lebanon, which fought against the PKK in the 1990s) in the 1990s, and was infamous as a violent Islamist organisation.<sup>16</sup>

Since Huda Par’s return into politics in 2012, the PKK has perceived it as a ploy by the ruling Justice and Development Party (AK Party) to create differences within the Kurdish population in South East Turkey, and to split the votes of PKK supporters. During the October 2014 demonstrations, demonstrations by PKK and KCK supporters and many others from the Kurdish population in the South East of Turkey regarding the State’s inaction in defending Kobane against IS, led to street fights and inter Kurdish clashes between them and the Huda-Par (largely youth wings of these groups), leaving a reported 42 people dead.

Allegations from the HDP and from others within the Kurdish movement assert that the activity of the Huda-Par and the deaths of a number of people in clashes between its supporters and those of the HDP and KCK can be taken as evidence that the Government is working with the Army, Jitem (intelligence agency of the Turkish Gendarmerie) and Hizbullah, something which has intensified tensions further still. Despite the fact that Huda-Par is a legal party, such actions have reminded Turkey’s public of the 1990s when the “dark” forces of the State are said to have used the contras (Hizbullah) for their own purposes.

From the Government’s perspective, it can be said that the calls for demonstrations by the HDP and KCK are viewed as irresponsible and that the resulting unrest further undermines what little trust there was previously between the parties to Turkey’s solution process. The unrest among the South East’s public has also cast question on whether HDP carry

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<sup>16</sup> The Kurdish Hezbollah is not affiliated to the Hezbollah group based in Lebanon or any other country. Until closed down last May, Mustazaf-Der provided the linkage and continuity between Hezbollah and Huda-Par.

significant weight in relation to the process, or whether the PKK, and those based in the Qandil mountains,<sup>17</sup> are the only real player in the process, on the part of the Kurds. Musings on the risk of spoilers to Turkey's solution have increased within Turkey's public and media since the unrest began in October, with the question being raised as to whether the violence has been less about Kobane and Rojava and more an attempt by the KCK to undermine Kurdish leader and partner to Turkey's process, Abdullah Öcalan, and to end the fragile process, the perception being that those in Qandil are unhappy about their lack of inclusion in the current dialogue. Speculation on the roots of the violence has been a key topic of discussion within Turkey.

### **Effect of Kobane and next steps for the solution process**

It can be surmised that the principles of the solution process in Turkey have been undermined by both sides in recent months, and that there has been a clear lack of ability on both the part of the Government and of the Kurdish movement, to manage the situation which has escalated in the South East. The fragile process can be said to be at a crucial juncture; it is open more than ever to spoilers, and to the risk of coming off course, and serious efforts are needed by all stakeholders if it is to be maintained. The calling for public demonstrations by the Kurdish movement resulted in a clear obstacle to the process; while the Government's response of harsh rhetoric and policing tactics during demonstrations, as well as its perceived inaction in relation to preventing a massacre of the Kurds of Kobane, are likely to have pushed more moderate Kurds (even those who ultimately support the Government-led solution process) to rise up against the Government and to feel sceptical of the process. It is vital for the parties to create momentum behind the process, if it is to be continued and not parked indefinitely.

Following international pressure, the Turkish government did announce on 20 October that the Iraqi Kurdish forces could use Turkey as a route to enter Syria and support Kobane.<sup>18</sup>

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<sup>17</sup> Mountainous areas in Iraq; main sanctuary for Kurdish militants

<sup>18</sup> Ekim, S, "Turkey, Kobane and the Kurdish question," Open Democracy, (10.11.2014), accessed on 13.01.2015, accessed at <https://www.opendemocracy.net/opensecurity/sinan-ekim/turkey-kobane-and-kurdish-question>.

This was the first public deployment of international troops in Syria,<sup>19</sup> with Western states only using air strikes, rather than ground forces, in their fight against IS. At the same time, however, accusations have been made of the Turkish government's aid of IS forces, by allowing them to cross the Turkish border and receive medical treatment.<sup>20</sup>

Communication (or lack) of Government policy on Syria has created an absence of clarity within society and its focus on opposition to the developments of the cantons in Rojava has resulted in polarising society further within Turkey. In addition to exercising caution in relation to IS, it is also likely that the Government is eager to avoid a backlash from the nationalist constituency, which is likely to occur, should it take any concrete action in relation to the process.

Events in Kobane and the resulting policy of the Turkish Government have therefore clearly created a new source of tension between the Kurds of Turkey and the Government, which are likely to have an impact on the resolution of the Kurdish Question on its own territory. Recent developments have provided support for the idea (among the Kurds) that Turkey and the Kurdish Regions should be separated. The Kurdish run, semi autonomous region of Rojava, which is grouped into three cantons, headed by the Kurdish PYD, has worked towards a decentralised Kurdish region since the beginning of the conflict in Syria; something which the Turkish Government has consistently resisted due to the PYD's affiliation with its alleged sister organisation, the outlawed PKK, and due to its 'red line' approach to any notion of Kurdish autonomy. If the Government does not change its approach in relation to Rojava, there is a risk that the unrest will continue to escalate and developments within the solution process will continue to be limited. The situation in Kobane has greatly impacted on the Solution Process in Turkey, eroding much of the already tenuous trust between the Turkish government and the Kurdish groups. The Turkish Interior

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<sup>19</sup> Sly, L., "Syrian regime denounces Turkey for allowing foreign fighters to enter Kobane," The Washington Post, (30.10.2014), accessed on 16.01.2015, accessed at [http://www.washingtonpost.com/world/middle\\_east/iraqi-kurds-join-fight-to-break-islamic-state-siege-on-syrian-town/2014/10/30/8d846f30-6026-11e4-91f7-5d89b5e8c251\\_story.html](http://www.washingtonpost.com/world/middle_east/iraqi-kurds-join-fight-to-break-islamic-state-siege-on-syrian-town/2014/10/30/8d846f30-6026-11e4-91f7-5d89b5e8c251_story.html).

<sup>20</sup> Freeman, C., "Turkey sets conditions for helping West in Kobane crisis in Syria," The Telegraph, (28.10.2014), accessed on 14.01.2015, accessed at <http://www.telegraph.co.uk/news/worldnews/islamic-state/11193995/Turkey-sets-conditions-for-helping-West-in-Kobane-crisis-in-Syria.html>.

Minister Efkân Ala claimed that demonstrators were betraying their own country,<sup>21</sup> and Prime Minister Ahmet Davutoğlu likewise warned that the government would not take a position that will tolerate violence for the sake of the solution process. President Erdoğan in contrast, stated that the solution process has not been broken, but he warned that spoilers to the process would pay dearly. Both Cemal Bayik, the acting PKK commander, and Abdullah Öcalan, the PKK's leader in prison, cautioned that the events surrounding Kobane have the potential to end the process.<sup>22</sup>

Regarding next steps for the solution process, it is possible that some parties may use the opportunity of this 'uprising' as an excuse not to deal with the substantive issues of resolution until after the 2015 general elections in Turkey. While the Government is likely to continue to produce small scale democratisation packages between now and then, it is unlikely that more concrete steps will be accomplished. While fighting continues in Kobane and tensions remain high in Turkey, Prime Minister Davutoğlu has asserted Turkey's commitment to the process internally, regardless of actions across the border or regionally.<sup>23</sup> That said, in order for dialogue to continue, all actors involved need to create an inclusive process to which all elements of Turkey's diverse society (and diaspora) feel party. A lack of inclusivity, and shared sense of ownership throughout society, has created difficulties to date, and will continue to do so if not addressed.

To ease tensions, Prime Minister Davutoğlu called a meeting of the former Wise Person Commission on 19 October, to discuss ways in which to move forward with the process.<sup>24</sup> Some former members declined to attend because they believed the meeting would not be useful, but was rather an excuse to appease the situation without doing anything to further the process.

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<sup>21</sup> BBC News, "Turkey Kurds: Kobane protests leave 19 dead," BBC News (08.10.2014), accessed on 13.01.2015, accessed at <http://www.bbc.co.uk/news/world-middle-east-29530640>.

<sup>22</sup> Ekim, S, "Turkey, Kobane and the Kurdish question," Open Democracy, (10.11.2014), accessed on 13.01.2015, accessed at <https://www.opendemocracy.net/opensecurity/sinan-ekim/turkey-kobane-and-kurdish-question>.

<sup>23</sup> Daily Sabah, 'Turkey hopeful for reconciliation process: PM Davutoğlu', 30 October 2014. <http://www.dailysabah.com/politics/2014/10/30/turkey-hopeful-for-reconciliation-process-pm-davutoglu> (last accessed 12.12.14)

<sup>24</sup> Daloglu, Tulin, 'Have the Kurds played their cards wrong on Kobane protests?', 20 October 2014, *Al Monitor*. <http://www.al-monitor.com/pulse/originals/2014/10/turkey-kurds-kobani-protests-wise-people.html#> (last accessed 12.12.14)

It is unlikely that the government will address substantive issues on the process until after the 2015 elections, however as indicated previously, there are likely to be small scale reforms from now until the time of the elections.<sup>25</sup> These 'democratisation packages' may include reforms on procedures regarding political prisoners and new regulations on local administration. Calls for improvement of Öcalan's prison conditions also continue on the part of the Kurds,<sup>26</sup> in addition to the formation of a 'secretariat team' for Öcalan.

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<sup>25</sup> There are discussions in Turkey of possible early elections.

<sup>26</sup> Çandar, Cengiz, 'Kurds seek to fast-track peace process', 26 December 2014, *Al-Monitor*. <http://www.al-monitor.com/pulse/originals/2014/12/turkey-kurds-peace-process-erdogan-ocalan.html> (last accessed 02.01.2015)

## **Security Package**

### **Introduction**

As a result of the recent unrest in Turkey, in October 2014, the Government introduced a new “security package”. This consisted of a bill with 35 proposed amendments to the Turkish Penal Code (TCK) and its Code of Criminal Procedure (CMK) to ensure that acts of violence were dealt with appropriately.

The draft bill was introduced on 24 November, and was followed by a separate law which was passed by Turkey’s parliament on 2 December, to widen police and court powers. The draft security bill has 35 articles, which mainly target legislation to empower the police and the prosecutors and will mostly affect the rights of protesters and dissidents. Such amendments would grant the police and security forces much greater power and freedom on issues of surveillance and detention. It would furthermore give the government a much tighter grip on the military and the judiciary. As a result, any critique of the government, support for ‘outlawed organisations’, protests or civil unrest would be seen as a severe criminal offence that could lead to detention without charge, up to several years of imprisonment and the annexation of personal or business assets of the detainees.

### **Background**

Although many newspaper articles have discussed the security package as an unforeseen change to legislation, this bill is not wholly unsurprising. Both the TCK and the CMK have been amended more than 60 times between 1926 and 2005. In addition, since 2005 up until the present day, they have both been amended another 40 times. As a result, Mr Muammer Aydın, former head of the İstanbul Bar Association, argued that legislation always follows the political situation in Turkey.

In the case of the recent proposed changes, there is a widespread mistrust about the Government’s official stated aims as to their need, namely, to protect Turkey against national security threats. Commentators and human rights activists believe that the reasoning behind the new package is to quell any parliamentary opposition that threatens

Erdoğan's position of power. As a result, the security package has also been dubbed the "third judiciary package" which aims to reign in the control of the judiciary and to silence "red-booklet" groups such as the Gulenites and the PKK, which Erdoğan refers to as "the parallel structure".<sup>27</sup> Regardless of the criticism received as a result of the draft bill, Turkey's Prime Minister insists that any amendments suggested are in line with European Union norms.

## Proposals

### 1. Extending the power of the police and National Intelligence Organisation

As a means of extending the power of both the police and the national intelligence organisations, in most cases of surveillance, search and detention, the burden of proof has been changed from "strong and concrete evidence" to "reasonable doubt".<sup>28</sup>

It will become easier for the police to search an individual, his/her home and vehicle. Private vehicle rental firms will be required to hand over the personal information and travel destinations of their customers to law enforcement agencies. Rented cars will be fitted with GPS tracking systems in order to determine who the customers meet with and thereby collect information about their location. Those rental firms who allow customers to rent out cars using aliases will be charged a TL 2,000 fine.

It also includes the right to seize the assets of people and institutions convicted of crimes against the constitutional order or attempts to topple the government in peace time. This will have grave repercussions on the 35 people still on trial for last year's Gezi protests, who include several leaders of the Beşiktaş football fan club Çarşı, and are being accused of working to overthrow the government.

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<sup>27</sup> 12 October [http://www.todayszaman.com/national\\_govt-led-security-package-creates-fears-of-police-state\\_361398.html](http://www.todayszaman.com/national_govt-led-security-package-creates-fears-of-police-state_361398.html)

<sup>28</sup> <http://factsonturkey.org/11863/judicial-bill-aims-at-silencing-social-media-daily-says/>

The police would also be able to detain suspects for up to 48 hours, contrary to the 24 hour limit currently in place.

If approved, the changes to the Turkish penal code (TCK) will affect dissidents more significantly than other groups in society as they will severely criminalise any critique of the government.

Article 152 has been altered to increase the penalties regarding resisting arrest and causing damage to state property. If found guilty, the protesters will not be released by the court pending trial. In addition, article 265 has been amended to ensure greater prison terms for those protesters who choose to shield their identity. A Molotov cocktail will be considered a firearm and as such the police have been granted permission to open direct fire upon the 'attacker', if the situation is evaluated as such. The penalty for bringing and/or throwing a Molotov cocktail ranges from five to twelve years in prison depending on sources. The new bill will also include a section on "mental force" which will argue that non-violent opposition can be seen as a threat to the nation and should be put under surveillance. As a result, chanting the slogans of outlawed organisations during protests and those carrying banners and emblems of outlawed groups were to be charged with prison sentences ranging from six months to three years.

Included in the "mental force" section is also for the first time, social media. If the bill is approved, "calls for violence, terror or hate speech" as well as any other calls for action and the closing of businesses in protest will be considered a crime to the Turkish penal law (TCK).

It also will allow the government to reintroduce an old law, which gives Turkey's telecommunications directorate (TiB) the authority to close websites within four hours on the basis of national security, protecting public order, or preventing crime.



## **2. Restricting the rights of suspects and their defence lawyers.**

This reform will make it harder for defence lawyers to acquire information about details of legal proceedings brought against their clients during the course of an ongoing investigation. This means that they will have no access to the investigation file either in the questioning by the police / prosecutor or during the arrangement hearings. Instead the defence will only be allowed to see the evidence against their clients when the indictment is proposed and accepted by the court.<sup>29</sup>

“There will be no way for a lawyer to examine the file on his or her suspect unless the "super" prosecutor - the title given to these prosecutors who are going to be endowed with tremendous authority - allows it. Therefore the suspect will not know why he or she is detained. However, whoever has brought the charges will be able to examine all of the file, make copies of it and collect information on any detail related to the suspect's private life.

## **3. Extending the power of the penal judge of peace and district governors**

The expansion of the power of the penal judges of peace means that they will be granted the power to allocate rulings on detentions, arrests, seizures of goods and search warrants during the investigatory stages of such cases. They can also handle appeals on these rulings. A consequence of these legislative changes will be that the judges will no longer be restricted to their own jurisdiction and can render changes that will have an impact across the country.

Governors and district governors will also be granted the authority to discipline law enforcement officials under their direct command. Therefore the authority to issue warnings, censures and monetary fines of up to 10 days to law enforcement personnel will be carried out by governors and district governors.

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<sup>29</sup> <http://factsonturkey.org/11863/judicial-bill-aims-at-silencing-social-media-daily-says>

Judges and prosecutors can also be expected to receive a pay rise of TL 1,155.

#### **4. Removing power from the judiciary and the supreme court of appeals**

This would mean that courts would no longer have the power to decide who gets appointed to the court. If this law should pass, the court would have to accept whoever gets nominated by the Supreme Board of Judges and Prosecutors (HSYK), whereas currently the supreme court of appeals can reject or accept any name nominated. There has been an outcry against these suggestions as it is known that the majority of the HSYK is pro-government. What the opposition and critics are now afraid of is that any such amendment will paralyse the judiciary and the appeals process.

Furthermore, the bill includes a bid for the government to fast track the appointment of judges.

#### **5. Centralising military and police rule**

The Gendarmerie General Command and the Coast Guard will be made subordinate to the interior minister except on military issues. The TSK has been opposed to this issue, as they are afraid that their institution will become politicised.

The draft also provides for changes to the structure of the police. Apparently, a police chief who is second in command will, with the approval of the administration, be able to be promoted to the following positions: deputy director general of public security; head of the inspection and control board; head police inspector; head of the special security unit; head of the police academy or provincial police chief.

The draft bill also suggests that police colleges and academies should be shut down. Current students will be transferred to other suitable schools and the teachers will become Ministry of Education staff. Thousands of police officers, including the

deputy director general of public security, department heads, and provincial police chiefs, that fulfil the necessary criteria for retirement but that have chosen to remain on active duty will also be forced to retire within a month. Instead the bill will allow for the the police administration to recruit non-police personnel to the police force.

## **Applicable International Norms and Principles**

Turkey is bound by the European Convention on Human Rights (ECHR) and International Covenant on Civil and Political Rights (ICCPR) and any new laws restricting that right to peaceful assembly or expression must be in accordance with case law relating to those treaties.<sup>30</sup> To reaffirm that position, Article 90 of the Constitution provides for the supremacy of international law standards above domestic law on the subject of rights and freedoms.<sup>31</sup> Turkey must, therefore, abide by international law norms on the rights to free assembly, expression, and fair trial and prohibitions on arbitrary and/or unlawful use of police force, interference with privacy, and detention.

Article 11, ECHR, and Article 21, ICCPR, to which Turkey is a State Party, guarantee the right to freedom of peaceful assembly. It states that no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health, morals or the rights and freedoms of others.<sup>32</sup> In tandem with the right to free assembly, Article 10, ECHR, and Article 19, ICCPR, guarantee the freedom of expression. That right can only be curtailed if prescribed by law and necessary in a democratic society. Necessity is determined by the legitimate aim in respect of interests of national security, territorial integrity or public safety or the protection of

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<sup>30</sup> Council of Europe, 'European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14', 4 November 1950, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf), accessed 3 February, 2014; UN General Assembly (UNGA), 'International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999', 16 December 1966, <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>, accessed 3 February 2014.

<sup>31</sup> Turkey, 'Constitution of the Republic of Turkey as amended in 2007', [http://global.tbmm.gov.tr/docs/constitution\\_en.pdf](http://global.tbmm.gov.tr/docs/constitution_en.pdf), accessed 4 February 2014.

<sup>32</sup> Article 11, ECHR; Article 21, ICCPR.

health, morals, reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.<sup>33</sup>

Whilst the proposed amendments to the TCK and CMK are, prima facie, in accordance with the law and are justified on grounds of national security or public safety they are likely to be considered neither proportionate nor necessary by European Court of Human Rights case law given their scale and impact on the substantive right to peaceful assembly.

Even the current laws restricting the right to freedom of assembly and expression under the Constitution are problematic and new laws that effectively proscribe non-violent process by targeting, vaguely at that, words ‘constituting a threat to the nation’ is unhelpful. The meaning, for instance, of the four grounds restricting freedom of association under Article 34 (1) of the Constitution (i.e. “national security”, “public order”, “public health” and “public morals”) has never been clearly defined which allows for different interpretations by prosecutors at the expense of the individual and collective liberties, in particular, with regards to arbitrary interference; the new proposals add significantly to that legal uncertainty.<sup>34</sup> Similarly, while the Law on the Prevention of Terrorism does not directly regulate the freedom of assembly, it has been interpreted broadly to prosecute human rights activists and civil society activists who have held meetings and demonstrations that the government has deemed as linked to the activities of terrorist organizations.<sup>35</sup>

The proposals to further regulate, monitor and proscribe activity on social media is again problematic. In theory restrictions to prevent, prosecute and punish terrorism related offences can be justified by Turkey where any such restriction is proportionate (with real and effective safeguards) to the threat faced and are genuinely necessary. In respect of these proposals the necessity is questionable given laws that were already passed in 2014. In 2014, legislation was passed that further limited freedom of expression, including a law regulating the internet, that was considered necessary for ‘national security and protection

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<sup>33</sup> Article 10, ECHR; Article 19, ICCPR

<sup>34</sup> Turkey, ‘Constitution of the Republic of Turkey as amended in 2007’, [http://global.tbmm.gov.tr/docs/constitution\\_en.pdf](http://global.tbmm.gov.tr/docs/constitution_en.pdf), accessed 4 February 2014.

<sup>35</sup> ‘NGO Law Monitor: Turkey’, International Center for Not-for-Profit-Law, 1 December 2014, <http://www.icnl.org/research/monitor/turkey.html> accessed 15 December 2014.

of public order'.<sup>36</sup> The blanket bans on YouTube and Twitter, in March 2014, were a matter of serious concern. Although the bans were overturned by the Constitutional Court, warnings by Government officials had a significant intimidating effect on journalists. Warnings, combined with the ownership structure of the media sector, led to widespread self-censorship.<sup>37</sup>

Expanding the scope of the ability of police and military forces to use force and coming perilously close to authorising the arbitrary and excessive use of force would fall foul of international human rights law. Any decision to disperse an assembly should be taken only as a last resort and in line with the principles of necessity and proportionality. International standards contained in the United Nations Basic Principles on the use of Force and Firearms by Law Enforcement Officials require that in dispersing assemblies, police must avoid the use of force or, where that is not practicable, must restrict any such force to the minimum necessary. The Principles also stipulate that the State shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under national law.<sup>38</sup> The United Nations Code of Conduct for law Enforcement Official's states 'law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty' with regards to demonstrators.<sup>39</sup> The use of firearms is strictly limited to situations of imminent threat to life or life-threatening injury. Expanding the circumstances to allow live firearms where there is not a threat to life, as anticipated under the new proposals, is strictly prohibited.

Current legislation in Turkey relating to the use of force by the police already is likely to be non-compliant with international law and any proposals to further those powers are

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<sup>36</sup> Grand National Assembly (GNA), Turkey, Law No. 5651 on Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publications of 4 May 2007, as amended by Law No. 6518 of Feb. 6, 2014 [in Turkish] [the omnibus law that includes the amendments to Law No. 5651] , Turkish Official Gazette, issue No. 28918 of February 19, 2014.

<sup>37</sup> European Union, 'Turkey Progress Report, COM(2014)700, Final of 8 October 2014', [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-turkey-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf), accessed 3 February 2014.

<sup>38</sup> UN. *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Committee on Crime Prevention and Control, 11th sess, Vienna, 1990 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>, accessed 28 October 2014.

<sup>39</sup> UN. *Code of conduct for law enforcement officials*. New York, 1980. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>, accessed 28 October 2014.

worrisome. Article 16 of the Law on the Duties and Powers of the Police fails to incorporate international law norms and standards that the use of lethal force must be as a last resort and only permissible in order to protect life.<sup>40</sup> Regarding the Law on the Prevention of Terrorism, Additional Article 2 fails to stipulate that the use of firearms directly and unhesitatingly against the target should be as a last resort in order to protect life. These omissions in both laws open the way for unlawful killings.<sup>41</sup> The use of “less than lethal” weapons such as pepper spray and teargas can also constitute lethal force if their use results in death. The lawfulness of such use is regulated by the same principles of proportionality and necessity as any other weapons.

The EU Progress Report for Turkey 2014 has highlighted that the frequent use of excessive force during demonstrations and arrests remains a matter of concern and noted that “Turkey needs to adopt clear and binding rules on the proportionate use of force in demonstrations, in line with the relevant Council of Europe Committee for the Prevention of Torture (“CPT”) recommendations and ECtHR case-law.” Furthermore, the Report noted that Turkish legislation on the right to association/assembly needs to be improved in order to be brought in line with international standards.<sup>42</sup> The ECtHR reiterated in *Izci v. Turkey* that a large number of applications against Turkey concerning the excessive use of force by law enforcement officials during demonstrations were currently pending. Considering the systemic aspect of the problem, the ECtHR requested the Turkish Authorities to adopt

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<sup>40</sup> The United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, Christof Heyns, expressed concern about inadequate safeguards of use of lethal force by Turkish police: “96. *The laws regulating the use of force by law enforcement officers (Law No. 2559 on the Duties and Powers of the Police; Law No. 2803 on the Organization, Duties and Powers of the Gendarmerie, and related regulation) should be brought in line with international standards. Both proportionality and necessity are crucial components of these standards. The terms “necessity” and “proportionality” in these texts should reflect their interpretation under international law: lethal use of force may be made only as a last resort to protect life. Regulations on the stop warning procedure and on the proportionate use of less lethal weapons should be promulgated and conform to these standards.*” He also stated that: “[t]hese relatively recently adopted provisions grant the police and security forces vague and therefore potentially wide powers to use force, beyond those permitted under international law. UNOHCHR, Heyns, Christof, *Preliminary Observations on official visit to Turkey*, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, 26-30 November 2012.

<sup>41</sup> UNOHCHR, Heyns, Christof, *Preliminary Observations on official visit to Turkey*, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, 26-30 November 2012.

<sup>42</sup> For instance, the unlawfulness of a demonstration, rather than its non-peaceful nature, is the basic criterion for the use of force to disperse participants, which is not in line with ECtHR case-law. European Union, ‘Turkey Progress Report, COM(2014)700, Final of 8 October 2014’, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-turkey-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf), accessed 3 February 2014.

general measures, in order to prevent further violations of that nature in the future.<sup>43</sup> Turkey's non-implementation of international standards in this area is well documented.<sup>44</sup>

The expansion of police powers and reduction in judicial independence indicate a regression somewhat in accountability of the police for violations of human rights law (procedural obligations under Article 2, 3) and principles of fair and independent trials (set out in Article 6, ECHR, Article 14, ICCPR). The ECtHR indicates that there were numerous violations by Turkey of Articles 2 (right to life) and 3 (prohibition of torture) of the ECHR owing specifically to the lack of effective investigations (145 and 152 judgments respectively until 2012).<sup>45</sup> As of 4 November 2014, there were at least 45 ECtHR judgments pending for execution before the Committee of Ministers relating to the heavy handed intervention of law enforcement officials in demonstrations or the initiation of criminal proceedings against peaceful demonstrators that were in breach of Articles 3 and/or 11 (freedom of assembly and association) (the *Ataman* Group of cases).<sup>46</sup> When considering that there will be new restrictions of the rights of defence attorneys and the accused to have full information as to the evidence against the accused the ability to make state officials accountable for their actions will become even harder. It would significantly hamper the right to a fair trial as well as violate due process.

## **Impact of the Security Package**

With this new security package, Turkey is seen by some as going back on several of the amendments that have moved it towards a 'democratic opening'. It has also been seen as a

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<sup>43</sup> ECtHR, *Izci v. TR*, judgment of 23 July 2013, App No 42606/05, para. 97 et seq; Press Release, *Izci v. Turkey*, 23. July 2013, ECHR 233 (2013). See also ECtHR, *Abdullah Yasa and Others v. TR*, judgment of 16 July 2013, App No 44827/08; *DISK and KESK v. TR*, judgment of 29 April 2013, App No 38676/08; *Ali Günes v. TR*, judgment of 10 April 2012, App No 9829/07; *Oya Ataman v. TR*, judgment of 5 December 2006, App No 74552/01.

<sup>44</sup> For instance, two circulars issued in 2013 by the Ministry of the Interior, governing the use of tear gas and pepper spray by the police, were not implemented consistently. The ECtHR has previously criticised Turkey for heavy-handed intervention of law enforcement officers during demonstrations, including use of tear gas and pepper spray (*Ataman v. Turkey* group of cases). The ECtHR found Turkey in violation of Article 2 ECHR (the right to life) in the *Makbule Kaymaz and Others v. Turkey*, and *Benzer and Others v. Turkey* cases. Recurrent and structural problems in policing demonstrations are widely documented in the more than 40 ECtHR judgments against Turkey and the more than 100 pending applications. European Union, *Turkey Progress Report*, COM(2014)700, Final of 8 October 2014, pp. 50-53.

<sup>45</sup> See statistics by state on the ECtHR website: <http://www.echr.coe.int/pages/home.aspx?p=reports&c=>

<sup>46</sup> Cali, Basak, *The Execution of the Ataman Group Cases - A Monitoring Report*, Turkish Human Rights Joint Platform, Dec 2014; See also current state of execution on the Committee of Ministers' website: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2014\)1208&Language=lanFrench&Ver=prel0001&Site=C M&Back-ColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2014)1208&Language=lanFrench&Ver=prel0001&Site=C M&Back-ColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

signal by some, that Turkey is moving towards a one party governmental rule. The opposition has voiced its concern that the government might call for a state of emergency and once again become a police state, something which would have grave consequences for democracy and for the Kurdish resolution process.

## **Election Threshold for Parliamentary Representation**

### **Background**

In June 2014, a case was brought by three political parties before Turkey's Constitutional Court in order to request the reduction of the 10 per cent threshold required for political parties to be represented in Turkey's Parliament. The election threshold was originally introduced in the 1980s by the leader of the military coup, Kenan Evren. Article 33 of *Law No. 2839 on the Election of Members of the National Assembly* amended the threshold amount and requires a minimum of 10 per cent of valid votes cast nationwide. If any party fails to reach the threshold, their votes are re-distributed proportionally.

The appeal was brought before the Court through the constitutional complaint process, which was adopted in the 2010 Constitutional Amendment Referendum as a mechanism with which to reduce the large numbers of cases in which Turkey was brought before the ECtHR. The Constitutional Court started its task of hearing individual constitutional complaints on 23 September 2012. Since then, the Court has delivered some seminal decisions via this mechanism, such as the *Twitter case*,<sup>47</sup> which related to upholding freedom of expression following a government ban on social media outlets due to them being used for criticising government officials.<sup>48</sup> The Constitutional Court can be deemed a relative success in its new task of hearing individual complaints relating to the ECHR (especially for instance on press freedom) and reducing the Turkey's caseload before the ECtHR.<sup>49</sup> For obvious reasons not all political parties, however, happy with the creation of

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<sup>47</sup> The Turkish Constitutional Court, Appl. No. 2014/3986, Judgment of 2 April 2014.

<sup>48</sup> Ceylan Yeginsu, Turkey Lifts Twitter Ban After Court Calls It Illegal, *The New York Times*, 3 April 2014, accessed at: [http://www.nytimes.com/2014/04/04/world/middleeast/turkey-lifts-ban-on-twitter.html?\\_r=0](http://www.nytimes.com/2014/04/04/world/middleeast/turkey-lifts-ban-on-twitter.html?_r=0).

<sup>49</sup> Although Turkey's record on press freedom is relatively poor. According to a 2014 report issued by Freedom House, Turkey is among the "partly free" states. Freedom House, *Freedom in the World-Turkey*, accessed at: <https://freedomhouse.org/report/freedom-world/2014/turkey-0#.VIGJdTFy1io>.



this mechanism, with the AK Party specifically criticising the Constitutional Court especially where it has reversed government decisions.

Although the case was filed in June 2014, the issue's political importance increased in late November 2014, with the start of the election campaign process in Turkey, and following on from a statement on 30 November 2014 by the Head of the Constitutional Court clarifying that a decision on the appeal would be made within a few weeks. Within the context of Turkey's upcoming general elections in June 2015, a lowered threshold would be greatly beneficial to certain of the smaller parties, as well as to the majority opposition party, the Republican People's Party (CHP). The Nationalist Movement Party (MHP) supports the threshold, because according to the MHP any lower threshold will allow the pro-Kurdish political movement to gain more representative power. The Kurdish Peoples' Democratic Party (HDP) is vehement in its call for abolishing the threshold given that it hovers very close to the threshold amount. On the other hand, should the Court rule in favour of the applicant's there would be a potentially detrimental to the AK Party, as many individuals would vote for smaller parties instead of the AK Party. President Erdogan has targeted a two thirds majority in Parliament for AK Party, which would ease the way for planned constitutional changes to bolster his powers as Head of State – anything less would be devastating for his plans.<sup>50</sup> The threshold mechanism, if left unchallenged by the Court will benefit the AK Party the most. Re-distribution proportionally of the votes of those parties which do not make the threshold would be almost certain to grant the AK Party as the biggest party the highest proportional share of the smaller parties lost votes.

Previous debates and judicial decision on this matter have taken place. In 1995, the Constitutional Court had the opportunity to rule on the constitutionality of the electoral threshold.<sup>51</sup> The matters to be reviewed before the Court were the national as well as the provincial electoral threshold. The Constitutional Court held that the 10 per cent national threshold was compatible with the Constitution, while having declared the 25 per cent provincial threshold unconstitutional. Members of an earlier pro-Kurdish political party also

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<sup>50</sup> Kandemir, Asli. Turkey's top court declines to lower 10 percent electoral threshold, Reuters, 6 June 2015, accessed on 04.02.2015, accessed at <http://www.reuters.com/article/2015/01/06/us-turkey-election-threshold-idUSKBN0KF1DJ20150106>

<sup>51</sup> Acar, Ali. The Electoral Threshold Case in Turkey, Int'l J. Const. L. Blog, December 9 2014, accessed at: <http://www.iconnectblog.com/2014/12/the-electoral-threshold-case-in-turkey>

brought a case before the ECtHR in 2008 in the case of *Yumak and Sadak v. Turkey*.<sup>52</sup> The ECtHR held, with majority of 13 to 4, that there was no violation of Article 3 of Protocol 1 (the right to free election) on the basis that, whilst the electoral threshold of 10% constituted interference with the applicants' electoral rights, it pursued the legitimate aim of avoiding excessive and debilitating parliamentary fragmentation and thus of strengthening governmental stability. The Court was not persuaded that, having regard to the specific political context of the elections in question, and to the correctives and other safeguards which had limited its effects in practice, the impugned 10% threshold had had the effect of impairing the essence of the applicants' rights under Article 3 of Protocol No. 1. The Court did, however, caution that "...a 10% electoral threshold appears excessive. In that connection, it concurs with the organs of the Council of Europe, which have stressed the threshold's exceptionally high level and recommended that it be lowered".<sup>53</sup>

The issue had also previously been highlighted in the political agenda as part of the AK Party's democratisation package from 30 September 2013. In this, the party proposed three solutions for the matter: the 10 per cent threshold could be maintained; it could be reduced to 5 per cent; or it could be removed altogether and a preference was expressed to its abolition.<sup>54</sup>

## Result

On 6 January 2015, the Constitutional Court ruled against lowering the election threshold, on the basis that it did not have jurisdiction to rule on the matter due to a "lack of venue" but providing little further elaboration.<sup>55</sup> Out of the 16 judges who voted on the matter, 12 were against a lowered threshold, and only two were in favour. Haşim Kılıç, the Head of the Court, who had been criticised for biased public commentary on the matter, did not vote.

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<sup>52</sup> ECtCR, Appl. No. 10226/03, *Yumak and Sadak v. Turkey*, Grand Chamber, § 147, Judgment of 8 July 2008.

<sup>53</sup> *Ibid*

<sup>54</sup> Acar, Ali. The Electoral Threshold Case in Turkey, Int'l J. Const. L. Blog, December 9 2014, accessed at: <http://www.iconnectblog.com/2014/12/the-electoral-threshold-case-in-turkey>; Daily Sabah, "Top court refuses to decrease 10 percent electoral threshold," Daily Sabah, (06.01.2015), accessed on 12.01.2015, accessed at <http://www.dailysabah.com/elections/2015/01/06/election-threshold-not-to-be-decreased>

<sup>55</sup> Daily Sabah, "Top court refuses to decrease 10 percent electoral threshold," Daily Sabah, (06.01.2015), accessed on 12.01.2015, accessed at <http://www.dailysabah.com/elections/2015/01/06/election-threshold-not-to-be-decreased>

The decision by the court was viewed as politically determined, given the political turmoil that would follow a finding of violation and the significant impact it would have on the upcoming June 2015 parliamentary election. There were claims of intimidation and intense pressure being placed on members of the Court and their families by the AK Party.<sup>56</sup> In the run up to the Constitutional Court's ruling, the Secretary General of CHP claimed that the AK Party was threatening members of the Constitutional Court so as to ensure a favourable ruling. The leader of the Grand Unity Party (BBP) also made statements regarding threats from the AK Party to influence the judiciary. Tekin did not provide specific details as to how the members of the Constitutional Court were being threatened.

Members of the AK Party did speak out against the reduced threshold. Justice Minister Bekir Bozdağ even called this a political engineering, and an open intervention into the 2015 elections on 4 December 2014. Similarly, the Prime Minister Numan Kurtulmuş suggested that the appeal was meaningful in terms of its timing. The President of the Parliamentary Justice System, Ahmet İyimaya, and the President of the Parliamentary Constitutional Commission, Burhan Kuzu, both made public statements against the reduced threshold. The government also consistently labelled the threshold appeal as a 'coup attempt'.

That the Court ultimately ruled in favour of the government was an interesting change in direction for the judicial organ, as the Court's decisions often go against the government. This has been seen in a number of the Court's decisions made through the complaint process, as previously mentioned, with then-Prime Minister Recep Tayyip Erdoğan publically criticising the Court's decision to overrule the banning of Twitter, for example.<sup>57</sup> Kılıç, as the Head of the Court, has specifically clashed with Erdoğan, and he deeply criticised the government on the anniversary of the formation of the Constitutional Court on 24 April 2014.<sup>58</sup>

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<sup>56</sup> Kandemir, Asli. Turkey's top court declines to lower 10 percent electoral threshold, Reuters, 6 June 2015, accessed on 04.02.2015, accessed at <http://www.reuters.com/article/2015/01/06/us-turkey-election-threshold-idUSKBN0KF1DJ20150106>

<sup>57</sup> Candemir, Y. and Parkinson, J., "Premier Criticizes Court's Decision to Lift Twitter Block," Wall Street Journal, (04.04.2014), accessed on 12.01.2015, accessed at <http://www.wsj.com/articles/SB10001424052702303532704579480764082593266>

<sup>58</sup> Sahin, Omer, "Turkey's high court could pull rug from under AKP," Al Monitor, (22.12.2014), accessed on 12.01.2015, accessed at <http://www.al-monitor.com/pulse/originals/2014/12/turkey-constitutional-court-akp-government-pull-the-rug.html###ixzz3ObxTB3jw>

## **Effect of the decision on Turkey's solution process**

In future, the threshold is likely to remain at 10 per cent, with Kilic having stated that the ruling on the applications must be applied in the upcoming June elections. The issue regarding the threshold is a key and ongoing controversial issue in Turkey, as it affects the rights of parties to be represented. It is especially relevant to the Kurdish party HDP. In the 2014 Presidential elections, Selahattin Demirtaş, the party's leader, received 9.8 per cent of the votes. Despite his popularity and success in gaining support, it remains uncertain whether HDP will manage to meet the 10 per cent threshold in the general elections and gain any parliamentary representation. The events in Kobane are also likely to affect the percentages that the Kurdish political party gains in the upcoming elections. If the population is hopeful about the process, Kurdish people may vote for a Kurdish party. If not, they are more likely to vote for the AK Party. Calling for voters to "tear down" the 10 per cent threshold, Demirtaş indicated that the threshold issue is an important aspect of the Kurdish resolution process.<sup>59</sup>

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<sup>59</sup> Hurriyet Daily News, "HDP co-leader calls for election threshold to be 'torn down'," Hurriyet Daily News, (04.01.2015), accessed on 12.01.2015, accessed at <http://www.hurriyetdailynews.com/hdp-co-leader-calls-for-election-threshold-to-be-torn-down-.aspx?pageID=238&nID=76472&NewsCatID=338>.

## **Conclusion**

In summary, the events of the last three months in Turkey have had a significant impact on the momentum behind the process, with some seeing the process as having reached a 'stalemate'. The unrest in Turkey's southeast, coupled with the government's proposed extension of security powers, have increased tensions, and the polarisation of society continues. The looming general elections are only exacerbating this, and it is unlikely any traction will be achieved with regards to the process moving forward before these are held in June. The inclusivity of the process continues to be lacking, and in order for all stakeholders to commit to taking the necessary steps forward, it is vital that all of Turkey's society feel part of, and ownership for the process. Also pertinent to the elections is the threshold issue, which will prove to be of critical import to the development of the process.