

Linguistic rights in Turkey: Conservations in an Unknown Language (2012)

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1. Contemporary Setting of the Problem in Turkey

In Turkey, in the last months there are media reports feature in the news, newspapers starting with this classical sentence; “Kurdish crisis erupted in the courtroom”.

What happens is the following; the trials are related to investigations regarding the Union of Communities in Kurdistan (KCK)”; an organization related to the armed insurgent Kurdish group, Kurdistan Workers’ Party (PKK). Just as an overview, the KCK is said to be devised as a grassroots structure, with a youth council, women's council and councils of the other territorial entities of inhabited by Kurdish people (Turkey, Iraq, Iran, Syria) and one of the European diaspora, also participating political and armed entities, like PKK, PJAK; etc.

The KCK is devised as a parallel state. It undertakes all the responsibilities performed by state institutions. Its aim is to move the Kurdish dominated regions of Turkey to democratic confederalism. It establishes courts to solve disputes. It provides schooling. It imposes punishments on those who fail to comply with its rules.

Since April 2009, around 4, 500 people people have been detained on charges of being members of KCK. Most of them were politicians active in the meanwhile closed down Democratic Society Party (DTP) or the Peace and Democracy Party (BDP). Trade unionists and human rights defenders have also been among the detainees.

The trials of KCK are becoming venues for the advocacy of linguistic rights. Actually, probably, the only manner language rights become a source of debate is when the defendants demand to deliver their case in Kurdish. The trial scene that keeps repeating itself is when the defendant starts speaking in Kurdish, the judge states that the language spoken is an “unknown language” and turns down the microphone of the defendant.

And the aforementioned, ‘classical’ reports appear in the media; the KCK defendants’ demand for speaking Kurdish before the local courts are rejected, and they rebel against this verdict, and so the vicious circle continues. In that sense, the legal deadlock has come to symbolize linguistic rights in contemporary Turkey. While this is a sad fact, condemning the issue to become lost in a gridlock, a clash of wills between the Justice and Development Party (AKP) and the Peace and Democracy Party (BDP).

Thus, the concept of linguistic rights continue to be closely associated with the right to use Kurdish public places, as well as in education (be it private or public), in publications, in communicating ethnic self-identity. In a way, language rights are commonly related to freedom of expression, rather being debated as rights *per se*.

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This is not to say that political gridlock locking the public debates on language rights are limited to only the KCK trials. As Turkey's grassroots are becoming expressive in all kinds of identity issues in the recent years, it has become possible to witness language rights demands by the Circassians, the Laz, and the Roma. Especially, the case of the Circassians is interesting.

Recently, the Circassians, who happen to be the Caucasian ethnic and linguistic groups emigrated to the Ottoman Empire and the newly founded Republic of Turkey throughout the 19th and early 20th centuries have begun voicing demands for the language rights; especially those in education.

Circassians are known to be an ethnic group that are in good terms with the state throughout their history in Turkey; which is in contrast with the Kurds who have fallen into continuous polarization with the state. The fact that they have conducting public demonstrations to claim rights in mother tongue education is highly significant.

The Laz, the predominant ethnic group of the Black Sea region, also have begun advocating their demands in education in the mother tongue, as well as, devoting of state funds to the protection of their language and public broadcasting in Laz. As both Circassians and Laz are by and large are considered as rather nationalist groups, affiliated with Turkish nationalism, their claims signify a turning point. However, the grassroots demands are not translated into state policies, partly due to lack of understanding of the concept of "language rights". But, state reluctance to guarantee or even recognize linguistic rights is due to the Kurdish Question; the open, violent conflict that has been ongoing since the beginning of 1980s, claiming by now, 50 thousand lives.

II. Historical Background from a Legal Perspective

In contemporary Turkey, the Lausanne Treaty of 1923, which was signed with Allied powers, continues to be the only regulating legal document as far as the minorities are concerned. This Treaty officially established the Republic of Turkey. The treaty guaranties non-Muslim citizens' rights, though no specific groups are mentioned, to the freedom of religion, worship and education. The Republic, however, chose to acknowledge these rights only for Armenian, Greek and Jewish communities, albeit their names are not specifically mentioned in the Lausanne Treaty, following the structure of millet system of the Ottoman Empire. Hence, these 'recognized' minorities have the right "to found and run schools, charity organizations, and religious foundations". The rights granted are granted; the right to education in minority language (Art: 40, Art:41), equal civil and political rights (Art:38), the right to access public employment (Article 39), the right to establish, manage, control charitable, religious and social institutions (Art:40), the right to set up schools and institutions of instruction (Art:40).

The other non-Muslim minorities such as Orthodox Assyrians, Caldeans, and Assyrians were excluded minority protection guaranteed by the Treaty. Moreover, the Baha'is, the Yezidis, and believers of the Syrian Orthodox Church, the Catholic United churches (the Chaldean Church and the Syrian Catholic Church), and the Roman Catholic Church were not included in the minority protection system regulated by the treaty. Secondly, officially recognized minority groups could not fully enjoy the rights stated in the Lausanne Treaty. There are

important restrictions with regard to their freedom of religion and property rights of their foundations. Lastly, the rights granted to all Turkish citizens regardless of religion cannot enjoy their stated rights such as the right to language.

The Turkish Republic's legal framework strictly relies on the concept that the state is founded on unitary basis. For example, Article 3 of the Constitution 1982, The Turkish State, with its territory and nation, is an indivisible entity. This is also one of the provisions that are neither amendable nor could amendments be even proposed. Also, the concept of Turkishness is enshrined in the 1982 Constitution and other legal texts of Turkey; Article 66, paragraph 1 of the Constitution states that; "Everyone bound to the Turkish state through the bond of citizenship is a Turk." Definition of the "Turk" always existed in Turkey's constitutions, but the 1924 Constitution was for example employed a broader definition by stating; "The nation of Turkey with respect of citizenship is called Turk, irrespective of religion or ethnicity".

Furthermore, Articles 10 and 24 provide all citizens for equal rights before the law irrespective of language, race, color, as well as the right to freedom of conscience, religious belief and conviction. Article 10 states, inter alia, that "All individuals are equal without any discrimination before the law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such considerations". Article 24 enshrines that, "Everyone has the right to freedom of conscience, religious belief and conviction...No one shall be compelled to worship, or to participate in religious ceremonies and rites, to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions."

The legal context and the general state policies have come to possess a Janus faced quality; on the one hand, the concept of Turkishness is emphasized and put forward as a prerequisite of national belonging. But, on the other, Turkishness is said to be conceptualized as a "supra identity"; which could include Kurdish, Circassian, Alevi etc, all those embracing it through assimilation (or some argues, just acculturation).

The Turkish Constitutional Court, in its decisions have come to emphasize the concept of "nation" and "national state". It is possible to trace the Janus faced profile. For example, the Court has once ruled that; "What may be his or her origin, everybody is included in the nation without differentiation, thus unity of the nation becomes concrete". (Decision No: 1997/1 of 14.2.1997, in Official Gazette, 26.6.1998). But in another decision the Court stated that "Article 66 of the Constitution reads 'everyone bound to the Turkish state through the bond of citizenship is a Turk'. This principal aimed to secure the equality among citizens of the Turkish Republic, an indivisible entity with its territory and nation, in respect of individual human rights. The principle also established a unique and integrative basis for the nation to avoid any privileges to be granted to any ethnic groups who form it. In this context, 'Turk' has nothing to do with any racial meaning. Citizenship and national identity do not mean denial of citizens' ethnic roots. What is prohibited is not the expression of cultural differences and richness, but their utilisation to create minorities on the territory of the Republic of Turkey for the purpose of undermining national unity and founding a new state order on that basis" (Decision No:94/2 of 16.6.1994, in Official Gazette, 30 June 1994).

Throughout the 2000's, certain legal amendments were made to accomodate language rights, mainly as a result of the pressures and necessities arising from the European Union

membership prospect. Constitutional restrictions against the usage of local mother tongues were removed by the 2001 Constitutional Amendment. For example, as a result of the amendments made on Articles 26 and 28, phrase of “language prohibited by law” was removed. This was a highly symbolic change, enabling the recognition of minority languages. Law no 4471 of 2002 made the use of local languages or dialects in the realm of education or media (printed media, but radio and television in essence). Presently, it is known that private courses in different languages or dialects are held. The Law no 4903 of 2003 ensured the legal basis for broadcasting in different languages or dialects by both public and private radio-television companies.

On the whole, the strict adherence to Laussane Treaty have caused rights that could be related language develop completely different from the international standards and norms in Turkey. Therefore, Turkey has developed a wholly diverse path to conceptualization and practice of linguistic rights, if any, than international framework drawn by the Council of Europe (CoE), Organization for Security and Cooperation (OSCE) and United Nations (UN). The EU has been exerting crucial pressure on Turkey to ratify the conventions and declarations of different international organizations; such as the Framework Convention for the Protection of Minorities (FCPM) and European Charter for Regional or Minority Languages (ECRM) adopted by the Council of Europe (CoE) but also other general human rights treaties such as United Nations Covenant on Civil and Political Rights (ICCPR) and United Nations Covenant on Economic, Social, and Cultural Rights (ICESCR).

The EU has tried to make Turkey adopt, firstly, to ratify Framework Convention and Charter on Minority Languages; secondly, to eliminate the reservations that Turkey has made to the ICCPR and the ICESCR.

III. View from the Field: Government Policies and Some Examples from the Field

The state policy towards language rights is closely associated with the story of the Kurdish language in Turkey. The draconian state approach began changing in 1991 when the ban on Kurdish language was lifted, after decades of the *de facto* denial of the existence of it's Kurdish minority.

The end of the 1990s were rather optimistic that Turkey could actually ‘change’ its state approach to language rights and even minority rights have provided The PKK-leader Abdullah Ocalan was detained, and this was thought to bring about the end of the Kurdish Question. Turkey's candidacy by the EU created the optimistic vision that democratization problems would be resolved. The Justice and Development party (AKP) was elected in 2002 by and large with zest that transformation on all fronts were on the way. The AKP was founded in 2001 and sees itself as a conservative democratic party akin to Christian Democrat political parties in Europe.

Kurdish voters were one of the largest constituencies of the AKP both in the 2002 and 2007 elections with hopes that the AKP had the potential to challenge the status quo, especially with regards to undermining the Turkish Armed Forces influence over politics. There have been highly significant reform steps taken by the AKP in terms of language rights. Prime Minister Erdoğan has delivered a highly emotional speech in the predominantly Kurdish city of Diyarbakır in 2005, acknowledging that the state “has made mistakes about the Kurdish issue”.

In terms of political campaigning, politicians were prosecuted for making election propaganda in languages other than Turkish as a consequence of the Political Party Law that bans the use of any language but Turkish for 'political propaganda. In 2007, the Kurdish mayor of the Democratic Society Party (DTP) of the Sur Municipality of Diyarbakır, Abdullah Demirbaş, was barred from office by the State Council for offering multilingual municipal services.

Turkey began permitting Kurdish broadcasting and the teaching of Kurdish at private language institutions in 2002. The parliament passed laws allowing parents to give their children Kurdish names. In 2003, Turkey passed a law allowing Kurds to have their own radio stations for the first time which resulted in limited Kurdish broadcasts. The Supreme Board of Radio and Television (RTÜK) allowed limited broadcasting in Kurdish (45 minutes) by the end of January 2006. Programs for children were not allowed.

In 2009, The Higher Education Board (YÖK) announced that Kurdish will be made an elective course at universities. Turkey's first undergraduate-level Kurdish language and literature department has had its first class in October 2011 in the Southeastern city of Mardin's Artuklu University.

The Radio and Television Supreme Council (RTÜK) is planning to extend the period of time private television and radio stations are allowed to broadcast in Kurdish. The ban on making Kurdish phone calls and communicating in Kurdish with visitors for inmates in prison was lifted.

In the parliamentary elections of July 22, 2007, the Justice and Development Party (AKP) increased its votes in the Kurdish region of Turkey from around 26% to approximately 53%. Having a strong mandate for reform, AKP embarked on the reform and democratization package, referred to as the "Kurdish Initiative" in 2008. At the time, Istanbul-based think tank the Turkish Economic and Social Studies Foundation (TESEV) assembled a report proposing resolutions to the Kurdish Question largely by focusing on linguistic rights;

- 1- With legal amendments, the Kurdish language should be accepted as a second language in schools;
- 2- The linguistic bans on organizations and freedom of expression should be lifted;
- 3- Names of geographical locations should be restored to their original Kurdish names;
- 4- Religious sermons in the region should be allowed to be given in Kurdish;
- 5- Health organizations in the region should employ personnel fluent in Kurdish;
- 6- Educational institutions should employ Kurdish-speaking personnel;
- 7- State theaters should stage plays in Kurdish; and
- 8- Universities should be allowed to establish Kurdology institutes that will study Kurdish language and literature.

In its 2011 report on the Kurdish Question, the International Crisis Group put forward language reform as one of its key suggestions, advising the Turkish government to allow for "the use of Kurdish or other local languages in all schools where there is sufficient demand while maintaining Turkish as the official first language of education".