



SEEKING KANT IN THE EU'S RELATIONS WITH TURKEY

Author

SENEM AYDIN DÜZGİT

Endorsed by

HAKAN ALTINAY

SEYLA BENHABİB

CEM ÖZDEMİR

JEAN-FRANÇOIS LEGUILL-BAYART



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*Turkish Economic and
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Dış Politika Programı

Foreign Policy Program

Bankalar Cad. Minerva Han No: 2 Kat: 3

Karaköy 34420, İstanbul

Tel: +90 212 292 89 03 PBX

Fax: +90 212 292 90 46

info@tese.org.tr

www.tese.org.tr

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Seeking Kant in the EU's Relations with Turkey

We believe European Union membership is in the interests of Turkey, the EU, and the global community. We are deeply concerned at the way the European Union is failing to respect the principles of equal treatment in its relations with Turkey. We do not argue that Turkey is ready for EU membership; and we recognise that Turkey has a lot to do, primarily regarding democratic governance, to make itself ready for membership. However, we also believe that increasingly discriminatory practices towards Turkey violate the Enlightenment principles upon which Europe itself is founded and endanger the formation of a Europe governed by Kantian ideals. This perspective necessitates identifying key events that gave rise to this concern during the period after the 1997 Luxembourg Summit. The main aim of this report is to examine the extent to which the EU has adhered to its official statements on fairness and equal treatment and whether or not the assertion that the EU has breached Kantian ideals is valid. The focus of this report will be two-fold. The first focus will be on the 'double standards' evident in the EU's policies towards Turkey, which we will point out by comparing the EU's treatment of Turkey with its treatment of other candidate countries. It is now widely accepted that there is a clear double standard in the way in which the EU deals with candidate-nations and member states, especially in areas such as human rights and the protection of minorities; the report will discuss blatant cases of such discrimination.² The second focus of the report will be on instances in which the EU has not kept key promises with Turkey or 'systematically distorted' communication has been abundant in discussions over the issue. We believe that such an endeavour is imperative to see the way in which the EU today is deviating from the Kantian ideal of achieving a Europe without dividing lines, where 'you do as you would be done by'.

INTRODUCTION

Perhaps the most-controversial issue on the European Union's enlargement agenda is the accession of Turkey. At the 1999 Helsinki Summit, the EU granted Turkey the status of a 'candidate state destined to join the Union on the basis of the same criteria as applied to the other candidate states'.³ Since then, Turkey has struggled to undertake internal democratic reforms that will fulfil the Copenhagen political

1 The focus here will be on the discourse and/or the actions of the European Council, the European Commission and the European Parliament. The Council will be treated at a larger scale here as to include government representatives as well as the heads of state.

2 See Gerard Delanty and Chris Rumford (2005), *Rethinking Europe: Social Theory and the Implications of Europeanisation*, p.67.

3 Helsinki Summit Conclusions, December 1999.

criteria required for the opening of accession negotiations. For its part, the European Union has completed the eastern enlargement to the 10, suffered through the crisis following voter rejection in France and The Netherlands of the proposed European Constitution, opened accession negotiations with Croatia, and made a long-term commitment to enlarge to the remaining Western Balkan countries.

The intensive debate during this period on the cultural, societal, geographical, and geopolitical ramifications of enlargement has drawn attention to the normative and political grounds on which EU is governing its relations with Turkey. At the level of official discourse, the EU has framed these relations by the principles of 'fairness' and 'equal treatment'. The 1999 Helsinki Summit is probably the best known, but not the first, instance where EU official discourse underlined the principle of equal treatment toward Turkey. Even the 1997 Luxembourg Summit, which was marked by the decision to exclude Turkey from the first two waves of enlargement due to its failure to meet political and economic standards, concludes that 'Turkey will be judged on the basis of the same criteria as the other applicant states'.⁴ In a similar vein, the former EU Commissioner for enlargement, Gunter Verheugen, suggested that Europe should 'use the same methodology and benchmarks, the same criteria and same rules' that have been applied to other new members of the EU, that it should not have 'higher or lower standards for Turkey', and that it should not involve 'double standards'.⁵

We believe European Union membership is in the interests of Turkey, the EU, and the global community. We are deeply concerned at the way the European Union is failing to respect the principles of equal treatment in its relations with Turkey. We do not argue that Turkey is ready for EU membership; and we recognise that Turkey has a lot to do, primarily regarding democratic governance, to make itself ready for membership. However, we also believe that increasingly discriminatory practices towards Turkey violate the Enlightenment principles upon which Europe itself is founded and endanger the formation of a Europe governed by Kantian ideals. This perspective necessitates identifying key events that gave rise to this concern during the period after the 1997 Luxembourg Summit. The main aim of this report is to examine the extent to which the EU has adhered to its official statements on fairness and equal treatment and whether or not the assertion that the EU has breached Kantian ideals is valid. The focus of this report will be two-fold. The first focus will be on the 'double standards' evident in the EU's⁶ policies towards Turkey, which we will point out by comparing the EU's treatment of Turkey with its treatment of

4 Luxembourg Summit Conclusions, December 1997.

5 Cited in Judy Dempsey, 'EU Appeals for Fairness over Turkish Talks', *Financial Times*, 28 May 2004.

6 The focus here will be on the discourse and/or the actions of the European Council, the European Commission and the European Parliament. The Council will be treated at a larger scale here as to include government representatives as well as the heads of state.

other candidate countries. It is now widely accepted that there is a clear double standard in the way in which the EU deals with candidate-nations and member states, especially in areas such as human rights and the protection of minorities; the report will discuss blatant cases of such discrimination.⁷ The second focus of the report will be on instances in which the EU has not kept key promises with Turkey or 'systematically distorted' communication has been abound in discussions over the issue. We believe that such an endeavour is imperative to see the way in which the EU today is deviating from the Kantian ideal of achieving a Europe without dividing lines, where 'you do as you would be done by'.

The report will demonstrate the breach of these ideals in eight main cases: discrimination in the negotiating framework, discriminatory EU discourses regarding Turkish accession, the absorption capacity debate in the Union, the Union's stance in the Cyprus conflict, double standards regarding the Copenhagen political criteria, the EU's differential treatment of two figures accused of crimes against humanity (Öcalan and Gotovina), the Union's attitude in the adultery debate in Turkey, and the visa regime applied to Turkey.

1. DISCRIMINATORY DISCOURSES: IS MEMBERSHIP A RIGHT OR A PRIVILEGE?

From the beginning, the Treaty of Rome stated that the EU shall be open to all European democracies, and no treaty revisions since then (actual or proposed in the Constitution) have differed. Both officially and practically 'Europe' can be defined as the membership map of the Council of Europe. Hence the claim to membership, once all the necessary conditions are fulfilled, has been established as a right rather than a privilege granted by the present members. The 'One Europe' Declaration adopted by the Union in February 2003 also points to the 'continuous, inclusive and irreversible' nature of the enlargement process.

The Copenhagen Summit of December 2002 concluded that 'if the European Council in December 2004, on the basis of a report and a recommendation from the Commission, decides that Turkey fulfils the Copenhagen political criteria, the EU will open negotiations without delay'. Hence, as expected, the year 2004 witnessed intense debates on the issue of Turkey's accession to the Union. However, not all talk was on the level of Turkish democracy, which had improved significantly since 1999 and reached the standard required to begin accession negotiations as recommended by the European Commission on 6 October 2004.⁸

7 See Gerard Delanty and Chris Rumford (2005), *Rethinking Europe: Social Theory and the Implications of Europeanisation*, p.67.

8 On the democratic reform process in Turkey, see Senem Aydin and E. Fuat Keyman, 'European Integration and the Transformation of Turkish Democracy', EU-Turkey Working Paper No.2, Centre for European Policy Studies (CEPS), Brussels, August 2004.

In fact, despite the official commitment to the candidate and the Commission's recommendation, most debates still centred on whether Turkey should, in principle, become an EU member. In the wake of the Brussels Summit of December 2004, Austrian Chancellor Wolfgang Schüssel has repeatedly stated that an alternative to full membership should be found. In a similar vein, the French Prime Minister Jean-Pierre Raffarin called for an alternative to full membership should the negotiations fail with Turkey.⁹ The Conservative and Christian-Democrat factions in the European Parliament lobbied intensively throughout the year to introduce a 'privileged partnership' with Turkey, rather than full membership. Furthermore, for the first time in the history of EU enlargement, they successfully pushed for a secret vote in the Parliament on the Turkey report, despite opposition from the Socialists, the Liberals, and the Greens, who argued that such a vote violated transparency.

The notions of cultural difference and identity were also a major theme in heated discussions on the prospects of Turkish accession to the Union. It was Valérie Giscard d'Estaing, former president of France and the President of the European Convention on the Future of Europe, who broke the 'discourse consensus' on Turkey in 2002 by saying that 'Turkey is not a European country, its capital is not in Europe.' He added that Turkey is part of 'another culture, another way of life' and that its integration would mean 'the end of Europe'. As Turkey came closer to fulfilling the EU standards necessary to begin negotiations, such talk became commonplace, tolerated and accepted to the extent that it hardly attracted any attention. In the wake of the crucial December 2004 Summit, French Prime Minister Raffarin stated in an interview that they were not 'doubting the good faith of Mr. Erdoğan, but to what extent can today's and tomorrow's governments make Turkish society embrace Europe's human rights values...do we want the river of Islam to enter the riverbed of secularism?'¹⁰ The head of France's ruling UMP (*Union pour un Mouvement Populaire*) and Minister of Interior, Nicolas Sarkozy, has summarised his views simply by stating that 'if Turkey were European, we would know it'.

Such discourse that constructs fixed, static and binary identities that are placed in opposition to each other where 'European' identity is defined in relation to Turkey as its threatening 'other' was also commonly taken up by the members of the European Parliament, primarily among the Christian Democrats and the Extreme Right. Hans Gert Poettering speaking on behalf of the European People's Party and European Democrats (the EPP-ED group) in the European Parliament argued that he was 'gravely concerned that should Turkey join the European Union, this enlargement might prove fatal and Europeans might lose their identity, that it

9 'Raffarin to Reform 35 Hour Week', BBC News Europe, 9 December 2004, available at <http://news.bbc.co.uk/2/low/europe/4082135.stm>

10 'Raffarin Demurs at Turkey's EU Bid', *Wall Street Journal*, 23 September 2004.

might be detrimental to the sense of being 'us' on which solidarity in the European Union is founded'.¹¹

The European Commission was also not immune from this contaminated discourse on essential cultural and religious identities. Despite the Commission's strategy to keep internal debate over Turkish accession silent until the publication of its report and recommendation in October 2004, Franz Fischler, the Commissioner for Agriculture, wrote a letter to Enlargement Commissioner Verheugen stating that Turkey is a 'sui generis society, far more oriental than European' and a country that can weaken the EU's 'common identity'. According to him, the credentials of the Caucasus countries as well as Russia and Ukraine are more 'European' than Turkey's in terms of culture, religion and history.¹² Similar views were expressed by Fritz Bolkestein, the EU Commissioner for the Single Market and a former leader of the Dutch liberals, who warned that Europe's Christian civilisation risked being overrun by Islam if 70 million Muslims were allowed to join the EU. He also added that this would be forgetting 1683, when the Ottoman army was defeated at the gates of Vienna. Hence, historical memory alongside cultural, religious, and geographic differences also began to be explicitly utilised to construct insurmountable differences between the two entities.

It is evident that the fear of a loss of identity and the ensuing need to draw fixed boundaries became major themes in the discussion of Turkey in the European Union. Throughout these debates, 'Europe' was built around a shared cultural and historic identity that is unable to accommodate and live with diversity rather than a political project based on common values that are not transcendental or inherent in any sense. This is in stark contrast with the way in which the other candidate countries have been treated in Europe. On the one hand, commitment to eastern enlargement was never really questioned in the EU. The messages were not contradictory, and the criteria were clear from the very beginning. The principle of full membership had never even been questioned.

The credibility of EU commitments toward Turkey have, on the other hand, been characterized by mixed messages, contradiction of commitments, and opposition to the principle of accession on the basis of constructed borders that the country itself could do nothing about. This discrepancy in the EU's treatment can also be observed in other areas, which will be dealt with in the sections below.

11 European Parliament Debate on 'Turkey's Progress towards Accession', 13 December 2004, available at <http://www.europarl.eu.int/activities/expert/cre/calendar.do?language=EN>

12 'Fischler Criticises EU Plans for Turkey', *Financial Times*, 10 September 2004.

2. OPENING OF ACCESSION NEGOTIATIONS AND THE NEGOTIATING FRAMEWORK

Despite the December 2004 Council decision to begin accession negotiations with Turkey on 3rd October 2005, much of the year 2005 was spent questioning this decision and raising doubts as to its credibility. Up until the very last minute, the Austrian presidency stated that the goal of accession negotiations should not be full membership, even though the 'possibility' of eventual membership could not be ruled out.¹³ A month before winning the national election, Angela Merkel sent a letter to conservative heads of government in the EU, underlining that accession negotiations with Turkey should not lead to membership but should instead lead to a 'privileged partnership' and be 'open ended'. This was in line with the French attempt to introduce the recognition of Cyprus as a novel condition to begin accession negotiations prior to 3rd October, in a reversal of its previous stance and commitments.¹⁴ The Christian Democrat group in the European Parliament also upheld its consistent reaction to the opening of negotiations, highlighting that neither Turkey nor the EU was ready for accession talks.

This attitude was finally reflected in a clear fashion in the negotiating framework with Turkey. While the EU finally opened accession negotiations with Turkey on the same day as Croatia, the negotiating framework¹⁵ drafted for the two countries displayed significant differences, revealing the EU's unequal treatment of the two candidates. Whereas the negotiating framework for Croatia states that '*by their very nature, the negotiations are an open-ended process whose outcome cannot be guaranteed beforehand*', the same sentence is repeated for Turkey without the disclaimer, suggesting that this is beyond a mere matter of rhetoric for the case of Turkey. In a similar vein, only the framework document on Turkey contains the following section:

'while having full regard to all Copenhagen criteria, including the absorption capacity of the Union, if Turkey is not in a position to assume in full all the obligations of membership it must be ensured that Turkey is fully anchored in the European structures through the strongest possible bond.'

This phrase, which invites reflection on alternative outcomes such as a 'privileged partnership' and highlights 'absorption capacity' as a Copenhagen criteria, is non-

13 'EU Seeks to Resolve Austrian Doubts over Turkey', *Financial Times*, 26 September 2005.

14 'Turkey's EU Dream Dealt Double Blow as Chirac and Merkel Raise Doubts', *The Guardian*, 27 August 2005.

15 See Negotiating Framework (Turkey) and Negotiating Framework (Croatia), 3 October 2005, both available at http://ec.europa.eu/enlargement/pdf/st20002_en05_TR_framedoc.pdf#search=percent22negotiatingpercent20frameworkpercent22percent2Cpercent22turkeypercent22percent22 and http://ec.europa.eu/enlargement/pdf/st20004_en05_HR_framedoc.pdf#search=percent22percent22negotiatingpercent20frameworkpercent22percent2Cpercent22croatiapercent22percent22 respectively.

existent in the text on Croatia. The concept of 'absorption capacity' only figures once in the text on Croatia as 'an important consideration in the general interest of both the Union and Croatia'. In the case of Turkey, the Commission is deemed responsible to 'monitor this capacity during negotiations, encompassing the whole range of issues set out in its October 2004 paper on issues arising from Turkey's membership perspective in order to inform an assessment by the Council as to whether this condition of membership has been met'; no such measure is proposed for negotiations with Croatia.

The statements on conditions for transitional arrangements or derogations after the accession of Turkey show the starkest disparity in the EU's attitude towards the two countries. While the negotiating framework document on Croatia highlights, in the spirit of previous accession negotiations, that 'transitional measures and specific arrangements, in particular safeguard clauses, may also be agreed in the interest of the Union', the corresponding provision on Turkey introduces both politically and legally objectionable points and thus needs to be quoted here in full:

'Long transitional periods, derogations, specific arrangements or permanent safeguard clauses, i.e. clauses which are permanently available as a basis for safeguard measures, may be considered. The Commission will include these, as appropriate, in its proposals in areas such as freedom of movement of persons, structural policies or agriculture. Furthermore, the decision-taking process regarding the eventual establishment of freedom of movement of persons should allow for a maximum role of individual Member States. Transitional arrangements or safeguards should be reviewed regarding their impact on competition or the functioning of the internal market.'

These provisions allow for the insertion of a considerable 'Trojan horse' behind the defences of the EU's own law and political principles that guarantee equality of all member states.¹⁶ It runs fully counter to the underlying values and principles on which the Union is founded. It has been a key item of EU doctrine in previous enlargements that there should be no permanent derogations from EU law and no opting out provisions for new member states.¹⁷ Hence, as a first in enlargement history, such violations of EU law are now proposed for Turkey to politically open the door to a 'second-class membership', in line with the spirit of the rest of the above-mentioned provisions of its negotiating framework document.

3. THE 'ABSORPTION CAPACITY' DEBATE

The EU's 'absorption capacity' has been a key element of the debate on Turkey's accession. The concept of 'absorption capacity' is nothing new. It has, in fact,

16 Michael Emerson, "Vade Mecum for the Next Enlargements of the European Union", CEPS Policy Brief, No.61, December 2004, p.2.

17 Ibid.

been on the table since the 1993 Copenhagen Summit, which stated in its conclusions that 'the Union's capacity to absorb new members, while maintaining the momentum of European integration, is an important consideration in the general interest of both the Union and the candidate countries.'¹⁸ 'Absorption capacity', however, did not figure prominently in the previous round of enlargement. While institutional, policy, and budgetary reforms were on the agenda for the countries chosen to participate in the enlargement, 'absorption capacity' was clearly presented as a task for the Union that was to be dealt with prior to the candidates' accession.¹⁹

The concept of 'absorption capacity' resurfaced during 2005 in the debate on Turkey's accession and in the rejection of the proposed Constitutional Treaty by voters in France and The Netherlands, which the political elite in both countries saw as a measure of popular dissatisfaction with the functioning of the European project. The debate focused upon Turkey's size, its population (70 million), its culture, and its unpopularity with EU citizens. Commentators said the EU would have severe difficulty in 'absorbing' a country like Turkey and 'absorption' was incorporated into Turkey's framework of negotiations with measures like permanent safeguards and alternatives to membership as discussed above.

France has played a pivotal role in driving the debate in Europe about whether the EU can absorb Turkey.²⁰ While the absorption capacity problem for France seems to apply both to Turkey and the Western Balkan states, the emphasis, especially in the aftermath of France's failed referendum, has been on Turkey. In fact, President Jacques Chirac backed the modification of France's Constitution, which made it compulsory to hold a referendum on the future EU enlargement. What was striking about this decision was the way in which the wording of the Article indirectly left Croatia unaffected when both Croatia and Turkey were starting the EU talks at the same time.²¹ It was again President Chirac who initiated the 'absorption capacity' debate during the June 2006 Summit, when he stressed that EU enlargement 'should only continue in a process that is controlled and better understood'. He said that the 'absorption capacity' of the EU has institutional, financial, and political components

18 European Council Meeting in Copenhagen, 21-22, June SN 180/1/93, p.14.

19 See 12-13 December 1997 Luxembourg Presidency Conclusions.

20 The term 'assimilation capacity' is often used interchangeably with 'absorption capacity' in French debates.

21 Article 88.5 of the French Constitution does not apply to those countries whose adhesion follows an intergovernmental conference (IGC) that had been decided to be held before 1st July 2004. While the IGC for Croatia was held after 1st July 2004, the decision to hold the IGC was already made before 1st July 2004, at the European Summit on 16-17th June 2004. (In the presidency conclusions of this European Summit it is stated that, under point 34: "The European Council decided to convene a bilateral intergovernmental conference with Croatia early in 2005 in order to begin negotiations.") The fact that the accession negotiations for Croatia did not start as foreseen on 17th March 2005, but only on 3rd October 2005 (together with those for Turkey) does not cause any change, since the time of the decision to hold the IGC (and not the IGC itself) is decisive for the application of the clause in the French constitution.

and that the political component should take into account the views of the people of the member states and allow them the opportunity 'to say if they accept or not'.²² The governing party UMP has consistently argued that the EU cannot absorb Turkey for cultural, geographic, budgetary and institutional reasons, signalling the end of the federalist ideals. Many in the French centre-right have gone so far as to argue that further EU enlargement, particularly to Turkey, was a major factor behind the rejection of the referendum by the French public.²³

The EU's 'absorption capacity' is also a salient topic in the enlargement debate in Germany. The Coalition Agreement's section on enlargement opens with the claim that 'a circumspect enlargement policy, *which does not overtax the European Union's capacity to absorb new members*, constitutes an important contribution to peace and stability on our continent.' After welcoming the opening of accession negotiations with Croatia and confirming the 'European perspective' for the Western Balkans, as established in the declaration of Thessaloniki, the document re-emphasises the importance of 'absorption capacity' with respect to the EU's relations with Turkey, a country deemed to pose 'a particular economic, demographic and cultural challenge' for the EU, hinting once again at the need to develop a policy of 'privileged partnership' should the EU not have the capacity to absorb the country.²⁴

The EU institutions also took positions in the debate. In a March 2006 resolution, the European Parliament defined 'absorption capacity' as a criterion for the accession of new countries and argued that defining the nature of the EU, including its geographical borders, is 'fundamental to understanding the concept of absorption capacity'. Since 2004, when the prospects of Turkish accession were strengthened with the accelerated pace of reform in the country, the concept has been a recurring component of the Copenhagen Criteria in EP reports on Turkey. The latest EP Report on Turkey further highlights the importance of 'societal/public absorption' by suggesting that 'unlike in previous negotiations, in the case of Turkey it would be necessary to inform the European public continuously and intensively about the negotiations themselves and Turkey's progress in this regard.'²⁵

The European Commission on the other hand has had a more cautious attitude on the subject by pointing to the need of structuring the debate accordingly, within a consensual framework, so that EU conditionality is not hampered in candidate

22 Press conference given by M. Jacques Chirac, President of the Republic, following the European Council, Brussels, 16 June 2006.

23 'Le Non Souligne les Difficultés de l'Elargissement' (The No Underlines the Difficulties of Enlargement), *Le Monde*, 30 May 2005.

24 Coalition Agreement between the CDU, CSU and SPD, Section IX., Germany as a Responsible Partner in Europe and the World, 11 November 2005, available at http://www.bundestag.de/aktuell/archiv/2005/koalition/vertrag_en.pdf

25 European Parliament Resolution on Turkey's Progress towards Accession, 27 September 2006.

countries. Olli Rehn expressed this in the wake of the June 2006 Council Summit when the debate in Europe had reached its peak:

'This cloud of absorption capacity was raised above Turkey and then easterly wind started to travel across the Bosphorus westwards and it stopped above Western Balkans. And it started to contaminate the debate in Western Balkans...Therefore I am in favour of having the debate, yes, finding a new consensus, but concluding the debate having common principles, common policy guidelines...'²⁶

This circumspect stance of the Commission has not been uniform throughout the institution. In a recent statement after the Council Meeting in June 2006, the President of the European Commission, José Manuel Barosso positioned himself closer to member-state and EP discussions, arguing that it would be very difficult for Turkey to join the EU since this would not only place demands upon Turkey but also place demands upon the EU 'to be ready to accommodate such an important big country that is seen by so many of us as culturally different from, let's say, mainstream Europe.'²⁷

The discussion above demonstrates that the debate on whether the EU can 'absorb' Turkey has societal, institutional, and financial dimensions.

The societal dimension gained increasing prominence during the 2006 constitutional referenda, which displayed a low level of citizen support for enlarging to Turkey. It is a fact that sizeable majorities in Europe are against Turkey's accession to the EU. When asked in 2006 about the countries they would like to welcome as members of the family in the future, 48 percent of EU citizens expressed their opposition to Turkish accession whereas 39 percent responded in favour of Turkish membership.²⁸ However, evaluations of this data often ignore two crucial points. First, support for specific countries tended to fluctuate during the previous rounds of EU enlargement; European public opinion can be different at the time of decision on the accession of a given state. In 1997, when the enlargement process of the 12 was officially launched, EU citizens' support for the accession of the new candidates was below 50 percent for all the applicant countries. The figures of support were as low as 36 percent for Slovakia and Bulgaria; 35 percent for Estonia, Latvia, and Lithuania; and 33 percent for Slovenia and Romania.²⁹ In the year 2002, when the negotiations with the 10 were concluded, support levels were 40 percent and above for all the applicants

26 Extracts from the Policy Briefing by Commissioner Olli Rehn held on 19 May 2006 in Brussels, organised by the European Policy Centre (EPC).

27 'Leaders Chart Future for Europe', BBC News Europe, 19 June 2006, available at <http://news.bbc.co.uk/1/hi/world/europe/5085772.stm>

28 "Attitudes towards European Union Enlargement," Special Eurobarometer 255, July 2006, pp.69-71, available at http://ec.europa.eu/public_opinion/archives/ebs/ebs_255_en.pdf

29 Standard Eurobarometer 48, March 1998, p.55, available at http://ec.europa.eu/public_opinion/archives/eb/eb48/eb48_en.pdf

except Bulgaria (39 percent), Romania (38 percent), and Slovenia (35 percent).³⁰ This not only goes to show that support levels may fluctuate, but also that remaining levels of relatively low support for certain countries was neither a topic of debate nor cited as an impediment to accession in the previous round of enlargement.

The second point that deserves attention is the role of the EU, with its institutions and its member states, in shaping public opinion. Opinion polls show that the European publics are grossly misinformed about the economic, financial, and social consequences of enlargement and are mostly concerned with unemployment.³¹ Research on political communication and its effects on public support for enlargement have also shown that public opinion is very sensitive to whether the media present enlargement as an opportunity or as a risk for Europe.³² Less-knowledgeable segments of society are particularly vulnerable to the framing effects of enlargement news. Hence, to avoid the formation of misperceptions about enlargement, it is imperative to initiate a pragmatic discourse about enlargement where opportunities and risks are discussed in a balanced and neutral fashion. The responsibility falls on EU elites to undertake the duty of helping to engage their national publics in a well-informed, frank, and rational debate on enlargement.

This, however, has so far not been the case in discussions by EU elites on Turkey. When the issue comes to Turkey's accession, the discussions remain far from balanced. In fact, when juxtaposed with the 'facts', most of the arguments on the 'absorption' of Turkey reveal a one-sided character. This is clearly demonstrable in other sections of this report, but becomes more evident during debates of 'absorption capacity'. One such clear example was the debate in France on the rejection of the constitutional referendum as the test case for the problems with 'social absorption'. Despite arguments to the contrary (briefly referred to above), the special Eurobarometer carried out by the European Commission immediately after the referendum in France has shown that more than three-quarters of the negative vote in the referendum had a fundamentally left-wing connotation, against the governing party and, more particularly, against its economic and social policies, where only 6 percent of 'no' voters mentioned Turkish membership as a reason behind their decision.³³

In a similar vein, European elites do not give balanced treatment to certain Turkey-related fears prevalent among the broader population. This is visible in discussion of the immigration issue. Serious research forecasts no dramatic inflow of people from

30 Standard Eurobarometer 58, March 2003, p.87, available at http://ec.europa.eu/public_opinion/archives/eb/eb58/eb58_en.pdf

31 "Attitudes towards European Union Enlargement," *Special Eurobarometer 255*, July 2006, available at http://ec.europa.eu/public_opinion/archives/ebs/ebs_255_en.pdf

32 See Andreas R.T. Schuck and Claes H. de Vreese, 2006. "Between Risk and Opportunity: News Framing and its Effects on Public Support for EU Enlargement," *European Journal of Communication* 21 (1): 5-32.

33 See Flash Eurobarometer 171/2005, *La Constitution européenne: sondage post-référendum en France*.

Turkey to the EU: estimates vary from 0.5 to 4.4 million; and most of the estimates foresee an upper limit of 2 million immigrants if Turkey joins the EU in 2015. Some of these studies suggest that if Turkey's membership process is endangered and high economic growth cannot be sustained in Turkey, 2.7 million people may migrate from Turkey to the EU-15 despite prevailing restrictions on labour mobility and that the composition of this migration would be less conducive for the EU labour markets as well as for integration into host societies.³⁴ On top of this, many would argue that Turkey is a potential solution for the EU's demographic decline, which is expected to intensify steadily from 2010 to 2030.³⁵ What is striking is the indifference of most of the European elite towards such findings and the way many EU leaders fail to refer to them to alleviate public fear. In some cases, accounts by elites that emphasise religion and the size of Turkey's population and official measures to introduce permanent safeguards in the free movement of labour fuel these 'constructed' fears.

A similar pattern is evident in the way in which European elites frame the other two dimensions of the 'absorption capacity' debate: the institutional and financial dimensions. It is often argued that Turkey, thanks to its large population, would 'disrupt' institutional balances within the Union. Studies however suggest that if Turkey were admitted, it would not change institutional balances drastically. In an already enlarged Union, Turkey, on its own, would have very little power to initiate or block any decision.³⁶ Turkey's votes and seat shares would undoubtedly be equal or very close to those of Germany in EU institutions, so Turkey might become a significant ally for both large- and small-country groups. But, it should be kept in mind that the Nice Protocol already undercuts both the future number of Commissioners and the future number of Member of the European Parliament (MEPs).³⁷ Furthermore, there is neither an 'a priori' reason nor any evidence to suggest that Turkey would disrupt the 'consensual' mode of policy making in the Union by importing divergent or destabilising policy agendas into the EU. It would most likely join existing coalitions on given issues and hence do little more than reinforce existing trends in EU politics, such as growing conflict over the budget and increasing cooperation outside of the first pillar. This has also been the case with the countries of the last enlargement wave, which have been integrated into the culture of consensus-building and the

34 See Refik Erzan et. al., "Growth and Immigration Scenarios for Turkey and the EU", EU-Turkey Working Paper No.13, December 2004, Centre for European Policy Studies (CEPS), Brussels.

35 See Michael Emerson et al., "What is This Absorptive Capacity of the European Union?", Centre for European Policy Studies (CEPS), Brussels, October 2006, pp.13-14.

36 See Fuad Aleskerov et. al., "European Union Enlargement: Power Distribution Implications of the New Institutional Arrangements", *European Journal of Political Research*, Vol.41, Issue 3, May 2002. See also R. Baldwin and M. Widgren, "The Impact of Turkey's Membership on EU Voting", CEPS Policy Brief, No.62, February 2005.

37 See Michael Emerson et al., "What is This Absorptive Capacity of the European Union?", Centre for European Policy Studies (CEPS), Brussels, October 2006, p.16.

number of states opposing a proposal in the Council has not yet risen above the usual number of one or two countries.³⁸

The indifference towards the realities of 'institutional absorption' applies almost equally to debates on the 'financial absorption' of Turkey by the EU. The costs of enlargement have always been among many EU citizens' core concerns. The fact that Turkey, like Bulgaria and Romania, is still very poor compared to other EU members exacerbates this debate. The large agricultural sector as well as regional imbalances will have to be tackled during the course of negotiations. Studies however suggest that, as in the case of the last enlargement, the cost to the EU budget - estimated at a maximum of around 0.20 percent of the EU's GDP - will be manageable.³⁹ Comparative approaches also suggest that Turkey's economic position is not fundamentally different than the starting position of Poland, Slovenia, Romania, and Bulgaria at the beginning of their accession process.⁴⁰

Against this background, it is no exaggeration to say that the concept of 'absorption capacity' itself has very weak theoretical and practical underpinnings and gives the impression that it is being used to erect seemingly 'objective' barriers to integration, primarily with Turkey, "instead of honestly confronting the political problems that including Turkey in the enlargement process raises among domestic electorates."⁴¹ In other words, instead of paving the way for an informed, rational debate by providing facts and balanced arguments on Turkey's accession, most of the EU leaders have so far played into the misinformed public fears of Turkey's membership. This is a complete reversal to their stance in the previous round of enlargement where it was presented as a historic necessity not to be questioned in depth.

4. SELECTIVE APPLICATIONS OF THE 'STICK': THE CASE OF CYPRUS

2004 was a crucial year for the Cyprus conflict, which dates back to 1963. It witnessed the last stage of the most concerted and wide-ranging effort by the international community to achieve a settlement on the island. The Annan Plan, which was by far the most detailed and comprehensive attempt by the UN to advance a federal solution in Cyprus, was published in March 2004 in an effort to reunify the island before the formal accession of Cyprus to the EU in May 2004. The Plan, which was also strongly supported and advocated by the EU, was based on the principles of bi-zonality and political equality as well as the respect for ethnic diversity and human

38 Ibid.

39 See Daniel Gros, "Economic Aspects of Turkey's Quest for EU Membership", CEPS Policy Brief, No. 69, April 2005.

40 'Turkey in Europe: More than a Promise?', Report of the Independent Commission on Turkey, September 2004, pp.38-41.

41 Frank Vibert "Absorption Capacity": The Wrong European Debate, accessible at http://www.opendemocracy.net/demcracy-europe.constitution/wrong_debate_3666.jsp

rights under an independent sovereign state with a single international personality.⁴² After the parties agreed in February that the Secretary-General should, in the absence of a final agreement on the text, put his own last version to the vote, the Plan was put to referenda on both sides of the island on 24th April 2004. The outcomes of the referenda were a clear 'yes' from the Turkish Cypriots, with 65 percent of the votes, and an overwhelming 'no' from the Greek Cypriots, with 76 percent of the votes. The result was the accession of a divided island to the European Union.

The hard-line stance of the Turkish Cypriot leader, Rauf Denktaş, during the whole of his presidential tenure had in effect prevented any serious questioning of the official 'pro-solution' attitude of the Greek Cypriot governments in the past. This was also considered as one of the main reasons behind the EU's opening of accession negotiations with Cyprus and committing itself to its accession without making reunification a precondition. In the words of Jack Straw, the then UK Secretary of State for Foreign and Commonwealth Affairs, 'although it was a decision that we made, there was, I think, an all-party agreement on it and it was not an issue of great controversy between the parties in the late 1990s. The problem then was that the Greek Cypriot community had reasonable leadership who wished desperately for a deal both on EU membership and a settlement with the Turkish Cypriot community, but the Turkish Cypriots under Mr. Denktash were almost impossible to negotiate with. Had EU membership been proposed under the current circumstances, neither any British Government nor most European Governments would have touched the idea of allowing a divided Cyprus into the EU.'⁴³

It was the final phase of negotiations of the Annan Plan which revealed that Greek Cypriots' long-declared support for reunification was not to be taken at face value. Whereas Turkey under a new single party government (AKP - Justice and Development Party), together with the 'pro-solution' factions in the North, was paving the way for a 'yes' vote among the Turkish Cypriots, the South had a clearly negative attitude from the start. In fact, the 'no' camp had been bolstered among the Greek Cypriots by one and a half years of campaigning since the publication of the first version of the Annan Plan in November 2002. The Greek Cypriot negotiating team, under Tasos Papadopoulos, was also reported by the Secretary-General as having refrained from meaningful negotiation in the last phase of the negotiations.⁴⁴ The real test case, however, was provided by the prospect of the referendum. President Papadopoulos made an emotional appeal on television urging the Greek Cypriot public to reject the

42 See 'The Cyprus Stalemate: What Next?', *International Crisis Group (ICG) Policy Report*, 8 March 2006, pp.3-5.

43 House of Commons Hansard Debates, 7 February 2006, available at <http://www.publications.parliament.uk/cgi-bin/newhtml.h?DB=semukparl&STEMMER=en&WORDS=jack%20straw&ALL=&ANY=&PHRASE=&CATEGORIES=&SIMPLE=&SPEAKER=jack%20straw&COLOUR=red&STYLE=s&ANCHOR=st.062&URL=/pa/cm200506/cmhansrd/cm060207/debtext/60207-04.htm#st.062>

44 *Ibid.*, pp.5-6.

plan in the referendum. He stated that he had 'received a state' and had no intention of 'handing over a community' and despite pleas not to do so from the EU, initiated a very strong 'no' campaign in the country.⁴⁵ Furthermore, the Greek Cypriot authorities went to extreme measures, preventing the UN special envoy to Cyprus, Alvaro de Soto, and the EU Commissioner for Enlargement, Gunter Verheugen, from giving interviews to Greek Cypriot state or private television, fundamentally curbing basic European principles of the freedom of expression, freedom of press, and the right to information on such a historic decision.⁴⁶ In the words of the Former President of the Republic of Cyprus, George Vassiliou, there was an 'industry of misinformation at work...a special kind of police state where people have been told to vote and indirectly threatened.'⁴⁷

There was some reaction to this state of affairs within the European Union. In a speech delivered to the European Parliament three days before the referendum, Enlargement Commissioner Verheugen expressed his strong disappointment with the Greek Cypriot government:

'From my perspective, this is a deeply depressing situation for two reasons. Firstly, when we changed our strategy on Cyprus in 1999 and, at the urgent request of the Cypriot Government, pledged to the Greek Cypriot Government that the solution to the Cyprus conflict would not be the precondition for the island's accession to the European Union, this was based on the clear understanding that we would do everything possible to facilitate Cyprus' accession, and, by the same token, the Government of the Republic of Cyprus would do everything in its power to achieve a settlement, and that under no circumstances would a settlement fail as a result of Greek Cypriot opposition... The second point that I wish to make is this: ...at every stage of the process, the Government of the Republic of Cyprus reaffirmed that it endorsed the basic framework of the Annan Plan... President Papadopoulos's statements after the end of the talks in Switzerland amount to the fundamental rejection of the basic principles set out in the plan... I can now only conclude that the Government of Cyprus now rejects the federal solution to the Cyprus problem, which is based on the coexistence and equality of the Greek and Turkish Cypriots and is endorsed by the United Nations and the entire international community.

...I feel personally cheated by the Government of the Republic of Cyprus... Never before in the history of the European Commission has a member of the European Commission been banned from making statements on a key European issue in a Member State on the grounds that it constitutes interference in its domestic affairs... it is very regrettable that in the many statements I have heard from the Greek Cypriot side in recent days, the word 'peace',...'reconciliation',...'mutual understanding',...'different communities and religions living together' are hardly ever mentioned. That would send out a very strong signal, especially in this region, where the coexistence

45 Ibid., p.8.

46 'Verheugen in Quarantine', TO VIMA, 25 April 2004, available at <http://tovima.dolnet.gr>

47 See 'The Cyprus Stalemate: What Next?', *International Crisis Group (ICG) Policy Report*, 8 March 2006, p.8.

of communities from different cultures and religions had produced the most profound and difficult global crisis that we have faced for some time.'

In the same debate, some MEPs expressed similar feelings of disillusionment and some, like the previous rapporteur on Turkey, Arie Oostlander, noted that the Greek Cypriots had seriously breached the Copenhagen political criteria.⁴⁸

Such expressions of disappointment, however, remained very limited even within the realm of rhetoric, to the Commission and to some MEPs. One could indeed argue that there was little the Union could do to punish Cyprus since it was set to become a member 10 days later. The negotiations were in fact concluded and the country was to join the Union on 1st May 2004. However, there was also a case of a new member state that had committed a serious breach of the Copenhagen political criteria, that had acted in stark contrast to the basic values of peace and unification - values which the Union itself is founded - and that had clearly demonstrated its potential to import the dangerous face of 'nationalism' against which the Union was established. This can easily be contrasted with the Union's stance in the Haider affair - when Joerg Haider's extreme right-wing Austrian Freedom Party (FPÖ) entered into coalition government in February 2000 - where there was a coherent EU discourse of shaming and isolation which resulted in diplomatic sanctions against Austria. In the case of Cyprus, a breach of its Accession Treaty commitments was also in question. Protocol 10 to the Accession Treaty of the Republic of Cyprus states that the high contracting parties 'reaffirm their commitment to a comprehensive settlement of the Cyprus problem, consistent with relevant United Nations Security Council Resolutions, and their strong support for the efforts of the United Nations Secretary General to that end'. Despite the lack of Greek Cypriot cooperation with the UN, the Union refrained from taking a cohesive stance against Cyprus, thus rendering condemnation of an even symbolic nature impossible.

The Council declared however on 26th April 2004 that it was 'determined to put an end to the isolation of the Turkish Cypriot community and to facilitate the reunification of Cyprus by encouraging the development of the Turkish Cypriot community' and invited the Commission to 'bring forward comprehensive proposals to this end with particular emphasis on the economic integration of the island and on improving contact between the two communities and with the EU'.⁴⁹ In response to this invitation, the Commission proposed a comprehensive package of aid and trade measures in July 2004. The issue of direct air links, which is considered to be crucial for the easing of international isolation of the Turkish Cypriots, did not even figure in the Commission proposal, mostly due to the combination of the strong Greek stance with member states' reluctance to take any steps in this area.⁵⁰ The aid regulation

48 European Parliament debate on 'Cyprus', 21 April 2004, available at <http://www.europarl.eu.int/activities/expert/cre/calendar.do?language=EN>

49 See 'Turkish Cypriot Community' at the EU Commission Enlargement Website, available at http://ec.europa.eu/enlargement/turkish_cypriot_community/index_en.htm.

50 See 'The Cyprus Stalemate: What Next?', *International Crisis Group (ICG) Policy Report*, 8 March 2006, p.13

has finally on 27 February 2006, but still remains unimplemented due to Greek Cypriot insistence in the Council that the funds can not be used on Greek Cypriot land, property or public bodies.

The outlook on trade regulations remains even bleaker. The proposed regulation that allows for duty-free imports of EU goods into northern Cyprus and the duty-free exports of goods wholly obtained or substantially produced in the North has so far been blocked by the Greek Cypriots. Legally, the Commission had originally proposed the regulation under a procedure which would require a qualified majority in the Council. However, the Greek Cypriots, with the support of the Council's legal service, successfully argued that the regulation required unanimity and has so far managed to prevent direct trade with the North.

Hence the EU has so far failed to deliver its promises to end the international isolation of the Turkish Cypriots who have resoundingly shown their will to a reunified island. None of the member states have so far challenged the Greek Cypriot claim that the issue is their 'vital national interest'.⁵¹ Even comparatively smaller measures such as having Turkish Cypriots fill their share of Cyprus' quota in EU institutions or recognising Turkish as an official EU language have not been taken. The European Parliament has created a High Level Contact Group for relations with the North and two parliamentarians from the North participate, albeit in a limited fashion, in the activities of the two largest political groups in the European Parliament. Even the establishment of the High Level Contact Group had proven very difficult due to efforts primarily from the EPP-ED faction in the European Parliament. Hence the means of communication available to the Turkish Cypriots also remained substantially limited, leaving them with little opportunity to make their voices heard in Brussels. This results in the Greek Cypriots supposedly speaking for the whole island in both the Council of Ministers and the European Parliament. In a recent Friends of Europe report, this is likened to a situation where 'the Flemish spoke for the whole of Belgium, including on issues where there is strong disagreement with the Walloons, or as if the English spoke for the Scottish' and it is highlighted that the Union continues to agree to this lack of democratic representation despite its emphasis on human rights and democracy.⁵²

The way in which the Union has so far tolerated the Greek Cypriot stance towards the Turkish Cypriots – to the extent that it hampers the Union's own commitments – as well as its ensuing reluctance to a solution underlined by the principle of equality as advocated by the international community⁵³, displays a stark contrast with the heavy conditionality applied to Turkey between

51 *Ibid.*, p.13-14.

52 See Kirsty Hughes, 'Turkey and the EU Four Scenarios: From Train Crash to Full Steam Ahead', *Friends of Europe Report*, September 2006, p.iii.

53 After acceding to the Union, Tasos Papadopoulos implicated on various occasions that he wants an open-ended peace process without UN proposals and deadlines.

1999 and the year 2004 on this issue due to its hard-line attitude regarding a solution on the island. EP resolutions had often 'deplored the lack of goodwill on the part of the Turkish Cypriots and Turkey to make progress with the negotiations on the question of Cyprus towards a settlement on the basis of the relevant UN Security Council resolutions'⁵⁴ and reiterated together with the Commission that 'a failure to reach agreement on Cyprus could pose a serious obstacle to Turkey's European ambitions'.⁵⁵ What is however even more striking is the way in which some member states encourage Greek Cypriot efforts to also blackmail Turkey through its right to veto. In the aftermath of the failed constitutional referenda in France and the Netherlands and in the wake of the opening of accession negotiations with Turkey, France demanded that Turkey can only begin accession negotiations if it officially recognises the Republic of Cyprus and that its will not to do so was not 'in the spirit expected of a candidate to the Union'.⁵⁶ This was in breach of the European Council Conclusions on 17th October 2004, where it was decided that accession negotiations with Turkey would begin with Turkey on 3rd October on condition that Turkey extends the customs union agreement to Cyprus. This also went against the statements by the EU's Presidency (Britain) and the European Commission that the full and formal recognition of Cyprus is not a precondition for negotiations.⁵⁷ This was not only perceived as a breach of the EU commitments given to Turkey less than a year ago, but also as yet another reward for the Greek Cypriots whose own European credentials were seriously overshadowed by their recent actions. Despite negotiations being opened with Turkey on 3rd October 2005 upon the signing of the customs union protocol, extending its application to the Republic of Cyprus and hence without full and formal recognition, the issue is expected to loom over Turkey during the whole course of accession negotiations.

5. MOVING STANDARDS: THE COPENHAGEN POLITICAL CRITERIA

Between 1999 and 2005, Turkey undertook substantial democratic reforms in areas like civilian-military relations, respect for human rights, the protection of minorities, and the judicial system. Indeed, the European Commission concluded in October 2004 that Turkey had fulfilled the Copenhagen political criteria. Despite the Commission's report, there were significant controversies in the EU throughout 2004 regarding Turkey's democratic credentials to begin accession negotiations; these criticisms focused on the state of human rights and the protection

54 'European Parliament resolution on Cyprus' application for membership of the European Union and the state of negotiations', COM(1999)502-C5-0025/2000-1997/2171(COS), 4 October 2000.

55 'European Parliament resolution on the comprehensive monitoring report of the European Commission on the state of preparedness for EU membership of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia', COM(2003)675-C5-0532/2003-2003/2201(INI), 11 March 2004.

56 'Turkey must Recognise Cyprus if it Wants EU Talks, says French PM', *The Independent*, 3 August 2005.

57 'Chirac Challenges Ankara's Cyprus Stance', Euractiv, 29 August 2005, available at <http://www.euractiv.com/en/enlargement/chirac-challenges-ankara-cyprus-stance/article-143553>

of minorities in Turkey. In fact, the Commission's final verdict was that the country 'sufficiently' fulfilled the criteria, an expression not utilised for previous candidates.

We are not suggesting here that the level of democratisation in Turkey was or is currently up to EU standards. By its very nature, democratisation – hence the fulfilment of the Copenhagen political criteria – is an ongoing process that cannot at any point be considered 'complete'. So, for Turkey and every other EU candidate country, the accession period itself serves as a time for consolidating democracy. In fact, the EU's attitude towards the countries of the most recent wave of enlargement tends to confirm that this has been the underlying theme in dealing with the democratic development of its candidate countries. Latvia is one example.

5.1. THE 'LATVIAN' EXAMPLE: 'RESIDENTS' AS 'FOREIGNERS'

Latvia is a country in which members of minority groups account for 41 percent of the population.⁵⁸ Some 28 percent of Latvia's residents, almost all of them Russians, Ukrainians, and Belarussians, did not have Latvian citizenship in 1997 when the European Commission declared that the country fulfils the Copenhagen political criteria upon which accession negotiations had been started in 1999. In fact, only 4 percent of non-citizens who had the right to apply for Latvian citizenship applied and were naturalised between 1995 and mid-1997 due to obstacles such as the inability to pass the Latvian language and history exam, lack of information, and high naturalisation fees.⁵⁹ Non-citizens not only had no political rights, they faced several questionable legal restrictions on their employment opportunities in the private sector, including work as legal assistants, aeroplane pilots, private detectives and security guards. Language barriers were even more significant. As of 2001, approximately 43 percent of all residents did not speak Latvian as their mother tongue; 36 percent were native Russian speakers.⁶⁰ The Constitution declared Latvian to be the exclusive 'state language' and all other languages were legally considered 'foreign'. Any official act was to be conducted in Latvian and fines were to be imposed in cases of 'disrespect towards the state language'.⁶¹ Significant restrictions also remained with respect to private and public electronic media, hampering the use of minority languages in the public sphere.⁶² Furthermore,

58 As of 1 January 2006, minority populations consist of the Russians with 28.5 percent of the total population, Belarussians with 3.8 percent, Ukrainians with 2.5 percent, Poles with 2.4 percent, Lithuanians with 1.4 percent, Jews with 0.4 percent, Estonians with 0.1 percent and others with 1.9 percent. See Data of the Board for Citizenship and Migration Affairs, http://www.np.gov.lv/index.php?en=fakti_en&saite=residents.htm

59 For the official figures in 1997, see *Ibid*, p.305.

60 See 'Minority Protection in Latvia', *Monitoring the EU Accession Process: Minority Report*, Open Society Institute, 2002, p.300.

61 2001 Regular Report, p. 25 and p.26.

62 As of 2002, one of the two public radio and television channels could only broadcast in Latvian while the other could allocate up to 20 percent of its airtime to broadcasts in minority languages. No more than 25 percent of the programming of private entities could be in a foreign language. See 'Minority Protection in Latvia', *Monitoring the EU Accession Process: Minority Report*, Open Society Institute, 2002, p.356.

even at the time of accession, Latvia had still not ratified the Council of Europe's Framework Convention for the Protection of National Minorities.

However some member states continue to experience problems in the field of human rights and minority protection, with little reaction from the EU. Greece constitutes one example.

5.2. THE 'INVISIBLE' MINORITIES IN GREECE

The blatant discriminatory treatment of candidate countries in comparison to the way in which the EU deals with its own member states, especially in the area of human rights and the protection of minorities, is now almost considered commonplace.⁶³ The increasingly distorted balance between security and human rights as well as the state of immigrants in EU societies are among the major challenges faced by many of the member states themselves (these will not be elaborated in greater detail here). However, there is one case that deserves mention, because it clearly illustrates why many Turks believe they face double standards when dealing with the EU. This case involves the treatment of minorities, in particular the Turkish minority, in Greece, which goes largely unnoticed by the Union.

Greece officially recognises one minority group, namely the Muslim minority, as defined in the 1923 Treaty of Lausanne. This is also the case with Turkey, which officially recognises only non-Muslim minorities (represented by approximately 25,000 Jews, 3,000 Greeks and 50,000 Armenians) on the basis of the Treaty of Lausanne. The shortcomings in Turkey's respect for the rights granted to non-Muslim communities under the Treaty have rightly been criticised by the Union in a consistent fashion over the years and now constitutes one of the core components of the Copenhagen political criteria for Turkey. There has been some progress, albeit insufficient, regarding their lack of legal personality, restrictions on them to buy or sell property, and state interference in their religious and educational institutions. The implementation of the Treaty has also been far less than perfect in Greece, where there are severe violations of the rights of the Turkish minority largely located in Western Thrace. According to Human Rights Watch, at the root of the problems regarding the Turkish minority in Greece lies with the 'Greek government's attitude toward the Turkish minority as somehow alien to Greece, as an outside threat that must be minimised or isolated.'⁶⁴ Greek courts have outlawed the use of the word 'Turkish' to describe the Turkish minority, as most recently witnessed in the 2005 decision of the Greek Supreme Court to approve a 1984 low court decision to ban a minority foundation – the Turkish Union of Xanthi – on the grounds that its title comprises the word 'Turkish'. The rationale behind the decision rested on claims

63 See James Hughes and Gwendolyn Sasse, "Monitoring the Monitors: EU Enlargement Policy and Minority Protection in the CEECs", *Journal on Ethnopolitics and Minority Issues in Europe*, Issue 1, (2003).

64 See 'Report on the Turks of Western Thrace: Continuing Violations', Human Rights Watch, 1999, available at <http://www.hrw.org/reports/1999/greece/Greec991-06htm>

that the foundation openly attempted to stress the presence of an ethnic Turkish minority, promoted the interests of a foreign country, tried to raise a non-existent minority problem, and attempted to disrupt public order with the usage of the word 'Turkish' in its title.⁶⁵ Greece, in its refusal to accept the minority's Turkish identity, went so far as to prosecute individuals who publicly identified the minority as 'Turkish'.⁶⁶

The problems, however, were not only confined to the non-recognition of a minority identity; the problems extended to cover state interference in the religious affairs of the Turkish minority and the administration of minority foundations as well as disrespect towards minority autonomy by attempts to manage its educational institutions, all of which are violations of the Treaty of Lausanne.⁶⁷ Furthermore, though Article 19 of the Citizenship Law, which had been used arbitrarily to deprive ethnic Turks, and other non-ethnic Greeks, of their citizenship, was repealed in 1998, this repeal did not apply retroactively and led to loss of Greek citizenship for nearly 60,000 people.⁶⁸ Article 19 provided that *Greek citizens who were not ethnically Greek* could have their citizenship revoked if they left the country and if the Greek authorities believed they did not intend to return. According to a 2005 Amnesty International Report on Greece, the application of the Article was never transparent and thus resulted in withdrawing citizenship from individuals who had never intended to emigrate. Furthermore, in most cases, the authorities did not take adequate steps to ensure that the individuals concerned were informed of the decision to withdraw their citizenship in time to appeal these decisions, and thus the right to appeal was lost. Amnesty International states that some of the people who lost their citizenship under the old Article 19 might still be unaware of it today.⁶⁹ At a time when the EU is critical of Turkey's treatment of its non-Muslim citizens, minimal levels of consistency would necessitate Greece being warned about the treatment of its Turkish citizens.

6. PERPETRATORS OF CRIMES AGAINST HUMANITY: DIFFERING TREATMENTS

The most important development that contributed to the further souring of EU perceptions in Turkey in the aftermath of the 1997 Luxembourg Summit decision

65 See 'Greece-Out of the Spotlight: The Right of Foreigners and Minorities still in a Grey Area', Amnesty International, 5 October 2005, available at www.amnesty-eu.org

66 See 'Report on the Turks of Western Thrace: Continuing Violations', Human Rights Watch, 1999, available at <http://www.hrw.org/reports/1999/greece/Greec991-06.htm>

67 Ibid.

68 European Commission against Racism and Intolerance (ECRI), Council of Europe, Third Report on Greece adopted on 5 December 2003 and made public on 8 June 2004, available at http://www.coe.int/t/e/human_rights/ecri

69 'Greece-Out of the Spotlight: The Right of Foreigners and Minorities still in a Grey Area', Amnesty International, 5 October 2005, available at www.amnesty-eu.org

was the chain of events that were triggered by the expulsion of Abdullah Öcalan from Syria in October 1998. Öcalan was the leader of the Kurdish People's Party (PKK), a terrorist-guerrilla organisation that for 14 years had waged a violent secessionist campaign in southeastern Turkey. Turkey applied intense pressure on Syria to hand over Öcalan for trial. After initially seeking refuge in Greece and Russia, Öcalan arrived in Italy in November 1998 and was arrested by the Italian police. The Italian authorities denied the Turkish government's request for extradition, and Öcalan was released from detention on condition that he stays in Rome pending consideration of his request for political asylum in Italy. In the meanwhile, reports suggest that Germany refused to receive Öcalan, despite the fact that there was a warrant for his arrest in the country, because the authorities feared that it would trigger violence between Kurds and Turks in Germany.⁷⁰ While the EU and the rest of the member states remained silent on the issue, the fiercest response came from international human rights organisations to which Italy hardly paid any attention. Human Rights Watch continuously urged the Italian authorities to deny Öcalan's asylum request, noting that 'those believed responsible for crimes against humanity are ineligible for asylum under international law' and highlighting that the PKK 'committed numerous large-scale massacres of civilians' including those of women and children. Italy was called upon to either prosecute Öcalan for the 'abuses he committed during the 14-year conflict between the PKK and the Turkish government' or to 'extradite him to another country that would undertake the prosecution in accordance with international law.'⁷¹ Despite these calls, Italy simply chose to release Öcalan. Later, Italy would see fit to grant the terrorist leader's request for political asylum.⁷²

After short visits to Greece and Russia in January 1999, Öcalan received refuge in the Greek Embassy in Nairobi, Kenya, where he stayed for nearly two weeks before being caught by the Turkish secret police on his way to the airport to board a flight to Holland. At the time of his capture, he was found to be carrying a fake Greek Cypriot passport under the name of 'Lazaros Mavros', a Greek Cypriot journalist who was also the vice-president of the 'Cyprus-Kurdistan Solidarity Committee'.⁷³

Greece's high level of involvement in the affair led to a political scandal inside the country. The parliamentary inquiry committee only functioned for three months and issued five different reports, each one signed by each of the five political parties that were then represented in the parliament. The Foreign Affairs Minister at the time, Theodoros Pangalos, the then Minister of Public Order later to become the Minister of

70 Rudolf Wassermann, *Berliner Morgenpost*, 18 January 1999.

71 'Italy Urged to Prosecute PKK Leader Öcalan', Human Rights Watch, 21 November 1998, available at <http://hrw.org/english/docs/1998/11/21/italy1388.htm>

72 'L'Italie Accorde l'Asile Politique au Leader Kurde Abdullah Öcalan' (Italy Awards Political Asylum to the Kurdish Leader Abdullah Öcalan), *Le Monde*, 6 October 1999.

73 'Öcalan Fallout Hits Greece', BBC News Europe, 18 February 1999, available at <http://news.bbc.co.uk/1/hi/world/europe/281322.stm>. See also Hellenic Resources Network, 23 February 1999, available at <http://www.hri.org/news/cyprus/cypio/1999/99-02-23.cypio.html>.

Justice, Phillipos Petcalinos, and the Minister of Interior Affairs, Alekos Papadopoulos were forced to resign from the government. The head of the Greek Intelligence Service, Haralambos Stavrakakis was also removed from his post. A high court case was opened in Greece in 2003 to try 13 defendants involved in the case (including Öcalan himself) where all were acquitted.⁷⁴ During the case, Stavrakakis admitted that Öcalan had entered Greece on two separate occasions and that he was escorted to Moscow and Nairobi with planes hired by the Greek Intelligence Service.⁷⁵ Pangalos defended the assisting of Öcalan to Kenya on grounds that the country could have gone to war with Turkey had it failed to do so. Furthermore, during his trial in Turkey, Öcalan stated that Greece had provided financial and logistic support to PKK and the two enjoyed close contacts until his capture.⁷⁶

What is in fact even more striking than the events themselves was the European Union's apparent silence concerning the explicit assistance of some of its member states to a terrorist believed to be responsible for crimes against humanity. No official condemnation was made against Italy and Germany who refused to bring Öcalan to justice, nor against Greece who escorted him throughout and gave him refuge in its official premises. The issue was never raised with a candidate for accession, Cyprus, where no substantial inquiry was undertaken to find out the means through which Öcalan obtained his fake Greek Cypriot passport.

Such attitude on the part of the EU stands in stark contrast to its stance towards the Croatian General Ante Gotovina, who went into hiding for four years after having been indicted in 2001 by the International Criminal Tribunal for the former Yugoslavia. The full cooperation of the Croatian government with the tribunal was made a precondition for the start of accession negotiations with Croatia, which were scheduled to begin on 17th March 2005 and postponed pending the resolution of the issue. Only after the ICTY's announcement in October 2005 that Croatia was cooperating 'fully' with the tribunal and Gotovina's capture by the Spanish police in December 2005 did the EU initiate accession negotiations with Croatia.

Although the cases of Öcalan and Gotovina are not their exact equivalent since the former was not convicted by an international tribunal, the wide gap in the EU's attitude regarding these two cases suggest that the EU has applied double standards. Where it rightly insisted on the capture of Gotovina and made it a central element of the political conditionality applied to Croatia's accession to the EU, it refrained from making the slightest criticism for failing to bring Öcalan to justice and worse, for assisting him in evading prosecution.

74 See Ta Nea Online, 28 June 2003, available at http://ta-nea.dolnet.gr/print_article.php?e=A&f=17674&m=N21&aa=2

75 See Embassy of Greece, Washington DC Press Office, " 'Naxakis to Blame', Former EYP Chief says during Trial for Öcalan Affair", 31 May 2003, available at <http://64.237.101.224/Embassy/content/en/Article.aspx?office=3&folder=475&article=11627>

76 'Öcalan: Greeks Supplied Kurdish Rebels', BBC News Europe, 2 June 1999, available at <http://news.bbc.co.uk/2/hi/europe/358115.stm>

7. 'HYSTERIA' AND 'DEAFENING SILENCE': CRIMINALISATION OF ADULTERY

One controversy during the 2004 discussions on whether the EU should open accession negotiations with Turkey focused on the proposal by the AKP leadership for amendment of the draft Penal Code to criminalise adultery.

The regime of Kemal Atatürk adopted Turkey's legal code in 1926; the original text being a quasi-literal translation of Italy's code at the time. Since 1926, Turkey's legal code has been amended 60 times. Rulings by the Turkish Constitutional Court in 1996 and 1998 effectively annulled the provision on adultery on the grounds that it discriminated against women by making adultery a punishable offence for women but not for men. In August and September 2004, while the Turkish Parliament was in the closing stages of legislating an entirely new and progressive legal code, some members of the governing party began to discuss the idea of an amendment that would re-establish adultery as a criminal offence for both men and women.

These discussions were a focus of serious concern both within Turkey and within the European Union. The way in which the issue was handled in Europe, however, reveals important contradictions. Even at the planning stage, before any amendment was agreed on or formulated, the European Union made it clear that a law punishing adultery might be a severe blow to efforts to begin membership talks. Verheugen warned Turkey 'not to divert from the path to EU membership' by recriminalising adultery and added that this could give the impression that 'Turkey is introducing *Islamic* elements into its legal system while engaged in a great project such as the EU'.⁷⁷ Elmar Brok, the Head of the Foreign Affairs Committee in the European Parliament, argued that negotiations could not begin with a country that criminalizes adultery.⁷⁸ As a result of this strong EU conditionality combined with internal reactions, the issue was dropped prior to the adoption of the new Penal Code.

Such reactions from the European Union tend to suggest that considering adultery a crime before the law was a thing of the distant past for EU member states. Closer examination of the EU member states' legal codes, however, reveals that decriminalisation of adultery in the EU countries was an ongoing process during the twentieth century and that some countries only decriminalized recently, e.g., Italy (1969), Portugal (1974), France (1975), and Spain (1981).⁷⁹ Austria, which became a full EU member in 1995, kept the crime of adultery in its legal code until 1997. The

77 'Verheugen Warns Turkey on Adultery Law', Deutsche Welle, 10 September 2004, available at <http://www.dw-world.de/article/0,1564,1324102,00.html>

78 'Unionspolitiker: Türkisches Ehebruchgesetz gefährdet EU-Beitritt' (Union Politician: Turkish Adultery Law Puts EU-Accession at Danger), SPIEGEL Online, 9 September 2004, available at <http://www.spiegelgruppe.de/spiegelgruppe/home.nsf/PMWeb/32CCooAD856B3732C1256F950041CBD7>

79 K. Derviş et al. (2004) *The European Transformation of Modern Turkey*, Centre for European Policy Studies, Brussels, p. 20.

issue figured neither during its candidacy, nor after its accession to the Union. Criminalising adultery runs counter to Article 8 of the European Convention of Human Rights (ECHR), which guarantees the right to respect private and family life. But that is not the issue here. The issue is that it was hypocritical for EU officials to speak of allegations of 'Islamisation' and say that Turkey's accession to the European Union might be hindered because of a 'discussion' about the criminalisation of adultery in Turkey when nobody raised the issue when, for example, Austria entered the EU with an adultery law on the books.

A similar situation can also be discerned with respect to Cyprus, which was in the first group of countries with whom the EU opened accession negotiations in December 1997. The Commission decided that Cyprus had fulfilled the Copenhagen political criteria even though Article 171 of the Cypriot Criminal Code completely contravened Article 8 of the ECHR by prohibiting (male) homosexual acts between consenting adults. Under this Article, men who committed homosexual acts faced prosecution and, if found guilty, a possible prison sentence of two to fourteen years; men found guilty of attempting to commit homosexual acts were liable to imprisonment for three years. It was only in May 1998, and in response to strong conditionality from the Council of Europe and not from the European Union, that homosexuality was finally decriminalised in Cyprus. Even the new law contained extensive discriminatory provisions, many of which were gradually abolished later in the accession process.⁸⁰ Although the impact of the Orthodox Church was evident in Cyprus' slow progress on this front, this was not perceived and presented as an issue with religious roots by the Union.

8. VISA 'TROUBLE'

If the European Union is built on a will to live together, the current practices of visa issuance in Turkey and processes for visa facilitation with Turkey contradicts this vision. Visa facilitation between the EU and non-member countries ranks high on the Union's agenda at the moment, specifically with respect to the EU's Eastern neighbours. This is taking place in a context where it is becoming ever more apparent that strict and cumbersome visa regimes are only helping to make travel more difficult for law-abiding citizens, while those persons whose entry which the system is designed to prevent are indeed finding their way through. The EU and Ukraine have already started visa-facilitation negotiations in November 2005, prior to the EU-Ukraine Summit of December 1st. Visa-facilitation and re-admission negotiations with Russia were launched in 2004 with the signing of various bilateral agreements between Russia and member states (namely Germany, France, and Italy) and were

⁸⁰ See The World Legal Survey by the International Gay and Lesbian Association, available at http://www.ilga.info/Information/Legal_survey/europe/cyprus.htm

concluded in October 2005. It significantly eases the procedures for issuing short-stay visas and simplifies the criteria required for issuing multiple-entry visas for various groups of people such as lorry drivers, people on business, students, and journalists. The agreement also simplifies the documentation required with visa applications and reduces visa fees, waiving it for close relatives, students and the disabled. The Commission also recommended in July 2006 that the negotiation of visa facilitation and re-admission agreements with Western Balkan countries. The measures include speedy applications, fee waivers for certain groups and lower rates for others, as well as simpler requirements for the documents to be presented with the application. The Commission considers visa facilitation to be important for ordinary citizens in the region to travel, to study, to do business with the EU and hence make the European perspective more concrete to all citizens.

European policymakers have often stressed that these agreements constitute important steps in the creation of a 'single Europe', a Europe without dividing lines. Nevertheless, the fact that visa restrictions continue to be a major issue in the EU's relations with Turkey indicates that achieving this aim is still a long way off. The Schengen visa regime as implemented vis-à-vis Turkish nationals is the subject of considerable complaint, resentment, and discomfort in Turkey. A prominent international judge and professor of international law, Rona Aybay, has reported complaints about the practice of stamping 'Visa Rejected' in some passports of Turkish nationals by the British and German consulates, arguing that this could constitute a violation of international law and human rights.⁸¹ The EU's visa policy towards Turkey has been of particular concern for many Turkish business people, students, and journalists who have bitterly complained about restrictions.⁸² Students and journalists complain about inconsistencies in the processing of visa applications by EU consulates and the administrative difficulties and obstacles which go beyond bona fide measures. Business people complain that they feel unfair competition from EU counterparts who are able to travel to Turkey freely despite the fact that their 'goods' are circulating freely within the internal market, they themselves face restrictions. Complaints regarding high visa costs, excessively long queues, processing time, documentation requirements and attitudes of consular officials are abound among all groups that wish to travel to the EU.

The EU practice of lifting or easing visa requirements for the nationals of candidate countries of the most recent enlargement prior to their accession has also not gone

81 Cumhuriyet, 7 June 2004. Cited in J. Apap, S. Carrera and K. Kirişçi "Turkey in the EU Area of Freedom, Security and Justice", EU-Turkey Working Papers, August 2004, Centre for European Policy Studies (CEPS), Brussels, p.30.

82 The most recent case that received wide coverage in the media was the visa application by Cengiz Solakoglu, the CEO of the largest Turkish holding company and a civil society activist, to enter into Denmark for a cruise trip. Following constant obstacles and extra documentation requests i.e. marriage certificates, Solakoglu finally withdrew his application.

unnoticed by Turkish officials and politicians. The attempts at visa facilitation with the countries of the Eastern neighbourhood, e.g., Russia, Ukraine, and the Western Balkan states, help fuel criticism in Turkey that this treatment is largely unfair considering that, unlike these states, Turkey is negotiating accession and is expected to be fully incorporated into the Schengen regime prior to accession to the EU. In fact, many legal experts and businessmen in Turkey also argue that the 1963 Association Agreement as well as the 1970 Additional Protocol signed between Turkey and the EC does indeed give Turkish businessmen, employers, service providers, etc., the possibility to enjoy the right to free movement, particularly in relation to a recent ruling of the ECJ on the matter.⁸³

One of the main reasons cited for the lack of progress on the visa front is the ongoing dispute over the signing of a re-admission agreement between Turkey and the EU. Here too, Turkish officials feel that Turkey is being treated differently from previous candidate states. In the case of other candidate states, these agreements were signed on a bilateral basis with EU member states (and not multilaterally – as in the case of third countries) only after accession talks were officially underway. By then, these states had only partially completed alignment with the EU negative visa list, which only fully took place at a much later stage, but before their accession to the EU. Furthermore, many Turkish officials are concerned with the absence of burden-sharing. They complain that Turkey is basically left to its own devices with the respect to combating irregular migration and to arranging for the return of the illegal migrants to their countries of origin.⁸⁴

Real border and security concerns do not justify existing restrictions and the lack of visa-facilitation talks with Turkey, which are irreconcilable with the common will to live together in a single Europe. Furthermore, they inflict great damage upon the perceptions of Europe upheld in the country. The reflection of the feeling of mistrust and even hostility through a policy felt so profoundly in people's daily lives is only contributing to rising levels of scepticism about Europe within Turkey as yet another blatant expression of the double standard policy applied towards the country.

CONCLUSIONS

The cases presented in the sections above are illustrative of the violations of Europe's own Kantian ideals when it comes to its dealings with Turkey. It contradicts just and ethical premises on which relations should be built and hinders any possibility for a 'cosmopolitan existence' under the rubric of the EU. Such violations also comprise the fuelling dynamics behind the rising feelings of resentment held in Turkey towards the

83 See J. Apap, S. Carrera and K. Kirişçi, "Turkey in the EU Area of Freedom, Security and Justice", EU-Turkey Working Papers, August 2004, Centre for European Policy Studies (CEPS), Brussels.

84 See *Ibid.*

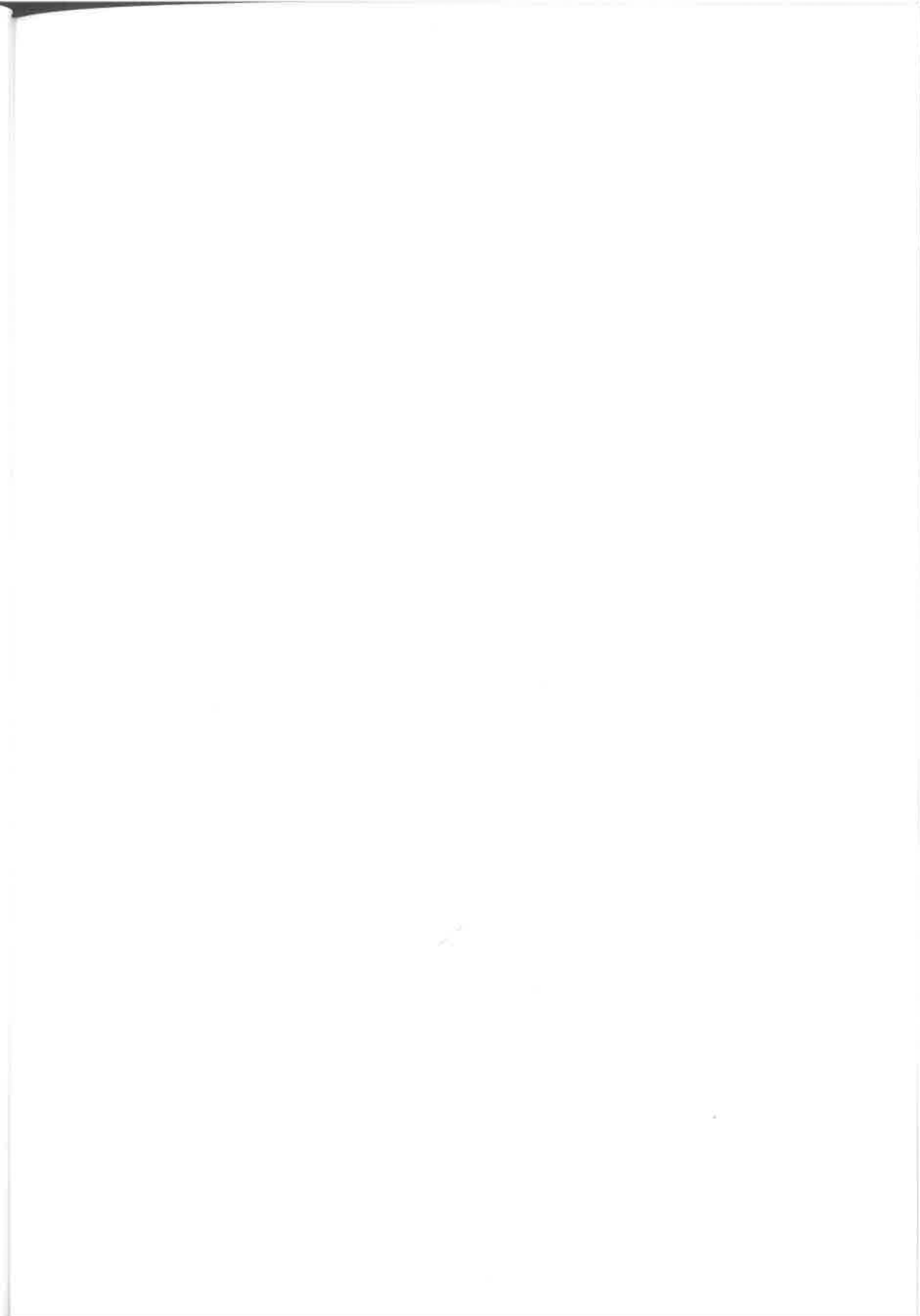
EU. According to a nation-wide study, 61.8 percent of the Turkish population believe that the EU has treated Turkey with double standards, by imposing on Turkey conditions that it has not imposed on the other candidate countries. The same study also suggests that 49.7 percent of the Turkish population does not expect Turkey to become a full member of the Union, even if the country satisfies all the necessary conditions.⁸⁵ Such widely held conceptions have a strong potential not only to hamper the process of accession negotiations but also to seriously endanger the success of enlargement policy via weakening the credibility of EU conditionality which has proven crucial in encouraging democratic transformation in Turkey in recent years.

At the discursive level, mere rhetoric on 'equal treatment' needs to be supplemented by informed, balanced and rationally informed debates on Turkish accession rather than populist argumentation strategies that have so far largely been favoured by many European leaders. At the level of action, decisions on Turkey need to be 'universal' and 'impartial'. The norm of 'universality' implies that the EU should not treat Turkey as a special case, but as one of the candidate countries for full-membership status, whereas the norm of 'impartiality' requires that the EU's distance to Turkey's full-membership should be as equal to its distance to the full-membership of other candidate countries.⁸⁶ Without these foundations on which relations should be based, a country's democratic future as well as the credibility and transformative power of an expanding international institution will remain at peril.

While the record so far is not very promising, all is not yet lost. Turkey is now a negotiating country for accession and despite the decrease in levels of support for EU membership, a majority of the Turkish population still sees its future in the European Union. The challenges for both sides are clear. Turkey needs to speed up its efforts to align with the EU *acquis* while sustaining the momentum of political reform. The EU also faces a double task. Besides preparing the country for accession, it also needs to send the clear message that 'fairness' is the underlying normative foundation for relations between the two sides. This however needs to cover both discourse and action to significantly strengthen the hands of the reformers in Turkey to tilt the fine balance largely in their favour and to sustain the success of the enlargement policy. This is not merely a matter of crucial importance for Turkey, but also for world politics in general. Our extremely dangerous post-September 11th world is in desperate need of a credible European Union that is able to reshape international relations as a democratic space of world governance.

85 Hakan Yılmaz, "Euroscepticism in Turkey: Manifestations at the Elite and Popular Levels", Paper Presented at the Centre for European Policy Studies (CEPS), Brussels, 23 March 2004.

86 See Senem Aydın and E. Fuat Keyman, "Turkey, Democratisation and the Future of Europe" in E. Fuat Keyman (ed.), *Remaking Turkey: Globalisation, Alternative Modernities and Democracy*, Lexington: Oxford, forthcoming in March 2007.





TESEV

Turkey's European Union membership is in the interests of Turkey, the EU, and the global community alike. However, accession seems further away than it did six months ago. The pace of reform has slowed in Turkey, yet the EU's will to encourage Turkey's Europeanization process is less apparent. There is concern from both inside and outside the country that the EU's attitude towards Turkey differs from its attitude towards other candidates. Human rights and democratic governance issues on which Turkey is being rightfully questioned are in fact not fully implemented in certain member states themselves.

This paper argues that the increasingly discriminatory practices towards Turkey violate the Enlightenment principles upon which Europe itself is founded and endanger the formation of a Europe governed by Kantian ideals. Whereas Turkey continues to need the incentives that had driven the unprecedented reform process leading up to the opening of accession talks, the EU is not being helpful by not keeping its promises and applying double standards. The EU needs to send a clear signal to those wishing the accession process to continue in Turkey that it will treat Turkey fairly.

This report is authored by Senem Aydın Düzgüt who is a PhD candidate in political science at the Free University of Brussels (VUB) and an associate research fellow at the Center for European Policy Studies (CEPS), Brussels. Hakan Altınay (Open Society Turkey), Seyla Benhabib (Yale University), Cem Ozdemir (European Parliament) and Jean-François Leguil-Bayart (Sciences Po) have endorsed the report.

