



**The exception within the rule: analysing the impact of the Turkish emergency
legislation on the Kurdish case.**

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The exception within the law: analysing the impact of the Turkish emergency legislation on the Kurdish case.

ABSTRACT

Starting from an historical and anthropological overview, necessary to understand the deep roots of the conflict between Turks and Kurds, the object of this study focuses on why and how the use of the State of Emergency and the related legislation implemented by Turkey, impacted the so-called Kurdish Question. The investigation conducted along this work is aimed at clarifying the consequences related to the Emergency Regulation *phenomenon* in this particular context. The definition of Kurds and Kurdistan raises several matters: Kurds are often considered as the biggest stateless population, a heterogeneous group geographically dislocated with a shared cultural identity. The analysis of the legislation implemented by the Turkish state started after the proclamation of the Republic of Turkey, in 1923: the constant use of the repressive measures can be considered as a reaction to the *Sevrès Paranoia*, the symbol of the Turkish fear of the state territory disintegration. The social changes occurred after the 1960 military *Coup d'Etat* definitely opened to the birth of the PKK and to the political use of the law, legitimized by the new constitution and made concrete by the 1971 Martial Act n. 1402. This juridical system and the collusion between the military and the civilian, brought to the 1980 *Coup d'Etat*, the draft of a new constitution (amended but still in force), the 1983 State of Emergency Law (N.2935) and to the creation of a the OHAL Region: the Kurdish areas since that moment were under the jurisdiction of a special emergency governor, so that making even crueller the PKK reactions. During the 90s the juridical system was reinforced by the adoption of more provisions aimed at limiting the PKK acts, such as the 1991 Law on fight against terrorism Act number 3713. At the end of the 90s occurred a political change that slowly started to modify the Turkish approach towards Kurds: the Turkey candidacy to the EU. Despite the AKP policies, the formal opening of the Turkish government and the weakening of the PKK, the still deep collusion between the military and the institutions is slackening the peace process. Moreover, the integration social path seems to be still limited by years of legitimized repression, mistakes and mistrust which need a long time to overtake the barriers of a common future.

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Introduction.

Starting from an historical and anthropological overview, necessary to understand the deep roots of the conflict between Turks and Kurds, the object of this study focuses on why and how the use of the State of Emergency and the related legislation implemented by Turkey, impacted the so-called Kurdish Question. The analysis of the different laws issued time by time, always taking into consideration the political situation, it has been considered the most effective way to attempt to conduct this investigation and to understand the consequences related to the Emergency Regulation *phenomenon* in this particular context. Many scholars approached the Kurdish Question from the self-determination perspective, others from the PKK and terrorist one. This study developed by the analysis of the Kurds condition within the Turkey state through the legitimize and discriminatory use of the law. Therefore, it has been considered most relevant to start from the law, its meaning and its impact, to define the relational process occurred between the power holders and the people this power has been exerted over. Each law, decree having the force of law and constitutional reform text, is explained by the context that brought it into lights, by the use of Academic sources and IGOs and NGOs reports, both necessary to understand the key points of the use of the State of Emergency.

The relevance both of the Kurdish issue and of this particular research approach to it, can be explained through several political considerations. This specific use of the law is not an isolated case, it has always been a widespread power tool practices to keep control over those parts of the population or those subjects within a country considered *others*, different, a threat to the unity of the state. At the same time, the Emergency Legislation has also been used in order to foster a belonging feeling among the citizens, necessary to obtain a full legitimation for all the other policies implemented by the state. Moreover, what makes relevant to analyse and monitor how Turkey applied the legislative power is its key role in the Middle-East and, at the same time, its strategic position for Europe, both economically and from a eastern borders control perspective. Starting from these considerations, throughout this study will be attempt to give an answer and an explanation to the these issues and conditions.

Chapter One: Kurds and Kurdistan. Definitions.

1.0. Introduction.

A definition of Kurds and Kurdistan raises several questions and problems of different nature. Kurds are often considered as the biggest stateless population, a heterogeneous group geographically dislocated with a shared cultural identity. To understand the reasons that brought into light the existence of the so-called “Kurdish Issue”, in this chapter it will be attempt to give a historical interpretation of the *phenomenon*, starting from the crisis and fall of the Ottoman Empire. At a second stage, will be analysed the constitutive elements of the Kurdish identity, giving a general overview of the political consequences that the internal and external identification process brought to the Kurdish cause in the Middle East.

1.1. Kurdistan: an historical and geographical overview.

Kurdistan is an area strategically located in the Middle East, considered during the Ottoman Empire as the region inhabited by the Kurdish population. The Kurds are generally considered as the largest ethnic group without a nation state. They are approximately 35 million people¹ constituting a significant percentage of the minority population in several countries within the Middle East, such as Turkey, Iran, Iraq, Syria and Azerbaijan, and within different European countries as refugees (e.g. Germany, The Netherland)². To give a geographical and political definition of Kurdistan is not therefore simple at all. Indeed, as Mc Dowall briefly draft in the foreword of his book, *A Modern History of the Kurds*,

The term Kurdistan is controversial. I use it simply to indicate the region where the majority of people are Kurds, not to peddle any particular political views. In the case of

¹ Ozsoy H., 2013, p. 1.

² For a general overview look at Izady M. R. , *Kurds: A Concise Handbook*, Taylor & Francis, 1992; Mc Dowall D., *A Modern History of the Kurds: Third Edition*, I.B.Tauris, 2004; McKiernan, K., *Turkey's war on the Kurds*, Bulletin of the Atomic Scientists, 1999.

Turkey, therefore, it means the same as the euphemistic 'East' or 'South East', in the case of Iran it implies more than the province of Kurdistan (except where that is clearly the sense) to include the Kurdish parts of West Azarbaijan and Kirmanshah, and in Iraq it means more than the autonomous region³.

Through history, Kurds never existed as an independent community, their struggles and demands have been different depending on which country they dealt with and in which historical period, even though their condition in one territory influenced the Kurds situation in the others. To simplify the complex history of Kurdistan, it can be easily stated that the Kurdish population has been under many different authorities and rulers, among others the Sassanian Empire, Safavid Empire, the Ottoman Empire and Turkey. It is of interest hereby to take especially into account the historical development of the so-called “Kurdish issue” starting from the late Ottoman period and the Turkish path toward the creation of an independent republic, above all because

[...] the transformation of the Kurds into a “problem” occurred gradually in the course of the dismantling of the Ottoman Empire and the rise of several nation-states on its ruins⁴.

The Ottoman Empire differed from the nation-states for what concerns the relation with the subjects under its jurisdiction: individuals were not classified through their ethnic origin but rather according to their religious belonging, the differentiation was between Muslims and not-Muslims⁵, and Kurds were considered part of the Muslim community and enjoyed a significant degree of autonomy. Despite that, at the end of the nineteenth century and in the early twentieth, in conjunction with the crisis of the Empire, started a process of nationalization of the territory which led to a reconfiguration of power among the subjects, especially toward the people living in Anatolia and Mesopotamia.

The turning point occurred immediately after the end of the First World War:

³ Mc Dowall D., *Op. Cit.*, 2004, p. XII.

⁴ Ozsoy H., *Op. Cit.*, 2013, p. 2.

⁵ As Celick wrote: “[...]Kurds, who had lived in the Ottoman domains since the sixteenth century, were recognized as part of the Muslim community, along with Arabs, Turks, Albanians, etc.” Çelik A.B., 2012., p. 242.

Kurds were Turks's allies⁶, they could not avoid the political subjection and the *status quo* defined by the colonial powers, such as France and Britain, which created a deep change on the territorial organization of Kurdistan. It was, indeed, previously divided in two parts, one ruled by the Ottomans and the other one by the Safavids of Iran. Than its geography was divided in four parts (current borders of Turkey, Syria, Iran, Iraq), all governed by the colonial countries⁷. According to what said above, the map of Middle East was redrawn and the *Sykes-Picot Agreement*⁸ defined the Ottoman's Empire organization during the War. The harsh impact of this agreement on Kurdistan was clear just for few Kurds worried about the European strategies direct at dividing them. The British considered Kurdistan as a secondary issue compared to areas of major interest, such as Syria and Mesopotamian area. Nevertheless, the strategic position of Kurdistan in Mesopotamia and its natural resources were the only reasons that made the British to reconsider the Kurds's future.

Kurds main economic activity, in fact, was stockbreeding: they provided the meat for Anatolia, Syria and Mesopotamia selling their flocks in the main cities of the area. In addition, another relevant economic reason that made Kurdistan interesting to the European countries was the significant presence of oil and water resources. Moreover, the situation within Kurds themselves was involuntarily supporting the western plans over the Mesopotamian area. There were, in fact, different political ways of thinking, often intermingled: the pro-Turkish one, the pro-Allies one and pro-independence one. The rapid changing of the events contributed in dissolving many Kurdish hopes.

⁶ It is necessary to sketch the relationship between Kurds and Turkey with regard to the Armenian situation and the Russian interests during the First World War period. *"Inside Ottoman borders the Turks had been preparing themselves for the Russian onslaught in spring 1915. Essential to that preparation was the removal of all those potentially forces, in short the Armenian and other major Christian communities of the region. [...] The Armenians of Van came under siege by the Kurds after those in surrounding villages had been massacred. On 30 of May Muslims, which in practice broadly meant Turks and Kurds in the towns and Kurds in the countryside, were formally allowed to take over 'abandoned' Armenian property. Over the next twelve months or so, about one million Armenians perished"*. A solidarity movement between Armenians and Kurds never materialized, mainly because Kurdish people felt weak and threatened by the Christian neighbour countries so, even though they were reluctant to the idea to serve in the Ottoman army, they enrolled themselves because *"most Kurds involved in the massacres probably felt it was a question of 'them or us' "*. Mc Dowall D., *Op. Cit.*, 2004, pp. 103 and ss.

⁷ Kurdistan were divided in four parts, mainly corresponding with the current borders of Turkey, Syria, Iran and Iraq. Ozsoy H., *Ibidem*.

⁸ Concluded in May 1916, the Sikes-Picot Agreement was a secret agreement between France and Britain aim at defining the territorial control in the Middle East and to defeat definitely the Ottoman Empire.

In May 1919 Greece and Italy landed in Turkey hoping to get its part of the *Sykes-Picot* Agreement loots, threatening the Muslim population of Anatolia and forcing Kurds into an alliance with Turks in the name of a pan-Islamic solidarity. In addition, it was a Turkish aim to provoke the Kurds fear about the Christian danger⁹. At the same time, while Greeks and Italians were conquering parts of Anatolia and the Allies were talking about the reconstruction of Armenia, the Kurdish independence was becoming more and more a faded dream. In the meantime Sharif Pasha¹⁰, contacted the chief political officer of the British forces in Mesopotamia and proposed him an agreement on the behalf of the Kurds's interests: Sharif Pasha's idea was to create an unique relationship of collaboration between Britain and Kurdistan. Basically, he proposed to the British to guarantee autonomy to the southern Kurds under their protection conferring them, in return, the control of the finances and to assist the population in the administration of the country¹¹. Sharif Pasha also recommended to the British to create in London a committee of Kurdish and Armenian representatives, to counter-act the Turkish policy of fostering hatred between the two populations in order to gain the control of the area. Even though the committee proposed by Sharif Pasha never materialized, he was chosen to represent the interests of Kurdistan in the Paris Peace Conference, the meeting of Allied victors of the First World War. For the first time the request of an independent Kurdish state was on the negotiations table. Whereas Sharif Pasha was pleading in Paris his willing to become the *Amir* of an independent Kurdistan, it was clear that other matters had to be taken into consideration.

The idea of an independent Kurdish state had been mooted point before: in 1918 Iran's Kurdish chiefs had been already discussing on this issue, on the idea of an

⁹ Mc Dowall D., *Op. Cit*, 2004, p. 126.

¹⁰ "Sharif Pasha(General Muhammad, 1965-1951) was a member of the Baban family in what is now northern Iraq and a cosmopolitan Kurdish leader during the final years of the Ottoman Empire. A former Ottoman envoy to Sweden and a member of the first Kurdish **nationalist** organization that appeared in Istanbul early in the 20th century, Sharif Pasha lacked serious contacts in Kurdistan. He also was a supporter of the deposed sultan Abdul Hamid II and as a result had to flee the country after he was sentenced to death following the abortive countercoup of April 1909 against the Committee for Union and Progress. At the beginning of World War I, Sharif Pasha offered his services to Great Britain in Mesopotamia but was turned down. He retired to his luxurious villa in southern France. In May 1919, he offered to become Mir of an independent Kurdistan, but given his lack of a constituency there, the British again rejected his proposal". Gunther M.M., *Historical dictionary of the Kurds*, in urds_history.enacademic.com, assessed on the 27th of May 2013.

¹¹ Jwaideh W., 2006, p. 129.

independent Kurdistan cooperating with the British and under their protection, but the idea was destroyed by Arnold Wilson during his visit in Sulaymaniya. With these premises and Sharif Pasha weakly supported, it was hard to believe that the diplomatic conference would have led to the creation of a united Kurdistan¹². Despite that and even though many disappointing condition arose, the diplomatic abilities of Sharif Pasha brought to the recognition of the national aspirations of the Kurds in the *Treaty of Sèvres*, signed in 1920. This achievement can be explained as a consequence of different historical factors, on one hand the above-mentioned efforts made by the Kurds, on the other hand it has to be reminded the unsettled situation within Turkey.

In 1919, in fact, a radical revolution started in Turkey under the leadership of Mustapha Kemal Pasha, aimed at creating, in place of the Ottoman Empire, a Turkish nation for Turkish people in a homogeneous and secure territory¹³. This goal, if achieved, would have probably put into danger the Kurdish population. The *Treaty of Sèvres*, although ended up in a failure, in many scholars¹⁴ opinions represents the first real step toward the creation of an independent Kurdistan whereas, for others, it was, at the end, just a piece of the Kemalist puzzle, aimed at the creation of a national discourse on the internal and external dangers and enemies of the Turkish state¹⁵. Considering the *Treaty of Sèvres* as a milestone in the history and struggle for independence of Kurdistan, it is of interest to mention the relevant part of the document that dealt with the Kurds's issue. Article 62 of the Treaty drafted the geographical borders of Kurdistan across the east of the Euphrates, the south of the southern boundary of Armenia and the north of the frontier of Turkey with Syria and Mesopotamia; a commission sitting in Constantinople was designed to guarantee the implementation of this agreement¹⁶.

¹² Mc Dowall D., *Op. Cit.*, 2004, p. 123.

¹³ It will be told later about. Stedman B., *The Republic of Turkey*, The Virginia Law Register, Vol. 12, 1928, p. 726.

¹⁴ *Ex multis* Loizides N.G., *State ideology and the Kurds in Turkey*, Middle Eastern Studies, Vol. 46, No. 4, 513–527, July 2010; Mc Dowall D., *Op. Cit.*, 2004.

¹⁵ “*The 1920 Sevres Treaty, which constitutes the Kemalist state discourse to identify internal and external enemies, created 'local autonomy for the land where the Kurd element predominates'. Although never put into practice, the Sevres Treaty remains in the collective memory of the Turkish state. Fear of partition still haunts Turkish society and breeds continuing suspicion of foreigners and their sinister domestic collaborators*”. Yavuz M.H., 2001, p. 6.

¹⁶ Article 62 states: “*A Commission sitting at Constantinople and composed of three members appointed by the British, French and Italian Governments respectively shall draft within six months from the coming into force of the present Treaty a scheme of local autonomy for the predominantly Kurdish areas*”.

Although in the document was clear the formal willing to set the basic structure for the creation of an independent Kurdistan, in Article 64 it can be found a relevant political condition, a perilous objection on the path for the concretization of the Kurdish political process, above all considering the changeable political situation of the area after the Ottoman Empire's fall. The norm, in fact, established that within one year the Kurdish could have been going to the Council of the League of Nation proving that the majority of the population desired the independence. An independent state had to be grant only after a Council evaluation of the Kurds capability to keep the control over the territory established by Article 62¹⁷. The political situation within Turkey and the Middle East area during those years made impossible the realization of the contents of the *Treaty of Sèvres*, quickly replaced by the *Treaty of Lausanne*, signed in 1923. Despite his failure due to the Turkish revolution of those years, which culminated in the proclamation of the Republic of Turkey in 1923, the *Treaty of Sèvres* recognized for the first time the ethnic distinct existence of Kurds and their geographical allocation.

However, the Treaty never provided an unified Kurdistan, the document focused on its independence drawing an hypothetical geographical border not considering the political obstacle due to the fact that the different areas of Kurdistan were part of other countries, not only Turkey, which would have unlikely accepted a partition of their territories. Furthermore, the documents that shaped the legal basis of the new Republic of Turkey never took into account the possibility to recognize Kurds or other Muslim groups as autonomous population: only non-Muslim, such as Greeks, Armenians and Jews, were considered as minorities. Even though the *Treaty of Lausanne* replaced the

lying east of the Euphrates, south of the Southern boundary of Armenia as it may be hereafter determined, and north of the frontier of Turkey with Syria and Mesopotamia, as defined in Article 27, II (2) and (3). If unanimity cannot be secured on any question, it will be referred by the members of the Commission to their respective Governments. The scheme shall contain full safeguards for the protection of the Assyro-Chaldeans and other racial or religious minorities within these areas, and with this object a Commission composed of British, French, Italian, Persian and Kurdish representatives shall visit the spot to examine and decide what rectifications, if any, should be made in the Turkish frontier where, under the provisions of the present Treaty, that frontier coincides with that of Persia". World War I Document Archive in www.lib.byu.edu (consulted on the 29th of May 20013).

¹⁷ "If within one year from the coming into force of the present Treaty the Kurdish peoples within the areas defined in Article 62 shall address themselves to the Council of the League of Nations in such a manner as to show that a majority of the population of these areas desires independence from Turkey, and if the Council then considers that these peoples are capable of such independence and recommends that it should be granted to them, Turkey hereby agrees to execute such a recommendation, and to renounce all rights and title over these areas". *Ibidem*.

Treaty of Sèvres creating a unified Turkey, always lasted a generalized fear that the country could be divided, also known as *Sèvres Paranoia*¹⁸. The challenge faced against external powers for the state territorial integrity and the implementation of local autonomies in the Kurdish areas, deeply affected the development of the Turkish policies toward Kurds and harshly influenced the evolution of the conflict that, at a later stage, arose between Kurds and Turks. The “Kurdish issue”, as it will be called since on, finds deeply its origins in the above described transformation period: the centralization process and the birth of the Turkish nation state based on the uniformity of culture, identity, territory (that is to say sovereignty) as a consequence of the Ottoman Empire’s fall, set a broken ground for the Kurds’ s cause.

1.2. The Kurds: a construction of identity?

In order to understand the origins of the already mentioned “Kurdish issue” and its consequences in the Kurdish political and social history, it is necessary to try to deepen their distinctive features. In the anthropological literature an ethnic group is described as a population that is characterized by the same identity, culture, history, structure of the society and that distinguished itself from the others in a generally mutual and relational interaction¹⁹. Although a *stricto sensu* anthropological perspective is not object of this study, the above-mentioned guidelines will be used to understand the peculiarities of the Kurdish population.

Even though a common Kurdish consciousness exists, the Kurds’s geographical allocation in different countries (as it has been said Turkey, Syria, Iran, Iraq) is unavoidably the first key factor that makes difficult to define them as a homogeneous

¹⁸ Çelik A.B., *Op.Cit.*, LLC 2012., p. 244.

¹⁹ Friedrik Barth in his book *Ethnic Groups and Boundaries* states that the term ethnic group is used to designate a population which is “*largely biologically self-perpetuating; shared fundamental cultural values, realized in overt unity in cultural forms; makes up a field of communication and interaction; has a membership which identifies itself and id identified by others, as constituting a category distinguishable from other categories of the same order*”. In his opinion, anyway, culture has a central importance. Bath F., p. 10. It is also of interest to compare the definition of ethnic unit given by Roul Narrol, who says: “*we have at least six criteria proposed for defining whole societies, or other units of comparison: distribution of particular traits being studied, territorial contiguity, political organization, language, ecological adjustment, local community structure*”. Narrol R.,1964, pp. 283-312.

group. An obvious remark is that in every country they speak different dialects²⁰, influenced by the main language spoken in the area they live in, also as a consequence of the assimilation process with the national communities. The linguistic factor can be considered as a relevant connector in order to define if a subject is either or not member of an ethnic group. Moreover, Kurdistan is a geographical region characterized by *forbidding mountains*²¹, partially isolated, harsh to reach: this conformation inevitably influenced the structure of the society. The population was usually organized in tribes and clans in whom the tribal chiefs and the religious authorities²² held the power and had the chance to create close communities acting collectively. These close structures contributed to the formation and development of a separate language. At the same time, the differentiation based on the linguistic factor was not always enough: sometimes the Kurdish was not taught because people were afraid of the hegemonic power of national authorities of the country in which the Kurds represented a minority, sometimes because of the process of assimilation within the national community. Therefore, a Kurd often would define him/herself either on the basis of the parents's place of birth or at the end of a process of self-identification²³. This is the case, for instance, of what happened in Turkey since the beginning of the Republican period. The Kurds were the largest non-Turkish speaking minority²⁴ and bilingualism was not tolerated: Turks carried on a campaign of eradication of minority languages both in the public and in the private sphere as a response of the *Sèvres Paranoia*, the fear of the dissolution of the Republic.

²⁰ “[...] *the northern version, commonly called Kirmanji, is spoken in Turkey, Syria, and the northern part of the Kurdish-speaking areas of Iraq and Iran. The central version, commonly called Sorani, is spoken in western Iran and much of Iraqi Kurdistan. The Southern Kurdish dialects, and Hewrami or Auramani (Gorani) are spoken by few, especially in Iran*”. Çelik A.B., *Op.Cit.*, LLC 2012., p. 243.

²¹ Van Bruinessen M., *Agha, Shaikh and State: the social and political structures of Kurdistan*, London Zed Books Ltd, 1992, p. 11.

²² On this point, Aslan reports that “*State rulers perceived the strong authority of local leaders such as religious sheikhs and tribal chiefs over the population as an indication of backwardness and a challenge to the state's power*”. Aslan S., *Everyday forms of state power and the Kurds in the early Turkish Republic* in *Int. J. Middle East Stud.* **43**, 2011, p. 78.

²³ Çelik A.B., *Op.Cit.*, LLC 2012., p. 243.

²⁴ “*According to the 1927 census, 1,184,446 people out of a total population in Turkey of 13,629,488 declared their mother tongue as Kurdish. In 1935, the number of Kurdish speakers had increased to 1,430,246 out of 16,157,450 people. Around 70 percent of the Kurdish speakers did not know Turkish, and around 75 percent of them lived in the eastern and south-eastern provinces of Turkey. In eight provinces—Diyarbakır, Elazığ, Bitlis, Beyazıt, Mardin, Siirt, Van, and Hakkari—Kurdish speakers constituted a majority.19 Such a high proportion of non-Turkish speakers created serious concern among state elites.*” Aslan S., *Op. Cit.*, 2011, p. 79

The language, as a distinguishing factor of belonging to a specific ethnic group, threatened the Turks because of its power to foster nationalistic aspirations of self-determination.

The cultural and religious element also has to be taken into consideration in order to understand the nature of the Kurdish population. The religion is a Kurds distinguishing element in relation to their neighbours: the majority of Kurds are orthodox, Sunni Muslim and they follow the Shafi rite. The majority of the Turks and Arabs living in the southern borders of Kurdistan are Sunni Muslims, while there is another part of the Turks and the Persians which are Shiites, moreover, a relevant percentage of the Kurds living in the south of the region are orthodox²⁵. In addition to the orthodox Shiite and Sunni, a lot of Kurds follow different syncretistic cults (e.g. Sufism), often of not of strict Islamic matrix. Considering the multiplicity of professed creeds, there are two elements of interest to understand and define the Kurdish population. The religious factor from the point of view of the analysis of the Kurds as an ethnic group reveals that there is not a homogeneous belief system among the different tribes, there is not a common religious core. In addition, it can be observed that, as a consequence of this *scenario*, the bond between Islam and Kurdish nationalism never developed as it happened, for instance, for the Turks. In fact, it can be seen a form of opposition between the two populations on this point:

Islam has always played an important role in the vernacularization of Turkish nationalism, and the nationalists, in turn, redefined Islam as an integral part of national identity. Turkish nationalism is essentially based on the cosmology of Islam and its conception of community. Although Turkey is a national and secular state, religion lies at the core of its identity debate and political landscape.²⁶

This element brought to a further situation: the threats suffered by their Muslim neighbours had a crumbling effect on the Kurdish group; it was one of the elements that caused them to migrate and, thus, to mingle with different national communities. It can be asserted that the religious element concurred in the development of a disaggregating

²⁵ Van Bruinessen M., 1992, p. 23.

²⁶ Yavuz M.H., , 2001, pp. 5-6.

process instead an aggregating one. These considerations do not facilitate the construction of a uniform definition of Kurds as a distinguished ethnic group.

Talking about another factor in order to define if the Kurds can be considered or not an ethnic group, their geographical *diaspora* unavoidably affected the construction of a common historical path between the Kurdish communities living in different areas of Kurdistan. The fall of the Ottoman Empire and its *Millet system*²⁷ brought several consequences for the Kurds living in Iraq, Iran, Syria and Turkey.

Immediately after the end of the Ottoman period, the Kurds in Iraq revolted after realising there were no possibilities to them in being part of the Arab Iraq²⁸. From that moment started a long period of struggle for the autonomy of the region, failed for decades. The oppressive situation of Iraqi Kurds just arose during the Gulf War when the US government encouraged a popular uprising against the regime. In that circumstance the “Kurdish Issue” was mentioned for the first time in a resolution of the United Nations Security Council, N.668 of 1991. Thanks to the intervention of the international community and the normative framework emerged after the adoption of the new Constitution, the Iraqi Kurds gained a relevant degree of autonomy and political relevance. In 2005 was even elected a Kurdish President of the Republic.²⁹ It is questionable if the Iraqi Kurds would give up to their domestic achievements in the name of the creation of a transnational Kurdish region.

In Iran the recent historical-political development is slightly different. Also in Iran there was an uprising attempt, initially ended up in the 1946 with the proclamation of the first Kurdish Republic, the *Mahabad Republic*³⁰. Since the failure of this attempt

²⁷ During the Ottoman Empire the *Millet system* was a method to govern religious minorities. The leader of each millet (national, religious community) supported the sultan in exchange of power, protection and self-government.

²⁸ Ali H., 2011, p. 7.

²⁹ As Ali states: “*The Kurdistan Regional Government currently administers much of the Kurdish areas of Iraq and the Kurdish Parliament exercises considerable legislative powers. Iraqi Kurdistan post- 2003 is a constitutionally recognised federal region within Iraq and it enjoys broad international diplomatic relations. The Kurds have also actively participated in the country-wide Iraqi politics, so much so that for the first time in the history of Iraq a Kurd was elected president of the Republic in 2005*”. *Ibidem*, p.8.

³⁰ “*Also known as the Democratic Republic of Kurdistan, the Mahabad Republic of Kurdistan in northwestern Iran was a rump Kurdish state that was proclaimed on 22 January 1946, received considerable aid from the Soviet Union, but collapsed by December 1946. Its much revered leader Oazi Muhammad was hanged on 31 March 1947, and the Kurdistan Democratic Party he headed virtually ceased to exist*”. Gunther M.M., Historical Dictionary of the Kurds, http://kurds_history.enacademic.com,

after only one year, the Iranian Kurds suffered a policy of oppression and discrimination, often accused of being members of separatist organizations, prohibited by the Iranian Criminal Code.

The Syrian Kurds did not face a better political development of their condition. They were never recognized as a minority group, so that they experienced a continuative process of forced assimilation and denial of internal self-determination. Moreover, they are not even recognized as citizens of the Syrian State, they are stateless people within a national state that denies them the right to have a nationality.

The situation of the Turkish Kurds after the *Treaty of Lausanne* in 1923 will be later analysed, however, the period immediately after the ratification of the *Treaty of Sèvres* and the end of the Ottoman Empire gave birth to a deep *dilemma*, still existing among the different groups of Kurds living within the Turkish territory. In fact, until now, there are Kurds for whom their ethnic and national identity is less important than their modern state identity because of their political and economical interests. For another part of the Kurds, the issue of the ethnic belonging arise a question of identity and loyalty. For this reason the goal they want to achieve is the complete separation from Turkey and the ethnic independence,

These divisions have not disappeared and remain important. The first category, which claims membership of a wider whole, may still be found in state capitals and in the countryside - 'traitors' or 'collaborators', as they are frequently described among those who insist that ethnic difference demands political autonomy or independence³¹.

It is possible to outline some general considerations once it has been given a definition of minority or ethnic group on the base of a simple relational dichotomy based on the idea of the coexistent presence of two elements: the external perception of the group and the internal one. The Kurds can be described as a heterogeneous group with a common cultural background, but different languages, religions and historical paths³². In the attempt of defining them, it can be asserted that the relevant element is a strong idea of self-identification in the group. In addition to the internal factor, is that to

(consulted on the 7th of June 2013).

³¹ Mc Dowell, *Op. Cit.*, p. 92.

³² Çelik A.B., *Op.Cit.*, LLC 2012., p. 241.

say their self perception, there is a second aspect which contributed in the creation of the identity, the perspective of the hegemonic national communities the Kurds dealt with in the different parts of the Kurdish region. In fact, in countries such as Turkey, a harsh political *othering* process reinforced the element of self-identification in the group. The point is to understand how, after the idea of self-determination became weaker, can be faced a right of self-governing for a population who is systematically oppressed on the base of its identity elements. Therefore, two main demands appear to connect all the Kurds through the Middle East: the first is the end of the forced political assimilation and repression, the second is the recognition of their right to rule themselves.

It has been considered fundamental to define what the Kurdish population is characterized by and the political steps that brought to the birth of the Turkish state, to understand, in the next chapters, why and how these peculiar conditions deeply influenced their relation and, consequentially, the development of the conflict, mainly characterized by the implementation of the State of Emergency rules in Turkey and the consequent Kurdish answer to it.

Chapter two: From the 1960 *Coup d'Etat* to the secularization of the Kurdish question through socialism.

2.0. Introduction

In this chapter will be analysed the evolution of the conflict between Turks and Kurds and the origins of the two main aspects that will characterize it: the enactment of the State of Emergency by the Turkish state and the central role of the revolutionary movements, especially the PKK, directed to object the forced centralization policies.

2.1. The 1960 *Coup d'Etat* and the new Constitution.

Before turning to the developments post 1960, that would have deeply influenced the whole development of the relationship between Turks and Kurds, it is relevant to give a brief overview of the period immediately following the proclamation of the Turkish Republic, in order to better understand the reasons that would have brought to the consolidation of tensions originated by on one hand, the harsh repressive emergency policies of the Turkish State and, on the other hand, by the different Kurds's acts of resistance.

After the proclamation of the Republic in 1923, Ataturk carried out an intensive program of centralization aimed at creating a homogeneous nation to exert direct control over the state territory. This process implicated the creation of a common history, a common social contest, based on the same language, culture and religion in order to create new national subjects³³. As a matter of fact this objectives were strongly conducted in those areas of the country where largest linguistic minorities were living, considered as areas of potential dissidence,

Kurds constituted the largest non-Turkish-speaking minority in the country. According to the 1927 census, 1,184,446 people out of a total population in Turkey of 13,629,488

³³ Aslan S., 2011, 78.

declared their mother tongue as Kurdish. In 1935, the number of Kurdish speakers had increased to 1,430,246 out of 16,157,450 people. Around 70 percent of the Kurdish speakers did not know Turkish, and around 75 percent of them lived in the eastern and south-eastern provinces of Turkey. In eight provinces—Diyarbakır, Elazığ, Bitlis, Beyazıt, Mardin, Siirt, Van, and Hakkari—Kurdish speakers constituted a majority. Such a high proportion of non-Turkish speakers created serious concern among state elites³⁴.

The concerns of the *elite* of the country became quickly the constant political approach toward the Kurdish population, thus started a forced Turkification process that, on one hand, imposed the Turkish language on all the non-Turkish speaking areas and, on the other hand, implicated the purification of the language from all the foreign influences, so that creating a radical rupture with the Ottoman Empire and the *Millet System*. The practice of forced assimilation implemented by the new government responded to the fear of losing again parts of territory since, for instance, in the Euphrates regions the number of Kurds was at least four times larger than the number of Turkish.³⁵ These data persuaded the government to take the necessary measures to contain the Kurdish population and, as a reaction, in 1925 Kurds, headed by Sheik Said, rebelled against the Turkish Republic³⁶. After couple of months the rebellion was suppressed by the state but the tensions between Turks and Kurds were just at the beginning. The strong political position of the Turkish government started to develop immediately after the proclamation of the Republic and lasts until nowadays. There is a clear connection between Kemalism and what Edward Said defined as Orientalism: there is a sharp correlation between

Orientalism and Kemalism within the framework of the Turkish nation-building project, in which a Westernised elite exalted homogenous nation-state-hood as the criteria for “Westernness”, in the process othering the ethno-religious diversity of the country as defining “Orientalness”.³⁷

³⁴ *Ibidem*.

³⁵ Yegen M., 2009, p. 600.

³⁶ Olson R., 1989 and Van Bruinessen M., 1994.

³⁷ Zeydanlioglu W, available at welat.zeydanlioglu.googlepages.com (consulted on the 8th of June 2013).

The above described othering process was necessary to justify all the further policies engaged by the Turkish state toward the Kurds, an *anti-Kurdish Hysteria*³⁸ that explain the dynamics which existed between Kurds and Turks also after the *Coup d'Etat* of the 1960 and lasted for the following years. The period following the Second World War it is of interest to understand because of the consequences it brought to development of the Kurdish Question in relation with the Turkish state and to the implementation of the consequent harsh repressive measures carried out by the latter. At that time Ismet Inonu, considered as the trustworthiest collaborator of Ataturk, ruled Turkey. According to the Kemalist ideas of secularization of the State, Inonu started an opening process toward the Western countries, aimed at reinforcing the Turkey relation with the western model of democratic society. In doing so, he slackened his authoritarian regime and allowed the creation of opposition political party, the Democratic Party (DP). This passage is relevant for the historical and political effects that it had on the organization of the whole state and, as a consequence, on the Kurdish population³⁹. During the 50s the opposition party influence in the political scene became hard to contain, the single party era came to an end and the power was regularly transferred. If the previous strict state control made impossible for the Kurds to rebel against the Turkish hegemony, above all after the failure of the rebellion period occurred during the first two decades of the Turkish Republic, the new political situation did not really change the Kurdish situation. The Kurds, in fact, voted for the Democratic Party, hoping it would have helped their political struggle, but the Democrats mainly ignored the Kurdish demands⁴⁰ and, on the contrary, they persecuted some Kurdish intellectuals who were involved in the resistance to the policies of the state. Because of the situation just described, the Kurdish opposition at the end of the 50s barely existed.

The political condition of the 60s settled the ground for a period of relevant transformation within the Turkish state and for the Kurds; the military intervention in

³⁸ *Ibidem*.

³⁹ Barkey H.J., Graham E.F., 1997, p. 64.

⁴⁰ Barkley, in fact, states: "Despite some symbolic attempts to deal with Kurdish demands, such as the prosecution of General Mustafa Muglali who, in 1943, had had 33 Kurds executed in cold blood, the DP largely ignored the Kurdish question". *Idem*, p. 65.

the 1960 and the consequential *Coup d'Etat*, gave birth to a new Constitution. The guidelines of the new political tendency were already drafted in the Preamble of the constitutional text. The spirit of the document was strictly related to the transition period, the first lines, indeed, focused on the right of the Turkish population to *resist the oppression of political power*⁴¹. The central part of the preamble can be read as the key to understand the relationship that took place toward the Kurdish population in the year immediately following the *Coup d'Etat*. The text, in fact, reports a clear idea of how the new Turkish state should have been

[...] the Turkish nation, prompted and inspired by the spirit of the Turkish nationalism, which unites all individuals, be it in fate, pride or distress, in a common bond, as an indivisible whole, around national consciousness and aspirations, and which has as its aim always to exalt our nation in a spirit of national unity[...]⁴².

On one hand, the spirit of the Preamble should be kept in mind to understand the development of the Kurdish situation of those years, on the other hand the new Constitution focused around a process of liberalization that involved not only the economical aspects but also the protection of several fundamental rights, such as the freedom of expression, freedom of the press and the freedom of association⁴³. The two souls of the document led to an unbalanced condition for the Kurds.

Whereas the rights protected encouraged the above-mentioned freedoms and allowed, for instance, the publication of the first Kurdish journal at the beginning of the 60s, the ruling authority, in respect of the spirit of unity of the Turkish nation, imposed a strict control over the areas inhabited by the Kurdish population, also involving a process aimed at replacing, in different locations, Kurdish names with Turkish ones⁴⁴.

⁴¹ The sentence continues: “[...] *political power which had deteriorated into a state of illegitimacy through behaviours and actions contrary to the rule of law and the constitution[...]*”. Turkey Constitution of 1961 in Islamic Studies Vol. 2, N.4, pp. 467-519, assessed on the 15th of June 2013.

⁴² Preamble of the Turkish Constitution of 1961, *Ibidem*.

⁴³ *Cfr.* Section IV of the Constitution, titled “*Rights and Freedoms of thoughts and beliefs*”; Section VI “*Provisions governing the press and publication*”.. *Ibidem*.

⁴⁴ As Celik says: “*By Law No.1587, the National Unity Committee, which for a while took over the administration after the 1960 coup d'état, started to replace Kurdish place names with Turkish ones, claiming that names which hurt public opinion are not suitable for national culture, moral values,*

Despite of the great restrictions supported by the Kurds, the new liberal environment gave them the possibility to start a legal opposition either in associations either in political parties, such as *the Workers's Party of Turkey* (WPT).

Thanks to the freedoms granted by Constitution, several intellectuals gathered around these political organisations and started a process of secularization of the Kurdish identity⁴⁵, which quickly commingled with socialist ideas and self-determination ideals, unavoidably creating a climate of tension in the authoritarian and centralizing Turkish state⁴⁶.

2.2. The 1971 Martial Act (n. 1402) and the arise of left Kurdish political parties and movements.

In the 1971 the Turkish government ruling at that time issued a law, the Martial Act number 1402, so that settling a political system which would have had several consequences in the development of the Kurds-Turks conflict since on the 80s. It is relevant to understand not only the content of this Act, but also the political environment that gave birth to it. As it has been said, the *Coup d'Etat* of the 1960 and the following Constitution brought different changes either to the Turkish society either to the Kurdish condition. The foundation of the already mentioned WPT had an interesting part in this historical scene. In fact, depending on the geographical areas and parts of the society, the effects of the Workers's Party of Turkey were different.

In the main cities, the party mainly focused on the Marxistic discourse of the class conflict and the struggle against the exploitation of the capitalistic economical system.

traditions, and customs. Thus, the 1960s both created some liberties and led to greater restrictions on Kurdish rights". Celik, A.B., Op. Cit., p. 246.

⁴⁵ Yavuz reports: "*The secularization and transformation of Kurdish identity took place within the broader leftist movement in Turkey in the 1960s and 1970s. This secularization of Kurdish identity took place as a result of interaction with socialist ideology. Alevi Kurds played a critical role in this process of secularization. With the spread of universal education and the socio-political liberalization as a result of the 1961 Constitution, new modern intellectuals rather than tribal and religious leaders started to shape Kurdish identity. Under the 1961 Constitution, Kurdish intellectuals expressed Kurdish concern and grievances in socialist idioms to promote the self determination of the Kurds*". Yavuz M.H., 2001, p. 9

⁴⁶ The central role of the idea Turkishness in this period can be easily explained through Article 66 of the Consitution: "Everyone who is tied to the Turkish State through citizenship ties is Turkish". In *Islamic Studies* Vol. 2, N.4, pp. 467-519, (consulted on the 15th of June 2013).

In the peripheral areas of the country, the WPT moved a step forward and started to argue also about the emancipation from the chains of the feudalism and about the liberation of the people. The two barely different points of view were shaped on the heterogenic characteristics and demands of the population, however the common argument was the necessity to change the society: in the cities because of the exploitative scope of the institutions, in the external areas because of the oppressive measures adopted by the government, above all toward minorities. It is enough to say that the word “Kurdishness” has never been pronounced by any of the political parties before the second part of the 60s⁴⁷.

The leader of the WPT, Aybar, in order to broaden the socialist ideals underlying the party, especially to the Kurds, switched his political argumentation from the ‘class struggle’ to ‘human freedom’⁴⁸. Therefore, at the end of the 60s, the Kurdish issue started to become a question of economic and social inequality that had to be solved through socialism, not safe from manipulations of these parties whose aim was using the ethnic question to challenge the dominant governmental powers and to gain votes⁴⁹. In fact, even though it is significant, with regard with the Kurdish issue, that the WTP was the first legal party recognizing the Kurds existence in Turkey, it barely succeed in persuading completely the Kurds, who thought the WTP was anyway too connected with the Turkish instances. On the other hand, however, it became usual for the Turkish leftist movements to expand their base prizing the Kurdish situation.

Thanks to the increased consciousness mingled with the political influence of the socialist ideas spread in the areas, in the 1969 the Revolutionary Cultural Society of the East (DDKO) was established. The organization built relations with students’ movements and uprisings in Istanbul and Ankara in the name of social justice; in the 1970 Abdullah Ocalan took part in the DDKO activities⁵⁰.

⁴⁷ Celik, A.B., *Op. Cit.*, p. 247; *Cfr* also Samim, A., 1987.

⁴⁸ Samimi, *Op. Cit.*, p.158.

⁴⁹ As Yavuz states: “*At its Fourth National Congress, the Labour Party of Turkey, passed a resolution which said 'there is a Kurdish people in the East of Turkey.'* The goal of this statement was to carve a socialist base for the Labour Party by using the ethnic card. In the 1970s, leftist groups and identities were used to challenge the 'central political authority' in Ankara. Criticism of the centre was the major unifying force of the leftist movement”. Yavuz, *Op. Cit.*, p.10

⁵⁰ *Ibidem*.

In this political contest came into light the 1971 legislation, the intervention became famous as “*The coup by memorandum*”, because of its particular feature: compare to the 1961 *Coup*, at the beginning of the 70s, the military forces remained behind the scenes, did not seize the power by means of direct action. The military generals, in fact, strongly tied and in collusion with the representatives of the political powers, both in government and parliament, exerted control over the population both staying in the background and remaining within the law borders⁵¹. Indeed, the martial law was proclaimed in respect of articles 123 and 124 of the 1961 Constitution, both under the section VI, entitled “*Emergency Administration*”. Whereas Article 123⁵² mainly regulates the general obligations applicable in cases of emergency, Article 124 can be considered as the legal legitimation of the suspension of the ordinary political *status quo*. According to the Article, in situation of war or uprising against the Republic, the Council of Ministers was allowed to proclaim the *State of Emergency* within a time limit of one month. The acts should be approved by the Turkish Grand National Assembly and could be extended for two further months *each time*⁵³. The norm was quite vague about the concrete procedure and the existing guarantees during the state of emergency and the time limit could have been easily overtaken because of the unspecific statement “*each time*”. The martial law, in fact, stood in force more two years, until the 1973⁵⁴.

⁵¹ Momayezi N., 1998, p. 8. *Ex multis* on the relationship between the military and the political powers, see also Nye R.P., 1977.

⁵² The article 123 states: “*Procedures governing the imposition of financial obligations, seizure of property, the impressment of labor on citizens in cases of emergency, shall be regulated by law, including the proclamation, enforcement, and termination of such obligations*”. Turkish Constitution of 1961.

⁵³ The concept is vague, not clarified in the rest of the norm. Article 124, in fact, says: “*In the event of war, or a situation likely to lead to war, or in case of revolt of the emergence of definite indications of a serious and active uprising against the homeland and the Republic, the Council of Ministers may proclaim the martial law, in one or more than one region of the country, or in every part thereof, for a length of time not exceeding one month, and shall immediately submit such proclamation to the approval of the Turkish Grand National Assembly. [...] The extension of the martial law, not exceeding two months each time, is subject to the decision of the Turkish Grand National Assembly. Such decision shall be taken at the joint session of both legislative bodies. In the event of martial law. Or war in general, the specific provisions to be enforced, the manners in which government operations shall be conducted and the manners in which freedoms shall be restricted, shall be defined by law*”. Article 124 Turkish Constitution of 1961.

⁵⁴ The legislative system of this period will be put into force again after the coup d'état of 1980, therefore it was relevant to analyse the transition process of the 70s.

Another relevant aspect of the norm was its specific geographical applicability: the state of emergency could be applied in one or more than one region of the country, depending on the level of danger in the different areas and on the risk of threats against the *homeland*. This last concept clearly reminds of the strong idea of the unity of the Turkish State, as the continuance and evolution of the *Sevrès Paranoia*. The domestic instability experienced by the Turkish government in those years, such as workers and students demonstrations, urban guerrilla and a political system stalemate, pressed the Turkish Grand National Assembly to apply the state of emergency over eleven provinces: Adana, Ankara, Eskisehir, Istanbul, Izmir, Kocaeli, Sakarya, Zonguldak, Diyarbakir, Hatay, and Siirt, whose the last three were Kurdish.

As a consequence of the application of the martial law, from the 1971 to the 1974 the Kurdish struggle was once again forced into silence. In countertrend respect the liberal ideals of the Constitution, during those two years, many amendments were approved in order to contain the diffusion of the suspected “anarchists”, and special units of the Army were instituted to curtailing the freedoms granted by the Constitution⁵⁵. In this general setting, most of the leftist parties became illegal, many Kurdish leaders were captured, the social and political life in the regions under the State of Emergency was harshly controlled. However, every provision was established in accordance with the law. In this highly politicized environment, several Kurdish groups, considered illegal, started to emerge, all of them, even though with different perspectives, belonging to the political left cultural area. The reinforcement of the idea of a Kurdish state and autonomy burst again, as McDowall argues, thanks to the

[...] economic deprivation, social injustice and physical displacement as well as ideas of ethnic identity, all of which combined in the 1970s to create the conditions for revolt⁵⁶.

Even though the martial law and the State of Emergency established through it stood in force only two years, this transition period brought relevant consequences to the development of the Turks-Kurds conflict, whose one was the emergence of the PKK, the Kurdistan Workers’s Party.

⁵⁵ Nye R.P., *Op. Cit.* p. 213.

⁵⁶ McDowall D., *Op. Cit.*, p. 402.

2.3. The birth of the Kurdistan Worker's Party (PKK) in 1978.

The end of the imposition of the martial law and the following elections in 1973⁵⁷ did not bring the Turkish state out from its uncontrolled situation⁵⁸. The uncertain political conditions were worsened by the deep economical crisis experienced by Turkey in those years and the mix of these two factors made really weak the legitimation and authority of both the government and the General Assembly. The inflation reached an extremely high peak and, the importation and exportation of goods was completely blocked, even the first aid goods, such as medicines, run low, therefore creating a general disorder which quickly led to violence, tensions and the surfacing of extreme left and right⁵⁹ movements, the latter often in collusion with governmental political parties. Even in those regions specifically under the State of Emergency, the military and paramilitary did not have enough power neither to halt the violence nor to keep exerting their authority over the population. As a consequence of this situation, the new Prime Minister, Bulent Ecevit, declared a general amnesty in order to quell the disorders and authorized the release of the people convicted of political crimes; this decision turned out to have different consequences in respect with the original scope that pushed Ecevit to adopt them.

The Labour Party and the DDKO during the martial law were outlawed (as it happened to other groups and movements that for space reasons hereby will be not mentioned) so, after the amnesty, many of their members tried to join themselves together hoping to revive their common struggles. Due to the different ideological and geographical perspectives, they were not successful and, on the contrary, the Kurdish

⁵⁷ The 1973 presidential elections were critical turning point for the Turkish state, above all to check the stability of the new Constitution and procedural guarantees related to it. The test was clearly failed and it meant the emergence of a political chaos which would have lasted for years. Nye R.P., *Op. Cit.* p. 210.

⁵⁸ As Marcus reports: "*Following the return to democracy in 1974, the government's hold over the country gradually grew weaker and weaker. The country's coalition governments—there were four between 1975 and 1980—could barely function, one of which lasted less than six months before falling on a vote of confidence. Even when the coalition government managed to hold together, deep ideological divisions and old suspicions within the coalitions and the Assembly made it hard to agree on necessary laws and then get them passed*". Marcus A., 2007, p.49.

⁵⁹ "*The paramilitary Grey Wolves grew stronger when the political party with which it was affiliated, the ultra-right-wing Nationalist Action Party (MHP), was included in two of the coalition governments. The Grey Wolves fought with the radical left-wing groups, and later on the Islamists joined in on the side of the right-wing extremists*". *Idem*, p.50.

nationalism and Kemalist view lying among the Turks, quickly brought to two consequences: on one hand, the tensions in the country sharply grew, on the other hand the Kurdish and Turkish leftist groups started to be apart from each others⁶⁰. This separation between the Kurdish and Turkish left movements is the key to understand how the Kurdistan Workers's Party (PKK) emerged and the reason why it has been supported by the Kurds.

In the second part of the 70s started a process of fragmentation of the Kurds and socialist movements that created a complex situation mainly because of the different ideas that Kurds started to have about their condition. First, it appeared the National Democratic Revolution movement (MDD), a Kemalist-Marxist organization that even if supported the recognition of some rights to the Kurds (e.g. the education in Kurdish and the liberation from the feudalistic system in the Kurdish regions), did not agree with the idea of self-determination of the Kurdish population. Second, in contrast with the MDD, there was the Turkey People's Liberation Party-Front (THKP-C), supporting the idea of Kurds 's self- determination, but this organization did not have legal basis and was not strong enough. Third, another movement, the Communist Party of Turkey (Marxist/Leninist) supported the same ideas, but also faced the same problems; none of this groups was capable neither to set a revolution nor to concretely solve the Kurdish problems. In this context, Kurds had the feeling that no one except of them could have longer carry out their cause and from the ashes of the DDKO, Abdullah Ocalan started a campaign aimed at recruiting people in order to create a movement that, from his pint of view, would have brought the independence to the Kurds. Despite his inexperience, he thought to be ready to lead the Kurdish revolt and to start an immediate armed revolution to conquer the independence; not too slowly his organisation took shape, and on the 27th of November 1978 the PKK was finally established.

⁶⁰ “*Although leftist groups might pay lip service to the Kurdish problem, it was never at the top of their agenda. The more Kurds pushed for discussion of the Kurdish problem and possible solutions, the more the Turkish left grew intransigent. There was a natural tension within the socialist ideology between promoting nationalism and believing that socialism would solve all problems. Beyond this, there was also the underlying Turkish nationalism—so strong in the educational system—that even the radical left could not easily shake. The issue of a Kurdish state was not something the left wanted to tackle*”. Marcus A., *Op. Cit*, p. 26.

The Kurdistan Workers's Party played a crucial role in the construction of the Kurdish consciousness, for different reasons. First of all, the PKK supported the idea of the birth of an independent Kurdistan on the base of a transnational collaboration of the Kurdish population. The socialist movements of Turkey, Syria and Iran should have fought together without the support of the Turkish left, too involved in the class struggle to care about the Kurdish independence. The PKK started to recruit militants inside and outside Turkey, presenting itself as the voice of the Kurdish identity and justifying their use of violent means as the only way to react to the oppressive Turkish state, becoming even more authoritarian as a reaction to the socialist struggles⁶¹. Moreover, his main goal was the achievement of the independence through the destruction of the Kurdish traditional society and the creation of a pan-Kurdish socialist state, so that he did not only look at the Kurds in other countries but also searched the support of foreign states, like Syria, Greece and Russia. Ocalan engaged a terror campaign against the Turkish state, often targeting infrastructures, such as hospitals and schools to punish the people collaborating with the Turks and to stop the process of assimilation of the Kurds within the Turkish state, still carrying on its centralization policies⁶².

The actions of the PKK in those years had two main consequences: first of all the Kurdistan Workers's Party murdered a lot of Kurds not supporting the struggle and therefore considered traitors, so that producing a fragmentation within the Kurdish population. On the other hand, as a reaction, the Turkish state established an even harsher repressive system, legitimizing the measures adopted as a necessary action to protect the state against terroristic activities and groups. The conflict developed during the 70s would have become much more cruel at the beginning of the 80s.

⁶¹ On PKK look also at Kutschera C., 1994; Imset I.G., 1993.

⁶² Yavuz H., *Op. Cit.*, p. 12

Chapter 3: Two decades of State of Emergency.

3.0. Introduction.

In this chapter will be analysed the State of Emergency legislation issued by the Turkish government starting from the 1980 military *Coup d'Etat*, especially to understand the impact that the emergency system had toward the Kurdish population, how it influenced the arise of the PKK and the conflict in Turkey until the end of the 90s, when the establishment of a new political period and of new strategies further change the balances of the Kurdish Issue within the Turkish state.

3.1. The 1980 *Coup d'Etat* and the 1982 Constitution.

The socialist Turkish movements, the PKK and the hard economical crisis started to be considered by the political and, above all, military *elites* as a concrete threat to the Turkey's national security and union. As it has been seen, they always had a constant preoccupation⁶³ for national unity thus, as the situation was falling apart, the 12th of September of 1980, the military body prepared a new *Coup d'Etat*, ended up with the establishment of a new political order. Invoking the deterioration of the political, social and economical conditions, the Turkish Armed Force forced the dissolution of the parliament and of the government ruling at that time and proclaimed itself the only ruler of the country, legitimating this passage through the construction of a new legal order.

First of all, the 1971 Martial law was renewed and amended in order to increase the control of the central authority at the local level⁶⁴; secondly, the regime introduced a new Constitution directed to control the political life of the country, especially of those

⁶³ “*The Turkish elite has an obsession with territorial integrity and national unity that seems to be rooted in the trauma of the gradual dismemberment of the Ottoman Empire. Fears that the Armenians would prove to be a fifth column in an armed conflict with Russia led to their deportation and the massacre of hundreds of thousands of them in 1915. Similarly, the Kurds have been suspected of disloyalty and collusion with foreign powers: with the British and French in the 1920s and 1930s, when these were still considered enemies, and later with the Russians*”. Van Bruinessen M., 2000.

⁶⁴ Karabelias G., 1999, p.133.

more sensitive regions where the socialist movements engaged with the Kurdish struggles.

The new Constitution entered into force in the 1982 and, as it was for the previous one, the spirit prevailing at that time was embodied in the preamble:

In line with the concept of nationalism and the reforms and principles introduced by the founder of the Republic of Turkey, Atatürk, the immortal leader and the unrivalled hero, this Constitution, which affirms the eternal existence of the Turkish nation and motherland and the indivisible unity of the Turkish state [...] ⁶⁵

This attitude unavoidably characterized the whole organisation of the institutions and of the power in the country. The new Constitution, in fact, entailed the abolition of the Senate and the drastic reduction of the Grand National Assembly member's number; moreover, enlarged the powers of the President ⁶⁶. Furthermore, according to Article 175 of the Constitution, established that for the first mandate the President had the right to veto any constitutional amendment or proposal ⁶⁷. Article 104 of the Constitution (based on constitutional provisions disposed at the beginning of the Constitution), outlined the President's powers, among which there was also the right to proclaim the Martial Law and the State of Emergency ⁶⁸. Finally, Article 108 ⁶⁹ established the *State Supervisory*

⁶⁵ Turkish Constitution of 1982, (consulted on the 20th of June 2013 in www.servat.unibe.ch).

⁶⁶ Karabelias G., *Op.Cit.*, 1999, p.134.

⁶⁷ *Ibidem*

⁶⁸ Article 104 Duties and Powers: “*The President of the Republic is the Head of the state. In this capacity he or she shall represent the Republic of Turkey and the unity of the Turkish Nation; he or she shall ensure the implementation of the Constitution, and the regular and harmonious functioning of the organs of state. (2) To this end, the duties he or she shall perform, and the powers he or she shall exercise, in accordance with the conditions stipulated in the relevant articles of the Constitution are as follows: [...]to represent the Supreme Military Command of the Turkish Armed Forces on behalf of the Turkish Grand National Assembly, to decide on the mobilization of the Turkish Armed Forces, to appoint the Chief of the General Staff, to call the National Security Council to meet, to preside over the National Security Council, to proclaim martial law or state of emergency, and to issue decrees having the force of law, in accordance with the decisions of the Council of Ministers under his or her chairmanship*”, 1982 Turkish Constitution (consulted on the 20th of June 2013 www.servat.unibe.ch).

⁶⁹ Article 108 State Supervisory Council: “*(1) The State Supervisory Council which shall be attached to the Office of the Presidency of the Republic with the purpose of performing and furthering the regular and efficient functioning of the administration and its observance of law, shall be empowered to conduct upon the request of the President of the Republic all inquiries, investigations and inspections of all public bodies and organisations, all enterprises in which those public bodies and organisations share more than half of the capital, public professional organisations, employers' associations and labour unions at all levels, and public welfare associations and foundations. (2) The Armed Forces and all judicial organs*

Council, an agency with strong investigation powers on public bodies and organisation, with the exception of the military bodies. The aim of these norms, written mainly by military officers, was to create a strong presidency able to control both the military and the political power⁷⁰: so that, to reinforce its hegemony, the Military body established the National Security Council (NSC), which exercised either the legislative power and the executive one.

The number of military commanders part of the NSC was definitely larger than the number of civilian members; furthermore, Provisional Article 1 of the Constitution, provided that General Evren would have been President of the Republic for the first seven Years with veto power (Article 9 of the Constitution), as it has been already mentioned above. In addition, the Presidential Council authority had supplementary powers, such as the power to review the laws on particular matters, like individual rights, national security, public order, emergency rule and Martial law; as Momayezi asserted, the 1982 Constitution preserved the military power, which became at the end the arbiter and ruler of the whole political system⁷¹. In fact, because of the military had the majority of the representatives inside the NSC and, furthermore, because of, according with Article 118 of the new Constitution, it had the power to submit to the Council of the Ministers its suggestions with regard with national security policies of the State, the NSC and the President hold a general power, from their point of view in order to preserve the integrity and indivisibility of the State⁷².

In this political framework is easy to see how the fact that the highest decision body was a non-elected one would have deeply impacted the Turkish treatment toward the Kurds, a population that for its own characteristics represented a relevant danger for the dictatorial and centralizing policies of the new Turkish political order.

are outside the jurisdiction of the State Supervisory Council". Ibidem.

⁷⁰ Momayezi N., 1998, p. 11.

⁷¹ Momayezi N., *Op. Cit.*, p. 13.

⁷² [...] *the Council of the Ministers its views on the advisory decisions that are taken and ensuring the necessary condition with regard to the formulation, establishment, and implementation of the national security policy of the state. The Council of Ministers shall evaluate decisions of the National Security Council concerning the measures that it deems necessary for the preservation of the existence and independence of the state, the integrity and indivisibility of the country and the peace and security of society".* 1982 Turkish Constitution (consulted on the 20th of June 2013 www.servat.unibe.ch).

3.2.The 1983 State of Emergency Law (N.2935) and the OHAL Region: the beginning of the conflict between the PKK and the Turkish government.

The Martial law and the extraordinary regime established immediately after the 1980 *Coup d'Etat* lasted until the 1983 when, the military leaders had the feeling that the country was ready to transit into a different political system in order to be more economically competitive within the international environment; this decision was the consequence of the successful policies implemented during the three years of Martial law in which the military leaders suppressed and repressed social violence and, according to their perspective, successfully instituted a balanced political situation⁷³. Thus, in 1983, Turkey stopped to use direct military control over the population and the government decided to adopt a mixed system, composed by both a military and an ordinary component: so that, in that year, was issued the State of Emergency Law number 2935; its adoption was made in respect with the Articles 119, 120 and 121 of the Constitution.

The purpose and scope of this Law are explained in the first two Articles of the document: the adoption of the State of Emergency was related to the existence of some conditions, listed in the provision, such as natural disasters, economic crisis and, of interested for this work, acts of violence meant to overthrow the democratic order⁷⁴. In addition, it was specified that depending on the emerging causes and conditions, for each application of the State of Emergency would have been decided how the fundamental rights and freedoms should be limited⁷⁵. Moreover, Article 3 of the Law

⁷³ Karabelias G., *Op.Cit.*, 1999, p.137.

⁷⁴ Article one of the Law states: “*The purpose of this Act, in case of: (a) natural disasters, dangerous epidemic diseases or serious economic crises; or (b) the appearance of serious indications resulting from widespread acts of violence designed to eliminate the free democratic order established by the Constitution or fundamental rights and freedoms or violent actions causing serious deterioration of public order, is to determine the declaration of a state of emergency and the procedures to be applied in states of emergency*”. <http://legislationonline.org> (consulted on the 25th of June 2013).

⁷⁵ Article two says: “*This Act covers provisions of the declaration of a state of emergency; the financial, material and working obligations imposed on citizens during states of emergency declared in the case of natural disaster, dangerous epidemic diseases or serious economic crises. Provisions shall differ for each type of state of emergency concerning how fundamental rights and freedoms shall be limited or suspended; how and in which way necessary measures shall be taken; what sort of powers shall be given to public service officials; what changes shall be made in the position of officials; and administrative procedures of emergency*”. <http://legislationonline.org> (consulted on the 25th of June 2013).

determined that the State of Emergency should have been implemented after consultation with the NSC, a body as it has been said, harshly influenced by the military presence. In its original version, the State of Emergency could have been declared in one or more region within a maximum period of six months⁷⁶.

Despite the provisions established in the Law, this extraordinary regime had been lifted until 1987 in several provinces inhabited by Kurds⁷⁷: Siirt, Mardin, Diyarbakir, Hakkari, Elazig, Tunceli, Bingöl and Van, in order to contain the emergence and the strength of the Kurdish constant rebellions, above all those carried on by the PKK. The political justification of this situation had to be found in the “security reasons” mentioned in the Law and

The state of emergency was described by the Turkish press as a 'civilian' form of martial law; although the highest authority is no longer the provincial military commander but a civilian governor, most of the restrictive measures taken under military rule remain in effect⁷⁸.

Furthermore, in 1984, in the same areas, started to be operative the so-called State Security Courts which, even if theoretically aimed at substituting the Military Courts, at the end did not really differ from the previous Trial System, also because the majority of the judges operating acquired experience in the military courts system⁷⁹; they had jurisdiction on all the political cases.

⁷⁶ Article three of the Law: “(1) The Council of Ministers assembled under the chairmanship of the President shall declare a state of emergency: (a) whenever there is in existence one or more natural disasters, dangerous epidemic diseases or serious economic crisis; (b) whenever there appear serious indications resulting from widespread acts of violence which are aimed at destroying the free democratic order or fundamental rights and freedoms, or violent acts causing serious deterioration to public order, after consultation with the National Security Council, in one or more regions or throughout the country for a period not exceeding six months”. <http://legislationonline.org> (consulted on the 25th of June 2013).

⁷⁷ As a further example of the Kurdish suppression, it is of interest to report the implementation of another Law, the number 2932 of 1983, according to which was applied a system of suppression of the Kurdish language and publications and broadcasting in Kurdish were prohibited. Cfr. Van Bruinessen M., 2000.

⁷⁸ Van Bruinessen M, 1996, p. 5.

⁷⁹ Cfr. *Turkey, Justice Delayed and Denied: The persistence of protracted and unfair trials for those charged under anti-terrorism legislation*, Amnesty International, EUR 44/013/2006, www.amnesty.org (consulted on the 25th of June 2013).

The answer of the PKK and the Kurds to this new order was the declaration of a “guerrilla war of liberation”⁸⁰, aimed at setting free the population oppressed by the harsh policies of the Turkish state. The PKK started to attack military and police buildings in different towns, especially close to the Iraqi border, so that provoking an even harder repression by the Turkish state; in fact, in order to solve the situation and to organize the operations against the PKK, and Kurds in general, the government instituted in 1987 the *Regional State of Emergency Governorate* (OHAL) in the areas where Kurds were living, in south Eastern Anatolia.

The OHAL was meant to be a super-governor with wide powers in collaboration with the military security forces: the Kurds were considered enemies of the state and because of it the Minister of the Interior decided was necessary a higher standard of security and control in that part of the country⁸¹. The OHAL region was under a special regime of decrees issued by the government, which were not controlled and supervised by the Constitutional Court. It was, at that time, the most repressive policy established toward the Kurdish population because it was clear that a quick solution to the PKK actions in the region was not possible: the Turkish assimilation strategy was failing and the answer should be appropriated for the severe danger faced by the country due to the actions of the Kurdish liberation movement, perceived as a terrorist group⁸². The result of these policies ended up to the consolidation of the Kurdish nationalism and the worsen of the conflict: according to the statistics almost 40.000 people were killed, many families lost their sons whom decided to join the PKK and fight for the liberation of Kurdistan, thousands of Kurds fled looking for peace and security in other countries and the social, economical and cultural life of the area was completely destroyed⁸³.

The conflict burst and eroded completely the rule of law so that the Kurdish issue started to receive the attention of both the Turkish society and the International one, also because of the large number of refugees scattered all around; despite of it the Turkish attitude did not change for a long time.

⁸⁰ Van Bruinessen M., *Op. Cit.* 1996, p. 4.

⁸¹ *Ibidem.*

⁸² *Cfr.* Barkey H.J., Graham E.F., *Op.Cit.*, Vol. 51, N.1, 1997 and Berkeley B., 2009.

⁸³ Yavuz H. M., *Op. Cit.*, 2007, p.13

3.3. The Turkish legislation on fight against terrorism adopted in the 90s.

The measures adopted by the Turkish state to stop the activities of the PKK and to strictly control the area did not find a limit in the realization and implementation of the OHAL: thus, several further specific provisions were taken in order to do so.

According with Articles 119, 120 and 121 of the Constitution, in 1990 a new decree was issued, the Decree N. 403, *Having the force of law concerning the additional measures to be taken during the term of the office of the State of Emergency Governor and of the State of Emergency*. The norm was adopted by the Council of Minister to face the violent actions and the disturbances to the public order widespread in the region. Article 1 of the Act disposed severe restrictions on the rights and freedoms of expression, especially related to the liberty of press or of any publication considered *likely to cause disturbances of the public order*⁸⁴. In the Article 2, the same restrictions disposed in Article 1 about the freedom of expression, were adopted for the freedom of association, particularly in regard with the trade unions⁸⁵. It is also of interest to look at Article 3, a provision that, for its nature, was aimed at creating a inner rift in the Kurdish society, already weakened by the constant oppressive policies suffered. In fact, the provision disposed first of all, that the public personnel considered pernicious could be relocated outside the provinces under the jurisdiction of the State of

⁸⁴ “[...]The State of Emergency Regional Governor or a provincial governor in a region under a state of emergency may prohibit, or subject to the obtaining of prior permission, the printing, duplicating, publishing or distribution of any printed work, book, magazine, newspaper, brochure, poster or other similar printed matter, and the entry into and distribution within the region of those that are printed or duplicated outside the region, which are likely to cause a serious disturbance of public order in the region or agitation among the population of the region, or to prevent the security forces from discharging their duties properly by falsely depicting the activities in the region or reporting untruthful news. If confiscation of any such book, magazine, newspaper, brochure, poster or other similar matter that are prohibited herein is not sufficient, the Minister of the Interior shall, on the recommendation of or in consultation with the State of Emergency Regional Governor, issue a written notice of warning to the owners and/or editors responsible for such publications, to cease or withdraw from circulation their publications, regardless of whether the publications were printed within or outside the concerned region [...]”. Article 1, Decree N.403 Published in the Official Gazette No. 20727 dated 16 December 1990, <http://legislationonline.org> (consulted on the 27th of June 2013).

⁸⁵ “The State of Emergency Regional Governor may prohibit, or subject to the obtaining of prior permission, such trade union activities as the exercise of strike and lock-out rights, expression of will and referendum [ballotting]; he may also prohibit or prevent such acts as destruction, looting, occupation, boycotts, go-slows, restrictions on the right to work and closing down of workplaces, and take any other preventive measures as is deemed necessary in the provinces that are listed in Decree No. 285 and where a state of emergency has been declared for the duration of the emergency”. Article 2, *Ibidem*.

Emergency Regional Governor and encouraged the people collaboration with the authorities carrying on the investigations directed to determine the criminal responsibility⁸⁶. Finally, according to Article 8 of the Decree, the political, juridical and executive powers explicitly discharged themselves from any criminal, financial or legal responsibility, through the disposition of a provision that excused the Governor conducts because of the existence of the State of Emergency⁸⁷.

These extensive powers granted to the Emergency Governor and the adoption of decrees having the force of the law but not subjected to the Constitutional Court review, influenced the Kurds's condition: a huge number of supporters started to join the PKK cause, as a response to the Turkish policies and the terrible conduct of the army. The PKK started a strategy directed to set a revolt following the example of the Palestinians, moving from guerrilla to random terrorist attacks to the diplomatic institution and fostering, at the same time, urban popular revolts: a huge popular uprising occurred in the beginning of the 1990, quickly called the '*Kurdish Intifada*'⁸⁸.

Despite the situation, the Turkish elections of 1991, the new Prime Minister Ozal, decided to formally allow a liberalisation of the Kurdish culture, the law that prohibited speaking the Kurdish language and the provisions of the Criminal Code forbidding any

⁸⁶ Article 3: "[...] the State of Emergency Regional Governor: may order relevant institutions or organisations that public personnel whose employment is deemed pernicious and whose services may be detrimental to the province or provinces under his jurisdiction in terms of security, peace and public order be re-located or assigned work outside the province or provinces under his jurisdiction, temporarily or permanently. Such orders shall be complied with immediately. The provisions in their own special laws shall be applied in respect of such personnel; may request the local office of the Chief Prosecutor of the Republic to start legal proceedings for offences concerning acts that led to the declaration of the state of emergency, and the Chief Prosecutor of the State Security Court to start legal proceedings for offences that fall within the jurisdiction of the State Security Court, and all such requests shall be complied with. Identities of those who inform about offences that fall within the jurisdiction of the State Security Courts shall not be revealed without their consent or unless the content of the information does not constitute an offence in itself; Those prisoners or detainees who need to be questioned in the course of any investigation concerning offences that led to the declaration of the state of emergency may be taken from the penal enforcement institution (prison) or custody centre upon a recommendation by the State of Emergency Regional Governor, a request by the Chief Prosecutor of the Republic, or a decision by a Judge, for a period not exceeding ten days at a time. Such periods shall be considered to be spent in prison or in other custody[...]" *Ibidem*.

⁸⁷ Article 8: "No criminal, financial or legal responsibility may be claimed against the Minister of the Interior, the State of Emergency Regional Governor or a provincial governor within a state of emergency region in respect of any of their decisions or acts connected with the exercise of the powers entrusted to them by this decree, and no application may be made to any judicial authority to this end. This is without prejudice to the rights of individuals to claim indemnity from the State for damage suffered by them without cause". *Ibidem*.

⁸⁸ Van Bruinessen M., *Op. Cit.*, 1996, p. 9.

socialist *propaganda*, were abolished⁸⁹. At the same time, however, a new Anti-Terror Law was introduced.

The Turkish executive in 1991 issued a new Law, the *Law on fight against terrorism of Turkey*, Act number 3713. The definition of terrorism and terrorist offender were defined in the first two articles of the law, according to which a terrorist was a person, member of an organisation who individually or being part of a group, committed any action aimed at changing the structure of the Republic⁹⁰. The offences, outlined in Article 3 of the Law, referred to crimes regulated by the Turkish Criminal Code. The procedure of investigations and trial procedures provided by the law, arose many doubts about the impartiality of the trial system in cases of terrorism; Article 10⁹¹ of the law, in fact, disposed that the suspected detainees had the right to consult a lawyer within a limited period of twenty-four hours and only upon a request of the Prosecutor. During the interrogation, only one defence lawyer might be present and, moreover, in order to further limit the rights of the detainees charged to be terrorist, militating in PKK or suspected of it, the defence lawyer needed an authorisation to

⁸⁹ *Ibidem*.

⁹⁰ Article 1 and 2: “*Definition of terrorism: Article 1 – Any criminal action conducted by one or more persons belonging to an organisation with the aim of changing the attributes of the Republic as specified in the Constitution, the political, legal, social, secular or economic system, damaging the indivisible unity of the State with its territory and nation, jeopardizing the existence of the Turkish State and the Republic, enfeebling, destroying or seizing the State authority, eliminating basic rights and freedoms, damaging the internal and external security of the State, the public order or general health, is defined as terrorism. Terrorist offender: Article 2 – Any person, who, being a member of organisations formed to achieve the aims specified under Article 1, in concert with others or individually, commits a crime in furtherance of these aims, or who, even though does not commit the targeted crime, is a member of the organisations, is defined as a terrorist offender. Persons who, not being a member of a terrorist organisation, commit a crime in the name of the organisation, are also considered as terrorist offenders and shall be punished as members of such organisations*”. Law on fight against terrorism of Turkey, Act Nr. 3713, <http://legislationonline.org> (consulted on the 27th of June 2013).

⁹¹ “*Procedure of investigation and trial Article 10 – For crimes within the scope of this Law, the provisions of the Code of Criminal Procedure are applicable, unless provided otherwise by articles 250 to 252 of the Code of Criminal Procedure. However; a) In cases where the aim of the investigation may be endangered, only one relative of the detainee or the apprehended person shall be notified about his or her situation by order of the Prosecutor. b) The suspect may only receive the assistance of one defence lawyer during the detention period. The right of a suspect in detention to consult a lawyer may be limited for twenty-four hours upon a request of the Prosecutor and by the decision of a Judge; however, he or she cannot be interrogated during this period. c) Only one defence lawyer may be present during the interrogation of the suspect by the security forces. d) Records to be prepared by the security forces contain only the registration numbers of the involved officers instead of their identities. e) The authorisation of the defence lawyer to investigate the contents of the file and make copies of them may be limited upon the request of the Prosecutor and by the decision of a Judge, if this could endanger the aim of the investigation*”. *Ibidem*.

investigate the contents of the files. The reasons of the denial of the authorisation upon a Prosecutor order or a decision of a Judge, were not specified in the Article, thus making vague the circumstances the prosecution was based on.

The just mentioned system brought several consequences to the Kurdish situation: first of all the repressive and extraordinary measures adopted by the Turkish state foster the liberation feelings spread among the Kurds, making the conflict and the Kurdish resistance crueller; this situation had terrible consequences for the whole Kurdish population, whose one was the quick increase of the number of political prisoners, charged to be member of the PKK even though in many cases the link between a person and the Kurdistan Workers's Party was just fictitious⁹². The situation remained very dangerous and tense for the all 90s: as it will be specify later on, the PKK continued to attack the Turkish military forces as a reaction to the implementation of the Emergency legislation thus making even harsher the repressive provisions adopted by the Turks, often involving deep violations of the fundamental rights of the whole population living in the area, not only of the suspected members of the PKK.

3.4. Fundamental rights and liberties violations occurred during the State of Emergency: the particular case of the administrative detention.

The oppressive legislation implemented by the Turkish state during the State of Emergency made the Kurdish population suffering under a legitimized regime of violence. Since the 1980 military *Coup d'Etat*, the severe regime applied in Kurdistan toughly stroke the PKK members and the whole Kurdish population: the number of political prisoners sharply increased in those years also because a mass detention process took place in the name of the public order and of the state security⁹³. Rather than describe the different cases of detainees's human rights violation occurred under the State of Emergency period, in order to understand the *phenomenon* of the massive detention of prisoners and the consequential suspension of their rights, it is of interest to analyse the juridical structure experienced by Turkey at that time.

⁹² Westrheim K., 2008, p. 2.

⁹³ Westrheim K., *Op. Cit.*, 2008, Vol. 6, Issue 1, p. 3.

First of all, Article 15 of the Turkish Constitution provided a derogation clause actionable during times of public Emergency:

“In times of war, mobilization, martial law, or state of emergency, the exercise of fundamental rights and freedoms can be partially or entirely suspended, or measures may be taken, to the extent required by the exigencies of the situation, which derogate the guarantees embodied in the Constitution, provided that obligations under international law are not violated. (2) Even under the circumstances indicated in the first paragraph, the individual's right to life, and the integrity of his or her material and spiritual entity shall be inviolable except where death occurs through lawful act of warfare; no one may be compelled to reveal his or her religion, conscience, thought or opinion, nor be accused on account of them; offences and penalties may not be made retroactive, nor may anyone be held guilty until so proven by a court judgment”⁹⁴.

According to the provision, fundamental rights and liberties could be partially or entirely suspended in time of emergencies, not overtaking some limits, imposed by the International Law and, furthermore, the derogation must be proportional with the exigencies of the situation. Moreover, in the last part of the Article, are listed the rights protected even in case of emergency, such as the right to life, the right to protection from retroactive criminal laws and the right to presumption of innocence. This list barely differed from the one embodied in Article 15 of the European Convention of Human Rights (ratified by Turkey in 1954)⁹⁵, which adds more relevant rights for the discussion about political prisoners and pre-trial, administrative detention: the right not to be tortured and the right not to be punished without law.

⁹⁴ Article 15 of the 1982 Turkish Constitution, <http://legislationline.org> (consulted on the 28th of June 2013).

⁹⁵ Article 15 of ECHR states: “*In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed*”. www.echr.coe.int (consulted on the 28th of June 2013).

This lack of rights protection deeply affected the Turkish relation both with the International Community and the Turkish inner society. As it has been previously explained, during the public emergencies could have been issued decrees having the force of law and these decrees could be adopted without the authorisation of the Parliament and were not subject to the Constitutional Court review⁹⁶, so that making hard the possibility to respect in practice the limits imposed by the Constitution to the fundamental rights derogations. Both the Turkish Criminal Procedure Code (CPC) and the Anti-Terror Law were part of this scheme and incremented concretely the circumstances not complying with the rules on derogations limits. Article 9 and 10 of the Anti-Terror Law⁹⁷, in fact, disposed very strict limitation to the right to defence for the suspects, the right to the lawyer to assist his client and to access the necessary documents for the defence. Article 13 stated that the judgment in case of terrorist crimes cannot be suspended neither the sentence of imprisonment commuted into an alternative sanction⁹⁸.

The CPC mainly regulated the aspect of the arbitrary deprivation of liberty by the National Police and the Gendarmerie: according to the legislation, the arrest could have been preventive and judicial. In case of preventive arrest, the individual stood under the police custody, and the duration of the pre-trial detention might change depending on the individual or collective nature of the offence. If more than three persons committed an offence and the suspected crime was related to a terrorist action, the custody duration could last within a period of seven days⁹⁹. Furthermore, during the custody the police can question the suspect before the Prosecutor and in the pre-trial phase the control of the procedure was under the jurisdiction of the competent justice of peace¹⁰⁰.

⁹⁶ In accordance with Article 148 of the 1982 Turkish Constitution.

⁹⁷ Look at Articles 9 and 10 of the already mentioned Law.

⁹⁸ Article 13 states: “*The pronouncement of the judgment cannot be suspended according to article 231 of the Code of Criminal Procedure for crimes within the scope of this Law; neither can sentences of imprisonment be commuted to alternative sanctions or be suspended. However, these provisions are not applicable to children [...]*” in Law on fight against terrorism of Turkey, Act Nr. 3713, <http://legislationonline.org> (consulted on the 29th of June 2013).

⁹⁹ *Report of the Working Group on Arbitrary Detention*, Implementation of General Assembly resolution 60/251 of 15 March 2006, A/HRC/4/40/Add.5 7 February 2007, www.ohchr.org, p.11 (consulted on the 29th of June 2013).

¹⁰⁰ *Ibidem*.

What is more, the prisoners, because of the State of Emergency, were judge by the State Security Courts (SSC), established under Article 143 of the Constitution, and composed by two civil judges and one military judge. As Human Rights Watch states in its 1999 report

State Security Courts are a creature of the military. Heirs to the infamous martial law courts, they were established under Article 143 of the constitution promulgated under the military junta in 1982 "to deal with security offenses against the indivisible integrity of the State with its territory and nation, the free democratic order, or against the Republic whose characteristics are defined in the Constitution, and offenses directly involving the internal and external security of the State." Just as the constitution established a channel for military supervision of the government through the National Security Council, the influence the armed forces was built into the structure of the State Security Courts by placing one military judge together with two civilian judges on each court panel. The prosecutor may also be a serving army officer[...]¹⁰¹.

The Turkish judicial system was deeply intermingled with the military forces, hardly engaged in the conflict against the PKK in the OHAL region, an exceptional area in an Emergency juridical order. The reported testimonies and evidences of human rights abuses within the penitentiary system and the violations of the procedural guarantees during the trials¹⁰², found a confirmation once looking at the whole Turkish political system of those years. The SSC, established by the military government and dealing with cases against the security of the Turkish state, did not comply with the standards of impartiality and independence generally required by the International Law to a Courts system. Moreover, the Anti-Terror legislation and the CPC imposed a harsh regime for those individuals suspected to be part of a terrorist organisation (that is to say PKK). In this context it was a common practice the protraction of the imprisonment terms, the suspension of the basic fair trial standards, the violation of the principle of innocence for the individuals charged to be members of the PKK, thus terrorists. The

¹⁰¹ *Ocalan Trial Monitor*, Human Rights Watch, 1999, www.hrw.org, p. 1 /consulted on the 29th of June 2013).

¹⁰² *The Kurds of Turkey: killings, disappearance and torture*, Human Rights Watch, 1993, www.hrw.org; *Turkey: forced displacement of ethnic Kurds from southeastern Turkey*, Human Rights Watch/Helsinki, 1994, www.hrw.org (consulted on the 29th of June 2013).

situation slightly improved after the Ocalan Trial and the formal end of the State of Emergency.

3.5. The formal State of Emergency ending and the Ocalan Trial.

At the end of the 90s the PKK suffered a weakening moment due to different circumstances. First of all, a large number of PKK militants fled to Syria, it was almost five years that no one had seen Ocalan and the base of the Kurdistan Workers's Party needed to discuss its deteriorating situation with its leader. At the same time Syria ordered to the PKK to close its training camps and imposed a strict limitation to the liberty of movement within the country¹⁰³. The armed conflict, already carried out with diminishing strengths, definitely started to reduce when the Turkish Intelligence captured Ocalan in Kenya in 1999. After his capture, the Kurdish HADEP Party largely won the elections in South-Eastern Turkey: the party was seen from a big part of the population as the PKK's legal representative, voting for them represented an act of confidence toward the PKK¹⁰⁴. In this political context, the Ocalan trial took place, he was sentenced to the death by the State Security Court and publicly asked the PKK military forces to retire from Turkey and stop the armed struggle. Despite its leader statements the PKK, also reinforced by the elections results, in its 6th Congress promoted a new military strategy against Turkey in order to set a new *Kurdish Intifada*, under-evaluating the impact of the Trial: the call to struggle did not bring to the revolt the PKK was expecting¹⁰⁵. In the same year the Court of Appeal confirmed the sentence and Ocalan's lawyers took the case to the European Court of Human Rights, leveraging on the Turkish Political environment of those years which, deeply influenced by the position of the army who saw in the European membership a further phase of the Ataturk's project to make Turkey a western and secularized democracy. The ECtHR decided to apply an interim measure asking to suspend the execution.

¹⁰³ Marcus A., *Op.Cit.*, 2007, p. 254.

¹⁰⁴ *Ibidem*.

¹⁰⁵ Yavuz M. H., *Op. Cit.*, p. 16.

The 1999 was also a relevant year because the European Union accepted the candidacy of Turkey to be a member of the Union so that started a new media¹⁰⁶ and political process that unavoidably had consequences on the implementation of the Emergency legislation and on the Kurdish situation. The idea that the existence of a double standard in the Turkish judicial system had to be abolished (e.g. In the OHAL region the period of police custody could be extended up to eleven days whereas in the other parts of the country the allowable period was two days), started to spread in the public and political opinion. This new situation led to a temporary truce period at the beginning of the 2000, thus fulfilling the possibility of structural reforms that, theoretically, gave space to a new perspective to the Kurdish issue within both Turkey and Europe.

¹⁰⁶ For instance, in an interview made by the Turkish Dayly News to Celik , strongly emerged the idea that was necessary to abolish the Emergency law, in order to build a new relation with a huge part of the territory, also in accordance with the new criteria imposed to accomplish the European standards of democracy. It is interesting to report a small part of the article: “Celik: Emergency Rule in the region can easily be abolished because it would not have a negative effect on the struggle against the PKK. The military forces are already struggling against the PKK, and when you abolish Emergency Rule you will ensure security in the region too. The OHAL Governorship can easily be turned into a governorship devoted to the economic development of the region Namdar: It should be lifted. We have missed out on living under ordinary rule by living under Emergency Rule”. *Abolish OHAL, establish Southeast Economic Development Governorship*, Article of Alyamac published in the Turkish Dayly News the 6th of May 2000, (consulted on the 30th of June 2013).

Chapter Four: After 2002. From antagonism to dialogue?

4.0. Introduction

It has been considered of real interest and necessary to understand the latter developments of the Turks-Kurds conflict, to analyse the recent process of Europeanization of the Kurdish issue, as a consequence of the Turkish candidacy to the European Union. In order to comply with the EU standards, the Turkish state promoted several reforms of the judicial and political structure that directly and indirectly affected the Kurdish situation and the relation with the PKK. Through the analysis of those changes, will be explained the reasons that led to a deep and further modification of the Turkish system and to the Ocalan speech in 2013.

4.1. The Europeanization of the Kurdish issue: a second birth of the Kurdish question?

The historical development of the Turks-Kurds conflict at the end of the 90s was undeniably influenced by the new position that Turkey wanted to achieve in the International environment, so that indirectly bringing the attention of the western countries on the Kurdish question. In 1999, as it as been said, Turkey started its path to become a member of the European Union, as a result of the idea that the candidacy could have been a new step in order to carry on the Kemalist model of a secularized and modern Turkish state, following the western countries example. The first stage of this new political perspective was the attempt to liberalize the legal system of the country, by ratifying the international treaties and by complying to the fundamental rights standards and obligations: in 2000 Turkey signed the the Covenant on Individual and Political Rights and the Covenant on Economic, Cultural and Social Rights. In the same year the PKK declared a ceasefire that would have endured for 5 years: this historical contingency opened a new era for the Kurdish Issue within Turkey.

In the same year a summit of the OSCE was held in Istanbul and the PKK presidential council took advantage of the situation to lift up the Kurdish issue at the presence of the members of the EU, declaring that the success of the Turkish candidacy to the EU was strictly related to the resolution of the Kurdish question, the end of the OHAL system and, more in general, the conclusion of the military based, repressive regime¹⁰⁷. The Turkish government, thus, started to draft several systematic reforms directed to weaken the contention in the dialogue with the EU, also based on the unsolved situation with Kurds. In doing so, in 2001, the government established a National Program (NP), which emphasized the fact that even though the official language of the Republic was Turkish, was not forbidden the use of other dialects¹⁰⁸. Although it could be considered a minor change, mainly because of the influence of the military officers was still affecting the possibility of a real transformation of the policies toward minorities within the state, this new linguistic right undeniably gave the possibility of creating radio, newspapers and broadcasts in Kurdish language, facilitating the passage from an antagonistic relation to a collaborative one, especially with regard to the role of PKK.

The influence that the military was still exerting over the civilian institutions was an other contrasting point in the relation between the EU and Turkey: the European Union required a drastic reduction of the role of the National Security Council because

¹⁰⁷ “On 18-19 November 1999 Istanbul hosted the final major conference of the twentieth century when the representatives of more than 50 states gathered there for a summit meeting of the Organisation for Security and Cooperation in Europe (OSCE). Although the Kurdish problem was not officially broached, it was certainly on the minds of many. After all, 11 of the 15 members of the EU were currently being ruled by leftist governments which regarded the Kurdish question as a moral cause [...]. Until Turkey successfully implemented the OSCE'S Copenhagen Criteria of minority rights for its Kurdish population, and broad human rights reforms as demanded by the EU, Turkey could not hope to break through the membership logjam set by the EU. In short, Turkish EU membership depended on solving its Kurdish problem to the satisfaction of the EU. And if the truth be told, this was largely another way of declaring that Turkey's EU future depended to an ironic degree on Ocalan. Ocalan and his associates were certainly aware of this situation. Thus the PKK presidential council sent a long letter to the OSCE leaders gathering in Istanbul. It is no more than an illusion to expect the democratisation of Turkey without a resolution of the Kurdish problem ... Countries which have not resolved the Kurdish problem have inevitably had to shape their laws and institutions in an anti-democratic manner in order to keep the Kurds under control. This has meant that these countries, and primarily Turkey, have remained authoritarian and oppressive regimes.' If Turkey could solve its Kurdish problem, however, 'there will no longer be a need for such anti-democratic laws and institutions. From his prison cell, Ocalan concurred: 'Again, I wish to reiterate my conviction that solving the Kurdish question and creating the grounds for democracy in Turkey will be a guarantee for peace in the Middle East and far beyond'. Gunther M. M., 2000, p. 15.

¹⁰⁸ Yavuz H. M., *Op. Cit.*, p. 18.

of the veto power on the decisions of the government still in the hands of the military body. Thus, as a part of the European integration process, the Turkish Grand National Assembly, in addition to the already mentioned linguistic right and as a consequence of the ratification of the international treaties, abolished the death penalty¹⁰⁹. All these changes indirectly and unavoidably influenced the Kurdish situation and, in 2002 after fifteen years, the OHAL region was formally abolished. The State of Emergency was in open contrast with the requests of the EU and the new perspectives related to this transitional period were perfectly understood by the emerging AKP (Justice and Development Party), that made its political strategy based on the merging of the more conservative Islamic tendency and the democratic ideas related to the EU candidacy with a liberal and western economical model¹¹⁰. This new middle class party, led by Recep Tayyip Erdogan, started to develop several institutional reforms that challenged the traditional Kemalist ideas and tried to give a new face to the Turkish state, also apparently through the transformation of the government position toward the Kurdish Issue and PKK.

4.2. The legal reforms period: on going fundamental rights violations and the *de facto* State of Emergency.

The AKP after the elections started to draft several reforms in order to transform the Turkish political system and society, prompted mainly by two factors

On the one hand, the AKP pragmatically drew upon the discourses of human rights and democracy, which constituted the main premises of the EU accession requirements, against the secular state establishment for a political opening to legitimately maneuver it. On the other, the party used its successfully constructed pro-EU liberal face to gather support from different sectors of the society, crosscutting class and ideological divisions. Hence, it garnered support among provincial capitalists, small bourgeoisie, urbanized and rural poor,

¹⁰⁹ Celik A.B., *Op. Cit.*, p 251.

¹¹⁰ Cinar A., 2011, p. 530 ss.

liberal 'left' intelligentsia, as well as the high society of the business world, and emerged as the new centre-right political party¹¹¹.

Thus, in order to comply with the EU and International standards, was issued the so-called *Harmonization Laws Reform Packages*, partially concerning the security policies implemented by the state until that moment. The first measure adopted in this direction, in 2002, shortened from eleven to seven days the detention period in the areas where the State of Emergency was applied. Then, in the same year, another reform package was implemented in order to slightly reform the Anti-Terror Law previously analysed, disposing that the judges of the State Security Courts could not refuse to give information to the defendant lawyer and, moreover, was recognized the detainees's rights to have an advocate since the starting moment of the detention¹¹².

In 2003, was issued another law, the Act number 4959, called *Law of Resocialization*, aimed at introducing again the members of terrorist organizations in the society, is that to say to create a collaboration between the institutions and former terrorists¹¹³. This Act is very interesting and can be considered a good example of transformation of the political context of those years; it symbolized the concretization of the fundamental rights standards obligations that Turkey decided to adopt in order to become a EU member and to establish peace in the country. The Act should have been implemented on former members of terrorist organizations whom surrendered themselves, people that took part in terrorist crimes, external collaborators of the terrorist organizations¹¹⁴. In Article 4 were established the measures that would have

¹¹¹ Gokalp D., Unsar S., 2008, p. 94.

¹¹² Amnesty International September, *AI Index: EUR 44/013/200610, Turkey: Justice delayed and denied, 2006*. (consulted on the 3rd of July 2013).

¹¹³ Article 1 of the Law states: "*The purpose of this Law is the resocialization of members of terrorist organizations that were formed in order to commit crimes for political and ideological purposes, and prevalence and furtherance of the social peace and solidarity*". Law N. 4959, <http://legislationonline.org> (consulted on the 4th of July 2013).

¹¹⁴ Article 2 says: "*This Law shall be implemented on: a) Those who, having been members of a terrorist organisation, surrender themselves of their own or indirectly, without showing armed resistance, those who are understood to have retreated from the organisation of their own, or those who have been apprehended and either 1) have not taken part in the crimes committed by the terrorist organisations, or 2) have taken part in such crimes b) Those who aided and abetted members of terrorist organisations through giving them shelter, provisions, arms or ammunition, or through other means, in knowledge of their position and role. It is understood that the term "terrorist organisation" under this Law shall mean any organisation, association, armed organisation, gang, armed gang or secret conspiracy, that has been established in order to commit crimes for political and ideological purposes, as specified under the*

been adopted toward terrorists in case of their collaboration (e.g. not be punished for the crimes committed, be subjected to a reduction of the punishment or to an attenuation of the sentence) to stimulate the cooperation with the institutions. The idea that the Turkish state wanted to transmit was that a radical transformation of the country was going on, especially in one of its most problematic points, such as the relation with terrorists was, is that to say PKK and, indirectly Kurds. Thus, in Article 5¹¹⁵ of the law, were provided protective measures to the collaborators and to the penitent terrorists, to demonstrate how the new state could be egalitarian and respectful to all its citizens, taking the deep rooted fear of any act of separation or against the unity of the country over. Despite the implementation of the *Harmonizing Laws packages*, the security officials ignored many regulations and decrees and many complaints sued before the courts remained unaddressed: one of the main problem in Turkey continued to be the *incommunicado detention* and the violations of fair trial rights¹¹⁶.

Even though all the reforms were also direct to solve the harsh policies and State of Emergency rules embraced during history toward Kurds, the AKP at the end promised more than what it actually did about this problem, also because of the *de facto*

Turkish Criminal Code, Act Nr. 765, dated 01 March 1926, and under other special laws including criminal provisions". Ibidem.

¹¹⁵ Article 5 states: "Those who have been subject to article 170 and article 171, last paragraph of the Turkish Criminal Code, have provided information in consistence with their position and activities within the structure of the terrorist organisation, and thus have benefitted from this Law, shall, upon their will, be subject to protective measures and all kinds of measures of resocialization as specified by the Ministry of Interior, even before the judgment of the court becomes final. During the implementation of measures, the Ministry of Interior and other relevant authorities and institutions must obey all rules of secrecy. Those who violate the provisions of this paragraph shall be punished with imprisonment of two to three years. Persons to be subject to protective measures, the type, form and expenses in relation to such measures shall be specified under a Regulation to be issued by the Ministry of Interior. Relevant authorities and institutions shall immediately comply with the requests of the Ministry of Interior. Expenses regarding the implementation of protective measures shall be made from the funds to be placed under the relevant account of the budget of the Ministry of Interior. Expenditure from this account follows accruelement according to the principles specified under the amended article 77 of the Law 1050 on Public Accounting, dated 26 May 1927. Such expenditure shall not be subject to the provisions of the Law 4734 on Public Tenders, dated 04 January 2002. New identities of those whose identity has been changed under this article shall be kept in their judicial records, and these records shall only be kept at the central judicial registry at the Ministry of Justice, Department of Judicial Records and Statistics. Regarding persons benefitting from protective measures under the Law 3216, dated 05 June 1985 or under the Law 3419, dated 25 March 1988, such measures shall continue to be implemented". Ibidem.

¹¹⁶ On the point: *Prosecuting torture and ill-treatment within the turkish detention system-Trial observation report*, Kurdish Human Rights Project, 2009, www.khrp.org; *Report of the Special Rapporteur on the independence of judges and lawyers Mission to Turkey*, Gabriela Knaul, United Nations general Assembly, A/HRC/20/19/Add.3, 2012, www.unchr.org; *The Kurds of Turkey: killings, disappearance and torture*, Human Rights Watch, 1993, www.hrw.org.

huge power still in the hands of the military apparatus¹¹⁷. The State Security Courts system was replaced by a Heavy Penal Court system, operative in the area of the former OHAL region

With respect to the structure of courts in Turkey, one element that should be underlined is that, under the 1982 Constitution, the then military Government established State Security courts to try cases involving crimes against the security of the State and organized crime. The panel of three judges in each State Security Court included one military judge. In a number of cases, the European Court of Human Rights has found the presence of military judges in the State Security Courts to be a violation of fair trial principles. In the context of a package of reforms to the Constitution passed in June 2004, such courts were formally abolished and transformed into Special Heavy Penal Courts, composed of three civilian judges, authorized to try only cases involving organized crime, organized drug trafficking and cases brought under Law No. 3713 on the fight against terrorism (Anti-Terrorism Law), as amended on 29 June 2006¹¹⁸.

Furthermore, referring to the judiciary and political systems and their influence on the Turks-Kurds conflict, Erdogan brought civilians to the National Security Council, only in 2007. The NSC until that moment was mainly ruled by the military, still rejecting the possibility to recognize the Kurdish identity and to accept the Kurds' demands¹¹⁹. In 2005, for instance, burst a big demonstration across all Turkey because the Turkish General Staff used to use continuously the term "pseudo-citizens" when referring to the Kurds: the Kurdish population felt themselves to be threaten from the Turkish society, thus using the PKK flags and the Ocalan posters during the demonstrations; immediately arose again in the military's political speeches the idea of a great and homogeneous Turkish Nation.¹²⁰ Erdogan immediately afterwards, in a speech delivered in Southern Anatolia, responded to the situation stating that

¹¹⁷ Look at *Turkey, Justice Delayed and Denied: The persistence of protracted and unfair trials for those charged under anti-terrorism legislation*, Amnesty International, EUR 44/013/2006, www.amnesty.org (consulted on the 4th of July 2013).

¹¹⁸ *Report of the Special Rapporteur on the independence of judges and lawyers Mission to Turkey*, Gabriela Knaul, United Nations general Assembly, A/HRC/20/19/Add.3, 2012, www.unchr.org (consulted on the 4th of July 2013). p.8.

¹¹⁹ Abramowitz M., Barkey H.G., 2009, p. 120.

¹²⁰ Yegen M., *Op. Cit.*, p. 610.

[...]the Kurdish Question is everyone's problem, especially mine. Disregarding the mistakes made in the past is not an attribute of big states. The solution lies in providing more democracy, citizen rights and welfare¹²¹.

Although, formally, the AKP and its leader were trying to open a new dialogue with the Kurdish population, the centralizing and authoritarian Turkish policies never actually diminished, consequently many Kurds started to sue the European Court of Human Rights to see their rights recognized, hoping that a legal strategy could improve their *de facto discrimination*. This improvement never materialized, the hopes that the Kurds had about the Turkish candidacy to the EU, as a real chance to see their rights respected, quickly vanished: the Democratic People's Party and the other groups pro-PKK experienced a huge frustration when they started to realize the failure of the European accession process¹²². That is because the citizenship theories in Turkey are still strictly related to the idea that Turkishness is something more than citizenship¹²³ and because the authoritarian model and the military influence are still deeply intermingled with the Turkish political life.

¹²¹ Celik, Op. Cit., p. 251.

¹²² Gokalp D., Unsar S., *Op. Cit.*, 2008, p. 95.

¹²³ "The fact that Kurdish citizens sued the Turkish state in the EHCR made their status vis a vis Turkishness uncertain. Although Bila's interpretation was not a mainstream one, it was indicative of the tendency to equate Kurds with non-Muslims as being outside the circle of Turkishness. What is common to the above incidents is that they indicate a growing connection in the popular discourse between the Kurdish people and non-Muslim faiths. As noted, the theory and practice of citizenship in Turkey have defined Turkishness as a category which is simultaneously open and closed to non-Turks. When, in principle, it was open to non-Turkish Muslim inhabitants of the country, it was closed to non-Muslims. Accordingly, non-Muslims could become Turkish "in terms of citizenship" only. "Turkishness more than citizenship" or "Turkishness as such" has been reserved solely for the Muslim inhabitants of Anatolia. Reflecting on these unstable frontiers of Turkishness with respect to Muslimhood and non-Muslimhood and the connection built between the Kurds and non-Muslimhood points to the following thesis: The once popular belief in the idea that Kurds may become Turkish and that Kurds are "prospective-Turks" is not strong today. The status of Kurds vis a vis Turkishness is now much closer to that of non-Muslims". Yegen M., *Ibidem*.

4.3. The 2013 Ocalan's speech and its potential consequences.

During the 2000s, the Kurdish people living in Turkey were still not considered fully citizens and part of the Turkish society; the achievement of the defeating process carry out by the Turkish Republic toward Kurds did not led to realization of the assimilation process, on the contrary the Kurds developed a even stronger self-consciousness and persisted on their mind, not wanting to be part of the Republic. Thus, it is not hard to understand the reasons that, in the 2009 elections, made the DPT/PKK to be the first party on all the Kurdish provinces of the state, bringing to the AKP attention that the Kurdish issue was still far from a real resolution. So that, Turkey started to engage itself in a political process of dialogue with the US and the Kurdish Regional Government in Iraq, aware that was the first step to make in order to find a definitive solution¹²⁴. In the meanwhile PKK declared an unilateral ceasefire, so that facilitating the adoption by the Turkish State of a new strategy in terms of commitment to the Kurdish question. Consequently, started a process of political recognition also due to the creation of television and radio channels in Kurdish language and to the realization of a new reforms period.

A commission established by the Ministry of Justice drafted the *Judicial Reforms Strategy 2009-2013*, mainly aimed at promoting the impartiality of the judiciary system and its transparency, starting from a deep reform of the 1982 Constitution. The constitutional reform package included 26 amendments: especially relevant were those regarding the Constitutional Court and the Courts system. The number of judges become 15 instead of 17, some of them still nominated among candidates proposed by the High Military Administrative Court and the Military Court of Cassation; the positive change was the introduction of the election by the Parliament of part of the judges of the Constitutional Court, so that granting that the composition of the highest judicial body could be representative of the different constitutive parts of the society¹²⁵. Moreover, the amendment of Article 148 could be indirectly considered as another development in

¹²⁴ Yegen M., *Op. Cit*, p. 615.

¹²⁵ *Report of the Special Rapporteur on the independence of judges and lawyers Mission to Turkey*, Gabriela Knaul, United Nations general Assembly, A/HRC/20/19/Add.3, 2012, www.unchr.org (consulted on the 4th of July 2013). p. 6.

regard with the Kurdish question: according to new provision, as it has been modified by the reforms package, it is recognized the right of individual petition so that strengthening the human rights protection, particularly in case of individual claims due to the rights violation made by the public authorities¹²⁶. For what concerns the Courts System, as it has been explained along this work, the main problem related to the respect of Kurds's rights was mainly the deep impact and influence that the military had in the civil judicial and political system. Thus, Articles 145 and 156 of the Constitution have been amended, granting that the military justice was limited to trials related to military offences and that civilians could not be judged by the Military Penal Code during peacetime; it was not explicitly specified the treatments of civilians in case of emergency situations.

As a consequence of this further institutional transformation, a new phase started in 2012; Erdogan lunched a still on going military operation against the PKK at the border with Iraq and, at the same time, entitled the chief of the Turkish intelligentsia to establish a dialogue with Ocalan, hoping to negotiate the end of the hostilities. The Turkish Prime Minister, at the end of February 2013 , made a tour in the Kurdish provinces aimed at promoting a peace agreement and plan¹²⁷.

The response to the Erdogan new engagement in the resolution of the conflict, was the Ocalan speech in occasion of the Kurdish new year celebrations, partially reported hereby, that unavoidably opened to new dialogue between Kurds and the Turkish state:

[...] For the past 200 years, conquest wars, western imperialists interventions and oppressive mentalities have urged Arabic, Turkish, Persian and Kurdish entities to form artificial states, borderlines, problems. The era of exploiting, oppressive ignoring mentalities is over. The peoples of Middle East and Central Asia are waking up. They are returning to their own. They are saying 'no' to the clashes that aim to provoke and harm each other. Millions of people who are enthusiastically crowding for Newroz today speak of peace and fraternity, and demand a resolution. The struggle I initiated against our collective desperation, ignorance and slavery was aiming to form a consciousness, mentality and spirit albeit all challenges. Today, I see that this scream came to a certain point. Our fight was never against a particular race, religion, sect or group, and it can never be. Our fight was always against oppression, ignorance, injustice, lack of development and all sorts of pressures. Today though, we are waking up to a new Turkey, Middle East and

¹²⁶ *Ibidem*.

¹²⁷ Al Jazeera Center for Studies, *Amending Turkish Constitution for Kurdish Question*, <http://studies.aljazeera.net> (consulted on the 5th of July 2013).

future. To all youngsters who bless my call, to all women who add my message to their hearts, to all friends who consider my sayings, to all people who pay attention to what I am saying; We have a new era starting upon us. A door is opening from a process of armed resistance to a process of democratic politics. A new process emphasizing on political, social and economic aspect is starting, a new mentality on democratic rights, freedoms and equality is developing. We have sacrificed decades for this people, we have suffered great consequences. But all the sacrifice and struggle did not go unwasted. Kurdish people regained their true self-identity. We have come to a point where we say “let the arms silence, opinions and politics speak”¹²⁸.

However, it seems like that the Turkish government at the moment is still quite far from the embracement of those necessary policies aimed at meeting the Kurds’s demands, such as the education in the Kurdish mother tongue and the right to self-government. A lot of questions are still without answers and the Turkish government should make further modification of the Constitution to satisfy the Kurdish requests: a *scenario* hard to figure considering that the nationalist and centralizing spirit still characterize the Turkish government, as the latter’s political development occurring in the country confirm.

¹²⁸ Abdullah Öcalan, İmralı Prison, March 21, 2013, www.euronews.net (consulted on the 5th of July 2013).

Conclusions.

This work started with the attempt to give a definition of Kurdistan and Kurds, in order to define the roots of the conflict between Turks and Kurds. Despite the heterogeneity of culture and religious creeds, as it has been seen, among Kurds has always existed a strong feeling of self-identification within the group, considerable as a reaction to the repressive assimilation policies experienced by the Kurdish population during different historical periods, in different ways and by different governments. The history of Kurds, considered the largest stateless population in the world, deeply intermingled with the political situation of Middle-East and Mesopotamia, above all with the Turkish state because of the role played in the area. Starting from the analysis of the historical and anthropological factors that brought to the contraposition between Turkey and Kurdistan, the following study focused on the concrete effects emerged as a consequence of it.

The constant use of the Emergency Legislation by the Turkish governments since the fall of the Ottoman Empire, have to be taken into consideration from different perspectives. First of all, as a reaction to the *Sevrès Paranoia*, the Kurdish Question has always been considered as a terrorist issue, the symbol of the risk of disintegration of the state territory. Above all starting from the 1980 *Coup d'Etat*, the Kurds have been presented only through the PKK activities and all the acts carried out from the Kurdistan Workers's Party were considered just beastly attacks to the state and not as collateral reactions to the implementation of an oppressive system that, since the declaration of the Republic in 1923, repressed the Kurdish population through the legislation, mainly because it was not part of the Turkishness. The Kurdish nationalism can be considered as the mirror of the Turkish one, because of the mutual fostering process shaped by history. There are two following considerations to add; the Turkish government presented the Kurdish Question as a terrorist issue in order to legitimize its authoritarian structure and the deep impact the military always had in the Turkish institutions. At the same time the fear environment that these policies created in the country made, as a reaction, most of the Turkish citizens scared to assist at the fragmentation of the state,

angry with the Kurdish threat and, inevitably, supportive to the government and its legislation.

During the last years, as it has been seen, the Turkish government slowly moved from a totally repressive and denial approach of the Kurds identity to a partial recognition of some cultural rights. Despite this new open approach, influenced by the Turkey candidacy to the European Union, the peace process is still at the beginning: years of legitimized repression, mistakes and mistrust need a long time to overtake the barriers of a common future. Clashes in the Kurdish region are still occurring and the Turkish state is still influenced by the military hegemony, even though the reforms period engaged by the AKP has formally changed the power relation between the military and civil institutions. Through the analysis of the Emergency Legislation it has been shown how the regulation implemented by the Turkish government defined the whole development of the conflict with Kurds.

Almost one century of history of violence and fundamental rights violations need a long term program direct to create a real integration between the two parts object of this study, achievable through a reconciliation process that should bring to the complete recognition of the Kurds's citizenship within Turkey, since the Kurdish dreams of independence disappeared, smashed by the force of the repressive use of the law.

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