Is Turkish law incompatible with EU membership?

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Introduction:

Ten years ago Turkey applied for accession to the European Union. Till today the accession has not be granted. Mainly because of the huge overall concern that Turkey is not what is perceived to be a truly democratic and free country. One largely ignores the fact that not half a century ago that what was mostly a divided and warring section of Mediterranean countries like Greece, Spain and Portugal is now today an integrated and peaceful Europe and the European integration project in which Turkey wants to join, has brought Europe together into a cohesive whole creating a ‘security community’ within an ever growing community where there is a “democratic peace”. Former authoritarian and militarily dominated countries have come together. And the conditionality for the membership ‘peace and cooperation’ has been the most potent tool for the drawing together of diverse cultures and groups such as French, German, Poles, Hungarian and Romanian countries. Dialogue and a mutual sense of security exist where earlier there was only confrontation and suspicion. Till today Turkey’s dream of integration into the EU is still a dream. A virulent debate still rages over whether Turkey will strengthen EU’s ‘democratic zone’ or destroy it and undermine the functioning of the EU through its action, most of which is considered as unlawful in the EU

The most prominent argument is that Turkey is a hardliner and the regions surrounding Turkey is filled with instability, violence, terrorism and political instability with hard-line Islamic fundamentalism. But internationally prominent figures like George Bush and Condoleeza Rice, Tony Blair are all for the process of Turkey’s integration into the European Union. Olli Rehn (assumed office as EU Commissioner for Enlargement on 22 November 2004,) is the President of the European Commission responsible for Enlargement of the European Union (ENP), which was adopted in 2003. EU borders are being stretched now to the Middle East and World borders are breaking down. Increasingly Turkey is starting to play a prominent role. It is shedding the coercive aspects of its political views and laws are becoming much more liberal and dependent on dialogue and cooperation, dismantling prejudices and promoting mutual trust. The Portuguese Foreign Affairs minister recognized this and after the Brussels Council meeting in 2005 he said ‘the US will be pleased and Bin Laden will be disappointed’. This was the meeting where it was decided that talks on Turkey's accession to the EU would start. With this accession to the EU its credibility and influence in world politics and the Muslim world will increase significantly.

Prominently opposition was because the Turks did not allow **freedom of expression**.

For a long time challenging status quo in Cyprus amounted to treason and the Annan Plan was criticized and applauded in turn. The Prime Minister, Tayyip Erdoğan (wanted a “win-win” solution) Discourse of this kind was a new phenomena and a novel one in Turkey and undoubted this was the pressure that was created due to the EU and the prospect of accession.

On 12th September 2005 was published the 12 cartoons by the Danish newspaper Jyllands-Posten which showed the Muslim Prophet Muhammad in a variety of humorous or satirical situations.

Turkey and the Muslim world clashed with the western world. Danish Prime Minister Anders Fogh Rasmussen’s nomination as NATO’s new secretary-general due to his stand in 2005 in this issue lead to his leadership being strongly opposed and the rights and the freedom of expression in the Muslim world being strongly questioned. It seemed to be incompatible with the U.N declaration of human rights.

Muslims complained about an ‘ongoing smear campaign’ in Denmark against Islam and warned that negative reaction could result in Muslim countries and Muslim communities in Europe. They called on the prime minister “to take all those responsible to task under law of the land” and requested an urgent meeting. Turkish secretary-general of the Organization of the Islamic Conference (OIC), also wrote to the prime minister and deplored “the smear campaigns conducted against Muslims and their religion” in Denmark. Rasmussen’s answer to both letters was identical:

“The freedom of expression has a wide scope and the Danish government has no means of influencing the press.”[[1]](#footnote-0)2

The editor of the paper Rose declares that the images portraying Mohammed do not criticise him as such but those images had certainly raised the issue of the debate on the integration of minorities’ communities in EU. Newspaper across Europe who republished the theme of Mohammed said “they were defending the right of free speech and acting in solidarity with Jyllands Posten”

The diplomatic furore, which resulted due to this lead to the closure of diplomatic embassies in October 2005 and Danish products were boycotted and the protests built up in late January and February and death threats against artists.

2nd February Danish Prime Minister Rasmussen appeared on Arabic TV and apologised for the offence caused but also defended the right to expression and speech.

Article 301in the Turkish Penal Code made it a crime to insult Turkishness before the reform of April 30th 2008 reforms. One such high profile case was of the Turkish-Armenian journalist working for AGOS who was critical of the Turkish Republic’s stand on the Armenian Genocide **Ogün Samast**; a 17-year old Turkish nationalist was paid to murder him on 19th January 2007.

The Quran says: "Whoever speaks about what does not concern him will be prohibited from obtaining truthfulness; whoever busies himself with superfluity will be prohibited from obtaining true fear of Allah; and whoever entertains bad opinions will be prohibited from obtaining certitude. Whoever is prohibited from obtaining these three, he is destroyed."

The hardliners took this literally and then freedom of speech was curtailed, as was the right to express opinions. April 30th, 2008, reforms laws were introduced to cover up the legal loopholes and now anybody seeking to prosecute someone has to seek the approval of the minister of justice before filing a case. The reforms are now called “Insulting the Turkish People” a change from Insulting Turkishness.

EU Criticizes Turkish Law on “Insulting Turkishness”[[2]](#footnote-1)3

Olli Rehn the commissioner of the EU Enlargement demanded that Turkey modify and amend its law on freedom of expression under the article 301 of Turkish law. Author of ‘Father and Bastard’ Elif Shafak faces this charge of “publicly insulting Turkishness.”

Amnesty International believes that the increasing number of document which are shown here show that the Article 301 of the Turkish Penal Code poses a threat to the principle of freedom of expression and calls for it to be repealed. “Amnesty International considers Article 301 to be at odds with Turkey's international legal obligations, and therefore calls on the Turkish authorities to terminate without delay all prosecutions against individuals under it, and to abolish the article in its entirety” [[3]](#footnote-2)4 .

It is now clear that a lot of journalist and writers are there who continue to be intimidated and suppressed because of this law article 301 of the Turkish Penal Code. Writers such as Orhan Pamuk, Paris - Turkish writer Nedim Gursel( Daughters of Allah) are under threat. 'The authorities accuse me of insulting religious values and thereby being a danger to public security,' Gursel said in Paris[[4]](#footnote-3)5. The daughters of Allah says Turkish daily Hurriyet is insulting and sarcastic, humiliating Allah, the prophets, divine religions, worshipping, holy books and religious principles,' and concluded that 'this cannot be explained in the scope of freedom of thought or criticism.' [[5]](#footnote-4)6

### Austria Criminal Code article 248 , France’s Internal Security law, Italy Article 292, German Criminal Code Section 90 , Netherlands Penal Code, Portugal Penal code all are based on this same principle *‘to stop the defamation of the state by speech or act’.* But public opinion has focused on Turkey because of its other gross violation which does not conform to the EU focus.

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Women and Law

The opposition to the use of force in the ‘Open letter to Abdullah Gul, Minister of Foreign Affairs of the Republic of Turkey is the ’<http://www.fidh.org/Open-letter-to-Abdullah-Gul> showcases again how law and EU come up in an confrontational attitude.

From the letter we glimpse views of law and women's rights:

“The International Federation for Human Rights (FIDH) and its partner

Organisation, the Human Rights Foundation of Turkey (TIHV) and the Human Rights Association (IHD), welcome the decision of the Turkish Government to open an investigation into the serious incidents that occurred on March 6, 2005 in Istanbul.

The FIDH, the TIHV and the IHD. The FIDH, the TIHV and the IHD express their deepest concern regarding the disproportionate use of force by police officers against demonstrators who had gathered in Istanbul on 6 March 2005 to celebrate the International Women’s Day 2003.

The FIDH, the TIHV and the IHD are concerned about this most recent example of a continuing pattern of human rights violations, among them the negation of the freedom of expression and the freedom of assembly, which constitutes a flagrant violation of the international standards and, in particular of the International Covenant on Civil and Political Rights which was ratified by Turkey September 2003”

It is a law in Turkey and the Islamic world that women cover their entire body. Head Scarfs may have specific religious significance here. Head Scarfs are also called the [*burqa*](http://en.wikipedia.org/wiki/Burqa) , [*chador*](http://en.wikipedia.org/wiki/Chador) .[*niqab*](http://en.wikipedia.org/wiki/Niqab) or [*dupatta*](http://en.wikipedia.org/wiki/Dupatta) used for cloaking the entire body. It is choice of Muslim women whether they wish to wear one or not. The insistence of the wearing of the hijab (or the public places, either willfully or being coerced to do so is seen as an attempt to increase the role of religion in Turkey. The attack on the judges in May 2006 has lead to the question of the suitability of Turkey’s EU vocation.[[6]](#footnote-5)

**Adultery law** stops Turkey at EU gates 2004-09-20 13:41:52 Anthony Browne, Brussels -- 21sep04 (<http://news.pseka.net/index.php?module=article&id=5167>)

The Islamic government scrapped the package of reforms aimed at stopping honor killings and torture and this has put in jeopardy the EU accession progress of Turkey which it has tried to achieve since the past 40 years.

European Enlargement Commissioner Gunter Verheugen said unless by October 6th the reforms were not put in place, he would not recommend the start of the membership talks.

"Only with these reforms can we certify that Turkey is a just state in which human rights are taken into account," he said. "Now comes the moment of truth. Turkey must find the strength to reconcile traditional Turkish values with European values. The European values are non-negotiable."  [[7]](#footnote-6)8

EU has already informed Ankara that criminalizing adultery is against the principles of EU . But this is supported by 80% of the Turkish population and even the PM said that enough reforms have been made ‘ we are Turks and we will make our own decisions’. So until October 6th things are in a limbo and EC will publish a report whether any law amendment has been passed or not. “And this is part of the changes being effected which determines whether torture has been abolished and individual liberties been protected or not. The changes are to align Turkish legal code with that of the EU human rights legislation” (http://news.bbc.co.uk/1/hi/world/europe/341026.stm)

Most Muslims follow the Shania . It is the expression of the divine will and is a system of duty which is incumbent on a Muslim because he follows the Muslim faith. Islamic law covers all aspect of life like matters of state to foreign relations to daily living. The *Hudud* is the defining of the punishment for crimes like adultery, alcohol consumption, theft and robbery. Law of inheritance, marriage , fasting, charity, prayer is all defined here and prohibitions and use declared here. Most Muslims follow this. Since the reforms by Mustafa Kemal Ataturk Turkey has been ruling as a secular state.

Turkish asylum policies were discussed openly in December 2004 as open debate raged over the asylum law with NGO representatives. In European Commissions twinning project foreign officials prepared *Action Plan on Asylum and Migration* to harmonize the laws with that of the EU which dictated that the *non-refoulement* principle in which the principle is not sent back to their homeland or to a situation where they may face death, torture or degrading treatment. This was done after they faced bitter criticism in 1990. Today UNHCR works closely with Turkish officials. In 2006 the “Asylum Regulation” was amended for cooperation in area of asylum with non-governmental organizations.

Foreign Affairs minister Abdullah Gül has stressed the need for Muslim countries to liberalize more and to attend to human and women’s rights in much involved way.

Divorce plans for women in EU are a cause for concern because Islamic law rules different here. Sweden ran into strong opposition when it proposed the non-EU countries law could be applicable in divorce cases, including the Islamic Law, or the Sharia. Germany holds the EU presidency at present and it is pushing for the law which allows for divorce rules to be laid down according to one's own faith before marriage.

Sweden opposes EU divorce rules plan, Islamic law a concern

<http://www.earthtimes.org/articles/show/53850.html>

The adultery law is part of a package of sweeping changes to the penal code, which include the abolition of torture and the expansion of individual liberties. The changes are an effort to bring Turkey's legal code into line with European human rights legislation.

Why the EU increasingly wants to include Turkey in the membership is clear. It is the fourth largest natural gas owner in the world. The EU is planning to welcome the Turkmenistan President Gurbanguly Berdymukhammedov at an energy summit with all honours laid out. European Union’s Commission principal decision makers are hoping that Turkey will help propel into reality the plans to build a major new pipeline bypassing Russia to feed the growing energy needs of natural gas and oil to the EU. (<http://euobserver.com/9/27985>).

Rich enough to spend euro 33 million to repair former presidents Niyazov's fountains golden statues, having Turkey, as a member is clearly viable option for EU. Added advantages would be the halt to organised crime, illegal immigration, and hardcore terrorism. Plus point would be the inculcation of youth into the EU, which is increasingly starting to have an aging population.

But the country’s reputation as a grotesque dictatorship has hindered the process of assimilation of the Turkish population into the EU as well. Erdoğan states that ‘if today the word Muslim is associated with terrorism us as leaders of the Islamic world, must remind ourselves that this was not the teaching of Islam we received from our forefathers”. [[8]](#footnote-7)9

Others have also raised the argument that Turkey advancing on the way to EU membership is welcome evidence against the idea that reform cannot coexist with Islam.[[9]](#footnote-8)10

It is a controversial partner for Europe. Jails are filled with political and religious prisoners and rape, illegal human trafficking, disappearances, illegal migration; drug trafficking and Islamic fundamentalism is rampant. Back in the 1990s the Turkish world was not too keen on democracy, was lacking in economic and political stability. It resorted to hard power against the method of soft power, which has been adopted means of international dealing of the EU. It was a ‘consumer’ of security rather than a ‘provider’. It had high inflation and interest rates. Today the scenario is different. In 1995 Turkey’s economy stood at 166.5 billion USD. In 2005 it was 353 billion USD surpassing Sweden and Switzerland. And it is the 19th largest economy of the world. Inflation is at 8% compared to the 106% in 2005. Tourism has gone up to 20 billion from just eight billion in 2005 and FDI close to 10 billion USD. Ten years ago death penalty was legal. It has now been abolished for good. Now state security courts are closed down for good. Freedom of expression and association has significantly expanded

Secularism is pure and simple heresy to some people of the Muslim world, but for Turkey it is the basis for its democracy and progress, without which they could not be where they are now. David Howden says the “Turkey EU project is in danger of collapse” *The Independent*, 24 May 2006. Turkey has still to find a happy medium between secularism and individual right of expression and still have to find a path to a lawful existence.



1. 2 <http://www.american.com/archive/2009/april-2009/the-turkish-bridgehead> [↑](#footnote-ref-0)
2. 3 <http://www.brusselsjournal.com/node/1197> [↑](#footnote-ref-1)
3. 4 <http://www.amnesty.org/en/library/info/EUR44/003/2006> (Turkey: Article 301: How the law on "denigrating Turkishness" is an insult to free expression) [↑](#footnote-ref-2)
4. 5 and 6 <http://www.monstersandcritics.com/news/europe/news/article_1471447.php/Turkish_writer_to_be_tried_for_insulting_religious_values_> [↑](#footnote-ref-3)
5. [↑](#footnote-ref-4)
6. David Howden, “Turkey EU project is in danger of collapse” *The Independent*, 24 May 2006. [↑](#footnote-ref-5)
7. 8 http://news.pseka.net/index.php?module=article&id=5167 [↑](#footnote-ref-6)
8. 9 In the 6 Euro-asian islamic council meeting in September 2005 [↑](#footnote-ref-7)
9. 10 Mohammed Al Rumaithi *Al-Hayat* (London) 13 October 2004 reproduced in Turkish in *Radikal* 23 October 2004. [↑](#footnote-ref-8)