

**The Implementation of International Law on the Right to
Education of Ethnic Minorities in Turkish Legislation:
Kurdish language**

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List of Abbreviations

AKP Justice and Welfare Party (Adalet ve Kalkınma Partisi)

CHF Republican People Party (Cumhuriyet Halk Fırkası)

CoE Council of Europe

ECHR European Convention for the Protection of Human Rights and Fundamental Freedoms

ECJ European Court of Justice

ECtHR European Court of Human Rights

EP European Parliament

EU European Union

HDP People's Democracy Party (Halkların Demokrasi Partisi)

HCNM High Commissioner on National Minorities

ICCPR International Covenant on Civil and Political Rights

ICESCR International Covenant on Economic, Social and Cultural Rights

ILO International Labour Organization

OSCE Organization for Security and Cooperation in Europe

PKK Workers' Party of Kurdistan (Partîya Karkerên Kurdistan)

UN United Nations

UNESCO United Nations Educational, Scientific and Cultural Organization

Abstract

This thesis researches the education rights of minority groups. As a case study, the Kurdish language in Turkey is examined. For gaining a clear understanding of the selected topic, the education rights of Kurds in Turkey are compared to Catalans in Spain.

The main focus is the implementation of international documents in Turkish law. Based on the literature review and analyses, the situation of Kurds' education rights in their mother tongue from a law perspective is examined. The main focus is on the examination of the constitution of Turkey and different laws.

As a result of these analyses, the main problem is having conflicts between Turkish law and international documents. Following recommendations are considered necessary for realizing the education rights of minority groups for Turkey:

- Being part of the international document which is the core document for minority rights
- Avoiding the use of nationalistic approaches to school curricula
- Ensuring the attendance of the members of minority groups in the
- management of schools.

Introduction

The existence of linguistic rights is the core pillar for the existence of any minorities. Linguistic rights were emphasized by international and regional documents particularly when the topic concerns minority rights. It means the non-existence of certain linguistic rights would definitely pave a way to the loss of their identity and assimilation of the minorities.

When talking about linguistic rights, various sectors should be considered. According to minority rights group international, individual and collective rights to choose one's own languages of communication are protected by linguistic rights within either private or public areas. "They contain rights to use one's mother language in legal, administrative and judicial acts, rights to obtain education in the local language and rights to broadcast in media using the mother tongue" (Minority rights group international, 2015).

As mentioned above, one of the basic linguistic human rights belonging to minorities is-or should be-to achieve high levels of bilingualism or multilingualism through education. Being able to speak at least two foreign languages - becoming bilingual is in most cases necessary for minorities to exercise other fundamental human rights, including the fulfillment of basic needs." (Linguistic genocide). However, today getting access to education for minority groups is the most controversial issue in the world.

This paper will discuss the implementation of international and regional legislation on ethnic minority language rights-especially having access to educational rights- under the European Court of Human Rights practice, in accordance with the UN Declaration, the Framework Convention for the Protection of National Minorities in Turkey. (Turkey's accession to this document should be investigated, and Turkey's role in solving this problem should be emphasized).

Linguistic rights of Kurdish people in a comparative manner- comparing to the Catalan example in Spain will be examined throughout the paper. As already known, Catalans possess the right to education in their own language even in high school levels. Therefore, mentioning the implementation of this experience in the Turkey context would be a great example in this case.

Why was Turkey chosen as a state to examine the protection of linguistic rights for this thesis?

The main reason for selecting Turkey as a case for studying the protection of linguistic rights is the ongoing controversy involving Kurdish people's struggle to have their education in their own language. They are blamed for being separatist, even terrorists when they demand to have access to education in their native language. The right to education is one of the most important rights in the cultural rights category. International law and legislation of Turkey should protect not only the rights of persons belonging to minorities but also all the children to have education in their mother language.

As the access to education in Turkey has many difficulties due to poverty, the dominance of a particular ideology and the education system, the whole society is affected by these issues. In the case of minorities, more specific issues are added to these general problems.

In this context, the power of a particular ideology is the main problem for realizing Kurdish educational rights. One dominant nation ideology prevents access to have the basic human rights of minorities and this prevention is legalized in internal legislation. Despite the fact that Turkey is a member of several international and regional organizations and signatory part of plenty of international documents ensuring minority rights, the internal legislation does not reconcile these documents.

To examine these issues in a detailed manner, the paper will begin with international standards. The first chapter covers the research of international documents. The documents of the UN, EC are taken as the main guarantor, as Turkey is a member of these organizations and have obligations to exercise these rights. Continuing the research, Framework Convention and European Charter for Regional or Minority Language are examined. These two documents are considered mainly focusing on the linguistic rights of minority groups.

In the second chapter, the conditions of the Kurdish language in Turkey is examined. The importance of having this section is for gaining better insights into the historical context of the problem. The internal legislation which is the main restrictive part of realizing these rights is examined through the subchapters of this chapter. After mentioning the historical part and legislative issue, the modern condition is examined as well. It helps to see the detailed change from the beginning of the problem until the present time.

In the third chapter, this paper investigates the Catalan's linguistic rights. As mentioned before, the reason for selecting this sample is to have a comparative view of the issue. While Catalan people have the right to study in their own language in every level of education, Kurdish people do not have this access even in primary school. These differences will be described in this part of the paper. The main focus will be on the differences which stem from the internal legislation.

The final chapter will analyze the conflicts between international law and Turkey legislation. The perspectives for solving these problems will also be described throughout the last part.

Chapter I. International standards

1.1. The documents which protect minority rights in international law

1.1.1. UN

This chapter will present the guarantees that are provided by international law and describe different approaches. Firstly, the approaches of the United Nations (UN) and the Council of Europe and different treaties will be discussed. Additionally, the decisions of the UN Human Rights Council and the European Human Rights Court (EHRC) will be discussed in this chapter. All in all, the main emphasis of this particular chapter will be on language rights.

UN was founded after the end of the Second World War and accepted the Universal Declaration of Human Rights. This document does not entail anything about specific minority rights, because during this term it was not acceptable to talk about these rights.

In 1948 UN General Assembly accepted Resolution 217 and in this resolution the Fate of Minorities mentioned but again they stressed that it was a very complex problem and it was impossible to give a unified solution. (United Nations, 1948) It means they did not mention specific provisions related to minority rights but as written in the resolution “the United Nations (1948) cannot remain indifferent to the fate of minorities”.

In 1993 UN Human Rights Commission adopted the “Declaration on the Rights of Persons Religious and Linguistic Minorities”. In this document the UN invokes the states that they have to support and create conditions that can help the improvement of the minorities’ existence (Declaration on the Rights of Persons Religious and Linguistic Minorities, 2018).

Following that UN the “Working Group on Minorities was established in 1995 pursuant to Economic and Social Council resolution 1995/31 of 25 July 1995 as a subsidiary organ of

the Sub-Commission on the Promotion and Protection of Human Rights (previously called the Sub-Commission on Prevention of Discrimination and Protection of Minorities)” (United Nations, 1995) “Between 1995 and 2006, the Working Group held 12 sessions aimed at being a forum for dialogue” (United Nations, 2007). It helped to create awareness about minority problems. “In 2007, the Working Group was replaced by the Forum on Minority Issues, established by Human Rights Council resolution 6/15” (United Nations Human Rights Council, 2007).

And in 2013 Special Rapporteur presented her report about difficulties of linguistic minorities (A/HRC/22/49) (Language Rights of Linguistic Minorities a Practical Guide for Implementation, 2013). This document (2013) emphasized that many languages are threatened, they are assimilated by states and there are many restrictions using minority languages, receiving education and using it in public places. Additionally, it stressed that linguistic rights are evaluated by different human rights points: dignity, liberty, non-discrimination, and identity (Language Rights of Linguistic Minorities a Practical Guide for Implementation, 2013).

1.1.2. European Council

In 1990, Parliamentary Assembly of Council of Europe (hereinafter PACE) adopted a recommendation 1134 about the “Rights of minorities”. This document contains this idea: the respect of the minorities is the pillar of democracy and stability. (Council of Europe, 1990). PACE determined minimum standards in this document for minority rights.

- every citizen must have equal access to the courts and be afforded the rights safeguarded by the European Convention on Human Rights including the right of individual petition set forth in Article 25 ;

-introduction of a general non-discrimination clause in the European Convention on Human Rights;

-the special situation of a given minority may justify special measures in its favor;

-minorities shall be allowed to have free and unimpeded peaceful contacts with citizens of other states with which they share a common origin or heritage, without, however, infringing the principle of the territorial integrity of states (Council of Europe, 1990).

This document gave a definition for national minorities and linguistic minorities. This thesis will focus on linguistic rights therefore in this part linguistic rights are discussed mostly. According to PACE, “national minorities -separate or distinct groups, well defined and established on the territory of a state, the members of which are nationals of that state and have certain religious, linguistic, cultural or other characteristics which distinguish them from the majority of the population” (Council of Europe, 1990). They also gave a definition for linguistic minorities and established principles for determining linguistic minorities. PACE adopts two principles for respecting linguistic rights:

-persons belonging to a linguistic minority shall have access to adequate types and levels of public education in their mother tongue;

-linguistic minorities shall have the right to obtain, provide, possess, reproduce, distribute and exchange information in their mother tongue regardless of frontiers (Council of Europe, 1990).

This document established obligations for states. The state has to provide the necessary conditions for eliminating prejudice against minorities, also create an environment for improving minorities` culture, traditions. The states have to give a chance to minority groups for realizing their identity (Council of Europe, 1990).

In 1992 PACE adopted new recommendations 1771-1. The general view of this document is defending the idea that states cannot divide citizenship. And no one is the second type of citizen, everyone has equal rights (Council of Europe, 1992).

Additionally, PACE recommends accepting optional protocol to the European Convention on Human Rights (hereinafter: ECHR) and adopted a recommendation No 1201. (Council of Europe, 1990). In this document, minority rights are defined as an individual right.

Finally, in 1995 and 2001 PACE adopted two different recommendations (1255 and 1492(1)) (Council of Europe, 1995; 2001) related to minority rights and reaffirmed the importance of protection of minority groups.

1.1.3. Framework convention

Framework Convention has been signed by 43 states and ratified by 39 states up until today. Belgium, Greece, Iceland, and Luxembourg have not ratified the Convention yet while Andorra, France, Monaco, and Turkey have not signed it yet (Framework Convention for the Protection of National Minorities and Explanatory Report, 1995).

Framework Convention contains identification, non-discrimination, equality, culture, religion, language, and the provision of appropriate conditions for the protection of traditions, meeting, association, religion, conscience, freedom of thought and expression, access to and use of media, linguistic freedoms (both fundamental and public in the field, minorities should be able to use their own language), education (freedom of education and training in minority languages and establishment of educational institutions), cross-border communications, participation in economic, cultural and social life, participation in public life and the prohibition of forced assimilation (Framework Convention for the Protection of National Minorities and Explanatory Report, 1995).

In this document, the usage of minority language as a right is not defined as a collective right. This convention also follows other international documents. In this document, it is stressed that the persons belonging to national minorities, who may exercise their rights own or with others, have to be protected. The explanatory report shows that minority rights are evaluated as an individual right (Framework Convention for the Protection of National Minorities and Explanatory Report, 1995).

1.1.4. European Charter for Regional or Minority Language

Language is the core value of a human being. Language rights are part of the main rights and freedoms. Since 1990, language rights are being part of a discussion about human rights and democracy. International law works at the creation of universal principles for improving language rights. At the same time, it is given broad discretion to the states. States which have different minority groups always have concerns about separation. Therefore, international documents stressed that the territorial integrity of states is inviolable. States find solutions if there are different languages in their territory. These are the recognition of minority languages in an international framework, the adoption of many languages as an official language, given the special status to some languages, the recognition of regional autonomy and etc.

This chapter will discuss the European Charter for Regional or Minority Language. This Charter entered into force in 1998 March and 25 states signed and ratified it while 8 states have only signed until today (Council of Europe, n.d). The most important feature of this Charter is that it stresses the languages especially. Charter does not use the “national minority” phrase as a term and does not accept the approaches of Framework Convention.

The main aim of this Charter is to protect linguistic minorities and to improve the regional or minority languages. Additionally, the Charter does not contain the languages which

are created as a result of economic reasons or migration. And the flexibility of this Charter helps it to be implemented in different situations.

The aim of this Charter is given in the preamble: “Considering that the aim of the Council of Europe is to achieve a greater unity between its members, particularly for the purpose of safeguarding and realizing the ideals and principles which are their common heritage; Considering that the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe's cultural wealth and traditions; Stressing the value of interculturalism and multilingualism and considering that the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them....” (Council of Europe, 1992)

The Charter gives a definition to regional or minority languages and empathizes that dialects or migrants' languages and the official language are not accepted as minority languages: “These languages must clearly differ from the other language or languages spoken by the remainder of the population of the State. The Charter does not concern local variants or different dialects of one and the same language. However, it does not pronounce on the often-disputed question of the point at which different forms of expression constitute separate languages” (Explanatory Report -Regional or Minority Languages, 1992, p. 6).

Some chapters of the Charter are binding and at the same time, it gives some options to states. This structure considers for the encouragement of States.

Chapter II. The conditions of the Kurdish language in Turkey

2.1. Historical aspects

With the adoption of the 1924 Constitution, Turkish was confirmed as the official language of the country. The only exception that limited its official status was the provisions

of the Lausanne Treaty that enabled non-Muslim minorities to use their language in the areas of education, the judiciary, and the press. According to Sub-Commission for minorities in Turkey (Muslim Turkish nations), earlier, on January 11, 1923, only religious minorities had the chance of using their native languages in education, broadcast and media without having any restrictions. These groups were even provided with facilities and opportunities to utilize their languages in the courts (Kilinc, 2013).

In 1923, the adoption of “Protocol on the Protection of the minorities” allowed the non-Muslim minorities to study in their own language in primary education levels.

However, the official language Turkish would be taught as a compulsory subject in these schools (Oran, 2001).

In this period, the Muslim groups could take the dominance (also called - religious homogeneity) in the society, unlike in the Ottoman Empire’s existence period (Oran, 2001).

During the Ottoman Empire period, the population was separated by religions. In 1927, approximately 97% of Turkey's population consisted of Muslim citizens, but members of this Muslim population spoke to themselves in various languages such as Kurdish, Albanian, Bosnian, Georgian, Arabic (Dicle, 2010). This showed their language being other than Turkish although many people were residing in Turkey. In some provinces the proportion of those who declared Kurdish as their mother tongue was 50% (Tunc, 2004).

Despite these heterogeneous identities, the Republican cadres, who set out to create a homogeneous Turkish nation from culture and languages, ignored their view against the languages other than Turkish (Oran, 2001). As a consequence, the Turkish language became one of the most important tools in nationalization politics. “Turkification” would be performed in the cultural field mainly through several tools such as language and education. However, after the collapse of the Ottoman Empire, the expansion of the Turkish language occurred.

Recognition, promotion, and dissemination of Turkish as an official language became the main concern area (Arslan, 2015).

Turkish was confirmed as the compulsory course in all community schools of Turkey in the programs accepted by the Committee of Union and Progress in 1909 and 1913 congresses (Oran, 2001). However, the emergence of Turkish as a powerful sovereign language is in the Republican period of history (Kilinc, 2013).

The main controversy with the planning of the status of Turkish until the Republican period was that this language was taught in schools and even non-Muslim communities learned this language (Zeydanlioglu, 2012). The available data show that non-Muslims living in urban areas, particularly in the 19th century, spoke more or less in Turkish (Kucukoglu, 2013). In this period, non-Muslims took advantage of the knowledge of Turkish in order to succeed in commercial life. As a matter of fact, non-Muslims in the Ottoman Empire became bilingual; even multilingual ones as some of them were able to use Latino, French at school, Hebrew in the synagogue, Turkish in the streets and in official works (Dolgunsoz, 2014). This multilingual situation began to change rapidly during the Republican era. In the Turkish citizen-based policy of the Republic, the only language would be the official language (Sarah, 2014).

The Kemalist Republic wanted to dissolve the sub-identities recognized by the Ottomans in a higher identity (Turk). The Turkish History Thesis and the Sun Language Theory (Arslan, 2015) produced for this purpose tried to prove that Anatolia was an ancient Turkish land. For this purpose, some ancient folk names turned into the name of public institutions, some squares were named after them and they were even given to newborn babies and used as surnames (Toktas, 2008). In the course of time, a distant attitude was taken against ethnic identities other than Turkish who were even seen as enemies. Nationalism, which was declared as the official ideology, was already being largely spread through the use of the

language. The demand for punishment of those who did not use this language overtime was added to the need to expand the Turkish language. From the perspective of the same issue for various communities (Circassian, Bosniak, Albanian) speaking languages other than Turkish in Western provinces, Turkification was not only about the East but also about the West. The War of Independence had been won, but the non-Muslims language traces were still alive in the country (Toktas, 2008). While the aim was to strengthen the Turkish language, there was an ongoing debate in the parliament and the media on how to break the influence of other languages. It was stated that there should be legal sanctions among the measures to be taken. Living and using various languages had a negative impact on the use and learning of the Turkish language and prevented the dissemination of it throughout the whole country.

Without any doubt, such discussions in the press did not take place independently of political power. In other words, with a decision of 10 April 1926 (Law No. 805), the Turkish Grand National Assembly the commercial enterprises were obliged to carry out all their transactions (contracts, accounts, communication, commercial books, etc.) in Turkish. Companies that did not comply with this law would be fined in cash, or in the worst scenario, they would be closed down.

It was convinced that the gathering of everyone around the “common idea was only possible with the help of language which was the main tool of communication” (Mizrak, 2018). For this reason, some social pressures were added to legal obligations. In fact, from time to time campaigns against those who did not speak Turkish were launched.

The most important legal step towards policy was the Settlement Law of 1934. It was about creating a monolingual society as well as immigration and population.

This law also addressed people who migrated to Turkey and could not speak Turkish (Ulker, 2008). The Settlement Law regulated the settlement principles of different language communities in detail. In addition to the Settlement Law, the educational institution was used

effectively in the dissemination of the Turkish language (Ulker, 2008). Thus, two ways were taken: increasing the number of schools providing Turkish education and controlling the congregation and foreign schools providing education in different languages.

In the prescriptions of salvation that began in the period of Ottoman collapse, nationalization was largely attempted through languages and culture (Ulker, 2005). The problem of simplification in the language that began during this period was seen as a matter of communication.

2.2. Language is the key factor for the nationalism

The Kurds are people of Iran origin (Oran, 2001). From the 10th century onwards, they were pushed to the west by the Turkish waves coming from the east (Hale, 2014). They lived in various Middle Eastern countries (Hale, 2014).

Kurdistan as a term was used for the first time in 1157 by the Sanjar, the sultan in Seljuk's empire which covered the region where the Kurds lived (Tamari, 2019). The Ottoman Empire also used this term, but after the "Ittihat and Terakki" (Union and Progress) period this term was abandoned and they began to call these areas East and Southeast Anatolia (Oran, 2001).

Unifying these people occurred in different periods, who were isolated from others. It helped them to better identify themselves among others and separate them from other nations.

"The real Kurdish consciousness was the result of the Kurds' started as they witnessed the activity of the Turks from Central Asia to spread Turkism." (Diaspora- it always helps to grow the nationalism; 2- Nationalisms are born in response to nationalism). Kurdish nationalism was born as a consequence of the Turkish nationalism (Tezcur, 2009).

According to Turkish nationalism, for many decades the Kurdish language was banned and the Turkish language became the lingua franca for all citizens (Tezcur, 2009). After the

collapse of the Ottoman Empire, the Turkish state was founded based on a nation and one language- Turks and Turkish language (Menzies, 2014). All other populations and languages were attempted to eliminate. The Kurdish language also was one of them, which faced severe prohibitions and regulation (Yegen 2007). After 1923, the foundation of the Republic of Turkey by Mustafa Kemal, the Kurdish language began to be invisible (Yegen 2007). The education was monopolized by the Turkish language and the ban of using the other languages put the Kurdish language under the elimination threat (Hassanpour, 1992). After Mustafa Kemal's attempt to create a nation-based state, the oppression grew against Kurds and it was one motivation for the Kurdish uprising in the 1920s and 1930s in defense of Kurdish ethno national identity (Kilinc, 2013).

For the dying of a language, it is enough not to be promoted and banned. The Kurdish language faced this situation for many decades (Yegen 2007). As a result, it is now in danger of extinction, especially its one dialect - Zaza. According to the Draft Convention on the Prevention and Punishment of the Crime of Genocide, it is called "cultural genocide". In this document, the definition of "cultural genocide" term was given which also contained the word "linguicide" (Hassanpour, 1992).

In the final version, this term was not accepted. But some scholars wrote about the link between nationalism and genocide.

After the foundation of the Republic of Turkey which was based on one nation and one language, this identity began to genocide other groups, such as Armenians, Kurds, and Greeks and, others (Oran, 2001).

The policies towards Kurdish led to the erasure of the language. Erasure is a concept which "renders some persons or activities invisible" (Arslan, 2015). It means that states create ideology for being based on one nation and one language for building a homogenous state. As

for the Turkey example, after 1923 the nation based state was founded and after this period, the attempts to eliminate the language - as an Irvine and Gal's term - the erasure of the Kurdish language strengthened it day by day. In many homogeneous and nation-based states, such as Turkey, ethnicities are seen as threats to their unities. As mentioned above, Kurds are the second majority groups in Turkey (Dicle, 2010). Therefore, this elimination policy mostly focuses on this nation. For the physical assimilation, the Turkish government used relocation of Kurds throughout Turkey which was aimed at the eradication of the Kurdish culture and language. "The Kurdish regions faced the emergency situation early and lately in the 20th century, which resulted in the prohibition of foreigners traveling to Kurdistan until 1965" (Dicle, 2010). It can also be shown as an example of "linguicide". Throughout these years, they tried to show and declare the non-existence of the Kurdish language according to Turkey's policy.

In contrast to international law, the national law in Turkey did not imply international treaties which protected ethnic minorities to express themselves in the minority's traditional language (Human Rights Watch, 1993). The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, in particular, requires states to ensure that the members of minorities "have the needed prospects to learn their native languages", explaining that such persons "have the rights of utilizing their native languages both in private and in the society without having any restrictions or prohibitions" (United Nations, 1992). Despite these treaties and other international obligations, in Turkey legal obstacles prevent people from organizing private language courses in Kurdish or a private Kurdish-language station.

The UN Sub-commission on Prevention of Discrimination and Protection of Minorities, whose mandate specifically includes the protection of linguistic minorities, has been even more active in support of the language rights. In a landmark 1979 study, the sub-

commission praised the efforts of numerous states that had taken steps to facilitate the use of minor languages in a variety of contexts, including in communications with state authorities.

According to these treaties, language is one essential element of national identity. It is a primary indicator of group identification. States putting pressure on minor languages mean the forced assimilation of the whole nation.

In some cases, the authorities offer some pseudo-intellectual justifications for justifying their attempts to eliminate the Kurdish nation (Oran, 2001).

Thus, both Kurds and Turks were taught that they were descended from a pure Turkish race and Kurds had forgotten their mother tongue. The main aim, in this case, is to make Kurds more Turkish-political, cultural and social-oriented. A 1985 appeal by the UNESCO, the United Nations Educational Scientific and Cultural Organization, declares that "until today our citizens residing in Turkey... Kurdistan has not been able or allowed to obtain guidelines and education in their mother tongues, either in public or individually. Not any school in Turkey or in Iran teaches the Kurdish language to students."

At the same time, there were many restrictions on the usage of language in Turkey legislation. In the 1982 Constitution, Article 26 "Not any forbidden language shall be utilized in the expression and spreading of an idea. Any written or published papers, photo archives, magnetic or tapes, and other media tools used in violation of this provision shall be seized". Article 28 stated that: "No publications shall be made in any forbidden languages" (Constitution of Turkey Republic, 1982).

Additionally, Article 89, states that the political parties which represent these minorities are prohibited. "Not any political party maybe concerned with the defense, progress, or dissemination of any non-Turkish culture or language; nor may pursue to form minorities or to terminate the national unity" (Constitution of Turkey Republic, 1982).

As mentioned before, in this law it was showed explicitly that the Kurds are accepted as a threat to the unity of the Turkish nation.

After 1980, thousands of Kurds had been arrested, faced torture and received the harshest treatment (Human Rights Watch, 1993). According to Amnesty International, the torture facts are systematic, and in some cases, the ordeal ends in death. Amnesty made declarations about the concerns regarding the deteriorating state of health of many prisoners in Diyarbakir Military Prison.

This situation does not happen only with Kurds. The people who tried to defend them also face arrest. Dr. Ismail Besikci, a scholar, was arrested solely for his research project in which he showed that the Kurds were separate ethnic groups (Khalidi, 2017). He had spent more than a decade in prison.

To sum up, this chapter described the general conditions of Kurds in Turkey in the past decades. Throughout the investigations in the paper, it becomes clear that they faced assimilation and suppression by the government. This process is still ongoing but in a different manner.

2.3. The legislation

Currently, the central problem is the execution of international documents not working in Turkey appropriately. The issue regarding minority languages is not covered by internal legislative texts. Therefore, this gap helps to prevent realizing the language rights of minority groups, namely Kurdish people. In this part, the research will focus on internal guarantees, which could be interpreted as a legal guarantee for realizing the education rights of minority groups.

First of all, the treaty of Lausanne which was signed on 24 July 1923 by Turkey and the Entente Powers is considered as the main document for protecting the education rights of

minorities in Turkey (the treaty of Lausanne, 1923). However, the problem is that only non-Muslim people were mentioned as a minority in this treaty. Therefore, all Turkish governments have interpreted this treaty in this way: the treaty protects only non-Muslim people's minority rights and therefore Kurdish people are recognized as a part of the Muslim community, as a result, they are not assured by Lausanne treaty. If taking into consideration the conditions of the time when the Lausanne treaty was contracted, it is understandable to talk about minorities as a religious group as then the ethnicity of Ottoman empires was not homogeny (Oran, 2001). Therefore, they were recognized by their religions. The majority of the population were Muslim (Kilinc, 2013). From that perspective, it is comprehensible why only religious groups were referred to as a minority in Lausanne. However, after 1923 (the treaty of Lausanne was signed), the proclamation of the Republic of Turkey changed the situation entirely. They built a nation-based state which created new minority groups- ethnic minorities (Oran, 2001). These minority groups were not identified themselves as a part of Turk ethnic group and they began to claim their minority rights. The problem commenced from that confrontation.

In Turkey, legislation regarding minorities and their cultural rights are limited compared to the real situation of minorities in the country. The problem is that Turkey is not a signatory party of many regional and international documents that put obligations on states related to minority issues. The second main reason for that is the 3rd article of the Constitution. Which mentioned that "the Republic of Turkey, with all its territory and population, is an inseparable entity having its official language as Turkish" (Constitution of Turkey Republic, n. d). It is completely understandable and acceptable to have an article about the indivisibility of the territory. But what does it mean if the nation is an undividable entity? Does it mean that there is homogeneity? Does it deny the existence of the other nations and people from different ethnic groups? The other problem is "its language is Turkish" statement. It is meaningless to claim that the state has only one language. It could work in a different way, for instance: the

official language of the state is Turkish and the citizens could speak in other languages in addition to the official ones. However, as mentioned before there is nothing about the official status of the language but it is only mentioned that Turkish is the language of the state. This problematic approach is reflected in the education system.

“Nowadays, many followers of minority groups sense that the Turkish teaching system works to integrate them. Turkish individuality and nationalism are endorsed as fundamental morals while separate minority principles, history, and religions are disregarded” (Kaya, 2009).

“11) The initial years of primary education have critical significance in a child's improvement. Educational investigations propose that the language of instruction at pre-school and kindergarten levels should preferably be the child's mother tongue. Anywhere possible, the states should create circumstances empowering parents to get the advantage of this option.

12) Studies also specify that in primary school years, the syllabus should ideally be presented in the minority language. The minority language should be a topic that is taught repeatedly. The official language of the state -The Hague Recommendations - October 1996 7 should also be trained as a subject frequently ideally by bilingual teachers who possess a good understanding of the children's social and linguistic experience. Coming to the end of the period, some applied or non-theoretical subjects should be trained through the medium of the State language. Anywhere possible, the states should create circumstances empowering parents to get an advantage of this option” (The Hague Recommendation, 1996, p. 6)

This part is acquired from Hague recommendation (The Hague Recommendations Regarding the Education Rights of National Minorities and Explanatory Report) which is one of the main documents defining the educational rights of minority groups. Instead of this recommendation, legislation regarding educational issues is used in Turkey, the main problem is that:

“Article 42 of the Turkish Constitution states: not any language other than the Turkish language shall be taught as the native tongue to the Turkish population at any level of the education system. Practically, not any minority groups besides the three main groups (Armenians, Greeks, and Jews) can establish schools or institutions giving education in their own languages; not any native minority language shall be used at public schools as the medium of instruction, and not any of these languages can be chosen at public or private institutions or schools as an elective language course” (Kaya, 2009).

As a consequence of these boundaries, even to claim their rights could be ended as blame for breaking the constitutional laws. People are penalized solely for requiring their educational rights (Case of Colgecen, 2015).

2.4. Current situation

Currently, a process that began after the collapse of the Ottoman Empire still stays related to the Kurdish language. During the first years of AKP¹ governance, they took some steps for the Kurdish issue which is called the “Kurdish opening” process. It was also shaped by the pressure of the Kurdish liberation movement. Having an aim to have the EU membership was also one of the essential factors which speed up this process. But what does exactly “Kurdish opening” mean? Is it a kind of democratization process or compromise?

“The Kurdish Opening is proposed to be an understandable, multi-tiered strategic approach to determining pressures between the Turkish government and Turkey’s Kurdish citizens. Even though not all the details of the Kurdish Opening case have been opened to the public, Kemal Kırisci clarified Ankara’s plans to initiate by taking several self-assurance building actions. The primary measures of this include permitting Kurdish prayers in the mosques and officially altering the names of some Turkish cities back to Kurdish. Secondly,

¹AKP is the abbreviation of the name of the ruling party in 2019. In Turkish the of party is “Adalet ve Kalkınma” which means “Justice and Development”

the Kurdish opening probably contains granting amnesty to PKK activists. The final and most problematic stage encompasses a constitutional adjustment redefining Turkish residency to be not as much of ethnically based and permitting the Kurdish language to be trained in schools” (Carnegie Endowment for International Peace, 2009).

It was the discussion process that would create an opportunity to blend together two different sides of people. In this process, in which the basic demands of the Kurdish people were overlooked, a number of demonstrative steps were taken, such as reducing the pressure on Kurdish speaking and singing, and the launching of a Kurdish television channel. However, the fact that these practices were not even mentioned by the previous administrations helped the AKP to create the impression that a serious step was being taken. In further steps, it became clearer that it is not to accept the existence of Kurdish people as a nation, it is just to see Kurds as a folkloric element of the nation. The Kurds could have acquired some individual-cultural rights, but they should never have demanded anything other than being part of the “one-state”, “one nation” and “one flag”.

A parallel effort was the process of distraction and direction of the PKK, the leader of the national liberation movement. Because the intensification of the war with the PKK often deteriorated the political balances against the AKP, and the status quo, which had not yet been neutralized enough, it led to the initiative of the military-civil bureaucracy. It was also disrupting the process of advancing the European Union.

In such cases, steps were taken by the AKP, which would reduce the fire of the conflict and lead the PKK to break its actions. Official talks were held with the PKK and Öcalan. In fact, it was ensured that the public was aware of these meetings. It was said that these talks were held to ensure the end of the ongoing war. During the thirty years of war, the hope of the Kurdish people, whose persecution had not survived, was desired as an honorable peace as soon as possible, increased.

However, none of them was considered to have a real impact on realizing their educational rights. As above mentioned some small steps only serve for formal purposes. These small alterations were only needed for formality. They were there to create the appearance of the democratic state for the EU, while in reality to continue seeing the Kurds as a real threat.

The AKP used the same instrumental or pragmatic logic for Syrian asylum seekers: the Turkish formally announced that they embrace Syrians as their religious partners and brothers while in reality having the purpose of gaining 3 billion euros from the EU and still threatens the EU with crossing the borders and sending the Syrians to Europe” (Arslan, 2015). The AKP no longer needed the support of the EU, and the democratic standards needed for EU membership (rule of law, human rights, etc) began to fall (Inal, 2018).

Chapter III. The Spain experience as Catalans example

This chapter will compare the Catalan language with the Kurdish language. It is already mentioned as Kurdish, the Catalan language is the most spoken language among minority languages.(reference needed) However, there are huge differences between them which will be discussed throughout the paper.

Catalan is the official language of Catalonia, which is considered as the most spoken language among minority languages in Europe. (reference needed)“Having about 13 million people being able to comprehend it and 10 million people able to utilize this language in their speech, Catalan has more native speakers than the languages such as Finnish, Lithuanian or Danish which are just a few examples of the EU languages” (Rees, 1996).

However, there are still plenty of issues existing in Catalonia regarding the language. Lack of awareness of being a part of linguistic minorities affects the significant decrease in language usage. In many cases, the native population prefers to educate their children in the Spanish language. But why does the Catalan language have an official status and people can

choose to get their education in their own language while the Kurdish people have no official status this education right? What is the difference between the approaches of governments to the two mentioned languages? What is the difference between legislation which gives a chance to people for choosing their language as an educational tool? These questions will be addressed in the upcoming subchapters.

3.1. The restrictions imposed by legislation

In this part, the main reason of having huge gaps between the usage of the Catalan and Kurdish languages in education will be clarified.

In 1978 in Spain, some changes were adopted regarding the regional languages. This law confirmed that the autonomous regions can also use their own languages as an official language (Rees, 1996). After this, Catalan language gained an official status and got some benefits.

The second main document, especially for educational rights in Catalonia is the Law on Linguistic Normalization which permitted the usage of the Catalan language as the medium of instruction in Catalonia (Linguistic Normalization Act, 1998).

Law on linguistic policy and Statue of Autonomy of Catalonia also had a great impact on the realization of the linguistic rights of Catalan people.

The primary alteration related to languages is Article 6, which sets out the rights of all Catalan citizens to use both of the official languages and the duty to learn the usage of them. The Catalan language is the ideally preferred language used both in public and private areas. However, it must also be mentioned that the Spanish Constitutional Court ruled in July 2010 states that the word “preferential” according to Article 6.1 was unauthorised (European Research Centre on Multilingualism and Language Learning, 2013).

The Constitutional Court has put into question the role of Catalan as first language in the areas of public administration, public media and education. After the decision of the Constitutional Court, other Spanish courts have ruled in 2010 and 2011 that Spanish must be made a lingua franca in Catalan schools alongside with Catalan. This implies a change in the linguistic model of Catalan schools which has been in place for the last 30 years. It is still to be seen to which extent these rulings will affect education in practice (European Research Centre on Multilingualism and Language Learning, 2013).

As already mentioned, there are enough differences between legislation of Spain and Turkey. Besides mentioned benefits which were given to Catalan languages, in Turkey legislation also forced restrictions on the Kurdish language. It is not the only reason which makes Turkey a non-signatory part of international documents which are the main guarantor of the realization of linguistic rights. It also originates from main legislative documents: Constitution.

In Spain, the article 3 of Constitution contains linguistic rights, namely the usage of minority languages:

Article 3 of the Constitution states that:

- Castilian is the official Spanish language of the State. All Spaniards have the duty to be able to speak it and the right to use it.
- The other languages of Spain shall also be official in the respective self-governing bodies in accordance with their Statutes.
- The richness of the diverse linguistic modalities of Spain is a cultural heritage which shall be specially appreciated and secured.

In contrast to Turkish constitution, in this document describes minority languages as a cultural heritage.

The 3rd article of the Constitution states that “The State of Turkey, including its land and citizens, is an inseparable entity having its official language as Turkish.”

The Constitution which is the main document of both states demonstrates the situation clearly. Mentioning the situation of having Turkish as the language of the state and the population is the signal of the restrictions which will be made to the usage of other languages.

As already mentioned the main problem could be that Turkey is not a signatory part of the international documents which explicitly put obligations on states for protection minority rights. On the other hand, in spite of Lausanne treaty, in Turkey it is interpreted in a wrong way. There are enough explicit articles which could be understood as guaranteed protection of all minority groups as well as Kurdish. However, they claimed that Kurds were not included in Lausanne when it was contracted.

Article 39 of Lausanne clearly guaranteed the use of their own language to any Turkish national who use other languages. Article 39 confirms that: “No limitations shall be obliged on the unrestricted usage by any Turkish nations of any languages in individual interaction, commercial events, religious activities, media, publications or social events.” (The treaty of Lausanne, 1923).

This part clearly showed that it means all Turkish citizens use different languages and if it is taken into consideration it means that Kurds are guaranteed in Lausanne as well.

Except the rights of having education, executive, and legal procedures in one’s native language, the right to politically participate in events has been seen as one of the most necessary attributes of minorities’ linguistic rights. Nevertheless, Article 81 of the Law on

Political Parties is still in use and restricts the political parties from speaking any other language than Turkish in inscription and publishing party statutes or programmes; at conferences and seminars in open and indoor congregations; at gatherings and in propaganda; in images, phonograph archives, voice and visual tapes, flyers and announcements. This article also stops the parties from appealing the existence of national, linguistic, religious and ethnic minorities in Turkey and from defending other languages and cultures. Actually, the article indicates that the linguistic rights of minorities would pave a way to the establishment of other linguistic minorities in Turkey. As the consequence of this article, numerous Kurdish political parties have been excluded since 1970s, particularly in 1990s, as mentioned before (Oran, 2004).

Apart from that, the other crucial thing which gives official status to Catalan language is the Normalization act. “The statute that Catalonia carries states that the Catalan language is the official language of the education in the territory of Catalonia. (Article 2.2a) A more detailed legislative investigation regarding primary and secondary education levels shows (Article 4 in both) that:

The Catalan language which is the official language of Catalonia will be used as the normal linguistic tool and medium of instruction and teaching, as well as the language of both external and internal activities in the education system: written and verbal academic and departmental activities, speeches, textbooks and all other teaching materials, learning and assessment resources, and interactions with families” European Research Centre on Multilingualism and Language Learning, 2013).

This is the main internal guarantee which pushes back Spain language as a foreign language.

3.2. The perspective of implementation this experience in Turkey

International conventions of which Turkey is a party (Children's Rights) that guarantees the right of all children to education.

States should ensure equality of opportunities, require education in primary levels and provide education free of charge. The scope of this right is now expressed as education being available, accessible, acceptable and adaptable to the child's needs.

The right to access education imposes duties on the state beyond making arrangements to the fulfillment of these obligations. Some of these tasks are for states to take special measures to ensure the attendance of girls in schools and to eliminate inequality level of education of men and women, or to develop special programs for individuals or groups that are unable to exercise this right on their own.

The right of access to education in Turkey Constitution (Article 42) and the National Education Basic Law (Article 7) are the main documents for the educational rights. As already examined, there is no positive stance which could be interpreted as a chance to realize minorities' educational rights in their native language.

“Taking into account the cultural rights, the State Government has not yet legitimated the delivery of public facilities in any other languages than Turkish. Legal limitations on native languages in primary and secondary levels should endure.” (The European Economic and Social Committee and the Committee of the Regions, 2019)

Kurdish languages still are the optional in exceptional cases.

Languages used in the schooling system The Language Normalisation Act 7/1983, of 18 April 1983, acknowledged Catalan to have status of the native language of the four main regions of the Generalitat's language strategy: Catalan administration, names of various places and signage, communication tools of the Generalitat and lower university education. This

deliberation of the mentioned language - a language of orientation - has been strengthened by all subsequent laws (Sub-Directorate General for Language and Plurilingualism, 2018).

Chapter IV. The implementation of international law in this problem

4.1. Attempts

Starting from the end of 1990s, there appeared different initiatives in an attempt to alter the existing situation regarding the Kurdish language. Most of them occurred due to the state's will to join the EU. During these periods European Commission of the European Union gave progress report to Turkey for every year. According to these reports from 1999 until 2001 progress did not happen regarding minority issues, especially education rights of minorities (Kilinc, 2013). First time, in 2001 progress report illustrated that as regards to freedom of the press, amendments have been made and the provision that no language can be broadcasted in any language prohibited by law has been abolished (Kilinc, 2013). This change has led to the use of languages other than Turkish. It helps to abolish bans from media which belongs to minorities. However, it did not help to change the situation in education system. Regardless of the recommendation of the European Commission, Turkey did not change the law on education.

Following that, the first attempt was shown in 2002 in progress report. It is mentioned in this report that the law on foreign language education and training was amended and provided that Turkish citizens were offered an opportunity to learn different languages and dialects traditionally used in their daily lives and to overcome these courses, knowing that they do not harm the integrity of the state. That was counted as a first attempt to pave the way to realizing education rights of minorities. It could be shown as a big chance to realize the educational rights of minority groups. However, mentioning the integrity of the state prevented the realization of these rights. Always minorities seem as a danger for the national states. From

these expressions “integrity of the state” it is easily understood that they attempt to limit educational rights of minorities in indirect ways. That is not easy to say directly the realizing of minority rights seems us as a danger for integrity of our nation state. From this phrase, it seems that Turkey ensures minorities educational rights if they do not harm the integrity of state. However, there is no clear understanding of what could be counted as a harm for the state. It is an easy way to make obstacles for the realizing education rights. They closed down the schools which had classes in Kurdish language and justified that these schools promoted separation and harm to integrity of state.

Additionally, according to the 2006 progress report, school curricula and textbooks provide references on the operation of minority schools. Further efforts are needed on discriminatory statements in school books. The administration of schools, including the dual governance practice, still remains a problem (European Commission, 2006).

Children whose mother tongue is not Turkish cannot learn their own language in the Turkish public education system. Such situation can only happen in private educational institutions.

After these recommendations until 2011, Turkey government did not take any imitative to change the situation and fulfill the recommendations of European Commission (European Commission, 2011).

In 2011, progress report showed that the Ministry of Education made some positive changes, such as distributing the books to minority schools which occurred the first time from the existence of Turkey Republic. (European Commission, 2011).

After that in 2014, some schools in the east part of Turkey launched the education in the Kurdish language. They especially emphasized that these schools do not intent to do harm

to the integrity of state. The head of one of these schools said according to unitary structure of Turkey: “Following the Turkish Constitution, what we do is legal. Putting forward these global laws, we have founded these studies. Forming a new state government controls the schooling system and does not respond to the public acknowledgement of the culture and language. We demand a legitimate regulation on the education system in the native language. We give no different thought on the Turkish language surely for its unitary construction. We have the ownership of the establishment of this unit with Turkey's schools, we promote the use of the Turkish language to be trained in schools. In addition to that, we are also of the opinion to have training in other languages. A work that was done by Mr. Abdullah Ocalan and which continued for two years has to stand fruit. Languages and cultures are the most modest request. All of the local executives and institutions should comprehend this situation. If there are any legal measures to be made, we are for bringing this training to a specific level in cooperation with the ministry. In case of having no legal guidelines, this support will be used for the parents who support us. The resolution is the constitutional assurance of the education system in this native language. As soon as this is attained, the work will gain a constitutional security” (European Commission, 2014).

All these attempts failed in some stages as there are three main problems regarding Kurdish education in Turkey. The first one is about political issue. Kurdish parties are always complaining about lack of the education of Kurdish people in their mother language. However, they do not do anything in legal stages apart from complaining. None of them presented structured programmes of which steps should be followed for realizing these rights.

Finally, since 2009, there has been a good language and education in a bad mother tongue.

Latter; Education and training in the Kurdish language is a basic citizenship right (Oran, 2001). Just as the Kurdish citizens have the rights to receive health services in the institutions of the Ministry of Health; if they use their own vehicles on the roads of highways; agriculture and agriculture directorates; they shall also have the equal rights to benefit from the Ministry of National Education and the Ministry of Culture. Because if we consider this state as a 100 percent shared entity, 25 percent of it belongs to the Kurds. They are in hospitals, agricultural activities, highways and also in national education. Service, which is normal in other institutions, cannot undergo assimilation, denial and language breakdown in “national education” (Kilinc, 2011).

4.2. The conflicts between international law and Turkey legislation

As already mentioned in the previous headings the legislation is the main obstacle for realizing education rights of Kurdish people.

The Republic of Turkey has policies and regulations on education in mother language of minorities. However, the situation is not bleak in the international conventions of which Turkey is the party, such as legal regulations. “The Right to Education in first language in International Law” under the UN, the CSCE / OSCE and Council of Europe had mentioned various declarations and conventions on-site, where we see the need to re-enter the details of the provisions of these documents and will just describe the situation according to the documents in Turkey. However, as a large number of documents are able to talk about Turkey in this regard, the contents of this title will be quite narrow.

Although there is no document within the UN that directly covers the right to education in their mother tongue, there are conventions that grant the language rights to minorities. This contract is one of the International Covenant on Civil and Political Rights which states that Turkey is a party to the agreement together. That minority's right to use their language in

Article 27 of the Constitution and the provisions of the Lausanne Treaty was approved by keeping reserved. Turkey is not a party to the Convention against Discrimination in Education (UNESCO, 1960).

Both national legislations and the need to make an assessment in the context of international law, establishing that it pursues a single language and a single identity-based policy since the Republic of Turkey, for various reasons, gradually break experiences in recent history. Even though language rights have started to be recognized for different identities that have been appropriated for years, the state's tendency to see them as a bounty and the discriminatory discourse developed against these identities in various ways is not broken. The rights of citizens are recognized, regardless of the human rights of each country's minority-majority.

Turkey's national legislation is examined in the context of the right to education in the mother tongue, as we have stated in our top title, it is built with solid state, an impossibility in the first set, including the provisions of the Constitution. This structure of the Constitution, which does not allow the right to education in its mother tongue, has caused the laws that cannot contain provisions contrary to the Constitution in the context of the hierarchy of norms, only to include prohibited provisions. For these reasons, this section “National Legislation will be very narrow in scope. As discussed below, although there are legal developments in the context of language rights, it does not seem possible to speak of a legal improvement towards the right to education in the mother tongue. Accordingly, the language rights legislation referring to briefly look at the improved provisions for discarded documents as part of the Republic of Turkey will be finalized by said part of the demand right to education in mother tongue finally stating what the case actually is.

We will first start with a review of national legislation with general language rights - of course, basically constitutional provisions and developments. Article 3 of the 1982 Constitution states that the official language is Turkish; The first paragraph of the article, 'The State of Turkey is an indivisible entity with its territory and nation. Its language is Turkish. Again, according to Article 4 of the Constitution, it is not possible to amend Article 3, which includes the provision that the official language is Turkish, and it cannot even be proposed. The remarkable point concerning Article 3; what is meant by the concept of language of the state?

Although the term as official language is preferred in the previous constitutions before the 1982 Constitution, the present Constitution has found it appropriate to formulate it as “the language of the state. This statement is based on the assumption that the mother tongue of all Turkish citizens is Turkish: “The language is Turkish” is the product of an understanding which refers to the mother tongue rather than the official language, in other words it equates the official language to the mother tongue. Indeed, Article 3 of the Law No. 2932 on Publications in Languages Other than Turkish stipulated that the mother tongue of Turkish citizens is Turkish without leaving such an interpretation.

This law of 19 October 1983 was revoked on 12 April 1991.

The 26th article of the Constitution regulating freedom of expression and dissemination and the 28th article regulating freedom of the press contained in any language prohibited by law and punished the expression of opinion and publication in prohibited languages. With regard to these fundamental rights, the above-mentioned law 2932, with its very carefully written article 2, brought the following provision: Disclosure, dissemination and dissemination of ideas in any language other than the first official languages of the States recognized by the Turkish State are prohibited. According to Baskin Oran (2001), writing this article in this way

has two purposes: any language other than the first official language” to disregard the Kurdish language, the second official language of Iraq, and make the Kurd states renowned by the Turkish State” and not to recognize Kurdish as the official language. The law prohibited all kinds of activities in Kurdish: making all records, tapes, and audiovisual materials were illegal in this language. The attitude towards Kurdish was so harsh that prisoners in prisons were not even allowed to speak Kurdish with their families. Family members who do not speak Turkish were beaten when they spoke Kurdish with their children and were asked to either shut up or sign in. Similarly, the prohibition on making defense in Kurdish continued, and Kurdish was recorded in court records as an incomprehensible language.

The provision in the text of the article “Do not use any language and writing other than Turkish has been repealed by the Law no. 6529 dated 13 March 2014”.

Turkey's policy towards revealing the different identities and languages spirit of the Constitution and the laws mentioned also reflected the numerous legal regulations. For instance, Article 43, paragraph 3 of the Law on Political Parties numbered 2820 on propaganda in the pre-election is as following: “Applicant shall have the nation-wide, local or proficient scale, apart from the party program that they are included in, the conclusions of the main congress, the accredited central authorities and the party's appointment assertion. It is discoverable and any possibilities in writing cannot include languages other than the Turkish language. " Article 81 of the same Act is shown as following: ” Political Parties: a) minorities in the Republic of Turkey shall not be placed forward; b) to defend and separate other languages and cultures from the Turkish language or culture, activities should be established and spread through the weakening of the persistence of national unity by generating minorities in the Republic of Turkey in this way. c) No any other language other than Turkish can be used in written and published laws and regulations, in meetings and propaganda; in distributed flyers and banners, archives or records, tapes and announcements; these activities cannot be left

uninterested by them to be performed by others. Nevertheless, it is conceivable to have its statutes and programs translated into a foreign language other than those banned by law.”

Article 58 of the Election Law²¹⁴ states that propaganda (propaganda) It is forbidden to use the languages other than Turkish in propaganda, in media, television and radio broadcasts in other voting propaganda.

The Election Law No. 2839 was published in the Gazette based on national or religious culture, denomination, racial or language differences on the territory of the Official Republic dated 13.06.1983. The association cannot be established in violation of the principles; 1. Damaging the indivisible integrity of the country and nation - the Turkish State, 2. Language, race, class, endangering of the existence of the specified in the Constitution qualifications on the basis of religion and creed Republic of Turkey or to eliminate, 3 to eliminate the fundamental rights and freedoms in the Constitution, 4. the law, national sovereignty, national security, the public order and general security, public interest, public morals and engagement in activities contrary to the protection of public health, 5th District, race, social class, engagement in religious activities and sects based or on behalf of, 6. Republic of Turkey on the country by claiming that there are minorities based on racial, religious, sectarian, cultural or linguistic differences; or to ensure that they are privileged (Kilinc, 2011).

In Article 16 of the Population Law No. 1587, which was repealed the population administrations did not give birth to certificates of Kurdish children. Beyond that, if the parents who give Kurdish names to their children do not agree to change these names would be questioned by the law. However, in March 1992, the Court of Appeal ruled that a couple who named their children in Kurdish could not be tried under this article.

The second paragraph of the article was amended with the Law No. 6529 on the Amendment of Various Laws for the Development of Fundamental Rights and Freedoms,

which was adopted on March 2, 2014 and prepared within the framework of Democratization Packages: language and dialects.

The Law of Associations No. 2908 was published in the Official Gazette dated 07.10.1983 and numbered 18184. This Law was repealed by the Law on Associations No. 5253, adopted on 4 November 2004.

Article 5 of the Law No. 2908 on Associations²¹⁵, issued in October 1983, provides that:

In the event that this is not the basis laid down in the beginning of the Constitution, this is the case in 16/4. It was also decided that the article cannot be covered. About a year later, the parents were free to give their children Kurdish names. The case of half the national legislation of the language policy has stood since the 1990s in attitudes towards different mother tongues in which the first break began to show early. The first of these breaks was the abolition of the Law No. 2932 on Publications in Other Languages, which accepted the mother tongue of Turkish citizens as the Turkish language and prohibited the dissemination of ideas in languages other than Turkish during the sovereignty of President Turgut Özal, who said: We must recognize the Kurdish reality. With the abolition of this law, it has become possible to speak in languages other than Turkish, to sing and to record cassettes and records (Oran, 2001).

Regulations on the language bans have gained momentum and scope, mainly through the accession process to the European Union. In this context, in 2001, the term any language prohibited by law in Articles 26 and 28 of the Constitution was removed from the constitution and 'prohibited language phrases in the Press Law were removed in 2002 to ensure compliance with the Constitution (Arslan, 2015). Again in 2002, the ban on establishing associations to claim that there are minorities or to preserve, develop and disseminate languages and cultures separate from the Turkish language and culture was lifted (Kilinc, 2011).

On July 19, 2003, it was legally guaranteed to be broadcasted in different languages and dialects on national radio and television (OSCE, 2003). On 25.01.2004, the Regulation on Radio and Television Broadcasts to be made in different languages and dialects traditionally used by Turkish citizens in their daily lives 'was issued and the front of the publication was opened in local languages (OSCE, 2003). Article 5 of the mentioned regulation also states that; in local languages and dialects traditionally used, only adult news, music and traditional culture can be broadcasted, the broadcasting of these languages and dialects cannot be done, radio institutions should not exceed 60 minutes a day for a total of five hours a week, not to exceed 45 minutes for television organizations. It was stated that it would be possible to publish a total of four hours per week, provided that the publications were submitted in Turkish subtitles, or that they were immediately translated into Turkish. This article of the regulation, from the beginning of the language policies were not abandoned, such an arrangement was prepared as a result of various pressures signaled from June 21, 2004 when TRT, Bosnian, Circassia, Arabic, Kurdish (Kurmanji and Zazaki) began to broadcast television and radio programs (OSCE, 2003). In January 2009, TRT-6 started broadcasting in Kurdish for 24 hours (Yilmaz, 2009). In June 2009, the Ministry of Justice amended the Regulation on the Execution of Criminal and Security Measures for the Management of Criminal Institutions and opened the way for prisoners to speak in Kurdish on the telephone (Yilmaz, 2009).

Although these are developments in the national legislation on language rights, there have also been incidents that may be seen as the persistence of repressive language policies in practice. Nevertheless, the current situation creates a more promising atmosphere compared to past practices. Once these developments have been made, the legislation on the right to education in their mother tongue, which has not been the subject of promising steps and improvements, such as language rights, can be analyzed.

For example, one of three lawsuits filed against Orhan Miroğlu, who participated independently in the 22 July 2007 elections, for Kurdish election propaganda was concluded and he was sentenced to 6 months' imprisonment (Hejar, 2007). The violation of rights in this example stems from the fact that despite the abrogation of Article 58 of the Election Law, which prohibits propaganda in languages other than Turkish in the elections, the language ban in the Political Parties Law is maintained.

The content and current status of the right to education in their own languages, which was recognized by the Treaty of Lausanne, has been described above.

These are the laws directly or indirectly related to the use of mother tongue in education and restricting education in the mother tongue: Law of Unity of Education, Basic Law of National Education, Law on Private Education Institutions, Law on Foreign Language Education and Teaching and Learning of Different Languages and Dialects of Turkish Citizens, Minority Law on Turkish and Cultural Lessons Teachers of Schools, Regulation on Private Education Institutions under the Ministry of National Education, Regulation on Private Armenian High Schools and Secondary Schools, Regulation on Armenian Primary Schools, Istanbul Armenian Schools Ordinance, Istanbul Greek Schools Ordinance, Different Languages and Dialects Used Traditionally Regulation on the Learning, the Regulation on Opening and Closing and Naming of Institutions affiliated to the Ministry of National Education, Disciplinary and Re Ministry of National Education (Yilmaz, 2009).

1982 Constitution regulates the right to education and training Article 42 of the Republic of Turkey with the Lausanne Treaty and the Kingdom of Bulgaria between holding reserves of the provisions of the Treaty of Friendship, Any other language than Turkish are not trained in education institutions or training centers contains a provision. It is to be understood that this article is the first legal obstacle to the right to education in the mother tongue.

Following this provision in the constitution, the ban is continued with various legal arrangements. This law was established by changing the name and articles 1 and 2 of the Foreign Language Education Law No. 2923 (Oran, 2004).

Even the only positive step towards the right to education in the mother tongue is not about education in the mother tongue but the learning of this language. As a matter of fact, with the Law No. 2923 on Foreign Language Education and Training of 2002 and the Learning of Different Languages and Dialects of Turkish Citizens, To be subjected to the requirements of Law No. 625 dated 8.6.1965 and numbered 625 for the knowledge of different languages and dialects by tradition used by Turkish citizens in their everyday lives (European Commission, 2006). As it is clear from this provision, the right granted here is what we may call the teaching of the mother tongue or the education of the mother tongue. This provision in no way allows the use of mother tongue in levels of public education. This problem is also emphasized in article 2 / a of the law with the words. No language other than Turkish can be trained and t as a mother tongue in Turkish schooling system and training institutions. Based on this law, the first private Kurdish course was opened in Batman, followed by Diyarbakır, Şanlıurfa, Adana, İstanbul, Van and Mardin (Yilmaz, 2009). However, these first courses were closed in 2005, given bureaucratic restrictions and justified reluctance to learn people's mother tongue through special courses, and a very tense socio-political environment in which the Kurdish identity claim is perceived as terrorism in practice. However, within the framework of the Solution Process and Democratization packages, the Development of Fundamental Rights and Freedoms No. 6529 adopted on 2 March 2014 (European Commission, 2014).

With the purpose of amendment of various laws with the purpose of Foreign Language Education and Teaching Law No. 2923 and the Learning of the Different Languages and Dialects of Turkish Citizens, Article 2 (a) of the first paragraph. “Furthermore, subject to the supplies of the Law on Private Education Institutions, with the purpose of education and

training in various languages and dialects traditionally used in their everyday lives, private schools can be unlocked. The language and dialects to be educated in these places are defined by the opinion of the Council of Ministers. The moralities and measures regarding the opening and administration of these institutions shall be controlled by a regulation body to be delivered by the Ministry of National Education.” (European Commission, 2019). However, this provision also means that the mother tongue cannot be taught in public schools but also in private schools through private initiatives.

In the public schools, on the other hand, with the authority given by the Law No. 6287 on the Amendment of the Law on Primary Education and Education and the Law Amending Some Laws adopted on 30 March 2012, the list of elective courses that may be opened by the Ministry of National Education at the request at least 10 students to be also in Kurdish (Yilmaz, 2009). According to 2013 data, the number of students who choose Kurmanci and Zazaki as an elective course in the Kurdish-populated regions is close to 5 thousand (European Commission, 2013). The education in mother tongue is the most important part of the existing curriculum courses in the education system, the weight of which varies from model to model, in the mother tongue and majority language. It is clear that the possibility of teaching a language as an elective course is not covered by the right to education in its mother tongue. Recently, especially Kurdish politicians and non-governmental organizations have been demanding education in Kurdish mother tongue where Kurds live intensively. However, the reaction of these demands from both the opposition parties and the government is negative. In his meeting with representatives of non-governmental organizations in Diyarbakir, Prime Minister Recep Tayyip Erdogan, Sezgin Tanrikulu, who was the President of the Bar Association at that time, in response to the proposal to open Kurdish departments in education and universities in his mother tongue, said, “There are only population coming from Kurdish background. What happens when others question it? We have a nice talk about it, it is simple

to split-up the bachelor.” he said (Arslan, 2015). The state does not have any duties such as this. Uncover your course and allow the Kurdish to be the medium of instruction. Not any friends, no such things. Again, in September 2010, the Prime Minister specified that the Prime Minister should be gratified with current courses on education in the native language, and that they would not be capable of meeting any more demand: with your wish, you can uncover your courses. This is where you can spread your language through teaching, undertake your studies. However, you cannot expect to study in your own language as the official language of is the Turkish language. (Arslan, 2015). Erdogan's declarations are the statements which easily disclose the prominent standpoint on the right to education in their native language. These severe dissertations on mother tongue education are not limited to these; Deputy Prime Minister Bülent Arınç, he attended in a TV channel CNN Turk in February 2012, said that people would not be able to study with Kurdish from primary school to university, but could be an elective course: “Else, it would not possible to perform Kurdish education from primary school to university. There is a legitimate barrier to education in the Kurdish language. Secondly, can you trust that Kurdish education is a quality education if it is not a legitimate barrier? Can Kurdish be the language of civilization? We cannot consider spreading education in such a language. The fact that education in is Turkish provides both unity a civilization serves all areas of education with Turkish” (CNN Turk, 2012).

Reactions to mother tongue education demands were not limited to the government front. CHP leader Kemal Kılıçdaroğlu, the main opposition party, said that education in mother tongue would divide society and therefore they favored education in mother tongue, but opposed to education in mother tongue as follows: ‘Education in the native language is distinct and it can be done. But where can you discover the teacher for education in your oown language? To some people it may be seen as a matter of equality and human rights. We carefully analyzed and investigated the EU practices. Our job is to assimilate the society, not

to place boundaries in it. The public can be disconnected when the education starts to be served in the mother tongue. We have not yet grasped that development. The right to education in its mother tongue is not only harshly contradicted as a discourse, but also demands for the right are seriously penalized. As a matter of fact, in November 2001, a group of students from Istanbul University started a petition to spread Kurdish language to other universities in the country, demanding that the Kurdish language be taught as an elective course. And some of them were arrested for this petition. The whole practice is an unlawful interference with the right to petition; In the Article 74 of the Constitution and the Law on the Exercise of the Right to Petition, there was no restriction on the “content” of the right to petition (Arslan, 2015).

Although it is not directly related to a demand for education in the mother tongue, it is appropriate to mention an event that the judiciary draws an interesting picture. However, upon the application of the Ministry of Interior, on 22 May 2007, the Council of State unanimously decided to dissolve the municipal council and to dismiss the mayor Abdullah Demirbaş (Arslan, 2015). Additionally, this verdict was taken with mention of Article 42 of the Constitution monitoring the right to education and schooling: As the medium of instruction and teaching is Turkish and well-educated Turkish citizens can speak and write in this language, there cannot be any realistic explanations for serving municipal services in languages other than Turkish” is an example.

This bet will be closed by providing a final example of the demands for the right to education in the mother tongue. In September 2014, Kurdish schools were opened in Diyarbakır, Şırnak and Hakkari by KURDİ-DER, and 19 people were incarcerated in protest (Arslan, 2015). Interior Minister Efkan Ala's statement on this initiative to provide education in his mother tongue revealed the perception that language rights, or human rights in general, are the values that the state to the citizens, not the compulsion of human beings and human self-respect. Not. You can go, apply and meet the requirements. You can start the Turkish

course, as the English course is already open. But is there any Kurdish education? To put it in another way, can you form a Kurdish private school and start secondary education? You can still start as we have made the legal preparations of this. Can you create propaganda in Kurdish? Yes, you can also do it. But not more than that, not enough, if you have other ideas on the state of national legislation on education in the mother tongue, after mentioning the developments in this way, will end this section of the international arrangement that places the right to education in the mother tongue and can now also examine the ways he found money in Turkey.

4.3. Perspectives for solving of problems

As already mentioned the main thing is becoming a part of international documents which is the core element for realizing the education rights of minorities. Specifically, for Turkey, they should take an example of developed countries that contain minorities and has comprehensive rights regarding education in the mother tongue. The first problematic side of this issue in Turkey is that they are thinking about the issue of unitary, not like human rights. But language and education rights are human rights firstly. Before thinking about the unitary of state, the state should guarantee the rights of its citizens. There are some recommendations given for Turkey.

“Recommendations: 1. Schools should notice the social variety in which it lives with the purpose of overwhelming the “identity blindness” stemming from the out-dated monoism. 2. Schools should also permit the range of students considering the students as topics bearing and transporting different communal belongings as an alternative to homogenous entities. 3. To protect the suffering or disappointment growing from differences between the mother language and teaching language, a school should be turned into a multilingual location also covering the teaching in the mother tongue. Education and Identity: Rebuilding of the Kurdish Identity within and in Spite of Turkish Education System 34 Issue 5 Year 3 2016 4. Curriculum should be created regarding social background, morals, and academic guidelines. The process

of developing a curriculum should also include teachers, parents, students, and experts. 5. The image of the school as a process in which social struggles are created and the person's opposition should be substituted with the one which builds and empowers social peace. It should be altered into a setting where the cruel and exclusivist hierarchy does not occur in society among the languages and cultures" (United Nations, 2009)

Conclusion

Although the development of language rights literature can be traced back several decades, the dominant role of language rights in the conflict of ethnic, linguistic or religious identity across the world cannot be denied at the point where the global conjuncture and the increasing demands of different language groups are reached. The nation-states, which have existed since the 17th century, pursued pressure, violence and violence, the source of the differences, the source values of the differences, with the possibility of being the creator and owner of all the devices capable of systematically achieving this aim in every field for the sake of building a homogeneous nation. People and groups that bear the values, ignorance/destruction policies are the main reasons behind the underlying conflicts. These policies and practices of states are mostly based on the forced adoption of the language of the built nation and the devaluation or even prohibition of languages other than that language. Language is a sign of any dominant or different identity as deleting the language will also destroy the identity associated with this language. It would not be an exaggeration to say that a piece of land on the world under the sovereignty of a state that has not been experienced, does not exist even a person who has not been exposed to these policies. Peoples all over the world have stated that it is natural to have the oppression, violence, discrimination and dominant groups they face due to their differences; but they are struggling in different ways for their deprived rights. Their counterparts are the states that are the creators and implementers of the said policies, and the same states are seeking solutions for the establishment of a peaceful environment on different platforms. As such, it is ironic that the desired level of recognition and protection has still not been achieved in the field of language rights.

Whether language rights can still be part of human rights or not; in other words, there are discussions about whether language rights should be given to different languages and speaker groups other than those related to classical human rights. This thesis concludes that

language rights and human rights cannot be separated from each other and that language rights have the characteristics of human rights. The implementation of the linguistic rights regime, i.e. the failure to leave the classical human rights framework, can provide adequate protection for the majority group in a country; but for the members of different language groups, which do not doubt the human beings, it is enough to think that this will suffice, rendering the basic notion of human rights “equality” meaninglessly; and this in itself means emptying the concept of human rights. To ignore the differences and to make people who do not share equal conditions as the subject of the same right, to prefer people and groups who share dominant features in our opinion, is not acceptable.

The dominant view in the field of language rights is that language rights are minority rights. It is a fact that groups with different ethnic, linguistic or religious identities are minorities that are not dominant in society and therefore need protection. However, it would not be wrong to say that there is almost no difference between defending language rights as a category of rights that should only be granted to minorities and arguing that language rights and even minority rights do not exist at all. Because, although the rights categorized as minority rights are tried to be guaranteed by international conventions, to have the rights in these conventions, the minority which must be a member must first be recognized by the state.

It is not possible to accept the widespread opinion that language rights are minority rights because of this recognition condition which is arbitrary in the state.

What we advocate during the thesis is that a system in which only linguistic rights are recognized will not be sufficient to compensate for the persecution of different language groups or to enable them to live their language, culture, and identity and live freely. On the contrary, an order in which group identities are recognized and respected in the first place and the idea that these identities and languages deserve to live as much as the culture or language owned

by the majority group can provide justice and peace for all. For this reason, we argue that it is necessary to recognize the rights of the language, which are recognized in the collective dimension, supported by the state legally, economically and politically, that is, the state should be under a positive obligation and the founding effect of language on identity and culture is at the forefront. The collective dimension of the language rights, which we define in this way, and the importance it attaches to identity, reveal the close relationship of these rights with cultural rights, or rather with cultural identity rights.

It is not possible to say that these conclusions about language rights do not apply to the right to education in the mother tongue, which we accept as a language right. What we say about an ideal language rights regime is closely related to the right to education in the mother tongue. As a matter of fact, the language in which groups have vital interests in the protection and suppression of states by monolingual policies is their mother tongue; that is, the value that is tried to be protected by language rights is a native language. For other language rights to reach its purpose and express meaning, first of all, it requires protection of the mother tongue and access to the mother tongue is smooth. The only thing that is the dominant constituent element of different cultures and identities and that will ensure the survival of cultural values is the mother tongue that connects the identity and culture carriers. The main problem we face in both international regulations and policies implemented by states is the perception that the problems of different language-speaking groups will be eliminated if verbal freedom is granted to different native languages. However, in addition to having the freedom to use the majority group languages, they can receive all public services in their own language and have no obstacles in creating economic or cultural values with their languages. Let alone the ability to live their language and culture in the long run for different native speakers who do not have the same opportunities; they do not have to leave their language to find a place in society economically and socially.

It is a sine qua non for people to speak their mother tongue freely for the survival of a mother tongue, for the preservation of cultural and identity-based values connected with language and for transfer to future generations; but it is not enough. First of all, it is necessary to ensure that people have competence in their own mother tongue and produce new values with their language. The reason we attach such importance to the right to education in mother tongue is the vital role of education in the mother tongue in fulfilling this requirement. The most important apparatus used by nation-states to create homogeneous nations is the standard education system; that is, the most effective means of reproducing and imposing the language, values, and values of the created nation is education. With the standard education system, a situation arises in favor of the majority group in terms of transferring their language and culture to future generations. To prevent such an opportunity from different native speakers, states propose that: national unity and solidarity will be shaken and the threat of division will be faced; that economic development and democratic negotiation environment will be disrupted; that the presence of different languages in the public, especially in the education system, as more will create problems in exploiting opportunities in the context of intra-communal communication and social and economic integration. These arguments seem to be accepted as reasonable reasons. As a matter of fact, it was previously stated that a right of education in their mother tongue was not necessary for a two-headed education system in which the majority language was not learned. When the mother tongue education model is adopted, children with different mother tongue will also learn the dominant language; they will be able to complete the academic development by taking courses in both languages gradually and gaining competence in both mother tongue and dominant language. Moreover, the child's only gain in education in his mother tongue will not be competence or academic development in the languages he speaks. With an education in their mother tongue, children will not have to deny their language and identity as part of their existence.

Likewise, every child belonging to a majority or minority group will experience living concerning these values, intertwined with different identities and languages. It is beyond doubt that this experience will lay the foundations of a society without prejudice.

Cultural identity rights; the right to choose cultural identity, respect for it, respect for cultural identity in media and education, the right to cultural activity, the right to be recognized as a member of a cultural community, the right to name a cultural community, the right to name, the right to use the language of choice, the right to use public signs, the name of the village, the city or others as well as the right to learn the language of the minority, the right to receive education in their own language, the right to receive qualified education, the right to receive education based on tolerance, the right to continuous education... etc. If we recall that the rights are exemplary, the close relationship between language rights and cultural identity rights will be revealed. Indeed, most cultural identity rights have content that necessitates the free use of language, or practices based on state support for the language. The language is the most important indicator of culture. We have stated that the right to cultural identity is the recognition of these differences in groups that have a culture and identity different from that of the majority in a society, and the rights granted to the protection and development of identity and culture. In the light of this information, we stand behind the argument that the right to education in mother tongue is a cultural identity right when one of the dominant elements that distinguish one identity and culture from another is its mother tongue and its effect on the protection and transfer of identity and cultures to which the mother tongue has a constitutive importance.

The right to education in its mother tongue, which requires recognition of identity / culture in the first place, is a collective right both from the fact that education is a collective activity and from the dimension of the right to cultural identity. Besides, it is important not to confuse education in mother tongue with instruction in the mother tongue; In fact, mother

tongue teaching does not mean that a language is a language of instruction, but that it is usually taught in private courses or private schools as if it were a foreign language. However, the right to education in their mother tongue is the use of the mother tongue as a language of education in varying concentrations in public schools providing public education or in schools where the state provides legal, political and economic support.

From international obligations or the specific conditions of society, many countries around the world have adopted and implemented various models of education in their mother tongue within the framework of autonomous governments or federal state structuring. Especially after the dissolution of the USSR and Yugoslavia since the 90s, it was subject to regulations on language rights and the right to education in the mother tongue to resolve the ethnic, religious and linguistic conflicts in the newly established countries. However, some of these documents are not legally binding and although most of them treat this right under minority rights, they did not define the subject of rights as minorities due to the sensitivities of the states. Moreover, for these rights, which can be exercised by belonging to a minority, the state must recognize the minority group; but this, as we said before, is entirely a matter of state arbitrariness.

While the situation of the right to education in the mother tongue in the world is going this way, we see that the situation in our own geography is far behind the developments in the world. Moreover, Turkey as well as to supply a homogeneous society of ethnic or linguistic structures such as geography, marked by conflict is quite clear. In the language rights before the European Union accession process requires that the result of the growing democratization Packages of the Copenhagen criteria and the “Kurdish problem” for the resolution process for n, the Republic of Turkey's institutions are experiencing breaks in monolingual policies pursued since. However, these policies established by the Republic within the framework of a single language and single ethnology are so established in the mentality of government that

there is no proper implementation of the rights that should be recognized long ago. Moreover, while there are some developments, on the one hand, the rights of the state men on the other hand, where it is natural to have different identities.

The tendency of the State to see it as a blessing and its hatred and discriminatory rhetoric towards different identities are major obstacles for language rights. When we look at the rights to education in the mother tongue, we can say that the walls of high impossibility rise in front of this right. The only part that has the right to education in their mother tongue in public education context, Turkey adopted the founding treaties, and (that persisted unlike review expansionary in the literature) Jews recognized by the Lausanne Treaty reflects the limited minority understanding, are the Armenian and Greek Muslim minority. But that's the only obligation that Turkey, an important reason that the provisions of the Treaty of Lausanne of reservations that puts the relevant contract are a fact that also violates human rights.

Demanding for the right to education in the mother tongue in Turkey is increasing every day. Thousands of Kurdish students begin each academic year by boycotting the state and schools that do not allow for the right to education in their native language. Moreover, this violation is not only experienced by the Kurds. Although the remaining group of Kurds have been subjected to the Republic of Turkey as the most assimilationist policies and the most severe, living for years in the territory of Turkey and suppressed many ethnic, linguistic and religious communities located. If the conflicts end in the country and the establishment of an atmosphere of peace is desired, the state should take more concrete and sincere steps.

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