Turkey, the Kurds, and the legal contours of the right to self-determination

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Abstract
Within international law, the concept of self-determination has evolved over the years so as to reveal an external dimension, often associated with secession, and an internal dimension, entailing participatory democracy, minority protection in the context of pluralist co-existence within the territories of a state. An examination of the interpretation of self-determination by the Constitutional Court in Turkey shows, however, that the Court has statically endorsed the former, conservative viewpoint, which reinforces Turkey’s militantly nationalist, democracy. This article explains the development of the right of self-determination in international law and examines the Turkish Constitutional Court’s case law in that light. In a study of the case law on party closures in Turkey, it evaluates the extent to which the Constitutional Court’s archaic and anti-democratic interpretation has created a legality undermining the ethno-cultural and political rights for the Kurds in Turkey.

Keywords: Self-determination, Kurds, Turkish Constitutional Court, autonomy, democracy.

Introduction
The notion of self-determination has come a long way since its articulation as a “principle” in international law. Presently, it is not only considered to be a

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1 See article 1 and 55 of the United Nations Charter and section VIII of the Helsinki Final Act adopted by the Conference on Security and Co-operation in Europe (CSCE) in 1975. Also see the jurisprudence of the International Court of Justice in Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution

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“right”\textsuperscript{2}, but is, moreover, seen as an “inalienable” right or an “essential condition” for guaranteeing the implementation of individual human rights.\textsuperscript{3} As a right, it can be defined as the capacity of people to control and participate in decision making in determining their political status, in pursuing their economic, social, and cultural development, and disposing of their natural wealth and resources. Further, its realisation has been considered as contributing to the maintenance of peace and stability.\textsuperscript{4} States are under an obligation “concerning its implementation”\textsuperscript{5} for all people deprived of exercising this right. Further, positive state action may be required “to facilitate the realisation of and respect for the right of peoples to self-determination”.\textsuperscript{6} This became more tangible when the United Nations Human Rights Committee (HRC) requested state parties to the UN’s twin Covenants to elucidate in their regular report “the constitutional and political processes which in practice allow the exercise of this right”.\textsuperscript{7}

The content of the right to self-determination has also evolved over the years, and it is now widely accepted that the right to self-determination has two aspects - external and internal.\textsuperscript{8} The external aspect is considered to be exercised by a “people” to determine the political status of their territories in international law, in some limited cases of colonial or racist regimes, subjection to alien subjugation, domination and exploitation, etc.\textsuperscript{9} Some also argue

\textsuperscript{2} See para. 7 of the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by General Assembly resolution 1514 (XV) of 14 December 1960; common article 1 of the International Convention on Civic and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR); the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States adopted by the UN General Assembly in 1970, GA Res. 2625 (XXV); article 20 of the African Charter of Human and Peoples' Rights of 1981; the Charter of Paris for a New Europe (CSCE) in 1990; and article 2 of the Vienna Declaration and Programme of Action (UN) of 1993. See also UN Human Rights Committee (HRC), General Comment 12: The right to self-determination of peoples, 1984, art. 1, and the UN Committee on the Elimination of Racial Discrimination (CERD), General Comment 21, 1996. The “\textit{erga omnes}” character of self-determination has also been affirmed by the International Court of Justice in the case of \textit{East Timor (Portugal v. Australia)}, Advisory Opinion, ICJ Reports 1995, p.102, para. 29.

\textsuperscript{3} HRC General Comment no. 12, para. 1.

\textsuperscript{4} See HRC General Comment No. 12, para. 8. See also the Report of the International Conference of Experts (1998), pp. 20-21. The Report notes, at 10, that “in most cases it is not the assertion of claims by oppressed communities but the denial of self-determination by state authorities which cause armed conflicts”.

\textsuperscript{5} HRC General Comment No. 12, para. 2.

\textsuperscript{6} HRC General Comment No. 12, para. 6.

\textsuperscript{7} HRC General Comment No. 12, para. 4.


\textsuperscript{9} CERD General Comment 21, para 4. See also McCorquodale (1994: 859-863); Wheatley (2005: 124-125).
its relevance for minorities, but as a “last resort” in exceptional or extreme cases e.g. where a minority is under a “racist regime” (Wheatley, 2005: 94), in the case of “denial of their physical and cultural existence” (Henrard, 2000: 315; Wheatley, 2005: 94), or where they “are treated in a grossly discriminatory fashion by an unrepresentative government” (Thornberry, 1989: 876; also Xanthaki, 2005: 23-24). The HRC’s Concluding Observations on the periodic report of Azerbaijan can also be seen as taking such an approach: in affirming the applicability of the principle of self-determination to “all peoples and not merely to colonised peoples”, the HRC left its applicability open for minorities.

Conversely, as Thornberry (1993: 101) observes, the “democratic or internal dimension, should concern the relationship between a people and ‘its own’ state or government”. This internal aspect facilitates the free pursuit by various groups of their political, economic, social and cultural development through some institutional, legal, and political arrangements within the state they live in. It is argued that the internal aspect broadens the application of the right to self-determination beyond a “people” to “minorities” (Thornberry, 1991: 216; Henrard, 2000: 292, 297, 314-316; Wheatley, 2005: 124-125). The link between minority rights and the right to self-determination is also justified with reference to the realisation of the principle of substantive equality, human rights, the right to identity and culture, and the importance of

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10 The International Commission of Jurists, in its opinion in the case of the Åland Islands Question, later adopted by the Council of League of Nations, referred to the application of the external aspect of the right to self-determination’s to minorities as an “exceptional solution, a last resort when the state lacks either the will or the power to enact and apply just and effective guarantees of religious, linguistic and social freedom” (cited in Raić 2002:329, also see 330). The concurring opinion of judges Wildhaber & Ryssdal in the case of Loizidou v. Turkey (no. 40/1993/435/514, 28 November 1996) in the European Court of Human Rights (ECtHR) also takes a similar view when they state that: “Until recently in international practice the right to self-determination was in practical terms identical to, and indeed restricted to, a right to decolonisation. In recent years, a consensus has seemed to emerge that peoples may also exercise a right to self-determination if their human rights are consistently and flagrantly violated or if they are without representation at all or are massively under-represented in an undemocratic and discriminatory way. If this description is correct, then the right to self-determination is a tool which may be used to re-establish international standards of human rights and democracy.”

11 See also para.7 of the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (1970). The International Commission of Jurists on Report on Events in East Pakistan (1971) stated that “if one of the constituent peoples of a State is denied equal rights and is discriminated against, it is submitted that their full right of self-determination will revive.”


13 In General Comment 21, para. 5, CERD stipulated that the implementation of the right to self-determination is linked with protection of individual human rights without discrimination.

14 See also article 1 of the UN Declaration on Persons Belong to National, Ethnic, Religious and Linguistic Minorities, 1992. CERD General Comment 21, para. 5, calls upon governments to be “sensitive” to the ethnic groups‘ rights “to lead lives of dignity”, “to preserve their cul-
self-determination for democratic governance (Henrard, 2000: 315). The fulfilment of self-determination could take various forms15: from a genuine “participatory democracy”,16 to legal pluralism where the right to cultural, linguistic, religious, and political (territorial) autonomy17 can be exercised. In 2000, the Venice Commission stated that the internal aspect of the right to self-determination could be exercised in the form of “cultural autonomy, federalism, regionalism or other forms of local self-government” within exiting territorial arrangements.18

An alternative model of a “constitutive” and “on-going process” of self-determination is offered by Anaya (1996: 81) who looks beyond the external-internal dichotomy.19 The contemporary tendency among scholars and international organisations is to interpret the right to self-determination in a “broad sense”,20 which makes the application of this right in different forms possible as appropriate to the circumstances of each case. From the perspective of the International Conference of Experts, such an interpretation:

“requires the development of a culture of self-determination, as it were, where self-determination is seen as a necessary and positive process of human emancipation and a

culture”, and to equally benefit from the resources of the country where they live. See also Wheatley (2005: 26).

15 See also Thornberry (1991: 218), McCorquodale (1994: 864), Summers (2007: 33), and Henrard (2000: 307). Henrard (ibid.) notes: “Forms of the right to internal self-determination that have been acknowledged to be available to minorities include all kinds of territorial rights and forms of autonomy like decentralisation, regionalisation, federalism and even consociational democracy.”


17 Even though there is no right to autonomy in international law, the OSCE Copenhagen Document of 1990, para. 35, highlights territorial autonomy “as one of the possible means” for the adequate protection of the rights of minorities. See also article 11 of the Parliamentary Assembly of Council of Europe Recommendation 1201 which states that “a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state”. The Report of Geneva Meetings of Experts of 1991 reveals that Turkey’s delegate agreed there were “positive results of the autonomy for the minorities in some states.” See also Xanthaki (2007: 164-166) for the role of autonomy in the protection of minorities and indigenous people’s rights.

18 In Katangese Peoples’ Congress v. Zaire, African Commission on Human and Peoples’ Rights, Comm. No. 75/92 (1995) the Commission also ruled that the ‘inalienable right to self-determination’ under article 20(1) of the African Charter on Human and People’s Rights “may be exercised in any of the following ways [sic] independence, self-government, local government, federalism, confederalism, unitarism or any other form of relations that accords with the wishes of the people but fully cognisant of other recognised principles such as sovereignty and territorial integrity.”

19 This dichotomy has been criticised by Anaya (1996: 80-81) for having two discrete domains might limit the broad application of right to self-determination. See, further, Summers (2007: 401-404; and 2013).

corollary to democracy, in which people take greater responsibility for their community. At the same time, the traditional notion of the nation-state needs transformation. Sovereignty must no longer be understood to be the exclusive prerogative of the central authorities of the state, but, rather, a collection of functions that can best be exercised at different levels of society, depending on the nature of decisions that need to be made and the manner of their most appropriate implementation.”

More importantly, the application of the right to self-determination in a “broad sense” by availing its implementation through “democratic means” and “dialogue” is considered to be an assurance of the territorial integrity of states and as a conflict averter. It is therefore important that the state institutions be open to changes, paving ways to peaceful solutions rather than engaging in maintenance of the status quo.

In fact, an examination of the concept of self-determination in its historical context demonstrates an indissoluble link between the necessity for protection of minorities and the right to self-determination. For instance, under the League of Nations regime, minority protection was contemplated as the “alternative” to the non-exercise of the external aspect of the right to self-determination by minority groups (Vrdoljak, 2008: 42-43; Henrard, 2000: 282; Musgrave, 1997: 37-39). Thus, guarantees aiming to preserve the culture, language, identity etc. of minority groups were contemplated as compensation for their being deprived of the external right to self-determination. This connection became more evident in the International Committee of Jurists’ advisory report in the case of Åland Islands, where the right to self-determination and the protection of minorities were considered as having “a common object to assure to some national group the maintenance and free development of its social, ethnical or religious characteristics” (Rač, 2002: 198).

Turkey has been under the grip of an armed conflict between the state and the Kurdistan Workers’ Party (Partiya Karkerên Kurdistan, PKK) at the cost of many lives in the past three decades. The PKK’s claim for external self-determination was dropped from its official discourse in 1995, when it abandoned its secessionist policy (Roach, 2005: 110-111; Gunes, 2011: 90), and reformulated its demands in the coming years so as to claim a solution within the nation-state structure where territorial and cultural autonomy would be assured. For the solution of the Kurdish question in Turkey, Öcalan currently suggests a “democracy” project beyond the nation-state, consisting of a democratic republic, democratic autonomy, and democratic confederalism (see Öcalan, 2011; Akkaya and Jongerden, 2013).

In this setting, the position made public by the pro-Kurdish, legally established political parties poses an important challenge for the state during the

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preparation of the first civilian constitution in Turkey. On 11 January 2012, some Kurdish political organisations in Diyarbakir including the Peace and Democracy Party (Barış ve Demokrasi Partisi, BDP) announced their position vis-à-vis the new constitution.\textsuperscript{24} They demanded constitutional recognition of their exercise of the right to self-determination via regional autonomy under the existing nation-state structure as well as the protection of cultural and linguistic rights for the Kurds (\textit{Milliyet}, 2012).\textsuperscript{25} On 17 June 2013, the North Kurdistan Unity and Solution Conference (\textit{Kuzey Kürdistan Birlik ve Çözüm Konferansı}) convened with a wider set of participants from the Kurdish political spectrum. In their final resolution, they noted that the Kurds have the right to self-determination in the form of autonomy, federation, or independence. They also repeated the demand that the new constitution recognise their ethno-cultural rights (\textit{Radikal}, 2013).\textsuperscript{26} However, such claims, which require \textit{a de jure} recognition of the Kurds as a distinct ethnic group with a legal personality, also constitute a challenge to the legal system, especially in light of the fact that, to date, many political parties have been closed down for claiming the exercise of the right to self-determination for the Kurdish people.

In this article, I mainly examine judgments of Turkey’s highest court, the Constitutional Court (\textit{Anayasa Mahkemesi, AYM}), which has the jurisdiction to examine political party closure cases.\textsuperscript{27} In Turkey’s legal system, views on the right to self-determination have been mainly articulated within the political party closure judgments decided by the AYM.\textsuperscript{28} These judgments arose when political parties were dissolved for demanding the right to self-determination

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\textsuperscript{24} The organisations were as follows: \textit{Hak ve Özgürlükler Partisi, Katılımcı Demokrasi Partisi, Özgürlük ve Sosyalizm Partisi, Demokratik Toplum Kongresi, Kürt Demokratik Birlik Hareketi, Devrimi Demokratik Kürt Hareketi.}

\textsuperscript{25} The claims are expressed as follows: a) recognition and guarantee of Kurdish people’s (\textit{Kürt halki}) identity; b) the embracing of international standards regarding the rights to association and to form political parties using the terms ‘Kurd’ and ‘Kurdistan’; c) recognition of Kurdish as an official language, the guarantee of its free use in every aspect of life, and the guarantee of education in the Kurdish language; and d) provision of political status for the Kurdish people on the geography of Kurdistan to ensure their right to self-determination.

\textsuperscript{26} The resolution also states that a solution to the Kurdish issue cannot be achieved without determining Kurds’ legal status, and asks for a contemporary, democratic constitution, guaranteeing the right to political mobilisation, use of Kurdish as a medium of instruction, and recognising Kurdish as an official language.

\textsuperscript{27} The AYM was first established by the 1961 Constitution with a special jurisdiction to review the constitutionality of laws, to rule on certain types of cases where high-level state officials and politicians are involved, and to hear political party closure cases.

for the Kurds and seeking rights which entail legal guarantees for the protection of their culture, language, and proposing solutions to the “Kurdish problem” varying from federation, territorial autonomy to devolution of power.²⁹

An examination of the AYM’s case law shows that it has adopted a narrowly focused interpretation by persistently invoking a rigid unitary state concept in which the sole sovereignty is driven by a single nation within a fixed territorial unity. The AYM’s narrow construal has prevented a wider approach from being taken to the right to self-determination. The same court has negated the relevance of self-determination and the protection of minorities to people in Turkey, and has refuted the links of these rights to the protection of human rights and to democracy more generally.

Although territorial unity is strongly protected under various constitutions, many give a place to the right to self-determination.³⁰ For instance, the German Constitution contains references to the internal and external right to self-determination while the South African Constitution is open to internal self-determination.³¹ Constitutional Courts in many countries such as Canada, South Africa (Henrard, 2002), Germany, etc. have acted in a progressive manner in line with international developments. In Turkey, meanwhile, there is no reference to the right to self-determination in the Constitution or in legislation. This examination of the AYM’s case law reveals its conservative perception of the right to self-determination as being static, and rather more in keeping with the Turkish state’s official stance on the right to self-determination and minority rights in the international arena. Such an examination also makes

²⁹ Claiming that Kurds have the right to self-determination has had criminal consequences in Turkey and has been penalised under the Anti-Terror Law on grounds of “separatist propaganda” (see Yargıtay 9. Crime Section E.1998/1505, K.1998/1132, 01 March 1999, cited in HADEP-2003). Another interesting example in this regard occurred when the pro-Kurdish Democracy Party deputy Mahmut Alınak advocated for self-determination for Kurds, and was charged on grounds of infringing state security under article 125 of the defunct TCK of 1926, which required capital punishment. The Turkish Parliament subsequently decided he had to vacate his parliamentary seat because of the criminal investigation pending against him for his remarks. The AYM’s review of the parliament’s decision not only endorsed the decision as lawful, but also used the criminal investigation as a ground for its decision. See AYM. E. 1994/16, K. 1994/35, 21.March 1994.


³¹ See the Preamble of the German Constitution and article 235 of the South African Constitution (1996).

³² For instance, the Supreme Court of Canada, in a case on the secession of Quebec (Reference Re Secession of Quebec [1998] 2 S.C.R. 217), stated “The recognized sources of international law establish that the right to self-determination of people is normally fulfilled through internal self-determination - a people’s pursuit of its political, economic, social and cultural development within a framework of an existing state. A right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances” (para. 126). The Court further recognised a right to unilateral secession in cases “when a people is blocked from the meaningful exercise of its right to self-determination internally...as a last resort” (paras. 134-135).
enables us to understand the extent to which the AYM’s archaic interpretation has been employed as a legal rationale undermining Kurdish people’s demands in Turkey. This article aims to uncover the response of the AYM to the Kurds’ claim for internal self-determination and to evaluate this response in the light of the contemporary conceptualisation of the right to self-determination in international law.

Mention must be made here of the recent positive developments which have taken place during the AKP’s government with respect to the linguistic rights of Kurds. These can be read as important yet small steps towards the accommodation of the Kurds’ ethno-political demands in Turkey. A close examination of the judiciary’s response to the Kurds’ ethno-political demands during the AKP’s rule shows that very little, in fact, has changed. The AYM’s refusal to close down Rights and Freedoms Party (Hak ve Özgürlükler Partisi-HAK-PAR) because of its proposals regarding decentralisation as a solution to the Kurdish question, as opposed to previous party closure cases, unfortunately cannot be considered as a meaningful change. The HAK-PAR judgment is very short and not elaborately reasoned other than simply stating that claiming such a solution to the Kurdish question falls within the limits of the freedom of expression. Further, as Hakyemez (2009: 320) states, opposition to the majority judgment by five of the eleven judges of the court demonstrates that there is strong resistance within the AYM to any change in the case law on Kurdish political claims. Moreover, the AYM’s unanimous judgment in a subsequent pro-Kurdish political party closure case, DTP-2009, reaffirms its well-established legality, which is examined in more detail below.

The effects of the 2010 constitutional amendments, changing the composition and election procedure of the Constitutional Court, are yet to be tested. More recent case law fails again to take a more pro-diversity and human rights stance. This is demonstrated in a case brought by a person who wished to change his Turkish surname using a Syriac word. The legal action challenged the Surname Law of 1934, which only allows Turkish names to be taken as surnames. Consistent with its previous case law, the AYM used the principle of “equality” to justify rejecting the challenge, stating that since the Surname law applies to everybody on an equal footing, and that it is consistent with the equality principle.

Self-determination in the practice of the Turkish State and in Turkish international law scholarship

The political and legal stance Turkey takes in international fora towards the right to self-determination and minority rights has been unreceptive to the

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33 See, in particular, Bayır 2014, examining the judiciary’s role in the “politicide” of the Kurdish opposition in Turkey during the AKP’s rule and how the government’s discourse finds re-articulation in the legal discourse.


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change in international law. It has also tended to deny their relevance to democracy. For example, Aral’s study on Turkey’s voting pattern in the UN General Assembly up to 1997 found that the Turkish government persistently denied the relevance of self-determination to groups within sovereign states (Aral, 2004:143). Therefore, it either opposed or remained absent from the General Assembly during the voting for initiatives linking the right of peoples to self-determination and the effective protection of human rights (Aral, 2004: 144; Criss and Bilgin, 1997). Turkey has also abstained during voting upon, or been opposed to, any resolution promoting the protection of cultural rights or the collective dimensions of human rights before the UN General Assembly. Having said that, the Turkish state’s approach to the right to self-determination reveals that it takes case-specific and highly political positions. For instance, in some cases the Turkish state has not hesitated to rely on the right to self-determination, as in the case of Northern Cyprus, or to express its support for its exercise, as in the case of Kosovo.

Turkey’s problematic relationship to the protection of minorities also surfaces in its tendency of declining to adopt internationally binding instruments which include rights of people to self-determination, which reaffirm the rights of minorities as a distinct legal category (Aral, 2004:144), or international documents primarily concerned with minority rights. Turkey’s persistent cold-shouldering of minority protection is also evident from its reservations to internationally binding documents to which it is a state party. By those reservations, Turkey claims the right to interpret and apply these provisions in accordance with the related provisions and rules of the Constitution of the Republic of Turkey. 

35 The Turkish Ministry of Foreign Affairs’ reaction to the ICJ’s advisory opinion on Kosovo’s Declaration of Independence was that it would help “developing a positive and constructive dialogue between Kosovo and Serbia”, at http://www.mfa.gov.tr/no_163_22-july-2010_press-release-regarding-the-icj-s-international-court-of-justice-decision-on-kosovo-s-declaration-of-independence.en.mfa (last accessed on 18 June 2013). The Turkish state’s favourable attitude to self-determination in the case of Kosovo may also be explained by the equivocal nature of the ICJ’s decision. One commentator claimed that the judgement was irrelevant to the Kurds in Turkey: “In consideration of this, it could be perfectly argued that as long as it handles the Kurdish issue with reference to the universal legal criteria, expands the limits and sphere of democratic rights and freedoms, discards terrorists from civilians and abides by the rules of armed conflict, Turkey has nothing to worry about with respect to the recent ICJ decision on Kosovo.” See Çakmak (2010).

36 Turkey is not a state party to the European Charter for Regional or Minority Languages, 1992, the Framework Convention on National Minorities, 1995, or the ECHR’s Optional Protocol 12 on discrimination. Turkey is also one of the few countries that have not ratified the UN Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005. The treaty framers “presuppose the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples”, and require state parties “to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory.”

37 See Turkey’s reservation to article 27 of the ICCPR, article 13(3) and (4) and article 15 of the ICESCR, and article 17, 29 and 30 of the Convention on the Rights of the Child. Turkey has signed and ratified Protocol 1 to the ECHR, but put a reservation to article 2 to the effect that it interprets this provision in line with the Law on Unity and Teaching of 1924.
public of Turkey and the Treaty of Lausanne of 1923. That means it restricts the effects of any international legal order to the Greek, Armenian and Jewish minority communities while denying their possible impact for unrecognised minority groups (e.g. Kurds, Alevi, Arabs, Syriacs, Protestants, Roma etc.). A similar attitude is evident in the Turkey’s reservations to common article 1(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Through those reservations, Turkey has declared that it will implement its obligations under those Covenants in accordance with the obligations under the Charter of the United Nations. This means that Turkey accepts “self-determination” as a “principle”, but not as a “right”, and it only recognises its applicability to colonial territories.

By not acknowledging the right to self-determination as a right, Turkey aims to avoid its legal consequences, which oblige states to take action towards fulfilling it as a right. Turkey’s reservations further demonstrate that its approach to the right to self-determination is static and locked in the time and space of classical international law theory.

International law jurists and the judicial bodies in Turkey have acted in line with the Turkish government’s persistent position in international fora. Aral’s examination of the main international law textbooks written by Turkish scholars, and taught at public universities, clearly points to the parallels between “the dominant legal doctrine, legal education and foreign policy in Turkey”, and to the “conservative and positivistic stance” of Turkish jurists in their interpretation of international law (Aral, 2005: 770). He further states that while international law jurists in Turkey have formulated their textbooks around “classical (traditional) international law” perceptions, they “have either overlooked the issues of self-determination and minority rights in international law textbooks or …denied their relevance in the non-colonial situations” (Aral, 2005: 780). Besides pointing to a lack of critical thinking among many academics in Turkey, Aral (2005: 780) explains the approach of Turkish international jurists by pointing to two factors. First is their fear that a less state-centric perspective could play into the hands of the “separatists”, that is, the Kurds who have used the right to self-determination to ground their demands for cultural and linguistic rights in Turkey. Second, he claims many of the Turkish international jurists are in service to the state as representatives or legal advisors before international bodies, which means they are “either ideologically aligned to the official establishment or are unwilling to resist official policy... Since they see themselves as state advisers/employees, they tend to be pragmatic and nationalistic rather than theoretical or critical” (Aral, 2005: 784).

Bearing in mind the official positions taken by Turkey with respect to international law making in the sphere of self-determination and minority rights, and the state-oriented tendencies of the international law jurists in Turkey, we

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39 See General Comment No. 12, para. 2 and 6.

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can now turn to an examination of the approach of the “independent” judiciary, especially the Constitutional Court. The Turkish state’s conservative attitude concerning questions of self-determination and minority protection may not be striking, considering that they may not differ from many other states’ positions. However, the AYM’s stance, characterised by an ideological and detached attitude to the socio-political reality of the country, by its alignment with the ruling elite and its ideology, and by a special duty of “preserving hegemony”, is worthy of notice. In this way, the AYM’s contribution to a militant democracy helps create a legality which is anti-democratic and anti-pluralistic.

**Turkey’s Constitutional Court and the right to self-determination**

The AYM’s views on the right to self-determination are mainly articulated in the political party closure cases. These judgments arose when political parties were dissolved for seeking recognition of the Kurds’ ethnic, linguistic, cultural rights and legal guarantees for their protection, for demanding the right to self-determination, and for proposing solutions for the “Kurdish problem”, varying from federation, territorial autonomy to devolution of power.

The AYM’s main justification for these party closure judgements was the protection of “the state’s indivisible unity with its nation and territory” (devletin ulkesi ve ulusuyla bölünmez bütünlüğü) as set out in article 3 of the 1982 Constitution. Gözler (2000: 115-119) claims that “the state’s indivisible unity with its nation and territory” is a phrase substituting for the unitary state system. Thus, the article aims to protect the unitary state system in Turkey. The issue is put more explicitly in article 80 of the Political Parties Law, whereby political parties are banned from legally demanding and working towards changing the “unitary state” (devletin tekliği) system. Because of the vigorous attachment of this legislation to a unitary state model, neither regional autonomy nor the right to self-determination can be lawfully demanded in Turkey. In fact, the AYM’s interpretation of the “state’s indivisible integrity with its territory and

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40 For further study on examination of approach of the Turkish legal system to minorities, see Bayır 2013a. For a more specific study on representation of the Kurds by the judiciary in Turkey, see Bayır 2013b.

41 The legal value protected by this article is considered so important that according to the 1982 Constitution, this article cannot be altered, and proposals cannot be made for it to be altered (article 4). Article 3 also establishes Turkish as the 'state’s language' (devlet dili).

42 The concept of ‘the state’s indivisible unity with its nation and territory’ finds frequent recitation in the Constitution. It is one of the fundamental aims of the state (article 5). Fundamental rights and freedoms, freedom of media and freedom of expression can be restricted to protect this principle (article 14, 26, 28). The state is put in charge of protecting the youth from ideas against this principle (article 58). Further, political parties cannot defend ideas contradicting this principle (article 68). Members of Parliament and the President promise, in their oaths, to protect it (article 81 and 103). The principle can also be used to restrict academic freedom (article 130). The National Security Council (Milli Güvenlik Konseyi) is in charge of making decisions for measures to protect this principle, decisions for which are discussed with the cabinet (article 118). Its protection might also require a declaration of Martial law in Turkey (article 122).
nation” principle shows that it is designed for a broader purpose than merely protecting the unitary state principle. The case law sets out the aim of the principle as being to prevent: (1) the creation of a minority, (2) regionalism and racism, and (3) violation of the principle of equality. Consequently, the AYM has ruled against ideas or political formations defending diversity, the protection of differences, minority or group rights, or territorial autonomy. It has instead taken the position that such claims result in creating minorities, that they are tantamount to regionalism and racism, and that they go against the principle of egalitarianism (Bayır, 2013a). The unitary state principle turns out to be one of the main justifications for negating minority rights within legal discourse.

The underlying message following from “article 3 of the 1982 Constitution” can be summarised in the following motto: “one state, one nation, one language, one country”. This motto is very popular among mainstream politicians in Turkey regardless of their place in the political spectrum. Reflections of this motto can also be seen in the AYM’s judgements, especially in its references to the concepts of sole sovereignty, the single nation, and the unitary state system. The AYM has asserted that, in a unitary state, there is a sole sovereignty, and there should also be one nation. A federal system is thus not acceptable since it makes possible the existence of more than one sovereignty belonging to different nations. The AYM maintains that the unitary state principle does not allow for the formation of a federal system or any autonomous regions based on ethnicity, religion, or other grounds. In Turkey, sovereignty belongs to the “Turkish nation”, not to any person or group. Therefore, a federal state system, which could mean distribution of sovereignty among various nations, is declared as being of “no social benefit” (toplumsal yarar). The AYM justifies the unitary Turkish state as being a “necessity” due to “Turkey’s particular circumstances”. In its view, the option of a multinational state structure was ruled out with the establishment of the Turkish Republic. Separate schools and education, borders, and administration are considered incompatible with the unitary state principle. Since sole sovereignty belongs to the Turkish nation, Kurds could use this sovereignty only if

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44 See Prime Minister Tayyip Erdoğan’s speech where he added “one religion’ into this motto, but then corrected it as a ‘parapraxis’ (dil sürçmesi), Radikal (2012).
49 DDP-1996.
they accept being part of the Turkish nation. Contemplating a separate Kurdish nation empowered with sovereign power is considered unlawful.\textsuperscript{52}

Turkey is a state party to the European Convention on Human Rights and it has on many an occasion been found in violation of the Convention for closing the political parties. In contrast to the AYM, the European Court of Human Rights (ECtHR) has not found the claim for a federation, autonomy etc. to contradict democracy but, rather, finds such claims to be consistent with the democracy contemplated under its reading European Convention on Human Rights. Thus in \textit{Socialist Party v. Turkey} case, it stated that:

“the fact that such a political programme is considered incompatible with the current principles and structures of the Turkish State does not make it incompatible with the rules of democracy. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself.”\textsuperscript{53}

That is, in the ECtHR’s opinion, political systems other than the unitary state option cannot be considered as being incompatible with democracy, and cannot be suppressed on that basis. Further, in the case of \textit{HADEP and Demir v. Turkey},\textsuperscript{54} the ECtHR stated that statements by HADEP members to the effect that the Kurdish nation was distinct from the Turkish nation had to be read together with the party’s aims as set out in its programme, namely that it had been established to solve the country’s problems in a democratic manner. Thus, “even assuming that by such statements HADEP advocated the right to self-determination, that would not in itself be contrary to the fundamental principles of democracy.” The ECtHR did not consider that asserting that Kurds stand outside of the Turkish nation and have a right to self-determination, on its own, contradicts the idea of democracy.

\textit{Who enjoys the right to self-determination?}

In its judgements the AYM seems to generally refrain from going into a discussion of, or giving a definition about, the right to self-determination. However, in the ÖZDEP-1993 judgement it did reveal its view about who the


\textsuperscript{53} \textit{Socialist Party and Others v. Turkey}, (nos. 20/1997/804/1007, 25 May 1998). Also see \textit{Yazar and Others v. Turkey}, (nos. 22723/93, 22724/93 and 22725/93, 09 April 2002) para. 57. The Court accepts that “the principles supported by the HEP, such as the right to self-determination and recognition of language rights, are not in themselves contrary to the fundamental principles of democracy…if merely by advocating those principles a political group were held to be supporting acts of terrorism, that would reduce the possibility of dealing with related issues in the context of a democratic debate and would allow armed movements to monopolise support for the principles in question. That in turn would be strongly at variance with the spirit of Article 11 and the democratic principles on which it is based.”

\textsuperscript{54} \textit{HADEP and Demir v. Turkey} (no. 28003/03, 14 December 2010) para. 77-79.
bearers of this right are. It considered that only “nations” (uluslar) could be the subjects of “the right to self-determination” (kendi kaderini tayin hakkı) as well as of “independence” and “freedom”.

Interestingly, in the indictment of the same case, the public prosecutor argued along the same lines, further stating that “regional and local communities” (bölgesel veya yerel topluluklar) could not be subjects of these rights. This begs the question as to what a nation is in the AYM’s view.

The AYM describes the nation (millet/ulus) as the most advanced social structure (yapı), which has achieved the most advanced forms of togetherness in human progress. The AYM has stated that a national formation occurs by passing “certain historical and sociological stages and gaining certain characteristics”.

Thus, the nation is not a narrow concept like race, which is based on “anthropological and linguistic qualities”. The nation is not a kavim (ethnic group/tribe), which is “a sociological structure, formed by nomadic, local linguistic (yerel dili), and ethnic (soy) groups who have not created a consciousness of a common history”. The nation is not the umma (ümmet), which does not look for any other social ties except “common religion”. As opposed to its conceptualisation of the nation, the AYM considers groups based on an ethnic or religious nucleus to be “simple, primitive and one-dimensional”.

The AYM’s description reminds us of the infamous scholar of Turkish nationalism, Ziya Gökalp’s definition of the “nation”, which was mostly inspired by Durkheim (Çelik, 2006: 45). Meanwhile, there is a resemblance to the opinion of International Commission of Jurists (ICJ) adopted in the case of East Pakistan in 1972. The ICJ also stated that ethnic, linguistic, religious or regional differences were not enough to constitute a nation, nor did a tribe or clan constitute a people. While it took the view that members of such groups would have certain characteristics in common, “none of the elements concerned is, by itself, either essential or sufficiently conclusive to prove that a particular group constitutes a people… a people begin to exist only when it becomes conscious of its own identity and asserts its will to exist.” This led the ICJ to suggest that “the fact of constituting a people is a political phenomenon, that the right of self-determination is founded on political considerations and that the exercise of that right is a political act.”

60 Indeed, Durkheim also made distinctions between different societies and in his view not all societies have equal importance (Mitchell, 1931: 96). He then describes the nation as “the most exalted ‘collective being’ in actual existence” (Mitchell, 1931: 106).

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tion is best contextualised as being a view of its time, and one might not expect this kind of position to be adopted today since the self-determination concept is currently viewed with more sophistication.

Even though the AYM’s position cited above seem positivist, political, and in line with the past hegemonic and agonistic discourse, it appears there is more to it. Reading its discourse in the context of the Kurds reveals that such a discourse also fits in with the AYM’s particular concern to deny the application of the right to self-determination to Kurds. It is known that the Turkish judiciary has tended to use a particular way of speaking in its jurisprudence, while at the same time not referring to the Kurdish people or language directly, or when emphasising their “backwardness”. The Kurds have often been mentioned by the Turkish judiciary euphemistically with reference to a particular “region”\(^{62}\) and, alongside their being described as nomadic and tribal people, their particularities have been explained as being a result of “regional formations”.\(^{63}\) The AYM’s description of a nation is therefore also aimed at disconnecting any possible link between the right to self-determination and the Kurds.

Another outcome of the AYM’s description reveals that it only considers as a nation those people who have already formed a polity, and it is only such entities which are entitled to enjoy the right to self-determination. That is, people who do not have a state are left out of being considered bearers of this right. From this perspective, besides ethno-religious minorities, even indigenous people\(^{64}\) and people under colonial regimes cannot claim the right to self-determination. It can also be argued that the AYM’s interpretation is even more conservative than the Turkish state’s official stance, which at least supports independence for colonial peoples. Such a conceptualisation also denies the relevance of the right to self-determination to the protection of minorities.

Even though the AYM did not refer to “people” as the bearers of the right to self-determination, its effort to undermine the people-like “features”\(^{65}\) of Kurds can be highlighted. In particular, its efforts to deny the existence of a Kurdish nation outside of the Turkish nation with an original Kurdish language, Kurdish history, Kurdish identity and culture and, moreover, self-contradictorily denying their concentration in a particular parts of the country, is interesting to observe in this regard (see also Bayır, 2013a and 2013b).

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\(^{62}\) For the Turkish judiciary’s representation of the Kurdish identity as a “regional formation” and the Kurds as people of “the region”, see Bayır (2013b).


\(^{64}\) On the right to self-determination for indigenous people, see Xanthaki (2007).

\(^{65}\) Even though there is no definition for a “people” in international law, some of the following criteria and qualifications were invoked in the Final Report and Recommendations of International Meeting of Experts on the Further Study of the Concept of the Rights of Peoples for UNESCO (1990, p.8): (a) a common historical tradition, (b) racial or ethnic identity, (c) cultural homogeneity, (d) linguistic unity, (e) religious or ideological affinity, (f) territorial connection, (g) common economic life.
The content of the right to self-determination

Although frequently raised in the arguments of the defendant political parties facing investigation, the AYM has refrained from referring to the internal aspect of self-determination in its judgments. It seems that the real reason behind the AYM’s neglect cannot have been its lack of knowledge about the internal aspect of self-determination given that the scope of that right was explained in detail by the public prosecutor in the SBP-1995 indictment. It must be the AYM’s deliberate choice to interpret the right to self-determination only by reference to its external aspect entailing secession. Indeed, to date, the AYM has only conceived of the right to self-determination in its external aspect, and by equating it to “secession”, it has consequently made unlawful any claim for the right to self-determination. Conversely, it has ignored its internal aspect altogether. Such an approach has been criticised by the Venice Commission in its report, “Right to Self-Determination and Secession in Constitutional Law” issued in 1999: “On balance, while in very general terms secession is alien to constitutional law, self-determination, primarily construed as internal, is an element frequently incorporated in constitutional law but needing to be dissociated from secession.”

It is widely accepted that the right to self-determination is not a one-off act and its application is not exhausted upon the establishment of an independent state (Anaya, 1996: 81-82; Musgrave, 1997: 99; Henrard, 2000: 286; Vrdoljak, 2008: 78). On the contrary, it is considered to be an “enduring right” and an “ongoing process”. Vrdoljak (2008: 78) states that:

“A legacy of decolonization and the end of the Cold War for international law is an appreciation that self-determination is a process, and not a right extinguished upon independence. This realization has significant implications for its inter-relation with cultural rights, also. If self-determination is a process then it is to be realized through political, civil, social and cultural rights within a state which ensures effective participation of all inhabitants and the distinct identity of its constituent groups. The arrangements may entail the granting of extensive autonomy to groups in respect of economic, social and cultural matters. However, should there be gross violation or denial of these rights, then it becomes a matter of international concern and is no longer confined to the internal affairs of the state.”

67 See Principle VII of the Helsinki Final Act of CSCE; HRC General Comment No. 12, para. 2, 3 and 4; the Report of the International Conference of Experts (1998), p. 7 and 14, which stated that self-determination “should not be viewed as a one-time choice, but as an on-going process.” For an examination of the right to self-determination as an on-going process in international law and in state practice, see Musgrave (1997: 96-101).
The same message is evident from the fact that the HRC’s General Comment 12 requires state parties to continue reporting on the implementation of the right to self-determination in their country.\textsuperscript{68}

The AYM fails to interpret the right to self-determination in a “broad sense”. It considers the right as something that could only be claimed a one-off and in a “particular period”.\textsuperscript{69} The AYM’s view of the right to self-determination as being a “one-off” application, and not as an “on-going process”, undermines its contemporary relevance in Turkey. In several of its judgments, the AYM reiterates the following idea:

“The right to self-determination is not a new concept. It was a phenomenon that has been lingering within the international law order. It was dropped from the agenda of the Turkish Nation with the Lausanne Treaty. Territorial and national unity are still valid (geçerli) in the international legal system as was the case at the Lausanne Peace Treaty.”\textsuperscript{70}

The AYM has claimed that self-determination was purged from Turkey’s agenda following the Lausanne Treaty. This reference is particularly important in the case of the Kurds since the AYM claims that the Kurds had used their “one-off” right to self-determination at Lausanne in 1923 by agreeing to live within the Turkish state.\textsuperscript{71} The AYM thereby denies that the Kurds in Turkey could use their right to self-determination ever again.

Conceptualisation of self-determination as the means of expression of the will of the people, and as requiring representation of the will of the people as an on-going process, has important consequences particularly for the non-dominant minorities of a state. Such a conceptualisation provides opportunities for the realisation of self-determination by means of “on-going processes of consultation” and by keeping “negotiation” and “dialogue” open between the state and the people, which may in turn facilitate legal and administrative arrangements to comply with the ever evolving demands of a people.\textsuperscript{72} In this sense, democratic institutions in democratic regimes would play a crucial role.

\textsuperscript{68} HRC General Comment No. 12, para. 2. The OSCE Helsinki Final Act also reaffirms the permanent nature of self-determination in article 8.

\textsuperscript{69} See also Özkırımlı (2008: 14).


\textsuperscript{71} ÖZDEP-1993. In a speech at a secret session of the Turkish Grand National Assembly (TBMM) on 3 July 1920, Turkey’s nationalist founder Mustafa Kemal Atatürk developed a similar argument in response to the Soviet government’s demand that Turkey hold a plebiscite for the various racial inhabitants of Anatolia. He argued that the right to self-determination for the Kurds had been exhausted by their coming under the TBMM. While asserting that the nationalists had already recognised the establishment of independent states in Syria, Iraq and Armenia, he denied that that was the case for “Kurdistan, Lazistan and so on” since they “live within the circle drawn by national borders”, and had decided to respect each other’s racial, social, moral laws, as well as to “work together” to that end. He also defined their solidarity with reference to “the consciousness of brotherliness and religious manners” and their “common interests”, Türkiye Büyük Millet Meclisi Gizli Celse Zabıtları (1985), 03 July 1920, p. 73.

in the implementation of the right to self-determination as an “on-going process”. For instance, fair and regular elections can be interpreted as one of the significant modes for ascertaining the will of people on an on-going basis. However, an election system which only allows numerical majority voters to decide, while the numerically inferior minorities do not have a voice, and meaningful participation in decision-making, would fail to fulfil the demands of the self-determination obligation.\footnote{The Report of the International Conference of Experts (1998), p. 19.}

In the same manner, a high threshold in election systems requiring a minimum percentage of the popular vote for representation in the national parliament, without any other scheme to secure fair representation of minorities, can also be interpreted as a serious interference against the on-going expression of the people’s will (Wheatley, 2005: 144). Recently, when the AYM examined the constitutionality of the 10 per cent threshold in the national parliamentary elections in Turkey, it failed to make such a correlation. Rather, it defended the legality of this high threshold by declaring it to be “compatible with the principle of stability of governance” (yönetimde istikrar ilkesi) and “justice in representation” (temsilde adalet ilkesi).\footnote{AYM, E. 1995/54, K. 1995/59, 18 November 1995, R.G: 22470 – 21 November 1995.} Thus, it continued to rule in line with its conservative and archaic case law, and failed to take a stance on the side of democratic governance and human rights and freedoms. The ECtHR has also failed to declare such a high threshold as being a violation of the right to election under article 3 of Protocol No. 1, of the European Convention on Human Rights in the Yumak and Sadak v. Turkey case. The applicants had obtained 45% of the votes in a particular constituency, but they could still not be elected for parliament since their party had not crossed the national threshold. However, the Grand Chamber still found that the 10% electoral threshold, being the highest threshold in Council of Europe, appeared “excessive”, and constituted an interference with the applicant’s electoral rights, although it did not find this high threshold as being a breach of the Convention.\footnote{Yumak and Sadak v. Turkey (no. 10226/03, 08 July 2008), para. 147. For a detailed study of this issue, see also the Council of Europe Parliamentary Assembly Report (2010).}

The AYM’s case law has consistently rejected the link between the right to self-determination and the following international documents: the Helsinki Final Act (1975), the Charter of Paris for a New Europe (1990), and the Vienna Declarations and Program of Action of 1993.\footnote{HEP-1993, ÖZDEP-1993, SP-1992, STP-1993, DEP-1994, SBP-1995.} Besides others, these instruments are widely acknowledged for providing the legal foundations for minority protection and especially the internal right to self-determination. The AYM’s failure is more striking considering the fact that these instruments have been specifically pleaded in the party closure cases discussed here as the legal basis for claims regarding the Kurds’ ethno-cultural and political rights. As Turkey was a state party to them or participated in their preparation, they are binding upon Turkey (Aral, 2000: 111-115). However, the AYM has in-
stead claimed that discussion of ethnic differences in a “national and a unitary state” (Ulusal ve üniter devlet) is prohibited by international law. It goes further to claim that to differentiate Turks and Kurds, and seek the application of the right to self-determination for the Kurds, which in its view amounts to secession of those “distinguished as Kurds”, constitutes a breach of international law.

The AYM has not only denied the relevance of the above-mentioned instruments to the right to self-determination by claiming that their primary aim is to protect “the state’s indivisible unity with its territory and nation” and prevent activities that go against that principle; it further claims that these instruments do not allow the right to self-determination to be sought in a “democratic country” having a government representing all the people of the country regardless of their race, religion and colour, where the “equal rights” principle is applied, and no discrimination exists on the basis of race, religion and colour. The AYM has thereby clearly stated that these international law instruments cannot be used as legitimate justification for the Kurds’ claim for the right to self-determination.

Obviously, the AYM takes a selective position and inclines to adopting a more state-centred interpretation of these documents while ignoring their clear relevance for the right to self-determination and minority rights. Thus, the AYM never mentions in its judgements the fact that a state which fails to protect the right to self-determination or become the agent of the needs of the people and groups and instead oppresses them, cannot legitimately pursue the principle of territorial unity against the claims of these groups (McCrorquodale, 1994: 879-880). In this way, the AYM justifies the existing political and legal arrangements, which have failed to accommodate the needs of Kurds or other distinct communities within its boundaries. It also denies the state’s wrongdoings, oppression, and assimilation policies against the Kurds.

In some of its earlier judgements, the AYM accepts that there might be some contradictions, incongruity (aykırılık), unfair treatment, or wrongdoings against the Kurdish people but it considers that these can be faced by anybody at any time and can be resolved within the state’s existing regulatory framework. It has further stated that these wrongs should not be exploited by the human rights arena to distort reality. However, in its more recent judgements the AYM has taken a stricter position and stated that, contrary to the defendant party’s allegations, there was no oppression of or any prohibition

against Kurds, and has found the allegation that Kurdish people in Turkey are “oppressed and exploited on the basis of ethnicity” to be a “fictitious hypotheses”. In the DTP-2009 case, the AYM denied the existence of an “oppression and a persecution policy” directed towards the Kurds by the state.

The AYM has denied the state’s assimilation policy towards Kurds. However, this denial was not on the ground that assimilation is wrong, but due to an anxiety that acknowledging the existence of assimilation would result in acknowledging the Kurds’ separate existence. Thus, in the TEP judgment it stated that “to mention the assimilation of Turkish citizens who live in the eastern regions means to assert that they are an entity which is separate from the majority and entails the obligation of granting legal recognition to them”. While the AYM acknowledged in some of its judgments that the economic and social circumstances in the eastern areas were worse than in the rest of the country, it reasoned that that would not per se prove the existence of an assimilation policy. It has also stated that the heavier deprivations which might have been experienced in this region were due to various reasons and that the state’s severe measures anxiously taken to protect the “state’s existence and unity”, did not equate to “forced assimilation”; to claim the contrary was incompatible with historical facts. In its more recent judgments, the AYM not only continued rejecting the claim of assimilation of various ethnic groups, but also stated that “to repeat the fictitious allegations of assimilation, melting (eritme), and exclusion” goes against the Constitution and the Political Parties Law. First, the AYM’s case law cited above shows the efforts made by the AYM to establish the legality of using the principle of territorial integrity against the self-determination demands of the Kurds. Second, it demonstrates its efforts to deny the possible relevance of the external right of self-determination to the Kurdish case by undermining the gravity of oppression, violence and assimilation to which they have been subjected throughout the history of the Turkish Republic.

The AYM’s case law develops a line of reasoning which conceptualises the right to self-determination as a “threat” to the state’s territorial integrity but not as something crucial for its preservation. In this way, it fails to conceptualise adequately the application of the right to self-determination and minor-

84 DTP-2009.
85 TEP-1980 and, similarly, see DKP-1999. Also, in the TEP judgement, the court gave figures of Kurdish mother tongue speakers taken from the 1965 census to prove that Kurds were not the majority in the south-eastern part of the country. It also rejected claims about the practice of assimilation and the existence of such a policy by referring to a “non-Turkish language” which was still spoken by a group of citizens living in the eastern areas.
87 TEP-1980.
89 For a critique of such a view see Xanthaki (2005: 26) and see the Report of the International Conference of Experts (1998).
ity rights protection as a means for the “prevention of conflicts”, and gaining “prestige”\(^\text{90}\) in the international fora. Moreover, it persistently neglects the fact that the right to self-determination is designed to protect the rights of people, and not the rights of the states or governments (Xanthaki, 2005: 22; Aral, 1999-2000: 117).

**Conclusion**

The evidence seen in this article confirms that the AYM has conceptualised the territorial and national integrity and the right to self-determination as mutually exclusive. It has adopted an approach in alignment with that of the Turkish state and Turkish international law jurists to the right of self-determination. It has legitimised and provided legal cover for the state’s official position. The AYM’s failure to adopt an approach on the side of freedoms and human rights has led it to produce a highly ideological jurisprudence locked in time and space. The AYM has not only failed to understand and acknowledge the problems of the society upon the fate of which it decides, but has furthermore closed its eyes to the realities. Its anxious denial of the relevance of the right to self-determination to the Kurds is illustrative of its highly state-centric case law. The AYM bears some responsibility for its failure to protect against the human rights violations and abuses in the country. The AYM’s case law has not only fallen very much behind contemporary trends regarding the protection of minorities, but also shows that it has problems with the very justification for minority protection given in international law.

**References**


