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5 Acts of European Citizenship

Before we dwell on the acts we have chosen to analyze for this report, we would like to make a brief conceptual note regarding some of the language used in this section. Specifically we would like to make a note regarding the use of “act”, “site”, and “status”. We will not be providing definitions of these concepts as that would be a task that is beyond the scope of this report and as in our first deliverable we have attempted to provide our interpretation of the said concepts. Rather, we would like to provide the reader a brief note on the acts and sites we work through in the following pages and reiterate how we interpret the question of status regarding Kurdish acts of European citizenship.

Regarding the question of status, we would like to remind the readers that the acts of citizenship we examine are carried out by those subjects who do not formally hold citizenship status. As such, our focus is not and cannot be on whether and in what manner a priori defined citizens act out their status, fulfill their already defined duties, and benefit from the rights that are already granted to them. On the contrary, as those subjects who do not hold a European citizenship status, their acts enact European citizenship and Europeanness anew at every moment they claim and demand rights and act out a status that they do not formally hold. It is in this regard that instead of the fulfillment of a citizenship status, this report and our project in general interrogates the manner in which not only Kurds and other groups in Turkey become Europeans, but also how European citizenship is modified, challenged, and enacted by these non-status groups.

In this report we put forward a number of sites through and in which Kurdish citizens enact European citizenship. These are the European Court of Human Rights, the European Commission and the European Parliament. Kurdish citizens engage with and in these sites with not only EU bodies but also with an idea of Europeanness and European citizenship. As such, these sites create them a space in and through which they can demand rights that are granted to formal European citizens. [...]

5.1 ECtHR as a Site of Enactment

As one of the founding members of the Council of Europe, Turkey ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and Protocol No. 1, which enforces certain rights and freedoms not included in the convention in 1954 (right to the peaceful enjoyment of one's possessions, the right to education, and the right to participate in free elections by secret ballots (ensuring the free expression political opinion). Turkey has also ratified Protocols No. 6 and 13 (on the abolition of death penalty), but has refrained from ratifying Protocol No. 12 (granted individuals a self-standing right to be free from discrimination). Until 1987, not much attention was given to the fact that Turkey had ratified the ECHR but after 1987, Strasbourg became a litigation centre for various Turkish citizens (Kurban 2008, 3).

According to Dilek Kurban, in 1987 the Turkish government's acceptance of the right to individually petition the European Court of Human Rights (ECtHR) led to the increased prominence of the ECHR in Turkey (3). Until 2004, the executive power of the ECtHR decisions was ambiguous. However, in 2004 with the amendments made to Article 90 of the Constitution, the "courts of general jurisdiction [were] now required to enforce the supremacy of the Convention over domestic laws" (5). As a result, and as Ergil points out, since 2004 ECtHR decisions were executed more frequently in Turkish courts (Ergil 2006, 32). [...]

Between 1998 and 2006, 20,141 complaints were lodged against Turkey in Strasbourg (Kurban 2008, 11). Of the 1,560 judgments the ECtHR handed down last year, 334 (the highest number) concerned Turkey (11). Moreover, in 196 of these the ECtHR found Turkey to be violating one or more principles of the ECHR (11). Although until 1992 there were no petitions to the ECtHR from Kurdish citizens (Kurban, Erozdin and Gulalp 2008, 4), since then, largely thanks to the visits to Diyarbakır by various human rights lawyers from Europe, and the legal aid provided by TOHAV (Foundation for Social and Legal Research) (5), the Kurdish issue featured prominently in ECtHR jurisprudence. The most frequently brought cases concern atrocities committed by Turkish security forces during the State of Emergency rule (Turkey was found to have violated the ECHR in 43 cases), the dissolution of Kurdish political parties (Turkey was found to have violated the ECHR in 9 cases), and the prosecution of individuals who advocate a democratic solution to the Kurdish problem (Turkey was found to have violated the ECHR principles on freedom of expression in 58 cases) (Kurban 2008, 12-3).

We argue that ECtHR emerges here as a site at which the Kurdish citizens of Turkey challenge the republican conception of homogeneous citizenship by enacting themselves as Europeans who have the same rights as those who are citizens of the Union. What is at stake, however, is not a passive reception of European citizenship rights, and a rejection of Turkish citizenship. On the contrary, Kurdish acts of European citizenship, in this particular site, aim not only to claim rights, but to also challenge, and at times transform, the system and structures they are embedded in as citizens.

A closer look at the manner in which Kurds engage with ECHR and ECtHR illustrates this clearly. The highest number of cases to the ECtHR is brought by members of the Diyarbakır Bar Association (Interview with Diyarbakır Bar Association). Since 1996, the Bar has been undertaking projects through which it is educating citizens regarding their rights, and guiding them through their applications to the ECtHR (ibid). The Bar is frequently visited by members of the European Parliament and European Commission, and the president of the Bar is often quoted in regular progress reports on Turkey (ibid). The close relationship between the Bar and the EU has culminated in the 2003 "Justice for Everyone" project. The project, created by the Bar, and funded by the EU (it has received 460,000 Euro in funding) aims to teach disadvantaged groups ways of claiming their rights, particularly via the ECtHR (ibid). Through this, and through meetings members of the project have with the said groups, the project also implicitly attempts to build a civic attitude and a political ethos. This ethos emerges as a European ethos, and is visible in the relationship citizens have with the state.

In one training session, the speaker Tarik Ziya Ekinci demanded that the listeners, as members of various disadvantaged groups, but especially as Kurds, "communicate to

members of the European Parliament and Commission that the reforms undertaken by the Turkish government were not genuine” (“Asli Unsur, Kurucu Halk, Azınlık Hakkı”). The reason for communicating this to EU officials is that the EU is the only body that can guarantee that Turkey will carry on the democratization reforms, which will guarantee the enlargement of Kurdish rights (ibid). It was argued that only by demanding these rights, and demanding the necessary level of democracy, can Kurdish citizens truly become modern European subjects even if the “Turkish state failed to become a full member of the EU” (ibid). What we see in these acts of referencing/embodying Europe is the opening of a platform from which, by demanding rights that are delineated in the ECHR but are at moments overlooked by the Turkish state, Kurdish citizens of Turkey become European. What is crucial here is that *Kurdish citizens do not become European when the Turkish state grants them more rights, or recognizes that they are entitled to the rights outlined in the ECHR. Rather, we argue that they become European by demanding those very rights; it is the act of demanding that makes them European, and not the end result. [...]*

MAZLUM-DER (Organization of Human Rights and Solidarity for Oppressed People) works very closely with Kurdish citizens in the southeast, and especially Diyarbakır, and through a team of human rights lawyers files many cases in the ECtHR on their behalf. Its representatives assert that “Kurdish citizens do not trust the ECtHR as much as they did in 2004” (Interview with Diyarbakır MAZLUM-DER). According to our interviewees, many Kurdish citizens who apply to their organization declare that ECtHR is now playing a game of balance of power, and as such, is not primarily concerned with justice, but with “keeping the Turkish state as happy as possible” (ibid). An increasing number of Kurdish citizens feel that the ECtHR is siding with the state that oppresses them in the first place. The same sentiment is expressed by representatives of ĐHD (Human Rights Association of Turkey). According to one interviewee, an increasing number of Kurdish citizens who apply to ĐHD with cases of restriction of freedom of expression or subjection to violence ask the legal team of the ĐHD whether there are ways of seeking compensation or justice other than applying to the ECtHR; they no longer believe in the sincerity of the court as they feel the “ECtHR has alienated itself from the human rights issue in Turkey” (Interview with Human Rights Association of Diyarbakır). It would be a mistake to interpret these instances as absolute breaks with Europe by Kurdish citizens of Turkey. In fact, the contrary is the case. We argue that these are novel acts of European citizenship, just as the previously mentioned were, because it is here that Kurdish citizens enact themselves as European in spite, and because of their stand against the ECtHR and its latest decisions. In other words, the ECtHR emerges here as a site through and in which, regardless of the benefits or damages caused by the judgments of the Court and regardless of the affirmation or denial of these judgments by the Kurdish citizens, Kurds enact themselves as Europeans.

According to members of a highly active Kurdish rights advocate, Diyarbakır Development Center, “the essence of being European, and European citizenship consist of an absolute commitment to justice and being just (*hakkaniyet*)” (Interview with Diyarbakır Development Center). What the Kurds demand is the presence and dominance of this essential principle in the relations between various EU bodies and themselves. What the EU, and especially the ECtHR (as justice is its *raison d’etre*) have to achieve is the establishment of this principle in all affairs that relate to the Kurds (ibid). This moment, we argue, constitutes an illuminating act of European

citizenship. By claiming that which constitutes European citizenship to constitute their affairs, by demanding the justice that is given to European citizens as such, and without any reservations, they are enacting themselves as European citizens. That the ECtHR is not fulfilling their expectations or demands does not mean that they cease to become European. On the contrary, they become European by continually demanding and claiming what they interpret to be the essence of Europeanness at any site, and in any space that is strategically available. [...]

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