

**THE KURDISH AFFAIR:
FROM THE REGIME OF CAPITULATION
TO THE DOMESTIC JURISDICTION**

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Under what circumstances did the Kurdish question take its current dimensions? Since when and why it stands as such? What are the tools that have allowed it to extend? In an attempt to answer these questions we need to analyze the history of the Anatolian from the end of the Ottoman Empire to the present day. The end of World War I finds the pointing of the "Kurdish issue" which is used as a tool of execution for the implementation of the system of capitulation. Using this tool, the western states were able to create the situation due to which Kurdistan was snapped like a piece of bread from the neighbouring states. The wealth of Kurdistan had long attracted the appetites of the European powers but, since it was divided into zones of influence of the Ottoman and the Persian Empire, the colonial powers thought to exploit the enormous availability by exercising their sphere of influence on the two empires. Since the sixteenth century the Ottoman Empire had already granted "the regime of capitulation"¹ to the French and then to other European powers, resulting to

¹ The name of capitulations, after designating any treaty, remained in use, in diplomatic language, to denote the set of privileges that were not part of the "Concert of Europe" (Turkey, Barbary States and Muslims, and the Far East) agreed to the Europeans settled and traffickers in their territory. These states were called "countries of capitulations." The privileges granted consisted in the replacement of the jurisdiction of the foreign consuls, against its own people, to the jurisdiction of the

be considered as a semi colony by the end of the twentieth century, with an industry completely controlled by foreigners. It was established as an international protectorate, whose independence needed to be ensured by France, Britain and Russia. This regime of capitulation, as settled in the seventeenth and eighteenth centuries, is expressed at its greater effectiveness in the relations between France and the Ottoman Empire, through which were established in a very rhythmic way the formulas allowing the Europeans and the Americans to reside in non-European territories. The solution of the Kurdish problem unravels in the last century torn between the regimes of capitulation, constituting a legacy of the nineteenth century and the domestic jurisdiction of 900. The result was a prolonged conflict that unfolds in the extermination and the oppression of the Kurdish people and the inability or unwillingness of all international organizations to put a stop to the constant wear of this tragedy. The Western powers have made use of the system of capitulation as a functional tool and a profitable performance for their business, by passing the use of the regime of capitulation in the customary law of the relations between States. The evolution of this instrument, in the changed economic-political scenario of the twentieth and twenty-first century can be found in the domestic jurisdiction, even now, as part of the seventh paragraph of the Charter of the United Nations, which does not recognize an instrument that has the power to authorize the UN to intervene when a discrepancy arises between the violation of international law and the title retention. As the Charter was signed in 1945, it probably encloses the contours of the ambiguity of the period of a poisonous World War whose final results were still to be seen. Though, nowadays this indefiniteness is exploited by many states and has also proven very useful during the period of the Cold War. However, there is basically no Organism responsible for judging whether or not a subject belongs to the domestic jurisdiction². By focusing our attention in a particular way on Turkey, we try to

indigenous authorities. Under the usual term of consular jurisdiction means including, besides the functions of the judiciary itself, others pertaining to the executive branch (as p. Eg. (The police). So in the field of international relations we talk about regime capitulate, in contrast to the system of international law, to indicate the particular international legal situation of these states, in what most significantly differentiates them from the international situation of ordinary law between states of European civilization or Christian (and precisely, according to the meaning that can be said to be officially consecrated by art. 8 of the Treaty of Berlin July 13, 1878, in what concerns les immunités Privilèges et des sujets étrangers ainsi que les droits de juridiction et de protection consulaires, tels qu'ils ont été ETABLIS par les capitulations, etc.). www.treccani.it.

² When in August / September 1988 Iraq used chemical weapons on a large scale against Kurdish civilians, some Western countries asked the UN Secretary General to take a "personal initiative". He

explain why the Kurdish movement has taken a more radical position than the one present in Iraq, Iran and Syria. Turkey actually constitutes a part of NATO and the Council of Europe, while it is associated with the EEC and the WEU. It is useful to repeat that its difference regarding the other nations that share the territory of Kurdistan is dictated by the fact that Turkey has refused and then struggled to admit the peculiar existence of the Kurdish people. In the late '70s and the dawn of the '80s we have the development of the PKK or Kurdistan Workers Party, which finds its fulcrum in the figure of Abdullah Ocalan. The initial aim set by the PKK is the independence of Kurdistan, the end of feudalism, imperialism and of class discrimination. The broad consensus around these demands was the object of attacks and various kinds of violence, which led to extend the martial law in most of the Kurdish provinces. Among various events, the activity of the PKK sees the arrest of its leader Ocalan in 1999 with rather convulsive actions, and his incarceration in the island fortress of Imrali from where he tries to draft a peace process. The turning point seems to come with the election of Erdogan, who puts on his agenda the protection of minority rights but in a longer perspective than the human rights and basic freedoms, with reference to international standards proposed by the process of acceptance and integration for the European reality. In fact, in 2002 the Turkish state advertises the airing of radio and television programs in Kurdish and even a channel in Kurdish is activated. In 2004 is implemented the law that means to compensate for the damages suffered as a result of acts of terrorism, as well as the measures taken to combat it. On August 12, 2005 in Diyarbakir, Erdogan recognizes the Kurdish issue and talks about mistakes made by the State. But everything seems to stop in front of a new action of the Constitutional Court which closes the DTP and has as its corollary the arrest of Kurdish politicians. As a consequence, the problem of the legal path remains open, along with the issue of a political representation of the Kurdish minority in the parliament. In fact, as already happened in 1990, any act that arrives in parliament and is freely elected is afterwards abolished by the Constitutional Court, as an act contrary to the Constitution itself. Until 2004 the various acts were gathered in DTP³, allowing them to overcome the barrier in the 2007 elections. It seems like the time has come for Islam to approach the Kurds, expressed by the support of the Refah Partisi. The

appointed a commission of inquiry with the task of going in the Kurdish part of Iraq and Turkey. However the two states did not allow the commission he went on the site because they considered this initiative as interference in internal affairs. Tawfik, J., Kurds, BFS, Pisa, 1994, p 140.

³ Demokratik Toplum Partisi

latter, while expressing a radical right, has developed a pro-Kurdish process and he would refer to Islam as a cultural moment, accepting the symbolic codes of religion that were banned by Kemalism and that at the time offered to the Kurds some opportunities for recognition of identity. The complexity with which they change the scenarios will hardly lead to any conclusion if priority is given to mainly political or eminently economical aims. And the reason is that the ones will find the opposition of a nationalism that always serves for internal consensus, while the others will become a slippery and unstable ground as they are subject to the absolute volatility of an always-evolving geopolitical scenario.