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Human Rights Education and Practice in Turkey in the Process of Candidacy to the EU



Edited by

Muzaffer Dartan

Münevver Cebeci

MARMARA ÜNİVERSİTESİ YAYINEVİ

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Marmara University
European Community Institute

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FOREWORD

Jean François Bouffandeau*

The topic chosen by Marmara University "Human Rights Education and Practice in Turkey in the Process of Candidacy to the European Union" has aroused great interest. First of all, it reminds us of Turkey's commitment to Europe and secondly, it emphasizes the fact that human rights theory shall be meaningful only through education and daily practices; in other words by ensuring that Member States respect these rights.

People and states cannot struggle for human rights by themselves. In an era during which globalisation and communication have accelerated, everything must be considered and achieved on a world wide level. The state of prisons, the situation regarding the presumption of innocence, maltreatment, discrimination, xenophobia or racist reflexes must attract the attention of everybody all over the world, even in the most advanced countries. Once our attention loosens, such phenomena shall revive and become more and more commonplace.

The development and protection of human rights necessitate a struggle, which must be supported by all of us, especially when the education of the young and the approach of the public authorities towards the topic are concerned.

The topics chosen, participants, contributors and organisers of the conference remind us that:

- Human rights are indivisible, universal and accept no exception and no hierarchy.
- States have to respect these rights.
- Texts have a value only when they are applied.

* French Consul General to Istanbul.

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PREFACE

Jean François Bouffandeau*

Le thème retenu par l'Université de Marmara "L'instruction et la pratique des Droits de l'homme en Turquie dans le cadre de sa candidature à l'Union européenne" ne peut que susciter le plus grand intérêt. Il nous rappelle d'abord l'engagement européen de la Turquie et souligne surtout que la théorie des Droits de l'homme n'est rien si elle n'est pas suivie d'un enseignement et d'une mise en pratique quotidiens c'est-à-dire par le respect par les Etats eux-même du droit qu'ils se donnent.

En matière de Droits de l'homme, aucun peuple ni aucun Etat ne peuvent prétendre à des combats solitaires ni s'ériger en donneurs de leçons. A l'heure de la mondialisation et de la communication immédiate tout doit être pensé, accompli, rêvé à l'échelle du monde. Partout, même dans les pays les plus avancés, la situation dans les prisons, l'état de la présomption d'innocence, les mauvais traitements, la discrimination, des réflexes xénophobes ou racistes doivent demeurer sous l'attention de tous. Ces phénomènes sont en effet toujours prêts à resurgir et même à se banaliser si notre attention se relâche. L'action pour la promotion et le respect des Droits de l'homme est donc un combat sans cesse renouvelé de chacun et de tous, que ce soit au niveau de l'éducation de la jeunesse ou à celui du comportement des organes d'Etat qui doivent s'efforcer d'être irréprochable et de donner l'exemple.

Par les thèmes qu'ils ont retenu, par la qualité des intervenants, les organisateurs de la conférence nous rappellent opportunément que :

- Les Droits de l'homme qui sont indivisibles et universels ne sauraient être hiérarchisés au nom d'une quelconque spécificité,
- Les Etats doivent respecter le droit qu'ils se donnent à eux-mêmes,
- Les textes ne valent que s'ils sont appliqués.

* Consul Général de France a Istanbul

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EDITORS' FOREWORD

Since 1959, Turkey's relationship with the European Union (EU) has followed a difficult path full of upward and downward trends on both sides. The inception of the Customs Union process in 1996, and, more recently, the declaration of Turkey's candidate status by the European Council at the Helsinki European Council on 10-11 December 1999, paved the way for heated discussions on Turkey's possible membership in the EU and revealed public differences of opinion on European integration and in particular on the enlargement process. The Copenhagen criteria have been the most frequently debated issue among others concerning the enlargement process and Turkey's membership in that respect.

Meeting the Copenhagen criteria is a non-negotiable prerequisite for full-membership. In line with this condition, the European Commission announced Accession Partnerships for all candidate countries showing how and when to comply with the Copenhagen criteria and asked the candidate countries to prepare their national programmes accordingly. Therefore, Turkey has prepared a National Programme in accordance with her priorities, taking the Accession Partnership Document (APD) as the basis for progress in the same manner as the other candidate countries. In its National Programme (NP), Turkey has declared its willingness to undertake the obligations of adopting the EU acquis. With this in mind, we will draw particular attention to the human rights dimension of the political criteria in this publication.

Turkey's NP contains several parts including reforms related to political criteria, economic criteria, capacity to undertake the obligations of membership, administrative capacity and global financial assessments of the reforms. Even in the introductory part of the NP, it is stated that:

> Turkey will accede to all relevant international conventions and take the necessary measures for their effective implementation in order to ensure alignment with the universal norms manifest in the EU acquis and with practices in EU Member States, particularly in the areas of democracy and human rights.[1]

Furthermore under the political criteria chapter, it is also stipulated that:

> The Turkish Government will monitor closely progress in the country in the areas of human rights, democracy and the rule of law, regularly evaluate the work underway for harmonization with the EU acquis, and will take all necessary measures to speed up the ongoing work. In addition, legal and administrative measures will be introduced in the short or medium term regarding individual rights and freedoms, the freedom of thought and expression, the freedom of association and peaceful assembly, civil society, the judiciary, pre-trial detention and detention conditions in prisons, the fight against torture, human rights violations, training of law enforcement personnel and other civil servants on human rights issues, and regional disparities.[2]

Focusing on the last points of this commitment, we believe that there are various means and benefits to be derived from the exchange of knowledge and practices between different state institutions, and, between state institutions and academic institutions involved in training civil servants. Permanent human rights courses, seminar activities, conferences, TV programmes and specific projects are first approaches, which come to mind. Though numerous activities have been organized by various institutions, there is still much more to do in this regard.

What is more, as an academic institution, our Institute believes that human rights education should be dealt with more seriously at all levels of society. Providing life-long education on human rights should be the ultimate goal. Otherwise the internalisation of human rights cannot be achieved completely in society, and without this achievement, reforms on the implementation phase would prove to be ineffective. In 1994 the United Nations declared the period 1995-2004 as the decade of human rights education. This is an important international development that has highlighted the notion of education in this field.

This book has its origins in the conference entitled "Human Rights Education and Practice in Turkey in the Process of Candidacy to the European Union" held in Istanbul on October 4-5, 2001 by the European Community Institute. It should be noted that this conference resulted from a

nine-month long project, whose initiation goes back to the year 2000 when the European Community Institute received a European Commission Grant to conduct a project called "Seminars for the Improvement of the Human Rights Situation in Turkey" (reference number DGENLARG/MEDATQ/06/98). Though it was a pilot project, a very comprehensive framework and working program were designed to ensure that the project accomplished its objectives. The conference was held with the aim of announcing the results we had obtained from this project and of raising public awareness on the issue of preservation and protection of human rights in Turkey. The conference covered the subjects "human rights education in primary schools", "human rights in police education" and "human rights as a precondition for Turkey's full membership in the EU", as well as a theoretical background on the concept of human rights itself.

The outcome of the conference was satisfactory to a large extent. Not only the speakers but also the participants had an opportunity to express and exchange their concerns and opinions on the subject. In preparing this publication, we feel great pleasure at being able to reach a greater number of people who were not able to join us in the conference. Consequently we felt that we fulfilled a very important task by gathering experts, ordinary citizens, academics to discuss an important issue in the process of candidacy and then providing a source of information regarding this issue.

This book also includes a special section on "Human Rights in the EU" which analyses the EU approach to different aspects of human rights other than the legal aspect. This section comprises two articles separate from the proceedings of the conference and focus on social and security aspects of human rights[3].

Our publication also offers another opportunity to the European Community Institute to demonstrate that European studies are not only limited to pure economic and political concerns or pure technical issues of transposing the acquis. Indeed interdisciplinary studies, which penetrate the very fabric of society, have an important role in shaping the future of European academic interest as well as the future of Europe itself. Therefore we also hope that we can encourage young researchers to produce further studies on such an important subject in Turkey as well.

Endnotes

[1] Turkey's National Programme, p. 5
[2] Ibid.
[3] Please note that this section is independent from the conference proceedings that constitute the essential substance of this book.

Acknowledgements

The Marmara University European Community Institute held an international conference on "Human Rights Education and Practice in Turkey in the process of Candidacy to the European Union" in October 2001 as the final phase of a nine months project on human rights education which was financially supported by the European Commission. The conference in Istanbul lasted two days and brought together a wide a range of participants as well as speakers. There were very fruitful theoretical discussions enriched with practical applications in all papers and we would like to take this opportunity to publish if not the whole discussions in the sessions, all the papers presented at the conference with a view to reaching a greater number of people and calling their attention to the importance of education. We also believe that through this publication we can contribute to future studies on the subject.

Many people and various institutions have helped in the preparation of this publication and also in the implementation of the project and thus of the conference. First and foremost we would like to express our gratitude once again for the financial contribution of the *European Commission* and for the smooth implementation of the project to the *heads of all the City National Education Directorates in Istanbul, Izmir and Ankara, the principals and vice-principals of all the primary schools and the Heads of all the Police Schools, the Police Academy and the Police College, the relevant authorities in the Ministry of National Education and in the Ministry of the Interior.* We should also like to thank our previous Ministers of the Interior, *Mr. Saadettin Tantan and Mr. Rüştü Kazım Yücelen* for the support that they gave to our project and our previous Minister of National Education *Metin Bostancıoğlu* for his sincere interest in this project. Our previous Minister of State Responsible for Human Rights, *Mr. Nejat Arseven* and *Mr. Murat Gülcan*, the Head of the General Directorate for Primary School Education – Ministry of National Education were kind enough to attend our international conference and give a speech there. It should also be stated here that within the framework of this project, the then Head of the Education Department of the Directorate General of Security, *Dr. Fevzi*

Erdoğan, was kind enough to visit our Institute upon our request and give a seminar to our staff on "Education of the Turkish Police in the Process of full membership in the EU" on 16 March 2001. The new Head of the Education Department of the Directorate General of Security, *Mr. Ulvi Körezlioğlu* was kind enough to attend our conference with a group of high ranking police officials and give a speech at our conference. The heads of all the police schools in Istanbul also attended our conference.

We are indebted to our conference sponsors; the *Istanbul Chamber of Commerce, the Consulate General of France (Country which then held the presidency of the EU), the Jean Monnet Chair of University of Bremen, TRT (the Turkish Radio and Television Corporation – the state TV channel), the Goethe Institute, the Turkish Democracy Foundation (NGO), the Turkish-German Co-operation Institute in Bremen, and the Marmara Foundation for Strategic and Social Research (NGO)* whose invaluable support constituted the very first step towards this publication. We also would like to express our gratitude to Consul-General of France His Excellency *Mr. Jean François Bouffandeau* for his kind interest and support during the conference.

We are particularly indebted to the *Ministry of Foreign Affairs of the Netherlands and the Consulate General of The Netherlands in Istanbul* for supporting the publication. The publication of the conference proceedings were not included in the framework of our project. Our publication was financially supported by the *MATRA/KAP program of the Ministry of Foreign Affairs of the Netherlands.* Their invaluable support enabled us to reach a greater number of people who were not able to join us in the conference.

Our deepest gratitude goes to the translation team; *Gary Chambers (coordinator), Murat Tahsin Yörüng, Zeynep Sezgin, Sait Akman, Yonca Özer, Yıldıray Sak, Gregor Grubhofer, Rana Izci* without whose meticulous work it would not have been possible to prepare this publication. We would like to thank *Mr. Gary Chambers* for the translation reviews as well.

We would like to extend our warmest appreciation to our colleague *Kerem Batır* for his technical support.

Finally we would like to express our great appreciation to the *Rectorate of Marmara University* for their full support and we would like to thank *the*

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Representation of the European Commission to Turkey for their kind assistance in the implementation of the project and *the project team* for their patience, diligence and dedication during the entire process.

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PILOT SCHOOLS OF THE PROJECT

Institutions for Police Education

Police Academy in Ankara,
Police College in Ankara,
Police Schools:
Şükrü Balcı Polis Eğitim Merkezi in Istanbul
Rüştü Ünsal Polis Eğitim Merkezi in Izmir

Primary Schools

In Istanbul;
29 Ekim Ilköğretim Okulu
Göztepe Etüd ve Beslenme Ilköğretim Okulu,
Özel Irmak Ilköğretim Okulu

In Izmir;
Kaynaklar Ilköğretim Okulu
Meşkure Şamlı Ilköğretim Okulu
Özel Türk Koleji Ilköğretim Okulu

In Ankara;
Mamak Ilköğretim Okulu
Batıkent Kardelen Ilköğretim Okulu
Özel Arı Koleji Ilköğretim Okulu

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OPENING SPEECHES

Mehmet Yıldırım

Prof. Dr. K. Turay Yardımcı

Müjgan Suver

Gürbüz Kaya

Ali Eliş

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OPENING SPEECH

Mehmet Yıldırım*

Distinguished Guests,
Ladies and Gentlemen

First of all, we would like to extend a welcome to the "human rights education and applications in Turkey during the EU membership process" conference, which is being held at the Istanbul Chamber of Commerce under the direction of Marmara University - European Community Institute.

Human rights have taken a prominent place in Turkey's national agenda as in all democratic societies. When we review our history we discover that Turkey granted suffrage to women in 1934 and experienced the multi-party national elections in 1946. Both of these developments occurred before much of Europe. Our country's legal system is been based on Western civil and criminal codes. Our country is a secular and democratic republic with a predominately Muslim population.

Turkey has actively contributed to the development of international human rights covenants and is a party to all the major relevant United Nations conventions. Human rights in Turkey are being strengthened through two courses of action: "aligning domestic laws and regulations with international obligations" and "promoting a deeper understanding of human rights through education".

As indicated in the Turkish National Programme, the necessary arrangements for reform in the fields of democracy and human rights should be rapidly completed. We should allow no deviation from the principle that judges are impartial. Judicial control should be realized in every area and the necessary arrangements in the criminal code should be completed. In this

* President, Istanbul Chamber of Commerce.

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context a proposal about changes to 34 articles in the Turkish constitution was adopted at the Turkish Grand National Assembly (3.10.2001). This is a very positive development for our country.

The implementation of these laws will help to realize Atatürk's main targets on the way to contemporary civilization. But we should underline the fact that the government's activities on "human rights" are not by themselves enough. We should also work together especially with non-governmental, non-profit and civil society organizations.

In "Article 3" of the Universal Declaration of Human Rights it is stated that: "*everyone has the right to life, liberty and security of person*". In "Article 1" it is stated that: "*all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*"

While analyzing human rights in this meeting, we should also mention the terrorist attacks against the United States on 11 September 2001, which were among the most heart-rending disasters in human history. These terrorist attacks are human rights violations. In addition, supporting terrorism or offering safe havens to terrorists are also crimes. Trying to stop modern societies engaged in the globalization process by these means is unacceptable. It is also very wrong to differentiate between national terrorism and international terrorism. Terrorism cannot have a just cause and cannot be differentiated. The reality of terrorism in Turkey since the 1980's has negatively affected our country's democratic structures, human rights regime and our economy.

The increasing level of interdependence between economies around the world is known to everyone. We should not allow any slowdown in the American economy to exacerbate economic problems in other countries. Terrorism thrives on poverty and economic inequalities. Human rights violations will simply not occur in countries with sound economies and democratically responsive political institutions. In the 21st century it is time "to take a lesson from all the disasters in our country and in our world" and then "to cross-examine our selves". Now it is time to work for a world where we can all live in a civilized way.

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I would like to conclude by stating that achieving the ideal of human rights in Turkey and elsewhere requires mutual understanding, co-operation and support systems.

Honorable guests,

I wish you all a very profitable conference and thank all of you for your participation.

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OPENING SPEECH

K. Turay Yardımcı*

Dear Minister,
Dear President of the Chamber of Commerce,
Dear Consuls-General,
Distinguished Guests,
Ladies and Gentlemen,
Dear Members of the Media,

I would like to extend my warmest welcome to this international conference organised by Marmara University European Community Institute and run by Marmara University within the context of the Project entitled "Seminars for the Improvement of the Human Rights Situation in Turkey" which is being sponsored by the European Commission. This two-day conference will provide a wide forum for debate concerning human rights, a concept, which is of a great relevance for Turkey. This conference will also analyse the role of education in the development of respect for human rights in Turkey. I firmly believe that this Conference will provide an invaluable contribution to Turkey's integration process with the European Union (EU).

Marmara University, as an institution has attached the utmost importance to research in social sciences and especially relations with the EU, resolutely believes that a re-evaluation and discussion of human rights issues in this conference will have several benefits. The critical significance of human rights is clear when considered within the context of the steps to be taken in facilitating Turkey's accession to the EU as well as her wider endeavour to further integrate into the free and civilised world.

* Prof. Dr. Rector of Marmara University.

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Subsequent to the Helsinki summit process, the necessary reform measures to secure the protection of human rights – one of the Copenhagen criteria for full membership- have no doubt become even more essential as a way of providing the Turkish people with the level of development they deserve. All reforms designed to protect and promote human rights and freedoms in this country are of course vital and worthy of mention. Recent substantial modifications to the Constitution are positive indicators in this respect.

Turkish academics wholeheartedly support all attempts directed at the protection of human rights in Turkey. Nonetheless, only an institutionalisation of these attempts will provide a stable environment in the long run. In my view, this can only be guaranteed if human rights awareness is improved throughout Turkish society.

I have no doubt that this improvement can be secured by means of a thorough education as well as by the incorporation of human rights within the educational system – though this has already been included in the curriculum. Only in this way, will the concept of human rights reach the required level of institutionalisation and proceed beyond rhetoric.

Therefore, the Project undertaken by the European Community Institute aims at emphasising the role of educational methods in developing a generation conscious of human rights. I believe that there are two crucial concepts that are particularly worthy of discussion in today's agenda, which constitute a significant part of the conference.

The first relates to a discussion as to which methods are more efficient in equipping the individual with proper human rights consciousness during primary education when s/he is first exposed to systematic and regular education. I hope that the presentations on educational systems concerning human rights in Germany, a leading EU member state and member of the United Nations can also provide a forum for comparative analysis and a subsequent evaluation of future attempts.

The second area of discussion addressed by the Project is the human rights education provided in Police training facilities. Expert presentations concerning the methods used in teaching human rights in institutions for police education will enlighten us further about the topic. The debate that will be held concerning the differences and similarities in practice between

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Turkey and Germany will raise meaningful points of reference for Turkey's candidacy process to the EU as well.

In addition to these two points, the second day of the Conference will provide a venue for two more sessions dealing with both the theoretical aspects of human rights and the importance of human rights for Turkey's candidacy to the EU. It is devoted to a discussion of the European system of human rights, and the implications of human rights protection as a criterion in Turkey-EU relations. I believe, the contributions of Turkish and foreign experts and academics will especially be beneficial when considering necessary steps that must be taken in accordance with the Accession Partnership Document and Turkey's National Programme.

Marmara University is fully aware of the sensitivity on the issue of protection of human rights in Turkey. In this regard, let me congratulate the staff of the European Community Institute who initiated the Project and undertook to organize this international conference. I wish to also express my deepest gratitude to the Representation of the European Commission in Turkey; the Consulate General of France in Istanbul; the Istanbul Chamber of Commerce and other institutions, which have supported the holding of this conference.

To conclude, I would also like to express my indebtedness to the staff of those pilot primary schools and the institutions for Police education and the concerned Directorates of National Education and the General Directorate of Security, which provided the necessary support and co-operation. Finally, I would like to pay my deepest respect to Mr. Nejat Arseven, the Minister of State responsible for Human Rights, who has honoured our university by his presence at this conference.

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OPENING SPEECH

Müjgan Suver*

The concept of human rights emphasizes the fact that everyone has certain fundamental rights and freedoms from birth. The concept of human rights has provoked frequent and considerable debate. It is an area to which public opinion has displayed great sensitivity.

Human rights are a highly important subject in our age. It has become an indicator of the level of civilization existing in a country and countries, which do not attach the necessary level of importance to the protection of human rights, are being systematically excluded from the international community.

Our rapidly changing world has witnessed many developments regarding human rights over a very short period of time. Terrorist groups have gained considerable strength in some countries and have made moves to destroy freedoms in civilized countries, based on democracy, human rights, freedom of thought and expression etc. The terrorist attacks of September 11 against the United States (US) are one sign of this new reality.

In today's world, laws limiting freedoms and attaching more importance than human rights to security have appeared on the US agenda. This can be commented on within the framework of the Universal Declaration on Human Rights. It is important to remember that the 29th and 30th articles of this document stress that the rights and freedoms contained therein cannot be used against the purposes and the principles of the United Nations. Any rule imposed by the Universal Declaration on Human Rights

* President, Human Rights Platform, Marmara Foundation for Strategic and Social Research.

cannot be interpreted as giving rights to any country to destroy the rights and freedoms that have been mentioned here.

Therefore, we should work together in order to increase the capacity of national authorities to carry out fair prosecutions. Any measure to stop terrorism should also be compatible with the basic notions of human rights and should not be viewed as a pretext for human rights violations.

The Marmara Foundation, as a non-governmental organization, has assumed responsibility for promoting human rights in Turkey. The protection of human rights in Turkey is especially important as our country is now an official candidate for European Union membership. The European Union has made clear that respect for and the protection of human rights are among the fundamental elements of the political criteria that candidate countries should fulfil in order to become full-members. Hence, we should provide the necessary basis on which human rights will be promoted, protected and enhanced in Turkey.

In light of these facts, this Conference on human rights has acquired more importance. I hope that our respected guests will assert all their thoughts and questions sincerely regarding the past, present and future of human rights.

In this respect, we should like to express our kind thanks to the President of Marmara University Prof. Dr. Turay Yardımcı, who has prepared this conference and to the Director of the European Community Institute Assoc. Prof. Muzaffer Dartan and his hard working team. We are proud to support their studies and hope that their success will continue.

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OPENING SPEECH

Gürbüz Kaya*

On behalf of the Istanbul Branch of the Turkish Democracy Foundation, I would like to express our pleasure on contributing to the international Conference coordinated by the European Community Institute on guaranteeing human rights, which is a central criteria for Turkey's membership in the European Union.

Today, human rights and individual freedoms are issues, which call for the utmost sensitivity in all advanced democracies. Therefore, the issue of human rights has been one of the primary concerns of the Turkish Democracy Foundation since its establishment.

Our Foundation has been intensively involved in research on democracy and human rights since its establishment in 1987, during the period when Turkey made its application for full membership in the European Community. It has also been involved in the translation and circulation of international publications on democracy and human rights in Turkey. In this context, two major works, "Democracy in the Police" and "Human Rights" were published by the Turkish Democracy Foundation.

The activities of the Foundation are informed by an awareness of its role in assisting the task of creating a stable democracy in Turkey, which is a prerequisite for the development of individual potential within a system based on the protection of fundamental rights and freedoms.

Previously, we have organized seminars in the Istanbul Center for the Training on the Psychology of the Police (Istanbul Polis Moral Egitim Merkezi) with the cooperation of the Ministry of Interior and with the participation of police chiefs from the Istanbul Police Department and the

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chiefs of the gendarme stations. These seminars provided human rights training to two hundred participants with the cooperation of five commanders of the gendarme stations.

In this program, we offered courses on various topics including the European Human Rights Convention, the Law on Criminal Procedure, Forensic Medicine and the Law on Juvenile Prosecution. We are very happy that the same topics are being addressed by Marmara University's European Community Institute with cooperation of the Ministry of the Interior.

The concepts of democracy and human rights are closely intertwined with each other. We strongly believe that guaranteeing individual rights and freedoms and overcoming the challenges on the road to accomplishing this task are also a reflection of our commitment to improving Turkey's standing and prestige in the international arena.

It is a fact accepted by our political parties and leading civil society organizations that despite the government's commitment to improving human rights practice in Turkey, there are still things that need to be done on this front. Nevertheless the major obstacle, which has complicated and delayed this task has been the widespread terrorism which Turkey has suffered over the past ten years to a degree unprecedented anywhere else in Europe.

Unfortunately, most of the international and domestic criticisms directed against the Turkish Governments' approach to human rights have so far failed to pay sufficient attention to this problem. There have also been misunderstandings and a distortion of the Turkish experience of terrorism due to the terrorist propaganda.

I would like to point out that our objective should be to facilitate a discussion of the whole issue objectively, paying attention to all aspects of the problem, instead of claiming that there are no problems in human rights practices in Turkey. Therefore, we believe that all efforts to improve human rights practices should take this objective standpoint as a starting point for further discussion.

This project on human rights education sponsored by the MEDA funds of the European Union is made possible through the cooperation of the

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Turkish Higher Education Council, the Ministry of the Interior and the Ministry of National Education.

In this framework, our Foundation aims at, in the first stage, training one thousand elementary school teachers and one thousand personnel in the civil society associations about democracy and human rights.

Today, this conference organized with our cooperation with the European Community Institute sets an outstanding example. Without doubt, it will be followed by further such activities in the future.

It is obvious that there is a close relationship between developing democratic values and instilling in society an awareness of human rights. Facilitating this process in our country and carrying out the objectives put forward in the National Program would largely depend on the existence of a comprehensive education project.

It is an indispensable aim of the Turkish Democracy Foundation to become involved in joint projects with universities and democratic institutions and associations. I would like to emphasize the fact that any success in carrying out the objectives of the National Program in the process of Turkey's candidacy for membership in the European Union will largely depend on such institutional cooperation.

No society is more valuable than its members. This understanding is integral to the development of a culture of democracy. Hence, challenges in the struggle for democracy and human rights should not discourage us. We aim for a future in which our society will experience full democracy and human rights.

At this point, I would like to thank the Minister for Human Rights Mr. Nejat Arseven, who has enthusiastically participated in and contributed to our conference, the President of Marmara University Professor Turay Yardimci, all the participating representatives of various institutions and speakers, and the Director of the European Community Institute, Associate Professor Dr. Muzaffer Dartan, as a result of whose sense of responsibility and personal commitment to the issue made all this possible. I respectfully greet all the participants and wish you a successful conference.

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OPENING SPEECH

Ali Eliş*

Today I intend to discuss the issue of human rights, with regard to the EU and Turkey in particular, and to the world in general. The topic has a special meaning for all of us, as we are all humans who naturally desire to live in a just world where everybody is treated equally. The answer to the question of whether there can, in reality, be such a world or whether this is nothing more than just a dream, is open to discussion and any such discussion would go far beyond our topic of discussion today, but it does not matter what the answer to this question might be; we are among to those people who are in favor of striving to make such a world out of this one. And exactly because of this desire, we are talking about a concept called "human rights". But what do we actually mean by human rights? I now want to make some comments about this subject.

Human rights are the rights that a person possesses from the beginning of his/her life, till the end of it, by virtue of being human. Here, as we all know, it is supposed that a human being is a 'valuable' being. The value of a human being is the highest ethical value that exists. The protection of the value of a human being, i.e. the possibility for a human being to lead the life that (s)he deserves, is only possible when these rights are comprehensively defended. Human rights have a priority both for the society and for the state. When we look back into history and today, we can see that the greatest struggle of the human race has been the struggle concerning the protection of human rights. The first greatest step that was taken with respect to human rights was the Declaration of Independence, which was declared by the Americans in 1776. Subsequent to that were the French Human and Citizen Rights Declaration in 1789, and the Human Rights Declaration of the United Nations in1948.

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The struggle for human rights has a long historical background, but the 20th Century has a special meaning that requires us to regard it in a different way than previous centuries. Yes, humans have struggled against threats to human rights in other centuries too. We cannot deny that, but until the 20th century, the necessary political awareness and willpower with regard to the protection of human rights had not yet emerged. In the 20th century, however, this awareness developed and the demand for the protection and safety of the human rights began to be frequently and empathically articulated. This was particularly true of the period following the Second World War, when the biggest expectation and demand of the people from their governments, was the strengthening and broadening of human rights. The development that I have just mentioned was a product of the enlightenment and democratization processes of the western world, but the entire world was affected by it. We do not see the same kind of human rights concept in other cultures, as we see in the western culture. The human rights concept was first created and developed in the western world following the appearance of the modern state after the industrial revolution. At this point, it would not be wrong to claim that the very concept of "human rights" was actually grounded in western philosophy, which had "*individualism*" at its core. According to this philosophy, every individual is valuable in his/her own right. In oriental cultures, however, we see that the individual attains his-her value only when (s)he functions in the society and has a value "*for*" the society.

But today we can say that the western way of understanding, which is the basis of the modern state and western political thinking, no longer belongs to the western world alone. Today it is globally accepted that it is not the individual who must be there for the society, but rather it is the society which must be there for the individual and it is this conception that is the basis for the concept of human rights that we are talking about today.

Together with modernity, the conventional system of protecting the human being and his-her honor was eliminated, and replaced by the development of the human rights system. And together with globalization, modernization has become a drift that affects every country in the world. The changing power of world wide capitalism and industrialization makes human rights important for almost every society as the only reasonable solution ever. But it must be underlined that the human rights concept in the western sense does not have an unchangeable structure. This concept was a necessity for the modern state that appeared after the industrial

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revolution. " It might be that other generations will create other concepts in the future when they develop their civilizations. But in those countries where the modern nation-state and market economy system is accepted, the human rights are adopted universally. Universality, in this sense, does not mean that there are no countries that disagree with the human rights system. Universality, as a concept, is the characteristic of being valid for everybody, everywhere and forever. It does not matter if a person lives in the most developed country in Europe, or in the least developed country in Africa; (s)he must be able to have the same rights. It doesn't make any difference at all if one is European or African, Muslim or Christian, Jewish, Buddhist or atheist. It is already enough to be a human being.

Now, it is clear how important and valuable the concept of human rights is, and one can easily claim that a socio-political theory that does not include the human rights loses any chance of being considered seriously right from the outset. This is valid for both internal and foreign politics. It seems to be impossible for a state to be legally accepted into the democratic world when that state does not take human rights as a central point and does not act sensibly about human rights. We can liken the democratic world of today to a soccer field. If someone has the intention of staying right inside the borders of this field, (s)he has to know the rules of the game and play according to these rules. Otherwise they either get punished or sent off the field. And as for human rights, the protection of these rights is among the most vital rules of the game. It is possible for a state to take its place in the democratic world only if this state accepts the rules of human rights and adheres to them.

It is possible to assert that human rights are independent from cultural relativity. That is, a state cannot commit human rights violations and claim that it has the right and the legitimacy to do so because the very concept of human rights is actually not in accordance with the norms and dogmas of that society. This is because human rights are universal and the same rights are valid for everybody living on this planet.

The state has a great role in the realization and protection of human rights. A state has to fulfill its responsibilities not only to its citizens but also towards other states. That is; on the one hand, a state has to protect the rights of its own citizens, and, on the other hand, through its contacts with other states, it must pursue human rights in the global arena and it must accordingly encourage other states in this direction. This would, to a great

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extent, be possible by providing support to the human rights organizations both inside and outside the country.

To express the political importance of human rights in a few words, one can say the following: Today, human rights are the criteria for political legitimacy!

I tried to stress the immense responsibility of the state with regard to human rights, but it must also be stressed that it is quite wrong to consider the state as having all the responsibility. It is now time that we Turks questioned our conventional conceptions about the function of the state. It is absurd for a country that has any intention of becoming developed, to expect everything from the state. As citizens, we all have rights and duties, and instead of expecting everything from the state, we first have to make sure that we fulfill our own duties. Our main mission is actually, to reform the state to the point where it really serves its citizens and society, and to create the circumstances where the citizens can rely on the state. Our people should be brought up to a level, both culturally and intellectually, where they know what they want, are organized and are conscious of what they are doing. Additionally, the political parties would then take such a society more seriously. We have to strengthen and spread the conception of democracy all over the country – a conception of democracy, which has the "individual" at its very heart.

Human rights have been frequently discussed in Turkey during the last years. Although it can be said that the concept of human rights is usually only mentioned together with human rights violations or when these rights are under threat, the real reason underlying the fact that these rights are being mentioned more often than ever is related to Turkey's part in modernization. With good and bad experiences Turkey has been in the process of modernization for over 80 years. What is more, Turkey seriously intends to be a member of the EU. Naturally, there are some regularly repeated EU demands that must to be met by Turkey. Among the most important demands are the protection and systematic realization of human rights in daily life. It is not only an EU demand. It is also the expectation of every Turkish citizen who trusts and believes in the idea of a modern and democratic society. Equality of individuals with respect to the practices of human rights is a precondition, and, respect for national sovereignty, rule of law, and protection of human rights are the main and vital principles in every democracy.

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I would like to draw your attention to a point, which should not be overlooked. Turkey has tried to actualize and apply these modernization and democratization concepts, in a relatively short period of time: 80 years. When that is taken into consideration, it seems to be quite natural that there are some deficiencies and inadequacies. Before pitilessly criticizing and discriminating against Turkey, one should remember this fact.

The humanistic character of Turkish society should also not be forgotten. It assumes an important place in Turkey's human rights profile. As we know, qualities such as hospitability and helpfulness are among the most outstanding characteristics of Turkish society. It seems to be somewhat unlikely that a society, which instinctively possesses such qualities faces difficulties in adopting the values of human rights.

Turkey is also a signatory to major conventions on human rights one of which is the European Human Rights Treaty of 18.05.1954. It is not only down to the will of its citizens or to domestic law that Turkey has to create a mature democratic structure – with all the concommitant judicial, organizational and cultural dimensions – and a modern understanding of rights and freedoms. It is also a requirement of international law that Turkey is to adhere to the international conventions that it signed.

Unfortunately, today, it cannot be denied that Turkey has a serious human rights problem to resolve. In fact, this problem is not a new one, the problem has a long historical background; but the novelty is that this problem has just started to be consciously addressed and articulated. The establishment of human rights organizations in the country is an indicator of the consciousness and sensitivity that has been developing throughout the whole country. I view this as a very positive and pleasant development. So, what are the dynamics that build up the root of the human rights problem in Turkey? I think, before trying to solve this problem, one has first to give an answer to this question. At the root of this question lie the subconscious tendency or the philosophy of the society regarding this topic. This philosophy has its roots in the Ottoman Empire. According to this philosophy, authority – and thus, the state – is the highest value of the human existence. This way of thinking is the one I mentioned at the beginning of my speech, namely the oriental way of thinking; and according to it, it is not the state that must be there for the individual, but rather it is the individual that must be there for the state. I have already

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mentioned that this kind of an understanding is basically opposed to the very concept of human rights. According this concept, the state is a means, which is there in order to maintain national welfare. We can say that Turkey is now going thorough a phase in which the old, conventional understanding is changing. We can see that from the recent amendments made to the constitution, and we are very happy about that development. The implementation of this understanding is only possible if the political system of Turkey becomes more liberalized, democratized and integrated with the world in general, and with Europe in particular. Together with democratization, the inner dynamics, and, integration with Europe and the world, the outer dynamics will begin forcing the Turkish system towards greater sensitivity to human rights. It is high time that the structural problems, which constantly create human rights violations, are prevented. Turkey does not have much time to lose in its quest for full membership in the EU. It is now vital that we make the right moves and bring our country up to the standards of the EU as soon as possible. Everybody has certain responsibilities in this matter. One has to realize this, and act accordingly. In this sense, the amendments made to the constitutions are crucial. I believe that these reforms will enable our country to take a big step forward; and I am expecting the realization of these reforms.

With its rich human resources and cultural wealth, our country does not deserve the negative human rights profile that it has today. With the current amendments to the constitution, Turkey will swiftly move in the right direction. As a result of these reforms, a reasonable number of judicial errors will be corrected and deficiencies will be overcome. The EU is quite right to expect the fulfillment of the Copenhagen Criteria from all the candidates, including Turkey, but it should be a bit more sensitive in the Turkish case. The EU should support and help Turkey in its struggle towards civilization, because such an approach will also be necessarily in the interest of Europe. First of all, a Europe, containing Turkey inside its borders, will definitely be a more vivid and more democratic Europe. Moreover, Europe has a population problem to deal with, and this problem is growing every year. This problem has to be urgently resolved. A Europe that stands by Turkey and supports her would, in the future, profit from that support, as Turkey has a very large human resources capacity.

Turkey is located in one of the most problematic areas of the world. We can see this when we consider the countries, which surround her. Another important point concerning Turkey is that it is a country with a

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dominant Islamic population, but at the same time, it is a secular and democratic one. It is actually the only country that combines such qualities. When we consider this fact, we can assert that the EU is face to face with the opportunity of improving its relations with the Muslim world. Turkey is also a model for other Islamic countries. Many political scientists in Europe and the USA emphasize the "Kemalist, secular Turkish model". It is high time that the EU is more active and determined in facing Turkey's membership problem. The Turkish community living in Europe cannot imagine a Europe separated from Turkey. Becoming a member of the EU is very important for Turkey's future, and the same is true for the EU, because Turkey's geo-strategic location holds great significance for various European interests.

To sum up, I would like to make the following remarks: Although it has been over 80 years since the secular republic was founded, the requisite democratic steps to protect secular republic values and to achieve democratic rule, have yet to be fully implemented. As a result of this, human rights violations unfortunately cannot fully be prevented. And that, in turn, threatens our democracy and internal peace and negatively affects the prestige of our country. When we consider the universality of human rights, we can see that human rights violations committed in one country actually represent a violation of international law, because it is contrary to the international human rights agreements made among countries. Countries that have signed international treaties about human rights, however, have an obligation to protect human rights without discriminating against people. For this reason, human rights violations committed in one country are not just an internal matter for that country, but an international phenomenon.

I would like to make one point very clear here: There are reasons for each one of the problems that Turkey faces. Therefore, instead of criticizing Turkey in a pitiless manner, one should try to make sensible and constructive criticisms. It should not be forgotten that Turkey is located at a strategic point, which is open to many kinds of danger. Turkey is located at the crossroads of Europe and Asia. This makes more sense when we think about current events. A micro sized copy of what we witness nowadays, the so-called east-west confrontation, has experienced in Turkey for 100-200 years including the last phases of the Ottoman Empire. This is only one of the problems that Turkey has to deal with.

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Importantly, I think, citizens should be educated so that they can be sensitive and conscious about the significance of human rights. I suppose it would not be a fantasy to imagine and hope that human rights violations might be reduced to a great extent. Turkey has to take the Copenhagen criteria seriously and act accordingly so that the way leading to EU membership will be opened. The protection and the practical achievement of the human rights are at least as much important as economic affairs. Thus, Turkey has to show the same level of sensitivity that it shows in economic affairs, to matters concerning human rights. The 65 million people living inside the borders of the Turkish Republic and 3,5 million people living outside it are expecting and waiting for such a development. As to the amendments made to the Constitution, the modification of 37 articles of the Constitution is indeed a great, important, historical step. These amendments are the most important and extensive ones made during the last 50 years. I believe that the Grand National Assembly can succeed in this process, and I support this wholeheartedly. After these reforms, Europe will no longer be able to blame Turkey, for not taking the necessary steps. I am sure these reforms will not only be beneficial for the membership process, but what is more important, they will also serve the development purposes of our nation by producing an environment of trust in society and will provide higher living standards. The amendments made to the articles of the Constitution will allow Turkey to adopt a more democratic system; make it easier to protect human rights; and enable our country to take a big step towards the "high civilization" that Atatürk continuously mentioned. The constitutional reforms will positively impact all areas of life. These reforms will also help Turkish people living in Europe and the European friends of Turkey to their efforts to integrate Turkey with the EU.

We are now dreaming of a world where countries exist in harmony with each other in absolute peace. It is now time that we do everything we can, in order to turn this into reality. Every human being has positive things to offer to this world, it is enough just to believe in this and hope that peace will prevail in the world. Humans need love and respect, and when we esteem these values, the world will become a real paradise for us all. We just need to become united, support each other and strive for these ideals.

I hope our conference will be a successful one. Thank you and best regards to all of you.

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SPECIAL SESSION

The European Union and Human Rights

Nejat Arseven

Luigi Narbone

Volkan Vural

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HUMAN RIGHTS EDUCATION AND PRACTICE IN TURKEY WITH PARTICULAR REFERENCE TO THE COPENHAGEN CRITERIA

Nejat Arseven*

The subject of this meeting, namely human rights education, is one of the major topics I deem to be of great importance for the protection and improvement of human rights. Therefore I gladly accepted the invitation to join this meeting although I have been on a tight schedule lately.

The importance I attach to human rights education stems from my belief that the optimal solution to human rights problems in Turkey will first rest on the internalisation of a human rights culture. Moreover, contrary to widespread opinion, it is not only governmental institutions which should acquire this culture. Clearly, human rights violations do not only take place on a top-down basis from the state to the individual but also occur between individuals and social groups.

Consequently, all levels of society, individuals, all official and private institutions should possess sufficient knowledge, determination and sensitivity to protect and respect fundamental rights. Although it is one of the main obligations of the state is to protect human rights, this cannot be achieved without the contribution of individuals, NGOs, universities and relevant international organisations. Therefore, an improvement of the conditions in universities and civil society is very important, as it constitutes the most significant component of democracy.

Extensive research should be conducted on human rights and the results of such research should be made available to every layer of society in an effort to raise public awareness. Human rights is a field where

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education and information are of the utmost significance. No matter the amount of legal regulation achieved, it is not possible to obtain positive results unless those who apply these regulations and those who are supposed to benefit from these regulations possess sufficient knowledge and education on human rights. The success of each and every regulation depends on the people who implement them. Even the most up-to-date regulations will produce negative outcomes if left to inexperienced hands.

In this respect, universal education on human rights in general, and the education of civil servants in particular, appear to be a precondition for the smooth application of human rights. Therefore I would like to state my appreciation for the work done by both the European Community Institute and the Turkish Democracy Foundation. The research conducted by the Turkish Democracy Foundation within the framework of the "Democracy and Human Rights Education Project" has generated valuable data, from which we will also benefit. There is much to be gained from the continuation of such projects. I am looking forward to support from relevant international institutions and the European Union in the realization of new projects.

The presence of human rights problems all over the world cannot be denied, despite all the national and international efforts made to prevent them. These problems stem from different causes. First of all, poverty prevents people from enjoying the rights granted by international documents and modern constitutions. Insufficient economic, cultural and social means make it harder for people to understand and defend their basic rights. From this point of view, the elimination of poverty ought to be the most relevant task for all nations in order to grant everyone guaranteed access to their given rights.

The second important factor working against the perfect implementation of human rights is ignorance, which is primarily caused by insufficient education. Therefore, education and raising peoples' awareness on their rights and responsibilities is crucial for the prevention of human rights violations.

Another underlying factor behind human rights violations is a tendency toward the use of violence. Motivated by various reasons, violence usually starts within the family, may continue in social life and also within the police force. Hence maltreatment and torture will result. The tendency to

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use violence is also nourished by the media. Thus, it is necessary to educate people and to take all necessary measures to eliminate this tendency or at least to keep it under control.

Terror is a form of violence, which targets the innocent and transgresses their basic right to life. Although it has been used for many purposes in the past, terrorism today is mostly used by irredentist and secessionist groups. Yet the terrorist attack on the USA indicates the multi-faceted nature of terrorism. Following the events of September 11, the fight against all forms of terrorism has acquired an international dimension.

Turkey had been struggling against secessionist terrorism for more than fifteen years. The offensive capabilities of this movement have now been neutralized. Turkey had started to take all the necessary economic and social measures needed to avoid its re-emergence. However it is important to note that the perpetuation of these terrorist acts was only made possible through the support it obtained from various states.

It is a fact that various states directly or indirectly, support terrorism. However, international society should expect no gains from protecting terrorism. Terrorist activities that disturb a country today might sooner or later become a disturbing factor for another. Thus, international cooperation against terrorism is essential.

Xenophobia is another matter of concern in this context. Although it had already been present in many West European countries, xenophobia has increased following the terrorist attacks on the US. Xenophobia usually manifests itself in the explicit use of violence towards immigrants living in Western countries. The existence of xenophobia is incompatible with the cultural values of these countries and should be prevented.

No country can claim a perfect human rights record according to the assessments of many international organisations. Although more than fifty years have passed since the acceptance of the "Universal Declaration of Human Rights", there are human rights violations in all countries only varying in their extent and nature. Every country should take this fact into consideration in order to be self-critical. Every country should first consider her internal situation and then criticize other countries. This is the only way to achieve the desired level of cooperation, free from prejudice.

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Human rights require simultaneous protection and improvement. It is a dynamic process. States should do their best to provide a suitable climate and context for the complete application of human rights.

The United Nations General Assembly proclaimed the period between 1995-2004 as the "Decade of Human Rights Education". A "National Committee for the Decade of Human Rights Education" was also established in Turkey. Currently, it functions as a consultative body. It is composed of representatives from various ministries and voluntary institutions, as well as renowned academics from the field of human rights. This committee is successfully continuing its work.

Within the same framework, a course entitled "Citizenship and Human Rights" is being thought in primary schools as a compulsory course. Another course "Democracy and Human Rights" is being taught in secondary schools. There are human rights courses in various faculties of universities and human rights centres have been established in some universities.

The education of civil servants on fundamental rights and freedoms is also important. Turkish civil servants are receiving in-service education on human rights throughout their period of service. Police education is a crucial part of this broader framework. A Human Rights Course is being thought in the Police Academy as well as in the police schools. Furthermore, both the police and gendarmerie are receiving in-service education on human rights.

All Turkish senior officials, governors and police chiefs attach priority to human rights. After an amendment to the By-law on Civil Servants Record, respect for human rights has become a grade of behaviour. The establishment of human rights committees in all our regions and counties is supposed to contribute to the education programme.

The tasks of these committees would be to inspect the claims of human rights violations at the places where they occurred and to contribute to local education programs on human rights. An extensive education programme has been organized for people working in these committees. This programme includes every city in Turkey, and is grouped under ten regional categories. It started in Kayseri on 24 September 2001, with the participation of representatives from eight cities. The follow-up

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programme is going to take place on 22-26 October 2001 and will include Diyarbakır and neighbouring cities. This programme is due to be completed by June 2002.

Turkey's path to full EU membership is one of the major projects for transformation that will elevate Turkey to the universal values of the 21st century. Inspired by Atatürk's political guidelines, Turkey wants to share a peaceful and enlightened future with the member countries of the EU on the basis of common norms and values. Turkey plans to become a party to all the relevant international treaties and develop a more modern domestic legal system in order to reach an equal footing with the EU member states concerning human rights and democracy. Thus Turkey is taking serious steps to pursue this goal.

Removing legal barriers to freedom of thought and expression and the total elimination of torture are top priority issues for Turkey. These efforts fit into the general framework of Turkey's National Program. Concrete measures are being taken in the fields of freedom of establishing associations, strengthening civil society, abolition of the death penalty, improving cultural and individual freedoms, the application of human rights and freedoms regardless of language, race, colour, sex, ideology and religion, and the amelioration of prison conditions. Fundamental constitutional amendments have been tabled concerning these issues. The European Convention on Human Rights and the decisions and regulations of the European Court of Justice were taken as major guidelines in making these amendments. All these developments point to an advanced phase in the protection of human rights in Turkey. They will serve as a milestone in the Turkish history of democracy. The necessary implementing laws will be enacted soon after these amendments are put into effect. Accordingly, Turkey will make a considerable move towards the fulfilment of the Copenhagen political criteria.

As already stated in the National Programme, the necessary implementing laws can only work if these amendments are fully integrated into relevant public policy areas. I believe that the above mentioned education programs will be instrumental in achieving these ends.

At this point, I would like to highlight an important issue: In Turkey, EU membership is usually perceived as a process of catching up with the modern world. Turkey is a secular and democratic European country

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committed to the rule of law, fundamental human rights and other values that are deeply rooted in the idea of Europe. Moreover, it is an important geopolitical actor in world politics. And I think that the accession of such a geopolitical actor, committed to the same values, will in turn provide the EU with a broader perspective in the 21st century.

The EU has decided to carry its level of cooperation with Turkey beyond its traditional frame of reference. The EU showed a shift in its viewpoint by confirming Turkey's candidacy in the 1999 Helsinki Summit. By abandoning conservative policies like "cultural distinctiveness", the EU decided to walk with Turkey on the path of 21st century globalisation. In such an environment, Turkey will surely contribute to the reconstruction of Europe. Turkey also has important missions concerning Central Asian and the Middle East countries. Turkey has the dual task of both serving as an example of pluralist democracy to these countries and acting as the European gateway to the Asian continent. Turkey's candidacy is especially important and meaningful with reference to these realities.

Differences of opinion, evaluations and priorities between Turkey and the EU may arise during the process of candidacy. However, the important thing is to preserve harmony regarding basic aims and principles in an environment where differences will not constitute roadblocks. The progress Turkey has achieved and will continue to achieve during her candidacy should be evaluated objectively on the part of the EU. We expect the EU to work even harder to further this relationship. The preservation of mutual confidence, dialogue and goodwill, and the recognition of mutual responsibilities are crucial. Each party should do its best to accomplish these expectations.

I believe that human rights should not be taken as a given variable. Human rights refers to the total sum of values acquired by a process of long struggle. This struggle is still continuing. In this sense, improving human rights is an obligation for everyone.

Satisfying the demands of our citizens and raising the political, economic and social standards of Turkish society is a priority for the Turkish government. Turkey has started to engage in extensive political, economic and social reform initiatives aimed at pursuing these goals. Turkey is also meeting her obligations as described in international treaties. The Turkish constitution, regulations and laws serve to protect the

fundamental rights and freedoms of Turkish citizens. Thus, the proper application of these regulations and the removal of possible shortcomings are clearly important. Turkey is already working hard to remove these deficiencies and expects more EU help in this regard.

After the terrorist attacks on the U.S., a consensus on the universality of human rights and freedoms has been reaffirmed. The necessary, if belated, initiatives of the United Nations to reach agreement on the international fight against terrorism are compatible with the Turkish stance on terrorism. Having suffered much from terrorism, Turkey is ready to make every possible contribution to the full accomplishment of such initiatives.

The aforementioned realities have once more shown that respect for human rights and fundamental freedoms should be a common value for all pluralist, democratic societies. Equality before the law, transparency in administration and supremacy of the rule of law constitute the basic values of our times. It can be seen that countries committed to these values will rapidly progress whereas other countries, which fail to keep up with this trend will lag far behind. Therefore, our main target must be to enlarge the scope of basic freedoms and to enhance them in order to increase the productivity and creativity of each individual. This should be achieved through every possible means – education being the most important means of all.

I believe that this meeting will provide us with valuable data and insights and I respectfully greet you all.

MARMARA ÜNİVERSİTESİ YAYINEVİ

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HUMAN RIGHTS, THE EUROPEAN UNION AND TURKEY

Luigi Narbone*

The international community in the second half of the twentieth century has committed itself quite deeply to improving human rights standards and setting up a comprehensive legal and implementation structure for carrying out the obligations arising from the Universal Declaration of Human Rights. These instruments emphasise that all human rights are interrelated, interdependent and universal, including social, economic, cultural, civil and political rights. They recognise governments as being primarily responsible for the protection of human rights and the creation of institutions to develop standards and monitor performance. The development of regional instruments has mirrored these international standards, with European states developing standards and setting up protection mechanisms for the human rights of its citizens.

While it is clear that, in many respects, the protection of human rights has improved in the last 50 years, with the normative framework of human rights standards being almost universally accepted and democratisation taking root throughout the world, there is still an important gap between aspirational standards and the reality experienced by hundreds of million of people throughout the world. Despite the internationally accepted currency of the language of human rights and democracy, the reports of human rights mechanisms and NGOs suggest that we are still far from achieving the widespread enjoyment of human rights that humanity deserves.

It is against this background that the international human rights community has started to emphasise a shift in focus from standard setting to implementation. As the twentieth century closed, a quiet satisfaction could

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be expressed about the solid foundations laid by the comprehensive normative framework of human rights. Now that this difficult work is largely completed, the challenge for the international community involves putting the words into practice, in monitoring, enforcing and building respect for human rights. It is the role of the international community to encourage and support governments, and other important actors, such as civil society in fulfilling the obligations they are committed to. The European Union is deeply engaged in providing both political as well as financial support to the various actors involved in this process and assisting them in responding to these challenges.

Turning now more specifically to the role played by the EU in promoting human rights and democracy first within the Union and secondly as a fundamental component of the external policies, it is worth stressing that the EU itself was a response to the economic destruction of war and the human tragedies that accompanied it. The EU was based from its inception on the values of human dignity and freedom; shared values which, have proved to be the foundation of the peace and prosperity enjoyed by EU Member States and their citizens. The moral obligation of the EU to promote these values has been reflected in its own legal framework.

Human rights are one of the fundamental principles of the EU Treaties. The Treaty of Amsterdam reaffirms in its Article 6 that the European Union '*is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles that are common to the Member States*'. It emphasises that the respect of these principles also is required by countries applying for EU membership and introduces a mechanism to sanction serious and persistent breaches of human rights by EU Member States.

The Union can suspend certain rights of a Member State deriving from the application of the Treaty, if it has determined the existence of a serious and persistent breach of these principles by that Member State (Art 7 TEU). The Treaty of Nice also provides for the adoption of measures in case there is a clear risk of serious breach by a Member State of the fundamental rights or freedoms on which the EU is based.

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Candidate countries will have to respect these principles in order to join the Union (Art 49 TEU).

It has also given the European Court of Justice the power to ensure respect of fundamental rights and freedoms by the European institutions (Art 46 TEU).

The EU went further by designing a Charter of Fundamental Rights.

The Charter of Fundamental Rights of the European Union has to be seen in the wider context of the EU's enduring commitment to human rights and fundamental freedoms and of its policy in the areas of Justice and Home Affairs.

The decision to draw up a Charter of Fundamental Rights of the European Union, and to have it proclaimed at the Nice European Summit, was taken by the European Council in Cologne, Germany, on 3 and 4 June 1999.

The Charter does not add supplementary conditions for applicant countries. In reality, the fact that these countries accept the acquired body of Community law (the so-called *"acquis communautaire"*), for example in the area of the protection of personal data, already implies that they accept and respect the standards and principles set out in the Charter. What the Charter does is to render these standards more explicit in terms of fundamental rights, providing an additional level of judicial security, which will benefit both applicant countries and citizens in general. Nor should we forget that the applicant countries have already signed up to the European Convention on Human Rights and that their own constitutions include these fundamental rights.

Another important chapter concerns the fight against discrimination within the EU.

The Amsterdam Treaty also introduced a new Article 13 into the EC Treaty giving the Commission, for the first time, the power to take legislative action to combat racial discrimination. This legislation is applicable within the EU only, but forms part of the *'acquis'* that candidate countries will have to integrate into their own laws.

Accordingly, a package of new anti-discrimination measures was adopted by the EU in 2000. The package of measures adopted includes a directive on equal treatment irrespective of racial or ethnic origin. This directive sets out a binding framework for prohibiting racial discrimination throughout the EU. Moreover, it states that the Community is a strong defender of the human right's of women recognising that discrimination on the grounds of ethnic origin may affect women and men differently. The directive must be implemented in the national laws of the EU Member States by 19 July 2003.

The directive defines the concepts of direct and indirect discrimination and outlaws discrimination in the fields of employment, social protection, including health and social security, social advantages, education and access to the supply of goods and services, including housing. It gives individuals who believe themselves to be victims of discrimination access to an administrative or judicial procedure so that they can assert their rights, associated with appropriate sanctions for those who discriminate. In order to strengthen the position of victims, the directive shifts the burden of proof on to respondents and empowers victims to seek the help of associations.

In addition, the directive requires that all EU Member States set up a body, which may act independently to promote the principle of equal treatment irrespective of racial or ethnic origin.

A separate directive provides similar protection against discrimination in the labour market on grounds of religion and belief, disability, age and sexual orientation. This directive must be transposed into national law by 2 December 2003.

Finally, an Action Programme to combat discrimination will run from 2001 to 2006. With a budget of approximately 100 million EUROs, it supports projects aimed at preventing and combating discrimination on a number of grounds, including racial or ethnic origin and religion and belief.

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I - Protecting and Promoting the Rights of Minorities

The protection of persons belonging to minorities is an inherent part of the EU policy on human rights. Article 6 of the Treaty on European Union refers to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Its Article 14 states that the rights and freedoms laid down in the Convention - which has been ratified by all EU Member States and candidate countries- should *'be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'*.

Furthermore, the EU Charter on Fundamental Rights which was officially proclaimed in December 2000 lays down the equality before the law of all people (Article 20), prohibits discrimination on any ground (Article 21), and requests the Union to protect cultural, religious and linguistic diversity. The European Commission's actions in the field of external relations are guided by compliance with the rights and principles contained in this Charter.

II - External Relations

Respect for human rights and democratic values has come to be a defining element in EU relations with third countries; all agreements with third countries include a clause defining respect for human rights and democracy as 'essential elements' in the EU's relationship.

Several instruments are used to ensure coherent and consistent policies of the Union in the field of Human Rights and democratisation. For instance political dialogue with third countries represent forum to discuss human rights. Also the linkage between Trade, investment and HR have been increasingly strengthened and used as a means to promote human rights. Co-ordination with relevant international organisations such as the Council of Europe, the OSCE and the UN is also carefully sought.

Furthermore the Community actively implements its commitment to these principles through its development cooperation programmes and human rights budget lines. In 1994, the European Parliament created Budget Chapter B7-7, the 'European Initiative for Democracy and Human Rights' (EIDHR), which drew together all the budget headings dealing specifically

with human rights. Council Regulations 975 and 976 of 1999 provide the legal basis for the external action human rights and democratisation and the use of funds under EIDHR.[1]

The budget available for human rights in 1987 was € 200,000, by 2000, that figure had grown to € 100 million. EIDHR has funded projects in support of a wide range of EU policy objectives, such as democratisation and the rule of law, developing civil society, confidence building and empowering vulnerable groups and individuals.

As the involvement of the Commission in the field of human rights increases and knowledge of its services expands, it also has to face growing challenges. In particular, it must connect political priorities with effective implementation in the field, ensure high impact, link global activities to local ones, exploit the EIDHR added value and achieve enhanced complementariness and coherence at the Commission and EU level. Moreover, the external environment in which the Commission operates also changes and presents new challenges and opportunities. Globalisation brings along tremendous opportunities, but also risks to exacerbate inequalities and to exclude large numbers of individuals from sharing its benefits. In this context, the main actors have also changed, as civil society has become a major driving force. The Commission Communication on the EU's role in promoting human rights and democratisation in third countries, adopted in May 2001, represents a crucial new policy landmark for the EU in this area, addressing the major changes, which have influenced activities in the last few years.

The Communication identifies three areas where the Commission can act more effectively:

[1] Council Regulations 975/1999 and 976/1999 of 29 April 1999 on the development and consolidation of democracy and the rule of law and respect for human rights and fundamental freedoms. OJ L 120/1 of 8.05.1999. The first Regulation refers to developing countries, the second to all other countries. They expire in 2004, the time frame of the present programming exercise.

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Through promoting coherent and consistent policies in support of human rights and democratisation. This applies both to coherence within and between European Community policies, and between those policies and EU action, especially the Common Foreign and Security Policy. It also relates to the promotion of consistent and complementary action taken at the EU level and by Member States;

Through placing a higher priority on human rights and democratisation in the European Union's relations with third countries and taking a more pro-active approach, in particular by using the opportunities offered by political dialogue, trade and external assistance;

By adopting a more strategic approach to the European Initiative for Democracy and Human Rights (EIDHR), matching programmes and projects in the field with EU commitments on human rights and democracy. It establishes four thematic areas for intervention. These are:

Support to strengthen democratisation, good governance and the rule of law,

Activities in support of the abolition of the death penalty,

Support for the fight against torture and impunity and for international tribunals and criminal courts,

Combating racism and xenophobia and discrimination against minorities and indigenous peoples.

III - Candidate Countries

As everybody in Turkey knows, the approach developed for the candidate countries in Agenda 2000 on the basis of the accession criteria established in 1993 by the Copenhagen European Council is being applied. These criteria stipulate that membership requires the applicant country to ensure the *'stability of institutions guaranteeing democracy, the rule of law, human rights, and the respect for and protection of minorities'*. Fulfilment of the political Copenhagen criteria is a precondition for opening accession negotiations.

Candidate countries records regarding human rights and respect for minorities are assessed on a yearly basis in reports presented by the European Commission to the European Parliament and to the Council. Aimed at measuring progress made by candidates towards accession, these reports also serve to provide precise recommendations to the candidate countries with a view to improving their records.

Now again, it is a well known thing that the yearly assessment made through the Regular Report of the Commission, for instance, is based both on concrete legislative steps undertaken by candidate countries to conform with the EU acquis in the field of human rights and on the practical implementation and enforcement of reforms. Again, it is important that all legal instruments to ensure the protection of human rights are in place, but at the same time it is of fundamental importance that those principles contained in laws and regulations be effectively implemented by the different competent authorities, law enforcement agencies, the Judiciary etc.

As we know, Turkey has committed itself through the National Program for the Adoption of the Acquis to launching and implementing major reforms in the field of freedom of expression, freedom of association, individual rights, judicial modernisation so as to increase the efficiency of trial procedures, pre-trial and detention conditions, etc. Some steps have been taken, amongst which the most important is the constitutional amendment package adopted by the Parliament at record speed. Obviously these very positive steps will have to be followed by more legislative reforms, for instance in the amendment of various articles and laws that unduly restrict basic freedoms.

At the same time, it is also extremely important to change practices and mentalities. For this reason training is a key for success in the reform process. Lots of initiatives to inform and train the most important actors both in the state and in society have been undertaken in recent years. Those initiatives have certainly had some impact, even though it is somewhat difficult to measure and evaluate the extent of change, which has been generated. It is however very important that a more strategic approach is gradually being introduced in training in human rights. Training has to

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become a means to achieve the strategic objectives of the reforms and should become an increasingly indispensable component of major legal and institutional changes. This is one of the principle means to ensure that important legal reforms are followed up by changes in attitude and practice.

IV - EU Projects in Turkey

Talking now more specifically about Turkey's efforts in the field of human rights training: As I already mentioned, intensive efforts to carry out human rights training, mainly for the judiciary, police and the gendarmerie are underway, as foreseen in the National Programme for the Adoption of the Acquis. The European Commission welcomes these efforts.

The European Commission is making its contribution by funding a number of programs and projects. EC cooperation in the area of human rights training started out in 1992 through support for NGO activities. Between 1997 and 2001 around 30 NGO projects were financed in a wide spectrum of civil society areas. Of these around 10 projects were directly related to human rights education – total sum is a little over 1 million Euros. Marmara University's project for the improvement of human rights in Turkey is among the many examples of projects supported in recent years under the MEDA program.

As I mentioned The EU is paying more and more attention to long-term sustainability and institution building in the field of human rights training.

Examples of this can be seen in a joint EU-CoE package currently being prepared. One of the components is developing human rights training strategy for public officials with emphasis on the judiciary. The main target groups will be judges and prosecutors as well as lawyers and the main interlocutors the Ministry of Justice, the State Ministry responsible for human rights and the Ministry of the Interior. Technical assistance, the development of training materials, training activities and evaluation of the overall training strategy and curriculum will be key points of the programme.

Within the Civil Society Development Programme of the EU, another project is looking at the human rights training of police and gendarmerie. The project start is planned for 2002. We are aiming to design and develop a long-term, sustainable human rights training strategy for these two

important institutions. The project also includes technical assistance on the new 2-year curriculum of the Police Academy. The underlying goal is for all police officers to acquire knowledge about international human rights standards and to develop skills that will enable them to apply these in their daily working practice.

Similarly the Commission is developing a major program in the area of judicial modernisation and penal reform to begin in 2002. The program objectives involve:

providing tools for more effective monitoring and support of the judiciary, notably by improving statistics;

building Ministerial capacity to design and implement its IT project for a National Judicial Network;

developing a more coherent training strategy, including training of trainers in the context of the planned Justice Academy, with particular emphasis on training in connection with forthcoming penal and penal procedures legislation and ECHR jurisprudence;

extending the training of experts in forensic medicine so as to enable forensic services to be offered in the provinces;

bringing a European perspective to the drafting and implementation of penal legislation;

drawing up policy guidelines on management, detention conditions, rehabilitation support etc.;

enhancing technical capacity on architectural matters;

developing human resources and management capacity, both through the Prison Staff Training School and through a "model prison" project;

reinforcing the efficiency of external supervision through the enforcement prosecutors.

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The overall objective of all these programs is to assist Turkey in its reform effort. We believe that these programs can play an important role in this sense, by facilitating harmonization with the acquis or by showing some of the best practices in the EU.

Thank you.

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HUMAN RIGHTS AND THE TURKISH NATIONAL PROGRAMME

Volkan Vural*

There are important landmarks in every country's history. In Turkey's case, some of these include the proclamation of the Republic, the launch of Atatürk's reforms, the adoption of new values, the transition to a multi-party political system and the introduction of market economy rules. Turkey's EU membership bid marks a similar watershed in our historical evolution. This project is unprecedented in its potential to affect our destiny, given its sophisticated political, economic, social and global dimensions.

Turkey's status as a candidate country for membership in the EU was recognized in 1999 at the Helsinki Summit. It took some time for the European Union to put in place the pre-accession strategy for our country, which was endorsed only in March 2001. As soon as this strategy entered into force, our Government adopted the National Programme for the Adoption of the Union Acquis.

As we proceed with the process of implementing our National Programme, Turkey will further align with European norms, not only in terms of rules and regulations, but also in terms of their practical application. The end result will be a renewed Turkey – a new Turkey with a more open society, a highly enhanced judicial system and a more participatory democracy. It will also be a new Turkey in which all the institutions necessary for the operation of a free market economy under competitive conditions, especially in the financial sector, will be in place.

Prior to the adoption of our National Programme, we had suffered two economic crises, mainly due to the problems of the public finance system. The adverse effects of these crises can still be observed in Turkey. Many people have become jobless. Industrial output has plummeted. To deal with

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the situation, we are implementing a strict economic programme in cooperation with the IMF and the World Bank. We hope to start reaping the positive results of this programme soon. We are fully aware that this is not an easy process. In any event, we are determined to implement this programme in its entirety.

As part of this programme, we have started to address our structural weaknesses. We are removing state interventions in the market economy by establishing a new banking system and introducing independent regulatory bodies. The legal infrastructure for a well-functioning market economy is now in place. The basic features of a market economy, no doubt, already exist in Turkey. However, the management of our public finances has proved to be problematic. Now that fiscal discipline has been established and difficulties in public financing are being addressed, our economy is heading towards higher growth rates in the coming years.

Our National Programme is a comprehensive and far-reaching political and economic reform programme, which has been implemented during the last 6 months. In our National Programme, we envisaged two consecutive timeframes for the reform process, a short and a medium term timeframe, in light of the Accession Partnership. The measures for the short-term are to be implemented in one year. The medium term measures will be accomplished in more than a year, based on the understanding that these measures would be duly achieved.

Regarding the short-term objectives, there have been significant developments in the implementation of our National Programme. On 3 October 2001, the Turkish Parliament concluded its deliberations on a major reform of our Constitution. With the exception of extraordinary situations, this package is the most comprehensive set of constitutional amendments enacted by our Parliament to date. The Parliament agreed by an absolute majority to amend 34 articles, or almost one-fifth of the Constitution. The package constitutes an essential step forward towards compliance with the Copenhagen political criteria and the implementation of our National Programme. The amendments testify to the will of the Turkish Parliament and the political parties to advance towards full membership in the EU. The amendments include provisions on the enhancement of the freedom of thought and expression, the prevention of torture, the strengthening of democracy and civilian authority, the freedom and security of the individual, the privacy of individual life, the inviolability

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of the domicile, freedom of communication, the freedom of residence and movement, the freedom of association and gender equality.

This package, however significant, does not constitute an end in itself, but marks the beginning of a new process for strengthening democracy, the rule of law and human rights in Turkey. We now have to harmonize relevant Turkish legislation with these constitutional amendments. The main legislation to be reviewed in this context is the Turkish Penal Code, the Anti-Terror Act, the Act on the State Security Courts and the Codes of Civil, Penal and Administrative Procedure.

Therefore, the overall political and economic reform process is clearly on track despite differences of opinion over its content and speed. We are determined to further develop, on the basis of Turkey's international commitments and European Union standards, the provisions of our Constitution and other legislation to promote freedom; provide for a more participatory democracy with additional safeguards; reinforce the balance of powers and competences between state organs; and enhance the rule of law.

The advantages of Turkey's membership in the Union or disadvantages of a Union that excludes Turkey outweigh by far any real or perceived difficulties there may be on Turkey's path to full membership. The successful conclusion of our bid to become a full member of the European Union will be a great achievement both for Turkey and the Union.

Future membership in the European Union enjoys wide support from Turkish public opinion. Approximately 70 percent of our people favours Turkey's membership in the EU. This trend is also evident in the attitude of our political parties. There is an unprecedented consensus among political actors in Turkey about proceeding vigorously towards EU membership. The revision of the Constitution testifies to the wide political support given to EU membership by our political parties. This consensus represents the belief that EU membership would bring higher standards of living for our citizens, a more secure and stable political environment, reinforced democratic institutions, a more participatory and transparent governance and an increased share in the process of globalisation.

The Turkish public believes that, in return, the EU would have a stable and prosperous partner in Southeast Europe as the Union develops into a more effective actor on the international stage. Community transport and

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energy policies will be enhanced by Turkey's admission. Turkey's economic potential, market size and industrial base will make significant contributions to the EU.

When compared with the 12 other candidate countries, it would be fair to say that Turkey's singular contribution to the Union would be almost equal to the total contribution of half of the other candidates. When the 12 other candidate countries join the Union, the landmass of the community will be increased by 34 percent, its population by 32 percent, and the Union's gross domestic product by 11 percent, whereas Turkey's full membership single-handedly will enlarge the Community area by 24 percent, its population by 17 percent, and the Union's gross domestic product by 5 percent.

Turkey's membership to the Union will be an important step forward in the process of European unification and integration. The EU will see in this process a reaffirmation of its values. Turkey's membership will testify to the inclusiveness of the Union on the basis of the principles of an established democracy founded on the rule of law and respect for human rights, sustained by a functioning market economy. This will convey a strong message on the validity of European values of tolerance and respect for cultural diversity.

Turkey's membership will align our economies and lend a new dynamism to the Union's output and trade. It will create new jobs and enhance social stability. Fears about Turkish migration to Europe are mostly unfounded. Even today there are many foreigners working in Europe. By the time of accession, the Turkish economy will register an annual growth rate of 7 percent on average, which will utilize our human resources. We will have no interest in burdening the social system of the Union.

Turkey's full membership in the EU may well have wider geo-strategic implications, in particular with respect to globalisation. The EU with Turkey as a full member will certainly have a different outlook and global reach. Our membership may have significant effects beyond Europe, especially in the Mediterranean basin, the Middle East and the Caucasus. The European model of democracy, the rule of law, human rights and free market institutions may thus have a stronger appeal. Thereby, the Union will become a much stronger, and a more secure and prosperous entity.

Our immediate goal on the way to EU membership is to meet the Copenhagen political and economic criteria so that negotiations for accession can be initiated as soon as possible. In order to reach this point, we have a difficult journey ahead. In this process, we need the fully-pledged support of our friends and partners.

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PROJECT DESCRIPTION AND ASSESMENT

Assoc. Prof. Muzaffer Dartan

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PROJECT DESCRIPTION AND ASSESSMENT

I. Project Description

In view of its responsibility of being an academic institution and with the endeavour that the notion of the respect for human rights could only be given to the individuals through education, the European Community Institute found it appropriate to initiate a project titled "Seminars for the Improvement of the Human Rights Situation in Turkey" began on 23rd January 2001. This project was prepared with a view to raise awareness of preservation and protection of human rights, which is an issue that affects the process of Turkey's candidacy for membership in the EU. With this aim the project was based on two folds:

One of these folds was composed of giving seminars to the teachers and the students at the institutions for police education. The aim was to contribute to the creation of a raised awareness in the police force on issues related to human rights through seminars, with a view to affecting their individual and collective acts.

The other fold of our project consisted of giving seminars to the teachers at the primary schools on human rights education. The first place where most of the children start getting socialized is the primary school. Therefore, the aim of this fold was reminding the primary school teachers that they were one of the most important groups in endowing the individuals with a sense of human rights at an early stage and, in view of this fact, informing them of some useful teaching methods that they could apply not only at their lectures but also in their daily interaction with the students.

Due to budgetary restraints and the confined framework of our project as a model, the first phase of its implementation was the determination of the pilot primary schools and institutions for police education. These institutions were selected from Istanbul, Ankara and Izmir[1].

The second phase of implementation was the preparation and the publication of the booklets designed for each target group. For distribution

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at the primary schools we prepared two booklets one of which was for the teachers and titled "Human Rights Education in Primary Schools", and the other for the pupils at their first year and titled "We are learning human rights". Our third booklet is titled "The Police and the Law of Human Rights" and was prepared for distribution at the institutions for police education. Please see Annex I for the details of subjects covered in these booklets.

The third phase of implementation was the presentation of the seminars. The subjects covered in the seminars that we gave to the primary school teachers were the notion and the evolution of human rights, the meaning and the methodology of human rights education, incorporation of human rights in their teaching and useful methods for teaching human rights. The participant teachers also voiced their views and asked questions. A thorough debate on the subject occurred and an effective platform for exchange of views was provided. Please find the detailed outlines of the seminars in Annex II.

The subjects covered in the seminars that we gave at the institutions for police education were the evolution of Human Rights Law and the differences of practice between Turkey and the EU concerning human rights issues. In the seminars, related cases were also analysed with a view to supporting the information given by the lecturers. All the seminars given to the target groups were supported by power point presentations.

The fourth phase of implementation was the evaluation of the questionnaires. The target groups were given questionnaires prior to and after the seminars with a view to assessing the success of the seminars. We would like to draw the reader's attention to the point that these questionnaires were not made with any other endeavour than this simple assessment. Our aim concerning the prior tests was to find out which subjects should be emphasized in the seminars in order to create the best possible impact. Our aim concerning the final tests was to ascertain to what extent the target groups had benefited from our seminars. The results that we obtained from these questionnaires reveal that our seminars made the desired impact on the target groups. Please find some general remarks on the results of the questionnaires in Annex III.

The fifth and the final phase of our project was the international conference. It was held with the aim to announce the results we obtained

from this project and to raise public awareness on the issue of developing new and assessing the already existing methods of Human Rights Education in primary and police schools in Turkey. Ministers, Members of the European Parliament, Turkish Members of Parliament, Ambassadors, high-ranking bureaucrats, judges and distinguished academics shared their views and provided a lively and thorough debate not only on Human Rights Education in Turkey but also on the significance of Human Rights within the framework of Turkey's candidacy for full membership in the European Union.

II. Impact and Evaluation

The questionnaires that we applied to our target groups and our observations with regard to the reaction of the target groups to our seminars indicate clearly that the project was implemented successfully. It can easily be said that the goals of the project were met. We have also observed that the multiplier effect of the project had been bigger than what we expected. Further positive results such as the requests for broadening the project to include other cities to reach more schools etc. and to turn the booklets for the primary school students at their first year into a cartoon series for a nation-wide impact were also received. Some suggestions for broadening the target group (so as to include the parents etc.) were also made. These requests for broadening the project to provide a nation-wide impact encourage us to prepare a new and extended version of this project to be implemented in the future. We have already started the feasibility analysis of such a project.

II.I. Impact on the target groups[2]

II.I.I. Primary School Teachers:

On the whole, the teachers of the nine primary schools in the three cities welcomed the idea behind the project in general, and the package programme they received (the presentations and subsequent discussion sessions backed up with the two publications handed out prior to the presentations). They all have been very helpful, supportive and co-operative, prior to, during and after the presentations.

We were happy to see that the schools had already been unwittingly following some of the guiding principles we outlined in the presentations.

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We felt that we were rather supplying them with a theoretical and macro outlook, as well as some practical suggestions; we admit that they were not completely unaware of the topics we covered. The points that drew more attention in the package we offered were first, our suggestions about the assessment and improvement of human rights environment in schools, and secondly, practical exercises and teaching methods of human rights education. The questionnaires revealed that the methods discussed helped them express their experience and re-evaluate themselves in using these methods and helped us to transmit their expectations to the relevant authorities in Turkey. For the latter point, the international conference, as well as our institutional correspondence with the said authorities, was important. Basic Concepts in Human Rights, Exercises in the Methodology of Human Rights Education and Useful Teaching Methods were the parts where we had interesting and intensive discussions during our seminars.

The teachers did not also hesitate to make a general evaluation of the general system of education during and after presentations. The common criticisms voiced in these evaluations were the deficiencies in the performance appraisal system of teachers, lack of systematic parent education programmes which are expected to include, among other things, human rights education, the detrimental effect of media in terms of human rights and related concepts, the attitude of the parents - or, sometimes their ignorance - and some complaints about the physical environment in public schools such as crowded classrooms not feasible to teach or apply such methods.

The administrators and the teaching staff found the booklets for primary school teachers and the booklets for primary school students very useful and complementary. According to them, without these booklets the project would not have been complete.

II.I.II. Police Academy, College and Schools:

The main of the seminars had been to familiarize police students with the main litigation and procedures relevant to the human rights issues in Europe as well as the practical implications of the judgments of European Court of Human Rights on Turkey.

The students and the teaching staff addressed at the Police Academy and the Police College in Ankara and the Police Schools in Istanbul and Izmir

all welcomed this activity and the booklet we prepared, and they demanded deeper knowledge to figure out European and Turkish human rights law and practice. They all have been very helpful, supportive and co-operative, prior to, during and after the presentations. We observed that they were well aware of the biases (rightful or wrongful) against the police and were willing to improve the image of the police in Turkey through more tolerant and helpful practices. We were happy to see that the schools had already put Human Rights courses in their curricula. But they have to enlarge the courses in the field of international protection of human rights with special emphasis to the European system. We observed that they need a more analytical approach and intensive study that cover enabling seminars or periodical studies to reach desired goal.

II.I.III. Primary School Students at their First Year:

Although we did not give seminars to the students at their first year, the booklets that we prepared for them aroused significant interest on their part. Some of the students consulted told that they could easily understand the wording of the booklets and added that the pictures were very attractive for them and made the text more intelligible. The teachers of the primary schools all demanded to have more copies of these booklets so that they could distribute them to the students at their second year also. There were suggestions that we should turn this booklet into cartoon series for the TV so that we could obtain a nation-wide impact. This practice would also have a significant multiplier effect in the sense that we could reach children of different ages and perhaps their families.

II.II. The Multiplier Effect of the Project

When we started the project we were expecting that our project would have a considerable multiplier effect. Thinking of all the present and future pupils that would benefit from what their teachers had learnt from our seminars we could guess that our seminars would create a significant positive value. Another important factor increasing this positive value was the booklet that we prepared for the primary school students at their first year. With regard to the police, the fact that the seminars were given both to the teachers and to the students of the institutions for police education at each level were indicating that we would have a multiplier effect perhaps even bigger than that of the seminars given at the primary schools. This is due to the fact that not only the teachers at the police schools but also the

students would have the role of passing on their knowledge to other police officers once they became officers themselves. We have observed during our seminars at the police schools that young police officers used to learn a great deal from their elders at the police offices that they work. Moreover, the lectures given at the Police Academy were important in the sense that the Police Academy is the place for the education of high-ranking police officials and their practice would affect a wide range of people. We also though about the consequences of our international conference and were expecting that it would be useful for the people who attended it and would also make them think of the issue and encourage them to initiate similar projects.

However, the multiplier effect of our project happened to be more than what we had expected. Especially the discussion program at TRT 2 (the state's nation-wide TV channel) had significant repercussions and we had calls from people from various cities in Turkey. These people were primary school teachers, who appreciated the project; heads of NGOs or state authorities who found it a crucial opportunity for initiating a nation-wide project. The most interesting reaction came from the Instruction and Training Board of the Ministry of National Education and the deputy head of the board, Ms. Füsun Köksal. She wrote a letter to us, inviting members of our staff to join their project called "Democratic Citizenship Education Project" made under the auspices of the Council of Europe and work for them in several sub-committees of their project. Until now two members of our staff joined three meetings held by this Board and they became permanent members of two sub-committees. We would like to state here that they work voluntarily in these sub-committees and they have to pay their own transport and accommodation, as they have to go to Ankara for each meeting. Nevertheless, the members of our staff are happy to share our experience with them and have already made significant contribution to the work of this Board. This example reveals the scope and implications of our project.

The Instruction and Training Board of the Ministry of National Education is also the authority which issues official recommendations for school books and we are in the process of application to this authority for having the publications that we made for this project (our booklets for primary school teachers and students) officially recommended. We are of the belief that once recommended officially by the Instruction and Training Board of the Ministry of National Education, our publications indicating the contribution

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of the EC funds, will provide a bigger multiplier effect. The Instruction and Training Board of the Ministry of National Education has also decided to use our publications in their nation-wide teacher- training programme on human rights education.

Our project had also been subject to another discussion program at a private TV channel, "Haber Türk" (which is a news channel). This program has also engendered significant positive reactions. The conference and consequently the project have been subject to news published in daily nation-wide newspapers as well as widely distributed local ones.

Although this was a pilot project and could only be implemented in three cities and at a limited number of schools due to budgetary restraints, we do not have any doubts about its impact and about its role as a precedent for future projects.

It was pleasing to receive so many positive reactions and we have not received any negative ones so far. It should be stated here that the implications of this project extended to areas beyond our expectations. As a matter of fact, this is the point that marks the success of this project. Especially the calls for broadening this project to a nation-wide level encourage and make us work harder for this aim.

III. General Observations and Findings

It would be appropriate to conclude with a picture of the general observations that we had during the seminars through discussion and brainstorming with the participants and some findings that we reached upon a thorough assessment of our observations.

III.I. General Observations with regard to the Human Rights Education of the Police

Our seminars were given at a time when the education in Police Schools only lasted for 9 months. Therefore, the major problem that was stressed by the students was this limited period of study in which they could hardly grasp and analyse the subjects taught. However, a different system has been adopted in this academic year and the period of education in Police Schools

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has been raised to 2 years. Therefore, the students will be able to learn the subjects taught in a detailed way.

Our suggestion with regard to the content of the compulsory Human Rights Course in the Police Schools is that it should be extended to cover the differences of implementation in Turkey and Europe and the humanitarian dimension of the subject as well as its legal aspect. This may lead to a thorough analysis of the fundamental logic and philosophy of Human Rights Law and may make it possible to approach some concepts such as the victim, the accused, and the convict, from the point of view of human rights. A comparative analysis of the arrangements and implementation with regard to human rights would effectively lead to a deeper understanding of the subject. This impact would be further nourished by the explanation of the subject with a special emphasis on the significance of this matter for Turkey's candidacy for full membership in the EU and with an analysis of the police-human rights relationship based on this explanation. Finally we are of the view that the use of audio-visual means and provision of greater space for practice-oriented studies in the human rights education of the police would be useful.

III.II. General Observations with regard to Human Rights Education in Primary Schools

Our first observation is that the primary school teachers were not aware of the role that they could play in the development of consciousness of human rights. Some teachers also expressed their doubts about being the right target group in this respect. Nevertheless, at the end of the seminars it was observed that these doubts of the teachers were carried away and they were convinced that they had a crucial role in raising individuals who are conscious of human rights.

The most important proposal put forward by the teachers during the discussions was that another vital element in human rights education of the child was the parents and that they should also be given some kind of education in this respect. The teachers pointed out that the parents had a significant role in the misbehaviour of children and that those children who did not obey school rules or who discriminated against their friends were in fact affected by their parents' behaviour at home.

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The negative impact of the media on the children was also another factor that was stressed by the teachers. They were of the opinion that violence was reflected as something natural in the news broadcasts, movies and even in some cartoons, and that this caused a negative impact on the psychology of the children. They emphasized that the child's perception of violence as something natural might strengthen the potential for his/her misbehaviour especially with regard to matter that human rights. They suggested that the media should contribute to the awareness of human rights through special programs prepared for this aim, instead. They also proposed that the media had an important role to play with regard to the education of the parents as well.

The teachers of the course "Human Rights and Citizenship" taught at the 7th and 8th grade stated that the students had significant difficulty in understanding the subject of the course. They further contended that although human rights was one of the several subjects given at the 2nd and 3rd grades this was not enough for the students to grasp the concepts taught at the 7th and 8th grades and that this was mainly because of the fact that they were not given an effective education on the awareness of human rights in the early stages. Therefore, most of the teachers have suggested that human rights education should start at the pre-school level.

Conclusion

Our final observation is that human rights education is not and should not be limited to the schools, the students and the police. It should not be limited to course hours and school life. It should not be forgotten that human rights education is a lifetime process.

The fact that there have been some human rights violations in Turkey is revealed by the decisions of the European Court of Human Rights. Considering that the European Court of Human Rights is a judicial body, it is supposed that its decisions do not have a political nature. Taking this assumption as our point of departure, we saw that the human rights violations mentioned were mostly engendered by implementation problems and partly by legal arrangements. We are of the opinion that the readjustment of implementation and legal arrangements in a way that would not leave room for human rights violations could only be through effective education. Therefore, we wanted to emphasize the importance of education in the creation of a community conscious of and respectful to human rights.

We are of the belief that an answer given to an open-ended question in our questionnaires by a primary school teacher reflects the essence of our project and reveals that we have achieved the desired result. This answer can also be the appropriate final word of this project description and assessment:

"I forgot the unhappiness that I had due to tough living conditions. I did remember again that I was a "teacher". And I did realise once again how important I was to my students and how much more I had to do. It made me feel stronger and I was honoured. I thank you and hope that your efforts will continue..."

Endnotes

[1] Criteria for the selection of the primary schools: According to the budget of the project proposal that was made in 1997, it was determined that three schools would be selected in three cities. Therefore, in this phase, it was agreed that these schools should be selected in such a way to reflect three different socio-economic levels with regard to the profile of their students. The aim was to reach students representing three different socio-economic levels since we could not cover the whole picture in Turkey. This aim was determined with a view to contributing to the process of raising children who are respectful to human rights and thus creating the desirable platform for giving all the students an equal education on human rights in accordance with the universality of this notion. This provided us with a balanced distribution although it did not necessarily reflect Turkey as a whole. It would also be crucial to state here that a nation-wide impact had never been among the objectives of this project. Accordingly, three schools were selected in each city. One of these schools would represent the lower income level; the other, the middle-income level and the third, the upper income level. All these schools were selected without any other categorization and with the random sampling method.
Criteria for the selection of the institutions for police education: The institutions for police education were selected from the cities mentioned above in a way to represent different levels of police education. There is only one Police Academy and one Police College in Turkey and they are located in Ankara. Therefore, the institutions for police education in Ankara were determined accordingly. Another institution for police education is the police school. Since we had already determined two institutions in Ankara, we did not choose any police schools from this city. By using the random sampling method, we chose one pilot Police School from Istanbul and one from Izmir.

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[2] Please note that all the primary school teachers, and the students and teachers at the police education institutions who attended our seminars at the pilot schools were granted certificates indicating that they participated in our seminars. Our aim in giving certificates to the teachers was not only to provide them with a document certifying their attendance but also to encourage them to apply what they learned from our seminars.

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I. SESSION

Human Rights in Primary School Education

Chair Person : Prof. Dr. Ayla Oktay

Murat Gürkan Gülcan

Jagoda Illner

Prof. Dr. Alan Smith

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HUMAN RIGHTS EDUCATION IN THE TURKISH EDUCATIONAL SYSTEM

Murat Gürkan Gülcan*

I. Concept

Human rights, in its most commonly understood sense, expresses the undeniable and indispensable benefits that derive from being human. The origin of human rights is to be found in the nature of being human. A human being is a value, an objective in its own. The human being has a free nature. The maintenance of "human dignity" is a core concern in human rights practice.

Human rights education is defined in the United Nations (UN) Tenth Year Action Plan for Human Rights Education in the following terms: "Human rights education encompasses the informative and training activities aiming to create a universal culture of human rights consisting of knowledge, skills, comprehension and behaviours."

By stating that all human beings are born free and equal in dignity and rights, the Universal Declaration of Human Rights emphasizes the understanding that individuals acquire human rights naturally by birth.

Human rights education as a "human's right", is an indispensable component of every democracy. This definition also includes the two functions of human rights education, which are to raise awareness and develop behaviour while emphasizing its objective. The functions of providing knowledge about human rights and developing behaviours that protect and improve human rights can only be made possible by constructing the conditions for appropriate training and education; and this can be realized in a free and democratic environment.

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Human rights education is primarily necessary for individuals to become well informed about their rights and freedom. One cannot be automatically aware of his/her human rights. Like any other subject, knowledge of human rights may only be acquired through training and education. Human rights are acquired by birth but are not known about at birth. One cannot use his/her rights as acquired by birth unless one knows about them.

II. Human Rights Education for Promoting Consciousness of Human Rights and Transferring Knowledge into Behaviour

Human rights education should aim at acquiring knowledge about an awareness of human rights. Acquiring awareness about rights means consciousness of being human as well. Human rights education should teach people that "being human" precedes all other visible characteristics held by individuals and should provide awareness of being human. Being human precedes characteristics such as race, colour, gender, language, religion, origin, etc. which are not within one's power. Human rights education should aim to maintain and improve existing values concerning shared, common characteristics of humanity and an awareness about being human while informing individuals about human rights.

Human rights education is understood as the provision of training in human rights. However human rights are not limited to matters of education and training. Spreading values about human rights and the development of certain manners exist within the scope of this education. During the process of human rights education, individuals should also be informed about international regulations, and efforts directed at the protection of human rights at the national, regional and international levels and the prevention of violations of human rights. Hence, human rights education does not only concern merely teaching the principles which underpin the term human rights. At the same time, it also tries to embrace ways of eliminating the factors that prevent the development of a better understanding of human rights. Human rights education is aimed at enabling people to improve this understanding, to transform their knowledge into action, to encourage individuals to pay attention to the impoverished conditions of other people and to empower them to take effective measures against violation of human rights.

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III. Objectives

Human rights education within the general education system aims to:

Provide the conceptual framework of human rights,

Examine the practicability of human rights by cultural groups and people,

Interpret and evaluate the strategies, which enable the implementation and prevention of the violations of human rights while focusing on the definite problems about human rights.

Clearly, improving peace and justice around the world will enable preservation of human rights and fundamental freedoms. In view of this fact, human rights education aims to:

Enable people's *awareness* of *rights* and *obligations*,

Inform students and indirectly *everyone* on national and international regulations and *processes* on human rights,

Combine and compare the *theoretical* and *concrete* (*practical*) dimensions of human rights,

Enable a *sharing of information* and *experience* among themselves,

Improve *respect for the honour of being human*, and enable the active *participation* of individuals in administrative class.

IV. Principles

It is necessary to improve the skills of students in utilizing international human rights, and to teach them to be able to take objective decisions on the political and economic problems that exist in their own countries and elsewhere, through the means of human rights education. This is because human rights are "universal". They are universally valid for everyone regardless of their language, religion, colour, race, gender, etc. For this reason, it is necessary to enable students to reach a level where they will be able to evaluate standards on human rights and to synthesize universal

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values with national values during the course of human rights education. These standards should support national values and should be presented through a universal point of view.

The most important role of the instructors during developing international human rights awareness is to support the development of conditions that will improve human rights and to show students how their own rights are intertwined with the rights of other people in the world. The principles that human rights education are based on can be described as follows:

In all education institutions, human rights education should be substantially supported, *promoted* and regularly *monitored*.

Human rights education should be related to real life; that is to the immediate environment of the school itself.

Students should be enabled to perceive some knowledge on fundamental principles and terminology.

Change in the attitudes and behaviour of students should be aimed at both on an *individual* or a *group* basis.

V. Human Rights Education as a Legal Obligation

The obligation to show respect for human rights is a *common* obligation of each member state that has ratified the Treaty of United Nations. It is required that each member state "should promote respect for human rights and fundamental freedoms *for everyone* without distinction of race, gender, language or religion". Similarly, "respect for human rights" is among the objectives of the United Nations Education Science and Culture Organization (UNESCO). In the Statute of the Council of Europe, the obligation to be undertaken by member states has been emphasized as follows: "According to the principle of the rule of law, every member of the Council of Europe accepts that everyone should benefit from human rights and fundamental freedoms within its area of responsibility". In the preamble of the Treaty on the European Union, member states

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confirm their respect for democracy, human rights and fundamental freedoms, and their commitment to the rule of law.

VI. Documents on Human Rights Education

The right to education appears among the documents basically classifiable as a "convention" and convenient for leading to a legal obligation. A great amount of the documents are not "agreements", but a type of "declaration", "recommendation", or "decision".

The first international document on human rights education is "The Universal Declaration of Human Rights". The 26th article of this declaration states that *education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms*. Accordingly, "It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace".

The European Convention on Human Rights emphasizes that one way of achieving close cooperation among member states is the protection of human rights and fundamental freedoms.

The Convention on the Rights of the Child, The Recommendatory Resolution of Education on International Tolerance, Association and Peace Education and Human Rights and Fundamental Freedoms" of UNESCO, European Council's Resolution of Human Rights Training", the Recommendatory Resolution of Human Rights Education in Schools of Council of Europe, the UN General Assembly Resolution of Ten Yearly Human Rights Education, and several documents drawn up by the European Union, especially some declarations dating from 1986 to 1991, all stress the importance of human rights education and expect the concerned parties to put more emphasis on efforts to maintaining effective human rights education processes.

VII. Human Rights Education in Turkey

In Turkey, like most other countries, there was no subject directly or specially devoted to human rights education, at primary and secondary

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education levels until 1995. In the first years of the Republic, the fundamental objectives of our education policy were to provide educational programmes, which aimed to produce "good" and "republican".

Our constitution states that individuals should have inviolable, inalienable fundamental rights and freedoms and also educational rights and duties. Accordingly, "every Turkish citizen should benefit from the fundamental rights and freedoms by virtue of equality and social equity." In a similar vein, the principles of the government are defined as being "respectful to human rights" and "democratic". Based on these statements in the constitution, the Basic Law on National Education with law Nr 1739 (June 14th, 1973) determined the general objectives and basic principles of the Turkish Educational System. According to this law, the major objectives of the Turkish educational system are as follows:

- Educating citizens who are aware of their duties and responsibilities towards the Government of the Turkish Republic, which is a *democratic, secular and social* legislative government *based on human rights and the basic principles explained in the initial parts of the constitution*".

- Educating them to become individuals having free and scientific intellectual power, having a comprehensive philosophy of life, respectful to human rights, esteeming personality and entrepreneurship, feeling responsible to society, constructive, creative and productive.

The importance of *democratic awareness* in realizing and developing a free and democratic social system is emphasized in the law, as apparent in the principle of achieving *democracy education*. In the Regulation on Educative Studies and the Regulation on Primary Education Institutions; it is stated respectively that, all the educative processes should reflect a democratic life-style, and enable people to acquire the awareness on the ability to *use their rights*, perform their duties, undertake their responsibilities".

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VII.I. Human Rights in the Curriculum

When the primary education curricula that were adopted and put into practice in the years following the proclamation of the Republic to the present are examined, it may be observed that the main objective of the primary school is to educate students to become "good citizens".

According to the Primary Education Curriculum of 1926, primary education aimed to develop individuals who would effectively adapt to their environment. For this reason, the curriculum adopted the "collective education" principle that would be realised through the subject "Knowledge of Life".

In 1930-1931, the curriculum included the subject of "Civics" in the 2nd and 3rd grades of lower secondary schools. This was changed into "Civics Education" in the following years and information on the topics of human rights and democracy was added. The Curriculum of 1932 aimed at "providing the child with true basic thoughts on the rights and responsibilities of the citizens in a democratic country, to make them aware of their role in their society".

In the Primary Education Curriculum of 1936, the main objective of the primary education was defined as *stopping illiteracy*. The "Civics" program of the 3rd grade of lower secondary schools aimed to bring up well-mannered and tolerant citizens.

In the Primary Education Curriculum of 1948, four Objectives were set for National Education: "social relations", "individual relations", "human relations" and "economic life". In the curriculum, it was stated that pupils should show full respect for each other's rights and that they had to obey some rules in daily life; and should also show respect for each other's opinions. The Cabinet took a decision on April 6, 1949 about teaching and interpreting the Universal Declaration of Human Rights in schools and other education institutions and broadcasting related subjects through the use of radio and newspapers.

The Ministry of National Education presented a report on "Democracy Education" and explained the main facts about democracy education with the objective of educating the citizens of the future, at the Convention of 4th National Education Council on 22-31 August 1949. The Primary Education

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Curriculum of 1968 and the Curriculum of 1988; defined one of the principal objectives of the education as enabling the child to live in a democratic system, by emphasizing that the individual is a value.

VII.II. Attempts on Human Rights Education

A Research Commission on Human Rights (at the Turkish Grand National Assembly) was founded by law (No 3686 on December 5th, 1990). It initiated a preparation process *to make human rights as a subject of education* as result of the pressure received in the form of petitions from citizens, articles in the media and the pressure of public opinion. It corresponded with the Ministry of National Education (MNE) and the universities that contain faculties of education. In the document sent to MNE dated May 15th, 1991, the Commission suggested that a subject on human rights should be included in the primary and secondary education curricula offering education to children of that age.

In one document of the Board of Education dated June 27th, 1991, it was indicated that in pre-school, primary, secondary and high schools, a great importance had already been given to "Human Rights Education", and that it was better to present the subject through incorporating it into other related subjects. Hence they did not agree on having a separate course on "Human Rights". The Commission speeded up studies on "Human Rights Education" through the paper dated February 9th, 1993.

VII.III. The Activities of Human Rights Accumulation and Implementation Centre of Turkey-Middle-East Public Administration (TODAIE)

TODAIE put great efforts on setting the subject of human rights in formal and non-formal educational institutions. The Centre made a great contribution by announcing the research and solution proposals inside and outside the country, and also by organizing meetings and workshops. TODAIE offers educational service to the teachers who teach the Human Rights subject through association with Ministry of National Education.

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VII.IV. The Activities of Ministry of National Education and Ministry Responsible for Human Rights

Positive steps had been taken on Human Rights Education in Turkey in the 1990s. The most important step was the protocol signed by the two ministries. Through this protocol, the following provisions were adopted.

- Changing the Civics Education in Primary Education into "Civics and Human Rights Education",
- Inserting a subject called "Democracy and Human Rights" into the Upper-Secondary Education Programs,
- Further improvement in the education programs of formal and non-formal educational institutions in the aspect of democracy and human rights,
- Organizing in-service training courses and workshops for all teachers of human rights.

During this period, with the aim of taking steps towards the protection and improvement of human rights with an appropriate approach to contemporary, universal measures; the Coordination High Council on Human Rights was formed as required by the circular Nr 17 of Prime Ministry dated April 4th, 1997.

Since the academic year 1995-1996, "Civics and Human Rights Education" has been taught in the 8th grade in primary education, for two hours a week. Through the implementation of Law No. 4306 on "permanent eight-year compulsory primary education", beginning in the 1997-1998 Education year, the "Civics and Human Rights Education" course was redesignated to last one hour a week in the 7th and 8th grade of primary schools.

VIII. "Civics and Human Rights Education" Course in Primary Education

The major principles on which this course is based can be summarised as follows:

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- The awareness of people regarding human rights, their sincere wish to use and maintain them, comprehending the reason for maintenance of these rights, as well as knowing what, why, how they can be maintained, may only come true through their education.

- It should be explained that, the contemporary civilization level has been achieved as the result of the efforts of humanity; and it is necessary to approach people with tenderness and respect, in an *unprejudiced* and *tolerant* way.

- Awareness should be acquired in order for people to use their *basic rights* and *freedoms* completely and continuously without discrimination on the basis of birth, in an indispensable, non-transferable, immune way.

In the light of these principles, the general objectives of the course can be listed as follows:

- Providing an awareness of being human,
- Emphasizing the moral dimension of human rights,
- Providing awareness of citizenship,
- Teaching rights acquired and responsibilities undertaken by citizenship,
- Stressing the role of the individual in protecting human rights,
- Informing students on the duties and responsibilities of democratic government towards its citizens,
- Providing students with the knowledge of and the ability to use basic rights and freedoms as a citizen,
- Emphasising that human rights are for all the people, rights without discrimination by birth, indispensable, non-transferable, and intact,
- Stressing the necessity for the maintenance of human rights,
- Emphasising the importance of the principle "Peace in the country, peace in the world" for humanity.

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The outline of the human rights course at the 7th grade is as follows:

- Basic principles on humanity's common heritage,
- Basic principles on human rights,
- Basic principles on moral and human rights,
- Maintenance and advocating human rights,
- Basic principles on basic rights and freedoms.

The outline of the human rights course at the 8th grade is as follows:

- Basic principles on "Citizenship, Rights and Responsibilities of Citizens",
- Basic principles on "Maintenance of Human Rights",
- Problems to be confronted in the maintenance of human rights,
- The role of education in the maintenance and protection of human rights.

IX. "Democracy and Human Rights Education" Course in Secondary Education

The major principles on which this course is based can be summarised as follows:

- "Democracy and Human Rights" course should not be limited to abstract speeches but should be concrete, *focusing on students* in teacher-student relationships,

- Students should be aware of the fact that they are individuals who have the responsibilities of maintaining and improving human rights and democracy, through paying attention and showing respect to their personalities and opinions.

- The topics in the program should be designed in a way that would enable the students to form tolerant and respectful personalities in their daily life, by thinking critically, questioning and talking freely.

In the light of these principles, the general objectives of the course can be listed as follows:

- Providing students with the knowledge of and an ability to understand the basic principles of democracy as a necessity for peaceful coexistence.
- Providing students with a knowledge of the scope of human rights and democratic principles that will enable them to suggest solutions to world and country problems,
- Improving the students' awareness of human rights and basic freedoms as *universal* values.

In high school education, based on the objective of providing students with knowledge on maintaining their rights through more awareness on human rights and freedoms, an elective course "Democracy and Human Rights" was included in the curriculum for the 3rd grade in high schools.

X. Other Activities

The Ministry has invited the teachers to attend various courses and workshops, sometimes in cooperation with other public and non-governmental organizations, to reach the objectives on human rights education set out in the programs. "The Evaluation Workshop on Civics and Human Rights Education Program" was organized for teachers of Social Sciences; the subject "human rights" was added to the Basic Education Programs of practicing teachers, all the primary education inspectors were given courses lasting two weeks.

Through a workshop held in cooperation with the Ministry of National Education (MNE), Turkey-Middle-East Public Administration (TODAİE), the Turkish Democracy Foundation (TDV) and the universities, the Civics and Human Rights Education Program was evaluated and updated. A "Democracy and Human Rights Education Project" has also been designed in cooperation with several governmental and non-governmental organisations, to educate a total of 100 education staff, 100 citizens and 1000 teachers, for teachers of the Human Rights Education using books that have been published by the European Union and translated into Turkish by the TDV.

The MNE and the TDV held a workshop within the framework of "Democracy and Human Rights Education Project" in 15 provinces on the

dates between December 1999 and February 2000, for a total of 40 teachers who teach Civics and Human Rights Education Subjects. The MNE held another workshop together with Umut Foundation on Civics and Human Rights Education for a number of 50 participatory teachers from 6 provinces on 3-5 December 1999, in Nevşehir.

Another activity, carried out by the Ministry on Human Rights Education, was to prepare 6 modular "student text books" and "teacher guide books" on *human rights* and *rights of children* for the 1st to 6th grades in cooperation with the Department of Educational Research and Development, General Directorate of Primary Education (EARGED), and The British Council. The books were introduced to the class- and branch-teachers in the organized workshop. The textbooks that were prepared for the education programs were organized in a suitable way that would enable the children to acquire a "universal" point of view on human rights.

Conclusion

All the activities stated above are attempts at providing a better living for the citizens of this country in the light of universal fundamental values that have been developed since the creation of mankind. As it is stated in the text-book of the "Civics and Human Rights Education" Course for the 8th grade, common heritage has been formed through the accumulated efforts of humanity over centuries. If human beings had not formed this common heritage, they might not have ruled nature. Science, arts, philosophy and literature might not have been developed. So people might not have reached contemporary living standards. The enrichment and development of a common heritage has given meaning to concepts such as dignity, freedom, equality, rights and happiness of the individuals.

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HUMAN RIGHTS AND CHILDREN'S RIGHTS EDUCATION AT PRIMARY SCHOOLS IN NORTH RHINE-WESTPHALIA

Jagoda Illner*

I. Childhood today

Although as a whole the regional and national democratic structures of German[1] society function well, the development of the younger generations is being determined to a much greater degree by international events. Wars and terrorism, as we know all too well, are by no means merely the stuff of Hollywood films. The globalization of the economy and its transnational structures are not only giving rise to crisis in the third world, but are increasingly shaking the self-confidence of industrialized nations. In Germany, too, issues such as the future of employment, ecology, the preservation of the welfare state, migration and integration, and uncertainty concerning human rights, are giving rise to legitimacy problems and social tensions. At the same time, new information and communication technologies are changing people's working and living patterns, accelerating social change and creating adaptation problems, leading to individual identity crises and disorientation, which in turn make people vulnerable to radical points of view.

This – admittedly pessimistic – view of the present has, of course, been shaped by the horrific events of September 11th 2001.

What role should today's school play in the preparation for tomorrow's world? Where can children find guidance and answers to their questions? How can schoolchildren be made aware of the necessity of political action and at the same time allow their fears for the future to be assuaged?

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II. Human Rights and Children's Rights as a Lesson Topic

The first project presented here was carried out at a primary school in Gelsenkirchen, North Rhine-Westphalia (hereafter referred to as NRW). In September 2001, at the time of writing, around 30% of the children were from migrant families. The majority of German children live in a middle-class district. Some of the children live with their parents in a local home for refugees. Their future is uncertain.

This year, the school planned a project week on the particular situation of refugee children. The presentation of the results took place on "Refugees Day" on 29th September 2001. Children from the neighbouring nursery school, relatives, neighbours and guests from the Catholic, Evangelist and Islamic communities were invited to take part in a neighbourhood get-together and visit the local refugees' home. In addition to information on refugee children in Germany and elsewhere, which was collected and presented by the children themselves, the guests were also offered a rich variety of activities and entertainment. They were given the opportunity to play games from countries all over the world, listen to international music, visit an exhibition of paintings on the plight of refugees and expellees, and listen to the authentic stories of the refugees in a story-telling room.

This project week had been carefully prepared over a number of months. The children, aged between six and ten, had looked into why refugee children live in their town, and compared the circumstances under which they and their families live with those of the refugee children. They heard what it is like to be poor, to fear for one's life and limb, to experience religious and political persecution. These were not virtual, but authentic, first-hand experiences. They read about the existence, since 1989, of an international, legally binding document, the Convention of the United Nations on the Rights of the Child, one of the most comprehensive human-rights instruments existing, and ratified by almost every state in the world. They also read that even in their own vicinity, children's rights are unevenly distributed. They considered together what the phrase "children have rights" really means, and wrote down what it meant to them. They looked for ways in which children's rights can be put into effect in their everyday communal life.

In the third grade of a primary school in Essen, children's rights were made the subject of an interdisciplinary project. Language, religion and

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science teachers there were of the opinion that the children should learn to actively participate in the realization of their rights. They felt that there is no better way of approaching the issue than via the everyday experiences that children go through with adults and with each other in their own environment. They assumed that many children take their situation for granted and are unaware that they have a right to care and support and a loving environment. The teachers believed that only when these children have the confidence to stand up for their own rights are they in a position to do so for the rights of children worldwide.

As an introduction to the lesson, the children's personal needs and desires were discussed. Very quickly the children arrived at the issue of things they find unjust or hurtful and these were listed on wall posters and presented to the rest of the class.

In another lesson it became clear that "outside help" is sometimes useful. A local representative from the Society for the Protection of Children ("Kinderschutzbund"), who had been invited to give a talk to the class, told them about her activities in the children's shelter and as a Careline counsellor. During the talk, the issue of the right of children to protection and security was discussed. The counsellor told them about different cases in which children sought advice and protection. The children in the class then told each other about their own experiences with blackmailing, abuse, threats, violence, and gave each other advice. They agreed to process their experiences in workgroups and develop strategies for a "struggle for children's rights in everyday situations".

In all the lessons my colleagues told me about the *10 fundamental Children's rights* laid down by the UNICEF. These are:

The right to equal treatment and protection from discrimination, irrespective of sex, skin colour, language, religion, origin and outward appearance

- The right to a name and a nationality
- The right to good health
- The right to education and vocational training
- The right to leisure, rest and recreation
- The right to procure and impart information, the right to be heard and the right to assembly

- The right to a non-violent up-bringing and protection from all forms of abuse, exploitation and maltreatment
- The right to immediate assistance in catastrophes and emergencies, and to protection in wars and when seeking refugee status
- The right to a family, parental care and a safe home
- The right of disabled children to special care and assistance

III. Legal and Curricular Basis for Human Rights Education

When I had received the invitation to speak at this conference in Istanbul, I asked several teachers I know from various primary schools in NRW whether they deal with the topic of human rights and children's rights in their lessons, and if so, in what way. They all explained that human rights education is a regular aspect of their lessons, and made reference to the guidelines[2] and curricula[3] for primary schools. These indicate the need for human rights education through their reference to ethno-cultural heterogeneity at school and the need for social co-education. They also set learning targets relating to maturity, social responsibility and the capacity to resolve conflicts. Of particular relevance is the advice that current affairs, "such as increasing pollution, the growing scarcity of resources, but also hunger and poverty, war and peace in the world, coexistence with immigrants, changes in employment patterns and their effects on the family, conflicting norms and values", should all be taken into account.

A further document that regulates human rights education at all schools in NRW is the Recommendation of the Standing Conference of the Ministers of Culture, Education and Church Affairs of the German Länder ("Kultursministerkonferenz", or KMK) on promoting human rights education in school – as laid out in the Resolution of the KMK of 4.12.80, dated 14.12.2000. The Recommendation states:

1. Preamble

Human rights are among the essential requirements for a life of dignity. Political freedom and social justice cannot be fulfilled if those fundamental rights vital to human dignity are not ensured. Equally, a world order based on freedom, equality and justice, without which the enduring, peaceful coexistence of all people is not possible if these rights are not respected.

(...)

Even today, at the start of the new millennium, the human rights situation is contradictory. While human rights are verbally acknowledged throughout the world, reality tells us a completely different tale, with these fundamental rights being repeatedly disregarded and violated. The violation of these rights – not just through state tyranny – is an everyday occurrence in many countries. The denial of the right to political self-determination, the persecution and suppression of those who think differently, and discrimination against minorities are just as much a part of it as the daily suffering brought about by starvation and poverty in many countries.

(...)

Those states which are traditionally bound to the political ideal of human rights and acknowledge individuals the central element of the polity, have a special role to play in this respect. One such state is Germany, committed as it is through its Basic Constitutional Law to inviolable and inalienable human rights as the basis for all human communities as well as world peace and justice.

Human rights are achieved not just through state activity, but substantially through the attitudes and the commitment of each individual. Schools make a considerable contribution to this situation through character formation. Human rights education is a core function of school education, and is anchored in the Constitutions and Education Acts of the German Länder as the prime aim of education. It also encompasses all disciplines and all areas of school activity.

2. Teaching Aims and Content

Lessons on human rights should especially include the following information and insights on human rights:

- The historical development of human rights and their significance today;
- The meaning of fundamental and human rights with regard to both individual rights and the objective principles on which the polity is built;
- The relation between personal civil liberties and fundamental social rights as laid out in the Basic Law and in international conventions;
- The various interpretations and guarantees of human rights in different political systems and cultures;
- The fundamental significance of human rights for the emergence of the modern constitutional state;
- The necessity of taking individual human rights into account in international law;
- The significance of international cooperation for the realization of human rights and the securing of peace;
- The extent of and the social, economic and political grounds for human rights violations around the world.

The study of human rights issues is intended to encourage and reinforce the willingness among pupils to speak up for human rights and oppose their disregard and violation.

Human rights education should enable pupils to speak out in defence of human rights in their own personal and political activity radius. They should learn to use the realization of human rights as an important political yardstick with which to measure standards in their own and in other countries. This also includes the willingness to stand up for the rights of others.

3. Contribution of different school subjects

Teaching human rights is an issue for all subjects and the task of every teacher.

(...)

4. Textbooks

Textbooks must take into account the substance of this recommendation. The same is valid for other teaching and learning materials.

5. School Life

Human rights education cannot be limited merely to the imparting of knowledge. It must also include the emotional and active components. Pupils must treat each other with respect and experience it themselves in all forms of interaction at school.

6. Teacher Training and Further Training

The ministers and senators for education of the German Länder will endeavour to ensure that this agreement is also given adequate consideration within the context of teacher training and further training.

IV. Methodological and Didactic Procedures

How can the content of this rather abstract document be put into practice within the reality of a primary school? How do primary teachers cope with these requirements?

In practical terms, the teachers draw up their own lesson plans on selected major themes, and are confronted thereby with the fact that these global issues are often very abstract concepts for the children. It is therefore very important to observe the principle of starting out from the actual situation of the children in question. Some very good suggestions and case descriptions can also be found in the Internet at the following addresses, for example:

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http://www.unicef.de/welcome2.html [the UNICEF homepage – the text of the "Convention on the Rights of the Child" is published under the heading 'Forum' in the Unicef Media Library]
www.tdh.de [terre des hommes]
www.learn-line.nrw.de (Educational server of North Rhine-Westphalia)
http://www.dksb.de/ [Deutscher Kinderschutzbund- the Children's Lobby]
http://www.dkhw.de/ [Deutsches Kinderhilfswerk (German Children's Welfare Organiation) – DKH]
www.kinderpolitik.de [DKH info-site on policies concerning children]
www.kinderpolitik.de/linkliste [more links!]
http://www.jugendserver.de/start.htm [Youth server – info terminal]
www.amnesty.de (amnesty international)
www.proasyl.de (PRO ASYL: campaign for children's rights)
www.kinderschutzbund-nrw.de
www.nrw.de (The policy statements of the government of North Rhine-Westphalia on children and young persons)

When planning lessons, most teachers use the principle of so-called 'case study didactics'. They confront their pupils with 'practical cases' from various walks of life, thus avoiding the pitfalls of imparting theoretical knowledge, and giving precedence to a learning strategy that enables the pupils to grasp the social context and values relevant to actual cases or situations. Teachers choose cases with which the pupils are familiar through their actual life-situations.

The learning process is structured as follows:

- The case situation is presented
- Pupils access the sources of information and form opinions, unaided and in groups
- Alternative solutions are explored
- Groups discuss the various solutions and decide on what they think is the right solution
- Opinions and arguments are exchanged between the groups

- The solutions suggested by the groups are tested against the reality of the situation in question.[4]

Through lessons like this the children's concern is aroused and they learn to differentiate, and in this way the foundation is laid for a didactics of "global learning".[5]

"Global learning" is a teaching concept defined by the Schweizer Forum (Swiss Forum) as a way of assisting and guiding people at all educational levels towards forming personal judgements and taking action in a global perspective. The ability to assess problems and situations in a global and holistic context is not restricted to individual subject areas. It is rather a question of thinking, passing judgement, feeling and taking action from a new perspective, and at the same time offering a description of social competencies which are vital for the future.

Global learning is thus a future-oriented extension of the subject areas of peace education, environmental education, intercultural learning, human rights education.

(...)

Today, more than ever before, primary schools must face the reality of children's lives. Within the realm of experience of primary school children, the key problems, which are essentially about the successful management of human co-existence and their relationship to nature and the environment, might be, for instance:

The problems and consequences of societally produced inequality
Questions concerning the avoidance of war and the securing of peace. Also:

Relations between the sexes and between generations
Relations between members of majority and minority groups. (...)[6]

V. The School – a Place for Living and Learning

Paragraph 5 of the KMK's recommendation on human rights education emphasizes that pupils must experience and practice respect for each other in everyday life at school. In the UNO "Convention on the Rights of the Child", the right to procure information and the right to co-determination are included in the long list of children's rights.

Article 12 expressly states:

"States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters

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affecting the child, the views of the child being given due weight in accordance with age and maturity of the child."

Where better can children do this than at school?

Indeed, human rights are best taught and established through consistent democratic education in everyday life. One of the function's of democratic education is to help children develop a democratic way of thinking and to encourage them to take responsibility for their group, their class, for the school and the environment.

If pupils, parents and teachers succeed in making a school into a community in which every member shares the responsibility for making it a "place for living and learning", then the children will experience how individuals can exert an influence on community life, how laws and rules are made, and how their compliance is ensured. People will only develop an appreciation for the meaning of democratic action if they see that it really works.

When and how should democratic education begin?

Children should get to know the rules of living together as early as possible and increasingly live by them and participate in their making – in the classroom, in school, and in their own environment. Critical educational reformers call for schools that focus on the children, in which they play a responsible role in structuring their lessons/planning their own learning schedule right from the beginning.

"Children who begin to take responsibility and act on their own initiative, who do not lose sight of their goals, who use democratic means purposely, are not always easy to get on with. But they are well on their way to becoming mature citizens capable of participating in democratic processes."[7]

Many schools have adopted this target in their school policy. The policy statement of one primary school, for instance, states:

We see our school as a *place for living and learning* for children, parents and teachers. This means that all the groups and individuals participating in school life are equally important and accepted. This also requires them to accept responsibility and become involved in a (self)critical way. It is the task of everyone concerned to enliven the school culture, which is understood in this sense as an open process. Components of school culture

are, in our opinion, not only teaching practices/the actual lessons, but also our behaviour towards each other, joint projects, festivities and democratic co-determination.

Children are subjects in the community: It is our aim to give the children a solid foundation on which to cope in a constantly changing world. Children, as subjects, are taken seriously. This means that they are given sufficient opportunity to develop their powers of self-control, their emotions, their ideas, interests and experiences. It also means that children must learn to respond to the interests and needs of others, to accept the rules of a community, and to react appropriately in situations of conflict.

Teaching values, competencies and impartiality: Consequently, during our lessons, our aim is not only to achieve basic teaching and learning targets, but also to help pupils in the acquisition of social and communicative skills. We place great value on the cooperation of the children and on mutual respect and assistance. Our teaching methods are guided by the concepts of educational reformers (Montessori, Freinet, Petersen) and state-of-the-art findings in educational theory and practice. An even balance of concentration and relaxation in lessons, periods at the beginning of lessons in which pupils can choose their own activities and lessons with open structures, school fêtes, outings and project weeks are just some examples of how these values are imparted.

Shaping School (Life) Together: Cooperation with parents and other social groups and institutions are given particularly high priority. Our school is a place where everybody can learn from each other. Lively communication and positive involvement are the basis for successful educational work.

*Rules that help us so that everybody feels at ease:*School life as a whole, be it on the way to and from school, in lessons and during breaks, should be a pleasant experience for everybody.

- We are friendly to one another.
- We greet each other.
- We help each other.
- We are polite to each other.
- We let each other speak without interrupting
- School breaks and the journey to and from school should be pleasant for everybody!
- We show consideration for each other, which is why
- Nobody hurts anybody else
- Nobody annoys or disturbs others at play
- Nobody calls anybody names or makes fun of them
- Nobody bullies anybody else![8]

Lessons in Co-Determination

The development of a respectful form of class discussion is something that must consciously be trained. Aspects that have to be trained include, for example, "simple listening and the endurance of silence ...active

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listening and clear articulation ...the avoidance of direct questions ...the ability to convey information clearly and intelligibly...recapitulation."[9]

When a respectful form of dialogue is developed in class, the *discussion rules* are agreed on and tested together.

Democratic speech in class is a prime training area for verbal disputes, for arguing and debating. *Debates* for and against an issue are particularly suitable for practising these skills.

Class councils and children's councils are particularly suitable arenas for practising democracy. These are the political bodies at class and school level respectively.

At the class council incidents in the classroom are discussed that require clarification, for instance dissatisfaction with the lessons, difficulties with other classes and teachers, disputes among pupils, problems arising between teachers and children, excursions, rules on the use of learning materials and the administration of offices. ... At the children's council one or two representatives from each class meet on a certain day each week with the head of the school to discuss issues brought forward by the pupils that affect more than one class, e.g. conflicts during the school breaks or on the buses.

According to H. Schwarz, such opportunities are "appropriate forms for promoting the insight that it is possible to participate constructively in the community and to practice these skills. Children experience directly that the shaping of school life is their responsibility.[10]

In this way, school can become a model democratic polity. This can only succeed if adults allow it and encourage it.

"Visions need schedules", as Ernst Bloch put it. I would like to add that they must be good schedules.

Endnotes

[1] Ich habe "democratic" von "German" weggesetzt, weil es nach DDR klang (German Democratic Republic)...

[2] Educational keynotes on the development of schoolchildren and inferences from them for lessons from an educational, substantial and methodological perspective. They elucidate how children should live and learn together at school.

[3] Curricula for the distribution of subject matter according to grade, giving binding stipulations as to learning objectives and content. The practical application of the curricula is the responsibility of each individual teacher (according to the principle in Germany of pedagogic freedom).

[4] See Claudia Hartmann-Kurz: Grundrechte in der Schule, Inaugural Thesis, Pädagogische Hochschule Schwäbisch Gmünd, 1997

[5] Forum Schule für eine Welt, Globales Lernen in der Schweiz, Jona 1995, p. 9.

[6] Die "Eine Welt" im Unterricht der Grundschule, Bausteine einer Didaktik des "Globalen Lernens", Landesinstitut für Schule und Weiterbildung, 1997

[7] From: Kinder mischen mit, Ministry of Education, Science and Further Education for Rheinland-Pfalz, 1995

[8] School policy statement of the Matthias-Claudius Primary School, 41564 Kaarst, http://www.webandmore.de/matthias-claudius-schule/index.htm

[9] From Ulrike Potthoff u. a.: Gespräche mit Kindern. Gesprächssituationen – Methoden – Übungen, Kniffe, Ideen. Berlin 1995

[10] Hermann Schwarz: Lebens- und Lernort Grundschule. Berlin 1994

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EDUCATION FOR CITIZENSHIP AND HUMAN RIGHTS

Alan Smith*

I am delighted at the invitation to participate in this conference since it provides me with an opportunity to meet and express solidarity with educators in other countries facing similar challenges in the introduction of human rights education through schools. I think it is important on these occasions to speak from our own experience and circumstances and, whilst we may face similar challenges, it is equally important to acknowledge the diverse and different histories of our individual circumstances. So I will begin by saying something about why human rights education is so vitally important within my own country.

The island of Ireland was partitioned in 1921. Partition created an independent Republic of Ireland in the south of the island, but Northern Ireland remained part of the United Kingdom. However, partition of the island also meant that a significant number of Irish Catholics remained in the north and in 1969 a civil rights campaign emerged in Northern Ireland focused largely on grievances and discrimination against Catholics in housing, employment and voting rights. Civil disturbances and street rioting followed. The British Army was deployed, initially in a peace-keeping role, but soon became the focus for an armed campaign by the Irish Republican Army (IRA) that has lasted for more than 25 years. Since 1969 more than 3,600 people have been killed as part of 'the Troubles' in Northern Ireland.

The declaration of cease-fires by paramilitary groups in 1994 created an opportunity for political dialogue that lead eventually to the Belfast (Good Friday) Agreement in April 1998. The Agreement contains provisions related to the release of prisoners, the decommissioning of arms and reform

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of policing and is an attempt to establish democratic politics as the alternative to violence as a means of resolving political differences. A new legislative assembly comprised of 108 locally elected politicians has been established and an Executive body of 12 Ministers, representative of the four main political parties, has been created. Territorial claims to Northern Ireland have been removed from the constitution of the Republic of Ireland and it has been agreed that the constitutional status of Northern Ireland will remain part of the United Kingdom until a majority of its citizens decide otherwise.

The use of violence throughout the political conflict created a culture of intimidation and threat within which many people were fearful to speak out against the violence. The violence involved human rights abuses by paramilitary groups against individuals through punishment beatings, political and sectarian assassinations and the disappearance of people presumed murdered whose bodies have not been recovered. Human rights cases have also been brought against the United Kingdom government in its use of Special Powers through deployment of police and army to deal with security situations and there is currently an enquiry into the killing of civilians by security forces.

Part of the current peace agreement involves the release of political prisoners and measure to support the bereaved and other victims of violence. Proposals have also been adopted for the reform of policing. A number of other 'confidence building' measures have taken place and a number of new bodies have been established. These include a Parades Commission that makes rulings regarding the routing of contentious parades and marches; and an Equality Commission with responsibilities related to anti-discrimination legislation concerning Equal Opportunities (gender), the Race Relations Act, and Fair Employment (religion). A new Human Rights Commission has been established and this has consulted widely on the establishment of a Bill of Rights for Northern Ireland. Northern Ireland is also subject to the European Convention on Human Rights, which was incorporated into UK law through the Human Rights Act from 2 October 2000.

All these initiatives have implications for the education system and have created a highly politicized and often volatile environment within which a

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review of the Northern Ireland Curriculum is taking place. One element of the curriculum review is the proposal to introduce citizenship education based on human rights to all schools.

Part of the rationale is that citizenship education has a role in developing an understanding of democratic processes and their practical application in social, civic and political life; that the outcome of democratic processes should be a political commitment to equality and justice for all members of society based on the application of human rights principles; and that a more just society will only be achieved through a sensitivity and respect for the full range of diversity that exists within society.

In the Northern Ireland context it is extremely important that the programme is an inquiry-based model of curriculum. This means that the core concepts are regarded as problematic from the outset and explored from multiple perspectives through a range of local and international issues. Whilst there is a knowledge component, there is not an emphasis on prescribing civic 'facts' that have to be taught. This may bring the Northern Ireland programme into conflict with more dominant, 'transmissional' models of curriculum.

The political context also has significant implications for the model of citizenship education that is emerging in Northern Ireland. A 'patriotic' model of citizenship that promotes loyalty to the State would be inappropriate in a situation where the concept of nationality is a divisive issue. In a recent survey 42% of young people in Northern Ireland described their citizenship as Irish, 23% as British and 18% as Northern Irish. In Northern Ireland young people are growing up in a society that expects them to occupy the same civic space despite holding different loyalties in terms of national identity. The challenge is to explore whether it is possible to disentangle concepts of 'nationality' and 'identity' from concepts of 'citizenship'.

As part of our work we have tried to listen to what teachers and young people identify as the issues which, as a society, we should include as part of the education process. Not all are particular to Northern Ireland, but one which goes to the heart of the problem in Northern Ireland is the issue of identity - who we are, how we express ourselves in terms of our language, culture, religion, and politics. Teachers recognise that the exploration of identity is a key activity with which we should be engaging our young

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people. There are some more specific issues, such as some understanding of the contemporary history of Northern Ireland and the place of religious education within our schools.

Another issue, relevant also to this conference, concerns the role of the media and the extent to which. we help our young people to develop a critical faculty for reading the messages implicit in the way the media report events about this society. Other areas include the administration of justice, the law, civic education. Unlike some European countries, we do not have here a clearly focused area in our curriculum that represents for all young people a civic or political education. If we are truly to move away from a culture of 'political violence' towards one which is characterised by 'political dialogue' then our young people need to understand concepts such as democracy and its implications for decision-making and participation in civil society.

This is a formidable list which is a considerable challenge to educators and there is an implied criticism from young people themselves that we are not addressing these issues as best we might. So, if we have a clear idea of which issues to address, how do we fit them into our curriculum? There are basically three ways in which this can be done.

The first is through infusion of the curriculum, that is, to encourage a root-and-branch review of all our areas of study and to try to integrate this whole agenda of issues through every subject across the curriculum. The benefit of this would be that teachers, already committed personally to their subjects, would handle the agenda in a committed and thoughtful way. But in reality, some subjects are more amenable to this infusion than others. We have found that the teachers who tend to get heavily involved teach subjects like History, Religion and English.

A second strategy would be to permeate the curriculum - that is, not asking every teacher to take on the whole agenda, but to ask teachers in amore collective sense to share the load, so that some aspects of this agenda may be carried through particular subjects but co-ordinated with what is happening in other subjects. But it does have weaknesses. There is a real danger the co-ordination does not exist at school level to make for an effective strategy. Or, the work might be ghettoised so that one particularly enthusiastic teacher will end up carrying the whole agenda for the whole school.

A third option would be a dedicated space within the curriculum in which to grapple with the more complicated issues. We do not have this at the moment and the politics of achieving it are probably quite difficult given the demands we currently have on the curriculum. However we have established a pilot programme in 24 post-primary schools throughout Northern Ireland. The pilot programme has a citizenship programme based on three core areas:

- Diversity and social inclusion
- Equality and justice
- Democracy and active participation in civil society

None of these strategies alone is likely to be completely satisfactory, so it seems reasonable that they should be regarded as complementary and pursued concurrently. We have an opportunity between now and our next formal review of the curriculum to grapple not just with what the issues are but also what the best strategies are for trying to embed this work in a meaningful way within our curriculum.

In a sense, the response to this has been that some schools have adopted what could be term a minimalist approach. In other words, they look at what is required by law, basically to reassure themselves that they are covering the broad objectives through each subject in the curriculum. That does not really follow the spirit of what the theme is about. To move beyond that minimalist approach means that we need a degree of vision within the senior management of our schools because it is they who create the climate in which teachers feel safe, supported and able to tackle what are, after all, not very easy issues. So it is perhaps on that group that we should be concentrating more of our energies in order to create a broader vision of the climate within the school, relationships within it, relationships between the school and the community it serves and the extent to which he school is actually a democratic institution itself.

Finally, but also most importantly, if there was a single message we received from teachers, it was that they had considerable reservations about their own capacity to actually engage with the kind of agenda I have been describing. In part that may have been because, in their initial training, they had not had the opportunity to develop the skills or to become familiar with the kinds of issues involved. But it also to do with the type of training they received, in the sense that a lot of the training did not really explore the

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values and emotions which are part and parcel of this work. We all have our own tradition, culture and beliefs and we bring these all to bear in the learning environment. Teachers regret the fact that they had really had very little opportunity to reflect on their own values, and the emotions they evoke and the type of training we provide will address these issues.

We are attempting a real shift in the *values* that we promote through our education system. Whatever the outcome of current political developments in Northern Ireland, it is clear that democratic politics offer the most viable alternative to violence as a means of resolving political differences. Education has a long-term role in promoting the values, skills and knowledge that will sustain democratic politics for future generations. Education has a particular contribution to make by developing:

- A sensitivity and respect for the diversity that exists within our society;
- A commitment to equality and justice for all members of society based on the application of universal principles of human rights;
- An understanding of democratic processes and their practical application in social, civic and political life.

The challenge for educators is to turn these abstract aspirations into practice. It is a demanding and daunting task that will require the sustained commitment of mainstream educational institutions.

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II. SESSION

Human Rights in Police Education

Chair Person : Prof. Dr. Süheyl Batum

Prof. Dr. İbrahim Kaboğlu

Ulvi Körezoğlu

Lutz Müller

Prof. Dr. Füsun Sokullu Akıncı

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HUMAN RIGHTS EDUCATION IN TURKEY

İbrahim Ö. Kaboğlu*

At the beginning of the twenty-first century, the strengthening of human rights in Turkey is being carried out by means of complementary activities, which comprise new regulations on the normative plane, institutional structures and application. Educational activities are being continued with a view to improving human rights practice.

I. Normative Regulations

Constitutional reform is the main normative regulation. The Constitution of 1982, which was enacted under extraordinary circumstances and was based on the belief that Turkey would always live under extraordinary conditions, had an excessively restrictive, even prohibitive approach towards rights and freedoms. The constitutional amendments enacted between 1987 and October 2001 mostly broadened the field of freedoms. Among them, the 1995 amendment eliminated especially some of the prohibitive provisions concerning collective freedoms; the constitutional revision of 2001 not only eliminated restrictive and prohibitive provisions, but also reinforced the criteria of guarantee for rights and freedoms. 26 of the 36 constitutional amendments realized in 2001 are directly pertinent to the issue of human rights. First of all, the introduction of the criterion of guarantee, and secondly, improvements concerning personal security and freedom, freedom of expression and collective freedoms constitute the main parts of this revision. In short, the

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constitutional revision of 2001 eliminated, to a great extent, the effects on freedoms of the extraordinary period.

Acts that permit the adaptation or application of existing legislation have been enacted in accordance with these constitutional improvements. In particular, the abrogation of the provisional Art 15 (3) has attributed a great responsibility to the Turkish Constitutional Court. Provisional Art. 15 used to prevent the review of the compatibility of laws – with the constitution – enacted between 1980 and 1983. The laws put into force during the aforesaid period can be challenged in front of the Constitutional Court by raising an objection since October 2001. Certainly, interpretation in favour of freedoms is expected from all judicial organs in the reform process.

II. Institutional Reconstruction

Secondly, institutional reconstruction must be mentioned. Turkey had previously preferred administrative political structures as the institutional guarantee of human rights instead of expert and autonomous structures in the form of an independent authority.[1] In this framework, many institutions have been established since 1991. Among them, the Human Rights Investigation Commission of the Turkish Grand National Assembly is a leading force .[2] In almost all of the cabinets created during the last ten years, a minister of state was appointed to deal with human rights matters. The Human Rights Coordinator Supreme Board established under this ministry continues to fulfil its tasks under a new title, as the "Human Rights Supreme Board".[3] Furthermore the Human Rights Presidency[4] has been instituted as an administrative unit. Lastly, a Human Rights Consultative Board[5], composed of representatives from related public institutions, representatives from non-governmental organizations and experts, has been established as a consultative body. In addition, The National Committee of the Decade for Human Rights Education which is attached to the Prime Ministry has been carrying out its activities since 1998[6], Recently, Provincial and County Boards of Human Rights have been instituted in all the provinces and counties in Turkey[7] Apart from all these organisations, the establishment of "Boards of Examination of Allegations Concerning Human Rights" has been decided upon.[8]

Institutional reconstruction may be evaluated in terms of these data: The units concerned are numerous, but their powers are limited. They have been instituted by means of by – laws, which rank at the bottom of hierarchy of norms. All these negative factors necessitate vigorous reconstruction in the field of human rights

III. Human Rights Practices and Education

With regard to human rights practices, it can be asserted that although the aims of constitutional and statutory regulations and the character of the organisations are determinant factors, human rights practices are at least as significant. The improvement of human rights practices depends mainly on human rights education. This task is being fulfilled by the National Committee for Human Rights Education. Provincial and County Boards have some tasks within this framework, as well. The activities of Human Rights Research Centres may also be mentioned.

III.I. The National Committee for Human Rights Education

Educational reform has been initiated with a view to improving human rights practices in Turkey pursuant to the aforementioned reforms, especially by instituting the National Committee for Human Rights Education. The Committee was instituted in congruence with the UN Ten Years of Human Rights Education.

"The National Committee which held its first meeting on 3 September 1998, decided; to compile an inventory of the human rights education which was and is being provided in Turkey and the efforts related to this education; to determine the needs, having regard to human rights problems in Turkey; to specify the leading target of human rights education in Turkey related to these needs and the main target groups; and to determine its efforts and strategies in the long, medium and short run".[9]

The National Committee, consisting of representatives from official institutions (the Prime Ministry, the Ministries of Justice, Internal Affairs, Foreign Affairs, National Education, Health and Culture), representatives from non-governmental organizations, and expert academics working in the field, has concentrated its activities on the field of human rights education. Within this framework, the National Committee is contributing to the human rights education of certain categories of civil servants and of

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candidate civil servants who are being considered for certain official posts and prepares training programs in collaboration with related organisations[10]. It also contributes to raising the quality of human rights education in primary, secondary and high schools.

Among the training programs cited above, the preparation and application of human rights training programs relating to teachers, policemen, provincial governors and lieutenant governors, judges and public prosecutors and personnel of prisons are especially remarkable. The first program, the one concerning teachers, is being applied from time to time. The second one, the one concerning provincial and county governors has just been completed. The third one, the one concerning the security forces is still continuing. The fourth one, concerning judges and public prosecutors, is still at a project stage. The fifth one concerns prison personnel. We will mention them briefly.

1) The training program concerning teachers was initiated in 1999. This program covers one group consisting of 40 persons or two groups consisting of 80 persons each year. Its target group is teachers who give lessons on human rights and democracy and covers a very small percentage of the total number of teachers who give these lessons. Therefore, the scope of this program must be broadened.

2) The second one concerns the program whose target group is governors and lieutenant governors and was prepared by the National Committee in collaboration with the Ministry of Internal Affairs. Turkey has been divided into ten districts[11] according to this program, which started in September 2001 and was completed in July 2002. A human rights seminar has been completed in one district each month. Each seminar lasted one week. Groups consisting of nearly fifty people participated in the seminars and each group was made up of assistant governors, who serve as presidents of Human Rights Provincial Boards and lieutenant governors who are presidents of Human Rights County Boards. These seminars were concerned with the historical development of the idea of human rights and institutionalization in human rights, the national and international guarantees of human rights and the role of non-governmental organizations in this field. Furthermore, fundamental rights and freedoms

such as the right to life, the right to personal security, freedom of expression, children's and women's rights were examined. Expert academics some of whom are also members of the National Committee lectured in these seminars.

3) The third one is the training program, which covers the security forces. With the cooperation of the National Committee for Human Rights Education and the Council of Europe, the training of the police instructors and the gendarme forces is envisaged by means of a yearly project entitled "The Police's Professional Activities and Society". The total number of policemen and gendarmes to be trained is 72. The first part of the project covered 36 persons and has been completed. The second part shall be completed in the autumn of 2002. It is composed of different stages the first of which will be held in Turkey over three weeks, the second of which will be held in Strasbourg over 2.5 weeks and the third of which will be held in training centres over 8 weeks.

4) The fourth program is still at project stage and aims to contribute to the human rights training of judges and public prosecutors. The program has been prepared by the National Committee in cooperation with representatives from the Ministry of Justice and representatives from the Council of Europe. It is envisaged that this program will be conducted between October 2002 and December 2004 and is to cover the whole of Turkey. It is to involve a three-stage program:

In the first stage, five seminars will be held in Ankara, Antalya, Diyarbakır, Istanbul and Trabzon. 40 judges and prosecutors will participate in each seminar and each seminar will last five days. The European Convention on Human Rights and its implementation constitute the main topic of these seminars.

The second stage will be realized by bringing together the five groups mentioned above and a total of 214 judges and prosecutors will participate in this stage. It will be held in Istanbul over five days. Its aim is to reinforce the content of the first stage. The first two stages have been planned to ensure the training of the instructors.

The third stage shall be realized all over Turkey, in 115 centres of education and each will cover a group consisting of 50-60 judges and prosecutors. This stage will encompass a total of 9308 judges and

prosecutors and will last nearly two years. The European Convention on Human Rights and its implementation will again form the main topic of the seminars. Each seminar will last 30 hours.

The experts who will lecture in these three stages will form units of a mixed character. Most of the experts will be European and Turkish academics as for the first two stages. In the third stage, most of the experts will be Turkish academics, judges and prosecutors.[12]

5) The fifth program aims at the human rights education of prison personnel. This stage is supposed to be prepared after the initiation of the formation program for judges and public prosecutors

6) Lastly, the activities of the National Committee for Human Rights Education also cover topics such as "the review of textbooks, the problems of the children working and living in the streets, the education of the people working in the media, the training of the trainers for non-governmental organizations, the training of the personnel employed in the Social Centres of the Institution for Social Services and Children's Protection".

III.II. Provincial and County Human Rights Boards

Provincial and County Human Rights Boards are boards of a mixed character. Functionally, they are consultative organs. These boards meet every month under the presidency of an assistant governor in the provinces and under the presidency of a lieutenant governor in the Counties. Heads of institutions which are in a sensitive position with regard to human rights violations and human rights guarantees, representatives from professional institutions which are considered public bodies, representatives of non-governmental organizations, and experts from universities all participate in these boards.

These boards display an original structural model, because they bring together representatives on an equal footing from public bodies, which are most likely to violate human rights, non-governmental organizations which defend human rights and experts on human rights. Individuals may apply

directly to the board regarding human rights violations. The boards may conduct the necessary examinations and investigations and exert efforts aimed at sensitising the relevant authorities to the issue of human rights. One of the principal duties of the boards is to prepare human rights education programs especially for civil servants and to put these programs into operation. The provincial and County boards allow the possibility of participation by non-governmental organizations in institutional efforts aimed at improving human rights.

III.III. Human Rights Centres

Human Rights Research and Application Centres have been instituted in some universities and some bar associations. They contribute to the improvement of human rights by producing publications and organizing scientific conferences and conducting academic activities (1). Some institutions whose *raison d'être* does not involve human rights also contribute to human rights education. The European Community Institute of Marmara University may be cited as a good example.

Conclusion: For the Promotion of Human Rights

Consequently, the establishment of human rights organisations both in the Capital and in all the provinces and counties may be considered a positive development towards the improvement of respect for human rights, the prevention of human rights violations and the determination and termination of existing violations. However, the functions of these human rights organisations are being restricted by some negative factors; firstly, despite the fact that they are highly necessary, they are merely consultative organs. Therefore their number must be diminished, and their powers must be increased. Secondly, they do not have their own budget. Lastly, insufficient planning and coordination must be mentioned as a negative factor. In order to eliminate the latter, all public institutions and non-governmental organizations, which prepare and put into practice human rights education programs must act in coordination with the National Committee of Human Rights Education. The difficulty of eliminating the traditional habits of civil servants within the framework of unilateral relationship formation not based on equality must also be mentioned. What is even worse is that public bodies which have been organized in a rigid hierarchical structure resort constantly to self-defence mechanisms instead of self-criticism.[13] Despite all of these factors, all ongoing official and

unofficial efforts pertaining to human rights may be evaluated as a serious process of information. The reforms mentioned so far, the activities of institutionalisation and education are contributing to the reinforcement of the rule of law and the development of a society based on rights in Turkey. However, all these developments must not make us ignore the need for restructuring by way of more radical reforms and the need for a substantial change of ideas in the field of human rights.

Endnotes

[1] Turkey still needs an autonomous, expert and independent authority to protect human rights.

[2] Act on Human Rights Investigation Commission No.3686, 5 December 1990, OJTR 8.12.1990-20719.

[3] HR CSB was instituted by means of a circular of the Prime Ministry (Circular 1997/17), 9.4.1997) and was later converted to "Human Rights Supreme Board" by means of by-laws. Please see OJTR, 5 October 2000, No. 24191. for the last by-law (The By-law on the Procedures and Principles Concerning the Institution, Tasks and Operation of the Human Rights Supreme Board), see OJTR 15 August 2001, No 24494.

[4] The Human Rights Presidency was also established by means of a by – law. See OJTR, 21 April 2001, No. 24380.

[5] The By – law on the Procedures and Principles Concerning the Institution, Tasks and operation of the Human Rights Consultative Board. OJTR 15 August 2001, No. 24494.

[6] The National Committee was established by means of the By – law on the National Committee of Ten Years of Human Rights Education which was published on the OJTR of 4.6.1998, No.23362 and which was amended on 18 July 2001 with a view to increasing the number of expert members. OJTR 18.7.2001, No.24466.

[7] See By – law on the Tasks, Institution and Operation of Human Rights Boards, OJTR 2 November 2000, No. 24218.

[8] See By- law on the Procedures and Principles Concerning the Tasks, Institution and operation of Boards of Investigation of Human Rights Allegations. OJTR 15 August 2001, No. 24494.

[9] Human Rights Education Program of Turkey (1998-2007), National Committee of Ten Years of Human Rights Education, July 1999, Ankara, p.11. For the text in English, see Human Rights Education Program of Turkey (1998- 2007) National Committee of the Decade for Human Rights Educations, July 1999, Ankara, p.11.

[10] The style of lecturing is as important as the contents of the books in human rights education. Substantial information concerning freedom, equality, human dignity should be provided instead of loading their minds with unnecessary information.
Ideas of freedom and the habit of questioning must be given to young people and thus human rights must be reflected on their behaviour. The following is a valuable and comprehensive source on in the field of human rights education: Mesut Gülmez, İnsan Hakları Eğitimi ve Demokrasi, TODAİE publications, Ankara, 2001.

[11] Kayseri, Diyarbakır, Konya, İzmir, Trabzon, Eskişehir, İstanbul, Erzurum, Adıyaman and Çorum have been chosen as centres of districts.

[(11/a)] The formation program with the broadest scope to be realized by the National Committee for Human Rights Education will be supported financially also by the EU

[12] For the Turkish and English texts of the project which has not been published yet, see
- I. Hakim ve Savcı Adaylarının İnsan Hakları formasyonuna Katkı Projesi, II. Yüksek Yargı Organları Mensuplarının İnsan Hakları Formasyonuna Katkı Projesi, III. 9308 Hakim ve Cumhuriyet Savcısının İnsan hakları Formasyonuna Katkı için Eğitim Projesi (Mayıs 2002 – Mayıs 2004), T.C. Başbakanlık İnsan Hakları Eğitimi On Yılı Ulusal Komitesi.

- I. The project to support training education of candidate judges and public prosecutors on human rights, II. The project support training education of members of supreme courts, III. The project to support training education of 9308 judges and public prosecutors (May 2002 – May 2004), Turkish Republic Prime Ministry, the National Committee of Ten Years of Human Rights Education.

[13] Security forces are the main type of such institutions. However, self-criticism instead of self-defense increases the respectability of security forces like all other institutions and ensures more effective fulfillment of their service.

[(13/a)] It must be mentioned that the Human Rights Research Centers in universities are in a passive position, since they are being directed by people who are not experts of the field, like in Marmara and Istanbul Universities.

[14] Security forces are the leading example. However, self-criticism instead of defense would increase their respectability and ensure more effective provision of the service in concern.

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HUMAN RIGHTS IN THE TRAINING OF TURKISH POLICE FORCES

Ulvi Körezlioğlu*

I would like to thank the European Community Institute of Marmara University for their kind invitation to this conference on "Human Rights Education and Practice in Turkey in the Process of Candidacy to the European Union ".

The concept of human rights is one of the major values cherished by humanity and represents a common aim for civilized nations. Universal success in protecting human rights can only be obtained by a common awareness that all human beings have the right to a free and equal life. With this in mind, a joint training project envisaging a series of "Seminars for Improving Human Rights Standards in Turkey", was launched on 23rd January 2001, by Marmara University, the European Community Institute and the General Directorate of the Turkish National Police.

The project included seminars on "Differences On Human Rights Practice Between Turkey and Europe" for instructors and students from the Police Academy, the Police College, Istanbul Şükrü Balcı and Izmir Rüştü Ünsal Police Schools; and seminars to equip primary school teachers with the skills to provide human rights education. Before and after these seminars, questionnaires were completed by both the instructors and the students. Thus, we attempted to ascertain the human rights perspective of the participants. Following all these studies, the Turkish Police believes that it will be beneficial to reflect on the outcomes of this research at an international conference such as this one.

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In response to drastic changes in the modern world, police organisations have attempted to improve the quality of basic and in-service police training and to train police officers by providing them with the necessary knowledge, skills and attitude that will enable them to perform their duties effectively. The policing concept in modern times requires not only an ability to deal with social changes and advances but also an ability to control any harm to democratic values that these changes might engender. In this respect, police officers should be educated as highly qualified members of the community.

A number of training activities have been planned and implemented in order to improve the quality of basic and in-service police training. Training projects were initiated with the education faculties of various universities. In order to meet the instructor needs of the Police Academy and Police Schools many of our personnel have been sent abroad to attend masters and doctorate programs in police related subjects such as anti-terrorism, human rights, intelligence, public relations, crime analysis and forensic science. In addition to these efforts directed at improving quality of police training instructors, further joint projects are envisaged in connection with the Council of Europe and the European Union.

The Turkish Police organised a number of in-service training programs during the year 2000. 81% of Police personnel (127.389 in total) have received training from one of these programs.

As the human rights awareness of the public has improved, citizens now expect different behaviour from the Police than they would have expected in the past. Therefore, regional training programs on police and public relations have been organised in 8 separate regions for station chiefs and the personnel of local police stations in 81 provinces. In this context, a citizen-oriented approach was adopted and other related subjects were added to the curricula of in-service training programs. Human rights and public relations courses are taught to participants of all in-service training programs.

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The 21st century police force should maintain close contact with the public and win its confidence; should not only deal with crime and law enforcement subjects but also guide the community by serving as a role model. In order to behave in a manner appropriate to this role, the modern police force should be exposed to efficient and comprehensive training programs. For this reason, the Turkish Police force has decided to focus on designing training activities that will contribute to the development of one of the leading police organisations in the world.

The aforementioned joint training activities involving international partners are mostly focused on human rights issues. In this context, the "Training the Trainers of the Trainers" project has been designed under the auspices of the Council of Europe and the "Police and Human Rights Beyond 2000" program. The aim of this project is to train a pool of instructors for both the recently established Police Vocational Schools of Higher Education as well as for in-service training programs.

This pool of instructors will be composed of 36 qualified personnel and the required training will be provided in 2 phases. In the first phase of the project, a 3 week-long course will be organised in Ankara to be followed by a 3 week-long course abroad, in various EU countries. Police experts on police professional law, human rights, introduction to policing, law of criminal procedure, police tactics and strategies, forensic science, traffic management, firearms and shooting, police ethics, anti-terrorism and interviewing/interrogation techniques, will be trained via this project. The project aims to raise the human rights awareness of police personnel and to prevent human rights violations through comprehensive in-service training activities; to transfer the training approaches and technologies used in Europe to Turkey; to improve the vision of instructors on policing strategies and human rights; to contribute to maintaining the rule of law.

In addition, 5 separate projects are being planned in connection with the EU and in coordination with the Ministry of Foreign Affairs as part of Turkey's accession process to the EU. These projects are concerned with "reorganising the in-service training programs", "senior management training", "regional training seminars for sub-, mid-, and high-level officers", "program for training the trainers on human rights", "publishing periodical bulletins for the continuous training of personnel on human rights, education/training and management."

The objective of the training activities conducted by the Turkish Police is to develop personnel who are highly qualified and respectful of human rights. This kind of policing approach will be the key factor in ensuring respect for human rights and in protecting the values of democratic society.

Finally, I would like to thank the participants in this symposium for their valuable contributions.

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AN EVALUATION OF THE TRAINING ACTIVITIES OF THE TURKISH NATIONAL POLICE IN VIEW OF ORGANISATIONAL AND BEHAVIORAL CHANGES

Fevzi Erdoğan*

Nowadays, a rapid level of change and development is being observed in economic, social, cultural and technical fields. As a result of these changes and developments the production of goods and services has been globalized and quality and efficiency have become important indicators of productivity in recent years. In addition to these changes, exalted concepts, especially the state, law, and human rights have been reconsidered as well as police and security issues (Erdogan, 1998: 12).

There are several definitions of police functions in democratic societies. For example, the functions and duties of the police involve the protection of society, securing the peace and the enforcement of laws (Brown, 1981: 3; Alderson, 1973:49). In the USA, a national commission appointed to define standards and goals in the fight against crime, described the traditional duties of the police as the "protection of peace" and "law enforcement". The police are a major factor of stability in democratic societies. While it enforces a respect for human rights, it also utilizes state authorized power to protect the citizens and their institutions (Alderson, 1984: 15).

Various definitions of the police share one common point: The police is an agency that enforces the law to protect and provide peace. The enforcement of law is as important as the reasons behind it.

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The most important criterion for the development of a nation is the practice of societal rules and regulations. As Atatürk stated, "the practice of decisions in the government is as important, if not more important, than the decisions themselves" (Saglam1995: 10). This statement may also be interpreted in a way to reflect on the importance of the duty of the police in the sense that most of the difficulties arise with regard to their practice.

The duties of the police have increased in scope and their nature have changed in parallel with democratic changes in society. Definition of criminal acts have also been modified and some acts that constituted a crime previously are not regarded as such at present. In a similar vein, some acts of the police, which used to be regarded as natural beforehand, are being criticized today. Police agencies have been emphasizing the importance of carrying out their duties in ways that are approved of by society. It is also important to establish a balance between the authority of the state and the demands of society. A police force that establishes this balance can be considered as successful and professional.

As Alderson states, citizens expects the police not only to provide basic law enforcement services, but also to accomplish them in a tolerant and polite fashion (Alderson, 1984:15) For example, the police are expected to disperse illegal demonstrators in a safe way by talking and convincing them rather than using force. These expectations and demands are the result of changes occurring in society. In view of these changes, the police must change and adapt the education curricula in police training institutions. Police officers must consider the need to act like a psychologist or sociologist as a prerequisite rather than a luxury. Today, administrators, scientists and representatives from various groups of society agree on the need for a dynamic, friendly police force capable of adapting to changing demands.

Attempts at meeting this need can be observed in many countries. For example, industrial administrative concepts have been adapted by the police administration in England (Holdaway, 1993: 21). Their education curricula aim to train "mini-sociologists" and "managers" instead of "mini-lawyers" and "classic administrators." On the other hand, some chiefs of Police in the Netherlands are working on international projects that involve such attempts and are promoted accordingly.

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Contemporary administration models, such as Total Quality Management, Human Resources Management or Performance Management, all emphasize "humanity" and the needs and education of the individual as their core concept. An administrative model that does not have the individual as its central object cannot be successful.

One French police chief well known for his scientific studies, Monet, suggested in one of his articles that the new models of police administration were merely disguises for police forces. He has been trying to answer some of the following questions:

- How could the police administrators' use of new administrative models act as a disguise without changing their old habits?

- How could the objective balance be maintained between the practical beliefs of police and results of scientific studies in fighting crime?

Police departments have implemented structural and administrative modifications to adapt to these changes.

An organization is known to have four dimensions. The first one is considered to be the organizational structure. The second one is the human dimension, the third one is the technological dimension, and finally, the fourth dimension focuses on the goals of the organization.

The police educational system is one of the subsystems of a police organization. The main duty of the police educational system is to ensure the education of officers in a manner compatible with the goals of the organization.

The goals of an organization are the activities it plans to accomplish. Once the goals are defined, the means must be modified to achieve them. The development of the organizational structure used in training must be planned according to the goals of the organization. Developments, which fail to take these goals into account, cannot be successful. For this reason, police reorganization and organizational development have been a major subject of research.

One of the major goals of the development of an organization is to induce change in behaviour (Bumin, 1991: 25). In the USA, 97 % of the problems the police encounter concern behavioural issues, whereas only 3 % of the problems are in the professional domain. The same things are valid for other police organizations as well as the Turkish Police.

A system is a structure that operates under certain laws and is created to obtain a particular result (Bursalioglu, 1991: 3). The system also has other properties, is composed of sub systems, and works as part of other systems. The parts of the system all have individual goals. Change in one part of the system affects the other parts and may induce changes in them. Thus, systems are complex, and it is important to investigate them by taking individual goals into consideration.

The Turkish Police Education System was established in the 1900's. The Istanbul Police School was opened in 1900, and was followed by the Police Academy in 1937 and the Police College (high school) in 1938. Studies conducted on improving the structure of this education system have proven to be effective. Reforms to the three-tiered education system have been in effect since 2000.

Before going into further detail, it is important to review the institutions for police education.

The structure of the Turkish police training system consists of:

I - *Pre-service Training*

- the Police Academy
- the Police College
- the Police Schools

II - *In-service Training*

- Training Department
- Central Departments
- Provincial Police Directorates

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In order to reach a better understanding of the organization of the police training system, the above sections merit further discussion:

I - Pre-Service Training

The Police Academy

Establishment:

The Police Academy is the only institution, which is charged with training high-rank management officers for the Turkish Police Force. It was established on November 6, 1937, in accordance with Article 18 of the National Police Act 3201 in order to provide 2 years of in-service training. At that time, it was called "the Police Institute". The Police Institute was later converted to a vocational School of Higher Education under the instruction of the Board of Education of the Ministry of National Education. In 1961, the Police Institute provided a 2-year education program, operating as a vocational School of Higher Education, and began offering a 3-year program in 1992. Following a decision by the Ministry of National Education, the school was converted to a four-year Higher Education institution.

Education and Training

The student resources of the Police Academy are as follows:

- the Police College
- High Schools
- Foreign Students

According to relevant bilateral agreements, foreign students who are competent in speaking, writing and understanding the Turkish language are eligible for enrolment, subject to the prior approval of the Ministry of the Interior. Foreign student enrolments started especially after 1990 when the Turkic Republics of Central Asia became independent. The Police Academy also provides full scholarships for those students who wish to pursue other professional degrees in order to meet the needs of the Turkish National Police. Later, they are appointed to positions related to their areas of expertise in the police force. These graduates are entitled to the full privileges of the Academy graduates.

The Police Academy attaches great importance to the provision of sport facilities. There are 2 gyms, 2 football fields, 2 basketball courts and 4 volleyball courts in the Police Academy. In addition to these facilities, an Olympic-size swimming pool and two gyms are currently under construction. As a result, the Academy has a considerable base of male and female athletes, and has won many championships and trophies in national competitions.

The Police Academy curriculum is based on instruction in three areas: academic training in the form of courses, practical training, and work-based training. The Academy provides a 4-year undergraduate education program for students who are high school or Police College graduates and are enrolled according to the rules and regulations of the Academy. The length of the program is 8 semesters over 4 years. Students can extend their education up to one academic year in the event of illness.

Academic semesters are 14 weeks long and therefore a full academic year lasts 28 weeks with a 15-day break between the two academic semesters. Testing and examination periods are not included in this 14-week period.

A total of 14 law-related courses are taught in 1st and 2nd years and occupational and 14 law-related courses with equal weight are taught in the 3rd year. In the 4th year, 14 different applied and practical advanced specialist courses are taught.

At the end of the 1st and 2nd years, students have to attend one-month long summer camps in Aydın /Didim Practical Training Center.

Police College graduates should pass a written test prepared especially for them, which is held on the Gölbaşı Campus. High school graduates should receive at least the minimum score of the university entrance exam, be younger than 22 years of age, at least 165 cm tall for females and 167 cm for males, and be a graduate of a general, trade, tourism, craft or technical high school.

Applicants who have succeeded in the written tests have to complete physical strength testing. During this testing the applicant's medical condition should be evaluated, documented and approved.

The applicant's physical and mental state, self-confidence, ability to understand and evaluate, and communications skills are tested (oral tests). The physical capacity of applicants is examined according to norms determined by the General Directorate (physical tests). Applicants should score at least 70 out of 100 in order to be eligible to take the written test. The written exam consists of Turkish language (30 questions), social sciences (30 questions), mathematics (20 questions), foreign language (20 questions).

In the year 2000, the Police Academy was upgraded to a 4-year university in order to provide undergraduate and graduate training and the Head of Police Academy acquired the status of a university rector and has become a member of the board of universities.

The Police Academy regulations were redesigned in accordance with the Higher Education Council Act, and scientific boards and committees were established to obtain scientific autonomy.

The Office of Dean of the Security Sciences Faculty was established.

The Graduate School of Police was established to provide masters and doctorate programs. These programs are offered to the management level of the Turkish National Police.

New professors and associate professors have been appointed to the Police Academy and the Police Vocational Schools of Higher Education, and satisfactory numbers of instructors have been reached. Thus, police and university cooperation has been improved.

Police basic training schools were converted into 2-year Police Vocational Schools of Higher Education and affiliated to the Police Academy.

The Police College

The Police College was established according to an article (Article 19) added to Law 3201 of the Code on Security Organization. According to Article 19, the Police College is a four-year high school with a one-year preparatory school for foreign languages. It is a boarding school for male students, and directly governed by the General Directorate of Security, with the authorization of the Ministry of the Interior. Its function is to

supply students for the Police Academy that train high and middle rank officers and/or for other higher education institutions to meet the needs of the Turkish National Police.

Training at the Police College is based on a curriculum prepared by the Ministry of the Interior and approved by the Ministry of National Education. The improvement of physical state and intellectual ability, good character, morals and mental health of the students are to be achieved in an environment that fosters free and scientific thinking.

Police College graduates are to be educated as global citizens and members of the information society.

Police Schools

The Police Vocational Schools of Higher Education (the Police Schools) provide 2 years of basic training that aims to provide professional basic knowledge, awareness and discipline required to meet the constabulary needs of the Turkish National Police. There are 20 Police Schools and 4 training centres providing pre-service basic training throughout Turkey. Each year, a total of 10,000 students are trained in these schools.

Objectives

The aim of the Police Schools is to meet the constabulary needs of the Turkish National Police, to educate police officers who are devoted to Atatürk's principles and revolutions and sensitive to the integrity of the Turkish state and nation, who are well-balanced in terms of physical, mental, moral, psychological condition and possess good health, are able to uphold the honour and pride in policing and capable of holding responsibilities.

Entry Requirements for Police Schools

An applicant should

- be a citizen of the Republic of Turkey,
- be a graduate of a general, trade, tourism, craft or technical high school

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- be aged between 18 and 27
- receive a score equal to or more than 105 from the University Entrance Test (ÖSS)
- be taller than 165 cm for females and 167 cm for males
- have completed compulsory military service (for males)
- not have had any relation with any illegal ideological activities, anarchic or terrorist acts.

Selection of Students

The selection process has 3 stages:

- Selection at the provincial level

  - Interviews
  - Medical checks (by police service doctors and psychiatrists)

- Selection in the regional centres

A commission appointed by the General Directorate selects applicants by means of:

- Physical tests
- Interviews
- Medical checks (by police service doctors and psychiatrists)

In addition, all applicants take the Minnesota character test.

- The Written Test (Final Stage)

Successful applicants are eligible to take the written test. This test consists of 100 questions.

Curricula in the Police Schools

The following subjects are taught in the Police Schools: Professional Police Law, National Security and Intelligence, Preventive Duties, Public Order, Professional Correspondence Techniques, Observation of Criminal Procedure Law, Firearms Training, Physical Training and Self-Defence, Atatürk's Principles and Revolutions, Human Rights, Constitutional Law,

Criminal Law, Police-Public Relations, Basic Traffic Knowledge, Discipline Procedures, English, Introduction to Law, Introduction to Policing, Police Tactics, Psychology, Social Psychology, Structure of the State, Duty of the Police, Crime Organization and Procedure, Civil Law, Behavioural Sciences.

Reorganization of the Institutions for Police Education

In order to improve policing standards and to provide a high quality service depends on developing the quality of the basic training process to meet the needs of society and to contribute to the social development process, the Turkish National Police has planned and completed a structural reform to reorganise basic and in-service police training.

Police Schools were converted into 2 year Police Vocational Schools of Higher Education and linked to the Police Academy.

For the Police Academy and the Police Schools, new professors and associate professors have been appointed and the number of instructors has reached satisfactory levels.

In order to motivate the personnel working in training facilities, working conditions and the individual rights of the staff have been re-designed. Practical training programs have been increased.

Sociology, Psychology, Foreign Language, Police Ethics, Human Rights and Public Relations training will have more importance and higher priority.

II - In-Service Training

In-Service Training activities are planned and performed in a spirit of co-operation and harmony in order to improve officers' knowledge in the technological and social areas in which they pursue a nationwide struggle against crime.

Objectives

In-service training is organized in order to train all officers in regard to contemporary developments, trends and methods, and/or prepare them for a higher rank to develop good relations between police and the public.

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Goals

- To meet the need for specialists,
- To assist officers in gaining the necessary knowledge, skills, and ability,
- To assist officers in adopting new developments and trends,
- To prepare officers for promotion,
- To assist officers in their new duties and department.
- To improve and update officers knowledge through in service training,
- To improve co-operation with the public,
- To develop a new and better police image in the eyes of public opinion,
- To continue the internal processes of reciprocal interaction and communication,

In-Service Training Activities

All in service training activities can be classified as follows:

- Training activities planned and organized by the Central Departments
- Training activities planned and organized by the provincial police directorates
- On the job training
- Fire Arms and shooting practice
- Training programmes in Turkey and abroad in 2000
- Public Relations And Community Policing Programmes
- Preparation Programs For Retirement
- Training activities planned and organized by Central Departments

Basic Specialist Training

A training program designed for newly recruited officers to induct them into their specializations.

Improvement training

Further training is provided for participants to update their technical knowledge.

Specialized training

Specialized training to meet the specialist needs of the Turkish National Police in various areas.

Further training to prepare officers for promotion to higher ranks

It is a form of training to prepare an officer for a higher rank and new post.

Symposiums, panel discussions and conferences

Symposiums, panel discussions and conferences are organised to contribute to in-service training activities.

Training activities planned and organized by provincial police directorates

Some of the courses included in the training activities are as follows:

- Constitutional Law,
- Regulations on Police Duties,
- Discipline,
- Human Rights,
- The History of the Turkish Revolution and The Principles of Atatürk,
- Crime Scene Investigation,
- Public Relations,
- Counter-terrorism,
- Problem Solving and Stress Management.

In addition, many seminars and conferences are held on topics such as human rights, public relations and management.

On the job training

Personnel are also trained "on the job" while they are performing their daily duties.

Firearms and Shooting Practice

Firearms training is organised in order to improve shooting skills.

Training programs organised in connection with universities in Turkey and abroad in 2000

In Turkey:

36 Police personnel attended an MA program at TODAIE (Turkey and Middle East Public Administration Institute)

20 Police personnel are following a specialization program in the European Community Research and Practice Centre of Ankara University.

In addition, 184 Police personnel attended language courses last year. (68 Police personnel in the cultural centres of Embassies, 46 in State Language Schools, 70 in the Language Centre of Ankara University.)

Abroad:

51 Police personnel attended post-graduate programs in France (5 officers), Germany (4 officers) and US (42 officers), at various universities in the periods between 1999-2000.

The areas studied by the above mentioned personnel concern; Counter-Terrorism, Organized Crime and Smuggling, Police Education, Police Administration, Law, Human Rights, Public Events, Computer Science, Crime Analysis, Crime Scene Investigation, Intelligence and Public Relations

These officers will be appointed as instructors in the Police Academy and the Police Schools when they complete their master and doctoral programs. In this way, they will contribute to developing well-educated

police officers who should be able to justify their actions and decisions, who are open minded, tolerant and who wish to aid social development.

In addition, 19 officers attended post-graduate programs in the US in 2001.

Public Relations And Community Policing Programmes

In 2001 image and public relations programmes were included in the plan for police training for the first time.

Regional Training Provided By Central Training Teams

Improvement training has been organised in the provinces by central training units.

The topics included are as follows:

- Establishing dialogue with the public, as well as with suspects, witnesses, complainants (public relations course)
- The authority and the responsibilities of the police (human rights)
- Police behaviour (the balance between police power and citizen's freedom and wishes)
- Stress management
- Dealing with policing problems

Within this framework, during the year 2000, regional training seminars were held in 7 regional centres (that covers 72 provinces) for chiefs and personnel of police stations.

The topics covered in the seminars were as follows:

Human rights, criminal procedure law, administration and motivation techniques, community policing and public relations, behavioural science, police professional ethics, stress management, crime scene investigation.

12 professors, 24 associate professors, 15 police, 5 chemical engineers took part in these seminars. In this way, 792 police centre chiefs and 1296 constables (2088 in total) were trained.

Media-related Activities

Not only information about incorrect behaviour by police officers, but also information about the positive and self-sacrificing attitudes of police are being broadcast.

The community has been informed about preventive policing through published books, brochures etc.

Interactive materials are being designed to demonstrate policing events.

In order to improve the security sensitivity of the public, a TV program – security hour -has been prepared together with the TRT.

Programmes to improve police-public relations;

The community is convinced of the fact that security and crime prevention is not only a matter for the police, but also a vital problem concerning the public. In this respect, apart from informing the public, close cooperation has been developed with the Ministry of National Education and the media.

Peace conferences and meetings are being held by police forces and community members.

The Police Schools' social activities have been opened to adults and parents, as well as students from elementary schools.

Preparation Programs For Retirement

Preparatory programs for personnel, who have only 1 year before compulsory retirement, will be designed to contribute to their adaptation to a non-police life-style after years of demanding and exhausting service.

EVALUATION

I - Pre-service education

Public relations activities will form the strategic dimension for crime prevention beyond 2000. In this respect, the Turkish National Police prepared police and public relations training programs in 2000. In addition, structural and administrative reforms have been undertaken to maintain strong scientific links between the Turkish National Police and the academic world. In this respect, the Turkish National Police has established modern training schools and institutions that are able to provide contemporary, citizen-oriented training facilities. In order to meet the needs of society and to contribute to the social development process, the

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Turkish National Police has planned and completed structural changes concerning basic and in-service police training.

With these changes;

The Police Academy was upgraded to the four-year Faculty of Security Sciences.

2-year Police Vocational Schools of Higher Education were established and linked to the Police Academy.

New professors and associate professors have been appointed to the Police Academy and Police Vocational Schools of Higher Education and the number of instructors has reached satisfactory levels as the number of instructors has been increased. For example; the number of professors increased from 4 to 49; Associate Professors, from 8 to83; and instructors holding a PhD, from 23 to119.

The curricula of Police Vocational Schools of Higher Education have been designed in collaboration with universities. Extra subjects such as psychology, sociology, foreign language, behavioural sciences, have been added to the curricula.

A citizen oriented police and police training approach has been adopted.

In this respect, the "Police Training Through the 21st Century Symposium" was organized on 24-25-26 October 2000, in Ankara to discuss how contemporary police training can be provided, with the participation of field experts and professors from various universities and the presentation of more than 100 papers.

II. In-service Training

Some of the training activities organized in 2000 were as follows:

- 303 in-service training programs were organized. 17.567 personnel attended the improvement and specialization training, 109.209 personnel attended the practical training programs (126.776 in total).
- 1118 Chief superintendents attended the training programs for administrators.
- Professors and 35 assistant professors taught the training courses for managers.
- Education management and school leadership seminars were organized for the Directors of the Police Schools.

- In accordance with the annual training plan 2000, total quality management training programs have been designed and applied.
- In connection with the Turkish Standards Institute, the Police completed a study to determine the professional standards for 13 areas of policing. These areas included: public order, bomb technicians, mobile force, education, general services, security police, financial police, narcotics police, crime scene investigation, anti-organized crime police, anti-terror police and traffic police.
- A modular interactive training project was prepared in cooperation with The European Council to modernise the curricula of Police Vocational Schools of Higher Education,
- Human rights and public relations courses were taught to the participants of all in-service training programs.

1st and 2nd Meetings of Educational Board of the Turkish Police

In accordance with article 8 of In-Service Training statutes, the first and second meetings of the educational board of the Police were held in February 2000 and 2001, under the chairmanship of The General Director of the Turkish National Police.

In addition to in-service training policies, the training strategies of the Police Schools, the Police College and the Police Academy were discussed and examined in the meeting.

CONCLUSION

The Turkish Police Forces have attached vital importance to training activities. At the start of the new millennium, there has been a drastic change in the structure of police training. Some of the expected benefits from this new structure are dealt with below.

I. Traditional structure of police training

The first Police School was established in Istanbul in 1902. In 1937, the Police Academy and in 1938 the Police College were established. This trio has been the main structure of police training since then and it would appear to be different from the European style. However, the Turkish Police Force has become one of the leading police organisations in the world based on the specialised personnel trained in this structure. On the

other hand, the information age requires some changes and new priorities need to be acknowledged in police training. Therefore, restructuring is a must.

II. New perceptions in policing

In this new age, academic discipline and problem resolutions are as important for police officers as fighting crime.

In the US, there are Criminal Justice Departments or faculties in many universities. Academic research is conducted into crime, criminals and the causes of committing crime. Preventive approaches are formulated and forwarded to relevant organisations. Innovative ideas and the development of new strategies provide considerable benefit for the police.

In this respect, the Police Academy has been upgraded to the status of a university and runs post-graduate programs. 2-year Police Vocational Schools of Higher Education have been established and linked to the Academy.

In order to meet the needs of the Police Academy and Police Vocational Schools of Higher Education, it is envisaged that 50 police personnel (inspectors, chief inspectors and superintendents) will attend post-graduate programs on computer science, police training, public relations, law, human rights, intelligence, the fight against organised crime and smuggling, crime scene investigation, crime analysis, Anti-terrorism, public events, management and administration, in several countries. These personnel will be able to contribute to the academics resources of the Academy after they have completed their MA/doctoral programs.

In this way, the academic personnel will acquire the advantage of knowing the problems facing practicing police in their daily work. They will also be able to propose solutions to these problems.

III. Learning and teaching

Within the new structure and strategies of police training, learning is preferred to teaching. Interactive learning models have been designed to facilitate learning by seeing, hearing and practising.

IV. The Balance between Theory and Practice

Nowadays, the police are not only responsible for handling policing duties perfectly, but also expected to serve the community in a tolerant and courteous fashion. Within this new structure, there is no place for theories, which have lost their relevance, and for practices, which lack scientific rationale.

V. Citizen-oriented but Professional Training structure

As the human rights awareness of the public has improved, now citizens expect different behaviour from the police than they would have in the past. An attitude that was perceived as normal in the past, may not be approved of today. In this respect, the police has attempted to pursue a professional approach in order to maintain citizen-oriented training. Trust for the police can only be constructed through neutral, fair and effective policing.

The objective of the Police training activities is, to develop personnel who respect human rights, follow Ataturk's principles, are creative, convincing, tolerant, open to universal values, and able to follow change and improvement.

As a conclusion, the new structure of police training facilitates the process of maintaining a police organisation that deals with crime prevention, is able to present the authority of the state in a tolerant way, is citizen-oriented and contributes to social development.

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VOCATIONAL EDUCATION AND FURTHER VOCATIONAL TRAINING IN THE BREMEN POLICE: Important Elements in Preserving Human Rights?

Lutz Müller*

"It is not important what you say but what you do."

Apart from its statement of basic rights and human rights, the constitution of the Federal Republic of Germany also comprises the fundamental rules of interaction and of mutual control concerning the authority of the state – the legislature, the judiciary, and the executive. Moreover, within the scope of the principle of the rule of law, the monopoly on the use of force is assigned to the executive – here: the police. That is, the individual citizen transfers his/her right to use force to a state organization. In return everybody has the opportunity to participate in politics and to state his opinion within the scope of democratic rules.

This competence also places an obligation on the state and state institutions to guarantee security and freedom for the people who live in this society and to interfere with the rights (basic rights and human rights) of citizens only within the confines of the legal system and upon strict and careful consideration. This is only possible if there is legal authorization and if the appropriateness of means is observed. Furthermore, it is possible for every citizen to have police actions reviewed by the courts. This constitutes an important part of the civil rights approach, which is often used to control police activities.

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The basic conditions referring to the constitutional law, which I have just described, are to be found in the same form or in a similar one in many states throughout the world and for many states they are a matter of course – in theory. But that does not mean that in reality ordinary police operations in Germany (e.g. operations in Bremen) always proceed with the necessary optimal results. Examples of human rights violations by the police have frequently been subjects of reports in the media and of investigations in recent years. I do not want to deal with these accusations in detail; but it is obvious that human rights and the principles of the rule of law, which are laid down in the constitution cannot always be successfully put into practice.

An examination of the special problems and demands on police work will help to develop a better understanding for the aims and content of vocational education for police officers.

Below, I will cite examples, which deal with everyday encounters between the police and citizens in particular. The dangers, which I describe are accurate in general. They increase further in large-scale operations and unusual situations, as the individual police officer operates more anonymously then and group-dynamic processes play an even more important part. Incidents in the recent past such as those, which happened at the summit conference in Genoa and during the shipment of nuclear transports to Gorleben, a town in the northern part of Germany, can be cited as examples of this phenomenon.

I. What do we demand from the police?

First of all I should like to ask you this question. What do you expect from the police? How do you want to be treated?

Imagine you are sitting in a restaurant with your friends or your family to celebrate something special. Suddenly a special operational group rushes into the room to conduct a raid. A well-known mafioso is wanted. Think of three different scenarios:

Scenario 1:

You are not involved. How would you like to be treated?

You will respond quite easily. Perhaps you fully understand the police action but certainly you want to be treated as the innocent person that you are.

Scenario 2:

You are totally innocent but you are taken for the mafioso.

You make your standpoint clear but the police do not believe you. How would you like to be treated?

Scenario 3:

Imagine you are the mafioso.

You can also claim to be treated in accordance with the rule of law.

You can be arrested. If you put up any resistance this will be met and countered by means of force if other persuasive means are not successful. This will be legally correct.

But assault and battery only because you are a mafioso – that does not correspond to our ideas. Even if we as citizens sometimes want the police to be tough when handling dangerous criminals – it is up to the courts to decide on any punishment.

The police carry an immense responsibility. They must resolve conflicts, offer assistance, use or prevent the use of force by unauthorized people and arrest offenders. While on duty the officers, who work mostly in pairs, rapidly become caught up in conflict situations. They are insulted, perhaps even attacked. They have the power, the weapons, and they are often alone with the suspect(s). It is very easy to abuse their power –as nobody apart from the suspect will get to know about it. Who believes what a criminal or a peddler or an asylum seeker has got to say? Not to abuse this power, even if others spit at you and swear at you – that is what our constitution and many human rights declarations request.

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And it is exactly in these very same situations that problems may occur. The power, which the policemen/policewomen exercises over the suspect, the alleged criminal, then can be abused. Remember the imaginary situation in the restaurant. Imagine being the mafioso or the suspect who is innocent. You are handcuffed with your hands behind your back, you are pushed, you stumble and fall down. Have you ever fallen down or got into a vehicle with your hands handcuffed behind your back? Just have a try but before you do so, do not forget to have a bandage and an ice pack ready.

You are at the police station and you want to call your lawyer – it is your right to do so. However, you have no telephone or no small change to put in the public telephone. There are a multitude of possibilities in which your human rights may be violated. You are alone with the policemen/policewomen. Who shall help you if they do not?

This situation is aggravated by the main features of daily police work. Coping with a variety of conflicts, with misery and criminality, with violence and aggression demands an enormous amount of physical and psychological stability on the part of every single policemen/policewomen. We provide our officers with a great deal of responsibility. It is not possible to supervise every single action. Therefore everything must be done to reduce the probability of such violations.

II. Which causes play a part in the known cases of human rights violations in Germany?

The academic community as well as parliamentary commissions have been repeatedly preoccupied with this question – especially after violations of human rights by the police have become known. Why is it so difficult for the police to act in a manner defined by human rights organizations and to refrain from any violation of human rights? Possible reasons can be divided into the following categories:

Society:

For example, changes in the basic values of our society during the last 30 years must be noted. These changes have involved a shift from the performance of one's duty to self-development and finding one's self, from an authoritarian state to a police force that serves the citizens, from heteronomy to self-determination. The desire for more personal freedom

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and individuality not only has consequences in the relationship between citizen and the state but also in the relationship between the policemen/policewomen and police organization. Police officers from the younger generation expect a lot more opportunities for self-development and a higher degree of codetermination when performing their work. Then there is the citizen who does not approve of any actions of the state uncritically. The intervening officer must give reasons for his actions, has to be convincing, must expect and be able to cope with justified resistance.

With regard to human rights there is no fundamental dissent in Germany. Freedom and the rule of law are as self-evident as high social standards. We feel that we are in good hands with our police. This is true in particular for German citizens.

But the reality of society also looks quite different. Prejudice, racism, discrimination, populism are commonly held phenomena, which affect the police as well. Both the police and the community have contradictory ideas not only on dealing with ethnic minorities but also on dealing with criminals. The police have been accused of violating the human rights of foreigners more frequently in recent times. Human rights apply to everyone and we expect our policemen/policewomen to perform their duties without any prejudice; even if people request tougher action in isolated cases. The police officer as a friend and helper, as "a fighter for a good cause", is not allowed to give up his role as a part of the executive. Having "She/He deserves it." as a motto can justify your action(s) quite easily – and be socially accepted.

Human Factor:

When considering the human factor, we are referring to personal and individual lapses, uncertainty, an inability to tolerate stress and frustration, a lack of ability to communicate and to deal with conflict, attitude towards other people, weak leadership. The quality of police work is defined by the sum of the individual performance of every single officer. Police work is moulded by the fact that people interact. However, each person is different his/her peers, reacts differently and perceives things in a different way. All these factors impose a high standard on the police, as democracy and the constitutional state will work only if conflicts are resolved without recourse

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to violence. And you know how difficult it is to resolve conflicts in a peaceful way if the parties involved are unable to communicate. The law enforcement professional must set a good example here. Violence in the resolution of conflicts must remain *ultima ratio* the absolute last resort, and within the confines of the law.

The Assignment:

Police duties involve conflict-based stress, frequent interactions with fringe groups, dealing with criminals and violence, but also with misery. I have already pointed this out several times. 50% of the main tasks of the police in the large city of Bremen involve conflict resolution and assistance in situations originating from social problems. Someone who has to cope with these tasks and human tragedies, with helplessness, e.g. when dealing with drug-related and also with organized crime, day in day out needs special personal abilities that prevent him/her from becoming a part of these problems and preventing him/her from cutting him/herself off from reality. In addition, more and more must be done with fewer and fewer personnel.

The Organization:

The work of the police organisation is based on 24-hour service, on work in small, very close teams; and on little control and supervision routine. These basic structures require a large amount of self-discipline and self-control. The ability to work in a team is a positive quality. However, it can quite easily turn into chumminess and *esprit de corps*. Group-dynamic processes can lead to their own rules, to an independent conception of legality. The group can encourage and accept violence and readiness for conflict: "If the courts do not punish, we will." Then any officer who does not give in to this stereotype or does not support this view is treated in a prejudiced manner and not respected, although the police organization itself stands for law and order.

There has been considerable research into each of these respective ideas worldwide. The results of these research efforts always contain suggestions regarding the selection of personnel, as well as vocational education and training and the organization of the police.

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III. What do we expect of our police, of every single policemen/policewomen?

The following topics are important in shaping our expectations:

III.I. Law

Apart from the constitution, the laws, and the administration of justice by the courts, the application of the law in particular is an important field for us to reflect on. The contravention of human rights by police officers can only be legitimised by a criminal offence/a crime or a dangerous situation and a legal authorization for intrusion. Both are defined in the constitution, in human rights conventions, and in laws. The most difficult part of a legitimate violation of human rights is the decision on using specific measures and their enforcement. Each officer on duty has to think carefully about the measures she/he intends to use and consider. The relevant criteria can be stated as follows:

- suitability (Will I succeed by using these means?)
- necessity (Are these the least violent of all possible means?)
- appropriateness (Is the measure appropriate to the situation?)

This process of decision-making must be carried to every new case and is one of the most important principles of the rule of law. It has to be recorded so that it can be checked by the courts. The police do not have a right to punish. They ensure that fair legal proceedings can take place in which a court can reach a decision. It must be a matter of course that these principles are applied to all people equally.

III.II. Ethics

Based on the notion of the human being, which is set out in our Basic Law, Article 1 – the dignity of the human being is inviolable – all institutions of the state are obliged to observe and to protect the dignity of every individual. The police are not allowed to distinguish between rich and poor, German and non-German, clean and dirty, normal and abnormal when dealing with people even if they sometimes find it difficult to do so because of their own daily experiences.

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III.III. Model and Strategy

With regard to their function in the community the Bremen Police force has developed patterns to guide their performance. How would they like the public to be aware of them and how would they like the public to see them? These guidelines were compiled together with the police employees and a model was developed.

One fundamental principle involves the idea of being at the people's service; this has also become a part of police strategy. For us the citizen is no petitioner but a client. This does not mean that the legal setting has been enlarged; only the relationship between the people and the police exists in more concrete terms. The people can expect respect and friendliness.

III.IV. Expectations of citizens and "clients"

Opinion polls are regularly conducted among the citizens of Bremen in order to learn how the police can meet the people's expectations in a better way. Apart from general polls, other polls have been taken among people who come into direct contact with the police e.g. at a traffic accident – as a witness or as a casualty.

Citizens expect a lot from their police. No state organization or agency other than the police can be called upon around the clock and is supposed to deal with any problems rapidly and in a competent way. Performing these duties requires an open-minded approach, friendly behaviour and a large amount of sensitivity. Most complaints against the police do not concern apparently illegal actions but are attributed to unfriendly and inappropriate behaviour on the part of police officers.

IV. The Job Description for the Police in Bremen

From what has been described so far you can observe clearly that there are frequent areas in which the police must take risks. Therefore the job description of the police comprises several basic capabilities, which ought to interact and in this way help to guarantee the observance of human rights.

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IV.I. General Education

A police officer needs to be a competent citizen who has received a good general education and has sound basic knowledge and capabilities. To ensure this, some educational requirements must be met for employment purposes. These requirements are the same as those that are to be met by those who wish to proceed to higher education.

IV.II. Professional Competence

We expect that police officers are quite aware of their role in society, that they have a strong consciousness of what is right or wrong and a profound knowledge of the law and that they can deal with other people without any prejudice. The Police should be able to identify themselves with their occupation and should have a subtly differentiated attitude towards violence. Although de-escalation and the resolution of problems without violence are defined as primary goals, police officers must be ready to use physical measures and also to use weapons as a last resort.

Our police officers are to develop a wide-ranging (specialized) knowledge of their subject, are supposed to perform well professionally, to know their job well and should have an appropriate and modern appearance.

IV.III. Social Competence

Social competence is the ability to deal with all kinds of different people, to understand their problems and conflicts and to find solutions. Someone who possesses social competence is able to work alone or in a group and is interested in relations with other people. There are a variety of qualities, which we expect from our officers in this respect:

- an ability to communicate
- an ability to cooperate and to work in a team
- an ability to accept others, empathy
- self-assertion and self-confidence

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IV.IV. Personal Competence

Apart from social competence a police officer also needs strong personal competences in order to be able to pursue and assert defined aims independently and with a high level of concentration.

The dividing line between social competence and personal competence is not fixed. Nevertheless, those qualities necessary for personal confidence can be listed as follows:

- composure in stress situations and the ability to cope with conflicts
- determination, efficiency and motivation
- ability to criticize and to learn
- ability to analyse and capability to conceptualise
- flexibility and creativity
- ability to decide and to judge

IV.V. Physical Resilience

A medical examination is conducted before someone is certified as fit for police service; additionally we expect a policemen/policewomen to be fast and agile, to have physical-strength and endurance.

V. Realization of the Job Description: A Basis for Police Work, which conforms to Human Rights

I do not think that anyone can guarantee an absolute observance of human rights by the police in every case. We must not forget that all the people involved are human beings – not machines. We must not give up our standards and we must do everything to ensure that the behaviour of our police officers mirror the rules laid down in the German Basic Law. This is what I demand not only as a college teacher and a senior command officer but also as a citizen.

From what I have said so far, you can easily conclude that all the requirements that govern such a complex job description cannot be met successfully by simple means. From our point of view, there are five areas, which have an essential influence on the quality of police work and in this

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way on the protection of human rights. All of them proceed from the individual.

Selection and Recruitment

Are we able to select the right applicants from all parts of the population? How attractive is the police job description, do we get the right employees and colleagues, the best ones?

Education

Do we develop the innate abilities of selected officers in such a way that violations of human rights will be reduced to an absolute minimum? Do we prepare them properly for their duties, which are without doubt difficult ones, for their function as law enforcement professionals?

Further Vocational Training

Are there enough possibilities to keep pace with continual changes in policing, enough opportunities to break everyday routine by further training, enough chances to reduce personal and professional deficiencies?

Leadership

Do superiors take their special responsibility to serve as role-models seriously? Are they successful at overcoming and remedying any deficiencies with the use of suitable measures?

Control

Do we allow society, political institutions, the media, and the courts to monitor what we do? They can only survey and understand those actions and events, which are open to scrutiny. Do we monitor our own actions sufficiently and do we take action against violations of law within our own ranks seriously enough?

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In view of the topic under consideration, I will confine myself to the areas of selection/recruitment and education in particular. I consider the other topics to play an equally positive part in the protection of human rights. I will comment on them only briefly though.

V.I. Selection and Recruitment

The police compete with various organizations for the best trainees every year. Therefore we always make every effort to recruit young people.

Apart from the criteria, which were already mentioned, some general requirements apply to the recruitment:

The applicant must have German nationality or the nationality of a European Union Member State. The Federal State of Bremen also employs foreign applicants if a relatively large number of people from the same foreign country live in Bremen. Moreover the applicant must be able to speak both the German language and his/her mother tongue. Currently, we have several colleagues of Turkish origin in Bremen.

The applicant must not have previously received a criminal conviction and must assure that she/he will defend the Basic Law of the Federal Republic of Germany at all times.

He/she must not be older than 25 years.

He/she must have passed the "Abitur" (academic standard required for university entrance), or "Fachabitur" examinations (requirement for admission to higher education institutions) or must have an equivalent qualification.

He/she must have a driver's license, must have proved that she/he is able to swim and must have basic computer skills.

The recruitment procedures have been designed with a view to evaluating the applicant's qualifications according to the essential criteria, which are relevant for job description. These procedures are as follows:

- a psychological test: The results indicate the applicant's intelligence, ability to think, memory capacity as well as

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powers of concentration and deduction and also his/her ability to cope under pressure,

- a German language test and a language test in their mother tongue for foreign applicants,
- a sports test to check the applicants' physical resilience and fitness,
- an aptitude test consisting of a personal interview and a group talk/discussion. Talking to the applicant and watching him/her in a discussion gives us a chance of taking a closer look at his/her personal and social competence and of seeing whether she/he is able to communicate in difficult situations,
- a medical examination in which the general health and physical resilience of applicants are checked; the required standards are the same in all German federal states.

The whole procedure takes three days.

V.II. Vocational Education/Studies

In Bremen and in most federal states in Germany, police trainees study at a "Fachhochschule", i.e. a higher education institution, which offers relatively focused and practical courses of study and is centred on the needs and demands of police work. In this way we want to guarantee that our trainees obtain the knowledge and education required by the Police job description.

They study at an open educational institution, which is also frequented by other students and learners. This helps to support and develop not only professional competences, but also personal and social abilities. The students attend lectures, seminars, projects, training units, and – suited to their progress of studies – participate in real, job-based exercises.

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Their studies last six semesters, five semesters are taken up by academic subjects, one is a semester for practical studies; the educational process takes three years in all. Their course of studies is completed by a state examination and the submission of a dissertation. After having passed the written examination, the students are given some more time (about eight weeks) for practical courses, which takes them up to the end of their studies. They are then introduced to the duties of the criminal investigation department. However, instead of entering the CID they are also encouraged to join other police departments or to get to know foreign police organizations. Contacts with foreign higher education institutions and police training colleges abroad already exist and should be used in this connection. Up to now these practical courses have been the exception rather than the norm.

We would also like to have the opportunity to realize e.g. practical training periods in Turkey or to establish a regular exchange program with other Turkish colleagues in order to get to know more about the country and its people.

V.III. Entry Level-Policing

After having completed their studies the students are ready to begin their work as police officers. However, we know from experience that, generally speaking, our graduates can be deployed in every situation only after they have performed one year on duty. This explains why graduates work at a central police station attached to an urban anti-riot police unit for at least one year after their studies.

Furthermore, they take part in large-scale operations (also non-local) in which they act as members of the squad and cooperate with colleagues. As these new policemen/policewomen at the beginning of their careers should become personally responsible for their work as soon as possible, experienced officers act as mentors during this first period of duty. Having finished this entry-level process, the police officers are assigned to a district and start to enjoy individual responsibility.

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V.IV. Further Vocational Training

Concerning further education, our efforts are aimed at maintaining and/or improving the standards, which were achieved in the first period of studies/training throughout the remainder of the officers' professional life. Further more we want to prepare our policemen/policewomen for any changes, which might affect their professional performance; of course we try to remain responsive to their needs.

Apart from the training that relates to professionally relevant subjects, instruction in the conduct that is necessary for specific situations (e.g. communication, coping with stress and conflicts, efforts aimed at de-escalation) is of special importance. Negative incidents and apparent deficits are analysed, discussed, worked out in these training units.

V.V. Leadership and Organization

Police officers gain a lot of experience during their service in the police department: this acquired knowledge and the existing norms have a considerable influence on their conduct. There is a very close relationship between the opinions of the police which are constructed through experience and their treatment of minorities: As they become more open minded and pluralist, their attitude towards people become more tolerant and liberal. Executive personnel, senior command officers set an example. There is a saying among us: "The fish stinks from the head down".

The executive personnel themselves function in a permanent process of change in order to meet all the necessary requirements. High demands are made of them. Their roles change from being superiors to being coaches; these two terms can indicate the internal process of democratisation in the best way perhaps. Existing structures are increasingly being replaced by teamwork and work in/on projects.

Process-orientated developments of organization(s) also illustrate this change. At the moment there is a visible tendency to turn the police organization into a place where reaching the "optimal working process" rather than achieving "hierarchy" is the ultimate aim. Therefore, high-

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ranking police officers should have an ability to manage rather than to rule as traditional leaders.

Concrete measures such as job rotation or supervision can be used to relieve extremely overstrained stations and departments. Reward and sanction based systems are also available to support these efforts.

V.VI. Control

I have already mentioned that it is possible to have police actions reviewed by the courts. Apart from this there are other control systems inside and outside the police. Every citizen has the possibility to complain directly to the chief of police, the public prosecutors or the Ministry of the Interior. It is his/her right to do so. All complaints are investigated. Within the police there is an extra department of inquiry, the internal affairs department. In addition, the mass media and numerous human rights organizations are frequently used to put pressure on the police and on those responsible for relevant political decisions.

VI. Upshot

I hope that I have made it clear that the police operate in a difficult tension-ridden area. Various efforts are necessary and must be co-ordinated in order to establish structures, which are in conformity with human rights as expressed not only not in the Basic Law and in legislation but also in the conduct of the police.

You can compare this endeavour with a lawn:

"The lawn will not grow faster and better if you pull at it."

The right mixture of soil, water, sun, fertilizer, and care will meet with success.

Even if violations of human rights cannot be totally eliminated they must not represent basic patterns of behaviour by the state. They must remain isolated cases, which cannot be justified in any way.

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HUMAN RIGHTS EDUCATION OF THE POLICE: Why Educate the Police on Human Rights?

Füsun Sokullu–Akıncı*

Introduction

In the present century, all civilized democratic countries share a number of universal values: human rights constitute the core of all of these values. The issue of human rights intersects closely with law especially in the area of Criminal Law and Criminal Procedure Law.

When are human rights endangered in a society? Generally speaking, human rights violations take place during criminal procedure activities and are usually committed by state officials, especially law enforcement officers.

In a democratic society, where antisocial behavior is to be checked and peace and public order maintained by the government, the values of a democratic society, especially the cause of human rights deserve the utmost importance since democracy is itself the expression of popular sovereignty[1]. We must show extreme care in ensuring an equilibrium between the two competing demands[2] of human rights and individual liberties on the one hand, and public peace and order on the other. However, human rights must never be sacrificed for the sake of peace and order[3].

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This is the reason why codes of criminal procedure and even constitutions contain detailed rules on the provision of fair trials and due process, which all serve to protect human rights. The rules laid down in those codes are not only designed to protect the rights of the accused, but also the rights of innocent citizens, who may one day be harassed by law enforcement officers, if the latter are not subject to control and limited by law. For this control and limitation to be effective we have to know more about some of the sociological aspects of the law enforcement system.

Although the functions of law enforcement officers are defined by law, the interpretation and enforcement of these laws are established by elements present in the professional subculture of law enforcement officers. In law-making process, this subculture must be taken into consideration. Otherwise, this subculture, which is a global concept, will cause many detrimental effects. Their professional sub-culture may lead the police to value and favor the protection of peace and order over concerns about human rights.

Law enforcement officers are the armed forces of the government in peace-time and the need to control their power and functions has gained more importance as police forces become more organized. In the twenty first century, individuals and governments are more sensitive regarding the protection of human rights. Since news outlets and the media keep informing the public about human rights violations, a general suspicion about law enforcement officers has increased amongst the public. Legislators are developing the necessary laws to control law enforcement agencies in order to minimize human rights violations and control illegal behaviour by police officers. In a democratic country, the government must be subject to the consent of the governed, i.e. individuals [4].

On the other hand, socio-cultural events cannot be regulated by prohibitive methods. Law enforcement officers' functions and the issue of human rights may be reconciled, only by taking their professional subculture into consideration. When officers violate human rights, these violations can be attributed to the elements of their subculture.

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In addition to amending the present legislations and introducing new rules, police officers must be educated on contemporary human rights concepts and issues. I am not an expert on police education and cannot say how this education should be provided, but I know *why* this education must be imparted: the reason is closely related to the existing police subculture.

I - The Subculture of Law Enforcement Officers[5]

According to sociologists, professions exert influence on people's personalities[6]. A person's profession creates an environment for the individual concerned and the longer he/she works in that environment the more he/she acquires the characteristics or personality traits of his/her fellow colleagues. This includes the development of a special way of perception, in other words, seeing the world through a special perspective, like all the other members of that group[7].

Members of the law enforcement profession share the same environment for long periods of time. The essential elements of this milieu are *danger*, *authority* and *efficiency*. The amalgamation of these factors creates distinctive cognitive and behavioural responses and the development of characteristics, unique to law enforcement officers[8]. These characteristics are: *solidarity*, *secrecy*, *social isolation*, *conservatism*, *suspicion* and *deception*[9].

While officers are carrying out their duties, they may violate certain human rights, such as the right to privacy, liberty and security. Elements of the subculture may cause such unlawful behaviour for the sake of obtaining evidence and efficiency [10]. Although the causal relationship in social events is not as apparent as it is in the positive sciences, factual data should also be taken into consideration in any legislative activity concerning social life.

Legislators can use two methods to impose limits on law enforcement officers and to protect human rights: (1) Punitive methods, (2) Deterrent methods. In democratic countries, a mixed system with an emphasis on the deterrent method is used. Only the punitive method was used in Turkey until 1992. For example, Article 194 of the Turkish Penal Code punishes

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those officers who enter a person's home or perform arbitrary searches in such places, and act contrary to the conditions prescribed by law or abuses his/her office. Article 243 of the Turkish Penal Code punishes officers who perform cruel and inhuman acts or threaten or torture the accused in a behaviour incompatible with human dignity, in order to force him to confess to the alleged crime or to force other parties to the trial, such as the witness or the victim not to testify or not to make a complaint.

In the protection of human rights, deterrent methods are more effective than punitive ones, because the punitive system punishes the officer who violates human rights. But in the long run, it is difficult to punish a law enforcement officer, because of the elements of secrecy and solidarity, which exist in his/her professional subculture.

Deterrent methods, on the other hand, aim to check and prevent an officer's motives for using illegal methods. For example, if a policeman questions an individual in an illegal way, in a way that violates human rights and dignity; or if he uses illegal methods during searches and arrests, the deterrent method, by excluding illegal evidence from consideration in the final judgement, aims to alter the motives – which exist in the police officers' professional subculture. Thus, the factors, which create the subculture, are altered and modified. In time the prevailing subculture will also change. The deterrent method was introduced into the Turkish system in 1992, with the use of Exclusionary Rules.

II - Exclusionary Rules

Exclusionary rules are relatively new to the Turkish Criminal Procedure system and were introduced only in 1992. They are stipulated in two separate articles in the Code: One article specifies the exclusion of evidence obtained by illegal methods of interrogation, and, the second more general article excludes all illegally obtained evidence.

II.I - Turkish Criminal Procedure Code, Article 135a

The use of illegal methods during the interrogation of a suspect is prohibited. The suspect must offer his testimony on the basis of his own

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free will. Physical or mental actions designed to weaken the will power of the accused, such as maltreatment, torture, administering of drugs, sleep deprivation, deception, physical force or the use of any devices is prohibited. Testimony obtained through use of the above illegal methods cannot be evaluated as evidence, even if they have been obtained with the consent of the accused. This article deters the use of illegal methods during interrogation and gives no opportunity to justify any excuses for this type of behaviour[11].

This article conforms to Article 17/3 of the Turkish Constitution, which reads: "No one shall be subjected to torture or ill-treatment, no one shall be subjected to any penalty or treatment incompatible with human dignity". The prohibition of illegal methods is designed to protect human dignity. This article also applies to the State Security Courts.

Article 135a of the Turkish Criminal Procedure Code (TCPC) lists other examples of maltreatment that will affect the will power of the accused. But these examples are not *numerus clausus*. However, there may be some situations that this article does not cover, such as threats made to the suspect[12]. For example, threatening to kill the suspect[13], threatening to hand him over to the public waiting outside, who will lynch him, threatening to use torture[14], or threatening the suspect that if he does not confess his wife will be arrested for the same crime[15], talking with other officers about the torture they have employed previously[16]. Such acts must be considered within the scope of Article 135 a.

Article 135a has already been taken into consideration by the Turkish Court of Cassation in some major decisions. The Court reversed decisions from courts of first instance, even in cases, where the accused was acquitted, stating that, "interrogation is a procedural institution for reaching at the substantial truth. It aims to protect the accused as well as the public. So, if the accused is not reminded of this right, even in cases where he is acquitted, the decision must be reversed[17]. In fact, a fair trial is not only for the sake of the accused, but also essential for the rule of law. In a country where the rule of law is prevalent, no one is above the law. All public officials must obey the laws and in due time everyone will grow accustomed to behaving in a law abiding fashion.

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II.II - Prohibition of All Illegal Evidences (Turkish Constitution, Article 38/7, TCPC Article 254/2)

A new paragraph was added to Article 254 of the Turkish Criminal Procedure Code in 1992, stating that all illegal evidence obtained by investigating officers, were not to be taken into consideration as part of the final judgment[18]. This brings a contemporary dimension to Turkish Procedure Law. To reinforce this rule and stress its importance, a similar provision has been added to Article 38 of the Turkish Constitution (paragraph 7). Thus, the principles of obtaining evidence in criminal procedure is limited within the boundaries of law and in accordance with human dignity, which is one of most prominent of human rights[19]. Although the discovery of the truth is the ultimate aim of criminal procedure, the state has no right and should never try to conduct its activities outside the legal sphere and, in particular, it should never attempt to violate any laws concerning human rights, human dignity and integrity or fail to respect the right to privacy. There are some very strict rules on how to obtain evidence and establish the truth. There are also some values, which cannot be put aside even for the sake of determining the truth. As Erman argues: "In a country where the rule of law is prevalent, the ultimate aim does not justify the use of illegal means"[20].

Illegal methods of interrogation are prohibited by Article 135a and Article 254/2 goes still further. Accordingly, any evidence obtained through the use of illegal methods, for example by illegal searches and seizures, illegal line-ups, illegal wire tapping or illegal sources, is not to be taken into consideration in the final court judgment.

This Article is unique in continental law. It reminds us of the American "poisonous tree doctrine" which prevents the use of derivative evidence if it is based on primary illegal evidence and it represents the only way to prevent the use of illegal methods by law enforcement officers. In my opinion, punishing officers, for the crimes they commit while performing their duties and collecting evidence through the use of illegal methods, is not enough to deter them, when the secrecy and solidarity aspects of their subculture[21] is considered. Without taking this situation into consideration,

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some Turkish lawyers claim that the new rule is a further burden on the already slow procedural system[22] and the accused will be acquitted because of a "minor infringement" on the part of law enforcement officers. They classify illegal evidence as "minor" and "major" violations of law[23]. Some argue that the impact of the crime on society and the impact of illegal evidence on the individual must be compared. According to this view if the damage of the crime on the society is more prevalent, then illegal evidences can be taken into consideration as part of the final judgement[24]. This is an unacceptable solution and it is contrary to the clear disposition of Article 254/2. Besides, when an individual's rights are violated, there is always public harm and damage to society. On the other hand, if some of the violations committed by the police officers are classified as "minor" and "unimportant", it will be impossible to prevent the use of illegal evidence and furthermore, it will not be possible to talk about the rule of law in such a country. The police department is an organization with a subculture[25]. Subculture is a sociological notion. So if we are lenient towards some of the violations, which we consider "minor", the police will never be able to integrate lawful behaviour into their subculture.

Some Turkish academics argue that in order to consider evidence as falling within the remit/scope of Article 254/2, there must have been a violation of the individual's constitutional rights[26]. This approach is derived from American Law where all procedural rules are located in the American Constitution and all violations of the procedural rights of the individual are "unconstitutional". But this is not true for Continental Europe and Turkey where only a few procedural rules are stated in the Constitution. The majority of procedural rules are to be found in separate Codes. As a consequence, all forms of illegal evidences are not "unconstitutional". This proposition seems to embody one of the unfortunate efforts to limit the application of Article 254/2. If we respect the rule of law, all forms of illegal evidence must be considered within the aforementioned article.

On the other hand, one group of lawyers argue that this article is restricted to evidence obtained by investigating officials and does not include illegal evidence obtained by private individuals[27]. For example, Öztürk states that in Public Law, any act that is not prohibited is legal[28]. In

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my view, this is an unacceptable assertion since laws must be obeyed by every one. They are not just for state officials, especially law enforcement officers. Otherwise an officer will use the help of a private person to obtain illegal evidence and by-pass the law. Laws must be interpreted in light of the purpose they aim to achieve. A stolen document is illegal evidence and if an officer uses a third person to obtain it, he/she is making use of illegal evidence. As Keskin indicates, public officials have the authority to prosecute criminal acts and collect evidence. Private individuals have no such authority and they cannot violate other peoples' fundamental rights while they are exercising their own rights[29]. I agree with this view and I want to add further that, if the power for collecting evidence is not granted by the laws only to officers with the authority to prosecute, it must not be transferred to any one.

If a court's final judgment takes a piece of illegally obtained evidence into consideration, this will produce a wrong decision and the Court of Appeals will reverse it[30]. But the problem of causality is addressed by the Turkish doctrine. According to one view, if illegal evidence has no direct influence on the final judgment, there is no reason to reverse the decision[31]. Article 320 of the TCPC states this point clearly. Unfortunately, this seems to be just an effort designed to limit the application of Article 254/2. But for the most part, the Turkish doctrine states that if illegal methods are used, the judgment must be reversed even if the evidence has no direct bearing on the judgement[32]. Keskin even adds that if the legislator wanted to see a direct causal effect of illegally obtained evidence on the judgment, this second paragraph would have been added to Article 308 instead of Article 254[33].

Conclusion

Recent amendments to Turkish laws represent a major step towards the protection of human rights, because they have taken the effects of the police subculture into account. But non-application of some of these changes at the State Security Court level has created an ambiguity within the system. The procedural rules are always being replaced by better ones. If the old rules were abolished because they were not sufficiently effective

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in the protection of human rights, why should these same rules be maintained in the system of the State Security Courts?

The amendments discussed above will surely alter elements of police subculture in the long run but in the meantime the police must be well educated so as to understand the importance of human rights and understand that their primary and ultimate function is not just to maintain peace and order but also to protect human rights. If the police reach this level of awareness, they will then receive more support from the public.

Police education concerning human rights should take place on two levels: the first level should take place at the beginning of his/her career, whereas the second level should take place at certain intervals during his/her service. The requirements and contents of these two educations should differ. The first level of education should inform new recruits about the basic concepts of human rights and the reasons why these concepts should be regarded as the highest tenet of modern society. The second level of education should take police subculture into consideration. The longer the police officer is on the force, the more he will be affected by the existing police subculture. Therefore, in-service training must be repeated every two or three years.

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III. SESSION

European Human Rights Regime and the European Union

Chair Person : Jean François Buffandeau

Ann Sherlock

Prof. Dr. Leo Zwaak

Prof. Dr. Bengt Beutler

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ENSURING EFFECTIVE PROTECTION OF RIGHTS UNDER THE ECHR

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Introduction

The aim of this paper is to examine the mechanisms which exist under the European Convention on Human Rights for ensuring the protection of the rights set out in that treaty. The paper will scrutinise the systems whereby complaints are brought to the Court of Human Rights, and the systems which exist for ensuring that rulings of the Court are complied with by the Contracting States. It seeks to assess the strengths and weaknesses of the protection mechanisms. This paper links with that of Professor Leo Zwaak in that this paper will introduce, set out and comment on the protection system of the European Convention on Human Rights from a general perspective; Professor Zwaak will relate some of these general aspects more specifically to the experience of Turkey.

The General Scheme: the subsidiary role of the Convention institutions

The European Convention on Human Rights requires in its first provision that the Contracting States guarantee the rights set out to everyone within their jurisdiction. The primary responsibility for implementing and securing the rights is left to the States. Although the Convention does not prescribe any particular method of implementation which the States must adopt, it is a substantive right under Article 13 of the Convention that everyone shall have the right to an effective remedy when his or her rights have been violated. The Court of Human Rights has held that Article 13 requires that there must be an effective remedy where there is an arguable claim that a

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right has been violated.[1] Most states allow for direct reliance on the Convention rights within the domestic systems; others rely on other national guarantees to ensure that the level of protection required by the Convention is provided and they amend their legislation where necessary to ensure consistency with the Convention. The Court has frequently emphasised that the protection system established by the Convention is subsidiary to national systems ensuring respect for the Convention rights.[2] The Convention system of protection comes into play when the relevant national procedures and mechanisms have been proved inadequate, and it cannot be invoked before then.

It is well known that the original protection system set up by the Convention underwent an overhaul in the 1990s with the drafting of Protocol No. 11 which entered into force in November 1998. Whereas the original system involved the European Commission of Human Rights, the European Court of Human Rights and, sometimes, the Committee of Ministers of the Council of Europe, in an examination of applications, the current system relies on the new and permanent Court of Human Rights to examine the admissibility and the merits of applications and to rule on whether there has been a violation. The role of the Committee of Ministers is to supervise the execution of any judgment of the Court finding a violation of the Convention of Human Rights.

The result of the changes brought in by Protocol No. 11 means that all parties to the European Convention on Human Rights must now accept the compulsory jurisdiction of the Court of Human Rights in cases brought by individuals or other states. Under the original machinery, the Contracting Parties had to opt into acceptance of the right of individual petition[3] and acceptance of the compulsory jurisdiction of the Court.[4] Accordingly, it was possible that the only way in which a state might be challenged for non-compliance with the Convention rights was if another state took it to the Commission of Human Rights. But as we will see, very few inter-state cases have been brought since the Convention came into existence. The changes brought about by Protocol No. 11 therefore represent a significant step forward in making the Convention protection machinery a more effective one.

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The applicability of the Convention

Article 1 of the ECHR requires the Contracting States to guarantee the rights in the Convention to 'everyone within their jurisdiction'. This means that, whereas some national constitutional guarantees of rights are limited to citizens, and many European Community rights are restricted to its Member State nationals, the rights guaranteed under the ECHR are available to nationals and non-nationals of the Contracting States.

A Contracting State may be responsible not only for what happens within its own territory but also if it delivers an individual into another territory where there will be a serious violation of rights. For example, extraditing[5] or deporting[6] an individual to a third state where there is a serious risk of treatment contrary to Article 3 of the Convention will engage the responsibility of the Council of Europe state. However, Contracting States are not obliged to ensure that every aspect of other articles of the Convention have been complied with before co-operating with a third state: to execute a criminal sentence imposed in a third state did not require a Contracting State to verify that the proceedings which resulted in the conviction were compatible with all the requirements of Article 6 of the Convention. However, a Contracting State would be obliged to refuse to co-operate with a third state in such a case if it were the case that the conviction was the result of 'a flagrant denial of justice.'[7]

Under Article 56 of the Convention, a Contracting State may make a declaration that the Convention is to apply to any of the territories for whose international relations it is responsible. So for example, in the *Tyrer case*[8] in 1978, the United Kingdom was taken to the Court of Human Rights in respect of corporal punishment in the Isle of Man, a territory for whose international relations the United Kingdom is responsible but which governs its own internal affairs.

A Contracting State may also be responsible for acts committed outside its national territory if it exercises effective control over another territory. In the case of *Loizidou v. Turkey*[9], the Court of Human Rights held that the responsibility of a Contracting Party may arise when it exercises effective control of an area which is outside its national territory as a result of military action. A State may also be responsible for the actions of its authorities in a third state. However, for such responsibility to be engaged, it is necessary to be able to show that individuals acting in a third state are acting in the

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capacity as authorities of the Contracting States and not in an individual capacity. In *Drozd and Janousek v. France and Spain*[10], the Court of Human Rights held that while judges from France and Spain did indeed sit in the Andorran courts, they did not do so in their capacity as French or Spanish judges and their actions, therefore, could not engage the responsibility of their Contracting States under the Convention.

As to the temporal effect of the Convention, States will not be responsible under the Convention in relation to situations or facts which arose before the Convention entered into force for the State in question. However, if the alleged violation of the Convention is a 'continuing' situation then the Court will examine the situation as it exists at the date of the entry into force of the obligations. Accordingly, the Court has examined many cases alleging unreasonably lengthy proceedings in breach of Article 6 even where the original proceedings were commenced before the entry into force of the Convention in the states but where the proceedings were still not completed at the relevant date.[11] Such temporal limits also applied where states made declarations, prior to Protocol No. 11, accepting the right of individual petition and the compulsory jurisdiction of the Court but indicated that those declarations should apply prospectively only.

Limiting the effect of the Convention: reservations

Very few rights are guaranteed by the Convention without any exceptions. In most cases, there is some scope for restrictions which are necessary for the protection of the rights of others or for ensuring the prevention of disorder or crime etc. In relation to such restrictions, the major test applied by the Court of Human Rights is to determine whether the restrictions on the rights have been proportionate to the legitimate aim being pursued. In addition to this kind of restriction there are two other specific provisions of note.

As to the rights guaranteed under the Convention and any Protocols ratified, two provisions may permit the limiting of the obligations. Article 57 (previously Article 64) permits the making of reservations, while Article

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15 allows for derogations from certain articles. We will first consider the matter of reservations. Under the terms of Article 57, a reservation may be 'in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision.' Reservations of a general character are ruled out by Article 57. A state making a reservation is required to include a brief statement of the law concerned.

The Court has held that it has jurisdiction to review the validity of reservations[12] and has, on occasion, held reservations to be invalid. This is clearly welcome: otherwise, a state could largely negate its obligations under the Convention. However, the Court has not always applied Article 57 as strictly as it might have done and it is open to criticism for this.[13] At a more general level, the system is not entirely satisfactory: the validity of a reservation will be examined only when it arises in a case before the Court. Until then there is no opportunity to rule on the validity of the reservation. It has been suggested that a special procedure should be established to enable the admissibility of reservations to be ruled upon when they are made.[14]

On a more general level, the very idea of allowing states to make reservations has been described as one of the great weaknesses of the European Convention on Human Rights. Commissioner Frowein, as he then was, considered that the very idea of having a human rights treaty was that a minimum standard should be achieved. In his view this minimum standard is undermined where states can unilaterally make reservations.[15] It is hoped that reservations can be used to a minimum and only to provide a transitional period for a new party to the Convention to adapt its laws to the obligations of the Convention.

Limiting the effect of the Convention: derogations

Derogations are dealt with under Article 15. More strictly worded than Article 57, Article 15 makes it clear that temporary derogations may be made in exceptional circumstances only, and in relation only to specified articles of the Convention. Given that many articles of the Convention permit states to make some restriction on rights in the interests of national security and public safety, it is clear that Article 15 is designed to deal with truly exceptional circumstances. Article 15 lists a small number of rights from which there can be no derogation: Article 2 (with the exception of deaths 'resulting from lawful acts of war'), and Articles 3, 4(1) and 7. A

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derogation is permitted by Article 15 where there is 'war or other public emergency threatening the life of the nation.' In such circumstances, the State is allowed to take measures derogating from its obligations under the Convention 'to the extent strictly required by the exigencies of the situation.'

Under Article 15(3), a state which wishes to derogate from its obligations is to keep the Secretary General of the Councils of Europe 'fully informed' of the measures it has taken and the reasons for them. It is also supposed to inform the Secretary General when the exceptional measures have ceased to operate. As is the case regarding reservations, the validity of a derogation will be examined only when a case arises before the Court of Human Rights. We have already noted the problems with such a system in relation to reservations. This is even more serious in relation to derogations since not only will there be the uncertainty as to the validity of the derogation but there is the serious danger that individual applications will be inhibited, particularly given that the circumstances which will accompany a derogation, even one ultimately found not to be valid, are not conducive to the best protection of human rights. Indeed the right of access to the national courts may itself have been suspended under a derogation.

Even where the Court has reviewed derogations adopted by States, its scrutiny has tended to be limited. The Court has held that in determining whether the life of the nation is threatened and the extent to which exceptional measures are needed, the national authorities are better placed than the Court to decide on the existence of the threat. Accordingly it sees fit to accord a wide margin of appreciation. However, it emphasises that the domestic margin of appreciation is accompanied by European supervision in that the Court will rule on whether the state has gone beyond what is strictly required by the situation. It has on occasion found that a state's actions have indeed gone too far, as for example in *Aksoy v. Turkey*[16], where incommunicado detention of 14 days was held to be too long, but on other occasions it has been severely criticised for allowing too much leeway to a state, as for example in relation to the United Kingdom in *Brannigan*[17] where it appeared that the Court did not require the state to establish why derogation was strictly necessary and why other measures could not have

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been adopted instead. One of the dissenting judges in that case, Judge Makarczyk underlined the overall seriousness of derogations:

'The principle that a judgment of the Court deals with a specific case and solves a particular problem does not, in my opinion, apply to cases concerning the validity of a derogation made by a State under Article 15 of the Convention. A derogation made by any State affects not only the position of that State, but also the integrity of the Convention system of protection as a whole. It is relevant for other Member States – old and new – and even for States aspiring to become Parties which are in the process of adapting their legal systems to the standards of the Convention.'[18]

It is worth noting too that the *Brannigan case* arose in relation to the same situation which had been ruled by the Court to be a violation of Article 5 in the *Brogan case*.[19] The United Kingdom Government introduced the derogation which was at issue in *Brannigan* in response to the ruling in *Brogan* rather than making any change to the law. This caused one commentator to remark that

'There is a potential danger that a state found to have committed breaches of the Convention (apart from obligations from which no derogation is permitted) may decide that the least onerous course of compliance is to lodge a specific derogation with the Council of Europe, of the kind approved in *Brannigan*.'[20]

Possible applicants under the European Convention of Human Rights

Two categories of applicant are provided for by the Convention. Under Article 33, a High Contracting Party may bring an application alleging a violation of the Convention by another High Contracting Party. Article 34 provides for individual applications, whereby 'any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties' may make an application to the Court.[21] Of the two kinds of case, the system of individual applications has amounted for almost all of the cases which have reached the Court of Human Rights. A very small number of inter-state cases have been instituted and an even smaller number have actually reached the Court. And of the inter-state applications, fewer still can be identified as being from what might be described as 'disinterested' states, namely states with no

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special national interest involved in the dispute and no special link with the injured individuals. In relation to the referral of the *Greek case*[22] to the Commission in 1967, one writer declared that had the four states not referred the case it would have been

> unmistakably demonstrated that even as advanced a system for the international protection of human rights as the European Convention on Human Rights is doomed to fail whenever it must depend for its enforcement on disinterested governments.[23]

Nonetheless, it is important that the provision for inter-state complaints exists: when states were not obliged to accept the right of individual petition, an interstate complaint was the only means whereby complaints against some Contracting States could be made to the Commission. Even now where the right of individual petition is not optional, the interstate complaint still leaves a safety valve for cases where individual victims might not come forward, whether for fear of repercussions, lack of awareness of the Convention, alienation from the legal system and a disinclination to pursue a grievance through the courts of the state in question, or other reasons.

However, it would appear that it is very much in the nature of a safety valve: states have shown no real inclination to bring such actions. Perhaps this should not surprise us too much: in the context of the European Union remedies, states have been unwilling to litigate against each other for breaches of European Community law. In the European Union, the burden of initiating such litigation is undertaken by individuals within the member state courts and the European Commission before the European Court of Justice. There is no equivalent of the European Commission as an independent enforcer within the system of the European Convention and the litigation which has in effect brought to light breaches of the Convention before the Court has been the result of individual applications. While various organs within the Council of Europe operate a watching brief on the compliance of states with the norms of the European Convention on Human Rights and other Council of Europe treaties, none can initiate a case before the Court of Human Rights although they may be able to bring political

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pressure to bear on the states concerned.[24] Under Article 52 (previously Article 57), the Secretary General may require any State to explain how its national law ensures the effective implementation of any of the provisions of the Convention. The Convention makes no indication of what the Secretary General is to do with that information if it discloses possible violations and it certainly does not give a power to initiate an action before the Court.

Admissibility requirements – a general overview

Two requirements on admissibility apply to all applicants, individual or state, to the Court of Human Rights: Article 35(1) requires that the Court may deal with a matter only after all domestic remedies have been exhausted and it imposes a time limit for the submission of applications of six months from the date on which the final decision on the issue was taken in the relevant Contracting State. As regards individual applications, Article 35(2) sets out a number of additional criteria: that the application should not be anonymous, that it should not be substantially the same as a matter already considered by the Court of Human Rights or submitted to another international system, that it should not be 'incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.' In addition, Article 34 itself, in setting out the right of individual application, stipulates that the person bringing the application must be a 'victim' of a violation of the Convention or its protocols. It is proposed to examine each of these requirements in a little more detail.

Exhaustion of domestic remedies

Article 35(1) states that the 'Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law.' Unlike Article 35(2) which applies only to individual applications, the requirement to exhaust domestic remedies also applies to states where they are taking up the case of an individual, although not in relation to an abstract complaint concerning a legislative measure or an officially condoned administrative practice. As with other human rights treaties which apply such a 'local remedies rule', the rationale behind this is that the state in question should have been given the opportunity to resolve the matter internally before being taken before the international body. The Court of Human Rights has emphasised that this fits

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within the context of the Convention machinery being subsidiary to the states' mechanisms for ensuring compliance with the Convention. As mentioned earlier, Article 13 of the Convention requires that states should have a system for redress where there is an alleged breach of the Convention. The obligation is to pursue domestic remedies which are available, which are sufficient and which relate to the breaches alleged.[25] Where there is doubt about the effectiveness of a remedy, then one should bear in mind the Court's statement that there is an obligation to use any remedy 'which does not clearly lack any prospect of success'.[26] However, where a remedy formally exists, the Court of Human Rights will, where relevant, examine whether in practice that remedy is likely to be effective in practice. There is no obligation on an applicant to pursue a remedy which would clearly be futile in practice. If an individual can show that there is an administrative practice which has been officially tolerated, this will be a ground for not having pursued a particular remedy. In cases where it is impracticable or futile for applicants to have tried to pursue local remedies, the Court has held their applications admissible notwithstanding their failure to exhaust the domestic avenues of redress. In the Court's words,

'it is essential to have regard to the particular circumstances of each individual case. This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants.'[27]

Time limit of six months

Applications to the Court must be made 'within a period of six months from the date on which the final decision was taken' within the national system. The final decision is the decision at the end of the chain of domestic remedies which the applicant is obliged to exhaust under the local remedies rule.

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Individual applications: obligation not to hinder

The final sentence of Article 34 underlines the obligation of the Contracting States in relation to the right of individual application. It is not simply that such applications must be permitted but States are required not to hinder the effective exercise of this right in any way. Indeed, if the right of individual application is undermined, the entire Convention protection system which depends so heavily on individual application is called into question.

The Court will require independent and concrete proof that an interference has taken place by the authorities. Sadly, it has found such interference in a number of cases. Questioning applicants about their applications or putting pressure on them to withdraw applications are serious interferences, and the fact that an individual pursues a complaint in the face of such interference does not absolve the state from responsibility.[28] Undue interference with correspondence of a detained person who is making an application will also amount to a hindrance. The seriousness of such possible interferences is underlined by the drawing up of the European Agreement relating to persons participating in proceedings before the European Commission and the European Court of Human Rights.[29] The extent to which a state might be required by Article 34 to comply with a request by the Court to take interim measures to maintain the status quo is considered a little later.[30]

Requirement that an individual applicant be a 'victim' of a violation

In contrast to Article 33 on inter-state applications, which imposes no special standing requirement on states, Article 34 requires that any person, non-governmental organisation or group of individuals bringing an application must be a 'victim' of a violation of the Convention rights. Accordingly, an organisation such as a trade union may allege that its own rights as a trade union have been violated, but it may not advance the grievances of individual members. The actual victim of an alleged violation will be any person who has already been personally affected by the alleged violation. Potential victims, those who are at risk of being affected by a law or administrative act, such as deportation, will also be regarded as a victim. So too will indirect victims, those persons immediately affected by a violation which directly affects another person, for example the family members of someone who has been imprisoned or killed.

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Applications shall not be anonymous

This is not generally a major issue. It is possible for an applicant's identity to be kept private after it has been disclosed to the Court. The most likely realistic situation for this condition to be an issue is where an organisation, whose rights as an organisation have not been infringed, wishes to take up the claims of its members. In such a case, the individuals who are the actual victims of the alleged breach need to be identified; if they are not the application would be anonymous. (It would also lack a victim for the purposes of Article 34.)

Not the same as a matter decided already by the Court or submitted to another procedure of international investigation or settlement and contains no relevant new information

This requirement is not designed to prevent multiple applications on the same grievance but rather repeated complaints on the same grievance by the same applicant. If the same applicant wishes to make a further application to the Court, it will be admissible only if there are new facts or a change in the legal position which would mean that the Court would be deciding a new matter.

The prohibition on the application having been made to another international system of protection prevents an applicant from approaching the European Court of Human Rights if he or she has already made an application which is being examined by, for example, the United Nations Human Rights Committee. In practice, this has not proved to be of great practical significance. So far, the question of whether submission of a similar issue to the European Court of Justice in Luxembourg would attract the application of this provision has not been determined.

Not incompatible with the Convention

An application might be incompatible with the Convention in a substantive sense if the applicant were seeking to rely on the Convention to

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achieve an end inconsistent with the Convention itself. Article 17 provides that nothing in the Convention

'may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent that is provided for in the Convention.'

The other sense in which applications may be 'incompatible with the Convention' is where they fall outside the application of the Convention, whether substantively (*ratione materiae*), temporally (*ratione temporis*), geographically (*ratione loci*) or in terms of the permitted applicants and defendants (*ratione personae*). These matters have already been considered in earlier sections

Not an abuse of the right of application

A test case is not an abuse of the right of application. Nor will an application which is designed to win publicity for a particular cause be so either in itself. An abuse of petition will overlap with the idea of an application which is inconsistent with the Convention where the object of the application is to undermine the legitimate rights of others.

Not manifestly ill founded

This actually requires some consideration of the merits of the case. If at the end of a preliminary examination of the law and facts presented, the Court concludes that there is no violation of the Convention, it may declare the application inadmissible as manifestly ill founded. This sounds as if the application was wholly unarguable but in fact this is unlikely to be the case. It is more of an indication that the Court is able to make a decision on the case on the basis of the law and facts presented and that no more complex issues requiring further investigation are present. One writer has described the word 'manifestly' as being used in a 'flexible' sense here and describing the decision of manifestly ill founded as being a finding that on the basis of the examination of the information provided by both parties, 'it has now become manifest that the claim of a breach of the Convention is unfounded.'[31]

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The issue of interim measures – a weakness in the Convention?

Unlike certain other treaties[32], the European Convention on Human Rights does not include a provision empowering the Court of Human Rights to order interim measures. The absence of such a provision was discussed by the Parliamentary Assembly in the 1970s and it recommended the drafting of an additional protocol to the Convention to allow the Commission and Court to order interim measures when necessary. However, this was considered by the Committee of Ministers not to be necessary given that the practice of the Commission in requesting governments to suspend the measure complained of was working satisfactorily. Under its rules of procedure, the Commission could 'indicate to the parties any interim measure the adoption of which seems desirable in the interest of the parties or the proper conduct of the proceedings before it.'[33] Such indications have usually been requested in cases where expulsion of an applicant is imminent and where it is argued that the applicant will face treatment contrary to Article 3 of the Convention if expelled from the Contracting State.[34] Interim measures have also been requested where a sentence of death has been passed on an applicant.[35]

However, in the *Cruz Varas* case[36], where such an indication had not been complied with, the Court ruled, by ten votes to nine, that the state had not breached its obligation under (the old) Article 25 (now Article 34) not to hinder the individual application made. Not complying with a Commission indication under Rule 36 did not amount to hindering an application. The fact that such indications had almost always been complied with was not, in the Court's view, because of a belief that the indications gave rise to a binding obligation but was a matter of good faith co-operation. Rule 39 of the Rules of the Court allows the Court to indicate interim measures but if the Court follows the ruling made in *Cruz Varas,* this will not give rise to a binding obligation.[37] However, the Court did indicate that a failure to comply with a Rule 39 indication would lead to any subsequent breach found by the Court being seen as aggravated by the failure to comply. It emphasised that such indications would be given only in exceptional cases and served in expulsion cases to advise a state that irreversible harm might

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be done if an applicant were deported or extradited and that there is good reason to believe that a breach of the Convention will be found.

An alternative to the indication of interim measures would be for the Court to expedite the proceedings by giving priority to a particular application rather than taking the application in the order in which they become ready for examination.[38]

The Judgment of the Court of Human Rights and compliance by the state

The judgment of the Court indicates whether there has been a violation of the Convention as alleged by the applicant. In cases where it finds a violation, it may, under Article 41, 'afford just satisfaction' to the applicant where the internal law of the state in question allows only partial reparation to be made. However, only compensation, pecuniary and non-pecuniary, and costs may be awarded by the Court. It does not have the jurisdiction to order particular action to be taken by the State in breach of the Convention. Accordingly, the Court has been unable to accede to requests from successful applicants before it that criminal convictions be struck from their record[39], or deportation orders annulled.[40] In *Bozano*[41]it declined to make a recommendation that the French Government seek a diplomatic solution with the Italian Government whereby the latter would give the applicant a presidential pardon or allow the re-opening of the criminal proceedings taken against him in the 1970s. Where judgment has been given by the Grand Chamber of the Court it is final. Where judgment has been given by a Chamber it becomes final when it can no longer be referred to the Grand Chamber, where the parties have declared that they will not request a referral to the Grand Chamber or where the Grand Chamber has rejected a request to refer the Chamber's judgment to it.[42]

Under Article 46, the Contracting Parties undertake to abide by the judgment of the Court in any case to which they are parties. The judgment is transmitted to the Committee of Ministers under Article 46 and the Committee of Ministers is charged with supervising the execution of the judgment. What actually needs to be done depends on the violation that has been found by the Court. Sometimes a state will simply need to pay any costs and compensation ordered in order to comply. In other cases some more extensive action may be required. However, as noted, the Court's judgment will only indicate the violation and any just satisfaction. It will not

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indicate any other specific measures to be taken. However, the State remains under an obligation to remove the violation which has taken place. This may involve removing legislative provisions or enacting new legislation. The Committee of Ministers can bring political pressure to bear on a state which fails to comply with a judgment. Ultimately, the defaulting state could be suspended or expelled from the Council of Europe but this appears to be very unlikely to happen in the absence of continuing, deliberate and exceptionally grave breaches of the Convention with no effort whatsoever being made to secure compliance.

There have been cases in the past where significant delay has taken place, even in relation to the paying of compensation. In an article in 1992, one commentator noted instances where just satisfaction had not been paid for up to three years.[43] In response to such delays the Court began to indicate a time limit in its judgments for the payment of just satisfaction. Where legislation has needed to be changed there have been some considerable delays. For example, the violation found in the *Marckx case* was not remedied until some eight years later.

However an applicant who considers that judgment has not been properly executed cannot raise the issue before the Committee of Ministers since there is no such access and system for individual complaint. In *Dublin Well Woman Centre Ltd v. Ireland*[44], the applicant sought to raise before the Commission the non-execution of the judgment by the State. The application was ruled inadmissible by the Commission on the basis that it had no competence to examine whether a Contracting Party had complied with its obligations under a judgment of the Court, that supervisory role being the jurisdiction of the Committee of Ministers under the Convention. However, if an applicant can show that the non-execution of the original judgment has given rise to a new violation of the Convention, the matter could be examined. This was the case following the *Marckx* case[45] where the legislation which was finally introduced to remedy the discrimination identified in *Marckx* was not made retrospective. A later case, *Vermeire*,[46] raised the same discrimination and the Court held that there had been a breach of Article 14 in conjunction with Article 8. A state which fails to

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remedy a breach will therefore run the risk of being found to be in violation on the same point in other applications. In the Court's words,

'The freedom of choice allowed to a State as to the means of fulfilling its obligation under [now Article 46(1)] cannot allow it to suspend the application of the Convention while waiting for such a reform to be completed, to the extent of compelling the Court to reject in 1991, with respect to a succession which took effect on 22 July 1980, complaints identical to those which it upheld on 13 June 1973.'[47]

In the case of *Olsson v. Sweden (No. 2),*[48] the same applicants as in *Olsson v. Sweden (No. 1)*[49] returned to the Court of Human Rights, arguing that the restrictions on access to their children found to be in breach of the Convention by the Court of Human Rights in the first case had continued in place. The applicants argued that by continuing to act in breach of article 8 after the judgment in the first case, the State had acted in breach of Article 53 (now Article 46(1)). In its judgment, the Court noted the resolution of the Committee of Ministers[50] whereby it had declared that it had 'exercised its functions under Article 54 [now Article 46] of the Convention', 'having satisfied itself that the Government of Sweden has paid to the applicants the sums provided for in the judgment.' In its judgment in the second case, the Court noted that the complaint under Article 53 gave rise to new issues which had not been determined under the first judgment. These issues were essentially the same as the complaint which had been put forward in the second case in relation to Article 8 on which the Court had found no violation of Article 8. Accordingly, it found that no separate issue arose under Article 53 (now Article 46). However, this judgment appears to leave open the possibility in a future case that the Court might examine a complaint under Article 46(1) that a judgment has not been complied with.

Friendly Settlements

One possible outcome of a case is that the parties will arrive at a friendly settlement of the matter. Article 38 indicates that once an application has been declared admissible, the Court must pursue the examination of the case and must

'place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.'

If such a friendly settlement is reached the Court then strikes the case out of its list. Terminating the proceedings at the Court, a friendly settlement, involving 'neither a winner nor a loser'[51], has been described as arrangement in which 'both sides will normally have gained something as a result of the settlement' and, as such, 'often the most satisfactory termination of a legal dispute.'[52]

Some friendly settlements involve the payment of a sum of compensation on an *ex gratia* basis to the applicant; others involve an agreement on the part of the State to engage in varying degrees of reform of the legal position, for example by introducing amending legislation in the national legislature or ensuring that the members of the relevant authorities are better informed on their obligations under the Convention. In some cases the parties themselves may have carried out the negotiations; in other cases, there may have been significant input from the Convention organs. It is up to the Court whether it strikes a case out of the list: it may refuse to do so where it considers that the public interest requires that the matter be examined by it.

Is the system effective?

Is the system of protection under the European Convention on Human Rights effective? Many writers hail the Convention system as a very effective and impressive system. Exactly what they are praising and exactly how we answer the question of effectiveness depends on the benchmark for effectiveness which is adopted. Indeed, different writers may be judging different elements of the system.

Determining the levels of compliance is in any case a difficult matter. Even in relation to the specific area of ascertaining the extent to which the judgments of the Court of Human Rights are complied with there are difficulties. It is of course very easy to consider the resolutions of the Committee of Ministers which record whether the State concerned has paid the just satisfaction ordered by the Court. But this is a fairly minimal level of compliance by a state. Where the cause of a violation is the existence of a specific piece of legislation identified in the Court judgment, it will be possible to ascertain whether that offending legislation has been removed. It

is, however, harder at times to detect what the effect of the removal of a piece of legislation has been in practice, especially if alternative legislation has been enacted at the same time. Where a violation arises from practices of national authorities - police, prison or administrative - it is harder to determine whether a particular practice has been stopped in accordance with a ruling by the Court. This is particularly the case in situations where the general public do not have access, such as to places of detention. It may be that the resolution of the Committee of Ministers notes the Government's assurance that the judgment of the Court has been notified to the relevant authorities. This may be welcome news but it does not necessarily tell us how far changes are being made in day to day practice by those implementing the law at the most basic level.

Janis, [53] for example, considers that different aspects of the Strasbourg may be considered in judging its efficacy. There is the question of the level of compliance with the judgments of the Court of Human Rights (and decisions of the Commission and Committee of Ministers in the past). Janis urges caution in relation to some of the claims in relation to success on this level:

> It may well be that the record of executing Strasbourg judgments is no worse than the record of many domestic courts, but one must be careful not to go too far in asserting a nearly perfect record for compliance with Strasbourg judgments.[54]

As to the overall efficacy of the Strasbourg legal system, Janis considers that many of the assertions of the overall efficacy of the system may in the end be somewhat impressionistic.[55] One of the concerns expressed by this author is that there is not as much objective study of levels of compliance as would be useful.

Janis's caution may be very wise. Even if the Convention is successful relative to certain other human rights treaties, there is certainly scope for improvement. A report of July 2000 by the Parliamentary Assembly's Committee on Legal Affairs and Human Rights makes sobering reading.[56] It expresses the Assembly's concern that 'the execution of some judgments is causing considerable problems that threaten to undermine what almost forty years of operating the Convention machinery has achieved.'[57]

At times, the Parliamentary Assembly has expressed frustration with the Committee of Ministers for not being more energetic and rigorous in its supervision of the compliance by states with Court rulings. However, its report of July 2000 considers that problems relating to the execution of judgments arise from a range of factors. It identifies what it sees as the causes of the problems. Fortunately, it considers that political reasons are the least frequent cause of non-compliance: it is extremely rare for a state to refuse outright to comply. More often, slow or imperfect compliance is related to the enormous scale of reforms needed to remedy a situation – not just legislation , regulatory and administrative measures, and better training for officials, but also a change in cultural attitudes towards human rights.

The Parliamentary Assembly's Committee report notes that states may have practical problems such as when drafting new legislation is disrupted by problems in the legislature. Sometimes it is a matter of economic resources, as for example where there is a shortage of judges or where removing some discrimination has significant financial implications. In addition, in the Committee's view, the judgments of the Court are not always as clear as they might be in terms of indicating what needs to be done to remedy the breach. There are also occasions where a state's membership of another organisation may give rise to problems: the report refers to the difficulty for the United Kingdom in remedying the breach found in the *Matthews* case.[58] In order to change the position concerning elections to the European Parliament in Gibraltar, the United Kingdom needs the agreement of the other European Union member states.

In response to the various concerns, the Parliamentary Assembly has urged changes at national and Council of Europe level.[59] At national level it urges better screening of legislation in the light of the Convention, better dissemination of the Court's case law in the relevant national languages and prompt execution of judgments. At Council of Europe level, it urges the Committee of Ministers to be stricter with states which fail to execute their judgments and to ensure that the measures taken by them are effective in preventing further violations. It has recommended that the Committee of Ministers should seek the amendment of the Convention to introduce a system of financial sanctions for cases where there is persistent failure on

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the part of a state to execute a Court judgment. This envisages a system of daily fines for delay in execution of the judgment. This is quite reminiscent of the system which exists in the European Community.

As to judging the performance of any one state, it is clear that this cannot be done solely from a consideration of the number of times the State is found by the Court to be in breach of its obligations. A very small number of cases before the Court might indicate that the Convention is well integrated into the domestic legal system and that it is well respected by the national authorities. On the other hand, it might indicate a lack of awareness of the Convention rights on the part of the general public and the legal profession within that state, or worse still a climate of fear and intimidation in which the prospect of individual applications is small. A large number of cases against a State might indicate a poor level of respect for the Convention, the failure to ensure its respect within the national system and possible structural problems in the organisation of the national legal system. It might also indicate a well-informed public and legal profession and the presence of pressure groups that are supporting claims by individuals in order to achieve reforms in the law[60], signs of a healthy awareness of human rights and conditions in which claims may be pursued relatively easily. Without knowing about the individual systems and the circumstances of each it is difficult to make these judgments.

The nature of the breaches cannot be ignored. Some breaches of the Convention are more serious than others. Repeated breaches indicate problems within states and repeated grave breaches indicate serious problems. Unfortunately, it is relation to such breaches that the Convention system may be least equipped to respond.[61] Indeed, some writers have put the success of the Convention down to the fact that the majority of the breaches are minor and unintentional, thus requiring less by way of response from the offending state.[62] Helfer and Slaughter note a 'sad paradox' whereby international human rights and tribunals under those regimes have been most effective in relation to the states that arguably need them the least.[63] Experience under the European Convention is not out of line in this respect with experience under the European Community law enforcement machinery.

Under the Community system, many alleged breaches are cleared up during informal administrative procedures and only a small number of cases actually reach the judicial stage of the enforcement. However, where a State

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has intentionally decided to flout Community law the system is least well equipped to secure compliance. It remains to be seen how the system of financial penalties introduced into the Community system for persistent violations improves the system in the long run. The point is that where a State is determined not to comply there is very little a supranational system can do to secure real compliance. In an ideal world, best compliance with the Convention would be achieved by preventing the breaches occurring in the first place.

In the end, the successful implementation of the Convention requires the control machinery established by the Convention to operate, as intended, as a subsidiary system to the protection afforded at national level. Given this, it is above all essential that Contracting States are assisted, urged and, if necessary, pressured into improving the level of protection within their national systems. The Committee of Experts for the Improvement of Procedures for the Protection of Human Rights has emphasised the need to ensure, for example, the systematic screening of legislation and administrative practice in the light of the Convention and a better dissemination at national level of case law of the Court. However, as noted earlier, improving protection at the national level is not just about putting in place appropriate legislation: it is above all about ensuring that a culture of respect for human rights and an awareness of human rights obligations are established at all levels within the state, not just among state bodies but also among the general public. Projects, such as the one which has been undertaken by the Marmara University European Community Institute, on education on human rights in schools and in the training of the police have an enormously important role to play in that process.

Endnotes

[1] *Silver v United Kingdom*, Judgment of 25 March 1983; 5 E.H.R.R. 347.

[2] *Akdivar v. Turkey*, Judgment of 16 September 1996; 23 E.H.R.R. 143

[3] Article 25 of the Convention prior to the entry into force of Protocol No. 11.

[4] Article 46 of the Convention prior to the entry into force of Protocol No. 11.

[5] *Soering v. United Kingdom*, Judgment of 7 July 1989; 11 E.H.R.R. 439

[6] *Cruz Varas v. Sweden*, 20 March 1991; 14 E.H.R.R. 1

[7] *Drozd and Janousek v. France and Spain*, Judgment of 26 June 1992, para 110; 14 E.H.R.R. 745

[8] *Tyrer v. United Kingdom*, Judgment of 25 April 1978; 2 E.H.R.R. 1

[9] Judgment of 23 March 1995 (preliminary objections); 20 E.H.R.R. 99

[10] See note 8 above

[11] See, for example, *Kudla v. Poland*, Judgment of 26 October 2000

[12] *Belilos v. Switzerland*, Judgment of 29 April 1988; 10 E.H.R.R. 466

[13] Van Dijk and Van Hoof, *Theory and Practice of the European Convention on Human Rights*, 3rd ed., p779. (1998, Kluwer Law International, The Hague)

[14] *Ibid.* p775

[15] Frowein, Reservations to the European Convention on Human Rights, in Matscher and Petzold (ed), *Protecting Human Rights: The European Dimension* (1988, Carl Keymanns Verlag, Koln.)

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[16] Judgment of 18 December 1996; 23 E.H.R.R. 553

[17] *Brannigan v. United Kingdom,* Judgment of 26 May 1993; 17 E.H.R.R. 391. See also *Marshall v. United Kingdom*, Decision on admissibility of 10 July 2001.

[18] *Ibid.*

[19] *Brogan v. United Kingdom,* Judgment of 24 November 1988; 11 E.H.R.R. 117

[20] Janis, Kay and Bradley, *European Human Rights Law*, 2nd ed, p396 (2000, Oxford University Press, Oxford). See also the general discussion in Gross and Ní Aoláin, 'To know where we are going, we need to know where we are: Revisiting states of emergency', in Hegarty and Leonard, *Human Rights: An Agenda for the 21st Century* (Cavendish, London, 1999).

[21] State bodies will not be regarded proper applicants under Article 34.

[22] Applications by Denmark, Norway, Sweden and the Netherlands against Greece, 12 *Yearbook of the European Convention* 196 (1969)

[23] Buergenthal, Proceedings Against Greece Under the European Convention of Human Rights, 62 *American Journal of International Law* 441 (1968). See also Becket, The Greek Case before the European Human Rights Commission, 1 *Human Rights Law Journal* 91, 94 (1970)

[24] Committee of ministers, Parliamentary Assembly, Council of Europe Commissioner for Human Rights and Secretary General of the Council of Europe.

[25] *Brozicek v. Italy*, Judgment of 19 December 1989; 12 E.H.R.R. 371

[26] *De Wilde, Ooms and Versijp v Belgium*, Judgment of 18 June 1971; 1 E.H.R.R. 373, 432

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[27] *Akdivar v. Turkey,* Judgment of 16 September 1996; 23 E.H.R.R. 143

[28] *Ibid.*

[29] ETS no. 67; entered into force in 1971

[30] See text accompanying note 33

[31] Van Dijk and Van Hoof, note 14 above, p165

[32] Contrast the EC Treaty, the American Convention on Human Rights and the Statute of the International Court of Justice which include such a provision.

[33] Rule 36

[34] *Cruz Varas v. Sweden*, Judgment of 20 March 1991; 14 E.H.R.R. 1; See also *Mamatkulov v. Turkey and Abdurasuloviv v. Turkey*, Decisions on admissibility of 31 August 1999.

[35] *Ocalan v Turkey*, 30 November 1999; Decision on admissibility of 14 December 2000.

[36] *Cruz Varas v. Sweden*, Judgment of 20 March 1991; 14 E.H.R.R. 1

[37] The *Cruz Varas* approach was followed by the Court in *Conka and others Belgium*, Decision on admissibility of 13 March 2001.

[38] Rule 41 of the Rules of the Court

[39] *Brozicek,* see note 25 above

[40] *Nasri v. France*, Judgment of 13 July 1995; 21 E.H.R.R. 458

[41] *Bozano v* France, 18 December 1986; 9 E.H.R.R. 297

[42] Article 44

[43] Christian Tomuschat, Quo Vadis Argentoratum? / The success story of the European Convention on Human Rights – and a few dark stains, 13 *Human Rights Law Journal* 401. See the examples given therein.

[44] Application no 28177/95, 9 April 1997

[45] *Marckx v. Belgium*, Judgment of 13 June 1979; 2 E.H.R.R. 330

[46] *Vermeire v. Belgium,* Judgment of 29 November 1991; 15 E.H.R.R. 488

[47] *Ibid.* para. 26 of the Judgment of the Court

[48] Judgment of 30 October 1992; (1994) 17 E.H.R.R. 134

[49] Judgment of 24 March 1988; 11 E.H.R.R. 259

[50] Res. DH (88)18, 26 October 1988

[51] Kruger and Norgarrd, Reflections concerning friendly settlement under the European Convention on Human Rights, in Matscher and Petzold (ed), *Protecting Human Rights: The European Dimension* (1988, Carl Keymanns Verlag, Koln.) p329

[52] *Ibid.*

[53] Janis, The Efficacy of Strasbourg Law, 15 *Connecticut Journal of International Law* 39 (2000)

[54] *Ibid.*

[55] He admits to being 'as guilty as anyone in making grand claims about the efficacy of the Strasbourg legal system.' *Ibid.*

[56] Doc. 8808, 12 July 2000

[57] *Ibid.* para. 5

[58] Judgment of the Court of 18 February 1999.

[59] Res. 1226 (2000); Rec. 1477 (2000).

[60] Harlow and Rawlings, *Pressure through Law*, (1992, Routledge, London) discusses the role of pressure group activity in the United Kingdom in relation to the preparation of cases under the European Convention.

[61] Menno T. Kamminga, Is the European Convention on Human Rights Sufficiently Equipped to Cope with Gross and Systematic Violations?, 12 *Netherlands Quarterly of Human Rights* 153, 153-154

[62] *Ibid.*

[63] Helfer and Slaughter, Toward a Theory of Effective Supranational Adjudication, 107 *Yale Law Journal* 273 (1997)

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TURKEY'S QUEST FOR MEMBERSHIP OF THE EUROPEAN UNION: THE ROLE OF HUMAN RIGHTS

Leo Zwaak*

Introduction

In its screening of candidate countries to the European Union the European Commission takes carefully note as to whether the candidate country has adhered to a series of human rights instruments such as the ECHR, the European Social Charter (ESC), the European Convention for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment (CPT), the Framework Convention for the Protection of Minorities and the global human rights treaties, like the ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the Convention against Racial Discrimination (CERD).[1]

In April 1987 Turkey applied for membership of the European Community[2], however in 1989, the European Commission stressed that priority was given to achieving the aims of the Single European Act[3] and that it was undesirable to start accession negotiations with any country before 1993. In 1993 the Copenhagen European Council established the accession criteria for countries wishing to join the European Union (EU). They were to possess stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. The Treaties on European Union (concluded in Maastricht on 7 February 1992 and Amsterdam, 2 October 1997) build on the established case law of the European Court of Justice. The European Court of Justice has incorporated the rights enshrined in the European Convention on Human Rights (ECHR) into the general principles of Community law, which has been ratified by all

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Member States of the European Union. Sometimes, however, the Court will allow an appeal to other human rights conventions, such as the International Covenant of Civil and Political Rights (ICCPR).[4] The Treaty of Amsterdam contains the additional provision, in Article 6 paragraph 1, that the EU is founded on the principle of freedom, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which the Member States share in common. Article 7 has a sanction/suspension clause. Article 46 provides for the exercise of judicial control over respect for human rights. Article F, paragraph 2 of the Treaty (Article 6, paragraph 2 of the Treaty of Amsterdam) lays down that the Union shall respect fundamental rights, as guaranteed by the ECHR, including the acquis.[5]

Relations between Turkey and the EU have been a chapter of misunderstanding, dissatisfaction and confusion. Moreover, the issue of Turkey's possible membership of the EU has placed great strain on these relations, particularly in recent years. This is because the opening up of Central and Eastern Europe means that Turkey has once again been obliged to take a step back. In its report, the Advisory Council to the Netherlands Ministry of Foreign Affairs noted that there is no convincing reason why Turkey should in principle be rejected as a possible member of the European Union, but also pointed out that Turkish membership is still a long way off. Turkey is, after all, still evolving towards a pluralist democratic society.[6] In that respect, the extent to which Turkey observes the international human rights conventions – in particular, the ECHR and CPT – has to be considered.

This article will focus on the specific role of respect for human rights, democracy, the rule of law which has gradually been enhanced in the external relations of the EU. First of all, the extent to which the ECHR plays a fundamental role in the Turkish domestic legal order will be elaborated. Attention will be drawn to the development of the scope of the rights and freedoms enshrined in the ECHR through the case law of the supervisory organs of the ECHR in cases brought against Turkey. In this respect it is also necessary to consider Turkey's attitude towards the supervisory mechanism and the problems of derogating from some of the rights and freedoms enshrined in the Convention and the supervisory role of the Committee of Ministers of the Council of Europe in this respect. Finally, the role of the CPT and the Parliamentary Assembly of the Council of Europe will be considered.

I. The role of the European Convention for the Protection of Human Rights in the domestic legal order of Turkey

Turkey was one of the first countries to become a party to the ECHR, which it ratified on 18 May 1954, since that time several Protocols have been added to the Convention, which have not yet been ratified by all High Contracting Parties.[7] In particular, the fact that Turkey has not yet ratified Protocol No. 6 containing the abolition of capital punishment places a heavy burden on the requirements of a possible accession to the European Union. In this respect it also should be mentioned that the fact that Turkey has not yet abolished capital punishment is also contrary to the practice of the Council of Europe, since new members to the Council of Europe have to ratify the ECHR including the Protocols.

It was not until 1987 that Turkey recognised the right of individual petition and it accepted the jurisdiction of the European Court of Human Rights in 1990. So there has been only one decade during which the Strasbourg organs could deal with cases brought against Turkey. Until that time the ECHR only played a role at the domestic level, since being a party to the ECHR brings with it the obligation that a State party brings its legislation and practice into conformity with the Convention.

The legal force of a treaty *vis-à-vis* a State depends on whether the treaty has entered into force, both in general and for that particular State. Both are determined by ratification. The fact that a treaty has entered into force for a particular State means that this State is bound by its provisions The character and scope of the legal obligations ensuing for the State from such a legally binding treaty, however, may vary quite substantially between one treaty and another, but also within one and the same treaty. This character and this scope are determined by the individual provisions of the treaty as interpreted according to the general principles of treaty interpretation. In some cases the treaty obligations have to be fulfilled completely at the moment of the entry into force of the treaty. This is the case for all obligations laid down in the ECHR.[8] While in other cases the States have to do so only progressively.[9] This character and this scope, in their turn, determine the character and the scope of the State's discretionary powers concerning these obligations. In this respect it should be noted that the supervision of the implementation of the Convention rests primarily with the national authorities, in particular the national courts. This is especially the case in States where the courts are allowed to directly apply the Convention.

It should be noted that the Turkish legal system has a number of structural defects, such as regular interference from government authorities and a considerable shortage of judges. It is also worth mentioning that the Turkish government changed the composition of the state security courts by abolishing the requirement that one of the three judges should be from the armed forces, which can be considered as a positive development, since it contributes to the independence of the judiciary. Since 1990 the European Court of Human Rights has regularly heard cases against Turkey, where on some occasions it ruled that Turkey had been in breach of its obligations. These cases concerned the right to life, the prohibition of torture and inhuman treatment, deprivation of liberty, interference in the right of individual petition, the right to have access to an effective remedy, the right to a fair trial and the right to freedom of expression. Against this background, it might be said here that the role of the ECHR at the domestic level could be considered for a long period of time as rather weak, insofar as it lacked the supervisory mechanism of the Strasbourg organs.

II. Derogations with respect to the ECHR

Article 15 ECHR recognises the possibility to derogate rights and freedoms in case of a public emergency. However, this right of derogation does not apply to Article 2, except in respect of deaths resulting from lawful acts of war. This prohibition is absolute as regards Article 3 (torture, inhuman and degrading treatment or punishment) and paragraph 1 of Article 4 (slavery or servitude) Article 7, which forbids *ex post facto* criminal laws, nevertheless permits "the trial and punishment of any person for any act or omission which at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations", Protocol No. 6 concerning the abolishment of capital punishment and Article 4 of Protocol No. 7 concerning the *non bis in idem* principle.

With some intervals Turkey has made use of the right under Article 15 ECHR to derogate from the rights and freedoms laid down in the Convention - insofar as they are not excepted in the second paragraph - in case of a public emergency threatening the life of the nation. It did so for the period from 16 June 1970 to 5 August 1975, from 26 December 1978 to 26 February 1980 and from 12 September 1980 to 19 July 1987.[10] The state of emergency, declared in 1987 and continued in 10 south-eastern provinces, allows the civil governor to exercise certain quasi-martial law powers, including restrictions of the press, removal from the area of persons whose activities are deemed hostile

to public order and the right to hold suspects in incommunicado detention up to thirty days for certain crimes. The state of emergency decree was renewed in October 1995 and is still in force in six provinces in South Eastern Turkey and entails among other things limitations on the freedom of the press and the power to expel people from the area who pose a threat to public order and to detain people incommunicado for 30 days.[11]

According to the wording of Article 15(1) ECHR there must be "a time of war or other public emergency threatening the life of the nation". The Strasbourg organs have further elaborated when it could be said that there exists a situation threatening the life the nation. The Court set forth the criteria for evaluating the existence of the conditions dictated by Article 15(1), according to "the natural and customary meaning of the words":

> The existence ...of a "public emergency threatening the life of the nation," can be derived from "a combination of several factors, namely: in the first place, the existence in the territory of the Republic of Ireland of a secret army engaged in unconstitutional activities and using violence to attain its purposes; second, the fact that this army was also operating outside the territory of the State, thus seriously jeopardising the relations of the Republic of Ireland with its neighbour; thirdly, the steady and alarming increase in terrorist activities ..... [12]

In the *Greek* case the Commission clarified that the term "public emergency" contained the notion of imminent and widespread danger and that therefore the following elements were required to met the standard established by Article 15(1):

> 1) It must be actual or imminent.
> 2) Its effects must involve the whole nation.
> 3) The continuance of the organised life of the community must be threatened
> 4) The crisis or danger must be exceptional, in that the normal measures or restrictions, permitted by the Convention for the maintenance of public safety, health and order, are plainly inadequate.[13]

According to the note of the representative of the Turkish Government it made use of the right to derogate because there existed a situation amounting to a threat to the life of the nation in the meaning of Article 15 ECHR. Based on the above-mentioned case law the Court held in the case of *Aksoy v. Turkey* that, in light of all the material before it, the particular

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extent and impact of PKK terrorist activity in South East Turkey has undoubtedly created, a "public emergency threatening the life of the nation"[14] in the region concerned. The Court has also indicated that with regard the need to derogate a certain margin of appreciation should be left to the State.

In the case of *Ireland v. United Kingdom* which concerned, inter alia, the British Government's derogations from the Convention in regard to controlling the ongoing civil strife in Northern Ireland, the Court stated that:

> It falls in the first place to each Contracting State, with its responsibility for "the life of [its] nation, to determine whether that life is threatened by a "public emergency" and, if so, how far it is necessary to go in attempting to overcome the emergency. By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it. In this matter Article 15(1) leaves those authorities a wide margin of appreciation. Nevertheless, the States do not enjoy an unlimited power in this respect. The Court, which with the Commission, is responsible for ensuring the observance of the States' engagements (Article 19), is empowered to rule on whether the States have gone beyond the "extent strictly required by the exigencies" of the crisis ....The domestic margin of appreciation is thus accompanied by a European supervision.[15]

It should be noted, however, that Article 15 authorises derogations from the obligations arising from the Convention only "to the extent strictly required by the exigencies of the situation". In this respect it should be pointed out that the measures taken should not be disproportionate. In its report in *Ireland v. the United Kingdom*, the Commission addressed more explicitly the application of the principle of proportionality inherent in Article 15. It noted that a Government may not invoke the existence of a state of emergency to justify any possible measure it might choose to implement, but it must establish a concrete connection between the measure and the situation requiring control.[16] Also the territory to which the derogation applies has to be precise and thus in the case of *Sakik and others v. Turkey* the Court noted that the relevant legislation, which was referred to in the Turkish derogation applied, according to the descriptive summary of their content, only to the region where a state of emergency has been proclaimed, which, according to the derogation, did not include the city of Ankara. However,

the applicants' arrest and detention had taken place in Ankara on the orders first of the public prosecutor attached to the Ankara National Security Court and later of the judges of that court. Therefore it would be working against the object and purpose of that provision if, when assessing the territorial scope of the derogation concerned, it were to extend its effects to a part of Turkish territory not explicitly named in the notice of derogation.[17]

Although the Court has acknowledged that the particular extent and impact of PKK terrorist activity in South East Turkey has created, in the region concerned, a "public emergency threatening the life of the nation, however, conceivable that even if the public emergency continues, the effect of the measures adopted or of certain developments has been such that from a given moment continuation of the derogations to the same extent can no longer be deemed 'strictly required'. The interpretation of Article 15 must leave place for progressive adaptations"[18]. Especially, in the Turkish situation, where with the exception of some intervals there has been made use of the right of derogation for almost two decades the consequences thereof can be indicated as so far-reaching and the number of people affected is so large that the effective role of the Convention at the national level as well at the international level has been dramatically minimised. It goes without saying that victims of violations in cases of emergency may, in general, be expected to be hesitant to lodge complaints while national courts may be under considerable pressure.[19] In a number of cases related to detention and arrest under anti-terrorist legislation applicable in the United Kingdom, the Court has taken a consistent position that the fight against terrorism raises special considerations:

> Accordingly, for the purposes of interpreting and applying the relevant provisions of the Convention, due account will be taken of the special nature of terrorist crime, the threat it poses to democratic society and the exigencies of dealing with it.[20]

In particular, the Court has accepted governmental arguments as to a broader scope of "reasonableness" in connection with the investigation of terrorist crimes than would be permissible in connection with conventional crimes. The particular issue the Court has pinpointed in this regard is the importance of protecting confidential sources of information, including veiling even facts supporting the "reasonable suspicion", where those facts might lead to the identification of those sources. In times of public emergency, the categories of Article 5 (1) may be extended, for instance to include political

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internment of groups or individuals whose loyalty is questioned, on the conditions laid down in Article 15. This is a way in which national security may be invoked to interfere with personal liberty in cases other than those expressly authorised.

This area is very delicate, as some abuses of emergency powers have shown in the past. However, as early as 1961, in the *Lawless* case, the Court took the position that internment to prevent criminal offences without the accused being brought before the court, or a trial being intended, is not permitted.[21] The same position was taken in the *Greek* case, the case of *Ireland v. the United Kingdom* and in the case of *Brogan v. United Kingdom*.[22] In the case of *Aksoy v. Turkey* the Court noted that it has taken account of the unquestionable serious problem of terrorism in South East Turkey and the difficulties faced by the State in taking effective measures against it. However, it was not persuaded that the exigencies of the situation necessitated the holding of the applicant on suspicion of involvement in terrorist offences for 14 days or more incommunicado detention without access to a judge or other judicial officer.[23]

Although it is undeniable that a party to the Convention, in the circumstances of a particular situation, to make use of the right to derogate from certain rights and freedoms, within the strict limits laid down in Article 15, it might be questioned whether this still is so with respect to Turkey. In fact during the whole period it has been switching on and off its obligations under the Convention without any form of supervision being exercised by the Strasbourg organs. It might be questioned whether a State party should have the right to derogate for such a long period as in the case of Turkey. A derogation made by any State affects not only the position of that State, but also the integrity of the Convention system of protection as a whole. It is true that the Court has emphasised the obligation of the derogating State to review the situation on a regular basis. But this obligation clearly results from the third paragraph of Article 15 and the emphasis does not contribute to reassure the international community that the Court is doing all that is legally possible for full applicability of the Convention to be restored as soon as practicable. In this respect it opens for the derogating State, an unlimited possibility to derogate from its obligations for an uncertain period of time.[24] This is not only an undesirable situation from the perspective of the Strasbourg supervisory mechanism, at the long run it is also at the detriment of the derogating State.

III. Questions of State responsibility in respect of the Northern Cyprus

In general, a State may define its own jurisdiction, however always with regard to the confines of international law, including the relevant Articles of the Convention. For example, Article 56 permits a High Contracting Party to extend coverage of the Convention to "all or any of the territories for whose international relations it is responsible". The Commission, however, has not permitted States to disavow jurisdiction over the acts or omissions of persons under their actual responsibility and authority on the grounds that the act or omission occurred outside State territory or that the effect of the act or omission was produced outside the territory of the State.[25] The Court has, however, clarified that the notion of jurisdiction set forth in Article 1 comprises the idea of state jurisdiction over the individual through state organs or authorities.

The Court has made its position on jurisdiction clear in the case of *Loizidou v. Turkey*, in which the Turkish government disavowed any jurisdiction over the activities of the Turkish military forces occupying northern Cyprus, which forces had prevented the applicant from gaining access to her property. The Court held that Article 1 was applicable. The Court held that although Article 1 sets limits on the reach of the Convention, the concept of "jurisdiction" under this provision was not restricted to the national territory of the High Contracting Parties. In addition, the responsibility of Contracting Parties can be involved because of the acts of their authorities, whether performed within or outside national boundaries, which produce effects outside their own territory.

Bearing in mind the object and purpose of the Convention, the responsibility of a Contracting Party may also arise when as a consequence of military action whether lawful or unlawful it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control whether it exercised directly, through its armed forces, or through a subordinate local administration. The applicant in the case of *Loizidou v. Turkey* owned certain plots of land in northern Cyprus. Since 1974, she was prevented from gaining access to her properties as a result of the presence of Turkish forces in Cyprus who exercise an overall control in the relevant area. Without substantiation the Turkish Government pointed out that they did not accept the capacity of the applicant Government to represent the

people of Cyprus. The Court clearly established its view on state responsibility. It held that the applicant Government had been recognised by the international community as the Government of the Republic of Cyprus. Its *locus standi* as the Government of a High Contracting Party was not in doubt.[26]

The concept of 'jurisdiction' under Article 1 is not restricted to the national territory of the High Contracting Parties. Responsibility may also arise when as a consequence of military action, whether lawful or unlawful, a Contracting Party exercises effective control of an area outside its national territory. It was not disputed that the applicant was prevented by Turkish troops from gaining access to her property. The Court concluded that the facts alleged were falling within Turkish 'jurisdiction' within the meaning of Article 1. In its judgement on the merits of this case the Court repeated its earlier point of view. The establishment of the State responsibility did not require an examination of the lawfulness of Turkey's intervention in 1974. The Court held that the applicant remained the legal owner of land, but since 1974 effectively lost all control, use and enjoyment of it.[27]

In line with its *Loizidou* judgment, the Court noted in its recent decision in the case of *Cyprus v. Turkey* that it was evident from international practice and the condemnatory tone of the resolutions adopted by the United Nations Security Council and the Council of Europe's Committee of Ministers that the international community does not recognise the "TRNC" as a State under international law. The Court reiterated the conclusion that the Republic of Cyprus has remained the sole legitimate government of Cyprus and on that account their locus standi as the government of a High Contracting Party cannot therefore be in doubt.[28] In that connection, the Court had regard to the special character of the Convention as an instrument of European public order (ordre public) for the protection of individual human beings and its mission, as set out in Article 19 of the Convention, "to ensure the observance of the engagements undertaken by the High Contracting Parties". Having regard to the applicant Government's continuing inability to exercise their Convention obligations in northern Cyprus, any other finding would result in a regrettable vacuum in the system of human-rights protection in the territory in question by removing from individuals there the benefit of the Convention's fundamental safeguards and their right to call a High Contracting Party to account for violation of their rights in proceedings before the Court.[29]

In the period 1974-1978 Cyprus brought three complaints against Turkey after the invasion of Turkey on Cyprus. In its extensive report the European

Commission of Human Rights gave as its opinion that various violations of the provisions of the Convention had taken place, such as violation of the right to respect of family life (article 8), violation of the right to liberty of person (article 5), violation of the right to life (article 2), and violation of the prohibition of torture or inhuman or degrading treatment or punishment (article 3).[30] Since in this case no settlement was possible and since Turkey had not accepted the jurisdiction of the Court at that time, the Committee of Ministers finally had to decide the case.

On 20 January 1979 the Committee of Ministers of the Council of Europe adopted, with reference to an earlier decision[31], in which it expressed, inter alia, the conviction that "the enduring protection of human rights in Cyprus can only be brought about through the re-establishment of peace and confidence between the two communities; and that inter-communal talks constitute the appropriate framework for reaching a solution of the dispute". In its resolution the Committee of Ministers strongly urged the parties to resume the talks under the auspices of the Secretary-General of the United Nations in order to agree upon solutions on all aspects of the dispute. The Committee of Ministers viewed this decision as completing its consideration of the case. With respect the third application the Committee of Ministers adopted 2 April 1992 Resolution DH (92) 12 in respect of the Commission's 1983 report. In its resolution the Committee of Ministers limited itself to a decision to make the 1983 report public and stated that its consideration of the case was thereby completed. Despite all efforts made so-far, it has to be concluded that there is still not even a glimmer of a solution is this case through the Committee of Ministers of the Council of Europe.

The fact that the Court now also has taken a position in the question of Cyprus, does not in my opinion bring a solution of the Cyprus question any nearer. The Court cannot do more than finding a violation, and if that is the case, to decide that the respondent Government has to pay just satisfaction. The Committee of Ministers has the task to supervise, whether the respondent State is abiding the judgment of the Court.[32] And as far as the question of Cyprus is concerned, the Committee of Ministers has not taken any significant step in a direction of a possible solution. The situation now is damaging the relations of Turkey with the European Union, because Cyprus takes the position that it must join the European Union in 2003, while it is impossible that this could be the case, as long as Cyprus is divided in a Greek and a Turkish part.

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IV. The right of individual petition

When in 1987, Turkey recognised the right of individual petition to the European Commission of Human Rights and accepted the compulsory jurisdiction of the European Court of Human Rights from 1991 onward, it initially subjected its acceptance of the Commission's competence to a number of limitations. Turkey declared that the notion of "a democratic society" in paragraphs 2 of Articles 8, 9, 10, and 11 ECHR must be understood in conformity with the principles laid down in the Turkish Constitution. It also declared that the competence attributed to the Commission shall not comprise matters regarding the legal status of military personnel and in particular, the system of discipline in the armed forces. This limitation would have the effect that civilian prisoners in military jails would not profit from the jurisdiction of the Commission. The declaration further contained a territorial limitation.

The Commission and Court had the opportunity to consider this question, when they were confronted with a complaint against Turkey. The Commission had first to determine the validity of Turkey's declaration and its scope. The Commission held that apart from the temporal limitations provided for in paragraph 2 of Article 25, the Convention did not authorise any other restriction in a declaration accepting the right of individual petition. Consequently, the limitations of the Turkish declaration were not valid.[33] A similar problem arose with respect to Turkey's acceptance of the Court's jurisdiction under Article 46 ECHR. The Turkish declaration related "to the exercise of jurisdiction within the meaning of Article 1 ECHR, performed within the boundaries of the national territory of the Republic of Turkey, and provided further that such matters have previously been examined by the Commission within the power conferred upon it by Turkey". In its judgment in the case of *Loizidou v. Turkey* the Court sought to ascertain the ordinary meaning given to Articles 25 and 46 in their context and in the light of their object and purpose.

The Court held that if Articles 25 and 46 were to be interpreted as permitting restrictions (other than of a temporal nature) States would be enabled to qualify their consent under the optional clauses. According to the Court, this would severely weaken the role of the Commission and Court and diminish the effectiveness of the Convention as a constitutional instrument of European public order. The consequences for the enforcement of the Convention would be so far-reaching that a power should have been expressly provided for. No such provision is contained in either Article 25 or 46. The

subsequent practice of Contracting Parties of not attaching restrictions *ratione loci* or *ratione materiae* confirmed the view that these were not permitted.[34] Meanwhile Turkey, when renewing its declaration on the competence of the Commission to receive individual petitions and the acceptance of the compulsory jurisdiction of the Court did not repeat the limitations *ratione materiae*, but upheld its territorial reservation.[35] With the entry into force of Protocol No. 11 ratification of the revised Convention automatically entails recognition of the individual right of complaint.[36] Separate acceptance of the Court's jurisdiction is no longer required.

V. The obligation not to hinder the effective exercise of the right of individual petition

The right of individual petition includes the obligation on the part of the State that it may not hinder the effective exercise of this right. On several occasions Turkey has been found in violation with this obligation. In its report on the case of *Akdivar and others v. Turkey*, the Commission noted with concern that the applicants, and persons who were thought to be applicants, had been directly asked by the authorities about their petitions to Strasbourg. It considered it inappropriate for the authorities to approach applicants in this way in the absence of their legal representatives, particularly where such initiatives could be interpreted as an attempt to discourage them from pursuing their complaints, and concluded that the Turkish authorities had hindered the effective exercise of the right of individual petition.[37]

Before the Court, the Delegate of the Commission had stated that, in general, in cases from South East Turkey applicants had been contacted by the authorities who had inquired about their applications before the Commission. These interviews had sometimes resulted in a declaration by the applicant that he or she had never lodged any application or that he or she did not wish to pursue the application. In some cases, statements to this effect were recorded in minutes drawn up before a public prosecutor or a notary, apparently at the initiative of the authorities. The Government pointed out that it had actively co-operated with the Commission at all stages of the proceedings and that during the witness hearings each of the witnesses was free to express his or her views. The investigations, in its submission, had no effect whatsoever on the exercise of the right of individual petition or on the ensuing proceedings. It was only if an applicant was actually prevented from exercising the right irrespective of the presence or absence of a legal representative during such inquiries, that there could be an obstruction of the right of individual petition.

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The Court considered that it is of the utmost importance for the effective operation of the system of individual petition instituted that applicants or potential applicants are able to communicate freely with the Commission without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. The Court continued that given the vulnerable position of the applicant villagers and the reality that in South East Turkey complaints against the authorities might well give rise to a legitimate fear of reprisals, the matters complained of amounted to a form of illicit and unacceptable pressure on the applicants to withdraw their application. Moreover, it could not be excluded that the filming of the two persons who were subsequently declared not to be applicants, could have contributed to this pressure. The fact that the applicants actually pursued their application to the Commission does not mean that such behaviour on the part of the authorities did not amount to a hindrance in respect of the applicants' right of individual petition.[38]

From this point of view, the right of individual petition forms the cornerstone on which the whole system of the Convention depends in the exercise of this right. In case, this right is restricted or interfered with, it could be argued that the Court is deprived of its principal instrument for assessing the situation as to the protection of the other rights and freedoms guaranteed in the Convention.

VI. The question of exhaustion of domestic remedies

An international body may only deal with a complaint if it has been proved that the domestic authorities had been given the opportunity to remedy the alleged violation. Article 35(1) ECHR refers expressly to the general rules of international law in the matter, and in its case-law the Commission is indeed frequently guided by international judicial and arbitral decisions with respect to this rule. In the *Nielsen* case the Commission formulated this rationale as follows:

> The Respondent State must first have an opportunity to redress by its own means within the framework of its own domestic legal system the wrong alleged to have been done to the individual.[39]

Consequently, States are released from answering before an international body for their acts before they have had an opportunity to provide a remedy through their own legal system. In this respect the Court pointed out in the case

of *Akdivar and others v. Turkey* that this rule is based on the assumption, reflected in Article 13 ECHR, that there is an effective remedy available in respect of the alleged breach in the domestic system irrespective of whether or not the provisions of the Convention are incorporated in national law. In this way, the Court continued, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights.[40]

The local remedies rule is not an admissibility condition with an *absolute* content. The point of departure is that each concrete case should be judged in the light of its particular facts. According to the Court this means, amongst other things, that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants. In this respect the Court noted in the case of *Akdivar and others v. Turkey* that:

> The situation existing in South East Turkey at the time of the applicants' complaints was – and continued to be – characterised by significant civil strife due to the campaign of terrorist violence waged by the PKK and the counter-insurgency measures taken by the Government in response to it. In such a situation it must be recognised that there may be obstacles to the proper functioning of the system of the administration of justice. In particular, the difficulties in securing probative evidence for the purposes of domestic legal proceedings, inherent in such a troubled situation, may make the pursuit of judicial remedies futile and the administrative inquiries on which such remedies depend may be prevented from taking place.[41]

An applicant is also absolved of the rule of exhaustion of domestic remedies if the available remedies are ineffective or inadequate. Ineffectiveness of remedies may particularly occur in the case of practices of torture and inhuman treatment. On that ground, in the *Donnelly* case, the Commission took the view that in such a situation the local remedies rule is not applicable, provided that the applicant provides *prima facie* evidence that such a practice has occurred and that he is the victim of it.[42]

In the case of *Aksoy v. Turkey* the Commission noted the applicant's declaration that he had told the public prosecutor that he had been tortured. Moreover, when asked to sign a statement, he had answered that he could not sign because he could not move his hands. Although it was not possible to establish in detail what happened during the applicant's meeting with the

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public prosecutor, the Commission found no reason to doubt that during their conversation there were elements which should have made the public prosecutor initiate an investigation or, at the very least, try to obtain further information from the applicant about his state of health or about the treatment to which he had been subjected.

The Commission further noted that, after his detention, the applicant was in a vulnerable position, if he had, as he stated, been subjected to torture during his detention. The threats to which the applicant claimed to have been exposed after he had complained to the Commission, as well as his tragic death in circumstances which had not been fully clarified, were further elements which could at least support the view that the pursuance of remedies was not devoid of serious risks. The applicant could be said to have complied with the domestic remedies rule.[43] The Court accepted the facts as they had been established by the Commission and, on that basis, held that these constituted special circumstances which absolved Mr Aksoy from the obligation to exhaust the local remedies.[44]

The Court has further established with respect to the Turkish Constitution that an action in administrative law under Article 125 of the Constitution based on the authorities' strict liability, that a Contracting State's obligation under Articles 2 and 13 ECHR to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of fatal assault might be rendered illusory if in respect of complaints under those Articles an applicant were to be required to exhaust an administrative-law action leading only to an award of damages.[45]

As regards a civil action concerning redress for damage sustained through illegal acts or patently unlawful conduct on the part of State agents, the Court noted that a plaintiff in such an action must, in addition to establishing a causal link between the tort and the damage he or she has sustained, identify the person believed to have committed the tort. In the case of *Asvar v. Turkey* no evidence was forthcoming as to the identity of the alleged security officer implicated in the killing of the Asvar until some years had passed.[46] The Court concludes that the investigation by the gendarmes, public prosecutor and before the criminal court did not provide a prompt or adequate investigation of the circumstances surrounding the killing and therefore was in breach of the State's procedural obligation to

protect the right to life. This rendered recourse to civil remedies equally ineffective in the circumstances.[47]

VII. The question of an administrative practice of human rights violations

Several cases have been submitted by Kurdish citizens alleging that an administrative practice exists on the part of the Turkish authorities of tolerating abuses of human rights in relation to persons in police custody.[48] In one case the applicant had been killed following the submission of his application to the Commission and there were indications that to pursue the available remedies might have entailed serious risks for the other applicants. The Commission held in these cases that it was not necessary to resolve the question if there existed an administrative practice, because the applicants had done all that could be expected in the circumstances in relation to the local remedies. Three applicants who were placed in police custody and suspected of an offence coming within the jurisdiction of the State Security Council, alleged violations of Article 3 in that they were subjected to torture while held *incommunicado* in police custody. The Commission held that the Government had not mentioned any domestic remedy available to the applicants with regard to their detention *incommunicado* by the police, as such. Apparently this particular form of detention was an administrative practice.[49]

In the case of *Akdivar and others v. Turkey*, the applicants maintained their allegations before the Court, which they had already made before the Commission, that the destruction of their homes was part of a State-inspired policy. That policy, in their submissions, was tolerated, condoned and possibly ordered by the highest authorities in the State aimed at massive population displacement in the emergency region of South East Turkey. There was thus an administrative practice which rendered any remedies illusory, inadequate and ineffective. The Court concluded that there were special circumstances absolving the applicants from the obligation to exhaust their domestic remedies. The Court also emphasised that its ruling was confined to the particular circumstances of that case. It was not to be interpreted as a general statement that remedies were ineffective in that area of Turkey.[50]

From the above, it should be stressed the case law with respect to the exhaustion of domestic remedies and the right to have access to an effective remedy in the Turkish cases above all stem from situations where according to the Turkish Government the applicants were in one or another way

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allegedly involved in terrorist activities. This makes it difficult to draw conclusions in this respect in general. Be that as it may, the European Court has thus far on several occasions ruled that there does not exists an administrative practice of human rights violations in Turkey.[51] However, it nevertheless stressed that applicants have met serious difficulties in respect the exhaustion of domestic remedies and gaining access to effective remedies in case of alleged violations of human right, especially in South East Turkey.

VIII. The availability of an effective remedy offering a possibility of redress as prescribed by Article 13 ECHR

It is standard case law that Article 13 ECHR, which guarantees the availability at the national level of a remedy to enforce the substance of the rights and freedoms guaranteed by the Convention in whatever form they might happen to be secured in the domestic legal order. Article 13 thus requires the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although the Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 also varies depending on the nature of the applicant's complaint under the Convention.

Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State.[52] The Court has further held that where the relatives of a person have an arguable claim that the latter has disappeared at the hands of the authorities, or where a right with as fundamental an importance as the right to life is at stake, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigatory procedure.[53]

The Court has repeatedly held that

> the obligation to protect life under Article 2 ECHR, read in conjunction with the State's general duty under Article 1 ECHR to secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of

effective official investigation when individuals have been killed as a result of the use of force.[54]

The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion, once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge formal complaint or to take responsibility for the conduct of any investigatory procedures.[55]

For an investigation into alleged unlawful killing by state agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including inter alia eye witness testimony, forensic evidence, and where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard. There must also be a requirement of promptness and reasonable expedition implicit in this context. It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.[56]

In the case of *Mahmut Kaya v.* Turkey the Court observed that the implementation of the criminal law in respect of unlawful acts allegedly carried out with the involvement of the security forces discloses particular characteristics in the South East region in this period. Firstly, where offences were committed by State officials in certain circumstances, the public prosecutor's competence to investigate was removed to administrative councils which took the decision whether to prosecute. These councils were made up of civil servants, under the orders of the Governor,

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who was himself responsible for the security forces whose conduct was in issue. The investigations which they instigated were often carried out by gendarmes linked hierarchically to the units concerned in the incident. The Court accordingly found in two cases that the administrative councils did not provide an independent or effective procedure for investigating deaths involving members of the security forces.

Secondly, the cases examined by the Convention organs concerning the region at this time have produced a series of findings of failures by the authorities to investigate allegations of wrongdoing by the security forces, both in the context of the procedural obligations under Article 2 of the Convention and the requirement of effective remedies imposed by Article 13 of the Convention. A common feature of these cases is a finding that the public prosecutor failed to pursue complaints by individuals claiming that the security forces were involved in an unlawful act, for example not interviewing or taking statements from implicated members of the security forces, accepting at face-value the reports of incidents submitted by members of the security forces and attributing incidents to the PKK on the basis of minimal or no evidence.

Thirdly, the attribution of responsibility for incidents to the PKK has particular significance as regards the investigation and judicial procedures which ensue since jurisdiction for terrorist crimes has been given to the State Security Courts. In a series of cases, the Court has found that the State Security Courts do not fulfil the requirement of independence imposed by Article 6 of the Convention, due to the presence of a military judge whose participation gives rise to legitimate fears that the court may be unduly influenced by considerations which had nothing to do with the nature of the case. The Court found that these defects undermined the effectiveness of criminal law protection in the South East region during the period relevant to this case. It considered that this permitted or fostered a lack of accountability of members of the security forces for their actions which, as the Commission stated in its report, was not compatible with the rule of law in a democratic society respecting the fundamental rights and freedoms guaranteed under the Convention.[57]

It might be argued that in the various cases the Court has dealt with so-far full redress for violations of human rights and fundamental freedoms are not sufficient available to those victims in Turkey. The right established by Article 13 flows as a logical consequence from Article 1, which imposes on

the High Contracting Parties the obligation to "secure" the rights and freedoms under the Convention.[58] The provision of domestic remedies to uphold these rights and freedoms can be seen as part of that obligation. Although, it is primarily the task of the national authorities of the Contracting States to secure the rights and freedoms set forth in the Convention. The notion that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective is, explicitly or implicitly, present in many judgments of the Court. The existence of these shortcomings in this respect is evident in Turkey.

IX. The right to life and the prohibition of torture

It is not the place here to discuss in detail the extensive case law of the European Court of Human Rights in respect of Turkey. However, in order to consider whether Turkey meets the minimum standards achieved so far it is necessary to consider the cases in which the most basic rights such as the right to life and the prohibition of torture and inhuman treatment were at stake.

In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account.[59] Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and as a general rule it is for those courts to assess the evidence before them. Though the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts.[60]

Where allegations are made under Articles 2 and 3 ECHR however, the Court must apply a particularly thorough scrutiny. When there have been criminal proceedings in the domestic court concerning those same allegations, it must be borne in mind that criminal law liability is distinct from international law responsibility under the Convention. The Court's competence is confined to the latter. Responsibility under the Convention is based on its own provisions which are to be interpreted and applied on the basis of the objectives of the Convention and in light of the relevant principles of international law. The responsibility of a State under the

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Convention, arising for the acts of its organs, agents and servants, is not to be confused with the domestic legal issues of individual criminal responsibility under examination in the national criminal courts. The Court is not concerned with reaching any findings as to guilt or innocence in that sense.[61]

In several cases the Court observed that the procedural protection for the right to life inherent in Article 2 secures the accountability of agents of the State for their use of lethal force by subjecting their actions to some form of independent and public scrutiny capable of leading to a determination on whether the force used was or was not justified in a particular set of circumstances.[62] Whether a failure on the part of the authorities to provide a plausible explanation as to a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention will depend on all the circumstances of the case, and in particular on the existence of sufficient circumstantial evidence, based on concrete elements, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody[63].

In the case of *Kurt v. Turkey* the Court was for the first time faced with the question of disappearances. Having regard to the circumstances as well as to the fact that the complainant was the mother of the victim of a human rights violation and herself the victim of the authorities' complacency. In the face of her anguish and distress, the Court found that the respondent State was in breach of Article 3 in respect of the applicant. However, the Court held that there were insufficient persuasive indications that the applicant's son had met his death in custody.[64] In the case of *Timurtas v. Turkey* the Court was of the opinion that Timurtas had to be presumed dead following an unacknowledged detention by the security forces. Consequently, the responsibility of the respondent State for his death is engaged. Noting that the authorities had not provided any explanation as to what occurred after Timurtas' apprehension and that they do not rely on any ground of justification in respect of any use of lethal force by their agents, it follows that liability for his death is attributable to the respondent Government. Accordingly, there had been a violation of Article 2 on that account.[65]

The Court has held that where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which an issue arises under Article 3 of the Convention.[66] In the

same vein, Article 5 imposes an obligation on the State to account for the whereabouts of any person taken into detention and who has thus been placed under the control of the authorities.[67] With respect to Article 3 ECHR the Court of Human Rights considered that where an individual is taken into police custody in good health but is found to be injured at the time of release, it was incumbent on the police to provide a plausible explanation as to the cause of the injury, failing which a clear issue arises under that provision. The Court recalled that the Commission found *inter alia* that the applicant was subjected to "Palestinian hanging", in other words, that he was stripped naked with his arms tied together behind his back, and suspended by his arms. In the view of the Court this treatment could only have been deliberately inflicted. In addition to the severe pain which is must have caused at the time, the medical evidence shows that it led to a paralysis of both arms, which lasted for some time. The Court considered that this treatment was of such a serious and cruel nature that it could only be described as torture.[68]

Article 3 ECHR enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 even in the event of a public emergency threatening the life of the nation.[69] In the case of *Aksoy v. Turkey* the Court recalled that the Commission found, inter alia, that the applicant was subjected to "Palestinian hanging", in other words, that he was stripped naked, with his arms tied together behind his back, and suspended by his arms. In the view of the Court this treatment could only have been deliberately inflicted; indeed, a certain amount of preparation and exertion would have been required to carry it out. It would appear to have been administered with the aim of obtaining admissions or information from the applicant. In addition to the severe pain which it must have caused at the time, the medical evidence shows that it led to a paralysis of both arms which lasted for some time. The Court considered that this treatment was of such a serious and cruel nature that it could only be described as torture.[70]

In the case of *Akdivar and others v. Turkey* the Court found it established that the security forces were responsible for burning of the applicants' houses. The Court went on that there was no doubt that the deliberate burning of houses and contents at the same time constituted a serious

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interference with the right to respect for their family lives and homes and with the peaceful enjoyment of their possessions. No justification for these interferences have been provided by the Government - which have confined their response to denying any involvement of the security forces in the incident - the Court therefore concluded that there had been a violation of both Article 8 and Article 1 of Protocol No. 1. In the absence of precise evidence concerning the specific circumstances in which the destruction of the houses took place and its finding of a violation of the applicants' rights under Article 8 and Article 1 of Protocol No. 1, the Court did not examine the applicants' allegation that the burning of their houses amounted to inhuman treatment in breach of Article 3.[71]

Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices, which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way, which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk to life therefore can entail on the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. The cases dealt with by the Court in this respect have shown that Turkey is far from meeting this positive obligation. The fact that Turkey repeatedly has been found in violation with respect to the right to life and the prohibition of torture and inhuman treatment is not only a clear obstacle to be accepted as a member of the European Union but it is also detrimental to Turkey's credibility in meeting the standards of the Council of Europe in that respect. Little has been done to find and try those guilty of these offences.

X. The Committee of Ministers of the Council of Europe

The Committee of Ministers is the Council of Europe's decision-making body, and is composed of the Foreign Ministers of the 43 member states (or their Permanent Representatives). The Committee of Ministers performs a triple role: as the emanation of the governments which enables them to express on equal terms their national approaches to the problems

confronting Europe's societies; as the collective forum where European responses to these challenges are worked out; as guardian, alongside the Parliamentary Assembly, of the values for which the Council of Europe exists. An important task of the Committee is monitoring respect of commitments by the member States. Article 15.a of the Statute of the Council of Europe states that the Committee of Ministers "shall consider the action required to further the aim of the Council of Europe, including the conclusion of conventions and agreements". Article 15.b of the Statute provides for the Committee of Ministers to make recommendations to member states on matters for which the Committee has agreed "a common policy". In accordance with Articles 32 and 54 ECHR the Committee supervises the execution of judgments by the European Court. In that respect the Committee of Ministers noted with regard to the judgments of the European Court of Human Rights transmitted to it for supervision of execution and to its decisions in a number of cases concerning Turkey in which the Court have found violations of the provisions of the Convention, that Turkey had failed to take the necessary steps in order to abide by the judgment of the Court.

In an interim Resolution concerning the judgment of the Court in the case of *Loizidou v. Turkey* the Committee of Ministers, deeply deplored the fact that, to date, Turkey has still not complied with its obligations under the judgment delivered by the Court on 28 July 1998 in that case. It recalled its Interim Resolution DH (99) 680 of 6 October 1999, in which, inter alia, the Committee of Ministers strongly urged Turkey to pay the just satisfaction awarded in this case so as to ensure that Turkey, as a High Contracting Party, meets its obligations under the Convention. The Committee pointed out that Turkey had had ample time to meet its obligations and that its failure to comply with a Court judgment was unprecedented. It stated that Turkey's refusal to execute the judgment demonstrated a disregard for its international obligations, both as a Contracting Party to the Convention and as a member state of the Council of Europe. In view of the gravity of the matter, it strongly insisted that Turkey comply fully and without any further delay with the Court judgment of 28 July 1998.[72] There are estimated to be around 150-200 similar cases brought by Cypriots against Turkey now pending before the Court of Human Rights.

In a number of cases in which the Court has found that the criminal convictions of the applicants, on account of statements contained in articles, books, leaflets or messages addressed to, or prepared for, a public audience,

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had violated their freedom of expression guaranteed by Article 10 ECHR. The Committee noted that it had been informed that a comprehensive programme of reforms has been drawn up with a view to aligning, in the short-term, Turkish law and practice with the Convention's requirements in the field of freedom of expression, in order to prevent new violations similar to those found in these cases. The Committee considered however that, in most of these cases, the convictions are still in the criminal records of the applicants and restrictions of their civil and political rights remained in place. Having regularly invited the Government of Turkey, since it examined the first of these cases in 1998, to inform it of the measures taken by the Turkish authorities in order to comply with the obligation to abide the judgments of the Court it noted that, according to the Turkish Government, a reform of the Code of Criminal Procedure would be necessary to reopen the impugned proceedings and redress the violations. The Committee regretted that such a reform, announced in September 1999 by the Minister of Foreign Affairs of Turkey, is still not foreseen for the immediate future and that, as yet, no ad hoc measures have been taken pending the adoption of the aforementioned reform. It urged the Turkish authorities, without further delay, to take ad hoc measures allowing the consequences of the applicants' convictions contrary to the Convention in these cases to be rapidly and fully erased and decided to resume consideration of these cases at each of its meetings until the adoption of the individual measures required.[73]

It has to be noted in this respect that the Committee, in cases of unwillingness or reluctance on the part of the respondent States to take appropriate steps to avoid further violations, is not provided with appropriate tools. It will keep these cases on its agenda and may try that in the long run the respondent States will take appropriate steps. According to the Statute of the Council of Europe the ultimate step is that the Committee may decide that such a State should be expelled from the Council of Europe. According to Article 8 of the Statute any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such a member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine.

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XI. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Turkey was the first country to ratify the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in February 1988. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is required to draw up every year a general report on its activities. In general, the Committee conducts two types of visits - periodic and ad hoc. Periodic visits are made on a regular basis to all parties to the CPT, whereas ad hoc visits are organised in states where, in the Committee's view, circumstances require a visit. Two fundamental principles govern the relation between the parties and the CPT: co-operation and confidentiality. The CPT emphasised that its role is not to condemn states but to assist them to prevent the ill-treatment of persons deprived of their liberty. The Committee's reports are confidential, but most states choose to publish the reports that concern them. The CPT is composed of persons from a variety of backgrounds: lawyers, medical doctors, police and prison experts, persons with parliamentary experience, etc. The Committee's task is to examine the treatment of persons deprived of their liberty. For this purpose, it is entitled to visit any place where such persons are held by a public authority and to interview those persons in private. The Committee may formulate recommendations to strengthen, if necessary, their protection against torture and inhuman or degrading treatment or punishment.

A delegation of the Committee visited Turkey from 27 February to 3 March 1999. The visit, which the Committee deemed "to be required in the circumstances," was in part a follow-up visit to assess the progress made since the CPT's periodic visit in October 1997. The government authorised the publication of the Committee's report. The report noted that, on the whole, the CPT received excellent co-operation from the government. The Committee regretted, however, that it had been unable to meet with the doctor of the Haseki state hospital who had examined 34 persons detained at the Anti-Terror Department of the Istanbul police headquarters after they had spoken to the CPT. The Anti-Terror Department was one of the establishments about which the CPT had received complaints about ill-treatment. Medical members of the CPT delegation who had examined the detainees found that some of them displayed marks or conditions that were consistent with their allegations. The Committee also noted that two prisoners who had been held at the Foreigners' Department's detention

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facility at the Istanbul police headquarters, which the CPT also visited, had been removed from the facility so that they could not speak to the CPT delegation. The Committee stated that such behaviour was not in compliance with article 3 ECHR.

On the subject of a detainee's right of access to an independent lawyer from the outset of his or her custody, the CPT indicated that much still remained to be done to render this right fully effective in practice, once it has become applicable *de jure*. The Committee also noted that it was apparent that the right of detainees to inform their next of kin of their situation was rarely applied in practice. The Committee recommended that medical examinations be conducted out of the hearing of law enforcement officials at all times and out of sight of law enforcement officials, unless the doctor concerned requests otherwise in a particular case. The report noted that the conditions of detention at the Foreigners' Department of the Istanbul police headquarters were somewhat better during the February 1999 visit than in October 1997. However, the problem of the unsuitability of these premises for extended periods of detention remained unsolved. Detainees interviewed suggested that certain improvements were only made the day before the CPT's visit. The Committee stated that is was very important that detainees receive adequate food, not just some sandwiches, and that they be given outdoor exercise and bathroom facilities.[74]

In its response, the government replied to some of the comments made by the CPT. The government stated that it was not the case that some persons, detained at the Foreigners' Department detention facility at Istanbul police headquarters, had been moved elsewhere in order to prevent them from speaking to the Committee's delegation. As to the case of Süleyman Yeter, the government stated that the preliminary conclusions of an investigation into his death suggested that the officers responsible for his detention appeared to be guilty of ill-treatment or torture, and that the Committee would be informed of the final outcome of the investigation. The government also noted the following: the conditions of detention at the Anti-Terror Department of the Istanbul police headquarters have been brought up to standard; some provisions have been made in the regulations on arrest, custody and interrogation to guarantee any detained person the right to meet with their lawyers at all times without power of attorney being sought and out of the hearing of others; article 9 of this regulation guarantees that the next of kin will be informed of the detention "where it is not definitely inadvisable as regards disclosure of the subject of

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investigation." The government also stated that the Ministry of Health was working on a standard for judicial medical examination reports, to be used as a standard procedure throughout the country, and that the only reason why law enforcement officials are sometimes present at a medical examination was to ensure the doctor's safety or that of the suspect, or to protect the soundness of the investigation, and that the intention was not to prevent the identification of interrogation methods prohibited by Turkish law.[75]

In December 2000, the government authorised the publication of the preliminary observations made by the CPT delegation which visited Turkey from 16 to 24 July 2000, together with the government's response to those observations. The Committee's report focused on two main issues: steps being taken to introduce smaller living units for prisoners; and police matters. On the subject of living space, the report notes that construction of a prison is of great importance and that since most of the prisons in Turkey are large dormitory accommodations, the main issue was to reduce the size of these living spaces. The Committee noted that the government was addressing this issue. Some of the facilities visited did have areas for communal activities but these seemed to be hardly used. The CPT had doubts about the extent to which the prisoners were involved in activities outside their living units. As to the treatment of inmates, the information gathered by the CPT delegation suggested that the most severe forms of ill-treatment had diminished, but some methods of interrogation resulting in or similar to ill-treatment still existed such as the deprivation of sleep over periods of days, prolonged standing and threats to harm the detainee and/or his family. With regard to the rights of access to a lawyer, there remained a problem concerning people arrested on suspicion of collective offences falling under the jurisdiction of the State Security Courts, as it may still take up to four days for these detainees to have access to a lawyer.

In its response, published in the same document, the government stated that it would welcome suggestions by the CPT on purposeful activities that might be offered to detainees. The government also stated that it was aware that there remained much work to be done regarding the exercise areas but that this would entail major reconstruction of the facilities and budgetary resources did not allow this for the time being. With regard to the CPT's observation that some prisoners are held up to 25 days without outdoor exercise, the government stated that all remand and sentenced prisoners in observation and disciplinary cells were given at least 90 minutes of daily

open-air exercise. The government stated that it would do everything possible to prevent the use of any interrogation methods that are not suitable, which have no place in a modern police system and are contrary to international standards. The government indicated that a protocol had been issued to guarantee a medical examination in a hospital to remand and sentenced prisoners. According to this regulation, if the examination room or unit is secure, the law enforcement official will wait outside; if not, the official will make the necessary arrangements so that he will only be present at a distance and cannot hear the conversation between doctor and patient.[76]

In response to mounting concern about the hunger strike crisis related to the prison system, the Turkish government on 6 December 2000, invited the Committee to carry out a visit to Turkey, in order to contribute to efforts under way aimed at finding a solution capable of bringing the hunger strikes to an end. The CPT accepted the Turkish government's invitation and its delegation arrived in the country on 10 December 2000. The delegation held detailed discussions with the Turkish authorities directly responsible for issues concerning the hunger strikes.

A delegation of the Committee returned to Turkey in April 2001. It held consultations with both Government authorities and non-governmental organisations. The delegation considered that the agreement reached at Government level on several draft laws concerning prison matters was a positive development. Of particular interest are the draft laws on the amendment of Article 16 of the 1991 Law to Fight Terrorism, on the establishment of prison monitoring boards, and on the creation of sentence execution judges. These draft laws have the potential to bring about important reforms of the Turkish prison system. The delegation has emphasised that the rapid adoption and entry into force of the draft laws should be treated as a matter of the highest priority; it is pleased to note that they have already been formally submitted to the Turkish Grand National Assembly. The CPT delegation greatly regretted the loss of life which has occurred in the course of the current hunger strike protest and very much hopes that means will rapidly be found of ending the hunger strikes. In this regard, the delegation considered that immediate steps should be taken to explain in an objective and thorough way to all those involved in the hunger strikes the various elements contained in the prison reform proposals. Further, the CPT delegation has urged the Turkish authorities to explore all possible means of immediately attenuating the small group isolation system

which flows from the present text of Article 16 of the Law to Fight Terrorism.[77]

With respect to Turkey's obligations under the CPT it has to be noted that, unlike in the past the Committee has received full co-operation from the Turkish authorities. It has also to be noted that according to the Committee the situation in Turkey is improving. If the suggestions made by the Turkish Government were to be implemented in full, it would mark a turning point in the human rights situation in Turkey. Recently the Committee carried out a two-week periodic visit to Turkey. The visit started simultaneously in Ankara and Istanbul on Sunday, 2 September 2001. The result of that visit has not yet been made public.

XII. The Parliamentary Assembly of the Council of Europe

The Parliamentary Assembly is the Council of Europe's deliberative body. Its 602 members (301 representatives and 301 substitutes) are drawn from the 43 national parliaments. The Assembly meets quarterly for a week in plenary session in Strasbourg. Sittings are public. It also holds a spring meeting in one of the member states. Its work is prepared by specialist committees dealing with: political affairs, legal affairs and human rights, social, health and family questions, culture and education, environment, regional planning and local authorities, science and technology, agriculture and rural development, economic affairs and development, migration, refugees and demography, relations with national parliaments and the public; equal opportunities for women and men; and the honouring of obligations and commitments by member states.

The Parliamentary Assembly had, on various occasions, debates on the honouring by Turkey of its obligations and commitments as a member State. For many observers outside Turkey the country has a negative human rights image, which seems justified by a number of facts. Considering that this image has a negative effect on the Council of Europe and Turkey itself, which is aspiring to European Union membership, it has been stressed that it would be in the interests of both to seek "to determine whether the dynamics exist in Turkey for improving the human rights situation". During the debates some Assembly members referred to a series of human rights violations occurring particularly in prisons. It was also reminded the Assembly that a number of steps have been taken over the last three years to amend the Turkish penal code and reform regulations on arrest, detention

and release procedures. However, they expressed fears as to how systematically these principles are being implemented, and recommended giving the human rights organisations greater access to prisoners.

A number of parliamentarians asked the Turkish authorities to abolish the death penalty and to press on with constitutional reform. It was suggested that as a Party to the Partial Agreement on the European Commission for Democracy through Law "Venice Commission"), Turkey should use the possibility of consulting this Commission. Recently, the Assembly encouraged the Turkish authorities to continue with the reforms that they had carried out to meet the Council standards, notably and above all in priority areas such as respect for human rights and pluralistic democracy, the fight against terrorism, freedom of expression, conditions in police custody, and the elimination of torture and inhuman treatment. It called for the abolition of the death penalty *de jure* and, in the meantime, the non-enforcement of capital punishment, observed *de facto* since 1984.[78]

It has to be said that the role of the Parliamentary Assembly is rather weak within the structure of the Council of Europe. It does not have any decision making power, this rests with the Committee of Ministers of the Council of Europe. In general the Assembly could be seen as the public watchdog of Europe, which in last resort may function as the initiator of the mobilisation of shame. However, it could be noted that the relationship of Turkey with the Parliamentary Assembly of the Council of Europe has turned into a positive and constructive dialogue between the members of the parliament.

Conclusions

With respect to the observance of the obligations under the European Convention and the implementation of the judgments of the Court much has to be done before it can be said that it meets the standards of human rights protection in Europe. At the same time it has to be stressed that Turkey, unlike many other Member States of the Council of Europe is confronted with a situation which makes it difficult to meet those standards. A country faced with a struggle against terrorism may not be compared with a country, which is not faced with such hardships. Apart from the possibility to derogate under Article 15, the Convention does not leave other means, than keeping the democratic principles on the level of the requirements stated in the Preamble of the Convention. As a party to the European Convention on

Human Rights, Turkey is obliged to respect the democratic principles enshrined in this instrument on the whole of its territory, including the South East region. The Court has repeatedly indicated, that it has understanding for the problems Turkey is faced with in its fight against terrorism, but nevertheless found violations for which Turkey was responsible on various occasions. It is also notable that in certain situations Turkey has failed to abide by the judgments of the Court.

The Council of Europe lacks a mechanism under which the Member States can be kept under constant surveillance as to their compliance with the commitments accepted within the Council of Europe. On 10 November 1994 the Committee of Ministers tried to fill this gap and adopted a declaration on compliance with commitments. This declaration envisages a political mechanism under which the Members of the Council of Europe, its Secretary General or its Parliamentary Assembly may refer questions of implementation of commitments concerning the situations of democracy, human rights and the rule of law to the Committee of Ministers. On 20 April 1995, the Committee of Ministers adopted the procedure for implementing the above-mentioned declaration. This mechanism does not affect the existing procedures arising from statutory or conventional control mechanisms. The discussions will be confidential and held in camera 'with a view to ensuring compliance with commitments, in the framework of a constructive dialogue'.

Finally, the Committee of Ministers in cases requiring specific action, may decide to request the Secretary General to make contacts, collect information or furnish advice; to issue an opinion or recommendation; forward a communication to the Parliamentary Assembly or take any other decision within its statutory powers. It is far too premature to give an opinion on this mechanism. It certainly does not provide the Committee of Ministers with more powers than it already had. It also will probably result in even less willingness on the part of the Member States to make use of the already existing inter-state complaint mechanism under Article 33 ECHR.

The mechanism has, however, the advantage that it creates a platform for the Committee and the Member States to discuss and examine on a structural basis the human rights situation in all Member States of the Council of Europe, while this only could take place on an *ad hoc* basis. It also provides a more convenient tool for the Member States to give room to an `early warning system' when there are indications that one of the Member States does not fulfil its obligations. In the more than fifty years of its existence, there have

been situations, that silent diplomacy could have had a better result than the existing complaint procedures. It is in that respect that it can be said that it is to be hoped that the Committee of Ministers under the monitoring procedure will be able to enter into a constructive dialogue with the Turkish authorities.

Turkey's relationship with the Committee for the Prevention of Torture has improved significantly. This improvement verifies the importance of silent diplomacy, which is the cornerstone of the CPT mechanism. Furthermore, it is remarkable that the relationship with the Parliamentary Assembly has improved, although there are areas of concern, the Assembly has noted an improvement of the human rights situation in Turkey.

Finally, coming to the essential question of this contribution; "Is Turkey ready for accession to the European Union?": Unfortunately, the answer cannot be stated in the affirmative. Generally speaking, the shortcomings found by the European Court of Human Rights and the Committee of Ministers with regard to democracy and respect for human rights have created a gap between Turkey and the European Union. In its Regular Report 2000 from the Commission on Turkey's progress towards accession it has been mentioned that in the framework of the fight against torture and ill treatment, there is still an urgent need to bring legal procedures concerning pre-trial detention into line with the provisions of the Convention and the relevant case law of the Court.

In particular, there should be an automatic judicial review (including the physical presentation of the detainee to the judge) of the legality of all detention in police custody at the very latest on the 4th day of detention, in line with the requirements under the Convention. It is equally important that regular medical examination of the detainees by forensic doctors be ensured during the pre-trial detention period, in line with the recommendations of the CPT. Finally, it should also be mentioned that a protocol signed in January 2000 between the Ministry of Justice, the Ministry of the Interior and the Ministry of Health is reported to put unnecessary obstacles in the way of visits to detainees by their lawyers.

Prison conditions (e.g. insufficient or delayed medical care for prisoners) remain a major cause for concern. Violent clashes between detainees and guards or security forces, mutinies, and the taking of hostages still occur. Ill-treatment of detainees notably during transfer between prisons is also reported. The number of prisoners in Turkey has reached the record figure

of 72,500, leading to serious overcrowding. Under these conditions, the coalition government is currently debating amnesty measures.

The conditions in institutions for juvenile delinquents also deserve the highest priority. There is still a serious problem with regard to the freedom of expression, including that in the political sphere. Existing legislation, as confirmed by many judgements of the Court, still leads to interpretations that violate the freedom of expression as guaranteed by the Convention. Turkish courts continue to restrict the expression of views with which the State disagrees, notably when it concerns the situation of the population of Kurdish origin. An overall reform of both legislation and practice in this field is urgently needed to avoid further violations. In the meantime, judges and prosecutors should strictly respect the case law of the Court. A positive development since the last regular report is the launching in Turkish society of a wide-ranging debate on the political reforms necessary with a view to accession to the EU. Two important initiatives have been taken in this context: the signing of several international human rights instruments and the recent endorsement by the government of the work of the Supreme Board of Co-ordination for Human Rights. [79]

Apart from many other questions of a possible membership, such as answers with respect to the economic situation of the country, there is the serious obstacle of the Cyprus question. This question has to be solved beforehand and there are no signs that that there is any solution on the way in this respect.

Although it may be said that the human rights situation on the whole has improved in recent years, Turkey must show that it is serious about drawing closer to the European Union and about putting the standards and values that have been incorporated in its legislation into practice. It is necessary to put words into action. This is one side of the coin. The other side is that also the Member States of the European Union could do much more to improve their relationship with Turkey. Respect for human rights and the democratic principles is one step towards membership of the European Union. But using these principles to hide other objections for possible membership could be seen as paying lip-service to respect for human rights and finally does not lead to any positive result.

Endnotes

[1] Turkey did not ratify the Framework Convention on the Protection of Minorities, the ICCPR, the CERD and the CESCR.

[2] Before the entry into force of the Maastricht Treaty, new Member States acceded to the European Communities. Since then, new Member States accede to the European Union.

[3] With the Single European Act the concepts of human rights entered into the basic treaties, which finally led to the Treaty on the European Union.

[4] ECJ Orkem judgment (374/97) of 18 October 1989.

[5] See in this respect: Alan Rosas, *The European Union and International Human Rights Instruments,* The European Union and the International Legal Order: Discord or Harmony?, Vincent Kronenberger (ed), The Hague, 2001, p. 55-57.

[6] Towards Calmer Waters, A report on relations between Turkey and the European Union, Advisory Council on International Affairs, No. 9, July 1999, The Hague, p. 7.

[7] Protocol No.4, 6 and 7 to the ECHR have not been ratified by Turkey.

[8] See Article 1 ECHR.

[9] See Article 2 CESCR.

[10] See Yearbook ECHR XIII (1970), p. 18; Yearbook ECHR XVIII (1975), p. 16; Yearbook ECHR XXI (1978), p. 18; Yearbook ECHR XXII (1979), p. 26; Yearbook ECHR XXIII (1980), p. 10 and Council of Europe, Information Sheet No. 22 (1987), p. 14.

[11] See: http://conventions.coe.int/treaty/EN/cadreprincipal.htm (last visited 20 September 2001)

[12] Judgment of 1 July 1961, *Lawless v. Ireland*, A. 3, p. 56 § 28.

[13] Report of the Commission of 5 November 1969, Yearbook 12, p. 72 § 153

[14] Judgment of 18 December 1996, *Aksoy v. Turkey*, § 70. See also the judgment of 26 November 1997, *Sakik and others v. Turkey*, § 38.

[15] Judgment of 18 January 1978, *Ireland v. United Kingdom*, A. 25 pp. 78-79, § 207.

[16] Report of the Commission, *Ireland v. the United Kingdom*, Yearbook 19 p. 512 (588).

[17] Judgment of 26 November 1997, *Sakik and others v. Turkey*, § 39.

[18] See *note 15*, A. 25, p. 83.

[19] See in this respect Van Dijk et al., *Theory and Practice of the European Convention on Human Rights*, Kluwer (1998), p. 731.

[20] See e.g. the judgment of 28 October 1994, *Murray v. United Kingdom*, A. 300-A, p. 23, §. 47 and the judgment of 29 November 1988, *Fox, Campbell and Hartley v. United Kingdom*, A. 145-B, p. 27, § 48.

[21] See *note 12*.

[22] Judgment of 29 November 1988, *Brogan and others v. United Kingdom*, A . 145-B, pp. 28-30, §§ 49-53.

[23] Judgment of 18 December 1996, *Aksoy v. Turkey*, § 84.

[24] See in this respect Mark Janis, Richard Kay and Anthony Bradley, *European Human Rights Case Law*, Second Edition, Oxford (2000), pp. 394-396.

[25] Appl. 6780/74 and 6950/75, *Cyprus v. Turkey*, D & R 2, p. 125 (136-137).

[26] Judgment of 23 March 1995, *Loizidou v. Turkey,* A. 310, p. 24, § 62 (preliminary objections).

[27] Judgment of 18 December 1996, *Loizidou vs. Turkey v. Turkey* (merits).

[28] Judgment of 10 May 2001, *Cyprus v. Turkey*, § 61.

[29] *Ibidem*, § 79.

[30] Report of the Commission of 10 July 1976, *Cyprus vs. Turkey*, D&R 72, p. 5.

[31] Resolution DH (79) 1 of 21 October 1977.

[32] Article 42(2) ECHR.

[33] Appls. 15299/89, 15300/89 and 15318/89, Dec. 4 March 1991 D & R 68 p. 216(237-240).

[34] Judgment of 23 March 1995, *Loizidou vs. Turkey v. Turkey* , A.310, §§ 70-75.

[35] Decree of the Turkish Council of Ministers of 27 April 1992, RG No. 21234 of 21 May 1992

[36] Article 34 ECHR.

[37] Report of the Commission of 26 October 1995, *Akdivar and others (21893/93 vs. Turkey),* §§ 104-105. See also the report of the Commission of 7 March 1996, *Mentes and Others (23186/94 vs. Turkey).*

[38] Judgment of 16 September 1996, *Akdivar and Others.*

[39] Appl. 343/57, *Schouw Nielsen* v. *Denmark*, Yearbook II (1958-1959), p. 412 (438). See also Appl. 5964/72, *X* v. *Federal Republic of Germany*, D&R 3 (1976), p. 57 (60); Appl. 12945/87, *Hatjianastasiou* v. *Greece*, D&R 65 (1990), p. 173 (177); judgment of 20 September 1993, *Saïdi*, A.261-C, p. 55.

[40] Judgment of 16 September 1996, *Akdivar and others v Turkey*, § 65.

[41] *Ibidem*, §§ 69-70.

[42] Appls. 5577-5583/72, Yearbook XVI (1973), p. 212 (262). See also the report of the Commission of 5 November 1969 in the *Greek* Case, Yearbook XII; *Greek* Case (1969), p. 194. *Cf.* Appls. 9911/82 and 9945/82, *R, S, A and C* v. *Portugal*, D&R 36 (1984), p. 200 (207), in which the Commission stated that the applicant must provide detailed allegations, if the remedy is to be considered ineffective.

[43] Appl. 21987/93, *Aksoy v. Turkey*, D&R 79-A (1994), p. 60 (70-71).

[44] Judgment of 18 December 1996, *Aksoy v. Turkey*, §§ 55-57.

[45] See the judgment of 2 September 1998 *Yasa v. Turkey*, Reports 1998-VI, p. 2431, § 74; judgment of 18 July 2001, *Avsar v. Turkey*, § 377.

[46] *Ibidem*, § 378.

[47] *Ibdem*, §§ 406-408.

[48] Appl. 21987/93, *Aksoy v. Turkey*, D&R 79-A (1994), p. 60 (70-71); Appl. 21893/93, *Akdivar* v. *Turkey* (not published); Appl. 21895/93, *Çagirga* v. *Turkey* (not published).

[49] Appls 16311/90 and 16313/90, *Hazar and Acik* v. *Turkey*, D&R 72 (1992), p. 200 (208).

[50] Judgment of 16 September 1996, *Akdivar and others v. Turkey*, § 77

[51] See most recently judgment of 31 May 2001, *Akdeniz and others, v. Turkey*, § 123; judgment of 22 May 2001, *Sarli v. Turkey*, § 80.

[52] See most recently judgment of 31 May 2001, *Akdeniz and others v. Turkey*, § 112

[53] Judgment of 25 May 1998, *Kurt v. Turkey*, § 140; judgment of 2 September 1998, *Yasa v. Turkey*, § 114; judgment of 31 May 2001, *Akdeniz and others v. Turkey*, § 112.

[54] Judgment of 27 September 1995, *McCann and others v. the United Kingdom*, A. 324, § 161; judgement of 19 February 1999, *Kaya v. Turkey*, Reports 1998-I, § 105; judgment of 31 May 2001, *Akdeniz and others v. Turkey*, § 90

[55] Judgment of 10 July 2001, *Avsar v. Turkey*, § 393.

[56] *Ibdem*, § 394.

[57] Judgment of 28 March 2000, *Mahmut Kaya v. Turkey*, §§ 94-97; judgment of 27 July 1998, *Güleç v. Turkey*, Reports 1998-IV, pp. 1731-33, §§ 77-82; judgment of 20 May 1999, *Ogur v. Turkey*, §§ 85-93.

[58] Judgment of 21 February 1986, *James and others v. United Kingdom*, A. 98; judgment of 8 July 1986, *Lithgow and others v. United Kingdom*, A. 102.

[59] Judgment of 18 January 1978, *Ireland v. United Kingdom*, A. 25, p. 65, § 161.

[60] Judgment of 22 September 1993, *Klaas v. Germany*, A. 269, p. 17, §§ 29-30.

[61] Judgment of 10 July 2001, *Avsar v. Turkey*, § 284.

[62] See a.o judgment of 19 February 1998, *Kaya v. Turkey*, § 81; judgment of 27 February 2001, *Cicek v. Turkey*, § 147; Judgment of 10 July 2001, *Avsar v. Turkey*, § 284.

[63] Judgment of 18 July 1999,*Çakici v. Turkey*, § 85; judgment of 13 June 2000, *Timurtas v. Turkey*, § 81.

[64] Judgment of 25 May 1998, *Kurt v. Turkey*.

[65] Judgment of 9 May 2000, *Ertak v. Turkey*, § 133; judgment of 13 June 2000, *Timurtas v. Turkey*, § 86.

[66] judgment of 27 August 1992 *Tomasi v. France*, A. 241-A §§ 108-111; judgment of 4 December 1995, *Ribbitsch v. Austria*, A. 336, § 34, *and Selmouni v. France* [GC], no. 25803/94, § 87.

[67] Judgment of 25 May 1998, *Kurt v. Turkey*, Reports of Judgments and Decisions 1998, § 124.

[68] Judgment of 18 December 1996, *Aydin v. Turkey*.

[69] Judgment of 18 December 1996, *Aksoy v. Turkey*, § 62.

[70] *Ididem*, § 64.

[71] Judgment of 16 September 1996, *Akdivar and others* §§ 88-91; see also judgment of 28 November 1997, *Mentes and others v. Turkey*. See also the judgement of 16 November 2000, *Bilgin v. Turkey*, § 103, where the Court found a violation of Article 3 in this respect.

[72] DH (2000) 105, Adopted by the Committee of Ministers on 24 July 2000 at the 716th meeting of the Ministers' Deputies.

[73] Interim Resolution Res. DH(2001)106 Adopted by the Committee of Ministers on 23 July 2001 at the 760th meeting of the Ministers' Deputies

[74] Council of Europe, CPT/Inf (2000)17.

[75] Council of Europe, CPT/Inf (2000)18.

[76] Council of Europe, CPT/Inf (2000)19.

[77] See: http://www.cpt.coe.int/en/press/20010424en.htm. (last visited 20 September 2001)

[78] See Resolution 1256 and Recommendation 1529 (2001), 28 June 2001.

[79] Regular Report 2000 from the Commission on Turkey's progress towards accession, 8 November 2000, pp. 20-22.

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THE SIGNIFICANCE OF FUNDAMENTAL RIGHTS IN THE PROCESS OF EUROPEAN INTEGRATION AND IN THE EUROPEAN UNION

Bengt Beutler*

Introduction

As recent political developments have shown, fundamental rights have become and are still becoming of growing interest to the international community. They have also become of growing importance in the process of European Integration, and thus are also of special interest to Turkey as one of the longest associate members and now official candidate for membership in the European Union.[1]

In a global context, recent contributions on the occasion of the anniversary of the Conveneant on Civil and Political Rights[2] have shown a growing and global interest in the meaning and functioning of fundamental rights. As to the European context the Charter of Fundamental Rights proclaimed solemnly in Nice in December 2000[3] is the most recent example of the growing importance of the role which fundamental rights play in the European Integration process. The Charter reflects the different elements and traces of fundamental rights developments in Europe ranging from the Convention on Human Rights and Fundamental Freedoms (Convention on Human Rights) to the constitutional discussion in the member states. Facing the demand of a "new (European) legal order" and the jurisprudence of the European Court of justice the Charter shall also accompany the concept of a common market. The Charter aims to bring together those different elements in the project of a political European union under the treaty of this union.

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Since the Treaty of Amsterdam, fundamental rights form a decisive element of the principles common to the member states as laid down in Article 6 of the Treaty on European Union (TEU). Article 7 provides sanctions and a procedure against the respective member state in case of a breach of Article 6. According to Article 49 TEU, on the other hand, it is necessary for every state applying for membership in the Union to respect the basic principles in Article 6, which includes, as mentioned above, the respect of fundamental rights as an essential element.

Given that all modern states – including Turkey – protect fundamental rights in one way or another, one is faced with the question as to what extent additional elements should be added as a precondition for membership to the EU. To impart a better understanding of the issue I will begin with a short summary of the conceptual and practical problems of fundamental rights and their effective protection in general.

I.

First, the concept of universal fundamental rights also bears a certain weakness: If fundamental rights are universal in the sense of their global applicability for any person, do they also in reality apply to everybody?[4] Do they apply to mankind in general, not only to those living in Western civilization?[5] Do they apply not only to the rich, but also to the poor? Do they apply without discrimination, especially of sex? Do they apply with due respect for the rights of others?

1. As to the content of universality we observe a broadening scope of universal fundamental rights from classical liberal rights to social and cultural and finally to political rights covering the right of democracy and of self-determination for every state.[6] Although this broadening scope is desirable without doubt, it poses difficult questions of coordination. What is, for instance, the relationship between the individual right and the majority rule in democracy, what is the relationship between freedom of religion and the protection of cultural identity? How far does the notion of rights allow obligations of others as implied for instance by the claim of social rights in a strict sense?

2. The answer is connected with the second question, which is not less intricate: How are fundamental rights protected efficiently, not only by

declarations, conventions and statutes which are more or less enforceable or compulsory? Does a universal mechanism exist?[7]

Despite all the international documents on Human Rights one can observe that fundamental rights are, if at all, best protected by the institutional framework of the (nation) state. But that presupposes the sovereignty of states. The sovereignty of states and the protection of fundamental rights, however, sometimes collide when individuals' (fundamental) rights are abused. This is one of the most controversial and not yet sufficiently solved problems in public international law.[8]

3. The reasons for this collision have to be seen in the different development of states and societies by means of global comparison. The common denominator of this development seems to be a notion of state as the sole guarantee of legal order on the one hand and the society as an ever more evolving and differentiated and sophisticated system on the other hand under the roof of globalization and democracy. If the state is a decisive element, it has to be defended against the dilution of its peace- and law-giving function but at the same time to be supervised against the abuse of its power. In practical terms and under present historical conditions one needs therefore to open the concept of state sovereignty to a generally accepted rule of law concept, which coordinates the state-internal and state-external means of legal control[9], enabling at the same time the development of an ever more complex and global society in the sense that its limits cannot any longer be defined exclusively by the state.

This is the real question of constitutionality connected to the development of a civil society beyond the limits of the state, but with a clear consciousness of the necessity for the state as a basis and guarantee for this development.

II.

It is exactly for this claim that the development in European integration offers a most advanced solution: The claim of a notion of state transcending the traditional sovereign nation state concept and guaranteeing effective fundamental rights protection, thus enabling the evolution of a complex and at least European if not global civil society, is best documented in the already mentioned Charter of Fundamental Rights of the European Union, pronounced at the EU summit in Nice in December 2000.[10] One of the main

purposes of the Charter is to make existing protection of fundamental rights visible with the claim of an ever closer union of the peoples and states.

For this reason the Charter makes reference to the different elements of fundamental rights protection in recent European history: the protection of fundamental rights in the member states, in the European Convention on Human Rights and already existing protection in the framework of the European Community developed by the Court of Justice, which now - not at least by means of the Charter - has to be transferred to the Union.

1. The basis of European Integration since 1949 is the constitutional state, the notion of which means neither merely state nor merely constitution, but a mutual exchange to secure and legitimate the mutual existence of the state and the law, especially regarding the protection of the individual. Historically this notion reflects the experience of the totalitarian state and the Second World War and the wish to find an effective form of protection for the individual against despotism and arbitrariness. The validity of this concept has to prove itself, though now under the changed conditions of globalization, i.e. in a changing context of state and the people (IV.).

2. The impulse for the protection of the individual against the arbitrariness of a totalitarian state in the post-war Europe led to the European Convention on Human Rights, signed in 1950 within the Council of Europe as an instrument of public international law for the protection of fundamental rights in Europe. The history of the Convention already offers some striking examples of its growing importance and its development from an instrument of traditional international law to a supra-national legal order. An important step in that direction was also taken recently with the implementation of the "right of individual complaint".(V.).

3. The evolution to a supra-national mechanism has been possible only on the basis of the development of the European Communities and their concept of a new – i.e. supranational – legal order by conferring rights on individuals that are direct applicable and have their origin outside of domestic laws and which shall protect individuals from state interference. This has been a result especially of the jurisdiction of the Court of Justice of the European Communities, whose broadening scope as well as its claim for prevalence even in conflicts between European and national

constitutional law has led to sweeping fundamental rights protection by Jurisdiction. (VI.).

4. So the present situation of fundamental rights in the process of European Integration has been marked by a synthesis of different currents:

- A strong but different constitutional state basis in every member state of the EU
- The growing impact of international instruments for the protection of the individual
- A new legal order, which reflects both sides of state and international legal order but adds a new dimension of coordination.

The legally-binding framework of those different currents is provided by the Treaty of the Union in Article 6 and 7 (VII.), thus, the Charter of Fundamental Rights of the European Union must be interpreted in the light of these Articles. The meaning of fundamental rights in the European Integration and in the European Union for the member states and especially for the accession states can only be interpreted and understood properly within the context of those different elements under the common perspective offered now by the Charter (IX.).

III.

As already mentioned, the basis of fundamental rights protection in the European integration process was the notion of the state as a constitutional state or to put it differently a state based on the rule of law[11], meaning that those adopting laws shall act only within the powers conferred upon them by law, not so much because their acts should be predictable, but for the very protection of the individual.

In the member states of the Union there is great variety as to the constitutional form of such protection especially in the field of fundamental rights.[12] This variety ranges from written constitutions in the continental tradition to a non written constitution in the special case of Great Britain, from an extensive and enumerated fundamental rights code as e.g. in Germany to a more general reference as in France, and to a special fundamental rights procedure as in Germany with the existence of a constitutional court and the possibility of a special form of complaint by the

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individual to the protection of fundamental rights by the ordinary jurisdiction with a whole variety of combinations in between.[13]

In particular the last example shows that, apart from all the differences and distinctions mentioned, there are apparently common features in all member states in the form of an adequate judicial culture with independent courts and legal proceedings. This culture is part of the development of an increasingly sophisticated and secular society. It presupposes historically the development of the secular state materially in the sense of freedom of religion and other fundamental rights and in terms of the differentiation of the organized and protected independence of the judiciary, which is not based only on a legal mechanism but also on political, economical and cultural roots. This basis is jeopardized and endangered by the isolation and/or prevalence of any of these elements as well as their negligence or fusion and furthered by the right balance between them.

IV.

The European Convention on Human Rights[14] reflects the need for such a balanced state-external system and its growing differentiation and influence on the state-internal legal order. One of the original and main purposes of the Convention is to serve as an effective level of judicial protection in the contracting states, which now has been expanded by the possibility of an individual complaint to the European Court on Human Rights, but only following the exhaustion of state remedies. This limitation of access shows that protection of fundamental rights is granted by means of a two level system, the internal state level on one hand and the external state level on the other pursuant to state remedies having been exhausted by the applicant. Thus, the national state still plays an important role, even though the Convention, as already mentioned, has developed from an inter-state to a more self-relying - but not self executing - system.[15]

Adopted by the Council of Europe in 1950, its development has been marked by several quantitative and qualitative steps forward[16] including a number of additional protocols as well as the jurisdiction of the European Court on Human Rights. The Convention itself reflects the development from a classical notion of human rights to a broader concept in the sense of a second and third generation of human rights, including for instance the right to education as well as

that of democracy. The geographical application of the Convention has also evolved rapidly, especially in the years since 1989. Procedurally the introduction of the individual complaint in 1998 marks a further significant step in the direction of more effective protection.

Apart from this the character of judgments has developed substantially from a conventional international to a supranational one. One of the final reflections of an ever-growing complexity of fundamental rights control was the implicit control of the European Community via the member states as in the Matthews-Case.[17]

On the other hand, pursuant to the Convention final jurisdiction on the protection of fundamental rights shall rest with the European Court of Human Rights and not with domestic authorities. The idea that the Court's decisions are respected by the state is also a precondition to becoming a Member of the Council of Europe. With regard to the Court's jurisdiction, especially on Article 10 (freedom of expression) of the Convention, it has also been discussed sometimes to what extent Member States have to recognize the Court's decisions.[18]

The execution of the judgments of the Court of the Convention is in practice also supervised by the European Court of Justice of the European Union, though without any means for the latter, execution still depends on the obedience of the Member States. So, in a way, you find a split development of fundamental rights in Europe at that time: on the one hand an ever stricter fundamental rights jurisdiction, on the other hand a still large discretion of the state as far as application and implementation are concerned.

V.

The European Community has taken a decisive step to bind states effectively in a supranational legal order. According to the jurisdiction of the European Court of Justice, the Community is a new legal order, new in the sense of being equally applicable in any member state and thus being invocable also by the individual.[19] In case of conflict, Community law prevails over national law.[20] Even in the interpretation of escape clauses it is up to the European Court of Justice to render a decision.[21]

This concept has been accompanied by procedural means to control the application and implementation of community law: on the one hand by the possibility of instituting procedures against member states in breach of community law, on the other hand by giving national courts the possibility and as courts of last instance the obligation under the former Article 177, now 234 of the EEC, to apply community law and its interpretation by the European Court of Justice.

Here the question may be asked as to what role fundamental rights played within this context and in regard to this development? Within the European Coal and Steel Community, the ECSC, fundamental rights did not play any role at all. But with the growth and expansion of the new legal order the fundamental rights question also became of growing importance.

According to the jurisdiction of the European Court of Justice, the supremacy of community law is unconditional. This means that community law prevails even over the constitutional law of the Member States, which also may include fundamental rights.[22] But as the Community Treaties did not provide for any fundamental rights protection, the European Court of Justice had to "invent" fundamental rights to bridge this gap. In the absence of any written law sources in EC law the European Court of Justice derived common principles from the constitutions of the Member States and international treaties, especially the Convention on Human Rights.[23] In this way, the Court established an element of European constitutional law in the sense of joining and integrating the Convention and the national protection of fundamental rights in the member states, increasingly making reference to the Convention.

By bringing together the fundamental rights as laid down in the European Convention on Human Rights and the principles of fundamental rights developed in the domestic laws of the Member States, the jurisdiction of the European Court of Justice was part of the evolution of common values of European integration and in this sense a common constitution. This concept has been developed on the basis of the Common Market and its fundamental liberties as grounds for the general application and the priority of Community Law in the case of conflict with national law. Furthermore, this jurisdiction is also becoming more and more political as the Court also addresses new issues such as minority problems[24] and regionalism. Consequently the jurisdiction of the Court has been accompanied by other

fundamental rights documents, and the process has led finally to the adoption of basic principles of fundamental rights, which are now formulated explicitly in Arts. 6, 7 and 49 TEU and 177 TEEC.

VI.

According to Article 6(1) TEU fundamental rights form a common basis for the member states and the union together with the principle of democracy and the rule of law.[25] This system is protected by Article7 regarding the existing member states, and by Article49 as a precondition for the new member states. According to Article 177 EEC Treaty it is also valid for the relationship towards third states.

The concept of fundamental rights is formulated more precisely in Article 6(2) TEU. According to Article 6(2) the Union respects the fundamental rights formed by the tradition of the member states and international treaties especially the Convention on Human Rights. This formula refers to the jurisdiction of the European Court of Justice.[26] But what is the underlying meaning of fundamental rights in the system of Article6 as a whole? Apparently Article 6(1) has the most important function, serving as the basis of a possible procedure against member states and a precondition for new member states. Apparently Article 6(1) has the most important function by serving as the basis of possible proceedings against a Member State that violates fundamental rights and by laying down a precondition for the accession of new member states.

As to the actual Member States, Article 7 regulates the proceedings against a Member State that is seriously and consistently in breach with the principles laid down in Article 6(1), which has already been discussed widely in the case of Austria. The problem in this case was the conflict between protection of fundamental rights on one hand and the defense of democratic principles on the other when Austrian's far right Freedom Party formed a coalition with the Austrian People's Party after gaining sufficient votes in parliamentary elections.

As to the accession of new Member States control is exercised also preventively within an accession partnership.

According to Article 6(2) the Union has to respect fundamental rights with reference to the common tradition of the member states and the

European Convention. But according to the jurisdiction of the European Court of Justice those fundamental rights also have to be taken into account if European law is applied in the member states, thus stating the direct applicability of the so called secondary Community law but also the direct application of the so called fundamental liberties of the citizen of the Common Market.

So far as the Member States of the European Union are concerned, the protection of fundamental rights is not only guaranteed under the Convention on Human Rights but also under the Treaty establishing the European Union, the latter being executed by the national courts in dialogue with the European Court of Justice and accomplished by the proceedings laid down in Article 7 TEU. It is interesting to note that in this context the Member States and academic research expressed reservations as to whether a concept of fundamental rights shall coexist with a concept of fundamental liberties. This discussion culminated in the question of the scope of Article 51 of the Charter of Fundamental Rights.[27]

In addition to this point, control over the law of the Union is on the other hand open to the claim of control by the national courts[28] and to the Court of the European Convention on Human Rights[29]. This growing complexity of fundamental rights,control leads to the need for effective coordination.

VII.

The Charter of Fundamental Rights[30] aims to make visible the fundamental rights protection in the European Union. The Charter achieves this aim with an impressive catalogue of 54 articles, of which 50 articles enumerate fundamental rights. However, by designing those rights as distinctive rights in the European Union and considering the last four Articles regarding the interpretation and application of the Charter the difficulties of fundamental rights protection in the European Union's integration process remain visible. To date the Charter's position in the European constitutionalisation process has yet to be found and determined. In making visible the existing fundamental rights protection, the Charter refers to the European Convention as well as to the constitutions of the member states and to the jurisdiction of the Court of Justice.

It refers to the Convention[31] by adopting a whole series of rights already protected by the Convention and by explicitly or implicitly referring to the

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standard of the Convention, a standard which the Charter must not fall short of (see Article 52(3)). The Charter also refers to the member states, by mentioning their constitutions as sources and levels for interpretation. With reference to the jurisdiction of the European Court of Justice new rights such as the right of good administration (Article 41) and the application of the Charter in the framework of the application of the law of the Union in the Member States (Article 51) were also adopted in the Charter. Furthermore the Charter formulates some other rights already contained in the European Treaties as fundamental rights. Although the Charter tries to combine all the generations and aspects of the existing and even future fundamental rights, it still falls short of a perfect solution.

Apart from the question as to whether the enumeration of individual rights is exhaustive, there are a number of questions as far as applicability and affectivity are concerned. Are the rights formulated as (individual) rights or as programs? If they are directed against the Union, how far does the Union have the means to guarantee the necessary protection at its disposal? If not and in general terms one question should be asked: How far is the Charter applicable in the member states? And finally: does the Charter provide a common denominator which makes control by national courts and the Court of Human Rights superfluous?

While it reflects the existing complexity of the problems the Charter is at the same time a valuable instrument to reduce the solution of those problems to a manageable form. But who has to decide upon the interpretation of the Charter? To date, it has not become part of the treaties nor secondary law and thus is not legally binding. However, the fact that the parties in a convention of representatives from all the Member States could agree on the Charter shows that at least some limited binding character was intended. At the moment the legal effect of the Charter remains dependent on its application by the European Court of Justice, but even in this context it plays an essential and new role in the process of what is called European constitutionalisation[32]. It would therefore be shortsighted to interpret the Charter only as a formal document. In the future it will be a decisive point of reference in the already legally binding context of the law of the Union, which is formed by Articles 6, 7, and, for the accession states, by Article 49 TEU.

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Conclusion

What does the level of fundamental rights protection in the European Union mean for the member states – i.e. the current and future member states?

As to the original member states, their common conception of fundamental rights protection formed the basis for the development of a European fundamental rights protection in the more traditional form of public international law, i.e. the Convention on Human Rights, but also in the general conceptualization of a supra-national "new legal order" giving rights to the individual. On this basis fundamental rights protection in Europe has been influenced more and more by their European form and level. Though every member state has methods of fundamental rights protection rooted in its own constitutional history, fundamental rights protection on this basis means the search for a common denominator combining national and European identity. In this process, the players involve participants of all kinds and also include representatives of an emerging European civil society.

Those Member States, which joined the European Union later, had to face with the existing acquis communautaire of a new legal order including fundamental rights protection and, thus, they had to be included in an already ongoing process. All those new member states then had to adapt to the needs of implementing the acquis communautaire, as for instance Great Britain which had to adjust the doctrine of parliamentary sovereignty so dear to its constitutional history.

But due to the common European tradition it has been possible until now to integrate all new member states and to contribute to their integration – even states with former totalitarian regimes such as Spain and Portugal as well as Greece. The individual form and problems of national "digestion" can be observed in the way the European Convention has been implemented differently according to the internal monistic or dualistic law conception of the respective states.[33]

As to the validity of laws and rights in the European Union one important characteristic must be mentioned: European law has to be applied without distinction in the member states. This has led to a continuing dialogue about a better coordination in the field of the protection of fundamental rights

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especially between the German Constitutional Court and the European Court of Justice. Though European fundamental rights protection in this context is basically accepted, it remains the object or at least decisive element of a constitutional discussion which is carried on now increasingly at the European level.

If the evolution of fundamental rights evolution has led already to a broad constitutional discussion in the existing member states, what does it mean for new member states, i.e. the current candidates? Apart from Article 49 TEU, states applying for membership in the Union are obliged to implement the afore mentioned acquis communautaire[34], whose development and progress is judged within the frame of the so-called accession partnerships (the former association agreements) concluded with the accession candidates.

The application of this jurisdiction requires a highly sophisticated jurisprudential system in the formal context of Article 234 TEC which should be equally effective and independent and which opens up the state concept to legal control by its own courts.

For the Central and Eastern European Countries this is not a minor problem – proceeding from the legacy of limited sovereignty within a political supranational order to a new restraint, though this time, legal order. Though the roots of a common European history exist, one of the most important tasks is to explain and make visible the distinct concepts of the limitation of state sovereignty. In this process, fundamental rights, as an element of common values, will play an important Article. They have to be seen in the context of a developed constitutional society with a separation of powers, respect for the rule of law and an independent and effective judicial system that respects the need for a functioning legal order which substitutes the legal order of the Member States. This has to go beyond the exchange of mutual economic and political interests.

But at the same time societies that have emerged from totalitarianism have to be developed, i.e. opened as well. Fundamental rights as a point of reference play a crucial part in this context.[35] The question of minorities[36] for instance is part of any accession partnership.

As for Turkey one has to take into account her special historical and geographical background and her relations between the orient and the

west.[37] The effects of her special relations[38] and also a possible clash of cultures[39] must be taken into account, too.

The Nice summit of December 2000 made a good start by developing a partnership which also contained the framework of fundamental rights including the judicial system, the restriction and abolition of the death penalty as well as complicated minority problems.[40] Thus, the summit provided a good basis for all the steps that will have to be implemented.[41]

From this point of view European identity means a balanced perspective, in which fundamental rights play an important role as "navigation-light" but also as institutions, which presuppose more then the formal adherence to international conventions. It is up to Turkey to accept this offer[42] - but at the same time it is up to the Union to offer the right means on this path to the development of national identity orientated at common European values. This means common rights with respect for the differences rooted in the history of every member state – but meaning also and not least the heart and minds of the people.

Endnotes

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[3] O.J. C 364/2000, 1.

[4] *Ch. Schreuer*," Regionalism v. Universalism" EJIL 1995, 477.

[5] *T.M. Frank*, "Is Personal Freedom a Western Value ?" AJIL 1997, 593;

[6] *J. Crawford*, "Democracy and International Law", BYIL 1993, 113; *T.M. Frank*, "The Emerging Right to Democratic Governance", AJIL 1992, 46.

[7] *R.B. Lillich*, "Towards the Harmonization of International Human Rights Law", FS für R. Bernhardt, 1995, 453

[8] *R. Zacklin*, "The United Nations and Humanitarian Intervention", Virginia Journal of International Law 2001, pp. 923

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[9] This context has been systematically reflected by Immanuel Kant. See *H.William,* "The Kantian model of federalism", in: *P.King/ A. Bosco, (ed.)* A Constitution for Europe, London 1997.

[10] O.J. C 364/2000, !.

[11] *A.Dashwood,* States in the European Union, ELRev. 1998, 481.

[12] See *J. Schwarze,* "Judicial Review in EC Law – Some reflections on the origins and the actual legal situation", ICLQ 2002, 17.

[13] e.g. Italy with the Corte Cassatione as the central court for every complaint against judgments of the ordinary courts, a complaint whose existence is guaranteed by the Constitutional Court, to which a general constitutional complaint is not admissible.

[14] See e.g. *P. van Dijk/G.J.H. van Hoof,* Theory and Practice of the European Convention on Human Rights, 3rd. Ed. 1998; *F.G. Jacobs* and *R.C.A. White,* The European Convention on Human Rights, 2nd ed. Oxford, 1996

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[15] *M . De Salvia, / M.E. Villiger,* (ed.), The Birth of European Human Rights Law/L'éclosion du Droit européen des Droits de l'Homme, Baden-Baden 1998 See e.g. *Robertson A.H./Merrills J.G.,* Human Rights in Europe, 3rd ed. Manchester and New York 1993.

[16] *R.Beddard,* , Human Rights and Europe, Cambridge 1993.

[17] *G. Cohen-Jonathan, Flauss, J.-F.,* A propos de l'arret Matthews./.Royaume Uni, RTDE 1999, 737.

[18] See e.g. *St.J.Macdonald,* "The Margin of Appreciation" in: *Macdonald, M.Matscher and Petzold* (ed.), The European System for the Protection of Human Rights. 1993.

[19] Van Gend & Loos 26/62 (1963) ECR 3

[20] COSTA./.E.N.E.L. 6/64 (1964) ECR 1253.

[21] van Duyn 41/74 (1974) ECR 1337.

[22] Internationale Handelsgesellschaft 11/70 (1970) ECR 1125.

[23] Nold 4/73 (1974) ECR 491

[24] *F. Palermo*, "The Use of Minority Languages: Recent Developments in EC law and the Judgments of the ECJ", 8 MJ 2001, 299

[25] *F. Sudre*, "La Communauté Européenne et les Droits Fondamentaux après le Traité d'Amsterdam", JCP 1998, 9. *Ph. Alston, (Ed.)*, The EU and Human Rights, Oxford 1999

[26] *F.Zampini*, 'La Cour de Justice des Communautés Europèennes, gardienne des droits fondamentaux „dans le cadre de droit communautaire"', RTDE 1999, 659

[27] *F. Jacobs* ELRev. 2001, 140.

[28] See e.g. Federal Constitutional Court of Germany (BVerfG), judgment of 12 october 1993, the so called „Maastricht-Judgment", Common Market Law Reports 1994, 66 and Constitutional Court of Italy, judgment of 21 April 1989, Common Market Law Reports 1989, 655.

[29]See footnote 18.

[30] As on the growing literature concerning the Charter see e.g.: *Benoit-Rohmer, Florence,* La charte des droits fondamentaux de l'Union européenne, LeDalloz 2001, 1483. *Besselink, Leonard F.M.,* The Member States, the National Constitutions and the Scope of the Charter, MJ 2001, 68. *de Búrca, Gráinne,* The Drafting of the European Union Charter of Fundamental Rights, ELRev. 2001, 126. *Curtin, Deidre* und *van Ooik, Ronald*, The Sting is Always in the Tail. The Personal Scope of Application of the EU Charter, MJ 2001, 102. *Curtin, Deidre,* The „EU Human Rights Charter" and the Union Legal Order: The „Bans" before the Marriage ? in: D.O'Keeffe (Hrsg.) Liber amicorum Lod Slynn of Hadley, Kluwer 2000, 303. *Engel, Christoph,* The European Charter of Fundamental Rights, ELJ 2001, 588. *Fischbach, M.,* Le Conseil de l'Europe et la Charte des droits fondamentaux de l'Union européenne, Revue Universelle des Droits de l'Homme 2000, 7. *Gijzen, Marianne,* The Charter: A Milestone for Social Protection in Europe ? MJ 2001, 33. *Goldsmith, Lord,* A Charter of Rights, Freedoms and Principles, CMLRev. 2001, 1201 ff. *Grigolli, Stephan,* The EU Fundamental Rights Charter in current debate: Origins, Positions, Future Prospects, The European Legal Forum 2000, 2. *Heringa, Aalt Willem* und *Verhey, Luc*, The EU Charter: Text and Structure, MJ 2001, 11. *Lemmens, Paul,* The Relation between the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights – Substantive Aspects, MJ 2001, 49. *Lenaerts, Koen*

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[31] *Lemmens, Paul*, "The Relation between the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights – Substantive Aspects", MJ 2001, 49.

[32] e.g. *Ch. Engel*, The European Charter of Fundamental Rights, ELJ 2001, 588.

[33] E.g. *E.Wicks*, "Declaratory of Existing Rights – the UK's role in Drafting a European Bill of Rights", Mark II, Public Law 2000, 527.

[34] *C. Curti Gialdino*, "Some reflections on the acquis communautaire" CMLRev. 1995, 1089 sequ.

[35] *G. Brunner*, "The Constitutions of Central and Eastern European Countries and the Duty to Protect and to Ensure Human Rights", in: *E. Klein*, (ed.) The Duty to Protect and to Ensure Human Rights, Berlin 2000, 73 sequ.

[36] Vgl. *Küpper*, Völkerrecht, Verfassung und Aussenpolitik in Ungarn, ZaÖRV 1998, S. 239 ff, 252.

Popescu, l'application des normes de droit international relatives aux droits de l'homnme en droit roumain, European Review of Public Law 1996, S. 351 ff.

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[42] see e.g. the report of the conference from April 2000 13th to 15th in Postdam – Die Türkei ante portas – der EU- Beitritt als Chance und Problem, Orient 2000, 213-217.

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IV. SESSION

Human Rights as a Criterion for Membership to the European Union and the Position of Turkey

Chair Person : Assoc. Prof. Turgut Tarhanlı

Sema Pişkinsüt

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TURKEY'S PROBLEMS RELATED TO HUMAN RIGHTS AND DEMOCRACY AND THE EUROPEAN UNION

Sema PİŞKİNSÜT*

If the title of the session (Human Rights as a Criterion for Membership to the European Union and the Position of Turkey) had been formulated differently, it would have enabled us to enjoy a more constructive debate. Human Rights is a dynamic concept, which has developed in every society under internal and external influences, but especially in relation to internal dynamics. I am concerned that the title of this session may cause people to think that internal dynamics are less significant than external influences.

I believe some circles are suffering from a misperception that the importance of the west for Turkey or the importance of Turkey for the west was conceived only after World War II. On the contrary, these relations have a very long history. Therefore, we must analyse our relations with the EU, by having regard to these historical facts. European identity is a concept with historical, social and universal dimensions that has been defined in relation to "the other". It was shaped in the beginning by Christianity, but later, became synonymous with the concept of "civilization" in parallel to the development of the concept of the nation.

Turkish identity must be evaluated just like European identity. Turkish or Ottoman identity, until the twentieth century, was an identity, which developed under the influence of Islam, conflicted with European identity and was moulded by this conflict. Turkish identity surpassed Islamic identity after the nineteenth century and began to take prominence over it.

It was this interaction, this dialectical relation, the antagonism between Christian Europeans and Muslim-Turks that ensured the emergence of the

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identity of civilized Europe as well as shaped the modern Turkish identity simultaneously.

What is critical here is whether the European Union and European identity must be considered as a thesis or anti-thesis or as a synthesis. There are Europeans who conceive of this problem as a thesis or an anti-thesis, who want Turkish identity to remain as the other permanently, who insist that the European Union is a "Christian club". Conclusions formulated by Christian Democratic leaders in the recent past must be recalled within this context.

It must also be remembered that such approaches have been used by some circles to sustain racist thinking. Indeed, the number of such people is considerable. Those who separate identities in an antagonistic way on the conceptual basis of "the other", those who view their differences as superiority, assert, even impose Europe, which they define personally, as an ideal for the whole world. These circles have the prejudice that countries in other cultural geographies shall never be able to attain this idealised level. Berlusconi's recent comments represent the last example reflecting this prejudice. In this sense, it is ironic to see these same people comment on human rights.

On the contrary, those who conceive of the EU as a consequence of the historical development of Europe and as a synthesis claim that the European Union must represent the norms of modern civilization and must involve other identities instead of excluding and discriminating against them. These are the people who know that human rights are dynamic, who contribute to the concept's development, and who keep their contribution on the agenda outside the Union. I would like to emphasize that there are very important differences between these groups and therefore it is not possible to talk about a homogeneous Europe or a homogeneous EU approach.

When the human rights policy of the EU is examined, it can be clearly observed that the Court of Justice recognized fundamental rights as an inseparable part of the legal order of the Community despite the fact that the EEC Treaty did not contain any specific provisions on human rights. Thus the Court of Justice guaranteed that human rights would be fully observed in the judicial system.

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The Treaty on European Union, which entered into force on November 1, 1993, initiated a new stage in EU policies on human rights and democratic principles.

Respect for human rights has been adopted as one of the principal conditions and prerequisites of accession to the EU. This has been stated explicitly in section F of Article 2 of the Treaty on European Union, which reads as follows:

"The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 04 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law."

Furthermore, the European Court of Justice has rendered a series of judgements, which show that this Convention and other relevant international and regional instruments have been defined as a foundation of the EU. These internal EU developments have ensured the emergence of the human rights provisions of the European Constitution, which is in the process of formation.

Therefore, I believe that the human rights criteria of the EU must be based on the historical background, which ensured the formation of civilized European identity, on the international instruments, which came into existence in this process and on the principles and instruments underlying the construction of the EU.

On the other hand, two different approaches have taken root in Turkey. One approach places a strong emphasis on Turkey's national integrity, unitary state, and republican program, speaks of the special realities of the country and sees human rights and democracy as secondary problems. It must not be ignored that the 1980 *coup d'etat* was realized for the sake of the republican program, too. However, it proved in a short time to be an act, which did not embrace a democratic and social program and was ultimately unsuccessful. Now, we are being compelled to face the collapse of this approach and its negative consequences. The supporters of this approach say that Turkey has special conditions, its geopolitical situation necessitates cautiousness. They emphasize that Turkey has an income per capita below 3000 dollars, and therefore a democracy meeting European standards is not

feasible. They argue that such a democracy can be realized only in the future by closing the socio-economic gap.

It is certain that such approaches limit the concepts of human rights and democracy and legitimize anti-democratic practice. It is a fact that each country has circumstances of its own. Is Turkey the only country in a significant geopolitical situation? Are the geopolitical circumstances of Israel, India and East European countries unimportant? It must also be remembered that Europe's socio-economic conditions were once much worse than today and its income per capita was very low. However, great developments with regard to human rights were achieved in those countries even then and they were able to develop strong democracies. India constitutes an interesting example as far as its socio-economic circumstances are concerned. India has a successful democracy in spite of its huge population and its severe socio-economic problems. Therefore, it is our duty to open the way for more democracy instead of trying to close the way. If one wants to prevent the promotion of democracy, it is always possible for him to find such justifications in every country and especially in Turkey.

It is certain that some of the EU criteria with regard to economic, social, cultural and political rights shall contribute markedly to the reinforcement of our republican program.

The development of rights and freedoms, which are capable of eliminating the disequilibria and contributing to the social development of the individual and the country, can only be expected to strengthen the republic. However it is undeniable that there are some attitudes, which contradict with our republican program. EU Member States have made dramatic mistakes by permitting organizations which oppose our national integrity, our unitary state and our secular system and which conduct an armed struggle, to carry out activities in EU countries and even to offer support to them. Such an approach was never adopted towards the IRA, which has fought against the United Kingdom and towards ETA, which has fought against Spain. A double standard has been applied with regard to Turkey. I do not believe that there is any rule, which aims at weakening the national integrity of a candidate country or a Member State to be found in any of the documents

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and criteria of the EU. Nevertheless, such attitudes could be witnessed frequently in many EP resolutions and in Member States' relations with terrorist organizations.

In Turkey, there is a train of thought which does not care much about the republican program and some try to create conflicts and controversies centred on the concepts of the unitary state, national integrity and secularism and they put the emphasis only on human rights and democracy in the abstract. It must be accepted that the republican program cannot be reinforced without democracy and that democracy is a practice, which does not weaken the republic. We must also refrain from converting democracy into a means of weakening the republic. Otherwise there may be no state left in which to apply democracy. There is no doubt that Turkey needs an urgent democracy program. However, attempts to encourage micro-nationalism and to divide Turkish society on the basis of ethnicity, religion or sect, which are becoming very common responses to globalisation, must be prevented. Conditions, ensuring the most extensive exercise of individual and collective rights, must be created while remaining sensitive to the problems, which may create such consequences.

The EU possesses an admirable support structure of democracy and human rights and its citizens enjoy a remarkable array of rights. Moreover, the EU did not allow these rights to remain purely theoretical and worked to apply them. By adopting the democracy and human rights criteria of the EU, Turkey will reach the most significant stage in the process of westernization or civilization which she entered two hundred years ago. The fact that the common definitions of some concepts have not been or could not be made in international law has created important problems. For example, "democracy, the rule of law, the protection of and respect for human rights and minorities were mentioned in the political criteria adopted in the Copenhagen summit of 23 June 1993.

It has not proved possible to define the concept "minority" in international law. International documents on minorities contain the expression "people belonging to national minorities". This expression refers to individual rights, and not collective rights.

The EU and its Member States are displaying a different attitude towards Turkey with regard to minority rights even though these rights are not defined thoroughly in international law, are recognised as individual rights

and are exercised with care. They do not distinguish between individual rights and collective rights. It is certain that there are important problems in Turkey with regard to democracy and human rights, and they must be solved. However, the fact that some subjective evaluations are being advanced which do not exist among the human rights and democracy criteria and that some additional criteria are being imposed vis-à-vis Turkey, have caused a double standard to emerge in this field, too. This situation has created problems concerning Turkey's democracy program, which is vital for its process of modernization and may cause problems concerning the continuation of its republican program.

It can be clearly understood that the republican program and the democracy program are not two conflicting programs. They complement and can develop each other. It must be recalled that the republican program cannot be reinforced without real democracy and that the republic constitutes a strong basis for the democracy program.

The human rights criteria, accepted as indispensable for EU membership, do not contradict this evaluation. On the contrary, the human rights criteria overlap with it. Therefore, Turkey must continue its republican program and democracy program and the EU must not exaggerate the problems existing in Turkey. What is more, the EU must not create a double standard by trying to apply additional criteria to Turkey.

Another remarkable point concerning our country is that the issue of economic and social rights, which developed strongly after World War II, but began to recede in the 1970s, have not been treated seriously. This topic was ignored during the negotiations which led to the recent constitutional amendments.

This is mainly because the development of socio-economic rights has slowed down given the great impact of globalisation during the last twenty years and also under the influence of the polarization process which is its antagonist. Indeed, deterioration has occurred in some aspects of socio-economic rights. The concept of rights has been eroded by the fact that the differences between rich countries and poor countries and between the developed and underdeveloped regions in each country has increased, that

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the allocation of resources between social classes has been affected negatively; poverty, unemployment and famine have all increased. Globalisation has severely affected the character of the social welfare state. The idea that each individual should get as much health care, education, social security and housing as he can pay for has become widespread. Health services, education, social security are no longer considered as rights. Instead, they are considered as needs.

In addition to the limitations of rights and freedoms, duties and responsibilities have been extended, too. "The Universal Declaration of Human Responsibilities" which has been prepared by a board of influential people consisting of Helmut Schmidt, Gorbatchev, Jimmy Carter, Felipe Gonzales with the expectation that it would be adopted by the UN around the 50th anniversary of the Universal Declaration of Human Rights in 1997 has been the most important of such attempts. This attempt proved abortive due to the intense criticism that " the concept of responsibility is being bolstered in order to overshadow human rights". But such intentions have never subsided.[1]

The Annual Human Development Reports of the United Nations clearly show that the conditions of none of the periphery countries including Turkey are improving, that they could not accede to the group of centre countries, that on the contrary the differences between them and the centre countries have increased and that their debts to the centre countries have multiplied, over the last twenty years. The unjust allocation of income in these countries has increased especially in the last ten years. By contrast, strong socio-economic structures, a balanced allocation of income, developed institutions, and organized structures will reinforce democracies and strengthen human rights practices.

Organizations such as labour unions, which constitute the most important means of protecting and developing socio-economic rights, have been affected very badly by globalisation and lost strength. They have declined even in France and Britain, which have been important centres of the labour movement and the percentages of unionised workers have decreased rapidly in these countries. Turkey has experienced the same changes.

Another important aspect of democracy and human rights issues in Turkey is that such developments are considered in strict relation to the EU. The decisive factor here must be our internal dynamics. A strong determination

to achieve more in this direction has developed in our society. Certainly, the positive influence of external dynamics should not be denied, but the solutions to our democracy and human rights problems must not be expected only from the EU.

The Accession Partnership Document, which was prepared for Turkey, strongly emphasized privatization, agricultural reform and the implementation of the program agreed on with the IMF and World Bank. Turkey has concluded 18 agreements with the IMF and 17 of them have not been successful. These failures have mostly been caused by the attitude of the IMF. Turkey is obliged to approximate its economy to the macro economic norms of the EU. The EU must be willing to facilitate this alignment. However, the application of IMF and World Bank programs must not be accepted as the only means of achieving progress and they must not be imposed as an economic criterion. The EU protects its agricultural sector and subsidized it heavily for the sake of just 5% of its population. The EU wished to impose an agricultural reform on Turkey, which means that the support granted to the agricultural sector will effectively be terminated despite the fact that this sector involves 45% of its population. On the other hand, the EU's public sector accounts for 50% of the economy. Yet, public sector privatisation is seen as a criterion for Turkey where the state accounts for only 20% of the economy. All of these changes are expected from a country where intense socio-economic disequilibria prevail. Certainly, there have been some irrational practices in the management of public enterprises in Turkey. Many mistakes have been made with regard to planning, choice of location and scale and our public enterprises suffer from partisanship and a lack of productivity. The reform of these enterprises could be regarded as plausible, but requiring their liquidation brings different motives to one's mind.

Consequently, socio-economic structures must be reinforced in order to ensure the development of the conditions necessary for the realization of the EU human rights criteria. The realization and protection of such rights will be much easier on the basis of a strong socio-economic structure. Therefore, the Accession Partnership Document should have been prepared with greater attention and should have been free from conjunctural assessments.

It is thus possible to conclude that the republican program, democracy program and social program are required as a whole in order to open the way for Turkey.

We can maintain change and development in all social fields, namely in economic development, in our social structure, in politics and in the cultural-ideological field and become a country with modern norms and standards only with the support of these three programs. The failure of even one of these programs shall prevent us from developing positive social change. I must emphasize that the human rights criteria overlap with these developments and support them. However, it is also a fact that some of the subjective attitudes and practices displayed by the EU and the Member States cause some problems.

It can be asserted that Turkey's democratic system is far below the level we are aiming to achieve, as a consequence of the defects in our legal system, practices and our political culture.

The constitution unfortunately does not exhibit the characteristic of a social contract for us, because it is the product of an era when democracy was conceived as a threat. It is a constitution, which limits rights and freedoms, prevents the democratic development of society, leaves the individual and the society powerless vis-à-vis the state and does not trust the individual and society as a whole. The constitutional amendments made recently must be evaluated as a first step taken in the direction of overcoming defects in our democracy.

Efforts to remove obstacles to freedom of thought, freedom of expression and freedom to organize must be continued in order to develop Turkish democracy and ensure improvements in human rights practices.

The lack of coordination and the deficiencies which can be witnessed with regard to the principle of separation of powers, the imbalances between the legislative, judicial and executive organs, must be ended.

The extraordinary powers conferred upon the executive organs raise it to a very influential status vis-à-vis the legislature and the judiciary. Therefore, the legislature cannot fulfil its duties and the origin of sovereignty has become a matter of controversy. Sovereignty must be returned to the people.

The reinforcement of executive organs is not the only problem. Turkish democracy was first diminished to a democracy of parties and the democracy of parties was then diminished to a democracy of leaders. The "democracy of leaders" to which we refer very often is a fact, but not our destiny. Therefore, The Act on Political Parties and the Electoral Act must be redesigned in order to eliminate these deficiencies and to reinforce Turkish democracy.

The legislature must be freed from problems originating from the existing implementation methods of representative democracy and from its weak status vis-à-vis governments. The legislative process must be backed up by the involvement of experts and draft statutes must not contain technical mistakes.

The judicial system, like the legislature, is under the influence of the executive organ. The rule of law must be observed and the law must be accepted as the supreme power in all social disputes. Situations where the independence of the judiciary is not ensured are unacceptable in a democracy, which respects the rule of law.

Legal reform must not be interpreted as surrendering to pressures exerted by the west or as unconvincing, deceptive measures. Legal reform must involve amendments of the provisions of the 1982 Constitution which limit rights and freedoms and weaken the social state, the elimination of obstacles to freedom of thought, freedom of expression and freedom to organize, and involve the regulations to be made in relevant laws and other types of legislation in harmony with these amendments. Any conceptions and practices justifying the use of force and infringements of the rule of law by certain powers must be terminated. The recent constitutional amendments must be assessed only as a first step in this direction.

Legal reform must bring solutions to the problems faced in practice. Within this context:

1- Legal education must be restructured.

2- The structure of the Ministry of Justice must be redesigned.

3- The Court of Cassation must be turned into a unique high court with more functions and less personnel, a judicial organ, which possesses the characteristics of a court of precedent.

4- The High Council of Judges and Prosecutors must be redesigned by means of the necessary constitutional amendments in order to convert it into an institution, which protects and develops the independence of the judiciary and the membership of the Minister of Justice and the undersecretary of the Ministry of Justice therein must be terminated.

5- The Fundamental Statutes must be redesigned

6- The system of penal justice must be reinforced.

7- The courts must be reorganized; new courts must be established; and the number of judges and prosecutors must be increased.

8- The State Security Courts must be abolished.

9- The Act on the Trial of Civil Servants must be repealed or its scope must be restricted.

10- The state forensic medicine service and expertise must be redesigned.

11- Consequently, the length of judicial proceedings must be shortened and the sense of justice within society must be reinforced.

Endnotes:

[1] Prof. Dr. Rona Aybay, İnsan Hakları, İnsan Sorumlulukları, Elli Yıllık Deneyimlerin Işığında Türkiye'de ve Dünyada İnsan Hakları, Hacettepe Üniversitesi, 1999.

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AN MEP'S ASSESSMENT: FROM HELSINKI TO THE PRESENT - THE LATEST SITUATION IN TURKEY WITH REGARD TO HUMAN RIGHTS

Ozan Ceyhun *

Even after the Helsinki Summit of October 1999, the number of people who believed that Turkey would move decisively and quickly towards EU membership were already few in number. Now, there is almost nobody who believes in the likelihood of such progress. The National Program that was prepared as a response to the short and medium term targets of the Accession Partnership Document submitted after prolonged debates by the Commission on December 4, 1999 does not contain any meaning as long as it remains merely on paper and is not implemented.

While reports on candidate countries apart from Turkey were being considered at a session of the European Parliament entitled "The Enlargement Policy of the EU" on September 4, 2001, the Frankfurter Rundschau, on the same day, reported that Günter Verhaugen, the Commissioner responsible for EU Enlargement, had stated at a meeting with German Ambassadors that ten candidate countries were ready for accession to the EU[1]. This brief outline can be regarded as a summary of the latest developments.

As you all know, the requirements that should be fulfilled in the fields of human rights and democracy were openly stated in the document "Accession Partnership for Turkey" and are still valid.

The "short-term priorities" that should be realized by the end of the year 2001 were stated in the document "Accession Partnership for Turkey" in the following terms and identified the need to:

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- Strengthen legal and constitutional guarantees for the right to freedom of expression in line with Article 10 of the European Convention of Human Rights. Address in that context the situation of those persons in prison sentenced for expressing non-violent opinions.

- Strengthen legal and constitutional guarantees of the right to freedom of association and peaceful assembly and encourage development of civil society.

- Strengthen legal provisions and undertake all necessary measures to reinforce fight against torture practices, and ensure compliance with the European Convention for the Prevention of Torture.

- Further align legal procedures concerning pre-trial detention with the provisions of the European Convention on Human Rights and with recommendations of the Committee for the prevention of Torture.

- Strengthen opportunities for legal redress against all violations of human rights.

- Intensify training on human rights issues for law enforcement officials in mutual cooperation with individual countries and international organizations.

- Improve functioning and efficiency of the judiciary, including the state security court in line with international standards. Strengthen in particular the training of judges and prosecutors on European Union Legislation, including in the field of human rights.

- Remove any legal provisions forbidding the use by Turkish citizens of their mother tongue in TV/radio broadcasting.

- Develop a comprehensive approach to reduce regional disparities, and in particular to improve the situation in the South-East with a view to enhancing economic, social and cultural opportunities for all citizens.

....

Employment and Social Affairs

- Further strengthen efforts to tackle the problem of child labor.

- Ensure that the conditions are in place for an active and autonomous social dialogue, inter alia by ensuring that trade union rights are respected and by abolishing restrictive provisions on trade union activities[2].

In addition to the objectives stated above and defined as short-term, the medium-term objectives to be fulfilled by the end of the year 2004 were listed as follows:

"Strengthened political dialogue and political criteria"

...

- Guarantee full enjoyment by all individuals without any discrimination and irrespective of their language, race, color, sex, political opinion, philosophical belief or religion of all human rights and fundamental freedoms. Further develop conditions for the enjoyment of freedom of thought, conscience and religion.

- Review of the Turkish Constitution and other relevant legislation with a view to guaranteeing rights and freedoms of all Turkish citizens as set forth in the European Convention for the Protection of Human Rights; ensure the implementation of such legal reforms and conformity with practices in EU member states.

- Abolish death penalty, sign and ratify Protocol No. 6 of the European Convention on Human Rights.

- Ratify the International Covenant on Civil and Political Rights and its optional protocol and the International Covenant on Economic, Social and Cultural Rights.

- Adjust detention conditions in prisons to bring them in accordance with the UN Standard Minimum Rules for the Treatment of prisoners and other international norms.

- Align the constitutional form of the National Security Council as an advisory body to the government in accordance with the practice of EU member states.

- Lift the remaining state of emergency in the South-East.

- Ensure cultural diversity and guarantee cultural rights for all citizens irrespective of their origin. Any legal provisions preventing the enjoyment of these rights should be abolished, including the field of education.

....

Employment and Social Affairs

- Remove remaining forms of discrimination against women and all forms of discrimination on the grounds of sex, racial and ethnic origin, religion or belief, disability, age or sexual orientation.

...

Justice and Home Affairs

...

- Further develop and strengthen justice and home affairs institutions with a view in particular to ensuring the accountability of the police.

...

- Lift the geographical reservation to the 1951 Geneva Convention in the field of asylum and develop accommodation facilities and social support for refugees[3].

Although the "National Program of Turkey for the adoption of the *acquis communautaire* of the European Union" was deemed as inadequate in regard to the expectations of EU circles, the government portrayed it as a very important document especially when Turkish realities are taken into account. The preamble of this text started with the statement: "A peaceful foreign policy, secularism, the rule of law, a pluralist and participative democracy, human rights and freedoms constitute the essence of the modern Turkish Republic"[4] and this preamble gave us hope. Nevertheless we are still waiting for the implementation of this program's provisions.

Except for a few legal amendments in the law, it has not been possible to achieve any further positive developments with regard to Human Rights in Turkey. On the contrary, we were all surprised to hear of the claims that two HADEP members had disappeared at a gendarme station and also by the claims that a police officer who was reputed to be a "torturer" in the Manisa case was also involved in the death of a 16 year-old boy in his new posting – the assertion that this boy hanged himself by using the bed linen in the cell of the police station where he was detained astonished everyone since we did not know that there were cells in Turkish police stations that had bed linen as good as the linen used in luxury hotels. We sadly observed the assault on a Turkish MP at the congress of her party – an MP who had provided valuable, bold and substantiated research on torture. She was also subjected to ill treatment since she had refused to disclose data on the victims of torture – those who had provided her information about the torturers -- in subsequent investigations. These investigations were initiated when her research on torture was made public. These, and other similar events form part of a very long list.

The events that took place in the course of the police hunt for the murderers of Üzeyir Garih, a person whom I loved and respected a great deal and who was the victim of a vile murder, and, the information given to the press by the authorities concerning the police investigation constituted

a shameful abuse of human rights. The announcement of a boy as *the* "murderer" in the first place; the subsequent realization that he was not actually involved in the incident in any way; and the following ill treatment of some female suspects without any respect for their individual rights and any concern as to the basis of their guilt reveal how far the Turkish Police Force is from the "work notion" of the EU-Rule of Law- State Police Departments. The most saddening part of this issue was that Üzeyir Garih himself was someone who had actively fought against such injustices.

Until a few days ago, Turkey used to criticize the EU and complain that the stipulated financial aid for Turkey had been blocked. This problem was solved at the level of the Council and the European Parliament, as a result of the efforts exerted by the European Commission.

A total amount of 177 million Euros was released for Turkey from three different sources (127 million Euros from MEDA, 5 Million Euros for the strengthening of the customs union, and, 45 million Euros for supporting economic and social development). Furthermore, the European Investment Bank will provide additional financial aid to support capital investments. Accordingly, within the framework of the Special Action Program, a 450 million Euros credit will be provided in the period 2001-2004. Since May 2001, Turkey has had the right to benefit from pre-accession credit facilities together with all the other candidate countries. Also, within the context of the Mediterranean Policy it has been agreed that Turkey will be given a 6.425 million Euros credit in the period 2000-2006 by the European Investment Bank. In short, the issue of "financial aid" about which Turkey used to complain so much, is no longer a problem. The EU is acting in compliance with the provisions of the Helsinki Council Conclusions and is fulfilling its obligations.

Nevertheless, it is not possible to contend that Turkey is fulfilling its obligations with the same sensitivity. On the one hand, for example, the "Draft Law for the amendment of some Articles of the Turkish Constitution" submitted by the Inter-Party Compromise Commission – in its final form as accepted by the Turkish Grand National Assembly, and if evaluated from a Turkish perspective – can be regarded as a very important step. On the other hand, if we ask to what extent the EU's expectations have been satisfied, in other words, adopt the EU's perspective, these amendments may be viewed as "inadequate". Amending the constitution drawn up by the 12 September 1980 Military Regime has been, in fact, a

pleasant development despite the slow speed of the process. However, I observe that the steps, which need to be taken over the death penalty and some other similar fields cannot be taken due to some internal controversies. This is unfortunate and disadvantageous for Turkey.

I sadly observe that the state authorities, which are trying to contribute to the solution of the problems in the fields of democracy and economy in line with the Copenhagen Criteria are being continuously obstructed. Some circles are afraid of the success of the State Minister responsible for the economy, Mr. Kemal Derviş and are doing their best to hamper his efforts. The same holds true for the removal of the former Interior Minister Saadettin Tantan from his office. I still wonder who was protected by this removal.

As a matter of fact, the number of people who believe that this Prime Minister (Bülent Ecevit), who has serious health problems, and his three party coalition can take Turkey further on the path towards EU membership, is decreasing day by day. According to the latest opinion polls, voter support for the Prime Minister's party (Democratic Left Party - DSP) stands at approximately four percent.

Since the DSP's coalition partner, the Motherland Party (ANAP) has developed a reputation for "protecting corruption", it is envisaged that ANAP will not be able to secure parliamentary representation in the coming elections.

The other coalition partner, the Nationalist Action Party (MHP), on the other hand, is constantly attempting to restrain the actions of the State Minister responsible for the economy, Mr. Kemal Derviş, although as a party, it obviously lacks any expertise in economic management. This is because reform of the current system does not correspond with the interests of this party. Furthermore, as the party that had promised the execution of Öcalan as a means to win votes, the MHP is obstructing the necessary steps that should be taken to democratize Turkey. For example, it is preventing the abolition of the death penalty.

An implementation of the necessary economic and democratic reforms through common and decisive policies does not seem possible since these three parties have different reasons for being members of the coalition government. What is even worse is the fact that there does not seem to be

any alternative to this government. It is obvious that Tansu Çiller cannot attract significant support from Turkish voters. It is a very well known fact that the two successor parties to the now defunct Virtue Party are abusing the democratic process for their own anti-democratic Islamic ends although they try hard to appear "pro-European Union".

We can hardly expect that the current government and the Parliament that is supposed to control it are going to be able to find solutions to the Cyprus and the Aegean disputes as they cannot even find solutions to the problems of democratic and economic reform that are cited above. I do not believe that the Cyprus problem can be resolved with the participation of Denktaş. On the other hand, I believe that the Commissioner who is responsible for Enlargement, Günter Verheugen should maintain his determined stance in this respect. I am afraid we will face a Cyprus Crisis in the coming days. (Nevertheless, if the negotiations between Denktaş and Klerides continue to improve and my opinion proves to be wrong, then this may offer a chance for Turkey.[5])

Moreover, it would be naïve to expect any positive developments over the issue of the Aegean Islands. The Aegean and the Cyprus problems cannot be resolved unless Turkish domestic politics become more stable. But we should not lose hope.

I think that Turkey needs a modern and European social democratic party just like PASOK in Greece. The establishment of a modern socialist movement that will embrace all the people living in Turkey can also offer a chance to the Right. Both the left and the right in Turkey may become modern in the European sense and thus, may dispense with the "overarching power of leadership" mentality, which is a very big problem in Turkish Politics. However, there are currently no signs of such a development.

In a context where only some employer institutions such as TUSIAD, or various NGOs are making efforts to solve Turkey's democratic deficit, it is hard to be optimistic. But it has to be said that there are people who are trying and they are the only hope for the future.

Now, I will proceed to answer one question, which I am frequently asked, "Will Turkey be a member of the EU?", I would say "No, under

these conditions, but it is up to Turkey to change these conditions." Turkey does not have any other alternatives.

The first step should be to fulfil the criteria for EU membership and if it appears finally that the criteria cannot be fulfilled completely in spite of Turkey's best efforts, then, an interesting truth will emerge. Given the reforms that it implemented on its path towards the EU, Turkey has become a more democratic, stable country where the rule of law is respected and a country that has solved all its problems. Even if Turkey cannot achieve the end goal of EU membership in the end, these developments would be worth all the efforts undertaken. Thus, we should support these efforts.

Endnotes

[1] Frankfurter Rundschau, 4th September 2001, p.5.
[2] Güncel Haber, Kasım-Aralık 2000, AB-Türkiye İlişkileri
[3] *ibid.*
[4] Official Journal dated 24th March 2001, No. 24352, (Resmi Gazete, 24 Mart 2001, Sayı 24352 (Mükerrer)) p. 4.
[5] Editor's note: Please note that this statement was not originally included in the speech that the author made at the conference. He added this statement in order to update his paper before publication of this book.

THE PLACE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN THE CONSTRUCTION OF EUROPE AND ITS EFFECTS ON TURKEY

Rıza Türmen*

I. The place of the ECHR within European Law

I.I. Europe's new structure and the ECHR

By the end of the Second World War, the positivist idea of law, which had formed the legal basis of totalitarianism, no longer held any validity. Within post-war Europe the previously existing understanding that required the unquestioned enforcement of statutes has disappeared.

States that had been involved in the war adopted democratic Constitutions and brought them into force. Laws enacted by the former governments, which were contrary to these democratic constitutions, were annulled by the supreme courts of these states. This trend in favour of constitutionality played a great role in the dominance of a democratic legal system in Europe.

The European Convention on Human Rights (ECHR) was drafted and entered into force in this era. The ECHR is a part of the new legal system that emerged in Europe after the war. It is necessary to evaluate the ECHR in this context. This new legal system signified the rejection of a period in Europe during which human beings were first externalised (dehumanised) because of their racial, ethnic characteristics, and told that they could not possess the rights possessed by other people, and were then exterminated en masse. The Universal Declaration of Human Rights and the European Convention on Human Rights arose out of the injustices, pains and fears of this period.

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The greatest feature of the new legal era in Europe was the supremacy of human rights over national sovereignties. In this way, they aimed to secure the prevention of human rights violations stemming from national interests or the objectives of political powers. Thus, the legitimacy of laws was bound to causality other than the will of the decision-making power. The actual meaning of the laws stemmed from reasons that were independent of the laws in question.

In this context judges have a great duty. This is because laws acquire meaning as they are enforced. The interpretation of law by judges when considering individual's rights and freedoms and the exclusive focus on rights are vital components of the new legal system. Today the responsibility for the legalisation and comprehension of the system of values that characterizes Europe pertains firstly to the judges. Firstly, the judge is charged with responsibility for giving meaning to the law, as he/she is the one who brings it to life. Secondly, the judge does not have to respond to the short-term worries that the politician has to respond to.

The ECHR allowed individual's fundamental rights and freedoms to acquire the quality of legal norm. Its decisions over a period of 50 years have created a common legal area. For that reason, it would be misleading to seek the answers to the questions about the position of the ECHR over the laws or the constitution within a narrow positivist approach. It is necessary to consider the problem from the perspective of being internal or external to the common legal system created by the ECHR and the place of human rights in post-war Europe.

Today's European judges take the ECHR and the criteria contained in the decisions of the European Court of Human Rights into consideration spontaneously in the interpretation of national laws. The adoption of a monist or dualist system regarding international treaties does not make any difference in this respect.

By the end of the cold war the position of human rights generally in the international area and especially in Europe had changed. Human rights became a factor that unites, rather than separates Eastern and Western Europe. It has become the basic axis of unification between Eastern and Western Europe and a leading component of a value system valid for the whole of Europe that underpins European integration.

Following the end of the cold war, a new understanding of democracy was established in Europe. Accordingly, the source of legitimacy for political power was not only the concept of sovereignty. Human rights also became another source of legitimacy.

At the same time, the threat posed by Eastern Europe to the security of Western Europe disappeared. Indeed, the threat began to originate from inside Europe itself, particularly from the mass violations of human rights that were occurring in the Balkans. And this increased the importance of human rights as an international political tool.

The increasing importance of the rights and freedoms of the individual and the consensus about their importance also affected the European Court of Human Rights. When we compare the decisions that the Court made after 1990 with its decisions before 1990, we see that the decisions made in the post-Cold War period take a more courageous stance against States. They are more intolerant of state interference, and the rights and freedoms of individual have gained priority over the security requirements of the State.

During the same period, a large number of applications from South Eastern Turkey brought against Turkey began to come before the Court. The Court's decisions concerning cases from South Eastern Turkey must be evaluated within the challenging framework of the period.

I.II. The role of the ECHR system in Europe

The Convention is not an international agreement, which consists of mutual obligations between States. It is also not an agreement in which one State's obligation depends on another State's performance of its obligation. The ECHR sets objective obligations for all contracting states, which take on the characteristic of rights to be clarified by the ECHR. The fundamental rights and freedoms of individuals are not rights given by the ECHR. These are rights that exist because of the existence of the human being. The subject of these rights is the individual. For that reason, the obligation to protect individuals' fundamental rights and freedoms undertaken by States cannot be abolished due to another State's performance of its own obligations. This was pointed out by the European Commission of Human Rights in its decision in the Austria v. Italy case in 1961:

> The Convention governs more than simply mutual obligations among contracting States. It creates objective obligations beyond bilateral, mutual contracts and these objective obligations make use of a "collective enforcement" as submitted in the preamble of the Convention. By the Convention contracting States had suggested not creating mutual rights and obligations in line with their national interests, but realising aims and ideals of the Council of Europe.

According to the Court's point of view, the protection of the rights and freedoms of the individual is related to the European public order and the Convention is a part of the European public order. The Court has repeated this opinion in many cases. Recently in the judgment of Cyprus v. Turkey dated May 10, 2001, the court specified: "The Court must have regard to the special character of the Convention as an instrument of European public order".

Here the Court acts from the assumption of the existence of a European society and a group of basic rules governing this society. There is no concept of 'public order' in the Convention. The concept of "public order" appeared with the case-law of the European Court of Human Rights and was accepted. However, the language in the preamble of the Convention denote that the authors of the Convention intended to picture 'a European public order' even if this is not clearly mentioned.

Expressions in the preamble such as "a common understanding and respect to human rights dependent upon this common understanding", "a common heritage of political traditions, ideals, freedom and the rule of law", "collective enforcement of certain of the rights stated in the Universal Declaration", indicate that the authors of the Convention acted from the perspective of a basic collective common interest. Moreover it seems possible to deduce that the authors aimed to exclude individual's fundamental rights and freedoms from the sovereignty of the States. On becoming a party to the Convention, States accepted the fundamental rights and freedoms of individual as *jus cogens*. So, when the Court uses the term 'European Public Order' it always relies on the Convention's references, some of which are contained in its preamble, some of which are located in its text or sometimes through implication.

The Court of Human Rights took one further step in its Loizidou decision and characterised the Convention as "the Constitutional Instrument

of the European public order". However this provoked criticism from judges serving as judges in the Constitutional Court of the respective contracting states.

When we accept the Convention as a part of the European public order, it is clear that the rules related to public order are compulsory. They have binding force upon all parties. From this perspective, debates on the position of the ECHR in the hierarchy of norms in the domestic law of States do not make any sense.

The Convention's feature as the protector of the European public order also raises some questions.

Since the Convention protects a collective interest, the cases brought before the Court should have the purpose of protecting this collective interest. 98% of the applications are individuals' petitions. Individual application can be made only by the victim according to article 34 of the ECHR. The Convention does not allow *actio popularis*, that is, the application of a non-victim in order to protect this public order. Then how can individual applications be compatible with the Convention's feature as the guardian of the public order in Europe?

In my opinion, there is no contradiction on this point. The collective interest of the contracting States concerns the protection of the rights and freedoms of individuals. The European public order is based on individual rights and freedoms. By making an individual application, the individual contributes to the protection of the European public order.

One other issue is that Article 57 of the ECHR permits States to opt out at the signature or ratification stage. How can it be possible to allow reservation in a Convention, which protects the rights and freedoms of the individual and international values, and furthermore which is a part of the European public order? It should be remembered that reservation is only valid for the States that have approved it, in other words, it has a feature of reciprocity. So the question of how suitable it is for a Convention consisting of objective obligations has become extremely important.

Permission to make reservation resulted from discussions, which took place in the preparatory stage of the Convention and also the attitudes of the Participating Governments. In the 1950's, Governments were very sensitive

about delegating their sovereignty to the ECHR system by ratifying the Convention. Reservations, the assent of the Ministers Committee regarding Commission reports were the products of this sensitivity. For the Governments concerned these were conditions which needed to be met before approving the Convention.

But today, within the evolving framework of the ECHR system and given the increased importance of human rights, it is a fact that opt-outs are not compatible with the characteristics of the system. Finally, as the right to opt out is restricted, and as the Court has further restricted it through its decisions, it can be stated that opt-outs do not affect the basic character of the Convention.

For example in the Temeltasch Decision (1983), the European Commission of Human Rights states:

> Concerning a reservation within the Convention, even approval or rejection of the Contracting States may have a legal sense, it does not abolish the authority of the Commission to declare its opinion regarding its validity in accordance with the Convention. According to the Commission Contracting States have not intended to recognize each other's mutual rights and obligations in accordance with their national interests by the Convention, but they intended to establish a common public order formed by the democracies of Europe.

In this context, the Commission concluded that the Convention has provided the Commission with the authority of decision on the subject of validity of a reservation or a declaration concerning implementation within the Convention.

In the same way, the Court decided that the reservation by Switzerland was not in conformity with the Convention, in the Belilos v Switzerland case (1998).

II. Effects of the ECHR system on Turkey

Turkey became a party to the ECHR in 1954. Turkey recognised the right of individual application on 28 January 1987. Individual application became mandatory for all contracting States by virtue of the 11th Protocol which entered into force in November 1998. The protocol also abolished the

Commission. Thus individuals living under Turkey jurisdiction have the right to make individual application against Turkey.

Turkey's entry into the ECHR system engendered legal and political consequences. One reason for this situation was the internal and external problems with which Turkey was confronted. Before recognition of the right of individual application, the right to bring a case against Turkey was more limited. However, during this period some of Turkey's important problems were brought before the European Commission of Human Rights by means of States' applications.

Turkey's confrontation with the organs of the Convention began in 1974 with the Greek-Cypriot Government's application to the Commission against Turkey. Since then the Greek-Cypriot Government has made three more applications against Turkey. The last of these was concluded by the Court in 2001. During all these applications Turkey claimed on the one hand that the Greek-Cypriot Government could not represent the State of Cyprus, and on the other hand that Turkey could not be responsible for violations in Northern Cyprus. However these lines of defence were not accepted. Turkey participated in these cases until an admissibility decision was given but it did not participate in the examination of the case.

During the 12 September period, five States (Denmark, France, Netherlands, Sweden and Norway) applied to the Commission against Turkey in 1982, claiming that individuals who had been arrested or detained were being tortured; the custody period was excessively long; individuals detained on remand were not being brought before a judge within a reasonable time frame. Furthermore, restrictions on the right to defence, the rights of political parties, trade unions and press were not in conformity with the Convention. The application resulted in a friendly settlement decision in 1985.

The acceptance of right of individual application in 1987 was a very important step for Turkey. In this way Turkey was for the first time confronted with the protection of individual rights and freedoms against the State and confronted also an international legal force that would pursue the violation of human rights. Such an arrangement was a great innovation in Turkish political culture. It required a new perception, which considered the individual rather than the State to be of central importance. Therefore the adoption of the ECHR system in Turkey was not an easy process. And

developments after the recognition of the right of individual application did not help, either. During the time Turkey was continuing its struggle with terrorism from the beginning of the 1990's, a wave of individual applications from the South Eastern part of Turkey occurred. The Court found Turkey's laws and practices inconsistent with the ECHR. This was followed by the Loizidou judgment in 1995. When these developments combined with the introduction of a new system unfamiliar to Turkish political culture, a reaction against the Court emerged. It is still possible to observe this reaction especially in the administrative class, bureaucracy and judicial organs.

However the interesting thing is that individuals living in Turkey, in spite of this negative reaction, are increasingly using the Court and regard it as a natural way of seeking justice. Therefore, from the sociological perspective, I think that the ECHR is making an important contribution to Turkish peoples' individualism, the position of acting as an autonomous subject and an improvement of knowledge concerning the protection of their rights against the State.

It is still premature to assert a definitive idea concerning the role of the ECHR in Turkey's societal progress. Following both the decrease of terrorist actions to a minimum and the end of cases from the South East, applications to the Court against Turkey have entered into a process of normalisation. Cases brought against Turkey have gradually begun to resemble cases brought against other States. When this process develops further, it will be possible to offer a more reliable analysis about the effect of the Court on Turkish society.

In the legal area the effects of the ECHR can be seen more concretely. As of 1 June 2001, the number of applications to the Court totalled 17 950. 2635 of these applications were being brought against Turkey. Between the period of 1 November 1998 and 1 June 2001, 1789 temporary files were opened concerning applications from Turkey, 1738 applications were registered, 826 applications were rejected due to inadmissibility, 742 applications were reported to the Government, and 435 applications were found admissible. Within the same period the number of decisions totalled 57.

The highest number of registered applications has been made against Turkey. Whereas these applications are related to almost all of the rights set

forth in the Convention, more than 200 applications are about the right to life (Art. 2) and more than 350 applications concern the prohibition of ill-treatment. In addition, more than 450 applications are concerned with the right to a fair trial in an independent and impartial tribunal, more than 200 applications about the custody period, more than 500 applications concern the violation of the right to property, more than 350 applications about the right to reach court or right to effective remedy (Art. 6 and/or 13), and more than 50 applications concern the right to freedom of expression. Nevertheless, as far as the number of applications related to Turkey is concerned, a decrease in the number of registered applications is noticeable particularly in fields such as the right to life (Art. 2), the prohibition of ill-treatment (Art. 3), long detention periods (Art. 5). For example, whereas 41 applications concerning the right to life were made in 1999, the number of applications concerning the same had decreased to 27 in the year 2000.

During the period of January 1 – December 31, 2000 735 applications were recorded against Turkey. In respect of the total number of applications against Contracting Parties, the fifth highest number of applications results from applications brought against Turkey. In this period, 1325 applications against Russia, 1033 applications against France, 867 applications against Italy, and 777 applications against Poland were submitted. Within the same period, the number of decisions given by the Court totalled 695. 39 of these decisions are related to Turkey. 23 of them determined that there had been a violation; in 3 decisions the Court found no violation; and 13 decisions resulted in a friendly settlement or striking out decision. It is necessary to state that, during the same period, there were 233 decisions against Italy and that there were 49 decisions against France. However whereas the decisions against Italy were generally about the length of the trial period; 9 of the decisions against Turkey were about the right to life, 6 of them were about the prohibition of ill-treatment, 4 were about the freedom of expression, and one of them was about the prohibition of ill-treatment, private life and the right to property.

Another point that needs to be emphasised is the increasingly widespread use of the friendly settlement practice. 8 applications regarding the length of the trial period in criminal procedure, 3 applications regarding violation of property right, 1 application regarding the prohibition of ill-treatment, and 1 application regarding long detention period resulted in friendly settlement.

The decisions of the European Court of Human Rights produced important effects on the improvement of statutes in Turkey in accordance with the case-law of the organs of the Convention and changes in practice by legal and administrative bodies.

Firstly, the friendly settlement declaration proclaimed by Turkey in the Denmark v. Turkey decision (friendly settlement) shows that the measures taken concerning the prevention of ill-treatment and prosecution of such claims in an effective and meaningful way. Relevant parts of the Declaration are as follows:

Within the last year (1999), Articles 243, 245 and 354 of the Turkish Penal Code (TPC) were amended to redefine and prevent torture and ill-treatment in accordance with international conventions and the penalty for such criminal acts were increased. The amendment of Article 354 stipulates the prosecution of doctors and other medical personnel charged with drafting false reports regarding cases of torture or ill-treatment.

'The Regulation on Apprehension, Custody and Interrogation', which came into force on 1 October 1998, brought procedures into line with the standards of the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European Convention for the Prevention of Torture (CPT). A circular of the Prime Ministry, issued on 25 June 1999, introduced measures to ensure the effective implementation of the above-mentioned regulation by all relevant public authorities and enhanced control of implementation. The circular stipulated that Governors, District Governors, Public Prosecutors, Public Inspectors, other officials authorised for inspection, Commanders of Gendarmerie and Directors of Police were authorised to implement random controls and inspections. The circular also stipulated that the necessary measures would be rapidly taken to remedy the deficiencies uncovered during these inspections and the necessary procedures would be initiated for officials at fault. In addition, the Ministries of Justice and the Interior will submit reports once every three months from 1 January 2000 to the Prime Ministry's Human Rights Co-ordination High Committee concerning the results of reports prepared with regard to these checks and inspections.

Finally, the Law on the Prosecution of Civil Servants and Other Officials, which was approved by Parliament on 2 December 1999 and

subsequently entered into force, facilitates the initiation of investigations and prosecution of public officials.

In this context, the request for permission to initiate an investigation against civil servants by public prosecutors for crimes alleged to have been committed in connection with their duties has to be concluded within 4,5 months. The new law clarified many issues concerning the trial of public officials, determined the bodies authorised to allow an investigation and stipulated the authorities entitled to carry out preliminary examinations and preparatory investigations.

Detention periods stipulated by the Turkish Code of Criminal Procedure (CMUK) and the Code of Establishment and Procedure of State Security Courts (DGM Code) which were found to be contrary to the Convention as a result of the Court's decisions were changed by law No. 4229, dated March 6. 1997. Furthermore, legal supervision in the 4th day of custody was made possible by virtue of article 128 of the CMUK.

The most effective decision of the European Court of Human Rights is probably the one that led to a Constitutional amendment to change the composition of the State Security Courts. (DGM). On 18 June 1999, the Turkish Grand National Assembly (TBMM) approved an amendment to article 143 of the Constitution and accordingly enacted a law on 22 June 1999. It put an end to the practice of a military judge's presence in State Security Courts. In this way the requirements of the Incal and the Çıraklar decisions were implemented as the Court had argued that the DGM could not be an independent and impartial court in the sense of Art. 6 of the Convention if it contained a military judge.

One of the other important amendments was the modification of rates of interest applied to State loans pursuant to the Akkuş and the Aka decisions. In these decisions, taking the high inflation rate into account in the same period, the Court concluded that the payment of compensation with an interest of 30% in the cases concerning expropriation was an unbalanced interference concerning property right. Following these decisions, the legal rate of interest was increased to 50% from 1 January 1998. Then the legal interest was bound to the short-term real market interest rate for the period after 1 January 2000. This subject has been rearranged by the latest constitutional amendments. By the amendment to Article 46 of the

Constitution, in case of delay of payment in cases of expropriation, the highest rate of interest for State credits would be paid.

Within the same framework, it is possible to see the effects of cases decided by the Court in Constitutional changes related to procedures on the abolition of political parties, the inviolability of domicile, the right to privacy, the period of detention, freedom of press, freedom of establishment of association and fair trial.

There is no doubt that, as a State located in the common legal area created by the European public order and the European Court of Human Rights, Turkey is naturally affected by the developments occurring in this common area. What is more, Turkey is making an effort to adapt to these developments.

It should be concluded that Turkey's efforts at adaptation would, at the same time, generate important results in respect to Turkey's future membership in the EU.

MARMARA ÜNİVERSİTESİ YAYINEVİ

CONCLUDING REMARKS

Chair Person : Prof. Dr. Orhan Oğuz

Prof. Dr. Halûk Kabaalioğlu

Prof. Dr. Bengt Beutler

MARMARA ÜNİVERSİTESİ YAYINEVİ

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CONCLUDING REMARKS

Halûk Kabaalioğlu*

This conference has once again underlined the need for our colleagues in other parts of the continent to review some of their prejudices towards our country when they advance some general statements concerning human rights.

There have been some fundamental changes in Turkey to reform our legislation. You will recall that very extensive and comprehensive amendments to the Constitution were realised and a series of legislation was adopted by the Parliament. Thus, the legislation required for the implementation of these constitutional amendments has also been enacted.

With regard to human rights, there is one important development which you should note. For several years already, Turkey has not been the number one country against which cases have been brought at the European Court of Human Rights (ECHR) in Strasbourg. In terms of the number of cases, I think Turkey ranks fifth or sixth.

Furthermore, the types of cases brought against Turkey are not like those which occurred in the early 1990s. In relation to those cases one of course has to remember that Turkey had to face a terrorist movement which was aided and abetted by three neighbouring countries, all of which at the time were referred to as "rogue states" by the United States. There was also testimony by the leader of the terrorist group (PKK) during his trial where he disclosed which

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countries including even some members of the European Union had provided support. This reminds me a series of cases handed down by the ECHR against the United Kingdom when the behaviour of security forces and anti-terror legislation concerning Northern Ireland were at issue. The terror organisation, generally referred to as the PKK, has finally been included in the list of "terror organization" – though only after it changed its name as KADEK – prepared by the EU authorities. It is particularly sad that our European partners have, alas, after many years, realised that this was a terrorist organisation – *only after* its gang leader had been arrested, tried and sentenced and terrorist armed groups had surrendered or left the country. The aforementioned terrorist leader was not only harboured in a number of EU Member States, but was also sheltered in the diplomatic premises of another EU Member State in Kenya.

Nowadays, Judgements against Turkey are either concerned with interest rates to be paid by the public authorities when a decision is taken for the acquisition of property, based on the rate of inflation or various tax law issues. Some important judgements have been delivered where cases against Turkey were rejected. These cases ranged from the cases brought by fundamentalist political parties to dismissal of personnel based on religious fundamentalist affiliation.

It is particularly sad to note the general prejudice against Turkey concerning human rights issues and references in this seminar to "special problems" as to how adequate fundamental rights protection can be formulated "due to characteristics of Turkey's history". It may be anachronistic to evaluate current circumstances with too much emphasis on past experiences. Turkish people may also choose to judge Europe with its own past, but every sensible person knows that it would not be fair.

On the basis of the sweeping changes made to the Turkish constitution and other main legislative texts, Turkey now qualifies for starting accession negotiations under the Copenhagen political criteria and it is time to support the reform movement in Turkey and for a

display of the same goodwill shown to the other candidate countries. Negotiations should not be further delayed.

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CONCLUDING REMARKS

Bengt Beutler*

This conference has demonstrated a clear awareness of the difficulties and function of fundamental rights in a global and European perspective - and in the particular case of Turkey, particular in the sense of being respected as a state with its own origin, history and presence: no civilized state and society can exist without adequately protecting fundamental rights. The conference has documented a high level of awareness of those problems, which are related to the sufficient implementation of fundamental rights and the competence to cope with it. The mere fact that this conference has taken place at a crucial moment of human rights development is evidence enough in itself. Every speaker and participant at this conference was aware of that reality and the complex problems related to the protection of human rights in practice. To mention only one example I would like to refer to the discussion that dealt with the problems concerning the Convention on Human Rights and the European Court of Justice. I am glad and proud to have participated in this conference on behalf of the Jean Monnet Chair of the University of Bremen. Additionally, I would like to address my profound thanks to the organizer of the conference.

However, I would like to speak in the name of all participants by saying that this discussion is only one if not the first step in the right direction. It has to be accompanied by the necessary institutional steps to secure a proper protection of fundamental rights. The consciousness of that fact and the direction of evolution are marked by the fact that this conference is taking place at the same time as sweeping changes in the Turkish constitution are being implemented. Moreover, every kind of progress regarding the protection of fundamental rights has to be evaluated in the perspective of accession to the European Union.

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There are special problems on how to formulate an adequate fundamental rights protection due to the characteristics of Turkey's history. Again, it has to be emphasized that written papers or amendments alone are not sufficient. Being effective in this area requires a high standard of political and legal culture and differentiation. Another thing that really impressed me about this conference was the awareness of this problem as demonstrated by all the contributions and also in my private discussions.

The protection of Human Rights has to be implemented in the context of enduring national identity and globalization by opening new perspectives and endangering old ones at the same time. In this context the role of the state as a necessary guardian and a possible threat to fundamental rights has to be questioned along with all of its consequences.

The protection of fundamental rights in this sense demands a culture of fundamental rights, which concerns society as a whole.

This approach is double sided: on one hand national identity has to be respected and on the other one has to be conscious of the necessary binding forces coming from outside the state including fundamental rights as a basic element. A comparison with other accession candidates shows that a black and white solution cannot be achieved. Any implementation of fundamental rights has to respect national identity but at the same time it has to point out very clearly one common ground: the existence and practice of fundamental rights not only in statutes but also in practice observed by the eyes of an ever growing international culture and society.

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SPECIAL SECTION

Human Rights in the European Union: An Approach Through the Perspectives of Social Policies and Human Security

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INTRODUCTION

> We all have some space; and if we could all hope to do the same in the worlds we touch, our subject would be braver, human potential greater, and perhaps world politics freer of human wrongs[1].

Human rights can be thought of as an effective measure taken against what Ken Booth calls "human wrongs". Human failure to establish effective structures to provide shelter, food and security for everyone may be regarded as part of these wrongs. Nevertheless, the ongoing debates on "who should and will be secure"[2], "how far community should and will spread"[3], and "who should and will be emancipated"[4] do not leave much room for the creation of effective policies to right these wrongs. The much debated nature of human rights is significant in this respect as it is rather regarded as a matter of "different cultural conceptions"[5] or as basically a Western project as many would claim. This section aims at approaching human rights from the points of view of social policies and security, reflecting on how these sectors are interlinked with human rights. The major argument that will be put forward is that human rights are not exclusively a sub-discipline of law, rather, they have political, economic, social and security dimensions.

There is no doubt that one of the topics mentioned in Europe most frequently is the issue of human rights. In fact; it is impossible to distinguish between democracy and human rights completely. Democratic countries are, at the same time, the countries, which have accepted the obligation to respect human rights. If democratic institutions are functioning perfectly in a country, it is assumed that human rights are being protected there, because all democratic countries have signed international conventions concerning human rights and have enacted related laws.

Some important documents concerning human rights are the Bill of Rights of England (1689), Human Rights Declaration of Virginia (1776), the

Declaration of Human and Citizens Rights of France (1791), the UN Universal Declaration of Human Rights (1948), and the European Convention of Human Rights (1950). However, these documents, which are basically "lists of rights and principles", do not speak for themselves. They need to be interpreted.

There are common views concerning the content and nature of human rights and how they are conceived in law. The law of human rights provides satisfactory relevant data. It may be difficult for all social sectors to reach a perfect compromise on the concept of human rights, but agreeing on a "common denominator" and defining some objective criteria – in other words, "a minimum level of consensus" – are attainable goals.

Another important characteristic of human rights that should be emphasised is that they ensure the protection of the individual, who is weak/disadvantaged, against the authority. In other words, the relationship between the state/authority and the individual is central to the law of human rights. It is certain that there are also rights, obligations, principles and rules that must be complied with as far as the relationship between one individual and another is concerned. They constitute the subject matter of other sub-disciplines of law. Rights can be seen as instruments for restricting authority. Therefore, human rights concern the relationship between the powerful and the weak and aim at limiting the potential of the powerful/state to act.

There are various classifications pertaining to the substance of rights. Each one is disputable from a different aspect. Nevertheless the general and the most common classification is as follows:

- First Generation Rights: Fundamental rights: Civil and Political Rights
- Second Generation Rights: Social rights (economic, social and cultural rights)
- Third Generation Rights: Rights of solidarity (Peoples rights have special significance)

The starting point of the classification above is that these categories of rights correspond to the developments in the history of struggle for human rights. In this framework, first generation rights are connected with liberal doctrines and bourgeois revolutions and second generation rights are related

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with the industrial revolution, with the development of the social state in the capitalist system and with the socialist doctrines, which influenced this process. Third generation rights, on the other hand, can be regarded as a requirement of modern and post-modern developments in the contemporary world.

However, this classification is based on the following abstraction along with the historical evolution of human rights: The first generation rights are indispensable and not exposed to possible interventions by the public authority, because they originate entirely from the existence of their subjects. Second generation rights, on the other hand, necessitate positive action on the part of the public authority. The main characteristic of the third generation rights is that they involve positive and negative actions in that they have a mixed character.

An expansion from classical rights to economic and social rights began in the 19th century. It is possible to witness this development most clearly in the UN Declaration on Human Rights The rights listed in the first twenty-one articles of this declaration are classical rights. The other nine articles are on economic and social rights. Consequently, the term human rights not only circumscribes classical rights, but also economic and social rights.

Although the nature and scope of human rights are highly contested, there exists a consensus on some basic rights and freedoms. A categorical presentation of these rights can be laid down as follows:

- The right to life, personal freedom and personal safety, the freedom of thought and expression, the freedom of belief and religious practice, the immunity of domicile, the right to property, the right to equality, the right to establish and join organizations, the right to hold meetings and to demonstrate, the freedom to work, the right to protection of privacy, the right to vote and to stand for elections, the right to fair proceedings are in the list of first generation rights. The basic characteristic of these rights is the protection of individuals against the state. Individuals may act freely within this field, which must not be interfered with by the state.
- The right to work, the right to establish labour unions, the right to go on a strike and to be party to collective agreement, the right to employee participation, the right to social security, the right to education, protection of health, nutrition, the right to housing are in

the list of second generation rights. These rights, unlike the first generation rights necessitate the active (positive) interference by the state, not its non-interference.

- The right to environment, to peace, respect for the common patrimony of humanity, the right to development are in the list of third generation rights.

The reply to the question "What are human rights?" is different today from what it was yesterday. It will be different tomorrow from what it is today. Rights are in a process of constant development, parallel to the development of economic, social and security relations. This fact is the point of departure to our analysis. Our basic argument is that human rights are not exclusively a sub-field of law. Rather, it has political, social, economic and security dimensions. Therefore, this section consists of two separate papers. One of these papers deals with the social aspects of human rights, laying down the context in which the EU approaches the subject. The second paper analyses the relationship between human rights and human security and how it is correlated with the field of human rights.

Endnotes

[1] Ken Booth, (1995), "Human Wrongs and International Relations", *International Affairs*, 71(1): 126.
[2] Ibid, p. 112.
[3] Ibid.
[4] Ibid.
[5] Ibid.

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Human wrongs can be plain facts, but they are not necessarily plain political truth. On the whole, citizens of Western liberal democracies have a high opinion of their moral standing. It is not wholly justified, despite the great amount of good work that is practiced. When we contemplate global human wrongs today, we in the West are more culpable than at least some of those we claim to embody evil. .... At the sharp edge, in war, enemies have often been dehumanized to make it easier to kill them. In more refined times, brilliant Greek philosophers pondered the good life, while living off the backs of slaves. So did an educated man like Thomas Jefferson, while creating a constitution committed to the inalienable rights of man. At least by their own lights, these people were not hypocrites; but we in the West today frequently are, and the technologically shrunken world denies us the comfort of ignorance. ... How do our intelligent and caring minds cope with so many human wrongs? In today's wired world we have nowhere to hide, except in our minds. Consequently, we have stories which help us choose our wrongs selectively. This is where the discourse of international relations plays a role.

Ken Booth, (1995), "Human Wrongs and International Relations", *International Affairs*, 71(1):108

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THE EUROPEAN UNION AND PRESSURE GROUPS IN THE CONTEXT OF SOCIAL RIGHTS

Muzaffer DARTAN*

The phenomenon of human rights is a concept which consists of various interrelated dimensions; fundamental rights and freedoms, social rights, rights of solidarity which are the most recent ones to be incorporated into the main boundaries of these dimensions. Social rights include the demand for certain tools by individuals, belonging to different social groups, to eliminate their "weak" aspects in comparison with other individuals in society. The rights against the state cannot be achieved without proper social and economic rights and existing forms of inequality in power, wealth and status prevents the systematic implementation of social and economic liberties. Thus, the issue of social rights represent a serious level in the area of human rights as a result of its features.

One can observe progress in terms of "fundamental rights" and "solidarity rights" whereas such progress cannot be traced in the field of "social rights". The social rights profile established in the European Union (EU)[1] level to date lags behind the national arrangements of most of the member states. Indeed, social rights have a key role in the realization of human rights in terms of the accomplishment of concrete responsibilities and in the applicability of other rights and freedoms. Therefore, the future form of the EU is closely related to the way the European social space will develop in the future.

The 1990's serves as the setting for the competition between different social and economic groups over the Union institutions that lack complete political sovereignty, particularly in the field of social rights. This competition brings the Union authorities face to face with a bottom-to top

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social pressure over the issue of establishing a real, participatory European institutionalisation. In the light of analyses provided by neo-pluralist theoreticians, we now focus on pressure groups in the EU and the impact of competition among these groups on developments concerning social rights in the EU.[2]

The Group Theory of the Neo-Pluralist Approach and the EU

As a form of governance, democracy is based on the ideal of pluralism. To put it clearly, pluralism means the recognition of all the different elements in society, and their freedom of manoeuvre in the political, economic and social sphere with all their specific characteristics. Hence, the groups and the organisations that different elements form in order to express their interests acquire a key position in the functioning of the democratic process and they become the protectors of the democratic system.

This situation becomes apparent as classical pluralists evaluate the political process as a competition among groups. Therefore, pressure groups have a central role in decision-making processes. Consequently, the decisions produced by the political centre reflect the activities carried on by interest groups. The process of governing is shaped by the success level of the pressures exerted by the groups in the decision-making processes within the general framework of inter-group competition. In short, the decision-making process is considered to be a process of inter-group competition. The notion of power, however, emerged as a result of the need to mediate the different combinations of interest and to stabilize them with respect to each other.

In other words, the group approach of pluralism ignores the position of the state over the groups in society, as a vital upper organisation. Therefore, this approach is bound to be a weak theory regarding the issues of the negative effects that inequalities among the groups might generate on competition, the authorities' level of being affected by these negative effects, the differences in pressure that these groups cause and the effects of the policiés that the public authorities themselves can pursue on the basis of these differences.

The level of state interventionism after the 1929 World Economic Depression, the universal institutionalisation of interventionist policies, the criticisms directed towards pluralist approaches by the political ideas that

had emerged in the above circumstances led some of the pluralist theoreticians to re-comment on the classical approach from the mid 20th century onwards and neo-pluralist approach emerged as a result of these efforts.

Dahl, as other pluralist theoreticians, calls attention to the competition among groups, rather than political parties and the institutions of representative democracy. The only difference is that the groups he defines do not act in an equal competitive environment, on the contrary, the unequal distribution of resources plays a decisive role in this competition. Dahl emphasizes that groups supplied with more resources would have more say in the decision-making processes. This inequality over resources would hinder other groups competing in the field at hand and would prevent them from entering into competition. Thus, group elitism emerges. Although Dahl draws attention to the fact that inter-group inequalities cause a group monopoly to emerge in the decision-making process, he does not mention much about the role of public authorities.[3]

Lindblom, however, has re-commented on the group theory in terms of its effects on the decision-making processes. He states that the classical pluralists ignore the fact that official institutions form an interest group among themselves and reduce the inter-group competition to private interests. Accordingly, Lindblom rejects the pluralist tendency that the state preserves its neutrality towards inter-group competition.[4]

According to Lindblom, the primary effect of the state on groups shows itself most openly in the economic field. Government cannot remain indifferent to market movements. Stagnation, inflation and other economic problems are of vital importance for the government. The authorities should take measures against negative developments in the market in conformity with democratic rules. Here, the government tries to maintain the groups to move in a certain direction by applying encouraging policies that lead the market. According to Lindblom, the state cannot stay indifferent to other groups in such an environment. The depèndency on general election results prevents government from producing encouraging policies in line with the interests of just one group. The public authorities face the necessity of finding an optimum balance. Consequently, Lindblom points out that the state can play an aggregatory role in the unequal distribution of the resources.[5]

As can be observed, while neo-pluralists state that the unequal distribution of sources provides advantages to certain groups on the one hand, on the other, they accept that the state has to develop policies aimed at reaching an optimum balance among these groups and therefore it has a leading and stabilizing power. This approach, developed by the neo-pluralists, provides an explanatory framework in terms of the evolution that the pressure groups in the EU are experiencing in the sphere of social rights.

Above all, the EU owes its importance to the fact that it includes a process with two aspects. The first aspect is related to the EU's development with respect to prioritising economic interests. From the Rome Treaty until the end of the 1980's, European integration and the support of European businessmen in international competition remained closely intertwined, as to one implied the other. The Rome Treaty was initially reduced to the formation of an economic field where labour, capital, services and goods could move freely, in order to pursue the goal of a common Europe, to increase economic welfare and to raise the living standards in all the member countries. Therefore, businessmen constituted the social group to which both the governments and the Union bureaucrats consulted most in the Union process. It was the interests of businessmen that led the governments to develop a supra-national approach to integration in the EU. Besides shaping the behavioural tendencies and activity targets of the economic and social groups within the EU, this situation also caused an inequality over resources as Dahl has determined.

The second aspect of the EU process is related to the fact that European countries have a relatively higher level of political and social institutionalisation. Therefore, the pressures that are directed to reflecting the level of democratic institutionalisation and the social, economic and participatory rights guaranteed at the national level in the member countries to the community level are creating tensions in the governments. Europe, traditionally, has been a community of political systems, which is highly organized and different economic and social groups are equipped with the means to reach the public authorities in the decision-making processes. The searches resulting from the supra-national structuring, where the interests of the businessmen are dominant; and the national interactions constituted by the experiences of the national governments, are developing rather separately at the EU level. This situation causes a pressure process led by increasing demands for social rights at the EU level, to intensify over the Union authorities. Thus, as the first aspect is related with inequality in the

inter-group competition, as Dahl has pointed out; the second aspect seems to display an outlook which confirms Lindblom's thesis that governments cannot develop a one-sided interest perspective and that they would be forced to play a mediator-stabilizer-leader upper authority role among different groups.

It is natural that the above mentioned tensions will be clarified with discussions that will emerge in the field of social rights. Therefore, in the light of these two directions expressed with respect to the EU process, the resource inequality among groups at the EU level and the discussion on the issue of social rights will be dealt with more closely.

Organised Interests and the State

A variety of pressures have acted on the various forms of organised interest:[6]

Moves towards a global economy are paradoxically linked with the growing importance of the individual firm. Here, the implications of economic globalisation for different interest groups, organisations are analysed with particular reference to the role of the firm in this process. Disturbed product markets and intensified competition have led individual companies to direct their efforts in finding new competitive niches with the maximum degree of freedom. In the case of larger companies, this tendency has involved seeking multinational locations for their economic activities and pursuing strategic cooperation with potential rivals all over the world. Yet, the rules of this cooperation have been set completely independent of the rules of governments. Therefore, it can be stated that these firms have set themselves free of the constraints resulting from the earlier requirement to base themselves primarily in one particular territory.

In this respect, the core model of successful development has recently been Japan, where large firms are known for developing internal cultures. Many Western firms have thereafter sought independence from all outside pressures such as state regulations or memberships in certain associations. These attempts to imitate the Japanese model can also be observed in American business schools which have removed the associative networks from the picture. Therefore, it can be deduced that globalisation leads firms to re-position themselves with respect to governments and associations in trying to maintain a more distant relationship. These firms have a tendency

of both trying to eliminate state regulation and staying away from business associations whose raison d'etre is actually to represent their interests. Very large firms also have a tendency to "go global" in every possible way, bypassing national governments and associations.

These pressures also affect pluralist organised interest systems, though in a different way. First, firms have increased their lobbying activities among business interests, either direct or specific, together with a decline in work by associations. This has long been observed in French business interest groups, but now, it can be observed in a wider way. Actually, one of the most important cases is Britain, where during the 1980's, many trade and employers' associations were weakened and lost members. In some cases, these associations can be said to have disappeared. Even though the *going global* of firms and their acquiring autonomy meant that they lost dependence on their or any other country's legal constraints, they did not lose their interests in lobbying that particular country's government. For instance, in the case of choosing a certain location for a new investment, the firm will definitely bargain with the various governments over tax concessions, subsidies and the relaxation of regulations that they are eager to propose to direct the investment to their countries. Powerful companies lobby about important government decisions, and take advantage of their increasing mobility. The pressure that Volvo exerted upon the Swedish government to enter the EU was an example of such activities, where the firm had threatened the government with relocating their plants.

The relationship between business interests and the state can either be concerned with the optimal conditions for the success of a specific branch of industry within a national environment, or can be one that particularly favours individual firms. In this context, there might be an increase in pluralist characteristics to the extent that this interaction leads to an increase in the number of dialogue possibilities between the government and the interest. Yet, as a result of the growing importance of capital interests with respect to labour interests, pluralism can seem to be extremely elitist.

The first reason behind this is the fact that globalisation increases the chances for employers to choose among extended labour markets whereas labour does not have a similar chance to choose from such extended ranges of employers. Second, it is not as easy for labour as it is for corporate firms to organize internationally. Actually, the means for cooperation is available for businesses by means of improving coordination and monitoring schemes

whereas labor has to organize on the basis of solidarity. Finally, the growing pre-eminence of the individual company in particular, means sometimes a decrease in the activities of labour organisations.

The growing importance of the EU as a focus for interest group activity is a good example. National and transnational interests have intensified their activities in Brussels since the mid-1980's. This has in a sense been the result of a transfer of some economic competencies to the European level by the national governments. The best example in this case is the achievement of the single market. Globalisation has speeded up this process in certain ways. For instance, new technologies such as the energy or telecommunication service supplies have undermined existing national monopolies, and the increasing international mobility of capital and firms undermines the superiority of national regulation.

Consequently, the handling of economic functions by supranational level have attracted the interests of the economic actors that are affected by this shift. Therefore many firms have become largely dependent on decisions taken in Brussels. For example, we have recently witnessed a discussion within the European Commission about whether to permit the joint operation of Deutsche Telecom and France Telecom. The interest shown by the advertising industry in the Commission's broadcasting proposals of the mid-1980s is also a demonstrative example.

As the functions performed by the EU have increased, states have observed that these functions were previously with their realm. Thus states realize that their competencies have been reduced particularly under the influence of EU activities. Globalisation and pressures coming from the EU level have led to privatisation and deregulation, which have limited the possibilities of state control over businesses as they have started to see international capital markets as the sources of their own funding. The Maastricht Treaty, with the convergence criteria it stipulated, and the competition policy of the EU have limited the chances for states to provide funds for businesses, in terms of macroeconomic policy.

The Expansion of EU Lobbying[7]

The variety of interests with a stake in European public affairs is vast. It includes firms, professions, employers and labour groups, consumer, cause, socio/community, citizen and environmental interests, at European, national and subnational levels of organisation, and territorial interests themselves, such as regional and local government (see Table 1). The EU Commission has estimated that there are some 3000 interest groups in Brussels seeking to exert influence on European public affairs, including more than 500 European and international federations, and that some 10 000 individuals are involved in interest representation, working on behalf of either collective or non-collective interests.[8]

European-wide interest group federations have existed since the inception of the EC in industrial sectors such as agriculture, coal and steel. The European Commission was endowed with policy-making upon the rights it acquired by the Treaty of Rome. The number of Euro-groups was more than 300 by 1970, and had increased to an officially recognized 439 by 1980.[9] Therefore, it is plausible to say that some industries, with important interests concerning EC competencies, have been effective EC lobbyists for quite a long period of time.

EC lobbying was largely conducted through the political and administrative structure of the nation-state until the 1986 Single European Act. This was largely due to the fact that the decision-making power belonged to the Council of Ministers at the EC level and the groups primarily had contact with their national ministries. However, as each national government acquired a veto over proposals put to the Council by the European Commission with the 1966 *Luxembourg Compromise*, it became possible for national officials to defend their cause at the European level. Furthermore, even though EC law was already accepted to be superior over national legislation, many groups did not even have a considerable interest in the EC policy processes until the adoption of the Single European Act, as the scope of the Community jurisdiction was limited in practice. In short, as national legislation provided the main regulatory frameworks within which businesses operated, most interest groups were far more interested in their own national legislation and national governments still had the role of intervening if a problem had arisen in the market mechanism.

TABLE 1: Most Important Business Interest Groups in the EU

Perhaps the most familiar aspects of European business interest representation are the formal, cross sectoral groups. These include:

1. UNICE, the Union of Industrial and Employer's Confederations of Europe, the peak association of business. UNICE was designed to represent the interests of industry as a whole. It is a confederation of 32 national federations of "peak" business associations from 22 European (i. e. Not simply EU) countries, of which the majority in turn comprise sectoral associaitons. It therefore represents members which themselves have a wide range of intersts to represent.

2. EUROCHAMBRES, the Association of Chambers of Commerce and industry. EUROCHAMBERS, like UNICE, is a confederation of federations, bringing together 32 national associations from EU, EFTA and other countries, which between them represent 1200 local chambers of commerce, and, through them, some 4 million enterprises. Many of these businesses are the SMEs operating at highly localised levels.

3. ERT, the European Round Table of Industrialists, comprising the chief executives of some of the largest European firms. ERT is altogether quite different from either UNICE or EUROCAHMBERS. Formed in 1983, it is "rich club", with membership by invitation only, of (in february 1996) forty-six chief executive officies (CEOs) of some of the largest European firms spanning key sectors of the European economy, and which are multinational character and throughly global in outlook.

4. AMCHAM-EU, the EU Committee of the American Chamber of Commerce, organising American firms in Europe. Like the ERT, AMCHAM-EU, created to represent the interests of European firms with American patentage, is one of the most effective and admired of all Euro groups. However, while the ERT focuses on strategic issues, AMCHAM-EU tends to focus more on specific legislation. Although the present structure was established in 1985, with a membership constituency of forty companies, AMCHAM has had a Belgian office since 1948 and a European-level interest reprsentation mechanism since the foundation of the EEC.

5. A Variety of organisations seeking to represent the interests of small and medium-sized enterprises in Europe. Although UNICE seeks to incorporate the interests of SMSs though its Committee for SMSs, there is a plethora of European-level interst groups dedicated to the representation of small firms, which accurately conveys an impression of fragmentation in the landscape of organisation of SMSs. The Commssion considers that the relationship between these peak organisations is marked by competition.

Source: Greenwod, J. (1997), *Representing Interests in the European Union*, Macmillan Press, pp. 101-132.

The Single European Act (SEA) brought about considerable changes to this structure, by importantly strengthening and formalizing the powers of the European Commission to initiate Community policies in a variety of areas. Signatories to the SEA agreed to the gradual introduction of full economic and monetary union., a commitment which is re-emphasized in the 1991 Maastricht Treaty. More importantly, the Act forced the member states to commit themselves to the implementation of the provisions of the Single European Act in their internal markets by the end of 1992 (i.e. free movement of goods, services, capital, and labour within the EC).

When national associations come across certain policy difficulties with their national governments or with other similar European firms, particularly on issues where a solution cannot be achieved or when simply competing with them, they also lobby independently at the European level. Multinational companies and economically powerful firms and organisations are also represented in Brussels, either by their own public relations staff or by a professional consultant. Regional and local authorities throughout the EC have also become more active lobbyists in recent years.

Finally, non-EC groups and governments have also become more active in Brussels, Japanese and American groups being the most effective EC lobbyists.

Therefore, we can observe a substantial increase in the number of interests represented in Brussels in recent years, both in terms of volume and diversity. If the distribution of the pressure groups with respect to the interests they represent is taken into consideration, it is evident that business groups in particular and economic groups are more organized and therefore in a more effective position in comparison with other groups. Business interests have always had a dominant role in interest representation at the European-level. This is in part due to the history of the EU as an economic community. When we take a sample of business groups, we observe that more than three-quarters were established even before the single market was envisaged, whereas more than half of them had already established themselves in Brussels before the single market project.

This situation can clearly be seen in Euro-groups. Approximately 50 % of the Euro-groups are composed of industrial and commercial employers interests, 25 % are related to agriculture and food, 20 % are related to

service industries, legal and banking professions included, and only 5% of the Euro-groups represent the interests of trade unions and customers and environmental interests.[10]

The effective position of the employer's become even more evident, when these ratio inequalities, the effective position of the business organizations in national associations and the fact that non-EC groups are completly composed of business organizations and groups formed by firms are taken into consideration. The effective position of business groups is a direct result of their being considered as a party by the EC/EU authorities since the 1950's onwards and the fact that they have an organizational background that is institutionalized with the EU process.

The apperance of inequality among the pressure groups is not only related to numerical distribution. There are clear inequalities between business organizations and trade unions and social groups in terms of their access to the authorities and financial capacity. For instance, ERT has the capacity, namely the power, to exert simultaneous pressure both on national governments and on the EU institutions. On the contrary, the European Trade Union Confederation (ETUC), the biggest Euro-group, lacks the capacity to exert such two-directional pressure. Although ETUC, is a body open to all of the workers' organizations in Europe, has a wide scope of representation and is recognized offically by the EU, it is an organization whose organizational power is dependent upon the EU authorities' desire to consider them as a party due to its disorganized representation structure, the frequency of divisions emerging from differences in opinions that prevent the groups therein to move in the same direction, and lastly its financially weakness.

Therefore, there is an inequality among the economic and social groups within the EU in terms of numerical distribution, ability to secure access, financial power and the level at which they are considered as a party. This inequality fundamentally generates an integration process that operates in line with business interests and the initiaitive to affect the political authorities.

Two Fundamental Instruments on Social Rights

Two instruments attract attention in discussions between different economic and social groups when we consider the topic from the dimension of social rights. The first of them is the Social Charter of the Council of Europe which was formed outside the framework of European Union and which precedes it (SCCE). SCCE is a source of reference for Europe on account of its broad scope and its elaborated structure with regard to practice. The second one is the Social Charter of the European Union (SCEU) of 1989 which was shaped within the EU process.

The basic characteristic of the SCEU is that it serves as a source for concrete policies at EU level. Both social charters provide discussions on social rights within the Union in a legitimate and harmonious fashion and the differences between these instruments play a decisive role in the discussion. Furthermore, these instruments serve as sources for the demands and political tendencies developed by economic and social groups and authorities of the Union in Europe. That is why we will try to study the contents of these two instruments.

The SCCE is a remarkable instrument because it is an older instrument and has a broader scope and facilitates participation. The SCCE has been improved and broadened constantly since 1961. Therefore the SCCE constitutes a "European Model" within a system which stems from experience and rests on an equilibrium of interests, structures and principles and on a relationship between the state, social sides, private sector and non-governmental organizations. It consists of a preamble and 38 articles and is supplemented with an additional protocol composed of 13 articles.

19 fundamental social rights are listed in the first chapter of the SCCE and the obligation of the Member States to accept at least five of the articles 1, 5, 6, 12, 13, 16 and 19 which cover core rights is introduced in chapter 2. The core articles cover; the right to work, the right to organize, the right of collective bargaining, the rights to social security and social assistance, the right to protect one's health and the rights of immigrant workers and families to protection and assistance.

The other provisions have been laid down under the following titles: The right to just conditions of work (Art.2); the right to safe and healthy working conditions (Art.3); the right to a fair remuneration(Art.4); the right

of children and young persons to protection (Art.7); the right of employed women to protection (Art.8); the right to vocational guidance (Art.9); the right to vocational training (Art.10); the right to protection of health (Art.11); the right to benefit from social welfare services (Art.14); the right of physically and mentally disabled persons to vocational traning, rehabilitation and social resettlement (Art.15); the right of mothers and children to social and economic protection (Art.17); the right to engage in a gainful occupation in the territory of other Contracting Parties (Art.18).

In addition to having a broad scope, the SCCE has introduced a relatively efficient mechanism of operation and control. The signatory States submit reports once every two years pertaining to the implementation of the provisions which they adopted. This is also applicable to the provisions which they have not adopted. Copies of these reports are sent to international organizations of employers and employees and to national organizations. The States have to convey to the Secretary General the opinions of the national organizations concerning national practice. The reports are examined by the Committee of Experts which consists of a maximum of seven members selected by the Committee of Ministers from the independent experts nominated by the states. The ILO is invited to the meetings of this committee in order to play a consultative role. A report containing the conclusions reached by the Governmental Social Committee of the Council of Europe is submitted. The same report is also submitted by the Secretary General of the Council of Europe to the Consultative Assembly and the Consultative Assembly sends its opinion to the Committee of Ministers. The Council of Ministers may make recommendations to the Party State on the basis of the conclusions. Recommendations are not binding, but continuous infringements of the Charter may lead to expulsion from the Council.

Even though the European Social Charter of 1961 precedes the EU Social Charter of 1989, its operation and control mechanism is more developed. This is mainly due to the fact that their aims are different. The Social Charter of Council of Europe is an instrument which supplements the ECHR of 1950 as far as social rights are concerned. This becomes apparent by emphasizing the goal of

> achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitataing their economic and social progress, in particular

> by the maintenance and further realisation of human rights and fundamental freedoms.

On the other hand, the main concern in the EU process is the social and economic integration of the Member States. Therefore, the EU Social Charter has been adopted as a subordinate instrument within the framework of EU objectives. This is why the following expressions exist in its preamble:

> ... in the context of the establishment of the single market, the same importance must be attached to the social aspects as to the economic aspects and whereas, therefore, they must be developed in a balanced manner;
>
> Whereas the social concensus contributes to the strengthening of the competitveness of undertakings, of the economy as a whole and to the creation of employment; whereas in this respect it is an essential condition for ensuring sustained economic development.

Another reason why the two Social Charters are different is that the inequality between the aforesaid groups was a decisive factor in the formation of the EU Social Charter.

The EU authorities approached social rights with pragmatic aims until the 1980's and there was no change in the "Europe of Businessmen" for a long time. Article 5 of the EC Treaty provides that all information concerning the situation of a company must be provided to the workers and the workers must be consulted on the regulations concerning workforce. As the goal of economic integration gained momentum in the 80's, this article has been the topic of heated debates between employers' organizations and businessmen.

In 1980, the proposal to add a paragraph to Art. 5 so that tripartite consultative mechanisms would be formed caused the business groups to react vigorously and was eventually withdrawn. This experience exposed the EU authorities to pressures coming from national labor organizations and groups of businessmen who were well organized at supranational level. Consequently, the EU had to resort to an balanced policy with a view to controlling possible reactions in the process of building the common market. The social reactions that could be created by the aim of big European companies which direct EU policies to increase their

competitiveness in external markets could jeopardise the integration process and cause breakdowns.

The attempt which was initiated in 1989 by Jacques Delors who was then the president of the European Commission and which created the EU Social Charter was sustained by the aforementioned dynamics. Delors and his colleagues believed that the proper functioning of the EU could be possible if the Europe of businessmen was controlled by means of social rights.[11] Therefore, the EU authorities tried to persuade the Member States and succeeded. The ETUC was accepted as an organization with which the EU could enter into discussion and its status within the Union was reinforced.

As Lindblom points out in his theoretical analysis, political authorities adopted the policy of balancing private interests according to general objectives and this approach led to the reinforcement of the positions of the social groups. Furthermore, although the final instrument is less developed than its international counterparts, it provided competing social groups with the basis of legitimacy. However, this basis does not create a framework which enables a comprehensive regulation to be realized, unlike the SCCE. This caused the Charter to emerge as a weaker instrument.

When the EU Social Charter is compared with the Social Charter of the Council of Europe, its weaknesses appear in the following points: First of all, the frequent attributions to ILO principles in the SCCE do not exist in the EU Social Charter. The SCCE and ILO conventions are cited as sources of inspiration only in the preamble.

However, in Art 12 of the SCCE, the Convention on Minimum Standards of Social Security is accepted as the basic criterion;

> ...to maintain the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention (No. 102) Concerning Minimum Standards of Social Security.

Art. 26 provides that ILO representatives shall be invited to join the activities of the Committee of Experts

> The International Labour Organisation shall be invited to nominate a representative to participate in a consultative capacity in the deliberations of the Committee of Experts.

Art. 36 provides that the General Directorate of ILO shall be informed about amendments to the Charter.

> The Secretary General shall notify all the members of the Council of Europe and the Director General of the International Labour Office of the entry into force of such amendments.

Secondly, the EU Social Charter has a softer approach and tends to endorse the initiative of the Member States. The different ways the right to collective bargaining, social dialogue the right to go on a strike are laid down in twe texts are good examples.

Art. 5 and 6 of the SCCE are as follows:

> With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protections of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the quarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these quarantees and the extent to which they shall apply to persons in this category shall equally be determeined by national laws or regulations. (SCCE, Article 5)

> With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake:
>
> 1. to promote joint consultation between workers and employers;
>
> 2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means collective agreements;
>
> 3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;
>
> and recognise:

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4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into. (SCCE, Article 6)

The same topics are covered by Art 11-12 and 13 in the following paragraphs of the SCEU:

Employers and workers of the European Community shall have the right of association in order to constitute professional organizations or trade unions of their choice for the defence of their economic and social interests... (Article 11).

Employers or employers' organizations, on the one hand, and workers' organizations, on the other, shall have the right to negotiate and conclude collective agreements under the conditions laid down by national legislation and practice... (Article 12).

The right to resort to collective action in the event of a conflict of interests shall include the right to strike, subject to the obligations arising under national regulations and collective agreements... (Article 13).

As can be seen, the EU Social Charter has a more limited scope and puts more emphasis on the national legislation of the Member States. Similarly, Art. 8 and 9 of the EU Social Charter which govern weekly rest period, annual paid leave and conditions of employment and Art.27 which governs the application of the EU Social Charter explicitly recognize Member State initiative and leave them a lot of room for maneouver.

Every worker of the European Community shall have a right to a weekly rest period and to annual paid leave, the duration of which must be progreesively harmonized in accordance with national practices. (Article 8).

The conditions of employment of every worker of the European Community shall be stipulated in laws, a collective agreement or a contract of employment, according to arrangements applying in each country. (Article 9).

It is more particularly the responsibility of the Member States, in accordance with national practices, notably through legislative measures or collective agreements, to guarantee the fundamental social rights in this charter and to implement the social measures indispensable to the smooth operation of the

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internal market as part of a strategy of economic and social cohesion. (Article 27).

Thirdly, the EU Social Charter takes a more restrictive approach in some areas. For instance, it provides that civil servants along with military and police forces are excepted from the application of the rights to become organized and to go on a strike. However, Art. 5 of SCCE confines these exceptions to the armed forces and police. Furthermore, the SCCE stipulates the right of employed women to protection (Art. 8); the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement (Art. 15) and the right of migrant workers and their families to protection and assistance (Art.19) in a more explicit and detailed way while the EU Social Charter either ignores them or stipulates them in brief and general expressions.

As can be seen, there are significant differences between these two texts in force at the continental level and these differences are at the center of discussions among competing economic and social interests at the EU level.

Recent Developments in the Field of Social Rights and Three Approaches in Formation

As has been stated, the EU Social Charter represented an important step taken in the field of social rights and the 90's have been particularly important in this regard. In this process, the EU began to exhibit a more equitable appearance vis-a-vis competition between groups. The Maastricht Treaty extended the scope of the EU Social Charter of 1989 and attached it to the Treaty by means of an additional protocol. Thus, traditional principles such as the free movement of workers, non-discrimination on the basis of sex; the right to organize; job security; provision of hygienic conditions; the principle of handling economic and social integration together; on which a consensus has been reached. Furthermore, new opportunities with regard to vocational training the extension of social dialogue at Union level and the institutionalization of social assistance have been created. By means of the Maastricht Treaty, the obligation to consult the social partners (UNICE on behalf of employers, ETUC on behalf of employees, CEEP on behalf of public employees) on drafts prepared by the EU Commission has been introduced.

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In addition, the requirement of unanimity has been replaced with qualified majority voting with regard to working conditions, information of workers and consultation, opportunities concerning the labor market, equality between men and women, the integration of people who are outside the labor market.

The Maastricht Treaty has redefined the European Social Fund which was established under Art. 123 of Rome Treaty in 1961 and has made it an organ which assists the Commission in improving employment opportunities and enhancing living standards. The Fund is being administered by a committee composed of representatives of workers, employers and governments. Financial support is thus being maintained in order to solve problems faced in member countries in the process of adaptation to social policies.

Social groups and labor unions seem to have developed an interest perspective which aims at determining policies by producing more partipatory mechanisms at the EU level. The approaches of EU authorities who are trying to balance the social and economic dimensions of the Community constitute one aspect of this effort; and attempts to expand the powers of the European Parliament constitute the other aspect. Organizations of businessmen, on the other hand, aim at creating a supranational platform which is independent from institutional structures developed at national level and within which they can move more freely. They want Union standards to be regulated in a rather general way and the conditions of international competiton to be accepted as the basic criteria. The EU seems to possess a social rights perspective and institutional structure which is in accordance with their aims. However, developments show that the EU authorities are adopting a strategy of equilibrium between social demands and the aims of groups of businessmen.

Conclusion

Social rights are one of the problematic dimensions of the European Union. This dimension causes social groups to react to the institutionalization of Social Europe which develops without the support of national experiences. Especially in the North European countries where social rights have been adopted with a rather broad scope, there is widespread concern that national acquisitions will be lost in the process of integration. The concern that losses would take place was an important

facto which led the Danish people to say "NO" in the referendum held in June 1992. All these reactions made the EU authorities develop a social policy of equilibrium and accelerated their efforts to build a more social structure so that reactions by national groups would not jeopardize the single market. As a consequence of these efforts, social groups found a basis for legitimacy increasingly at European level, had the chance to discuss matters and were included in the decision-making processes. However, this trend is not sufficient to put an end to the image of the "Europe of Businessmen."

Despite the situation of the Union, Europe is a continent where important instruments capable of constituting a model in the field of social rights were created and applied. The SCCE and the norms of the ILO laid down in conventions are outstanding fundamental instruments on account of their broad scopes and functions. The institutions of the Union may not ignore these instruments totally. The fact that references have been made to these instruments constitutes strong evidence supporting this idea. Consequently, the aforesaid instruments and norms are fundamental bases for legitimacy in the field of social rights and the inclusion of social groups into the decision-making processes of the Union will increase their effectiveness proportionally.

Business organisations expect demand created by concerns about achieving effectiveness of competition in the European single market and in international field. The general tendency of social groups and trade unions is to start the implementation of the above mentioned international documents drafted before the establishment of the EU. Therefore, business groups are in support of the less binding more autonomous Union policies which are inspired by very basic non-detailed regulations. Trade unions and social organisations are groups which are dependent on the demands of EU authorities because of their financial, structural and organisational weakness. Therefore, extending their competence in the decision-making process of the European Parliament, which is the only EU institution that they can easily communicate with, may advance their interests.

Social groups are demanding the reconstruction of the Commission which is closer to the interests of businessmen as a more accountable structure to the Parliament and transfer of the entire power of legislation to the Parliament. Finally, they favour a legislative system generally based on majority-voting procedures. In addition, the labor unions in particular want

all specific regulations to be turned into drafts by mixed committees which will make the committees more effective. They also want the finalized drafts to be in force all over Europe at local, regional and national levels.

The commission, which remains the engine of the EU decision-making process, tends to approve of neither the absolute independence regime of social rights suggested by business groups nor extending the effectiveness of mixed commitees that is suggested by the trade unions. The Commission supports decisions by qualified majority of the member states including general regulations and making new policies with special emphasis on the views of parties in case of conflict in implementation .

This tendency has rendered a policy quo but balancing both sides. The destiny of social rights will be determined by the strategies followed by the EU authorities with regard to both sides of the balance.

Endnotes

[1] The term "European Union" or simply "EU" has generally been used in place of "European Community" or "EC" throughout the article, except when referring explicitly to the pre-Maastricht era.

[2] The diversity of interest groups includes five broad types: pluralism, elitism, étatisme, neo-corporatism and consociationalism. For more details see, Crouch, C. And Menon, A. (1997), "Organised Interests and the State", in Rhodes, M., Haywood, P. and Wright, V. (eds.), *Developments in West European Politics*, Macmillan Press Ltd., pp. 151-168.

[3] Dahl, R. (1968), *Who Governs?*, Yale University Press, New Haven, p. 277. See also Dahl, R. (1982), *Dilemmas of Pluralist Democracy*, Yale University Press, London.

[4] Lindblom, C. E. (1965), *The Intelligence of Democracy*, Free Press, New York, p. 13.

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Lindblom, C. E. (1959) "The Science of Muddling Through" in *Public Administration Review,* 19, pp. 79-88.

Lindblom, C. E. (1979) "Still Muddling, Not Yet Through" in *Public Administration Review,* 39, pp. 517-526.

[5] Ibid., p. 13.

[6] Crouch, C. And Menon, A. (1997), "Organised Interests and the State", in Rhodes, M., Haywood, P. and Wright, V. (eds.), *Developments in West European Politics*, Macmillan Press Ltd., pp. 151-168.

[7] Mazey, S. and Richardson, J. (1993), "Introduction: transference of Power, Decision Rules, and Rules of the Game", in Mazey, S. And Richardson, J. (eds.), *Lobbying in the European Community*, Oxford University Press, pp. 5-7. See also Greenwood, J. (1997), *Representing Interests in the European Union,* Macmillan Press Ltd., and Rhodes, M., Haywood, P., and Wright, V. (eds.) (1997), *Developments in West European Politics*, Macmillan Press Ltd.

[8] Greenwood, J. (1997), *Representing Interests in the European Union,* Macmillan Press Ltd, London, pp. 2-3.

[9] Ibid., p. 5.

[10] Ibid., p. 7.

[11] For more details, see Ross, G. (1995), "Assessing the Delors Era and Social Policy", in Leibfried, S. Und Pierson, P. (eds.), *European Social Policy: Between Fragmentation and Integration,* The Brookings Institution, Washington, pp. 357-388.

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THE CONCEPT OF HUMAN SECURITY AND THE EUROPEAN UNION: A Humanitarian Approach to Security Theory and Practice

Münevver Cebeci*

The global focus on human rights is not only a legal, socio-economic or political issue. It also has a security dimension. Human rights are only one part of a greater picture. Theory of human rights is introduced to attain the overall goals of maintaining human security and human development, whereas human security and human development are in turn important tools for promoting human rights. Therefore it would not be an overstatement to argue that the protection and preservation of human rights, the achievement of human security and human development are requisites for each other. This paper aims at exploring the interlinked nature of these three concepts through an analysis of the concept of human rights; portraying how human security is internationalized through a theoretical description of the relation between state security and individual security; and finally analysing some EU policies to depict their effect on human security through a debate on the EU's role in international relations as a security provider. The major argument of this paper is that despite its ambiguous and all-inclusive nature, the concept of human security has a symbolic quality that reminds one of threats other than those directed at the state, of how "all levels in the security game are interlinked"[1] and of how policies developed for promoting human rights and reinforcing human development end up nurturing individual security.

Definitions of Human Security

Human security is a newly developed concept. Security has long been thought of as the state's reserve. What we observe today is actually a general shift in the focus of security from a state-centric approach to a multidimensional approach, which emphasizes various referent objects of

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security other than the state. Human security constitutes one of these dimensions.

Individual (thus, human) security has always been the focus of liberal thought, as one of the overriding aims of liberalism is "to secure the political conditions that are necessary for the exercise of personal freedom"[2]. Nevertheless, the sectoral approach to security brought about by the Copenhagen School[3] does not regard human security as a sector and rather prefers to deal with the human aspects of security within different sectors, the political one being the mostly referred sector in this respect. Critical theorists, on the other hand, tend to put the emphasis on human security as a counter argument to state-centric approaches to security and to consider the individual as the primary referent object of security. Nevertheless, critical theorists do not take this central role of the individuals as a given. Rather they call it into question by concerning themselves with its relative weaknesses and strengths and come up with ideas on how to develop this line of argument[4]. There are also other analysts, who suggest that human/individual security should be included in the necessary redefinition of the concept of security[5].

International organizations such as the United Nations and some international initiatives such as the Human Security Network suggest that the definition of security should be extended to cover other fields than the military and human security is one of the most important fields that should be taken into account in this respect. They also come up with definitions of human security. At this point, it would be useful to examine such definitions:

> The concept of security has for too long been interpreted narrowly: as security of territory from external aggression, or as protection of national interests in foreign policy or as global security from the threat of nuclear holocaust. It has been related more to nation-states than to people... Forgotten were the legitimate concerns of ordinary people who sought security in their daily lives. For many of them, security symbolised protection from the threat of disease, hunger, unemployment, crime, social conflict, political repression and environmental hazards. ... For most people today, a feeling of insecurity arises more from worries about daily life than from the dread of a cataclysmic world event.[6]

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> Human security can be said to have two main aspects. It means, first, safety from such chronic threats as hunger, disease and repression. And second, it means protection from sudden and hurtful disruptions in the patterns of daily life – whether in homes, in jobs, or in communities. ... Human security means that people can exercise [their] choices safely and freely – and that they can be relatively confident that the opportunities they have today are not totally lost tomorrow.[7]

The Human Security Network, on the other hand, defines human security as follows:

> In essence human security means freedom from pervasive threats to people's rights, their safety or even their lives.... Human security has become both a new measure of global security and a new agenda for global action. Safety is the hallmark of freedom from fear, while well-being is the target of freedom from want. Human security and human development are thus two sides of the same coin, mutually reinforcing and leading to a conducive environment for each other.[8]

Governments of some states also find it necessary to put an emphasis on human security. In this vein, they make their own definitions of human security. For example, the Japanese Ministry of Foreign Affairs, in its Diplomatic Bluebook – 1999, contends that the concept of human security:

> ... comprehensively covers all the measures that threaten human survival, daily life, and dignity – for example, environmental degradation, violations of human rights, transnational organized crime, illicit drugs, refugees, poverty, anti-personnel land-mines and ...infectious diseases such as AIDS and strengthens efforts to confront these threats.[9]

The Canadian Foreign Ministry, on the other hand, has "a more restrictive definition of human security as 'freedom from pervasive threats to people's rights, safety or lives'"[10], which includes safety from physical threats, the achievement of an acceptable quality of life, a guarantee of fundamental human rights, the rule of law, good governance, social equity, protection of civilians in conflicts, and sustainable development[11].

Basing its arguments on a conceptual definition in the 1994 *Human Development Report*, the United Nations Development Programme (UNDP) lists seven specific elements that comprise human security[12]:

- Economic security (requirement of an assured basic income, and thus regular employment)
- Food security (the need for physical and economic access to basic food, and issues related with the overall availability of food)
- Health security (the need for a reduction of the major causes of death due to several diseases caused by the patients' environment and living conditions, prevention of the spread of epidemics such as HIV/AIDS)
- Environmental security (the need for the provision of a healthy environment for the use of human beings, and for measures against basic environmental threats such as scarcity of resources, pollution and global warming)
- Personal security (security from physical violence, especially, sudden and unpredictable violence, which is vital for human security)
- Community security (security enjoyed by virtue of being a member of a group – a family, a community, an organisation, a racial, or ethnic group that can provide a cultural identity and a reassuring set of values)
- Political security (protection acquire through respect for human rights, democracy and the rule of law)

Personal security, community security and political security are the sectors that concern first generation human rights[13] according to this categorization. Economic security, food security and health security can be regarded as referring to the second generation human rights whereas environmental security can be considered within the scope of third generation human rights. Notwithstanding, it should not be forgotten that all these sectors and rights categories are in fact interlinked and that they frequently overlap. This overlap is especially significant in the sense that all the elements listed above refer to and intersect with different sectors of the general concept of security (as defined by the Copenhagen School), i.e. military, environmental, societal, economic and political. War is definitely a threat to human security as well as the violation of human rights, environmental degradation, economic deprivation, threats to one's identity, etc. Therefore, it can be argued that human security is affected by the developments concerning all sectors of security and thus, the concept of human security has an important symbolic value in that it reminds one of the fact that "all levels in the security game are interlinked"[14]. However, in terms of analytical usefulness, perhaps it would be better to analyse human security under different sectors rather than naming it as a sector on its own.

Apart from the elements listed above, which may have personal, group, national and international characteristics as well as local, regional and interstate nature, there is an important level which stands above all the categories and this level is the global level. The definition of global human security circumscribes all sectors of human security and refers to those threats to human security, which have a global character. These threats have a transboundary nature in that they have the potential to affect the whole world despite the fact that they may be generated at a local (or regional) level. Environmental threats show such characteristics. Although they may be generated at one specific part of the world, their consequences may be felt everywhere and more intensively at some other parts rather than this specific one where the threat is generated. The damage on the ozone layer is a well-known example of such a situation.

Transnational crime, especially drug production and trafficking, has a similar nature, as the violence and dependency cycle[15] that it causes has global effects. Human trafficking[16] is also another sort of transnational crime that has global significance. It is also the crucial element of another global threat, international migration, which has grave socio-economic, cultural and security implications. Unchecked population growth and economic disparities are also important factors that cause threats to global human security. Together with environmental degradation, these two factors engender excessive international migration, which represents a very important global threat as mentioned before. International terrorism is also another threat with global consequences, as it operates in networks at a global level and chooses its targets randomly among innocent people without any consideration of their national/ethnic identity, gender or age.

There are also some analysts who tend to categorize different conceptions human security. Amitav Acharya refers to three main conceptions of human security[17] in this respect. The first one is commonly associated with the Canadian understanding and concentrates on reducing the costs of violent and non-violent conflict. The focus of this conception is on landmines, child soldiers, war tribunals, etc. However, Acharya emphasises that this approach is not widely accepted in Southeast Asia. According to him, this has several reasons. One of them is that this conception is rather seen as a Western understanding. Secondly, it has anti-sovereignty implications and in correlation with these implications, it may be used as a justification for humanitarian intervention. The second conception refers to human security as human need, which covers the issues of reduced economic growth rates,

generated political instability and high levels of unemployment. The third conception that Acharya defines is human security as human rights. It is related with the ideas of political freedom and social justice as well as economic growth. Therefore, it holds that human rights should be at the core of human security and human needs cannot be addressed without addressing human rights.

This categorization clearly reflects how human rights, human security and human development are interlinked. The achievement of one without the others seems impossible. The Copenhagen School states that "the rising focus on human rights supports claims to give individuals more standing as the ultimate referent object for security"[18], although they prefer to analyse individual security in relation to human rights under the political sector[19]. Herman Kraft contends that human security can be guaranteed only when human rights are guaranteed[20]. According to him, human security is another avenue for promoting human rights. He points to a considerable similarity and overlap between the two concepts, including the similarity in terminology, the notion of universality, as well as the focus on the human being, human life and dignity[21]. Freedom from fear and freedom from want can only be maintained through the establishment of structures, which respect and protect human rights and provide the necessary socio-economic living standards for the people, so that they can "exercise their choices safely and freely"[22]. The definition of security as emancipation[23] builds upon such line of argument, stressing that emancipation is "the freeing of people from those physical and human constraints, which stop them carry out what they would freely choose to do"[24]. Ken Booth classifies these kinds of constraints as poverty, poor education, political oppression, etc. as well as war and the threat of war[25].

An interesting point on the definitions about human security is that they present human security as an all-inclusive concept. The problem with all-inclusive concepts is that they lack analytical relevance as they may mean anything. The definitions of human security, therefore, run the risk of ending up with labelling everything that is good for humans as security. That is why the concept of human security lacks precise substance (as it covers everything from physical security to psychological well-being)[26]. Furthermore, it can also be observed that the concept is intentionally kept ambiguous and expansive so that it may be applied easily to specific cases. Under these circumstances, it can be contended that although the concept of human security lacks analytical usefulness[27], it touches on a very important

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point, that the individual should be put at the centre of the approach to security since state security may not always mean the security of the people. At this point, it would be useful to analyse the relationship between the individual and the state in terms of human security.

State Security versus Individual Security

Traditionally, the major threats to a state's security have been regarded as threats to its territorial integrity and sovereignty. The state, which holds the authority to legitimate use of force[28], has been seen as the only power to protect the security of its citizens against other states as well as to provide law and order that would protect its citizens against each other. The state also has had welfare goals such as providing benefits and distributing public goods to its citizens[29]. Nevertheless, most casualties and human suffering in the 20th century resulted from unconventional threats; i.e., structural violence[30]. Structural violence involves threats such as human rights violations which are non-violent but intentional threats to human security; violence perpetrated by one societal group against another (such as those perpetrated by Serbs against Bosnian Muslims); the threats engendered by the global order such as "globalisation", "imperialism" or "centre-periphery" relations that cause deprivation on the part of the peoples of the Third World; and threats from "nature", that are not caused by societal or political factors (such as HIV/AIDS or environmental degradation)[31]. When structural violence persists, one cannot talk about a positive condition of security even if there are no direct threats to people's lives. This kind of security can only be named as "negative peace"[32]. This presents a very different concept of security from that provided by traditional approaches such as realism[33] and certainly requires a new approach, which shifts the focus from military threats to other types of threats and the emphasis from the state to other referent objects of security.

As a matter of fact, the idea of regarding individuals as referent objects of security is not new. It can be traced back in the basic tenets of liberal thought. The central idea of liberalism is that all individuals should be able to take decisions about their lives without fear or favour[34]. This statement refers to both a condition and an objective. Individual security is thus a "condition and an objective of individuals"[35] and it is both an "individual and a collective good"[36]. Nevertheless it can only be attained in some sort of collective and contractual enterprise such as the state[37]. This line of argument can easily be found in the liberal thought of the Enlightenment[38].

At this point it may be useful to analyse the liberal view concerning the relation between the individual and the state and how this is reflected in the conception of security. While seeking to achieve the aims of liberty, individual security and economic growth, liberals tend to limit the state's role to the provision of law and order, in other words, politico-military security. The state is allowed to intervene in the economic and social life only when there is a market failure and only to support the social fabric[39] in such instances. In this sense, it can be argued that liberalism is about the "opening up of human life"[40]. Security, on the other hand, refers to the use of extra-ordinary means (a kind of mobility which mostly involves the breaking of the "normal political rules of the game") against something constructed as an existential threat by some authority[41]. Therefore, it calls for "closure against threats"[42]. This inverse character of liberalism and security leads us to the argument put forward by Barry Buzan and Ole Waever, that "liberalism can be seen as a general project for desecuritization"[43], since "it seeks to narrow the range of things seen as threats, and to enlarge the realm of 'normal politics' both within and between states"[44].

The Copenhagen School's definition of security is especially significant at this point. Security itself (or the act of securitization itself) may constitute an act against human security (or human rights or human development) in that it involves the breaking of the normal political rules of the game[45]. Although security is "the condition for political freedom"[46], it may also hamper this freedom. Therefore, the crucial point here is to know how to securitize and how much securitization is really needed. Perhaps, securitization of the individual is a necessary countermeasure against too much securitization in other fields. This understanding is especially important to an analysis of the relationship between state security and individual security, in that "the state can be a source both of security and of insecurity"[47] for the individual.

But how can the state, the main function of which is to ensure justice and security to individuals, be a threat to them, instead. It is usually the authoritarian or oppressive regimes that threaten the security of their citizens. These threats can be in the form of gross human rights violations as well as the citizens' deprivation from some property rights (such as those that were observed in the Soviet world). There is a general belief that it is usually a powerful state structure that puts strains on the citizens' rights and lives. However, perhaps it would be better to put it in another way and state

that it is under those authoritarian regimes that human security is usually threatened, as they tend to exert their power on their citizens to avoid any challenge to the existent regime that can come from inside. Nevertheless, this does not necessarily mean that these states are powerful states. As a matter of fact, "the main security problem in today's developing world may however, not represent an excess but rather a deficit of state power"[48]. In "weak states"[49], corruption, economic deprivation (the huge gap between the rich and the poor), crime (especially organised crime), terrorism, internal (inter-communal) strife, malnutrition and endemic diseases threaten human security more than the authoritarian practices of the state regime. The possibility that the citizens of such weak states may resort to self-help can also undermine "the state's Weberian 'monopoly on the legitimate use of force'"[50], as people may try to take law into their own hands[51]. This may in turn result in more insecurity for the state and the individuals.

Arguably, a dualism exists with regard to the relations between the state and the individual in that as the state can pose a threat to the individual, the individual is increasingly becoming a challenge (if not yet a threat) to the state. The internationalisation of human security (and human rights) leaves the state vulnerable against international claims of human rights violations and humanitarian intervention. The rhetoric that state security can be maintained at the expense of human security and thus human security should be given due priority, erodes the Westphalian system of non-interference in domestic affairs[52]. Bjørn Møller calls this a new world order in which "international politics" is replaced by "domestic politics at a global scale"[53]. This constitutes a challenge to the traditional understanding of sovereignty. In contemporary international politics, states are considered as legitimate only as long as provide the necessary human rights protection and justice to their citizens[54]. And their sovereignty depends on their legitimacy. Therefore "a direct link between legitimate statehood and rightful state action and the representation of individual's political interests and the protection of their human rights"[55] exists. This actually refers to a new understanding of state sovereignty, which regards the state as an important unit but not as an exclusive and unchallenged entity.

The internationalisation of human security can be seen as a natural end product of the liberal approach to individual security and international relations as well as of the quest for the establishment of international society since the international society is committed to much more than the preservation of minimum order between states[56]. As an important example

of international society, the European Union also gives priority to the issues of human rights, human development and human security in its relations with the rest of the world. The next section will deal with the EU's approach and policies concerning human security.

The European Union and Human Security

Despite criticisms levelled against the ineffective and declaratory nature of its Common Foreign and Security Policy (CFSP) and the lack of military capabilities to back up its foreign policy, the EU is actually an important security provider. It is not a traditional one, though. The EU's power does not rest on its military might but rather on its soft security approach as a "civilian power". Therefore, it cannot be evaluated with the same criteria that we use for the evaluation of collective security and defence organisations. The EU should be regarded as a security community, instead. It is this characteristic of the EU that makes it a security provider, since international institutions such as the EU "may be conducive to the formation of mutual trust and collective identities"[57] and they "may be able to foster the creation of a regional 'culture' around commonly held attributes, such as, for example, democracy, developmentalism, and human rights"[58].

Like hanging, Ole Waever sees European integration ultimately as a security project:

> The process of European integration is the main pillar of stability on the European continent. It holds the potential rivals in the West (France and Germany) together (or apart as one might prefer it), it generates 'security community' of de-securitization for the rest of Western Europe, prevents conflicts in East Central Europe through the power of 'magnetism' and finally has a certain and probably an increasing role to play as more direct intervenor further away from the Western core. [59]

Although the term "human security" is rarely used in EU official documents, the EU as a "civilian power" approaches the issue of human security from all possible dimensions, which clearly match the argument that human rights, human security and human development are interlinked and that they usually overlap. The tools that the EU uses for maintaining human security are humanitarian and development aid, enlargement and relations with third countries that depend upon the conditionality that the (third) countries in question should respect basic European values such as

democracy, human rights and the rule of law. The newly emerging European Security and Defence Policy (ESDP) that will take on the task of crisis management appears as another policy tool that will support EU's civilian policies with adequate military power. The third pillar of the EU – Justice and Home Affairs – is also significant since the measures that the EU takes against transnational and organized crime (involving drugs and human trafficking), international migration, and terrorism all have the effect of maintaining human security. There is also an internal mechanism (established by the Amsterdam Treaty, Articles 6 and 7 of the Treaty on the European Union [TEU]) through which the protection of fundamental rights by the EU Member States is guaranteed. This mechanism involves the suspension of membership in case of gross violations of fundamental rights. Among all the policies mentioned previously, EU humanitarian and development aid, conditionality, and the CFSP/ESDP will be given special consideration here.

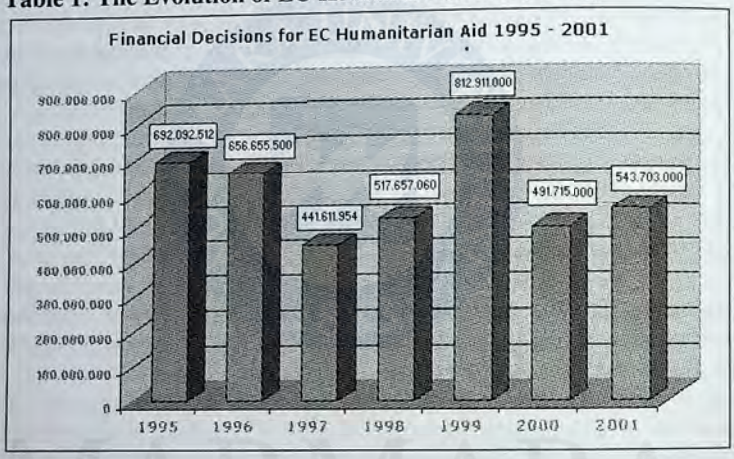
EU Humanitarian Aid

Humanitarian aid is one of the main tools that the EU uses in its external relations and also an important element of EU's role as a security provider. The EU is the largest provider of humanitarian aid in the world and its humanitarian activities have developed substantially in recent years. The major aim of EU humanitarian aid is to prevent or relieve human suffering through providing help to people in third countries, who have been victims of natural (earthquakes, floods, etc.) or man-made (wars, violent conflicts, etc.) disasters or structural crises (severe political, economic or social breakdowns). This help usually takes the form of providing goods and services (food supplies, medicine, vaccinations, clothes, shelter, rehabilitation, minesweeping, etc.). Three main instruments of EU humanitarian aid are: emergency aid (to address "exceptional", immediate difficulties; usually in the form of cash), food aid (provision of food to regions suffering from famine and emergency food aid in crisis situations) and refugee aid (to provide aid to refugees and displaced persons between the emergency stage (exodus) and final settlement, in order to encourage self-sufficiency). The major focus of EU humanitarian aid is vulnerable people, especially those who live in developing countries[60].

The European Office for Emergency Humanitarian Aid (ECHO) was established in April 1992 to finance EU humanitarian aid operations throughout the world. ECHO's work covers emergency measures, as well as

preparatory and follow-up actions aimed at alleviating human suffering. ECHO's tasks usually have a short-term nature. The EU provides 55% of the total international humanitarian aid. 30% of this aid comes from ECHO and 25% from the Member States directly[61]. The majority of ECHO's aid comes from the Community's general budget and it is backed up by the European Development Fund.

Table 1: The Evolution of EU Humanitarian Aid (in €m)[62]



***EU Development Policy*[63]**

Development policy is another external policy tool of the EU which has the effect of supporting human security. The major aim of EU development policy is to eradicate poverty in developing countries and to integrate these countries into the global economy through the achievement of sustainable development. EU development aid also has political goals: to reinforce democracy, rule of law and respect for human rights and freedoms; to consolidate peace; and to prevent conflict.

The EU's development policy was first designed as a means to deal with the former colonies (overseas countries and territories) of EC Member States, and then its scope was expanded to cover other developing countries. Currently, EU development policy covers three different regions: South and

East Mediterranean, Asia and Latin America, and the ACP (Africa, Caribbean and Pacific) Countries. Yaundé Conventions (1963-1969), Lomé Conventions (1975-1989) and the final Cotonou Agreement (2000) are the basic documents that determined the EU's development policy concerning the ACP countries. Some bilateral agreements, non-preferential trade agreements and regional dialogue, such as the Rio Group or the Barcelona Conference (1995) are the main instruments that shape EU's development policy concerning the Mediterranean and Asian and Latin American countries.

The Community budget is the main financial instrument of the EU's development policy and EU's development aid may take the form of donations as well as loans. A thematic distinction is also made with regard to development aid and they are dealt with under specific headings, such as food aid, humanitarian aid and cooperation with NGOs. In addition to the Community Budget, the European Development Fund and the European Investment Bank are also the major specific financial instruments of EU's development policy. The EU is the world's leading development aid provider as it provides 55% of total international development aid. It is also the largest trading partner of developing countries and it also supports their economy through direct investment.

EU aid for the rehabilitation and reconstruction in developing countries[64]

The EU also provides aid for the rehabilitation and reconstruction in developing countries that have suffered serious destruction through war civil disorder or natural disaster. The goal of the rehabilitation and reconstruction aid is to restore social and political stability in the countries and to meet the needs of the people who are affected by the destruction. An important aim of this aid is to establish a link between relief (for example, humanitarian aid) and development aid, as relief refers to short-term aid whereas development aid is a long-term policy tool. The relaunch of production on a lasting basis; the rehabilitation of basic infrastructure, including mine clearance; social reintegration, in particular of refugees, displaced persons and demobilised troops; the restoration of the institutional capacities required, especially at local level are some of the basic operations envisaged within the framework of this aid. Major beneficiaries of this aid are the ACP countries, the Mediterranean countries, the countries of Latin America and Asia, and the developing countries of the Caucasus and Central Asia.

Conditionality in the EU's relations with third countries

The EU frequently resorts to conditionality in its relations with third countries with a view to reinforce democracy, the rule of law and respect for human rights and freedoms in these countries. Karen Smith contends: "Political conditionality entails the linking, by a state or international organization, of perceived benefits to another state (such as aid, trade concessions, cooperation agreements, political contacts, or membership), to the fulfilment of conditions relating to the protection of human rights and the advancement of democratic principles"[65]. She defines two types of conditionality: positive conditionality and negative conditionality. Positive conditionality means promising benefit(s) to a state if it fulfils the conditions, while negative conditionality involves reducing, suspending, or terminating those benefits if the state in question violates the conditions[66]. The use of conditionality as a foreign policy tool by the EU is especially observed in its development policy, external trade, association agreements and enlargement process. This policy also has the effect of contributing to human security.

EU Enlargement and Conditionality

The most important document with regard to EU enlargement is the Presidency Conclusions of the Copenhagen European Council of June 1993, in which the political criteria for accession to be met by the candidate countries are laid down. This document stipulates that the EU candidates must have achieved "stability of the institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities". The Copenhagen criteria were enshrined into the Amsterdam Treaty later on and became constitutional principles with the entry into force of this treaty (May 1999). Article 6(1) of the TEU states that the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law. Building on this article, Article 49 stipulates that any European state, which respects the principles set out in Article 6(1), may apply to become a member of the Union. These principles were also emphasised in the Charter of Fundamental Rights of the EU (Nice European Council, December 2000). The current efforts of EU candidate countries to fulfil these political criteria are significant evidence that reveal the effectiveness of EU's leverage over these countries and thus the EU's power as a different type of security actor/provider (a civilian power) in international relations. Recent constitutional reforms adopted in Turkey (for

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EU membership), which abolished the death penalty, and provided cultural rights for minorities constitute an important example of the EU's impact in this respect.

The EU's Development Policy and Conditionality – A Horizontal Approach

The EU's development policy is not solely a policy for providing direct financial or technical aid to developing countries in order to eradicate poverty. It is also a policy field in which conditionality is frequently used to persuade the governments of these developing countries to pursue policies that promote and protect democracy and human rights. Article 177 of the EC Treaty lays down the objectives of development cooperation with reference to human rights, particularly by opening the door to human rights (essential element) clauses.

Since 1992, all agreements signed between the EC and third countries (more than 120) contain an "essential element" clause[67], which stipulates that respect for democratic principles and fundamental human rights as laid down in the Universal Declaration of Human Rights is the basis of their relations. This means that democracy and human rights are set as "essential elements" of all the agreements between the EU and third countries. Recent agreements further involve a final provision that stipulates the non-execution of the agreement in case of a breach of the "essential element". The Cotonou Agreement with ACP countries involves such an "essential element" clause and is significant for its special emphasis on the role of human rights in relations between the two parties since it bases the allocation of sources by country on the situation in this field. The Cotonou Agreement refers to reciprocity in the field of good governance and decentralization (the opening of the partnership to non-state actors) as well as to gender equality and institutional development. All these developments reveal that the "essential element" clause is an important example of the EU's use of conditionality as a tool to support democracy and human rights; to ensure the accession, ratification and implementation of international human rights instruments by those states that have not signed them; and to prevent crises.

The EU's use of conditionality in its development policy[68] is usually regarded as a "horizontal policy"[69] in that besides its main aim (the aim of eradicating poverty), this policy is used to achieve another equally

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important aim, the aim of promoting democracy of human rights, which appears to pertain to another policy field. It is actually this multidisciplinary/cross-pillar approach to human rights and the use of all kinds of available tools for an effective strategy to protect and promote them that marks the EU's power in dealing with human security. This point also supports the argument that it is very hard to draw distinct lines between human rights, development and security. It is inevitable that an act to protect or promote one of them will eventually affect all of them.

The CFSP and the ESDP

Article 11 of the TEU sets the objectives of the CFSP. One of these objectives is to develop and consolidate democracy and the rule of law, and, respect for human rights and fundamental freedoms, which has a direct effect on the maintenance of human security. The basic foreign policy tools used to achieve this objective are common strategies (e.g., the common strategy on Russia and the conflict in Chechnya) joint actions (e.g. joint action concerning the EU Monitoring Mission that should be sent to Western Balkans) and common positions (e.g., the common position on the International Criminal Court)[70]. Council conclusions and dialogue with third countries are other instruments that are used to support the EU's foreign policy with regard to the promotion and protection of democracy and human rights. The EU also cooperates with other international organisations such as the UN, the Council of Europe and the OSCE in the fields of democracy and human rights and the EU Member States adopt common positions in these organisations when they vote on related issues.

The Petersberg tasks, which constitute the main functions of the ESDP, refer to the EU's use of military power to back up the EU's foreign policy[71] and they are important tools for the protection of human security as well. Petersberg tasks involve humanitarian and rescue operations, peacekeeping, and tasks of combat forces in crisis management including peacemaking[72]. Petersberg tasks are especially significant for their nature as they aim to stop direct violence – the basic threat to human security. Nevertheless, the ESDP does not only have a military crisis management function. It also has a non-military crisis management function through which it aims to pursue civilian police, humanitarian assistance, administrative and legal rehabilitation, search and rescue, electoral and human rights monitoring activities. This function necessitates high degree cooperation with NGOs as well as other international organisations. It also requires a cross-pillar approach that takes

the issue out of the CFSP/ESDP reserve. The non-military aspects of the ESDP also constitute important tools for providing human security.

Conclusion

One can hardly see the term "human security" in EU official documents. This may have several reasons. It may be out of a preference for the terms "protection and promotion of human rights" with a view to keeping the emphasis on these highly important issues. It may also be for the sake of simplicity, with a view to use generally accepted terms rather than new and complex concepts. Despite the disputed nature of human rights (as they are mostly regarded as a Western invention and thus relative in nature) there are at least some commonly accepted definitions of this term. On the other hand, the definitions concerning the concept of "human security" are usually all-inclusive and thus highly ambiguous. Nevertheless, the fact that the term human security is rarely used in official documents should not overshadow another fact; that EU's policies of conditionality, development and humanitarian aid, and the CFSP/ESDP all contribute to human security in particular, and world security in general. It is this characteristic of the EU that makes it an important security actor in world politics.

The concept of "human security" may lack analytical usefulness and clarity, however, it has a symbolic quality as a way for promoting human rights; as a way for desecuritization against excessive securitization; and as a way for unifying "the fields of policy and analysis that have conventionally been kept separate: humanitarianism and development, on the one hand, and international security on the other"[73].

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Endnotes

[1] Bjørn Møller, (2001), "National, Societal and Human Security: General Discussion with a Case Study from the Balkans", *What Agenda for Human Security in the 21st Century* (First International Meeting of Directors of Peace Research and Training Institution – Proceedings), Paris: UNESCO: 48.

[2] Emma Rothschild, (1995), "What is Security?", *Daedalus*, 124(3): 83.

[3] Copenhagen School is the school of thought, which has developed a sectoral approach to security (naming the sectors of security as military, societal, economic, environmental and political), and takes its name from the Copenhagen Peace Research Institute under the auspices of which it pursues the majority of its activities. The major distinguished scholars of this school are Barry Buzan, Ole Weaver and Jaap de Wilde. For further information on the sectoral approach to security please see; Barry Buzan, (1991) *People, States and Fear – An Agenda for International Security Studies in the Post-Cold War Era*, Second Edition, London: Harvester Wheatsheaf and Boulder: Lynne Rienner; Barry Buzan, Ole Waever, and Jaap de Wilde, (1998) *Security: A New Framework for Analysis*, London: Lynne Reinner Publishers, Boulder; *Ole* Waever, (1995) "Securitization and Desecuritization", in Ronnie Lipschutz, (ed.), *On Security*, New York: Columbia University Press: 46-86; Ole Waever (1996) "European Security Identities", *Journal of Common Market Studies*, 34(1): 103-132; Ole Waever, Morten Kelstrup, M., Pierre Lamaitre, and Buzan, B. (ed.s), *Identity, Migration and the New Security Agenda in Europe*, London: Pinter Publishers; etc.

[4] For a debate on the the term "critical", please see: Michael C. Williams and Keith Krause, (1997) "Preface: Towards Critical Security Studies", in Michael C. Williams and Keith Krause (eds), *Critical Security Studies – Concepts and Cases*, London: UCL Press Ltd.: vii –xxi. For a debate critical approach on individual security please see: Michael C. Williams and Keith Krause, (1997) "From Strategy to Security: Foundations of Critical Security Studies", in Michael C. Williams and Keith Krause (eds), *Critical Security Studies – Concepts and Cases*, London: UCL Press Ltd.: 33-59 (especially, pp. 43-47).

[5] Emma Rothschild, (1995), "What is Security?", *Daedalus*, 124(3): 53-97. Ken Booth, (1991), "Security and Emancipation", *Review of International Studies*, 17(4): 313-326. Please note that Ken Booth names himself "an utopian realist".

[6] 1994 *Human Development Report* – United Nations Development Programme (UNDP):22.

[7] Ibid, p. 23. , the word in brackets added to replace the word "these" in the original text.

[8] "A Perspective on Human Security: Chairman's Summary – 1st Ministerial Meeting of the Human Security Network", Lysoen, Norway, May 20, 1999, taken from http://www.humansecuritynetwork.org/menu-e.asp

[9] Japanese Ministry of Foreign Affairs, Diplomatic Bluebook – 1999, Chapter 2, Section 3. You may access this text through http://www.mofa.go.jp/policy/other/bluebook/1999/II-3-a.html .

[10] http://www.defait-maeci.gc.ca/foreignp/humansecurity/menu-e.asp

[11] Roland Paris, (2001), "Human Security - Paradigm Shift or Hot Air?", *International Security*, 26(2): 91.

[12] Ibid, pp. 24-33.

[13] On first, second and third generation human rights, please see the introduction of this section (Human Rights in the European Union: An Approach Through the Perspectives of Socio-Economic Policies and Human Security)

[14] Bjørn Møller, (2001), "National, Societal and Human Security: General Discussion with a Case Study from the Balkans", *What Agenda for Human Security in the 21st Century* (First International Meeting of Directors of Peace Research and Training Institution – Proceedings), Paris: UNESCO: 48.

[15] Ibid, p. 34.

[16] For the relationship between human trafficking, human rights and security please see "Routes of Human Trafficking", *Parliament Magazine*, Issue 36, March 25, 2002: 33-37.

[17] Amitav Acharya, speech at the workshop: "Human Security in Asia Pacific – Human Security in the Region: Conceptual Issues", organised by York University, Rapporteur: Natasha Maurovic, CANCAPS Bulletin, No.28, February 2001, accessed through: http://www.iir.ubc.ca/cancaps/cbul28.html#husec .

[18] Barry Buzan and Ole Waever, (1998), "Liberalism and Security: The Contradictions of the Liberal Leviathan", *COPRI Working Papers*, 23: 30.

[19] Barry Buzan, Ole Waever, and Jaap de Wilde, (1998) *Security: A New Framework for Analysis*, London: Lynne Reinner Publishers, Boulder.

[20] Herman Kraft, speech at the workshop: "Human Security in Asia Pacific – Human Security in the Region: Conceptual Issues", organised by York University, Rapporteur: Natasha Maurovic, CANCAPS Bulletin, No.28, February 2001, accessed through: http://www.iir.ubc.ca/cancaps/cbul28.html#husec .

[21] Ibid.

[22] 1994 *Human Development Report* – United Nations Development Programme (UNDP): 23.

[23] Ken Booth, (1991), "Security and Emancipation", *Review of International Studies*, 17(4): 313-326.

[24] Ibid, p. 319.

[25] Ibid.

[26] Roland Paris, (2001), "Human Security - Paradigm Shift or Hot Air?", *International Security*, 26(2): 88.

[27] For such an argument please see: Ibid., pp. 87-102.

[28] For a debate on how the authority over security is vested on the state (in the traditional sense) please see: Thomas Hobbes (1992, [1651]), *Leviathan*, (edited by Richard Tuck in 1991), Cambridge: Cambridge University Press; and Jean Jacques Rousseau, (1973) *The Social Contract and Discourses*, (translated by G.D.H. Cole, and, revised and augmented by J.H. Brumfitt and John C. Hall, reprinted in 1992) London: J. M. Dents and Sons Ltd.

[29] George MacLean, "The Changing Perception of Human Security: Coordinating National and Multilateral Responses", accessed through: http://www.unac.org/en/link_learn/canada/security/perception.asp, accessed on October 15, 2002.

[30] The concept of "structural violence" is a part of the Galtungian notion of security as "positive peace". Please see: Johan Galtung, (1975), *Essays in Peace Research Vol. 1: Peace: Research, Education, Action*, Oslo: prio Monographic International Peace Research Institute, , "Violence, Peace and Peace Research", *Journal of Peace Research*, 6: 167-191.

[31] Bjørn Møller, (2001), "National, Societal and Human Security: General Discussion with a Case Study from the Balkans", *What Agenda for Human Security in the 21st Century* (First International Meeting of Directors of Peace Research and Training Institution – Proceedings), Paris: UNESCO:49-50

[32] For the concept of "negative peace" please see: Johan Galtung, (1975), *Essays in Peace Research Vol. 1: Peace: Research, Education, Action*, Oslo: prio Monographic International Peace Research Institute, , "Violence, Peace and Peace Research", *Journal of Peace Research*, 6: 167-191.

[33] Terry Terriff, Stuart Croft, Lucy James and Patrick M. Morgan, (1999) *Security Studies Today*, Cambridge: Polity Press: (Chapter 3: Peace Studies) 74.

[34] Emma Rothschild, (1995), "What is Security?", *Daedalus*, 124(3): 63. On theories of social contract, please see the works of Jean-Jacques Rousseau, Thomas Hobbes and John Locke.

[35] Ibid.

[36] Ibid.

[37] Ibid.

[38] John Locke and David Hume can be regarded as thinkers in this school of thought.

[39] Barry Buzan and Ole Waever, (1998), "Liberalism and Security: The Contradictions of the Liberal Leviathan", *COPRI Working Papers*, 23: 19.

[40] Ibid., p. 4.

[41] This definition of security is made by Ole Waever in various publications such as: Barry Buzan, Ole Waever, and Jaap de Wilde, (1998) *Security: A New Framework for Analysis*, London: Lynne Reinner Publishers, Boulder; *Ole* Waever, (1995) "Securitization and Desecuritization", in Ronnie Lipschutz, (ed.), *On Security*, New York: Columbia University Press: 46-86; Ole Waever (1996) "European Security Identities", *Journal of Common Market Studies*, 34(1): 103-132.

[42] Barry Buzan and Ole Waever, (1998), "Liberalism and Security: The Contradictions of the Liberal Leviathan", *COPRI Working Papers*, 23: 4.

[43] Ibid.

[44] Ibid.

[45] For the risks engendered by securitization please see: *Ole* Waever, (1995) "Securitization and Desecuritization", in Ronnie Lipschutz, (ed.), *On Security*,

[46] Emma Rothschild, (1995), "What is Security?", *Daedalus*, 124(3): 80

[47] Ibid, p. 63.

[48] Bjørn Møller, (2001), "National, Societal and Human Security: General Discussion with a Case Study from the Balkans", *What Agenda for Human Security in the 21st Century* (First International Meeting of Directors of Peace Research and Training Institution – Proceedings), Paris: UNESCO: 49.

[49] Ibid.

[50] Ibid.

[51] Ibid.

[52] Ibid, p. 46.

[53] Ibid.

[54] On the legitimacy and justice please see John Rawls (1999[1971]) *A Theory of Justice*, Cambridge, Mass.: Belknap Pressof Harvard University Press.

[55] Christian Reus-Smit, (2001) "Human Rights and the Social Construction of Sovereignty", *Review of International Studies*, 27(4): 530.

[56] Ken Booth, (1991), "Security and Emancipation", *Review of International Studies*, 17(4): 323

[57] Emanuel Adler and Michael Barnett, (1998), "A Framework for the Study of Security Communities" in Emanuel Adler and Michael Barnett (eds), *Security Communities*, Cambridge: Cambridge University Press: 43.

[58] Ibid.

[59] Ole Waever, (2000) "The EU as a Security Actor – Reflections from a Pessimistic Constructivist on post-Sovereign Security Orders", in Morten Kelstrup and Michael Williams (eds), *International Relations Theory and the Politics of European Integration – Power, Security and Community*, London: Routledge. 250.

[60] For futher information on EU humanitarian aid, please see http://europa.eu.int/scadplus/leg/en/lvb/r10000.htm Please note that the information given in this paragraph is basically referred to from the same website.

[61] For further information on ECHO please see:

http://europa.eu.int/comm/echo/presentation/background_en.htm
http://europa.eu.int/comm/echo/presentation/mandate_en.htm
http://europa.eu.int/scadplus/leg/en/lvb/r10003.htm .

Please note that the information given in this paragraph is basically referred to from the named websites.

[62] This table is taken from http://europa.eu.int/comm/echo/presentation/background_en.htm .

[63] For further information on EU's development policy please see: http://europa.eu.int/scadplus/leg/en/lvb/r12000.htm and http://europa.eu.int/scadplus/leg/en/lvb/r12001.htm . Please note that the information given under this heading is basically referred to from the named websites.

[64] For further information on EU policy on rehabilitation and reconstruction in developing countries please see: http://europa.eu.int/scadplus/leg/en/lvb/r10004.htm

. Please note that the information given under this heading is basically referred to from the same website.

[65] Karen E. Smith, (1997), "The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?", *EUI Working Papers*, 97(7): 6.

[66] Ibid, pp. 6-7.

[67] The information on the "essential element clause" is basically referred to from:

http://europa.eu.int/scadplus/leg/en/lvb/r10101.htm .

[68] It is important to note that conditionality is not used in cases of humanitarian aid since humanitarian aid involves a degree of urgency and is solely based on the relief of human suffering. Conditionality would not be a relevant tool to be used in such instances.

[69] For another definition of the term please see:
http://europa.eu.int/scadplus/leg/en/lvb/r10100.htm .

[70] This information is basically taken from the "European Union Annual Report on Human Rights 2001; accessed through:
http://europa.eu.int/scadplus/leg/en/lvb/r10103.htm .

[71] Please note that the ESDP does not undermine the EU's role as a civilian power. It should also be kept in mind that the Petersberg Tasks only involves crisis management operations that may be regarded as part of the lower end of the military spectrum. Please see Gordon Wilson, (1998), "WEU's Operational Capability – Delusion or Reality?" in Guido Lenzi, *WEU at Fifty*, Paris: WEU Institute for Security Studies: 51-66, for a debate on the nature of Petersberg tasks.

[72] WEU Council of Ministers, Petersberg Declaration, June 1992.

[73] Barnett Rubin, "Afghanistan and Threats to Human Security", accessed through: http://www.ssrc.org/sept11/essays/rubin.htm , on October 25, 2002. This essay was adapted from a speech delivered in Tokyo on December 15, 2001, at the International Symposium on Human Security: "Human Security and Terrorism - Diversifying Threats under Globalization"---from Afghanistan to the Future of the World.

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ANNEXES

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ANNEX I:

SUBJECTS COVERED IN THE BOOKLETS

The Booklet titled: "The Police and the Law of Human Rights"

Subjects Covered:

General Framework of the notion of the Law of Human Rights
The Differences of Practice between Turkey and Europe concerning Human Rights Issues with regard to the Police

The Booklet titled: "Human Rights Education in Primary Schools"

Subjects Covered:

General Framework of the Notions of Human Rights and Human Rights Education
How to Incorporate Human Rights in Everyday Education
Useful Methods for Teaching Human Rights
The Human Rights Environment in Primary Schools

The Booklet titled: "We are Learning Human Rights"

Subjects Covered:

A simplified version of the Universal Declaration for Human Right

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ANNEX II:

SEMINAR OUTLINES

SEMINAR OUTLINE FOR PRIMARY SCHOOL TEACHERS

Section I – Human Rights

- Definition
- Features
- Fundamental Sources
- Evolution in Historical Context
- The Rights of the Child

Section II – Human Rights Education

- Human Rights Education in International Context
- The UN and Human Rights Education (The Decade of Human Rights Education; 1995-2004)
- Definitions: Teaching for and about Human Rights
- Aims of Human Rights Education
- Important Points for Teachers
- Methodology of Human Rights Education
- Sample Exercises

Section III – Human Rights Environment in School

- Points for Evaluating the Human Rights Environment in School
- Recommendations on How to Improve the Human Rights Environment in School

Section IV – Incorporating Human Rights in the Curriculum

- General Remarks
- Recommendations for Specific Courses
  - Social Studies and History
  - Social Studies and Geography
  - Turkish (Writing Exercises)
  - Literature

Foreign Language Courses
Biology and Physical Sciences

Section V – Useful Teaching Methods for Human Rights Education

General Remarks
Teaching Methods: Aims and Techniques
Role-Playing
Group Studies
Brainstorming
Class-Discussion
Questions and Answers
Projects
Pictures and Photographs
Cartoons and Comics
Important Points for Teachers on Designing their Own Human Rights Teaching Activities

SEMINAR OUTLINE FOR STUDENTS OF THE POLICE SCHOOLS, THE POLICE COLLEGE AND THE POLICE ACADEMY

Section I – Concept of Human Rights and International Human Rights Law

Definition of Human Rights
Detailed Examination of Some Terms (dignity, positive and natural law, rights and duties)
First Human Rights Documents
Human Rights and Law
International Human Rights Declarations/Conventions
UN Human Rights Declaration
Council of Europe
European Convention on Human Rights
The EU and Human Rights
    Member States and Human Rights
    Candidate states and Human Rights
European Human Rights Law and Turkey
    Effects of European Human Rights Law and the Police
    Turkey's Candidacy and the Police and Human Rights

Section II – 1982 Constitution of Turkey and Fundamental Rights and Freedoms

Fundamental Rights and Freedoms in Turkish Constitution
Restriction Clauses
European Convention on Human Rights and the Constitution
Differences between the European System and the Constitution

Section III – Human Rights Law and the Police: The Police Tasks and Human Rights

Human Rights and the Police

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Right to Life
- Use of Force
- Extralegal Killings
- Disappearances

Torture
- Prohibition of Torture
- Conditions
- Ill Treatment

Right to Liberty and the Security of the Person
- Arrest and Detention
- Innocence Presumption
- Fair Trial
- Minimum Guarantees of Person in Investigation
- Prohibition of Arbitrary Arrest, Procedures, Safeguards, and Measures of Derogation Requirements of Detention, Fundamental Principles, Concept of Suspect and Conditions of Detention

Right to Privacy
- Investigation, Arbitrary Interference with privacy, Investigation in House or Office and Investigation in Person
- Unlawful Interference to Correspondence
- Policing Skills and Technical View of Investigation

ANNEX III:

GENERAL REMARKS ON THE RESULTS OF THE QUESTIONNAIRES

General Remarks on the results of the questionnaires for primary school teachers:

The results that we obtained from the first group of questions in the first questionnaires showed that most of the teachers in the three cities had not taken a seminar on human rights education before. The table below shows the number of teachers who stated that they had not taken Human Rights Education (seminars, conferences, etc) beforehand.

	ANKARA	ISTANBUL	IZMIR
LOWER INCOME LEVEL SCHOOLS	12 (out of 16)	20 (out of 22)	7 (out of 7)
MIDDLE INCOME LEVEL SCHOOLS	16 (out of 21)	7 (out of 12)	22 (out of 27)
UPPER INCOME LEVEL SCHOOLS	12 (out of 15)	10 (out of 17)	16 (out of 35)

Table 1: First Questionnaire, Question 1: "Number of teachers who stated that they had not taken Human Rights Education before".

However, results of some questions also showed that many of them had basic information about human rights irrespective of their professional

background. The table below shows the number of teachers who regarded their level of knowledge on the basic human rights concepts as "good".

	ANKARA	ISTANBUL	IZMIR
LOWER INCOME LEVEL SCHOOLS	8 (out of 16)	14 (out of 22)	3 (out of 7)
MIDDLE INCOME LEVEL SCHOOLS	13 (out of 21)	4 (out of 12)	22 (out of 27)
UPPER INCOME LEVEL SCHOOLS	10 (out of 15)	10 (out of 17)	17 (out of 35)

Table 2: First Questionnaire, Question 2: "Number of teachers who stated their level of knowledge "good" on the basic concepts of human rights".

In another question, we asked the opinion of all teachers on the appropriate level to start Human Rights Education. Most teachers at the upper income level school in Ankara and at the middle-income level school in Istanbul, and majority of the teachers at the upper income level schools in Istanbul and Izmir stated that human rights education should start at the pre-school level.

	ANKARA	ISTANBUL	IZMIR
LOWER INCOME LEVEL SCHOOLS	9 (out of 16)	4 (out of 22)	3 (out of 7)
MIDDLE INCOME LEVEL SCHOOLS	7 (out of 21)	8 (out of 12)	14 (out of 27)

UPPER INCOME LEVEL SCHOOLS	10 (out of 15)	9 (out of 17)	27 (out of 35)

Table 3: First Questionnaire, Question 13: "Number of teachers who thought that the best time to start Human Rights Education was the pre-school level".

Some teachers at the lower income level schools in three cities stated that the best time to start such kind of an education was the period between the 1st and 3rd years at primary schools.

	ANKARA	ISTANBUL	IZMIR
LOWER INCOME LEVEL SCHOOLS	6 (out of 16)	9 (out of 22)	4 (out of 7)

Table 4: First Questionnaire, Question 13: " Number of teachers who thought that the best time to start Human Rights Education was the period between the 1st and 3rd years".

There were other responses, which favoured the period between the 3rd and 6th years at primary schools as the best time to start such kind of an education. Only a few number of teachers stated that the courses given in the 7th and 8th years were appropriate. Nevertheless, the number of teachers who stated their opinion in favour of these two choices was certainly less than the number of teachers who favoured earlier periods to start human rights education. Therefore we would like to state that even before our seminars, most of the teachers in our pilot schools agreed that the pre-school level was a crucial stage concerning the basic logic of the human rights education.

We saw that most of the teachers found our seminar "useful" given the results of the last question in all of the three types of final questionnaires. Nevertheless, the degree of usefulness varied between "very much", "mostly" and "partly". The tables below show the total number of the

teachers at each income level school in the three cities who found our seminar "very much", "mostly" and "partly" useful respectively.

	ANKARA	ISTANBUL	IZMIR
LOWER INCOME LEVEL SCHOOLS	4 (out of 17)	7(out of 23)	1(out of 8)
MIDDLE INCOME LEVEL SCHOOLS	10 (out of 23)	8(out of 12)	15 (out of 30)
UPPER INCOME LEVEL SCHOOLS	6 (out of 17)	2 (out of 13)	13 (out of 39)

Table 5: Final Questionnaire, Question 8 in the questionnaires of teachers who teach in the first five years, Question 9 in the questionnaire for teachers who teach "citizenship and human rights course" and Question 9 in the questionnaire for counselling teachers; "Total number of teachers who found our seminar **mostly** *useful".*

	ANKARA	ISTANBUL	IZMIR
LOWER INCOME LEVEL SCHOOLS	13 (out of 17)	7 (out of 23)	4 (out of 8)
MIDDLE INCOME LEVEL SCHOOLS	7 (out of 23)	8 (out of 12)	8 (out of 30)
UPPER INCOME LEVEL SCHOOLS	8 (out of 17)	2 (out of 13)	13 (out of 39)

Table 6: Final Questionnaire, Question 8 in the questionnaires of teachers who teach in the first five years, Question 9 in the questionnaire for teachers

who teach "citizenship and human rights course" and Question 9 in the questionnaire for counselling teachers; "Total number of teachers who found our seminar **very much** *useful".*

	ANKARA	ISTANBUL	IZMIR
LOWER INCOME LEVEL SCHOOLS	–	5 (out of 23)	2 (out of 8)
MIDDLE INCOME LEVEL SCHOOLS	5 (out of 23)	2 (out of 12)	7 (out of 30)
UPPER INCOME LEVEL SCHOOLS	1 (out of 17)	7 (out of 13)	1 (out of 39)

Table 7: Final Questionnaire, Question 8 in the questionnaires of teachers who teach in the first five years, Question 9 in the questionnaire for teachers who teach "citizenship and human rights course" and Question 9 in the questionnaire for counselling teachers; " Total number of teachers who found our seminar **partly** *useful".*

The last question of all the types of the final questionnaires was open-ended and was on the teachers' evaluation of our seminar. The opinions that the teachers stated in this last question reinforced our belief that there should be future projects on human rights education and those projects should be conducted nation-wide. Responses to this question clearly indicated that irrespective of the Cities and Average Income Level of the School Area and the professional background of the teachers, almost all the teachers shared similar views about our seminars. We present the statistical evaluation of this question (how many teachers stated their own view...) in Annex 1 under the Evaluation of Final Questionnaire. However, we would like to state the common points explained in their answers given to this question here.

Many teachers stated that they found our seminar useful since:

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- we provided interesting sample exercises, which they could apply in each course without having any substantial difficulty
- our seminar refreshed their knowledge on human rights
- we explained teaching methods on human rights education and how they could use these methods in a comprehensive way
- our seminar provided knowledge on recent developments in the field of human rights education.
- our seminar created a good and lively atmosphere for them to share their experiences and to discuss the issues.
- our seminar had comprehensive parts to explain the whole issue
- our seminar provided academic/scientific base to improve their current practices and think of and plan their future practices with a different point of view

Some teachers stated that they could not obtain very much benefit from our seminar since:

- Our seminar was not a permanent study and
- It was limited with few hours.

Based on these responses we thought that nation wide and long-term projects on human rights education at primary school level would be very much welcomed and would serve well to instigate awareness on the issue.

Finally, we want to quote a few answers given to the last question. Particularly one of them is very striking. It is the answer of one teacher from the middle-income level school in Istanbul where we had intensive discussions on whether teachers at the primary schools were the right target group to address such an issue.

The teacher wrote: "*I forgot the unhappiness that I had due to tough living conditions. I did remember again that I was a "teacher". And I did realise once again how important I was to my students and how much more I had to do. It made me feel stronger and I was honoured. I thank you and hope that your efforts will continue...*"

Another teacher (counselling teacher) from the lower income level school in Ankara wrote: *"This seminar contributed a lot to reviewing my knowledge on many issues. It also convinced us about the sincerity of the project team and those who work to improve human rights. Thank you..."*

A teacher who teaches in the first five years at the upper income level school in Ankara wrote: *"I believe that this seminar gave me a chance to question myself. It also strengthened my thoughts and feelings on this specific issue and refreshed my knowledge."*

General Remarks on the Evaluation of the questionnaires for teachers of the Police Schools, the Police Academy and the Police College:

Given the results of first set of questions in the first questionnaires directed to the teachers of the Institutions for Police Education, we saw that most of the teachers considered "the human rights education of the police" necessary and thought that it should be continued after the students' graduation (i.e. after their formal education). We also found out that the teachers were very sensitive about the institutions, which should provide human rights education.

Most of the teachers emphasized two very important points in their responses to an open-ended question in the final questionnaires (Question 2 in the Final Questionnaire for the Teachers of the Police Schools and Question 4 in the Final Questionnaire for the Teachers of the Police Academy and of the Police College). These two points can be stated as follows.

"Human rights education should be a continuous process. Police officers that have completed their formal education should be regularly updated on the issue of human rights."

"Human rights education that keeps their knowledge on human rights up to date and reminds them of the importance of respect for human rights is a commonly perceived necessity."

General Remarks on the Evaluation of the questionnaires for the students of the Police Schools, the Police Academy and the Police College:

The following questions were particularly significant both with regard to the results of our seminar and the contribution of such activities on the human rights education of the Police in future.

Results of the Question 6 in our final questionnaire (Question 6: Have you obtained the expected benefit from the seminar?) indicated that the many students could obtain the expected benefit from our seminar.

	YES	PARTIALLY	NO
POLICE ACADEMY	44	49	7
POLICE COLLEGE	70	27	3
POLICE SCHOOL IN ISTANBUL	51	40	9
POLICE SCHOOL IN IZMIR	47	52	1

Table 10: Final Questionnaire, Question 6: "Statistical evaluation of obtaining the expected benefit from the seminar".

However the degree of obtaining the expected benefit varied among the students. This showed us that a considerable percentage of students thought that they could benefit more from seminars and other similar studies depending on specific conditions.

	DEFINITELY	IN SOME CIRCUMSTANCES	NOT AT ALL
POLICE ACADEMY	40	54	6
POLICE	56	38	6

COLLEGE			
POLICE SCHOOL IN ISTANBUL	49	36	15
POLICE SCHOOL IN IZMIR	55	43	2

Table 11: Final Questionnaire, Question 9: "Statistical evaluation of students' views on whether seminars and related activities are beneficial to them"

Furthermore given the results we obtained from Question 10, it was obvious that those students were of the opinion that seminars and other similar studies would be more beneficial to them if these studies were organised as projects related to practice.

	A series of seminars, conferences or panels	a detailed and continuous education	various projects related to practice	Others (Please state briefly)
POLICE ACADEMY	10	28	62	-
POLICE COLLEGE	5	30	65	-
POLICE SCHOOL IN ISTANBUL	11	36	52	-
POLICE SCHOOL IN IZMIR	9	38	50	-

Table 12: Final Questionnaire, Question 10: "Statistical Evaluation of students' preferences on most suitable circumstances for beneficial seminars and related activities"

As a final point we would like to emphasize that the results of these questions, particularly results of Question 10 provided feedback that might guide researchers in similar projects.

ANNEX IV:

CONFERENCE PROGRAM

Thursday, 04.10.2001

Opening Speeches

Mr. Mehmet Yıldırım (President, Istanbul Chamber of Commerce)

Prof. Dr. Turay Yardımcı (Rector, Marmara University)

Mrs. Müjgan Suver (President, Human Rights Platform, Marmara Foundation for Strategic and Social Research)

Mr. Gürbüz Kaya (Director, Turkish Democracy Foundation, Istanbul)

Mr. Ali Eliş (Director, Turkish-German Co-operation Institute, Bremen)

Special Session: The European Union and Human Rights

Mr. Nejat Arseven (Minister of State Responsible for Human Rights)

Mr. Luigi Narbone (Representative of the European Commission)

Ambassador Volkan Vural (Secretary General for the European Union)

Project Description and Assesment

Assoc. Prof. Dr. Muzaffer Dartan (Director, EC Institute, Marmara University – Project Coordinator)

Ms. Münevver Cebeci (Lecturer, EC Institute, Marmara University – Assistant to Project Coordinator)

Session I: Human Rights in Primary School Education

Chairperson: Prof. Dr. Ayla Oktay

Mr. Murat Gürkan Gülcan (Head of he General Directorate for Primary School Education, Ministry of National Education)
"Human Rights Education in Primary Schools: Practices within the Curriculum and Extra-Curricular Activities"

Ms. Jagoda Illner (Expert, Centre for Schools and Continuous Education, Nordrhein Westfalen, Germany)
"Human Rights in the German Education System"

Comment: Prof. Dr. Alan Smith (UNESCO Chair, Department of Education, University of Ulster)

Session II: Human Rights in Police Education

Chairperson: Prof. Dr. Süheyl Batum (Dean, Faculty of Law, Bahçeşehir University)

Prof. Dr. Ibrahim Kaboğlu (Faculty of Law, Marmara University)
"Human Rights Education in Turkey"

Mr. Ulvi Körezlioğlu (Head, Education Section, General Directorate of Security)
"Human Rights in the training of Turkish Police Forces"

Mr. Lutz Müller (Director, Institute of Continuous Education, School for Public Administration, Bremen)
"Human Rights in the Training of German Police Forces"

Comment: Prof. Dr. Füsun Sokullu Akıncı (Faculty of Law, Istanbul University)

Friday, 05.10.2001

Session III: European Human Rights Regime and the European Union

Chairperson: Jean François Buffandeau (Consul-General of France)

Ms. Ann Sherlock (Department of Law, University of Wales)
"Ensuring Effective Protection of Rights under the European Convention on Human Rights"

Prof. Dr. Leo Zwaak (Netherlands Institute of Human Rights)
"Turkey Towards Membership of the European Union: The Role of the European Convention on Human Rights"

Prof. Dr. Bengt Beutler (Department of Law, University of Bremen)
"Protection of Human Rights and Fundamental Rights in the European Union"

Session IV: Human Rights as a Criterion for Membership to the European Union and the Position of Turkey

Chairperson: Assoc. Prof. Turgut Tarhanlı (Faculty of Law, Bilgi University)

Ms. Sema Pişkinsüt (Member of the Turkish Grand National Assembly, Former President of the Human Rights Commission)
"Human Rights and Democracy in Turkey and in the European Union"

Mr. Ozan Ceyhun (Member of the European Parliament, Vice-Chairman of the EP Delegation to the EU-Turkey Joint Parliamentary Committee)
"Perspective of a Member of the European Parliament: Latest Developments Regarding Human Rights in Turkey since Helsinki"

Mr. Rıza Türmen (Judge, European Court of Human Rights)
"Role of the ECHR System in the Shaping of Europe and its Effects on Turkey"

Closing Speeches

Chairperson: Prof. Dr. Orhan Oğuz (Founding Rector, Marmara University)

Prof. Dr. Halûk Kabaalioğlu (Founding Director, EC Institute, Marmara University)

Prof. Dr. Bengt Beutler (Department of Law, University of Bremen)

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Turkish-German Co-operation Institute

Marmara Foundation for Strategic and Social Research

ANNEX V:

THE MATERIALS AND PUBLICATIONS PRODUCED DURING THE PROJECT

Questionnaires for assessing the general human rights approach of the **students** at the Police Schools, College and Academy and for learning their expectations from our seminar. These questionnaires are prepared for application prior to the seminars.

Questionnaires for assessing the general human rights approach of the **teachers** at the Police Schools, College and Academy and for learning their expectations from our seminar. These questionnaires are prepared for application prior to the seminars.

Questionnaires for assessing the general human rights approach of the **teachers** at primary schools and for learning their expectations from our seminar. These questionnaires are prepared for application prior to the seminars.

Questionnaires for assessing the success of the seminars at the Police Schools, College and Academy. These questionnaires are prepared to be applied to the students after the seminars.

Questionnaires for assessing the success of the seminars at the Police Schools, College and Academy. These questionnaires are prepared for application after the seminars and applied to the teachers.

Questionnaires for assessing the success of the seminars at the primary schools. These questionnaires are prepared to be applied to the teachers after the seminars.

Booklet titled: "The Police and The Law of Human Rights" for the Police Schools, College and Academy

Booklet titled: "Human Rights Education in Primary Schools" for the Primary School Teachers

Booklet titled: "We are Learning Human Rights" for the Primary School Students at their 1st year

Brochure titled: "International Conference: Human Rights Education and Practice in Turkey in the Process of Candidacy to the European Union". This brochure was published for indicating the programme of the conference and was sent to more than 800 invitees.

The files distributed at the conference consisting of a notebook, a pen, the outlines of the seminars given at the primary schools and the institutions for police education, the covers and contents-pages of the booklets published as well as a 3-page description of the project.

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"Human dignity is inviolable.
It must be respected and protected"

• Article 1
Charter of Fundamental Rights of the European Union.

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