THE EU ENLARGEMENT AND THE POLITICAL CRITERIA: THE CASE OF TURKEY*

Araş. Gör. Ceren Su
Yeditepe Üniversitesi Hukuk Fakültesi

I. Introduction

The Helsinki Summit of 1999 ushered a new era in the EU-Turkey relations. Turkey, an associate since 1963 and an applicant since 1986, was announced to be a candidate for the EU membership for the first time. In this context, human rights and democracy issues, which have played a major role in the relations between the two parties, have gained the limelight, since the membership requires Turkey to fulfil the Political Criteria.

This paper will examine the impact of the EU on the human rights situation in Turkey.

For this purpose, first the implementation of the human rights conditionality by the EU towards third countries and the birth of the Political Criteria will be examined. In this context, the human rights enforcement

---

* LLM dissertation by the author presented to the London School of Economics and Political Science in July 2002. The author hereby thanks to her supervisor, Mr. Damian Chalmers for his support. The Postscript part of this paper was added after the presentation of the original study, for the purpose of providing an outline of the developments following the presentation date.

and scrutiny tools of the EU within the pre-accession strategy will be identified.

Secondly, the EU – Turkey relations beginning from Turkey's application for associate membership of the EU in 1959 till the Helsinki Summit, will be reviewed. This part will focus on the role of the human rights in the relations. The reasons underpinning periodic human rights policy shifts in the EU will also be addressed.

Finally, the current human rights situation in Turkey will be analysed in the light of the Accession Partnership, the National Programme of Adoption of the Acquis and the Regular Reports.

II. A Brief Background to the Political Criteria

Prior to the late 1980s, human rights policy of the EU remained rather internal. Although the EU lacked its own Bill of Rights, as is the case now, the case law that the European Court of Justice has developed since 1969[1] constitutes "an unwritten charter of rights"[2]. In many of its judgements on human rights issues, the ECJ repeatedly referred to "the constitutional traditions common to the Member States" and "international treaties for the protection of human rights on which the Member States have collaborated on or of which they are signatories"[3], particularly the European Convention on Human Rights[4] as its inspirations[5]. On December 14, 1973, the Copenhagen Council recognised respect for human rights to be one of the essential values composing the European identity. In late 1970s, the European Parliament emerged as another important actor besides the ECJ in shaping the human rights policy of the

1 Case 29/69 *Stauder v. City of Ulm* (1969) ECR 419., Barbara Brandtner and Allan Rosas, "Human Rights and the External Relations of the European Community: An Analysis of Doctrine and Practice", 9 EJIL, (1998), p. 468, also available at the EJIL website at http://www.ejil.org/journal/Vol9/No3/index.html.

2 Paul Craig and Grainne de Burca, EU Law: Text, Cases and Materials 2nd ed., (Oxford University Press, 1998), p. 296.

3 Case 4/73, Nold v. Commission, (1974), ECR 491.

4 However, the ECJ decided that accession of the European Community to ECHR was not within the competence of the Community. Opinion 2/94, Accession by the Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms, 2 CMLR, (1996), p. 265.

EU. It was the European Parliament, which led to Joint Declaration on Human Rights of the European Parliament, Council and Commission on April 5, 1977. This Joint Declaration of the Parliament, the Commission and the Council, stating the significance attached by these institutions to human rights as well as their commitment to respect them while exercising their powers, was endorsed by the European Council of April 1978 in Copenhagen[6]. Moreover, since 1983, the EP has been adopting annual reports and resolutions on human rights issues.

In the mid 1980s, the EU's human rights policy began to gain external dimensions. The Single European Act (SEA), which entered into force on July 1, 1987 stated human rights issues, democracy and the rule of law to be an essential element of the Community's foreign policy. Furthermore, Articles 8 and 9 of the SEA amended Articles 237 and 238 of the Rome Treaty so as association agreements with third countries and accessions of new members to the Community to be subject to the assent of the EP. The EP, on many occasions, used this authority for human rights considerations. In 1986[7], the European Political Cooperation submitted its first annual written report on human rights, due to the EP's request. On July 1986, a statement made by the foreign ministers meeting in the EPC framework reconfirmed "their commitment to promote and protect human rights and fundamental freedoms" [8]. Moreover, due to the Community's, especially the EP's persistence a joint declaration restating that human dignity to be an essential objective of development was included in Lome III Agreement of 1985[9].

Human rights conditionality in the EU's relations with the third countries initially occurred towards the countries of Central and Eastern Europe (CCEE), in the wake of dissolution of the Soviet Union in late

5 Nanette A. Neuwahl, "The Treaty on European Union: A Step Forward in the Protection of Human Rights?", in Nanette A. Neuwahl and Allan Rosas (eds.), (The Hague, Nijhoff, 1998), pp. 1 – 22.

6 Daniela Napoli, "The European Union's Foreign Policy and Human Rights", in Nanette A. Neuwahl and Allan Rosas (eds.), (The Hague, Nijhoff, 1998), pp. 297 – 312.

7 Since then, the EPC/CFSP Presidency has continued with presentation of annual reports to the EP.

8 Karen Smith, "The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?", 3 EFA Rev., (1998), pp. 253 – 274.

9 Karen Smith, (1998).

1980s. By the end of the cold war, a significant change in favour of conditionality took place. The initial statement of human rights conditionality was made by the Strasbourg European Council of 1989 as follows: *"The Community's dynamism and influence make it the European entity to which the countries of Central and Eastern Europe now refer, seeking to establish close links. The Community has taken and will take the necessary decision to strengthen its cooperation with peoples aspiring to freedom, democracy and progress and with States which intend their founding principles to be democracy, pluralism and the rule of law."*[10]

In 1990 the Commission established the conditions to be met by the CCEE for the signature of association agreements (Europe agreements) with the Community. These conditions were identified as follows; the rule of law, human rights, a multi-party system, free and fair elections and a market economy.

The first three association agreements with Czechoslovakia, Hungary and Poland in December 1991) did not comprise human rights clauses. However On May 11, 1992, the Council decided that all cooperation agreements concluded with CCEE to include a clause permitting the suspension of the agreements in case of the violence of human rights, democratic principles and the principles of market economy[11]. The outcome was insertion of human rights clauses in the following association agreements with CCEEs[12].

The Birth of Copenhagen Criteria

In April 1993, the Commission in its communication "Towards a Closer Association with the countries of Central and Eastern Europe" explicitly stated the final goal of the relations with these countries[13]. The Commission mentioned the objective of future membership, an objective that had already existed within the framework of the relations between the parties, yet, had remained implicit. The Commission suggested that the

10 Strasbourg European Council Presidency Conclusions, 1989, EC Bull 12/1989.

11 Karen Smith, (1998).

12 Karen Smith, (1998).

13 Andrew Williams, "Enlargement of the EU and Human Rights Conditionality: A Policy of Distinction", 25 ELRev., (2000), pp. 601 – 617.

European Council confirm its commitment to membership of the EU for the CCEEs. However, this membership was recommended to be subject to a number of conditions expressed by the Commission as follows: capacity to assume the Community acquis and the competitive pressures of membership, ability to guarantee democracy, human rights, respect for minorities and the rule of law and the existence of a functioning market economy. Moreover, the Community's own capacity to absorb new members was to be considered.

The decisions taken by the Copenhagen Council of April 1993 on the relations with the CCEEs were in line with the Commission Communication:

> " The European Council today agreed that the associated countries in Central and Eastern Europe that so desire shall become members of the European Union....
>
> Membership requires that the candidate country has achieved stability of institutions, guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union."[14]

The establishment of the accession criteria (Copenhagen Criteria) was mostly noteworthy since it placed human rights conditionality, which was already introduced in trade agreements and development cooperation with third countries, into the EU's accession policy for the first time. The Copenhagen Criteria constituted a formal basis, of which human rights is an essential element, for evaluation of membership applications.

The Essen Council of December 1994 decided on the implementation of a pre-accession strategy for each candidate, in order to "provide a route plan for the associated countries as they prepare for accession" [15]. This strategy was to be realized through; (a) a "structured relationship" covering "Community areas, especially those with a trans-European dimension (including energy, environment, transport, science and technology, etc.), Common Foreign and Security Policy as well as home and judi-

14 Copenhagen European Council, June 1993, Presidency Conclusions, EC Bulletin 6/1993.

15 Essen Council Presidency Conclusions, December 9 and 10, 1994, Annex IV, available at: http://ue.eu.int/en/Info/eurocouncil/index.htm

cial affairs"[16] and (b) preparation of the CCEEs for the integration into the Internal Market through a number of short and medium term measures. Moreover, this strategy was to be supported by PHARE programme, which would "develop on an indicative basis into an enhanced medium-term financial instrument with improved possibilities to promote infra-structure development and intra-regional cooperation"[17].

The Florence Council of June 1996 re-emphasized "the need for the Commission's opinions and reports on enlargement as called for at Madrid to be available as soon as possible after the completion of the Intergovernmental Conference"[18]. This would avail the beginning of the negotiations six months after the Intergovernmental Conference, following a close examination of the progress made by the CCEEs in meeting the Copenhagen Criteria, and thus human rights.

In line with the request of the Council, in 1997, the Commission presented "Agenda 2000"[19]. Agenda 2000 documentation comprised the Commission's suggestions concerning the future of the EU's policies, the enlargement strategy and the EU's financial framework for the period 2000 – 2006. The Commission's preliminary Opinions[20], evaluating the progress made by each CCEE towards meeting the accession criteria, came as a part of the Agenda 2000. The assessment of political issues was stated in these Opinions, which were delivered separately for each applicant. The Commission evaluated the applicants' situations regarding political criteria on three pillars, i.e.; (a) democracy and the rule of law, (b) human rights, and (c) respect for minorities. The sources of information used through the examination were listed as follows; (a) answers given by the authorities of applicant States to a questionnaire sent to them in April 1996, (b) bilateral follow-up meetings, (c) reports from Member States' embassies and the Commission's delegation, (d) assessments by international organisations, in particular the Council of Europe and the Organisation for Security and

16 Essen Council Presidency Conclusions.

17 Essen Council Presidency Conclusions.

18 Florence Council Presidency Conclusions, June 1996, available at: http://ue.eu.int/en/1nso/eurocouncil/index.htm

19 EC Bull Supp. 5/1997.

20 Commission Opinions on the applications of ten CEECs, COM (1997) 2001 – 2010 final. The applicants were Hungary, Poland, Romania, Slovakia, Latvia, Estonia, Lithuania, Bulgaria, Czech Republic and Slovenia.

Cooperation in Europe (OSCE), (e) reports produced by non-governmental organisations, and (f) other sources. Following its evaluation, the Commission reached to the conclusion that, the applicants, with the exception of Slovakia satisfied the Political Criteria.

The Luxembourg Council of December 1997 announced the opening of the negotiations on March 11, 1998 with Greek Cypriot Administration and five CCEEs[21] that were decided to have met the Copenhagen Criteria by the Commission in Agenda 2000. While the preparation of negotiations with four CCEEs[22] failing to satisfy the economic criteria and Slovakia were decided to be speeded up "through an analytical examination of the Union acquis" and with the opportunity of discussion "at ministerial-level bilateral meetings with the Member States of the Union", Turkey was presented a "European strategy".

A significant step taken by the Luxembourg Council in the context of human rights conditionality for accession was the adoption of two new tools for the pre-accession strategy, namely Accession Partnerships and Regular Reports. The instrument of Accession Partnership was initially introduced by the Commission in its Agenda 2000, as "the key feature" of the enlargement strategy. Adoption of Accession Partnerships was significant in two ways. First, by identifying the priorities to be realised by the applicants for membership on an individual basis, Accession Partnerships brought the Political Criteria to specific and "personalised" terms for each applicant. Second, progress made towards achieving these specified priorities was made a condition of receiving the financial assistance of the EU within the framework of pre-accession strategy. Moreover, the Council decided that the Commission to present regular reports, "reviewing the progress of each Central and East European applicant State towards accession in the light of the Copenhagen criteria". These regular reports were to "serve as a basis for taking, in the Council context, the necessary decisions on the conduct of the accession negotiations or their extension to other applicants". Through putting regular reports in motion, an effective inspection on progress by each candidate towards accession, thus realising objectives placed in its Accession Partnership, was established.

21 Czech Republic, Hungary, Poland, Estonia, Slovenia

22 Romania, Latvia, Lithuania, Bulgaria

Human Rights Conditionality for Membership in the Context of Treaty of European Union

Article O of the Maastricht Treaty did not mention any conditions to be satisfied in order to become a member of the European Union, except for the condition of being a "European State". However, Article 49 (former Article O) of the Amsterdam Treaty explicitly establishes human rights conditionality by referring to Article 6/1 (former Article F) of the TEU: *"Any European State which respects the principles set out in Article 6/1 may apply to become a member of the Union."*

Article 6/1 of the TEU reads, *"The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States."*

The human rights conditionality for accession to the EU under the Amsterdam Treaty seems to be the emplacement of the Copenhagen Political Criteria in the text of the TEU. Nevertheless, there are two main dissimilarities between the two texts. First, contrary to the Copenhagen Criteria, Article 6/1, "which applies to all Member States, i.e. even to those which do not recognize minorities such as France"[23], does not refer to respect for minority rights. Second, Article 6/1 mentions the principle of liberty while the Copenhagen Criteria do not include such principle.

Articles 6/1 and 49 of the TEU reinforce the basis created by the Copenhagen Criteria for the imposition of human rights conditionality by the EU on the applicant States. It is also noteworthy that Article 7 (former Article F.1), envisaging suspension of Member States' rights in the case of *"a serious and persistent breach of principles mentioned in Article 6/1"*, expands the conditionality from the context of candidacy to enjoyment of the rights arising from membership, thus completes the picture.

III. The History of the EU – Turkey Relations

The idea of westernisation in Turkey has had a long history, which dates from the last ages of the Ottoman Empire. In the 19th century, the

23 Manfred Nowak, "Human Rights 'Conditionality' in Relation to the Entry to, and Full Participation in, the EU", in Philip Alston (ed.) with the assistance of Mara Bustelo and James Heenan, The EU and Human Rights, (Oxford University Press, 1999), pp. 687 – 698.

views of Turkish elites supporting adoption of a more "Western" model in many areas resulted in the beginning of Europeanisation process concerning economical, political and social structures of the Empire.

Within this framework, Westernisation and deepening the relations with European Civilisation have been among the main principles of Turkish Republic since its establishment in 1923. Turkey has adopted European social, political and legal measures and has allied herself closely to the West. In the post-Second World War period, being motivated by the Soviet Union threat as well as her main goal of Westernisation, Turkey became a member of many European institutions. Turkey participated in OECD in 1948, in the Council of Europe in1949 and in NATO in 1952. Thus, besides being an identity and a social project, Westernisation turned out to be the key motive of the Turkish foreign policy[24].

The 1959 Application of Turkey to the Community for Associate Membership

Following the abovementioned approach, Turkey, under the premiership of Adnan Menderes, applied to European Economic Community on July 31,1959, 36 years after the establishment of the Turkish Republic and 19 months after the Rome Agreement came into force. While examining the reasons underpinning Turkey's application, which were, in particular, being in search of intensified relations with the Western Europe and endorsing the economic development of the country by providing the inflow of external funds and the free entry of the Turkish products into the European markets, one should also note the "Greece" factor. Therefore, it was not a coincidence that Turkey applied to the EEC two months after Greece's application[25].

24 Atila Eralp, "Turkey and European Union in the Aftermath of the Cold War", in Libby Rittenberg (ed), The Political Economy of Turkey in the Post-Soviet Era: Going West and Looking East?, (Westport, Conn., Greenwood Press, 1998), pp. 37-50.

25 It is known that Greece has always played an important role in Turkish foreign policy-making. For a better understanding of the role of Greece in Turkish foreign policy and in particular in Turkey's application to EEC for associate membership, it is worth-mentioning the words of Fatin Rüştü Zorlu, the Turkish Foreign Minister at the time of application: "If Greece is jumping into a swimming pool, it is essential to follow her even though that pool is empty." S. Rıdvan Karluk, Avrupa Birliği ve Türkiye (European Union and Turkey) (Istanbul, Beta, 2002), p. 465.

Acting cautiously in order to balance its relations between these two countries and considering the security and strategic issues arising from the Cold War era, the EEC welcomed both applications. The negotiations between Turkey and the EEC started on September 28, 1959. During the negotiation process for her membership of the EEC, for the first time, Turkey faced the importance of human rights and democratic principles for the Western Europe and experienced the fact that leaving democracy would also mean leaving Europe. That was when the President of France, De Gaulle, insisted on the relations with Turkey to be frozen due to the deaths of the Prime Minister Adnan Menderes, the Foreign Minister Fatin Rüştü Zorlu and the State Minister Hasan Polatkan by capital punishment, consequent to the military interlude on 27 May 1960. As a result, the EEC Council, which met on 26-27 September 1961, decided to postpone the negotiations with Turkey until the democratic principles were re-established in the country. Having De Gaulle's veto been lifted, the negotiations between parties restarted on July 24, 1962, as a result of which the **Agreement Establishing an Association between the European Economic Community and Turkey**[26] (the Ankara Agreement) was signed on September 12, 1963 at Ankara.

The Ankara Agreement

The Ankara Agreement, which still forms the legal basis of the Association between the EC and Turkey, came into force on December 1, 1964. The Ankara Agreement foresaw the progressive establishment of a customs union between the parties within a three-stage route consisting of a preparatory stage, a transitional stage and a final stage (Articles 2/2 and 2/3). The aim of the Agreement was stated in Article 2/1 as "*...to promote the continuous and balanced strengthening of trade and economic relations between the Parties, while taking full account of the need to ensure an accelerated development of the Turkish economy and to improve the level of employment and the living conditions of the Turkish people.*" In accordance with the Article 6 of the Agreement, an Association Council was to be formed in order to "*...ensure the implementation and the progressive development of the Association.*" The Association Council would settle disputes or decide to transfer disputes to the Court of Justice of the

26 OJ 1973 C 113/2.

European Communities or to any other existing court or tribunal (Article 25/2). The Agreement included freedom of movement for workers (Article 12), freedom of establishment (Article 13) and freedom to provide services (Article 14) between the parties by the guidance of the relevant provisions of the Rome Treaty. Concerning the agricultural products, the Association would operate within special rules, taking into consideration the common agricultural policy of the Community (Article 11). Article 28 of the Ankara Agreement considered the accession of Turkey to the Community "*as soon as the operation of this Agreement has advanced far enough to justify envisaging full acceptance by Turkey of the obligations arising out of the Treaty establishing the Community.*"

The EEC applied Article 238 of the Rome Treaty in order to grant associate membership to Turkey. The customs union envisaged by the Ankara Agreement comprised not only of the termination of tariff and quantitative barriers to trade between the Parties and the implementation of a Common External Tariff to imports from third countries, but also of the approximation with the EEC policies in most of the areas relating the internal market. The Association established by the Agreement was designed in line with the consideration of Turkey's eventual full membership to decision-making mechanism.

The preparatory stage of the Ankara Agreement appeared to advance fluently and the Turkish Government applied to the EEC for the initiation of the transitional stage in May 1967 motivated by some economical and yet mostly political reasons[27]. However, the period initiated by Turkey's application turned out to be problematic relating to the Turkey-EEC relations as well as the domestic debates on the issue of transition in Turkey[28]. At the beginning, the EEC acted unwillingly to meet this request claiming that the Turkish economy was not ready to handle the burden of the transition to the second stage. However due to political reasons, the EEC shifted from its initial response and the official negotiations over the transitional stage began on January 1, 1970.

27 Selim İlkin, "A History of Turkey's Association with the European Community" in Ahmet Evin, Geoffrey Denton (eds.), Turkey and the European Community, (Opladen, Leske+Budrich, 1990), pp. 35 – 49.

28 For details of these debates, see Selim İlkin, (1990).

The Additional Protocol of 1970[29] [30]

The Additional Protocol, which spotted the opening of the transitional stage was signed on November 23, 1970 between the EEC and Turkey and came into force on January 1, 1973 after ratification by the parliaments of the Community's member states. The purpose of the Protocol was to establish a customs union between the EEC and Turkey by December 31, 1995. The Protocol brought about Turkey's further integration into the European Market and provided with the establishment of the transitional stage in such a way as to grant Turkey a space in order to make the required alterations in her economy without encumbering its development. In accordance with Articles 9 and 24 of the Protocol, the EEC immediately eliminated customs duties and quantitative restrictions on imports from Turkey with a couple of exceptions, namely, certain petroleum and textile products. In return Turkey was to remove customs duties and quantitative restrictions on imports from the EEC progressively, over a normal period of 12 years or an exceptional period of 22 years (Arts. 10-16, 21-23, 25-28). The Protocol included provisions relating to free movement of workers (Arts. 36-40) and approximation of laws and policies concerning economic and trade matters (Arts. 43-56).

Paradoxically, the signature of the Additional Protocol turned out to mark the beginning of a steady deterioration in relations between Turkey and the European Community[31]. Disagreement between the parties in the application of the Additional Protocol's provisions relating to agriculture, the EEC's inability to perform its commitments such as establishing free movement of workers and granting further concessions over industrial exports arising from the Protocol worsened the relations. In addition, the 1973 Oil Crisis had to be dealt with by both parties on their sides. In Turkey, the increasing problems concerning balance of payments after the Oil Crisis led to harsh domestic debates over the possible negative effects

29 OJ 1977 L361/1.

30 For a detailed analysis of the Additional Protocol, see Roswitha Bourguignon, "The History of the Association Agreement between Turkey and the European Community" in Ahmet Evin, Geoffrey Denton (eds.), Turkey and the European Community, (Opladen, Leske+Budrich, 1990), p. 51-63 and Meltem Müftüler-Bac, Turkey's Relations with a Changing Europe, (Manchester-New York, Manchester University Press, 1997), p. 58.

31 Meltem Müftüler-Bac, (1997), p. 60.

of a customs union with the EEC[32]. Following the Oil Crisis, the EEC on its side adopted the Global Mediterranean Policy, which windswept the priorities granted to Turkey. The 1972 Enlargement of the EEC, the 1974 Cyprus intervention by Turkey and finally 1975 Greek application for full membership were the other factors that damaged the relations further. As a result of the crisis years and under economic difficulties as well as political instability, Turkey under the premiership of Bülent Ecevit officially requested a freeze for five years in the terms of Ankara Agreement invoking Art. 60 of the Additional Protocol in October 1978. The Demirel government, which came into office in 1979, withdrew this request and Turkey opened her economy to the operation of market forces and integrated to the international economy in accordance with the January 24, 1980 decisions. Moreover, on June 30, 1980, the Turkish Foreign Minister Hayrettin Erkmen stated that Turkey formally would apply for full membership to the EEC by the autumn. Although these developments weakened the estrangement between the parties for a short time, the EEC-Turkey relations came to a freeze as a consequence of the September 12, 1980 military interlude in Turkey.

The 1980 Military Interlude in Turkey – A Stormy Era

The military intervention in Turkey, which took place seventeen years later than the signature of the Ankara Agreement, brought the relations between Turkey and the Community to a standstill that lasted for six years.

Straight away after the military coup, the Commission announced that the Association between the Community and Turkey would continue. Nevertheless, the Commission also stated that it wanted to see the re-establishment of democratic institutions in Turkey as soon as possible. The Foreign Ministers of the EC decided that the Community would adopt a policy of cooperation with Turkey only if the new military government were to fulfil three conditions: -to re-establish democratic institutions quickly, -to observe human rights, -to guarantee the lives of political prisoners. Nevertheless, officials of the Community stated that a long-lasting continuation of a non-democratic situation would be seen as a violation by

32 Atila Eralp, (1998).

Turkey of several explicit undertakings to which she had agreed when she signed the Association Agreement[33].

However, the relations, which had seemed to remain normal in spite of the military intervention became deteriorated increasingly, beginning from the second half of 1981. In line with the European Parliament's request in April 1981, the Commission decided to freeze the Fourth Financial Protocol, regarding the October 1981 arrests of the former leaders of Turkey's political parties as an impediment in restoration of democracy. In addition, on January 22, 1982, the Association Agreement and the Joint Parliamentary Committee was suspended until the re-establishment of democratic principles and respect for human rights in Turkey by a Resolution passed by the European Parliament[34].

Contrary to Turkish leaders' expectations and in spite of being a significant step towards re-establishing democracy, the general elections in Turkey of November 6, 1983 did not alter the position of the Community which took into account the facts that only three parties were approved to participate the elections and former party leaders were still banned from participation. On October 23, 1985, the European Parliament adopted the Balfe Report, which had been prepared in order to reassess the political circumstances in Turkey. The Balfe Report stated that significant infringements of human rights and democratic principles were still continuing in Turkey.

Normalisation Process and Turkey's Application for Full Membership

Özal government, which came into office following the 1983, elections aimed at liberalising Turkish economy, improving deteriorated relations with the Community and tightening the links between the parties especially in economic terms. Evidently, the Foreign Minister of the new government was sent to Brussels with an assignment of requesting the revitalization of the Association Agreement on January 21, 1984[35] and in line

33 Meltem Müftüler-Bac, (1997), p. 79.

34 Mehmet Uğur, Avrupa Birliği ve Türkiye: Bir Dayanak/İnandiricilik İkilemi (European Union and Turkey: An Anchor/Credibility Dilemma), (Everest, 2000), p. 273.

35 This request was rejected by the Commission arguing that the Turkish leaders of the 1970s were still banned from active politics through the Political Parties Act of 1982. Meltem Muftuler-Bac, (1997), p. 82.

with the recommendations stated in the Balfe Report, the martial law was lifted in most of the larger cities within a few months after the adoption of the Report by the European Parliament[36]. Moreover, on July 1985 the Prime Minister Turgut Özal announced that Turkey would apply for membership of the EC as soon as more favourable conditions occurred[37]. On February 17, 1986, the Council, in spite of Greece's objections, endorsed the proposal by the Commission for the reactivation of the relations[38]. This was followed by the Association Council meeting on September 16, 1986, after a break of six years, in Brussels[39]. As a result, the normalisation process in the relations between the parties was initiated.

Motivated by increasingly improving relations with the Community and in line with the emerging idea in business circles for economic purposes[40] and in other circles with the concern of reinforcing the newly gained democracy[41], Turkey applied to the Community on April 14, 1987. Concerning her application, Turkey did not make use of the relevant articles of the Ankara Agreement, in particular Article 28, but invoked Article 237 of the Rome Treaty which granted the right to apply for full membership to every European State. Following the usual process stated under the Treaty of Rome, the Luxembourg Council of April 27, 1987 decided to forward the application to the Commission for preparation of an Opinion. The Commission delivered its opinion on the issue on December 18, 1989, two and a half years later than the application. The Opinion concluded that although Turkey was eligible for membership the accession of her to the Community was not feasible on the following grounds. Firstly, the Commission mentioned the consolidation problems within the Community arising from the third enlargement and the objective of establishing a single market as envisaged in the Single European Act of 1986. Within this framework, the Commission stated, *"it would be unwise, with regard both to the candidate countries and to the Member States, to envis-*

36 Meltem Müftüler – Bac, (1997), p. 82.

37 S. Rıdvan Karluk, (2002), p. 472.

38 S. Rıdvan Karluk, (2002), p.472.

39 S.Rıdvan Karluk, (2002), p.472.

40 Canan Balkır, "The Customs Union and Beyond", in Libby Rittenberg (ed), The Political Economy of Turkey in the Post-Soviet Era: Going West and Looking East?, (Westport, Conn., Greenwood Press, 1998), pp. 52-77.

41 Canan Balkır, (1998).

age the Community becoming involved in new accession negotiations before 1993 at the earliest, except in exceptional circumstances."[42] Secondly, the Commission examined Turkish economy and noted that there were major disparities between Turkey's economy and that of the Community. Thus it concluded that *"...Turkey would experience serious difficulties in taking on the obligations resulting from the Community's economic and social policies"* and the supplementary burden on the funds of the Community *"would be even greater than at the time of the last accessions, given Turkey's size and level of development."*[43] Thirdly, relating to political context, the Commission underlined the concerns of the Community arising from the issues of democracy and human rights in Turkey, the dispute between Turkey and Greece and the situation in Cyprus[44].

It must be noted that the timing of the application of Turkey surprised many circles[45]; the Community was preoccupied by its internal integration in progress and the debates between the parties on democracy and human rights situation in Turkey were persisting. Both prior to the application and during the period of evaluation of it by the Commission, the Turkish Government took some steps for improving the country's record on democracy and human rights[46]. The death penalty, to which political prisoners were sentenced, was converted to a thirty-year long prison sentence by a law enacted by the Turkish Parliament on March 11, 1986. In January 1987, Turkish citizens obtained the right to apply individually to the European Commission of Human Rights. Turkey ratified the UN and European Conventions for prevention of torture in January 1988. The political restrictions imposed by the military on the party leaders of 1970s were removed with the Turkish referendum held on

42 Commission Opinion on Turkey's Request for Accession to the Community - 20 December 1989, see the web page of Turkish Ministry of Foreign Affairs, available at: http://www.mfa.gov.tr.

43 Commission Opinion on Turkey's Request for Accession to the Community, (1989).

44 Commission Opinion on Turkey's Request for Accession to the Community, (1989).

45 see Atila Eralp, "Turkey and the European Community: Prospects for a New Relationship", in Atila Eralp, Muharrem Tunay and Birol Yesilada (eds.), The Political and Socioeconomic Transformation of Turkey, (Westport-Connecticut-London, Praeger, 1993), pp. 193-213, see also Roswitha Bourguignon, (1990), pp. 51-63.

46 Meltem Müftüler-Bac, (1997), p. 83 and 87.

September 6, 1987, as a result of which Article 4 of the 1982 Constitution was repealed. This followed by an early election held in November 1987, which was hoped to be regarded, on the contrary of the 1983 elections, as fully democratic by the Community. Although, these improvements were not considered as adequate by the Community for full membership[47], they led to complete normalisation of relations between the parties[48].

The Council endorsed the Commission's Opinion on Turkey's Request of Accession to the Community on February 5, 1990. Thus, Turkey's hope for full membership had to be postponed until 1993. Nevertheless, in its Opinion the Commission recommended that the Community "pursue its cooperation with Turkey, given that country's general opening towards Europe"[49]. Moreover, it recommended that the Community to *"propose to Turkey a series of substantial measures which, ... , would enable both partners to enter now on the road towards increased interdependence and integration, in accordance with the political will shown at the time of the signing of the Ankara Treaty"*[50]. These measures would focus on four aspects, namely, completion of the customs union, the resumption and intensification of financial cooperation, the promotion of industrial and technological cooperation, and the strengthening of political and cultural links[51]. In line with these recommendations, in 1990, the Commission presented the Matutes Package, a cooperation package, which included the aim of completion of customs union, economic, industrial and political cooperation and resumption of the Fourth Financial Protocol. However, the same year, the Council rejected the adoption of the Matutes Package due to the Greek veto. In this context, establishment of a customs union turned out to be the only way to intensify the relations. In Brussels, at the Association Council meeting between

47 Commission Opinion on Turkey's Request for Accession to the Community - 20 December 1989.

48 As a response to these political reforms, the European Parliament adopted a Resolution on the revival of the Association Agreement on September 15, 1988. Meltem Müftüler-Bac, (1997), p. 84.

49 Commission Opinion on Turkey's Request for Accession to the Community, (1989), para. 12.

50 Commission Opinion on Turkey's Request for Accession to the Community, (1989), para. 13.

51 Commission Opinion on Turkey's Request for Accession to the Community, (1989), para. 13.

Turkey and the EC on November 9, 1992, the parties agreed on the realisation of a customs union by January 1, 1996. At the 34th Association Council Meeting which was held on November 8, 1993, a "Work Programme on the Customs Union" covering the instant topics concerning the conclusion of the customs union was formed.

The negotiation period, which took place between 1992 and 1995, was highly coloured by political issues. The Cyprus issue, democracy and respect for human rights, especially minority rights and the issues relating to the Turkish citizens with Kurdish ethnicity, dominated the debates between the parties rather than the economic issues. The decision of the Turkish Parliament to lift the parliamentary immunities of the pro-Kurdish Democracy Party (DEP) members in March 1994 had a negative impact on the relations between the parties[52]. The problem grew deeper when the DEP was abolished by the Turkish Constitutional Court in June 1994[53]. In September 1994, the European Parliament resolved to freeze the activities of the EC – Turkey Joint Parliamentary Committee[54]. In December 1994, following the ending of the trials of the former members of the DEP by imprisonment of those, the European Parliament passed a resolution maintaining the suspension of the Joint Parliamentary Committee till Turkey considered the Parliament's demands, deciding to submit to the Council a call for the immediate suspension of the talks on the establishment of a customs union between Turkey and the EU and pointing out that the agreement on a customs union with Turkey was subject to the assent procedure[55].

Following lengthy debates on political and economic matters, the 36th

52 The decision was based on the grounds that the members in question were guilty of performing the acts enlisted in Art. 125 of Turkish Criminal Code. This article reads: "The person who commits crimes aiming at putting the whole or a part of state's territories under a foreign state's sovereignty, diminishing the state's independence, or separating a part of territories which are under the state's sovereignty from the state's administration, will be sentenced to death."

53 The DEP had thirteen members, six of which were already under custody since March. Meltem Müftüler-Bac, (1997), p. 90.

54 Resolution on the trial of members of the Turkish Grand National Assembly – September 29, 1994, see the web page of European Parliament, available at http://www.europarl.eu.int.

55 Resolution on the trial of Turkish Members of Kurdish origin of the Turkish Grand National Assembly, Doc. B4-0515, 0526, 0530, 0534, 0540, 0548, 0553, 0555 and 0567/94, December 15,1994, available at http://www.europarl.eu.int.

Turkey – EC Association Council took the decision on customs union on March 6, 1995. On July 23, 1995, Turkey, under the motive of improving the situation of democracy and human rights in line with the request of the Community, amended a number of provisions of the 1982 Constitution. These amendments included the right of trade unions to take place in political activities (Articles 33 and 52), the right of civil servants to bargain collectively[56] (Article 53), the lowering of the voting age to 18 and the right of university staff and students to participate in political parties (Articles 67, 68). In October 1995, Article 8 of the Anti-Terrorist Law which forbade "any written or oral propaganda, meeting, demonstration and march which aim at violating the indivisible integrity of the State of Turkish Republic with its territory and nation, irrespective of the methods, motives or intentions of those concerned" was amended by the removal of the last part beginning with "irrespective". Due to this amendment eighty-two prisoners, including two imprisoned DEP members, who were sentenced in accordance with this Article, were released. Moreover, sentence to five years of imprisonment envisaged in case of infringement of Article 8 was decreased to three years. The Council welcomed these developments in Turkey[57]. The Commission regarded the amendments as convincing signals that Turkey would fulfil her obligations under the European Human Rights Convention[58].

The European Parliament assented to the Decision on Customs Union on December 13, 1995, however, conditionally upon Turkey's respect to democratic principles, rule of law, human rights, especially minority rights[59]. "*Of the 528 European deputies who participated in the European Parliament session, 343 voted in favour of establishing a customs union between the EC and Turkey, 149 voted against and 36 abstained. As it was voiced by Pauline Green, the leader of the Socialist Group in the EP, the ones who voted in favour of Turkey wanted to encourage the democratic evolution in Turkey 'in favour of individual and minority rights'. They believed that it was the right way to support and encourage democratic forces in Turkey*"[60]. Having been ratified by The European

56 However, the right to strike was not granted to those.

57 Madrid European Council, December 15 and 16, 1995, Presidency Conclusions

58 Mehmet Uğur, (2000), p. 287.

59 Resolutions of December 13, 1995, see the web page of European Parliament, available at http://www.europarl.eu.int.

60 Canan Balkır, (1998), pp. 52-77.

Parliament, the Customs Union Decision entered into force on January 1, 1996.

The Customs Union Decision (Association Council Decision 1/95)

The Customs Union Decision settled the coverage of the customs union and the obligations of the parties. The Decision was accompanied by two other documents, namely, the Resolution of EC-Turkey Association Council on the development of the Association and the Community Declaration on the resumption of Financial Cooperation[61]. With these instruments added, the Decision 1/95 established the customs union as a sound tool to bring Turkey closer to the EU rather than a customs union in general and more limited terms[62].

The Decision set a schedule for the elimination of customs duties, quantitative restrictions and measures having equivalent effect on trade in industrial goods between the parties. Moreover, it included provisions envisaging adoption by Turkey of the Community's Common Customs Tariff (CCT), alignment by Turkey with the preferential customs regime of the Community and approximation of laws regarding the rules on competition and protection of intellectual, industrial and commercial property rights.

Turkey welcomed the Decision 1/95 with jubilation considering the Customs Union a significant and sound step towards her ultimate goal of full membership to the EU. However, contrary to the initial expectations; the Customs Union introduced another uneasy era in the EU-Turkey relations.

Besides a number of economic problems in Turkey, brought about by the implementation of the Customs Union Decision[63], the issues underpinning the uneasiness between the parties were rather political. The Turkey – Greece dispute on the Aegean islets of Kardak (Imia) in January 1996, caused tension in the relations between the EU and Turkey. This was followed by the death of a journalist, Metin Göktepe under detention in

61 Canan Balkır, (1998), pp. 52-77.

62 Nanette A.E.M. Neuwahl, "The EU – Turkey Customs Union: A Balance, but No Equilibrium", 4 EFA Rev., (1999), p. 37.

63 Canan Balkır, (1998), pp. 52-77.

January 1996 and the Bursa Prison hunger strikes, which began in June 1996 and ended in July 27, 1996, claiming the lives of 12 political prisoners[64]. These events raised concerns in the EU, especially in the European Parliament about the human rights situation in Turkey. Following the December 24, 1995 general elections, the Islamist Welfare Party's coming into office as a coalition partner made the matters worse. Finally, on September 19, 1996, the European Parliament passed a Resolution freezing the financial aid allocated for Turkey in accordance with the Customs Union Decision and calling on the Commission to block all allocations set under MEDA programme for projects in Turkey, except those concerning the promotion of democracy, human rights and civil society[65]. The events led to this Resolution were as follows; the judgement of the European Court of Human Rights, delivered on September 16, 1996 which held Turkey responsible for breaching Article 8 of the European Human Rights Convention and Article 1 of Protocol No. 1[66], continuing imprisonments of Leyla Zana and three other DEP ex-parliamentarians with Kurdish ethnicity, ongoing military operations by the Turkish armed forces in eastern Turkey and killings of two unarmed Greek-Cypriots by Turkish soldiers. As a result of this Resolution freezing the EU financial aid, the economical drawbacks of the customs union faced by Turkey increased.

Another factor, which deepened the aggravations in the EU – Turkey relations, was the dissimilarity between the parties concerning their approach to the customs union. While Turkey enthusiastically regarded the customs union as a way leading to eventual full membership, the EU seemed to consider it as an alternative to full membership and a "skilful way of keeping Turkey in the periphery of Europe"[67]. The Madrid European Council of December 1995, emphasising the priority it attached to the development and reinforcement of the relations with Turkey, however not mentioning Turkey's name within the enlargement process and among the countries to be briefed on the progress of the Intergovernmental Conference, led to disenchantment on Turkey's side. With the

64 Turkish Daily News, July 27, 1996, available at http://www.turkishdailynews.com/old_editions/07_27_96/tdn.htm.

65 Resolution on the political situation in Turkey – September 19, 1996, see the web page of European Parliament, available at http://www.europarl.eu.int.

66 Akdivar and others v. Turkey No 00021893/93

67 Canan Balkır, (1998), pp. 52-77.

Luxembourg Summit of 1997, this disappointment deepened when Turkey was plainly excluded of the EU's enlargement process.

The Luxembourg Summit (12-13 December 1997)

During the Luxembourg Summit the European leaders, taking into consideration the Commission's recommendations stated in Agenda 2000 determined the list of the applicant countries to be included into the EU enlargement process. In this context, the European Council declared that accession negotiations with Greek Cypriot Administration, Hungary, Poland, Estonia, the Czech Republic and Slovenia to begin and decided that the preparation of negotiations with Romania, Slovakia, Latvia, Lithuania and Bulgaria to be accelerated in particular through an analytical examination of the Union acquis. Whereas Turkey was confirmed to be eligible for full membership, she was not listed among the candidate countries. Nevertheless, the European Council decided on preparation of a strategy to bring Turkey closer to the EU membership. Yet, rapprochement policy for Turkey was subject to the conditions laid down in the Presidency Conclusions as follows: "*country's pursuit of the political and economic reforms,..., including the alignment of human rights standards and practices on those in force in the European Union; respect for and protection of minorities; the establishment of satisfactory and stable relations between Greece and Turkey; the settlement of disputes, in particular by legal process, including the International Court of Justice; and support for negotiations under the aegis of the UN on a political settlement in Cyprus on the basis of the relevant UN Security Council Resolutions.*"[68]

The response of the Turkish Government to the Luxembourg decisions, which it regarded as "biased and prejudiced",[69] was considerably sharp. The Turkish Prime Minister, Mesut Yılmaz, announced that the EU would not be addressed vis-à-vis political issues concerning Turkey anymore, although bilateral relations between Turkey and EU member states would continue as before[70]. Moreover, the Government rejected the invitation of the EU for the

68 Luxembourg European Council, December 12 and 13, 1997, Presidency Conclusions, para. 35.

69 Statement by Mesut Yilmaz, Turkish Daily News, December 15, 1997, available at http://www.turkishdailynews.com/old_editions.

70 Statement by Mesut Yilmaz, (1997).

European Conference, the participation in which was subject to recognition of the settlement of territorial disputes through the jurisdiction of the International Court of Justice in The Hague[71]. Yet, the Turkish leaders announced that Turkey would preserve her motivation of integration with the EU despite the attitude exposed at the Luxembourg Summit[72].

The Luxembourg Summit marked the entry of the relations into a troubled phase, which lasted for two years. At the Cardiff Summit held in June 1998, the first report relating to Turkey's progress towards membership was put in motion[73]. The European Council of December 1998 in Vienna underlined "the great importance it attached to the further development of relations between the EU and Turkey taking forward the European Strategy to prepare Turkey for membership"[74]. However, it was only in December 1999 that the ice between the parties was thawed, when the European Council at the Helsinki Summit announced Turkey's candidacy.

The Helsinki Summit of 1999 and Turkey's Candidacy

The Helsinki Summit of December 1999 has been a milestone in the relations between the EU and Turkey. The explicit acceptance by the EU of Turkey's candidacy for the first time ended the uneasiness and brought jubilation on Turkey's side.

The European Council did not include opening of accession talks within the pre-accession strategy for Turkey. Instead, it envisaged "enhanced political dialogue, with emphasis on progressing towards fulfilling the political criteria for accession with particular reference to the issue of human rights as well as on the issues referred to in paragraphs 4[75] and 9(a)[76],[77].

---

71 Milliyet Newspaper, December 15, 1997, available at http://www.milliyet.com.tr/1997/12/15/index.html.

72 Statement by Mesut Yilmaz, see above n. 46.

73 Cardiff European Council, June 15 and 16, 1998, Presidency Conclusions, para. 68.

74 Vienna European Council, December 11 and 12, 1998, Presidency Conclusions, para. 63.

75 This paragraph relates to settlement of border disputes through jurisdiction of The Hague.

76 This paragraph relates to the Cyprus problem.

77 Helsinki European Council, December 10 and 12, 1999, Presidency Conclusions, para. 12

As a result of the conditions put forward by the EU "in carefully weighed words"[78] for Turkey's membership, besides Turkish – Greek dispute and Cyprus problem, human rights issue which has influenced the relations between the parties over decades, has become the limelight, this time in the context of Turkey's candidacy.

IV. Turkey's Human Rights Related Obligations in the Context of Candidacy

Following the announcement of Turkey's candidacy, in accordance with the request by the Helsinki Council of December 1999, the Commission, initiating the legal procedure concerning Turkey's accession strategy, submitted two proposals, namely "Proposal for a Council Regulation on assistance to Turkey in the framework of the pre-accession strategy, and in particular on the establishment of an Accession Partnership"[79], dated July 28, 2000 and "Proposal for a Council Decision on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey" [80], dated November 8, 2000. The Foreign Affairs Council agreed on the two aforementioned documents at a meeting in Nice on December 4, 2000 and formally adopted the framework Regulation[81] on February 26, 2001. The framework Regulation provided for the legal basis for the Accession Partnership and aimed at coordination of all the EU financial assistance for pre-accession under a single system. The General Affairs Council formally endorsed the Accession Partnership by its Decision[82] dated March 8, 2001.

78 Jolanda Van Westering, "Conditionality and EU Membership: The Cases of Turkey and Cyprus", 5EFA Rev., (2000), pp. 95 - 118

79 Proposal for a Council Regulation on assistance to Turkey in the framework of the pre-accession strategy, and in particular on the establishment of an Accession Partnership, (July 28, 2000), COM/2000/502/Final.

80 Proposal for a Council Decision on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey (Nov. 8, 2000), COM/2000/714/Final.

81 Council Regulation (EC) No 390/2001 of 26 February 2001 on assistance to Turkey in the framework of the pre-accession strategy, and in particular on the establishment of an Accession Partnership, OJ L58, (February 28, 2001), p.1.

82 Council Decision of 8 March 2001on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey, (2001/235/EC)

The Accession Partnership names the principles, priorities, intermediate objectives and conditions to be met and considered by Turkey within the framework of her candidacy. Thus, it constitutes a "roadmap" for Turkey and is at the heart of pre-accession strategy. Under the title "Objectives", the purpose of the Accession Partnership was stated as *"to set out in a single framework the priority areas for further work identified in the Commission's 2000 regular report on the progress made by Turkey towards membership of the European Union, the financial means available to help Turkey implement these priorities and the conditions which will apply to that assistance"*. The priorities and intermediate objectives to be realized by Turkey for satisfying the Copenhagen Criteria were identified by the Commission taking into consideration the analysis in the 2000 Regular Report of Turkey's progress towards accession. The priorities and intermediate objectives were classified within two groups, i.e., short-term priorities and intermediate objectives to be completed by Turkey by the end of the year 2001 and long-term ones, which are likely to take more than one year to complete, yet the efforts for which should be initiated within 2001, where possible.

Regarding the Political Criteria, the demands of the EU were specified within the abovementioned classification, namely, short-term and long-term priorities. The most highlighted issues constituting Turkey's "homework" concern freedom of expression, freedom of association and peaceful assembly, prevention of torture, abolishing capital punishment, minority rights, strengthening efficiency of judiciary, the role of the National Security Council and improvement of conditions of prisons. Moreover, two non-human rights issues, i.e., the situation in Cyprus and the dispute with Greece are to be settled in short-term concerning the former and in long-term for the latter.

Under the title "Conditionality", it was stated that the financial assistance of the EU within the framework of pre-accession strategy to be subject to respect by Turkey to her commitments under the Association Agreement, customs union, the decisions of the EC-Turkey Association Council and the priorities identified by the Accession Partnership. Moreover, it was added that *"failure to respect these general conditions could lead to a decision by the Council on the suspension of financial assistance on the basis of Article 4 of the proposed single-framework Regulation"*.

The monitoring of the implementation the Accession Partnership will take place under the framework of the Association Agreement.

Having been submitted the Accession Partnership, Turkey announced her National Programme for the Adoption of the Acquis (NPAA) [83] prepared by Secretariat General for EU Affairs on March 19, 2001. The NPAA was submitted to the EU on March 26, 2001. The EU welcomed the NPAA in its official statement, however cautiously noting that certain areas such as abolition of death penalty and minority rights required further efforts. The criticisms by the EU circles referred to the vagueness of the document, in particular that of the parts concerning abolition of death penalty and freedom to use Kurdish language[84]. The EP in its Resolution dated October 25, 2001 referred to the NPAA as follows:

> "The European Parliament,
>
> ...
>
> having regard to Turkey's national programme for the adoption of the acquis, adopted by Turkey on 19 March 2001 and forwarded to the Commission on 26 March 2001,
>
> ...
>
> whereas the national programme for the adoption of the acquis takes up the main thrust of the priorities set out in the Accession Partnership and for the first time makes a comprehensive assessment of the potential effect of European integration on Turkey and puts forwards a wide-ranging political and economic reform programme, which, though useful as a beginning of the vast transformation needed for the modernisation of Turkey, unfortunately lacks a clear enough "road map" and timetable,
>
> ...
>
> Welcomes Turkey's adoption of the national programme for the adoption of the acquis setting out a programme of the reforms required to meet the Copenhagen criteria as a first significant step in

83 The text of the NPAA is available at the Commission's enlargement web page at: http://www.europa.eu.int/comm/enlargement/turkey/index.htm.

84 Gamze Avci, "Putting the Turkish EU Candidacy into Context", 7 EFA Rev, (2002), pp. 91 – 110

the right direction; regards it as vital, however, that this programme be backed up with details of the actual substance of the undertakings concerned and a timetable for their implementation; expects that the programme will be adapted to embrace further reform as the first phase of the constitutional amendments takes effect;

Urges Turkey to propose in the coming year a precise timetable for fulfilling the political criteria of Copenhagen as soon as possible."[85]

Human Rights in Turkey

a) Constitutional Basis

To define the original structure of the 1982 Constitution, one should observe the conditions under which it was prepared. The 1982 Constitution of the Republic of Turkey was adopted right after the 1980 military interlude, under unusual and anti-democratic conditions. During the establishment of the Constitution, the assumption of the authoritarian rule was that large-scaled freedoms granted to individuals and society could result in terrorism and chaos. This approach, underpinned by the instinct of protecting the State against individuals and society considering those as a political threat, identified the structure of the Constitution. The Constitution was structured on the contrary to the fundamental purpose of protecting the fragile rights of the citizens against strong State[86]. One can witness the reflection of this approach on the 1982 Constitution through a number of authoritarian and restrictive articles placed especially in the original text prior to several amendments. This characteristic of the Turkish Constitution was also emphasised by the EP in its Resolution dated October 25, 2001; " ... *the Turkish Constitution, approved under military rule in 1982, fails to provide an adequate legal framework to guarantee the rule of law and fundamental freedoms; whereas thorough constitutional reform alone will enable to Turkey to embrace democracy*

85 European Parliament resolution on the 2000 Regular Report from the Commission on Turkey's progress towards accession, October 25, 2001

86 Yılmaz Aliefendioğlu, "2001 Anayasa Değişikliklerinin Temel Hak ve Özgürlüklerin Sınırlandırılmasında Getirdiği yeni Boyut", Anayasa Yargısı Dergisi Cilt 19, (2002), available at http://www.anayasa.gov.tr/anyarg19/aliefendioglu.pdf.

wholeheartedly and irrevocably"[87].

The aforementioned deficits arising from the nature of the 1982 Constitution led Turkey to amend its Constitution in order to improve democracy and human right. Since its birth in 1982, the Turkish Constitution has witnessed five series of amendments, which took place in 1987, 1993, 1995, 1999 and 2001. Among these amendments one can spot the 1995 amendments and the 2001 amendments as the most significant ones.

Having been amended for several times, the Turkish Constitution, today, recognizes a large spectrum of freedoms and rights and democratic principles. Article 2 of the Constitution reads: *"The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights"*. Article 4 forbids any amendments or proposals of amendments to Article 2. Article 3 states that *"The fundamental aims and duties of the state are; to safeguard ..., the Republic and democracy; ..., to strive for the removal of political, social and economic obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by the rule of law; and to provide the conditions required for the development of the individual's material and spiritual existence."* Article 9 establishes the principle of equality before the law, *"irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations"*.

Moreover, Article 12/1 states that *"Everyone possesses inherent fundamental rights and freedoms which are inviolable and inalienable."* Some examples of freedoms, rights democracy and rule of law-related principles recognized by the Constitution are as follows: right to life and the right to protect and develop one's material and spiritual entity (Article 17), right of personal liberty and security (Article 19), freedom of conscience, religious belief and conviction (Article 24), freedom of thought and opinion (Article 25), freedom of expression (Article 26), freedom of association (Article 33), right to collective bargaining and right to strike and lockout (Articles 53, 54), right to form and participate in political par-

87 European Parliament resolution on the 2000 Regular Report from the Commission on Turkey's progress towards accession, October 25, 2001.

ties (Article 68), recourse to judicial review against all actions and acts of administration (Article 125), independence of the courts (Article 138).

Besides recognising several rights and freedoms listed under the Turkish Constitution, Turkey ratified numerous international treaties concerning protection of human rights.

In this context, it is noteworthy that the Article 90/5 states that, *"International agreements duly put into effect carry the force of laws"*. This means that once an international treaty is ratified by the Turkish Grand National Assembly, it will perform the same effects as domestic laws; as a part of the domestic law, it will be directly applicable. Moreover, by many, it is argued that international agreements are in the same degree with the Constitution in hierarchy of norms or at least, they are supreme to the domestic laws. The reasoning of this argument is constituted by Article 90/5 which reads: *"No appeal to the Constitutional Court can be made with regard to these agreements, on the ground that they are unconstitutional"*, while the annulment by the Constitutional Court of domestic laws in conflict with the Constitution is possible. While theoretical disputes on this issue carry on, in practice, it is often accepted that if a provision of domestic law conflicts with that of an international treaty, the provision of the latter is applicable[88].

b) Examination of Specific Democracy and Human Rights Issues in Turkey in the context of Candidacy

The Role of Military and the National Security Council

The military has influenced Turkish politics and governments since the first years of the Turkish Republic. The National Security Council, established by the 1961 Constitution is considered to be the proof of the important role played by the military in governing of Turkey. The EU concerns regarding the effective role of the military on Turkish political life have often been voiced.

The Commission in its 1998 Regular Report on Turkey's progress towards accession referred to a number of points demonstrating the emphasized role of the military: *"The Chief of the General Staff is not for-*

88 Seref Ünal, "Turkish Legal System and the Protection of Human Rights", (1999), SAM Papers No 3/99, available at: http://www.mfa.gov.tr/grupa/ac/aca/acad/hmrghts.htm

mally responsible to the Minister of Defense; he is nominated by the Supreme Military Council and appointed by the Prime Minister"[89]. Regarding the National Security Council, the Commission stated:

> "The existence of this body shows that, despite a basic democratic structure, the Turkish constitution allows the Army to play a civil role and to intervene in every area of political life.
>
> ...The National Security Council demonstrates the major role played by the army in political life. The army is not subject to civil control and sometimes even appears to act without the government's knowledge when it carries out certain large-scale repressive military operations."[90]

The European Parliament in its Report dated June 25, 1998 addressed the same issue by referring to the military's *"inclination to meddle too much in politics"*[91]. Furthermore, the Report noted:

> "As for the role played by the army in society, it must be said that its influence over Turkish political life is excessive by any standards. Its de facto and de jure position in the legal and constitutional framework is far in excess of what is used in the EU Member States.
>
> The Constitution and provisions of secondary legislation should move towards the exclusion of the army from political activity and government. With this in view, the National Assembly should strengthen its powers of control over the armed forces and the National Security Council"[92].

On September 17, 1998, the European Parliament adopted a Resolution on the Commission reports on developments in relations with Turkey since the entry into force of the Customs Union. In its Resolution, the European Parliament stressed the importance of *"continuing democratization, safeguarding human rights and establishing political control of*

---

89 Regular Report from the Commission on Turkey's Progress Towards Accession, (1998), p. 10.

90 Regular Report,(1998), p. 14

91 Report on the Commission reports on developments in relations with Turkey since the entry into force of the Customs Union, (June 25, 1998), by Edward McMillan-Scott, DOC_EN/RR/356/356875 PE 222.635/fin, p. 11.

92 Report on the Commission reports on developments in relations with Turkey since the entry into force of the Customs Union, (1998), p. 12.

the armed forces"[93] in Turkey.

The 1999 and 2000 Regular Reports reconfirmed the EU concerns regarding continuous influence of the military, in particular the National Security Council on the governing of the country. The 2000 Regular Report noted, *"the Council of Higher Education, which controls the activities of the institutions of higher education, as well as the Higher Education Supervisory Board, include one member selected by the Chief of General Staff"*[94]. The Accession Partnership, prepared by the Commission on the basis of the evaluation in the 2000 Regular Report placed the issue in medium-term priorities. In accordance with this, Turkey was to "*align the constitutional role of the National Security Council as an advisory body to the Government in accordance with the practice of EU Member States".*

Turkey did not address the EU concerns about the aforementioned issue until the adoption of the NPAA. The NPAA stated, *"The National Security Council, which is a constitutional body, has the status of a consultative body in areas of national security. Relevant articles of the Constitution and other legislation will be reviewed in the medium term to define more clearly the structure and the functions of this Council".* However, this statement is considered to be far from satisfying the EU's demands, on the grounds that it is rather vague and lacks a timetable. Moreover, the Commission's aforementioned observations in the 1998 and 1999 Regular Reports, pointing out inadequate civilian control over the military were not taken into consideration.

The 2001 constitutional amendments brought about a considerable, however inadequate improvement of the issue of civilian control over the military. On October 17, 2001, Article 118 of the Turkish Constitution was amended in a way providing for the civilian members of the National Security Council to outnumber the martial members. Moreover, the expression *"The Council of Ministers shall give priority consideration to decisions of the National Security Council"* was amended as *"The Council of Ministers shall evaluate decisions of the National Security*

93 Resolution on the Commission reports on developments in relations with Turkey since the entry into force of the Customs Union, (September 17, 1998), A4-0251/1998, para. 20.

94 Regular Report from the Commission on Turkey's Progress Towards Accession, (2000), p. 12.

Council"[95] in order to emphasise the advisory role of the body. Nevertheless, the improvements have remained limited to the National Security Council and have not been extended to the other aspects of civilian control over the military.

There have been three military interventions in Turkey since the establishment of the Republic. Partly due to these experiences, the power of military over Turkish political life is an issue of concern not only in the EU but also in some Turkish circles. Although the decisions of the National Security Council are not legally binding, the governments of Turkey found themselves in a de facto situation obliging them to act in line with the suggestions of the Council on several past occasions. The submission of a list of "recommendations" on safeguarding secularism by the National Security Council to Mr. Erbakan, the pro-Islamist Prime Minister of Turkey (Welfare Party) on March 3, 1997 raised concerns in many circles, which regarded this list of recommendations as a disguised ultimatum by the military to the Government. Criticisms voiced by both domestic and foreign circles increased when Prime Minister Erbakan resigned from the government on June 18, 1997, presumably as a result of the negative attitude of the army more than other factors.

Although, the Accession Partnership sets no such an objective, the EU seems to prefer abolition of the National Security Council to put a certain end on the military's influence on Turkish political life[96]. This idea is also backed up by a number of NGOs observing Turkey[97]. Yet, the possibility of abolition of the NSC even in the long run has not been pronounced by the Turkish leaders. Arguably, this results from the importance given to national security concerning the country's geopolitical situation in a politically unstable region.

It is noteworthy that the military has taken a positive attitude towards accession of Turkey to the EU since the beginning. Moreover, the military has occasionally stressed its commitment to protect democratic

95 Emphasis added.

96 "The existence of this body shows that, despite a basic democratic structure, the Turkish constitution allows the Army to play a civil role and to intervene in every area of political life." Regular Report 1998.

97 Aslan Gündüz, "The Land of Many Crossroads: Human Rights and Turkey's Future in Europe", Orbis, (Winter 2001), pp 15 – 30.

and secular state. *"Therein lies another irony of the Turkish human rights imbroglio: the military elite is the most pro-Western force in the country"*[98]. During the discussions on modification of the National Security Council's composition, the Chief of the General Staff, General Huseyin Kivrikoğlu said, *"If they* (the EU) *want 100 civilians as members of the National Security Council, so be it."*[99] It is also significant that in the last National Security Council meeting on June 1, 2002, the military representatives took a positive attitude towards the issues such as the lifting of the emergency state and absolute abolition of death penalty, which are of crucial importance for the EU membership[100].

The 2001 Regular Report on Turkey's progress towards accession evaluated the issue of military in Turkey taking into consideration the 2001 amendments. The Report stated, *"The extent to which the constitutional amendment will enhance de facto civilian control over the military will need to be monitored."* Under the title "General Evaluation", the Report noted, *"The basic features of a democratic system exist in Turkey, but a number of fundamental issues, such as civilian control over the military, remain to be effectively addressed"*[101].

In this context, it is likely that Turkey will have to revise the role of the military, albeit by seeking balance between the need to guarantee her national security and stability and the EU demands.

Judiciary and Right of Fair Trial

The main EU concerns relating to Turkish judiciary converge on the state security courts, independence of judiciary and inefficiencies arising from lengthy trials and excessive workload on the courts.

The state security courts first appeared in the context of Turkish judiciary with a law adopted in July 1970. This law was annulled by the Constitutional Court on the grounds that it conflicted with the 1961 Constitution, in June 1975. However, following the 1980 military inter-

98 Aslan Gündüz, (2001), pp 15 – 30.

99 Bertil Duner and Edward Deverell, "Country Cousin: Turkey, the European Union and Human Rights", Turkish Studies, Vol. 2, No. 1, (Spring 2001), pp. 1 – 24.

100 Turkish Daily News, June 2, 2002, available at http://www.turkishdailynews.com/old_editions.

101 Emphasis added.

vention, the state security courts were re-established, this time within the text of the 1982 Constitution. According to Article 143 of the Constitution, the state security courts shall *"deal with offences against the indivisible integrity of the State with its territory and nation, the free democratic order, or against the Republic whose characteristics are defined in the Constitution, and offences directly involving the internal and external security of the State"*.

The state security courts initially became an issue of concern in European and Turkish legal circles due to their composition. According to the related legislation the courts had three members, one of whom was appointed from the military judiciary. The 1998 Regular Report addressed the issue of state security courts as follows:

"There are reasons to believe that by their very nature these courts do not offer defendants a fair trial. The key problem areas include over-reliance on obtaining confession rather than on traditional investigative methods; the relative status of the prosecutor (who sits next to the judges) and the defense lawyer (who sits below and whose points are not entered into the trial record verbatim but based on a summary of them by the judge); and the extreme slowness of trials and the fact that many defendants are held in custody throughout the duration of their trial without a clear justification having to be presented by the judge. There are also doubts about the impartiality of judges: one in three SSC judges are military judges who, as the European Commission on Human Rights recently pointed out, are serving military personnel and therefore subject to military discipline. This is the only example in Europe in which civilians can be tried at least in part by military judges."

The highly criticized semi-civilian composition of the State Security Courts was restructured by the constitutional amendment in 1999. On June 18, 1999, Article 143 of the Constitution was amended by removing military membership of the Courts. The amendment was of particular significance on the ground that it was underpinned by a European Court of Human Rights (ECHR) judgment[102]. In its decision the ECHR stated that the State Security Court trial was in breach of Article 6/1 of the European Convention on Human Rights establishing the right of fair and public hearing within a reasonable time by an independent and impartial tribunal.

102 Case Incal v. Turkey App. No: 22678/93

The Incal decision was based on the following aspects raising concerns of the independence and impartiality of the military judges:

"Firstly, they are servicemen who still belong to the army, which in turn takes its orders from the executive. Secondly, they remain subject to military discipline and assessment reports are compiled on them by the army for that purpose. Decisions pertaining to their appointment are to a great extent taken by the administrative authorities and the army. Lastly, their term of office as National Security Court judges is only four years and can be renewed."[103]

Restructuring of the State Security Courts as purely civilian bodies has constituted a significant step towards improvement. However, there have remained problems to be addressed, related to other aspects of these Courts mentioned by the 1998 Regular Report.

In the Accession Partnership bringing the State Security Courts in line with the international standards was placed among short-term priorities. In its NPAA, the Turkish Government introduced its plan *"to review the constitutional provisions on the State Security Courts and the Act on the Establishment and Procedures of the State Security Courts"*.

As the 2001 Regular Report pointed out, no changes regarding the problems arising from the State Security Courts took till the end of 2001. On December 6, 2001, the Turkish Parliament adopted a law amending the Law on the Establishment and Procedures of the State Security Courts so as to narrow the sphere of the crimes falling within the jurisdiction of these Courts. With another law adopted by the Parliament on February 6, 2002, pre-trial detention period regarding collective crimes has been limited to 4 days and in case of an emergency state to 7 days.

In 1992, a modernization package was introduced, amending a number of provisions of the Turkish Code of Criminal Procedure. These amendments led to significant improvements such as strict limitation and enumeration of the conditions that have to occur for detention and arrest, establishment of the right to information of the charge and shortening of the pre-trial detention period. Unfortunately, the State Security Courts were excluded from this package. Although the recent amendments introduced improvements to a certain extent, this situation constitutes a legal

103 Case Incal v. Turkey, para. 68.

anomaly due to the fact that a number of provisions, amended for their inability of reflecting the modern approach, have remained applicable regarding the criminal procedure of the State Security Courts. The current procedure raises several human rights problems such as limited access to a lawyer. Thus it is inevitable for Turkey to revise the issue of the State Security Courts, also taking into consideration the possibility to abolish these bodies eventually.

Another issue, which is questionable, is the independence of the Turkish judiciary. Article 138 of the Constitution establishes the basic principle of independence of the courts:

"Judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, law, and their personal conviction conforming with the law.

No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions.

No questions shall be asked, debates held, or statements made in the Legislative Assembly relating to the exercise of judicial power concerning a case under trial.

Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution."

Concerns related to independence of the courts mainly arise from the structure and functioning of the Supreme Council of Judges and Prosecutors. In accordance with Article 159/3 of the Constitution, the Supreme Council shall *"deal with the admission of judges and public prosecutors of courts of justice and of administrative courts into the profession, appointments, transfers to other posts, the delegation of temporary powers, promotion, and promotion to the first category, the allocation of posts, decisions concerning those whose continuation in the profession is found to be unsuitable, the imposition of disciplinary penalties and removal from office. It shall take final decisions on proposals by the Ministry of Justice concerning the abolition of a court or an office of judge or public prosecutor, or changes in the jurisdiction of a court. It shall also exercise the other functions given to it by the Constitution and laws"*. One of the problems is that due to Article 159/2, the Supreme Council includes

the Minister of Justice and his undersecretary, the former as the president. This situation raises questions regarding the independence of the courts as pointed out in the 2001 Regular Report. Another problem is related to the inspections and investigations carried prior to the decisions listed under Article 159/3. These inspections are being carried out by civil servants working under the Ministry of Justice. Arguably, this shadows the independence of the judges, by facilitating influence by the Executive on them.

According to the NPAA, review of provisions in the context of the independence of the Judiciary, and restructuring of the Supreme Council for Judges and Public Prosecutors were to take place in the short-term. However, these issues are still waiting to be addressed.

Finally, the Turkish judiciary suffers serious problems of lengthy trials and excessive workload on the courts. Turkey was held responsible in breach of Article 6/1 of the European Convention of Human Rights, establishing reasonableness of the length of proceedings. With the recent constitutional amendments and adoption of two laws amending the Turkish Criminal Code, the sphere of the crimes, notably of those relating to expression, assembly and speech has been narrowed. This may lead a decline in the backlog of cases. However, the effective solution of the problem should be realized by enacting a new Criminal Code and the Code of Criminal Procedure.

Death Penalty

The abolition of the death penalty is an issue of crucial importance for Turkey's EU membership. It is a must for the accession negotiations to open.

Prior to the 2001 amendments, the capital punishment was permitted according to Article 38 of the Constitution as well as according to a number of articles of the Turkish Criminal Code and Anti-Terrorism Law. However, since 1984 Turkey has been applying the de facto moratorium on execution of the death penalty.

The Accession Partnership set both short-term and medium-term priorities related to death penalty as follow: in the short-term maintaining the de facto moratorium, in the long-term abolishing the death penalty and ratifying Protocol 6 of the European Convention of Human Rights. The

Turkish Government in the NPAA presented its plan regarding this issue as: *"The abolition of the death penalty in Turkish criminal law, its form and its scope, will be considered by the Turkish Grand National Assembly in the medium term."* Although this statement lacked a detailed approach and a time-table, death penalty was included within the framework of the 2001 constitutional amendments. The amended Article 38/7 of the Constitution now reads, *"the death penalty shall not be imposed excluding the cases in time of war, imminent threat of war and terrorist crimes"*. The exceptions envisaged for *time of war* and *imminent threat of war* are compatible with Article 2 of Protocol 6 while the exception of *terrorist crimes* is not.

The expression *terrorist crimes,* in reality, is the reflection of the need to balance between the society's sensitivity for relating to the PKK, in particular the PKK leader Öcalan case and the requirement for the EU membership. In addition, it is the outcome of the need to reach a consensus on the issue between the coalition partners forming the Turkish Government, one of which is the nationalist MHP (National Action Party).

The European Parliament addressed the issue of death penalty by passing a Resolution after the State Security Court sentenced Öcalan to death. In its Resolution dated July 22, 1999, the European Parliament stated:

> "The European Parliament,
>
> ...
>
> *A.* whereas the Court in Ankara has condemned Mr Öcalan to death,
>
> B. whereas an appeal has been lodged by Mr Öcalan's defence lawyers, and whereas, if this fails, the Turkish Grand National Assembly would have to enact a law for the sentence to be carried out,
>
> C. whereas Turkey has observed a *de facto* moratorium on capital punishment since 1984, and whereas Turkish Government Ministers have stated in recent months that Turkey should abolish the death penalty,
>
> ...
>
> 1. Condemns Mr Öcalan's sentence and reiterates its firm opposition to the use of the death penalty;

2. Calls on the Turkish authorities not to carry out the death sentence;
3. Expects the Supreme Court of Appeal to reverse the verdict against Mr Öcalan as a violation of Turkey's international legal commitments under the European Convention on Human Rights;
4. Urges the Turkish Grand National Assembly to transform the current *de facto* moratorium on executions into a formal abolition of the death penalty in Turkey. "[104]

Having received the European Court of Human Rights' request to put off the execution of Öcalan in November 1999, the Turkish Government agreed to suspend the execution of the death penalty for a temporary period, in January 2000[105].

The current debate in Turkey on death penalty issue has focused on the removal of the expression *"terrorist crimes"* of Article 38/7. In addition, the draft of the new Criminal Code completed by the Ministry of Justice is now before the Turkish Parliament. There seems a consensus between majority of Turkish society on abolition of death penalty including terrorist crimes, although this abolition will prevent the execution of Öcalan, for the sake of the EU membership. In political circles, the two partners of the coalition, namely the Democratic Left Party (DSP) and the Motherland Party (ANAP) appear to be in favour of such an amendment. Also the True Path Party (DYP), the main opposition party seems to back up the idea. However, recently the Nationalist Action Party (MHP) has demonstrated a diverging attitude from its initial support for meeting the Political Criteria for accession to the EU. As a result of the lack of consensus in the Turkish Parliament, the issue of death penalty has remained ambiguous.

Torture

Article 17 of the Turkish Constitution states, *"No one shall be subjected to torture or ill-treatment; no one shall be subjected to penalties or*

104 Resolution on the death sentence on Mr Öcalan and the future of the Kurdish question in Turkey, October 22, 1999.

105 Regular Report, (2000).

treatment incompatible with human dignity". According to the Turkish Criminal Code torture is prohibited and a punishable offence. Moreover, Turkey has ratified a number of international agreements on prevention of torture such as UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Prevention of Torture.

Although Turkey has the fundamental legislation prohibiting torture, there are several torture cases throughout the country. The 1998 Regular Report identified this problem and the reasons of it as follows:

"Persistent cases of torture, disappearances and extra-judicial executions are regularly recorded despite repeated official statements of the government's commitment to ending such practices. In many cases torture is suffered by persons during periods of detention incommunicado in police stations before they are brought to court. Many of the cases recorded are so precisely documented that there is no doubt about the responsibility of the police authorities. These cases put into question the effective control and supervision of the security forces. Appropriate standards of discipline are lacking for these officials. Criminal prosecution of civil servants for alleged offences emerging from their duties is generally subject to permission from the administrative authorities. When they take place, prosecutions and convictions of law enforcement officers (including police and gendarmerie) for torture and ill treatment have so far led to rather light sentences by European standards. Thus, systematic judicial prosecution of law enforcement officers for misdemeanours is not ensured."

In October 1998, Regulation on Apprehension, Police Custody and Interrogation came into force, with the aim of identifying "the rights of the persons apprehended, under custody or under detention" and "powers and responsibilities of the personnel as to the interrogation procedures"[106]. In June 1999, the Prime Ministry issued a circular on the effective implementation of the abovementioned Regulation. In August 1999, Articles 243 and 245 of the Turkish Criminal Code were amended so as to define torture in broader terms and increase the punishment for those who commit this crime. Nevertheless, no clear definition has been given

106 Regulation on Apprehension, Police Custody and Interrogation, OG (01.10.1998) No. 23480, Art. 1

for the actions constituting torture. In December 1999, the Law on the Prosecution of Civil Servants and other Public Employees was adopted, aiming at facilitating investigation and prosecution of civil servants. The adoption of this Law has led to no significant improvement since it has not terminated the immunity of civil servants. Moreover the Law has replaced the institutions, which were authorized to lift civil servants' immunity, with individuals. As a result, as the 2000 Regular Report pointed out, the situation regarding torture in Turkey remained largely unchanged.

The Accession Partnership referred to torture problem by placing the issue among short-term priorities. In response, the Turkish Government, in its NPAA presented a detailed plan including enactments of the new Turkish Penal Code and Turkish Code of Penal Procedure.

Within the framework of the 2001 amendments, Article 19/5 of the Constitution was amended by limiting the pre-trial detention period for collective crimes to four days. Moreover, immediate notification of the arrest or detention of the person to his next of kin has been established as an obligation. In February 2002, the Law on the Establishment and Procedures of the State Security Courts was brought in line with the constitutional amendments.

The Draft Turkish Criminal Code before the Turkish Parliament distinguishes between *simple, qualified* and *severe torture* and leaves the definition to the interpretation of the court. The Draft Code considers torture as a crime that not only civil servant or other public personnel but everyone can commit and envisages increased punishments. According to the Code, in the case that torture is committed by public personnel, the act is considered as *qualified torture* and subject to 5-10 years of heavy imprisonment[107]. According to Amnesty International Report on torture in Turkey dated October 2001, the lack of definition of torture in the Draft Penal Code is a problem:

"...the Convention against Torture, to which Turkey is a state party, defines torture by three elements: severity of the harm, intention and state responsibility....AI recommends that the amendment of the TPC should at a minimum incorporate the definition in the Convention against Torture

107 Statement by the Minister of Justice, Hikmet Sami Turk, Hürriyet Newspaper, July 6, 2001.

and its established interpretation." [108]

The torture problem in Turkey mainly stems from other factors rather than law. One of these factors is the lack of judicial officers directly controlled by public prosecutors[109]. The public prosecutors rely on the police who are answerable to the Ministry of Internal Affairs and therefore the public prosecutors do not have actual control on. Another factor is the inadequate education of the police on human rights. In this context, a well-organised education programme on human rights for the police can improve *"the absence of a culture of human rights on lower levels of the administration"*[110], more likely in the long-run.

The Minority Rights Pillar of the Political Criteria and the Turkish Citizens with Kurdish Ethnicity

Minority rights pillar of the Political Criteria, which, according to the EU, in Turkey's case is the synonym of the Kurdish issue, perhaps is the most debated condition in the country for the EU membership. The disagreement between the EU and Turkey on this issue arises from a number of factors.

Firstly, while the EU considers the Turkish citizens with Kurdish ethnicity as an ethnic minority, Turkey does not recognize any minorities except those identified in the Lausanne Treaty on the basis of religion. Article 66 of the Constitution reads, *"Everyone bound to the Turkish state through the bond of citizenship is a Turk."* According to the EU opinion, this approach leads to violation of cultural and linguistic rights of the Turkish citizens with Kurdish ethnicity.

Secondly, while the EU is in favour of a political solution, Turkey, especially after having to handle armed PKK (Kurdistan Workers' Party) separatism which led to the loss of some 30,000 lives between 1984 and 1999 is highly sceptic about granting any degree of autonomy to any ethnic group. Arguably due to the strong feeling of insecurity arising from both historical

108 Amnesty International, "TURKEY: An end to torture and impunity is overdue!", (2001), AI Index: EUR 44/072/2001, p. 6, available at: http://web.amnesty.org/library/index/engeur440722001

109 Amnesty International, (2001), p.7.

110 Amnesty International, (2001), p. 7.

and geopolitical reasons, Turkey is strongly attached to the principle of the State's indivisible entity. Prior to the capture of Öcalan, the calls[111] made by the EU to Turkish governments for settling the conflict through negotiations with the PKK leaders were refused. Moreover, these calls raised suspicions in Turkey by triggering the so-called "Sevres Syndrome".

It is worth to mention that there are 60 different ethnic groups living in Turkey. Thus, establishing special treatment in favour of one ethnic group may well lead the other groups' demands to be treated in the same way. This may cause the dissolution of Turkish society[112].

In this context, Turkey tries to solve the problem within the sphere of cultural and linguistic rights. With the 2001 constitutional amendments, linguistic restrictions were removed from the texts of Articles 26 and 28 of the Constitution which establish freedom of expression and freedom of press. This has availed the usage of Kurdish language in television and radio broadcasting. Nevertheless, these amendments should be reflected to the relevant legislation. There is an ongoing debate in political circles regarding the removal of the bans on the usage of any language other than Turkish for educational and broadcasting purposes. Due to the lack of consensus, this issue is still waiting to be addressed.

With regards to the social and economic rights, An East and Southeast Action Plan is being implemented by the State Planning Organization which includes measures related to public administration, economy, health and education.

Freedoms of Expression and Peaceful Assembly

The restricted freedom of expression in Turkey has been one of the most criticized issues by the EU. The 1998 Regular Report stated:

"Despite some improvements in recent years, freedom of expression is not fully assured in Turkey. An excessively narrow interpretation of the Constitution and other legal provisions (Articles 7 and 8 of the Anti-Terror Law, Articles 158, 159, 311 and 312 of the Criminal Code) concerning the unity of the state, territorial integrity, secularism and respect for formal institutions of the state is regularly used to charge and sentence elected

111 see for example, the EP Resolution on human rights and the situation in Turkey, June 6 1996, para. 3.

112 Bertil Duner and Edward Deverell, (Spring 2001), pp. 1 – 24.

politicians, journalists, writers, trade unionists or NGO workers for statements, public speeches, published articles or books that would be acceptable in EU Member States."

The Accession Partnership set the goal of strengthening the freedom of expression to be realized within the short-term. The NPAA envisaged a review of legislation including the relevant provisions of the Constitution, the Turkish Penal Code and Anti-terrorism Act. This review was stated to be *"realized on the basis of the fundamental principles of the Turkish Constitution, particularly those concerning the secular and democratic character of the Republic, national unity and the unitary state model."*

In October 2001 Article 26 was amended so as to avail thought to be expressed in any language. Moreover, on February 6, 2002 a law amending the Turkish Penal Code and Anti-terrorist Act was adopted. With this law, the scope of Article 312 of the Penal Code, catching almost every expression of thought opposing the policy of the State has been defined on more precise terms. In addition, the scope of Article 7 of the Anti-terrorist Act has been narrowed.

With regards to freedom of association, with the amendment of Article 33 of the Constitution, forming associations has been facilitated. This amendment was translated to the Code of Associations by a law adopted on March 3, 2002.

V. Conclusion

This paper attempted to examine the impact of the EU on the human rights situation in Turkey.

For this purpose, first the implementation of the human rights conditionality by the EU towards third countries and the birth of the Political Criteria were examined. In this context, the human rights enforcement and scrutiny tools of the EU within the pre-accession strategy were briefly mentioned.

Secondly, the EU – Turkey relations beginning from Turkey's application for associate membership of the EU in 1959 till the Helsinki Summit, were reviewed with the focus on the role of the human rights. The reasons underpinning periodic human rights policy shifts in the EU were attempted to be addressed.

Finally, the current human rights situation in Turkey was analysed in the light of the Accession Partnership, the National Programme of Adoption of the Acquis and the Regular Reports.

VI. Postscript

Since the time by which this paper was completed important developments relating to the issues mentioned in this study have taken place.

First, the legislative package[113] enacted in August 2002 brought important amendments to several laws. Abolition of death penalty excluding the cases in time of war and imminent threat of war is considered to be the most significant of all these amendments[114]. Other amendments concerned broadcasting and education in languages other than Turkish[115], freedom of association[116], pre-trial detention[117] and enforcement of European Court of Human Rights judgments[118]. The Regular Report of 2002 referred to this package as being *"particularly far reaching"* and stated that Turkey had made a considerable progress towards meeting the Copenhagen Political Criteria[119].

Second, following the elections in Turkey, held on November 3, 2002, the DSP – ANAP – MHP coalition government was replaced by the AKP (Justice and Development Party) single – party government. After coming into office, the new government endeavoured into speeding up the process of fulfilling the Political Criteria, presumably with the aim of confirming its stated commitment to the goal of the EU membership. In this context, four legislative packages were adopted in January[120], February[121], July[122] and August[123] 2003. The Regular Report of 2003 took notice of

113 Act No. 4771, available at: http://www.tbmm.gov.tr/kanunlar/k4771.html

114 Act No. 4771, art. 1

115 Act No. 4771, art.s 8, 11

116 Act No. 4771, art. 3

117 Act No. 4771, art. 11

118 Act No. 4771, art.s 6, 7

119 2002 Regular Report on Turkey's Progress towards Accession, p. 46, available at: http://www.europa.eu.int/comm/enlargement/turkey/docs.htm

120 Act No. 4778, available at: http://www.tbmm.gov.tr/kanunlar/k4778.html

121 Act No. 4793, available at: http://www.tbmm.gov.tr/kanunlar/k4793.html

122 Act No. 4928, available at: http://www.tbmm.gov.tr/kanunlar/k4928.html

123 Act No. 4963, available at: http://www.tbmm.gov.tr/kanunlar/k4963.html

these reform packages and stated that; *"Overall, in the past 12 months Turkey has made further impressive legislative efforts which constitute significant progress towards achieving compliance with the Copenhagen political criteria"*[124]. However, the Report went onto state that; *"Turkey should address the outstanding issues highlighted in this report, with particular attention to the strengthening of the independence and the functioning of the judiciary, the overall framework for the exercise of fundamental freedoms (association, expression and religion), further alignment of civil-military relations with European practice, the situation in the Southeast and cultural rights. Turkey should ensure full and effective implementation of reforms to ensure that Turkish citizens can enjoy human rights and fundamental freedoms in line with European standards"*[125].

Finally, in line with the Commission proposal to revise the Accession Partnership with Turkey, the Council adopted a **decision on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey**[126] on May 19, 2003. The 2003 Accession Partnership sets out revised priorities regarding the fulfilment of the Political Criteria. A number of these priorities are as follows ; implementating the measures to fight against torture and ill – treatment by enforcement officials, guaranteeing in law and in practice the full enjoyment of human rights and fundamental freedoms by all individuals without discrimination, pursuing and implementing reforms concerning freedom of expression including freedom of the press, freedom of association and peaceful assembly, adapting and implementing provisions concerning the exercise of freedom of thought, conscience and religion by all individuals and religious communities, aligning civilian control of the military with practice in EU Member States, strengthening the independence and efficiency of the judiciary.

In accordance with the revised priorities envisaged for Turkey in the 2003 Accession Partnership, Turkey renewed its National Programme for the Adoption of the Acquis by a decision adopted by the Turkish Council of Ministers[127].

124 2003 Regular Report on Turkey's Progress Towards Accession, p. 45, available at: http://www.europa.eu.int/comm/enlargement/turkey/docs.htm

125 Regular Report, (2003), p. 45.

126 Council Decision on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey, OJ 2003 L145/40

127 Decision of the Council of Ministers Dated 23 June 2003, No. 2003/5930, OG (24.07.2003) No. 25178 bis., also available at: http://www.abgs.gov.tr/NPAA/up.htm

BIBLIOGRAPHY

Books and Articles

Aliefendioğlu, Yılmaz. "2001 Anayasa Değişikliklerinin Temel Hak ve Özgürlüklerin Sınırlandırılmasında Getirdiği yeni Boyut", Anayasa Yargısı Dergisi Cilt 19 (2002), available at http://www.anayasa.gov.tr/anyarg19/aliefendioglu.pdf.

Amnesty International, "TURKEY: An end to torture and impunity is overdue!", (2001), AI Index: EUR 44/072/2001, available at: http://web.amnesty.org/library/index/engeur440722001

Avcı, Gamze. "Putting the Turkish EU Candidacy into Context", 7 EFA Rev (2002) pp. 91 – 110

Balkır, Canan. "The Customs Union and Beyond", in Libby Rittenberg (ed), The Political Economy of Turkey in the Post-Soviet Era: Going West and Looking East?, Westport, Conn., Greenwood Press 1998, pp. 52-77.

Bourguignon, Roswitha. "The History of the Association Agreement between Turkey and the European Community" in Ahmet Evin, Geoffrey Denton (eds.), Turkey and the European Community, Opladen, Leske+Budrich 1990, p. 51-63

Brandtner, Barbara and Allan Rosas. "Human Rights and the External Relations of the European Community: An Analysis of Doctrine and Practice", 9 EJIL, (1998), p. 468, also available at the EJIL website at http://www.ejil.org/journal/Vol9/No3/index.html.

Craig, Paul and Grainne de Burca. EU Law: Text, Cases and Materials 2nd ed., Oxford University Press 1998.

Duner, Bertil and Edward Deverell. "Country Cousin: Turkey, the European Union and Human Rights", Turkish Studies, Vol. 2, No. 1, (Spring 2001), pp. 1 – 24.

Eralp, Atila. "Turkey and European Union in the Aftermath of the Cold War", in Libby Rittenberg (ed), The Political Economy of Turkey in the Post-Soviet Era: Going West and Looking East?, Westport, Conn., Greenwood Press 1998, pp. 37-50

Eralp, Atila. "Turkey and the European Community: Prospects for a New Relationship", in Atila Eralp, Muharrem Tunay and Birol Yesilada (eds.), The Political and Socioeconomic Transformation of Turkey, (Westport-Connecticut-London, Praeger, 1993), pp. 193-213

Gündüz, Aslan. "The Land of Many Crossroads: Human Rights and Turkey's Future in Europe", Orbis, (Winter 2001), pp 15 – 30.

İlkin, Selim. "A History of Turkey's Association with the European Community", in Ahmet Evin, Geoffrey Denton (eds.), Turkey and the European Community, Opladen, Leske+Budrich 1990, pp. 35 – 49.

Karluk, S. Rıdvan. Avrupa Birliği ve Türkiye, Istanbul, Beta 2002.

Müftüler-Bac, Meltem. Turkey's Relations with a Changing Europe, Manchester-New York, Manchester University Press 1997, p. 58.

Napoli, Daniela. "The European Union's Foreign Policy and Human Rights", in Nanette A. Neuwahl and Allan Rosas (eds.), The Hague, Nijhoff, 1998, pp. 297 – 312.

Neuwahl, Nanette A. "The Treaty on European Union: A Step Forward in the Protection of Human Rights?", in Nanette A. Neuwahl and Allan Rosas (eds.), The Hague, Nijhoff, 1998, pp. 1 – 22.

Neuwahl, Nanette A. "The EU – Turkey Customs Union: A Balance, but No Equilibrium", 4 EFA Rev., (1999), p. 37

Nowak, Manfred. "Human Rights 'Conditionality' in Relation to the Entry to, and Full Participation in, the EU", in Philip Alston (ed.) with the assistance of Mara Bustelo and James Heenan, The EU and Human Rights, Oxford University Press 1999, pp. 687 – 698.

Smith, Karen. "The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?", 3 EFA Rev., (1998), pp. 253 – 274.

Ünal, Seref. "Turkish Legal System and the Protection of Human Rights", SAM Papers No 3/99 (1999), available at: http://www.mfa.gov.tr/grupa/ac/aca/acad/hmrghts.htm

Uğur, Mehmet. Avrupa Birliği ve Türkiye: Bir Dayanak/İnandiricilik İkilemi, Everest 2000

Van Westering, Jolanda. "Conditionality and EU Membership: The Cases of Turkey and Cyprus", 5EFA Rev., (2000), pp. 95 – 118

Williams, Andrew. "Enlargement of the EU and Human Rights Conditionality: A Policy of Distinction", 25 ELRev., 2000, pp. 601 – 617

Documents and Newspapers

Commission Opinion on Turkey's Request for Accession to the Community - 20 December 1989, available at the web page of Turkish Ministry of Foreign Affairs: http://www.mfa.gov.tr.

Commission Opinions on the applications of ten CEECs, COM (1997) 2001 – 2010 final

Council Regulation (EC) No 390/2001 of 26 February 2001 on assistance to Turkey in the framework of the pre-accession strategy, and in particular on the establishment of an Accession Partnership, OJ L58/1.

Council Decision of 8 March 2001on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey, (2001/235/EC)

Council Decision on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey, OJ 2003 L145/40

European Commission, Agenda 2000, EC Bull Supp. 5/1997

European Court of Justice Opinion 2/94, Accession by the Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms, 2 CMLR, (1996), p. 265.

European Parliament Resolution on the trial of members of the Turkish Grand National Assembly – September 29, 1994, available at: http://www.europarl.eu.int

European Parliament Resolution on the trial of Turkish Members of Kurdish origin of the Turkish Grand National Assembly, Doc. B4-0515, 0526, 0530, 0534, 0540, 0548, 0553, 0555 and 0567/94, December 15,1994, available at http://www.europarl.eu.int

European Parliament Resolutions of December 13, 1995, see the web page of European Parliament, available at http://www.europarl.eu.int

European Parliament Resolution on human rights and the situation in Turkey, June 6, 1996,

available at: http://www.europarl.eu.int

European Parliament Resolution on the political situation in Turkey – September 19, 1996, available at: http://www.europarl.eu.int

European Parliament Resolution on the Commission reports on developments in relations with Turkey since the entry into force of the Customs Union, September 17, 1998, A4-0251/1998, available at: http://www.europarl.eu.int

European Parliament Resolution on the death sentence on Mr Öcalan and the future of the Kurdish question in Turkey, October 22, 1999, available at: http://www.europarl.eu.int

European Parliament Resolution on the 2000 Regular Report from the Commission on Turkey's progress towards accession, October 25, 2001, available at: http://www.europarl.eu.int

Hürriyet Newspaper, July 6, 2001, available at: http://www.hurriyet.com.tr

Milliyet Newspaper, December 15, 1997, available at http://www.milliyet.com.tr/1997/12/15/index.html

National Programme for the Adoption of the Acquis, (2001), available at: http://www.europa.eu.int/comm/enlargement/turkey/index.htm.

National Programme for the Adoption of the Acquis, OG (24.07.2003) No. 25178 bis., also available at: http://www.abgs.gov.tr/NPAA/up.htm

Presidency Conclusions, Strasbourg European Council, June 1989 EC Bull 12/1989.

Presidency Conclusions, Copenhagen European Council, June 1993, EC Bulletin 6/1993

Presidency Conclusions, Essen European Council, December 1994, Annex IV, http://ue.eu.int/en/Info/eurocouncil/index.htm

Presidency Conclusions, Madrid European Council, December 1995, available at: http://ue.eu.int/en/Info/eurocouncil/index.htm

Presidency Conclusions, Luxembourg European Council, December 1997, available at: http://ue.eu.int/en/Info/eurocouncil/index.htm

Presidency Conclusions, Cardiff European Council, June 1998, available at: http://ue.eu.int/en/Info/eurocouncil/index.htm

Presidency Conclusions, Vienna European Council, December 1998, available at: http://ue.eu.int/en/Info/eurocouncil/index.htm

Presidency Conclusions, Helsinki European Council, December 1999, available at: http://ue.eu.int/en/Info/eurocouncil/index.htm

Proposal for a Council Regulation on assistance to Turkey in the framework of the pre-accession strategy, and in particular on the establishment of an Accession Partnership, (July 28, 2000), COM/2000/502/Final.

Proposal for a Council Decision on the principles, priorities, intermediate objectives and

conditions contained in the Accession Partnership with the Republic of Turkey (November 8, 2000), COM/2000/714/Final.

Report on the Commission reports on developments in relations with Turkey since the entry into force of the Customs Union, (June 25, 1998), by Edward McMillan-Scott, DOC_EN/RR/356/356875 PE 222.635/fin.

Regular Report from the Commission on Turkey's Progress Towards Accession, (1998), available at: http://www.europa.eu.int/comm/enlargement/turkey/docs.htm

Regular Report from the Commission on Turkey's Progress Towards Accession, (1999), available at: http://www.europa.eu.int/comm/enlargement/turkey/docs.htm

Regular Report from the Commission on Turkey's Progress Towards Accession, (2000), available at: http://www.europa.eu.int/comm/enlargement/turkey/docs.htm

Regular Report from the Commission on Turkey's Progress Towards Accession, (2001), available at: http://www.europa.eu.int/comm/enlargement/turkey/docs.htm

Regular Report on Turkey's Progress towards Accession, (2002), available at: http://www.europa.eu.int/comm/enlargement/turkey/docs.htm

Regular Report on Turkey's Progress Towards Accession, (2003), available at: http://www.europa.eu.int/comm/enlargement/turkey/docs.htm

Turkish Daily News, June 2, 2002, available at: http://www.turkishdailynews.com/old_editions

Turkish Daily News, December 15, 1997, available at http://www.turkishdailynews.com/old_editions

Turkish Daily News, July 27, 1996, available at: http://www.turkishdailynews.com/old_editions