

COMPARATIVE ANALYSIS OF  
THE UK AND TURKEY IN  
TERMS OF THE QUESTION:  
CAN THE UK'S HUMAN  
RIGHTS LAW BE A MODEL  
FOR TURKEY TO OVERCOME  
ITS VIOLATIONS OF ARTICLE  
3 AND ARTICLE 10 OF THE  
EUROPEAN CONVENTION  
ON HUMAN RIGHTS?

Devran ÜNLÜ\*

---

\* Treasury lawyer.



## ABSTRACT

*This dissertation presents the human rights problem in Turkey and it aims to suggest a new way forward which has not proposed previously. Although Turkey has made several legal reforms related to its prohibition of torture, inhuman and degrading treatment and freedom of expression violations, such violations have continued to pose a problem. Consequent to a comparison of the human rights policies of the United Kingdom and Turkey, this paper suggests that the incorporation the European Convention on Human Rights into Turkish domestic law could be beneficial for the country. The United Kingdom's law is a convincing example of the advantages of incorporating the Convention. The comparison of the legal frameworks, case law and the statistics of the European Court of Human Rights provide an evidence to underpin this thesis. Consequently, the research concentrates on whether the United Kingdom's law can be a guide for Turkey to cope with its human rights law deficiencies.*

**Keywords:** *European Convention on Human Rights, Torture, Inhuman Treatment Freedom Of Expression, Human Rights Act.*

## 1. INTRODUCTION

More than a half century time has passed since the European Convention on Human Rights (*hereinafter the Convention*) became effective in 1953. Since Turkey accepted the right of individual petition to the European Court of Human Rights (*hereinafter the Court*) in 1987, an internationally challenging period started for the Turkish legal system. Especially violations of Article 3 (*prohibition of torture, inhuman and degrading treatment*) and Article 10 (*freedom of expression*) of the Convention have become the focal point of the concerns of international organizations. The consistent criticisms of the Court and the European Union (*hereinafter EU*) on human rights issues led this research to investigate how Turkey could overcome its human rights deficiencies. Despite the fact that Turkey has endeavoured to implement most of the recommendations of international organizations, it remains that human rights conditions in Turkey has been far from satisfactory. Indeed, although Turkey has tried to reform its human rights law since the military coup in 1980, the facts have indicated that these reforms are not adequate and Turkey needs more fundamental legal changes. It is worth explaining that there is a common confusion relating to the difference between the Convention and EU law. First of all, the Convention was constituted by the European Communities (*Council of Europe*), a larger institution than the EU. Secondly, the judicial organ of the EU is the European Court of Justice<sup>[1]</sup>. Nonetheless, the Convention plays a crucial role within the EU<sup>[2]</sup>.

In this dissertation, a theoretical and conceptual framework will be set up by comparing the human rights situations of the UK and Turkey. Although there is a comprehensive literature about human rights conditions in Turkey, it seems that there is a paucity of literature around what Turkey can do to enhance this situation. The dissertation aims to add value to the current state of knowledge by critically evaluating the existing literature on this area. The research was carried out in five sections. After a brief background about the topic, the legal frameworks of Turkey and the United Kingdom will be compared in terms of prohibition of torture, inhuman and degrading treatment and freedom of expression. In the second section, the decisions of the Court about Turkey and the UK will be compared to understand their degrees of protection. In the third section, the statements of international organizations will be presented to see the changes year on year. Lastly, in the last section, the question of what Turkey can do will be investigated in the case of Turkey deciding to follow the UK's human rights law as a guide. A comparative approach was decided upon

[1] Steve Foster, *Human Rights & Civil Liberties* (2nd edn Pearson Education Limited, Essex 2008) p.21-22.

[2] Brice Dickson, *Human Rights and the European Convention* (Sweet&Maxwell, London 1997) p.15

for the research methodology to demonstrate how the legal systems of the UK and Turkey have addressed the problems. This methodology will allow a clearer presentation of which aspects the UK has more sophisticated human rights regime. This dissertation mainly suggests that Turkey should follow the UK's human rights law and incorporate the European Convention on Human Rights into its domestic law. As a result of these evidence, the research topic is "*Comparative analysis of the UK and Turkey in terms of the question: Can the UK's human rights law be a model for Turkey to overcome its violations of the Article 3 and Article 10 of the European Convention on Human Rights?*"

---

## 2. COMPARISON OF THE LEGAL FRAMEWORKS OF TURKEY AND THE UK IN TERMS OF PROHIBITION OF TORTURE, INHUMAN AND DEGRADING TREATMENT (ARTICLE 3) AND FREEDOM OF EXPRESSION (ARTICLE 10)

---

### **2.1 Prohibition of Torture, Inhuman and Degrading Treatment or Punishment**

At the outset, Article 3 of the Convention states that "*no one shall be subjected to torture or to inhuman or degrading treatment or punishment*"<sup>[3]</sup>. Like the right to life, Article 3 of the Convention charges the member states with the duty of protecting people against foreseeable threats of torture, inhuman and degrading treatments or punishments<sup>[4]</sup>. It is emphasised that some of the rights under the Convention and its protocols are regulated as absolute rights, whereas other rights are conditional. The prohibition of torture, inhuman and degrading treatment is an absolute right. Therefore, this right must not be breached under any situation such as the fight against terrorism<sup>[5]</sup>. Furthermore, Spencer maintains that that even in the war or threat of war situation, no exceptions or limitations are allowed on this right<sup>[6]</sup>.

Neither torture nor inhuman and degrading treatment is defined in the Convention<sup>[7]</sup>. However, in the Court rulings, torture is designated as the

---

[3] Council of Europe, 'Convention for the Protection of Human Rights and Fundamental Freedoms' (2010) <[http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG\\_CONV.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf)> accessed 29 August 2011.

[4] David Feldman, *Civil Liberties and Human Rights in England and Wales* (2nd edn Oxford University Press, Oxford 2002) p. 257 citing Judgment of *A v UK* 23 September 1998, 27 EHRR 611.

[5] Steve Foster (n1) p.72

[6] Maureen Spencer and John Spencer, *Human Rights Law in a Nutshell* (3rd edn Sweet & Maxwell, London 2007) p. 86-87

[7] A H Robertson and J G Merrills, *Human Rights in Europe; a Study of the European Convention on Human Rights* (3rd edn Manchester University Press, Manchester &

procedures which cause severe and cruel physical or mental suffering<sup>[8]</sup>. It is a deliberate act to break resistance of the victim<sup>[9]</sup> for obtaining information or a confession<sup>[10]</sup>. Inhuman treatment is defined as an act that causes physical or mental suffering (*such as incommunicado detention*)<sup>[11]</sup>. Lastly, degrading treatment is explained as an act that stimulates in the victim a feeling of grief, anxiety, fear or inferiority capable of humiliating the victim and eliminating his or her resistance<sup>[12]</sup>. As a threshold standard, the treatment or punishment is supposed to reach 'a minimum level of severity'<sup>[13]</sup>. For instance, in the Ireland v. the United Kingdom Case, the Court stressed the duration of the treatment<sup>[14]</sup>.

### 2.1.1. Turkey

The Turkish governments have alleged, at different times, that Turkish law had adequate measures to thwart torture, inhuman and degrading treatment<sup>[15]</sup>. As can be seen below, Turkish law also avoids defining torture and ill treatment<sup>[16]</sup>.

#### 2.1.1.1. Turkish Constitutions

Article 17 of the Constitution of Turkish Republic (1982) pronounces that "*no one shall be subjected to torture or ill-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.*<sup>[17]</sup>" Similar provisions were also regulated in the previous Constitution (1961). Actually, Article 14 of the Constitution of Turkish Republic (1961) maintained that "*No individual shall be subjected to ill-treatment or torture. No punishment incompatible with human dignity shall be imposed.*<sup>[18]</sup>" As being the first Turkish Republic Constitution,

---

New York 1993) p.36

- [8] Mark W. Janis, Richards Kay and Anthony W. Bradley, *European Human Rights Law Text and Materials* (2nd edn Oxford University Press, New York 2000) p. 102
- [9] Keir Starmer, *European Human Rights Law* ( Legal Action Group, London 1999) p. 91
- [10] David J Harris and others, *Law of the European Convention on Human Rights* (2nd edn, Oxford University Press, 2009) p.72-73
- [11] David Feldman (n4) p. 124
- [12] Ibid
- [13] Ibid
- [14] Aisling Reidy, 'A Guide to the Implementation of Article 3 of the European Convention on Human Rights' <<http://echr.coe.int/NR/rdonlyres/0B190136-F756-4679-93EC-42EEBEAD50C3/0/DG2ENHRHAND062003.pdf>> accessed 09 September 2011.
- [15] Commission of the European Communities, '2009 Progress Report' (Brussels, 2009) <[http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/Progress/turkey\\_progress\\_report\\_2009.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/turkey_progress_report_2009.pdf)> accessed 25 August 2011.
- [16] Criminal Codes, 'Legislation Online' <<http://legislationline.org/documents/action/popup/id/6872/preview>> accessed 13 September 2011.
- [17] Turkish Republic, 'Constitution' (As amended on May 22, 2004, Article 17) <[http://www.anayasa.gov.tr/images/loaded/pdf\\_dosyalari/THE\\_CONSTITUTION\\_OF\\_THE\\_REPUBLIC\\_OF\\_TURKEY.pdf](http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf)> accessed 29 August 2011.
- [18] Sadik Balkan, Ahmet E. Uysal and Kemal H. Karpat, 'Constitution of the Turkish Republic' (Ankara, 1961) <<http://www.anayasa.gen.tr/1961constitution-text.pdf>> accessed 12 September 2011.

Article 74 of the 1924 Constitution stipulated the prohibition of torture and ill-treatment<sup>[19]</sup>. Also Article 90 of the Constitution of Turkish Republic (1982), entitled “*Ratification of International Treaties*”, grants international agreements a superior position by stating that “*international agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.*”<sup>[20]</sup> Correspondingly, the Convention can be directly invoked before Turkish tribunals<sup>[21]</sup>.

### **2.1.1.2. Turkish Criminal Codes**

Parallel to the Constitution (1982), the third section of the Turkish Criminal Code (2004- *Law no 5237*) regulates prohibition of torture and torment. Article 94 of the Turkish Criminal Code (2004) prohibits torture. Article states that “*any public officer who causes severe bodily or mental pain, or loss of conscious or ability to act, or dishonors a person, is sentenced to imprisonment from three years to twelve years.*”<sup>[22]</sup> Additionally, according to Article 95, in case of loss of bodily functions, the sentence will be increased<sup>[23]</sup>. Torture and ill-treatment were also prohibited in the scope of the article 243 and article 245 of the abolished Turkish Criminal Code (1926-*Law no 765*)<sup>[24]</sup>. However the maximum limit of the torture’s punishment was eight years<sup>[25]</sup>. Moreover, Article 135 of the Code of Criminal Procedure (*Law no 5271*) underlines that, even with the consent of the testifying person, any testimony which is made under the physical or emotional interventions such as ill-treatment, torture or forceful administration of medicine shall not be taken into account as evidence<sup>[26]</sup>. Article 354 of

[19] Constitution of the Republic of Turkey (1924) <[http://www.anayasa.org/index.php?option=com\\_content&view=article&id=83%3Aanayasa-1924&catid=53%3Aanayasalar&Itemid=65&lang=en](http://www.anayasa.org/index.php?option=com_content&view=article&id=83%3Aanayasa-1924&catid=53%3Aanayasalar&Itemid=65&lang=en)> accessed 14 September 2011.

[20] Turkish Republic, ‘Constitution’ (n17)

[21] United Nations, ‘Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ (Periodic Reports, 2001) <[http://www.unhchr.ch/tbs/doc.nsf/0/a8983ccf93598b19c1256cfb00601578/\\$FILE/G0243568.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a8983ccf93598b19c1256cfb00601578/$FILE/G0243568.pdf)> accessed 10 September 2011.

[22] Criminal Codes, ‘Legislation online’ <<http://legislationline.org/documents/action/popup/id/6872/preview>> accessed 13 September 2011.

[23] Ibid.

[24] Mark W. Janis, Richards Kay and Anthony W. Bradley (n8) p. 398

[25] United Nations, ‘Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ (Periodic Reports, 2001) <[http://www.unhchr.ch/tbs/doc.nsf/0/a8983ccf93598b19c1256cfb00601578/\\$FILE/G0243568.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a8983ccf93598b19c1256cfb00601578/$FILE/G0243568.pdf)> accessed 10 September 2011.

[26] Rhona K M Smith, *Texts and Materials on International Human Rights*( 2nd edn

the Turkish Criminal Code (2004) points out that producing falsified medical report by physicians, pharmacists or other health professionals is an offence. It is momentous because it is a caution against concealing signs of torture and ill-treatment<sup>[27]</sup>.

Although Turkey has improved the prohibition of torture and ill-treatment conditions, it is generally accepted by the doctrine and non-governmental organizations that torture and ill-treatment is still endemic and widespread. In particular, members of the Kurdish Workers Party (PKK) continue to be subjected to torture and ill-treatment by the security officers<sup>[28]</sup>. Indeed, a circular published by the Interior Ministry in 2001 acknowledged that a serious number of violations of Article 3 of the Convention not only damaged Turkey's reputation, but also caused high amounts of compensation paid to litigants<sup>[29]</sup>. This suggests that inclusion of these prohibitions at constitutional level is an essential element in ensuring the prevention of torture and ill-treatment. Yet, although all of the member states include these prohibitive norms in their jurisdiction, it seems that existence of such regulations is not enough to meet the obligations imposed by the Convention<sup>[30]</sup>.

### 2.1.2. The United Kingdom

It is generally asserted that the United Kingdom has an unwritten constitution on the basis of several documents comprising the principles of constitutional practice. Indeed, the leading principles of constitutional practice are upheld in several documents such as Acts of Parliament, common law and constitutional treaties. For this reason practitioners prefer to use "uncodified" terms instead of "unwritten"<sup>[31]</sup>. As the French philosopher Montesquieu argued in the Spirit of Laws in 1748, England's "uncodified" constitution has provided English law with a deep legal infrastructure<sup>[32]</sup>. The first instrument which subsumed essential human

---

Routledge, London&New York 2010) p.112

[27] Hikmet Sami Turk, 'Human Rights in Turkey' (December 1998 - February 1999) Volume III - Number 4 J.Int'l Aff. < <http://www.sam.gov.tr/perceptions/Volume3/Dec1998-Feb1999/turk.PDF> > accessed 13 September 2011.

[28] Mark W. Janis, Richards Kay and Anthony W. Bradley (n8) p.398  
Commission of the European Communities, 'Commission Staff Working Document Turkey, 2010 Progress Report' (Brussels, 9 November 2010) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/tr\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf) > accessed 22 August 2011.

[29] United Nations, 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (Periodic Reports, 2001) <[http://www.unhcr.ch/tbs/doc.nsf/0/a8983ccf93598b19c1256cfb00601578/\\$FILE/G0243568.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/a8983ccf93598b19c1256cfb00601578/$FILE/G0243568.pdf) > accessed 10 September 2011.

[30] Aisling Reidy (n14)

[31] House of Commons, 'The Bill of Rights 1689' <<http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-00293.pdf> > accessed 14 September 2011.

[32] Mark W. Janis, Richards Kay and Anthony W. Bradley (n8) p.5 citing Montesquieu, 'l'esprit des lois', (euvres completes 527 (editions de seuil 1964).



rights is accepted as the Magna Carta, whose first version was promulgated in 1215<sup>[33]</sup>. The second historic document which formulated the rights and obligations of the individuals against the Crown is hypothesised as the Bill of Rights 1689<sup>[34]</sup> <sup>[35]</sup>. The Bill of Rights 1689 is another important instrument to provide an impediment against monarchical authorities' recurrence of abuses and to guarantee the fundamental human rights of the citizens<sup>[36]</sup>. Lastly, the Human Rights Act 1998 can be added to these basic constitutional documents<sup>[37]</sup>. Actually, the Human Rights Act 1998 maintains the prohibition of torture, inhuman and degrading treatment by incorporating the Convention<sup>[38]</sup>.

Torture was outlawed as an instrument of investigation in the United Kingdom by the abolition of the Star Chamber in 1641. This prohibition was mostly implemented through the Treason Act 1708<sup>[39]</sup>. In spite of the prohibition, it is obvious from the historical records that torture was still implemented in the United Kingdom in the 16th and 17th centuries<sup>[40]</sup>. Still, in the recent English criminal law, torture and ill-treatment has already been regulated as a crime<sup>[41]</sup>. Section 134(1) of the Criminal Justice Act 1988 regulates torture as an offence by stating that "*a person who commits the offence of torture shall be liable on conviction on indictment to imprisonment for life.*"<sup>[42]</sup> Torture is defined as a crime in English Law wherever in the world it is committed and whatever the nationality of the offender<sup>[43]</sup>. Moreover, evidence which is obtained by torture and inhuman or degrading treatment is regarded as unreliable<sup>[44]</sup>. Similarly, Feldman highlights that English police has an obligation to investigate allegations of torture and inhuman or degrading treatment immediately<sup>[45]</sup>. More recently, the Terrorism Act 2000 came into force in 2001<sup>[46]</sup>. Further, terrorism legislation followed with

[33] David Feldman (n4) p.70-71.

[34] The others are the Petition of Right (1627) and the Act of Settlement (1700).

[35] House of Commons, 'The Bill of Rights 1689' (n31)

[36] David Feldman (n4) p.70-71

[37] House of Commons, 'The Bill of Rights 1689' (n31)

[38] Edwin Shortt and Claire de Than, *Human Rights Law in the UK* (Sweet & Maxwell, London 2001) p.21.

[39] Rangzieb Ahmed and Habib Ahmed v. The Queen [2011] EWCA Crim 184 <<http://www.bailii.org/ew/cases/EWCA/Crim/2011/184.html>> accessed 14 September 2011.

[40] Omar Othman (aka Abu Qatada) v. Secretary of State for the Home Department, SC/15/2005, United Kingdom: Special Immigration Appeals Commission (SIAC) <<http://www.unhcr.org/refworld/docid/499043ea2.html>> accessed 13 September 2011.

[41] D. Hoffman and J. Rowe, *Human Rights in the UK an Introduction to the Human Rights Act 1998* (3rd edn Pearson Education Limited, Essex 2010) p.152.

[42] Criminal Justice Act 1988 c.33 s.134 <<http://www.legislation.gov.uk/ukpga/1988/33/section/134>> accessed 14 September 2011.

[43] Rangzieb Ahmed and Habib Ahmed v. The Queen [2011] EWCA Crim 184 <<http://www.bailii.org/ew/cases/EWCA/Crim/2011/184.html>> accessed 14 September 2011.

[44] D. Hoffman and J. Rowe (n41) p.168.

[45] David Feldman (n4) p. 260.

[46] D. Hoffman and J. Rowe (n41) p. 371.

the Terrorism Act 2006 and the Counter-Terrorism Act 2008<sup>[47]</sup>. However, even though there tends to be a temptation to infringe Article 3 of the Convention, there is a wide consensus in the doctrine that these legislations do not include provisions which directly inhibit the practice of prohibition of torture and ill-treatment<sup>[48]</sup>.

In *A v Secretary of State for the Home Department Case*<sup>[49]</sup>, the House of Lords underlined that even in an emergency situation such as terrorism; courts should interpret and apply the existing law<sup>[50]</sup>. In this case, the reliability of the evidence obtained by torture was evaluated<sup>[51]</sup>. The Appeal Court tended to confirm the admissibility of this kind of evidences which were obtained by the torture of another state. Nonetheless, the House of Lords unanimously overruled that although the United Kingdom was not accepted as responsible for the torture, evidence obtained through torture as *jus cogens* must be assessed as unlawful, regardless of by whom and wherever the evidence had been procured. Therefore, evidence obtained through torture must not be used also against a third person<sup>[52]</sup>.

## **2.2. Freedom of Expression**

The doctrine evaluates freedom of expression as one of the crucial principles of democracy<sup>[53]</sup>. Actually, freedom of expression enables individuals to contribute to conflicts about social, political and moral issues. It is mostly suggested that the ideal method to reach the most prudential solution of debates is to allow the widest range of opinions to circulate<sup>[54]</sup>. According to Foster, freedom of expression ensures investigation of the best recipe of the debates<sup>[55]</sup>. It also reinforces the development of people intellectually and spiritually<sup>[56]</sup>. Additionally Janis claims that freedom of expression strengthens the safeguard of broadmindedness and pluralism<sup>[57]</sup>. Freedom of expression is classified as a conditional right. This means that it should be examined with other interests of the public. For this reason, in democratic systems, sensible limitations towards expressions have been established by the law<sup>[58]</sup>. In plain words, it cannot be implemented certainly in

---

[47] Ibid p. 372.

[48] *ibid* p.373.

[49] *A v Secretary of State for the Home Department* [2005] 2 AC 68 (HL)

[50] Steve Foster (n1) p.9

[51] *D Hoffman and J Rowe* (n41) p.168

[52] Tobias Thienel, 'The Admissibility of Evidence Obtained by Torture under International Law' (2006) 17 EJIL 2 <<http://www.ejil.org/pdfs/17/2/78.pdf>> accessed 17 September 2011.

[53] Dirk Voorhoof, 'Freedom Of Expression Under The European Human Rights System' (2010) <[http://www.psw.ugent.be/Cms\\_global/uploads/publicaties/dv/05recente\\_publicaties/LAEHR.VOORHOOFFINAL.2OCT2010.pdf](http://www.psw.ugent.be/Cms_global/uploads/publicaties/dv/05recente_publicaties/LAEHR.VOORHOOFFINAL.2OCT2010.pdf)> accessed 22 August 2011.

[54] David Feldman (n4) p. 763-764

[55] Steve Foster (n1) p.354

[56] *ibid* p. 355

[57] Mark W. Janis, Richards Kay and Anthony W. Bradley (n8) p. 280

[58] M Spencer and J Spencer (n6) p.17-18

every situation such as obscenity, slander or libel<sup>[59]</sup>.

The doctrine argues that there are several derivatives of freedom of expression<sup>[60]</sup>. For instance it is propounded that seeking, propagating or receiving information contributes to improvement of freedom of expression. Indeed, as well as expressing the ideas, freedom of expression involves the freedom to hold and receive opinions<sup>[61]</sup>. On the other aspect, it is deemed that media and press serve as “*public watchdog*” force which is vital to social consciousness. The press and media reinforces to effective process of democracy by revealing the performance and omissions of the government<sup>[62]</sup>.

### 2.2.1. Turkey

#### 2.2.1.1. Turkish Constitutions

Freedom of expression is regulated under the title of ‘Freedom of Expression and Dissemination of Thought’ on the article 26 of the Turkish Constitution (1982)<sup>[63]</sup>. Article 26 of the Turkish Constitution (1982) states that “*everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively.*”<sup>[64]</sup> In the second and third paragraphs of the article 26, the right is limited by maintaining that “*the exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary. The formalities, conditions and procedures to be applied in exercising the right to expression and dissemination of thought shall be prescribed by law.*”<sup>[65]</sup> Similar provisions were also regulated in the previous Constitution (1961). Actually, Article 20 of the Constitution of Turkish Republic (1961) maintained that “*every individual is entitled to have his own opinions and to think freely. He is free to express his thoughts and opinions singly or collectively, through word of mouth, in writings through pictures or through other media. No individual shall be coerced to disclose his thoughts and opinions.*”<sup>[66]</sup>

[59] Ibid p. 72.

[60] David Feldman (n4) p. 781.

[61] John Wadham, Helen Mountfield and Anna Edmundson, Blackstone’s Guide to The Human Rights Act 1998 (5th edn Oxford University Press, Oxford, 2009) p. 169-170

[62] David J Harris and others (n10) p. 465

[63] Arkadiusz Stokłosa, ‘Human Rights in Turkey’ (2009) <<http://swepub.kb.se/bib/swepub:oai:DiVA.org:hh-2281?tab2=abs&language=en>> accessed 14 September 2011.

[64] Turkish Republic, ‘Constitution’ (n17)

[65] ibid

[66] Sadik Balkan, Ahmet E. Uysal and Kemal H. Karpat, ‘Constitution of the Turkish Republic’ (Ankara, 1961) < <http://www.anayasa.gen.tr/1961constitution-text.pdf> > accessed 12

It is also noteworthy that Article 28 of the Constitution (1982) analyses freedom of media. The Article provides that the media is free and no censorship shall be applied<sup>[67]</sup>. In doctrine, it is critiqued that Turkish Constitution (1982) grants the executive and judicial organs power to restrain political expressions if the unity of the state is perceived to be threatened. For instance, for a long time, using the word “*Kurdistan*” was accepted as treason offense<sup>[68]</sup>. Especially, paragraph 5 of the preamble of the Constitution (1982)<sup>[69]</sup> has become the focal point of these criticisms<sup>[70]</sup>.

### 2.2.1.2. Other Acts

Article 301 of the Turkish Penal Code (2004- Law no 5237) has been a basic resource in the practice of freedom of expression in Turkey<sup>[71]</sup>. Article 301 of the Turkish Criminal Code (Law no 5237), entitled ‘Insulting Turkishness, the Republic, the organs and institutions of the State’, enacted as “*any person who publicly denigrates Turkishness, the Republic or the Grand National Assembly of Turkey shall be sentenced to 6 months to 3 years of imprisonment. Any person who publicly denigrates the Government of Republic of Turkey, the judicial institutions of the State, the military or security organizations shall be sentenced to 6 months to 2 years imprisonment. Where denigration of Turkishness is committed by a Turkish citizen in another country, the sentence shall be increased by one third. Expression of thoughts intended to criticize shall not constitute a crime.*”<sup>[72]</sup>

---

September 2011.

- [67] Paul J. Magnarella, ‘The Legal, Political and Cultural Structures of Human Rights Protections and Abuses in Turkey’ \* (1994) 3 J. Int’l L. & Prac. 439 <
- [69] Preamble regulates that “[N]o protection shall be afforded to thoughts or opinions contrary to Turkish national interests, the principle of the existence of Turkey as an indivisible entity with its state and territory, Turkish historical and moral values, or the nationalism, principles, reforms, and modernism of Atatürk, and that as required by the principle of secularism, there shall be no interference whatsoever of sacred religious feelings in state affairs and politics; ...”
- [70] Paul J. Magnarella (n67).
- [71] Jahnisa Tate, ‘Turkey’s Article 301: A Legitimate Tool for Maintaining Order or a Threat To Freedom Of Expression?’ (2008-2009) 37 Ga. J. Int’l & Comp. L. 181 <[http://legislationline.org/documents/action/popup/id/6872/preview](http://heinonline.org/HOL/Welcome?message=Please%20log%20in&url=%2FHOL%2FPa ge%3Fhandle%3Dhein.journals%2Fgjicl37%26div%3D8%26collection%3Djournals %26set_as_cursor%3D23%26men_tab%3Dsrchresults%26terms%3D%28freedom% 2520AND%2520of%2520AND%2520expression%2520AND%2520Turkey%2520A ND%2520article%2520AND%252010%29%26type%3Dmatchall> accessed 18 July 2011.</a></p><p>[72] Criminal Codes, ‘Legislation online’ <<a href=) > accessed 13 September 2011.

Article 159 of the first Criminal Code of the Turkish Republic (*Law no.765 – 1926*), as amended in 1936, maintained that “*those who publicly insult or ridicule the moral personality of Turkishness, the Republic, the Parliament, the Government, State Ministers, the military or security forces of the state, or the Judiciary will be punished with a penalty of no less than one year and no more than six years of maximum security imprisonment. If insulting Turkishness is carried out in a foreign country by a Turk the punishment given will be increased from one-third to one-half.*”<sup>[73]</sup> In 2002, a democracy package was voted by Parliament which reduced the punishment for Article 159 of the Turkish Criminal Code (1926) from a maximum of six years to three years<sup>[74]</sup>. Furthermore, by this reform, the regulation below was added to Article 159 of the Turkish Criminal Code (1926); “*written, verbal or pictorial expressions of opinion which are intended solely to criticize, without insulting and criminal intent, the bodies and establishments detailed in the first paragraph shall not incur punishment.*”<sup>[75]</sup>

Article 301 has been amended seven times up to now<sup>[76]</sup>. In 2005, Article 301 amended after one year later its enactment. The new version stated that “*a person who explicitly insults being a Turk, the Republic or Turkish Grand National Assembly, shall be imposed a penalty of imprisonment for a term of six months to three years. A person who explicitly insults the Government of the Republic of Turkey, the judicial bodies of the State, the military or security organisation shall be imposed a penalty of imprisonment for a term of six months to two years.*”<sup>[77]</sup> Still, the regulation included vague notions<sup>[78]</sup>.

The Progress Report of the European Parliament (2005) stressed that in many cases, non-violent expressions of the intellectuals and journalists were punished in Turkey on the grounds of Article 301 of the Turkish Penal Code (2004)<sup>[79]</sup>.

[73] U.S. English Foundation Research, Turkey Legislation < <http://www.usefoundation.org/view/878> > accessed 15 September 2011.

[74] Human Rights Watch, ‘Questions and Answers: Freedom of Expression and Language Rights in Turkey’ (2002) < <http://www.hrw.org/legacy/press/2002/08/turkeyqa041902.htm> > accessed 15 September 2011.

[75] Official Gazette Law on Changes made to Various Laws (Law no. 4771 Adopted: 03.08.2002) <<http://www.ilo.org/dyn/natlex/docs/SERIAL/68377/66629/F1942448432/TUR68377.PDF> > accessed 19 August 2011.

[76] World Law Direct, ‘Article 301 of Turkish Penal Code’ <<http://www.worldlawdirect.com/forum/law-wiki/13828-article-301-turkish-penal-code.html> > accessed 09 September 2011.

[77] Christian Christensen, ‘Breaking the News: Concentration of Ownership, the Fall of Unions and Government Legislation in Turkey’ <[http://citation.allacademic.com//meta/p\\_mla\\_apa\\_research\\_citation/1/6/8/4/1/pages168418/p168418-21.php](http://citation.allacademic.com//meta/p_mla_apa_research_citation/1/6/8/4/1/pages168418/p168418-21.php) > accessed 17 August 2011.

[78] The Representative on Freedom of the Media Miklos Haraszi, ‘Review of the Draft Turkish Penal Code: Freedom of Media Concerns’ (2005) < <http://www.osce.org/fom/14672> > accessed 12 September 2011.

[79] European Parliament, ‘Turkey Human Rights’ (Brussels, 10.03.2006) <[http://www.europarl.europa.eu/meetdocs/2004\\_2009/documents/fd/d-tr20060425\\_05/d-tr20060425\\_05en](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/d-tr20060425_05/d-tr20060425_05en) >

Indeed, since the Code was enacted, many people have been charged with “*insulting Turkishness/Turkish nation*” act under the Article 301<sup>[80]</sup>. Apparently, it seems that this norm has been utilized to judge intellectuals, human rights activists and journalists who peacefully expressed their dissenting views<sup>[81]</sup>. Actually it is criticised that Turkish prosecuting attorneys and judges have interpreted the concepts such as “*public order*”, “*national security*” and “*territorial integrity*” against the freedom of expression<sup>[82]</sup>. One of the well-known victims of this article is Hrant Dink, who was murdered by a militant nationalist in 2007<sup>[83]</sup>. He was repeatedly prosecuted on “*insulting Turkishness*” Act because of his historical statements about Armenian Genocide 1915<sup>[84]</sup>. Although the amendment of the Article 301 in 2008 has enabled a small amount of improvement in the number of prosecutions<sup>[85]</sup>, it is deemed that the scope of the “*degrading*” word is pendent<sup>[86]</sup>.

The most notorious practice of Article 301 is known as Orhan Pamuk Case. Analogously, in the case of Ferit Orhan Pamuk, who is a Nobel laureate (2006) in literature, he was tried because of his expression in 2005 which asserted that “*30,000 Kurds and one million Ottoman Armenians were killed in Turkey. And almost nobody dares to mention that. So I do.*”<sup>[87]</sup> The charges then dropped by reason of lack of the Justice Ministry’s approval and pressure of international organizations<sup>[88]</sup>. On a different perspective, despite the fact that there appears to be strong nexus between freedom of press and freedom of expression<sup>[89]</sup>,

---

pdf> accessed 19 August 2011.

[80] Commission of the European Communities, ‘Commission Staff Working Document Turkey, 2006 Progress Report’ <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2006/nov/tr\\_sec\\_1390\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/tr_sec_1390_en.pdf)> accessed 21 August 2011.

[81] Arkadiusz Stokłosa (n63)

[82] Commission of the European Communities, ‘Commission Staff Working Document Turkey, 2008 Progress Report’ (Brussels, 5.11.2008) <[http://ec.europa.eu/enlargement/pdf/press\\_corner/key\\_documents/reports\\_nov\\_2008/turkey\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/turkey_progress_report_en.pdf)> accessed 24 August 2011.

[83] Today’s Zaman , ‘EU Welcomes 301 Amendment But Calls For More’ (01.05.2008) <[www.todayszaman.com/tz-web/detaylar.do?load=detay&link=140606](http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=140606)> accessed 13 September 2011.

[84] Commission of the European Communities, ‘Commission Staff Working Document Turkey, 2007 Progress Report’ <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2007/nov/turkey\\_progress\\_reports\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf)> accessed 20 August 2011.

[85] Commission of the European Communities, ‘Commission Staff Working Document Turkey, 2009 Progress Report’ (Brussels, 2009) <[http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/Progress/turkey\\_progress\\_report\\_2009.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/turkey_progress_report_2009.pdf)> accessed 25 August 2011.

[86] Bulent Algan, ‘The Brand New Version of Article 301 of Turkish Penal Code and the Future of Freedom of Expression Cases in Turkey’ (2009) 12 German Law Journal 2237 <[http://www.germanlawjournal.com/pdfs/Vol09No12/PDF\\_Vol\\_09\\_No\\_12\\_2237-2252\\_Developments\\_Algan.pdf](http://www.germanlawjournal.com/pdfs/Vol09No12/PDF_Vol_09_No_12_2237-2252_Developments_Algan.pdf)> accessed 24 April 2011.

[87] Ibid.

[88] Ibid.

[89] David Feldman (n4) p.802

in 2001 State's media watchdog RTUK imposed closure orders against BBC and the Deutsche Welle on the basis of their separatist broadcasts, which were thought that they were threatening the national unity (*Article 26 of the RTUK Law*).<sup>[90]</sup> Lastly, the 'Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publications' (*Law No. 5651*) was enacted in 2007 to protect children from harmful contents<sup>[91]</sup>. However, it has been applied to block adult's legal websites on the grounds of Article 301<sup>[92]</sup>.

After criticisms of international organizations, in 2008, Article 301 of the Turkish Criminal Code was undertaken again by the law no. 5759<sup>[93]</sup>. Firstly, the amendment substituted the phrase "*Turkishness*" with "*Turkish nation*." Secondly, maximum level of the penalty decreased from three to two years of imprisonment. It is an important reform because according to Turkish Criminal Law, execution of an imprisonment for a sentence to two years or less can be suspended for first time offenders on the discretion of the judge<sup>[94]</sup>. Thirdly, permission of the Justice Ministry for prosecutors became a requirement to proceed with a prosecution. In other words, prosecution became contingent on the Ministry's approval. Lastly, the amendment repealed the increased penalty of the offense because of committing the crime abroad<sup>[95]</sup>. There is a wide consensus today that the 2008 reform of the Article 301 has not clarified the vague elements of the article. Interpretation of the article by Turkish judges plays a vital role to guarantee freedom of expression in Turkey<sup>[96]</sup>. These proceedings indicate that the Turkish law is not adequate to guarantee freedom of expression<sup>[97]</sup>.

[90] Human Rights Watch, 'Questions and Answers: Freedom of Expression and Language Rights in Turkey' (2002) <<http://www.hrw.org/legacy/press/2002/08/turkeyqa041902.htm>> accessed 15 September 2011.

[91] Murat Erdal, Gulşah Ekiz, Selim Aksin, and Necmi Murat Güngör, 'Restricted Access and Blocking Websites, Internet Regulations and Turkey Practices' (2010) <<http://www.irma-international.org/viewtitle/43502/>> accessed 15 September 2011.

[92] Freedom House, 'Freedom on the Net: A Global Assessment of Internet and Digital Media' <<http://www.freedomhouse.org/template.cfm?page=384&key=212&parent=19&report=79>> accessed 13 September 2011.

[93] Human Rights Watch, 'Turkey: Government Amendments Will Not Protect Free Speech - Article 301 Should Be Abolished' (17 April 2008) <<http://www.unhcr.org/refworld/docid/480db4a02.html>> accessed 15 September 2011.

[94] Kaan Karcilioğlu, Article 301 of the Turkish Criminal Code Amended <<http://merlin.obs.coe.int/iris/2008/6/article28.en.html>> accessed 18 September 2011.

[95] *ibid*

[96] Bulent Algan, 'The Brand New Version of Article 301 of Turkish Penal Code and the Future of Freedom of Expression Cases in Turkey' (2009) 12 German Law Journal 2237 <[http://www.germanlawjournal.com/pdfs/Vol09No12/PDF\\_Vol\\_09\\_No\\_12\\_2237-2252\\_Developments\\_Algan.pdf](http://www.germanlawjournal.com/pdfs/Vol09No12/PDF_Vol_09_No_12_2237-2252_Developments_Algan.pdf)> accessed 24 July 2011.

[97] Commission of the European Communities, 'Commission Staff Working Document Turkey, 2010 Progress Report' (Brussels, 9 November 2010) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/tr\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf)> accessed 22 August 2011.

Holly Cartner (*Europe and Central Asia director of Human Rights Watch*) discusses that Article 301 should be repealed immediately<sup>[98]</sup>. Also, the European Union expects Turkey to abolish the article<sup>[99]</sup>. However, Turkish government has asserted that norms similar to Article 301 have prevailed in many European countries<sup>[100]</sup>. Indeed, if we compare Article 301 of the Turkish Criminal Code with European Countries' Criminal Codes, despite tolerance of them, it can be clearly seen that many European Country's criminal laws imply same offense. For instance, Articles 290 and 291 of the Italian Penal Code, Article 133 of the Polish Penal Code, Article 543 of Spain Penal Code, Sections 90a and 90b of the German Penal Code and Article 110/e of the Denmark Penal Code include very similar provisions to Article 301<sup>[101]</sup>. On the other hand, it should be taken into consideration that Turkish figures published by Justice Ministry of Turkey demonstrated that 1533 people tried under this article in 2006. Conversely, in other European Countries, such laws have been used very rarely<sup>[102]</sup>.

### 2.2.2. *The United Kingdom*

As a common view, protection of freedom of expression law has been prudential in the UK<sup>[103]</sup>. One of the cardinal principles of freedom of expression in English Law designates that members of the House of Commons and the House of Lords have an inviolability of saying anything in the Parliament<sup>[104]</sup>. Article 9 of the Bill of Rights 1689 has also provided political immunity by stating that "*the freedom of speech and debate or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.*"<sup>[105]</sup> The significance of the freedom of expression has been concluded by Lord Steyn in *Turkington and Others v. Times Newspapers Limited* judgment as follows:

[98] Human Rights Watch, 'Turkey: Government Amendments Will Not Protect Free Speech - Article 301 Should Be Abolished' (17 April 2008) <<http://www.unhcr.org/refworld/docid/480db4a02.html>> accessed 15 September 2011.

[99] World Law Direct, 'Article 301 of Turkish Penal Code' <<http://www.worldlawdirect.com/forum/law-wiki/13828-article-301-turkish-penal-code.html>> accessed 09 September 2011.

[100] Human Rights Watch, 'Turkey: Government Amendments Will Not Protect Free Speech - Article 301 Should Be Abolished' (17 April 2008) <<http://www.unhcr.org/refworld/docid/480db4a02.html>> accessed 15 September 2011.

[101] World Law Direct, 'Article 301 of Turkish Penal Code' <<http://www.worldlawdirect.com/forum/law-wiki/13828-article-301-turkish-penal-code.html>> accessed 09 September 2011.

[102] Human Rights Watch, 'Turkey: Government Amendments Will Not Protect Free Speech - Article 301 Should Be Abolished' (17 April 2008) <<http://www.unhcr.org/refworld/docid/480db4a02.html>> accessed 15 September 2011.

[103] David Feldman (n4) p. 801

[104] Robert Blackburn, Andrew Kennon, Sir Michael Wheeler-Booth, J.A.G. Griffith, and Michael Ryle, *Parliament: Functions, Practice and Procedures* (Sweet & Maxwell, London 1989)p. 86-90

[105] David Feldman (n4) p.274



“Freedom of expression is, of course, intrinsically important: it is value for its own sake. But it is well recognised that it is also instrumentally important. It serves a number of broad objectives. First it promotes the self-fulfilment of individuals in society. Secondly, in the famous words of Holmes J (echoing John Stuart Mill), ‘the best test of truth is the power of the thought to get itself accepted in the competition of the market.’ Thirdly, freedom of speech is the lifeblood of democracy.”<sup>[106]</sup> In the UK Law, the scope of ‘expression’ also concerns pictures and acts which aims to express an idea or to lodge information<sup>[107]</sup>. On the other hand, it should be remembered that during the Thatcher administration, government attempted to suppress the expression of the dissenting opinions<sup>[108]</sup>.

According to UK’s law, education authorities and teachers are not permitted to propagate any partisan political concept during the teaching of any topic in the schools<sup>[109]</sup>. However, teachers could answer the political questions in lessons such as humanities and social studies. Moreover, teachers can follow a political party outside working hours<sup>[110]</sup>. The European Court of Human Rights evaluates such restrictions on political activity of civil servants justifiable<sup>[111]</sup>. Actually, in several cases, promoting politically neutral civil service to secure impartiality of the public servants was also found coherent to the provisions of the Convention<sup>[112]</sup>.

Blasphemy law of the UK has generated ground-breaking debates in freedom of expression law. First of all, the capital punishment for blasphemy, heresy, schism and atheism was repealed by the Ecclesiastical Jurisdiction Act 1677 (29 Car.2 c.9)<sup>[113]</sup>. For a long time, it has been accepted that statements outraging the emotions of ordinary Christians, such as vilifying Christ by describing him as a wanton person, could not enjoy protection of freedom of expression<sup>[114]</sup>. In R. v. Chief Metropolitan Stipendiary Magistrate, ex parte Choubhury Case<sup>[115]</sup>, a group of Muslims complaint against Salman Rushdie with blasphemous libel that his book , the Satanic Verses, attacks on the Islamic Religion. However, the magistrate held that the blasphemy law recognises only Church of England’s

[106] Richard Clayton and Hugh Tomlinson, Privacy and Freedom of Expression (Reprinted from The Law of Human Rights Oxford University Press, Oxford 2006) p.115

[107] Stevens v United Kingdom (1986) 46 DR 245

[108] David Feldman (n4) p.800

[109] David Feldman (n4) p.787

[110] David Feldman (n4)p. 788

[111] David Feldman (n4)p. 792

[112] David Feldman (n4) p. 792 citing Vogt v. Germany, Eur. Ct. HR, Series A, No. 323, Judgment of 26 September 1995, 21 EHRR 205 and Rekvenyi v. Hungary, Eur. Ct. HR, App. No. 25390/94, Judgment of 20 May 1999

[113] UK Parliament, ‘Blasphemy’ <<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldrelol/95/9515.htm#n137>> accessed 18 August 2011.

[114] R. v. Lemon [1979] AC 617, [1979] 1 All ER 898 HL

[115] R v Chief Metropolitan Stipendiary Magistrate, ex parte Choudhury [1991] QB 429, [1991] 1 All ER 306, DC

beliefs. The Division Court espoused the magistrate's interpretation by ruling that incorporating other beliefs into blasphemy law would mean extending the courts' power<sup>[116]</sup>. It is also noteworthy that after the BBC broadcasted Jerry Springer: The Opera in 2005, the fundamentalist group Christian Voice started a criminal proceeding against the BBC on the basis of depicting Christ as a homosexual<sup>[117]</sup>. Yet, City of Westminster magistrates' tribunal held that blasphemy offenses did not subsume broadcasts<sup>[118]</sup> and stage productions<sup>[119]</sup>.

More recently, in 1997, although the European Court of Human Rights critiqued the ambiguity of the UK's blasphemy law, the court ruled that it was not in contravention of the Convention<sup>[120]</sup>. After the Human Rights Act 1998 was legislated, it has become an obligation for the courts to interpret blasphemy law consistent with the Convention. Therefore, since the statute was enacted, no blasphemy trial has been prosecuted in the United Kingdom<sup>[121]</sup>. Subsequently, Article 79 of the Criminal Justice and Immigration Act 2008 repealed offence of blasphemy and blasphemous libel. However, Article 74 of this act generated offense of incitement to hatred on the grounds of sexual orientation<sup>[122]</sup>.

Inciting hatred has been another controversial issue of the right to freedom of expression in the UK. In Hammond Case, equalizing homosexuality with turpitude was held to be an insulting behaviour, which is not in the scope of the freedom of expression<sup>[123]</sup>. Analogously, in Norwood Case, holding all Muslims responsible for the September 11 terrorist attacks was construed as incompatible with the purpose of freedom of expression<sup>[124]</sup>. In 2006, inciting racial hatred

---

[116] David Feldman (n4) p. 912

[117] R Green v. City of Westminster Magistrates' Court & (1) Jonathan Murray Thoday (2) Mark Thompson [2007] EWHC 2785 (Admin) <<http://www.bailii.org/ew/cases/EWHC/Admin/2007/2785.html>> accessed 16 September 2011.

[118] Section 6 of the Broadcasting Act 1990 (1990 c.42) <<http://www.legislation.gov.uk/ukpga/1990/42/contents>> accessed 13 September 2011.

[119] Section 2(4) of the Theatres Act 1968 (1968 c. 54) <<http://www.legislation.gov.uk/ukpga/1990/42/contents>> accessed 13 September 2011.

[120] Wingrove v. The United Kingdom [1996] ECHR 17419/90 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Wingrove%20%7C%20v%20%7C%20the%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 21 August 2011.

[121] UK Parliament, 'Blasphemy' <<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldrelol/95/9515.htm#n137>> accessed 18 August 2011.

[122] The Criminal Justice and Immigration Act 2008 (2008, c.4) <[http://www.justice.gov.uk/downloads/guidance/youth-justice/assessment/ukpga\\_20080004\\_en.pdf](http://www.justice.gov.uk/downloads/guidance/youth-justice/assessment/ukpga_20080004_en.pdf)> accessed 12 September 2011.

[123] Harry John Hammond v Department of Public Prosecutions [2004] EWHC 69 (Admin) <<http://www.bailii.org/ew/cases/EWHC/Admin/2004/69.html>> accessed 17 September 2011.

[124] Mark Anthony Norwood v Department of Public Prosecutions [2003] EWHC 1564 (Admin) <<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2003/1564.html>> accessed 17 September 2011.

is elaborated in the Racial and Religious Hatred Act 2006<sup>[125]</sup>. Furthermore, incitement of the racial hatred has been a crime under the section 17 of the Public Order Act 1996<sup>[126]</sup>. In addition, section 1 of the Terrorism Act 2006<sup>[127]</sup> constituted new offenses such as inciting terrorism which has raised potential debates about these norms' compatibility with the Human Rights Act<sup>[128]</sup>.

Freedom of press has been accepted as companion of the freedom of expression. Indeed, the introduction of the printing press to the UK by William Caxton in 1477 was a milestone for illumination of the people<sup>[129]</sup>. In *British Steel Corporation v. Granada Television Ltd. Case*<sup>[130]</sup>, Lord Wilberforce maintained that "*freedom of the press imports, generally, freedom to publish without pre-censorship, subject always to the laws relating to libel, official secrets, sedition and other recognised inhibitions*". This was an unduly narrow view, which reflected the failure of the UK to provide protection for freedom of expression.<sup>[131]</sup> In parallel, in *Derbyshire County Council v. Times Newspaper Case*<sup>[132]</sup>, the tribunal held that organs of the government must tolerate democratic criticism without claims of defamation<sup>[133]</sup>.

---

### 3. COMPARISON OF THE STATISTICS AND CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

---

The Convention was signed by Belgium, Denmark, France, Germany, Iceland, Ireland, Italy, Luxemburg, Netherlands, Norway, Turkey and the United Kingdom on 4 November 1950. The Convention entered into force on 3 September 1953<sup>[134]</sup>. In the preamble, it is highlighted that the Convention purposes to secure universal human rights regulated by the Universal Declaration of Human Rights<sup>[135]</sup>. Apparently, the Convention has three sections; section I guarantees the rights and freedoms, section II concludes the European Court of Human

---

[125] D. Hoffman and J. Rowe (n41) p.307

[126] Ibid.

[127] Terrorism Act 2006 (2006 c.11) <<http://www.legislation.gov.uk/ukpga/2006/11/contents>> accessed 14 September 2011.

[128] D. Hoffman and J. Rowe (n41) p.372

[129] David Feldman (n4)p. 807

[130] *British Steel Corporation v. Granada Television Ltd. Case* [1981] 1 All ER 417 at 455

[131] David Feldman (n4)p. 835

[132] *Derbyshire County Council v Times Newspapers Ltd and Others* [1993] AC 534, [1993] 1 All ER 1011, [1993] 2 WLR 449, 91 LGR 179 House of Lords

[133] David Feldman (n4) p. 837

[134] House of Lords, 'Debate on 19 May: the European Convention on Human Rights' <<http://www.parliament.uk/documents/lords-library/Library%20Notes/2011/LLN%202011-017%20ECHR.pdf>> accessed 17 September 2011.

[135] George Letsas, 'Two Concepts of the Margin of Appreciation' (2006) 26(4) Oxford J. of Leg. Studies 705 <<http://ojls.oxfordjournals.org/content/26/4/705.full.pdf+html>> accessed 28 September 2011.

Rights and its operation, section III regulates various norms such as reservations, signature and ratification<sup>[136]</sup>. In the first section, the Convention and additional protocols includes 26 rights and freedoms<sup>[137]</sup>. It maintains the right to life, liberty and physical integrity, protection of correspondence and housing, freedom of conscience and religion, freedom of thought and publication, freedom of assembly and association. It also guarantees the right to marriage and founding a family, the right to respect private life, family and the right to respect the property and science<sup>[138]</sup>. In the second section, it is highlighted that the basic mission of the Court is to monitor whether signatory states obey the Convention obligations<sup>[139]</sup>. One of the core norms of the Convention is Article 1, which imposes duty that every member state should ensure the application of the Convention in domestic law<sup>[140]</sup>. On the other hand, Article 15 of the Convention grants the derogation from obligations clause on the condition of war or other emergency situations threatening the existence of the nation<sup>[141]</sup>. It is also noteworthy that Turkish citizens have been able to apply to Court with the allegation of their rights are invaded since 1987<sup>[142]</sup>. However, United Kingdom citizens have been enabled to take their cases to the Court since 1966<sup>[143]</sup>.

### 3.1. Prohibition of Torture, Inhuman and Degrading Treatment or Punishment

Article 3 of the Convention, which is entitled 'Prohibition of Torture, covers that "*no one shall be subjected to torture or to inhuman or degrading treatment or punishment.*"<sup>[144]</sup> As it can be seen above, Article 3 regulates three different types of prohibited treatment and punishment: torture, inhuman treatment or punishment and degrading treatment or punishment.<sup>[145] [146]</sup> The Court

[136] Keir Starmer, 'The European Convention on Human Rights and the Human Rights Act 1998' <<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=1980064>> accessed 17 September 2011.

[137] Arkadiusz Stokłosa (n63)

[138] Ibid.

[139] Ibid.

[140] Steve Foster (n1)p.20-21

[141] Peter Rowe, 'Control over Armed Forces Exercised by the European Court of Human Rights in Vankovska' (eds), *Legal Framing of the Democratic Control of Armed Forces and the Security Sector: Norms and Realities* (Geneva Centre for the Democratic Control of Armed Forces 2001) 57-67

[142] Arkadiusz Stokłosa (n63)

[143] British Council, 'Overview of Human Rights in the United Kingdom' <[www.britishcouncil.org/governance-hrukoverview.doc](http://www.britishcouncil.org/governance-hrukoverview.doc)> accessed 17 September 2011.

[144] European Court of Human Rights, 'Convention for the Protection of Human Rights and Fundamental Freedoms' <[http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG\\_CONV.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf)> accessed 17 September 2011.

[145] Keir Starmer (n9) p.91

[146] For the disparity of the concepts: see Section 2.1.

overemphasized that such treatments could not be justified even while fighting terrorism<sup>[147]</sup>. In *Dougoz v. Greece Case*<sup>[148]</sup>, the Court established that detaining individuals in overcrowded and unsanitary lock-ups breached Article 3<sup>[149]</sup>. Signatory states also have the liability to maintain adequate measures and remedies against private persons' inhuman or degrading treatments<sup>[150]</sup>. Additionally, it must be noted that Article 15(2) eliminates derogation rights of the states from Article 3<sup>[151]</sup>.

### **3.1.1. Turkey**

#### **3.1.1.1. The Statistics**

In this part of the dissertation, the statistical data of the Turkey will be analysed to designate the seriousness of the human rights conditions in Turkey. Also, the data of the United Kingdom will be explicated to proof that the United Kingdom law can be an appropriate guide for Turkish Law. Indeed, although the United Kingdom has experienced emergency situations because of the IRA and Al-Qaeda terrorist attacks<sup>[152]</sup>, it has not failed to protect citizens' rights regulated in Article 3 and Article 10 of the Convention. The statistical data will be discussed under '1959-2010', '1999-2007', '2008', '2009' and '2010' titles in an effort to show that there is a stability in the violation records of the Turkey (*instead of development*) and the UK. It should also take into consideration that even though the United Kingdom has 3600 pending applications, Turkey has 18450 pending application<sup>[153]</sup>.

##### **3.1.1.1.1. 1959-2010**

According to recent statistics, which were conducted in 2011 by the European Court of Human Rights, between 1959 and 2010, Turkey exhibited the highest number of violations of the Convention among the signatory states (*2245 violations*)<sup>[154]</sup>. Additionally, the Court found 27 breaches of the prohibition

[147] Steve Foster (n1) p.27-28

[148] Steve Foster, 'Prison Conditions and Human Rights: the Development of Judicial Protection of Prisoners' Rights' (2009) <<http://webjcli.ncl.ac.uk/2009/issue1/foster1.html>> accessed 27 September 2011 citing *Dougoz v Greece* [2002] 34 EHRR 61

[149] Steve Foster (n1) p.213

[150] David Feldman (n4) p.262

[151] Michael O'Boyle, 'Torture and Emergency Powers under the European Convention on Human Rights: Ireland v. The United Kingdom' (1977) 71(4) AJIL 674 <<http://www.jstor.org/pss/2199581>> accessed 17 September 2011.

[152] Steven Foster, *The Judiciary Civil Liberties and Human Rights* (Edinburgh University Press, Edinburgh 2006) p. 21-22

[153] European Court of Human Rights, 'Pending Applications allocated to a Judicial Formation' <[http://www.echr.coe.int/NR/rdonlyres/92D2D024-6F05-495E-A714-4729DEE6462C/0/Pending\\_applications\\_chart.pdf](http://www.echr.coe.int/NR/rdonlyres/92D2D024-6F05-495E-A714-4729DEE6462C/0/Pending_applications_chart.pdf)> accessed 18 September 2011.

[154] European Court of Human Rights 'Violations by Article and by Country' (31.12.2010) <[http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/Tableau\\_de\\_violations\\_19592010\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/Tableau_de_violations_19592010_ENG.pdf)> accessed 18 September

of torture during the same period, which was also the highest number (*total number of violations of all member states were 69 and Turkey had 27 violations*)<sup>[155]</sup>. The statistics also indicates that between 1959 and 2010, Turkey broke the prohibition of inhuman and degrading treatment provision 207 times, which means after Russia, Turkey provided the worst conditions of inhuman and degrading treatment<sup>[156]</sup>.

### **3.1.1.1.2. 1999-2007**

Between the 1999 and 2007, Turkey exhibited the highest number of violations of the Convention among the signatory states (*1395 violations*)<sup>[157]</sup>. Furthermore, 17 breaches of the prohibition of torture were found, which was also the highest number (*total number of violations of all member states were 34 and Turkey had 17 violations*)<sup>[158]</sup>. The statistics also indicates that between 1999 and 2007, Turkey invaded the prohibition of inhuman and degrading treatment provision 114 times, which indicates that Turkey provided the worst conditions of inhuman and degrading treatment among the signatory states<sup>[159]</sup>.

### **3.1.1.1.3. 2008**

In 2008, Turkey presented the highest number of violations of the Convention among the signatory states (*257 violations*)<sup>[160]</sup>. Moreover, the Court found 3 breaches of the prohibition of torture and 30 breaches of the prohibition of inhuman and degrading treatment. This means that in terms of Article 3, after the Russia, Turkey demonstrated the worst performance<sup>[161]</sup>.

### **3.1.1.1.4. 2009**

In 2009, Turkey exhibited the highest number of violations of the Convention among the signatory states (*341 violations*)<sup>[162]</sup>. Furthermore, 2 breaches of the prohibition of torture were found<sup>[163]</sup>. The statistics also indicates that Turkey invaded the prohibition of inhuman and degrading treatment provision 28

---

2011.

[155] Ibid.

[156] Ibid.

[157] European Court of Human Rights 'Annual Report 2010' (2011) <[http://www.echr.coe.int/NR/rdonlyres/F2735259-F638-4E83-82DF-AAC7E934A1D6/0/2010\\_Rapport\\_Annuel\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/F2735259-F638-4E83-82DF-AAC7E934A1D6/0/2010_Rapport_Annuel_EN.pdf)> accessed 18 September 2011.

[158] Ibid.

[159] Ibid.

[160] European Court of Human Rights 'Violations by Article and by Country' (2009) <[http://www.echr.coe.int/NR/rdonlyres/5D511C09-CF91-47D2-BA2F-8EEBBB38CCD1/0/Tableau\\_de\\_violations\\_2008\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/5D511C09-CF91-47D2-BA2F-8EEBBB38CCD1/0/Tableau_de_violations_2008_ENG.pdf)> accessed 17 September 2011.

[161] Ibid.

[162] European Court of Human Rights 'Violations by Article and by Country' (2010) <[http://www.echr.coe.int/NR/rdonlyres/E8F73EC8-AF6A-4205-BAF2-F6043F67F651/0/Tableau\\_de\\_violations\\_2009\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/E8F73EC8-AF6A-4205-BAF2-F6043F67F651/0/Tableau_de_violations_2009_ENG.pdf)> accessed 16 September 2011.

[163] Ibid.

times, which indicates that after Russia, Turkey provided the worst conditions of inhuman and degrading treatment<sup>[164]</sup>.

### 3.1.1.1.5. 2010

In 2010, Turkey presented the highest number of violations of the Convention among the signatory states (228 violations)<sup>[165]</sup>. Moreover, the Court found 3 breaches of the prohibition of torture and 32 breaches of the prohibition of inhuman and degrading treatment. This means that in terms of Article 3, after the Russia, Turkey demonstrated the worst performance<sup>[166]</sup>.

### 3.1.1.2. The Cases

It is hypothesised by doctrine that violation of human rights in Turkey has been generally related with combatting terrorism<sup>[167]</sup>. Indeed, it must be considered that Kurdish Workers Party (*PKK*) has been classified as a terrorist organization<sup>[168]</sup> [169]. For instance, in *Dulas and Asker v. Turkey Case*<sup>[170]</sup>, the Court commented that the destruction of a citizen's house by soldiers, while the householders were watching, constituted inhuman treatment<sup>[171]</sup>. In *Aksoy Case (1995)*, in spite of Turkey's derogation and pleading organized terrorism, which threatens life of the nation, the Court clarified that torture and inhuman or degrading treatments were unacceptable under any circumstances<sup>[172]</sup>.

On a general perspective, although Article 3 of the Convention and Turkish

[164] Ibid.

[165] European Court of Human Rights 'Violations by Article and by Country' (2011) <[http://www.echr.coe.int/NR/rdonlyres/596C7B5C-3FFB-4874-85D8-F12E8F67C136/0/TABLEAU\\_VIOLATIONS\\_2010\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/596C7B5C-3FFB-4874-85D8-F12E8F67C136/0/TABLEAU_VIOLATIONS_2010_EN.pdf)> accessed 17 September 2011.

[166] Ibid.

[167] Joan Fitzpatrick, 'Speaking Law to Power: The War against Terrorism and Human Rights' (2003) *EJIL* 14(2) 241 <<http://ejil.oxfordjournals.org/content/14/2/241.full.pdf+html>> accessed 28 August 2011.

[168] Stephen R. Barnhart, *International Terrorism and Political Violence: The Entity of Trans-National Criminal Organizations and New Terrorisms in the Balkans-Middle East and Eastern Europe, and Its Effect on the Entire World!* (Trafford Publishing, 2002) <<http://books.google.com/books?id=kWK385cUCVoC&pg=PA105&dq=#v=onepage&q&f=false>> accessed 18 August 2011.

[169] United States Department of State, *Country Reports on Terrorism (2007)* <<http://www.state.gov/s/ct/rls/crt/2006/82738.htm>> accessed 18 August 2011

[170] *Dulas v Turkey Case* [2001] ECHR 25801/94 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Dulas%20%7C%20v%20%7C%20Turkey%20%7C%20Case&sessionid=62680957&skin=hudoc-en>> accessed 19 September 2011.

[171] Aisling Reidy, *A Guide to the Implementation of Article 3 of the European Convention on Human Rights* <<http://echr.coe.int/NR/rdonlyres/0B190136-F756-4679-93EC-42EEBEAD50C3/0/DG2ENHRHAND062003.pdf>> accessed 09 September 2011.

[172] Peter Rowe, 'Control over Armed Forces Exercised by the European Court of Human Rights in *Vankovska*' (eds), *Legal Framing of the Democratic Control of Armed Forces and the Security Sector: Norms and Realities* (Geneva Centre for the Democratic Control of Armed Forces 2001) 57-67

law on torture seems to be analogous, the Court decisions indicate that Turkish law do not overlap with the Convention. For instance, in *Tekin v Turkey Case*, the court maintained that the deficient conditions of jail formed inhuman and degrading treatment<sup>[173]</sup>. Correlatively, in *Aydin v Turkey Case*<sup>[174]</sup>, the applicant complained that although she reported to the public prosecutor that she was exposed to torture (*Palestinian hanging*) and, inter alia, rape, her accusations were not investigated properly<sup>[175]</sup>. Thereupon, the Court stated that rape was a grave and abhorrent form of inhuman treatment. Correspondingly, the Court added that the existence of violation of Article 3 was obvious even in the absence of torture<sup>[176]</sup>. Moreover, in *Dikme and Akkoc Cases*, incommunicado detention and threats of reprisal against the detainee's relatives were interpreted as mental torture<sup>[177]</sup>. In *Cyprus v Turkey Case*<sup>[178]</sup>, the Court ruled that Turkey failed to take satisfactory disciplinary measures to prevent inhuman treatment of its soldiers. Therefore, Turkey was found responsible for the rapes (*inhuman treatment*) and deprivation of medical treatment, food and water (*inhuman treatment*) committed by its security forces<sup>[179]</sup>. More recently, in *Umit Gul v. Turkey Case*, the medical reports drawn up that while the applicant was in custody, he subjected to physical and psychological inhuman treatment. Additionally, he was not allowed to sleep. So the court declared that there was a violation of Article 3 and accepted eleven thousand euros non-pecuniary compensation claim of the applicant<sup>[180]</sup>. Lastly, in *Jabari v. Turkey Case*<sup>[181]</sup>, the Court judged that the deportation of a person to Iran invades Article 3 because there was a predictable possibility that the complainant would be subjected to inhuman or degrading punishment in the deported State<sup>[182]</sup>.

[173] *Tekin v. Turkey* [1998] 52/1997/836/1042 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=tekin&sessionid=62680957&skin=hudoc-en>> accessed 30 July 2011.

[174] *Aydin v. Turkey* [judgment of 25 September 1997] 25 EHRR 251, at p. 1103-9 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=aydin%20%7C%20v.%20%7C%20turkey&sessionid=62680957&skin=hudoc-en>> accessed 12 August 2011.

[175] Mark W. Janis, Richards Kay and Anthony W. Bradley (n8) p. 844

[176] John Wadham, Helen Mountfield and Anna Edmundson (n61) p. 124

[177] David J Harris, MO Boyle, EP Bates and CM Buckley (n10) p.74-74

[178] Susan Marks, 'Civil Liberties at the Margin: The UK Derogation and the European Court of Human Rights' (1995) 15(1) *Oxford J. of Legal Studies* 69 <<http://www.jstor.org/stable/764581>> accessed 19 September 2011 citing *Cyprus v Turkey Case* (1982) 4 EHRR 482

[179] John Wadham, Helen Mountfield and Anna Edmundson (n61) p.126

[180] *Ümit Gül v. Turkey* [2009] Application no. 7880/02 <<http://www.bailii.org/cgi-bin/markup.cgi?doc=/eu/cases/ECHR/2009/1408.html&query=torture+and+inhuman+and+treatment&method=boolean>> accessed 19 September 2011.

[181] *Jabari v. Turkey* (App.40035/98), Judgment of 11 July 2000 <<http://www.unhcr.org/refworld/docid/3ae6b6dac.html>> accessed 12 October 2011.

[182] Clare Ovey and Robin White, Jacobs and White, *The European Convention on Human*



### **3.1.2. The UK**

#### **3.1.2.1. The Statistics**

##### **3.1.2.1.1. 1959-2010**

According to recent statistics, which were conducted by the European Court of Human Rights in 2011, between 1959 and 2010, The United Kingdom violated the Convention 443 times<sup>[183]</sup>. Additionally, the Court found no breach of the prohibition of torture during the same period<sup>[184]</sup>. Lastly, the statistics also indicates that between 1959 and 2010, United Kingdom broke the prohibition of inhuman and degrading treatment provision 15 times<sup>[185]</sup>.

##### **3.1.2.1.2. 1999-2007**

Between the 1999 and 2007, United Kingdom infringed the rights under the Convention 160 times<sup>[186]</sup>. Furthermore, no breach of the prohibition of torture was found<sup>[187]</sup>. The statistics also indicates that between 1999 and 2007, United Kingdom invaded the prohibition of inhuman and degrading treatment provision 6 times<sup>[188]</sup>.

##### **3.1.2.1.3. 2008**

In 2008, United Kingdom presented 27 violations of the Convention<sup>[189]</sup>. Moreover, the Court found no breach of the prohibition of torture and 1 breach of the prohibition of inhuman and degrading treatment<sup>[190]</sup>.

##### **3.1.2.1.4. 2009**

In 2009, United Kingdom demonstrated 14 violations of the Convention<sup>[191]</sup>. Furthermore, no breach of the prohibition of torture was found<sup>[192]</sup>. The statistics also indicates that United Kingdom did not invade the prohibition of inhuman and degrading treatment<sup>[193]</sup>.

---

Rights (4th edn Oxford University Press, Oxford 2006) p.105

[183] European Court of Human Rights 'Violations by Article and by Country' (31.12.2010) <[http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/Tableau\\_de\\_violations\\_19592010\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/Tableau_de_violations_19592010_ENG.pdf)> accessed 18 September 2011.

[184] Ibid.

[185] Ibid.

[186] European Court of Human Rights 'Annual Report 2010' (2011) <[http://www.echr.coe.int/NR/rdonlyres/F2735259-F638-4E83-82DF-AAC7E934A1D6/0/2010\\_Rapport\\_Annuel\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/F2735259-F638-4E83-82DF-AAC7E934A1D6/0/2010_Rapport_Annuel_EN.pdf)> accessed 18 September 2011.

[187] Ibid.

[188] Ibid.

[189] European Court of Human Rights 'Violations by Article and by Country' (2009) <[http://www.echr.coe.int/NR/rdonlyres/5D511C09-CF91-47D2-BA2F-8EEBBB38CCD1/0/Tableau\\_de\\_violations\\_2008\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/5D511C09-CF91-47D2-BA2F-8EEBBB38CCD1/0/Tableau_de_violations_2008_ENG.pdf)> accessed 17 September 2011.

[190] Ibid.

[191] European Court of Human Rights 'Violations by Article and by Country' (2010) <[http://www.echr.coe.int/NR/rdonlyres/E8F73EC8-AF6A-4205-BAF2-F6043F67F651/0/Tableau\\_de\\_violations\\_2009\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/E8F73EC8-AF6A-4205-BAF2-F6043F67F651/0/Tableau_de_violations_2009_ENG.pdf)> accessed 16 September 2011.

[192] Ibid.

[193] Ibid.

### 3.1.2.1.5. 2010

In 2010, United Kingdom presented 7 violations. Moreover, the Court found no breach of the prohibition of torture and 2 breaches of the prohibition of inhuman and degrading treatment<sup>[194]</sup>. Consequently by these records, it can be understood that United Kingdom's human rights law can be a guide for Turkish law system.

### 3.1.2.2. The Cases

As discussed above, despite the fact that the Court has never found the UK in breach of prohibition of torture, the government has infringed several times the prohibition of inhuman or degrading treatment or punishment under Article 3<sup>[195]</sup>. It has been hypothesised by the doctrine that the United Kingdom may be in contradictory attitudes which has a nexus with the concern of terrorism<sup>[196]</sup>.

#### 3.1.2.2.1. Ireland v. United Kingdom<sup>[197]</sup>

On 9 August 1971, 342 Irish, who were suspected of terrorist offences, were detained by UK's police department<sup>[198]</sup>. The Irish newspapers published that whilst in custody, the detainees had been subjected to inhuman methods of interrogation to obtain confession about their affiliation with the IRA, which exacerbated the retaliation actions of the IRA, such as Birmingham pub bombings in 1974<sup>[199]</sup>. To investigate these allegations, a Commission of Enquiry, which was chaired by British Ombudsman Sir Edmund Compton, was set up<sup>[200]</sup>. In the report of the Commission, it was declared that this illicit questioning, which was also known as the five techniques; consisted of:

(a) Wall-standing: the arrestees were forced to standing on their toes with the weight of their bodies for hours against the cell wall.

(b) Hooding: putting a hood over the detainee's head throughout the imprisonment except during interrogation.

---

[194] Ibid.

[195] Steve Foster (n1) p.27

[196] Claire de Than and Edwin Shorts, *International Criminal Law and Human Rights* (Sweet & Maxwell Limited, London 2003) p. 225

[197] *Ireland v United Kingdom* (1978) 2 EHRR 25 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22%20%7C%203%20%7C%20ireland&sessionid=62680957&skin=hudoc-en>> accessed 20 September 2011.

[198] Claire de Than and Edwin Shorts, *International Criminal Law and Human Rights* (Sweet & Maxwell Limited, London 2003) p. 226-227

[199] Peter Rowe, 'Control over Armed Forces Exercised by the European Court of Human Rights in Vankovska' (eds), *Legal Framing of the Democratic Control of Armed Forces and the Security Sector: Norms and Realities* (Geneva Centre for the Democratic Control of Armed Forces 2001) 57-67

[200] Michael O'Boyle, 'Torture and Emergency Powers under the European Convention on Human Rights: Ireland v. The United Kingdom' (1977) 71(4) AJIL 674 <<http://www.jstor.org/pss/2199581>> accessed 17 September 2011.

(c) Subjection to noise: holding the arrestees in a room where they subjected to continuous loud and hissing noise to isolate them from communication.

(d) Deprivation of sleep: The arrestees were deprived of sleep.

(e) Deprivation of food and drink: depriving the detainees of sufficient nourishment<sup>[201]</sup>. The Commission especially emphasised that these techniques constituted inhuman treatment, but not brutality<sup>[202]</sup>. Additionally the report underlined that there was also implementation of torture<sup>[203]</sup>.

The Convention maintains two kinds of application method: first, an interstate application (*Article 24*) brought by a signatory country against another on the grounds of a violations of commitments under the Convention and second, an application brought by an individual (*Article 25*) who alleges to be a victim of a violation<sup>[204]</sup>. So far, five interstate cases have been decided by the Court; Austria v. Italy<sup>[205]</sup>, Denmark v. Greece<sup>[206]</sup>, Greece v. United Kingdom<sup>[207]</sup>, Ireland v. United Kingdom and Cyprus v. Turkey<sup>[208]</sup>. The Irish Government applied to the Court under Article 24 and Article 3 against the methods operated by the UK's police officers<sup>[209]</sup>. The Court ruled that the practice of these techniques caused intense physical and psychological suffering, so they constituted inhuman and degrading treatment, but not torture<sup>[210]</sup>.

### 3.1.2.2.2. Other Cases

Soering v. United Kingdom Case<sup>[211]</sup> has been a landmark verdict of the Court in terms of the responsibility of a signatory state for the violation of another state. At the outset, Jens Soering was decided to extradite by English Courts

[201] Claire de Than and Edwin Shorts, *International Criminal Law and Human Rights* (Sweet & Maxwell Limited, London 2003) p. 226-227

[202] Michael O'Boyle, 'Torture and Emergency Powers under the European Convention on Human Rights: Ireland v. The United Kingdom' (1977) 71(4) *AJIL* 674 <<http://www.jstor.org/pss/2199581>> accessed 17 September 2011.

[203] Claire de Than and Edwin Shorts, *International Criminal Law and Human Rights* (Sweet & Maxwell Limited, London 2003) p.227

[204] Michael O'Boyle, 'Torture and Emergency Powers under the European Convention on Human Rights: Ireland v. The United Kingdom' (1977) 71(4) *AJIL* 674 <<http://www.jstor.org/pss/2199581>> accessed 17 September 2011.

[205] Austria v. Italy (1961) Application No. 788/60, 4 *YEARBOOK* 116

[206] Denmark v. Greece (1968) Application Nos. 3321, 3322, 3323, 3344/ 67, 11(2) *YEARBOOK* 690, 731

[207] Greece v. United Kingdom (1959) Application Nos. 176/56 and 299/57, 2 *YEARBOOK* 182, 186

[208] Cyprus v. Turkey (1975) Applications Nos. 5310/71, and 5451/72, 18 *YEARBOOK* 82

[209] Steve Foster (n1) p.27

[210] John Wadham, Helen Mountfield and Anna Edmundson (n61) p. 125 -126

[211] Soering v United Kingdom (1989) 11 *EHRR* 439 Appl. no. 14038/88 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Soering%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 21 September 2011.

to USA under the Extradition Treaty (1972)<sup>[212]</sup>. At the next phase, applicant complained to the Court on the grounds that extradition request for an offence carrying the capital punishment was in contrast with Article 3<sup>[213]</sup>. The Court stated that notwithstanding high risk, the state that deported or extradited the victim was responsible for the persecution of the receiver state (*violation of Article 3*) because of not considering the results of the extradition<sup>[214]</sup>.

In also *Chahal v. United Kingdom Case*<sup>[215]</sup>, the domestic court connoted to deport Mr. Chahal on the grounds of being supporter of a radical Sikh separatist organization<sup>[216]</sup>. At the next session of the proceedings, the Indian Government guaranteed that he would not be subjected to torture or ill-treatment. Hence, although the risk of ill-treatment was imminent, the domestic court decided to refuse the asylum request and deport him<sup>[217]</sup>. Then Mr. Chahal applied to the European Court against the United Kingdom for subjecting to torture by the Indian Police officers<sup>[218]</sup>. The European Court stressed that there were obvious 'rogue' elements in the police department of Punjab Province<sup>[219]</sup>. Consequently, the Court, by twelve votes to seven, found the breach of the Article 3 on the basis that the United Kingdom could estimate that the complainant would face a real risk of torture or inhuman treatment where he extradited or deported<sup>[220]</sup>.

In *Keenan v. United Kingdom Case*<sup>[221]</sup>, although it was known that the prisoner had a mental illness (*schizophrenia*), it was diagnosed that effective medical care was not provided<sup>[222]</sup>. Additionally, he interned in segregation

---

[212] Ibid.

[213] D. Hoffman and J. Rowe (n41) p.152

[214] Joachim Herrmann, 'Implementing the Prohibition of Torture on Three Levels: United Nations –Council of Europe – Germany' <[http://www.zis-online.com/dat/artikel/2007\\_8\\_152.pdf](http://www.zis-online.com/dat/artikel/2007_8_152.pdf)> accessed 21 September 2011.

[215] *Chahal v United Kingdom* [1997] 23 EHRR 413, Appl. No: 22414/93 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22%20%7C%203%20%7C%20chahal&sessionid=62680957&skin=hudoc-en>> accessed 20 September 2011.

[216] D. Hoffman and J. Rowe (n41) p.151-152

[217] Joachim Herrmann, 'Implementing the Prohibition of Torture on Three Levels: United Nations –Council of Europe – Germany' <[http://www.zis-online.com/dat/artikel/2007\\_8\\_152.pdf](http://www.zis-online.com/dat/artikel/2007_8_152.pdf)> accessed 21 September 2011.

[218] European Court of Human Rights, '*Chahal v. The United Kingdom*' (1997) 9 (1) Int J Refugee Law 86-121. <<http://ijrl.oxfordjournals.org/content/9/1/86.full.pdf+html>> accessed 21 September 2011.

[219] Clare Ovey and Robin White, Jacobs and White, *The European Convention on Human Rights* (4th edn Oxford University Press, Oxford 2006) P.104-105

[220] Steve Foster (n1) p.27

[221] *Keenan v United Kingdom* [2001] 33 EHRR 38 Appl. no. 27229/95 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=3%20%7C%20Keenan%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 21 September 2011.

[222] David Feldman (n4) p.125

without adequate monitoring<sup>[223]</sup>. By the agency of this negligence, the prisoner committed suicide in custody by hanging himself. The court held that because of the lack of medical care and monitoring, the government could not thwart the suicide, which constituted the violation of the Article 3 by reason of neglect<sup>[224]</sup>. Corporal punishment has formed another argument of human rights in the UK. In Costello-Roberts Case<sup>[225]</sup>, corporal punishment was used as a disciplinary measure in a private school against a seven year-old student. The headmaster of the school admitted that the student received three whacks of the slipper on his clothed buttocks for infringing school rules<sup>[226]</sup>. The Court held that corporal punishment could be accepted permissible in schools on condition that it did not reach the level of inhuman or degrading punishment<sup>[227]</sup>.

In another ground-breaking case in the United Kingdom, a child was beaten severely by his stepfather<sup>[228]</sup>. Although a prosecution was started against him, the domestic court regarded this action in the limits of parental chastisement. The boy and his biological father started a case before the European Court, pronouncing that the UK's law failed to provide appropriate norms against prohibition of inhuman treatment. The Court ruled in favour of the applicant and pointed out that States must provide vigorous measures within their jurisdiction to prevent inhuman treatments<sup>[229]</sup>. Analogously, in *Z. v. United Kingdom Case*, the Court found violation of Article 3 in consideration that the social services failed to provide protection of the complainant against abuses of her family<sup>[230]</sup>.

[223] UK Parliament, 'Human Rights Standards and Deaths in Custody' <<http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/15/1505.htm>> accessed 21 September 2011.

[224] Steve Foster (n1) p.213

[225] Costello-Roberts v. The United Kingdom [1993] Appl. No: 13134/87 <<http://sim.law.uu.nl/sim/caselaw/Hof.nsf/1d4d0dd240bfee7ec12568490035df05/18382141e6cbe733c1256640004c19ff?OpenDocument>> accessed 21 September 2011.

[226] D Hoffman and J Rowe (n41) p.156

[227] House of Lords, 'Judgments - Regina v. Secretary of State for Education and Employment and others (Respondents) ex parte Williamson (Appellant) and others' (Session 2001-2002) <<http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050224/will-1.htm>> accessed 21 September 2011.

[228] A. v. United Kingdom [1998] Appl. No: 25599/94 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=3&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22%20%7C%203%20%7C%20A.&sessionId=62680957&skin=hudoc-en>> accessed 21 September 2011.

[229] Aisling Reidy, 'The Prohibition of Torture' (2003) <<http://echr.coe.int/NR/rdonlyres/0B190136-F756-4679-93EC-42EEBEAD50C3/0/DG2ENHRHAND062003.pdf>> accessed 21 September 2011.

[230] Steve Foster (n1) p.199.

### 3.2. Freedom of Expression

The first paragraph of Article 10 of the Convention provides that “*everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*” In the second paragraph, it is stated that “*the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*”<sup>[231]</sup>

There is wide consensus that Article 10 has served in the maintenance of tolerance and pluralism. Actually, permitting the ideas to circulate enables individuals to contribute to social or moral disputes<sup>[232]</sup>. Furthermore, freedom of expression has been one of the most influential tools of seeking the truth for promoting democracy<sup>[233]</sup>. It also serves individuals to improve them intellectually, morally and spiritually<sup>[234]</sup>. Therefore the Convention tends to extend the scope of freedom of expression<sup>[235]</sup>. For instance, the Convention has adopted access to information as a part of freedom of expression on the basis of providing accountability of the governments<sup>[236]</sup>. As a matter of fact, Article 10 aims to preserve all forms of expression<sup>[237]</sup>. However, academic expression has a privileged position in the case law of the Court<sup>[238]</sup>. Although in practice, the Court grants more vigorous protection to academic, political (*such as Bowman v. United Kingdom Case: distribution of leaflets by abortion campaigner prior to general election*<sup>[239]</sup>) and journalistic expression (*such as Goodwin v.*

[231] Council of Europe, ‘Convention for the Protection of Human Rights and Fundamental Freedoms’ (2010) <[http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG\\_CONV.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf)> accessed 29 July 2011.

[232] David Feldman (n4) p. 763-764

[233] Steve Foster (n1) p.354

[234] Ibid p.355

[235] Susan Marks, ‘Civil Liberties at the Margin: The UK Derogation and the European Court of Human Rights’ (1995) 15(1) Oxford J. of Legal Studies 69 < <http://www.jstor.org/stable/764581>> accessed 19 September 2011.

[236] David Feldman (n4) p. 781

[237] Keir Starmer, European Human Rights ( Legal Action Group, London 1999) p.607 citing (1988) 13 EHRR 212

[238] Michael O’Boyle, ‘Torture and Emergency Powers under the European Convention on Human Rights: Ireland v. The United Kingdom’ (1977) 71(4) AJIL 674 <<http://www.jstor.org/pss/2199581>> accessed 17 September 2011.

[239] Bowman v. the United Kingdom [1998] 26 EHRR 1 (141/1996/760/961) <<http://cmiskp.echr>.

*United Kingdom Case: refusing to disclose journalist's sources*<sup>[240]</sup>), Article 10 also attaches importance to artistic (such as *Wingrove v United Kingdom Case*<sup>[241]</sup>) and commercial (such as *Colman v United Kingdom Case: doctors' advertising*<sup>[242]</sup>) forms of expression<sup>[243]</sup>. According to case law of the Court, Article 10 covers freedom of artistic expression in order that it also contributes to the exchange of opinions in the public<sup>[244]</sup>.

Freedom of expression is regulated as a conditional right<sup>[245]</sup>. The Convention permits signatory countries to impose restraints on right of freedom of expression by two methods. Signatory countries are permitted to limit the enjoyment of rights with the purpose of protecting superior interests such as national security. Additionally, Article 15 of the Convention maintains derogation rights of the states in emergency situations which are threatening the life of the nation<sup>[246]</sup>. Actually Article states that “(1) *in time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. (2) No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.*”<sup>[247]</sup>

---

coe.int/tkp197/view.asp?item=1&portal=hbk&action=html&highlight=Bowman%20v%20United%20Kingdom&sessionid=62680957&skin=hudoc-en> accessed 23 September 2011.

- [240] *Goodwin v. United Kingdom* [1996] 22 EHRR 123 (17488/90) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbk&action=html&highlight=Goodwin%20v%20United%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 24 September 2011.
- [241] *Wingrove v United Kingdom* [1996] 24 EHRR 1 (17419/90) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbk&action=html&highlight=Wingrove%20v%20United%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 23 September 2011.
- [242] *Colman v United Kingdom* [1993] 18 EHRR 119 (16632/90) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbk&action=html&highlight=Colman%20v%20United%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 23 September 2011.
- [243] John Wadham, Helen Mountfield and Anna Edmundson (n61) p.170
- [244] Michael O'Boyle, 'Torture and Emergency Powers under the European Convention on Human Rights: Ireland v. The United Kingdom' (1977) 71(4) AJIL 674 <<http://www.jstor.org/pss/2199581>> accessed 17 September 2011.
- [245] Steve Foster (n1) p.356
- [246] Thomas A. O'Donnell, 'Margin of Appreciation Doctrine: Standards in the Jurisprudence of the European Court of Human Rights' (1982) 4 Hum. Rts. Q. 474 <<http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/hurq4&div=35&id=&page=>>> accessed 23 September 2011.
- [247] European Court of Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms <[http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG\\_CONV.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf)> accessed 22 September 2011.

Analogously, in doctrine, it has argued that in democratic regimes, a prudential restraint towards freedom of expression is admissible<sup>[248]</sup>. This means that any statement that contains instigation to hostility, violence or racial discrimination cannot benefit from the protection of Article 10<sup>[249]</sup>. Also, recent awards of the Court have argued that justifying hostility on the grounds of discrimination and intolerance has not been secured by Article 10<sup>[250]</sup>. On the other hand, the case law of the Court has not clarified entirely the boundaries of acceptable restrictions of freedom of blasphemous and indecent expression, which are extremely difficult to designate<sup>[251]</sup>. The court awards also discusses that “*other public emergency threatening the life of a nation*” means “*an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed.*”<sup>[252]</sup> On a different perspective, Hoffman analyses that even in modern criminal laws, fomenting disorder, crime or hatred (*including religious intolerance*) is regulated as an offence for protecting the rights of other individuals<sup>[253]</sup>. It should be note down that although the contracting states have a certain margin of appreciation, it was comprehended that national margin of appreciation is also restricted in some conditions such as when press is fulfilling its social duty to impart ideas on issues of public concern<sup>[254]</sup>.

The Convention intends to ensure that the restraints must be imposed only if they are prescribed by law (*legality*), seek to achieve a legitimate objective (*proportionality*) and necessary in a democratic society (*necessity*)<sup>[255]</sup>. In parallel, the Court awards have pointed out these three principles for the limitations<sup>[256]</sup>. The Court awards have stressed that any restriction to the freedom of expression must be prescribed by law, in pursuit of a legitimate aim and exigency in a democratic regime (*or ‘pressing a social need’*)<sup>[257]</sup>. First of all, the

---

[248] Maureen Spencer and John Spencer (n6) p.17-18

[249] D Hoffman and J Rowe (n41) p. 305

[250] Dirk Voorhoof, ‘Freedom Of Expression Under The European Human Rights System’ (2010) <[http://www.psw.ugent.be/Cms\\_global/uploads/publicaties/publicaties/dv/05recente\\_publicaties/LAEHR.VOORHOOFFINAL.2OCT2010.pdf](http://www.psw.ugent.be/Cms_global/uploads/publicaties/publicaties/dv/05recente_publicaties/LAEHR.VOORHOOFFINAL.2OCT2010.pdf)> accessed 22 April 2011 citing *Soulas v. France* (ECHR (Judgment) 10 July 2008, Case No. 15948/03); *Balsytė-Lideikienė v. Lithuania* (ECHR (Judgment) 4 November 2008, Case No. 72596/01), and, *Féret v. Belgium* (ECHR (Judgment) 16 July 2009 Case No. 15615/07).

[251] David Feldman (n4) p. 905

[252] Claire de Than and Edwin Shorts, *International Criminal Law and Human Rights* (Sweet & Maxwell Limited, London 2003) p.69

[253] D. Hoffman and J. Rowe (n41) p.305

[254] Clare Ovey and Robin White, *Jacobs and White, The European Convention on Human Rights* (4th edn Oxford University Press, Oxford 2006) P.323-324

[255] John Wadham, Helen Mountfield and Anna Edmundson (n61) p.29

[256] Keir Starmer (n9) p.610

[257] D Hoffman and J Rowe (n41) p.305



rule of law principle has been a core element of the Convention<sup>[258]</sup>. By the legality principle, citizens comprehend the statutory basis of the interference<sup>[259]</sup>. Also the Court decisions suggested that the legislation should have the characteristic within the scope of “*prescribed by law*.”<sup>[260]</sup> According to ‘prescribed by law’ principle, the norms should be precise and foreseeable<sup>[261]</sup>. Similarly, Hoffman states that the term of “*prescribed by law*” occupies that the domestic regulation must be clear and predictable<sup>[262]</sup>. As a result, an interference with freedom of expression should have a basis in national law and this law should be adequately accessible and sufficiently certain to enable persons to foresee the results of their attitudes<sup>[263]</sup>. In the absence of legal basis, even any justified interference will be contrary to the Convention<sup>[264]</sup>. According to case law of the Court, legal basis can include secondary legislation<sup>[265]</sup>, applicable norms of European Union Law<sup>[266]</sup>, and even the common law<sup>[267]</sup>. In the other words, accountability is not related with how the norm is formed. Every foreseeable norm can create the legal basis<sup>[268]</sup>.

Secondly, the court also examines whether the interference is proportionate<sup>[269]</sup>. Even just the severity of the punishment imposed against an expression can be enough to violate Article 10<sup>[270]</sup>. In *Soering v United Kingdom* Case, the Court emphasised that the Convention desired to provide a fair balance

[258] John Wadham, Helen Mountfield and Anna Edmundson (n61) p.30

[259] *Ibid.*

[260] Alastair Mowbray, *Cases and Materials on the European Convention on Human Rights* (2nd edn Oxford University Press, New York 2007) p. 666

[261] D Hoffman and J Rowe (n41) p.304

[262] *Ibid.*

[263] Richard Clayton and Hugh Tomlinson, *Privacy and Freedom of Expression* (Reprinted from *The Law of Human Rights* Oxford University Press, Oxford, 2006) p.183

[264] *Halford v United Kingdom* [1997] 24 EHRR 523 (20605/92) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Halford%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 23 September 2011.

[265] *Barthold v. Germany* [1985] 7 ECHR 383 (8734/79) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Barthold%20%7C%20v%20%7C%20Germany&sessionid=62680957&skin=hudoc-en>> accessed 23 September 2011.

[266] *Groppera Radio AG v Switzerland* [1990] 12 EHRR 321 (10890/84) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Groppera%20%7C%20Radio%20%7C%20AG%20%7C%20v%20%7C%20Switzerland&sessionid=62680957&skin=hudoc-en>> accessed 23 September 2011.

[267] *Sunday Times v United Kingdom* [1979] 2 EHRR (2456538/74) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Sunday%20%7C%20Times%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 23 September 2011.

[268] John Wadham, Helen Mountfield and Anna Edmundson (n61) p.32

[269] Richard Clayton and Hugh Tomlinson, *Privacy and Freedom of Expression* (Reprinted from *The Law of Human Rights* Oxford University Press, Oxford, 2006) p.185

[270] Clare Ovey and Robin White, Jacobs and White, *The European Convention on Human Rights* (4th edn Oxford University Press, Oxford 2006) p.328

between the general interests of public and individual's human rights<sup>[271]</sup>. The examination whether the interference is 'necessary' in a democratic society has been the most demanding criterion to decide the permissibility of the restriction<sup>[272]</sup>. Lastly, if the legitimate aim is not proved by the state, the interference will be lack of justification<sup>[273]</sup>. In Article 10, the legitimate purpose is set out in the second paragraph by marshalling protection of health and morals of the country, national security, public safety or protection of the rights and freedoms of other individuals<sup>[274]</sup>.

### **3.2.1. Turkey**

#### **3.2.1.1. The Statistics**

Recent research which was conducted by the European Court of Human Rights in 2011 indicates that between 1959 and 2010, Turkey invaded the right of freedom of expression provision of the Convention 201 times. It is tragic because after Turkey, Austria has the highest number with just 32 violations and total number of all signatory states' breaches was 447<sup>[275]</sup>. Additionally, according to another statistics of the Court, between 1999 and 2007, Turkey infringed the rights of freedom of expression provision of the Convention 149 times. It is also noteworthy because after Turkey, Austria has the highest number with just 23 violations and total number of other signatory states' violations was 122<sup>[276]</sup>. In 2008, Turkey violated the right of freedom of expression provision of the Convention 20 times. After Turkey, France, Russia and Poland have the highest number of violations with just 3 violations and total number of all signatory states' breaches was 47<sup>[277]</sup>. Moreover, in 2009, Turkey invaded freedom of expression provision of the Convention 12 times<sup>[278]</sup>. Lastly, in 2010,

[271] Soering v United Kingdom [1989] 11 EHRR 439 (14038/88) para. 89 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=Soering%20v%20United%20Kingdom%20Case&sessionid=62680957&skin=hudoc-en>> accessed 23 September 2011.

[272] George Letsas, 'Two Concepts of the Margin of Appreciation' (2006) 26(4) Oxford J. of Leg. Studies 705 <<http://ojls.oxfordjournals.org/content/26/4/705.full.pdf+html>> accessed 28 September 2011.

[273] John Wadham, Helen Mountfield and Anna Edmundson (n61) p.33

[274] Ibid p.33-34

[275] European Court of Human Rights 'Violations by Article and by Country' (31.12.2010) <[http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/Tableau\\_de\\_violations\\_19592010\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/Tableau_de_violations_19592010_ENG.pdf)> accessed 18 September 2011.

[276] European Court of Human Rights 'Annual Report 2010' (2011) <[http://www.echr.coe.int/NR/rdonlyres/F2735259-F638-4E83-82DF-AAC7E934A1D6/0/2010\\_Rapport\\_Annuel\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/F2735259-F638-4E83-82DF-AAC7E934A1D6/0/2010_Rapport_Annuel_EN.pdf)> accessed 18 September 2011.

[277] European Court of Human Rights 'Violations by Article and by Country' (2009) <[http://www.echr.coe.int/NR/rdonlyres/5D511C09-CF91-47D2-BA2F-8EEBBB38CCD1/0/Tableau\\_de\\_violations\\_2008\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/5D511C09-CF91-47D2-BA2F-8EEBBB38CCD1/0/Tableau_de_violations_2008_ENG.pdf)> accessed 17 September 2011.

[278] European Court of Human Rights 'Violations by Article and by Country' (2010) <[http://www.echr.coe.int/NR/rdonlyres/5D511C09-CF91-47D2-BA2F-8EEBBB38CCD1/0/Tableau\\_de\\_violations\\_2010\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/5D511C09-CF91-47D2-BA2F-8EEBBB38CCD1/0/Tableau_de_violations_2010_ENG.pdf)> accessed 17 September 2011.

Turkey broke freedom of expression provision of the Convention 19 times. It is also noteworthy that total number of all signatory states' breaches was 55<sup>[279]</sup>.

### 3.2.1.2. *The Cases*

At the outset, as Smith aptly hypothesises, PKK's actions in South-East region of Turkey have constituted a public emergency which is threatening the life of the nation<sup>[280]</sup>. Correspondingly, in Mehdi Zana v. Turkey<sup>[281]</sup> and Surek v. Turkey<sup>[282]</sup> cases, the Court asserted that the expressions of the applicants included fomentation of violence and glorification of terrorism<sup>[283]</sup>. Therefore their statements exacerbated the heavy situation in the south east province of Turkey<sup>[284]</sup>. However, in Incal v. Turkey Case, the limitation of the expression was found disproportionate<sup>[285]</sup>. Actually, Turkey convicted the complainant for distributing a leaflet, which included virulent comments about policies of authorities in Izmir. The litigant asserted that State's interference was disobedient to Convention<sup>[286]</sup>. In Ceylan v. Turkey Case<sup>[287]</sup>, the complainant was the administrative officer of petroleum workers' union. He castigated the prevention of terrorism method of the Turkey<sup>[288]</sup>. He alleged that his conviction under Article 312 of the Turkish Criminal Code invoked the provisions of Article 10. Unanimously, the European Court pointed out that despite the fact that the interference was prescribed by law and had a legally admissible purpose, the punishment of the statement was contrary to the principles of democratic government<sup>[289]</sup>.

---

[www.echr.coe.int/NR/rdonlyres/E8F73EC8-AF6A-4205-BAF2-F6043F67F651/0/Tableau\\_de\\_violations\\_2009\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/E8F73EC8-AF6A-4205-BAF2-F6043F67F651/0/Tableau_de_violations_2009_ENG.pdf) > accessed 16 September 2011.

[279] *Ibid.*

[280] Rhona K M Smith (n26) p.111

[281] Zana v. Turkey [1997] EHRR Appl. No:69/1996/688/880 <[http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=zana&sessionid=62680957&skin=hudoc\\_en](http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=zana&sessionid=62680957&skin=hudoc_en)> accessed 24 September 2011.

[282] Sürek and Özdemir v. Turkey [1999] Applications Nos. 23927/94 And 24277/94 <[http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=surek&sessionid=62680957&skin=hudoc\\_en](http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=surek&sessionid=62680957&skin=hudoc_en)> accessed 25 September 2011.

[283] Richard Clayton and Hugh Tomlinson, *Privacy and Freedom of Expression* (Reprinted from *The Law of Human Rights Oxford University Press, Oxford, 2006*) p.188

[284] Clare Ovey and Robin White, Jacobs and White, *The European Convention on Human Rights* (4th edn Oxford University Press, Oxford 2006) P.322

[285] Richard Clayton and Hugh Tomlinson, *Privacy and Freedom of Expression* (Reprinted from *The Law of Human Rights Oxford University Press, Oxford, 2006*) p.188

[286] Incal v. Turkey [1998] ECHR 41/1997/825/103 <[http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=incal&sessionid=70066519&skin=hudoc\\_en](http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=incal&sessionid=70066519&skin=hudoc_en)> accessed 25 September 2011.

[287] Ceylan v Turkey [1999] ECHR 23556/94 <[http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=ceylan&sessionid=70066607&skin=hudoc\\_en](http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=ceylan&sessionid=70066607&skin=hudoc_en)> accessed 26 September 2011.

[288] Alastair Mowbray, *Cases and Materials on the European Convention on Human Rights* (2nd edn Oxford University Press, New York 2007) p.645

[289] *Ibid.*

In *Yazar and others v. Turkey Case*, the dissolution of the People's Labour Party (*HEP*) in 1993 was analysed in terms of freedom of expression<sup>[290]</sup>. Principal State Counsel at the Court of Cassation alleged that the party advocated right to self-determination for the Kurds and designated the PKK's terrorist operations as a freedom war<sup>[291]</sup>. The Constitutional Court of the Turkey found that there was a link between the party and PKK terrorist organization, so the dissolution of the party was decided<sup>[292]</sup>. The European Court held that although the interference was prescribed by law and pursued a legitimate aim, the dissolution was not compatible with democracy<sup>[293]</sup>. In fact, the party was discharging its function to draw attention to its electors' concerns<sup>[294]</sup>. The Court also stated that the criticism of Turkish Army Forces could not be regarded as a campaign against integrity of state or support of terrorism<sup>[295]</sup>.

In *Erdogdu v. Turkey Case*, the complainant, who was a sociologist, was convicted by Turkish forum because of his article which analysed that the Kurdish problem was a Turkish problem<sup>[296]</sup>. However, the European Court stressed that the complainant's views did not promote terrorism or violence<sup>[297]</sup>. Furthermore, in *Erdogdu and Ince v. Turkey case*, the government defended that the expression depicted the PKK as a liberation army, so it constituted instigation to separatist propaganda<sup>[298]</sup>. Nevertheless, the Court decided that in spite of the fact that the limitation was in accordance with law and pursued a legitimate aim, there was not the existence of a pressing social need<sup>[299]</sup>. Therefore it was concluded that the limitation was not reconcilable with freedom of expression as protected by Article 10. Furthermore, it was added that at least, a more lenient punishment could be decided<sup>[300]</sup>.

[290] D. Hoffman and J. Rowe (n41) p. 319

[291] Ibid.

[292] David Schilling, 'European Islamophobia and Turkey - Refah Partisi (The Welfare Party) v. Turkey' (2003-2004) 26 *Loy. L.A. Int'l & Comp. L. Rev.* 501 <<http://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/loyint26&div=28&id=&page=>> accessed 26 September 2011.

[293] Ibid.

[294] *Yazar, Karatas, Aksoy and the People's Party (HEP) v Turkey* [2002] 36 *EHRR* 59 Applications nos. 22723/93, 22724/93 and 22725/93 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=yazar%20%7C%20karatas%20%7C%20aksoy&sessionid=62680957&skin=hudoc-en> accessed 26 September 2011.

[295] Ibid.

[296] *Erdogdu v. Turkey* [2000] *ECHR* 25723/94 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=erdogdu&sessionid=70066654&skin=hudoc-en> accessed 27 September 2011.

[297] Alastair Mowbray, *Cases and Materials on the European Convention on Human Rights* (2nd edn Oxford University Press, New York 2007) p. 666

[298] *Erdogdu and Ince v. Turkey* [1999] *EHRR* Applications nos. 25067/94 and 25068/94 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Erdogdu%20%7C%20Ince&sessionid=62680957&skin=hudoc-en> accessed 27 September 2011.

[299] Ibid.

[300] Alastair Mowbray, *Cases and Materials on the European Convention on Human Rights*

In *Özgür Radyo-Ses Radyo Televizyon Yayın Yapım Ve Tanıtım A.S. v. Turkey Case*, the broadcast authorisation of the applicant company was suspended by the national media watchdog (*RTUK*) on the ground of inciting Kurds to resort to terrorism<sup>[301]</sup>. Nonetheless, after the examination of the contents of the programmes, the Court ruled that one of the vital duties of the press was to illuminate the omissions of authorities<sup>[302]</sup>. Therefore, the court decided that the interference of the Turkish government meant censorship, which has been a breach of Article 10<sup>[303]</sup>. Similarly, in *Media FM Reha Radio v. Turkey Case*<sup>[304]</sup>, the Court held that the suspension of the radio for a year suggested a disproportionate interference, which formed the violation of Article 10<sup>[305]</sup>.

In *Cox v. Turkey Case*, freedom of academic expression was examined. Norma Jeanne Cox (*the complainant*) was a lecturer at a university in Turkey<sup>[306]</sup>. In 1985, the Interior Ministry of Turkey decided to expel the applicant because of her comments. In her commitments, she alleged that Armenians subjected to genocide and Kurdish citizens were endeavoured to assimilate<sup>[307]</sup>. The national tribunal stated that the complainant's separatist statements could incite people to hostility and hatred<sup>[308]</sup>. In 2002, she applied to the European Court on the basis of violation of Article 10 of the Convention. The Strasbourg Court judged unanimously that her statements were in the scope of freedom of expression. Additionally, the Court argued that the deportation of the complainant on the grounds of Turkish Passport Act (*Law no.5682*) was not justified since the norm was not foreseeable for the complainant to evaluate the results of her expression. The court also decided that non-pecuniary compensation must be paid<sup>[309]</sup>. In *Baskaya v. Turkey Case*<sup>[310]</sup>, the applicant's criticism of the “*official ideology*” of the State in an academic work was perceived by the Turkish court

---

(2nd edn Oxford University Press, New York 2007) p. 666

[301] *Ozgur Radio and Television Company v Turkey* [2009] ECHR 10129/04 <<http://sim.law.uu.nl/SIM/CaseLaw/Hof.nsf/e4ca7ef017f8c045c1256849004787f5/c4866bd606307f87c1257574004b7bdf?OpenDocument>> accessed 26 September 2011.

[302] David J Harris, MO Boyle, EP Bates and CM Buckley (n10) p.447

[303] *Ibid.* p.470

[304] David J. Harris, MO Boyle, EP Bates and CM Buckley (n10) p.469 citing *Media FM Reha Radyo ve İletim Hizm A.S v. Turkey* Appl. No 32842/02 ECHR (2006)DA.

[305] David J. Harris, MO Boyle, EP Bates and CM Buckley (n10) p.469

[306] *Cox v. Turkey* [2010] ECHR 2933/03 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbk&action=html&highlight=cox&sessionId=70061327&skin=hudoc>> accessed 27 September 2011.

[307] *Ibid.*

[308] Alastair Mowbray, *Cases and Materials on the European Convention on Human Rights* (2nd edn Oxford University Press, New York 2007) p. 645.

[309] *Ibid.*

[310] *Başkaya and Okçuoğlu v. Turkey* [1999] ECHR 23536/94 and 24408/94 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbk&action=html&highlight=baskaya&sessionId=62680957&skin=hudoc>> accessed 24 September 2011.

as racial discrimination which jeopardised the national unity<sup>[311]</sup>. The European Court declared that the complainant discussed in an academic essay to resolve the problems of Kurdish people through dialogue<sup>[312]</sup>. The Court concluded that the statement of the complainant did not fomented sentiments of violence, armed rebellion or enmity<sup>[313]</sup>.

### 3.2.2. The UK

#### 3.2.2.1. The Statistics

Between 1959 and 2010, the United Kingdom invaded the right of freedom of expression provision of the Convention 10 times<sup>[314]</sup>. Additionally, between 1999 and 2007, 2 violations of the freedom of expression provision were ruled<sup>[315]</sup>. Furthermore, United Kingdom did not infringe the right of freedom of expression provision of the Convention in 2008<sup>[316]</sup>. In 2009, the United Kingdom broke freedom of expression provision of the Convention 1 time<sup>[317]</sup>. Lastly, in 2010, the United Kingdom did not infringe the right of freedom of expression provision of the Convention<sup>[318]</sup>.

#### 3.2.2.2. The Cases

Until 2006, in eight applications, the United Kingdom was found to be in breach of Article 10 of the Convention (*Sunday Times v United Kingdom*<sup>[319]</sup>; *Sunday*

---

[311] Ibid.

[312] David J. Harris, MO Boyle, EP Bates and CM Buckley (n10) p. 455.

[313] Başkaya and Okçuoğlu V. Turkey [1999] ECHR 23536/94 and 24408/94 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=baskaya&sessionid=62680957&skin=hudoc-en>> accessed 24 September 2011.

[314] European Court of Human Rights 'Violations by Article and by Country' (31.12.2010) <[http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/Tableau\\_de\\_violations\\_19592010\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/Tableau_de_violations_19592010_ENG.pdf)> accessed 18 September 2011.

[315] European Court of Human Rights 'Annual Report 2010' (2011) <[http://www.echr.coe.int/NR/rdonlyres/F2735259-F638-4E83-82DF-AAC7E934A1D6/0/2010\\_Rapport\\_Annuel\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/F2735259-F638-4E83-82DF-AAC7E934A1D6/0/2010_Rapport_Annuel_EN.pdf)> accessed 18 September 2011.

[316] European Court of Human Rights 'Violations by Article and by Country' (2009) <[http://www.echr.coe.int/NR/rdonlyres/5D511C09-CF91-47D2-BA2F-8EEBBB38CCD1/0/Tableau\\_de\\_violations\\_2008\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/5D511C09-CF91-47D2-BA2F-8EEBBB38CCD1/0/Tableau_de_violations_2008_ENG.pdf)> accessed 17 September 2011.

[317] European Court of Human Rights 'Violations by Article and by Country' (2010) <[http://www.echr.coe.int/NR/rdonlyres/E8F73EC8-AF6A-4205-BAF2-F6043F67F651/0/Tableau\\_de\\_violations\\_2009\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/E8F73EC8-AF6A-4205-BAF2-F6043F67F651/0/Tableau_de_violations_2009_ENG.pdf)> accessed 16 September 2011.

[318] European Court of Human Rights 'Violations by Article and by Country' (2011) <[http://www.echr.coe.int/NR/rdonlyres/596C7B5C-3FFB-4874-85D8-F12E8F67C136/0/TABLEAU\\_VIOLATIONS\\_2010\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/596C7B5C-3FFB-4874-85D8-F12E8F67C136/0/TABLEAU_VIOLATIONS_2010_EN.pdf)> accessed 17 September 2011.

[319] *Sunday Times v. The United Kingdom* [1979] 2 EHRR 245 Appl. no. 6538/74 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20Sunday%20%7C%20Times%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 28 September 2011.

*Times v United Kingdom (No 2)*<sup>[320]</sup>; *The Observer and The Guardian v United Kingdom*<sup>[321]</sup>; *Tolstoy Miloslavsky v United Kingdom*<sup>[322]</sup>; *Goodwin v United Kingdom*<sup>[323]</sup>; *Bowman v United Kingdom*<sup>[324]</sup>; *Steel v United Kingdom*<sup>[325]</sup>; *Hashman and Harrup v United Kingdom*<sup>[326]</sup> <sup>[327]</sup>). In *Tolstoy Miloslavsky v. United Kingdom Case*, the national court decided that Miloslavsky's statement, which damaged British army officer Lord Aldington's reputation by blaming him for duplicity and brutality during Second World War, was defamation<sup>[328]</sup>. However, the European Court considered that the common law was not sufficiently certain and the interference was not "*necessary in a democratic society*," so the national award constituted a breach of the complainant's right to freedom of expression<sup>[329]</sup>.

Moreover in *Hashman and Harrup v United Kingdom Case*, the national court ruled that the complainant's behaviour (*intention of disrupting the fox*

[320] *Sunday Times v United Kingdom* [1991] 14 EHRR 229 Appl. no. 13166/87 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=10%20%7C%20Sunday%20%7C%20Times%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 29 September 2011.

[321] *The Observer and The Guardian v United Kingdom* [1991] 14 EHRR 153 Appl. no. 13585/88 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20The%20%7C%20Observer%20%7C%20Guardian%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 29 September 2011.

[322] *Tolstoy Miloslavsky v. The United Kingdom* [1995] 20 EHRR 4421995 Appl. no. 18139/91 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20Tolstoy%20%7C%20Miloslavsky&sessionid=62680957&skin=hudoc-en>> accessed 29 September 2011.

[323] *Goodwin v. United Kingdom* [1996] 22 EHRR 123 Appl. no. 17488/90 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20goodwin&sessionid=62680957&skin=hudoc-en>> accessed 29 September 2011.

[324] *Bowman v United Kingdom* [1998] 26 EHRR 1 (141/1996/760/961) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20bowman&sessionid=62680957&skin=hudoc-en>> accessed 29 September 2011.

[325] *Steel and others v United Kingdom* [1998] 28 EHRR 603 (67/1997/851/1058) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20Steel%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 29 September 2011.

[326] *Hashman and Harrup v United Kingdom* [1999] 30 EHRR 241 Appl. No: 25594/94 <<http://sim.law.uu.nl/sim/caselaw/Hof.nsf/233813e697620022c1256864005232b791d890ecea07365dc1256847003479cb?OpenDocument>> accessed 29 September 2011.

[327] Richard Clayton and Hugh Tomlinson, *Privacy and Freedom of Expression* (Reprinted from *The Law of Human Rights* Oxford University Press, Oxford, 2006) p.195

[328] *Ibid.* p. 184

[329] *Tolstoy Miloslavsky v. The United Kingdom* [1995] 20 EHRR 4421995 Appl. no. 18139/91 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20Tolstoy%20%7C%20Miloslavsky&sessionid=62680957&skin=hudoc-en>> accessed 29 September 2011.

*hunting*) was contra bonos mores (*against good morals*)<sup>[330]</sup>. Yet, the European Court overruled that the concepts of “*breach of the order or peace*” in the Justices of the Peace Act 1361 was not a sufficient guide for the purposes of Article 10<sup>[331]</sup>. Indeed, the concept was vague to be accepted as in accordance with law<sup>[332]</sup>. On the other hand, in *Steel v United Kingdom Case*, the applicant was also charged with breaching of the peace<sup>[333]</sup>. The European Court hypothesised that despite the fact that political rights are conditional; the authorities must tolerate the criticisms and react proportionately<sup>[334]</sup>. Nonetheless the Court also held that the criticism in the present case exceeded the limit. Correspondingly it was concluded that the action of the government for preventing disorder and protecting the rights of others on the grounds of section 5 of the Public Order Act 1986 was sufficiently prescribed by law to satisfy Article 10<sup>[335]</sup>.

In *Norwood v. United Kingdom Case*, the expression of the complainant did not enjoy the protection of Article 10<sup>[336]</sup>. The applicant displayed a large placard with a photograph of the Twin Towers in flame which pronounced that “*Islam out of Britain.*” The police regarded the placard as racially offensive expression and urged to remove it. The Court concluded that the interference was reasonable<sup>[337]</sup>. In another case, preventing the civil servants to be engaged in politics has been found legitimate by the case law of the Court<sup>[338]</sup>. Indeed, in *Ahmed and others v. United Kingdom Case*, the Court argued by citing *Vogt v. Germany Case*<sup>[339]</sup> that bolstering politically neutral public service was a valid element of democratic society<sup>[340]</sup>. The Court also underlined that the

[330] *Hashman and Harrup v United Kingdom* [1999] 30 EHRR 241 Appl. No: 25594/94 <<http://sim.law.uu.nl/sim/caselaw/Hof.nsf/233813e697620022c1256864005232b7/91d890ecea07365dc1256847003479cb?OpenDocument>> accessed 29 September 2011. paras 36-41

[331] Richard Clayton and Hugh Tomlinson, *Privacy and Freedom of Expression* (Reprinted from *The Law of Human Rights* Oxford University Press, Oxford, 2006) p.185

[332] Steve Foster (n1) p.56-57

[333] *Steel and others v United Kingdom* [1998] 28 EHRR 603 (67/1997/851/1058) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20Steel%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 29 September 2011.

[334] Richard Clayton and Hugh Tomlinson, *Privacy and Freedom of Expression* (Reprinted from *The Law of Human Rights* Oxford University Press, Oxford, 2006) p.189-190

[335] Steve Foster (n1) p.56-57

[336] *Mark Anthony Norwood v. United Kingdom Application no. 23131/03* <<http://strasbourgconsortium.org/document.php?DocumentID=4868>> accessed 27 September 2011.

[337] Steve Foster (n1) p.8-9

[338] David Feldman (n4) p. 792

[339] *Vogt v. Germany* [1995] 21 EHRR 205 Appl. No: 17851/91 <<http://sim.law.uu.nl/sim/caselaw/Hof.nsf/2422ec00f1ace923c1256681002b47f1/5c39c9042d3d80e3c1256640004c2c43?OpenDocument>> accessed 28 September 2011.

[340] *Ahmed and others v. The United Kingdom* [1998] Appl. No:22954/93 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=ahmed&>



Local Government Officers (*Political Restrictions*) Regulations 1990 was a licit response to provide officer's impartiality, within the United Kingdom's margin of appreciation<sup>[341]</sup>.

In the case of *Wingrove v. the United Kingdom*, the complainant was a film director who directed a short film, 'Visions of Ecstasy.'<sup>[342]</sup> The film portrayed a sexual fantasy of St Teresa and Christ<sup>[343]</sup>. The applicant started a legal procedure when the British Board of Film Classification refused to provide the classification certificate on the grounds that the film was obscene and it infringed the British blasphemy law. The European Court considered that the prohibition was intended to protect "the rights of others", and there was no violation of the requirements of Article 10 has been established<sup>[344]</sup>. Furthermore in *Handyside v. the United Kingdom Case*, it was hypothesised that the inoffensive ideas which were accepted disturbing the government or public did not violate the requirements of Article 10<sup>[345]</sup>. In the present case, the applicant was the publisher of a schoolbook including sexual information for adolescents<sup>[346]</sup>. The United Kingdom authorities confiscated the book on the grounds of obscene<sup>[347]</sup>. In the judgment of the European Court, it was concluded that the interference was not only in accordance with law and in pursuit of a legitimate aim, but also necessary for protecting public morals in terms of 'pressing social need', so the imposed restriction was within the State's margin of appreciation<sup>[348]</sup>.

Contrary to *Handyside Case*, in *Sunday Times v United Kingdom Case*, the *Sunday Times* prepared an article entitled "Our Thalidomide Children: A Cause for National Shame" about a drug containing thalidomide. The drug was a sedative for expectant mother, yet it was alleged that the drug caused severe

---

sessionid=62680957&skin=hudoc en > accessed 28 September 2011.

[341] Ibid.

[342] UK Parliament, Select Committee on Religious Offences in England and Wales ( 2003, First Report) <<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldrelol/95/9515.htm#n142>> accessed 30 September 2011.

[343] George Letsas, 'Two Concepts of the Margin of Appreciation' (2006) 26(4) Oxford J. of Leg. Studies 705 <<http://ojls.oxfordjournals.org/content/26/4/705.full.pdf+html>> accessed 28 September 2011.

[344] *Wingrove v. the United Kingdom* [1996] 24 EHRR 1 Appl. No: 17419/90 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20wingrove&sessionid=62680957&skin=hudoc-en>> accessed 30 September 2011.

[345] *Handyside v. the United Kingdom* [1976] 1 EHRR 737 (Appl. no. 5493/72) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20handyside&sessionid=62680957&skin=hudoc-en>> accessed 30 September 2011. para.48.

[346] Clare Ovey and Robin White, Jacobs and White, *The European Convention on Human Rights* (4th edn Oxford University Press, Oxford 2006) P.318

[347] George Letsas, 'Two Concepts of the Margin of Appreciation' (2006) 26(4) Oxford J. of Leg. Studies 705 <<http://ojls.oxfordjournals.org/content/26/4/705.full.pdf+html>> accessed 28 September 2011.

[348] Ibid.

malformations of babies' limbs<sup>[349]</sup>. Publication of the article was prohibited in order to prevent contempt of national court<sup>[350]</sup>. The European Court judged that even though the prohibition served a legitimate purpose (*providing the authority and impartiality of the judiciary*), the limitation on expression was not pressing a social need, so it was not in the scope of the domestic power of appreciation<sup>[351]</sup>. Additionally in *Goodwin v. United Kingdom* Case, the journalist asserted that he was coerced by the government to declare the sources of the news, so the government violated his right under Article 10<sup>[352]</sup>. The applicant also alleged that protecting the sources was encompassed by the right to receive and impart information. The court held that as a public watchdog, one of the essential roles of the media was scrutinizing the operations of authorities and informing the citizens<sup>[353]</sup>. Thus, protecting sources was accepted as a certain necessity for the media to perform their duties by obtaining information from the individuals<sup>[354]</sup>.

---

[349] *Sunday Times v. The United Kingdom* [1979] 2 EHRR 245 Appl. no. 6538/74 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20Sunday%20%7C%20Times%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionId=62680957&skin=hudoc-en>> accessed 28 September 2011.

[350] George Letsas, 'Two Concepts of the Margin of Appreciation' (2006) 26(4) *Oxford J. of Leg. Studies* 705 <<http://ojls.oxfordjournals.org/content/26/4/705.full.pdf+html>> accessed 28 September 2011.

[351] Steve Foster (n1) p.8-9

[352] *Goodwin v. United Kingdom* [1996] 22 EHRR 123 Appl. no. 17488/90 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20goodwin&sessionId=62680957&skin=hudoc-en>> accessed 29 September 2011. para. 39.

[353] Clare Ovey and Robin White, *Jacobs and White, The European Convention on Human Rights* (4th edn Oxford University Press, Oxford 2006) P.323

[354] David Feldman (n4) p.854-855.

## 4. HUMAN RIGHTS SECTIONS OF TURKEY'S PROGRESS REPORTS

In 1998, it was decided that Commission of the European Communities would present a progress report on Turkey on the basis of Article 28 of the Association Agreement<sup>[355]</sup>. Because of the concerns about fitting within the Convention's framework, the human rights reports of the Amnesty and Human Rights Watch organizations are not involved.

### **4.1. Turkey**

#### **4.1.1. Torture**

In the Progress Report of 2001, it was declared that although the authorities embarked on a substantial reform of training programmes, it was found that torture, inhuman and degrading treatment were implemented systematically<sup>[356]</sup>. The Report of 2003 presented that the government strengthened its legislation with respect to torture. For example, by the amendments of Article 243 and 245 of the Turkish Criminal Code, the sentences for torture, inhuman and degrading treatment were not able to be suspended or converted into fines. Furthermore, amendment of the Code of Criminal Procedures granted a priority and urgent position to torture and ill-treatment trials. Nonetheless, despite government's zero tolerance policy against torture, it was noted that the cases of torture and ill-treatment persisted. Indeed, the perpetrators of these crimes were not punished due to elapse of time and the punishment was not commensurate with the gravity of the offense<sup>[357]</sup>. Additionally, in the Report of 2004, it was informed that by the amendments in 2003, the procedure to obtain authentication from superior authority to hold an inquiry against officials was lifted. However, it was denounced that prolonged standing, incommunicado detention and sleep deprivation allegations were habitual. Moreover, the number of complaints of torture and other forms of ill-treatment outside of formal arrest centres increased. Therefore more vigorous efforts were required to combat such treatments<sup>[358]</sup>.

[355] Commission of the European Communities, '2003 Regular Report on Turkey's Progress Towards Accession'  
<[http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/Progress/Turkey\\_Progress\\_Report\\_2003.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2003.pdf)> accessed 01 October 2011.

[356] Commission of the European Communities, '2001 Regular Report on Turkey's Progress Towards Accession' (Brussels, 13.11.2001)  
<[http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/Progress/Turkey\\_Progress\\_Report\\_2001.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2001.pdf)> accessed 02 October 2011.

[357] Commission of the European Communities, '2003 Regular Report on Turkey's Progress Towards Accession'  
<[http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/Progress/Turkey\\_Progress\\_Report\\_2003.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2003.pdf)> accessed 01 October 2011.

[358] Commission of the European Communities, 'Turkey-2004 Progress Report' (Brussels

The Report of the 2005 promulgated that detainees were ensured with accompanying of their lawyers along the detention. Also, the new Penal Procedures Code pledged promptly investigation of torture. On the other hand, it was stated that the prosecutors failed to conduct investigations impartially. Such incidents indicated that despite reforms, legal infrastructure was still not adequate to eradicate torture, inhuman and degrading treatment<sup>[359]</sup>. The Progress Report of 2006 presented that torture and ill-treatment practices were still reported. Actually, the limitation of the right to access an advocate and notify a relative still occurred. According to the Report, concerns about the statements obtained under torture or ill-treatment remained. The circular submitted by Diyarbakir Bar Association indicated that in the South-eastern province of Turkey, because of the lack of full investigation, such practices were still widespread<sup>[360]</sup>. Additionally, in the Report of 2007, the concerns remained that such violations were recorded, especially during arrest or outside detention bureaus. Prompt and impartial investigation into allegations of torture and ill-treatment remained an area of concern<sup>[361]</sup>.

The Progress Report of 2008 maintained that the number of complaints in relation to Article 3, in particular during unregistered apprehension, was increased. The Criminal Procedures Code prohibited the use of statements which were obtained under illegal treatments or which were not approved in front of the court. Nevertheless, the Courts of Cassation refused to apply this norm retroactively. Therefore despite torture or ill-treatment allegations of the defendants, these statements were evaluated as legal evidence<sup>[362]</sup>. In the Report of 2009, it was criticised that the Forensic Medicine's (*under the Ministry of Justice*) monopoly of the examinations of the complainants prevented the independency of the process. In addition, it was again underlined that the lack of independent, prompt and impartial investigation into torture or ill-treatment allegations were still a cause for great concern<sup>[363]</sup>. Lastly, the Progress Report of

---

06.10.2004) <[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2004/rr\\_tr\\_2004\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf)> accessed 02 October 2011.

[359] Commission of the European Communities, 'Turkey-2005 Progress Report' (Brussels 09.11.2005) <<http://www.unhcr.org/refworld/docid/43956b6d4.html>> accessed 5 October 2011.

[360] Commission of the European Communities, 'Turkey-2006 Progress Report' (Brussels 08.11.2006) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2006/nov/tr\\_sec\\_1390\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/tr_sec_1390_en.pdf)> accessed 03 October 2011.

[361] Commission of the European Communities, 'Turkey-2007 Progress Report' (Brussels 06.11.2007) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2007/nov/turkey\\_progress\\_reports\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf)> accessed 03 October 2011.

[362] Commission of the European Communities, 'Turkey-2008 Progress Report' (Brussels 05.11.2008) <[http://ec.europa.eu/enlargement/pdf/press\\_corner/key-documents/reports\\_nov\\_2008/turkey\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/turkey_progress_report_en.pdf)> accessed 03 October 2011.

[363] Commission of the European Communities, 'Turkey-2009 Progress Report' (Brussels 14.10.2009) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/](http://ec.europa.eu/enlargement/pdf/key_documents/2009/)

2010 declared that the number of violations of the European Convention on Human Rights continued to increase. Legal counsels of the victims were not permitted to attend medical examination. Further, it was asserted that a few cases filed against security officers for torture or ill-treatment was resulted in a conviction. Consequently, it was concluded that to eradicate such practices, Turkey needed to be enhance its legal regulations<sup>[364]</sup>.

#### 4.1.2. Freedom of Expression

The Progress Report of the 2001 promulgated that by the constitutional amendment of Article 13 and 14, the basis for restricting fundamental rights and freedoms, were narrowed. Moreover, the principle of proportionality was established. However, it was stressed that Turkish legal system still did not provide a sound guarantee for freedom of expression. Also, it was stated that comprehensive amendments were required to extend the scope of freedoms so as to provide concrete content to the constitutional reforms. Indeed, Article 159 (*insulting to parliament, security forces, republic and judiciary*) and Article 312 (*fomentation to racial, ethnic or religious enmity*) of the Criminal Code and Article 7 and 8 of Anti-Terrorist Law (*dissemination of separatist propaganda*) were implemented by the courts to limit freedom of expression<sup>[365]</sup>.

In the Report of 2003, it was emphasised that by the amendment of Criminal Procedure Code, the cases in which the Court found breach of the Convention became applicable for retrial. Furthermore, on the official website of the Justice Ministry, translations of the all awards of the Court were made accessible. On the other hand, it was maintained that although majority of the cases concluded with acquittals, Article 159 (*insulting the state institutions*) of the Criminal Code continued to interpret inconsistently. Also, censorship of internet remained as a serious problem. Consequently, it was pronounced that Turkey failed to take prudential measures to redress its violations of Article 10<sup>[366]</sup>.

The Report of 2004 analysed that by the amendment of Criminal Code, the penalty of Article 159 was reduced. Moreover, the amendment constituted distinction between ‘intending to criticise’ and ‘intending to insult or deride’.

---

tr\_rapport\_2009\_en.pdf> accessed 04 October 2011.

[364] Commission of the European Communities, ‘Turkey-2010 Progress Report’ (Brussels 09.09.2010) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/tr\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf)> accessed 04 October 2011.

[365] Commission of the European Communities, ‘2001 Regular Report on Turkey’s Progress Towards Accession’ (Brussels, 13.11.2001) <[http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/Progress/Turkey\\_Progress\\_Report\\_2001.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2001.pdf)> accessed 02 October 2011.

[366] Commission of the European Communities, ‘2003 Regular Report on Turkey’s Progress Towards Accession’ <[http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/Progress/Turkey\\_Progress\\_Report\\_2003.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2003.pdf)> accessed 01 October 2011.

Also, it was provided that by the change of the Article 90 of the Constitution, international treaties had a superior position over domestic norms. As a result, since the January 2004, 103 judgements concluded with acquittals by referencing to Article 10 of the Convention. Nevertheless, the effects of the reforms were not uniform throughout the State. Many writers and journalists who criticised the public policies were still prosecuted under the revised Article 159<sup>[367]</sup>.

In the Progress Report of 2005, it was again addressed that writers and journalists were sentenced for the expression of their non-violent ideas on the Kurdish and Armenian issues under Article 301 of the new Criminal Code (*formerly Article 159, "insulting the State and State institutions"*). Actually, the new regulation was also interpreted in a restrictive perspective<sup>[368]</sup>. The Report of 2006 argued that although the government suggested the courts to take into consideration the Convention, provisions of the Criminal Code, in particular Article 301, implemented to prosecute or convict the expression of non-violent ideas, which caused self-censorship of the intellectuals<sup>[369]</sup>.

The Progress Report of the 2007 maintained that the number of prosecutions for the non-violent expressions under Article 301 increased, which led to self-censorship in the academic field and media. Therefore it was claimed that the provisions must be brought in line with the European Union standards<sup>[370]</sup>. In the 2008 Report, it was declared that Article 301 of the Penal Code was amended with the intention of providing broader protection for freedom of expression. Thus, in 126 cases, the Ministry of Justice rejected to grant permission to launch prosecution. However, it was stressed that these reforms were not adequate to guarantee freedom of expression. Additionally, website bans and pressure on the press was regarded as another problematic area<sup>[371]</sup>.

In the Report of 2009, it was stated that the prosecutions and convictions of non-violent expressions continued on the grounds of the Turkish Penal Code. The risk of investigation of the academics, journalists, publishers, writers and

---

[367] Commission of the European Communities, 'Turkey-2004 Progress Report' (Brussels 06.10.2004) <[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2004/tr\\_tr\\_2004\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/tr_tr_2004_en.pdf)> accessed 02 October 2011.

[368] Commission of the European Communities, 'Turkey-2005 Progress Report' (Brussels 09.11.2005) <<http://www.unhcr.org/refworld/docid/43956b6d4.html>> accessed 5 October 2011.

[369] Commission of the European Communities, 'Turkey-2006 Progress Report' (Brussels 08.11.2006) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2006/nov/tr\\_sec\\_1390\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/tr_sec_1390_en.pdf)> accessed 03 October 2011.

[370] Commission of the European Communities, 'Turkey-2007 Progress Report' (Brussels 06.11.2007) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2007/nov/turkey\\_progress\\_reports\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf)> accessed 03 October 2011.

[371] Commission of the European Communities, 'Turkey-2008 Progress Report' (Brussels 05.11.2008) <[http://ec.europa.eu/enlargement/pdf/press\\_corner/key\\_documents/reports\\_nov\\_2008/turkey\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/turkey_progress_report_en.pdf)> accessed 03 October 2011.

human rights activists caused self-censorship<sup>[372]</sup>. Lastly, the Report of 2010 asserted that the free debate of sensitive issues, such as minority rights, Armenian genocide and the political role of the army, still subjected to political pressure and interventions. The non-violent opinions were subjected to convictions under the provisions of the Penal Code and the Anti-Terror Law. High number of violations of the Article 10 was also submitted to the Court. Hence, the Court ruled that these provisions must be revised<sup>[373]</sup>. In addition, mainstream video sharing web portals was banned. Consequently it was concluded that Turkish legal system still could not enhance to guarantee freedoms in line with the Convention and Strasbourg Courts' Case Law<sup>[374]</sup>.

#### 4.2. *The United Kingdom*

The European Commission's progress reports are the documents which explain the annual progress conditions of candidate and potential candidate states. It is about enlargement strategy. Therefore no progress report has been presented about United Kingdom<sup>[375]</sup>. Still, on the other international reports, it was highlighted that in the United Kingdom, there has been no systematic engage in mistreatment of detainees. Furthermore, it was stated that prison and detention centre conditions mostly met international standards (*except being overcrowded*). Additionally, it was asserted that freedom of expression and press was ensured by the UK's law and it was compliance with international law<sup>[376]</sup>.

[372] Commission of the European Communities, 'Turkey-2009 Progress Report' (Brussels 14.10.2009) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/tr\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf)> accessed 04 October 2011.

[373] Case of Ürper and others v. Turkey (Applications nos. 55036/07, 55564/07, 1228/08, 1478/08, 4086/08, 6302/08 and 7200/08) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=%DCrper%20%7C%20others%20%7C%20.%20%7C%20Turkey&sessionid=62680957&skin=hudoc-en>> accessed 05 October 2011.

[374] Commission of the European Communities, 'Turkey-2010 Progress Report' (Brussels 09.09.2010) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/tr\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf)> accessed 04 October 2011.

[375] European Commission, 'Enlargement Strategy and Progress Reports 2010' <[http://ec.europa.eu/enlargement/press\\_corner/key-documents/reports\\_nov\\_2010\\_en.htm](http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm)> accessed 06 September 2011.

[376] Bureau of Democracy, Human Rights, and Labor, '2010 Human Rights Report: United Kingdom' <<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154457.htm>> accessed 06 September 2011.

## 5. IN CASE TURKEY TAKES THE UK'S HUMAN RIGHTS LAW AS A MODEL, WHAT CAN TURKEY DO?

Since the Magna Carta was granted on 15 June 1215, the human rights experience of the United Kingdom has played a leading role for other States<sup>[377]</sup>. Except the period that President Thatcher attempted to suppress the opposed political and moral views, the United Kingdom has continued to serve as a successful model in the last century<sup>[378]</sup>. In the Thatcher period, there was a conflict between need to combat terrorism and the human rights of terrorism suspects<sup>[379]</sup>. Apparently, terrorism has been a common problem for Turkey and the United Kingdom. However, during the fight of the UK against terrorism, the violation of Article 3 and 10 has been an exceptional situation<sup>[380]</sup>. On the other hand, Bozarslan maintains that the overwhelming majority of Turkey's breach of the Convention has been linked to the war between the state and the PKK terrorist organization<sup>[381]</sup>. Paradoxically, from 1991 and 1995, although Turkey had a Ministry of Human Rights, it was the worst period in terms of the violation of the Convention<sup>[382]</sup>. It is also noteworthy that the United Kingdom declared its intention to recognize the right of individual petition and the jurisdiction of the Court under the Article 25 in the beginning of 1966<sup>[383]</sup>. The first finding of violation of the Convention by the United Kingdom was in 1975 (*Golder v. UK [1979-80] 1 EHRR 524*)<sup>[384]</sup>. However, Turkey recognised the competence of the Court by making a declaration under the Article 25 of the Convention in 1987<sup>[385]</sup>.

At the end of the last century, the massive number of claims against the UK called attention to the deficiencies of the UK's system for protecting human

[377] Edwin Shortts and Claire de Than, *Human Rights Law in the UK* (Sweet & Maxwell, London 2001). p.4

[378] David Feldman, *Civil Liberties and Human Rights in England and Wales* (2nd edn Oxford University Press, Oxford 2002) p.800

[379] *Ibid.* p.711

[380] Joan Fitzpatrick, 'Speaking Law to Power: The War Against Terrorism and Human Rights' (2003) *EJIL* 14(2) 241 <<http://ejil.oxfordjournals.org/content/14/2/241.full.pdf+html>> accessed 08 October 2011.

[381] Hamit Bozarslan, 'Human Rights and the Kurdish Issue in Turkey: 1984-1999' (2001) 3(1) *Human Rights Review* 45 <<http://www.springerlink.com/content/mntcthr413p0p30r/>> accessed 10 October 2011.

[382] *Ibid.*

[383] David Feldman (n4) p.45

[384] *Ibid.* p.36

[385] Iain Cameron, 'Turkey and Article 25 of the European Convention on Human Rights' (1998) 37(4) *ICLQ* 887 <<http://www.jstor.org/pss/759836?searchUrl=%2Faction%2FdoBasicSearch%3FQuery%3DTurkey%2BAnd%2BArticle%2B25%2Bof%2Bthe%2BEuropean%2BConvention%2Bon%2BHuman%2BRights%2BIain%2BCameron%26gw%3Djtx%26prq%3DHamit%2BBozarslan%26Search%3DSearch%26hp%3D25%26wc%3Don&Search=yes>> accessed 09 October 2011.



rights and civil liberties<sup>[386]</sup>. Thus, the Parliament passed the Human Rights Act (*hereinafter the HRA*) on 9 October 1998 and its provisions became effective on 2 October 2000<sup>[387]</sup>. Section 1(1) of the HRA provides that the Act includes Articles 2 to 12 and 14 of the Convention, Article 1 to 3 of the First Protocol and Articles 1 and 2 of the Sixth Protocol<sup>[388]</sup>. In spite of the deficiency of HRA in terms of right to freedom of information, right to adequate housing, specific recognition of children's rights and right to an environment which is not harmful to health, the HRA has been a momentous improvement for the protection of human rights in the UK<sup>[389]</sup>. On the other hand, Foster hypothesises that despite its broad impact, the HRA preserves the parliamentary sovereignty, so in case of conflict between national law and the Convention, it dictates that national law will prevail<sup>[390]</sup>.

As a matter of fact, also before the HRA, the Convention had a considerable impact on the judicial interpretation of human rights principles<sup>[391]</sup>. Indeed, in many cases references were made to the Convention<sup>[392]</sup>. For example in the case of *Camelot Group Ltd. v. Centaur Communications Ltd*<sup>[393]</sup>, before the enactment of the HRA, it was held that as the European Court analysed in *Goodwin* award, inoffensive dissenting views was not in a divergent position with public interests<sup>[394]</sup>. Despite the fact that the HRA does not have higher or enhanced status than other statutes, its constitutional importance has been recognised by the judiciary<sup>[395]</sup>. For instance, in the case of *Steve Thoburn v Sunderland City Council*, the HRA was designated as a constitutional status, such as the European Communities Act 1972 or Magna Carta<sup>[396]</sup>. It is noteworthy because unlike ordinary acts, the HRA cannot be impliedly repealed<sup>[397]</sup>.

After the Good Friday 1998, by the Human Rights Act 1998, the English law subsumed the Convention. This development provided the directly enforceability of the Convention in the domestic courts. Indeed, after the HRA, the English courts have to grapple with the rights regulated in the Convention

[386] Steven Foster, *The Judiciary Civil Liberties and Human Rights* (Edinburgh University Press, Edinburgh 2006) p.15

[387] Steve Foster, *Human Rights & Civil Liberties* (2nd edn Pearson Education Limited, Essex 2008) p.145

[388] *Ibid* p.147

[389] John Wadham, Helen Mountfield and Anna Edmundson (n61) p. 17

[390] Steve Foster, *Human Rights and Civil Liberties* (Pearson Education Limited, Essex 2003) p.145

[391] Steve Foster (n1) p.20-21

[392] *Ibid*.

[393] *Camelot Group Ltd. v. Centaur Communications Ltd.*, [1998] 1 All ER 251 CA

[394] David Feldman (n4) p.855

[395] John Wadham, Helen Mountfield and Anna Edmundson (n61) p. 12

[396] *Steve Thoburn v Sunderland City Council* [2002] EWHC 195 Admin <<http://www.bailii.org/ew/cases/EWHC/Admin/2002/195.html>> accessed 11 October 2011.

[397] John Wadham, Helen Mountfield and Anna Edmundson (n61) p. 12

more concretely<sup>[398]</sup>. Analogously, between 2 October 2000 and 30 April 2002, 431 cases were examined by the Human Rights Act Research Unit and in 318 cases; it was found that the Higher Court considered overruling the outcomes of the cases by citing the Convention on the grounds of the HRA<sup>[399]</sup>. However, according to another research which was conducted by the same institution with a similar methodology indicates that between 1975 and 1996, although in 316 cases the Convention was cited; only in 11 cases the Convention affected the statutory interpretation<sup>[400]</sup>. These data illustrate that the HRA has reinforced the use of the Convention by obliging the domestic courts to evaluate existing or future statutes or common law in conformity with approach of the Convention and by introducing the obligation of considering the case law of the Strasbourg<sup>[401]</sup>. Moreover, after the HRA received the Royal assent, the civil servants and governmental bodies examined their practices to evaluate whether these practices and procedures complied with the HRA<sup>[402]</sup>.

On a different perspective, in the past, the UK law avoided to define the precise scope of freedom of expression. Furthermore, not only the dualism of national and international law, but also parliamentary sovereignty complicated to impose a normative legal framework on the freedom of expression<sup>[403]</sup>. The HRA has been the legal remedy of this inconvenience. Today, the UK law includes a right to free expression in the terms of Article 10. By the agency of HRA, the case law of the Court has become a prudential guidance<sup>[404]</sup>. For instance, in the Case of *Turkington and others v Times Newspapers Limited*, the House of Lords stated that the position of freedom of expression was unsatisfactory before the HRA on the grounds that interferences on expressions were not exposed to the examination of proportionality and necessity so stringently implemented by the European Court<sup>[405]</sup>. To prove this thesis, *R v Secretary of State for the Home Department, ex parte Brind* [1991] 1 AC 696, *Sunday Times v United Kingdom (1979)* 2 EHRR 245 and *Goodwin v United Kingdom (1996)* 22 EHRR 123 cases were provided as an example<sup>[406]</sup>. Consequently, the HRA has

[398] Edwin Shortt and Claire de Than, *Human Rights Law in the UK* (Sweet & Maxwell, London 2001) p.21

[399] Nigel Johnson, *the Human Rights Act 1998: A Bridge between Citizenship and Justice?* (2004) 3(2) *Social Policy and Society* 113 <<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=212323>> accessed 18 September 2011.

[400] John Wadham, Helen Mountfield and Anna Edmundson (n61) p. 1

[401] *Ibid.* p.12

[402] Eric Barendt, *Freedom of Speech* (2nd edn Oxford University Press, New York 2005) p.43.

[403] David Feldman (n4) p.752-753

[404] *Ibid.*

[405] *Turkington and others v Times Newspapers Limited* [2000] 4 All ER 913 (HL) <<http://www.publications.parliament.uk/pa/ld199900/ldjudgmt/jd001102/turk-1.htm>> accessed 07 September 2011.

[406] Steve Foster (n1) p.361

explicitly contributed to not only reduction in the number of cases against the UK, but also reduction in the number of findings of violations<sup>[407]</sup>.

It can be alleged that the doctrine has countenanced the enactment of the HRA. Hoffman states that the HRA has provided a fresh source for the UK's legal system<sup>[408]</sup>. Hoffman also pronounces that the HRA maintained an opportunity for the academics, journalists, judges and legal counsels to examine whether the UK's law really provides the guarantee of the rights<sup>[409]</sup>. According to Feldman, by means of enactment of the HRA, the case law of the Strasbourg Court became a helpful guidance for the domestic courts<sup>[410]</sup>. He also underlines that the HRA has altered the legal structure and has gradually provided a more balance understanding between the national security, public order and freedom of expression<sup>[411]</sup>.

In addition, Shorts and Than hypothesis that the amount of cases and violations found by the Court has indicated that the previous system of implementation of the Convention was problematic. They add that in some cases, although the practices of the UK's organs were legal, they violated the Convention because of the conflict between them<sup>[412]</sup>. Foster emphasises that the HRA has brought the Convention and its case law into domestic law with the primary purpose of enhancing the protection of fundamental human rights<sup>[413]</sup>. He adds that to achieve this, the HRA has conveyed the Convention to more central position in the British jurisprudence. He concludes that before the HRA, the implementation of the Convention was unsatisfactory especially for the cases where the law was ambiguous<sup>[414]</sup>.

In conclusion, although it was claimed by Turkey that the European Courts awards would be reflected into domestic legislation<sup>[415]</sup>, it has been clear that still Turkish laws and the Convention are not parallel to each other. Additionally, the statistics of the court illustrates that Turkey has not improved its violations sufficiently. It seems that Turkish legal regime needs more radical reforms. All the data provided above suggests that incorporation of the Convention into

[407] David Hoffman and John Rowe Q.C., (n41) p.35

[408] Ibid p.392

[409] Ibid.

[410] David Feldman (n4) p.752-753

[411] Ibid p. 903

[412] Edwin Shorts and Claire de Than, *Human Rights Law in the UK* (Sweet & Maxwell, London 2001) p.40

[413] Steve Foster (n1) p.26.

[414] Steve Foster, *Human Rights and Civil Liberties* (Pearson Education Limited, Essex 2003) p.134

[415] Foreign Affairs Ministry of Turkey, ' Press statement on the 2001 regular report on Turkey's progress towards accession and the strategy paper prepared by the EU Commission-November 13' (2001) <[http://www.mfa.gov.tr/press-statement-on-the-2001-regular-report-on-turkey\\_s-progress-towards-accession-and-the-strategy-paper-prepared-by-the-eu-commission--november-13.en.mfa](http://www.mfa.gov.tr/press-statement-on-the-2001-regular-report-on-turkey_s-progress-towards-accession-and-the-strategy-paper-prepared-by-the-eu-commission--november-13.en.mfa)> accessed 11 October 2011.

Turkish law can reinforce the conception of the Convention, so the incorporation can maintain sounder protection of the fundamental human rights.

---

## 6. CONCLUSION

---

In summary, this study has compared the legal frameworks, the statistics and case law of the European Court of the UK and Turkey in terms of Article 3 and Article 10 of the Convention. Additionally reports of non-governmental organizations have been investigated. Different aspects of doctrine were analysed to fill the gap in knowledge defined in the chapters above. The overall purpose of this dissertation is to offer a new formula for Turkey to redress its human rights conditions. Indeed, like Neumayer's statement, in some countries, it was observed that international human rights treaties have not, per se, improved respect for protection of human rights<sup>[416]</sup>. As discussed above, there are also queries about whether the Convention has made a distinction in Turkish case. That is why additional remedies are required for Turkey. As the UK did, enacting a specific human rights act was introduced as the cardinal suggestion. Apparently, it can be deduced from the facts that human rights law of the UK can be a guide for Turkish law regime.

Throughout this research, it can be found that Turkish jurisprudence has failed to take the criticisms into account and prohibit torture and inhuman and degrading treatment. Although there were positive events related to Article 3 and Article 10 since the 1980 military coup, the difference between the commitment and performance of Turkey has been a daunting challenge<sup>[417]</sup>. Unequivocally, once an international convention come into force, all of the signatory parties should conduct their policies in accordance with their commitments in good faith<sup>[418]</sup>. (*Pacta Sunt Servanda Principle, Article 26 of the Vienna Convention on the Law of Treaties.*<sup>[419]</sup>) In the light of all these facts, despite endeavours at reforming its legislation, it seems that Turkey needs a new perspective, so more radical steps to attain the human rights level of the Convention are required<sup>[420]</sup>.

---

[416] Eric Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49(6) *The Journal of Conflict Resolution* 925 <<http://www.jstor.org/stable/pdfplus/30045143.pdf?acceptTC=true>> accessed 14 October 2011.

[417] Paul J. Magnarella, 'The Legal, Political and Cultural Structures of Human Rights Protections and Abuses in Turkey (1994) 3 J. Int'l L. & Prac. 439 <<http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/mistjintl3&div=35&cid=&page=>>> accessed 14 October 2011.

[418] Rhona K M Smith (n26) p.8

[419] United Nations, *Vienna Convention on the Law of Treaties* (1969) <[http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)> accessed 13 October 2011.

[420] Neil Hicks, 'Legislative Reform in Turkey and European Human Rights Mechanisms' (1999)

In other words, the complaints against Turkey indicate that revising the present acts tends to be inadequate for achieving this objective. It seems that the United Kingdom law can be a model for Turkey to incorporate the Convention. Actually, incorporating the Convention may change the legal perception in Turkey. Otherwise the growing number of new applications related to Article 3 and Article 10 indicates that Turkey's dilemma will aggravate. It can be spelled out that the contribution of this dissertation is this suggestion.

Nevertheless, it must be also stated that the historical distinction of human rights law of Turkey and the United Kingdom can be evaluated as a limitation or weak point of this research. Indeed, although the first document of the UK's human rights law is Magna Carta (1215), human rights experience of Turkish law started with Tanzimat (*administrative*) Reforms (1839). Before Tanzimat reforms, the freedom of expression and prohibition of torture was not respected by the tyrannical regime of the state<sup>[421]</sup>. Therefore, because of the disparity of the backgrounds, it is a justifiable allegation that enactment of a specific human rights act may not lead to the desired improvement in Turkey. Furthermore, there is also a need for further research to concentrate on the effect of terrorism on human rights. As a matter of fact, as Marcus Tullius Cicero stated in his Pro Milone (BC 52) speech "*the laws are dumb in the midst of arms.*"<sup>[422]</sup>

---

3(1) Human Rights Review 78 <<http://www.springerlink.com/content/e28n4dtcq2brl4qk/>> accessed 13 October 2011.

[421] Berdal Aral, The Idea of Human Rights Perceived in the Ottoman Empire (2004) 26(2) Hum. Rts. Q. 454 <<http://heinonline.org/HOL/Page?handle=hein.journals/hurq26&cid=3&collection=journals&index=journals/hurq>> accessed 12 October 2011.

[422] D. Hoffman and J Rowe (n41) p.367

## BIBLIOGRAPHY

### PRIMARY SOURCES

#### CASES

1. *A v Secretary of State for the Home Department* [2005] 2 AC 68 (*HL*)
2. *A. v. United Kingdom* [1998] Appl. No: 25599/94 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=3&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22%20%7C%203%20%7C%20A.&sessionid=62680957&skin=hudoc-en>> accessed 21 September 2011
3. *Ahmed and others v. The United Kingdom* [1998] Appl. No:22954/93 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=ahmed&sessionid=62680957&skin=hudoc-en>> accessed 28 September 2011
4. *Austria v. Italy (1961)* Application No. 788/60, 4 YEARBOOK 116
5. *Aydin v. Turkey* [judgment of 25 September 1997] 25 EHRR 251, at p. 1103-9 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=aydin%20%7C%20v.%20%7C%20turkey&sessionid=62680957&skin=hudoc-en>> accessed 12 August 2011
6. *Balsytė-Lideikienė v. Lithuania (ECHR (Judgment))* 4 November 2008, Case No. 72596/01
7. *Barthold v. Germany* [1985] 7 ECHR 383 (8734/79) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Barthold%20%7C%20v.%20%7C%20Germany&sessionid=62680957&skin=hudoc-en>> accessed 23 September 2011
8. *Başkaya and Okçuoğlu v. Turkey* [1999] ECHR 23536/94 and 24408/94 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=baskaya&sessionid=62680957&skin=hudoc-en>> accessed 24 September 2011
9. *Bowman v United Kingdom* [1998] 26 EHRR 1 (141/1996/760/961) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20bowman&sessionid=62680957&skin=hudoc-en>> accessed 29 September 2011
10. *British Steel Corporation v. Granada Television Ltd.* Case [1981] 1 All ER 417 at 455
11. *Camelot Group Ltd. v. Centaur Communications Ltd.*, [1998] 1 All ER 251 CA
12. *Case of Ürper and others v. Turkey (Applications nos. 55036/07, 55564/07, 1228/08, 1478/08, 4086/08, 6302/08 and 7200/08)* <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=%DCrper%20%7C%20others%20%7C%20v.%20%7C%20>>

- Turkey&sessionid=62680957&skin=hudoc-en> accessed 05 October 2011
13. Ceylan v Turkey [1999] ECHR 23556/94 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=ceylan&sessionid=70066607&skin=hudoc-en>> accessed 26 September 2011
  14. Chahal v United Kingdom [1997] 23 EHRR 413, Appl. No: 22414/93 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22%20%7C%203%20%7C%20chahal&sessionid=62680957&skin=hudoc-en>> accessed 20 September 2011
  15. Colman v United Kingdom [1993] 18 EHRR 119 (16632/90) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Colman%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 23 September 2011
  16. Costello-Roberts v. The United Kingdom [1993] Appl. No: 13134/87 <<http://sim.law.uu.nl/sim/caselaw/Hof.nsf/1d4d0dd240bfee7ec12568490035df05/18382141e6cbe733c1256640004c19ff?OpenDocument>> accessed 21 September 2011
  17. Cox v. Turkey [2010] ECHR 2933/03 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=cox&sessionid=70061327&skin=hudoc-en>> accessed 27 September 2011
  18. Cyprus v. Turkey (1975) Applications Nos. 5310/71, and 5451/72, 4 EHRR 482 18 YEARBOOK 82
  19. Denmark v. Greece (1968) Application Nos. 3321, 3322, 3323, 3344/ 67, 11(2) YEARBOOK 690, 731
  20. Derbyshire County Council v Times Newspapers Ltd and Others [1993] AC 534, [1993] 1 All ER 1011, [1993] 2 WLR 449, 91 LGR 179 House of Lords
  21. Dulas v Turkey Case [2001] ECHR 25801/94 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Dulas%20%7C%20v%20%7C%20Turkey%20%7C%20Case&sessionid=62680957&skin=hudoc-en>> accessed 19 September 2011
  22. Erdoğan and İnce v. Turkey [1999] EHRR Applications nos. 25067/94 and 25068/94 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Erdoğan%20%7C%20İnce&sessionid=62680957&skin=hudoc-en>> accessed 27 September 2011
  23. Erdoğan v. Turkey [2000] ECHR 25723/94 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=erdogdu&sessionid=70066654&skin=hudoc-en>> accessed 27 September 2011
  24. Féret v. Belgium (ECHR Judgment) 16 July 2009 Case No. 15615/07)
  25. Goodwin v. United Kingdom [1996] 22 EHRR 123 Appl. no. 17488/90 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20goodwin&sessionid=62680957&skin=hudoc-en>> accessed 29 September 2011
  26. Greece v. United Kingdom (1959) Application Nos. 176/56 and 299/57, 2 YEARBOOK 182, 186
  27. Groppera Radio AG v Switzerland [1990] 12 EHRR 321 (10890/84) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Groppera%20%7C%20>

- Radio%20%7C%20AG%20%7C%20v%20%7C%20Switzerland&sessionid=62680957&skin=hudoc-en> accessed 23 September 2011
28. Halford v United Kingdom [1997] 24 EHRR 523 (20605/92) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Halford%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 23 September 2011
29. Handyside v. the United Kingdom [1976] 1 EHRR 737 (*Appl. no. 5493/72*) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20handyside&sessionid=62680957&skin=hudoc-en>> accessed 30 September 2011
30. Harry John Hammond v Department of Public Prosecutions [2004] EWHC 69 (*Admin*) <<http://www.bailii.org/ew/cases/EWHC/Admin/2004/69.html>> accessed 17 September 2011
31. Hashman and Harrup v United Kingdom [1999] 30 EHRR 241 Appl. No: 25594/94 <<http://sim.law.uu.nl/sim/caselaw/Hof.nsf/233813e697620022c1256864005232b791d890ceae07365dc1256847003479cb?OpenDocument>> accessed 29 September 2011
32. Incal v. Turkey [1998] ECHR 41/1997/825/103 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=incal&sessionid=70066519&skin=hudoc-en>> accessed 25 September 2011
33. Ireland v United Kingdom (1978) 2 EHRR 25 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22%20%7C%203%20%7C%20ireland&sessionid=62680957&skin=hudoc-en>> accessed 20 September 2011
34. Jabari v. Turkey (*App. 40035/98*), Judgment of 11 July 2000 <<http://www.unhcr.org/refworld/docid/3ae6b6dac.html>> accessed 12 October 2011
35. Keenan v United Kingdom [2001] 33 EHRR 38 Appl. no. 27229/95 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=3%20%7C%20Keenan%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 21 September 2011
36. Mark Anthony Norwood v Department of Public Prosecutions [2003] EWHC 1564 (*Admin*) <<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2003/1564.html>> accessed 17 September 2011
37. Mark Anthony Norwood v. United Kingdom Application no. 23131/03 <<http://strasbourg-consortium.org/document.php?DocumentID=4868>> accessed 27 September 2011
38. Media FM Reha Radyo ve Iletim Hizm A.S v. Turkey, Appl. No 32842/02 ECHR (2006) DA.
39. Omar Othman (*aka Abu Qatada*) v. Secretary of State for the Home Department, SC/15/2005, United Kingdom: Special Immigration Appeals Commission (*SIAC*) <<http://www.unhcr.org/refworld/docid/499043ea2.html>> accessed 13 September 2011
40. Ozgur Radio and Television Company v Turkey [2009] ECHR 10129/04 <<http://sim.law.uu.nl/SIM/CaseLaw/Hof.nsf/e4ca7ef017f8c045c1256849004787f5/c4866bd606307f87c1257574004b7bdf?OpenDocument>> accessed 26 September 2011
41. R v Chief Metropolitan Stipendiary Magistrate, ex parte Choudhury [1991] QB 429, [1991] 1 All ER 306, DC



42. R Green v. City of Westminster Magistrates' Court & (1) Jonathan Murray Thoday (2) Mark Thompson [2007] EWHC 2785 (*Admin*) <<http://www.bailii.org/ew/cases/EWHC/Admin/2007/2785.html>> accessed 16 September 2011
43. R. v. Lemon [1979] AC 617, [1979] 1 All ER 898 HL
44. Rangzieb Ahmed and Habib Ahmed v. The Queen [2011] EWCA Crim 184 <<http://www.bailii.org/ew/cases/EWCA/Crim/2011/184.html>> accessed 14 September 2011
45. Rekvenyi v. Hungary, Eur. Ct. HR, App. No. 25390/94, Judgment of 20 May 1999
46. Soering v United Kingdom [1989] 11 EHRR 439 (14038/88) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=Soering%20%7C%20v%20%7C%20United%20%7C%20Kingdom%20%7C%20Case&sessionid=62680957&skin=hudoc-en>> accessed 23 September 2011
47. Soulas v. France (*ECHR (Judgment)*) 10 July 2008, Case No. 15948/03)
48. Steel and others v United Kingdom [1998] 28 EHRR 603 (67/1997/851/1058) <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20Steel%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 29 September 2011
49. Stevens v United Kingdom (1986) 46 DR 245
50. Steve Thoburn v Sunderland City Council [2002] EWHC 195 Admin <<http://www.bailii.org/ew/cases/EWHC/Admin/2002/195.html>> accessed 11 October 2011
51. Sunday Times v. The United Kingdom [1979] 2 EHRR 245 Appl. no. 6538/74 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20Sunday%20%7C%20Times%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 28 September 2011
52. Sunday Times v United Kingdom [1991] 14 EHRR 229 Appl. no. 13166/87 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=10%20%7C%20Sunday%20%7C%20Times%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 29 September 2011
53. Sürek and Özdemir v. Turkey [1999] Applications Nos. 23927/94 and 24277/94 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=surek&sessionid=62680957&skin=hudoc-en>> accessed 25 September 2011
54. Tekin v. Turkey [1998] 52/1997/836/1042 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=tekin&sessionid=62680957&skin=hudoc-en>> accessed 30 July 2011
55. The Observer and The Guardian v United Kingdom [1991] 14 EHRR 153 Appl. no. 13585/88 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20The%20%7C%20Observer%20%7C%20Guardian%20%7C%20v%20%7C%20United%20%7C%20Kingdom&sessionid=62680957&skin=hudoc-en>> accessed 29 September 2011
56. Tolstoy Miloslavsky v. The United Kingdom [1995] 20 EHRR 4421995 Appl. no. 18139/91 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20Tolstoy%20%7C%20Miloslavsky&sessionid=62680957&skin=hudoc-en>> accessed 29 September 2011

57. *Turkington and others v Times Newspapers Limited* [2000] 4 All ER 913 (*HL*) <<http://www.publications.parliament.uk/pa/ld199900/ldjudgmt/jd001102/turk-1.htm>> accessed 07 September 2011
58. *Ümit Gül v. Turkey* [2009] Application no. 7880/02 <<http://www.bailii.org/cgi-bin/markup.cgi?doc=/eu/cases/ECHR/2009/1408.html&query=torture+and+inhuman+and+treatment&method=boolean>> accessed 19 September 2011
59. *Vogt v. Germany* [1995] 21 EHRR 205 Appl. No: 17851/91 <<http://sim.law.uu.nl/sim/caselaw/Hof.nsf/2422ec00f1ace923c1256681002b47f1/5c39c9042d3d80e3c1256640004c2c43?OpenDocument>> accessed 28 September 2011
60. *Wingrove v. the United Kingdom* [1996] 24 EHRR 1 Appl. No: 17419/90 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10%20%7C%20wingrove&sessionid=62680957&skin=hudoc-en>> accessed 30 September 2011
61. *Yazar, Karatas, Aksoy and the People's Party (HEP) v Turkey* [2002] 36 EHRR 59 Applications nos. 22723/93, 22724/93 and 22725/93 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=yazar%20%7C%20karatas%20%7C%20aksoy&sessionid=62680957&skin=hudoc-en.>> accessed 26 September 2011
62. *Zana v. Turkey* [1997] EHRR Appl. No: 69/1996/688/880 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=zana&sessionid=62680957&skin=hudoc-en>> accessed 24 September 2011

## LEGISLATIONS AND TREATIES

1. *Broadcasting Act 1990 (1990 c.42)* <<http://www.legislation.gov.uk/ukpga/1990/42/contents>> accessed 13 September 2011
2. *Constitution of the Republic of Turkey (1924)* <[http://www.anayasa.org/index.php?option=com\\_content&view=article&id=83%3Aanayasa-1924&catid=53%3Aanayasalar&Itemid=65&lang=en](http://www.anayasa.org/index.php?option=com_content&view=article&id=83%3Aanayasa-1924&catid=53%3Aanayasalar&Itemid=65&lang=en)> accessed 14 September 2011
3. Council of Europe, 'Convention for the Protection of Human Rights and Fundamental Freedoms' (2010) <[http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG\\_CONV.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf)> accessed 29 August 2011
4. Criminal Codes, 'Legislation Online' <<http://legislationline.org/documents/action/popup/id/6872/preview>> accessed 13 September 2011
5. *Criminal Justice Act 1988 c.33 s.134* <<http://www.legislation.gov.uk/ukpga/1988/33/section/134>> accessed 14 September 2011
6. European Court of Human Rights, 'Convention for the Protection of Human Rights and Fundamental Freedoms' <[http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG\\_CONV.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf)> accessed 22 September 2011
7. House of Commons, 'The Bill of Rights 1689' <<http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-00293.pdf>> accessed 14 September 2011
8. *Terrorism Act 2006 (2006 c.11)* <<http://www.legislation.gov.uk/ukpga/2006/11/contents>> accessed 14 September 2011

9. The Criminal Justice and Immigration Act 2008 (2008, c.4) <[http://www.justice.gov.uk/downloads/guidance/youth-justice/assessment/ukpga\\_20080004\\_en.pdf](http://www.justice.gov.uk/downloads/guidance/youth-justice/assessment/ukpga_20080004_en.pdf)> accessed 12 September 2011
10. Theatres Act 1968 (1968 c. 54) <<http://www.legislation.gov.uk/ukpga/1990/42/contents>> accessed 13 September 2011
11. Turkish Republic, 'Constitution' (*As amended on May 22, 2004, Article 17*) <[http://www.anayasa.gov.tr/images/loaded/pdf\\_dosyalari/THE\\_CONSTITUTION\\_OF\\_THE\\_REPUBLIC\\_OF\\_TURKEY.pdf](http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf)> accessed 29 August 2011
12. United Nations, 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (*Periodic Reports, 2001*) <[http://www.unhchr.ch/tbs/doc.nsf/0/a8983ccf93598b19c1256cfb00601578/\\$FILE/G0243568.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a8983ccf93598b19c1256cfb00601578/$FILE/G0243568.pdf)> accessed 10 September 2011
13. United Nations, 'Vienna Convention on the Law of Treaties' (1969) <[http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)> accessed 13 October 2011
14. World Law Direct, 'Article 301 of Turkish Penal Code' <<http://www.worldlawdirect.com/forum/law-wiki/13828-article-301-turkish-penal-code.html>> accessed 09 September 2011

## SECONDARY SOURCES

### BOOKS

1. Barendt Eric, *Freedom of Speech (2nd edn Oxford University Press, New York 2005)*
2. Barnhart Stephen R., *International Terrorism and Political Violence: The Entity of Trans-National Criminal Organizations and New Terrorisms in the Balkans-Middle East and Eastern Europe, and Its Effect on the Entire World! (Trafford Publishing, 2002)* <<http://books.google.com/books?id=kWK385cUCVoC&pg=PA105&dq#v=onepage&q&cf=false>> accessed 18 August 2011
3. Blackburn Robert , Kennon Andrew , Wheeler-Booth Sir Michael , Griffith J.A.G., and Ryle Michael , *Parliament: Functions, Practice and Procedures ( Sweet & Maxwell, London 1989)*
4. Clayton Richard and Tomlinson Hugh , *Privacy and Freedom of Expression (Reprinted from the Law of Human Rights Oxford University Press, Oxford 2006)*
5. Dickson Brice, *Human Rights and the European Convention ( Sweet & Maxwell, London 1997)*
6. Feldman David, *Civil Liberties and Human Rights in England and Wales (2nd edn Oxford University Press, Oxford 2002)*
7. Foster Steve , *Human Rights and Civil Liberties (Pearson Education Limited, Essex 2003)*
8. Foster Steve , *Human Rights & Civil Liberties (2nd edn Pearson Education Limited, Essex 2008)*
9. Foster Steven, *The Judiciary Civil Liberties and Human Rights (Edinburgh University Press, Edinburgh 2006)*
10. Harris David J, Boyle MO, Bates EP and Buckley CM, *Law of the European Convention on Human Rights (2nd edn, Oxford University Press, 2009)*

11. Hoffman David and Rowe John Q.C., *Human Rights in the UK an Introduction to the Human Rights Act 1998 (3rd edn Pearson Education Limited, Essex 2010)*
12. Janis Mark W., Kay Richards and Bradley Anthony W., *European Human Rights Law Text and Materials (2nd edn Oxford University Press, New York 2000)*
13. Mowbray Alastair, *Cases and Materials on the European Convention on Human Rights (2nd edn Oxford University Press, New York 2007)*
14. Ovey Clare and White Robin, Jacobs and White, *The European Convention on Human Rights (4th edn Oxford University Press, Oxford 2006)*
15. Robertson A H and Merrills J G, *Human Rights in Europe; a Study of the European Convention on Human Rights (3rd edn Manchester University Press, Manchester & New York 1993)*
16. Rowe Peter, 'Control over Armed Forces Exercised by the European Court of Human Rights in Vankovska' (eds), *Legal Framing of the Democratic Control of Armed Forces and the Security Sector: Norms and Realities (Geneva Centre for the Democratic Control of Armed Forces 2001)*
17. Shorts Edwin and Than Claire de, *Human Rights Law in the UK (Sweet & Maxwell, London 2001)*
18. Smith Rhona K M, *Texts and Materials on International Human Rights (2nd edn Routledge, London & New York 2010)*
19. Spencer Maureen and Spencer John, *Human Rights Law in a Nutshell (3rd edn Sweet & Maxwell, London 2007)*
20. Starmer Keir, *European Human Rights Law (Legal Action Group, London 1999)*
21. Than Claire de and Shorts Edwin, *International Criminal Law and Human Rights (Sweet & Maxwell Limited, London 2003)*
22. Wadham John, Mountfield Helen and Edmundson Anna, *Blackstone's Guide to The Human Rights Act 1998 (5th edn Oxford University Press, Oxford 2009)*

## REPORTS

1. Bureau of Democracy, Human Rights, and Labor, '2010 Human Rights Report: United Kingdom' <<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154457.htm>> accessed 06 September 2011
2. Commission of the European Communities, '2001 Regular Report on Turkey's Progress towards Accession' (*Brussels, 13.11.2001*) <[http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/Progress/Turkey\\_Progress\\_Report\\_2001.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2001.pdf)> accessed 02 October 2011
3. Commission of the European Communities, '2003 Regular Report on Turkey's Progress Towards Accession' <[http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/Progress/Turkey\\_Progress\\_Report\\_2003.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/Turkey_Progress_Report_2003.pdf)> accessed 01 October 2011
4. Commission of the European Communities, 'Turkey-2004 Progress Report' (*Brussels 06.10.2004*) <[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2004/rr\\_tr\\_2004\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf)> accessed 02 October 2011
5. Commission of the European Communities, 'Turkey-2005 Progress Report' (*Brussels 09.11.2005*) <<http://www.unhcr.org/refworld/docid/43956b6d4.html>> accessed 5 October 2011

6. Commission of the European Communities, 'Turkey-2006 Progress Report' (*Brussels 08.11.2006*) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2006/nov/tr\\_sec\\_1390\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/tr_sec_1390_en.pdf)> accessed 03 October 2011
7. Commission of the European Communities, 'Turkey-2007 Progress Report' (*Brussels 06.11.2007*) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2007/nov/turkey\\_progress\\_reports\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf)> accessed 03 October 2011
8. Commission of the European Communities, 'Turkey-2008 Progress Report' (*Brussels 05.11.2008*) <[http://ec.europa.eu/enlargement/pdf/press\\_corner/key-documents/reports\\_nov\\_2008/turkey\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/turkey_progress_report_en.pdf)> accessed 03 October 2011
9. Commission of the European Communities, 'Turkey-2009 Progress Report' (*Brussels 14.10.2009*) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/tr\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf)> accessed 04 October 2011
10. Commission of the European Communities, 'Turkey-2010 Progress Report' (*Brussels 09.09.2010*) <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/tr\\_report\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_report_2010_en.pdf)> accessed 04 October 2011
11. European Commission, 'Enlargement Strategy and Progress Reports 2010' <[http://ec.europa.eu/enlargement/press\\_corner/key-documents/reports\\_nov\\_2010\\_en.htm](http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm)> accessed 06 September 2011
12. European Court of Human Rights 'Annual Report 2010' (2011) <[http://www.echr.coe.int/NR/rdonlyres/F2735259-F638-4E83-82DF-AAC7E934A1D6/0/2010\\_Rapport\\_Annuel\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/F2735259-F638-4E83-82DF-AAC7E934A1D6/0/2010_Rapport_Annuel_EN.pdf)> accessed 18 September 2011
13. United Nations, 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (*Periodic Reports, 2001*) <[http://www.unhcr.ch/tbs/doc.nsf/0/a8983ccf93598b19c1256cfb00601578/\\$FILE/G0243568.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/a8983ccf93598b19c1256cfb00601578/$FILE/G0243568.pdf)> accessed 10 September 2011
14. United States Department of State, 'Country Reports on Terrorism' (2007) <<http://www.state.gov/s/ct/rls/crt/2006/82738.htm>> accessed 18 August 2011

## ARTICLES AND OTHER SOURCES

1. Algan Bulent, 'The Brand New Version of Article 301 of Turkish Penal Code and the Future of Freedom of Expression Cases in Turkey' (2009) 12 German Law Journal 2237 <[http://www.germanlawjournal.com/pdfs/Vol09No12/PDF\\_Vol\\_09\\_No\\_12\\_2237-2252\\_Developments\\_Algan.pdf](http://www.germanlawjournal.com/pdfs/Vol09No12/PDF_Vol_09_No_12_2237-2252_Developments_Algan.pdf)> accessed 24 April 2011
2. Aral Berdal, 'The Idea of Human Rights Perceived in the Ottoman Empire' (2004) 26(2) Hum. Rts. Q. 454 <<http://heinonline.org/HOL/Page?handle=hein.journals/hurq26&cid=3&collection=journals&index=journals/hurq>> accessed 12 October 2011
3. Balkan Sadik, Uysal Ahmet E. and Karpat Kemal H., 'Constitution of the Turkish Republic' (*Ankara, 1961*) <<http://www.anayasa.gen.tr/1961constitution-text.pdf>> accessed 12 September 2011
4. Bozarslan Hamit, 'Human Rights and the Kurdish Issue in Turkey: 1984-1999' (2001) 3(1) Human Rights Review 45 <<http://www.springerlink.com/content/mntcthr413p0p30t/>> accessed 10 October 2011

5. British Council, 'Overview of Human Rights in the United Kingdom' <[www.britishcouncil.org/governance-hrukoverview.doc](http://www.britishcouncil.org/governance-hrukoverview.doc) > accessed 17 September 2011
6. Cameron Iain, 'Turkey and Article 25 of the European Convention on Human Rights' (1998) 37(4) ICLQ 887 <<http://www.jstor.org/pss/759836?searchUrl=%2Faction%2FdoBasicSearch%3FQuery%3DTurkey%2Band%2BArticle%2B25%2Bof%2Bthe%2BEuropean%2BConvention%2Bon%2BHuman%2BRights%2BIain%2BCameron%26gw%3Djtx%26prq%3DHamit%2BBozarslan%26Search%3DSearch%26hp%3D25%26wc%3Don&Search=yes>> accessed 09 October 2011
7. Christensen Christian, 'Breaking the News: Concentration of Ownership, the Fall of Unions and Government Legislation in Turkey' <[http://citation.allacademic.com//meta/p\\_mla\\_apa\\_research\\_citation/1/6/8/4/1/pages168418/p168418-21.php](http://citation.allacademic.com//meta/p_mla_apa_research_citation/1/6/8/4/1/pages168418/p168418-21.php)> accessed 17 August 2011
8. Erdal Murat, Ekiz Gulşah, Aksin Selim, and Güngör Necmi Murat, 'Restricted Access and Blocking Websites, Internet Regulations and Turkey Practices' (2010) <<http://www.irma-international.org/viewtitle/43502/> > accessed 15 September 2011
9. European Court of Human Rights, 'Chahal v. The United Kingdom' (1997) 9 (1) Int J Refugee Law 86-121. <<http://ijrl.oxfordjournals.org/content/9/1/86.full.pdf+html>> accessed 21 September 2011
10. European Court of Human Rights, 'Pending Applications allocated to a Judicial Formation' <[http://www.echr.coe.int/NR/rdonlyres/92D2D024-6F05-495E-A714-4729DEE6462C/0/Pending\\_applications\\_chart.pdf](http://www.echr.coe.int/NR/rdonlyres/92D2D024-6F05-495E-A714-4729DEE6462C/0/Pending_applications_chart.pdf) > accessed 18 September 2011
11. European Court of Human Rights 'Violations by Article and by Country' (2009) <[http://www.echr.coe.int/NR/rdonlyres/5D511C09-CF91-47D2-BA2F-8EEBBB38CCD1/0/Tableau\\_de\\_violations\\_2008\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/5D511C09-CF91-47D2-BA2F-8EEBBB38CCD1/0/Tableau_de_violations_2008_ENG.pdf) > accessed 17 September 2011
12. European Court of Human Rights 'Violations by Article and by Country' (2010) <[http://www.echr.coe.int/NR/rdonlyres/E8F73EC8-AF6A-4205-BAF2-F6043F67F651/0/Tableau\\_de\\_violations\\_2009\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/E8F73EC8-AF6A-4205-BAF2-F6043F67F651/0/Tableau_de_violations_2009_ENG.pdf) > accessed 16 September 2011
13. European Court of Human Rights 'Violations by Article and by Country' (31.12.2010) <[http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/Tableau\\_de\\_violations\\_19592010\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/Tableau_de_violations_19592010_ENG.pdf)> accessed 18 September 2011
14. European Court of Human Rights 'Violations by Article and by Country' (2011) <[http://www.echr.coe.int/NR/rdonlyres/596C7B5C-3FFB-4874-85D8-F12E8F67C136/0/TABLEAU\\_VIOLATIONS\\_2010\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/596C7B5C-3FFB-4874-85D8-F12E8F67C136/0/TABLEAU_VIOLATIONS_2010_EN.pdf) > accessed 17 September 2011
15. European Parliament, 'Turkey Human Rights' (Brussels, 10.03.2006) <[http://www.europarl.europa.eu/meetdocs/2004\\_2009/documents/fd/d-tr20060425\\_05/d-tr20060425\\_05.en.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/d-tr20060425_05/d-tr20060425_05.en.pdf)> accessed 19 August 2011
16. Fitzpatrick Joan, 'Speaking Law to Power: The War against Terrorism and Human Rights' (2003) EJIL 14(2) 241 <<http://ejil.oxfordjournals.org/content/14/2/241.full.pdf+html>> accessed 08 October 2011
17. Foreign Affairs Ministry of Turkey, 'Press statement on the 2001 regular report on Turkey's progress towards accession and the strategy paper prepared by the EU Commission- November 13' (2001) <[http://www.mfa.gov.tr/press-statement-on-the-2001-regular-report-on-turkey\\_s-progress-towards-accession-and-the-strategy-paper-prepared-by-the-eu-commission-november-13.en.mfa](http://www.mfa.gov.tr/press-statement-on-the-2001-regular-report-on-turkey_s-progress-towards-accession-and-the-strategy-paper-prepared-by-the-eu-commission-november-13.en.mfa)> accessed 11 October 2011

18. Foster Steve, 'Prison Conditions and Human Rights: the Development of Judicial Protection of Prisoners' Rights' (2009) <<http://webjcli.ncl.ac.uk/2009/issue1/foster1.html>> accessed 27 September 2011
19. Freedom House, 'Freedom on the Net: A Global Assessment of Internet and Digital Media' <<http://www.freedomhouse.org/template.cfm?page=384&key=212&parent=19&report=79>> accessed 13 September 2011
20. Herrmann Joachim, 'Implementing the Prohibition of Torture on Three Levels: United Nations – Council of Europe – Germany' <[http://www.zis-online.com/dat/artikel/2007\\_8\\_152.pdf](http://www.zis-online.com/dat/artikel/2007_8_152.pdf)> accessed 21 September 2011
21. Hicks Neil, 'Legislative Reform in Turkey and European Human Rights Mechanisms' (1999) 3(1) Human Rights Review 78 <<http://www.springerlink.com/content/e28n4dteq2b14qk/>> accessed 13 October 2011
22. House of Lords, 'Debate on 19 May: the European Convention on Human Rights' <<http://www.parliament.uk/documents/lords-library/Library%20Notes/2011/LLN%202011-017%20ECHR.pdf>> accessed 17 September 2011
23. House of Lords, 'Judgments—Regina v. Secretary of State for Education and Employment and others (Respondents) ex parte Williamson (Appellant) and others' (Session 2001-2002) <<http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050224/will-1.htm>> accessed 21 September 2011
24. Human Rights Watch, 'Questions and Answers: Freedom of Expression and Language Rights in Turkey' (2002) <<http://www.hrw.org/legacy/press/2002/08/turkeyqa041902.htm>> accessed 15 September 2011
25. Human Rights Watch, 'Turkey: Government Amendments Will Not Protect Free Speech—Article 301 Should Be Abolished' (17 April 2008) <<http://www.unhcr.org/refworld/docid/480db4a02.html>> accessed 15 September 2011
26. Johnson Nigel, 'The Human Rights Act 1998: A Bridge between Citizenship and Justice?' (2004) 3(2) Social Policy and Society 113 <<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=212323>> accessed 18 September 2011
27. Karcilioğlu Kaan, 'Article 301 of the Turkish Criminal Code Amended' <<http://merlin.obs.coe.int/iris/2008/6/article28.en.html>> accessed 18 September 2011
28. Letsas George, 'Two Concepts of the Margin of Appreciation' (2006) 26(4) Oxford J. of Leg. Studies 705 <<http://ojls.oxfordjournals.org/content/26/4/705.full.pdf+html>> accessed 28 September 2011
29. Magnarella Paul J., 'The Legal, Political and Cultural Structures of Human Rights Protections and Abuses in Turkey' (1994) 3 J. Int'l L. & Prac. 439 <<http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/mistjintl3&div=35&id=&page=>>> accessed 14 October 2011
30. Marks Susan, 'Civil Liberties at the Margin: The UK Derogation and the European Court of Human Rights' (1995) 15(1) Oxford J. of Legal Studies 69 <<http://www.jstor.org/stable/764581>> accessed 19 September 2011
31. Neumayer Eric, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49(6) The Journal of Conflict Resolution 925

32. O'Boyle Michael, 'Torture and Emergency Powers under the European Convention on Human Rights: Ireland v. The United Kingdom' (1977) 71(4) AJIL 674 <<http://www.jstor.org/pss/2199581>> accessed 17 September 2011
33. O'Donnell Thomas A., 'Margin of Appreciation Doctrine: Standards in the Jurisprudence of the European Court of Human Rights' (1982) 4 Hum. Rts. Q. 474 <<http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/hurq4&div=35&cid=&page=>> accessed 23 September 2011
34. Official Gazette Law on Changes made to Various Laws (*Law no. 4771 Adopted: 03.08.2002*) <<http://www.ilo.org/dyn/natlex/docs/SERIAL/68377/66629/F1942448432/TUR68377.PDF>> accessed 19 August 2011
35. Reidy Aisling, 'A Guide to the Implementation of Article 3 of the European Convention on Human Rights' (2003) <<http://echr.coe.int/NR/rdonlyres/0B190136-F756-4679-93EC-42EEBEAD50C3/0/DG2ENHRHAND062003.pdf>> accessed 09 September 2011
36. Reidy Aisling, 'The Prohibition of Torture' (2003) <<http://echr.coe.int/NR/rdonlyres/0B190136-F756-4679-93EC-42EEBEAD50C3/0/DG2ENHRHAND062003.pdf>> accessed 21 September 2011
37. Schilling David, 'European Islamophobia and Turkey—Refah Partisi (*The Welfare Party*) v. Turkey' (2003-2004) 26 Loy. L.A. Int'l & Comp. L. Rev. 501
38. Starmer Keir, 'The European Convention on Human Rights and the Human Rights Act 1998' <<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=1980064>> accessed 17 September 2011
39. Stokłosa Arkadiusz, 'Human Rights in Turkey' (2009) <<http://swepub.kb.se/bib/swepub:oai:DiVA.org:hh-2281?tab2=abs&language=en>> accessed 14 September 2011
40. Tate Jahnisa, 'Turkey's Article 301: A Legitimate Tool for Maintaining Order or a Threat To Freedom Of Expression?' (2008-2009) 37 Ga. J. Int'l & Comp. L. 181 <[http://heinonline.org/HOL/Welcome?message=Please%20log%20in&url=%2FHOL%2FPage%3Fhandle%3Dhein.journals%2Fgjic137%26div%3D8%26collection%3Djournals%26set\\_as\\_cursor%3D23%26men\\_tab%3Dsrchresults%26terms%3D%28freedom%2520AND%2520of%2520AND%2520exp%2520AND%2520Turkey%2520AND%2520article%2520AND%252010%29%26type%3Dmatchall](http://heinonline.org/HOL/Welcome?message=Please%20log%20in&url=%2FHOL%2FPage%3Fhandle%3Dhein.journals%2Fgjic137%26div%3D8%26collection%3Djournals%26set_as_cursor%3D23%26men_tab%3Dsrchresults%26terms%3D%28freedom%2520AND%2520of%2520AND%2520exp%2520AND%2520Turkey%2520AND%2520article%2520AND%252010%29%26type%3Dmatchall)> accessed 18 July 2011
41. The Representative on Freedom of the Media Miklos Haraszti, 'Review of the Draft Turkish Penal Code: Freedom of Media Concerns' (2005) <<http://www.osce.org/fom/14672>> accessed 12 September 2011
42. Thienel Tobias, 'The Admissibility of Evidence Obtained by Torture under International Law' (2006) 17 EJIL 2 <<http://www.ejil.org/pdfs/17/2/78.pdf>> accessed 17 September 2011
43. Today's Zaman, 'EU Welcomes 301 Amendment But Calls For More' (01.05.2008) <[www.todayszaman.com/tz-web/detaylar.do?load=detay&link=140606](http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=140606)> accessed 13 September 2011
44. Turk Hikmet Sami, 'Human Rights in Turkey' (December 1998–February 1999) Volume III–Number 4 J.Int'l Aff. <<http://www.sam.gov.tr/perceptions/Volume3/Dec1998-Feb1999/turk.PDF>> accessed 13 September 2011
45. UK Parliament, 'Blasphemy' <<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldrelol/95/9515.htm#n137>> accessed 18 August 2011



46. UK Parliament, 'Human Rights Standards and Deaths in Custody' <<http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/15/1505.htm>> accessed 21 September 2011
47. UK Parliament, 'Select Committee on Religious Offences in England and Wales' (2003, *First Report*) <<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldrelolof/95/9515.htm#n142>> accessed 30 September 2011
48. U.S. English Foundation Research, 'Turkey Legislation' <<http://www.usefoundation.org/view/878>> accessed 15 September 2011
49. Voorhoof Dirk, 'Freedom Of Expression Under The European Human Rights System' (2010) <[http://www.psw.ugent.be/Cms\\_global/uploads/publicaties/dv/05recente\\_publicaties/LAEHR.VOORHOOFFINAL.2OCT2010.pdf](http://www.psw.ugent.be/Cms_global/uploads/publicaties/dv/05recente_publicaties/LAEHR.VOORHOOFFINAL.2OCT2010.pdf)> accessed 22 August 2011
50. Watts Nicole F, 'Allies and Enemies: Pro-Kurdish Parties in Turkish Politics, 1990-94' (1999) 31 *Int. J. Middle East Stud.* 631 <<http://www.jstor.org/pss/176465>> accessed 14 September 2011

