

HUMAN RIGHTS IN THE TURKISH CONTEXT

Some Considerations and Perspectives*

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This paper, prepared for the purpose of contributing to a regional discussion, will endeavour, always in the Turkish context, to express some general views on four distinct aspects of the topic: priorities, international instruments, the teaching of human rights and possibilities of regional cooperation.

I. The Problem of Priorities

No other gathering can be as appropriate as this regional meeting to elaborate the composite nature of the "Turkish approach" to the question of human rights.

Here, at this crossroads of civilizations, it is very easy to juxtapose various approaches, to underline the differences, to stress the confrontations and to conclude by saying that the subject of human rights will remain a source of eternal and insoluble conflict. Because, our part of the world, with its very wide spectrum of regimes and ideologies, seems to lack the cohesiveness that one basically finds, for instance, in Western or Eastern Europe, North or South America or South Asia where one can speak at least of common traditions and historically shared experiences.

But this puzzling variety of approaches in our region should not necessarily lead to a gloomy conclusion. Perhaps the co-existence of so many different approaches may provide the possibility of working towards a synthesis which would be universally interesting, if not universally valid.

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It is in the context of this attempt towards a synthesis of the various approaches that the Turkish approach to the problem of priorities in human rights deserves a particular attention.

a) *The Constitutional Framework*

The Turkish Constitution of 1961 follows Jellinek's well-known categories which have become classical in enumerating the rights and liberties of citizens in any state; rights of negative status (freedom of expression, of belief, privacy of personal life, inviolability of residence, etc.); rights of positive status (right to education, right to medical care, social security, etc.); rights of active status (electoral rights, military service, etc.).

Although seemingly put on an equal footing, these three categories of rights do not enjoy the same constitutional protection: one of the articles of the Constitution, Article 53, stipulates that "The State shall carry out its duties to attain the social and economic goals provided in this Section (i.e. the Section on Social and Economic Rights and Duties) only insofar as economic development and financial resources permit." This relegates the economic and social rights of the citizen into a secondary position as compared with the first and third categories rights. In fact, "the rights and duties of the individual" and "the political rights and duties" are all protected by an elaborate system of judicial review through a Constitutional Court whereas most of the rights in the second category are almost completely dependent on political assessments of the allowance made by the economic development and financial resources" of the country.

b) *The Realities*

Even in the spheres of "the rights and duties of the individual" and of "the political rights and duties", much remains to be done in spite of the detailed constitutional provisions and the judicial machinery created for their protection: The Penal Code still contains articles limiting the freedom of expression and the right of organized political action; the rights of habeas corpus and protection from arbitrary detention are not always fully respected; there are frequent allegations of physically rough treatment at police stations, etc.

On the other hand, even without the constitutional "licence" made for the economic and social rights, it is obvious that in a country where the economy is still experiencing the difficulties of a painful stage of transition, the material protection of the individual is bound to remain below the standards of a developed welfare state: not all Turks are provided with fully free medical care or education; a great number of them are still deprived of the benefits of a social security system; housing and nutrition leave much to be desired, etc.

c) *The Guarantees for the Future*

What is then the originality and value of the Turkish approach?

It consists of a bold attempt to introduce the full list of liberties and rights and the checks and balances of highly industrialized and sophisticated societies to a country where economic and social conditions would have, on the contrary, called for a shorter list and more streamlined and authoritarian forms of political organization: an extensive constitutional list of rights and liberties, combining, as has already been said, the principles of the liberal tradition with the prerequisites of a modern welfare state, an electoral system based on proportional representation, bicameralism and a strict system of judicial review on all legislative and executive actions.

"A luxury", one would instinctively say, "for a society still semi-industrialized, semi-urban and semi-educated!"

And in fact many have said so.

What has been the result of this seemingly artificial implantation? The answer is today's "Turkish miracle".

Miracle, because in any other country with the same level of economic and social development (or rather underdevelopment), with the same rate of inflation and political violence, the system would have collapsed long ago. But in Turkey it still continues to function, in a wishy-washy fashion perhaps and sometimes in an atmosphere of suspense, in spite of several attempts to change its nature. Because, the so-called "luxuries" have created, and protected, in the process, a certain form of

rudimentary pluralism which has basically prevented a complete erosion of fundamental rights and liberties.

For instance, the Turkish trade-unionism, created by a certain constitutionalist implantation of such rights as collective bargaining, strike, etc., and encouraged by constitutional provisions for social security, etc., has in turn acted as a strong deterrent against attempts to distort the constitutional order. Organized labour is today perhaps the strongest guarantor of a system of which it shares the dividends and in which it has so much at stake.

This is a clear example of the "linkage" between the categories of the so-called liberal or classical liberties and the economic and social rights of modern times. The Turkish approach has shown that human rights can only be guaranteed by an intricate network of protection covering all spheres of life.

It is therefore difficult to talk of priorities. The temptation to oppose civil and political rights, on the one hand, to economic, social and cultural rights, on the other, has always been haunting the minds in Turkey as elsewhere. But this is a false confrontation and the temptation must be resisted. Often the two categories complement and protect one another. It seems that the Turkish society has reached a stage where the masses realize that they are less likely to have their material needs met if they cannot make their voices heard through well-protected political and civil rights. They also realize that these rights of theirs are in danger of being hampered if they cannot influence the course of events by the sheer weight of their numbers through organized industrial action under the constitutional protection of their economic and social rights.

II. International Instruments and Turkey

The list of international instruments on human rights signed and ratified by Turkey comprise the following:

— Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948 (entered into force 12 January 1951);

— Slavery Convention signed at Geneva, 25 September 1926, as amended by the Protocol of 7 December 1953, (entered into force 7 July 1955);

— Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery, 7 September 1956, (entered into force 30 April 1957);

— ILO Convention concerning the Abolition of Forced Labour, 25 June 1957 (entered into force 17 January 1959);

— Convention relating to the Status of Refugees, 28 July 1951 (entered into force 22 April 1954);¹

— Convention relating to the Status of Refugees, 31 January 1967 (entered into force 4 October 1967);¹

— ILO Convention concerning the Application of the Principles of the Right to organize and bargain collectively, 1 July 1949 (entered into force 18 July 1951);

— ILO Convention concerning Employment Policy, 9 July 1966 (entered into force 15 July 1966);

— Convention on the Political Rights of Women, 31 March 1953 (entered into force 7 July 1954);

— Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949);

— Geneva Convention for the Amelioration of the condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, 12 August 1949);

— Geneva Convention relative to the Treatment of the Prisoners of War, 12 August 1949);

1 While ratifying this convention, Turkey has added the following reservation and declaration:

“No provision of this Convention may be interpreted as granting to refugees greater rights than those accorded to Turkish citizens in Turkey”.

2 The accession of Turkey to this Convention should be read with the following reservation:

“The instrument of accession stipulates that the government of Turkey maintains the provision of the declaration made under section B of Article 1 of the Convention relating to the Status of Refugees, done at Geneva on 28 July 1951, according to which it applies the Convention only to persons who have become refugees as a result of events occurring in Europe, and also the reservation clause made upon ratification of the Convention to the effect that no provision of this Convention may be interpreted as granting to refugees greater rights than those accorded to Turkish citizens in Turkey.”

— Geneva Convention relative to the Protection of Civilian Persons in Time of War, 19 August 1949;

— ILO Convention concerning equal Renumeration for Men and Women Workers for Work of equal Value, 29 June 1951 (entered into force 23 May 1953);

— ILO Convention concerning Discrimination in Respect of Employment and Occupation, 25 June 1958 (entered into force 15 June 1960);

In addition, the International Convention on the Elimination of all Forms of Racial Discrimination (entered into force on 4 January 1969) was signed by Turkey, but has not yet been ratified.

This list consisting of 15 ratifications and one signature is rather short compared to some states in Europe: Norway 32 ratifications, Sweden 29, Federal Republic of Germany, 28, Denmark 28, United Kingdom 28; Yugoslavia 27, Finland 27. Other European countries in a more or less similar situation as Turkey are Greece (16 ratification, one signature), Portugal (14 ratifications and 2 signatures), Switzerland (14 ratifications).

The list compares favourably only with some small states of Europe: Liechtenstein (6 ratifications), Monaco 7, San Marino 5, Vatican 7.

A comparison with the participant countries of the present colloquy gives the following picture:

Bulgaria,	20	ratifications		
Greece,	17	"	and 1 signature	
Iran,	17	"	" 1	"
Iraq,	19	"	"	"
Romania,	22	"	" 2	"
Syrian A.R.	19	"		
U.S.S.R.	22	"		
Yugoslavia,	27	"		
Turkey,	15	"	" 1	"

But comparisons by mere figures are not enough since they do not reflect two important omissions on the part of Turkey:

“The International Covenant on Economic, Social and Cultural Rights” and “The International Covenant on Civil and Political Rights”. Turkey has not even signed these conventions. Considering that both allow a wide possibility of ratification under reservation, there can be no reasonable political excuse for this delay.

In the *European* context, Turkey has signed and ratified the European Convention of Human Rights and Fundamental Freedoms and four of its five protocols; but together with Cyprus, Greece, Malta and Switzerland she has not signed the Protocol No.4 prohibiting imprisonment for inability to fulfil a contractual obligation and dealing with the liberty of movement, freedom to choose residence, the right of entry and the power of expulsion.

The Protocol No. 1 was ratified with a reservation for Article 2 on the right to education, preserving the provisions of the Turkish law on the Integration of Education in matters of religious teaching.

Turkey, together with Cyprus, France, Greece and Malta, is among the five countries which have not made the declarations necessitated by Article 25 of the European Convention for the recognition of the right of individual petition to the European commission and by Article 46 for the recognition of the compulsory jurisdiction of the European Court. She has not of course made the declaration stipulated in the Protocol No. 4, having not signed it at all. Possessing no colony, Turkey had to make no declaration of extension under Article 63 of the European Convention.

In the sphere of economic and social rights in the European context, Turkey has signed, but not yet ratified the Social Charter, but signed and ratified the Social Code. She has signed, but not yet ratified the Convention on the Legal Status of Migrant Workers.

On the whole, judging from the lists of international instruments ratified or not ratified by Turkey, it is impossible to reach a clear-cut conclusion as to her “priorities” on the international scene. This lack of pattern seems to coincide with the lack of priorities on the domestic scene and with the composite nature of the Turkish approach to human rights.

III. The Teaching of Human Rights

Considering the immense interest in the subject and the proliferation of centers, etc. (the creation of the Human Rights Documentation Center at the Istanbul Bar Association, the Human Rights Center at the Faculty of Political Sciences, Ankara University, the Human Rights Research and Documentation Center at the Public Administration Institute for Turkey and the Middle East, the founding of the Turkish National Section of Amnesty International, in the course of one year alone), the teaching of human rights has not yet reached at formal academic recognition shared by all institutions of higher learning.

The present teaching of the subject, taking various forms according to the curricula and staff of the institutions concerned, can be best reviewed under three headings:

a) *Courses directly labeled "Fundamental Rights", "Public Liberties" or "Human Rights"*

— Faculty of Political Science, Ankara University: an undergraduate course on "Fundamental Rights" for third year students (3 hours per week for a semester);

— School of Press and Broadcasting, attached to the same Faculty: an undergraduate course on "Fundamental Rights" for fourth year students (3 hours per week for a semester);

— Faculty of Political Science, Ankara University: an undergraduate course on "Human Rights at the International Level" for third year students of international relations (2 hours per week for a semester);

— Faculty of Political Science, Ankara University: a graduate course on "International Protection of Human Rights" for the political science section of the graduate programme (2 hours per week for a semester);

— Faculty of Political Science, Istanbul Academy of Economic and Commercial Sciences: an undergraduate course on "Fundamental Rights and Liberties" for third year public administration students (2 hours per week for a year);

— School of Political Science, Istanbul Academy of Economic and Commercial Sciences: an undergraduate course on

“Fundamental Rights and Liberties” for third year public administration students (2 hours per week for a year);

— Institute of Journalism and Public Relations, Faculty of Economics, Istanbul University: an undergraduate course of “Public Liberties” for third year students (1 hour per week for two semesters);

— Ankara Academy of Economic and Commercial Sciences: an undergraduate course on “Public Liberties” for fourth year students (2 hours per week for a year).

— Faculty of Education, Ankara University: an undergraduate course on “Human Rights and Fundamental Democratic Institutions” for first year students (2 hours per week for a year), supplemented by a course on “The Rights of the Children and Related Institutions”.

— Public Administration Institute for Turkey and the Middle East: a graduate course on “Fundamental Rights and Liberties” in the programme of specialization on public administration (4 hours a week for a semester).

— Academy of Social Services: an undergraduate programme on “Human Rights and Social Services” for second year students (2 hours per week for a year).

b) Courses of which a section is devoted to “human rights”

— Courses on “general public law”: In faculties of law, both in Ankara and Istanbul, approximately a third of the course on “general public law” (political theory, history and principles) given to third year students is devoted to “human rights”.

— Courses on “Constitutional Law”: The teaching of “constitutional law”, a permanent feature of the curricula in Faculties of law and political science and in other institutions of higher learning in the field of social sciences, gives a prominent place to the subject of human rights, especially in relations with the topic of the judicial review of the constitutionality of laws.

— Courses on “International Law”: The international protection of human rights is usually dealt with in the context

of this course, the exception being the Faculty of Political Sciences, Ankara University, where the topic is treated as a separate course. There, another course on "The current problems of International Law" is presently dealing with "international judiciary", a subject closely related to the international protection of human rights.

— In many institutions of higher learning, parts of undergraduate or graduate seminars are also devoted to discussions on human rights: At the Faculty of Law, Istanbul University, a seminar of "Fundamental Rights" and a workshop of "Judicial Review of Constitutionality and Fundamental Rights" are conducted by members of the chair for Constitutional Law. The topic is also discussed in seminars of public law. At the Faculty of Political Science, Ankara University an undergraduate seminar and a graduate seminar on "The Jurisprudence of the Constitutional Court" deal with "Fundamental Rights and Liberties". Similar seminars have been organized by the Faculty of Administrative Sciences, Middle East Technical University in its programme for master's degree in Public Administration and Political Science.

c) *Courses indirectly dealing with "human rights"*

It goes without saying that in such legal courses as "International Private Law", "Law of Communication and Information", "Penal Law", "Labour Law" and "Administrative Law", the topic of human rights inevitably becomes part and parcel of the teaching. On the other hand, courses on "International Relations", "Political Theory", "Philosophy of Law", "Social Policy" also deal with human rights. It is known that the course titled "The Question of Liberty" at the Philosophy Section of the University of Hacettepe places a great emphasis on the subject of human rights as such.

If a general evaluation is needed, it may not be wrong to say that in spite of all these endeavours, the teaching of human rights has not yet acquired the rigour and comprehensiveness of an independent discipline.

Perhaps rightly so. The many facets of the subject should and do attract scholars of various disciplines.

But there is certainly a need for closer contact and coordination, better services of documentation and a more regular effort of periodical publication.

IV. Remarks on Regional Cooperation

Members of the present colloquy will certainly point out to the necessity of exchange of information and publications, mutual visits of researchers and teachers of human rights for short periods, organization of regular meetings and joint research projects, etc.

And certainly the Final Document of the International Congress on the Teaching of Human Rights organized by UNESCO in September 1978 in Vienna is full of suggestions and recommendations in this respect.

But this present meeting, which is perhaps unique of its kind, should stress that such a cooperation will be much more fruitful if it acquires a content suitable to the particularities and problems of the region. For instance, the implications of the proposed new economic order on the question of human rights or the protection of ethnic and religious minorities in the region are concrete topics on which an exchange of views and an effort to find common solutions may not only be to the benefit of the countries in the region, but may at the same time be an indirect contribution to the question of human rights in its universal context. The co-existence of different ideologies in the region makes it possible in many cases to see the same problems from in many cases to see the same problems from several different angles.