

## IMPLEMENTATION OF THE HELSINKI FINAL ACT BY A TURKISH COURT

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The traditions of Turkish law require that there should exist an independent branch of law under which an individual could seek redress for an injustice committed by a public official or body. This branch is Administrative Law, and as a general principle, all cases governed by administrative law fall within the competence of administrative courts.

Administrative courts constitute a separate system which includes the Council of State (Danıştay), the Military Administrative Court, the Court of Accounts and the subordinate administrative courts.

The Council of State is, in its judicial capacity,<sup>1</sup> the main and highest administrative court. The judicial division of the Council of State consists of ten judicial chambers. Each chamber acts as a court and has five members (justices) including the president. The jurisdiction of each chamber is defined by the law (statute) on the Council of State.

In a decision rendered by the Twelfth Chamber of the Council of State in April 1978 the *Final Act of the Helsinki Conference on Security and Cooperation* was referred to.<sup>2</sup> The plaintiff was the *Swedish Radio and Television Corporation* which had previously instructed a team of its personnel to make a documen-

1 The Council of State is at the same time the highest advisory body to the government. It submits opinions on drafts of legislation referred to it by the Council of Ministers, studies drafts of regulations, renders opinions on problems assigned by the Prime Ministry, etc. (See Aybay, Rona, "Administrative Law", in *Introduction to Turkish Law* - Ansay/Wallace editors, Oceana, 1978, pp. 77 et seq.).

2 Danıştay 12 Da. E. 1977/1349, K. 1978/955.

tary film in Anatolia. When the team consisting of four journalists and cameramen began to shoot the film, police intervened and the team was detained and then deported from Turkey under Art. 19 of the Law (statute) No. 5683 of 15 July 1950. The said provision of Law authorizes the Ministry of the Interior to deport aliens when and if their expulsion is deemed necessary for reasons of public security or for administrative or political reasons.

*The Swedish Radio and Television Corporation* as the employer of the deported journalists and cameramen brought an action for annulment (*recours pour excès de pouvoir*) before the Turkish Council of State. The subject matter of the action was the examination of the administrative act in question, *i.e.* the deportation order, from the point of view of legality.

The Twelfth Chamber pointed out in its decisions that the Turkish Republic was a *State of Law* (rule of law) and quoted the decisions rendered by the Constitutional Court which defined the concept of the *State of Law*; a state of law is, according to the Turkish Constitutional Court;

“... a State that respects human rights and establishes a just order of law whereby these rights are protected and maintained.

*All actions and functions of such a State must be in conformity with law and the Constitution*”<sup>3</sup>

The Twelfth Chamber of the Council of State elaborated in its decision the way the discretionary powers of the Administration should be exercised. The Chamber held that the Administration must exercise its discretionary powers granted by statutes in an *objective* manner and must take into account the general laws as well as the relevant international conventions.

Furthermore, it was indicated in the decision that the signatories of the *Final Act* of the Conference on Security and Cooperation in Europe (Helsinki Final Act), signed by Turkey along with 34 other countries on 1 August 1975, had declared their intention to improve the working conditions for journalists and not to hold them liable to *expulsion* in the legitimate pursuit of their activity.

3 See, Aybay; *supra* note 1 p. 56.

The Twelfth Chamber of the Council of State held, in conclusion, that the defendant (the Administration) made the deportation order without conducting sufficient investigations and examinations which were required by the relevant national and international regulations as well as the general principles of law.

Consequently, the Twelfth Chamber of the Council of State composed of five justices, annulled the deportation order in question by a unanimous decision.

This decision arose much interest both in Turkey and abroad,<sup>4</sup> and was praised as the first implementation of the Helsinki Final Act by a court.

Under article 65 of the Turkish Constitution international treaties duly put into effect carry the force of law (statute), *i.e.* become incorporated in the national (domestic) law of the State. Whether the *Helsinki Final Act* can be regarded as a treaty in the sense of Art. 65 of the Constitution, however, remains an open question.<sup>5</sup> It should be noted that the language of Art. 65

4 See, for example *Le Monde*, 3 août 1978; Ünsal, Artun "Des Arrêtés d'Expulsion sont annulés par le Conseil d'Etat Turc" (Diplomatie).

5 Many international agreements on human rights "notably, the human rights provisions of the Helsinki Final Act, have been placed by the signatory governments in the category of 'nonbinding agreements'. They propose a basis for mutual dealings; they provide a background against which citizens of signatory states can protest their governments' actions. But they are not treaties." See, Charles Frankel *Human Rights and Foreign Policy*, Headline Series, (National Endowment for Humanities), October 1978, p. 52.

It should be mentioned, however, that a different view of the legal nature of the Helsinki Final Act has also been proposed. This view maintains that the Final Act "is based on a *consensus* reached by all the countries participating at the Conference. . . what is contained in the Final Act represents an expression of the unanimous will of the participating states. This is in its actual weight-irrespective of the form of the document-very close to multilateral international treaties, if in fact it is not just such a treaty what is then virtually an international treaty also represents a 'unanimously expressed will of the parties to a particular contract'. In any case the Final Act is binding at least as much as for instance resolutions and declarations passed by the United Nations General Assembly, especially those not passed by an unanimous vote. It should also be noted that the countries themselves in no way object to the binding nature of the Final Act." (See, Petric, Ernest; *the Helsinki Conference and the National Minorities*, *Revue Yougoslave de Droit International*, year 1978, p. 150).

provides that only those international treaties which are *duly put into effect* carry the force of law (statute). As the Helsinki Final Act has not been ratified or put into effect through the procedures provided for in the Turkish Constitution, it is difficult to consider it as incorporated in the Turkish law, in the technical sense of the word. This does not mean to say, however, that the Final Act would not have any effect on the Turkish law. Provisions of the Helsinki Final Act may contribute to the development of Turkish law by, for example, providing a basis for interpretations perhaps beyond the scope of legislative intentions.