

Human Rights, The European Union and Turkey

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Westernization, namely taking place in Western world, has been one of the outstanding foreign policy objectives of Republic of Turkey, established in 1923. Although it is usually considered as the initiative of the Republic, the Ottoman Empire, governed by the Ottoman dynasty for more than six centuries, the dynasty occupying the throne for the longest time duration throughout the history, has spent efforts to adopt itself to Western norms and political order. As a result of these efforts and political conditions of 19th century in Europe, the Ottoman Empire was admitted to the European System by Paris Treaty, which ended Crimean War, in 1856. Therefore, it can be basically argued that taking place in Western World has always remained the main purpose of Turkish politics.

In 1950s, this objective has transformed to concrete political and diplomatic moves. Turkey became a member of Council of Europe in 1949, and of NATO, of which most members are European countries, in 1952, and took place in foundation of OECD (Nugent, p. 21). Turkish governments accentuated Turkey's objective of Westernization by demonstrating their interests to Western institutions in 1950s. Consequently, the Turkish government felt itself obligatory to apply to European Economic Community (it has evolved gradually, and is European Union at the present time). One of the reasons behind this application, of course, was to fulfil one of the requirements of westernization project. But the particular reason was to not leave Greece, with which Turkey has always had deep and intricate problems, alone in any international organization. The fact that Turkey applied for association with the European

Economic Community on 31st of July, 1959, only 54 days after Greece application reflects Turkey's concerns about the argument stated above.

Although Turkey initiated the membership process to the EEC in 1950s, its application is still pending. Despite recent efforts of Turkish officials towards improving the country's standards that the European Union seeks a prospective member to satisfy, the EU did not state a membership perspective, which Turkey would perceive as satisfactory.

In this article, implications of human rights practices of Turkey to its membership process to the European Union are evaluated. In addition, the relationship between membership process to the European Union and human rights practices of the prospective member country is clarified, and whether Turkey's efforts are satisfactory to fulfil the membership requirements is determined. Furthermore, the structural reasons of poor human rights record of Turkey and what need to be done in order for Turkey to overcome the obstacles to the improvements are explored.

The European Human Rights Regime

The European System for the protection of human rights has well-established institutions and well-defined processes (Steiner & Alston, 1996, p. 563). The Council of Europe, the intergovernmental organization established by ten Western countries in 1949, is the major constituent of the system (Buergenthal, Shelton & Stewart, 2002, p. 133). The number of its members has sharply increased after the collapse of Soviet Union and reached to 44 (Harmsen, 2001, p. 18). The leading goal of the Council is "to defend and reinforce the principles of human rights, pluralist democracy and the rule of law." (Ministry of Foreign Affairs[a], Turkey).

The Council System has two components. The primary one is the Convention for the Protection of Human Rights and Fundamental Freedoms. The European Social Charter for Economic and Social Rights, which is less significant than the Convention, complements the

system with respect to establishing a mechanism protecting economic and social rights. Like the Convention, it was adopted under the auspices of the Council of Europe, and performs a complementary role (Buergenthal, Shelton & Stewart, 2002, p. 181).

Human rights system of the Council was first initiated by the adoption of the Convention on November 4, 1950. Thirteen protocols added to the Convention have broadened the scope of rights to be supervised and made the system more powerful. Only members of the Council of Europe may accede to the Convention. Although members of the Council are not required to ratify the Convention, all of them but Armenia, Azerbaijan and Bosnia-Herzegovina that have recently been admitted to the Council are contracting parties at the present time (Buergenthal, Shelton & Stewart, 2002, pp. 133-7).

The Convention System is mainly operated by the European Court of Human Rights, which is “the longest standing international human rights court, [and thus,] inevitably seen as the model against which to measure other regional courts or a possible universal human rights court.” (Steiner & Alston, 1996, p. 598). At the inception of the system, the Convention established two institutions: the Court, and the European Commission of Human Rights. On November 1, 1998, the Commission was abolished with the adoption of Protocol No. 11, and a permanent Court was inaugurated (Buergenthal, Shelton & Stewart, 2002, pp. 140-2)¹.

The Court admits both individual and inter-state complaints. However, the admission requirements of individual petitions are quite strict:

To be declared admissible a petition must not be anonymous, manifestly ill-founded, or constitute an abuse of the right of petition. Domestic remedies must have been exhausted, it must be presented within six months of the final decision in the domestic forum and it must not concern a matter which is substantially the same as one which has already been examined by the [Court] or submitted to another procedure of international investigation or settlement.” (Steiner & Alston, 1996, p. 585).

The following is one of the most recent decisions of the Court regarding an individual petition. On 20 February 2003, the Court delivered its judgment about the complaint filed by

Djavit An, “a [Turkish] Cypriot national”, against Turkey. He applied to the Court on 8 September 1992, alleging “a violation of Articles 10,11 and 13 of the Convention, in relation to the refusals by the Turkish and Turkish Cypriot authorities to allow him to cross the green line into Southern Cyprus and participate in bi-communal meetings.” The Court made a decision on this issue as follows: It dismissed the objections of Turkish Government and agreed upon that there had been violations of Article 11 and 13 of the Convention. In addition, it required the respondent state “to pay the applicant, EUR 15,000 in respect of non-pecuniary damage, EUR 4,715 in respect of costs and expenses.” (Human Rights Documentation).²

As far as inter-state complaints are concerned, “[they] are not subject to the same admissibility requirements prescribed for private petitions other than the obligation to exhaust domestic remedies.” (Buerghenthal, Shelton & Stewart, 2002, p. 148). Despite the non-existence of strict requirements, the number of inter-state applications is very low when compared to that of individual petitions. This figure has reached to 21, from 1953 to 2001 (Buerghenthal, Shelton & Stewart, 2002, p. 148). In one of these 21 applications, Denmark lodged a complaint against Turkey on 7 January 1997, requesting “the Commission to examine the treatment by Turkish authorities of a Danish citizen, Mr. Kemal Koc, when he was detained in Turkey.” The Court made a call to the parties to reach a friendly settlement. Turkey agreed to pay to Denmark the amount of DKK 450,000 and Denmark welcomed “the steps taken by Turkey in order to combat ill-treatment and torture since the filing of the application.” As a result, the Court unanimously decided “to strike the case out of the list” and declared that a friendly settlement has been reached in that case (Human Rights Documentation).³ The reason lying behind the reluctance of states to file a complaint against another state is the possible retaliation of the state that the complaint is filed against. But the overall caseload of the Court has increased over the years. For example, during the 2001, the

Court opened 31.393 provisional files, registered 13.858 applications, and delivered 888 judgments (Buerghenthal, Shelton & Stewart, 2002, p. 143). The rapid increase in the number of cases brought before the Court indicates “the collective recognition of a European jurisdiction.” (Bhabha, 1998, p. 593). Today, the system has both reputation and legitimate power in deciding human rights issues within its jurisdiction.

The European Human Rights Protection System, where the European Court of Human Rights plays “the paramount role” (Steiner & Alston, 1996, p. 571), and which is mainly driven by the Convention, is the oldest, the strongest and the most effective one among its counterparts (Buerghenthal, Shelton & Stewart, 2002, p. 140). The system has significantly affected states’ practices pertaining to human rights. The recognition and reputation of the system, particularly of the Court, has led dramatic legislative amendments in member states. For instance, Germany, Italy, Belgium and Greece have modified their detention rules. The Netherlands and Switzerland have altered their legislation about treatment of aliens. The amendment of “privacy laws” in Italy in 1974 was made in the light of the impact of European Convention (Donnelly, 1993, pp. 83-5).

Human Rights in the European Union

In the EU, the issue of fundamental rights and freedoms is twofold: evolution of protection mechanism of rights and freedoms within the Union, and establishment of respect to those rights as a prerequisite for accession to the Union in its external relations.⁴

The efforts of the European Communities in the field of human rights and freedoms to form a mechanism protecting individuals residing within the Communities have been aiming to adapt certain legislations by making the required amendments in the treaties concerned and, at the same time, to converge those legislations with those of the Convention.

The treaties that established the European Community (now the European Union), with minor exceptions, did not contain any provisions protecting human rights. The European

Communities and institutions of the Convention system were not legally related (Schermers, 2001, p. 15).⁵ To set an explicit relation between the Convention and the European Communities, “[a]ttempts have been made over the years to work out some form of association agreement between the European Union and the Council of Europe, which would enable the former to join the European Convention of Human Rights. [In addition,] the preamble to the Maastricht Treaty, which transformed the European Community into the European Union, declares that ‘the Union shall respect fundamental rights, as guaranteed by the European Convention [of]... Human Rights.. and as they result from the constitutional traditions common to the Member States, as general principles of Community law.’” (Buergethal, Shelton & Stewart, 2002, p. 201).⁶ Furthermore, the European Court of Justice, which supervises the implementation of founding treaties of the European Union and settles the conflicts incurred from the application of provisions of the treaties, has increasingly relied on the case law of the Court of Human Rights in its judgments which relate to fundamental rights (Errera, 2001, p. 25). At the present time, it has the obligation to examine the conformity of European decisions with the rights and freedoms under the European Convention (Ballin, 2001, pp. 31-2).⁷ The most recent breakthrough to promote human rights within the Union is the proclamation of Charter of Fundamental Rights of the European Union, which is embodied in Nice Treaty, in 2000.⁸ The Charter is the first text combining all the rights expounded in a variety of such legal instruments as international conventions, national law into a single document (SCADPlus).

The European Community maintained the respect to human rights and to democracy as a basis in its foreign policy. For example, the special agreement between the European Community and Greece has been suspended between 1967 and 1974, due to poor performance of Greece in fundamental rights and democracy (Donnelly, 1993, p. 84). Likewise, the Community has interrupted the talks with Turkey after the military intervention

in that country in 1980 (Dagi, 1997, p. 126). The most salient move of the European Union in this issue is the acceptance of Copenhagen Criteria in 1993. These imply that the candidate country has to fulfill several criteria, one of which is to maintain institutions for the protection of human rights, in order to become a full member to the European Union (Kardas, 2002, p. 137).⁹ In addition, the candidate country has to have the capacity to harmonize “acquis communautaire”, the combination of all legal texts (treaties, conventions, charters etc.) adopted within the EU and exclusively supervised by the ECJ, with its domestic laws.

Human Rights in Turkey

A brief introduction pertaining to the basic characteristics and constituents of the Republic of Turkey needs to be made in order to be able to comprehend human rights and democratization situation in Turkey and make a comparison between the past and the present.

Although modern Turkish Republic was established in 1923, it has been experiencing multi-party system and free elections since 1950.¹⁰ However, Turkish democracy has not steadily developed since the first elections in which competing political parties took place to acquire the office. Military has directly interrupted the political process three times.¹¹ It is quiet interesting for a country like Turkey, which has a relatively long democratic history, that the first civil president came into power in 1989, decades after democratic processes and institutions were inaugurated. Moreover, Turkey never had a purely civil constitution. This has affected the content and the philosophy of the constitutions Turkey has had up until now. All constitutions have enormously emphasized upon the territorial integrity.

As Soysal (2001) points out, the present constitution, which entered into force in 1982 while military was still in power and almost all political activities were outlawed, defines “a typical nation-state modelled on the ‘Jacobine’ principles of the French Revolution” (p. 259), -principles of the supremacy of the national sovereignty, unity of the state’s territory with its nation, and the indivisibility of this territory (Articles 3, 5 and 6).

The modern Turkish State was composed of many different ethnic and religious groups. In that sense, it was very diverse and very vulnerable as well. “[The] population was itself divided in religious belief between Sunnis, those with Shi’ite tendencies (Alevi), and a small secularised elite, as well as between those who spoke differing mother tongues: Turkish, Kurdish, Laz or other languages.” (Poulton, 1999, p. 24). According to the official statement of Ministry of Foreign Affairs, there are more than 30 different ethnic groups in Turkey (mfa website). In order to eliminate the negative effects of diversity, the newly emerged state was designated as a strong centralized unitary state. The only officially recognized minorities were those mentioned in the Lausanne Treaty (Kilic, 2001, p. 87). In fact, the model adopted by Turkey was very common and popular in global politics at the time in which the Turkish State emerged. “This model remains essentially unchanged to the present day. This unitary nation-state model, which often includes a strong army to protect national boundaries, has recently gone out of fashion.” (Poulton, 1999, p. 24). But, it is of paramount significance to indicate that Turks, Kurds and other ethnic groups currently living in Turkish territory have lived together for centuries and developed a common identity (Soysal, 1999, p. 6). In that sense, they are inseparable, as one living in Turkey cannot easily determine his/her ethnic origin. The logical consequence of long-standing “common destiny” was viewed in the War of Liberation. All people from “different” origins did not hesitate to stand against the enemies. No separatist movement has been experienced in Turkey until 1980s.¹² This fact verifies the willingness of all ethnic identities in Turkey to share the common values. It is not very clear whether the founders of the Republic were aware of that. However, “it appears that Kemal initially saw the national movement as embracing Turks and Kurds (separately identified) and even went as far as to promise the Kurds autonomy in areas they constituted substantial populations.” (Poulton, 1999, p. 24). Those promises were not kept, arguably due to the insurgency led by Sheik Said. “The armed forces have always been

strongly committed to the preservation of the country's territorial integrity and were deeply influenced by the memory of the Sheik Said uprising and its dire consequences." (Soysal, 1999, p. 9).

Even though Turkey was not sufficiently democratic, substantial human rights violations have not been observed until 1980s. The military coup is a turning point in the sense that both ethnically oriented separatist movements and massive human rights violations of individuals emerged in the aftermath.

The considerable majority of human rights violations in Turkey from 1984 in which PKK terrorism began through 1999 in which the terrorism officially ended were directly linked to the Kurdish issue. More than 37,000 people died in the war between the Turkish State and PKK terrorists.¹³ 1,779 villages and hamlets, and 6,153 residential places were destroyed; and about three million people left their homes in this time period. Tens of thousands people were arrested. Nearly 10,000 of them are still in the prisons. Some are Kurdish members of the parliament, writers and journalists (Bozarslan, 2001, p. 45). Although PKK was formed and committed crimes before 1980 military coup, PKK's atrocities intensified after the military regime of 1980-1983, in which massive human rights violations were seen (Bozarslan, 2001, p. 46). However, it is not quiet easy to exclusively make a connection between the state attitudes during the military regime and terrorist actions. Undoubtedly, undemocratic policies of military administration played a significant role in the outbreak of Kurdish insurgency. But, there are two more important points having influenced the case. First, Turkish authorities did not realize the transformation in the notion of nation-state. The modern Turkish State was purely unitary. However, over the decades, such notions as ethnic identity, minority started to become more and more important. "In this climate, minorities are seen as potentially a good thing, and instead of "benign neglect" the new thinking is one in which the state should actively support minority cultures." (Poulton, 1999,

p. 25). On the contrary, Turkey has constantly denied the existence of a Kurdish identity. The Kurdish language and open expressions of Kurdish culture have been forbidden for decades (Galletti, 1999, p. 64). It appears that Turkey could not have adopted itself to arising “new” form of state in which individual rights are to be strictly protected and various cultures and identities are to be recognized and even fostered. Secondly, various governments’ failures to implement educational programs in the region and economic underdevelopment and severe imposition of security measures are the main factors having led the separatist tendencies (Soysal, 1999, p. 8).

Human Rights Dimension of Turkey-European Union Relations

“Turkey has been trying to gain full membership in the European Union since 1963.” (Kilic, 2001, p. 86). The major problems in the relations between Turkey and the European Union have been technical and economic ones during 1960s and 1970s (Dagi, 1997, p. 120).¹⁴ However, democratization and human rights issues started to take place in the agenda of European Union in 1980s. “[T]he EU’s interest in Turkey’s human rights record began only in 1980.” (Ugur, 1999, p. 216). There are mainly two reasons for that. First, the European Economic Community has transformed to European Community, which highlights the “political” characteristic of the new entity.¹⁵ In this political entity, the greatest consideration has been given to human rights and related issues. Secondly, the collapse of the Soviet Union led the European countries to have been less concerned about strategic and military cooperation, since there was no significant threat against their security. Consequently, human rights became an important dimension of foreign relations of European Community (Dagi, 1997, p. 120).

Turkey was placed into Western community and its role was never be subject to criticisms during the Cold War since it was located in a quiet vital geography for the Western world. However, in the post-Cold War era, with the shift in the Western priorities from

collective defense to the Western values of democracy, free markets and human rights, Turkey's role became changing (Aybet, 1999, p. 50).

This transformation and evolution in the nature of global politics and the European Communities as well have affected Turkey's relations with the Community. The political conditions of Turkey after 1980 and the "new" priorities of the European Community have constituted the new framework of the relations. Both the European Union and Turkey have been facing their own dilemmas. It is still not very clear whether the European Union is willing to admit Turkey even if it accomplishes the basic requirements for the full membership.¹⁶ As far as Turkey's dilemma is concerned, it has been swinging between "protecting" the territorial integrity by not allowing any opposite movement and completing the westernization project of the Republic by meeting the standards set by the European Union. Even though there have been some other issues, the main controversy in the membership venture of Turkey to the European Union has been human rights and level of democracy in Turkey. "[A]ccession is denied on the basis of insufficient democracy, human rights abuses, the excessive involvement of the military in political affairs, restrictions imposed on minority rights, limitations on political and cultural rights under the 1982 constitution (Kilic, 2001, p. 86).

The military regime, which was in power during the period of 1980-1983, is to be thoroughly examined in order to be able to explicitly deal with human rights issues of Turkey, since the 1982 constitution, which was created under the military administration, was a turning point in Turkey in terms of human rights. The universally accepted notions of democracy, human rights and secularism were removed from the constitution and replaced with "national" ones. While the previous constitution, which was adopted in 1961 after a military coup and is thought to be the most "liberal" Turkey has ever had stated the nation of

“based on human rights”, this has changed to “respectful” of human rights in the 1982 constitution (Kilic, 2001, p. 89).

The military takeover in 1980 differs from the previous ones in that the military stayed in power for three years. All political parties were closed and the leaders of the political parties, which were in power when military coup happened, were banned from political life. Many were executed and tortured. Democratic process was suspended and almost all kinds of freedoms were restricted. Tens of thousands of people have been imprisoned following the drastic measures introduced after the military intervention of 1980 (Ugur, 1999, p. 216). The new constitution made the military indirectly involved in political processes and the following governments restricted in their decisions, since MGK brought into Turkish political life by 1982 constitution is a constitutional body.

At the beginning, the response of the European Community to the military coup in Turkey was not as severe as expected. European Commission made a declaration on the day after the military took the power in Turkey, having stated that the European Community was following the developments in Turkey with the greatest consideration (Dagi, 1997, p. 126). It should be noted that it is a quiet soft response. The probable reason is that the European Community was expecting of those who were involved in the military coup to hand the administration over the civilians by running free elections immediately, as their colleagues had done in previous military takeovers.

The statements of the European Community in response to the circumstances in Turkey are to be seen as the indication of European Community’s “wait and see” policy stance towards what was happening in Turkey. The reluctance of the European Community to take action can be associated with the aforementioned expectation on the one hand, and the constant assurances given by military administration to maintain a democratic political order immediately on the other. Therefore, “the EU was still unable to develop a consistent policy

towards Turkey despite the fact that fifteen months had passed after the coup.” (Ugur, 1999, p. 221). The first significant and effective reaction of the European Community to Turkey’s undemocratic situation was the suspension of the relations. European Parliament officially suspended its relations with Turkey on 22nd January 1982 (ABGS).¹⁷ In addition to this sanction, the European Community did not release financial aids to be given to Turkey in accordance with the agreements signed between the European Communities and Turkey. After serious reactions of the European Communities, Turkish military authorities accelerated the democratization process. The constitution was adopted by the plebiscite took place on November 1982. One year later, first free elections were held after 3 years of military administration.

Before the elections took place, National Security Council vetoed some representative candidates that were thought to have been “threats” to the system. This was condemned by the European Community. The European Parliament described the elections as undemocratic and not having the capability of representation (Dagi, 1997, pp. 133-4). Notwithstanding the substantial defects of the elections, after 1983, Turkey began to normalize in terms of fundamental freedoms and democracy. “After the 1980 coup, the restoration of order, the withdrawal of the military and the creation of many new political parties, a new wave of democratization” (Aybet, 1999, p. 53) were seen in Turkish political life. Turgut Ozal’s Motherland Party, “despite the military’s stated preference to the contrary” (Poulton, 1999, p. 27), took the power after the elections. The Ozal era is of great significance in Turkish politics in many respects. In particular, progress made in democratization and establishing an effective mechanism to protect individual rights is worth to be mentioned.¹⁸ Ozal, “partly of Kurdish extraction” (Poulton, 1999, p.27), was eager to make Turkey integrated to the West. He believed that progress in such areas as democracy and freedom would have brought the country to the Europe. Over the time period of the premiership of Turgut Ozal, “there has

been substantive progress made in the human rights field, especially in the area of legislation.” (Hicks, 2001, p. 78). However, it was very unfortunate for Turkish progress in human rights that “in 1984, the Kurdistan Workers’ Party (PKK), an extreme left-wing group set by Abdullah Ocalan in 1978, began armed attacks on Turkish security forces mainly in the southeast of the country.” (Poulton, 1999, p. 28). It must be admitted that the harsh treatment of separatist terrorists in southeastern prisons during the military regime of 1980-1983 transformed the sporadic terrorist activities into massive violent terrorism (Soysal, 1999, p. 9). The terrorist attacks of PKK and responses of Turkish armed forces have continued for 15 years. Undoubtedly, this time period of 15 years in which terrorism has always been the top priority in the agenda of policy makers and high level officials of the military has significantly hindered the progress to be made in human rights fields.

After civil government took the office, the European Community resumed the membership talks which had been suspended due to antidemocratic environment created by military administration in Turkey. However, the progress in Turkey-European Community relations was rather slow, due to the respective considerations of the two parties. The European Community realized that insisting on putting pressure over Turkey to make improvements would be effective in ameliorating human rights performance of Turkey (Dagi, 1997, p. 136). As far as Turkey was concerned, intensive terrorist campaigns generated a paramount obstacle for the government to effectively address human rights improvements and democratic transformations. The government was confronting two pressures, each from different directions. The European Community was following the developments in Turkey and clearly stating that Turkey had to establish a system respectful to democracy and human rights. This approach was regarded by some circles in Turkey as an intervention to internal affairs of Turkey. On the other hand, security concerns raised by terrorist attacks and constantly increasing public reaction against terrorism made difficult to improve the quality of

democracy in Turkey. The responses of the Turkish State to terrorism were immediate military operations in the southeast of the country and subsequently the declaration of a state of emergency in the region. A number of Turkish governments have given the priority to the military solution rather than political ones in dealing with Kurdish problem. Three main strategies have been followed: the establishment of “village guards” in 1985, the introduction of the “state of emergency” in 1987 and the enactment of the Law to Fight Terrorism in 1991 (Galletti, 1999, p. 67). Those responses increased the sympathy towards PKK especially among Kurds, despite its brutalities, and led the rise of other extremist movements. As Osman Ocalan, brother of PKK head Apo, said, state repression was the reason of the popular support towards PKK. “We have to thank Turkey. We won half of the town of Cizre [by our own efforts], the other half has been presented to us on a silver plate.” (Bozarslan, 2001, p. 47). That PKK became popular among public was quiet surprising for the state authorities, as the PKK committed massive human rights violations, including the assassinations of civilians (Bozarslan, 2001, p. 47). Moreover, the measurements taken by Turkish authorities to eliminate terrorism negatively affected Turkish-European Community relations (Aybet, 1999, p. 53).

Turgut Ozal was determined to apply to the European Community for full membership, even though human rights record of Turkey not as good as stipulated by the European Community. One can see some crucial breakthroughs in human rights conditions in Turkey shortly before the application for the full membership to the European Community. First, Turkey declared that the 1964 decree that had frozen the assets of the Greek minority since 1963 would be invalid. Also it granted to Turkish citizens the right of individual petitions before the ECHR. And lastly, a Parliamentary Committee was formed to supervise the developments in human rights field (Ugur, 1999, p. 229). This implies that Turkey’s

approach in the case of membership was pragmatic. On 14th April 1987, Turkey applied for full membership (Dagi, 1997, p. 144).

Despite limited efforts of the past, internal developments that were worsening human rights record of Turkey were already taking place in Turkey at the time of its application to the European Community (Aybet, 1999, p. 57). The government was continuously spending efforts to make sure that Turkey's application would be regarded as admissible by the European Community. Turkey signed and ratified European and United Nations agreements prohibiting torture in 1988. Nearly 200 verdicts of capital punishments that had been waiting the approval of National Assembly were not approved, and thus, not exercised (Dagi, 1997, pp. 151-2). However, those efforts did not suffice to obtain a positive response from the European Community. It seems that the European Community and international human rights organizations, which tried to influence the decision of the Community viewed Turkey's application as a great opportunity to bring democratic standards to Turkey. On the one hand, the European Commission denied Turkey's application for the reason that Turkey still fell short of minimal standards the European Community sought, on the other hand it was expressing that Turkey might gain accession to the Community (Dagi, 1997, p. 155). The refusal of the application was definitely disappointing for Turkish authorities, since they were expecting, at the very least, a verdict that would allow the start of the membership negotiations immediate aftermath of the year of 1992 (Dagi, 1997, p. 155), but it was not discouraging. "Turkey introduced a number of improvements which included the permission to use the Kurdish language in publications, the annulment of Articles 141, 142 and 163 of the penal code, the commutation of the death sentences to 20 years and life sentences to 15 years, and the early conditional release of a large number of political prisoners." (Ugur, 1999, p. 231).

Despite holding the primary liability for human rights violations, the state presented itself as the country's main initiator of human rights reform. The main motive behind the eagerness the state demonstrated was that "the rapprochement with the European Union required the improvement of human rights conditions, particularly in the Kurdish areas." (Bozarslan, 2001, p. 49). Consequently, the state permitted human rights organizations to operate across the country. Under the Demirel and Ciller governments, Turkey had a ministry explicitly having dealt with human rights issues within the boundaries of Turkey. It was operating so freely that some of those who were employed in the ministry could even publicly blame their government of conducting "state terrorism" (Bozarslan, 2001, p. 49).

The period of 1991-1995 deserves to be paid a special attention with respect to human rights dimension of Turkey-EU relations as it witnessed some significant developments and mutual tactical movements. As Bozarslan (2001) suggests, human rights peaked up in the period (p. 49). Paradoxically, the Turkish State spent efforts in human rights field. While Anti-Terror Law, which would be harshly criticized at Helsinki meeting in December 1999 (Kilic, 2001, p. 87), was introduced in 1991, in the same year, "a minister of state was named responsible from Women and Family for the first time in Republican history and a woman minister was appointed for the position" (Arat, 2001, p. 31). On the Europe side, in 1993, the European Union adopted Copenhagen Criteria, which mean imposition of human rights requirements to prospective member states. "Becoming a full-member of the Union [has been] essentially bound to the implementation of [those] criteria" (Jung, 2002, p. 14) since that. On the other hand, the European Union has granted EUR 500,000 to Turkey annually for 'actions aimed at defending and promoting human rights and civil society' since the same year (Rumford, 2001, p. 97). What the above suggests is that Turkish authorities could not have given human rights improvements up for the sake of full membership to the European Union on the one hand, and insisted on their 'conventional' methods to eliminate terrorism on the

other. When it comes to the European Union, while having hardened the membership process, it avoided acting so as to discourage Turkish authorities. The attitudes of Turkish authorities proved that they were resolute to keep the ambition of the country to become a full member to the European Union vigilant. In the period under review, the particular objective of Turkey in the process was to acquire a Customs Union with the European Union. Turkish authorities were aware of the fact that any further expectation would be unrealistic, since the Commission had made no mention about Turkey prior to Lisbon Summit of the European Community in 1992 (Dagi, 1997, p. 159).

In spite of the fact that the European Union did not find the improvements made by Turkey in human rights field and democratization sufficient, a Customs Union agreement between Turkey and the European Union was signed.¹⁹ The Turkish Government convinced the European Union authorities to sign the agreement by having promised that Turkey would satisfy the majority of preconditions concerning human rights and democratization (Dagi, 1997, p. 161). However, the Europeans needed to see whether Turkey would have kept those promises. The Customs Union agreement signed on 6 March 1995 was to be approved by the European Parliament, which was highly concerned about human rights and democratization practices of applicant states. Therefore, Turkey was required to make reforms (Dagi, 1997, p. 162).

In this regard, Turkish authorities attempted to make substantial improvements in human rights field, in order to be able to influence the decision of the European Parliament. A constitutional reform was introduced in July 1995. The package concerned contained 20 articles of the 1982 constitution, however, only 13 of these were amended to some degree. As a result of the amendments, the statements in the preamble of the constitution praising, and arguably legitimizing the military intervention of 1980, were removed; students were allowed to become members of political parties; public sector employees were granted the right for

collective bargaining; and voting age was lowered from 21 to 18. In addition to the amendments in the constitution, a reform in Anti-Terror Law, which lowered the maximum sentences from 5 to 3 years, was made in October 1995 (Ugur, 1999, p. 234).

Even though the reforms introduced by Turkey were inadequate to meet the standards set by the European Union, they were viewed by the Europeans as the willingness of Turkey to make further enhancements. Consequently, “the EP gave its consent to the customs union agreement in December 1995 under intense pressure from the Commission and the member states.” (Ugur, 1999, p. 234).

Turkey’s human rights record has not improved significantly until 1999, due to the ongoing PKK terrorism. As Hicks (2001) indicates, the “military conflict between the state and the separatist guerillas of the Kurdish Workers Party (PKK) had a devastating impact on human rights conditions, especially in the areas ruled under a state of emergency in the predominantly Kurdish south-east.” (p. 78). While terrorist activities that Turkey was confronting prevented Turkish authorities to make a substantial progress in human rights field, the European Union appeared to be extremely determinant not to grant a satisfactory membership perspective to Turkey, unless the latter has proven its determination to overcome human rights problems by making significant legislative and practical reforms. As a consequence, Turkey’s accession was denied at the Luxembourg Summit in 1997. A signal for the denial was given in 1996, when the Commissioner for external relations Van den Broek told the Turkish foreign minister that the European Union “did not wish to isolate Turkey”, but it would be very difficult to deepen the EU-Turkey relations, given Turkey’s poor human rights record (Ugur, 1999, p. 235). The official statement of Luxembourg Summit verifies the personal view of Von den Broek. Turkey’s eligibility for accession was confirmed at the summit. But the Council “made it explicit that the strengthening of EU-Turkey relations would depend, inter alia, on Turkey’s political and economic reforms,

alignment of her human rights standards with those of the EU, and protection of minorities.” (Ugur, 1999, p. 235). That Turkey spent efforts in human rights field by introducing several legislative improvements in March 1997 (Hicks, 2001, p. 80) did not suffice to convince the European Union authorities who came together at the Luxembourg Summit in December 1997 to reach a concrete decision over the enlargement process of the European Union. The rejection created anger and protest against the European Union among the public, which is predominantly in favor of the membership to the European Union, and the official circles as well.

Having considered the protests and reactions, which might have indicated the possibility that Turkey would not be so much eager anymore to access the European Union, and Bill Clinton’s initiative, which strongly stressed Turkey’s eligibility for the membership, the European Union mentioned about Turkey as the 13th candidate country at the Helsinki Summit in 1999.

From 1999 onwards, Turkey has made an economic progress in terms of human rights and democratization. After the capture of PKK leader in February 1999, levels of violence, and thus, human rights abuses, have substantially declined (Hicks, 2001, p. 78). This very much contributed to the process in which improvements concerning human rights took place. The 1999 amendment of Article 143 of the Constitution removed the military judge from the three-person judicial panel in State Security Courts. The November 1999 amendments to Articles 243 and 245 of the Penal Code increased the length of custodial sentences for those found guilty of torture or mistreatment of detainees. The 1913 Ottoman Civil Servants Law, which was an obstacle to holding security forces responsible for their involvement in human rights violations, was repealed in December 1999 (Hicks, 2001, p. 80). In addition, a package of 34 measures was passed through the parliament in 2001. The package removed the prohibitions on broadcasting and publishing in Kurdish. It also improved the status of women,

recognizing men and women as legal equals and giving women a large share of property in case of divorce. The period of detention before trial was reduced to four days (Gorvett, 2002, p. 28).

The report released by the European Union in November 2001 proves that the Europeans have acknowledged the progress Turkey had made. However, the same report lists the failings in Turkey's reforms (Gorvett, 2002, p. 29).

Since terrorism did not pose a remarkable threat for the country's security, rapid progress was more likely to be introduced. Accordingly, "the Turkish Parliament adopted a new package of legislative reforms on 3 August 2002. These sweeping reforms range from reinforcing the legal guarantees on freedom of expression to the abolition of death penalty and from expanding the scope of the freedom of associations to lifting of legal obstacles to learn languages other than Turkish." (Ministry of Foreign Affairs [2], Turkey).

On 9 October 2002, the European Commission recognized Turkey's progress in its report on Turkey. But at the same time, it concluded that Turkey had not completely met the Copenhagen "political criteria (Ministry of Foreign Affairs [2], Turkey).

The reluctance of the European Union to fully embrace Turkey and the Copenhagen Summit in which the performance of each candidate country would be evaluated have led Turkish authorities to further enhance the human rights conditions in Turkey.

In this vein, the state of emergency was completely removed on November 2002. The newly elected government, which came into power following the 3 November elections, prepared two new legislative packages on 3-4 December 2002. The packages included such issues as "the prevention of torture and ill treatment, reinforcing the freedom of expression, press and associations, changes to the Political Parties and Elections Act, simplification of procedures on non-Muslim community foundations as well as the expansion of the scope of

retrial arrangements on the basis of judgments rendered by the European Court of Human Rights.” (Ministry of Foreign Affairs [2], Turkey).

At the Copenhagen Summit on 12-13 December 2002, the European Union welcomed those steps and decided that “if the European Council in December 2004, on the basis of a report and a recommendation from the Commission, decides that Turkey fulfills the Copenhagen Criteria, the European Union will open accession negotiations with Turkey without delay.” (Ministry of Foreign Affairs [2], Turkey).

Even though the result of the summit fell short of Turkey’s expectations, it is of significance in the sense that Turkey was given, for the first time, a precise date to start the negotiations.

Conclusion

The European Union set extremely strict and precise rules up for the candidate member countries. Those rules are embodied in the “*acquis communautaire*”, the legislation of the European Union. It is very obvious that the Union requires the future member to have a fairly good record of human rights and democratization. A country lacking of the basic standards concerning human rights field is never granted accession to the European Union. Therefore, the prospective members have no choice, but meeting the criteria set by the European Union, in order to be able to gain accession.

The European Union performs the surveillance of human rights conditions of the candidate countries through its own mechanisms and through the European Convention System. Even though the human rights mechanism of the Union and that of the Convention System are not fully harmonized at the present time, they have been converging over the time. In that sense, they are inseparable and completing each other. Since the verdicts of the European Court of Human Rights are objective indicators for the human rights record of a country, the human rights performance of the candidate country to the European Union could

be definitely evaluated by taking into account those verdicts. In addition to the Court System, the European Union operates its own mechanism when evaluating the performance of a prospective member country. Hence, prospective member is double-checked during the process of full membership to the European Union in terms of human rights. This means that there is no room for a candidate country's objection to the European Union's decision concerning whether the country is admissible to the Union, as far as human rights record of that country is concerned. In that case, Turkey is not an exception. Therefore, it can be easily concluded that Turkey is not to object the decision of the European Union regarding the accession of Turkey, when it is a denial.

It is already evident that Turkey still has a long way to go in meeting the human rights standards that the European Union has imposed as preconditions to full membership to the Union. Nevertheless, one should acknowledge Turkey's rapid progress in human rights field after the end of PKK terrorism in Turkey. The fact that substantial legal reforms have been introduced after the resolution of the most important problem of the country proves that there has been a direct link between human rights violations in Turkey and PKK terrorism that has caused thousands of people to have perished, deteriorated the economy and heavily injured the country's bid of membership to the European Union. In the meanwhile, it should also be noted that the above fact shows that human rights violations in Turkey have not been originated from racist sentiments against Kurdish population. Notwithstanding the fact that a certain amount of Kurdish population has had sympathy towards PKK, the majority of Kurds has never approved of the atrocities of PKK. There are no significant racist tendencies among the people living in Turkey, even though the ethnical composition of Turkey is rather diverse. Therefore, Turkey will be likely to introduce further legislative and practical reforms to access the European Union, given the eagerness of both the official circles and the public towards the full membership to the European Union. In the meantime, it is of significance to

indicate that however substantial the progress of Turkey in human rights field would be, the logic and the perception of state and its role in the society need to be reevaluated in Turkey, if and effective solution is sought. The terrorist activities during the period of 1984-1999 showed that the state assumes military means would solve the major problems the country is having. With the existing state's point of view, the progress in human rights would be likely to be interrupted, when a problem, which poses a so-called threat for the security of the country, emerges. What Turkey needs to do is a legislative and executive revolution, which would make the country fully civil and democratic.

As far as the relationship between Turkey's bid of full membership to the European Union and the improvements in its human rights record is concerned, it is quiet obvious that the European Union has remarkably affected Turkey's efforts on maintaining democratic values and institutions and human rights standards across the country. It is uncertain whether Turkey would have taken the measures, if its application to the European Union had never existed. Since the Europeans realized how accessing the European Union has been so much vital for Turkey, they have constantly demanded from Turkey to improve its human rights record. In this regard, "human rights and democratization" has been considered by the European Union as an effective tool to have Turkey complied with the set of requirements formulated at the Copenhagen Summit in 1993.

Whenever Turkey made improvements in human rights conditions in Turkey, the European Union gave a fair response to them. Each step of improvement has been appreciated and evaluated by the European Union accordingly. Almost every official response from the European Union to the improvements made by Turkey has consisted of appreciation and recognition of those improvements and recommendations to Turkey to completely satisfy the preconditions of full membership.

It is worth to indicate that every substantial progress of Turkey has coincided with the eve of an outstanding occasion in which the European Union would have made decisions on the enlargement process and evaluated the performances of the future member countries. This kind of attitude of Turkey has definitely generated some doubts in the European circles towards Turkey's frankness and eagerness to meet the standards of human rights. The fact that the most recent decision taken at the Copenhagen Summit on 12-13 December 2002 concerning Turkey stressed that the European Union needs to see the practical consequences of Turkey's legislative reforms verifies this argument.

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Notes

¹ Before the entry into force of Protocol No. 11, the Commission was dealing with admission of the cases. The prior system did not ensure and guarantee the right of individual petition and the jurisdiction of the Court. If States Parties to the Convention did not recognize the Court's intervention, the Court could not take any step over the case. But, Protocol No. 11 removed this discretion and made the Court the single authority over admitting the case and reaching a binding decision regarding the case brought before the Court. The jurisdiction also employs the Committee of Ministers, which supervises states' compliances with the Court's binding judgments. See Buergenthal, Shelton & Stewart, p. 141.

² For complete text of the judgment, see HUDOC (Human Rights Documentation) website: <http://www.echr.coe.int/Eng/judgments.htm>.

For the ECHR judgments exclusively related to Turkey, see Turkish Ministry of Justice website: <http://www.adalet.gov.tr/aihm/aihmk.htm>.

³ For complete text of the judgment, see the URL: <http://hudoc.echr.coe.int/Hudoc2doc2/HEJUD/200207/denmark.batj.doc>.

⁴ However, it should be noted that the EU is not entirely dedicated to promoting human rights, since its main objective has always been to create a single political and economic "European" entity. Therefore, it cannot be expected to maintain processes and mechanisms that are exclusively dealing with human rights.

⁵ The first case against the Community was brought before the European Commission of Human Rights in 1978. This application was declared inadmissible for the reason that the Community was not bound by the Convention. After this case all complaints against the Community (and the Union) have been declared inadmissible. What this implies is that although all member states of the European Union are bound by the Convention, the Union itself is not under the jurisdiction of the European Court of Human Rights. For further information, see Schermers, pp. 16-17.

⁶ However, the accession of the European Communities to the Convention system is not expected, at least, in a foreseeable future, since such an accession would be impossible, unless the contracting parties (43 for the Convention and 15 for the Treaties of European Communities) revise the treaties concerned accordingly. See Errera, p. 28.

⁷ It seems that this is the solution for the problem that the EU is not under the jurisdiction of the ECHR. Therefore, the ECJ performs the duty of ECHR, when the EU decisions are concerned.

⁸ The Treaty of Nice entered into force on 1 February 2003. For the text of the Charter see http://europa.eu.int/comm/justice_home/unit/charte/index_en.html

⁹ Official website of the EU states the Copenhagen Criteria as follows: "membership requires that the candidate country has achieved the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; the existence of a functioning market economy as well as the capacity to

cope with competitive pressure and market forces within the Union; the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union; and has created the conditions for its integration through the adjustment of its administrative structures, so that European Community legislation transposed into national legislations implemented effectively through appropriate administrative and judicial structures.” See <http://europa.eu.int/comm/enlargement/intro/criteria.htm>

¹⁰ It should be noted that the first elections in which competing political parties took place were run in Turkey in 1946. However, it is widely believed that those elections were not sufficiently democratic. Therefore, the elections of 1950 are generally recognized as the beginning of democratic transformation of Turkey.

¹¹ These are 1960 and 1980 takeovers and 1971 military warning to the government. In 1960, the Prime Minister Adnan Menderes and two ministers from his cabinet, Hasan Polatkan and Fatin Rustu Zorlu, were executed during the military administration. In 1971, the military did not topple the government. Instead, it issued a warning having requested the resignation of the government. Consequently, the government resigned and a new one was formed. The 1980 takeover was the most severe one, since the military government formed after the coup stayed in the office for three years.

¹² The Sheik Said insurgency cannot be considered as an ethnically motivated, and thus, a separatist movement, since the main motive behind the insurgency was demands concerning religious activities. In that sense, it was a fundamentalist movement rather than a separatist one.

¹³ It is quite interesting to note that most civilians murdered by PKK were of Kurdish origin. Although Turkish state was allegedly involved in extra-judicial killings, PKK was more violent against both Turkish and Kurdish population. In that sense, it seems very hard to recognize PKK terrorists as freedom fighters.

¹⁴ For instance, the European Community did not release several packages of financial assistance to be given to Turkey as per the provisions of the treaties signed between Turkey and the European Community.

¹⁵ In this regard, it is worth mentioning that the evolution towards building a political identity peaked in Maastricht Treaty, which transformed the European Community into the European Union.

¹⁶ It is frequently stated by even some high level officials of the European Union that Turkey should not be admitted, because of its cultural and religious characteristics. This kind of view recognizes the European Union as “A Christian Club” and wants it to remain as it is.

¹⁷ For a detailed chronological summary of Turkey-EU relations, see the URL: http://www.euturkey.org.tr/abportal/uploads/files/Turkiye-AB_Kronoloji_14.05.2002.doc (In Turkish).

¹⁸ For further information about “The Ozal Era”, see, for instance: Ihsan D. Dagi, "Human Rights, Democratization and the European Community in Turkish Politics: The Ozal Years, 1983-87" [17-40].

¹⁹ Turkey is the only country, which is not a member to the European Union, while having a customs union with the EU.