

“The issue of human rights on Turkey’s EU accession”

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ABSTRACT

Since the end of World War II, the issue of human rights has become an elaborate international practice for the European world. As a result of new developments in this area like the establishment of Universal Declaration on Human Rights or the establishment of the European Convention on Human Rights, it was demonstrated that the issue of human rights has become an important agenda for Europe since in the middle of the 20th century. In parallel with these developments, Turkey has affected the impact of the European Union in human right policies since the 1980's. It is an undeniable fact that the issue of human rights has played one of the most prominent roles during the EU membership process for Turkey. The EU has criticised Turkey since the 1980's because of the human rights abuses. I aim to explain the real situation in Turkey in terms of human rights, since most people in Europe have not known about the human rights abuses in Turkey during my research. It is clear that, the European Union is aware of Turkey's inefficiency about the protection of human rights and this phenomenon is one of the most controversial issues for Turkey's accession to the EU despite Turkey's reform programmes during membership process. I try to show this phenomenon as some specific topics like freedom of expression or freedom of press together with its reasons during my research.

Key Words: Human Rights, European Union, Justice and Development Party, Copenhagen Criteria, Freedom of Expression

LIST OF ABBREVIATIONS

AKP	: Justice and Development Party
CAP	: Common Agriculture Policy
CFSP	: Common and Foreign Policy
EC	: European Community
ECHR	: European Court of Human Rights
EJC	: European Court of Justice
EP	: European Parliament
EPC	: European Political Cooperation
EU	: European Union
PKK	: Kurdistan Workers Party
RTUK	: Supreme Board of Radio and Television

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CHAPTER I- INTRODUCTION

The issue of human rights cannot be defined in a similar way by all people, but it has a universal meaning which is 'commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being'. Moreover, Beitz identifies the idea of human rights as below:

"The doctrine of human rights is the articulation in the public morality of world politics of the idea that each person is a subject of global concern. It does not matter what a person's spatial location might be or which political subdivision or social group might belong to. Everyone has human rights, and responsibilities to respect and protect these rights may, in principle, extend across political and social boundaries. The propagation and diffusion of this idea are among the most impressive of the legacies of World War II. Today, if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights." (Beitz 2009, p.1)

It is clear that World War II created the need for a framework to explain and discuss the issue of human rights. Since the end of World War II, the issue of human rights has become an elaborate international practice for the European world. Nevertheless, the idea of human rights goes back a long way within traditional societies. According to Donnelly, 'traditional societies typically have had elaborate systems of duties . . . conceptions of justice, political legitimacy, and human flourishing that sought to realise human dignity, flourishing, or well-being entirely independent of human rights. These institutions and practices are alternative to, rather than different formulations of, human rights' (Donnelly 2003, p.71). However, the modern sense of human rights started with the Renaissance and the birth of European secularisation in the 16th century. Most of the ideas were discussed about human rights until the 20th century in Europe and the Western world. Indeed the two World Wars, especially World War II, showed the necessity of the conceptualisation of human rights for Europe in the 20th century.

As a result of new developments in this area like the establishment of Universal Declaration on Human Rights or the establishment of the European Convention on Human Rights, it was demonstrated that the issue of human rights has become an important agenda for Europe since in the middle of the 20th century. After World War II, two European organizations (which were the Council of Europe and European Communities) sought to combat two major problems: the economic restoration of Europe and the protection of human rights, fundamental freedoms and democratic values in Europe (Beitz, 2009). On the one hand, the Council of Europe has become concerned about human rights violations, on the other hand, European Communities have preferred to concern themselves with the economic restoration in Europe. However, the European Union changed its interest towards the issue of human rights after the 1970's. EU founding treaties and EU's Common Foreign and Security Policy has interested human rights violations in EU countries or third world countries (Smith, 2001).

Turkey has affected the impact of the European Union in human right policies since the 1980's. It is an undeniable fact that the issue of human rights has played one of the most prominent roles during the EU membership process for Turkey. The EU has criticised Turkey since the 1980's because of the human rights abuses. Moreover, the Copenhagen Criteria which was established for candidate states has become important for Turkey in terms of human rights. Although Turkey started the political reform programme in 2001 after the starting of Turkey's candidacy status with the Helsinki Council in 1999, these problems cannot be solved by the Justice and Development Party (AKP) which has been in government as the ruling party. The issue of human rights has been one of the most important problems for Turkey to access the European Union. Secondly, I aim to explain the real situation in Turkey in terms of human rights, since most people in Europe have not known about the human rights abuses in Turkey. Nine harmonisation packages and some constitutional amendments were enacted by the Turkish parliament between 2001 and 2005. It was an important step to improve the protection of human rights and to liberalise laws. However, the AKP government has not continued these steps after 2005 (Hale, 2011). I try to show this phenomenon together with its reasons during my research.

Methodology

I will use both primary and secondary sources during my research. My primary sources are formed by official reports which were prepared by the European Union or other internal and external institutions and some articles from Turkish Constitutions or other domestic laws which are related to the issue of human rights. In the first part of my research, there will be a brief discussion on the theoretical background of human rights and democratisation by using theoretical sources which explain the dynamics of the EU's human rights policies. Especially, Alston's books have many articles to show the historical process of the EU's policy making about the issue of human rights. Additionally, EU founding treaties are an important source to indicate the impact of human rights during the establishment of these treaties.

After that, there is a brief summary about the history of human rights in Turkey-EU relations in my thesis. It is clear that the history of Turkey-EU relations helps to understand the impact of human rights on these relations. I can use secondary sources like books and articles during this chapter. These books and articles include the history of Turkish Foreign Policy or Turkish Political History in terms of the EU accession process. Especially, William Hale and Ihsan Dagi who are specialists on Turkey and Turkish foreign policy write about books and articles to explain this phenomenon and I use these secondary sources during this chapter. Moreover, some primary sources like EU official documents are taken advantage of for this research. The Copenhagen Criteria which are the rules that define whether a country is eligible to join the European Union or Agenda 2000 which explicitly established economic, social, and environmental goals within a new reformulated set of objectives for the Common Agricultural Policy (CAP) consistent with the requirements of the Amsterdam Treaty, are my primary sources to show the dynamics of the historical process in Turkey-EU relations in terms of human rights.

The main point of my research aims to explain the big issues on human rights in terms of Turkey-EU relations. This study focuses on four important problems in terms of the human rights violations in Turkey during the EU accession process:

freedom of expression, freedom of press, freedom of religion and freedom of assembly. In this framework, both the books and journals about the political history of Turkey and the history of the EU accession process are used as well as secondary sources such as several newspaper articles. These four topics have some special cases which are the most criticised violations by the European Union and this research tries to summarise and show these examples to explain this phenomenon. For instance, the Hrant Dink and 301 Case is one of the most important cases for freedom of expression in Turkey in terms of the EU accession process. During this chapter, I will demonstrate these examples using primary sources as EU official reports and documents or internal or external human rights associations' reports. Indeed, the most important sources are the EU Progression Reports for Turkey for this chapter. After the Helsinki Council in 1999 which declared Turkey's candidacy status, the European Commission has established an annual progression report for Turkey to assess Turkey's situation in terms of fulfilling the Copenhagen Criteria. As seen, these reports show some human rights violations in the area of freedom of expression, freedom of press, freedom of religion and freedom of assembly with specific cases which are included in this study. Additionally, some current issues and cases like the Fazil Say Case in freedom of expression or the Gezi Park Protests in freedom of assembly are examined in this chapter with articles or news from internet websites or newspapers. Overall, my research benefits from books and articles about Turkish political history and foreign policy, newspapers, EU and other institutions' official reports and documents and other sources to explain the issue of human rights on Turkey's EU accession.

CHAPTER II- GENERAL CONSIDERATIONS ON DEMOCRACY AND HUMAN RIGHTS IN TERMS OF THE EUROPEAN UNION

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, hereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people ...” (United Nations General Assembly 1948, p.1)

These sentences were established by the United Nations General Assembly on 10 December 1948. It was the first important proclamation of human rights after World War II. Moreover it helped to create the European Convention on Human Rights which was adopted by the Council of Europe more than two years later (Alston and Weiler, 1999). Before the twentieth century, human rights policies did not play a prominent role in Europe. However, the regional system of human rights protection was developed in Europe due to two main reasons (Beitz, 2009). First reason is the impact of World War II. There were many serious human rights violations like the holocaust during World War II. Second, Ovey and Robin explain that the Convention was a response to the growth of communism in Central and Eastern Europe and designed to protect the member states of the Council of Europe from communist subversion. This, in part, explains the constant references to values and principles that are 'necessary in a democratic society' throughout the convention, despite the fact that such principles are not in any way defined within the convention itself (Ovey and Robin, 2006). As a result of these reasons, the European Convention on Human Rights was signed on 4 November 1950 in Rome. According to this convention, the European Court of Human Rights was established in 1959 within the context of the Council of Europe.

As it is seen, the United Nations and Council of Europe started human rights settlements and policies with these conventions after World War II. This period coincided with the first step of the European Union's setting up. European Coal and Steel Community (1951), the European Economic Community (1957), and the European Atomic Energy Community (1957) were established during this period for economic integration in Europe. On the one hand, the Council of Europe aimed to provide democratic human rights and the rule of law in Europe. On the other hand, the other communities which was the first step of the EU, aimed to develop economic integration (Betten and Grief, 1998). As a result of this, the issue of human rights was absent from founding treaties of the EU in 1951 and 1957. Betten and Grief point out this phenomenon below:

“Whereas the Council of Europe focused on the protection of human rights, fundamental freedoms and democratic values, the OECD and the European Communities were concerned with the economic restoration of Europe. This was to be achieved close co-operation of States, with a view to avoiding economic excuses for future inhumanity. This separation of foci was one of the main reasons why human rights were not included in the foundation treaties of the European Communities.” (Betten and Grief 1998, p.53)

Although there were no direct settlements about human rights in the EU founding treaties, three specific articles developed gender equality and non-discrimination in the European Community with the treaty of Rome in 1957. The most important article in Rome in terms of human rights is Article 141 (ex Article 119) which guaranteed gender equality in free markets:

“Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work. For the purpose of this Article, “pay” means the ordinary basic minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer. Equal pay without discrimination based on sex means: (a) that pay for the same work at piece rates shall be calculated on the

basis of the same unit of measurement; (b) that pay for work at time rates shall be the same for the same job.” (European Community 25 March 1957, p.43)

DeWitte explains that the other two important embodiments are non-discrimination on the ground of nationality (ex Article 6) and non-discrimination in the agricultural markets in terms of consumers or producers within the community (ex article 40(3) DeWitte, 1999). As mentioned before, the Council of Europe established the European Court of Human Rights (ECHR) to protect fundamental rights in Europe. After the ECSC Treaties in 1951, the European Court of Justice (ECJ) was established in 1952 and it is the highest court in the European Union in matters of European Union law. Nevertheless, this court has many differences from ECHR. The ECJ, which is based in Luxembourg, is not a human rights guardian *per se*. Rather, it is the highest legal institution established by the European Union, designed to uphold the process of economic integration among various member states (Betten and Grief, 1999). Some authors claim that ECJ played an important role in some specific areas of human rights protection especially in terms of economic and social rights. DeWitte points out this phenomenon below:

“Any conclusions reached here with regard to the general principles case law should be counterbalanced by looking at the central role played by the Court of Justice in shaping the more specialised areas of human rights protection just mentioned. Indeed, it is largely due to the European Court of Justice that the full human rights potential of those provisions has been revealed.” (DeWitte 1999, p.863)

Indeed, the issue of human rights became one of the marginal matters for the European Union until the 1970's. Nevertheless, the EU started to change its approach after the 1970's when the European Court of Justice (ECJ) began to rule that respect for such rights was part of the legal heritage of the community (Ata, 2013). The first important decision about the protection of human rights was the “Nold vs. Commission” by ECJ. It was important because member states should follow international treaties about human rights apart from EU founding treaties with this decision. According to Nold v Commission;

“As the Court has already stated, fundamental rights form an integral part of the general principles of law, the observance of which it ensures. In safeguarding these rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States, and it cannot therefore uphold measures which are incompatible with fundamental rights recognised and protected by the Constitutions of those States. Similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law.” (European Court of Justice, *Nold v. Commission*, 1974)

One year later, *Rutili v French Minister for Interior* Case was the first reference to the European Convention on Human Rights in terms of Member States (Ata, 2013). According to the Court, the limitations on the right of Member States to restrict the freedom of entry, residence and movement within their territory of Community nationals are found in Articles 8, 9, 10 and 11 of the European Convention on Human Rights which provide in identical terms that no restrictions in the interests of national security or public safety shall be placed on those rights other than such as are necessary for the protection of those interests in a democratic society.

Other main developments about human rights protection in the EU are the new treaties which are aimed at protecting human rights in Europe after the 1980's. The EU started a progressive consolidation of human rights protection which started taking place both internally and externally. As a result of this development, the Single European Act which was prepared in 1986 became the first treaty in terms of mentioning about human rights (Ugur, 1999). This treaty declared that the Community is “determined to work together to promote democracy on the basis of the fundamental rights recognised in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice”. (European Community, Single European Act, 1986).

The next step in the constitutional development of the European Communities and also in the development of the Human Rights within EC Law was the Treaty on the European Union signed on 7 February 1992 in Maastricht. According to Article F in the Maastricht Treaty; "The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law" (European Community, Maastricht Treaty, 7 February 1992). Some authors claim that this treaty has a second reference to ECHR within the third pillar provisions. Member States should deal with ECHR and the 1951 Geneva Convention in terms of free movement of persons in Europe. Peers believes that this second reference is more important than Article F in terms of the protection of human rights and he indicates this phenomenon below:

" . . . However, there was a more specific second reference in the core of the third pillar provisions: Article K.2(1) stated that the matters referred to in Article K.1 (now Article 29) (the subjects of JHA co-operation) shall be dealt with in compliance with the ECHR and the 1951 Geneva Convention relating to the Status of Refugees, and having regard to Member States' protection of persons persecuted on political grounds. While there is no reference to either other international human rights treaties agreed by Member States or national constitutional principles, the standard of review (shall be dealt with in compliance with) is stronger than the principle stated in Article F." (Peers 1999, p.168)

Indeed, these developments are related to internal improvements in human rights for the European Union. On the other hand, the issue of human rights has become one of the most important topics in the EU's external relations since the 1990's (Smith, 2001). After the collapse of communism, Eastern and Central European countries started a transition period with the aim of the European Union membership process. As a result of this, the EU must provide new membership criteria due to this enlargement process (Arikan, 2003). These membership criteria were laid down at the June 1993 European Council in Copenhagen, Denmark, from which they take their name. In the presidency conclusions of the Copenhagen Council,

relations with the countries of Central and Eastern Europe were identified in terms of the principles of human rights and democracy as below:

“The European Council today agreed that the associated countries in Central and Eastern Europe that so desire shall become members of the European Union. Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required. Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.” (Copenhagen European Council 1993, p.1)

EU membership criteria are defined by three groups as political, economic and legislative. Political criteria is divided by four elements: democracy, human rights, rule of law and respect for and protection of minorities. When we look at these four groups of elements, there are some of the important principles of human rights which play a prominent role during the membership process. Ata shows that there are some universal criteria for candidate states which are included in the Copenhagen Criteria (Ata, 2013, p.167): Free elections with a secret ballot; The right to establish political parties without any hindrance from the state; Fair and equal access to a free press, Freedom of expression and personal opinion; The right to be prosecuted only according to the laws that are in existence at the time of the offence; The right to be free from slavery; The right to be free from torture; Freedom of religion and protection of minorities.

These criteria are established by the European Union due to post communist states' transition to democracy within the EU accession process. Moreover, these issues have become problems and give difficulties for Turkey during the membership process and our study tries to explain this phenomenon (Ugur, 1999).

Other important external factor is the framework of the European Political Cooperation (EPC) and Common Foreign and Security Policy (CFSP) in terms of EU human rights policies during the 1980's and 90's (Smith, 2001). The EU made some declarations and agreements with the African countries or post communist states

within the context of EPC/CFSP. As a result, these declarations increased the role of EPC/CFSP in the issue of human rights significantly. Ugur indicates that;

“Formally, as an element of external policy, human rights matters have been dealt with by the EPC until 1992 and the CFSP thereafter. It can be argued that the EPC/CFSP framework is an intergovernmental forum that should be studied within a state-centric perspective. As a result, the EU’s human rights policy can well be examined with reference to the concepts of sovereignty and national interests, and the power politics associated with them” (Ugur 1999, p.211).

After the Maastricht Treaty and Copenhagen Criteria, the EU established the Amsterdam Treaty. Article 6 in Amsterdam is a follow-up of the Maastricht Treaty (Alston and Weiler, 1999). Moreover, Article 7 introduced the possibility to deprive a Member State violating human rights of some of its rights under the Treaty: “The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1), after inviting the government of the Member State in question to submit its observations (Amsterdam Treaty, 10 November 1997).” Alston and Weiler demonstrate the importance of these articles and this treaty in terms of human rights as follows:

“The treaty now provides for the first time that the EU is founded on the principles of liberty democracy, human rights, and the rule of law. It would be odd if this innovation were to have no significant policy implications and were instead to be treated as a mere rhetorical flourish . . . the treaty introduces the possibility of suspending the rights of a Member State for human rights breaches. That provision cannot be permitted to remain a dead letter. Consideration must be given now to the procedures which will be followed in such an event,” (Alston and Weiler 1999, p.18).

After the Amsterdam Treaty, the EU needed a new and independent settlement about the issue of human rights apart from the European Convention on Human Rights. In June 1999, the Cologne European Council concluded that the fundamental rights applicable at European Union (EU) level should be consolidated in a charter to give them greater visibility. The heads of state/government aspired to include in the charter the general principles set out in the 1950 European Convention on Human Rights and those derived from the constitutional traditions common to EU countries. In addition, the charter was to include the fundamental rights that apply to EU citizens as well as the economic and social rights contained in the Council of Europe Social Charter and the Community Charter of Fundamental Social Rights of Workers. It would also reflect the principles derived from the case law of the Court of Justice and the European Court of Human Rights. The charter was drawn up by a convention consisting of a representative from each EU country and the European Commission, as well as members of the European Parliament and national parliaments. It was formally proclaimed in Nice in December 2000 by the European Parliament, Council and Commission.

The Charter of Fundamental Rights recognises a range of personal, civil, political, economic and social rights of EU citizens and residents. According to this charter's preamble;

“The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.”¹

The Charter of Fundamental Rights of the EU brings together in a single document the fundamental rights protected in the EU. The Charter contains rights and freedoms under six titles: dignity, freedoms, equality, solidarity, citizens' rights, and justice. Proclaimed in 2000, the Charter has become legally binding on the EU with the entry into force of the Treaty of Lisbon, in December 2009.

¹ http://www.europarl.europa.eu/charter/pdf/text_en.pdf

To sum up, the European Union has become concerned about the issue of human rights with the end of the Cold War and increased the role of human rights since the 1980's and 90's. As a result, the European Union has carried out new human rights policies with some alterations in its founding treaties internally or with the establishment of a new framework on Common Foreign and Security policy or membership process for candidate states.

CHAPTER III- THE HISTORICAL PROCESS OF HUMAN RIGHTS ON TURKEY-EU RELATIONS

As mentioned in the past chapter, Europe and the West became concerned about the issue of human rights and democratisation after World War II. In parallel with this, Turkey started the democratisation process with the establishment of a democratically elected government after the 1950's. Nevertheless, the first relations between Europe and Turkey in terms of human rights were started after the 1970's (Hale, 2013). There was no effective protection system of human rights in Turkey after the establishment of the democratic government in the 1950's. Hale points out this phenomenon with its reasons:

“As in other spheres, human rights discourse in Turkey tends to be highly partisan, and often interpreted as human rights for me (by implication, but not for those other people). This has been reinforced by the fact that, although Turkey has been ruled by democratically elected governments for most of the period since 1950, its constitutions have been weak protectors of human rights” (Hale 2011, p.324).

Indeed, there were some negative developments in regard to human rights in Turkey during the between 1950 and 1980. The events of 6-7 September in 1955, 27 May 1960 Military Coup, internal conflicts, 12 March 1971 Military Coup were serious

examples of human rights violations (Robins, 2003). However, the EU did not show interest in these developments in the light of human rights due to some reason. The 1963 Ankara Association Agreement which was the first agreement between EU and Turkey did not mention the issue of democracy and human rights, this agreement included only economic integration between these two sides (Jørgensen and LaGro, 2007). Ugur explains that one of the main reasons is an ineffective human rights system in the European Union. Security or economic interests are more important than humanitarian aims for the European Union during this period (Ugur, 1999). On the other hand Turkey was an important country for Europe due to economic reasons in terms of European tariffs, reducing duties and non-tariff barriers to trade in Turkey (Arikan 2003). Because of this, Europe was interested in Turkey only for economic reasons until the 1980's. Nevertheless, the EU's position has not changed until 1980's due to some specific reasons. Ugur explains one of the main reasons below:

“ . . . One reason for this belated interest was strategic considerations. The withdrawal of Greece from NATO's military command in 1974 increased the premium on Turkey's role in the containment of the Soviet Union and induced the EU to subordinate human rights issues to strategic considerations.” (Ugur 1999, p.216)

Another reason was the internal conflict and political violence in Turkey. Most of the people were killed and many human rights violations were realised in the 1970's. It was caused to make pressure from European Union on Turkey with its poor image of a political situation not human rights violations (Robins, 2003). Finally, as said before, the EU's human rights policy was not developed until the 1990's with a new institutional framework like the Common Foreign and Security Policy or new membership process criteria such as the Copenhagen Criteria.

As a result of these developments, the EU engaged with human rights violations in 1980 before the military coup. Amnesty International reported human rights violations in Turkey and this reporting caused a new meeting of the EU-Turkey Joint Parliamentary Committee (JPC) for 20 October 1980 (Dagi, 1998). However the military coup of 12 September 1980 restrained this meeting. After the military coup, EU's member states implemented a 'wait and see policy' in terms of democracy in

Turkey between 1980 and 1985 (Ugur 1999). First, Turkey's membership process stopped with this military coup. The EU and Member States wanted to see Turkey's authorities' view about cooperation with international institutions like the European Union or NATO. The European Commission stated that "the EU hopes to see human rights will be fully respected" after the 1980 military coup. The EU and the Commission tried to send European Parliament (EP) members to investigate human rights violations and to call for a timetable for transition to democracy in Turkey between 1980 and 1982 (Kirisici, 1999). During this period, the situation of Turkey was important for EU due to economic and political reasons. Dagi summarises them as follows:

"...The Community tended to think that it had a right to interfere in the domestic restructuring of Turkish politics because as a state which was attached to Community with an association agreement and which also revealed its intention for full membership in a short time, the restoration of democracy could not be left to the goodwill of the ruling generals." (Dagi, 1998, p.131).

Despite these efforts, the EU cannot develop an effective policy towards Turkey, because transition to democracy in Turkey is not possible with the military regime after the 1980 coup. In 1983, free elections were held and a new government was established by Turgut Ozal who was the civilian politician after this election. It was an important development for the transition to democracy in Turkey, but it did not lead to a significant change in the EU's human rights policy towards Turkey until 1986 (Dagi, 2001). However, some overtures were tried by some Member States during this period. For instance, Denmark, France and the Netherlands tried to establish a friendly settlement with Turkey. Moreover, Germany tried to improve its influence in terms of Turkey's accession to the EU due to economic reasons like free movement for Turkish workers (Hale, 2013). These efforts happened due to some economic improvements in Turkey like Turkey's high growth rates or increasing foreign trade. Nevertheless, there were no effective human rights policies from the European Union towards Turkey during this period. The death penalty, torture or restrictions on the freedom of opinion or expression had become unsolved problems

despite the fact that the new civilian government was established after the military coup (Smith, 2003). Ugur evaluates this phenomenon below:

“ . . . the EU made it clear in 1980 that it was not prepared to take Turkey in because of the high levels of risk associated with the latter’s divergent policy choices and the non-credible nature of her European orientation. In fact, the economic concessions granted in 1980 were closely related to objective of securing a delaying Turkey’s membership application. In that sense, the EU’s human rights were an anchor/credibility dilemma in EU-Turkey relations. While Turkey’s non-credible European orientation induced the EU to be even more risk averse; the latter’s failure to undertake risks and its unwillingness to impose sanctions made it easier for the Turkish military to deviate from EU standards and impose a highly restrictive regime”. (Ugur 1999, p.226).

EU’s Human Rights Policy towards Turkey after 1985

As indicated before, EU played a waiting game with the 1980 military coup between 1980 and 1985. From 1986 onwards, the issue of human rights became the main topic of EU accession for Turkey and the EU’s agenda. Dagi points out that the new civilian government under the Prime Minister Ozal wanted to continue economic and politic relations with the EU and other international institutions. Because of this, Ozal tried new attempts to return democracy in Turkey (Dagi, 2001). For instance, a ban of former politician leader was lifted by a referendum which was prepared by the Ozal government at the end of 1986 (Evin, 2005). Moreover, the Ozal government granted a limited amnesty with an amendment on the execution of prosecution law which resulted in the release of 31,000 prisoners (Dagi, 2001). Nevertheless these positive changes had not found enough European Community in terms of Turkey’s accession. Ugur shows that most of the specific areas were not solved by the civilian government: the death penalty, the penal code and the code of criminal procedures, the anti-terror law, the treatment of the Kurdish minority and the anti-democratic provisions of the 1982 constitution (Ugur, 1999). Although Ozal wanted to improve relations with the European Community, the Community believed that Turkey was not ready for full access of the EU. Dagi explains this view as follows:

“Ozal believed that Turkey's relations and cooperation with the West should not be exclusively centered around a common defence strategy. He wanted to have closer economic ties, which were considered to be essential in order to integrate Turkey structurally into Europe. Despite the return to civilian government, Turkey's *de facto* frozen relations with the Community did not immediately start moving. The EC continued to make the reactivation of relations conditional on an improvement in the Turkish human rights record. The prevailing view was that despite general elections Turkey still had a long way to go for the full realization of democracy.” (Dagi 2001, p.58).

Ozal's government applied for a full membership of the European Community in April 1987. As a result of negative effects and developments, The European Commission responded in December 1989 by confirming Ankara's eventual membership but also by deferring the matter to more favourable times, citing Turkey's economic and political situation, as well its poor relations with Greece and the conflict with Cyprus as creating an unfavourable environment with which to begin negotiations (Dorronsoro, 2004). Moreover, Turkey's human rights regime and protection of minority rights had not reached the level required in a full democracy according to the Commission's decision.

After the end of the Cold War and the collapse of Soviet Union communism, Turkey's situation started to change in terms of the EU accession process. The end of the West-East divide gave hope to Turkey about the accession to the European Union after 1989 (Jorgensen and LaGro, 2007). As a result, Turkey started partial reforms to improve the human rights record in the country. Ugur points out that these were moderate changes; partial reform continued after the negative verdict of the Commission in December 1989 on Turkey's membership application. In 1991, Turkey introduced a number of improvements which included the permission to use the Kurdish language in publications from February 1991 onwards; the annulment of Articles 141,142 and 163 of the penal code on 12 April 1991; the commutation of the death sentences to 20 years and life sentences to 15 years in the same month; and the early conditional release of a large number of political prisoners on 16 July 1991 (Ugur, 1999).

Nevertheless, these positive changes in constitutions and other general rules of law were not enough to fulfill the Copenhagen Criteria in terms of the EU accession process. The Kurdish issue was one of the main controversial issues for human rights violations in Turkey. Historically, the Kurdish political movement had many difficulties in Turkish politics. Smith indicates that Kurdish political leaders were jailed, killed or disappeared; books which were written in the Kurdish language and about Kurdish nationalism were seized; and Kurdish newspapers, magazines, and civil organisations have been closed by the state since the 1980's (Smith, 2003). Moreover, the anti-terror law (Law 3173) which was established to punish the Kurdistan Worker's Party's (PKK) military actions towards Turkey's forces was an important problem in terms of human rights. Article 8 in this law punished people due to their expressions (violent or not) with long prison sentences and heavy fines. Consequently, the number of prisoners who were Kurdish people rose significantly during the conflict between PKK and Turkish military forces (Yildiz, 2005).

Additionally, The Turkish Court decision to dissolve the pro-Kurdish Democracy Party (DEP) in June 1994 and the trials of the DEP members of parliament – which occurred at the time when Turkey was pressing for the customs union – were an important indication that EU influence on Turkey's policy choices was limited in this regard (Yildiz, 2005). Indeed this issue was important for the European Union in terms of the Copenhagen Criteria and Turkey's membership process. Because of this, the European Parliament called on Turkey to release six members of parliament who were from the pro-Kurdish Democracy Party and to vacate Article 8 of the anti-terror law (Kirisci, 1999). All these negative developments affected the economic relationship between the EU and Turkey during this period. Under these circumstances, both Turkey and the EU seemed to settle with a customs union by the Ankara association agreement which was established in 1963. Dagi shows how the issue of human rights was affected during the creating of this customs union between the European Union and Turkey:

“ . . . However, even in the routine process of setting up a customs union, the issues of human rights and democratisation came up to a degree that put the Turkish government under pressure, as it was determined to reach an agreement and then sell it to the Turkish public as a major breakthrough. The EP had

passed a resolution following the decision of the association council that human rights conditions in Turkey were not satisfactory to permit setting up a customs union with this country.” (Dagi 2001, p.64).

Nevertheless, this negative situation in Turkey’s human rights record could not stop the creation of a customs union between Turkey and the EU in 1995. Especially the leading EU members like France and the UK supported Turkey and lobbied the other member countries to compromise for a customs union with Turkey (Rumford, 2001). Despite this support, the EU has not stopped its criticism about the issue of human rights violations in Turkey. In October 1996, a commission report on the progress of the customs union highlighted the need to introduce more reforms in the field of human rights. This proved that the EU was determined to insert political issues which are the human rights, democratisation and the Kurdish question into every aspect of EU-Turkey relations, including the customs union (Arikan, 2002).

Additionally, the reforms which must be implemented by candidate states were first outlined in the documents with the title "Agenda 2000" published by the Commission in July 1997. This document shows that Turkey is not eligible for accession and it must provide the quality of human rights and democracy in Turkey:

“... Despite political recognition of the need for improvement and certain recent legislative changes, Turkey’s record on upholding the rights of the individual and freedom of expression falls well short of standards in the EU. In combating terrorism in the south east, Turkey needs to restraint, to make greater efforts to uphold the rule of law and human rights and to find a civil and not a military solution”. (Bulletin of the European Union, Agenda 2000)

As a result, the European Council rejected Turkey’s application for candidate status in 1997 at the Luxembourg Council due to poor human rights record and tensions with Greece. The Turkish government believed the EU’s decision to be extremely critical and it was far from encouraging and persuading Turkey to fulfill the Copenhagen Criteria (Hale, 2013) Then, Prime Minister Mesut Yilmaz threatened the European Union with withdrawing Turkey’s membership application and froze the

relations with the EU. Smith indicates that Yilmaz and his government thought that some European countries, especially Germany, were pursuing a policy of Lebensraum, which was Hitler's foreign policy and Germany's policy is not related to the human rights problems in Turkey (Smith, 2003). On the other hand the politics of Turkey changed with the 1999 election. The far right party, the National Action Party, won about 17 percent of the vote in this election, became the second largest party in parliament and became a partner of the coalition government until 2002. The EU was concerned about this situation due to the eurosceptic view of the National Action Party (Duzgit and Keyman, 2007). In conjunction with this concern, despite of all these negative events and developments, EU finally recognised Turkey as a candidate country at the Helsinki summit in December 1999.

After the Helsinki Summit in 1999, the EU placed some conditions for full membership as short term and medium term. Smith explains that strengthening freedom of expression, civil society, stamping out torture, giving opportunities for legal redress against human rights violations, intensifying human rights training for law enforcement officials and maintaining the moratorium on capital punishment were some important aims for Turkey to access the EU in the short term. Over the medium term, Turkey should guarantee all human rights and fundamental freedoms; improve freedom of thought and religion; review the Turkish constitution in terms of protecting human rights and freedoms; abolish the death penalty; develop detention conditions in prisons and guarantee cultural rights for all citizens (Smith, 2003). As a result of these conditions, the Turkish government started to build a framework where Turkey carried out political reforms in order to fulfil the Copenhagen Criteria. Moreover, the Turkish authorities prepared a 'National Programme for the Adoption of the Acquis' in March 2001 (Dogan, 2006). Following the National Programme, political reform continued with 34 constitutional amendments in October 2001. The Turkish assembly passed nine harmonisation packages until 2004. These packages aimed to improve and protect workers' rights, freedom of expression, freedom of association, the right to demonstrate, freedom of thought, and cultural rights especially for minority groups (Duzgit and Keyman, 2007).

Indeed Turkey made remarkable advances in the development of human rights between 2001 and 2005. However, there has not been the same indication

after 2005 in terms of the improvement of human rights and democracy. Hale points out this phenomenon below:

“Between 2001 and 2005, Turkey made remarkable advances in the improvement of human rights. However, over the next four years, the reform process slackened severely, causing pessimists to predict that it might evaporate altogether. A commonly given explanation for this was that, up to 2005, Turkish governments had a powerful incentive to improve Turkey’s human rights regime, as demanded by the European Union (EU) as an essential condition for the start of accession negotiations. Once these negotiations had officially begun in October 2005, it was suggested, the incentive for further reform slackened significantly. This effect was compounded by the fact that some European leaders, in France and Germany in particular, now voiced open opposition to the whole principle of eventual Turkish membership, strengthening the arguments of those in Turkey who opposed further political reforms or closer alignment with the EU.” (Hale 2011, p.323).

As said before, Turkey started reform programmes to protect human rights and to fulfill the Copenhagen membership criteria after the Helsinki Summit in 1999. However, these moderate changes have not continued in some specific areas in the issue of human rights after 2005 due to some reasons. This study tries to explain why and how Turkey has changed its view about human rights protection by using some specific areas in human rights like freedom of expression or freedom of association in the next chapter.

CHAPTER IV- IMPORTANT ISSUES OF HUMAN RIGHTS IN TURKEY IN LIGHT OF EU ACCESSION

As mentioned in the past chapter, the issue of human rights has been one of the key issues in EU-Turkey relations since the 1990's. After the Helsinki European Council which declared Turkey's candidate status in the European Union, Turkey started national programmes and political reforms to improve the human right records in country. Despite moderate changes in freedom of expression or other democratic rights in Turkish constitution and other general laws, too many areas which were protected by an ineffective human rights system, were criticised by the EU in terms of Turkey's accession process. According to the Turkey Progress Report which was prepared annually by the European Commission, criticism of Turkey were in these areas: Prevention of torture and ill treatment; Reform of prison system; Access to justice; Freedom of expression; Freedom of press; Freedom of thought and religion; Woman's rights and gender equality; Freedom of assembly and association.

This study does not explain all of these areas and human rights violations. It aims to show the most important issues which affect EU-Turkey relations negatively such as freedom of expression, freedom of press, freedom of religion and freedom of association.

a) Freedom of Expression

“As regards freedom of expression, a number of journalists were released pending trial after excessively long periods spent in pre-trial detention. The third judicial reform package prohibits the seizure of written work before publication. It also eases restrictions on media reporting of criminal investigations. There continues to be room for debating some topics perceived as sensitive, such as the Armenian issue or the role of the military, and opposition views are regularly expressed. However, these reforms fall short of a significant improvement regarding freedom of expression. The increasing incidence of violations of freedom of expression raise serious concerns, and freedom of the media continued to be further restricted in practice. The increasing tendency to imprison journalists, media workers and distributors fuelled these concerns. The European Court of Human Rights received a large number of applications concerning

violations of freedom of expression by Turkey.” (European Commission, 2012 Turkey Progress Report, p.21-22).

These sentences were established in the 2012 Turkey Progress Report which was prepared by European Commission. Indeed, Turkey has an important historical process in terms of human rights abuses in freedom of expression. As indicated before, Turkey was faced with two military coups in 1971 and 1980. These military coups caused anti-democratic constitution and laws in terms of the issue of human rights (Darendeli, 2012). Freedom of expression became one of these problems during this period. Kurdish and Armenian issues, Radical Islamism and Communism became problematic areas in terms of freedom of expression in this time. Fulton explains this phenomenon below:

“Many of the Turkish government's reservations about freedom of speech have developed from insecurities regarding past conflicts. The government's most controversial legislation has roots in the age-old tensions between Turks and the ethnic Armenians and Kurds living within Turkey. Because it is in Turkey's interest to appear united and in control of its territory, Ankara has used the conflicts as pretexts for limiting free expression.” (Fulton 2008, p.26)

These matters were included in the Turkish Penal Code until the 1990s. Restrictions on the freedom of expression based on Article 141 and 142 (about communist and socialist propaganda) and Article 163 (Radical Islamist propaganda) and other general settlements restricted freedom of expression in Turkey (Christensen, 2010). Moreover, the EU wanted Turkey to lift these restrictions from its constitution and laws since the 1990s. The Turkish Assembly lifted Article 141, 142 and 163 in 1991, however its successor which was called Anti-Terror Law has created similar problems about the issue of freedom of expression during the 1990s (Yildiz, 2005). After the declaration of Turkey's candidacy in Helsinki in 1999, the Turkish government started political reforms like reforms on freedom of expression. A number of amendments were made to the Turkish Penal Code in relation to human rights issues (Dogan, 2006). Nevertheless, Article 301 was the biggest problem for Turkey in terms of EU relations with the value of freedom of expression. Hrant Dink

Case was one of the well-known cases during these discussions and this research tries to demonstrate this case in regards to EU-Turkey relations and freedom of expression.

Hrant Dink Cases and Article 301

Hrant Dink, was a Turkish-Armenian editor, journalist and columnist, editor-in-chief of the bilingual Turkish-Armenian newspaper *Agos* and was a prominent member of the Armenian minority in Turkey. Dink was prosecuted three times for denigrating Turkishness under Article 301 of the Turkish Penal Code. He was acquitted the first time, convicted and received a suspended six-month jail sentence the second time, which he had appealed at the European Court of Human Rights. At the time of his death, the prosecutor's office was preparing to press charges in a third case. When he was acquitted the first time, the Court said that; 'This is disrespectful to the Turkish ancestors, martyrs, and values that form a nation'.²

Indeed, this decision worried the European Union and he criticised Article 301 to Turkey in his progress report: For example, in 2006 the Progress Report points out that;

“ . . . However, the prosecutions and convictions for the expression of non-violent opinion under certain provisions of the new Penal Code are a cause for serious concern and may contribute to create a climate of self-censorship in the country. This is particularly the case for Article 301 which penalises insulting Turkishness, the Republic as well as the organs and institutions of the state. Although this article includes a provision that expression of thought intended to criticise should not constitute a crime, it has repeatedly been used to prosecute non- violent opinions expressed by journalists, writers, publishers, academics and human rights activists”. (European Commission, 2006 Turkey Progress Report, p.14).

In the 2007 Progress Report on Turkey, the EU believed that the Turkish legal system did not fully guarantee freedom of expression in line with European

² <http://arsiv.ntvmsnbc.com/news/346067.asp?cp1=1>

standards. Article 301 and other provisions of the Turkish Criminal Code that restrict freedom of expression needed to be brought into line with the ECHR and the case law of the ECtHR. As a result of these demands and the impact of the Hrant Dink Case, there were changes of Article 301 (Christensen, 2010). This article was amended by the parliament on 30 April 2008 with some changes. According to these changes, the word 'Turkishness' was replaced by 'the Turkish Nation' and reduced the maximum penalty for these cases. Nevertheless, this reform did not satisfy the European Union. In 2008 the Turkey Progress Report indicated that;

"However, the wording of Article 301 remains largely the same and the prior authorisation requirement opens up the possibility that the article will become subject to political consideration. So far, the Minister of Justice authorised the criminal investigations to continue in 37 cases. This includes one case which was initiated following a statement made by a Turkish writer on the Armenian issue shortly after the assassination of the Turkish journalist of Armenian origin, Hrant Dink." (European Commission, 2008 Turkey Progress Report, p.16)

Indeed, these problematic issues have increased with the Justice and Development Party's policies in light of Political Islam. Secularism has become one of the problems in terms of freedom of expression after the increase of Political Islam in Turkish public and political life (Bogdani, 2011). The case of Fazil Say was a good example to explain this phenomenon.

The Case of Fazil Say

World-renowned Turkish pianist Fazil Say had been given a suspended 10-month jail sentence for insulting Muslim values on his Twitter account in 2013. Say is an important artist and he defends the value of secularism in the Republic of Turkey. Moreover, he has criticised some matters in Islam and most people hated him due to his views and they indicated this to him sometimes. In one of these cases in 2013, an

Istanbul court found Say guilty over a series of posts on the social networking site Twitter. In one of the examples of his posts, he says: 'I am not sure if you have also realised it, but if there's a louse, a non-entity, a lowlife, a thief or a fool, it's always an Allah-ist'.³ Most of the artists and intellectuals believe that this view is only criticism about Islam with non-violent opinions. However, their critics have accused the governing AKP of undermining Turkey's secular values and pandering to Islamists.

Additionally, the European Union has concerns about the increase of human rights violations in freedom of expression in Turkey and the Fazil Say Case supports their worries. After this decision by the Istanbul Court, Maja Kocijancic, spokeswoman for the commission, the European Union executive said that;

"The commission underlines the importance for Turkey to fully respect freedom of expression in line with the European Convention on Human Rights and case law of the European Court of Human Rights. Turkey's bid to join the European Union has been stalled partly due to shortcomings in democratic reforms and "recurring infringements of the right to liberty and security and to a fair trial, as well as of the freedom of expression, assembly and association".⁴

Overall, freedom of expression has been an important problematic issue for Turkey during the EU accession process since the 1990s. First of all, the idea of Communism, Kurdish nationalism or radical Islam had been seen as an important threat by Turkish state in the 1990s (Fulton, 2008). After the Helsinki Council in 1999, the Turkish government began to reform this situation with constitutional and law changes. However, the AKP government transformed Turkey's way from Europeanisation to Political Islam after 2007 and the human rights violations in freedom of expression have increased during this period (Owen, 2009). This problem is one of the most important obstacle for Turkey's accession to the EU according to the EU's view and documents like Progress Reports.

³ <http://www.bbc.co.uk/news/world-europe-22151212>

⁴ <http://www.businessweek.com/news/2013-04-15/turkish-pianist-say-sentenced-for-insulting-islam-on-twitter>

b) Freedom of Press

“The press is free, and shall not be censored. The establishment of a printing house shall not be subject to prior permission or the deposit of a financial guarantee. The state shall take the necessary measures to ensure freedom of the press and freedom of information.” These sentences came from the Turkish Constitution in Article 28 which was amended on October 17, 2001 in light of the National Programme and political reforms. Before the political reform in the press, it has played a critical role in Turkish politics since the second half of the twentieth century. In addition to this, freedom of press and media has become one of the controversial issues for Turkey during the EU accession process. While concerns about press freedom in Turkey are not new, the situation has worsened since the 1980s (Christensen, 2010). As mentioned before, most of the newspapers were closed after the 1980 military coup and the next years due to the Kurdish issue, because these newspapers and magazines were about the Kurdish language or published in the Kurdish language (Kirisci, 1999). Moreover some of the journalists were arrested due to their non-violent opinions. Nevertheless, all Turkish governments until AKP rejected the claim of human rights violation in terms of media freedom in Turkey. The Turkish government’s response to these developments has been to either deny the problem exists or characterise it differently, arguing that its actions are a response to insulting language or terrorism (Committee to Protect Journalists, 2012).

After the Helsinki Council in 1999, Turkey started reform programmes in many areas like freedom of press and media. Apart from constitutional changes about the freedom of press in 2001, the Turkish Press Law was amended by the Turkish Assembly in 2004. It is generally seen by press professionals as an important improvement regarding the regulation of the press. Nevertheless this act could not be satisfied in terms of the protection of journalists or media freedom. According to Thomas Hammerberg’s report (Commissioner for Human Rights of the Council of Europe Following), he is concerned that the Act does not include a strong public interest clause for the protection of journalists due to the Constitutional Court decision which invalidated some articles in the Turkish Press Law (Hammarberg, 2011).

Indeed, the Justice and Development Party has become more authoritarian in many areas such as media after the 2007 election. Most of the opponents think that Prime Minister Recep Tayyip Erdogan looks like a dictator with his aggressive policy and they criticised him within the newspapers. As a result the AKP government pressured the Turkish media agencies and press which was the opponent of Erdogan's government (Committee to Protect Journalists, 2012). Based on some reports as well as on consultations with Turkish and European human rights organisations, the Council of Europe and the European Union, two main issues emerged as the main areas of concern in relation to press freedom in Turkey now. Imprisonment of journalists and the employees of media sector and the government's direct interference in media affairs affect the situation of media freedom in Turkey and it has become one of the main problematic issues for Turkey during the EU accession (Pierini and Mayr, 2013).

Imprisonment of journalists

There has been a growing concern, both in Turkey and internationally, regarding the large number of criminal proceedings and arrests involving journalists in Turkey. According to the figures provided by the The Platform for Solidarity with Imprisoned Journalists, 67 press workers (including six newspaper distributors and 61 reporters, editors, correspondents or commentators) were now in prison. Indeed, these figures were higher than past years and about a hundred journalists and employees of the media sector have been in prison between 2011 and 2012 (Human Rights Association, 2012).

These trials are related to two main cases; the Ergenekon case and KCK case. The trial of the alleged criminal network Ergenekon is an important example to explain these trials. According to the 2011 Turkey Progress Report, the judicial investigation was expanded further and, according to official data, the number of defendants has risen to 238, 53 of whom are under arrest. The investigation into alleged media involvement continued with the detention of a number of journalists, among whom were prominent supporters of the investigation into Ergenekon. In March 2011, copies of an unpublished book written by one of the arrested journalists

were confiscated on the orders of a court for being a "document of a terror organisation". Confiscation of an unpublished book as evidence of crime raised concerns about press freedom in Turkey and the legitimacy of the case (European Commission, 2011 Turkey Progress Report).

The second and the biggest case of the imprisonment of journalists is directly related to the Kurdish issue. The majority of journalists were imprisoned in Turkey due to the KCK Case which is a pan-Kurdish political umbrella group linked to the Kurdistan Workers Party (PKK). The Turkish government under Erdogan believes that these trials were realised due to the fight against terrorism (Fulton,2008). Nevertheless the EU has not agreed with this idea. Journalists' interpretation by prosecutors and courts is uneven and is not in line with the European Convention on Human Rights or the case-law of the European Court of Human Rights, according to the European Commission (Pierini and Mayr, 2013). The EU believes that these journalists do not have any idea to the incitement to violence, they use only the expression of non-violent ideas. Nevertheless, most of the independent institutions apart from the EU think that the AKP government used the framework of anti-terrorism to explain these trials. For instance, Emma Sinclair-Webb, a senior researcher for Human Rights Watch, said that; "In the last three years, the biggest problem has been the misuse of anti-terrorism laws to bring criminal charges against many ordinary people who engage in legitimate and nonviolent pro-Kurdish or leftist political activity".⁵ Moreover, some independent agencies reported that journalists did only professional things in terms of journalism. For example, a special report by the Committee to Protect Journalists (CPJ) points out this phenomenon as follows:

"Throughout the Kurdish prosecutions, CPJ found that the government conflated reporting favourable to the PKK or other outlawed Kurdish groups with actual assistance to such organizations. Basic newsgathering activities—receiving tips, assigning stories, conducting interviews, relaying information to colleagues—were depicted by prosecutors as engaging in a terrorist enterprise". (Committee to Protect Journalists, 2012)

⁵ <http://everywheretaksim.net/human-rights-watch-turkey-end-incorrect-unlawful-use-of-teargas/>

Turkish government's direct interference in media affairs

“All through the [Syrian] process, even our print and visual media failed to stand against Bashar [al-Assad]. The media should have made more [stories] against main opposition leader [Kemal Kılıçdaroğlu of the Republican People's Party - CHP] who resembled the prime minister of this country as a ‘murderer.’ What if we were not there [to stand against al-Assad?] Would all those massacres not have taken place? Our print and visual media should have [moved] to invalidate the understanding of both the main and lesser [Nationalist Movement Party – MHP] opposition.”⁶

Erdogan said these sentences when he talked about the Syrian Crisis. As is seen, Prime Minister Erdogan gave instruction to media to make news about main and lesser opposition leaders. It means that Erdogan interfered in the media due to his interests and this situation damages the freedom of press and media in Turkey. Moreover, this phenomenon is not related only to Erdogan's speeches. Some important authors were threatened by Erdogan due to his/her views. For instance, Nuray Mert, one of Turkey's most prominent political columnists and commentators, criticised Erdogan due to his speeches about the Kurdish issue. After that, Erdogan lashed out with a personal attack that implied Mert was traitorous, and he threatened Mert with her safety.⁷ As a result of this debate, Mert's television show and newspapers column were cancelled by her sensitive bosses who were under pressure from Prime Minister Erdogan (Committee to Protect Journalists, 2012). Other interference included a media ban which is imposed on an important development in Turkey. The AKP government applied to the Courts to ban and restrict after some events in Turkey. For instance, after the Reyhanli Bombings, the Reyhanli Court of Peace ordered all voice, written, and visual publications relating to the scenes of incidents after the blasts banned, including content and images of the injured and the dead. This decision is criticised by the European Union and other independent institutions in terms of freedom of press.

⁶ <http://www.hurriyetdailynews.com/what-does-erdogan-want-from-the-turkish-media.aspx?pageID=517&nID=47167&NewsCatID=409>

⁷ <http://www.newyorker.com/online/blogs/comment/2012/03/turkeys-jailed-journalists.html>

On the other hand, the Supreme Board of Radio and Television (RTÜK) is another important example to explain Turkish government's interference with the media. RTÜK can impose fines or can warn television stations due to their broadcast (Kurban and Sozeri, 2012). It puts these channels' feet in the fire. The EU worries about RTÜK's power over television channels and the 2012 Turkey Progress Report demonstrates this concern:

"In order to ensure transparency of the Council's decisions, RTÜK makes them public. Sanctions were issued against broadcasters for violating the rules on the protection of minor and rules on commercial communication. Certain decisions of RTÜK continue to raise concerns as to the broad interpretation of certain legal provisions, especially as regards obscenity and the principle of the protection of family, national and moral values". (European Commission, 2012 Turkey Progress Report, p.54).

To sum up, press freedom is an important step for Turkey to access the European Union with regard to the Copenhagen Political Criteria. Pierini and Mayr indicate this matter: "Press freedom is one of the key subjects that will delineate the future nature of Turkey, including the country's domestic cohesiveness and its relationship with the rest of the world. The tenets of press freedom in Turkey are therefore of strategic interest not only to Turkish citizens but also for the European Union. The EU needs a prosperous, stable, and democratic Turkey irrespective of whether it is a member, a strategic ally, or a neighbour." (Pierini and Mayr 2013, p.21).

c) Freedom of Religion

Turkey was an important bridge between the East and the West historically due to specific reasons. It is clear that Turkey was an important country in so far as explaining the differences between two civilisations such as European and Asian or Christian and Muslim. Indeed, one of the most important momentums for the process of Europeanisation in Turkey is the accession to the European Union (Bogdani

2011). Turkey's accession process into the EU gained speed during the 1990s even though it was started in the 1960s. Arikan explains that after applying for full membership to the EU in 1987, the Copenhagen Criteria established and provided future accession processes like Turkey's process in 1993. However there was a key problem during the 1990s due to Islam (Arikan, 2003). The EU believes that freedom of religion has become one of the problematic issues for Turkey during the accession process in terms of human rights. Moreover, the Justice and Development Party which is called the Islamic Party won the 2002 election and has been the ruling party for ten years. As a result, the European Union has concerns about this party agenda in terms of freedom of religion. As a result of this, Turkey has difficulties in two main areas in light of freedom of religion during the EU accession: the issue of the Alevis and the protection of Non-Muslim groups (Ozdalga, 2008).

The Alevi Issue

The Alevis are a heterodox group which blesses the fourth caliph and son-in-law of the Prophet Muhammed, Ali. The followers of Ali provided this religious group historically. However, the Alevis become different by countries. For instance, Turkish Alevis' rituals and beliefs are different from other forms of Alevis in other countries. Alevism is a religious group combining Anatolian folk Shi'ism with Sufi elements such as those of the Bektashi (Bilgili and Carkoglu, 2013). Moreover, it is also a group identity which is variously interpreted as cultural (emphasising special traditions of poetry, music and dance), humanistic or political.

After the 1950s, Alevi communities have been alienated with the impact of orthodox Sunni religion under state control. Some of the Alevi communities were attacked by some groups which were not stopped by the state between the 1970s and 1990s (Ozdalga, 2008). Maras, Corum and Sivas (Madimak) massacres are some examples to explain this violation. Most of the Alevis were killed by Sunni Islamic and far right terrorist groups and the state gave indirect support to these terrorist groups during this time.

Ever since Turkey's candidate status was accepted at the EU's summit in Helsinki in 1999, the issue of Alevis has become more important for the European

Union. In the 2001 Turkey Regular Report, the Alevis were called 'Non-Sunni Muslim Communities' and the EU was concerned about the situation of the Alevis for the first time:

"No improvement in the situation of non-Sunni Muslim communities has taken place. The official approach towards the Alevis is unchanged. Alevi concerns have not been taken up by the Presidency of Religious Affairs. Particular Alevi complaints relate to compulsory religious instruction in schools and school books which fail to acknowledge the Alevi identity, and the fact that financial support is only available for the building of Sunni Muslim mosques and religious foundations." (European Commission, 2001 Turkey Regular Report, p.27).

As it is seen, the Alevi people have become a new religious minority from the EU perspective. Ozdalga points out that EU reports and documents were started to mention in regards to freedom of religion and minority rights and this situation caused negative impacts on different levels of Turkish society, state, different political parties and mass media. All of them rejected the criticism of the EU about the Alevi issue (Ozdalga, 2008). Nevertheless this reaction did not stop EU criticism in the next years. For example, the 2004 Regular Report defined the Alevis community as a non-Sunni Muslim minority and this report notes that Alevis are still not recognised as a religious minority and it points out that as far as the situation of non-Sunni Muslim minorities is concerned, there has been no change in their status. Alevis are not officially recognised as a religious community, they often experience difficulties in opening places of worship and compulsory religious instruction in schools fails to acknowledge non-Sunni identities (European Commission, 2004 Turkey Progress Report).

Indeed, the Alevi issue plays a prominent role in terms of religious freedom during the EU negotiations. Two main issues are important for Alevi people for protecting their minority rights: the official recognition of cem houses (chapel for Alevis) and the lifting of compulsory religion lessons for Alevi children (Ozdalga,

2008). Erdogan government started Alevi Openings in 2009 due to these interests and the impact of external pressures like the EU. The Alevi Opening is the first systematic effort to address Alevis' identity-based contentions. The AKP government took steps to recognise and address the concerns of the Alevi population between 2009 and 2011 (Bilgili and Carkoglu 2013). Nevertheless, these efforts have not been enough for some Alevi groups. They complained that these efforts did not address the needs of all Alevi groups, but only the ones close to the government. Moreover, the EU was not satisfied with the Alevi opening and believed that this step is lacking. The 2012 Turkey Progress Report emphasises this view as follows:

“Concrete follow-up of the opening made in 2009 to the Alevis is lacking. *Cem* houses were not officially recognised and Alevis experienced difficulties in establishing new places of worship. Alevis were concerned by the marking of many houses of Alevi citizens in a number of provinces and by incidents against them. Complaints were submitted to the prosecutors' offices by Alevi associations; judicial and administrative investigations are continuing. A demand to open a *cem* house in the parliament was rejected on the grounds that Alevi MPs could go to the mosque. Several commemoration ceremonies by Alevis were prevented by police, some through the use of force as was a demonstration against the closure of the Madimak court case. Some Alevis encountered job discrimination in the civil service.” (European Commission, 2012 Turkey Progress Report, p.25).

Non-Muslim Groups

The Ottoman Empire has a multicultural society in regards to non-Muslim communities. However, cultural pluralism has transformed to a uniform structure in Turkish society with the establishment of the modern republic of Turkey as a nation-state. This process caused many problems like population exchange (*nufus mubadelesi*) or Wealth Tax (*Varlik Vergisi*) in terms of religion freedom for non-

Muslim minorities in the first years of the Republic of Turkey until the 1990s (Ozdalga, 2008). Nevertheless, these problems did not impact on the Turkish EU membership process seriously. Indeed, the issue of religion has become an important argument in the debate on Turkey's accession to the European Union since the 1990s (Bogdani,2011). As a result, freedom of religion becomes one of the most important agendas for performing the Copenhagen Political Criteria in terms of human rights and protection of minority rights.

Some of the main problems for non-Muslim minorities are related to their property rights, access to justice, the ability to obtain work, residence permits for foreign clergy and fundraising. The Justice and Development Party could not implement a successful policy to solve these problems during its position as ruling party. Most of the international institutions like the European Union has been criticising Turkey due to some specific problems in terms of freedom of religion. For example, the 2012 Turkey Progress Report points out some issues about religion freedom and minority rights below:

“Restrictions on the training of clergy remain. Neither the Turkish legislation nor the public education system provide for private higher religious education for individual communities. Despite announcements by the authorities, the Halki (Heybeliada) Greek Orthodox seminary remained closed. The Armenian Patriarchate's proposal to open a university department for the Armenian language and clergy remained pending for a fifth year. The Syriac Orthodox community can provide only informal training outside any officially established schools. As regards participation in religious elections, in contradiction with European standards Turkish and foreign nationals are not treated equally in terms of their ability to exercise their right to freedom of religion by participating in the life of organised religious communities.” (European Commission, 2012 Turkey Progress Report, p.24-25).

It is clear that Turkey has many different non-Muslim and non-Sunni minorities like Alevi. However, the Turkish governments such as the AKP government have

not protected these minorities' right effectively. Moreover, especially Prime Minister Erdogan and other members of AKP governments continue to give hate speeches against Alevis or other non-Muslim groups. The European Union has been concerned about the threatening of religion freedom and protection of minority rights in Turkey. As Kiricsi points out, Turkey needs the EU's engagement to arrive at a more liberal balance between religion, politics and secularism (Kirisci 2008).

d) Freedom of Assembly

“Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission. The right to hold meetings and demonstration marches shall only be restricted by law on the grounds of national security, and public order, or prevention of crime commitment, public health and public morals or for the protection of the rights and freedoms of others”.

These sentences are quoted in Article 34 from the Turkish Constitution. As it is seen, the constitution guarantees freedom of assembly and the right of peaceful demonstrations without any permission. Nevertheless, some peaceful demonstrations have been precluded by Turkish governments sometimes. In some cases, especially like the 1 May Demonstrations or Kurdish New Year (Nevroz) celebrations, security forces used excessive force, especially when the demonstrations were carried out without permission. For instance, the 2008 Turkey Progress Report points out that the Turkish police used disproportionate force against protestors and trade union representatives who ignored the ban on 1 May demonstrations in Taksim Square in Istanbul. The Kurdish *Newroz* Spring celebrations in March 2008 resulted in violence against demonstrators in several provinces, in particular Hakkari, Yuksekova and Van (European Commission, 2008 Turkey Progress Report).

Indeed, the AKP government has taken a concrete step to improve the freedom of assembly after 2008. As a result of positive developments in this area, 1 May demonstrations and *Newroz* celebrations took place in a generally peaceful atmosphere until 2013. When this research has been made, Turkey encountered the

violations of assembly freedom in many provinces due to peaceful protests against the AKP government which are called by the Gezi Park Protests.

Gezi Park Protests (#ResistTurkey)

Turkey has been affected by one of the biggest and strongest protests with the Gezi Park. In the beginning, a small number of environmentalists were camping out due to protesting against the AKP governments' urban development plans to envisage building a replica Ottoman-era barracks and a mosque on the Taksim Square and Gezi Park. Indeed this protest is peaceful and protesters express their non-violence opinions about Gezi Park and Taksim Square and they use their constitutional rights with this way. However, in the early morning of 28 May and 31 May, police used tear gas against a small number of environmentalists to stop their protest and burned down their tents in order to allow the bulldozing to continue.⁸ As a result of these police attacks in Taksim Square, more than 100 people were injured, several of them seriously. After this interference, Turkey has been engulfed by a series of protests across several cities like Ankara, Izmir, Adana, Hatay, Eskisehir and other big cities, after riot police turned Istanbul's busiest city centre hub into a battleground, deploying tear gas and water cannon against thousands of peaceful demonstrators.⁹ These demonstrators did not have any guns or did not use any act of violence, they shouted slogans such as 'Everywhere Taksim, Everywhere Resistance' (Her yer Taksim, Her yer Direnis).

It is undeniable that, police staged consecutive raids on peaceful protesters in all these cities, using tear gas and water cannons, but the protests grew in scale, with artists, intellectuals and opposition MPs joining the ranks on June 2013. The AKP government and Prime Minister Erdogan rejected apologising to protesters and he said that 'these protestors are looters and vandals'.¹⁰ Moreover, Turkish police increased their attacks against peaceful demonstrators in many cities during June and July. As a consequence, one of the Turkish police (Mustafa Sari) died by accident during the protests and four demonstrators (Ethem Sarisuluk, Mehmet Ali

⁸ <http://www.bbc.co.uk/news/world-europe-22780773>

⁹ <http://www.theguardian.com/world/2013/may/31/istanbul-protesters-violent-clashes-police>

¹⁰ <http://www.latimes.com/news/world/worldnow/la-fg-wn-erdogan-protesters-vandals-20130609,0,1751080.story>

Ayvalitas, Abdullah Comert and Ali Ismail Korkmaz) were killed by civil or official police who used 'excessive force' against protestors.¹¹

Reaction against these police attacks did not arise from internal actors. External agencies like the European Union criticised Erdogan and his government's policy and the police's excessive force to protestors during the protest. The European Parliament discussed these protests and the police offensive in Turkey on 12 June with the attempt of Socialist & Democrats members of European Parliament. "There was intensive use of water cannon and tear gas. There were violent scenes in Ankara and Izmir too. Reports of widespread injuries once again underlined these police tactics are a major cause of concern," said EU foreign policy chief Catherine Ashton about the police offensive at a European Parliament debate on this meeting.¹² After this meeting, the European Parliament established a statement about the Gezi Park protests and called to order Prime Minister Erdogan to reduce tension between demonstrators and police.

This statement explains that Article 34 of the Turkish Constitution guarantees the right to organise peaceful, unarmed meetings and demonstrations without permission; whereas Article 26 guarantees freedom of expression, and Articles 27 and 28 guarantee 'freedom of expression' and 'unhindered dissemination of thought. Moreover, the European Union warned the Turkish government in terms of freedom of assembly. The EP called on the Turkish authorities to guarantee and respect the rights of all citizens to freedom of expression, peaceful assembly and peaceful protest; called for the immediate release of all peaceful protestors taken into custody and currently detained; asked for information on the exact numbers of detainees and injured (European Parliament, Motion for a Resolution in Turkey, 2013).

It is undeniable that the AKP government has improved the protection of assembly freedom in Turkey since 2008. Nevertheless, the Gezi Park protests and police offensive using excessive force damaged this situation. The protests initially began as a peaceful occupy-style movement in reaction to plans to demolish a park

¹¹ <http://www.bbc.co.uk/news/world-europe-22780773>

¹² <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20130612+ITEM-015+DOC+XML+V0//EN>

as part of a wider re-arrangement of the central Taksim Square in Istanbul, but evolved into a general expression of discontent with the government with the police offensive and Prime Minister Erdogan's aggressive policies. As a result of this, institutional actors such as the European Union expressed concern about the use of force by the police as the protest spread to more cities and they criticised the AKP government due to the police offensive and violations of assembly freedom in Turkey.

To sum up, this study tries to examine important issues in regards to the issue of human rights in light of the relations between Turkey and the European Union. As mentioned before, human rights have played an important role to explain the dynamics of Turkey's EU accession since the 1980s. Turkey has had many difficulties in this area and the EU believes that the issue of human rights was an unresolvable matter for Turkey until 1999. However, the start of the negotiations and Turkey's candidacy status in Helsinki Council in 1999 helped to start reform programmes in Turkey in terms of human rights and democracy. There was a significant improvement in the human rights record between 2001 and 2005 with the constitutional changes and harmonisation packages which were established by the Turkish Assembly.

Nevertheless, these positive developments did not take a long time. After 2005, this process slackened due to the AKP government and Prime Minister Recep Tayyip Erdogan's policy agendas (Hale, 2011). After the AKP's victory in 2007, Erdogan has started to centralise all powers like executive, legislature and jurisdiction in his profile. Most of the people claim that Erdogan wants to become a new dictator in Europe (Bogdani, 2011). As a result, the relationship between the EU and Turkey got worse in terms of human rights violations in Turkey. Indeed, Turkey has started a new political reform programme since 2009. However, the practicability of these reforms has become a highly controversial topic for Turkey-EU relations due to inefficient protection systems of human rights and human rights violations in Turkey. Indeed, Turkey should practise many reforms in many areas in terms of human rights. Moreover, the EU should support positive developments in Turkey or should press to prevent human rights violations in Turkey in light of EU accession. Dogan gives solutions and actions to be taken by Turkey and EU below:

"It is clear that Turkish laws, including some articles of the Constitution, should be amended. As demonstrated above, many critical rights and freedoms, such as the right to education and freedom and to religion and conscience, which have been negatively worded, in time should be reworded in a direct and positive way. The main changes needed, however, concern the implementation of the reforms and internalisation of the value of human dignity through such policies as already adopted "zero-tolerance" for human rights violations. The EU should encourage Turkey, provide incentives in the reform process, and try to keep Turkey's hope alive for full membership." (Dogan 2006, p.257).

CHAPTER V- CONCLUSION

"Human rights are one of my top priorities and a silver thread that runs through everything that we do in external relations. With this comprehensive package we want to enhance the effectiveness and visibility of the EU human rights policy. In order to help put the Framework and the Action Plan into practice, I have also proposed the appointment of an EU Special Representative on Human Rights and I look forward to a swift appointment," said Catherine Ashton, High Representative for Foreign Affairs and Security Policy/Vice- President of the European Commission, when European Council adopted a Strategic Framework on Human Rights and Democracy with an Action Plan in 2012.¹³

As seen, human rights, democracy and the rule of law are important values of the European Union according to Ashton's speech. It is clear that the European Union sees human rights as universal and indivisible. It actively promotes and defends them both within its borders and when engaging in relations with non-EU countries. This study gives some details about this issue with the history of the EU's human rights policy. As mentioned in past chapters, the European Union was founded after World War II due to improve economic conditions in Europe unlike the

¹³ <http://www.guardian.co.tt/news/2012-07-04/eu-adopts-framework-human-rights-democracy>

Council of Europe and United Nations. Although there have been some minor improvements about the protection of human rights in the framework of European Union until the 1990s, the EU has interested economic issues during this period. However, the impact of the end of Cold War and the collapse of communism affected the EU's human right policies seriously after the 1990s. There were many major developments within the structure of the European Union internally and externally. The issue of human rights was considered on a preferential basis in EU founding treaties like Maastricht or Amsterdam during the 1990s. Additionally, there are some universal criteria for candidate states which are included in the Copenhagen Criteria in terms of human rights after the 1990s. Moreover, one of the main external developments is the framework of European Political Cooperation (EPC) and Common Foreign and Security Policy (CFSP) in terms of EU human rights policies during the 1980s and 90s. The EU made some declarations and agreements with the African countries or post-communist states within the context of EPC/CFSP. As a result, these declarations increased the role of EPC/CFSP in the issue of human rights significantly.

Indeed, my main argument is that the issue of human rights has played one of the most prominent roles as a negative indicator during the EU membership process for Turkey. As indicated the chapter of The Historical Process of Human Rights on Turkey-EU Relations, the issue of human rights had not been an important issue in EU-Turkey relations due to the EU's economic interest towards Turkey until the 1980s. Nevertheless, some negative developments in Turkey like the 1980 military coup changed the EU's policy towards Turkey in light of human rights and democracy. As a result of these developments, the issue of human rights has become the main topic of EU accession for Turkey and the EU's agenda and the EU started to criticise Turkey about this issue since 1980.

It is clear that Turkey had not improved its human rights record until 1999. Nevertheless, the Helsinki Council changed this situation for Turkey. The EU finally recognised Turkey as a candidate country at the Helsinki summit in December 1999 and Turkey must fulfill the Copenhagen Criteria according to EU authorities after this decision. The political reforms which have been pressed on Turkey since the EU's Helsinki summit of December 1999 recognised Turkey as an official candidate for

eventual accession were not specially invented to meet the Turkish case but have been an established part of the EU's agenda for several years and are equally applied to all the candidate countries. The Turkish government's official reaction to this came in March 2001 when the cabinet approved a National Programme for the implementation of the EU *acquis*, the first part of which dealt with the political criteria. The Turkish parliament began to give effect to these commitments by passing nine harmonisation packages and some constitutional amendments between 2001 and 2005, in particular, freedom of expression, organisation and assembly, the use of minority languages, the partial abolition of the death penalty, and the role of the military in politics.

However, this positive trend has not continued after 2005. This study tries to explain why and how Turkey and the government of AKP has changed its position about human rights protection by using some specific areas in human rights: freedom of expression, freedom of press, freedom of religion and freedom of assembly. Also Turkey has many problems like women's rights, children's rights, asylum seekers or torture in terms of human rights; I choose these four topics which were the most criticised issues by the European Union during the EU accession process. Although there have been many cases in these four issues, some special, current and important cases are considered on a preferential basis during this study.

It is undeniable that the European Union is aware of Turkey's inefficiency about the protection of human rights and this phenomenon is one of the most controversial issues for Turkey's accession to the EU despite Turkey's reform programmes during this period. The last progression report by the European Commission in 2012 points out Turkey's dilemma about this issue in this report from the conclusion Part:

“Work on a new constitution started via a relatively democratic and participatory process. However, concerns are growing regarding Turkey's lack of substantial progress towards fully meeting the political criteria. The situation regarding the respect for fundamental rights continues to be the source of serious preoccupation. This stems, in particular, from the wide application of the legal framework on terrorism and organised crime, which leads to recurring

infringements of the right to liberty and security, of the right to a fair trial and of the freedom of expression, assembly and association.” European Commission, 2012 Turkey Progress Report, Conclusion on Turkey).

To sum up, the issue of human rights is one of the most important obstacles for Turkey to gain access to the European Union. I believe that Turkey is not ready to meet the Copenhagen Political Criteria in terms of human rights. The Justice and Development Party has not maintained the political reform progress and democratisation after the second half of 2000. The AKP government and Prime Minister Recep Tayyip Erdogan have become more authoritarian after the AKP's victory in the 2007 election. As a result of this, political reform has been slackened and new human rights violations in many areas like freedom of expression, freedom of press, freedom of religion or freedom of assembly have become fact due to the AKP government's policies. Indeed, this phenomenon has badly damaged Turkey-EU relations and Turkey's full membership process to the European Union.

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