HUMAN RIGHTS and the ENLARGEMENT of the EUROPEAN UNION: OBLIGATION or IMPEDIMENT?

COMPARATIVE CASE STUDIES of SPAIN, PORTUGAL and TURKEY

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PREFACE

This dissertation is written to be submitted for the degree of Master of Arts in International Relations at the University of Kent at Canterbury in 1997. When I was having trouble in choosing a topic for my dissertation, Prof. Mervyn Frost's lecture on "Human Rights in a World of States" gave me inspiration in the formulation of this dissertation. I am grateful to Prof. Frost for this inspiration and his supervision on the topic which has helped me extensively to dare to write on human rights.

I felt it was difficult to write a comparative study since it was quite difficult to find appropriate information for comparison. Another difficulty was writing on a topic in which my own country was concerned. However, I was aware of that writing an academic piece of work should be objective in its nature. It was very helpful to deepen my knowledge in the area and to think about the human rights issues.

The title of the dissertation can be viewed as a strong one, however it can be understood easily in the body of the whole text that it is neither too assertive nor negative in its claim. On the other hand, every piece of academic work may suggest a new perspective or a different claim. My attempt in writing this dissertation is to give an overview on the changing nature of the human rights rhetoric before and after the Cold War period. In addition, it is aimed to demonstrate the "human rights criteria" of the European Union in 1990s; and how it impedes the accession of newcomers, although it has not been popular in the international political agenda and has not been considered as a compulsory requirement for the accessions of new members to the European Communities before the end of Cold War.

I would like to thank to all my lecturers who have helped me not just to look at International Relations but to develop my own vision. I should also thank all my course friends, who are as international as our topic is, for the interesting discussions and enjoyable experiences we have had. Finally, I would like to thank my family and to my best friends who deserve a special acknowledgement for their precious support and unconditional love.

SUMMARY

This dissertation is aimed at exploring human rights as an international concern in world politics which is also a developing area in the field of International Relations. In particular, the focus of the dissertation is on the European Union which has put forward respect for human rights and fundamental freedoms as a criterion in the conclusions of the European Council in Lisbon in June 1992. Therefore, future accessions to the EU will take place in conditions different from the past. The new set of criteria is likely to bring new obligations to meet.

The human rights issues in Turkey have been considered as one of the major obstacles for her full-membership to the Union. In this context, the main arguments on human rights practices in Turkey are examined as well as the recent developments in human rights legislation and its implementation in Turkey.

In trying to identify importance of the "human rights" criterion in Turkey's accession to the European Union, the comparison is made with Spain and Portugal because of the similar human rights problems which they faced during their transition to democracy and the full-membership period of the EU.

INTRODUCTION

The history of relations between Turkey and the European Union has long been an issue for both sides. It dates back to 1959 in which Turkey officially declared that she wished to become an associate member of the European Economic Community. With the signing of Ankara Agreement in 1963, the process of Turkey's possible accession to the European Community was started. During the stages of associate membership and the period after Turkey applied for full-membership to the EC in 1987, several issues have held up the relations due to the political, economic and social circumstances in Turkey and the obligations arising out of the Treaties of Rome (and later on Treaty of Maastricht) of the European Union.

One of the requirements of the European Union from a possible new member is respect for democratic principles and human rights. It is stated to be one of the criteria for future accessions to the EU at Lisbon summit of the European Council in June 1992. Moreover, for the first time in the history of the EU, an explicit commitment to fundamental human rights has been embodied in the text of the Treaty of Maastricht which came into force in November 1993.

In the case of Turkey, human rights have been one of the main issues, especially in the last decade, for fulfilling the requirements for the accession to the EU. In the "Commission Opinion of Turkey's request for accession to the Community," (1989), it was concluded that it would not be useful to begin accession negotiations with Turkey due to the challenges facing the Community, and the economic and social conditions of Turkey, as well as the political sphere, particularly in the areas of human rights and the identity of minorities.

This dissertation is concerned with the relations between Turkey and the European Union. In particular, the human rights issues in Turkey which have been considered as one of the major obstacles for her full-membership to the Union will be examined. In this context, it is useful to start with an overview on the change of the human rights rhetoric after the end of

Cold War. In order to understand if human rights are really the issue for the EU and to what extent the human rights issues influence the EU governments, the European Union's commitment to democratic principles and human rights from the Rome Treaty to the innovations of the Maastricht will be analysed.

In the second part, the main arguments on human rights issues in Turkey-EU relations will be examined under several aspects of the current human rights practices in Turkey such as: respect for democratic principles and constitutional problems; Turkey's ongoing fight against terrorism as a violation of human rights; religious and ethnic minority rights; civil and political rights. Meanwhile, the recent legal developments in human rights in Turkey will be addressed in such areas: accession to international control mechanisms; domestic improvements on the legislation; 1995 constitutional amendments; change in the Turkish Anti-Terror Law.

The focus of the dissertation will then move to the comparison of Turkey and the two EU members which have faced similar situations in their human rights records before, during and partly after their accession to the EU. Spain and Portugal have been chosen to compare with Turkey owing to the fact that they both proceeded to democracy in the middle of the 1970s, and this opened the door for their being considered as candidates for full-membership of the European Community. A little over a decade that since they established democratic political institutions, Spain and Portugal have become members of the EU. On the other hand, despite her relatively long democratic tradition dating back to 1923, Turkey is still trying to fulfil the new requirements of the EU for possible accession to the Union. Is this purely because of Turkey's poor human rights records, or is it a result of the change in human rights rhetoric in the post-Cold War period and of the rising demands of the EU with regard to human rights following the end of Cold War? What has changed between the mid-eighties in which the European Community was enlarged to include Spain and Portugal and the mid-nineties in which Turkey's application is being discussed in terms of human rights? This dissertation will attempt to clarify these questions.

The reason for the length of the appendices which are placed at the end of the dissertation is their importance and relevance to the topic. In particular, the Constitution of the Turkish Republic has been given an appendix, not as a whole but citing the most important parts for a better understanding of the text. These include the Preamble, General Principles (Articles 1-11), and Fundamental Rights and Duties (Articles 12-74). In addition, 'Factual Information on Developments in Human Rights in Turkey'; 'Change in the Anti-Terror Law'; and 'Human Rights in Turkey' outline the recent developments in human rights related issues in Turkey.

A big part of the data used in forming the figures of the dissertation are taken from an article by David L. Banks who gives relevant data on Spain, Portugal and Turkey only for the period of 1972-1982. Although having searched intensively, required data for some comparisons covering the period after 1982 cannot be found.

CHAPTER I

HUMAN RIGHTS: RHETORIC and PRACTICE

A- Human Rights Rhetoric in the Post-Cold War Period

At present, human rights issues are very much on the international political agenda. Some people even proclaim that, "We live in the Age of Human Rights."[1] Yet, it has occupied only a "soft" marginal position within the discipline of political science until recent times:

> An international survey of human rights courses undertaken in 1989 underlined the very limited contribution of political scientists to the subject… And an analysis made in 1991 of the place of human rights within US textbooks on international relations concluded that, despite the increasing impact of human rights considerations on foreign policy, most American political scientists 'do not think human rights is an important part of international relations.[2]

Until the end of the Cold War, taking into account ethical concerns and normative considerations have been done for a number of different reasons which involve the predominance of positivism within social sciences; the dominance of realism in the field of IR; and the blocking effects of Cold War politics.

According to Frost and Brown, one of the most important reasons why normative theory was invalidated, was the Cold War system itself. In the Cold War period, it was meaningless to make ethical claims within a bipolar system of power and nuclear deterrence. As Frost puts it, "In a "life or death" struggle there did not appear to be much point in spending time and effort discussing the shape of a just world order."[3] Therefore, the end of the Cold War and the emergence of new states bringing new problems to the ethical nature of the state-centric global practice (in a wide context of liberty, sovereignty, human rights,

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[1] Hugo Storey, "Human Rights and the New Europe: Experience and Experiment," **Political Studies,** (Vol. 43, 1995), p. 131.
[2] David Beetham, "Introduction: Human Rights in the Study of Politics," **Political Studies - Politics and Human Rights Special Issue**, (Vol. 43, 1995), p. 1.
[3] Mervyn Frost, **Ethics in International Relations,** (Cambridge: Cambridge University Press, 1996), p.5.

just war and so on), made it possible for normative theory to develop considerably in the post-Cold War period.

The debates on ethical issues in IR have taken two main directions in order to provide background for normative theories. In the 'cosmopolitan/communitarian' divide several normative issues are viewed from a different perspective, and they attempt to sort out the ethical limitations of state sovereignty, the demands on human rights, distributive justice, the ethics of intervention, and environmental issues. [4]

According to the communitarian approach, the autonomy of states is derived from the nature of individuals as members of a community. So, it asserts that the state has an absolute right to autonomy. The cosmopolitan approach rejects this view and puts forward a universalist notion that suggests these values are derived from membership of humankind, and so universal rights override state autonomy. With regard to human rights issues, communitarians view individuals not as autonomous entities, but as receiving their identities as a result of being members of a community. Therefore, each community has a right to develop its own social, political, or economic system, and individuals cannot make claims beyond the limits of these systems. On the other hand, cosmopolitans take a universalist position advocating that human rights are possessed by individuals as autonomous moral agents, rather than as members of a community. For them, rights are gained by an individual because of his/her own status, and therefore he/she is independent from any particular system of community.

Another source of a persistent scepticism about human rights is to be found in one of its expressions which claims to be universal. The Universal Declaration of Human Rights (1948) explicitly proclaims that it forms a universal set of norms in its preamble. David Beetham claims that,

> If, then, the universalism required by the human rights project is deemed philosophically insecure, morally problematic and politically impractical by mainstream tendencies within the discipline, then it is hardly surprising that

[4] For details, see, Mark Hoffman, "Normative International Theory: Approaches and Issues," in A.J.R. Groom and Margot Light (eds.), **Contemporary International Relations: A Guide to Theory,** (London: Pinter Publishers, 1994), p.27-44.

> political science as a whole should have preferred to keep the subject at arms length.[5]

However, in the case of human rights, the growth of international treaties and regulatory regimes after 1945 have constituted a significant effect on the domestic law of states, meaning that how states treat their citizens has become more than an internal matter. "In addition, since 1989 there has developed a widespread recognition of the intimate connection between human rights and the process of democratization."[6] Progress in democracy and respect for human rights are being used as a condition for economic aid (for instance, by the European Bank for Reconstruction and Development), and as criteria for accession to the European Union. Lack of such progress can even be used as a reason to suspend economic relations and trade with another state.

In a very interesting article, called "Human Rights: A Forgotten Victim of the Cold War" Brady Tyson and Abdul Aziz Said argue that whereas democracy and human rights have become settled norms to a certain extent, the legacy of the Cold War in terms of human rights is not such a pleasant picture. According to Tyson and Said, the Cold War left a divided world on four counts:

> first, a conflict between civil and political rights, and economic, social, and cultural rights; second, a conflict among liberty, equality, and fraternity; third, a conflict between two versions of the modern democratic state; and fourth, a new conflict between the rich and the poor.[7]

In their argument, they purport two models of the modern state in the Cold War period. As they defined one is the capitalist, liberal modern democratic state and the other one is the one-party leadership, socialist modern democratic state. According to Tyson and Said these two modern state models have tried different solutions in the area of human rights according to their own priorities: political and civil rights versus the primacy of economic rights over political ones. All were flawed. The United States and the former Union of Soviet Socialist Republics, "…spent their energy and wealth in an ideological and weapons

[5] Beetham, op.cit., p. 3.
[6] Ibid., p. 6.
[7] Brady Tyson and Abdul Aziz Said, "Human Rights: A Forgotten Victim of the Cold War," **Human Rights Quarterly,** (Vol. 15, No. 3, 1993), p. 589.

production war, resulting in tremendous waste, and failing to expand democracy or promote justice in either society." [8] Moreover, Tyson and Said claim that, "The Cold War undercut the efforts to promote full democracy, full humanism, and full human rights" [9], and it even undermined development, particularly, in the Southern Hemisphere. The competition of the two superpowers and the struggle between the organisations which they established resulted in the neglect of human rights and harmed the human rights protection systems.

Nevertheless, this negligence eventually came to an end with the dissolution of the bipolar system in 1989. Today, in the post-Cold War period, a new vision of democracy and human rights should be defined globally, since "The world lacks a new democratic paradigm, a new set of global core values, and an integrated view of all human rights."[10] In order to contribute to the integration of the theory and practice of human rights, we should "join the theory, dream, or vision, and …[identify] appropriate practices in immediate challenges."[11] Since theory upholds the practice and to a certain extent practice gives theory the opportunity to develop.

In this context, the 'Vienna Declaration' of the World Conference on Human Rights (1993), the second UN-sponsored international conference on human rights (the first one was held in Tehran in 1968) has provided an appropriate reflection of the new international inclination towards democratisation and international human rights. Moreover, it has proposed further reforms for advancing human rights control mechanisms. What is remarkable is not only the massive increase in the volume of treaties, declarations, conventions, conferences, charters etc., but the progress of their implementation and control mechanisms and the high level of their recognition by more states.

Human rights, like other normative issues, were ignored in the field of International Relations until the recent changes that occurred both in the order of political system (namely, the end of Cold War), and in the emergence of more intensive academic concern with

[8] Ibid., p.592.
[9] Ibid., p.595.
[10] Ibid., p.596.
[11] Ibid., p. 599.

normative issues which have been increased considerably in the post-Cold War environment. These developments in both theory and practice have given way to the revival of human rights, due to the fact that several normative issues and ethical considerations have emerged in post-Cold War politics.

B- Respect for Human Rights: From the EEC to the EU

The experience of Europe with human rights began with the European Convention for the Protection of Human Rights and Fundamental Freedoms which was signed on 4 November 1950 and came into force after the ten ratifications were supplied on 3 of September 1953. It is one of the greatest achievements of the Council of Europe, since its significance derives from its being "the major contributor to human rights law not only regionally but at a global level." [12] Thus, the European Convention forms the legal basis for international human rights law with the 1948 Universal Declaration of Human Rights by the UN.

The Treaties of Rome, founding treaties of the European Communities, came into force on 1 January 1958. The Treaties are essentially economic in nature and contain few fundamental rights as a result of the measures taken to realise the common market. They do establish the right to equal payment for women and men in Article 119, the prohibition of discrimination on grounds of nationality in Article 7, the right of establishment in Article 52, and the rules concerning freedom of movement of workers in Article 48. However, there is no complete list of such rights and they do not have the characteristics or status of international human rights. Therefore, the Treaties "do not explicitly mention human rights" [13] and "the Community does not have and cannot develop a policy on human rights in the full sense of the term." [14]

From 1958 to 1972 five of the six members of the Communities were also parties to the European Convention on Human Rights with the exception being France. From 1

[12] Ralph Beddard, **Human Rights and Europe,** (Cambridge: Cambridge University Press, 1993), p.1.
[13] Michael Spencer, **1992 and All That: Civil Liberties in the Balance,** (London: Civil Liberties Trust, 1990), p. 131.
[14] Ibid.

January 1973 eight members of the Communities out of nine were parties to the European Convention with the accession of Denmark, Ireland and the United Kingdom. Afterwards, France ratified the European Convention on 3 May 1974.

Greece, which acceded to the EC in 1981, ratified the Convention on 28 March 1953. Afterwards, Greece denounced the Convention on 12 December 1969 under its military dictators, but ratified again on 28 November 1974. Spain and Portugal, which became members of the Communities in 1986, applied for membership of the Convention immediately after the end of their military dictatorships in the second half of the 1970s and ratified it before their accession to the EC (in the case of Spain on 4 October 1979, and of Portugal on 13 October 1976). The entry of Austria, Finland and Sweden in 1995 broadened the EU to 15 States. They all ratified the European Convention on Human Rights long before their accession to the EU: in the case of Sweden on 4 February 1952, and of Austria on 3 September 1958.

The protection of fundamental freedoms and human rights is being guaranteed in the constitutional traditions of the Member States of the EU and they have expressed their commitment to human rights with their ratification of the European Convention on Human Rights. However, as of August 1997, the European Union, as a community, is not a party of the European Convention of Human Rights, even though it has made certain provisions for fundamental rights in Community law.

The discussion on the incompleteness of expression and lack of comprehensive guarantees of human rights in the Treaties became a concern in 1979, when the Commission of the European Communities proposed that the Community should accede to the European Convention on Human Rights.

> There are two reasons why the Community should adhere to the European Convention: i. It would promote the protection of human rights in a uniform way throughout Europe; and ii. It would emphasise that the Community legal order is a fully fledged legal order equivalent to those of the Member States.[15]

[15] Henry G. Schermers, "The European Communities Bound By Fundamental Human Rights," **Common Market Law Review,** (Vol. 27, No. 2, 1990), p. 256.

Since some of the Member States do not support the Community's separate legal order, the proposal was not taken into full consideration until the Commission renewed it in 1990.[16] On the other hand, it was stated that, "the transfer of sovereignty by the Member States to the Communities shall not entail a reduction in the standard of fundamental rights guaranteed by the constitutions of those States." [17] For instance, in the famous *Internationale Handelsgesellschaft* case in 1974, the German constitutional court decided that "it would not necessarily accept the supremacy of EC law over its own internal law unless it could be satisfied that the former guaranteed human rights to at least the same level as did the German constitution to which German judges owed their allegiance." [18] The European Court of Justice replied that the human rights principles were a part of the fundamental law of the Community.[19]

Schermers explains why the European Union's adherence to the European Convention is so important as follows:

> As long as the Community is not a party to the European Convention on Human Rights the proceedings of that Convention do not apply to it. Neither States nor individuals can lodge a complaint against the Community before the European Commission of Human Rights. Citizens have tried this a number of times. But their complaints were declared inadmissible as being addressed to a non-party to the Convention.[20]

Hence, in the case of any violation of human rights by the European Union, it is impossible to follow international proceedings against the Union.

Nevertheless, the Treaty on European Union which came into force on 1 November 1993 has marked a new phase in Union's policy on democratic principles and human rights. Differing from the Treaties of Rome, the Treaty of Maastricht embodies an explicit commitment to fundamental human rights not in the preamble, but in the body of the text. For instance, Article J.1(2) of the fifth indent states that one of the main objectives of a common foreign and security policy is "*to develop and consolidate democracy and the rule*

[16] Ibid.
[17] Manfred A. Dauses, "The Protection of Fundamental Rights in the Community Legal Order," **European Law Review,** (Vol. 10, No. 6, Dec. 1985), p. 400.
[18] Storey, op.cit., p.135.
[19] Ibid., p. 136.
[20] Schermers, op.cit., p. 257.

of law, respect for human rights and fundamental freedoms." [21] Additionally, Article 130U(2) of the seventeenth indent of the Treaty on European Union expresses that the development co-operation policy of the Community "*shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.*" [22]

The Commission of the European Communities emphasised the innovations of the Maastricht Treaty with regard to the human rights policy of the Union in 'The European Union and the External Dimension of Human Rights Policy: From Rome to Maastricht and Beyond' in November 1995 as follows:

> The founding Treaties make no explicit reference to human rights or the relevant international instruments; such reference was not to make an appearance until thirty years later, in the preamble to the Single European Act, in which political cooperation is formally enriched. [23]

With the Maastricht Treaty, the EU made human rights such a policy centrepiece as respect for human rights has become one of the main prerequisites for membership of the European Union in addition to the economic qualifications.

> Article F(2) states that: *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.* [24]

Moreover, the EU is currently consulting upon whether to join the European Convention for the Protection of Human Rights and Fundamental Freedoms as a party at Community level. The Commission reopened the debate in 1990 and presented a formal request to the Council for authorisation for the future negotiations of the Community's accession to the European Convention. The Council asked the Court of Justice for its opinion on the matter and the Court of Justice gave its opinion on 28 March 1996 (Opinion 2/94). "In its Opinion the Court of Justice divided the question on admissibility between the questions

[21] Commission of the European Communities, **The European Union and the External Dimension of Human Rights Policy: From Rome to Maastricht and Beyond,** COM(95) 567 final, p. 5.
[22] Ibid.
[23] Ibid.
[24] Ibid.

of competence and compatibility."[25] Whereas the court held that the question of competence could be determined in spite of no current formal proposal, it believed that it was unable to give an opinion because of the insufficient information. With regard to the legal base "the court held that there was no legal base in the Treaties, either a specific power or an implied power, which would allow the Community to accede to the European Convention on Human Rights." [26] In addition, "It is clear from the arguments of the Member States and the Community institutions that there was no clear consensus as to a legal base for Community accession." [27]

Consequently, it is clearly stated by the Court of Justice that accession to the European Convention will require a Treaty amendment. Nonetheless, the decision is an unsatisfactory one since the Treaty amendment will take a long time owing to the fact that it requires a complex set of procedures. Therefore, the decision would not solve the problem of no consensus on how to guarantee protection of human rights in the EU either. Burrows claims that, "Perhaps the Court is jealous of its jurisdiction and will not lightly give way to an international court which may stand above it." [28] However, the European Court of Justice is not a Court of Human Rights owing to the fact that its duty is to balance individual rights against the objectives of the EU in its judgements, and it is not under any inspection from outside.

Despite the difficulties in the legal basis and the ongoing debate on the accession to the European Convention on Human Rights, the European Union should fulfil its lack of a systematic legal protection of human rights by adopting the European Convention. The EU should merit fully the respect of its Member States as well as the prospective ones by qualifying itself with adherence to the Convention at Community level which also forms a criterion of the accession to the EU for newcomers.

[25] Noreen Burrows, "Question of Community Accession to the European Convention Determined," **European Law Review,** (Vol. 22, No.1, Feb. 1997), p. 58.
[26] Ibid., p. 60.
[27] Ibid.
[28] Ibid., p.62.

CHAPTER II

HUMAN RIGHTS IN TURKEY: IN LAW and IN PRACTICE

A- Main Arguments on Human Rights Practices in Turkey

Turkey formally applied for full membership of the EU on 14 April 1987. In the Lisbon summit (in June 1992), Turkey's application was discussed and it was agreed that it "must be considered on its merits."[29] The official statement of the Commission relating to the request for enlargement in the case of Turkey, was as follows: "With regard to Turkey, the European Council underlines that the Turkish role in the present European political situation is of the greatest importance and that there is every reason to intensify cooperation and develop relations with Turkey in line with the prospect laid down in the Association Agreement of 1964 including a political dialogue at the highest level."[30]

Heinz Kramer explains the Union's reaction to the new international role of Turkey in his article entitled "EC-Turkish Relations: Unfinished Forever?". He points out that,

> Without a doubt, the EC member states have developed a great interest in Turkey's new strategic position, not so much because of the risks it involves for Turkey but because of the opportunities it offers to exert a stabilising influence via Turkey on the highly volatile forces in Central Asia and Transcaucasia.[31]

However, other political concerns of Turkey's possible accession to the Union, human rights legislation and in particular human rights practices in Turkey have been the focus of issues relating to Turkish candidature. In this context, the EU-Turkey Joint Parliamentary Committee was successfully reactivated in 1989,

> partly in order to establish a forum to discuss (and influence) the respect of human rights in Turkey. The issues have included banning of political parties, death sentences for political crimes, the treatment of Kurdish minority, restrictions of trade union rights and police brutality and torture.[32]

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[29] European Commission, **The European Councils: Conclusions of the Presidency 1992-1994,** (Brussels: DG Publication Unit, 1995), p. 7.
[30] Ibid.
[31] Heinz Kramer, "EC-Turkish Relations: Unfinished Forever?," in Peter Ludlow (ed.), **Europe and the Mediterranean,** (Exeter: BPCC Wheaton LTD., 1994), p. 243.
[32] John Redmond, **The Mediterranean Enlargement of the European Community: Turkey, Cyprus, and Malta,** (Hants: Dartmouth Publishing Company Ltd., 1993), p. 42.

Due to the regular military interventions in 1960, 1971 and 1980 and other human rights problems, the EU institutions, especially the European Parliament, other Western European organisations like the Council of Europe, non-governmental organisations like Amnesty International and the media have continually monitored democratic development and the human rights situation in Turkey, in particular over the last decade. The aim of these military interventions in the Republic of Turkey was to protect the secular and democratic system within the state philosophy of Kemalism. Since military coups are not considered as appropriate tools with which to restore democratic systems, when they have broken down, the interference of the Turkish army in Turkish political life has seemed neither favourable nor legitimate to Western European countries.

On the other hand, the role of the military has always been crucial in the Republic; and furthermore, many citizens in Turkey believe that Turkey should keep a strong military force to guarantee keeping control over problematic issues, especially any threats on the nature of the secular, democratic system of the Turkish Republic. The change of government in recent months is an example of the army's protective role in Turkey, since most Western European countries were expecting military intervention in Turkey again due to the Islamic fundamentalist government's controversial policies and practices. This time both the army and the political system in Turkey have managed to solve the political problem without having a fourth military coup. However, as Müftüler-Baç puts it, "the political role of the military has to cease" [33] for Turkey to be classified as a full-fledged democracy by the rest of Europe.

In recent years, the Kurdish issue and continuing terrorism in the south eastern part of Turkey have added to the concerns described above. The European Parliament states that it "wishes to see a situation in which all minorities in Turkey, in accordance with the provisions of the Treaty of Lausanne, are able express their cultural identity without fear of

[33] Meltem Müftüler-Baç, **Turkey's Relations with a Changing Europe,** (Manchester: Manchester University Press, 1997), p. 77.

expression or discrimination" [34] However, Kurds have not been accepted in Turkey as a separate ethnic minority by various Turkish governments in line with the provisions of the Treaty of Lausanne, although around one fifth of the population in Turkey consists of Kurds.[35] As Müftüler-Baç points out, "The Lausanne Treaty of 1923 clearly defines the minorities of Turkey as religious minorities: the Jews, The Armenians and the Orthodox Greeks." [36]

This point of view is shared by the President of Turkey, Süleyman Demirel. He explains his views on nationalism and ethnic identity in a speech on 28 December 1996, given in one of the annual press conferences in Turkey:

> Our conception of nation and nationalism is based on common history, shared destiny and goals and on the principles of civic identity. However, ethnic identity cannot be pitted against civic identity. All the citizens living within our borders are first class citizens without any prejudice with respect to origin, language, religion and gender. Whatever their ethnic origins or religious beliefs are, all the peoples living in Turkey have the same citizenship rights and responsibilities. [37]

In addition, the Kurdish problem is not confined to the borders of Turkey, nor it can be defined purely as the cultural identity problem of an ethnic minority, since "it is a common problem linking all the states in the area with a Kurdish population, namely Iraq, Iran and Syria." [38] The armed attacks of PKK (the Kurdistan Workers Party), describing itself as fighting in the name of the Kurdish people, in the south eastern part of Turkey and in the other neighbouring states are continuing. However, "The problem lies in distinguishing between the PKK - an illegal terrorist group - and the Kurdish people in Turkey."[39] The PKK is not accepted as representative of the Kurdish people in Turkey, since it kills civilians including Kurdish people living in the region, and it hampers any possible movement towards a peaceful solution and integration.

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[34] European Parliament, **A Motion for a Resolution on EC-Turkey Relations,** Doc. A3-0193/92 (with Annexes), 21 May 1992, p. 8.
[35] The number of the Kurdish population is taken from the following book: Meltem Müftüler-Baç, **Turkey's Relations with a Changing Europe,** (Manchester: Manchester University Press, 1997), p. 24.
[36] Ibid.
[37] Süleyman Demirel, **"**Turkey Towards 1997: The Developments in 1996 and The Goals of 1997", http://www.mfa.gov.tr/grupb/deming.html (visited 14 May 1997).
[38] Müftüler-Baç, op.cit.
[39] Ibid., p. 89.

In order to meet with the challenge of Kurdish identity, Turkey needs to "find a way to permit Kurdish cultural expression within the limits of a unitary Turkish state." [40] Especially during the 1990s, the EU has been influential in encouraging the Turkish government to realise a political solution to the Kurdish problem. The European Committee for the Prevention of Torture's public statement on Turkey issued on 6 December 1996 concludes that,

> On more than one occasion, the CPT has made clear that it abhors terrorism, and has recognised the serious difficulties faced by the Turkish authorities in this regard. Multi-faced terrorist violence exits throughout Turkey and, in the South-East region of the country, has caused major security and humanitarian problems. Turkey is entitled to the understanding and support of others in its struggle against this destructive phenomenon.[41]

Another problematic area in human rights issues in Turkey is the torture and severe ill-treatment of people in police custody. Turkey was condemned for widespread torture and ill-treatment practices by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in December 1992.[42] In the report, the CPT concluded that the practice of torture and ill-treatment of persons in police custody remained widespread; whereas they heard very few cases of ill-treatment by prison staff and practically no torture. In its visit to the largest psychiatric hospital in Turkey, the CTP stated that they did not find any evidence of ill-treatment. On the contrary, "the delegation was favourably impressed by staff-patient relations." [43] As for the gendarmerie, there the CTP has heard even fewer allegations of torture or ill-treatment.

Eventually the European Committee for the Prevention of Torture stated that legal safeguards against torture and other forms of ill-treatment needed to be reinforced, and in the short term some action on the practice side should be taken as well. Additionally, education on human rights issues and professional training needed to be intensified.

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[40] Michael Gunter, **The Kurds in Turkey: A Political Dilemma,** (Boulder: CO Westviev Press, 1990), p. 127.
[41] European Committee for Prevention of Torture, "Public Statement on Turkey," **International Human Rights Reports**, (Vol. 4, No. 2, 1997).
[42] European Committee for Prevention of Torture, "Public Statement on Turkey," **International Human Rights Reports**, (Vol. 2, No. 1, January 1995).
[43] Ibid., p. 256.

Having been a host to several civilisations throughout her long history, Turkey has also been one of the biggest and strongest empires (Ottoman Empire, 13th - 19th centuries), governing several ethnic and religious communities throughout six centuries regarding their own identities in a respectful manner. The rights of the religious minorities in Turkey are guaranteed under Articles 37-45 of 1923 Lausanne Treaty and the Articles 10 and 24 of the Turkish Constitution. "In today's Turkey, there are 50,000 Armenians, 25,000 Jews and 3,500-4,000 Greek Orthodox minorities." [44] Non-Muslim Turkish citizens enjoy the same rights and freedoms. For instance, there are 51 Armenian churches in Istanbul, 19 schools, 5 hospitals, 17 foundations, 2 daily and 6 weekly magazines which they publish. There are 25 Jewish synagogues, 3 Jewish schools, 8 associations and 3 hospitals.[45] Additionally, there are 15,000 Assyrians and around 15,000 Yazidis living in South-eastern Turkey.[46]

The democratic process, the protection of fundamental freedoms and respect for human rights in Turkey were the major issues dominating the agenda of the customs union negotiations between Turkey and the European Union in the period 1992-1995. The Customs Union was a big step towards a full integration with the EU economy, enabling the establishment of a common market effective from 1 January 1996. However, the issue of financial co-operation has become problematic in the sense that financial aid to Turkey from the EU of $470 million was blocked due to objections from Greece in the first instance. With the resolution of the European Parliament on 19 September 1996 criticising Turkey "for doing little regarding 'improvements promised by the then Prime Minister, Tansu Çiller, in the areas of democratization and human rights…' [it eventually] decided to block the 1997 adjustment fund payment of $66 million." [47]

[44] Turkish Ministry of Foreign Affairs, "Human Rights in Turkey**"**, http://www.mfa.gov.tr, (visited 14 May 1997).
[45] All the numbers are taken from the Internet Homepage of Turkish Ministry of Foreign Affairs in the address mentioned above.
[46] Ibid.
[47] **Human Rights Watch World Report 1997 (Events of 1996): Turkey,** p. 245.

B- Background and Recent Developments of Human Rights Issues in Turkey

The Republic of Turkey was born of a distinct set of historical circumstances and formed on a secular, democratic basis in 1923. The Republic was established in 29 October 1923 after a long national struggle for survival during the Turkish War of Liberation between 1919 and 1923, and the signature of the Treaty of Lausanne on 24 July 1923. This was the time to carry out the crucial task of reconstruction as Mustafa Kemal Atatürk stated in a speech in 1923: "These victories [of our army] have only prepared the ground for our future victories. Let us not be puffed up with military victories. Let us rather prepare for new victories in science and economics." [48] He believed that Turkey's future lay with Europe and the West.

Until his death in 1938, Atatürk continued to make reforms in order to reconstruct the economic, social and political aspects of the Turkish Republic's life. The abolition of Caliphate in 1924; the reform of hat and dress styles in 1925; the reform of the calendar and abolition of the religious courts in 1925; the reforms in Civil Law replacing the Islamic law with the Swiss Civil Code in 1926; the adoption of Latin alphabet as the new Turkish alphabet in 1928 were some of the most radical reforms carried in the early years of the Republic.

In 1930 the Grand National Assembly passed a new law granting Turkish women the right to take part in the election of members of municipal councils and the right to vote. In 1935 women were permitted to vote in parliamentary elections, and with Ataturk's support, 17 women were elected deputies to the Grand National Assembly.[49] The inspiration of a strict secular structure with "the concept of centralised nation-state wherein citizenship is based on the rights of the individual rather than on ethnic or religious identity"[50] was drawn from France.

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[48] Salahi R. Sonyel, **Atatürk - The Founder of Modern Turkey,** (Ankara: Publications of Turkish Historical Society, 1989), p. 102.
[49] Ibid., p.125-126.
[50] Eric Rouleau, "Turkey: Beyond Atatürk," **Foreign Policy,** (No.103, Summer 1996), p.70.

In this historical perspective; Turkey is the only pluralist, secular and democratic state among the Muslim states in the Middle East region, and she has always attached great importance to developing relations with the Western European countries. In many ways, Turkey provides a model for the other states in the region. Samuel P. Huntington summarises the survival of democratic foundations of Turkey despite the interruptions by military interventions as follows:

> In practice, with one exception, no Islamic country has sustained a fully democratic political system for any length of time. The exception is Turkey, where Mustafa Kemal Atatürk ... vigorously attempted to create a secular, modern, Western nation-state.[51]

During the establishment period of the new Republic in 1920s and 1930s, a series of revolutionary laws was enacted aiming to make Turkey a modern nation-state, democratic and secular. Turkey's secular interpretation of Europe and the West is based on the idea that Western civilisation is a synthesis of universal values, rather than seeing it simply in narrow religious terms. That is the perspective from which Turkey still views the Western world and Europe today.

Although Turkish democracy was hampered by three military interventions in 1960, 1971 and 1980, Turkey's record of democratic longevity surpasses those of the formerly communist Central and Eastern European countries as well as those of relative EU newcomers in Southern Europe; Spain, Portugal and Greece. John Redmond comments: "the total period of non-parliamentary rule in Turkey since 1945 is actually less than in either Spain, Portugal or Greece and the military has shown no great taste for power, merely stepping in when civilian rule broke down."[52]

Since the beginning of its establishment process, Turkey has closely aligned itself with the West. She has actively participated in all the European political, military and economic integration movements. Turkey is one of the 51 founding members of the United Nations, an early member of NATO (1952), the Council of Europe (1949), OSCE (formerly

[51] Samuel P. Huntington, **The Third Wave: Democratization in the Late Twentieth Century,** (Norman and London: University of Oklahoma Press, 1991), p.307.
[52] Redmond, op.cit., p.43.

CSCE), the OECD (formerly OEEC) and associate member of the Western European Union. Furthermore, Turkey signed an Association Agreement with the European Community in 1963, performing the longest-standing associate status with the EU among the non-members. Moreover, Turkey was one of the first countries to endorse and ratify the 1948 Universal Declaration of Human Rights; and she ratified the 1950 European Convention on Human Rights on 18 May 1954.

Turkey has played and still plays a key role in the European security. Contrary to what many have predicted, developments in the post-Cold War period have proven that Turkey today continues to play an important role in a totally different set of circumstances. One aspect of Turkey's new geostrategic importance stems from its central location within the Balkans, the Caucasus, the Persian Gulf and the Middle East which are major regions of instability in the post-Cold War era. Because of its geographical location and its peace-oriented foreign policy which is based on Atatürk's motto of "peace at home, peace in the world", along with its willingness to make commitments to this end, Turkey's cooperation is sought after in multi-national efforts to preserve peace and stability in these regions, particularly by USA and the Western European Countries. For example, Turkey played a pivotal role in assisting the UN effort during the Gulf War at considerable economic cost to herself. Another aspect of Turkey's new geostrategic significance derives from her influence in the Turkic culture zone stretching from the Balkans to China, most particularly with the newly independent states of central Asia.

Let us now examine Turkish constitutional development on the basis of fundamental freedoms and duties. The first constitution of the Turkish Republic was the 1924 Constitution, which included a section explaining very basic fundamental rights and freedoms, inspired by the influence of 1789 French Declaration of the Rights of Man and Citizen. Social and economic rights were not included in that constitution. The 1961 Constitution, which was adopted after the first military intervention in 1960, can be described as a reactionary constitution because of its lengthy section entitled "Fundamental Rights and Duties". One of the innovations of the 1961 Constitution was to include a part on

"Social and Economic Rights and Freedoms". During the 1971 military regime and the 1973 constitutional amendments, the "Fundamental Rights and Duties" part of the Constitution was not changed significantly.

After the 1980 army coup in Turkey, the 1982 Constitution retained almost the same set of freedoms as the previous constitution, but provided new rights and duties as well as limiting some others. In Article 13/2 of the 1982 Constitution, the limitation of fundamental rights and freedoms is regulated within the same terms as the European Convention on Human Rights (Articles 9/2, 10/2, 11/2) saying: *"General and specific grounds for restrictions of fundamental rights and freedoms shall not conflict with the requirements of the democratic order of society and shall not be imposed for any purpose other than those for which they are prescribed."* [53]

The protection of fundamental rights and freedoms is guaranteed in the 1982 Constitution under the Articles 36, 37, 38, 39 and Article 40 which states that, *"Everyone whose constitutional rights and freedoms have been violated has the right to request prompt access to the competent authorities."* [54] Article 40 was inspired from Article 13 of the European Convention as follows: *"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."* [55] Broadly speaking, there are many citations from the European Convention on Human Rights in the 1982 Turkish Constitution.

From around 1983, Turkey demonstrated that she was moving towards democratisation with the elections of 1987, 1989, 1991 and 1995. The developments in Turkish politics carried on with the referendum held on 6 September 1987, which lifted all the political restrictions of the 1970s, and allowed banned political leaders to resume their previous positions in the political arena. Before the referendum, martial law was lifted on 19 July 1987. As Müftüler-Baç indicates, "In Turkey, there are now no political restrictions on

[53] **Constitution of the Republic of Turkey,** http://www.mfa.gov.tr, (visited 18 August 1997).
[54] Ibid.
[55] Beddard, op.cit., p. 245.

party formation, but the mainstream parties, comprising the main centre-right, centre-left and centrist splinter parties, steer clear of ideological polarization. After the experience of the 1960s and 1970s, this is a major break-through." [56]

On 12 April 1991, articles 141, 142 and 163 of the Penal Code were abrogated and with this amendment, communism as well as religious propaganda would not be subjected to prosecution and all pending prosecutions would be suspended. In addition, the Law banning publications issued in languages other than Turkish was abolished at the same date. On 1 December 1992, the Law amending the Code of Criminal Procedures (Act No. 3842) came into force. The statistical information which the Turkish Government provided on the implementation of Act No. 3842 was considered encouraging by the UN Committee Against Torture in its report adopted on 9 November 1993. [57] The statistics referred to are shown below:

1 November 1992 - 1 December 1992

Number of suspects held in police custody	8613
Number of suspects held in pre-trial detention	1991
Number of suspects released	6622
Number of suspects who received the assistance of a lawyer	126

1 December 1992 - 1 January 1993

Number of suspects held in police custody	7593
Number of suspects held in pre-trial detention	1123
Number of suspects released	6470
Number of suspects who received the assistance of a lawyer	999

There were a lot of criticisms and pressure from the European Parliament in order to prevent the execution of political prisoners throughout the first half of the 1980s. The death

[56] Müftüler-Baç, op.cit., p. 85.
[57] UN Committee Against Torture, "Summary account of the results of the proceedings under article 20 UN Treaty against Torture concerning Turkey", **International Human Rights Reports**, (Vol. 4, No. 1, 1997).

penalty had been opposed internally as well. Eventually the Turkish Parliament passed a law on 11 March 1986 which provided for the commutation of the death penalty to a thirty-year prison sentence. Following that, another significant reform on the death penalty came with the amendment of Anti-Terror Law (Act No. 3713), which proscribed the execution of death penalties for crimes committed before 8 April 1991.[58] Hence, death sentences prior to this date were commuted to different periods of imprisonment.

On 12 March 1997, a new law came into force amending the excessive period of custody. For individual crimes, the period of custody has been shortened to 48 hours even if they take place in the emergency region, which previously was 96 hours. Moreover, For the collective crimes falling under the jurisdiction of the State Security Courts, the period of custody has been divided into three consecutive phases, which are 48 hours; 2 days; 3 days or 6 days depending on the place of the crime - whether the crime occurred in the state of emergency or not. Previously, these periods were 15 and 30 days.

Furthermore, promoting a thorough understanding of human rights through education has begun. For instance, human rights courses have been included in the curricula of Gendarmerie Officers School and Gendarmerie Training Camps as well as human rights seminars being organised for staff of the Ministry of Interior, including the General Directorate of Security, Governors and high local officials. Priority has been given to human rights in the training of police officers, by introducing human rights and Code of Criminal Procedure courses to the curricula of Police Academies and Colleges. Some of the recent courses for Anti-Terror Teams were held in Izmir, Istanbul and Ankara between 7 July and 15 August of this year.[59] The courses were aimed at helping to reduce the increased tension in the society by educating the police teams more intensively. Stress Management, Fundamental Freedoms and Rights, Behaviours in Social Events were some of the lectures which were given to a total number of 975 policemen. Prison staff is now also trained in this field.

[58] Turkish Ministry of Foreign Affairs, "Human Rights in Turkey**"**, http://www.mfa.gov.tr, (visited 04 August 1997).
[59] "Toplumsal olaylar için özel eğitim," **Türkiye** (a national periodical in Turkey), 9 July 1997, p. 8.

Meanwhile, a new emphasis is placed on human rights education in other education institutions, from primary schools to university MA and PhD programmes. Starting from the 1995-1996 academic year, courses on democracy and human rights have become part of the obligatory curriculum for primary and secondary schools.

Additionally, the Human Rights Inquiry Commission of the Turkish Grand National Assembly has been in session since 4 December 1990. This has the task of carrying out the investigation recommended by the European Committee for the Prevention of Torture.

Moreover, Turkey has accepted the individual right of petition to the European Commission on Human Rights as of 28 January 1987, and also the Human Rights Court's supremacy on 22 January 1990. In Turkey, the number of human rights associations and lobbies has increased in the last decade. The Human Rights Association which was established in 1986, and the Association Supporting Modern Life, which are actively working on promoting human rights in Turkey, can be counted among them. They are publishing books on subjects such as democracy, secularism, human rights, women's rights; and several reports on human rights violations monthly and annually. In addition, there are some other associations working for improving the rights of women and children in Turkey.

Consequently, in a period of seventy four years, Turkey has attempted to create a democratic, secular, pluralist republic and a civilised society. The right to live; to express or write one's opinions without fear and discrimination; social, political and cultural rights and freedoms; security from any torture or ill-treatment, are some of the main features of the contemporary society and democratic state into which Turkey is evolving and to which she is aspiring. This constitutes "the basic aspirations of the Turkish people and the solemn duty of their government." [60]

[60] Turkish Ministry of Foreign Affairs, "Human Rights in Turkey", http://www.mfa.gov.tr, (visited 04 August 1997).

CHAPTER III

A COMPARATIVE APPROACH TO HUMAN RIGHTS ISSUES: SPAIN, PORTUGAL and TURKEY

A- Spain: From Dictatorship to Democracy

Spain, like Portugal, experienced one of the longest standing dictatorships in Europe. Spain also went through a difficult but a successful transition from dictatorship to democracy in the mid-seventies and eighties after Franco's death in November 1975. Today's democratic Spain is a respectable member of the European Union, having evolved to a leading role within the Union's institutional framework.

The fairly lengthy period of political authoritarianism was undermined to institute democracy in Spain. Although there had been an attempt to initiate political democracy during the Second-Republic between 1931 and 1936, it was ill-fated. The Second-Republic did not last too long because of the army revolt in 1936 and the following period of Civil War continued until March 1939. Following the Civil War, General Francisco Franco established his dictatorship which can be described as "an essentially conservative, military dictatorship which left Spanish society substantially unchanged"[61] during its long rule until his death in 1975.

After Franco's death, King Juan Carlos initiated a period of controlled but intensive liberalisation that favoured democratisation. He pointed Adolfo Suarez as prime minister in July 1976. The first democratic elections were held in June 1977 establishing a constituent assembly. The broad agreement of the main political parties in establishing a parliamentary system retaining a constitutional monarchy led to the new constitution of Spain which was approved on 6 December 1978. The 1978 constitution strengthened the Spanish political movement towards democracy, which constituted a social, democratic state pursuing the

[61] Gordon Smith, **Politics in Western Europe: A Comparative Analysis,** (New York: Holmes & Meier Publishers, Inc., 1989), p. 362.

values of freedom, justice, equality and political pluralism defined as a parliamentary Monarchy.

On the other hand, Spain's young democracy had to face a number of serious challenges during its evolution, such as problems of regional autonomy (in the Basque case, it reached a violent expression with ETA), the post-1973 economic crisis, and the coup attempt of the conservative Spanish military in February 1981.

However, by applying for membership of the EEC on 27 July 1977, just one month after the first democratic elections were held, the new regime demonstrated its aspirations. It sought the beneficial effects of full participation in a European organisation which has always been "seen as a vital means, not only to stimulate a more competitive economy but to consolidate democracy and modernize socially."[62] As was indicated in a report of a CBI Working Party in 1981, the major impetus behind proposed enlargement for Spain and Portugal was political for both sides. Since, "the Working Party believes that accession to the EEC will promote the aims of increasing political stability in the two applicant countries and consolidate the democratic system in Western Europe."[63]

The EEC Commission's opinion on Spain's application favouring Spain's accession to the Community was published on 29 November 1978, and negotiations began on 5 February 1979. On the long way to full membership of the EEC, Spain discussed entry to NATO in terms of defining its foreign policy within the Atlantic Alliances, and eventually with a 52.5 percent "yes" vote in October 1981 referendum, Spain joined NATO in May 1982. NATO membership reinforced Spain's links with the western democracies, and also stabilised its external relations.

Following sixteen years of negotiations, Spain eventually acceded to the EEC on 1 January 1986 which has enabled it to reinforce its democratisation and political stability, to

[62] Michael Keating, **The Politics of Modern Europe,** (Hants: Edward Elgar Publishing Ltd., 1993), p. 317.
[63] CBI Working Party, **Enlargement of the European Community to Include Spain and Portugal,** (London, October,1981), p. 9.

foster its economic growth and modernisation, and to define its international role within the western democracies.

B- Portugal: Birth of a Democracy

Portugal endured the longest authoritarian regime within the Western Europe from 1926 when the military intervened to assume control of Portugal's parliamentary republic in the name of political peace. This lasted until 1974 when a leftist military revolt, followed by a revolution, brought down the authoritarian regime. Today, Portugal is a constitutional republic and a member of the European Union.

Following the military coup in 1926, Dr. Antonio Oliveira Salazar was appointed as finance minister of the transition regime in 1928. He became Portugal's dictator when he established a fascist-like state in 1933, which he called New State (Estado Novo). He promulgated a constitution which provided the appropriate institutions for his dictatorship. Portuguese neutrality in the Second World War helped his regime to survive. Although Portugal became a founder member of the NATO in 1949, Salazar never associated himself with the democratic ideals expressed in the founding treaty of NATO. In the early 1960s, revolts in Portugal's African colonies - such as Angola and Mozambique - affected the regime adversely.

Following Salazar's retirement in 1968, a right wing intellectual, Marcelo Caetano, replaced him, but failed to keep the authoritarian regime as strong as it had been before. On 25 April 1974, Portugal's democratic struggle began with a military coup which was executed by a group of young army officers known as the Armed Forces Movement. Until the elections of 25 April 1976, the Portuguese Revolution lacked direction, having six provisional governments in only two years.

As a result of the general elections, a constituent assembly was established and the constitution was promulgated in April 1976, formally initiating the Portuguese transition to democracy. Thus, the Constitution of the Portuguese Republic created a sovereign republic based on the dignity of the individual and the will of the Portuguese people, which formed

the basis of a political democracy guaranteeing the fundamental rights and freedoms of its citizens.

Less than one year after the first elections, Portugal officially applied for membership of the EEC on 28 May 1977. Portugal viewed EC membership as the key to economic development as well as democratic consolidation and stabilisation. The decision to apply for membership of the Community was naturally political since it was "taken at a time when the regime was extremely shaky and the economic situation alarming. This brought the three biggest political parties together on a pro-European platform."[64]

Negotiations began on 17 October 1978 after the Commission gave its opinion on Portugal's accession to the EEC on 5 June 1978 stating that,

> The Community cannot leave Portugal out of European integration. … The accession of Portugal, which set its face firmly towards Europe almost as soon as its democracy was restored, can only strengthen the European ideal.[65]

Eventually Portugal acceded to the EEC on 1 January 1986 at the same time as Spain allowing Portuguese politics and economy to benefit from membership, and Portugal to integrate with Western Europe.

C- Comparative Examination of Human Rights Issues in Spain, Portugal and Turkey

After the fall of the authoritarian regimes, both Spain and Portugal signed the European Convention on Human Rights (ECHR) at the same time they acceded to the Council of Europe; in the case of Portugal on 22 September 1976, and of Spain on 24 November 1977. Portugal subsequently ratified the ECHR on 13 October of the same year, and Spain ratified the Convention on 4 October 1979. Turkey ratified the 1950 European Convention on Human Rights many years before them on 18 May 1954.

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[64] Loukas Tsoukalis, **The European Community and Its Mediterranean Enlargement,** (London: George Allen & Unwin Ltd.), p. 120.

[65] The Commission of the European Communities, Opinion on Portuguese Application for Membership, **Bulletin of the European Communities,** (Supplement 5/78, 1978), p. 7.

Spain's and Portugal's constitutions devote a large part of their provisions to the rights, freedoms and fundamental guarantees of citizens under the strong influence of the ECHR and the Universal Declaration of Human Rights. As it is mentioned before, this is also the same in the case of Turkey's 1982 Constitution.

> Thus the first part of the Portuguese Constitution of 25 April 1976 is devoted to fundamental rights and duties (Art. 12 to79) which encompass rights, freedoms and guarantees largely inspired by the Universal Declaration of Human Rights and by the ECHR.
> The Spanish Constitutional Assembly adopted the same approach with regard to the 1978 Constitution (Title I, Art. 10 to 55). [66]

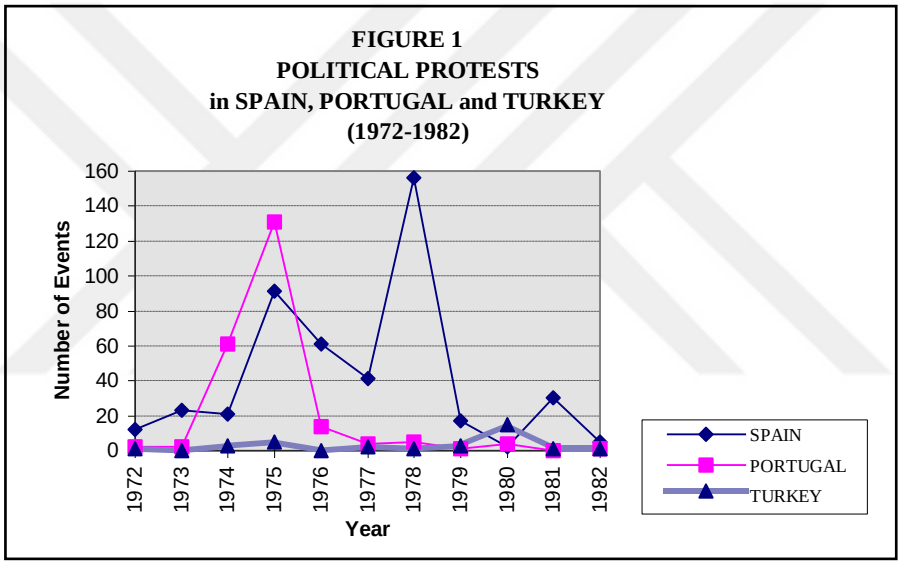
Although Spain and Portugal have gradually intensified their constitutional and legal provisions for protecting fundamental freedoms and human rights during their transitions to democracy and after their accessions to the European Union, they had several difficulties with the implementation of these provisions in practice.

The UN Human Rights Committee considering the initial report of Spain in October 1994, concluded that the Committee was concerned with the impact of the high rate of unemployment and the deterioration of the economic and social environment, as well as the lack of full co-ordination between the central and regional authorities for the promotion and protection of the rights of the child.[67] Regarding the fourth periodic report of Spain in April 1996, the Committee noted that "terrorist groups continue to perpetrate bloody attacks which result in loss of human life and affect the application of the Covenant in Spain. It also notes the re-emergence of racist and xenophobic theories and behaviour."[68] Meanwhile, the Committee was concerned at several "reports of ill-treatment and even torture inflicted on persons suspected of acts of terrorism by members of the security forces"[69], and at the poor prison conditions in Spain. In another meeting in May 1996, one of the Committee's

[66] Eliette Cavagna and Evelyne Monteiro, "Iberian Peninsula: Spain and Portugal," in Mireille Delmas-Marty (ed.), **The European Convention for the Protection of Human Rights: International Protection versus National Restrictions,** (The Netherlands: Kluwer Academic Publishers, 1992), p.172.
[67] UN Human Rights Committee, "Spain," **International Human Rights Reports**, (Vol. 2, No. 2, 1995).
[68] UN Human Rights Committee, "Spain," **International Human Rights Reports**, (Vol. 4, No. 2, 1997).
[69] Ibid.

principal areas of concern was the continuing discrimination against women with regard to the right to equal treatment at work, the right to equal pay and access to education.

As far as Portugal is concerned, the UN Committee Against Torture formulated its main concerns in its report dated November 1993 as follows: Ill-treatment and torture continued in police stations and other places of detention throughout the country; and the investigations into such allegations were often dragged on too long and offenders were not always brought to court.[70] The report of the Committee on Portugal, dated May 1995, concluded that there was still "de facto discrimination against women with regard to the right to equal payment at work and the right to equal remuneration."[71]

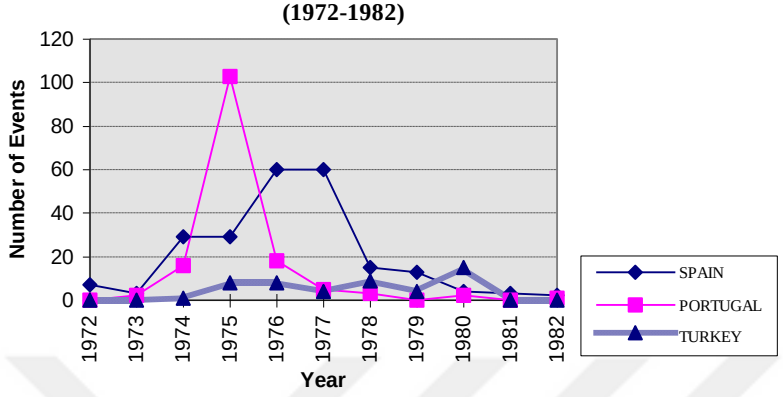


In the past, they were both faced with different political protests which can be described as "nonviolent gatherings of people organized for the announced purpose of protesting a regime, a government, or one of its leaders; its ideology, policy, or intended policy; or its previous action or intended action" [72] In the 1972-1982 period, Spain and Portugal were reconstructing their political systems whereas Turkey was facing internal

[70] UN Committee Against Torture, "Portugal," **International Human Rights Reports**, (Vol.3, No.2, 1996)
[71] UN Committee Against Torture, "Portugal," **International Human Rights Reports**, (Vol.2, No.3, 1995)
[72] David L. Banks, "The Analysis of Human rights Data Over Time," **Human Rights Quarterly,** (Vol. 8, No. 4, November 1986), p. 670.

political problems and student protests. The comparison of the numbers of these political protests is shown in Figure 1 above.[73]

FIGURE 2
VIOLENT DEMONSTRATIONS
in SPAIN, PORTUGAL and TURKEY
(1972-1982)



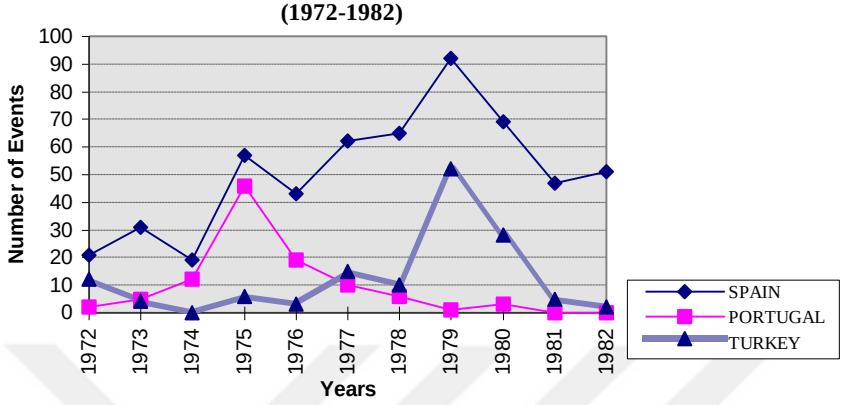
Besides the non-violent political protests in all three countries, there had been a considerable amount of violent demonstrations or disturbances "involving a large number of people; major property damage is also included"[74], in particular, during the Portuguese Revolution in 1974-76, and Spain's attempt to establish the first democratic government in 1976-77. In case of Turkey, the number of the violent demonstrations tended to increase during the 1980 military coup (see Figure 2).[75]

Moreover, an examination of Figure 3[76] clearly demonstrates that acts of "violent political conflict carried out by (or on behalf of) an organised group with the object of weakening or destroying the power exercised by another organized group"[77] in Portugal were peaking at the same time as its revolutionary movement. In Spain this conflict reached its peak in 1979 which Neo-fascist demonstrations were held on 14 May 1979; and in Turkey, they were relatively higher just before the 1980 coup. In particular, the Spanish government's slowness in responding to the regional problems and the claims of nationalist

[73] The data and the data descriptions used in the formulation of the Figure 1, 2, 3 and 5 in the dissertation are taken from the appendix of David L. Banks' article which is footnoted above.
[74] Ibid.
[75] Ibid.
[76] Ibid.
[77] Ibid.

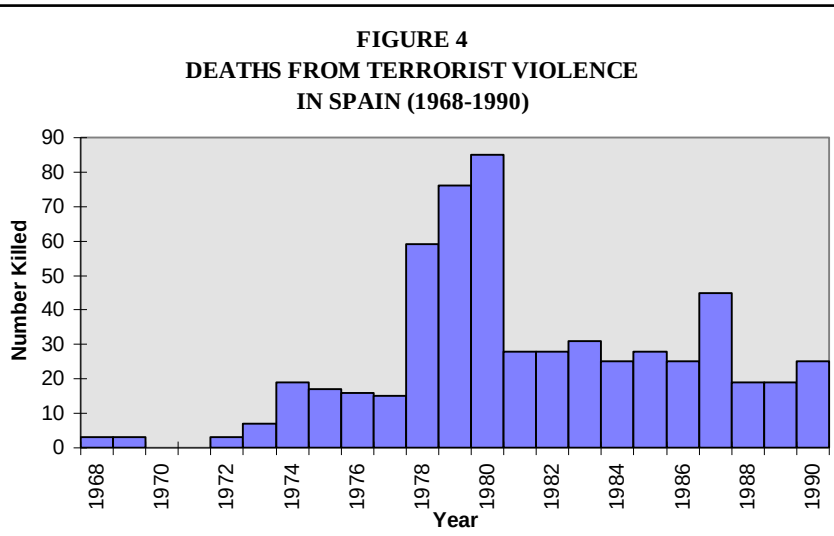
forces coming from the Basque and Catalan regions caused serious terrorist violence in Spain.

FIGURE 3
VIOLENT POLITICAL CONFLICTS
in SPAIN, PORTUGAL and TURKEY
(1972-1982)



The most violent expression of these nationalist movements emerged in the Basque case with the establishment of ETA, attacking top military personnel in Madrid. Spain granted autonomy to Catalonia in August 1979. As Arango indicates "Violence continues to haunt Spanish democracy [even in 1990s]. …In the first ten years of democracy (1977-1987), ETA killed 475 people, and the numbers have continued to mount to this day." [78] (see Figure 4)[79]

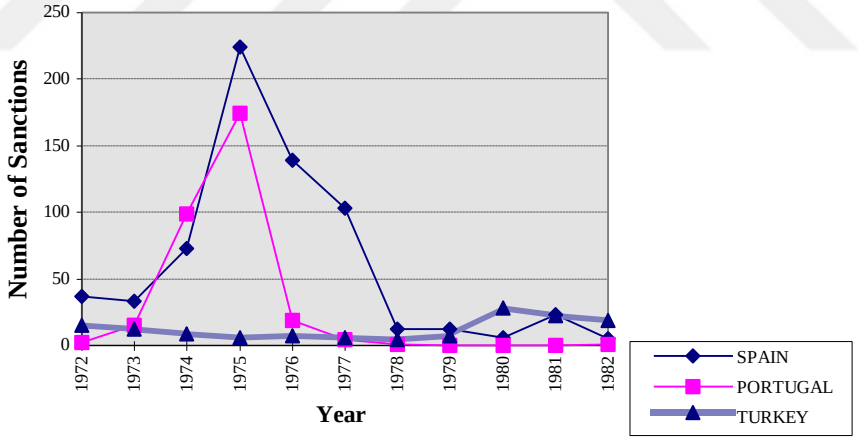
FIGURE 4
DEATHS FROM TERRORIST VIOLENCE
IN SPAIN (1968-1990)



[78] E. Ramón Arango, **Spain: Democracy Regained,** (Boulder: Westview Press, 1995), p. 223.
[79] Figure 4 is taken from; Kenneth Maxwell and Steven Spiegel, **The New Spain: From Isolation to Influence,** (New York: Council on Foreign Relations Press, 1994), p. 23.

Another issue is the imposition of political restrictions which "includes actions taken by the government to neutralize, or suppress, or eliminate a perceived threat to the security of the government, the regime, or the state itself" [80] Close examination of the period 1972-82 in Spain and Portugal shows that the biggest part of the political restrictions stemmed from the difficult transition periods of the regimes in both Spain and Portugal from authoritarianism to democracy - in particular between 1973-78. In the same period, Turkey had a relatively stable political life. However, the imposition of political restrictions was quite extensive during and after the 1980 military intervention which dissolved the Turkish Grand National Assembly, and banned the political leaders of the 1970s until the referendum held in September 1987, which completed the gradual removal of political restrictions in Turkey (see Figure 5 for the relevant data).[81]

FIGURE 5
IMPOSITION of POLITICAL RESTRICTIONS
in SPAIN, PORTUGAL and TURKEY (1972-1982)

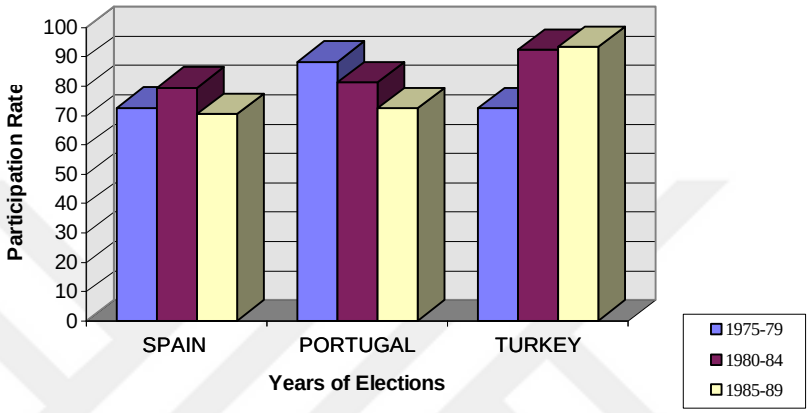


Participation in national elections generally depends on the interest of the citizen in politics and support for the current regime. Research done on electoral participation by Lane and Ersson shows that the level of participation in elections in the Western European democracies does not change too much from one to the next. However, they indicate that

[80] Banks, op.cit., p.671.
[81] Ibid.

there has been "a change as the overall trend seems to be towards less citizen interest in politics, the average rate of participation for all countries included falling down below a score of 80 per cent for the first time in the late 1980s." [82]

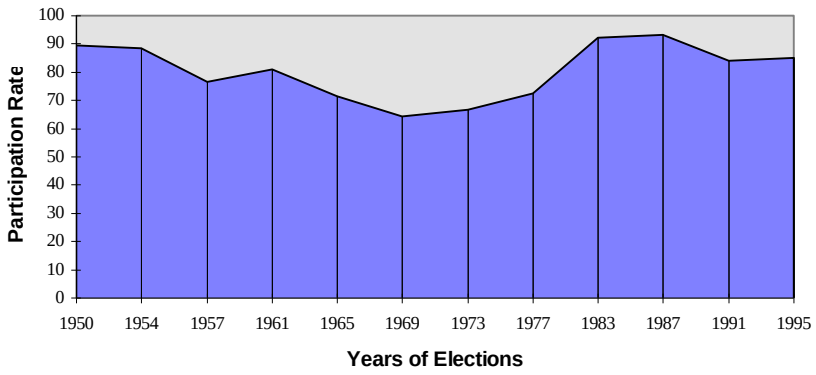
FIGURE 6
ELECTORAL PARTICIPATION to the NATIONAL ASSEMBLY DEPUTY ELECTIONS in SPAIN, PORTUGAL and TURKEY (1975-1989)



Referring to Spain and Portugal they comment that, "In the new democracies in southern Europe the rate of participation is also rather low" [83] (see Figure 6)[84]. In Turkey, the electoral participation in the national elections has gradually increased in the last decade. According to data from the Turkish State Institute of Statistics, the participation rate in the Grand National Assembly deputy elections in Turkey has never dropped under the 64.5 percent which is the lowest point (see Figure 7).[85]

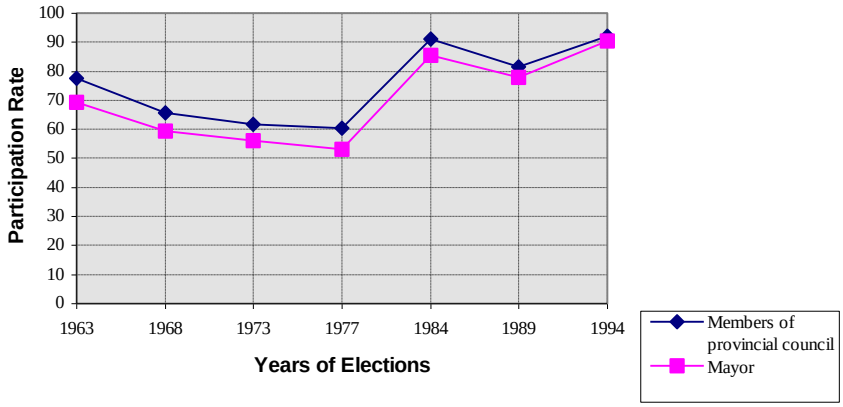
[82] Jan-Erik Lane and Svante O. Ersson, **Politics and Society in Western Europe,** (London: Sage Publications, 1994), p. 181.
[83] Ibid.
[84] The data of the Figure 6 for Spain and Portugal is taken from: Jan-Erik Lane and Svante O. Ersson, **Politics and Society in Western Europe,** (London: Sage Publications, 1994), p. 182.
For Turkey, it is taken from: Turkish State Institute of Statistics, **Statistical Indicators (1923-1995),** (Ankara, July 1996), p. 92-93.
[85] The data of the Figure 7 is taken from: Turkish State Institute of Statistics, **Statistical Indicators (1923-1995),** (Ankara, July 1996), p. 92-93.

FIGURE 7
PARTICIPATION RATES of the NATIONAL ASSEMBLY DEPUTY ELECTIONS in TURKEY (1950-1995)



Examining the results of the local administration elections in Turkey between 1963 and 1994, electoral participation has never dropped below 51.3 percent (in the 1977 elections). The highest participation was in the 1994 local elections which had a 92.2 percent participation rate (see Figure 8).[86]

FIGURE 8
PARTICIPATION RATES of LOCAL ADMINISTRATION ELECTIONS in TURKEY (1963-1994)



[86] The data of the Figure 7 is taken from: Turkish State Institute of Statistics, **Statistical Indicators (1923-1995),** (Ankara, July 1996), p. 94-95.

CONCLUSION

The rising demands of the European Union in human rights issues emerged right after the end of the Cold War - the post-Cold War period provided the appropriate environment for such ethical claims. International human rights rhetoric has changed broadly since the Cold War ended in 1989; in the case of the EU, human rights rhetoric has changed dramatically as well. With its several articles on fundamental freedoms and human rights in the body of its text, the Maastricht Treaty provides an essential base for these changes in the rhetoric. On the practice side, respect for human rights has become one of the prerequisites which is required with the implementation of these conditions and criteria.

In the enlargement of the EU to include Spain and Portugal the main concerns for both sides were to reinforce the young democracies and initiate economic development more intensively in Spain and Portugal. According to Tsoukalis, entry to the EU was considered as an automatic reward by these countries, and moreover it was viewed as "the return of the prodigal son to the family fold." [87]

On the other hand, might Turkey draw a number of general lessons from the experience of Spain and Portugal? John Redmond claims that it is possible to draw a number of lessons of which the important one is the political effect. He says that,

> EC membership does appear to shore up shaky democracies, to the extent that none of the EC's Mediterranean latecomers have experienced military intervention since joining the EC. … [and this] might offer some comfort and encouragement to the Turkish political elite. [88]

Furthermore, Redmond indicates that Turkey's possible accession to the EU "would not only safeguard Turkish democracy (as it did of Greece, Spain and Portugal) but also its secularity and that the EC ought to begin thinking in these terms." [89]

In fact, the European Union agrees with this view expressing its opinion in a report dated May 1993 as follows:

[87] Tsoukalis, op.cit., p. 122.
[88] Redmond, op.cit., p. 10.
[89] Ibid., p. 47.

> Accession would guarantee Turkey's position in the family of European democracies. Parallels are often made in this respect with Greece, Spain and Portugal. It is also argued that, as Turkey is a member of the Council of Europe and Nato proved its European credentials in the Gulf War Crisis, it should play a full part in the Community. [90]

In this context, it might be concluded that the continuing problems of Turkey's accession to the EU cannot be fully explained simply because of her poor human rights records. The broad change in human rights rhetoric in the post-Cold War period and the rising demands of the EU with regard to human rights following the end of Cold War should be considered as well. This is one of the dramatic changes between the mid-eighties in which the European Community was enlarged to include Spain and Portugal and the mid-nineties in which Turkey's application is being discussed in terms of human rights.

John Redmond enquires:

> is it unfair to insist that Turkey must complete its economic development and resolve the political issues (Cyprus, democracy and human rights) before it is allowed to join the EC when membership of the EC would considerably help Turkey deal with these matters? Were such standards applied to Spain, Portugal and (especially) Greece? [91]

This dissertation does not suggest that the "respect for human rights" criterion of the EU is an obligation only in the case of Turkey, but that with the imposition of this new obligation Turkey has found herself in a slightly different debate which does not greatly favour Turkey's joining the EU. However, it is true that human rights issues are forming something of an impediment for Turkey's accession to the Union. It is suggested that the key to future accession for Turkey must lie in completing her political and economic modernisation processes.

On the other hand, Turkey needs much help from the EU in order to strengthen her political system and to improve her human rights legislation and practices - Spain and Portugal received substantial assistance of this kind when they wished to join the EU.

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[90] European Parliament, **A Motion for a Resolution on EC-Turkey Relations,** Doc. A3-0193/92 (with Annexes), 21 May 1992, p.19.
[91] Redmond, op.cit., p. 54.

BIBLIOGRAPHY

ARANGO, E. Ramón. **Spain: Democracy Regained,** (Boulder: Westview Press, 1995).

BAEHR, Peter R. "Human Rights Organizations and the UN: a Tale of Two Worlds," in Dimitris Bourantonis and Jarrod Wiener (eds.), **The United Nations in the New World Order: The World Organization at Fifty,** (London: Macmillan Press Ltd., 1995), pp. 170-189.

BANKS, David L. "The Analysis of Human Rights Data Over Time," **Human Rights Quarterly,** (Vol. 8, No. 4, November 1986), pp. 654-685.

BEDDARD, Ralph. **Human Rights and Europe,** (Cambridge: Cambridge University Press, 1993)

BEETHAM, David. "Introduction: Human Rights in the Study of Politics," **Political Studies-Politics and Human Rights Special Issue**, (Vol. 43, 1995), pp. 1-9.

BROWNLIE, Ian (ed.). **Basic Documents on Human Rights,** (Oxford: Clarendon Press, 1992).

BURROWS, Noreen. "Question of Community Accession to the European Convention Determined," **European Law Review,** (Vol. 22, No.1, Feb. 1997), pp. 58-63.

CAVAGNA, Eliette and Evelyne Monteiro. "Iberian Peninsula: Spain and Portugal," in Mireille Delmas-Marty (ed.), **The European Convention for the Protection of Human Rights: International Protection versus National Restrictions,** (The Netherlands: Kluwer Academic Publishers, 1992), pp. 171-194.

CBI WORKING PARTY. **Enlargement of the European Community to Include Spain and Portugal,** (London, October,1981).

COMMISSION of the EUROPEAN COMMUNITIES. **On the Inclusion of Respect for Democratic Principles and Human Rights in Agreements Between the Community and Third Countries,** COM(95) 216.

COMMISSION OF THE EUROPEAN COMMUNITIES. Opinion on Portuguese Application for Membership, **Bulletin of the European Communities,** (Supplement 5/78, 1978).

COMMISSION of the EUROPEAN COMMUNITIES. **The European Union and the External Dimension of Human Rights Policy: From Rome to Maastricht and Beyond,** COM(95) 567 final.

Constitution of the Republic of Turkey, http://www.mfa.gov.tr, (visited 18 August 1997).

DAUSES, Manfred A. "The Protection of Fundamental Rights in the Community Legal Order," **European Law Review,** (Vol. 10, No. 6, Dec. 1985), pp. 398-419.

DEMİREL, Süleyman. **"Turkey towards 1997: The Developments in 1996 and The Goals of 1997",** http://www.mfa.gov.tr/grupb/deming.html (visited 14 May 1997).

DONNELLY, Jack. "Post-Cold War Reflections on the Study of International Human Rights," **Ethics & International Affairs,** (Vol. 8, 1994), pp. 97-117.

EUROPEAN COMMISSION. **The European Councils: Conclusions of the Presidency 1992-1994,** (Brussels: DG Publication Unit, 1995).

EUROPEAN COMMITTEE FOR PREVENTION OF TORTURE. "Public Statement on Turkey," **International Human Rights Reports**, (Vol. 2, No. 1, January 1995), pp. 251-259.

EUROPEAN COMMITTEE FOR PREVENTION OF TORTURE. "Public Statement on Turkey," **International Human Rights Reports**, (Vol. 4, No. 2, 1997), pp. 509-512.

EUROPEAN PARLIAMENT. **A Motion for a Resolution on EC-Turkey Relations,** Doc. A3-0193/92 (with Annexes), 21 May 1992.

FROST, Mervyn. **Ethics in International Relations,** (Cambridge: Cambridge University Press, 1996).

GOULD, Mark. "The European Social Charter and Community Law-A Comment," **European Law Review,** (Vol. 14, n0. 4, august 1989), pp. 223-226.

GUNTER, Michael. **The Kurds in Turkey: A Political Dilemma,** (Boulder: CO Westviev Press, 1990.

HOFFMAN, Mark. "Normative International Theory: Approaches and Issues," in A.J.R. Groom and Margot Light (eds.), **Contemporary International Relations: A Guide to Theory,** (London: Pinter Publishers, 1994), p.27-44.

Human Rights Watch World Report 1997 (Events of 1996): Turkey, pp. 240-246.

HUNTINGTON, Samuel P. **The Third Wave: Democratization in the Late Twentieth Century,** (Norman and London: University of Oklahoma Press, 1991).

KEATING, Michael. **The Politics of Modern Europe,** (Hants: Edward Elgar Publishing Ltd., 1993).

KRAMER, Heinz. "EC-Turkish Relations: Unfinished Forever?," in Peter Ludlow (ed.), **Europe and the Mediterranean,** (Exeter: BPCC Wheaton LTD., 1994), pp. 190-249.

LANE, Jan-Erik and Svante O. Ersson. **Politics and Society in Western Europe,** (London: Sage Publications, 1994).

MAXWELL, Kenneth and Steven Spiegel. **The New Spain: From Isolation to Influence,** (New York: Council on Foreign Relations Press, 1994).

MORAVCSIK, Andrew. "Explaining International Human Rights Regimes: Liberal Theory and Western Europe," **European Journal of International Relations,** (Vol. 1, No. 2, June 1995), pp. 157-189.

MÜFTÜLER-BAÇ, Meltem. T**urkey's Relations with a Changing Europe,** (Manchester: Manchester University Press, 1997).

REDMOND, John. **The Mediterranean Enlargement of the European Community: Turkey, Cyprus, and Malta,** (Hants: Dartmouth Publishing Company Ltd., 1993).

ROBERTSON, A. H. **Human Rights in Europe,** (Manchester: Manchester University Press, 1977).

ROULEAU, Eric. "Turkey: Beyond Atatürk," **Foreign Policy,** (No.103, 1996), pp.70-87.

SCHERMERS, Henry G. "The European Communities Bound By Fundamental Human Rights," **Common Market Law Review,** (Vol. 27, No. 2, 1990), pp. 249-258.

SMITH, Gordon. **Politics in Western Europe: A Comparative Analysis,** (New York: Holmes & Meier Publishers, Inc., 1989).

SONYEL, Salahi R. **Atatürk - The Founder of Modern Turkey,** (Ankara: Publications of Turkish Historical Society, 1989).

SPENCER, Michael. **1992 and All That: Civil Liberties in the Balance,** (London: Civil Liberties Trust, 1990).

STOREY, Hugo. "Human Rights and the New Europe: Experience and Experiment," **Political Studies,** (Vol. 43, 1995), pp. 131-151.

TSOUKALIS, Loukas. **The European Community and Its Mediterranean Enlargement,** (London: George Allen & Unwin Ltd.).

TURKISH MINISTRY OF FOREIGN AFFAIRS. "Human Rights in Turkey", http://www.mfa.gov.tr, (visited 04 August 1997).

TURKISH STATE INSTITUTE OF STATISTICS. **Statistical Indicators (1923-1995),** (Ankara, July 1996).

"Toplumsal olaylar için özel eğitim," **TÜRKİYE,** 9 July 1997, p. 8.

TYSON, Brady and Abdul Aziz Said. "Human Rights: A Forgotten Victim of the Cold War," **Human Rights Quarterly,** (Vol. 15, No. 3, 1993), pp. 589-604.

UN COMMITTEE AGAINST TORTURE. "Portugal," **International Human Rights Reports**, (Vol.2, No.3, 1995), pp. 670-671, and (Vol.3, No.2, 1996), pp. 427-429.

UN COMMITTEE AGAINST TORTURE. "Spain," **International Human Rights Reports**, (Vol. 2, No. 2, 1995), pp. 475-477, and (Vol. 4, No. 2, 1997), pp. 471-473.

UN COMMITTEE AGAINST TORTURE. "Summary account of the results of the proceedings under article 20 UN Treaty against Torture concerning Turkey", **International Human Rights Reports**, (Vol. 4, No. 1, 1997), pp. 227-235.

APPENDIX 1:

Factual Information on Developments in Human Rights in Turkey

A) Accession to International Control Mechanisms:

• On January 28, 1987, Turkey recognized the right of individual petition to the European Commission of Human Rights.

• On February 26, 1988, Turkey was the first Council of Europe member state to ratify the European Convention for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment of Punishment.

• On August 2, 1988, Turkey became party to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

• On 24 November 1989, Turkey ratified the European Social Charter.

• On January 22, 1990, Turkey recognized the compulsory jurisdiction of the European Court of Human Rights.

• On November 21, 1990, Turkey signed the OSCE Paris Charter.

• On July 12, 1993, Turkey ratified ILO Conventions 59 on the minimum age in industry, 87 on freedom of association and protection of the right to organize, 135 on representation of workers, 142 on the consideration of human resources, 144 on three-part consultations as to international labor standards and 151 on labor relations in the public sector. These conventions relate to significant employee and trade union rights.

• On November 2, 1994, Turkey ratified ILO Convention 77 on medical examination of young persons in industry.

• On December 11, 1994, Turkey ratified the UN Convention on the Rights of the Child.

• On January 4, 1995, Turkey ratified ILO Convention 158 on termination of employment.

• According to Article 90 of the Constitution, the international instruments to which Turkey is a party become integral parts of Turkish law, and replace domestic provisions incompatible with the terms of these international instruments.

B) Domestic Improvements and Raising Existing Legislation to International Standards:

• On May 17, 1987, Article 175 of the Constitution was changed, making easier future Constitutional changes.

• On September 6, 1987, the interdiction of political activities pending on some political leaders was put to a referendum and overruled.

• On 4 December 1990, a Parliamentary Commission consisting of members of political parties represented in the Grand National Assembly, has been established to monitor human rights practices in Turkey and in the world, to investigate allegations and complaints and to introduce amendments to change the existing legislation, where necessary.

• On April 12, 1991, articles 141, 142 and 163 of the Penal Code were abrogated. By virtue of this amendment, communism or religious propaganda would not be subjected to prosecution and all pending prosecutions would be suspended.

• On April 12, 1991, the Law banning publications issued in the languages other than Turkish was abolished.

• On July 3, 1992, political parties banned by the military rule after the September 1980 military intervention were authorized to be reinstituted, with the use of previous names and emblems.

• On December 1, 1992, the Law on Amending Some Provisions of the Code of Criminal Procedure entered into effect. Maximum period of detention for single offenses was reduced and reforms were made concerning notification of charges to suspects, presence of a lawyer at any stage of interrogation, appointment of lawyer to those who could not afford one. Prohibited methods of interrogation were listed, and it was decided that testimony extracted through prohibited methods would not be taken into account in the process of trial.

• On July 8, 1993, Article 133 of the Constitution, was changed. This made it possible for private radio and television stations to start broadcasting. As a result, there are at present 16 nationwide TV's, 160 local TV's and about 1500 local radio stations.

• On December 27, 1993, it was decided that cases pending to Marital Law Courts would be taken up and judged by civil tribunals.

• On December 22, 1993, the Ministry of Health sent instructions in order to reach European norms as to forensic medical reports.

• Human rights courses were included in the curricula of Gendarmerie Officers School and Gendarmerie Training Camps.

• Human Rights Seminars are organized for staff of the Ministry of Interior including General Directorate of Security, Governors and high local officials.

• Similarly, priority was given to training of police officers by introducing human rights and Code of Criminal Procedure courses to curricula of Police Academies and Colleges. Prison staff are also trained in this field.

• Starting from the 1995-1996 academic year, courses on democracy and human rights has become part of the obligatory curriculum for primary and secondary schools.

• On February 13, 1995, the Prime Minister issued instructions to the Ministry of Interior concerning the refrainment of torture and ill-treatment during interrogations. It was also required to take the necessary measures to ensure that interrogations are conducted according to international standards. As a follow-up, corresponding instructions were forwarded by the Ministry of Interior on February 16 and April 28, 1995 to the 77 Governorships, the General Directorate of Security and the Gendarmerie General Command. The importance of the application of the duties of police and gendarmerie in the field of human rights is the core of the set of instructions.

• On May 30, 1995, the Ministry of Interior in a memorandum, gave instructions on the creation of Custody Supervision Units in order to provide information to relatives of persons in custody. This instruction was put into practice in August 1, 1995.

• On July 18, 1995, the Grand National Assembly voted the 7th Five-Year Plan which include transfer of certain powers from central authority to local authorities.

• On July 23, 1995, 15 articles of the 1982 Constitution were changed.

• On October 27, 1995, Articles 8 and 13 of the Anti-Terrorism Law were amended.

Consequently, these Articles will help release those serving prison sentences, through:

• reducing the upper and lower limits of imprisonment,

• converting prison terms into fines or suspending future prison terms,

• requiring "aim or intent" to disrupt the integrity of the country,

C) 1995 Constitutional Amendments:

• A section of the Preamble praising the military rule of September 12, 1980 has been removed.

• The scope of legal actions against the political activities of associations are restricted. In this connection, the ban preventing associations from political activity has been removed. A court order will be required for the closure of associations. In cases of closure by competent offices for reasons such as national security, it will be necessary to obtain a court order within 24 hours. (article 33)

• The prohibitions on trade unions to engage in politically motivated activities and the ban on them to cooperate with political parties or to engage in joint actions with organizations such as associations and foundations has been repealed. (article 52)

• Certain categories of civil servants are given the right to form trade unions. They will not have the right to strike but will be able to conclude collective bargaining agreements. The particulars of this reform will be inscribed in a special law which will be enacted in the near future. (article 53)

• The voting age is lowered from 21 to 18 years of age. Infact in 24 December 1995 general elections the voting age was 18. Special arrangements will be made by law to enable Turkish citizens who are abroad to use their right to vote. Detainees will be given the right to vote under the supervision of judges. (article 67)

• Rules governing the formation of political parties and party membership are liberalized to achieve broader participation in the democratic process. The amendment lowers the age at which one may become a member of a political party from 21 to 18. The prohibitions against political parties to organize abroad and to found their respective youth and women branches have been eliminated. Academicians will be able to assume posts at the political parties' central offices and university students will be able to become members of political parties. Particulars of this reform also be subject to a special law. (article 68)

• Political parties will be allowed to work with organizations like trade unions, associations, foundations and vocational institutions. (article 69)

• The number of seats in the Parliament is increased from 450 to 550. (article 75)

• Rules governing resignation of a Deputy from the Parliament are simplified. The condition requiring an absolute majority of MP's to accept the resignation of a Deputy has been removed.

• The outcome of resignation will nevertheless be decided upon by the Plenary of the Assembly. The possibility of Deputies to change parties is also eased. The provision stipulating loss of membership if a deputy resigns from his party to join another has been removed. Furthermore, a Deputy belonging to a political party which is dissolved by the Constitutional Court will not lose his seat in the Parliament provided that he has not been instrumental in the banning of the party by his statements or activities. (article 84)

• In case of lifting of immunity or loss of membership in the Parliament the deputy concerned or another Deputy can apply to the Constitutional Court within seven days. The Court has to make its final ruling within 15 days. (article 85)

• The Parliament will henceforth commence its session on the first day of October, instead of the first day of September each year. (article 93)

• Efforts will be made to hold general, local an by-elections at the same time if there is a period of only one year in between them. (article 127)

• The provision stipulating that the activities of vocational institutions be halted if they engage in political activities or take joint action with political parties, labour unions or associations has been lifted. Thus, vocational institutions are now permitted to involve in political activities. (article 135)

• In cases where the Constitutional Court considers whether or not to dissolve a party, the Constitutional Court will be required to hear defense of the chairman of the party concerned or his proxy. (article 149)

• Cooperatives are given the right to engage in political activities and to establish links with political parties. (article 171)

APPENDIX 2:

Constitution of the Republic of Turkey
(Preamble, Part One and Part Two)

PREAMBLE
In line with the concept of nationalism outlined and the reforms and principles introduced by the founder of the Republic of Turkey, Atatürk, the immortal leader and the unrivaled hero, this Constitution, which affirms the eternal existence of the Turkish nation and motherland and the indivisible unity of the Turkish State, embodies;

The determination to safeguard the everlasting existence, prosperity and material and spiritual well-being of the Republic of Turkey and to attain the standards of contemporary civilization as an honourable member with equal rights of the family of world nations;

The understanding of the absolute supremacy of the will of nation and of the fact that sovereignty is vested fully and unconditionally in the Turkish nation and that no individual or body empowered to exercise this sovereignty in the name of the nation shall deviate from liberal democracy and the legal system instituted according to its requirements;

The principle of the separation of powers, which does not imply an order of precedence among the organs of State but refers solely to the exercising of certain State powers and discharging duties, which are limited to cooperation and division of functions, and which accepts the supremacy of the Constitution and the law.

The recognition that no protection shall be afforded to thoughts or opinions contrary to Turkish national interests, the principle of the indivisibility of the existence of Turkey with its State and territory, Turkish historical and moral values or the nationalism, principles, reforms and modernism of Atatürk and that, as required by the principle of secularism, there shall be no interference whatsoever of the sacred religious feelings in State affairs and politics;

The understanding that it is the birthright of every Turkish citizen to lead an honourable life and to develop his material and spiritual resources under the aegis of national culture, civilization and the rule of law, through the exercise of the fundamental rights and freedoms set forth in this Constitution in conformity with the requirements of equality and social justice.

The recognition that all Turkish citizens are united in national honour and pride, in national joy and grief, in their rights and duties towards their existence as a nation, in blessings and in burdens, and in every manifestation of national life, and that they have the right to demand a peaceful life based on absolute respect for one another's rights and freedoms, mutual love and fellowship and the desire for, and belief in, "peace at home, peace in the world".

This Constitution, which is to be understood to embody the ideas, beliefs, and resolutions set forth below should be interpreted and implemented accordingly commanding respect for, and absolute loyalty to, its letter and spirit,

Is entrusted for safekeeping by the Turkish nation to the patriotism and nationalism of its democracy-loving sons and daughters.

1982 Constitution
Part one : General Principles (Articles 1-11)
Part two : Fundamental Rights and Duties (Articles 12-74)
Part three : Fundamental Organs of the Republic (Articles 75-160)
Part four : Financial and Economic Provisions (Articles 161-173)
Part five : Miscellaneous Provisions (Article 174)
Part six : Provisional Articles
Part seven : Final Provisions (Articles 175-177)

PART ONE / GENERAL PRINCIPLES

I. Form of the State

ARTICLE 1. The Turkish State is a Republic.

II. Characteristics of the Republic

ARTICLE 2. The Republic of Turkey is a democratic, secular and social State governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble.

III. Integrity of the State, Official Language, Flag, National Anthem, and Capital

ARTICLE 3. The Turkish State, with its territory and nation, is an indivisible entity. Its language is Turkish.

Its flag, the form of which is prescribed by the relevant law, is composed of a white crescent and star on a red background.

Its national anthem is the "Independence March".

Its capital is Ankara.

IV. Irrevocable Provisions

ARTICLE 4. The provision of Article 1 of the Constitution establishing the form of the State as a Republic, the provisions in Article 2 on the characteristics of the Republic, and the provision of Article 3 shall not be amended, nor shall their amendment be proposed.

V. Fundamental Aims and Duties of the State

ARTICLE 5. The fundamental aims and duties of the State are; to safeguard the independence and integrity of the Turkish Nation, the indivisibility of the country, the Republic and democracy; to ensure the welfare, peace, and happiness of the individual and society; to strive for the removal of political, social and economic obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social State governed by the rule of law; and to provide the conditions required for the development of the individual's material and spiritual existence.

VI. Sovereignty

ARTICLE 6. Sovereignty is vested in the nation without reservation or condition.

The Turkish Nation shall exercise its sovereignty through the authorised organs as prescribed by the principles laid down in the Constitution.

The right to exercise sovereignty shall not be delegated to any individual, group or class. No person or agency shall exercise any State authority which does not emanate from the Constitution.

VII. Legislative Power

ARTICLE 7. Legislative power is vested in the Turkish Grand National Assembly on behalf of the Turkish Nation. This power cannot be delegated.

VIII. Executive Power and Function

ARTICLE 8. Executive power and function shall be exercised and carried out by the President of the Republic and the Council of Ministers in conformity with the Constitution and the law.

IX. Judicial Power

ARTICLE 9. Judicial power shall be exercised by independent courts on behalf of the Turkish Nation.

X. Equality Before the Law

ARTICLE 10. All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations.

No privilege shall be granted to any individual, family, group or class.

State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.

XI. Supremacy and Binding Force of the Constitution

ARTICLE 11. The provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial organs, and administrative authorities and other agencies and individuals.
Laws shall not be in conflict with the Constitution.

PART TWO / FUNDAMENTAL RIGHTS AND DUTIES
CHAPTER ONE
GENERAL PROVISION
I. Nature of Fundamental Rights and Freedoms
ARTICLE 12. Everyone possesses inherent fundamental rights and freedoms which are inviolable and inalienable.

The fundamental rights and freedoms also include the duties and responsibilities of the individual towards society, his family, and other individuals.

II. Restriction of Fundamental Rights and Freedoms
ARTICLE 13. Fundamental rights and freedoms may be restricted by law, in conformity with the letter and spirit of the Constitution, with the aim of safeguarding the indivisible integrity of the State with its territory and nation, national sovereignty, the Republic, national security, public order, general peace, the public interest, public morals and public health, and also for specific reasons set forth in the relevant Articles of the Constitution.
General and specific grounds for restrictions of fundamental rights and freedoms shall not conflict with the requirements of the democratic order of society and shall not be imposed for any purpose other than those for which they are prescribed.
The general grounds for restriction set forth in this article shall apply for all fundamental rights and freedoms.

III. Prohibition of Abuse of Fundamental Rights and Freedoms
ARTICLE 14. None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the State with its territory and nation, of endangering the existence of the Turkish State and Republic, of destroying fundamental rights and freedoms, of placing the government of the State under the control of an individual or a group of people, or establishing the hegemony of one social class over others, or creating discrimination on the basis of language, race, religion or sect, or of establishing by any other means a system of government based on these concepts and ideas.
The sanctions to be applied against those who violate these prohibitions, and those who incite and provoke others to the same end shall be determined by law.
No provision of this Constitution shall be interpreted in a manner that would grant the right of destroying the rights and freedoms embodied in the Constitution.

IV. Suspension of the Exercise of Fundamental Rights and Freedoms
ARTICLE 15. In times of war, mobilisation, martial law, or state of emergency, the exercise of fundamental rights and freedoms can be partially or entirely suspended, or measures may be taken, to the extent required by the exigencies of the situation, which derogate the guarantees embodied in the Constitution, provided that obligations under international law are not violated.
Even under the circumstances indicated in the first paragraph, the individual's right to life, and the integrity of his material and spiritual entity shall be inviolable except where the death sentence has been decided upon; no one may be compelled to reveal his religion, conscience, thought or opinion, nor be accused on account of them; offences and penalties may not be made retroactive, nor may anyone be held guilty until so proven by a court judgement.

V. Status of Aliens
ARTICLE 16. The fundamental rights and freedoms of aliens may be restricted by law in a manner consistent with international law.

CHAPTER TWO
THE RIGHTS AND DUTIES OF THE INDIVIDUAL
I. Personal Inviolability, Material and Spiritual Entity of the individual
ARTICLE 17. Everyone has the right to life and the right to protect and develop his material and spiritual entity.

The physical integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; he shall not be subject to scientific or medical experiments without his consent.
No one shall be subjected to torture or ill-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.
Cases of carrying out death penalties under court sentences, the act of killing in self-defense, occurrences of death as a result of the use of a weapon permitted by law as a necessary measure in cases of: apprehension, or the execution of warrants of arrest, the prevention of escape of lawfully arrested or convicted persons, the quelling of a riot or insurrection, the execution of the orders of authorized bodies during martial law or state of emergency are outside of the provision of paragraph 1.

II. Prohibition of Forced Labour
ARTICLE 18. No one shall be required to perform forced labour. Unpaid compulsory work is prohibited.
The term forced labour does not include work required of an individual while serving a court sentence or under detention, services required from citizens during a state of emergency, and physical or intellectual work necessitated by the requirements of the country as a civic obligation, provided that the form and conditions of such labour are prescribed by law.

III. Personal Liberty and Security
ARTICLE 19. Everyone has the right to liberty and security of person.
No one shall be deprived of his liberty except in the following cases where procedure and conditions are prescribed by law: execution of sentences restricting liberty and the implementation of security measures decided by court order or as a result of an obligation upon him designated by law; execution of an order for the purpose of the educational supervision of a minor or for bringing him before the competent authority; execution of measures taken in conformity with the relevant legal provision for the treatment, education or correction in institutions of a person of unsound mind, an alcoholic or drug addict or vagrant or a person spreading contagious diseases, when such persons constitute a danger to the public, apprehension or detention of a person who enters or attempts to enter illegally into the country or concerning whom a deportation or extradition order has been issued.
Individuals against whom there are strong indications of having committed an offence can be arrested by decision of a judge solely for the purposes of preventing escape, or preventing the destruction or alteration of evidence as well as in similar other circumstances which necessitate detention and are prescribed by law. Apprehension of a person without a decision by a judge shall be resorted to only in cases when a person is caught in the act of committing an offence or in cases where delay is likely to thwart justice; the conditions for such apprehension shall be defined by law.
Individuals arrested or detained shall be promptly notified, and in all cases in writing, or orally, when the former is not possible, of the grounds for their arrest or detention and the charges against them; in cases of offences committed collectively this notification shall be made, at the latest, before the individual is brought before a judge.
The person arrested or detained shall be brought before a judge within forty-eight hours and within fifteen days in the case of offences committed collectively, excluding the time taken to send him to the court nearest to the place of arrest. No one can be deprived of his liberty without the decision of a judge after the expiry of the above specified periods. These periods may be extended during a state of emergency, under martial law or in time of war.
Notification of the situation of the person arrested or detained shall be made to the next of kin, except in cases of definite necessity pertaining to the risks of revealing the scope and subject of the investigation compelling otherwise.
Persons under detention shall have the right to request to be tried within a reasonable time or to be released during investigation or prosecution. Release may be made conditional to the presentation of an appropriate guarantee with a view to securing the presence of the person at the trial proceedings and the execution of the court sentence.
Persons deprived of their liberty under any circumstances are entitled to apply to the appropriate judicial authority for speedy conclusion of proceedings regarding their situation and for their release if the restriction placed upon them is not lawful.
Damages suffered by persons subjected to treatment contrary to the above provisions shall be compensated for according to law, by the State.

IV. Privacy and Protection of Private Life

A. Privacy of the Individual's Life

ARTICLE 20. Everyone has the right to demand respect for his private and family life. Privacy of individual and family life cannot be violated. exceptions necessitated by judiciary investigation and prosecution are reserved.

Unless there exists a decision duly passed by a judge in cases explicitly defined by law, and unless there exists an order of an agency authorised by law in cases where delay is deemed prejudicial, neither the person nor the private papers, nor belongings of an individual shall be searched nor shall they be seized.

B. Inviolability of Domicile

ARTICLE 21. The domicile of an individual shall not be violated. Unless there exists a decision duly passed by a judge in cases explicitly defined by law, and unless there exists an order of an agency authorised by law in cases where delay is deemed prejudicial, no domicile may be entered or searched, or the property therein seized.

C. Freedom of Communication

ARTICLE 22. Everyone has the right to freedom of communication.

Secrecy of communication is fundamental.

Communication shall not be impeded nor its secrecy be violated, unless there exists a decision duly passed by a judge in cases explicitly defined by law, and unless there exists an order of an agency authorised by law in cases where delay is deemed prejudicial.

Public establishments or institutions where exceptions to the above may be applied will be defined by law.

V. Freedom of Residence and Movement

ARTICLE 23. Everyone has the right to freedom of residence and movement.

Freedom of residence may be restricted by law for the purpose of preventing offences, promoting social and economic development, ensuring sound and orderly urban growth, and protecting public property; freedom of movement may be restricted by law for the purpose of investigation and prosecution of an offence, and prevention of offences. A citizen's freedom to leave the country may be restricted on account of the national economic situation, civic obligations, or criminal investigation or prosecution.

Citizens may not be deported, or deprived of their right of entry into their homeland.

VI. Freedom of Religion and Conscience

ARTICLE 24. Everyone has the right to freedom of conscience, religious belief and conviction.

Acts of worship, religious services, and ceremonies shall be conducted freely, provided that they do not violate the provisions of Article 14.

No one shall be compelled to worship, or to participate in religious ceremonies and rites, to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions.

Education and instruction in religion and ethics shall be conducted under State supervision and control. Instruction in religious culture and moral education shall be compulsory in the curricula of primary and secondary schools. Other religious education and instruction shall be subject to the individual's own desire, and in the case of minors, to the request of their legal representatives.

No one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political influence, or for even partially basing the fundamental, social, economic, political, and legal order of the State on religious tenets.

VII. Freedom of Thought and Opinion

ARTICLE 25. Everyone has the right to freedom of thought and opinion.

No one shall be compelled to reveal his thoughts and opinions for any reason or purpose, nor shall anyone be blamed or accused on account of his thought and opinions.

VIII. Freedom of Expression and Dissemination of Thought

ARTICLE 26. Everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities.

This provision shall not preclude subjecting transmission by radio, television, cinema, and similar means to a system of licencing.
The exercise of these freedoms may be restricted for the purposes of preventing crime, punishing offenders, withholding information duly classified as a State secret, protecting the reputation and rights and the private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.
No language prohibited by law shall be used in the expression and dissemination of thought. Any written or printed documents, phonograph records, magnetic or video tapes, and other means of expression used in contravention of this provision shall be seized by a duly issued decision of a judge or, in cases where delay is deemed prejudicial, by the competent authority designated by law. The authority issuing the seizure order shall notify the competent judge of its decision within twenty-four hours. The judge shall decide on the matter within three days.
Provisions regulating the use of means of disseminating information and ideas shall hot be interpreted as a restriction of freedom of expression and dissemination unless they prevent the dissemination of information and thought.

IX. Freedom of Science and Arts
ARTICLE 27. Everyone has the right to study and teach freely, explain, and disseminate science and arts and to carry out research in these fields.
The right to disseminate shall not be exercised for the purpose of changing the provisions of Articles 1, 2 and 3 of this Constitution.
The provisions of this article shall not preclude regulation by law of the entry and distribution of foreign publications in the country.

X. Provisions Relating to the Press and Publication
A. Freedom of the Press
ARTICLE 28. 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.
Publication shall not be made in any language prohibited by law.
The State shall take the necessary measures to ensure the freedom of the press and freedom of information.
In the limitation of freedom of the press, Articles 26 and 27 of the Constitution are applicable.
Anyone who writes or prints any news or articles which threaten the internal or external security of the State or the indivisible integrity of the State with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified State secrets and anyone who prints or transmits such news or articles to others for the above purposes, shall be held responsible under the law relevant to these offences. Distribution may be suspended as a preventive measure by the decision of a judge, or in the event delay is deemed prejudicial, by the competent authority designated by law. The authority suspending distribution shall notify a competent judge of its decision within twenty-four hours at the latest. The order suspending distribution shall become null and void unless upheld by a competent judge within forty-eight hours at the latest.
No ban shall be placed on the reporting of events, except by the decision of judge issued to ensure proper functioning of the judiciary, within the limits specified by law.
Periodical and non-periodical publications may be seized by a decision of a judge in cases of ongoing investigation or prosecution of offences prescribed by law, and, in situations where delay could endanger the indivisible integrity of the State with its territory and nation, national security, public order or public morals and for the prevention of offence by order of the competent authority designated by law. The authority issuing the seizure order shall notify a competent judge of its decision within twenty-four hours at the latest. The seizure order shall become null and void unless upheld by the competent court within forty-eight hours at the latest.
The general common provisions shall apply when seizure and confiscation of periodicals and non-periodicals for reasons of criminal investigation and prosecution take place.
Periodicals published in Turkey may be temporarily suspended by court sentence if found guilty of publishing material which contravenes the indivisible integrity of the State with its territory and nation, the fundamental principles of the Republic, national security and public morals. Any publication which clearly bears the characteristics of being a continuation of a suspended periodical is prohibited; and shall be seized following a decision by a competent judge.

B. Right to Publish Periodicals and Non-periodicals

ARTICLE 29. Publication of periodicals or non-periodicals shall not be subject to prior authorisation or the deposit of a financial guarantee.
To publish a periodical it shall suffice to submit the information and documents prescribed by law to the competent authority designated by law. If the information and documents submitted are found to be in contravention of law, the competent authority shall apply to the appropriate court for suspension of publication.
The publication of periodicals, the conditions of publication, the financial resources and rules relevant to the profession of journalism shall be regulated by law. The law shall not impose any political, economic, financial, and technical conditions, obstructing or making difficult the free dissemination of news, thought, or beliefs.
Periodicals shall have equal access to the means and facilities of the State, other public corporate bodies, and their agencies.

C. Protection of Printing Facilities
ARTICLE 30. A printing press or its annexes duly established as a publishing house under law shall not be seized, confiscated, or barred from operation on the grounds of being an instrument of crime, except in cases where it is convicted of offences against the indivisible integrity of the State with its territory and nation, against the fundamental principles of the Republic or against national security.

D. Right to Use Mass Media Other Than the Press Owned by Public Corporations
ARTICLE 31. Individuals and political parties have the right to use mass media and means of communication other than the press owned by public corporations. The conditions and procedures for such use shall be regulated by law.
The law shall not impose restrictions preventing the public from receiving information or forming ideas and opinions through these media, or preventing public opinion from being freely formed, on grounds other than the general restrictions set forth in Article 13.

E. Right of Rectification and Reply
ARTICLE 32. The right of rectification and reply shall be accorded only in cases where personal reputation and honour is attacked or in cases of unfounded allegation and shall be regulated by law.
If a rectification or reply is not published, the judge will decide, within seven days of appeal by the individual involved, whether or not this publication is required.

XI. Rights and Freedoms of Assembly
A. Freedom of Association
ARTICLE 33. Everyone has the right to form associations without prior permission.
Submitting the information and documents stipulated by law to the competent authority designated by law shall suffice to enable an association to be formed. If the information and documents submitted are found to contravene the law, the competent authority shall apply to the appropriate court for the suspension of activities or dissolution of the association involved.
No one shall be compelled to become or remain a member of an association. The formalities, conditions, and procedures governing the exercise of freedom of association shall be prescribed by law.
Associations may be dissolved or suspended from activity by decision of judge in cases prescribed by law. In cases where delay endangers national security or public order and in cases where it is necessary to prevent the perpetration or the continuation of a crime or to effect apprehension, an authority designated by law may be vested with power to suspend the association from activity. The decision of this authority shall be submitted for approval to the judge in charge within twenty-four hours. Unless the judge declares a decision within forty-eight hours, this administrative decision shall be annulled automatically.
Provisions of the first paragraph shall not prevent the imposition of restrictions on the rights of armed forces and security forces officials and civil servants to the extent that the duties of civil servants so require.
The provisions of this article are also applicable to foundations.

B. Right to Hold Meetings and Demonstration Marches
ARTICLE 34. Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission.
The competent administrative authority may determine a site and route for the demonstration march in order to prevent disruption of order in urban life.

The formalities, conditions, and procedures governing the exercise of the right to hold meetings and demonstration marches shall be prescribed by law.
The competent authority designated by law may prohibit a particular meeting and demonstration march, or postpone it for not more than two months in situations where there is a strong possibility that disturbances may arise which would seriously upset public order, where the requirement of national security may be violated, or where acts aimed at destroying the fundamental characteristics of the Republic may be committed. In cases where the law forbids all meetings or demonstration marches in districts of a province for the same reasons, the postponement may not exceed three months.
Associations, foundations, labour unions, and public professional organisations shall not hold meetings or demonstration marches exceeding their own scope and aims.

XII. Right of Property
ARTICLE 35. Everyone has the right to own and inherit property.
These rights may be limited by law only in view of public interest.
The exercise of the right to own property shall not be in contravention of the public interest.

XIII. Provisions Relating to the Protection of Rights
A. Freedom to Claim Rights
ARTICLE 36. Everyone has the right of litigation either as plaintiff or defendant before the courts through lawful means and procedure.
No court shall refuse to hear a case within its jurisdiction.

B. Guarantee of Lawful Judgement
ARTICLE 37. No one may be tried by any judicial authority other than the legally designated court.
Extraordinary tribunals with jurisdiction that would in effect remove a person from the jurisdiction of his legally designated court shall not be established.

C. Principles Relating to Offences and Penalties
ARTICLE 38. No one shall be punished for any act which does not constitute a criminal offence under the law in force at the time committed; no one shall be given a heavier penalty for an offence other than the penalty applicable at the time when the offence was committed.
The provisions of the above paragraph shall also apply to the statute of limitations on offences and penalties and one the results of conviction.
Penalties, and security measures in lieu of penalties, shall be prescribed only by law.
No one shall be held guilty until proven guilty in a court of law.
No one shall be compelled to make a statement that would incriminate himself or his legal next of kin, or to present such incriminating evidence.
Criminal responsibility shall be personal.
General confiscation shall not be imposed as a penalty.
The Administration shall not impose any sanction resulting in restriction of personal liberty. Exceptions to this provision may be introduced by law regarding the internal order of the Armed Forces.
No citizen shall be extradited to a foreign country on account of an offence.

XIV. Right to Prove an Allegation
ARTICLE 39. In libel and defamation suits involving allegations against persons in the public service in connection with their functions or services, the defendant has the right to prove the allegations. A plea for presenting proof shall not be granted in any other case unless proof would serve the public interest or unless the plaintiff consents.

XV. Protection of Fundamental Rights and Freedoms
ARTICLE 40. Everyone whose constitutional rights and freedoms have been violated has the right to request prompt access to the competent authorities.
Damages incurred by any person through unlawful treatment by holders of public office shall be compensated by the State. The State reserves the right of recourse to the official responsible.

CHAPTER THREE
SOCIAL AND ECONOMIC RIGHTS AND DUTIES
1. Protection of the Family

ARTICLE 41. The family is the foundation of Turkish society.
The State shall take the necessary measures and establish the necessary organisation to ensure the peace and welfare of the family, especially the protection of the mother and children and for family planning education and application.

II. Right and Duty of Training and Education
ARTICLE 42. No one shall be deprived of the right of learning and education.
The scope of the right to education shall be defined and regulated by law.
Training and education shall be conducted along the lines of the principles and reforms of Atatürk, on the basis of contemporary science and educational methods, under the supervision and control of the State. Institutions of training and education contravening these provisions shall not be established.
The freedom of training and education does not relieve the individual from loyalty to the Constitution.
Primary education is compulsory for all citizens of both sexes and is free of charge in State schools.
The principles governing the functioning of private primary and secondary schools shall be regulated by law in keeping with the standards set for State schools.
The State shall provide scholarships and other means of assistance to enable students of merit lacking financial means to continue their education. The State shall take necessary measures to rehabilitate those in need of special training so as to render such people useful to society.
Training, education, research, and study are the only activities that shall be pursued at institutions of training and education. These activities shall not be obstructed in any way.
No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education. Foreign languages to be taught in institutions of training and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law. The provisions of international treaties are reserved.

III. Public Interest
A. Utilisation of the Coasts
ARTICLE 43. The coasts are under the sovereignty and at the disposal of the State.
In the utilisation of sea coasts, lake shores or river banks, and of the coastal strip along the sea and lakes, public interest shall be taken into consideration with priority.
The width of coasts, and coastal strips to be determined according to the purpose of utilization. and the conditions and possibilities of such utilization by individuals shall be determined by law.

B. Land Ownership
ARTICLE 44. The State shall take the necessary measures to maintain and develop efficient land cultivation, to prevent its loss through erosion, and to provide land to farmers with insufficient land of their own, or no land. For this purpose, the law may define the size of appropriate land units, according to different agricultural regions and types of farming. Providing of land to farmers with no or insufficient land shall not lead to a fall in production, or to the depletion of forests and other land and underground resources.
Lands distributed for this purpose shall neither be divided nor be transferred to others, except through inheritance, and shall be cultivated only by the farmers to whom the lands have been distributed, and their heirs. The principles relating to the recovery by the State of the land thus distributed in the event of loss of these conditions shall be prescribed by law.

C. Protection of Agriculture, Animal Husbandry, and Persons Engaged in These Activities
ARTICLE 45. The State assists farmers and livestock breeders in acquiring machinery, equipment and other inputs in order to prevent improper use and destruction of agricultural land, meadows and pastures and to increase crop and livestock production in accordance with the principles of agricultural planning.
The State shall take necessary measures to promote the values of crop and livestock products, and to enable growers and producers to be paid the real value of their products.

D. Expropriation
ARTICLE 46. The State and public corporations shall be entitled, where the public interest requires it, to expropriate privately owned real estate wholly or in part or impose administrative servitude on it in accordance with the principles and procedures prescribed by law, provided that compensation is paid in advance.
The method and procedure for calculating compensation for expropriation shall be prescribed by law. In determining the compensation, the law shall take into account tax declarations, current value

established by official assessment at the time of expropriation, unit prices and construction costs for real estate, and other objective criteria.
The procedure for taxing and difference between the sum due in compensation and the value declared in the tax declaration shall be prescribed by law.
Compensation shall be paid in cash and in advance. However, the procedure to be applied in paying compensation for land expropriated in order to carry out land reform, major energy and irrigation projects, and housing and resettlement schemes and afforestation, and to protect the coasts and to build tourist facilities shall be regulated by law. In the previous cases where the law may allow payment in installments, the payment period shall not exceed five years; whence payment shall be made in equal installments and an interest rate equivalent to the highest interest paid on the public debt shall be paid for the remainder of installments.
Compensation for land expropriated from the small farmer who cultivates his own land shall in all cases be paid in advance.

E. Nationalisation
ARTICLE 47. Private enterprises performing public service may be nationalised when this is required by the exigencies of public interest.
Nationalisation shall be carried out on the basis of real value. The methods and procedures for calculating real value shall be prescribed by law.

IV. Freedom to Work and Conclude Contracts
ARTICLE 48. Everyone has the freedom to work and conclude contracts in the field of his choice, the establishment of private enterprises is free.
The State shall take measures to ensure that private enterprises operate in accordance with national economic requirements and social objectives and in conditions of security and stability.

V. Provisions Relating to Labour
A. Right and Duty to Work
ARTICLE 49. Everyone has the right and duty to work.
The State shall take the necessary measures to raise the standard of living of workers, to protect them in order to improve the general conditions of labour, to promote labour, and to create suitable economic conditions for prevention of unemployment.
The State shall take facilitating and protective measures in order to secure labour peace in worker-employer relations.

B. Working Conditions and Right to Rest and Leisure
ARTICLE 50. No one shall be required to perform work unsuited to his age, sex, and capacity.
Minors, women and persons with physical or mental disabilities, shall enjoy special protection with regard to working conditions.
All workers have the right to rest and leisure.
Rights and conditions relating to paid weekends and holidays, together with paid annual leave, shall be regulated by law.

C. Right to Organise Labour Unions
ARTICLE 51. Workers and employers have the right to form labour unions and employers' associations and higher organisations, without prior permission, in order to safeguard and develop their economic and social rights and the interests of their members in their labour relations.
In order to form unions and their higher bodies, it shall suffice to submit the information and documents prescribed by law to the competent authority designated by law. If this information and documentation is not in conformity with law, the competent authority shall apply to the appropriate court for the suspension of activities or the dissolution of the union or the higher body.
Everyone shall be free to become a member of or withdraw from membership in a union.
No one shall be compelled to become a member, remain a member, or withdraw from membership of a union.
Workers and employers cannot hold concurrent memberships in more than one labour union or employers' association.
Employment in a given work-place shall not be made conditional on being, or not being a member of a labour union.
To become an executive in a labour union or higher organisation, it is a prerequisite that workers should have held the status of a labourer for at least ten years.

The status, the administration, and the functioning of the labour unions and their higher bodies should not be inconsistent with the characteristics of the Republic as defined in the Constitution, or with democratic principles.

D. Activities of Labour Unions
ARTICLE 52. (Article 52 of the Constitution of the Republic of Turkey has been repealed.)

VI. Collective Bargaining, Right to Strike, and Lockout
A. Right of Collective Bargaining
ARTICLE 53. Workers and employers have the right to conclude collective bargaining agreements in order to regulate reciprocally their economic and social position and conditions of work.
The procedure to be followed in concluding collective bargaining agreements shall be regulated by law.
The unions and their higher organizations, which are to be established by the public employees mentioned in the first paragraph of article 128 and which do not fall under the scope of the first and second paragraphs of the same article and also Article 54, may appeal to judicial authorities on behalf of their members and may hold collective bargaining meetings with the administration in accordance with their aims. If an agreement is reached as a result of collective bargaining, a text of the agreement will be signed by the parties. Such text shall be presented to the Council of Ministers so that administrative or judicial arrangements can be made. If such a text cannot be concluded by collective bargaining, the agreed and disagreed points will also be submitted for consideration of the Council of Ministers by the relevant parties. The regulations for the execution of this article is stipulated by law.
More than one collective bargaining agreement at the same place of work for the same period shall not be concluded or put into effect.

B. Right to Strike, and Lockout
ARTICLE 54. Workers have the right to strike if a dispute arises during the collective bargaining process. The procedures and conditions governing the exercise of this right and the employer's recourse to a lockout, the scope of both actions, and the exceptions to which they are subject shall be regulated by law.
The right to strike, and lockout shall not be exercised in a manner contrary to the principle of goodwill to the detriment of society, and in a manner damaging national wealth.
During a strike, the labour union is liable for any material damage caused in a work-place where the strike is being held, as a result of deliberate negligent behaviour by the workers and the labour union.
The circumstances and places in which strikes and lockouts may be prohibited or postponed shall be regulated by law.
In cases where a strike or a lockout is prohibited or postponed, the dispute shall be settled by the Supreme Arbitration Board at the end of the period of postponement. The disputing parties may apply to the Supreme Arbitration Board by mutual agreement at any stage of the dispute.
The decisions of the Supreme Arbitration Board shall be final and have the force of a collective bargaining agreement.
The organisation and functions of the Supreme Arbitration Board shall be regulated by law.
Politically motivated strikes and lockouts, solidarity strikes and lockouts, occupation of work premises, labour go- slows, production decreasing, and other forms of obstruction are prohibited.
Those who refuse to go on strike, shall in no way be barred from working at their work-place by strikers.

VII. Guarantee of Fair Wage
ARTICLE 55. Wages shall be paid in return for work.
The State shall take the necessary measures to ensure that workers earn a fair wage suitable for the work they perform and that they enjoy other social benefits.
In determining the minimum wage, the economic and social conditions of the country shall be taken into account.

VIII. Health, the Environment and Housing
A. Health Services and Conservation of the Environment
ARTICLE 56. Everyone has the right to live in a healthy, balanced environment.
It is the duty of the State and citizens to improve the natural environment, and to prevent environmental pollution.

To ensure that everyone leads their lives in conditions of physical and mental health and to secure cooperation in terms of human and material resources through economy and increased productivity, the State shall regulate central planning and functioning of the health services.
The State shall fulfill this task by utilizing and supervising the health and social assistance institutions, in both the public and private sectors.
In order to establish widespread health services general health insurance may be introduced by law.

B. Right to Housing
ARTICLE 57. The State shall take measures to meet the needs for housing within the framework of a plan which takes into account the characteristics of cities and environmental conditions and supports community housing projects.

IX. Youth and Sports
A. Protection of Youth
ARTICLE 58. The State shall take measures to ensure the training and development of youth into whose keeping our State, independence, and our Republic are entrusted, in the light of contemporary science, in line with the principles and reforms of Atatürk, and in opposition to ideas aiming at the destruction of the indivisible integrity of the State with its territory and nation.
The State shall take necessary measures to protect youth from addiction to alcohol, drug addiction, crime, gambling, and similar vices, and ignorance.

B. Development of Sports
ARTICLE 59. The State shall take measures to develop the physical and mental health of Turkish citizens of all ages, and encourage the spread of sports among the masses.
The State shall protect successful athletes.

X. Social Security Rights
A. Right to Social Security
ARTICLE 60. Everyone has the right to social security.
The State shall take the necessary measures and establish the organisation for the provision of social security.

B. Persons Requiring Special Protection in the Field of Social Security
ARTICLE 61. The State shall protect the widows and orphans of those killed in war and in the line of duty, together with the disabled and war veterans, and ensure that they enjoy a decent standard of living.
The State shall take measures to protect the disabled and secure their integration into community life.
The aged shall be protected by the State. State assistance to the aged, and other rights and benefits shall be regulated by law.
The State shall take all kinds of measures for social resettlement of children in need of protection.
To achieve these aims the State shall establish the necessary organisations or facilities, or arrange for their establishment by other bodies.

C. Turkish Nationals Working Abroad
ARTICLE 62. The State shall take the necessary measures to ensure the family unity, the education of the children, the cultural needs, and the social security of Turkish nationals working abroad, and shall take the necessary measures to safeguard their ties with the home country and to help them on their return home.

XI. Conservation of Historical, Cultural and Natural Wealth
ARTICLE 63. The State shall ensure the conservation of the historical, cultural and natural assets and wealth, and shall take supportive and promotive measures towards this end.
Any limitations to be imposed on such assets and wealth which are privately owned, and the compensation and exemptions to be accorded to the owners of such, as a result of these limitations, shall be regulated by law.

XII. Protection of Arts and Artists
ARTICLE 64. The State shall protect artistic activities and artists. The State shall take the necessary measures to protect, promote and support works of art and artists, and encourage the spread of appreciation for art.

XIII. The Extent of Social and Economic Rights

ARTICLE 65. The State shall fulfill its duties as laid down in the Constitution in the social and economic fields within the limits of its financial resources, taking into consideration the maintenance of economic stability.

CHAPTER FOUR
POLITICAL RIGHTS AND DUTIES

I. Turkish Citizenship

ARTICLE 66. Everyone bound to the Turkish State through the bond of citizenship is a Turk.

The child of a Turkish father or a Turkish mother is a Turk. The citizenship of a child of a foreign father and a Turkish mother shall be defined by law.

Citizenship can be acquired under the conditions stipulated by law, and shall be forfeited only in cases determined by law.

No Turk shall be deprived of citizenship, unless he commits an act incompatible with loyalty to the motherland.

Recourse to the courts, against the decisions and proceedings related to the deprivation of citizenship, shall not be denied.

II. Right to Vote, to Be Elected and to Engage in Political Activity

ARTICLE 67. In conformity with the conditions set forth in the law, citizens have the right to vote, to be elected, and to engage in political activities independently or in a political party, and to take part in a referendum.

Elections and referenda shall be held under the direction and supervision of the judiciary, in accordance with the principles of free, equal, secret, and direct, universal suffrage, and public counting of the votes. However, the conditions under which the Turkish citizens who are abroad shall be able to exercise their right to vote, are regulated by law.

All Turkish citizens over 18 years of age shall have the right to vote in elections and to take part in referenda.

The exercise of these rights shall be regulated by law.

Private and corporals serving in the armed services, students in military schools and convicts in penal execution institutions cannot vote. The Supreme Election Council shall determine the measures to be taken to ensure the safety of the counting of votes when detainees in penal execution institutions or prisons exercise their right to vote; such voting is done under the on-site direction and supervision of authorized judge.

The electoral laws shall be drawn up in such a way as to reconcile the principles of fair representation and consistency in administration.

III. Provisions Relating to Political Parties

A. Forming Parties, Membership and Withdrawal From Membership in a Party

ARTICLE 68. Citizens have the right to form political parties and in accordance with the established procedure to join and withdraw from them. One must be over 18 years of age to become a member of a party.

Political parties are indispensable elements of the democratic political life.

Political parties shall be formed without prior permission and shall pursue their activities in accordance with the provisions set forth in the Constitution and law.

The statutes and programmes, as well as the activities of political parties shall not be in conflict with the independence of the State, its indivisible integrity with its territory and nation, human rights, the principles of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular republic; they shall not aim to protect or establish class or group dictatorship or dictatorship of any kind, nor shall they incite citizens to crime.

Judges and prosecutors, members of higher judicial organs including those of the Court of Accounts, civil servants in public institutions and organizations, other public servants who are not considered to be labourers by virtue of the services they perform, members of the armed forces and students who are not yet in higher education institutions, shall not become members of political parties.

The membership of the teaching staff at higher education institutions in political parties is regulated by law. This law cannot allow those members to assume responsibilities outside the central organs of the political parties. It also sets forth the regulations by which the teaching staff at higher education institutions shall observe as members of political parties.

The principles concerning the membership of students at higher education institutions to political parties are regulated by law.
The State shall provide the political parties with adequate financial means in an equitable manner. The financial assistance to be extended to the political parties, as well as procedures related to collection of membership dues and donations are regulated by law.

B. Principles to be Observed by Political Parties
ARTICLE 69. The activities, internal regulations and operation of political parties shall be in line with democratic principles. The application of these principles is regulated by law.
Political parties shall not engage in commercial activities.
The income and expenditure of political parties shall be consistent with their objectives. The application of this rule is regulated by law. The auditing of the income and expenditure and acquisitions of political parties as well as the establishment of the conformity to law of their revenue and expenses, methods of auditing and sanctions to be applied in the event of unconformity shall also be regulated by law.
The Constitutional Court shall be assisted in performing its task of auditing by the Court of Accounts.
The judgments to be rendered by the Constitutional Court as a result of the auditing shall be final.
The dissolution of political parties shall be decided finally by the Constitutional Court after the filling of a suit by the office of the Chief Public Prosecutor of the Republic.
The permanent dissolution of a political party shall be decided when it is established that the statute and programme of the political party violate the provisions of the fourth paragraph of Article 68.
The decision to dissolve a political party permanently owing to activities violating the provisions of the fourth paragraph of Article 68 may be rendered only when the Constitutional Court determines that the party in question has become a centre for the execution of such activities.
A party which has been dissolved permanently cannot be founded under another name.
The members, including the founders, of a political party whose acts or statements have caused the party to be dissolved permanently cannot be founders, members, directors or supervisors in any other party for a period of five years from the date of publication in the official gazette of the Constitutional Court's final decision and its justification for permanently dissolving the party.
Political parties which accept financial assistance from foreign states, international institutions and persons and corporate bodies shall be dissolved permanently.
The foundation and activities of political parties, their supervision and dissolution, as well as the election expenditures and procedures of the political parties and candidates, are regulated by law in accordance with the above- mentioned principles.

IV. Right to Enter the Public Service
A. Entry into the Public Service
ARTICLE 70. Every Turk has the right to enter the public service.
No criteria other than the qualifications for the office concerned shall be taken into consideration for recruitment into the public service.

B. Declaration of Assets
ARTICLE 71. Declaration of assets by persons entering public service, and the frequency of such declaration, shall be determined by law. Those serving in the legislative and executive organs shall not be exempted from this requirement.

V. National Service
ARTICLE 72. National service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the Armed Forces or in the public service shall be regulated by law.

VI. Obligation to Pay Taxes
ARTICLE 73. Everyone is under the obligation to pay taxes according to his financial resources, in order to meet public expenditures.
An equitable and balanced distribution of the tax burden is the social objective of fiscal policy.
Taxes, fees, duties, and other such financial impositions shall be imposed, amended, or revoked by law.
The Council of Ministers may be empowered to amend the percentages of exemption, exceptions and reductions in taxes, fees, duties and other such financial impositions, within the minimum and maximum limits prescribed by law.

VII. Right of Petition

ARTICLE 74. Citizens have the right to apply in writing to the competent authorities and to the Turkish Grand National Assembly with regard to requests and complaints concerning themselves or the public.

The result of the application concerning himself shall be made known to the petitioner in writing.

The way of exercising this right shall be determined by law.

APPENDIX 3:

Human Rights in Turkey

IV. The Future: The Democratization Plan

Those nations that enjoy peace and prosperity in the future will be those that fully embrace and protect democracy, freedom and human rights for their citizens. Turkey is committed to further developing its laws and political institutions so that these fundamental principles forever endure. To that end, legislation implementing a program of sweeping political, administrative and social reorganization, known as the "Democratization Plan" is currently being debated by the Turkish Grand National Assembly (TGNA).

A. A New Constitution

Since the founding of the modern Turkish Republic in 1923, Turkish society has changed dramatically. During that time, Turkey has lived under three Constitutions, none of which anticipated the type of urban, educated and entrepreneurial society that Turkey enjoys today. The current Constitution is inadequate for the task of addressing the challenges of Turkey's modern, dynamic society.

Thus, the first step of the "Democratization Plan" is to draft and implement a new Constitution that will guarantee more democracy and more freedom for all citizens. At its core, the new Constitution will describe and define basic rights and freedoms, the most indispensable and important of which is freedom of thought and expression.

The new Constitution will be as dynamic as the people it governs. It will be libertarian, pluralist and based on the supremacy of law. It will be respectful of human rights and consistent with those common ideals that Turkey shares with the West.

B. Constitutional Amendments

Developing and implementing a new Constitution will take time. In the interim, political parties have agreed on a set of proposed legal amendments, which are under consideration by the TGNA:

***** The first and second paragraphs of the Constitution declaring the legality of the September 12, 1980 military operation have been removed to show that democracy is fully established in Turkey.

***** Article 15 is amended so that the second paragraph, which did not permit claims on the unconstitutionality of the laws and regulations made during the September 12, 1980 regime, is abrogated, and the said laws and regulations are opened to the control of the Constitutional Court.

***** Article 33 is amended so that the section limiting associations from political activity, from receiving support of political parties, from working jointly with professional associations or non-profit foundations was abrogated to allow these associations to take their absolutely necessary place in the democratic system.

***** Article 51 is amended so that the right is given to civil servants and other public employees to organize trade unions, hence paving the way for a system much like those in advanced industrial countries.

***** Article 52, which banned trade unions from political activities and from cooperating with political parties, organizations and foundations, is lifted.

***** Article 54 is amended so that all restrictions are removed on the issue of "strike" and "lock-out." The implementation of these rights will be organized by laws.

***** Article 67 is amended to allow citizens living abroad to vote from abroad. Furthermore, the voting age is lowered to 18. This gives the most basic freedom to vote to the young generations and to the three million citizens living abroad.

***** Article 68 is amended to lower the age of becoming a member of a political party from 21 to 18 and to provide the parties with the power to open representative offices, establish supporters wings such as women's or youth branches and foundations. It also gives members of the teaching staff and students at institutions of higher education the right to become a member of a political party.

***** Article 76 is amended to reduce the minimum age to be elected to Parliament from 30 to 25, to allow for the young generation to participate actively in the democratic system.

***** Article 84 is amended so that when a deputy loses membership, either by resignation or by conviction for an offense, which prevents him from continuing to be a member, the vacancy will take effect upon notification to the full session of the Assembly. This removes scope for criticism and allows proper operation of the resignation process.

***** Article 128 is amended by removing the section on "salaries, allowances and other matters related to the status of public employees". Thus, an important step has been taken in the democratization process by permitting the right of collective bargaining to public employees.

***** Article 135 is emended by lifting the ban o professional organizations to work with political parties, trade unions and associations, which resulted in their closing. Hence, professional organizations can be active in politics.

C. Revisions to the Law

The sweeping Constitutional reforms described above will require a comprehensive review of legislative issues with an eye towards enacting any necessary changes to ensure the swift implementation of those reforms.

The goal of any democratic system is to ensure that the people's fundamental right to happiness is not abridged. Accordingly, an Organization for Human Rights will be established. Comprising two principle components -a Human Rights Organization (HRO) will be an independent organization specializing in human rights. The Board will be comprised of seven people including a member selected by the Parliament, two members selected by the Council of Ministers, a diplomat from the Turkish Foreign Ministry, a member from the Justice Department, a scholar from the Inter-University Commission, a lawyer from the Turkish Bar Association and a member of the Turkish Physicians Association.

Additionally, a Human Right Council will be established, comprised of a representative from each ministry, a student and a professor from each university, a person from each public vocational institution, members from each local municipal and provincial assembly organizations, two members from media groups, two members each from labour and employers confederations, one member from each legal, non-government human rights organization and a maximum of 25 individuals known for their specialization in human rights. The Council will meet annually and will invite as observers representatives of international human rights organizations.

One of the basic pillars of democracy and social justice is that conduct against individual rights or injuring personal dignity and self-respect will not be tolerated, regardless of its origin. The Turkish Government will therefore review those laws which link legal proceedings to special permissions or decisions, particularly the Turkish Penal Code and the Civil Services Adjudication Law.

With respect to the latter, the Government is dedicated to ensuring that the personal rights of public employees are fully protected by passing a wide-ranging reform package.

With respect to the judicial system, the Government is determined to make the most radical changes in the history of the Republic that will ensure the system operates fairly, swiftly and affordably.

Accordingly, the Turkish Government has drafted and submitted before the TGNA 20 bills that, once posed, will achieve those goals. The legislation includes the Juvenile Courts Bill, the Judicial Courts and Upper Courts Bill, the Legal Trials Procedures Bill, the Criminal Trials Procedures Bill, the Labour Courts Bill, the Administrative Courts Procedures Bill an the Legal Profession Bill.

Improvements in enhancing protections of Turkish cultural life have been addressed as well. A Copyright Law to protect intellectual and cultural productions is currently before the Assembly; the Cinema and Musical Work Law will ensure continued progress in this field, and the Law to Protect Cultural and Natural Wealth will make it possible for Turkey's unique heritage to be passed along to future generations.

APPENDIX 4:

Change in the Turkish Anti-Terror Law

Article 8 of the Anti-Terror Law (Law No: 3713) Has Been Amended

OLD TEXT OF ARTICLE 8:

(Unofficial Translation)

No one shall, by any means or with any intention or idea, make written and oral propaganda or hold assemblies, demonstrations and manifestations against the indivisible integrity of the state of the Turkish Republic with its land and nation. Those carrying out such an activity shall be sentenced to imprisonment from two to five years and fined from 50 to 100 million Turkish Lira.

If the offense of propaganda referred to in the preceding paragraph is committed by means of periodicals, as defined in Article 3 of the Press Law No. 5680, the owners of such periodicals shall also be punished by a fine, to be determined in accordance with the following provisions:

***** For periodicals published at less than monthly intervals, the fine shall be ninety per cent of the average real sales of the previous month;

***** (For printed works that are not periodicals or for periodicals which have recently started business, the fine shall be ninety per cent of the average monthly sales of the highest circulating daily periodical) In any case, the fine may not be less than 100 million Turkish Lira.

Responsible editors of these periodicals shall be sentenced to imprisonment from six months to two years and to half of the fine determined in accordance with the foregoing provisions.

TEXT OF THE LAW AMENDING ARTICLE 8 (Law No. 4126):

(Unofficial Translation)

ARTICLE 1

Article 8 of the Anti-Terror Law No: 3713 has been amended to read as follows:

Article 8- No one may engage in written and oral propaganda aimed at disrupting the indivisible integrity of the State of the Turkish Republic, country, and nation Meetings, demonstrations and marches with this aim may not be engaged in. Those who engage in such deeds will be sentenced to from one to three years in prison and given a heavy fine of from TL 100 million to TL 300 million. In case the offense is repeated, punishment will not be

limited to a fine.

If propaganda stated in the first paragraph is carried out by means of periodicals specified in Article Three of Press Law No.5680, and if periodical appears less often than once a month, the owners will be punished with a fine equivalent to 90 % of the average value of sale amount of sales during the previous month. However, this amount cannot be less than TL 100 million. The legally responsible directors of these periodicals are to receive a fine half the size of that given to the owners and a prison sentence of between six months and two years.

If the propaganda specified in the first paragraph is carried out through mass media other than periodicals specified in the second paragraph or other printed materials, the legally responsible

(editors) and the owners of the mass media concerned will be imprisoned from six months to two years, and will be fined between TL 100 million and TL 300 million.

Furthermore, if this propaganda is carried out via radio or television, the court can decide to prohibit broadcasting by the relevant radio and TV station from one to 15 days.

If acts specified in the first paragraph are carried out through the mass media specified in the second and third paragraphs, punishment will be increased by between one third and a half.

ARTICLE 2

The following paragraph has been added to Article 13 of the Anti- Terror Law No. 3713 is as follows:

"However, this article does not apply to sentences given under Article 8".

TEMPORARY ARTICLE

Files of those sentenced according to Article 8 of the Anti-Terror Law No.3713 will be re-examined by the court which ruled the sentence within one month from the date the Law No.4126 has been put into effect. The court will make the appropriate decision regarding the re-determining of sentence periods and whether they are entitled to benefit from Articles Four and Six of Law No.647 of 13.7.1965.

ARTICLE 3

This law enters into effect on the date it is published.

ARTICLE 4

The Council of Ministers is responsible for implementing this law.

GROUNDS FOR THE ARTICLE (SUMMARY)

Restrictions on basic rights and freedoms in the 1982 Constitution were derived from the European Convention on Human Rights.

The restrictions on freedom of expression and dissemination of thought with a view to protecting the indivisible integrity of the State together with the country and the nation are set out in our Penal Code. This code describes those forms of expression of thought which are forbidden as "incitements to crime". Actually, what is prohibited is the expression of thought favouring to commit acts which constitute offences under the law and which could severely damage the social order in various ways.

The basic provision to this effect is contained in Article 311 of the Penal Code, which says: "Anyone who openly incites the commission of a crime.... shall be punished". Article 312 provides that "Anyone who provokes the public into disobedience against law or openly praises or affirms an act that is stipulated as offence by law" will be punished. Paragraph 2 of Article 312 points out that anyone who provokes by way of inciting the public and foments social hatred and enmity between "classes, races, religions, sects, or regions " will be subject to punishment.

In these paragraphs, incitement means the possibility of causing others to commit an act. If the idea expressed or words spoken are incitement to or encouragement of the commission of crime, then this constitutes "provocation", and as such lies outside the limits of freedom of expression.

Undoubtedly, the expression of thought is not a crime. It would be contrary to the freedom of thought, thus to the whole idea of liberal democracy, to consider the expression of an idea, thought or opinion as an offence. But if an idea has the characteristic, because of the fashion in which it is expressed, of inciting people to act against the existence of the State and to endanger the social order, then that idea,

because of the fashion in which it is expressed, is accepted as amounting to a crime. In fact, inherent to this conclusion is the general recognition that democracies have the right to defend themselves against threats to their existence and that this constitutes legitimate self-defence.

Propaganda, as referred to in the article, needs to be assessed in this context.

Democratic States regard the freedom of propaganda as legitimate, so long as this freedom is not used for incitement, provocation, encouragement of the commission of crime, overthrowing the liberal political order; destroying the rights and freedoms of others; handing over part of the territory of the State to foreign rule; or dividing the nation.

Whether or not the way of expression of thought or opinion creates a clear and immediate threat to the society, State, regime and social order and whether or not it orientates persons towards acts against laws are important points in evaluating propaganda as a crime in this context.

Therefore, the prohibition of propaganda which aims at the disruption of indivisible integrity of the State together with the homeland and the nation as mentioned in Article 8, does not vitiate by itself the democratic characteristics of our State.

On the other hand, the first paragraph of Article 8 as currently in force has been responsible for a good deal of debate and criticism nationally and internationally. This paragraph states that "irrespective of the method, objective or thought behind it, any form of written and oral propaganda aimed at disrupting the indivisible integrity of the Republic of Turkey" is ambiguous. In fact the wording of the Article is so general that it makes possible for the Article to include anything as propaganda. Thus it permits excessive restrictions on freedom of expression which are incompatible with the requirements of a democratic society.

In view of the practical problems currently experienced in connection with freedom of thought and expression and the international agreements to which our State is a party, it is necessary to revise the existing Article Eight.

The revision made in the article removes the wording in the first paragraph which created the ambiguity: "Whatever method, objective and thought" .... In making this revision, we aim to create the circumstances which will be conducive to the free expression of thought, thus meeting the standards of western democracies. In addition, lowering the minimum prison term from two years to one enables the courts to suspend sentences or commute them to fines, by virtue of a new clause added to Article 13.

In Article 13 of Law No. 3713, it was stated that all offences contained in the aforementioned law may not be commuted to fines or other measures.

The seriousness of terrorist crimes for the society as a whole was considered not to justify the conversion of sentences of imprisonment into fines or other penalties.

However, as a result of the amendment to Article 8, this prohibition is to be lifted as far as propaganda crimes are concerned. This will be in line with trends in modern enforcement and penal laws which take account of the character of the person who committed the offence. In line with this trend, a light sentence should not be served in prison. Thus it is appropriate to commute prison sentences given for separatist propaganda to fines or to convert into another measure or to suspend them.

To this end a temporary article is introduced into the amendment in order to enable the application of the provisions of Articles 4 and 6 of Law No. 647, when conditions are met.

SUMMARY ANALYSIS OF THE AMENDMENT

The revision comprises the following points:

1. The phrase in the old Article 8 "irrespective of means, objective and thought" practically deprived this article of the slightest notion of intent. Consequently the court had to judge exclusively the meaning of the words expressed in a speech, while supposing that they automatically contained intent to disrupt the territorial integrity. As a result of this broad and unclear focus, the freedom of expression has been restricted in Turkey beyond "what is necessary in a democratic society" (Article 10, European Convention on Human Rights).

2. The Law introduces the concept of intent (or aim disrupt the territorial integrity and political unity) in written or oral propaganda. This will focus the statute on those whose "intent to destroy" can be considered serious or effective. In a country where there is separatist terrorist violence, this aim or intention should be manifested in written or oral propaganda which encourages violence, terrorism, and related crimes for the purpose of separatism.

3. Prison sentences of from two to five years in the previous version of Article 8 are lowered in the Law to from one to three years. Thus the penalty ceases to be "criminal imprisonment" and becomes simple "imprisonment". In the Turkish legal system, the revision in Article 13
enables the courts to suspend the execution of punishment or to commute them to fines.

4. New amendments therefore introduce the possibility of commuting punishments to fines as well.

5. Consequently, the Article help release those serving prison sentences under the previous Articles 8 and 13, through:

- reducing the upper and lower limits of imprisonment.
- converting prison terms into fines or suspending future prison terms.
- requiring "aim or intent" to disrupt the integrity of the country.

6. Article 8 stipulates that the courts have to re-examine the cases of those in prison within a month of the effective date of the law. In line with the new spirit of this article, the courts quickly and benevolently reviewed the cases and began releasing those in prison even before the end of one month.

7. People, especially journalists and academicians, now enjoy much broader freedom of expression, since "they do not aim or intend to break up the territorial integrity and political unity of the country".

8. The courts take into account in their decisions the grounds for the article which is adopted together with the article itself by the Parliament.

There are three main points in the text of the grounds as follows:

1. The concept of intent must be clarified.

2. The new article introduces the possibility of commuting prison sentences to fines.

3. The amendment has been inspired by and complies with articles of the European Human Rights Convention, especially Article 10 of the Convention.

IMPACT OF THE AMENDMENT: As a result of the amendment, the courts ruled 141 release decisions and 7 acquittals as of January 8, 1996.