THE EUROPEAN UNION'S HUMAN RIGHTS CONDITIONALITY: NORMATIVE OR INSTRUMENTAL?

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THE EUROPEAN UNION'S HUMAN RIGHTS CONDITIONALITY: NORMATIVE OR INSTRUMENTAL?

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ABSTRACT

THE EUROPEAN UNION'S HUMAN RIGHTS CONDITIONALITY: NORMATIVE OR INSTRUMENTAL?

Erdem, Kamile Tutku

Graduate Program of European Studies

Supervisor: Asst. Prof. Dr. Işık GÜRLEYEN

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This thesis addresses the question "whether the European Union (EU) acts on normative grounds in implementing its human rights policy or perceives human rights as an instrumental tool in its external relations". The thesis aims at answering this question by looking at the case of human rights conditionality in Turkey-EU relations and comparing the EU documents and annual reports of Human Rights Watch and Amnesty International. If there is a convergence between reports of the EU and Amnesty International and Human Rights Watch, then it will indicate that the EU has normative approach in human rights policies towards Turkey. This comparison between the reports is the main contribution of this thesis to the literature on the EU and human rights. Following a discussion of the concept of human rights, the thesis analyses the role of human rights in the EU's relations with third countries. The thesis examines human rights protection and promotion system of the EU through an analysis of its legal documents, practices of its institutions and the instruments used in its external relations. The discussion is particularly focused on EU's membership conditionality towards Turkey between 2002 and 2006. Official EU documents and the annual reports of Amnesty International and Human Rights Watch are the primary sources used in the analysis.

Keywords: Human Rights Conditionality, Foreign policy tool, International values, Idealism, Realism, Turkey – EU Relations.

ÖZET

AVRUPA BİRLİĞİ'NİN İNSAN HAKLARI KOŞULLULUĞU:
DEĞER Mİ ARAÇ MI?

Erdem, Kamile Tutku

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Bu tez "Avrupa Birliği (AB) insan hakları politikalarını uygularken normatif amaçlarla mı hareket eder, yoksa insan haklarını dış ilişkilerinde bir araç olarak mı algılar" sorusuna yanıt aramaktadır. Tez, söz konusu soruyu Türkiye-AB ilişkilerinde uygulanan insan hakları koşulluluğunu inceleyerek ve AB belgeleri ile Uluslararası Af Örgütü ve İnsan Hakları İzleme Örgütü yıllık raporlarını karşılaştırarak yanıtlamaya çalışır. Eğer AB belgeleri ve İnsan Hakları İzleme Örgütü ve Uluslararası Af Örgütü raporları ortak noktalarda birleşirse, bu AB'nin Türkiye'ye yönelik insan hakları politikalarında normatif bir yaklaşım içerisinde olduğunu gösterir. Bu karşılaştırma, bu tezin AB ve insan hakları literatürüne yaptığı ana katkıdır. İnsan hakları kavramının içeriğine yönelik tartışmanın ardından, AB dış ilişkilerinde insan haklarının rolünü inceler. AB'nin insan haklarını koruma ve destekleme sistemini, yasal belgeleri, AB kurumlarının uygulamalarını ve dış ilişkilerde kullanılan araçları analiz ederek inceler. Tez, AB'nin 2002 – 2006 yılları arasında Türkiye'ye uyguladığı üyelik koşulluluğunun incelenmesine odaklanır. Resmi AB Belgeleri Uluslararası Af Örgütü ve İnsan Hakları İzleme Örgütü yıllık raporları bu çalışmanın temel kaynaklarıdır.

Anahtar Kelimeler: İnsan Hakları Koşulluluğu, Dış politika araçları, Uluslararası değerler, İdealizm, Realizm, Türkiye – Avrupa Birliği İlişkileri

To My ONE and ONLY Parent;
MOM…

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CHAPTER 1: INTRODUCTION

The role of human rights has increased both in politics and academia since the end of the Cold War similar to its upsurge in the post-World War II period. The evolution of human rights started with the codification of human rights under the United Nations legal framework and the establishment of international human rights law as a branch of international law after 1945. Recently human rights development has entered another phase, where scholars question the role of human rights not only in the law but also in the politics. Because of this change, contemporary debates on human rights do not only focus on the definition of these rights but also on the role of human rights in the relations between states and international organizations. Specific emphasis is placed on foreign policies, the way in which international human rights policies can shape state behavior. The driving force in setting human rights promotion as one of the objectives of foreign policy are another issue that is being discussed in the literature on human rights. Moreover, on the question of implementation of these policies, scholars focus on the types of tools that best promotes human rights in international relations.

In the light of these debates and the growing literature on human rights in world politics, this study will focus on a case study which analyzes the European Union's external human rights policies with regard to Turkey. More specifically, this thesis will analyze the driving forces of the EU human rights policies towards Turkey and addresses the question whether the EU human rights conditionality is based on moral values or is an instrument aiming to gain material benefits such as gaining military capacity through Turkish army, gaining more influential power on the Middle East, Caucasus or Near Asia because of geopolitical position of Turkey. In addition to the material benefits that EU can gain, there are major interests of

individual member states such as United Kingdom's need of Turkish support in Transatlantic relations especially on War on Terrorism and Iraq. Even though, the main analysis is made on the EU's human rights policies and membership conditionality, the intergovernmental character of the EU must not be neglected while analyzing the material interests and also their support on human rights policies. For example, among the member states, Scandinavian countries and the Netherlands consistently underline the importance of human rights concerns and show their will on the EU to take more actions on human rights issues. However, this thesis does not focus on the preferences of the member states but tries to analyze the EU human rights developments and policies.

In order to understand the role of human rights in the EU, the specific understanding in the EU and policies of human rights will be explained. What is more, the EU documents concerning human rights in Turkey will be analyzed in order to identify the implementation of EU's human rights policies. Turkey is an outlier case when it compared with other candidate or ex-candidate countries. Therefore it can be studied as a single unique case.

Since the main aim of this study is to understand whether the EU imposes human rights conditionality on normative grounds or instrumentally in its external relations, the EU's annual reports on Turkey are compared with those of Amnesty International and Human Rights Watch between 2002 and 2006. If there is a convergence between reports of the EU and Amnesty International and Human Rights Watch, then it will indicate that the EU has normative approach in human rights policies towards Turkey. This comparison between the reports is the main contribution of this thesis to the literature on the EU and human rights.

The theoretical framework of the study will be drawn from two main theories of the international relations discipline. The debates which address the questions raised above use basic international relations concepts such as interests, norms and treaty obligations, international law, pressure and the practice in policy making process of different actors. "Scholars have offered several types of explanations regarding how international human rights pressure can shape state behavior. Some of these explanations are rationalist-materialist in orientation, emphasizing realist notions of power or neo-institutionalist concerns with self-interest. Others have drawn on ideational-constructivist accounts to emphasize the role of norms, identity, and social actors. Additionally, scholars have paid attention to how international and domestic factors, sometimes in interaction, mediate human rights change."[1] In addition to the numerous works of scholars, in order to understand the drives of EU's human rights policies on Turkey, this study looks at the discussion of role of the human rights in world politics and human rights as a foreign policy tool. The evaluation of theoretical background will help to answer to the question whether these policies are directed by normative concerns or realistic interests. Therefore, the study will cover two main theories of international relations, idealism and realism. An analysis of idealist approach in international relations through the perspective of the norms and rights is followed by an evaluation of the realist approach in the practice of these norms. Evaluating the EU human rights policies through main international relations theories will help to understand the legitimacy of such policies. It is expected that the convergence between the reports of the EU and the Amnesty International and Human Rights Watch will indicate that the EU has idealist approach in human rights policies towards Turkey.

[1] Cardenas, Sonia. *Norm Collision: Explaining the Effects of International Human Rights Presseure on State Behavior,* International Studies Review, (2004) 6, p. 213.

The thesis follows a non-experimental research analyzing a case study with qualitative data. The analysis in this thesis proceeds as follows. It starts with the conceptual framework, where a definition of human rights and theoretical structure is offered, followed with the analysis of whether the EU's human rights policies are foreign policy tools or just moral values that the EU sees as a condition for the membership. In order to understand the EU's human rights promotion and protection mechanisms, examination of other European and global systems will be helpful. The reference point for the global human rights mechanism is the United Nations framework. Following the account of evolution, aims and means of the EU's human rights policy in Turkey-EU relations, the results of EU's human rights policies are evaluated. Specific emphasis is given to the conditionality tool of the European Union which aims to improve human rights practices in non-member countries. In order to identify the EU's demands from Turkey regarding its human rights situation, EU Commission's reports on Turkey between 2002 and 2006 will be examined. Perspective of the EU with regard to Turkish human rights records will be compared with the annual reports of Amnesty International and the Human Rights Watch on Turkey. Furthermore, Turkish governments' perception during legislative changes with regard to human rights regulations in Turkey between 1999 and 2006 are analyzed with an emphasis on the period between 2002 and 2006. In conclusion, the results of the comparison of the EU, the Human Rights Watch and Amnesty International are analyzed in order to find out the driving forces of the EU human rights conditionality towards Turkey.

CHAPTER 2: CONCEPTUAL FRAMEWORK

This chapter examines the scholarly work on the definition, theory and the practice of human rights in order to evaluate contemporary perceptions on the concept. Besides the determining the variables, understanding human rights and the major discussions related to the issue is useful to create the position where the basic assumptions of the thesis stand. The discussions on whether human rights is a branch of international law or politics guide the examination on the chosen case; the human rights axis of Turkish candidacy to the European Union.

2.1 HUMAN RIGHTS

One of the most challenging tasks of this study is to define the concept of human rights. The definition, meaning and the scope of the concept has evolved, changed and been rewritten over the centuries by different societies and traditions. Historical events in different parts of the world, which are the cornerstones of history shaped human rights concept in different ways, just as they did to other political concepts. Various experiences created diverse practices and understanding of human rights. On the other hand, this does not mean there is an absence of a definition of human rights agreed on by major schools of thought, political traditions or civilizations. The very basic and commonly accepted Human Rights definition can be stated as the rights held by individuals due to the fact that they are homo sapiens, which the term is used to refer to 'modern human beings as a species that contrasts with other ones such as animals and earlier forms of human beings, because of the existence of the mind. The ability to reason and judge causes human rights to be widely considered as the fundamental moral rights of an individual that are absolutely necessary for a life of human dignity.

While the definition emphasizes that rights are held by all those members of species, 'human'; at the same time, it raises the question of whether the scope of rights would differ as the individuals differ. 'WordReference' website based on Princeton University's database describes human rights as a legal term where human right is "any basic right or freedom to which all human beings are entitled and in whose exercise a government may not interfere (including rights to life and liberty as well as freedom of thought and expression and equality before the law).[2] The addition of "*all"* to the sentence underlines the point that these rights are shared by all, *everyone*, equally regardless of the sex, race, nationality and economic background. This understanding of equally shared rights by every individual elevates the concept to universal level and distributes them to every community. On the other hand, human rights have not evolved to the same level on the same issues under the same circumstances in different societies. Therefore, legal definition of human rights, which is "means to a greater social end, and it is the legal system that tells us at any given point in time which rights are considered most fundamental in society"[3], is insufficient. Insufficiency stems from the fact that this definition doesn't take into account the differences among societies and perceives a universal society. The more suitable definition for the purposes of this study can be that "human rights are the fundamental rights that are possessed by all individuals regardless of their society and regardless of the time period they live in". However, historical analysis of the development of human rights demonstrates that there are changes over time across societies in defining these rights.

Also, it becomes easier to examine that the concept of retaining "rights" and "liberties" based on the fact of being a human is not a short-term or recently

[2] http://www.wordreference.com/definition/human+rights accessed on January 2008.
[3] Forsythe, David P., *Human Rights in International Relations*, Cambridge University Press, UK, 2000, p.3.

established term either politically or legally. It must be acknowledged that there are diverse arguments with regards to the origins and scope of the human rights. It can be argued that the concept of citizens and the rights of the citizens in Ancient Greek city-states 300 – 200 BC are the first examples of human rights. It can be also said that British Magna Carta (1215), which includes the initial versions of contemporary rights such as equality before the law, the right to hold property and the freedom of religion, is the basic model of modern contracts on the rights of people against the sovereign. Moreover, many believe that the *holy* writings of diverse religions explain people's rights and duties. Since the origins of the human rights strongly affect the contemporary discussion on the issue, many scholars study a range of ancient and modern societies and civilizations. Even though, different degree of human rights is recognized by all political authorities, a significant number of studies show that the modern understanding of human rights has been developed by the western societies.

As one of the significant sources, in her book, The History of Human Rights: From Ancient Times to the Globalization Era, Micheline R. Ishay examines the evolution of human rights. First she studies the axis of religious and secular origins of human rights. Then, she sees human rights through the spectrum of different political ideologies such as liberalism and socialism. At the end, she analyzes the reflections of significant historical events on human rights such as World Wars and September 11, 2001[4]. Most importantly, she draws the conclusion that the current understanding of human rights in world politics originates from mostly European, in other words Western, history and human rights approach[5].

[4] Ishay, Micheline R., *History of Human Rights: From Ancient Times to the Globalization Era*, California UP Publishing, New York, 2004.

[5] For further information on the historical evolution of human rights also see Smith, Rhona K.M., *Textbook International Human Rights*, Oxford University Press, New York, 2005; Gemalmaz, Mehmet Semih, *Ulusalüstü İnsan Hakları Hukukunun Genel Teorisine Giriş* (Introduction to General Theory of Supranational Human Rights Law), Beta Basım, İstanbul, 2003.

The reason behind the dominance of Western Values on human rights is not related to the lack of these values in non-western societies as it mentioned before, but to the fact that the idea and the practice of "equal and inalienable rights held by all individuals against the state and society"[6] occurred in only Modern West. Through the cause and effect analysis of human history, the study can state that human rights were a response to the social and political changes that took place with the rise of modern economic structures and modern states in Europe, and it was the Western philosophers who conceptualized universal human rights in modern times. The basis of such ideas can be found in the aggregated various experiences such as wars, economic crises and revolutionary movements with a universal approach.

With a historical approach, examples of historical events in the evolution of human rights can be found as far back as with the Roman establishment of the laws to regulate the relations and solve the disputes between the Romans, and non-Romans. The Roman Catholic Church's perception of these laws as natural law reinforced its place in the domestic legal system. The concept of natural law provides the absolute universality and independence of these rules from the states and political structures[7] since the natural law derives its existence from nature and is believed that it is binding on all people apart from or in accordance with the laws established by the human authority. Later, numerous works of the Western political philosophers contributed to the notion of 'a right and a liberty' to the human rights literature of political science and positive law[8]. Evolution of human rights in politics and law was

[6] Donnelly, Jack, *Universal Human Rights in Theory and Practice*, Cornell University Press, Ithaca and London, 1989, p.2

[7] See Rehman, Javaid, *International Human Rights Law A Practical Approach*, Longman/Pearson, 2002. Gemalmaz, Mehmet Semih, *Ulusalüstü İnsan Hakları Hukukunun Genel Teorisine Giriş* (Introduction to General Theory of Supranational Human Rights Law), Beta Basım, İstanbul, 2003.

[8] See Ishay, Micheline R. (eds), *The Human Rights Reader Major Political Essays, Speeches and Documents From the Bible to the Present,* Routledge, New York, 1997, especially Chapter 1; Religious Humanism and Stoicism The Early Origins of Human Rights from the Bible to the Middle Ages, and Chapter 2 Liberalism and Human Rights The Enlightment. Also see Hampsher-Monk, Iain,

a response to the natural law by the law of science. When the positive laws were made which derived from traditions that have the acquiescence in society, people's rights and interests were more protected both economically and politically.

The French and American Revolutions of 18th century spread the fundamental political modern rights of men against the sovereign or state through the declaration of men are born free and equal. With the mass movements of 19th century in Britain and France, the workers gained limited social rights after several bloody strikes. Furthermore, in the first half of the 20th century, Europe was at the center of two world wars. World War I and World War II were the tragic experiences that shaped the Europeans ideas on the protection of human rights. World Wars had a significant impact on the post- war international political system and particularly on legal and political human rights discourse.

European ideas of responsibility for war damages, rooted in western economic, political and military dominance in the world for three centuries[9], meant there were initiatives to form a universal framework to protect individuals' rights. These embodied the concept of human rights on the western basis under the global structure of the United Nations[10] which is an international organization with a purpose to maintain international peace and security. Michael Ignatieff explains the

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A History of a Modern Political Thought: Major Political Thinkers from Hobbes to Marx, Blackwell Publishing, UK, 1992, Nelson, Brian R., *Western Political Thought From Socrates to the Age of Ideology,* Prentice Hall, New Jersey, 1996.

[9] See Kennedy, Paul, *The Rise and Fall of the Great Powers Economic Change and Military Conflict From 1500-2000,* Fontana Press, London, 1989, Joll, James, *Europe Since 1870,* 4th ed. , Penguin Books, England, 1990, Hobsbawm, Eric, *The Age of Revolution 1789-1848*, Abacus, UK, 1988 and *Age of Extremes The Short Twentieth Century 1914-1991,* Abacus, 2002.

[10] See Smith, Rhona K.M., *Textbook on International Human Rights*, Oxford University Press, New York, 2005; Ishay, Micheline R., *History of Human Rights: From Ancient Times to the Globalization Era*, California UP Publishing, New York, 2004; Gemalmaz, Mehmet Semih, *Ulusalüstü İnsan Hakları Hukukunun Genel Teorisine Giriş* (Introduction to General Theory of Supranational Human Rights Law), Beta Basım, İstanbul, 2003, Rehman, Javaid, *International Human Rights Law A Practical Approach*, Longman/Pearson, 2002, Donnelly, Jack, *Universal Human Rights in Theory and Practice*, Cornell University Press, Ithaca and London, 1989, Forsythe, David P., *Human Rights in International Relations*, Cambridge University Press, UK, 2000, and Forsythe, David P., "*The United Nations and Human Rights 1945-1985*", Political Science Quarterly, Vol.100, No:2, Summer 1985, pp.249-269.

post-war burden on the West and gives an example for the reason of western structuring of human rights. He acknowledges that calling the global diffusion of Western human rights a sign of a moral progress may seem Eurocentric and he underlines the fact that human rights instruments created after 1945 were not in fact a triumphant expression of European imperial self-confidence, but a war-weary generation's reflection on European nihilism and its consequences. "Human rights was a response to Dr. Pannwitz[11], to the discovery of the abomination that could occur when the Westphalian state was accorded unlimited sovereignty, when citizens of that state lacked normative grounds to disobey legal but immoral orders."[12]

A brief examination of the evolution of human rights suggests that due to political, economic and military dominance of the major European states in the world before WWII and the USA and the Soviet Union after the war, the human rights concepts that are leading this discourse are described by westerners. Especially, during the establishment of the United Nations and with the declaration of the Universal Rights in 1948, the western point of view dominated the human rights discourse even though there are wide-range differences within the West on the definition and prioritization of the rights. "Across the centuries, conflicting political traditions have elaborated different components of human rights or differed over which elements had priority. In our day, the manifold meanings of human rights reflect the process of historical continuity and change that helped shape their present

[11] Chief of the chemical department at Auschwitz Concentration Camp where the thousands of Jews, Gypsies and anti-Nazis were imprisoned, tortured, abused and killed. Ignatieff, Michael, *Human Rights as Politics and Idolatry,* Princeton University Press, USA, 2001, p.4.
[12] Ignatieff, Michael, *Human Rights as Politics and Idolatry,* Princeton University Press, USA, 2001, p.4-5.

substance and helped form the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948."[13]

Although the existing international human rights legal system aims to be universal, there are objections whether these rights are fully applicable in non-Western societies. Western origins and characteristics of human rights are the core of major debates on the concept. The challenge raised against human rights as described in Western terms is questioning its universality. The overall question that rises from these debates is whether a single set of human rights, a universal standard, can be applicable in any part of the world disregarding the regional, religious, cultural and political backgrounds for any individual or groups of people. There are two theoretical camps regarding the role of human rights in international relations: the universalists and [cultural] relativists. The former understands the human rights as universal norms. Rights such as right to life, civil and political rights and gender equality are acknowledged as standards that need to be implemented universally without any exceptions. The latter perceives human rights as divergent practices in different societies and approves practices such as female circumcision even it damages women's health, moreover causes deaths.

In this argument, the universalists, such as Jack Donnelly, defend the idea of globally defined human rights as the minimum standards that should be provided for every individual. The fundamental principle is that human species is a single entity and the rights must be entitled equally to each individual automatically by moral considerations. In addition to this perception, some accept the notion of globalized human rights since the world is already globalized through economic globalization. For instance, Ignatieff sees the worldwide spread of human rights norms as the moral

[13] Ishay, Micheline R., *History of Human Rights: From Ancient Times to the Globalization Era*, California UP Publishing, New York, 2004, p.3.

consequence of the economic globalization. He gives an example from the U.S. State Department's 1999 annual report on human rights practice around the world, which describes "the constellation of human rights and democracy – along with money and internet – as one of the three universal languages of the globalization."[14] Furthermore, universalists underline the fact that human rights have already become global for reason that they preserve interests of the powerless as well as they serve for interests of powerful groups.

In contrast to Universalists, relativists or particularists, whether soft or radical, constitute their argument on religious, geographical and historical diversity of humankind. Relativist scholars underline the existence of moral values, rules, traditions and social institutions that do not go parallel with the western traditions. Relativists acknowledge cultural differences among societies as the basic reasons to falsify the assumption of universal human rights. Moreover, a relativist approach demands respect for non-Western values, even if these practices violate the universal rights. Radical relativists argue that the outsiders' (the West, in most cases) criticism related to the human rights practices in a country cannot be legitimate since such criticism carry the danger of cultural or moral imperialism.

The second argument that relativists raise related to the western domination on human rights is a critic to universalist approach on the range of the people that benefit from human rights; both advantaged and disadvantaged ones. Radical relativists argue that Western rights can only satisfy the needs of the Western societies. In some cases, where the rights are consistently demanded by Westerners, non-Western societies see same rights as a blasphemy or threat to their values. Relativists recognize this persistence as opportunism and hypocrisy. Many political

[14] Ignatieff, Michael, *Human Rights as Politics and Idolatry,* Princeton University Press, USA, 2001, p.7.

leaders and even scholars from the East criticize Western countries for being intolerant towards the different level of approval and acceptance of some of the Western-inspired rights in Eastern cultures. Moreover, Easterners acknowledge these rights as unsuitable for their values and traditions. Non-Westerners also ask for understanding on their attempts to define and prioritize the universal human rights from their own point of view, values and priorities.[15]

Therefore, the politicians who follow the relativist approach construct their own documents and protection mechanisms to eliminate the influence of these critics. As Rehman explains "proponents of regionalism [*relativism*], for example those purporting Asian or African regionalism, have advocated the establishment of distinct systems. The Islamic States, which form a significant block, have advanced their [own] standards of human rights."[16] The African Charter on Human and People's Rights and the African Commission would be the examples for effect of relativism on regional systems. African Charter adds the communal rights and the duties of individuals in the community to the list of fundamental rights where Western [European] system recognizes the individualistic rights.[17]

2.1.1 THEORETICAL BACKGROUND

Providing detailed information on non-European regional human rights protection mechanisms will not be in line with the purpose of this study. On the other hand, it is significant to know that these non-Western regional systems are formed as

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[15] Brems, Eva, *Human Rights: Universality and Diversity,* Martinus Nijhoff Publishers, The Hague, 2001.

[16] Rehman, Javaid, *International Human Rights Law A Practical Approach*, Longman/Pearson, 2002.p.5.

[17] For further information on African Charter and Commission, Inter-American System for the Protection of Human Rights; American Convention on Human Rights, Commission and The Inter-American Court, and Arab Charter, see Rehman, Javaid, *International Human Rights Law A Practical Approach*, Longman/Pearson, 2002., Smith, Rhona K.M., *Textbook on International Human Rights*, Oxford University Press, New York, 2005.

a reaction to existing human rights mechanism which is mainly produced after World War II under international law and international politics by the Western powers, mainly European ones. The regional frameworks, especially in Asia and Africa, can be analyzed as reactions towards to constructors of Post-War world order. In order to understand the contemporary human rights contradictions, it is important to understand theoretical background of the Post-War world order and their approach to human rights.

World War I and World War II are not just key events in the definition of human rights, but also cornerstones of the discipline of international relations. Two key theories of international relations, idealism and realism, are the fundamental endeavors in explaining the world system. Understanding the main assumptions and contradictions of these theories with their influence on human rights law / politics is essential to comprehend one of the main debates on human rights, which is whether or not the human rights are part of international law or whether they are simply a foreign policy tool. This will also help to see that the universatists have idealist approach on human rights while the relativists raise their counter arguments on realistic judgments such as the non-implementation of all rights in different cultural structures.

From 17th Century till World War I, international system was the balance of power among European powers, which provides a certain degree of order in interstate relations. However, World War I damaged the balance in the system severely. In order to prevent another worldwide war, leaders of the victorious powers formed a new system with idealist aims. Especially, under the influence of U.S. President Woodrow Wilson who was previously an academician, advocated idealist principles in international relations. Idealists view people as rational actors

with *reason* who are good by nature so expect them to have moral standards. Victorious states of WWI saw the cause of the failure of the previous orders, the Concert of Europe and the balance of power system in Europe, as both systems were based on control and the deterrence of the enemy but not working in cooperation. The idealist point of view defends that the nations would also act rationally and regulates the relations among themselves more democratically or at least more cooperatively in order to maintain the peace. The most important reason that idealists see for this tragic experience was the absence of an international organization which with the duty of solving the disputes among states by providing them a democratic space to discuss the issues. Idealists believe that international institutionalization of liberal trade, open diplomacy and democratic values would eliminate the possibility of another war. They assume that international laws and institutions could prevent war by their active participation in policy formation of states. As a consequence, the League of Nations was established in order to realize these assumptions with the leadership of European states.[18]

The League of Nations emphasized four concerns in international human rights law that include the protection of minorities, the recognition of self-determination right of nations, the codification of laws related to prevent reoccurrence of gross violations of human rights in war times and conflict prevention mechanisms in diplomacy. International law regulates the interactions of States under the limited law based on consent of all parties. As the result of the accelerating political, economic and military interactions among the states, two significant

[18] See K.M.Smith, Rhona, *Textbook on International Human Rights*, Oxford University Press, New York, 2005; Ishay, Micheline R., *History of Human Rights: From Ancient Times to the Globalization Era*, California UP Publishing, New York, 2004; Gemalmaz, Mehmet Semih, *Ulusalüstü İnsan Hakları Hukukunun Genel Teorisine Giriş* (Introduction to General Theory of Supranational Human Rights Law), Beta Basım, İstanbul, 2003, Rehman, Javaid, *International Human Rights Law A Practical Approach*, Longman/Pearson, 2002, Donnelly, Jack, *Universal Human Rights in Theory and Practice*, Cornell University Press, Ithaca and London, 1989, Forsythe, David P., *Human Rights in International Relations*, Cambridge University Press, UK, 2000,

branches of international law, the laws of war and diplomacy, were codified to protect the individuals, aliens and civilians, under international context.

However, World War II ended to both post-war optimism and the League of Nations, which was founded with the aim of providing international protection mechanisms to oppressed groups and minorities. More significantly, international laws could not prevent the gross violations of human rights during World War II.[19]

After 1945, victorious states of WW II reorganized the global system and focused on the international human rights once again. The system that they defined was still under the influence of idealism. As Forsythe emphasizes, "Even if human rights are thought to be inalienable, a moral attribute of persons that the state cannot contravene, rights still have to be identified – that is, constructed – by human beings and codified in the legal system"[20] The new international organization, the United Nations, which replaced, succeeded of the League of Nations, created as the reflection of the world public opinion that expects maintenance of international peace and security and better human rights protections under international law. Article 1 of the United Nations Charter declared "*the purposes of the United Nations are to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace, to achieve international cooperation in solving international problems of economic, social, cultural and humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language and religion...*"[21]

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[19] Forsythe, David P., *The United Nations and Human Rights 1945-1985*, Political Science Quarterly, Vol.100, No:2, Summer 1985, pp.249-269.
[20] Forsythe, David P., *Human Rights in International Relations*, Cambridge University Press, UK, 2000, p.3.
[21] *Charter of the United Nations and the Statute of the International Court of Justice*, The United Nations Department of Public Information, New York, 2003, p.5.

Since 1945, under the United Nations, by the Charter, Councils, Committees, Covenant (treaty) based bodies, the international community is still widening the web of mechanisms to define, protect and maintain the human rights and fundamental freedoms in member states. States under system of the UN codified the documents on a wide range of rights, such as women's rights, children's rights, the prohibition of slavery, genocide, torture and all forms of racial, sexual discrimination.[22]

The United Nations system of protection of human rights is not the topic of this study. On the other hand, to be in line with the purpose of the study it is required to mention once again that the UN codifications are the only global legal framework of international human rights protection. Victorious states of World War II claimed to protect all the peoples of the UN. In order to do that, UN established legal obligations on the member states and increased their responsibility of not violating the human rights. Also the UN preserved these obligations in its Charter, that member states signed to give their consent for implementing human rights. Rehman explains; "While these agreements bind States either in Treaty or in customary law, the undertakings are broad; they represent an obligation not only not to violate human rights themselves, but also to undertake to 'ensure' or 'secure' the rights of individuals."[23] Expecting member states to obey the international law and be in cooperation to remedy in case of violations can be perceived as an influence of idealism on international human rights system.

While the international human rights system was written by idealist point of view, realist approach was also influential among the statesmen. Realism, which

[22] For the whole list of the International Human Rights documents formed by United Nations, monitoring and implementing procedure, see www.un.org
[23] Rehman, Javaid, *International Human Rights Law A Practical Approach*, Longman/Pearson, 2002, p.9.

aims to understand the reasons why cooperation among nations could not fully be realized, found the answer in the Hobbesian understanding of human essence and the unlimited desire of men on limited sources of the world. Following Hobbes, realism view the man as a rational but also self-interested and materialistic creature. "Some realists argue that there are unchanging laws which regulate individual and state behavior: states, like men, are by 'nature' self-interested and aggressive and will pursue their interests to the detriment of others and without regard to the constraints of law and morality."[24] Moreover, realists reflect this evil essence to international politics as recognizing states as the primary actors of the international system which are rational actors in a struggle for power to materialize their economic and military interests, without diluting their actions with ethical concerns. Realists perceive international system as anarchical where there is not superior authority above the nations to regulate relations among them as Hobbes described the state of nature; place where all is against all. Since there is not higher authority above states, there is no body that can punish the violators of international law and human rights. In realist theory, states perceive international human rights standards as a limitation on their sovereignty and as a violation of non-interference in the domestic affairs principle.

After the 1950s, even though idealists such as Eleanor Roosevelt inspired the formation of the UN, most scholars and statesmen thought that realism was the best-established and most valid theory explaining state behaviors. Many international relations scholars analyze relations among states during the Cold War on realist principles where ethical concerns such as the protection of human rights lost their priority. My contention is that, both in the Cold War and Post-Cold War periods, many states from superpowers to small states, failed to follow consistent human

[24] Steans, J., Pettiford, L. *Introduction to International Relations Perspectives and Theme*s, 2nd edition, Pearson Longman, England, 2005, p.49.

rights policies in the international arena. Realism could explain this inconsistency by acknowledging human rights policies as the foreign policy tools used to influence other states' behaviors. In cases where the interest of a state did not conflict with human rights concerns, that state could implement domestic or foreign policies to improve human rights. In other cases, however, where the security and economic interests had more priority, states tend to condone the violations. While realism views the inter-state relations in terms of interests, idealism defends the available mechanism of protection of human rights.

However, the approach that this study have see that one of these two dominant theories are inadequate in describing the fluctuations of human rights issues especially in the second half of the 20th century alone. Realism is insufficient to understand the emergence of human rights as part of international politics and the impact of human rights on the policies of states. "Realism cannot provide an explanation for the origins of the social purpose of hegemonic action on human rights"[25]. On the other hand, idealism cannot satisfy the international community of the necessity on limiting their expectations on the full implementation of human rights, prevention of the violations and the remedies in case of breaches because the idealists keep supporting the universality of the rights.

In conclusion, my perception is a hybrid model between these two theories; a normative model that explains how human rights laws and policies should be, at the same time, a descriptive model that analyzes the reasons of prioritization within the human rights policies and foreign policy choices of various states. "To understand the changes in the role of international human rights in international politics we must further develop our theories of the influences of norms and ideas on international

[25] Sikkink, Kathryn, *Transitional Politics, International Relations Theory, and Human Rights*, Political Science and Politics, Vol. 31, No.3, September, 1998, p.518.

politics."[26] Furthermore, this model can contribute to the literature by providing an account of the power of human rights as international norms and its impact on domestic change. In this case, the question of whether human rights are part of political science or a branch of international law can be answered by identifying the rules established with moral concerns and breaches occurred due to the realist ambitions.

2.1.2 NORMATIVE OR INSTRUMENTAL?

The last six decades has not just witnessed the formation of the international legal system of protection of human rights but has also enabled the shift in a realist understanding of sovereign states and has enlarged sphere of influence by other actors, especially on the issue of human rights. In other words, even if it is not accepted by all the authorities, some individual initiatives or global campaigns had success on influencing state behaviors while many other failed to do so. The international human rights standards that have been developed in post World War international system served as a guideline for governments on how to treat their own nationals after breaches in the period between the two world wars. However, it is now accepted by several scholars that the way in which human beings are treated is a legitimate concern of all states. *"At the end of the twentieth century, more and more states felt the responsibility for the life and well-being of people in other countries and chose to adopt the promotion of human rights as part of their foreign policy. This responsibility seems to stem not only from a feeling of collective morality but*

[26] Sikkink, Kathryn, *Transitional Politics, International Relations Theory, and Human Rights*, Political Science and Politics, Vol. 31, No.3, September, 1998, p.518.

also from the view that severe violations of human rights and humanitarian emergency situations might endanger international peace and stability"[27].

In this respect, the UN Security Council has acknowledged that the absence of military conflicts does not mean that non-military threats, economic, social, humanitarian and ecological sources of instability that threaten peace and security do not exist.[28] With this decision, the Security Council recognizes any form of instability, caused by various objectives ranging from the ecological to the economic as threat to peace. Even though there were contradicting implementations, this decision acknowledged the gross, systematic or random violations of human rights within states as the source of instability. Therefore, intervention in domestic affairs of a state on the grounds of human rights violations has become more legitimate. The adoption of human rights policies can be seen as a shift on foreign policy directed by long-term interests. "Human rights policies emerged because policymakers began to question the principled idea that the internal human rights practices of a country are not a legitimate topic of foreign policy and the casual assumption that national interests are furthered by supporting repressive regimes that violate the human rights of their citizens"[29]

In order to understand the influence of human rights on foreign policies of the states, a definition and the major principles of foreign policy-making must be mentioned. Foreign policy can be simply described as the activities of a state's conduct and attitude towards other states. K.J. Holsti defines foreign policy as "ideas or actions designed by policy makers to solve a problem or promote some change in policies, attitudes, or actions of another state or states, in non-state actors (e.g.

[27] Baehr, Peter R., Castermans-Holleman, Moique, *The Role of Human Rights in Foreign Policy,*3rd ed., Palgrave Macmillan, UK, 2004, p.1-2.
[28] Security Council, 31 January 1992.
[29] Sikkink, Kathryn, *Transitional Politics, International Relations Theory, and Human Rights*, Political Science and Politics, Vol. 31, No.3, September, 1998, p.519.

terrorist groups), in the international economy, or in physical environment of the world"[30]. A main concern of statesmen is to make policies that maximize the national interest of their own country, especially on security and economic issues. From a realist perspective, these two concerns are at the top of the hierarchy of foreign policy issues. The effective implementation of human rights on this decision-making mechanism presents a significant challenge. Although scholars such as, Kathryn Sikkink, and David Forsythe accept that human rights have a place of their own in foreign policy, they also underline the hierarchy among the foreign policy objectives and the place of human rights policies within this hierarchical system, where human rights polices are not and will never be in a higher position than the traditional objectives based on material interests such as protection of the national security or the promotion of foreign trade and investment.

Even though a realist approach places human rights in a lower position in the hierarchy of national interests, many human rights activists are pleased to observe increasing importance of human rights in many states' foreign policies. As human rights concerns in foreign policy increase, some scholars like Baehr and Castermans-Holleman prefer to define a foreign policy based on human rights. According to their definition, "foreign policy is activities by policy makers to influence another state or group of states so that they may improve the respect for human rights".[31] In addition to the responsibility of non-violation and promotion of human rights, there are several other motivations behind the inclusion of human rights into foreign relations, such as interest and influence groups.

[30] Holsti, K.J., *International Politics, a Framework for Analysis,* 7th eds, Prentice Hall International Editions, UK, 1995, p.83.
[31] Baehr, Peter R., Castermans-Holleman, Moique, *The Role of Human Rights in Foreign Policy,* 3rd ed., Palgrave Macmillan, UK, 2004, p.2.

In addition to the states and intergovernmental organizations, international non-governmental organizations, international organizations and even individuals are concerned with the human rights violations, not just with legal instruments but also with political actions. This change in international politics is contrary to the realist premise that the principle actors of the world politics are nation-states. "In order to understand the sources of this change in perception of interests, we need to look at the normative entrepreneurs both inside and outside of the state who began to push for changes in state policies."[32] Especially in the norm-creation period from the 50s to 80s, through global campaigns and efforts, a significant number of leaders were persuaded that human rights are essential for the societies. The campaigns on anti-apartheid, anti-slavery and elimination of any kind of discrimination and violence against women are examples of the change in attitude in both leaders and social groups[33]. Moreover, such campaigns, which caused shifts in policies, projected internal affairs onto the international level. They also supported the fact that [*some*] human rights could be implemented successfully at the global level.

Moreover, statesmen discovered that more international and internal legitimacy and benefits were gained when policies were implemented in line with global human rights protection mechanisms. Forsythe sees international legitimization as one part of the explanation of why human rights norms become increasingly important while recognizing other sources of legitimacy.[34] Especially in the bipolarity of the Cold War period, relatively smaller states benefited from the strategic and ideological blocks with regard to security, where the Western and

[32] Sikkink, Kathryn, *Transitional Politics, International Relations Theory, and Human Rights*, Political Science and Politics, Vol. 31, No.3, September, 1998,, p.519.
[33] Sikkink, Kathryn, *Transitional Politics, International Relations Theory, and Human Rights*, Political Science and Politics, Vol. 31, No.3, September, 1998, p.519.
[34] Forsythe, David P., *Human Rights in International Relations*, Cambridge University Press, UK, 2000, p.28-55.

Eastern blocks under the leadership of the hegemonic powers, the USA and USSR respectively, formed their policies mainly according to their security concerns. The human rights issue was again a battle zone between the two ideological blocks. Both camps supported the idea of universal human rights but fought with each other on the prioritization of these rights in every channel of the UN and through diplomacy. While the Socialist block underlined the importance of social and economic rights such as right to work and social security, Capitalist block defended civil and political rights that provide freedom of political choice to individuals.

After the end of the Cold War, the western understanding of human rights gained more influence, since they were prescribed as "rules for appropriate behavior and they help define identities of Liberal states. Human rights then become part of a yardstick used to define who is in and who is outside of the club of liberal states"[35], who were the victors in the Cold War. Since then, the importance of human rights in international relations has again begun to accelerate. An increasing number of states have started to promote human rights both at a domestic and international level with various foreign policies tools. Public support of foreign policies, formulized as a reaction or a response to other states' violation of human rights, have increased, while, at the same time, governments which have remained indifferent to the same kind of violations have lost some of their popular support.[36]

It is undeniable that governments which want to promote human rights in other states will usually face difficult choices and priorities. Tensions can be raised among states based on the dilemma of two main principles of the international system, the principle of non-intervention in internal affairs and the global

[35] Sikkink, Kathryn, *Transitional Politics, International Relations Theory, and Human Rights*, Political Science and Politics, Vol. 31, No.3, September, 1998, p.520.
[36] Baehr, Peter R., Castermans-Holleman, Moique, *The Role of Human Rights in Foreign Policy,*3rd ed., Palgrave Macmillan, UK, 2004, p.18.

responsibility of protecting and promoting human rights. As Michael Ignatieff points out, demanding respect for human rights is not without problems, and he emphasizes the conflict between furthering the human rights of individuals and maintaining the stability of the nation-state system[37]. The discussions on the influence of global responsibility in the foreign policy-making process show that the realist point of view offers no role for moral values in this process, since human rights interventions conflict with the main principles of international relations, such as the non-intervention principles in domestic affairs. As Baehr and Castermans-Holleman note, quoting from Stanley Hoffman, who clearly states the realist argument; human rights policies essentially conflict with the non-intervention principle. As a result, human rights policies will lead to a deterioration of international relations.[38]

On the other hand, idealists advocate the increase in weight of protecting human rights by the international community, composed of the states, international organizations, non-governmental organizations, world public opinion and even individual initiatives.[39] Donnelly perceives this kind of request as legitimate, mentioning that the powerful states sometimes cause the damages in the global regime of the protection of human rights. "The global human rights regime is a relatively strong promotional regime composed of widely accepted substantive norms, largely internationalized standard-setting procedures, and some general promotional activity, but very limited international implementation, which rarely goes beyond information exchange and voluntarily accepted international assistance for the national implementation of international norms. There is no international

[37] Ignatieff, Michael, *Human Rights as Politics and Idolatry,* Princeton University Press, USA, 2001, p.23.
[38] Baehr, Peter R., Castermans-Holleman, Moique, *The Role of Human Rights in Foreign Policy,*3rd ed., Palgrave Macmillan, UK, 2004, p.19.
[39] See Forsythe, David P., *Human Rights in International Relations*, Cambridge University Press, UK, 2000.

enforcement. Such normative strength and procedural weakness is not accidental; it is the result of conscious political decisions"[40]

Standing between these two arguments, the middle point must not neglect the unequal power relations within the state-system but see the possibility to use this inequality as an advantage for human rights and can ask strong states and superpowers to have active role and implement reasonable policies to improve human rights promotion in other states. In the 21st century, policy-makers have various policy instruments to realize these *reasonable* choices. Governments implement a variety of policies to influence other governments' policies. Such instruments vary within a large spectrum of level of sanctions, peaceful or not.

Between these two extremes, economic, diplomatic and military means lie. The choice of foreign policy instrument depends on many factors. Collective responses seem to be more effective and more legitimate than individual ones. Even though the UN mechanism remains unchanged, several states, especially European states, implement their own policy choices unilaterally or in the framework of other organizations. The Council of Europe, the European Union and Organization on Security and Cooperation in Europe are the major international organizations that command policy to implement, promote and protect human rights in member states and create pressure on third and domestic actors. On the other hand, European system is not as globalized as the UN and again has limited influential power on states.

The weakness of the global enforcement mechanism in the legal system of the protection of human rights is one of the reasons why human rights are being violated all over the world. These violations and the inaction of the international

[40] Donnelly, Jack, *Universal Human Rights in Theory and Practice,* Cornell University Press, Ithaca and London, 1989, p.210.

community raise fundamental questions related to the issue; whether human rights should be considered as normative or instrumental for achieving political ends.

If human rights are considered as just part of international law, but not of politics, the effect of political choices on the responses to violations cannot be fully explained. Moreover, the human rights policies that states and organizations put in practice through policy instruments will be ignored. The question of why certain states and international organizations implement better promotion and protection mechanism of human rights than even the UN system has not been addressed.

In addition to the global weaknesses in explaining the outcomes of international human rights policies, Ümit Cizre evaluates the domestic sources of difficulties of an effective human rights policy. In her article, Cizre analyzes the apolitical approach to human rights as one of the four main problems of the human rights situation in Turkey. According to her, the apolitical nature of the way that the human rights issue is dealt with weakens the bases for implementation of reforms. Also, since the political reasons for the violations cannot be examined, the reforms ignore the causes of violations, and deficits occur in the implementation of these reforms. Another problem that an apolitical perspective introduces is related to the monitoring of the rights. Accordingly, the violations are considered as breaches of law and the cases are perceived as exceptions. As a result, no effective steps can be taken on political aspect of elimination of the violations of human rights.[41]

To sum up, acknowledgement of human rights simply as a branch of law and consideration of them as an apolitical concept weakens the implementation of human rights practices and policies. The effects of this approach can be seen in both the global and domestic level. The main weakness caused by an only-law perspective is

[41] Ümit Cizre, *The Truth and Fiction About (Turkey's) Human Rights Politics,* Human Rights Review, October-December 2001, p.55-77.

seen in the evaluation of human rights violations. As is mentioned above, protection of human rights has a political dimension by its nature because it is a choice to defend and protect human rights. On the other hand, it would be unfair to say that human rights are just matter of politics. The international law that describes the rights of individuals and the states' obligations and responsibilities cannot be neglected.

2.2 HUMAN RIGHTS IN THE EU'S EXTERNAL RELATIONS

As stated in the previous section, the questions on the effectiveness of the global or European human rights mechanisms as a whole is not the concern of this study. This thesis will focus on the EU's protection and mainly promotion of the rights within the EU and in third countries, especially in candidate countries. The case study of this thesis is the evaluation of the EU's conditionality strategy towards Turkey in order to understand whether the EU perceives human rights as a moral value or as a foreign policy tool.

The supranational character of the EU is the first reason for choosing the EU as a case study. The EU has ambitious objective to create common policies for the member states superior to their domestic policies in certain areas. Although, the EU appears to be at the infant stage of establishing common policies in high politics, such as common security, foreign or defense policies, on the issue of human rights, member states shares minimum common ground, utilizing certain tools for the EU to promote respect for human rights such as human rights clause in trade agreements and membership conditionality. The second reason is the fact that human rights activism has been quite strong in Europe particularly after the WWII. Establishment

of the Council of Europe has played a significant role in this change as it brings forty-nine European states and created the European Convention on Human Rights, backed up by the European Court of Human Rights.

Although, this study focuses on EU's human rights policy it will take into consideration other actors. In addition to the EU documents, Amnesty International and Human Rights Watch documents on Turkey will also be covered in order to provide a second independent source for the human rights situation in Turkey. In other words, the EU's reports will be compared with those of Amnesty International and Human Rights. As the result of this comparison, it is expected to see whether the EU shares parallel or conflicted demands with these two international organizations towards Turkey's human rights record. Since the Amnesty International and Human Rights Watch are non-profit idealist actors, the convergence in terms of human rights criticisms can be an evidence of the argument that the EU sees human rights as moral value that needs to be protected and promoted universally.

Amnesty International describes their organization as "a worldwide movement of people who campaign for internationally recognized human rights for all."[42] The organization initiated their first campaign in 1961 and today almost 2.2 million members, supporters and subscribers work to put an end to abuses and violations of human rights in over 150 countries. Amnesty International has established global campaigns on the violation in individual cases by signing and sending letters and petitions to the responsible state officials. Also, Amnesty International creates global awareness campaigns on certain rights such as the prohibition of torture, the right to life, and women's rights. The organization cooperates with the UN and its agencies and other human rights defense

[42] http://www.amnesty.org/en/who-we-are accessed on June 2008.

organizations. Most importantly, Amnesty International prepares an annual country reports and publicizes the human rights conditions, abuses and improvements in countries.

Similar to Amnesty Internationals' self-definitions, Human Rights Watch defines itself as a group of professionals in an organization who are dedicated to protect the human rights of people all around the world. The Human Rights Watch started in 1978 with the Helsinki Accords with a mission to monitor human rights situation in Soviet bloc countries. After the 1980s, the Human Rights Watch started to operate worldwide. The researchers in the organization establish fact-finding investigations in cases of abuses and the results of these investigations are published with books and reports each year. Through publicity, the organization aims to influence states and other organizations to take measures to prevent these abuses. "This publicity helps to embarrass abusive governments in the eyes of their citizens and the world. The Human Rights Watch then meets with government officials to urge changes in policy and practice - at the United Nations, the European Union, in Washington and in capitals around the world."[43]

Since the main purpose of the study is not to assess the success or the failures of these organizations in defending human rights but to analyze their annual reports in order to gain more information on Turkey, the next chapter descriptively analyzes the independent variable of the case study, the European Union's human rights regime in both legal and political aspects. The codification and the implementation of EU human rights policies are explained.

[43] http://www.hrw.org/about/whoweare.html accessed on June2008.

CHAPTER 3: THE EUROPEAN UNION AND HUMAN RIGHTS

This chapter examines the human rights regime of the European Union, in its external relations. The chapter starts with a brief examination of the evolution and codification of these rights in the EU documents. In addition to the analysis of legal texts, decisions and opinions of the European Court of Justice (ECJ) on human rights, measures of other EU institutions, such as the European Parliament, Commission and the Council are examined. Overall this chapter aims to clarify the EU's understanding of human rights. After identifying the sources of human rights within the EU framework, the human rights policy towards third countries is analyzed.

Since the major concern of this thesis is the role of human rights in the EU's external relations with third countries, specific emphasis is given to the external human rights policies and policy instruments which can be categorized as diplomatic measures, economic measures and the application of conditionality. A detailed explanation of the European Union conditionality on human rights, especially membership conditionality on Turkey, is dealt with in the last part of this chapter. The main aim of this chapter is to provide a descriptive overview of the human rights structure of the EU in order to understand its consequences on external relations, particularly with regard to Turkey with the specific analysis of the instruments used.

3.1 DEVELOPMENT OF HUMAN RIGHTS IN THE EU

Respect, promotion and protection of human rights, democracy and the rule of law are at the core of the values and principles of the EU. Human rights provisions are embedded in the treaties, ECJ case law and specifically in the Charter of Fundamental Rights of the European Union. Moreover, respect for human rights is

one of the concerns of the external relations of the Union. "The promotion of respect for human rights in third countries was one of the first topics on EPC's agenda in the 1970s, though explicit declaration of the objective did not occur until 1986, by Statement by the Twelve on human rights"[44]. Consequently, respect for human rights occur as a prerequisite and precondition for those states which apply for membership of the EU and also for other countries which would like to conclude trade or other agreements with it.

International standards, mainly under the United Nations system and other international organizations, especially the Council of Europe, are the basis of the EU definition of human rights. EU identification of rights stems from the United Nations' International Bill of Rights which is composed of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights with its two optional protocols, and the International Covenant on Economic, Social and Cultural Rights.[45] As well as the Bill of Rights, some of the other conventions of the international human rights law, such as the Genocide Convention and Convention against Torture, are ratified by all members of the EU. The EU's human rights policy focuses on civil, political, economic, social and cultural rights.

Moreover, members of the EU share and have a universalist approach to fundamental rights. In the EU documents, such as opinion papers, human rights appear as universal and indivisible. The understanding of universality and indivisibility of human rights provides legitimacy to the EU's "foreign policy" objective, in other words, objective in the EU's external relations. Therefore, in promotion of human rights, it becomes natural for the EU to have an active role and

[44] Smith, Karen E., *European Union Foreign Policy in a Changing World,* Polity Pres, UK, 2003, p.97 and p.231.
[45] Smith, Karen E., *European Union Foreign Policy in a Changing World,* Polity Pres, UK, 2003, p.98.

participation in promoting human rights in its relations with third countries as well as within its own borders. At the same time, the EU takes special care not to intervene in the national foreign policy making process of member states. At the end of the chapter, while drawing the concluding remarks, the impact of member states' foreign policy practices related to the human rights concerns on the EU's human rights policies is analyzed.

Analyzing the development of the human rights policies of the EU is a complicated task since it is an ongoing process. Moreover, there are diverse actors who make the decisions and policies of the subject. The protection and promotion of human rights occur at the EU and in its external relations by the European Court of Justice, the European Commission, the Parliament and the Council. In addition to that, there are domestic practices of the member states, with regard to their responsibilities to other international organizations such as the Council of Europe's the European Convention on the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). All the members of the EU have ratified the European Convention and its protocols and are therefore under the jurisdiction of the Court of Human Rights.

In addition to the variety of actors, the EU itself has been transformed into a different actor over time. In 1950s the main concern of the policy-makers was to strengthen Europe through economic integration. There wasn't any reference to norms such as human rights in the founding treaties of the Community. "Neither the EC Treaty nor the ECSC or EAEC Treaties makes any specific reference to fundamental rights other than by resolving 'to preserve and strengthen peace and

liberty' in the last recital in the preamble."[46] This does not mean, however, that the EU did not give any importance to the subject. As is explained in the introductory chapter, the philosophical and political roots of human rights lie in Europe. For this reason, it has been natural for the European countries, which share similar political culture, to have no need for more extensive arrangements to protect human rights for almost 40 years, until the 1993 Treaty of the European Union. Moreover, before the codification of the human rights in the legal texts, especially ECJ case law, the activities and decisions of other institutions of the Community have aimed to strengthen the protection of human rights. In the next section, the role of ECJ and the effect of its cases on the human rights regime of the EU are explained.

3.1.1 THE EUROPEAN COURT OF JUSTICE CASE LAW AND HUMAN RIGHTS

The ECJ was established in 1952 and its main tasks are to ensure that the provisions of the founding treaties are implemented by the member states and the institutions of the Community. However, in due course, the ECJ was asked to reconcile the rights of the member states' nationals and the practices of the European community law (EC law[47]). The rationale behind the ECJ decisions was to protect the individual rights as much as possible through the implementation of EU law. The protection of human rights under the ECJ case law developed through this process, with each case related to conflict between the implementation of community rules and human rights law. The ECJ used primary sources while it was interpreting the EC law on human rights cases. These sources were the basics of the human rights

[46] Opinion 2/94 of the European Court of Justice , 28 March 1996, http://eu.pravo.hr/fileadmin/Europsko/dokumenti/MES/Opinion_2_1994.pdf accessed on January 2008.

[47] With the Maastricht Treaty, EC law will be stated as EU law because the European Community named as a European Union since then.

protection regime of Europe, the common constitutional traditions of the member states and the European Convention on Human Rights. In its Opinion 2/94, the ECJ stated its sources on human rights law and gave reference to Community documents and the Council of Europe documents on Human Rights. "The Court of Justice has upheld the protection of fundamental rights by way of general principles of Community law, referring to common constitutional traditions and to international instruments, in particular the Convention. Drawing on that case-law, the Single European Act refers in its preamble to respect for the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention and in the European Social Charter."[48]

In addition to the two fundamental rights, free movement of workers and non-discrimination, protected by the Community treaties and legislations, the ECJ adjudicated several appealing cases by giving a reference to the European Convention on Human Rights and the Court of Human Rights cases. For example, in the Kirk Kent vs. UK decision, the ECJ considered Article 7 of the European Convention which is named as 'no punishment without law' and regulates the non-retroactivity principle of laws.[49] As a result, several individual rights of the European Convention on human rights were brought under the jurisdiction of ECJ through case law. In her article, Türkmen provides a small list of these kind of rights; right to liberty and security (Article 5), right to fair trial (Article 6), right to respect for family and private life (Article 8), freedom of thought, conscience and religion (Article 9), freedom of expression (Article 10), right to effective remedy (Article 13)

[48] Opinion 2/94 of the European Court of Justice , 28 March 1996, http://eu.pravo.hr/fileadmin/Europsko/dokumenti/MES/Opinion_2_1994.pdf accessed on January 2008.

[49] For more examples; Türkmen, Füsün, "*Avrupa Birliği ve İnsan Hakları* (The European Union and Human Rights)" in Beril Dedeoğlu (eds), *Dünden Bugüne Avrupa Birliği*, Boyut Kitapları, İstanbul, 2003, p.136.

and protection of property (First Protocol Article 1).[50] Besides the overlapping concern of the ECJ and the European Convention on human rights, the convergence and conflict on some cases between the common constitutional traditions of the member states and the EC law also played a role in the development of the protection of human rights within the community. The principle of supremacy of EC law over domestic law had a direct effect on the ECJ decisions. The supremacy brought the responsibility to protect and provide human rights of member states' citizens.

Human rights are one of the major principles of the Constitutions of EU member states especially French and German constitutions. Moreover, these countries have long-standing traditions and protection mechanisms for their nationals' rights, similar to that of the United Kingdom, which codified the Magna Carta. The Magna Carta is one of the earliest modern documents on the protection of the rights of citizens against the king. Therefore, the absence of a human rights provision in EC legal texts created a gap with the supremacy of EC law over domestic laws and traditions. The Stauder case of 1969 is an important example of the impact of the human rights within the EC law and the principle of supremacy. Stauder claimed that the German Constitution was protecting his fundamental rights more than EC law, since he did not need to prove his identity to have a reduction on butter price entitled by the European initiative.[51] ECJ stated that "fundamental rights" [are] enshrined in the general principles of Community law and protected by the Court" and there is no dispute between the German Constitution and the related provision. Thus, ECJ brought the concept of fundamental rights under Community Law but without any specification on the rights. In 1970, with the Internationale

[50] Türkmen, Füsün, "*Avrupa Birliği ve İnsan Hakları* (The European Union and Human Rights)" in Beril Dedeoğlu (eds), *Dünden Bugüne Avrupa Birliği*, Boyut Kitapları, İstanbul, 2003, p.137.
[51] Smith, Rhona K. M., *Textbook on International Human Rights*, 2nd edition, Oxford University Press, New York, 2005, p.109.

Handelsgesellschaft case, the ECJ went one step further and stated that, on the protection of fundamental rights, it rejected the German Constitutional Court's reference which states that community law was contrary to the human rights provisions of the German constitution. In the explanation, the ECJ once again underlined the common constitutional traditions of the member states as sources of EC law, "the Court is bound to draw inspiration from constitutional traditions common to the Member States, and it cannot therefore uphold measures which are incompatible with fundamental rights recognized and protected by the Constitutions of those States".[52] Moreover, once again the ECJ stated that it could also use international human rights treaties, which member states ratified, as source for the decisions.

Overall, it can be argued that the initial point of human rights within the framework of the EU starts with the codification of the free movement and non-discrimination principle in the founding treaties. It continues through the adoption of international law documents on human rights in EC case law, especially the European Convention, and the recognition of the customary features of the common constitutional principles of the member states. And today, even after the beginning of the extensive codification process of the human rights with the Maastricht Treaty, ECJ and its case law still have a major role in the protection of human rights within the EU. In the following sections, the impact of other EU institutions on community human rights discourse is analyzed after the developments in legal texts are explained.

[52] Smith, Rhona K. M., *Textbook on International Human Rights*, 2nd edition, Oxford University Press, New York, 2005, p.109.

3.1.2 HUMAN RIGHTS IN LEGAL TEXTS OF THE EU

Debates regarding the level of political integration of the Community, enlargement and the European Identity were intensified following the fall of Berlin Wall. End of Cold War also played a crucial role on the question of human rights in Community politics. Even though, there was a practical approach on the protection mechanism in the Community where the case law of the ECJ gave reference to the European Convention on human rights and the common constitutional traditions of the member states, especially with the possible membership of the ex-communist Central and Eastern European countries, there was a need for the codification of the human rights. The only document that recognizes the Community's concern on human rights during the Cold War is the Single European Act (SEA).

3.1.2.1 SINGLE EUROPEAN ACT

SEA, which came into force in 1987, is the first substantial document that revises the founding treaties. Although it has no specific human rights articles, in its preamble SEA expresses the common determination on the promotion of the democracies based on the protection of fundamental rights, declaring that member states are "determined to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the European Convention and the European Social Charter, notably freedom, equality and social justice."[53] Therefore, the first recognition of the EC case law on legal text of the Community was made with SEA.

[53] Single European Act, http://www.bmdf.co.uk/singleuropeanact.pdf accessed on January 2008.

3.1.2.2 MAASTRICHT TREATY

After the initial step of SEA, the major leap forward on Community's human rights codification occurred with the Treaty on European Union, commonly known as the Maastricht Treaty, which came into force on January 1st, 1993. With article F, the treaty codifies the sources of the human rights protection mechanism of the ECJ and acknowledges the member states respect for fundamental rights. According to this article:

> "1. The Union shall respect the national identities of its Member States, whose systems of government are founded on the principles of democracy.
> 2. 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.
> 3. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies."[54]

Moreover, Article J (1) states the development and the consolidation of democracy, rule of law and the respect for human rights and fundamental freedoms as one of the objectives of common foreign and security policies. Thus, the protection of human rights in the relations with other countries finds a place in legal text of the EU. Although, Maastricht Treaty recognized the sources of EU law on human rights and set 'promoting and protecting the human rights and fundamental freedoms' as an objective for external relations, it did not define these rights. There was no categorization of rights in a way that clearly showed their scope, status of validity and the competence of the EU over them.

[54] Treaty on European Union, http://www.eurotreaties.com/maastrichtec.pdf accessed on January 2008.

3.1.2.3 AMSTERDAM TREATY

The Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities of October 1997 is a landmark in the protection and promotion of the human rights of the EU because of two major amendments. Firstly, Articles 6 and 7 are the revised version of Maastricht Treaty Article F with a significant addition that provides specific authority and competence to the Council to implement sanctions on the member states who contravene in order to protect fundamental rights and freedoms.[55] According to Article 7, these sanctions

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[55] Article 6
1.The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.
2.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.
3.The Union shall respect the national identities of its Member States.
4.The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.
Article 7
1.On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of principles mentioned in Article 6(1), and address appropriate recommendations to that State. Before making such a determination, the Council shall hear the Member State in question and, acting in accordance with the same procedure, may call on independent persons to submit within a reasonable time limit a report on the situation in the Member State in question.
The Council shall regularly verify that the grounds on which such a determination was made continue to apply.
2.The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1), after inviting the government of the Member State in question to submit its observations.
3.Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.
The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.
4.The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.
5. For the purposes of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 2. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2) of the Treaty establishing the European Community. This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 3.

can include the suspension some rights such as voting right in the Council. Article 7 also explains the procedure of determination on the breach of human rights and procedure for implementing the sanctions.

Secondly, Article 49 states the conditions for states applying for the EU membership. It gives a clear definition that any European state which respects the founding principles of the EU mention in article 6(1) as 'principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States' are eligible for the membership of the EU.

The Amsterdam Treaty extends the scope of the human rights with Article 6(2) and notifies the European Convention as the reference for the list of rights that fall under competence of the EU. However, it did not make the Union party to the European Convention and put it under the jurisdiction of the Court of Human Rights. Although, it can be perceived as a practical solution to the absence of the specific codification of rights within the Union's framework, in addition to some member states, the ECJ also opposed and rejected the joining of the EU to the European Convention on human rights with its Opinion 2/94. Consequently, at the European Council meeting in Cologne in June 1999, it was decided that the existing rights protected with the EU case law, general principles of law and the common constitutional traditions of the member states should be consolidated in a Charter which can be applied at the EU level.

In the next section, the consequence of Cologne Summit, the Charter on the Fundamental Rights of the European Union is described, and, its effect on the EU's

6. For the purposes of paragraphs 1 and 2, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its Members.

human rights regime will be examined in order to see the rights that the EU wants to codified in its system.

3.1.2.4 THE CHARTER ON THE FUNDAMENTAL RIGHTS OF THE EU

The decision of European Council in Cologne Summit, 1999, stated that "protection of fundamental rights is a founding principle of the Union and an indispensable prerequisite for her legitimacy. The obligation of the Union to respect fundamental rights has been confirmed and defined by the jurisprudence of the European Court of Justice. There appears to be a need, at the present stage of the Union's development, to establish a Charter of fundamental rights in order to make their overriding importance and relevance more visible to the Union's citizens."[56] Moreover, the Council mentioned the belief that the new charter must be composed of fundamental rights and freedoms, stated in the European Convention on human rights and in constitutional traditions of member states, and also the EU's documents. The charter-making process took one and a half years and included the state representatives, representative of the Commission, members of the European and the national parliaments. The Charter of Fundamental Rights was adopted at the Nice Summit on December 7, 2000.

The Charter includes the rights guaranteed in the European Convention, European Social Charter and some of the other international documents, as well as the sources of EC law defined by Opinion 2/94. "For the first time a single document brings together all of the rights previously to be found in a variety of legislative instruments, such as national laws and international conventions from the Council of

[56] Cologne European Council Conclusions of the Presidency, Annex IV, 3-4 June 1999, http://www.europarl.europa.eu/summits/kol2_en.htm#an4 accessed on April 2008.

Europe, the United Nations and the International Labor Organization."[57] The Charter of Fundamental Rights is composed of fifty four articles grouped in seven different chapters. These are dignity, freedoms, equality, solidarity, citizen's rights, justice and general provisons. (Appendix A)

Although the Charter was prepared to provide a legal basis for the human rights codification, its legal status is controversial. The adoption of the Charter is not binding. At the December 2001 Laeken Summit of the European Council, it was decided to integrate the Charter into the Draft Constitution of the EU. Through the ratification of the Draft Constitution, the Charter was expected to become binding. However, France and Netherlands rejected the Constitution in national referendums, therefore, the European Council of June 2007 decided to call an Intergovernmental Conference to finalize and adopt, not a constitutional treaty, but a 'reform treaty', known as Lisbon Treaty, to amend the existing treaties already in force. According to the IGC mandate, the text of the Charter will not be included in the new treaty, but will be legally binding in all Member States except the UK.[58] In addition, the ECJ sites from the Charter in its opinions and decisions, despite the Charter's non-binding status. In other words, the ECJ brings the Charter into its case law by giving references to it, thus acknowledging it as one of the sources of EU Law.

Therefore, even though the Charter is not legally adopted document, it is still the reference or the source for human rights practices of the EU. It is clear that the initial objective of the Charter is to provide practical protection for the EU citizens and enable them to understand their rights. Furthermore, it gives a simple definition of Article 6 Paragraph 2 of the Maastricht Treaty. In other words, it makes the EU's understanding of rights and freedoms visible, thus, national authorities have no

[57] http://europa.eu/scadplus/leg/en/lvb/l33501.htm accessed on January 2008.
[58] http://europa.eu/scadplus/leg/en/lvb/l33501.htm accessed on January 2008.

excuses such as “violation is caused by the unclear scope of the rights”. More importantly, it has an implication for the relations with third countries. Once the standards for the EU’s rights are set, the scope of the rights is defined more precisely. As a result, the human rights promotion demands of the EU can be explained clearly to third countries that face human rights clauses or conditionality in their relations with the EU.

Even though the legal texts are primary sources of human rights protection system of the EU, the role of the EU institutions also must be examined in order to understand their effect on the EU’s relations with third countries. Especially with the end of the Cold War, there has been increasing concern of the institutions on protection and promotion of human rights both within and beyond the borders of the EU. In the following section, community institutions are analyzed and their role as the driving force behind the evolution of human rights standards and policies is covered.

3.1.3 INITIATIVES OF EUROPEAN PARLIAMENT

Even though, the codification of the human rights provisions in EU treaties accelerated in 1990’s, the institutions of the EU took several initiatives in 1970s, drew conclusions and declarations, either individually or jointly, in order to strengthen the protection and promotion of human rights both within the Community and in its external relations throughout 1980s and 1990s. To include human rights in the activities and policies of the EU, many references were made to them in political documents. A significant summary of the initiatives of the EU institutions were recognized in the ECJ’s Opinion 2/94, in addition to the codification in the Maastricht Treaty.

> "Reference to respect for fundamental rights has also been made in political declarations by the Member States and Community institutions. These include the Joint Declaration by the European Parliament, the Council and the Commission on fundamental rights of 5 April 1977 (*Treaty Series* 1995, p. 877); the Joint Declaration by the European Parliament, the Council, the representatives of the Member States, meeting within the Council, and the Commission against racism and xenophobia of 11 June 1986 (*Treaty Series* 1995, p. 889); the Resolution of the Council and the representatives of the governments of the Member States, meeting within the Council, of 29 May 1990 on the fight against racism and xenophobia (OJ 1990 C 157, p. 1), the Resolution of the Council and of the Member States, meeting in the Council, on human rights, democracy and development of 28 November 1991 (*Bulletin of the European Communities*, No 11/1991, p. 130, point 2.3.1) and the Conclusions on the implementation of that resolution adopted by the Council and the Member States on 18 November 1992. Declarations by various European Councils may also be mentioned, such as the Declaration by the Heads of State or Government of the Member States of the EC on the European identity of 14 December 1973 (*Bulletin of the European Communities*, No 12/1973, point 2501), the Declaration by the European Council on democracy of 8 April 1978, the Declaration by the European Council on the international role of the Community of 2 and 3 December 1988 (*Bulletin of the European Communities*, No 12/1988, point 1.1.10), the Declaration by the European Council on human rights of 29 June 1991 (*Bulletin of the European Communities*, No 6/1991, Annex V) and the Statement by the European Union on human rights of 11 December 1993 on the occasion of the 45th anniversary of the Universal Declaration of Human Rights (*Bulletin of the European Communities*, No 12/1993, point 1.4.12)"[59]

These declarations pointed the human rights promotion as an issue of foreign policy cooperation, while they also contribute to the development of the domestic human rights policies. Although, the joint actions of the three institutions can be perceived as stronger influences on the EU's human rights policy, detailed information on the role of European Parliament is also necessary.

[59] Opinion 2/94 of the European Court of Justice , 28 March 1996, http://eu.pravo.hr/fileadmin/Europsko/dokumenti/MES/Opinion_2_1994.pdf accessed on February 2008.

As part of its political role, European Parliament (EP) defines the protection of human rights in the world as its top priority on its.[60] Since the EP operates through the Committees, the standing Committee on Foreign Affairs directly addresses the subject, but it is also taken up through subcommittees on Human Rights and Security and Defense. Other committees also working on the human rights are Legal Affairs, Civil Liberties, Justice and Home Affairs, Women's Rights and Gender Equality and Petitions.

Since 1983, EP has prepared two annual reports, first, on the human rights situation in countries outside of the EU, and second, that addresses issues on the respect for human rights in the EU. Moreover, in the coordination with the Council, EP can take active role on the creation of pressure on the countries by suspending planned agreements or relations on the basis of human rights records. Furthermore, it puts pressure regarding the allocation of the funds in the EU's initiatives of democracy and human rights promotion.

> "The Parliament has also continuously pressed for EC funds to be devoted to promoting human rights (and democracy) in third countries. In 1994, under EP pressure, the various funds that provided small amounts of such political aid were finally consolidated under one budget heading, the European Initiative for Democracy and Human Rights (EIDHR). The EP has since pressed for increased EIDHR funding and has even used its budgetary powers to restore funding that the Commission had proposed cutting. The EP has thus clearly been acting as a 'norm entrepreneur', 'an individual or organization that sets out to change the behavior of others."[61]

And finally, in its monthly sessions, the EP provides an international forum in which human rights issues can be debated, and can produce resolutions condemning

[60] http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=47&pageRank=4&language=EN accessed on February 2008.

[61] Smith, Karen E. *The European Parliament and Human Rights: Norms Entrepreneur or ineffective talking shop?*, Dossier El Parlamento Europeo en la Política Exterior no 11 / 2004, http://selene.uab.es/_cs_iuee/catala/Obs/parlament_europeu/PE_Analisis/PE200411.pdf accessed on February 2008.

governments that breach human rights. As a result, EP can increase the level of awareness of the EU and the citizens on the breaches of human rights in certain countries. It plays active role in the relations with third countries by pointing out human rights conditions in these countries and it also influences the decision making of the other institutions of the EU on issues such as funding, budgeting and human rights clauses. Therefore, it is true to say that the EP's task of monitoring human rights breaches in the world has an effect on the policies of the EU, especially external policies.

In the next section, the EU's external human rights policy will be analyzed with the information given above on the sources of the EU human rights law and politics.

3.2 HUMAN RIGHTS AS THE EU'S "FOREIGN POLICY" OBJECTIVE

The processes of globalization and democratization, which accelerated after the end of the Cold War, in addition to the ethnic conflicts that occurred in Europe such as Bosnia and Kosovo, were the new factors in international relations that forced the EU to take measures to ensure security in Europe. The EU aims to reach its security goals through the promotion of democracy and the human rights, since it has no common foreign policy that satisfies the interests of the member states. As a global actor without common foreign, security and defense policies backed up with military capacity and supranational structure, the EU prefers to use tools such as conditionality for its security. The rationale behind this strategy is the belief that democracies sharing a common understanding on the protection of the human rights would reduce tensions which stem from violation of human rights by governments.

Therefore, the place of human rights promotion on the external relations of the EU continues to grow as it did through the 1970s under the framework of European Political Cooperation (EPC) even though we still can not argue that there is a common human rights policy of the EU. Also it will be useful to remember that member states agree to promote and protect human rights through the EU's capabilities but they neither agree on how nor to whom the EU will apply these policies.

In the following section, the existing external human rights policy of the EU is examined. Also, an attempt will be made to analyze the impact of the internal codifications and regulations on the external relations of the EU. In following sections, the instruments used in the EU's human rights policies will be covered.

3.2.1 EVOLUTION OF EXTERNAL HUMAN RIGHTS POLICY OF THE EU[62]

Although there aren't any reference to human rights in documents that establishes the EPC, the member states concerns and willingness for the Conference on Security and Cooperation in Europe (CSCE) played a significant role on the evolution of an external human rights policy of the EU. The inconsistencies both in scope and implementation of human rights in the divided Europe of the Cold War, where the individual states had their own vital interests to guard through their foreign policies brought Eastern and Western blocks to the table of CSCE. The CSCE concluded with the 1975 Helsinki Act and is transformed into a permanent organization under the name of Organization for Security and Cooperation in Europe

[62] For more information on the historical evolution of EU external human rights policies see Williams, Andrew, *EU Human Rights Policies A Study in Irony,* Oxford University Pres, New York, 2005, Smith, Karen E., *European Union Foreign Policy in a Changing World,* Polity Pres, UK, 2003, especially "Chapter 5 Human Rights", Usul, Ali Resul, *Drawing a General Framework for the EU's Human Rights Policies towards Third Countries*, Review of International Affairs, Vol.1, No.3, Spring 2002, pp.49-66, Williams, Andrew, *Mapping Human Rights, Reading the European Union*, European Law Journal, Vol.9, No.5, December 2003, pp.659-676.

(OSCE). Helsinki Act can be considered as success of the West since it contains respect for human rights as one of the ten principles of the relations between the East and West. However, conflicted interests between the member states weakened the possible deepening in the EPC on human rights protection. Even though, each member acknowledged the importance of the respect for human rights and agreed on the promotion of human rights, there were disagreements on the kind of measures to be used in promoting human rights in third countries.

Disagreement on the measures to be used continues to this day. Despite the end of Cold War led to the re-unification of Europe through enlargement, there are differences among the EU members in terms of respect for human rights. North European countries such as Scandinavians and the Netherlands have more precise guidelines and stronger concerns on the role of human right in the foreign policy making process whereas the Southern members of the EU are less enthusiastic on the threats to human rights outside the EU.[63]

During 1970s and early 1980s, with the absence of the binding provisions of human rights in Community treaties, member states followed more independent and softer policies on human rights, preventing the Community from creating common, concrete external policies on the subject. Moreover, both the members and the Community placed more importance on maintaining trade ties with other countries than human rights records of those countries. As a result, unlike the contemporary arrangements of Cotonou Agreement, neither of the first two Lomé conventions referred to human rights. In the earlier agreements, the Community saw using trade agreements or aids to punish human rights abuses as unacceptable. However, because of the systematic violations occurring in Uganda, the third Lomé convention

[63] Smith, Karen E., *European Union Foreign Policy in a Changing World,* Polity Pres, UK, 2003, p.103.

'contained a joint declaration reiterating that human dignity is an essential objective of development. Nevertheless, beyond cases of atrocities, human rights considerations were largely excluded from relations with developing countries'.[64]

Yet the situation changed in 1980s especially with the consistent approach of the EP which created an effective pressure on the Commission. As stated before, in 1983, EP started to prepare annual reports on the human rights situations in countries and their relations with the community. In the 1983/1984 report, EP requested that Commission consider the possibility of linking EC aids and the minimum conditions of human rights protection. Moreover, the EP used its assent power provided by SEA, in order to press for human rights considerations and refuse to assent the financial protocols with Turkey and Israel in 1987 and 1988 respectively because of the human rights situation of these countries.[65] Incidents of discrimination having global impact such as the cases of in South Africa and Tianenmen Square in China increased the Community's level of commitment on human rights with the implementation of arms embargo and sanctions.

As a result of the EP pressure and the increased public awareness on human rights, the Foreign Ministers of the Community announced Declaration on Human Rights on July 21, 1986, which stated that "respecting, promoting and safeguarding human rights is an essential part of international relations and one of the cornerstones of European cooperation as well as of relations between the Community and its member States and other countries."[66]

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[64] Smith, Karen E., *European Union Foreign Policy in a Changing World,* Polity Pres, UK, 2003, p.104.
[65] Smith, Karen E., *European Union Foreign Policy in a Changing World,* Polity Pres, UK, 2003, p.104.
[66] http://www2.ohchr.org/english/law/compilation_democracy/councilres.htm accessed on February 2008.

A more significant motivation to strengthen the human rights in external policy of the Community emerged with the collapse of communist block in Europe. The desire of the Central and Eastern European countries (CEECs) to join the free Europe forced the EU to employ other instruments in external relations. While the CEECs intended to join the Europe through accession to the Community, the Community chose the implement political conditionality as the measure for promoting democracy and human rights in CEECs.

At the beginning of 1990s, member states also began to introduce political conditionality into their development polices as the Netherlands did in 1979. The disappearance of the need to support states that violated human rights in the containment policy of the Soviet Block gave more flexibility to the member states in their foreign relations and increased the sphere of human rights considerations on the foreign policy-making process. Consequently, the wording on the human rights discourse of the Community changed and in June 1991, the Conclusion of the Luxembourg European Council, declaration on human rights affirmed that the "European Community and its member States seek universal respect for human rights."[67] In November 1991, in the Resolution of the Council and of the member states Meeting in the Council on human rights, democracy and development, it was agreed that the considerations on human rights and democracy should be important elements in the relations with the third countries, therefore the Community could take positive and/or negative measures in order to prevent and stop the violations of human rights.[68] With the Maastricht Treaty, human rights considerations in the EU

[67] Conclusions Luxembourg European Council, Declaration on Human Rights, 28-29 June 1991, http://www.centrodirittiumani.unipd.it/a_temi/normedu/003_ue/1_2/1_2_3_en.pdf accessed on February 2008.
[68] Resolution of the Council and of the member states meeting in the council on human rights, democracy and development, 28 November 1991,

were codified as previously explained. After the long and still incomplete process of inclusion of human rights framework within the EU law and treaties, in the Council conclusions adopted on December 10, 2007, once again the Council reaffirmed the importance of the promotion and protection of human rights throughout the world as a cornerstone of the EU's external action.[69]

In other words, from 1970s until the present, the role of human rights in the EU's relations with third countries increased because of legal changes backed by the growing concerns of member states and institutional changes of the EU. Even though the evaluation of the successes and the failures of the attempts to create common security, defense and external policy is not the topic of this thesis, and yet there is no common external human rights policy of the EU, by examining the changes occurred in the human rights understanding and protection system of the Union, it can be said that the EU gives certain role to human rights in its external relations both with candidates and third countries. In the next section, the EU instruments of external relations on the promotion human rights will be described. Since the main concern of this thesis is the conditionality tool, the following section will be descriptive and aims to be useful in examining the range of the human rights instruments of the EU in the external relations.

3.2.2 HUMAN RIGHTS INSTRUMENTS OF THE EU IN RELATIONS WITH THIRD COUNTRIES

The EU pursues its human rights objective in external relations through several instruments that can be grouped as the diplomatic measures, economic

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http://ec.europa.eu/external_relations/human_rights/doc/cr28_11_91_en.htm accessed on February 2008.

[69] Bulletin EU 12-2007,http://europa.eu/bulletin/en/200712/p105002.htm#anch0024 , accessed on February 2008.

measures and the application of the conditionality. The Communication from the Commission to the Council and the European Parliament on "the European Union's Role in Promoting Human Rights and Democratization in Third Countries" and the Commission's website[70] give enough information about the Union's mechanisms to promote human rights in external relations. The key instruments are listed as common strategies, common positions, joint actions, demarches and declarations, conflict prevention and crisis management operations, dialogue and consultations with third countries, human rights clause in agreements with third countries, guidelines on EU policy towards third countries on specific human rights themes EU actions at international and regional human rights fora, the EU election observation and project funding. (Appendix B)

The EU lists wide-range tools to use in promoting human rights and democratization objectives in external relations where the some of these tools are instruments of traditional diplomacy and foreign policy, such as declarations, resolutions and interventions within the United Nations framework. In addition, the EU promotes human rights and democratization through various co-operation and assistance programs that it implements with third countries and through the political dialogues conducted on an economic basis. In doing so it uses a specific legal basis, a "human rights clause"[71]; EU Conditionality in other words, is included in almost all

[70] http://ec.europa.eu/comm/external_relations/human_rights/intro/index.htm#tools accessed on January 2008.

[71] Since 1995, all association agreements as well as partnership and cooperation agreements with third countries contain a clause stipulating that human rights are an essential element in the relations between the parties. There are now more than 120 such agreements. In the event that those principles are breached, the EU may take certain measures, ranging from a refusal to grant visas to senior government members to the freezing of assets held in EU countries. The human rights clause also offers the ultimate possibility of suspending the agreement. However, the principal rationale for the clause is to form a positive basis for advancing human rights in third countries through dialogue and persuasion. In other words, the preference is to use positive action rather than penalties.
The pivotal role of human rights is particularly evident in the Cotonou Agreement - the trade and aid pact which links the Union with 78 developing countries in Africa, the Caribbean and Pacific (the ACP group). If any of these countries fail to respect human rights, trade concessions can be suspended

of the EU agreements with third countries, as a vital, necessary and essential part of both treaties and the relations. Even though other economic and diplomatic measures are important for the implementation of the EU's human rights policies, the next part focuses solely on the EU's Conditionality on human rights. On the other hand, conditionality clauses in trade or other economic agreements will not be covered, since the main purpose of this study is to observe the effect of the membership conditionality of the Union on promotion and protection of human rights in candidate countries, specifically, Turkey.

3.2.3 THE EU'S HUMAN RIGHTS CONDITIONALITY: A UNIVERSAL VALUE OR AN INSRTUMENT?

This section examines the membership conditionality of the EU on human rights, firstly by defining the concept of conditionality and its types in general. Secondly, the EU's membership conditionality, the Copenhagen Criteria, especially the human rights criteria for membership, will be analyzed in a broader perspective since the aim of the next chapter is to understand the role of human rights conditionality in the EU's policy towards Turkey.

3.2.3.1 THE CONCEPT OF CONDITIONALITY

The term 'condition' is defined as "something which must happen, be true, or be done first before it is possible for something else to happen" and also defines it in legal terms as "part of a contract or a law which must be agreed to or obeyed in order for something else to be allowed"[72]. Therefore, in the simplest wording, conditionality can be described as 'providing X for someone, if that someone does

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and aid programs reduced or curtailed. The Union believes that poverty reduction, the main objective of its overseas development policy, will only be achieved in a democratic structure. (http://ec.europa.eu/comm/external_relations/human_rights/intro/index.htm#tools)

[72] Collins Cobuild English Language Dictionary

Y'. In the broadest political sense, conditionality can be defined as an instrument which requires "the linking, by a state or international organization, of benefits and desired by another state to the fulfillment of certain conditions"[73].

As a result of its nature, conditionality includes two or more actors that have unequal power of influence in their relations; the actor, the donor, provides "the thing" when the other actor, the recipient, fulfills "the condition". In this asymmetric distribution of power, it is a must that the donor needs to be in interaction with the recipient when the recipient has made some sort of a commitment to fulfill the conditions.

From a historical perspective, the categorization of the conditionality was based on the content of what donor demanded. Before the 1990s, the major actors that used conditionality were the financial institutions, especially the IMF and the World Bank. Therefore, the first generation conditionality, also known as the 'economic conditionality' was the instrument in the economic relations between the donor and the recipient. However, after the collapse of communism and the Soviet Union, second generation conditionality, the political conditionality, was used because of the rise of political concerns, such as democracy and human rights. However, particularly with the integration process of CEECs to Europe, where both economic and political conditionalities were used simultaneously, the line between the first and second generations of conditionality disappeared.

Even though some scholars, such as Angel Angelov, name this mixed conditionality as the third generation conditionality[74], the classification of

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[73] Smith, Karen E., "*The Evolution and Application of EU Membership Conditionality*" in Marise Cremona (ed), *The Enlargement of the European Union,* Oxford University Press, UK, 2003, p.108.
[74] Angelov, Angel, *Conditionality and Enlargement: The case of NATO and EU*. Paper presented at the annual meeting of the Cross-Regional Conference for AFP Fellows in Political Science/International Relations/History, Sinaia, Romania, Feb 23, 2006. http://www.allacademic.com/meta/p124230_index.html accessed on February 2008.

conditionality according to the time required for the recipient to fulfill the conditions is more acceptable. In this sense, there are two types of conditionality, *ex post* and *ex ante.*[75]

Ex post conditionality refers to a situation where the conditions appear after the parties have concluded the treaty or agreement. In other words, the recipient must fulfill the conditions determined by the treaty or the agreement after the parties ratify or conclude it. A typical example for ex post conditionality in the EU framework is the 'human rights clause'. The EU has used these instruments in trade and cooperation agreements such as the Lomé and Cotonou Agreement since 1995. The clause provides a legal base to the suspension of the agreements if the state which is a party to the agreement systematically violates the human rights.[76] Since *ex post* conditionality involves the reduction or suspension of the benefits that the donors provide for the recipients when the recipients are unable to comply with the stated conditions, it is known as negative conditionality[77].

On the other hand, *ex ante* conditionality refers to a situation where the certain conditions or criteria are set and required to be fulfilled before the treaty or agreement is concluded by the parties. Understanding *ex ante* conditionality is significant because the EU's membership conditionality on human rights belongs to this category of conditionality, where the candidate state needs to fulfill the Copenhagen criteria for the accession to the EU. *Ex ante* conditionality can be characterized as positive conditionality because it involves the donor's promise of

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[75] Fierro, Elena, *The EU's Approach to Human Rights Conditionality in Practice,* Martinus Nijhoff, The Hague, 2003, p,98.

[76] Zalewski, Piotr, *Sticks, Carrots and Great Expectations: Human Rights Conditionality and Turkey's path towards membership of the European Union*, Center for International Relations Reports and Analysis, 16/04/A, p.3, http://www.csm.org.pl/images/rte/File/Raporty%20i%20publikacje/Raporty%20i%20analizy/2004/rap_i_an_1604a.pdf accessed on September 2007.

[77] Fierro, Elena, *The EU's Approach to Human Rights Conditionality in Practice,* Martinus Nijhoff, The Hague, 2003*,* p.100.

benefits which will be distributed when the recipient country meets the required conditions. In addition, a certain willingness of the recipient country resulting from a cost and benefit analysis of the conditions is required. Both parties must perceive the relationship, created on the base of ex ante conditionality, as a mutually advantageous agreement. The result of the cost and benefit calculation must be aligned with the interests of both actors. Therefore, in the case of recipients, the weight of the benefits must be seen as greater than the weight of the domestic, economic and political costs of implementing the required conditions,[78] otherwise, there is no ground to establish the relations between donor and recipient. Moreover, *ex ante* conditionality is less risky and costly for the donor country because the actor can withhold the benefits if or when the recipient country fails to fulfill the criteria of the conditionality. For donors, there is no need to take negative action, such as military enforcement or economic sanctions, or positive measures such as unconditional aid.[79] On the other hand, since the conditionality is not a one actor process, it can exert some pressure on the donor to encourage the recipient state to implement reforms and maintain its commitment to the conditions.

3.2.3.2 THE EU'S EX ANTE CONDITIONALITY: THE COPENHAGEN CRITERIA

Ex ante conditionality on human rights for the accession into the EU is openly expressed in the Conclusions of the Copenhagen European Council of June 1993; "membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection

[78] Schimmelfenning, Frank, Engert, Stefan, Knobel, Heiko, *Costs, Commitment and Complience: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey*, Journal of Common Market Studies (JCMS), Vol.41, No.3, 2003, pp.495-518.
[79] Schimmelfenning, Frank, Engert, Stefan, Knobel, Heiko, "Costs, Commitment and Complience: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey"p.496-499.

of minorities, (…)"[80] The conditions on the political declaration of the Copenhagen Summit are called the Copenhagen Criteria, and they are inspired from Article 6 of the Treaty of Amsterdam. The political, economic and legislative conditions of the Copenhagen criteria, needed to be fulfilled by the candidate countries, also became a prerequisite for the opening of accession negotiations in the Luxembourg European Council summit of December 1997. In the conclusions of the summit, this was clearly stated as "[t]he European Council points out that all these States are destined to join the European Union on the basis of the same criteria and that they are participating in the accession process on an equal footing."[81]

Even though, there was no prioritizing within the Copenhagen criteria, there was a need for specification on each of them. Therefore, the European Commission in Agenda 2000, which contained the Commission's opinions on the membership applications of CEECs, defined its indications on the assessment of fully functioning democracy and respect for human right. These indications can be summarized as:

- "The constitution must guarantee democratic freedoms, such as political pluralism, the freedom of expression, and the freedom of religion;
- Independent judicial and constitutional authorities;
- Stability of democratic institutions permitting public authorities (including police forces, local government and judges) to function properly;
- The holding of free and fair elections, and the recognition of the role of opposition;
- Respect for fundamental rights as expressed in the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (including acceptance of the protocol allowing citizens to take cases to the European Court of Human Rights) and;
- Respect for minorities, which includes adoption of the Council of Europe's Framework Convention for the

[80] Conclusions of the Copenhagen European Council of 21 and 22 June 1993 http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/72921.pdf accessed on February 2008.
[81] Conclusions of the Luxembourg European Council of 13 and 13 December 1997 http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/032a0008.htm accessed on February 2008.

Protection of National Minorities, and Recommendation 1201 of the Council of Europe's Parliamentary Assembly."[82]

From a legal perspective, and in line with the rationale of the Commission, the human rights criteria did not impose new obligations upon the prospective member states, nor did it seek to establish new standards in the international protection of human rights under the Copenhagen Criteria, specified by Agenda 2000. Instead, it can be perceived as a reaffirmation on what the Council calls "the existing commitments which, as general international law, already bind all states," and which, owing to their universality and indivisibility, cannot justify derogation on the grounds of cultural relativism.[83] In other words, the Copenhagen human rights criteria are defined by the EU as a means of once again underlining the candidate states' responsibility to respect and promote universal values, not just for the EU but also for the international community.

Furthermore, the Luxembourg European Council of December 1997 gave a mandate to the Commission to prepare annual reports, (Progress Reports and Regular reports,) which evaluate the progress that each candidate country has gone through in the process of fulfillment of the Copenhagen Criteria. In the next chapter, these reports that released between 2002 and 2006 will be analyzed and compared with the Amnesty International and Human Rights Watch reports of the same period. Thus, the possible consistency between these reports will help to understand the mentality behind the EU human rights policies.

[82] Smith, Karen E., "*The Evolution and Application of EU Membership Conditionality*" in Marise Cremona (ed), *The Enlargement of the European Union,* Oxford University Press, UK, 2003, p.116.
[83] Council of the European Union, 1999 European Union Annual Report on Human Rights, http://ec.europa.eu/external_relations/human_rights/doc/report_99_en.pdf accessed on February 2008.

CHAPTER 4: THE EU'S HUMAN RIGHTS CONDITIONALITY AND THE TURKISH CASE

In order to understand the EU's human rights policy towards Turkey, it is necessary to examine the regular reports of the European Commission on Turkey. The reports are composed of different parts focus on the categories of the Copenhagen Criteria. Although, the evaluations on economy and governance are the parts of the reports, this study will focus on the sections related to the human rights issue.

In these reports, there is a specific section on "Human Rights and the Protection of Minorities". There are also subsections on civil and political rights, including the death penalty, torture and ill treatment, pre-trial detention, prison conditions, freedom of expression, freedom of the media, freedom of association and assembly, minority rights, freedom of religion, cultural rights, use of languages other than Turkish; economic, social and cultural rights, including the right to equal opportunity, the role of trade unions, children's rights and child labor; and finally, the state of ratification of the European Convention on Human Rights, of its protocols and of international human rights conventions.[84]

Therefore, the EU documents on Turkey, in particular the regular reports, become the main data in evaluating the human rights record of Turkey. In order to analyze the EU's human rights policy towards Turkey, the EU documents between 1999 and 2006 on the human rights record of Turkey are examined with the help of the documents released after the declaration of the Turkish candidacy, 1999. Until the 1999 Regular Report, which was accepted by the European Council in Helsinki, the Commission underlined the fact that the human rights situation in Turkey was far

[84] For all reports please see http://ec.europa.eu/enlargement/turkey/key_documents_en.htm

from fulfilling the Copenhagen criteria which is the condition for the EU candidacy. However, in the 1999 Helsinki Summit, with the proposal of the Commission, Turkish candidacy for the EU membership was acknowledged. Thus Turkey was declared as a candidate officially and the Commission prepared reports regularly as it did for the other candidates.

In addition to EU reports, this section covers the annual reports of the Amnesty International and Human Rights Watch, two non-profit and well-recognized non-governmental organizations in order to reach more objective conclusions. The international acknowledgement of the human rights situation in Turkey and the reforms which aim to improve it is considered using the data provided by Amnesty International and the Human Rights Watch.

As is mentioned in previous chapters, the EU categorizes three groups of rights in the regular reports related to Turkey. The first group of rights is civil and political rights. The second is economic, social and cultural rights. And the third is minority rights and the protection of minorities. This group of rights gains its legal base from the Copenhagen Political criteria which indicates "membership requires that a candidate country has achieved stability of institutions guaranteeing … human rights and respect for and protection of minorities."[85] The main focusing points in the data of Amnesty International and Human Rights Watch are as follows;

- the abolishment of the death penalty based on the right to life;
- the freedom of expression which also includes the freedom of conscience, thought and religion, and the freedom of assembly and association which evaluated through the situation of human rights defenders in Turkey;

[85] European Commission Enlargement Website http://ec.europa.eu/enlargement/enlargement_process/accession_process/criteria/index_en.htm accessed on February 2008.

- torture and ill-treatment which in cases will be evaluated through the prohibition of torture, the right to liberty and security, the right to a fair trial and no punishment without law; impunity based on the right to an effective remedy;
- women's rights under the cultural and civil rights and minority rights which are based on the elimination of all kinds of discrimination and right to education.

As can be easily seen, even though there is a categorization, the rights covered by the EU are numerous while Amnesty International and Human Rights Watch prefer to focus on certain rights from categories such as a right to life, freedom of expression, torture and ill-treatment of civil and political rights group and women's rights which are analyzed in many ways, including the right to education and non-discrimination.

Because of the difference between the EU's and the Amnesty International's and Human Rights Watch's concerns on rights, this thesis will not cover all the rights listed above. It will focus only on the civil and political rights, an intersection of groups between the EU and the two independent organizations, based on the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. This was previously referred to as the European Convention, since all member states and Turkey ratified it, and it is one of the sources of EC Law. The rights can be listed as;

- the capital punishment based on Article 2 right to life and the protocol 13;
- torture, ill-treatment and impunity which is based on Article 3, prohibition of torture, Article 5;

- right to liberty and security, Article 6;
- right to fair trial, Article 7 no punishment without law, and Article 13 right to effective remedy;
- the freedom of expression based on Article 9 right to freedom of thought, conscience and religion and Article 10 right to freedom of expression;
- Peaceful Assembly based on Article 11 right to freedom of assembly and association of the European Convention.

Moreover, this kind of limitation on the catalogue of the rights seems inevitable because of the growing number of rights which are listed under these categories. Also minority rights will not be covered because of Turkey's standpoint on the minority issue determined by the Lausanne Treaty and contemporary domestic problems, primarily "the Kurdish Question".

The comparison of the EU documents with reports of Amnesty International and Human Rights Watch is done by analyzing the each piece as follows. Firstly, the events and the points named in every document for the each right listed above are determined. Secondly, the lists are made for three annual sources. Then, these lists are used to identify the convergence and discrepancies. Common events and points and differences are analyzed.

To sum up, this part provides annual data on the listed rights in Turkey, starting with the EU's comments on the issue and comparing it with that of non-governmental organizations. The overall purpose is to understand whether the EU pursues human rights conditionality through normative approach.

4.1 THE EU'S INITIAL ROAD MAP FOR HUMAN RIGHTS IN TURKEY

In order to understand the role of human rights in the Turkey – EU relations, this part briefly explains the initial documents released by the EU the situation in Turkey, starting with 1999. As the consequence of 1999 Helsinki EU decision on recognizing Turkey as a candidate country, the Council prepared a Decision Document on 8 March, 2001[86], which determines the principals, priorities and objectives in the relations.

What the EU demanded from Turkey was to take significant steps to eliminate obstacles preventing the enjoyment of rights at international standards. More specifically, the EU demanded that Turkey to take all measures necessary to prevent existing violations, particularly those related to freedom of expression, prohibition of torture, freedom of association, prison circumstances and non-discrimination. The EU also expected Turkey to ratify related international treaties and to accept support from and cooperation with other states, especially on monitoring and training facilities. The steps that the EU wanted Turkey to take in order to fulfill the Copenhagen criteria and to start membership negotiations were listed in the document as follows:

> "Short Term
> • Strengthen legal and constitutional guarantees for the right to freedom of expression in line with Article 10 of the European Convention of Human Rights. Address in that context the situation of those persons in prison sentenced for expressing non-violent opinions.
> • Strengthen legal and constitutional guarantees of the right to freedom of association and peaceful assembly and encourage development of civil society.
> • Strengthen legal provisions and undertake all necessary measures to reinforce the fight against torture practices, and ensure compliance with the European Convention for the Prevention of Torture.

[86] Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:085:0013:0023:EN:PDF accessed on January 2008.

- Further align legal procedures concerning pre-trial detention with the provisions of the European Convention on Human Rights and with recommendations of the Committee for the Prevention of Torture.
- Strengthen opportunities for legal redress against all violations of human rights.
- Intensify training on human rights issues for law enforcement officials in mutual cooperation with individual countries and international organizations.
- Maintain the de facto moratorium on capital punishment.
- Remove any legal provisions forbidding the use by Turkish citizens of their mother tongue in TV/radio broadcasting.
- Develop a comprehensive approach to reduce regional disparities, and in particular to improve the situation in the south-east, with a view to enhancing economic, social and cultural opportunities for all citizens.

Medium term

- Guarantee full enjoyment by all individuals without any discrimination and irrespective of their language, race, color, sex, political opinion, philosophical belief or religion of all human rights and fundamental freedoms. Further develop conditions for the enjoyment of freedom of thought, conscience and religion.
- Review of the Turkish Constitution and other relevant legislation with a view to guaranteeing rights and freedoms of all Turkish citizens as set forth in the European Convention for the Protection of Human Rights; ensure the implementation of such legal reforms and conformity with practices in EU Member States
- Abolish the death penalty, sign and ratify Protocol 6 of the European Convention of Human Rights.
- Ratify the International Covenant on Civil and Political Rights and its optional Protocol and the International Covenant on Economic, Social and Cultural Rights
- Adjust detention conditions in prisons to bring them into line with the UN Standard Minimum Rules for the Treatment of Prisoners and other international norms.
- Ensure cultural diversity and guarantee cultural rights for all citizens irrespective of their origin. Any legal provisions preventing the enjoyment of these rights should be abolished, including in the field of education."[87]

In response to these demands, the coalition government of the Democratic Left Party, the Nationalist Action Party and Motherland Party, prepared a national program. This program can be seen as an addition to the October 2001 constitutional

[87] Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:085:0013:0023:EN:PDF accessed on January 2008.

amendments to enable the human rights reforms and harmonize domestic law with the EU's *acquis communautaire*. Since then, in Turkish political language there is a new term, "Harmonization Package", [88] it signifies a package of laws to amend or reform existing laws with the purpose of meeting the EU's standards. The first three Harmonization Packages were passed by the parliament through the initiatives of the coalition government on February[89], March[90] and August[91], 2002, to enhance human rights and the democratization process in Turkey. The ultimate aim was to fulfill the Copenhagen criteria in the shortest possible time in order to start accession negotiations. The EU welcomed the reforms and recognized significant efforts and changes in providing more efficient environment and the protection of human rights. However, in the 2002 Regular Report, it was stated that these efforts were not

[88] "Uyum Paketi".Örücü, Esin. *Turkey Seven Packages towards Harmonisation with the European Union*, European Public Law, Vol.10, issue 4, 2004, pp. 603-621.

[89] "This first package was prepared parallel to the amendments introduced into the Constitution in 2001. The package came into force on 19 February 2002. The draft was called the "mini democracy package" and created some conflict between the coalition partners of the fifty-seventh Government. Nevertheless amendments of Sections 159 and 312 of the Penal Code broadening freedoms were accepted, though after some controversy. For example the widening of the scope of the offence of "insulting the State and its institutions" was blocked, and the upper limit of punishment for this offence was reduced from six years to three years and fines were removed from this Section (Section 159). The word "possibility" was changed to 'danger' and 'individual' was changed to 'people' in Section 312. In this package, the Penal Code, the Law on Anti-Terrorism, the Law on the Establishment and Procedure of the State Security Courts and the Code of Criminal Procedure were amended." Örücü, Esin. *Turkey Seven Packages towards Harmonisation with the European Union*, European Public Law, Vol.10, issue 4, 2004, p. 605

[90] "This package was prepared parallel to both the Constitutional amendments of October 2001 and the changes introduced into the Civil Code. The package was discussed in Parliament during March and came into effect on 9 April 2002. The following Laws were amended in order to harmonise with the Constitution, the Civil Code, and the Turkish National Programme related to the Implementation of the European Union acquis communautaire: the Law on Administration of Provinces, the Law on the Press, the Law on Civil Servants, the Law on Political Parties, the Law on Associations, the Law on Meetings and Demonstrations, the Law on the Organisation, Duties and Competence of the Gendarme, and the Law on the Establishment and Procedure of the State Security Courts." Örücü, Esin. *Turkey Seven Packages towards Harmonisation with the European Union*, European Public Law, Vol.10, issue 4, 2004, p. 605.

[91] "This package was accepted in Parliament on 3 August 2002 and came into force on 9 August, amending the Penal Code, the Law on Associations, the Law on Charitable Trust, the Law on the Establishment and Duties of the General Directorate of Trusts, the Law on Meetings and Demonstrations, the Law on Radio and Television and Broadcasting, the Law on the Press, the Law on the Duties and the Competence of the Police Force, the Law on Foreign Language Teaching and Learning, and the Codes of Civil Procedure and Criminal Procedure." Örücü, Esin. *Turkey Seven Packages towards Harmonisation with the European Union*, European Public Law, Vol.10, issue 4, 2004, p. 605-606.

enough to meet the Copenhagen political criteria and there was a need to see reflections of these reforms in practice. The report also underlined the fact that there were important rights which were not addressed in the packages and that there were controversies between the laws. Moreover, the 2002 Report acknowledged and listed significant violations, especially on freedom of expression, prohibition of torture and ill-treatment[92]. The EU evaluated the progress that was demanded with the 2000 Accession Partnership Document in the 2002 Regular Report. The differences between the objectives and the Turkish efforts to implement these objectives were mentioned. Consequently, the EU decided not to declare a specific date for the start of the negotiation process. The report stated in the conclusion that;

> "Overall, Turkey has made noticeable progress towards meeting the Copenhagen political criteria since the Commission issued its report in 1998, and in particular in the course of the last year. The reforms adopted in August 2002 are particularly far-reaching. Taken together, these reforms provide much of the ground work for strengthening democracy and the protection of human rights in Turkey. They open the way for further changes which should enable Turkish citizens progressively to enjoy rights and freedoms commensurate with those prevailing in the European Union.
> Nonetheless Turkey does not fully meet the political criteria. First, the reforms contain a number of significant limitations, which are set out in this report, on the full enjoyment of fundamental rights and freedoms. Important restrictions remain, notably, to freedom of expression, including in particular the written press and broadcasting, freedom of peaceful assembly, freedom of association, freedom of religion and the right to legal redress.
> Secondly, many of the reforms require the adoption of regulations or other administrative measures, which should be in line with European standards. Some of these measures have already been introduced and others are being drawn up. To be effective, the reforms will need to be implemented in practice by executive and judicial bodies at different levels throughout the country.
> Thirdly, a number of important issues arising under the political criteria have yet to be adequately addressed. These include the fight against torture and ill-treatment, the situation of persons imprisoned for

[92] Commission of the European Communities. 9 October 2002. 2002 Regular Report on Turkey's Progress Towards Accession. Brussels. http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/tu_en.pdf , accessed on January 2008.

> expressing non-violent opinions, and compliance with the decisions of the European Court of Human Rights.
> In the light of the noticeable progress made in recent years and of the remaining areas requiring further attention, Turkey is encouraged to pursue the reform process to strengthen democracy and the protection of human rights, in law and in practice. This will enable Turkey to overcome the remaining obstacles to full compliance with the political criteria."[93]

Not only the EU, but also the Human Rights Watch, highlighted the fact that the reforms were not designed to operate effectively and they were unable to create recognizable improvement in practice with appropriate implementation. The 2002 Human Rights Watch report pointed to the failure of the strongly nationalist ruling coalition of the Democratic Left Party, the Nationalist Action Party, and the Motherland Party in enacting the key reforms in the face of longstanding opposition to these measures by the army and security forces. Moreover, the Union marked the government's National Program for Accession as a turning point for human rights, but also believed that it consisted mainly of vague and general undertakings that were clearly designed to delay or avoid significant change.[94] Also, the Human Rights Watch continuously expressed their disappointment at the lower than expected level of reforms. Even thought significant developments occurred on paper and cases of violations were dropped, the Human Rights defenders and Amnesty International strongly believed that these were very limited and insufficient in reality and day-to-day practice.

To restate, there was mutual agreement between the EU, Amnesty International and Human Rights Watch documents on the human rights situation in Turkey. All three found the reforms to be a paper tiger, acknowledged as a good

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[93] Commission of the European Communities. 9 October 2002. 2002 Regular Report on Turkey's Progress Towards Accession. Brussels http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/tu_en.pdf , accessed on January 2008.
[94] Human Rights Watch World Report 2002 Section on Turkey.

starting point on paper but a failure in the field. The decrease in violations was not seen as enough for the EU, Amnesty International and Human Rights Watch. They all expected more to be done in order to eliminate the limitations on rights both in the laws and practices of state officials.

The human rights reform process, in the first years after Turkey was declared official candidate the EU provided a road map to Turkey for improving the human rights conditions in order to start accession negotiations. With the Accession Partnership 2000, the EU drew the framework of the reforms that Turkey needed to apply. With domestic obstacles such as disagreements among the coalition members on the commitment to the EU, the first three reform packages by 57th government occurred as a hopeful but insufficient starting point for human rights improvements. In November 2002, the Justice and Development Party (JDP) took over the government with the responsibility to provide and protect the rights of every citizen of Turkey. The November 2002 elections not only brought the first victory to the JDP but also brought stability to Turkish politics at least at an executive and legislative level. Moreover, the EU commitment of the JDP brought back an enthusiasm that would accelerate the reform process. In the next section, the data on human rights in Turkey will be covered with a search on the question of whether these road maps or objectives of both the EU reached with legislative actions of JDP and if not, how the EU respond it.

4.2 HUMAN RIGHTS SITUATION IN TURKEY 2002-2006

The 2002 Progress Report and the conclusions of the European Council did not provide a starting date for the accession negations. The JDP government expressed its disappointment but acted in accordance with both their human rights

policies and the EU demands on human rights. In January[95] and February[96] 2003, two more harmonization packages were passed by the parliament. With the Council decision of May 2003, the EU declared revised priorities for Turkey to reach the level of the Copenhagen political criteria on human rights. (Appendix C)

The Accession Partnership 2003 document addressed more specific clauses as it was compared with the Council Decision of 8 March 2001, document on steps to be taken by Turkey. Conclusions of the Council specified international conventions and articles of European human rights documents. The Accession Partnership 2003 document also gave references to European Convention on human rights, its protocols and the case law of the European Court of Human Rights. While the previous document had general emphasis, the 2003 document gave reference to certain articles of the European Convention on human rights that are related to fundamental civil and political rights. Overall, the EU responded to Turkey's efforts to fulfill the human rights criteria as asking for more specific guidelines. In response, the JDP passed the sixth[97] and seventh[98] harmonization packages that took further

[95] "This extensive package was forwarded by the fifty-eighth Government to Parliament on 3 December 2002 and became Law on 2 January 2003, amending thirty one articles of sixteen Laws. The amended Laws are the Penal Code, the Code of Criminal Procedure, the Law on Charitable Trusts, the Law on the Press, the Law on Stamp Duty, the Law on Political Parties, the Law on Elections, the Law on Associations, the Law on the Use of the Right to Petition, the Law on the Judicial Register, the Law related to Measures to be taken in Regions Administered under Extraordinary Powers, the Law on Litigation Against Civil Servants, the Law on the Prevention of Payment of Bribes to Foreign Personnel in Matters related to International Trade, the Civil Code, and the Law on the Establishment, Duties and Procedures of Juvenile Courts." Örücü, Esin. *Turkey Seven Packages towards Harmonisation with the European Union*, European Public Law, Vol.10, issue 4, 2004, p.606.

[96] "Submitted to Parliament on 9 December 2002, this package was approved on 23 January 2003 and came into force on 2 February. It amended the Code of Civil Procedure and the Code of Criminal Procedure making requests for re-trial following decisions from the European Court of Human Rights easier, and the Law on Associations" Örücü, Esin. *Turkey Seven Packages towards Harmonisation with the European Union*, European Public Law, Vol.10, issue 4, 2004, p.606.

[97] "The fifty-ninth Government forwarded this package to Parliament on 12 June 2003 and it became Law on 19 June. The amended Laws are the Penal Code, the Law on Charitable Trusts, the Law on the Fundamental Principles of Elections, the Law on Population Registers, the Law on Administrative Adjudication Procedures, the Law on the Establishment and Procedures of the State Security Court, the Law on Construction, Town and Country Planning, the Law on Cinema, Video and Musical Products, the Law on the Judicial Register, the Law on Radio and Television and Broadcasting, and

steps to meet the Copenhagen criteria especially on freedom of expression, freedom of assembly, demonstration and association, prohibition of torture and detention, imprisonment conditions and freedom of conscience.

Under the positive impact of these legislative reforms, the 2003 Progress Report underlined the recognition and significance of the reforms passed by the JDP. The determination showed by the government on accelerating the reforms and their reflections on both political and legal systems were underlined. "Four major packages of political reform have been adopted, introducing changes to different areas of legislation. Some of the reforms carry great political significance as they impinge upon sensitive issues in the Turkish context, such as freedom of expression, freedom of demonstration, cultural rights and civilian control of the military. Many priorities under the political criteria in the revised Accession Partnership have been addressed."[99]

However, the EU also pointed out the gap between legislation and implementation. The report mentioned that implementation of the reforms is uneven. Moreover, the report provides an analysis on specific rights and pointed out that the reforms did not bring the expected effect till the end of 2003, for example, the prohibition of torture, the right to fair trial, freedom of expression, freedom of

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the Law on Anti-Terrorism." Örücü, Esin. *Turkey Seven Packages towards Harmonisation with the European Union*, European Public Law, Vol.10, issue 4, 2004, pp. 606-607.

[98] "The same Government submitted the seventh draft package to Parliament on 23 July 2003 and the package became Law on 7 August 2003. Further amendments were made to the Penal Code, the Law on Associations, the Code of Criminal Procedure, the Law on the Sayıştay (Court of Accounts), the Law on the National Security Council and the National Security General Secretariat, the Law on Meetings and Demonstrations, the Law on Teaching and Learning Foreign Languages and the Learning of Different Languages and Dialects of the Turkish Nationals, the Decree with the Force of Law on the General Directorate of Trusts, the Law on Anti-Terrorism, the Civil Code, and the Law on the Establishment and Adjudication Procedures of the Military Court." Örücü, Esin. *Turkey Seven Packages towards Harmonisation with the European Union*, European Public Law, Vol.10, issue 4, 2004, p.607.

[99] Commission of the European Communities. October 2003. *2003 Regular Report on Turkey's Progress Towards Accession.* Brussels. http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/rr_tk_final_en.pdf accessed on January 2008.

assembly, association and demonstration, freedom of thought, conscience and religion and freedom of expression respectively;

- "The fight against torture and ill-treatment has been strengthened and the Turkish legal system has come closer to European standards in this respect. The scale of torture has declined but there are still reports about specific cases, which continues to cause concern. The reform of the prison system has continued and rights of detainees have been improved. In practice, the right of access to a lawyer is not always ensured.
- The possibility of retrial has been introduced but in practice few cases have been subject to retrial. In the case of Zana and others, retrial has so far largely resulted in a repetition of the previous trial, leading to persistent concerns about the respect for the rights of the defense
- The adoption of the reform packages has led to the lifting of several legal restrictions on the exercise of freedom of expression. The enforcement of the revised provisions of the Penal Code has led to many acquittals although cases against persons expressing nonviolent opinion continue to occur. A number of persons imprisoned for non-violent expression of opinion, under provisions that have now been abolished, have been released.
- Notable progress has been achieved in the area of freedom of demonstration and peaceful assembly where several restrictions have been lifted. Nevertheless, in some cases of peaceful demonstration, the authorities have made a disproportionate use of force. As regards freedom of association, some restrictions have been eased, but associations still experience cumbersome procedures. Cases of prosecution against associations and particularly human rights defenders continue to occur.
- Concerning freedom of religion, the changes introduced by the reform packages have not yet produced the desired effects. Executive bodies continue to adopt a very restrictive interpretation of the relevant provisions, so that religious freedom is subject to serious limitations as compared with European standards. This is particularly the case for the absence of legal personality, education and training of ecclesiastic personnel, and full enjoyment of property rights of religious communities.
- Measures have been taken to lift the ban on radio and TV broadcasting and education in languages other than Turkish. So far, the reforms adopted in these areas have produced little practical effect."[100]

[100] Commission of the European Communities. October 2003. *2003 Regular Report on Turkey's Progress Towards Accession.* Brussels. http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/rr_tk_final_en.pdf accessed on January 2008.

The limited effect on implementations of the reform packages are also acknowledged by the Human Rights Watch and Amnesty International. Both organizations found the EU effect on Turkish reforms positive and listed the JDP's efforts. However, the Human Rights Watch and Amnesty International also identified the resistance groups in both the state apparatus and society. The shared aspiration to EU membership by public and business elite and community, and its impulsive force for the reforms were mentioned. However, a resistance in the state institutions is given as the reason for implementation problems of the reforms. "Set against this is a profound institutional resistance to transparency and democratic norms among the civil service, judiciary, and security forces that is acting as a counterforce to change."[101]

In addition to the various forms of resistance, Amnesty International stated that the quality of the reforms was also low which meant that the reforms seemed like ineffective amendments to the existing laws which were heavily restricted individual rights. According to Amnesty International, "the reforms consisted of amendments to articles of these laws rather than the fundamental redrafting of the laws that human rights lawyers and defenders had called for. There was concern that despite amendments to and repeal of certain articles of the Turkish Penal Code (TPC) and Anti-Terror Law, the lack of a holistic approach meant that similar articles to those altered or repealed were retained in other laws. AI feared that these could be used by prosecutors in place of the earlier articles."[102]

The year 2004 was an important period in Turkey-EU relations in several respects. First, at the beginning of January, Turkey signed the 13th additional protocol of the European Convention which abolishes the death penalty for all time,

[101] Human Rights Watch Report 2003 Section on Turkey.
[102] Amnesty International Report 2003.

regardless to peace, war or state of emergency times. This ratification satisfied the 'concerns on right to life' of the EU, Amnesty International and Human Rights Watch. Secondly, in May 2004, the constitutional reform was passed which revised Article 90 of the Constitution and adopted the principle of the supremacy of international law sources concerning the fundamental rights over domestic legislation. In other words, all human rights related international agreements that Turkey ratified became superior to domestic law in the hierarchy of laws. The rule of supremacy did not just meet demands on the rights covered in this study, but also for every right that is in the international agreements which Turkey has signed. Thirdly, the Regulation on Apprehension, Detention and Statement Taking adopted in January 2004 strengthened and improved the right of detainees who are protected under the right to fair trial, freedom and security. The alignment of the detention procedures of the military courts with other courts was realized with the amendment of the Military Criminal Code and the Law on the Establishment and Trial Procedures of Military Courts in January 2004. This was an additional improvement on the rights related to the freedom and security. Importantly, the new Press Law was adopted in June 2004 and the new Law on Associations in July 2004 broadening the liberty of expression. In June 2004 the Regulation on the Methods and Principles of the Boards of Non-Muslim Religious Foundations concerning the right of minority was adopted. The Law on Compensation of Losses Resulting from Terrorist Acts was implemented in July 2004 to protect right to property more effectively. In September 2004 the new Penal Code was adopted.[103]

As a result of these legislative improvements, on 6 October 2004, the European Commission declared that Turkey has sufficiently fulfilled the political criteria and

[103] Bulgarian European Community Studies Assocaition BESCA, "Reforms on Turkish Legal Order Following the Copenhagen Political Criterias" http://www.becsa.org/start_en.php?id=IstanbulConf08 accessed on November 2007.

recommended that accession negotiations be opened in its communication with the European Parliament. Furthermore, on the same communication, the influential role of the EU on the reform process was pointed out. The Commission underlined the importance of the support of the EU to Turkey on the reform making and implementing process. The Commission stated that the EU must keep monitoring the reform process and draw new road maps for Turkey in order to provide efficiency, sustainability and irreversibility of the reforms. The European Council at 16-17 December 2004 Summit acknowledged the ongoing reform process and identified on the 3 October 2005 to start the accession negotiations.

> "The European Council welcomed the decisive progress made by Turkey in its far reaching reform process and expressed its confidence that Turkey will sustain that process of reform. Furthermore, it expects Turkey to actively pursue its efforts to bring into force the six specific items of legislation identified by the Commission. To ensure the irreversibility of the political reform process and its full, effective and comprehensive implementation, notably with regard to fundamental freedoms and to full respect of human rights, that process will continue to be closely monitored by the Commission, which is invited to continue to report regularly on it to the Council, addressing all points of concern identified in the Commission's 2004 report and recommendation, including the implementation of the zero-tolerance policy relating to torture and ill-treatment. The European Union will continue to monitor closely progress of the political reforms on the basis of an Accession Partnership setting out priorities for the reform process. The European Council welcomed the adoption of the six pieces of legislation identified by the Commission. It decided that, in the light of the above and of the Commission report and recommendation, Turkey sufficiently fulfils the Copenhagen political criteria to open accession negotiations provided that it brings into force these specific pieces of legislation. It requested the Council to agree on that framework with a view to opening negotiations on 3 October 2005."[104]

In its annual analysis, the Human Rights Watch described October 2004 as a "make-or-break moment which will be a breaking point in the relations if the EU

[104] Presidency Conclusions 16-17 December 2004 http://ec.europa.eu/enlargement/pdf/turkey/presidency_conclusions16_17_12_04_en.pdf accessed on January 2008.

does not determine a date for the start of the accession negotiations, since a decision in December to open negotiations for membership would strengthen the government and those within the government who have pushed for reform, while a refusal or postponement was likely to be regarded as a sign that the EU intended to pull out of the process unilaterally in spite of the substantial human rights improvements."[105] Both the Human Rights Watch and Amnesty International listed the shortcomings of the reforms and the continuing restrictions and violations of human rights: "However, implementation of these reforms was patchy and broad restrictions on the exercise of fundamental rights remained in law. Despite positive changes to detention regulations, torture and ill-treatment by security forces continued." [106] In addition, the report underlines the continuation of the use of excessive force against demonstrators and the absence or rarely of bringing the people who were responsible for such violations to justice. "Those who attempted to exercise their right to demonstrate peacefully or express dissent on certain issues continued to face criminal prosecution or other sanctions. State officials failed to take adequate steps to prevent and punish violence against women."[107] The main concern of the human rights defenders continued to be the effective implementation of further reforms and overcoming the resistance against reforms by state officials.

As a result, the year 2005 was a period of 'wait and see' where both the EU and Human Rights Watch and Amnesty International observed the results of implementation of the legislative reforms on the ground. Their final conclusion was an acknowledgement of a slowing down in the efforts on reforms as they compared the number of laws, amendments or reforms passed between 2002 and 2004 and 2005. The main reason behind this deceleration on reform process was the gap in the

[105] Human Rights Watch Report 2004
[106] Amnesty International Report 2004
[107] Amnesty International Report 2004

implementation of reforms. In addition, political crises between Turkey and the EU such as the recognition of "Cyprus" received more attention than human rights. Moreover, the EU criticisms about the absence of effective measures on the protection of rights, such as freedom of expression, prohibition of torture, freedom of assembly, demonstrations and associations caused tension. Events such as excessive use of force on demonstrators on Women's Day, and civilians in Southeast of Turkey, alerted the EU and human rights defenders to a reconsideration of the reform process that Turkey has gone through.

The Human Rights Watch evaluated the period as "In October 2005, the attention of Turkey and the international community was focused on the EU's decision, after extended discussion, to open membership negotiations. The EU maintains a strong and effective engagement with the Turkish government on human rights issues. Confronted with media reports of the police attack on the International Women's Day demonstration in March, visiting EU troika representatives declared that they were shocked by images of the police beating women and young people demonstrating in Istanbul. In September, the EU Enlargement Commissioner Olli Rehn expressed 'serious concern' about the prosecution of Orhan Pamuk and visited the writer in his home."[108]

As the Human Rights Watch stated examples of the reforms' shortcomings, the EU also stated its concerns on the human rights issue of Turkey in the Progress Report of 2005. The European Commission acknowledged the fact that the reform process was an ongoing process. On the other hand, it underlined that there was an urgent need to see changes in practice. The Commission stated that important legislative reforms have entered into force and should lead to structural changes in

[108] Human Rights Watch Report 2005

the legal system, particularly in the judiciary. On the other hand, Commission underlined the fact that the pace of change has slowed in 2005 and implementation of the reforms remains uneven. Although human rights violations were diminishing, they continued to occur and there is an urgent need both to implement legislation already in force and, with respect to certain areas, to take further legislative initiatives. Significant further efforts are required as regards fundamental freedoms and human rights, particularly freedom of expression, women's rights, religious freedoms, trade union rights, cultural rights and the further strengthening of the fight against torture and ill-treatment. In particular, the Commission suggested that Turkey integrate a better reform process into the work of all public authorities. Turkey's commitment to further political reforms should be translated into more concrete achievements for the benefit of all Turkish citizens, regardless of their origin.[109]

While the technical phase of negotiations was proceeding and criticisms regard to a lack of implementation of reforms were growing, the JDP government objected to the criticism that there was a loss of motivation to reform or to become the member of the EU on part of their government and the party. The government continued to affirm their ultimate aim of being part of the EU but added that there was a need to see the effects of the implementation of reforms over time.

After the first year of negotiations, in which there was limited effort on introducing new legislations on fundamental rights and freedoms and the implementation of old laws, in 2006 the EU stated Accession Partnership document for Turkey. With the document, the Union asked for a road map, program or

[109] Commission of the European Communities. 9 November 2005. *Turkey 2005 Progress Report*. Brussels http://ec.europa.eu/comm/enlargement/report_2005/pdf/package/sec_1426_final_en_progress_report_tr.pdf accessed on January 2008.

timetable for the reform process. Once again, the Union listed its priorities on civil and political rights. (Appendix D)

The EU underlined the fact that ratification of additional international documents did not satisfy the EU where there was an absolute need to see implementation of these documents. The Progress Report, 2006, analyzes each and every right that EU conditionality covers for Turkey. Also the report offers a final analysis which underlines the fact that even though there are improvements in legislations and in practice, there is a long way to go for Turkey to reach the European standards of rights.

The Human Rights Watch and Amnesty International have not only pointed to the absence of implementation but also recognized the regression on reforms because of the increasing tension between PKK and armed forces in Southeastern Turkey. Both NGOs recognized the EU as major factor behind the reform and pointed out the importance of the continuation of the EU based criticisms on the human rights situation in Turkey.

4.3 OVERALL ANALYSIS

The assessments of the EU have their basis on the legal system of both the EU and particularly the Council of Europe in the case of human rights. As a candidate country, the recipients in the conditionality relation, Turkey, is required to take the EU's criteria, road maps and criticisms as tasks to be overcome. Turkey's EU candidacy still remains the most effective international factor in fostering respect for human rights in the country.

Comparison of the EU's human rights concerns with that of Human Rights Watch and Amnesty International, similar points raised in the 1999-2005 term. Based

on this similarity one can conclude that the EU shares parallel concerns with the two non-profitable and human rights defender organizations. Such concerns are expected to have idealist basis. On the other hand, the softer tone of the EU on the post-2005 reports when they are compared with the Human Rights Watch and Amnesty International should not be seen as a deviation from the EU's concerns on Turkey's human rights records. Furthermore, the deceleration of the reforms in 2005 and 2006 should not be seen as the ineffectiveness of the EU in Turkey. It must be kept in mind that the negotiations process is a long term process. The Turkish-EU relations do not only have a human rights dimension. Both international and domestic politics in (which human rights politics is just one common branch) of each member state and candidate are determinant in this process.

In overall analysis, it is seen that the process of reform in Turkey between the years 1999 and 2006, continued with ups and downs in terms of legislative efforts on human rights issues. The EU responded these fluctuations in all of its regular reports. Initially, because of the political will to ensure a date for the start of negotiations, the EU conditionality on human rights became the promoter for reforms in Turkey. In the period following the start of negotiations the new driving force for Turkish government to continue with reform process is conclusion of negotiations. It is clear that as long as the political and social will on EU membership go on, Turkey will go through more and more reforms to reach the European standards of human rights. Turkey needs to accept that the EU will watch over for the protection and promotion of human rights even Turkey satisfy the EU's other economic, political or military interests. As long as the EU codifies and sets the human rights as a condition within its system and in external relations, it will be hard to state that the EU concerns on human rights are driven only from its material interest.

CHAPTER 5: CONCLUSION

"Rights possessed by human beings simply as human beings"[110] is considered as the matter of law for many years. Both domestic and international legal mechanisms were created to protect their individuals' rights and to monitor the practices of other international actors in this respect. On the one hand, the UN provides a global framework on promoting and protecting rights. On the other hand, regional organizations such as the Council of Europe, OSCE, African Union and Organization of American States are established to provide legal and technical supports to global human rights mechanism. Moreover, international and national non-governmental organizations provide monitoring and observance services on the practices of human rights promoters whether they are global/regional organizations or individual states.

As the role of human rights increased in the inter-state relations, its political role gained importance. It became highly questionable to consider international law as the only source of promoting and protecting human rights. Policymakers, who see the contradiction between the principles of protecting human rights and non-interference to internal affairs, come across with a problem on deciding which one of these principles overrides. What is more, the legitimacy of the non-interference principle on the human rights violations is questioned more and more both academically and politically.

Classical approach of international relations defends that the internal practices of states are exempted from the interference of other international actors and can not be the subject of the foreign policies of other states. However, with the end of Cold War, human rights policies emerged as a major foreign policy concern for many

[110] *The Blackwell Encyclopaedia of Political Thought*, Basil Blackwell Ltd., New York, 1987, p. 222

states, many of which are European countries. Human rights become one of the most legitimate concerns of policymakers who aim to influence other states in order to improve human rights situation both at national and international levels.

Even though there is difficulty of defining the scope of human rights, its western roots are generally accepted. The philosophy of equal and inalienable rights in universal practice emerged in Europe and became one of the symbolic principles of Western states. The ideological victory of these states in the Cold War accelerated the role of human rights in the foreign policy conducts. European states which created more effective protection mechanism for human rights than UN's global system initiated several policies on promoting human rights in other states. That is why; this study has focused on Europe generally.

Even though, there are Council of Europe with the European Convention on Human Rights and the European Court of Human Rights, OSCE and their significant declarations, organs and monitoring bodies on protection of human rights, the EU is chosen to be topic of this thesis. There are two reasons for this choice. First one is Council of Europe and OSCE are intergovernmental organizations whereas the EU has supranational elements as well, especially in economic and monetary policies. Member states effectuate a union which is independent at a certain level and superior to their domestic policies. The second reason is actually related with the first one. The EU's will and attempts to create a union on high politics such as foreign and security policies, in area where the EU has intergovernmental structure. This study acknowledges human rights as one of the concerns of external relations. Therefore, describing human rights practices of the EU provides a better understanding for its role in the EU's relations with the third countries. Although, it is almost impossible to talk about an established and well-implemented EU common foreign and security

policy, the human rights dimension of the EU's relations with other states provides an interesting research area. This thesis suggests that the EU follows normative external human rights policies. However, this is only the first step. The second step would be to check "what has the EU done to implement its human rights policy?"

Therefore, a broader analysis could cover human rights dimension of EU's relations with third countries in its neighborhood policy, economic and trade policies. However, this thesis has focused on the human rights clause in the relations with the candidate countries. The main aim of analyzing the EU membership conditionality on human rights is to answer the question whether the EU perceives human rights as a moral universal principle or an instrument in external relations.

At the same time, again a choice was made among existing candidates and ex-candidate countries. The thesis focused on the EU human rights conditionality towards Turkey. Turkey is chosen as a case because of the fact that it is the only candidate country which has been internationally criticized on its human rights record for a couple of decades. In order to understand whether, or not, the EU's concerns over human rights situation in Turkey is a strategy, the EU's documents on Turkey is compared with other international human rights organizations. The analysis covers the years between 1999, when the EU declared Turkey as a candidate country and required to fulfill the Copenhagen Criteria, and 2006 when the EU started to point out problems related to implementation.

In order to understand the EU perceptions on human rights in the case of Turkey, annual reports of the Human Rights Watch and Amnesty International are also analyzed. Through these analyses, it is aimed to have independent source for the human rights situation in Turkey. Moreover, a research is made on whether

international organizations recognized the EU's effect on developments in Turkey's human rights records or not.

With descriptive parts on the EU's understanding of human rights, conditionality and time based analysis of human rights in Turkey – EU relations, this thesis demonstrated that the EU perceives human rights as one of its core principles. The codification of human rights in the acquis communautaire not only established an internal legal zone for the EU but also provided a legal base for human rights clause in the EU's external relations. Since then, with the support and activities of EU institutions, the EU utilizes human rights policies to influence other states on their human rights protection and promotion practices. Moreover, by defining human rights promotion as one of the objectives in its external relations, the EU policymakers underlined that human rights has a priority for the EU in international relations.

Therefore, the EU uses certain tools to affect the states on improving their respect for human rights such as human rights clauses in trade agreements and membership conditionality in the relations with candidates. In membership conditionality, the annual reports of the EU analyze the human rights situation in candidate countries in terms of improvements and shortcomings. In the EU's annual reports explain legislative reforms and obstacles in implementation. Moreover, the EU provides candidate countries road maps, which list things to be done in order to improve human rights situation throughout the country. The same structure is followed in Turkish case. The findings of the thesis demonstrate that there are strong parallels between the Human Rights Watch and Amnesty International's documents and the EU's standpoint on Turkey's human rights situation. Such similarity between the EU and international NGOs suggests that the EU acts on normative grounds

rather than interest-based instrumentality. The thesis also proves that the EU institutionalize its normative objectives. What is more, both NGOs acknowledge the EU membership as a driving force behind the Turkish legislative reforms on human rights. Their reports analyze the difference between legislative reforms passed before and after of December 17, 2004 as a significant example for the EU impact.

In conclusion, this study demonstrated that the EU is a significant actor, a kind of initiator behind the legislative human rights reforms in Turkey. However, the EU has a limited effect on the implementation of these reforms. The gap between the legislation and the practices of Turkish human rights protection mechanism is the reason for arguments on the success of human rights policies. Both the EU support for reforms and Turkish government's commitment for improving human rights are questioned since 2006 for three reasons. First of all, there is an increasing gap between the law and implementation of the law. Secondly, the number of reforms passed has decelerated. Lastly, there is an increasing number of violations on human rights. Both Turkey and the EU do not consider human rights as the most important factor in their relation and the economic relations continues even in a case where there aren't any improvements on the ground is recognized. Human rights defending organizations such as Human Rights Watch and Amnesty International increasingly criticize both parties and found the EU human rights policy ineffective.

Despite the criticisms, the conditionality approach in Turkey-EU relations cannot be neglected. As long as the EU has the will to enlarge and Turkey has the will to become a member, human rights issue will always be on the agenda. Sooner or later, Turkey needs to fulfill the human rights conditionality of the EU by implementing the reforms. As mentioned earlier, the EU increasingly underlines its world-wide concerns on human rights through diverse instruments of its institutions.

The acknowledgement of the human rights as the basic principle of the EU shows that the member states and the EU citizens share human rights values. The reflections of these values in both internal and external policies can easily be examined. Therefore, besides the discussions on the effectiveness of these policies, it would be wrong to state that the motivations of the EU human rights policies are just maximization of material interests.

This thesis did not cover the effectiveness of an outsider such as the EU on the practices of the domestic policy. In future, a broader study can analyze whether the behavior of a state can change because of other actor's human rights policy. In other words, the relationship between international pressure and the human rights developments of the states can be studied by evaluating the role of human rights in foreign policy. Such a study can identify the correlation between these two variables; "Will those states which face international pressure about their human rights records codify more protection mechanisms within their legislations?"

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APPENDICES

APPENDIX A

Accessed from http://europa.eu/scadplus/leg/en/lvb/l33501.htm on January 2008.

Chapter I: **Dignity** (human dignity, the right to life, the right to the integrity of the person, prohibition of torture and inhuman or degrading treatment or punishment, prohibition of slavery and forced labor);
Chapter II: **Freedoms** (the right to liberty and security, respect for private and family life, protection of personal data, the right to marry and found a family, freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association, freedom of the arts and sciences, the right to education, freedom to choose an occupation and the right to engage in work, freedom to conduct a business, the right to property, the right to asylum, protection in the event of removal, expulsion or extradition);
Chapter III: **Equality** (equality before the law, non-discrimination, cultural, religious and linguistic diversity, equality between men and women, the rights of the child, the rights of the elderly, integration of persons with disabilities);
Chapter IV: **Solidarity** (workers' right to information and consultation within the undertaking, the right of collective bargaining and action, the right of access to placement services, protection in the event of unjustified dismissal, fair and just working conditions, prohibition of child labor and protection of young people at work, family and professional life, social security and social assistance, health care, access to services of general economic interest, environmental protection, consumer protection);
Chapter V: **Citizens' rights** (the right to vote and stand as a candidate at elections to the European Parliament, the right to vote and stand as a candidate at municipal elections, the right to good administration, the right of access to documents, the ombudsman, the right to petition, freedom of movement and residence, diplomatic and consular protection);
Chapter VI: **Justice** (the right to an effective remedy and a fair trial, the presumption of innocence and the right of defense, principles of legality and proportionality of criminal offences and penalties, the right not to be tried or punished twice in criminal proceedings for the same criminal offence);
Chapter VII: **General provisions**.

APPENDIX B

Accessed from http://ec.europa.eu/comm/external_relations/human_rights/intro/index.htm#tools on January 2008.

"Common strategies aim to set objectives and increase the effectiveness of EU actions through enhancing the overall coherence of the Union's policy.

Common positions define the approach of the Union to a particular matter of general interest of a geographic or thematic nature; Member States must ensure that their national policies conform.

Joint actions address specific situations where action by the Union is required. Appointments of EU Special Representatives to contribute to peace settlements and post-conflict reconstruction in a number of regions or countries in the world are considered in this category. *Example: On 13 May 2004, the EU adopted a Joint Action providing EU support to the establishment of and Integrated Police Unit (IPU) in the Democratic Republic of Congo (DRC)*

Démarches and declarations are usually carried out in a confidential manner, either in "Troika" format or by the Presidency of the EU. In addition, the EU can make public declarations calling upon a government or other parties to respect human rights. The EU made human-rights related demarches and declarations to more than 60 countries in the year between July 1, 2004, and June 30, 2005.*Example: Although the death penalty has not been imposed for some years in the Caribbean, there is increasing pressure on some islands for it to be carried out. An EU demarche was carried out in Barbados in February 2005 and Trinidad and Tobago in June of the same year when it seemed that executions were imminent.*

Conflict prevention and crisis management operations carried out by the European Union within the framework of the European Security and Defense Policy (ESDP). *Example: The EU Rule of Law Mission in Georgia was deployed to assist the Georgian government in the developing of a strategy to guide the criminal justice reform process. The mission terminated on 15 July 2005.*

Dialogue and consultations with third countries *Extract from Guidelines on Human Rights Dialogues (2001): "The EU will ensure that the issue of human rights, democracy and the rule of law will be included in all future meetings and discussions with third countries and at all levels…"*

Human Rights Clause in Agreements with Third Countries

Guidelines on EU policy towards third countries on specific human rights themes EU actions at international and regional human rights fora (the United Nations, the Council of Europe, the Organization for Security and Co-operation in Europe)

EU election observation missions, the first of which was carried out in Russia in 1993, provide independent, comprehensive assessments of the conduct of elections in transition and post-conflict countries. Since 2000, the EU has deployed missions to observe roughly 40 elections around the world.

Project funding, particularly through the **European Initiative for Democratization and Human Rights (EIDHR)**

APPENDIX C

Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:145:0040:0056:EN:PDF accessed on January 2008.

"Ratify the International Covenant on Civil and Political Rights and its optional Protocol and the International Covenant on Economic, Social and Cultural Rights. Ratify Protocol 6 of the European Convention on Human Rights. Comply with the European Convention for the Protection of Human Rights and Fundamental Freedoms, including respect of the judgments of the European Court of Human Rights (section II of the Convention).

Implement measures to fight against torture and ill-treatment by law enforcement officials, in line with Article 3 of the European Convention on Human Rights and the recommendations of the European Committee for the Prevention of Torture. Adopt further measures to ensure that prosecutors conduct timely and effective investigations of alleged cases and those courts impose adequate punishments on those convicted of abuses.

Guarantee in practice the right for detained and imprisoned persons to access in private to a lawyer and to have relatives notified, from the outset of their custody, in line with the European Convention on Human Rights.

Guarantee in law and in practice the full enjoyment of human rights and fundamental freedoms by all individuals without discrimination and irrespective of language, race, color, sex, political opinion, religion or belief in line with relevant international and European instruments to which Turkey is a party.

Pursue and implement reforms concerning freedom of expression including freedom of the press. Lift legal restrictions in line with the European Convention on Human Rights (Articles 10, 17 and 18). Remedy the situation of those persons prosecuted or sentenced for non-violent expression of opinion. Implement legal provisions on the right to re-trial following the relevant judgment of the European Court of Human Rights.

Pursue and implement reforms concerning freedom of association and peaceful assembly. Lift legal restrictions in line with the European Convention on Human Rights, in particular on both foreign and national associations, including trade unions (Articles 11, 17 and 18). Encourage the development of civil society.

Adapt and implement provisions concerning the exercise of freedom of thought, conscience and religion by all individuals and religious communities in line with Article 9 of the European Convention on Human Rights. Establish conditions for the functioning of these communities, in line with the practice of EU Member States. This includes legal and judicial protection of the communities, their members and their assets, teaching, appointing and training of clergy, and the enjoyment of property rights in line with Protocol 1 of the European Convention on Human Rights.

Ensure cultural diversity and guarantee cultural rights for all citizens irrespective of their origin. Ensure effective access to radio/TV broadcasting and education in languages other than Turkish through implementation of existing measures and the removal of remaining restrictions that impede this access.

Strengthen the independence and efficiency of the judiciary and promote consistent interpretation of legal provisions related to human rights and fundamental freedoms in line with the European Convention on Human Rights. Take measures with a view to ensuring that the obligation for all judicial authorities to take into account the case-law of the European Court of Human Rights is respected. Align the functioning of State security courts with European standards. Prepare the establishment of intermediate courts of appeal.

Continue to bring conditions in prisons into line with standards in EU Member States.

Extend the training of law enforcement officials on human rights issues and modern investigation techniques, in particular as regards the fight against torture and ill-treatment, in order to prevent human rights violations. Extend the training of judges and prosecutors on the application of the European Convention on Human Rights and the case-law of the European Court of Human Rights.

Intensify efforts to develop a comprehensive approach to reduce regional disparities, and in particular to improve the situation in the south-east, with a view to enhancing economic, social and cultural opportunities for all citizens. In this context, the return of internally displaced persons to their original settlements should be supported and speeded up."

APPENDIX D

Council of the European Union. 23 January 2006. Council Decision on the Principles, Priorities and Conditions contained in the Accession Partnership with Turkey http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:022:0034:0050:EN:PDF accessed on January 2008.

Human rights and the protection of minorities Observance of international human rights law
Promote human rights with the active support of an independent, adequately resourced national human rights institution in accordance with the relevant UN principles. Monitor human rights cases, including sound statistical data.
Extend the training of law enforcement agencies on human rights issues and investigation techniques, in particular in order to strengthen the fight against torture and ill-treatment.
Ratify the optional protocols to the International Covenant on Civil and Political Rights. Comply with the European Convention for the Protection of Human Rights and Fundamental Freedoms, including full execution of the judgments of the European Court of Human Rights.
Implement legal provisions on the right to retrial in line with the relevant judgments of the European Court of Human Rights.
Guarantee in law and in practice the full enjoyment of human rights and fundamental freedoms by all individuals without discrimination and irrespective of language, political opinion, race, sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
Ratify Protocol No 12 to the European Convention on Human Rights on the general prohibition of discrimination by public authorities.
Ensure implementation of the measures adopted in the context of the 'zero tolerance' policy against torture and ill-treatment in line with the European Convention on Human Rights and the recommendations of the European Committee for the Prevention of Torture.
Intensify the fight against impunity. Ensure that prosecutors conduct timely and effective investigations of alleged cases leading to identification and punishment of perpetrators by the courts.
Ensure implementation of the Istanbul Protocol throughout the country, in particular by increasing medical expertise.
Ratify the optional Protocol to the UN Convention against Torture which provides for the establishment of a system of independent monitoring of detention facilities.
Enhance the opportunities for effective defense such as access to legal aid and qualified interpretation services.
Ensure that citizens are aware of, and in a position to exercise, their right to have access in private to a lawyer and to have relatives notified from the outset of their custody.
Ensure the exercise of freedom of expression, including freedom of the press, in line with the European Convention on Human Rights and in accordance with the case law of the European Court of Human Rights.

Continue to remedy the situation of those persons prosecuted or sentenced for non-violent expression of opinion.
Implement all reforms concerning freedom of association and peaceful assembly in accordance with the European Convention on Human Rights and its related case law. Implement measures to prevent the excessive use of force by security forces.
Facilitate and encourage the domestic development of civil society and its involvement in the shaping of public policies.
Facilitate and encourage open communication and cooperation between all sectors of Turkish civil society and European partners.
Adopt a law comprehensively addressing all the difficulties faced by non-Muslim religious minorities and communities in line with the relevant European standards. Suspend all sales or confiscation of properties which belong or belonged to non-Muslim religious community foundations by the competent authorities pending the adoption of the abovementioned law.
Adopt and implement provisions concerning the exercise of freedom of thought, conscience and religion by all individuals and religious communities in line with the European Convention on Human Rights and taking into account the relevant recommendations of the Council of Europe's Commission against Racism and Intolerance.
Establish conditions for the functioning of all religious communities, in line with the practice of Member States. This includes legal and judicial protection (inter alia through access to legal personality) of the communities, their members and their assets, teaching, appointing and training of clergy, and the enjoyment of property rights in line with Protocol No 1 to the European Convention on Human Rights.