INTRODUCTION

Respect for human rights is one of the most problematic issue in long lasting Turkey-European Union (EU) relations and constitutes a condition for being a member of the EU. Turkey has always been in difficulty to improve its human rights situation. Since its internal dynamics are problematic, it could not ensure an adequate record in human rights before the Helsinki Summit.

Turkish politics was quite problematic in 1970s and 1980s and this paved the way to failures in human rights. At the beginning of 1980s there was a military coup, and it hindered improvement in democratization because the conditions in Turkey were inconvenient for reforms in human rights. 1982 Constitution included unfavourable articles and constituted a step backward regarding human rights compared to a more democratic 1961 Constitution. In the former constitution the articles reflected a more nationalist and militarist view in accordance with the undemocratic conditions of that time.

Turkey applied for full membership to the then European Community (EC) in 1987. However, the application was refused because of Turkey's inadequate human rights record and its low economic development level. The Commission declared Turkey's eligibility for membership, but it did not present any motivating incentives for Turkey. The relations were redirected from membership towards association in the framework of the Ankara Agreement. Therefore, Turkey and the EU focused on the preparations for a customs union. The Customs Union between the EU and Turkey came into effect in January 1, 1996. In 1997 Luxembourg European Council, Turkey was again not declared as a membership candidate although the other applicants were declared as candidates. The eligibility was recalled again, however the European Council did not present any incentives such as declaration of EU candidacy. Helsinki Summit was a turning point for the relations in this respect. Turkey was considered as a candidate on the same footing with the other candidates. As a result, the reforms and, therefore, improvement in human rights situation started to take place in Turkey.

The miracle reforms between 1999 and 2004 were a result of a credible and effective EU conditionality. Conditionality, in general, is a tool that an international actor like the EU uses to present certain incentives in exchange of compliance of certain conditions by the countries concerned. Political conditionality, in particular for enlargement policy, is a political tool for the EU to develop and democratize the candidates. The EU conditionality was effective in Central and East European countries and similar effects may be felt for Turkey.

The EU used various levers in conditionality mechanism such as monitoring, financial aid and gate-keeping. The transformation cannot not take place without the conditionality.

Turkey improved its human rights record in transformation years, which were between 1999 and 2004. There occured many changes in the period and Turkey ensured the compliance with the Copenhagen political criteria. Turkey complied with the political criteria sufficiently for the opening of the accession negotiations. Finally, negotiations began with Turkey in October 3, 2005. Turkey has improved itself in human rights and democracy. The legislation and implementation became better when compared with the years before the Helsinki Summit. However, after the opening of the negotiations until recently, the performance of Turkey has decreased as a result of internal dynamics of Turkey and the ineffective and incredible EU conditionality.

The aim of the thesis is to examine whether the EU conditionality has been effective in transformation years and thereafter by analysing the developments and reforms in human rights situation in Turkey. It is obvious that a possible EU membership, after the declaration of candidacy, has created a strong impetus on the part of Turkey to comply with the Copenhagen political criteria and to undertake legislative reforms for this purpose. In other words, a linkage should be made between the EU enlargement policy and the improvement in human rights record of Turkey. That is why the thesis mainly focuses on the impact of EU conditionality on Turkey's improvement in human rights. The analysis of developments and reforms show whether the legislative changes have been adequate and whether they have been in European standards or not. The thesis argues that there have been remarkable improvements in human rights in legislative terms in the transformation period. However, the implementation of reforms has not been adequate although there has been a remarkable progress in implementation. In addition to the implementation problems, Turkey has been experiencing a break time regarding further legislative reforms after 2004 until recently.

In parallel to this, the main argument of the thesis is that the EU had implemented effective conditionality in the transformation years. However, the EU's conditionality has lost its impact on Turkey thereafter. In the transformation period, the EU was effective regarding legislative reforms; however, the internal factors in Turkey made the implementation of reforms hard to apply even in this period. On the other hand, after the transformation period until recently, the EU's conditionality has lost its effectiveness on Turkey and the reforms have slowed down and implementation has been inadequate. The implementation of reforms and further legislative changes have been problematic because of not only weakening effectiveness of conditionality mechanism but also internal factors and the traditional regime

in Turkey. The political tradition in Turkey makes the implementation and further reforms hard to be realised.

The thesis examines the decisions of the European Court of Human Rights (ECHR) in last 10-15 years. By examining the decisions of the ECHR, it tries to compare the implementation of the Turkish Case law and the implementation of the ECHR Case law. This analysis shows whether implementations of Turkish judges have been adequate and in European standards or not. Particularly the issue of freedom of expression is analysed in the examination of some selected cases. In comparisons between the Turkish Case Law and the ECHR, Article 301 and Article 312 of the Turkish Penal Code, which were about freedom of expression, were referred. On the other hand, in the case studies, Article 312 of the Turkish Penal Code was used to compare the applications by the ECHR and the Turkish interpretations for freedom of expression. The reason of using only freedom of expression instead of other issues of human rights is that freedom of expression has been a critical, important and current issue in Turkey and the EU relations. Secondly, the thesis needs to be limited with a certain issue. Otherwise, it would be longer and this would not give a chance to the author to make an in-depth analysis about a certain topic.

The thesis is composed of three chapters. The first chapter includes conceptual analysis of conditionality and examines the mechanism of conditionality by researching what conditionality is, what its levers are, where and in which conditions it is used and what factors make it effective. Effectiveness of conditionality and the factors that make it effective have been analyzed. Differences between positive and negative conditionality, the policy areas such as foreign and enlargement policies where conditionality is used, levers of conditionality, and the factors of effective conditionality have been taken up. The aim of the first chapter is making a conceptual analysis of conditionality and providing a groundwork to analyse its effectiveness on human rights developments in Turkey.

The second chapter examines reforms and developments in human rights in Turkey, how much improvements have been realised through legislative changes and the impact of EU conditionality on these developments. The chapter analyses how the EU conditionality functions in the relations between Turkey and the EU and what levers of conditionality the EU used in its relations with Turkey. Firstly, legislative changes are taken up and analysed. The reforms are studied year by year to show the improvement and the scene in the years of transformation and thereafter. Not only the reforms but also the problems in human rights are taken up to demonstrate that shortcomings have also occured in human rights in Turkey. By studying both the improvements and problems, a general picture about human rights situation

in Turkey is provided. This analysis also paves the way to making proposals about correcting the problematic points. After the analysis of the legislative changes, the role of the EU conditionality is analysed. The levers that the EU uses in its conditionality mechanism are analysed and this shows how conditionality functions between the EU and Turkey. Then, the factors of an effective conditionality are examined to conclude that whether the EU's conditionality is effective on Turkey regarding human rights.

The last chapter focuses on the implementation of reforms in human rights. The comparisons are made between the case law of the ECHR and Turkish case law. The chapter analyses how freedom of expression is implemented in Turkey by using some cases and examples. Comparative analysis is made to observe the degree of compliance of Turkey generally in human rights and particularly in freedom of expression with the judgements of the ECHR. The applications by the ECHR are taken up to show the European norms in the freedom of expression issue. Then, while presenting Turkish applications in freedom of expression, the aim is to compare the applications of Turkish judges in the issue with the ECHR applications. The concluding point would be to determine how different Turkey's case law, that is its implementation, is from European norms. The reason of analysing cases is that the cases are suitable examples of showing implementation.

In the third chapter, the effectiveness of the EU conditionality regarding implementation of the reforms is examined and the internal factors that have made the implementation problematic are taken up. The study on this issue is divided into two periods: the transformation period and the period since 2004 until recently. Transformation years show that the EU conditionality was effective regarding legislative reforms in human rights. There are some shortcomings in the implementation of these reforms in this period. These problems are analysed and it is concluded that mainly there are internal factors behind them. The EU conditionality is effective regarding legislative changes, however the implementation of these changes are problematic mainly because of the internal dynamics of Turkey. In the second period, the EU conditionality is not as effective as in the first period. Ineffective conditionality has combined with the continuing internal factors and led to the slowing down of the legislative reforms in addition to the existing implementation problems.

CHAPTER I. EU CONDITIONALITY AND ITS EFFECTIVENESS

I.1. EU CONDITIONALITY

EU applies political conditionality as a tool to drive countries for reform and change. The EU gives incentives to candidate countries and other countries around the world such as European agreements, aid, start of negotiations, trade cooperations, membership and improving relations mutually if the EU realizes that there are certain improvements and struggles in political conditions, such as human rights promotion, democratization, rule of law and minority issues. Conditionality can be described as "linking by a state or international organization of benefits desired by another state to the fulfillment of certain conditions."[1]

The EU controls candidate countries on these criteria and presents rewards and creates incentives to the countries. The EU conditionally is applied for candidate countries and for other countries around the world. The conditionality is considered as a part of EU foreign policy and applies it to candidates to ensure greater enlargement and as a part of enlargement policy. The EU prepares countries for membership or for other advantages with the rewards like incentives. The candidates have to fulfill the conditions in which they are presented in Copenhagen Criteria in order to receive benefits such as financial assistance. However, when there is a shortcoming on the adoption and on political criteria, the EU withholds the incentives in that situation. The importance of conditionality is that, the EU helps the countries for improvement, for democracy and at the same time, it helps countries with the incentives.[2]

The EU prepares roadmaps for countries for them to know what they must do to comply. The EU also uses conditionality to reduce conflicts beyond its borders and for promoting peace, to increase democratization standards in a country by for example monitoring elections, supporting democracy in a country. These are all counted in foreign

[1] Schimmelfennig, Frank (2003), "Costs, Commitment, and Compliance. The Impact of EU Democratic Conditionality on European Non-Member States", *Journal of Common Market Studies*, Volume 41, Number 3, June, http://www.ingentaconnect.com/content/bpl/jcms/2003/00000041/00000003/art00006 pp. 3-6 (14.03.2008).

[2] Grabbe, Heather (2002), "European Union Conditionality and the Acquis Communautaire", *International Political Science Review*, Vol 23, no:3, London, p.253. http://ips.sagepub.com/cgi/reprint/23/3/249 (14.02.2008).

policy of the EU. If conditionality is applied for CEECs, that is for further enlargement and putting conditions for the countries to apply changes.

I.1.1. Negative Conditionality

There is a negative conditionality on the implementation of conditionality. Negative conditionality is used for ensuring changes, human rights promotion and democracy for countries. The EU uses sanctions for countries who have shortcomings in their human rights record. They were made for Africa, Caribbeans and Pasific countries. Also, in enlargement, the negative conditionality is tried by withholding negotiations, by not calling the candidate to summits, by not recognizing as a candidate or by withholding the financial aids. However, for the EU, negative conditionality (punishment) is applied when it is the last resort and other methods were tried and these do not function. Political conditionality was also a solution to cope with the levels of candidates and to hinder the political inadequacies of candidates. By the help of this conditionality, it was aimed to reduce the inadequacies of candidates, because it is easier to cope with readier countries when they become members.[3]

The EU sometimes freezes the relations with a country or freezes the negotiations and other processes through the membership. This may be a result of the country which makes violation of human rights and when a country cannot comply the Copenhagen Criteria, for example economic conditions. These happens so rare, because this is the last thing to do. Instead, the EU does not distribute some resources for development. It can be financial instruments. For example, in 1997, the Commission and the Council mentioned that Slovakia should not be included in the first round of membership negotiations because of its poor human rights record. [4]

I.1.2. Positive Conditionality

Conditionality is especially making itself noticable with Copenhagen Criteria and it stated in Article 6 of Amsterdam Treaty that the criteria depends on whether candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human

[3] *Ibid.*, p.251.
[4] *Ibid.*, pp.247-249.

rights and protection of minorities.[5] And Luxembourg Council in 1997 stated that these are the conditions also for starting the negotiations. The conditionality is political but not legal and it is a means of reminding the candidates' responsibilities which are not for Union, but also for international order. While mentioning about conditionality, it is important to keep in mind that rationalist bargaining model is there for the candidate countries. Because, the candidates are the strategic utility maximizers and they have the right to choose what is beneficial for them and this analysis is made by the candidates for accounting their cost-benefit evaluation. The candidates try to maximize their utilities from the incentives that they are presented. The incentives may be the prospect for membership, aid, a program of development, technical aid and as such.[6]

In political conditionality, we see that the EU put conditions and its rules that the candidates have to fulfill to receive the rewards by the EU. The conditions were human rights norms, basic rules of democracy, rule of law and protection of minorities. The rewards are assistance and institutional ties and trade or cooperation agreements with the candidate countries. These rewards were given to central east European countries, but it is also possible to mention that these are nearly the same for Turkey, too. Customs Union, aid, funds for projects, Helsinki decisions for Turkey as recognition for candidacy, the positive commands in Regular Reports, Accession Partnership documents and the promise for starting the negotitations when the Commission found the political conditions satisfying, can be concluded as rewards and incentives. EU conditionality follows a strategy of reinforcement by reward and presents the reward if the target country fulfills the conditions and withholds the reward in case of a failure to comply.[7]

If the reward really exceeds the domestic costs of the candidate, then it could be determined that conditionality is effective and the candidate chooses to try to comply. For the conditions to be motivating, the conditions should also be credible, decisive and it should not be vague in addition to its benefits that exceed the costs in the candidate country. Conditionality is a tool that the EU uses in exerting political pressure and influence on

[5] Schimmelfennig, Frank (2003), pp. 3-6.
[6] Grabbe, Heather (1999), "A Partnership For Accession?:The Implications of EU Conditionality for the Central and Eastern European Applicants", *Robert Schuman Centre Working Paper*, http://www.cer.org.uk/pdf/grabbe_conditionality_99.pdf pp.2-4. (03.04.2008).
[7] Schwellnus, Guido and Schimmelfennig Frank (2006), "Political Conditionality and Convergence, the EU's Impact on Human Rights", *Paper Prepared for the CEEISA Conference*, Tartu, Estonia, 25-27 June 2006. http://www.eup.ethz.ch/people/schwellnus/papers/Schimmelfennig_Schwellnus.pdf pp. 5-7 (03.04.2008).

member states and to reach to some certain policy or legislation outcomes. Political conditionality is a way of democracy promotion. The Commission reports on the improvements and missing parts of candidates on political criteria. The EU uses two methods in applying conditionality. The first one is that the candidates' legislative amendmends are observed and what can be done for the implementation is evaluated. Secondly, the capacities of the candidates are observed and the alternatives are discussed. The Commission released an "opinions" document in 1997 and this was a step before Accession Partnership documents.[8]

The reports that the EU Commission prepares, consist of information from Council of Europe, OSCE, NGOs and assessments made by member states. "The dominant logic underlying EU conditionality is a bargaining strategy of reinforcement by reward under which the EU provides external incentives for a target government to comply with its conditions."[9] The rule transfer is realized like this by the reinforcement by reward strategy. Adoption of EU rules is performed by a strategy as institutionalization at the domestic level. EU legislation is tried to be converted to domestic law. Domestic institutions are restructured according to EU norms and values. The policy practices, policies are shaped according to EU rules. The external incentives model is a rational bargaining model. The actors (recipients) are utility maximizers and they account their cost-benefit analysis. Assistance, institutional ties, trade and cooperation agreements or incentives for full membership are the rewards at the end of the process. But, the withholding of the reward or giving it, depends on the recipient's fit at the end of the process.

The Copenhagen conditions were part of a proactive behavior that aimed minimizing the unstableness and economically insufficiencies of eastern countries. The Copenhagen conditions are; achieving stability of institutions guaranteeing democracy, rule of law, human rights and respect for minorities (political conditionality), ensuring the existence of a functioning economy as well as increasing the capacity to cope with competitive pressure and market forces, increasing the ability to take the obligations of members.[10] All these conditions are necessary, but in the reality that the EU is ready to absorb new members. The

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[8] Smith, E. Karen (2002), "The Conditional Offer of EU Membership as an Instrument of EU Foreign Policy: Reshaping Europe in the EU's Image," *Marmara Journal of European Studies*, A Publication of Marmara University, İstanbul, pp.35-39.
[9] *Ibid*., pp. 7-10.
[10] See http://europa.eu/scadplus/glossary/accession_criteria_copenhague_en.htm.

conditionality here is a promise by one party (the EU) to do something in exchange for a promise by other party to do something in the future. The reason behind this conditionality for eastern European countries is that they wanted to transform eastern societies and their economies and they wanted to guide these countries towards membership. However, the countries should also know to where they may go, as the required moving target. The clearer the incentives such as membership, the less the moving target problem of candidates.[11]

I.1.3. Conditionality as a Foreign Policy Tool

Conditionality is considered as a part of foreign policy tool of the EU. It is a part of dialogue, financial relations and political relationship with third countries around the world. In conditionality relations of the EU and the third countries, the EU tries to establish democracy and promote human rights in those countries. Cooperation, association agreements, trade agreements and financial aid are made conditional in return for respect for human rights and democratic principles.[12] The EU encourages respect for human rights and democracy. The EU uses economic and diplomatic instruments. The economic instruments are aid, trade, cooperation and association agreements. The diplomatic instruments are declarations and political dialogue. They are used in Common Foreign and Security Policy(CFSP), external relations and European Political Cooperation. The Central and Eastern European Countries (CEECs) were governed with authoritarian regimes. In return for changing these regimes to democratic ones, they are helped with incentives like cooperations and with membership perspective to the EU. According to the EU, promoting these norms like human rights makes contributions to international peace and stability. Political conditionality is presentation of certain benefits to a state in return for protection of human rights and democracy. Positive conditionality is presenting the benefits and negative conditionality is withdrawal of certain benefits because of violations of human rights.[13]

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[11] Grabbe (1999), p.6.

[12] Schmellfennig, Frank and Sedelmeier Ulrich (2004), "Governance By Conditionality:EU Role Transfer to the Candidate Countries of Central and Eastern Europe. " *Journal of European Public Policy*. Vol.11, No:4, August, http://www.mzes.unimannheim.de/projekte/typo3/site/fileadmin/research%20groups/1/teamBreader/Schimmelfennig%20&%20Sedelmeier_Governance%20by%20conditionality.pdf pp 13,16 (02.05.2008).

[13] Schmellfennig, Frank and Scholtz, Hanno (2007), "EU Democracy Promotion in the European Neighborhood: Conditionality, Economic Development and Linkage", paper for EUSA Biennial Conference, Montreal, May 2007, http://www.unc.edu/euce/eusa2007/papers/schimmelfennig-f-12b.pdf pp. 6-8. (17.04.2008).

Conditionality had been popular after the Copenhagen Summit and there was no clear reference to conditionality before that. For example, the European agreements in 1991 with Czechoslovakia, Hungary and Poland did not include any references to conditionality. However, the European agreements with Albania, Baltic States and Slovenia included the possible suspension references. In 1992, declarations showed that there were references to conditionality after that date. Recognition of new states in Eastern Europe was also attached to conditionality.[14] In 1993 Copenhagen European Council, it was determined that CEECs could join the Union when they satisfied certain conditions like democracy, rule of law, human rights and respect for minorities. Maastricht Treaty made clear that one of the objectives of CFSP was to improve democracy, rule of law, respect for human rights and fundamental freedoms.

Cooperation agreements with Latin American countries and Asian states also included a clause that stated respect for human rights and democratic principles that were essential elements of the agreements. But, in those agreements, there was no suspension. However, on 29 May 1995, the Council stated that a suspension mechanism would be added in case of violation of agreements. Lome Convention Article 366a in November 1995 also stated that the convention included a suspension clause in case of violation of human rights and democratic principles.[15]

In the application of the conditionality, sanctions and suspension of agreements were applied as a last resort. That meant that the suspensions were the last solution when other solution methods failed. The positive conditionality included granting aid to the countries that improve promoting human rights and making democratic reforms. The suspensions were applied in Kenya, Malawi, Sudan, Togo and Zaire because of human rights violations. The improved aids were sent to South Africa, Burkina Faso and Zambia were a result of improved human rights and democratic conditions there.[16] EU aid for democracy and human rights were made on some areas, such as improving rule of law, by supporting parliaments and the judiciary, by supporting elections and referanda in a country. Secondly, it is used to strengthen civil society by supporting non-governmental organizations and thirdly, by supporting torture victims and minorities. The negative conditionality includes public

[14] Schmellfennig, Frank and Sedelmeier Ulrich (2004), pp.13-15.
[15] White, Brian (2001), *Understanding European Foreign Policy*, Palgrave, New York, pp.70-75.
[16] Smith, E. Karen (2002), pp.35-37.

demarches, reducing cultural, scientific, technical cooperation programs, suspension of a contract, postponing projects on countries, implementing sanctions, suspension of arms sales and militaristic cooperation and suspension of a certain cooperation. In 1994, the EU made 50 demarches and released over 80 declarations on human rights.[17]

In 1995, after the execution of writer Ken Saro-Wiwa, the EU imposed an arms embargo on Nigeria. Similarly, an arms embargo was also applied on Burma because of their failure to respect the results of democratic elections. Because of the coup d'etat in countries like Haiti, Comores, the cooperations were suspended and slowed. On the other hand, because of the lack of progress in political field in Kenya, aid was suspended and later on, there was no structural adjustment together with the aid.

The EU conditionality is also used in EU's external relations and also in political dimension. The conditionality before 1993 cannot be ignored. The EU had several interactions with countries around the world. The external relations meant Community foreign policy and these relations included economic relations with third countries. Conditionality is used in political and economic relations. Conditionality is used in enlargement, in foreign policies of the EU, in development policy of the EU and in financial aids. In external relations, there are economic and trade agreements, with countries and there are cooperation and association agreements in relations of the EU with other countries. Rome Treaty Article 228 controls negotiations on economic and trade agreements. Moreover, Article 238 of the Rome Treaty manages aids, cooperation agreements and regional funds.[18]

The front players in these relations are the Commission and the Council. The Commission according to Article 113, reports and negotiates on behalf of member states. In instruments of external relations, there are regulatory, coercive and framework instruments. Coercive instruments include reducing the economic favours and implementing sanctions on

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[17] *Ibid*., pp.33-36.
[18] White, Brian (2001), pp.70-75.

countries. Framework instruments include cooperation and association agreements. These also include aid, concessions and private relations. [19]

When Argentina made attacks on Falk Islands, the EC ruled out arms deliveries to Argentina and banned exports of some of the goods. Also, when South Africa was in undemocratic political environment and when there were human rights abuses, the EC banned new investments to the country. Moreover, the EC banned the imports of iron and steel. The EU uses withdrawal of closest form of reaching to the Union and the Community. The countries which cannot improve human rights situations, were left outside of access to EC markets. In 1980s, the EC applied sanctions on Soviet Union and to Iran. The EC made arms embargo to Africa and it stopped oil exports because of the Apartheid regime on South Africa.[20]

Politically, the EC had political, economic and mixed instruments. Politically, the EU applied declarations and dialogues. Europe agreements with CEECs after 1989, were part of EU instruments after the international context changed. The EU started to implement a consistency between its instruments. Economic conditionality had political, political conditionality had economic endings and ties. For ensuring stability in Eastern Europe and in the other parts of the world, the EU tried to promote regional stability. The EU joined Euro-Arab dialogue, worked with ASEAN, Rio Group and Gulf cooperation to empower stability.[21] Trade agreements, technical and financial assistance was made with Poland and Hungary to develop these countries.

I.1.4. Conditionality as an Enlargement Tool

The EU applies positive and negative conditionality to third countries as trade concessions, aid, cooperation agreements and political contacts. The conditionality is being used for CEECs with the incentive of membership. After the Copenhagen Summit and the publishment of Copenhagen Criteria, the membership carrot started to be used in political relations with CEECs. They were expected to respect and promote human rights and democratic principles. The conditions which were set in Copenhagen Criteria, were to

[19] *Ibid.*
[20] *Ibid.*, pp.76-79.
[21] *Ibid.*, p.80.

decrease the risk of new entrants' unstability and economic failures. While doing this, the EU guides these states on how to be more stable on political and economic grounds. These changes are for post-communist transformation of economies and societies.[22]

When the prospect of membership is at play, then there is granting of trade concessions and aids are prepared by the EU. Trade and cooperation agreements had been made with CEECs from 1988 to 1990. A suspension clause was added to all Europe agreements and linked trade and cooperation agreements to achievements of democratic principles, human rights and market economy. The transformation of CEECs was linked to Europe agreements and PHARE aid programme. These linkages were placed to "pre-accession strategy" in Essen European Council in 1994.[23]

The Phare programme is a part of the aid for CEECs. At the beginning of 1990s, the Phare programme consisted grants and technical assistance. However, when the pre-accession strategy was revised in 1997, the focus of Phare programme was narrowed to funding accession preparations along Accession Partnerships. The Phare programmes were used to make advices on economic transformation. The assistances provided elimination of trade barriers and export promotion for CEECs.[24]

Europe agreements were used to ensure trade and cooperation agreements. Eligibility for a Europe agreement depended on five conditions, which were; rule of law, human rights, multi-party system, free and fair elections and a market economy. The agreements had the chance of being suspended in case the conditions were not maintained. However, there was no suspension to for example, to Slovakia which faced demarches from the EU for its undemocratic practices in 1995. That proved that EU saw the suspension as a last resort.[25]

In 1997, the avis (opinion) of the Commission were used to check and follow the situation in ten CEECs. The opinions were a tool of conditionality. The avis made an overview of political and economic situations in 10 countries and the opinion makes

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[22] Smith, Karen (2003) "The Evolution and Application of EU Membership Conditionality" in Cremona, Marise, ed. *The Enlargement of the European Union*. , Oxford University Oxford, p. 108.
[23] Smith, Karen (2000), pp 35-39.
[24] *Ibid.*, pp.33-36.
[25] Karen, Smith (2005), "The Outsiders: the European Neighbourhood Policy", *International Affairs*, Vol. 81, No. 4 ,July , p. 763.

evaluations on how close countries are to join with full membership. In other words, these evaluate the applicants' readiness. The avis were important steps in favor of condititonality. They were regarded as the first active application of conditionality.[26]

Europe Agreements were considered as structured trade relations and had mixed content of political and economic provisions. The Europe Agreements intended to create a free trade area and to ensure the application of four freedoms of Single market. The content of the Europe agreements were political dialogues, timetable for liberalisation of trade and industrial goods, competition policy, cooperation on economic issues and free movement of workers. By these issues, the EU introduces the acquis to the applicants.[27]

Accession Partnership documents make conditionality stricter by financial assistance and through Phare. The AP documents include EU demands and assistance for meeting the conditions. Priorities are set for policy reforms and the demands are replied by National Programmes for Adaption of the Acquis. The demands are put as short and medium terms. Later on, the Commission presents regular reports on candidates for accession. Aids are linked with conditions for accession. However, there is no certain measurement for what we understand from fulfilling and violations. APs are however considered as external drivers for reform. For example, in APs that were prepared for Slovenia, it was asked to prepare pension reforms in the short term, on the other hand, Lithuania was asked to accelerate large-scale privatization. In political criteria, Slovakia was asked to respect minority languages, democratic application of elections in the short term. Estonia and Latvia were asked to apply language training and ensure integration of non-citizens. Latvia was asked to improve prison conditions, Bulgaria was asked to protect individual liberties in the medium term.[28] The membership perspective is a key instrument in EU enlargement policy. This incentive is for the CEECs to undertake political and economic reforms. The EU thinks that the transformation of CEECs will pave the way to the improvements in European security. The EU thinks that democratic states and market economies will lead to more stable and secure Europe.

[26] Smith, Karen (2000), pp. 37-42.
[27] *Ibid.*, p.39.
[28] Schimmelfennig, Frank and Schwellnus, Guido (2006), pp.13-17.

Conditionality was used with Article 6 of the Amsterdam treaty which was mentioning that the Union was founded on principles of liberty, democracy, respect for human rights and fundamental freedoms and these were common to member states. Any European state which respected these principles may apply to become a member of the Union. (Article 49 of Amsterdam treaty.)[29] Conditionality also included peace in borders and good neighborhoods. With the conditions of Copenhagen Criteria, peace with neighbors and normal relations with neighbors were other conditions of conditionality. Peaceful settlements of disputes according to UN Charter was to be implemented. These foreign policy tools mean that the candidates must comply with some rules when normally they could not do. The tools of conditionality make the states reduce their differences.

To give a negative conditionality example, while Meciar government was on the governance in Slovakia, it was determined by the EU that Slovakia must have met democratic norms if it wanted to join the EU. In 1997, the Commission and the Council mentioned that Slovakia should not be included in the first round of membership negotiations.[30] The membership carrot was withdrawn by the EU to foster reforms in Slovakia. However, in 1998, the new government had made political reforms. This was resulted by the decision to open negotiations after Helsinki European Council. On the other hand, Bulgaria was refused in 1997 because of its political failure. However, it was accepted to have met the conditions after it made economic reforms and decided on acceptable closure dates on nuclear power plant. And, Romania was accepted after taking action on child care institutions and making economic reforms. All the CEECs tried to meet the Copenhagen conditions and it can be said that the EU conditionality worked by presenting them the membership carrot.[31]

I.2. LEVERS OF CONDITIONALITY

The EU used some levers of conditionality in helping the CEECs such as gate keeping, benchmarking and monitoring, financial and technical assistance and advice and twinning.

[29] "Treaty Of Amsterdam Amending The Treaty On European Union, The Treaties Establishing The European Communities And Certain Related Acts", European Communities, Germany,. 1997, www.europarl.europa.eu/topics/**treaty**/pdf/amst-en.pdf p.60, (15.02.2008).
[30] Smith, Karen (2000), p.40.
[31] Schimmelfennig, Frank (2003), pp.2-4.

Heather Grabbe classified those levers and levers that are used for Turkey were written below.[32]

I.2.1. Gate Keeping

Some kind of pressure is applied to the candidates as international and political pressure and the countries are criticized by the EU institutions through the media and through the reports. Regular Reports and commands on mass media are the examples of these pressures. For example, when Oli Rehn who is responsible for enlargement, says that Turkey should abolish Article 301 of the Turkish Penal Code and criticizes that this article is an obstacle in front of freedom of expression, then this will count as a pressure that is applied through gate-keeping. In Turkey's human rights abuses, the EU makes demarches which puts Turkey under pressure that is other than an adaptational pressure, this is a shaming pressure that creates a psychologic pressure on the government. The news on media about a certain human rights abuse or breach is an example of this situation.[33]

Another tactic which is employed under gate keeping role of EU conditionality is exclusion. When a candidate is under adaptational pressure on applying a certain rule, norm or policy, then the EU shows its threat on the country that it could be excluded from negotiations and from incentives. This is a risky tactic, because it must involve a certain and a clear breach or failure (ongoing misfit) in a policy or a rule. Otherwise, it causes a double standards, at least a perception of a double standard or an unfair judgement and governance by the EU. The EU mentions that negotiations with Turkey could be stopped in the case of a breach in Copenhagen political criteria. This is an example of using the stick and a threat of exclusion.[34]

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[32] Grabbe (1999), pp.5-10.
[33] Grabbe, Heather (2001), "How does Transformation Affect CEE Governance? Conditionality, Diffusion and Diversity", *Journal of European Public Policy*, Vol 8, Issue 4, http://www.cer.org.uk/pdf/grabbe_jepp_2001.pdf p.1021. (18.05.2008).
[34] *Milliyet* (2006), Can Dündar, "Müzakereye Ara Verelim", September 11, www.**milliyet**.com.tr/2006/11/09/siyaset/siy01.html (12.11.2007).

I.2.2. Benchmarking and Monitoring

It is another tool of conditionality through evaluating particular policy areas and making commands on the issue and evaluating the performance of the candidate by determinations prepared in Regular Reports. Accession Partnerships also evaluate performances of the candidates and shed light on the governments to apply the changes and reforms in certain dates and times. Some changes may be urgent and they are held in short time. However, some changes can take long periods of time, so that means that they can be performed in a medium and long term. The EU shows the timetables of these reforms and shows the way about which reforms in which time and periods these changes should be performed.[35]

For example, on the Accession Partnership document 2001 for Turkey, the EU made evaluations and put the changes in human rights freedom of expression in short term priorities. It mentioned that Turkey should ensure the legal and constitutional amendmends on freedom of expression that must be complied with the Article 10 of Convention on Human Rights that is about freedom of expression.[36] The legal ground was the first thing to do that meant that it was for the short term and implementation would be on long term. This kind of monitoring had shortcomings in its coverage. Because, some evaluations are vague and some are without details.

For example, when the EU mentions about adopting national legislation and asks the establishment of a monitoring body, it does not mention how and in what conditions. What features the institutions should include, are not written smoothly. General and vague sentences harm the conditionality perspective. Thirty-five negotiation chapters are other examples of conditionality. Legislative and institutional weaknesses are held in those meetings in screening processes.

[35] Grabbe (1999), pp.12-14.
[36] Hughes, James and Sasse, Gwendolyn (2003), "Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEEC", *Journal on Ethnopolitics and Minority Issues in Europe,* http://www.ecmi.de/jemie/download/Focus1-2003_Hughes_Sasse.pdf pp.23-25 (12.05.2008).

Monitoring by Progress Reports

The political conditionality shows itself in Regular Progress Reports that were presented to candidates. The reports express the candidates that certain fields must be open to change and some fields are convenient with the transformation of certain norms, values and implementations in addition to legislation that are mentioned in European Human Rights Convention. (EHRC) In Progress Reports, the Commission observe candidates' human rights record by analyzing the improvements in fields of civil and political rights, freedom of expression, torture and ill-treatment, detention conditions, freedom of association and assembly, minority rights, freedom of religion, the death penalty, the ratification of certain conventions and cultural rights.[37] These recommendations shed light to new amendmends in legislation and how certain implementation problems will be solved. The Commission sometimes calls on the governments to find solutions and to make changes on certain implementation on human rights or on certain provisions and laws. These calls and recommendations are part of EU human rights conditionality to make candidates ensure better implementation of human rights reforms and to motivate change.[38]

Progress Reports mention the protocols in human rights that the candidates signed or did not sign. Progress Reports motivates the candidates by mentioning the improvements and progresses that the candidates made. Progress reports are not always criticisms. They also respect and appreciate the progresses that the countries made. The Commission mentions about the improvements that the candidates have to make. For example, in cultural rights and in minorities, the Commission warns some countries such as Hungary to pay attention to these issues. It gives examples from some implementations that the candidates made and observe the human rights violations of the candidate. These warnings and observations effect the candidate by the pressure from the EU and the candidate tries to decrease the shortcomings and tries to improve the implementation of a policy. [39]

In progress reports, the EU uses the reports of International organizations and civil society organizations such as Amnesty International and attaches importance to certain

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[37] The European Commission, (2001) Regular Report, "Turkey's Progress Towards Accession" ec.europa.eu/enlargement/archives/pdf/key_documents/2001/tu_en.pdf (04.04.2007).
[38] *Ibid.*
[39] *Ibid.*

numbers and statistics. However, how to correct and handle the policy misfits are not adequately mentioned by the EU. There should be technocrats and experts that must make recommendations to the candidate governments and must take place in the implementation of the policies and must show how the improvements on certain policies should be made. This is because of the reason that "how" question cannot be solved solely by the candidates. There should be an advisor on making policies.

Monitoring by Accession Partnership Documents

Another tool of EU conditionality may be presented as the Accession Partnership documents. These documents were presented in 2001, 2003 and 2006 and in 2007. They show Turkey a framework for improvements and changes with certain time scales and schedules, with short and medium term changes that can be made. The documents directs the aid according to countries. The aids change according to the situations of the countries. While looking at the requirements and situation in a country, the EU attaches importance to Progress Reports. By exploring the Progress Reports, the EU determines the primary areas of the possible improvements. The application of primary concerns is supported with the aid programmes. These documents made Turkey release a National Program for the Adoption of the Acquis. Turkish government also explained the possible changes that can be made in short and medium term and prepared a time scale for these changes.[40] These reports and documents were supported with regular meetings between the Turkish authorities and the EU institutions with the flow of information. EU officials also attended certain cases regarding human rights like trial of Leyla Zana and other certain cases on freedom of expression. Orhan Pamuk case was monitored by EU representatives and the points related to those cases were recorded.[41]

The Accession Partnership documents are closely related to Progress Reports and the EU makes its recommendations by looking at the Progress Report. The documents are political tools that help the candidate Turkey to push for change and transformation of certain laws and implementations. The EU asks for better administrative structures and the implementation of legislative changes.

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[40] State Planning Organization, "Accession Partnership With Turkey", http://europa.eu/scadplus/leg/en/lvb/e40111.htm (24.02.2008).
[41] www.internethaber.com, "Dünya Bu Davayı İzliyor", http://www.internethaber.com/news_detail.php?id=43749 (20.09.2007).

The EU officials also make informal meetings with Turkish authorities and with ministries such as Human Rights, Justice and Internal Affairs. The EU officials come together with the General Secreteriat for the EU affairs. The EU benefits from certain resources such as NGO reports, human rights organization reports, academic resources and press resources to shape the reports that contain conditionality elements. Accession Partnership documents are intended to make conditionality more powerful. Financial assistance and accession are important issues and they needed to be depended upon a certain rule and the candidates prepare a national program to meet the conditions. Then after 1998, the Commission published systematic regular reports on candidates' preparations to accession. However, the Accession Partnership documents fail to explain what would count as a failure and what and how much progress is needed to fulfill the Copenhagen criteria.

I.2.3. Financial Aid and Technical Assistance

They are among the most important conditionality tools of the EU. Phare aid program helped the candidates to build their institutions and to implement legislations. The funds are given to NGOs and to public authorities to prepare them for better and more democratic institution building. In years between 2000 and 2006, the EU transfered funds to east European countries from its agricultural policy budget and from the structural funds. SAPARD and ISPA are other funds that are intended to develop institutional capacities of candidates.[42] These funds are pre-accession funds. Some of the funds are used for advice to candidate countries in specific projects. Twinning activities started in 1999 that helped the candidates to improve their institutional capacities and to comply with the acquis, by learning from the member states' experiences. Officials from member states come and work in ministries and present technical advice.[43]

The EU started at the beginning of 1990s with granting trade concessions to Central Eastern countries to improve their economies and to take them out of communist regime. Trade and cooperation agreements had been concluded with most CEE countries and with the

[42] Zalewski, Piotr (2004), "Sticks, Carrots and Great Expectations: Human Rights Conditionality and Turkey's Path Towards Membership of the European Union" CEPS Working Document. Centre For International Relations, http://www.csm.org.pl/images/rte/File/Raporty%20i%20publikacje/Raporty%20i%20analizy/2004/rap_i_an_1604a.pdf pp.1-3, (12.01.2008).

Soviet Union in late 1980s. However, there was also a withholding option of the EU when it added suspension clause to Europe agreements. If the recipients are not ready politically, the suspensions might take place. Europe agreements and the Phare program were among the most important conditionality carrots that the EU used. The Phare programme is the channel of EU aid to Central and Eastern Europe. In the beginning of 1990s, there was no Phare programme, but the EU linked the conditionality to pre-accession strategy after 1997. At the beginning, it was technical assistance, however it became a transformation tool as linked with Accession Partnerships. The EU used Phare funds to channel advice on economic transformation after the first revision of pre-accession strategy.[44]

I.3. EFFECTIVENESS OF THE EU CONDITIONALITY

To be effective means that the recipient country should be effected by the carrot and the stick. In other words, for the international actor to be effective, the recipient should work for the carrot and should fear the stick. And to be effective also means that the actor changes the policies in a country. In other words, the actor should play an important role in democratization of the recipient country. If there is a concrete change and a certain degree of democratization and improvement, then this will mean that the EU conditionality is effective. Effectiveness of the EU conditionality can be observed by looking at the consistency and credibility of the EU. If the credibility is ensured and EU is consistent in its policies, then this will mean that the EU conditionality is effective.[45] The other requirement is the response by the recipient country or candidate on certain incentives, rewards and negative conditionality. This means that the recipient country should respond to certain carrots and sticks. In other words, the candidate must believe in the credibility of the actor and the EU makes the arrangements on conditionality consistently.[46] So, the recipient should believe in the international actor and the international actor should present a valid and credible incentive, the things that the actor asks from the recipient should be clear and understandable, it should not be vague. Clear establishment of the rules and what the EU asks from the recipient country increases the credibility of the EU. These are what credibility means for the EU.

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[43] Grabbe, Heather (2001), p.1019.
[44] Foreign Policy Dialogue, "The New Neighborhood Policy of the EU", Volume 7, issue 19, London, http://www.deutsche-aussenpolitik.de/newsletter/issue19.pdf (27.03.2008).
[45] Smith, Karen (2000), p.38-39.
[46] *Ibid*., p.39.

On the other hand, the consistency means that the actor should treat to candidates on equal terms and fairly. When the EU asks a country to implement a certain policy, then it should also ask a similar policy's implementation from the other country in the conditions that especially when the conditions of the countries are similar. For example, when the EU asks Turkey to implement freedom of expression, it should also ask this to be implemented by France. However, in France it is certain that a person who mentions that there is no genocide on Armenians, the person is prosecuted. France does not implement freedom of expression adequately. This is a double standard. An international actor should have the consistency to be believed in. [47]

These factors determine whether the recipient country desires the incentives such as negotiations and membership and fears that it will lose some incentives and go back to the former level, or its relations may finish. These depend on the credibility and consistency of the conditionality of the actor. For example, the EU was effective on CEECs, because these candidates desired to turn to Europe and they wanted stability in their regions. That meant that the conditionality carrot was the membership and they believed in the credibility of the EU. In some countries, like Slovakia and Romania, the conditionality was effective, because the new politicians that came to power, believed in the change and membership would make them develop themselves. They would increase democratization in the country. One candidate must know certainly that the end of the process would be a consistent end that would result with membership or start of negotiations. [48]

Strength of conditionality is thus an important feature that must be included in the functioning of the conditionality. A reward must depend on a compliance with a spesific condition or conditions. The EU conditionality is effective when the reward depends on certain conditions and the EU must insist on its fulfillment. This makes the target governments concentrate on the conditions and apply strong implementation of the conditions.

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[47] Grabbe, Heather (2001), p.1020.
[48] *Ibid.* p.1024-1025.

I.4. FACTORS OF AN EFFECTIVE CONDITIONALITY

I.4.1. Cost and Benefit Calculations of the Candidate

It is very important to note that for an effective conditionality relationship to take place between Turkey and the EU, the Turkish government must be convinced that the benefits of EU membership or the positive and smooth results of transformation must outweigh the political and economic costs that Turkey will spend during the transformation of certain laws, norms, values and practices. [49] Whether a country adopts a certain rule depends on the choice of the recipient and if EU rewards exceed the domestic adaptation costs, then this will mean that the government of the country will adopt a certain policy. Cost-benefit balance depends on the determinacy of conditions, size and speed of reforms, credibility of threats and promises and the size of adaptation costs.[50]

This is also true for other candidates and this also belongs to the nature of EU conditionality relationship between the EU and the candidates. The relationship between the EU and the candidate Turkey can be strong when the EU can persuade Turkey that the benefits of EU membership are critical for Turkey and the benefits outweigh the costs of change. For example, when Turkey, in other words, Recep Tayyip Erdoğan says that Turkey could find alternatives other than the EU, thanks to its potential and its power or, to give another example, when the prime minister says that they could forget the Copenhagen Criteria and they could go on with Ankara criteria, the conditionality relationship is harmed.[51] Because, this decreases the importance of understanding the benefits of EU membership and Turkey feels itself in a condition that it can do without the EU and continue with different alternatives.

The benefits of the EU membership should be explained and Turkey should be persuaded that benefits are also important and that Turkey must not just say that it can only rely on its security asset and make the EU consider that EU needs Turkey and the EU must do

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[49] Zalewski, Piotr (2004), pp.30-32.
[50] Erdoğan, Birsen (2006), "Compliance with EU Democratic Conditionality" Standing Group on the European Union Third Pan-European Conference on EU Politics, 21-23 September , Istanbul, Turkey http://www.jhubc.it/ecpr-istanbul/virtualpaperroom/042.pdf p.6, (18.11.2007).
[51] http://www.csm.org.pl/images/rte/File/Raporty%20i%20publikacje/Raporty%20i%20analizy/2004/rap_i_an_1604a.pdf pp.30-32. (12.01.2008).

something not to discourage Turkey. This can also harm the normative power of the EU on Turkey. In short, the EU must attach Turkey's attention to the membership and its advantages.[52] The EU must also convince Turkey that the membership will bring stability to the country and that it will solve Kurdish issue by integrating Kurds into the country and by giving Kurds some rights and this will create a peace atmosphere.

I.4.2. Clarity of the EU Documents

Another problem on the conditionality of the EU is, the vagueness of the written political documents. The sentences in the reports and frameworks are sometimes not clear and are open to discussions and open to subjective understandings. In addition to this, the reports and the other documents are not legally binding and they are politically designed. So, this may decrease the way that EU conditionality applies sanctions on candidate countries. As to explain the vagueness of the reports, it can be analyzed that the language structure of the Regular Progress Reports began to be more precise and more clear. The researches for Turkey started to be more detailed and the observations were more precise.[53]

Clarity and formality of the rule must be strong in a conditionality perspective. The clearer the rule, the more legalized its status and the higher its determinacy. Determinacy makes the conditions more clear and the recipients will understand what to do in a spesific rule. Therefore, the credibility of conditionality increases. Size and speed of rewards are important determinators of a conditionality. Effectiveness of rule transfer increases with the size and speed of reforms.

The conditions must also be clear and not be ambigious. This makes the target government make sure that what they must do is clear to get the rewards.[54] This clearness also gives the oppurtunity to the target government to prevent the manipulations of the EU on the conditions and rewards. This detailed and precise explanations on reports were a result of the EU conditionality carrots that reflected the attitude of the EU to Turkey that it is recognised as a candidate like the other ones and Turkey is attached a similar importance like other

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[52] Grabbe, Heather (2002), "European Union Conditionality and the Acquis Communautaire", *International Political Science Review*, Vol 23, no:3, London , http://ips.sagepub.com/cgi/reprint/23/3/249 p.256, (05.04.2008).

[53] European Commission, (2001) Regular Report, "Turkey's Progress Towards Accession"

candidate countries. Therefore, it is important to make clear that the reforms could not fasten (not impossible) like that between 1999 and 2004, without a clear decision on Turkey after Helsinki Summit in 1999. The Helsinki Summit showed that the EU was ready and willing to share the burden of costs of transformation with the Turkish government. The EU was in a hard and sweet attitude to Turkey after Helsinki Summit on reports and Accession Partnership Documents and the EU left the speed and quality of the reforms to Turkey, whereas it criticised the authorities on the implementation of certain reforms and certain packages that entered into force.

The approach of the EU to Turkey in the period after 1999 to 2004 made it easy for Turkey to promote human rights policies and to improve human rights records with remarkable developments especially on legislative changes and package reforms. This approach was supported with Accession Partnership documents that shaped political dialogues between Turkey and the EU institutions. The Accession Partnership documents paved the way to participation of Turkey to certain EU funded programmes and this showed its effect between 2000 and 2006 with 1470 million euros of aid.[55] With the Accession Partnership documents, the EU used precise and certain explanations and recommendations to Turkey on the possible achievements. The EU explained the strategies that can be considered with the certain timetables with certain advices on strengthening legal and constitutional guarantees in favor of freedom of associations and to increase the role of civil society, developing the freedom of expression and the atmosphere for it, improving the recognition of cultural diversity and rights.

In spite of these positive approaches of the EU to Turkey in conditionality, the vagueness is still a problem in EU approach. There is no clear benchmarking mechanisms in EU documents that ensure people to understand the degree of required change and when and in which conditions the developments or fulfillments of criteria on human rights are ensured and are enough.[56] The degree of change, the fulfillment is determined according to what, is vague. But, this can be advantagous for Turkey and other candidates, because the vagueness

[54] Zalewski, Piotr (2004), pp.25-27.
[55] Sülün, Dilara " AB 2007'de Hangi Alanlarda Hibe Veriyor" www.izto.org.tr/NR/rdonlyres/B9A3F592-04A8-4CAE-A009-2A8C6C3F7503/8945/ABhibe.pdf (07.02.2008).
[56] Zalewski, Piotr (2004), p.34.

decreases the pressure on the recipient government. Because, there is no certain time limit for change.

I.4.3. Consistency

Unfair treatment by the EU against the candidate countries also creates complaints on the recipient, because for example, the Union considered Slovakia as a candidate which falls short of meeting the Copenhagen Criteria after the Luxembourg Summit in 1997, and gave chance to Slovakia to improve its democracy by giving them the candidacy status, and did not accept Turkey as candidate like in 1997, then this created "unfair" solilogues and has decreased the credibility of the EU and its political conditionality.[57] Similarly, Romania and Bulgaria were considered as on the same position as Turkey, although their economies were worse than Turkey's. Another example was the obligation that was presented to Turkey, that it must sign the fourth Additional Protocol of the ECHR that England, Greece and Spain were not party of it.[58] And obligations on minority rights were presented to Turkey, which were not presented to France, Spain, Greece and Italy. And, the EU did not attach importance to Turkey's problems related to security in Southeast, and did not investigate the factors that hindered reforms while terror was going on in the country.

The EU had little understanding of the problems that Turkey faced and in these conditions, it asked Turkey full implementation of minority rights and human rights promotion in Southeast. The discrimination, little understanding, double standards and uncertainty of the position of the candidate country makes the relations uncertain and decreases the effectiveness of the conditionality of the EU.[59] The uncertainty will cause to far nationalist protests and it decreases the contributions of the recipient government. Whenever the candidate state knows its status in the eyes of the EU, the conditionality recipient will make more motivated commitments in favor of transformation. The EU must also get rid of intergovernmental factors that hinders the transformation of a candidate. For example, a veto or a negative act by a country against Turkey may harm the efforts of Turkey on the way to transformation. The conditionality may be based on legal and judicial criteria rather than

[57] www.abhaber.com, "Fransa Kızdırmaya Devam Edecek." (31.12.2007).
[58] See www1.umn.edu/humanrts/instree/ap-europeansocialcharter.htm,(21.08.2007).
[59] Zalewski, Piotr (2004), p.36.

political. Because, this may increase the seriousness of EU sanctions and when the criteria takes part in EU law, then the criteria will not be open to discussions and subjective interpretations. The EU decreases its credibility when it applies a wait and see policy to candidates. Because, the candidates expect a certain time, date, certain decisions and identification of the situation of themselves.

And also, in order to increase Turkey's commitment on reforms and transformation, the EU should support the commitments with adequate financial support. But, it can easily be proved that the financial support was inadequate to increase Turkey's commitment for human rights reform. Around 1000 million Euros of loans and financial help was planned to be given to Turkey in times of Customs Union, however, this financial support was blocked by Greece veto and the European Parliament.[60]And between 1995 and 2003, only 1098 million Euros of financial aid was given to Turkey as a result of some programs and funds of the EU. Turkey received less than 5 Euros per capita in 1990s, whereas the CEECs accession countries reached 10-45 euros per capita.[61] The discrimination decreases the effectiveness of the EU conditionality and Turkey cannot deal with changes on certain institutional innovations as a result of inadequate resources. Especially, the lowest administrative levels of the institutions need financial resources for training programs, for institutionalization and implementation of reforms. The NGOs should be given more adequate resources given its potential to work with the government and to increase its struggles on institutionalization.

I.4.4. Credibility of the Carrot and the Stick

The important thing here is that the commitment of the conditionality recipient will be higher when the conditionality actor offers real, substantial and precisely defined incentives and rewards for change. The more conditional the membership perspective, the higher the credibility of conditionality. The promise of membership and the threat of being excluded should consist the same seriousness to be credible. Because, when the actor cannot define the precise incentives, this creates an atmosphere of ambiguity and this harms the prestige of the conditionality actor. This means that the EU will lose credibility. Specific incentives and

[60] Erdoğan, Birsen (2004), pp.7-8.
[61] Hughes,James (2003), pp.5-10.

rewards will make the recipient continue human rights reforms.[62] An example to this credible conditionality is that the EU did not mention spesific conditions and a clear time frame, however after 1997 the EU decided to open the accession negotiations with four CEECs. The opposite example is that, when the EU excluded the other countries because of their non-compliance with the political criteria.

. The credible and consistent EU conditionality occured after the second half of the 1990s and with strong ties between the eastern European countries and the EU made the veto points in a candidate country lose influence. A certain membership perspective, certain rewards such as Europe agreements and certain dates for the start of negotiations and membership paved the way to strong ties between the CEECs and the EU in the second half of the 1990s.[63]

Effective conditionality and determined conditions make the governments decisive on the implementation of certain laws and prevents them from veto points and negative domestic factors. Because, the incentives are clear for both sides. This is seen in Turkish government. The government was decisive on implementing changes in Penal Code and in constitution because of the candidacy status that was recognised by the EU and the Regular Progress Reports gave clear signals to Turkey and the decisiveness of the government made them bypass the veto points in the country.

The credibility of human rights conditionality actor may be evaluated by observing the precise terms and definitions that it defines on the papers. Human rights framework is accepted by member states under the framework of UN Charter and OSCE. And the implementation of human rights protection is made through the case law of ECJ. However, it is difficult to find a precise definition of human rights and the content of human rights. So, unclear definitions may pave the way to incredibility of the EU. Moreover, even though the

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[62] Smith, Karen (1997), "The Use of Political Conditionality in the EU's Relations With Third Countries: How Effective?" Paper for the ECSA International Conference, http://aei.pitt.edu/2729/01/002732_1.PDF (07.03.2008).

[63] Brusis, Martin (2005), "The Instrumental Use of European Union Conditionality: Regionalization in the Czech Republic and Slovakia", *East European Politics and Societies*, Vol 19, No 2, http://wbln0018.worldbank.org/Apps/CCKDoclib.nsf/e6cfaf4d4f3083ad85256896006bfaea/f0966dfacfebf36a8525720b007bf216/$FILE/ATTE9J60/EU%20structural%20funds%20regionalization%20Czech%20Slovakia.pdf pp.13, (05.10.2007).

EU makes reference to Universal Declaration on Human Rights, International Covenant on Economic, Social and Cultural Rights, the EU is not a party to any international treaty on human rights. In addition to this, the Charter of Fundamental Rights is accepted as a non-binding declaratory text. Furthermore, the human rights is still far from legal certainty and it is for example not like trade and cooperation. And, the Association agreement with Turkey in 1964 and Customs Union in 1995 do not include a human rights clause. Human rights clauses did not take place in trade and cooperation agreements until the fourth Lome Convention in 1989. These are the factors that reduce the credibility of the EU.[64]

In spite of this, the EU with its institutions set this conditionality politics. When the Parliament condemned Turkey for its refusal of Kurdish MPs and when Turkey's application was refused by the Council and when the Parliament mentioned its decision on whether to go on with Turkey's Customs Union or not. It asked the Council to suspend the negotiations with Turkey on the Customs Union. The Parliament gave its strength on imposing EU conditionality with its threat on putting Turkey out of Customs Union and Turkey in this situation, approved a set of constitutional reforms in 1995. EP asked Turkey to make human rights standards convenient with the EU, improvement of democratic standards, solution of the Kurdish issue and solution of the Cyprus problem by improving relations with Greece. But, whether this type of conditionality awakes real will of the recipient on the change and improvement is a question mark.

[64] Zalewski, Piotr (2004), p.32.

CHAPTER II. LEGISLATIVE REFORMS IN HUMAN RIGHTS IN TURKEY AND THE IMPACT OF EU CONDITIONALITY

II.1. LEGISLATIVE REFORMS IN HUMAN RIGHTS

In this chapter, the legislative changes in human rights are explored year by year and also the continuing problems and inadequacies in human rights in Turkey are examined. The periods that are examined in this chapter are the transformation years of 1999-2004 and the years from 2004 to recently. The rest of the study is composed of examining the impact of the EU conditionality on these reforms in human rights.

II.1.1. Legislative Reforms in Transformation Period (1999-2004)

II.1.1.1. Initial Reforms and Continuing Problems Immediately After the Helsinki Summit

Starting from 1999 after Helsinki Summit, the liberal policies of Motherland Party (ANAP) which was a coalition partner and the appointment of talented economist Kemal Derviş created an atmosphere of a relief and the democratization period could begin with these efforts. The new coalition government decided to decrease the number of military judges from the State Security Courts (SSC) and the Chairperson of the Human Rights Commission in parliament, Sema Pişkinsüt became influential with the role that she played against torture and human rights practices control.[65] There was a misfit between the institutions that the EU members had and Turkey. Especially SSC was one of them**.**

With the declarations of Sema Pişkinsüt and the Commission's reports, the public had been aware of the human rights practices and violations. In those years and before, torture was widespread in Turkey and the reports made a wide reflection among the public. Starting from

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[65] *Yaşadığımız Vatan* (2003), "Ulucanlar Adli TIP Raporu Bilimsel Değil" http://www.ozgurluk.org/kitaplik/webarsiv/vatan/vatan_arsiv/vatan41/haberler/vatan/haberler.html (12.05.2007).

1999, many judges, public prosecutors and police were started to be trained by the help of the projects funded by the EU.[66] As an institutional development, human rights education was added to police schools and police academies. Another development is that the government decided to build some new type prisons which were called F-type prisons. There would be 11 prisons to be built targeted for 2000. On the other hand, General Secreteriat for the EU Affairs was established in 2000. Mesut Yılmaz was appointed as responsible Minister for European affairs. Many other ministries reformed their internal structures and established offices for harmonization with the acquis of the EU. The first steps were made and changes were beginning. However, there were many inadequacies and problems in human rights. These problems are examined below.

In 2000, torture incidents continued for terrorist and separatist action committers. Even if they were punished, the fines were not proportionate. Between 1998 and 2000, Turkish Grand National Association (TGNA) released 9 reports related to the prisons and police stations with detailed reports about the conditions of prisoners and their communication rights with their relatives.[67] However, the monitoring mechanisms were not smoothly performed and the control mechanism were not adequate and this resulted ongoing crimes and poor conditions in prisons. The health examination of the detainees and their judicial period after prosecution must have been 4 days according to European Convention on Human Rights (EHRC).

Reform in the legislation and application of freedom of expression was needed and the Turkish legislation was not in line with the guarantees that were issued in EHRC. There were 40 journalists prisoned in 2000 and this was a serious issue to be tackled. On the issue of freedom of meeting and demonstrations, it can be said that the conditions were not convenient for free meeting and demonstrations. Nevruz celebrations were banned in Istanbul. Diyarbakır branch of Human Rights Association (HRA) was closed without any reason and setting up a

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[66] Avrupa Birliği Genel Sekreterliği (2007), "AB Fonları: Sistem Nasıl İşliyor", February 27, http://www.abgs.gov.tr/index.php?p=40931&l=1 (21.11.2007).
[67] Amnesty International (2002), "F-type Prisons Are Still Alarming", April 16, www.bianet.org/english/tags/1730/f-tipi-cezaevi (23.12.2007).

coordination or a union with other non-governmental organisations (NGOs) in other countries' NGOs needed permission from the Council of Ministers in Turkey.[68]

Broadcast of foreign languages were not free, and it was generally Turkish. In education, Turkish was mandatory and no other languages were permitted. Women's rights were not adequately guaranteed. Honor crimes and attacking women were going on and legal restrictions and legal distribution of rights were not adequate for women. Men were still seen as the leader of the family and this was still in Turkish constitution. The usage of languages other than Turkish was restricted with the right of using them in daily lives.[69]

II.1.1.2. Reforms and Continuing Problems in 2001

On 3 October 2001, TGNA voted yes for the amendment of 14 constitutional articles. Articles which restricted human rights and freedom of expression were amended and some of them were abolished. Length of detention period was reduced from 15 days to 4 days.[70] Freedoms like property, movement, gathering data, communication and private life was brought in line with the ECHR. Right of association restrictions was abolished and the restrictions were in line with the European Convention on Human Rights. The right to free trial was also incorporated into the Turkish constitution.

The usage of evidence gathered by illegal means was banned. The structure of the National Security Council (NSC) was reformed and it was shaped as a more civilized institution. Civilian majority was developed and vice Prime Minister and Minister of Justice were added to the Council to ensure this majority.[71] The death penalty was limited to times of war, imminent threat of war and for crimes of terrorism. Closing parties became harder by introducing changes related to alternatives to closure of parties. For example, state aids and funds would not be given or decreased instead of closing the political party.[72] The approval

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[68] Human Rights Watch (2000), "Small Group Isolation in Turkish Prisons", http://www.hrw.org/reports/2000/turkey/ (25.03.2007).
[69] Ekinci, Tarık Ziya (2004), *Türkiye'de Demokrasi ve İnsan Hakları Sorunları*, Cem Yayınevi, İstanbul, pp. 298-310.
[70] European Parliament (2004), "Turkey Human Rights", Policy Department., http://www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/d-tr20060425_05/d-tr20060425_05en.pdf (04.04.2007).
[71] *Ibid.*
[72] Duner, Bertil and Deverell, Edward, (2001), "Country Cousin: Turkey, the EU and Human Rights", http://meria.biu.ac.il/turkishstudies/toc4.html, pp.5-10. (13.10.2006).

right of the government of NSC decisions was given to increase the competence of the government over military. Article 26 of the constitution was completely removed, that had limited the usage of languages to express opinion.[73]

The Progress Report was published just after the constitutional reforms in 2001. The report emphasized the shortcomings as freedom of expression, assembly, retrial and religious rights. The reforms related to torture, prison conditions, competence of the armed forces on civil governance and cultural rights were found inadequate. Right to broadcast and education in minority languages were adviced to be improved in the report. The struggles on normalisation of the situation in the South-east and the improved conditions of the Southeast increased.[74] The death penalty of Öcalan was postponed as a decision in the parliament until the ECHR decision came. In mid 2001, Ministry of Internal Affairs introduced a declaration on responsibilities of security forces on detention, prosecution, statement taking and investigations. The declaration had a purpose of eliminating torture according to EHRC.

With a new law that was presented for discussion in 2000 and enacted in 2001, for empowerment of the Turkish human rights situation, the institutions such as Human Rights Presidency, Human Rights Major Council, Human Rights Advisory and Human Rights Research Councils were established. The functions of these bodies are; Turkish Human Rights Presidency monitors the implementation of the laws on human rights. Human Rights Major Council is responsible for making recommendations on the development of human rights policy in Turkey. Human Rights Advisory Council creates flow of information between government and civil society. And Research Council is responsible for exploration of human rights infringments in place. These human rights Councils present all their researches to Human Rights Major Council with their reports which are prepared every 3 months. [75]

The conditions for education of security forces were determined in the law on the education of police. Accordingly, police academies became responsible for ensuring education on human rights for police officers. Projects had started to improve prison

[73] Örücü, Esin "Seven Packages towards Harmonization with the EU", December 2004, Volume 10, Issue 4 pp. 613-615. (15.01.2007).
[74] The European Commission, (2001) Regular Report, "Turkey's Progress Towards Accession" ec.europa.eu/enlargement/archives/pdf/key_documents/2001/tu_en.pdf (04.04.2007).
[75] "İnsan Hakları Kurulları Çalışma Usul ve Esasları ile Faaliyetlerine İlişkin Yönerge" www.tbmm.gov.tr/komisyon/insanhak/orta/um_ihkurul_esas.pdf (26.08.2007).

conditions in Ankara. In 2001, approximately 20000 security forces were trained.[76] After these incidents, a reform for prison conditions were prepared in 2001 and these were changes in the law regarding the anti-terror law. The Article 16 gave chance to prisoners better conditions and activities.

Secondly, with another law, the institutions on lawyers who were responsible for actions against detainees were increased and the units on these lawyers were created. And thirdly, nearly 130 monitoring committees were established and these committies were responsible for organising the monitoring of the health conditions in penalty institutions, security considerations and presenting 3 month reports to Ministry of Justice and other institutions. For considerations on decreasing the increasing prisoners in limited capacity, a law called "forgiving"(Af), was enacted and this gave chance to people being released with condition that the crime would not be performed again. [77]

Torture and bad treatment had not changed in 2001 and torture on people who were prosecuted on helping the terrorist organisation PKK went on. The procedures regarding medical examinations and detentions were not in line with European Convention. Torture was witnessed in cell prisons and in detentions. The impunity of prosecutors was still a major problem in the areas of torture. However, there was an increase in the punity of security offices who were involved in torture activities. The impunities were sourced from the reversal of punishments to monetary fines and postponement of fines.[78]

The number of officers prosecuted for ill treatment and torture was 36 and 50 officers were sacked. After Sema Pişkinsüt, the president of Human Rights Commission resigned, the researches and the effectiveness of the investigations on human rights applications had decreased. The security forces were held responsible for their excessive force usage while they were sending the prisoners to F-type prisons, which were the new type of prisons, which were regarded as inconvenient and inadequate for prisoners regarding to standards. 32 people had died as a result of this excessive force.[79]

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[76] Amnesty International (2001), "Uluslararası Af Örgütü'nün İnsan Haklarının Etkin Korunması ve Teşviki için Tavsiyeleri" , www.amnesty.org.tr/v1601200502.si (23.07.2007).
[77] The European Commission (2001), Regular Report, "Turkey's Progress Towards Accession", Brussels.
[78] *Turkish Weekly Aksiyon* (2001), "Hakları Aramak", İstanbul , August 22.

Articles 159 of the Turkish Penal Code (now 301) and 7-8 of the anti-terror law did not comply with the philosophy of European Human Rights Convention. The authors and journalists were sued cases for their expressions. The authors Mehmet Uzun and Fikret Başkaya were sued cases on denigrating judiciary and Republic. 261 people were prisoned for freedom of expression and 324 people were imprisoned under anti-terror law. RTUK caused some obstacles to free broadcasting and free expression of opinions. The institution considered some channels' broadcasting as unconsiderable because of some comments. RTUK started to limit many kinds of broadcasting regardless of questioning where freedom of expression and broadcasting goes.[80] NGOs faced many difficulties in making observations and presenting the results. HRA was in danger of being closed in 2001 and these NGOs also faced difficulties in being established and setting branches in different countries and ensuring material supply for their functioning. The competence of permission was on state. In the constitution, there was no provision regarding the permission to education in other languages. In rights of women, there were still ongoing honor crimes and excessive force in families against women. The death penalties continued to be given under anti-terror law. In 2000, 17 and, in 2001, 10 people were killed by the death penalty.

II.1.1.3. Reforms and Continuing Problems in 2002

In 2002, there were 3 packages accepted through constitutional changes. Turkish government accepted the recommendation on reevaluation of the situation of prosecuted deputies Leyla Zana and Dicle. Turkish government brought a retrial law by the third harmonization package, which gave a chance for the prosecuted people to be trialled once again.[81] There were Human Rights Councils set in 81 cities in Turkey and Human Rights Presidency in Ankara was responsible for giving information to people in Turkey and taking complaints on human rights violations.[82]

Death penalty was abolished in times of peace and death penalties regarding the times of peace, was converted to life time sentence. The implementation of these convertion started

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[79] The European Commission (2001), Regular Report, "Turkey's Progress Towards Accession", Brussels, http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/tu_en.pdf

[80] www.voanews.com (2002), "RTÜK AB Üyeliğine Engel" , May 15, http://www.voanews.com/turkish/archive/2002-05/a-2002-05-15-2-1.cfm (24.08.2007).

[81] Rubin, Barry and Kirişçi Kemal (2002),"Turkey in World Politics" The Long Road to Membership. MERIA news., http://www.jhubc.it/ecpr-bologna/docs/616.pdf p.15, (21.09.2007).

[82] http://www.insanhaklari.gov.tr/ililcekurullari/kurullarhakkinda.htm "İnsan Hakları Kurumları." (08.10.2007)

through the end of 2002. Council on Prevention of Torture (CPT) had visited Turkey in 2002 and reported that the statements were taken lately and this caused impossibility of contact between lawyers. To ensure the effect of forcing methods to ensure the proper implementation of the laws, principle of torturer pays, was brought with the change regarding to state employees.[83]

For ensuring information for security forces, ECHR decisions were issued in booklets of police academies. The competence of the police was limited to ensure an atmosphere in which the police cannot use excessive force and abuse his duties.[84] The initiatives on protests were harsh and this continued in many prisons. The investigations were performed for security forces who took part in ill treatment and excessive force applications in Bayrampaşa and Ulucanlar prison.[85] Monitoring Councils were increased to 129 in 2002 and these Councils made recommendations on shortcomings on infrastructure, training and employees. The Councils criticized the implementation of prisoner visit and life conditions as inadequate. Turkey profession institution initiated a project that gave chance to old prisoners to have a place in new jobs. These projects were for guarantees in placing the prisoners to new jobs.

The second reform package amended Article 101 of the political parties law in connection with the Article 68 of the constitution. Closure of political parties was abolished and the new sanction was to remove the financial assets given. Closure of parties was a policy misfit when compared with member states' applications. This made the closure of parties difficult and gave chance to political parties to defend their views and stay in politics longer in a democratic way.[86] Rights of men and women were equalized by the change in new law in 2002. The children rights were organized through International Program on stopping child employment and the number of children working, were wished to be lowered.[87]

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[83] Council on Prevention of Torture (2002), *Turkey Annual Report.*
[84] Human Rights Watch (2002), World Report, Report on Human Rights Developments in Turkey http://hrw.org/wr2k2/europe19.html (20.04.2007).
[85] *Turkish Daily News Online* (2002), "Justice Minister Issues Circular for Prisoners," August 23, http://www.turkishdailynews.com.tr/archives.php?id=29106 (30.12.2007).
[86] Human Rights Watch (HRW), (2003) Hits and Misses on Turkey's EU Accession Targets, Backgrounder on the European Union regular Report on Turkey, www.omct.org/pdf/VAW/Publications/2003/Eng_2003_09_Turkey.pdf (07.10.2007).
[87] Libal, Kathryn (2002), "Childrens' Rights in Turkey" , *Human Rights Review*, http://www.humanrights.uconn.edu/rese_papers/ChldrensRightsInTurkeyLibal.pdf pp.14-15, (22.11.2007).

With the change in Article 159 of the Penal Code, prison sentences' upper limit was lowered to 3 years and the fines on insulting the Turkish laws were removed. The main change in the article was that there would be no sentences to the expressions and opinions for criticizing. However, the expression "on purpose" was an ambiguity on the article. Because, it is always open to discussion and to subjective understanding. Article 312 of the Penal Code was amended by addition of the clause incitement by harming public order. The punishment was organized according to the acts that harm public order.[88] The expression of opinions and thoughts would be implemented in any languages after the abolishment of Article 26 of the constitution which banned other languages than Turkish. The concerts and art applications were performed in other languages and this was supported by the Ministry of Culture. Moreover, with the third package, language courses other than Turkish was permitted with the condition that they would not harm the integrity of the state.

The freedom of contact of civil societies with other country's NGOs were broadened. Article 7, 11 and 12 of the Associations law was amended, so that other languages were free to be used and age limit of establishing associations was lowered to 18 from 21. The reasons for closure of the associations were limited with these amendmends with the second reform package.[89] Civil Society organizations came together in 2002 in Ankara to talk about their possible increasing commitment on helping to shape associations law. The law on associations was changed with the amendmend on Article 21 by giving chance to public institutions to establish associations. This was a change brought with second package. The third package gave chance for foreigners to join to demonstrations with the permission taken from the government 48 hours before the demonstrations. The foundations were allowed to make cooperation with others inside or abroad with conditions on reciprocity on benefits.[90]

Detention periods were arranged according to EHRC, but the detainees were still far away from the right to contact with relatives and with the lawyers. Moreover, protests in prisons due to bad conditions and hunger protests were going on in the prisons. The police used excessive force on prisoners and with protests, as a result of this, 57 people had died. Despite the changes, judgements of people under Articles 7 and 8 of the anti-terror law and

[88] Law No:5237 of 06.09.2004, Resmi Gazete No: 24841; 9.8.2002.
[89] Örücü,Esin (2004), pp. 613-615. (15.01.2007).
[90] Örücü,Esin (2004), pp.613-617.

under Articles 159 and 312 of the TPC went on.[91] And, Article 169 was frequently used to prosecute people. Interior Affairs and Ministry of Justice made declarations on informing the institutions. Despite the struggles, cases continued to drop due to time out and impunity went on. Long periods of cases did not end and punishments varied even in similar cases. This caused a superiority for security officers that were not punished. And prisoners' life and visit conditions was inadequate.

II.1.1.4. Reforms in 2003

In 2003, there were 4 packages accepted after the first three packages accepted in 2002. TGNA signed International conventions on politic, economic, social and cultural rights. Human rights Councils were increased in numbers and its structures were empowered. A new institution called Human Rights Reform Monitoring Group, was established with the responsibility to monitor human rights reforms in Turkey and to observe human rights violations claims. In 2003, another new institution called "Human Rights Observation and Evaluation Center" was established and made visits to police stations and made contributions for normalisation of the situation in Southeast.[92] New projects on human rights training for public employees and judiciary officers and ensuring consciousness on human rights in society with the funds taken from European Commission and European Council.

The sixth reform package contained the convertion of death penalty to lifelong imprisonment except in times of war and possible times of war. Articles 243 and 245 of the Penal Code was amended, so that the risk of convertibility of sentences to fines and the postponement of sentences were hindered. The provision on judgement of public officers were amended. The change consisted of the removal of permission requirement for prosecuting public officers. The lawyer of the detainee could take place in the investigations regarding to crimes that cover NSC cases, by the change with sixth package. Torture and ill treatment cases were named as superior to other cases in line and there would be no waiting period after the cases to prevent pending, impunity and infringement. This was accepted with the seventh reform package.[93]

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[91] Öniş, Ziya and Keyman, Fuat (2003), "Turkey at the Polls: A New Path Emerges", *Journal of Democracy*, Vol. 14, No. 2, www.shop.ceps.eu/downfree.php?item_id=1242, pp. 56-59. (24.04.2008).
[92] Devlet Planlama Teşkilatı (2003), *"Accession Partnership Document"*.
[93] Human Rights Foundation of Turkey (HRFT), *Human Rights in Turkey, May 2002 Report*, www.tihv.org.tr/eindex.html (26.04.2007).

Content of products was narrowed by specifying that literature, scientific and art products were out of restriction.[94] Article 427 of the Penal Code was changed, so that the products that were written and published including sexual content or inciting peoples' sexual feelings, would not be banned anymore. On broadcasting, RTÜK issued a declaration on how new changes would be interpreted and how the implementation would be. It would be given to the responsibility of TRT, to give all forms of languages in broadcasts that people in Turkey used. The conditions were that the broadcasts would not exceed 2 hours on TV and 4 hours on radio. Secondly, the broadcasts could not be against the integrity of the state and fundamental principles of the Republic.

Thirdly, Turkish translation would be made after or during the programmes. More importantly, with the sixth reform package, this right which was given to TRT, was permitted to other private T.V channels in 2003. On associations law, according to the fourth reform package, there would be no more restrictions on the language used in informal communications between the associations. The languages could be at any language other than Turkish and these writings would not have to be presented to judiciary.

With the seventh reform package, old criminals could establish associations and university students could establish associations on other topics than education, such as art and science. With the seventh reform package, the demonstrations would only be banned when there was a certain proof that there would exist a crime in demonstration. On political parties, party could only be closed with a three fifth majority of the Constitutional Court with the fourth reform package.[95]

Prison system and the implementation was better than former years. The amendmends on Article 307 of the Penal Code specified the punishments of security forces who hindered communications of detainees with the lawyer and his visitors, and who hindered timely eating and drinking of the detainees. Death fastings and protests in prisons decreased remarkably and training programs were performed for employees of prisons and prosecution houses.[96] The

[94] Örücü,Esin (2004), pp. 613-616.
[95] *Ibid*., (2004), pp. 603-610.
[96] Avrupa Birliği Genel Sekreterliği (2002), "Cezaevi Personeli Eğitimi" , August 2, http://www.abgs.gov.tr/index.php?p=20714&l=1 (20.04.2008).

conditions for prisons were improved by passage to room system instead of cell system and 4 new F-type prisons were built in 2003.

The number of f-type prisons increased to 10 in 2003 with an also new women prison. Prison monitoring Councils which were established in 2001, made important contributions to prison conditions in general because of their recommendations on health, life conditions, training and rehabilitation of prisoners. Restrictions on freedom of expression was remarkably reduced with reform packages. Lots of people were released from prisons whose crimes were on opinions without force. Seventh reform package limited the content of Article 169 of Penal Code, which is about helping terrorist organizations.

The content was narrowed by determining that crime will exist if there is action in the name of incitement to force and terror. With the sixth reform package, art products which harms the integrity of the state and fundamental principles of the state would be banned. The law on media Article 15 was changed and it gave the right to media managers to hide the sources of information and researches. Article 426 of the Penal Code was amended with the seventh package and the provision was amended that banned all products based on immorale.

II.1.2. Legislative Reforms After the Transformation Period (2004–2006)

II.1.2.1. Reforms in 2004

ECHR cases and its results were implemented by Turkey and the implementation of decisions were applied by Turkey that paved the way to retrial of some cases like Leyla Zana and other DEP deputies. In 2004, Turkey enacted a new law that paved the way for superiority of international law over national law in human rights. This eases the procedures when dealing with transformation of human rights and making ECHR law a part of national law. According to researches, many cases were evaluated by looking at ECHR law as a reference.[97] TGNA human Rights Investigation Commission accepted many complaints and made recommendations to people who are in difficulty to solve the problems with domestic laws and who want to solve the problems by ECHR. Ministry of Internal affairs established a

[97] Ermumcu, Osman (2007), "AİHS'nin İç Hukuktaki Yeri", www.aktif-hukuk.com/makaleler/makale004.doc p.8. (20.05.2007).

human rights investigation Office which controls police stations.[98] The lawyers and judges were trained by 225 professional trainers and human rights training to society went on in 2004. Turkey removed the death penalty in all conditions in 2004 and provisions on death penalty were removed from the constitution and Penal Code. In 2004, broadcasts in other languages than Turkish started in periodic timetable in TRT and these languages were Arabic, Bosnian and Kurdish. The broadcasts consisted of news, music and sports and cultural activities.

Ministry of Internal Affairs made a declaration on proactions for ensuring the rights to demonstrate peacefully. A second declaration was prepared by Ministry of Interior Affairs that stated and asked the officers to hinder excessive use of force and to implement strong punishments in case of use of excessive force. The reforms performed until 2004 made the implementation of equality between man and women more effective. Article 10 of the constitution mentioned the equality between man and woman a certain principle and that the state was responsible for ensuring that. The Penal Code ensured the atmosphere of fighting against honor crimes, sexual attacks and virginity tests.

More houses had been built for women and children for their prevention from use of force and as a result of municipality law, municipalities who were over 50000 people started to establish prevention houses for women and children. Importance was attached to vocations for pregnant women as a new declaration in 2004. With a new declaration on retarded people, an obligation was brought that made the 3 percent of retarded people should work in public businesses mandatory. An important increase occured in the occupation of retarded people after this declaration. According to an information from ILO, the number of children working at the age of between 7 and 15, decreased as a result of successful efforts and implementation of ILO-IPEC programme.[99] With the law on professions, a greater importance was attached to children, and payments for other professions. The government gave start to a campaign called "Let the girls go to school" with the common framework of UNICEF and this largely increased the number of educated young girls in SouthEast.[100]

[98] "İnsan Hakları Kurulları" , http://www.insanhaklari.gov.tr/ililcekurullari/kurullarhakkinda.htm (23.01.2008).
[99] International Labor Organization, www.ilo.org/public/english/region/eurpro/ankara/programme/ipec/publicationsII.htm (29.06.2007).
[100] UNICEF, "Çocuklar İçin Birleşin", www.unicef.org/turkey/gl/_gl3.html (30.06.2007).

The general picture of arrangements were organized with the government's zero tolerance policy on torture and the situation on the detention periods before judgement, improved remarkably and was brought in line with EHRC. There were no longer convertion of sentences to fines and postponements. The impunity of security officers reduced remarkably by the law that was accepted before that removed the permission obligation that must be taken from the government.[101]

Moreover, the detainees were not going to be treated medically with security officers in the room, registration and detainee rights were improved with more detailed reports and framework. New Penal Code increased the sentences of torture and if the tortured is dead, the criminal would conceed a lifetime imprisonment. Security officers were given a declaration about torture and they were warned about avoiding ill treatment. In addition to these, a two-year effort about zero-tolerance policy and a decisive stance by the government ensured the reduction of torture incidents.

According to HRA documents, it was mentioned that a 29 percent reduction in torture and ill treatment incidents occured. Some cases continued to be cancelled because of the time out and some criminals did not join the cases. 2500 doctors were trained and these doctors were distributed to prisons for proper functioning of doctor supply for prisons.[102] In 2004, detainees were responded positively by nearly 100 percent to their will on arranging lawyers and right of relatives of prisoners to be informed. Public officers should have been evaluated more accurately and the investigations were still slow and inadequate. Prison conditions became better in 2004 and there were no prisoners in death fasting. Also, F-type prisons were above normal standards. Nevertheless, the civil society support in monitoring Councils was not enough and they were not supported adequately.

II.1.2.2. Reforms and Continuing Problems in 2005

CPT in its research in Turkey, mentioned that there could be no country which is a member of European Council that could take precautions on prevention of torture like Turkey. Moreover, the new legislation that was accepted in 2005 contains elements limiting the efforts

[101] The European Commission (2003), *Regular Report*, "Turkey's Progress Towards Accession"
[102] Türkiye İnsan Hakları Vakfı (2003),*"Tedavi ve Rehabilitasyon Merkezleri Raporu"*, www.tihv.org.tr/.../Ra_2002_Tedavi_ve_Rehabilitasyon_Merkezleri_Raporu.pdf (21.10.2006).

on ensuring the fight against torture and ill treatment. According to formal institutions, the most serious types of torture and ill treatment were not used anymore in 2005 and ill treatment complaints decreased in last years. However, ill treatment still went on in demonstrations and in exchange of prisoners.

According to the last changes in legislation, everyone has the right to have a defender or lawyer. For children, the presence of the lawyer was an obligation in all conditions. In the crimes which were punished over 5 years, the prosecuted person should have the right to be defended by a lawyer. The new law on associations which entered into force in 2004, decreased the interference of the state on associations and ensured benefits for associations, thus made contributions on the development of civil society in Turkey. The new associations law however included some obstacles on being recognized because of provisions in the Penal Code that do not permit associations to be formed that aim to be set up under the auspices of religious and cultural identity. The obstacles may be harmful for correct application of EHRC Article 11 which is about freedom of establishing associations and organizing meetings. The associations which want to gain support from abroad, did not have to get permission from the government anymore.[103]

On freedom of demonstrations and meetings, the police used excessive force on people on the demonstrations on women's day in 2005. The government punished the security forces for their use of excessive force. The government warned the security forces of their obligations about the last declaration in 2004.[104] A mechanism of control system was needed to be performed by the Ministry of Interior and in this manner, a meeting was performed among the governors of cities. For the protection of women's rights, a new law on women's status and problems were released and the authorities responsible for women's status and problems, made a cooperation with the UN and created a campaign around the country to foster consciousness against the use of force against women. Women Status Advisory Council was established and it consisted of academicians and representatives of civil society organizations that would make contributions on determining state policies on status of women and problems of women in Turkey.[105]

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[103] The European Commission (2005), *Regular Report*, "Turkey's Progress Towards Accession"
[104] *Ibid.*
[105] Aydın, Fatih (2007), "Human Rights Institutions in Turkey", www.turkhukuksitesi.com/makale_649.htm (22.09.2007).

In TGNA, a commission of women's rights and sex equality was established and another commission about researches on use of force on women and children was set. The commissions would deal with the reasons of honor crimes, and the proactive efforts on hindering the honor crimes. With the campaigns performed together with the UN, nearly 110000 girls started to get their education and the private sector also started to deal with the campaign in their projects. Although the employment of woman in all spheres is lower than many European countries, the researches show that 30 percent of academics, doctors and lawyers are women in Turkey. In 2005, a woman was appointed to the presidency of Constitutional Court and it was the first time.[106]

On children's rights, a commission was established related to children's rights in TGNA and with the recommendation from this commission, a committee was established, consisting of ministry representatives from womens' rights, state ministry responsible for family, Ministry of Justice and Health. The committee made contributions on the research of homeless children and new services such as health, education and socialization started for them in 2005.[107]

The conditions of the prisons improved in the last years, however the standards should be normalized in every regions of the country. The conditions of the prisons were analysed by the officers and by the institutions like Monitoring Councils around the country. Nearly half of the proposals of the Councils were attached importance to and solutions to the problems were found out by the government by arranging resources for improving conditions of the prisons and prisoners. Life conditions, health and food support were included in these resources. Nearly 500 prisons were visited by the councils.

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[106] *Tumgazeteler.com* (2006), "Anayasa Mahkemesi Başkanı Tülay Tuğcu oldu", July 18, www.tumgazeteler.com/?a=1600865 (26.07.2007).
[107] The European Commission (2005), *Regular Report*, "Turkey's Progress Towards Accession".

Human rights institutions increased their efforts on human rights researches and human rights promotion in society. The basic promotion was the awareness that was tried to be achieved on the presence of Human Rights Presidency and Human Rights Councils in different cities. However, their role was not significant in advisory decisions in determining legislative changes and the budget seperated for them was not enough to implement a leading role in fostering human rights promotion.

For improving the quality of independent human rights institutions, and to improve the process of institutionalisation, Human Rights Presidency made meetings with other foreign European Human rights Councils from other countries. Human Rights Investigation Commission made declarations regarding the follow-up and the control of the situation which were important for public opinion like important human rights infringements. Human rights training went on in 2005 to improve standards of employees' education in police offices, gendarmes and in Ministry of Internal Affairs and Justice.[108]

Article 125 of the Penal Code was changed as harsh criticism would not be punished as in the old provision. Article 305 was changed as the actions against national interests were expelled from the provision. Article 301, which was changed after this new Penal Code, was used to judge people who made expressions about state and institutions. The article was amended so that opinions for criticizing would be free.[109]

The realization of the conference on Armenians in the last times of Ottoman Empire was a big step in favor of freedom of discussions and democratic speeches. Despite the criticisms by the members of the parliament, Minister of Justice and the decision of Istanbul Court, the conference was performed finally in Bilgi University.[110] According to the Publishers Union and bookstores, a research showed that the publishing of books and magazines related to Armenians and Kurds and many other sensitive issues were more free than ever in 2005. With the new Penal Code and reforms in recent years, many prisoners were released, but according to Turkish Press Council, there were no prisoners of journalists in

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[108] *Ibid.*
[109] *Milliyet* (2007), "Lagendijk, Ahmet Türk ile Olan Konuşmasını açıkladı." November 11.
[110] *Sabah* (2005), "Ermeni Konferansı Tartışmalı Başladı.", September 25, http://arsiv.sabah.com.tr/2005/09/25/gnd102.html (20.07.2007).

prison in 2005.[111] And Article 8 of the anti-terror law was completely repealed and this removed the obstacles on freedom of expression. [112]

The shortcomings were very similar to last years. These were impunity or postponement of punishments of public officers and the correct implementation of the legislation. The prison sentences for torturers increased, however the time limit of a case and the ebatement of acuse went on being a problem, nevertheless the time limit increased to 15 years from 10. But, more importantly there was a need for a closer examination of judgements to hinder the convertion of sentences to fines and postponement.

Civil society organizations could not take place in visits to prisons. Because, they believed that the structure of the institutions was not independent enough to reflect the realities in the country about the monitoring of the violations of human rights in the country.[113] Judgements and prosecutions still went on. A lawyer sued a case against Orhan Pamuk in August 2005 because of the statements that he spoke to a Swedish newspaper about the Kurdish people and Armenians and their murders. Another case was sued against Hrant Dink who wrote about Armenian diasphora and he was sentenced to 6 months imprisonment. Ragıp Zaragolu and Emin Karaca were the authors who were trialled under article 301 and their fines were converted into fines. Emin Karaca mentioned expressions about the activities of the army.[114]

In the cases of freedom of expression, the infringement of freedom of expression should have been set to a certain standard that would make the provisions less close to discussions. The expression must be analyzed so that whether it incites people to use of force, a chaos in the country, enmity and the capacity of the person who effects the public opinion and atmosphere in the country. Because, the effect and the result of the effect of the expression on public may determine the amount of the sentence and the decision.

Articles 216, 277 and 285 of the new Penal Code may pave the way for prosecution of press and media employees who watch, make commands and inform people about a

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[111] Amnesty International (2005), Report on Human Rights.
[112] Uğur, Mehmet and Canefe, Nergis (2004), *Turkey and European Integration* , Routledge, London, pp. 15-20.
[113] Dağı, İhsan (2004), *İnsan Hakları ve Demokratikleşme; Türkiye-AB İlişkilerinde siyasal boyut*, Dağı, Atilla (ed.), Türkiye ve Avrupa, Ankara:, İmge Yayınları, pp. 130-134.

judgement which was going on.[115] Article 216 punishes people who writes or mentions about a person on trial, Article 277 punishes people who effects justice system and Article 285 punishes for violation of privateness of the case. So, these articles could be a danger for journalists and it did in 2006. The political parties law had some shortcomings that were against the EHRC provisions and it must have been renewed. The usage of languages other than Turkish for other ethnic groups in political parties, was restricted and this was against the principles of European Convention on Human Rights.

II.1.2.3. Reforms and Continuing Problems in 2006

Human Rights Presidency and Human Rights Councils in different provinces made researches about human rights violations and supplied human rights educations. The applications to these institutions were about health and patient rights, actions against discrimination and right of material and social security. In recent years, there was a remarkable development on the appointment of lawyers for defence, because of the new laws about punishment. Also in recent years, there is a remarkable development in prison conditions, on physical conditions of prisons and training of prison officers because of the new prison system law that was enacted in 2004. The common problems that were going on are the shortcomings in medical examination and crowded cells. However, these conditions were getting better each year as it was mentioned above.[116]

On freedom of expression, Ministry of Justice issued a declaration that asks lawyers to obey Turkish laws that were amended (Penal Code and constitution) and EHRC. With this declaration, there existed a systematic monitoring of the cases on freedom of expression in monthly periods. And, as in media, the broadcasts started to vary in different languages in different channels.

Freedom of demonstrations and meetings faced less obstacles in recent years and even though ill treatment cannot be considered normal, it can be explained that if the demonstrators

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[114] Amnesty International (2005), www.amnesty.org.tr/v1601200502.si (25.09.2007).
[115] İlkiz, Fikret (2004), "İnsan Hakları Alanında Yapılan Değişiklikler", www.globalmedia-tr.emu.edu.tr/.../Fikret%20Ilkiz_Baris%20Günaydin.%20Kisilik%20Haklari.%20Onayli.pdf (21.09.2007).
[116] Türkiye İnsan Hakları Vakfı (2003),*"Tedavi ve Rehabilitasyon Merkezleri Raporu"*., www.tihv.org.tr/index.php?option=com_content&task=view&id=1105&Itemid=69

do not get the needed permission from the government or inform the government according to the meetings and demonstrations law, then the security forces may then use excessive force against people, although this does not show that they are right on the issue. On the result of the issue on womens' day case, it was decided that six officers who were responsible for training of the security forces were performed a salary cut. And 3 officers were punished with warning that resulted from their irresponsibility on the issue.[117]

With last changes and the former changes in associations law, it can be clearly evaluated that the new legislation is smoothly convenient with the European standards and the associations now have more and smooth rights on the issue and there are less restrictions for them. The changes were performed in 2004 as mentioned before. And as a positive development, in recent years, with the new laws on associations, the implementation shows its effects positively on civil society organizations and they are now wider in Turkey and they vary in their aims and policies. Occupational associations and syndicates started to increase and make their voices heard in recent years by the help of new legislation in Turkey. There were 80000 official associations in Turkey in 2006.[118]

On womens' rights, parliament made contributions with a detailed report on the situation on the issue on womens' rights and the dimensions of the use of force to women and children. The report stated the ways and the institutions that would be responsible for research and proaction. The institution which is a branch of presidency, Women's statue Board was responsible for precautions that were available in the report. In 2006, a campaign that was underway in 2004, continued with a second time effort that was about "an end to use of force in family" with the struggles of Hürriyet newspaper and "let the girls go to school" campaign is still going on. The media gave a remarkable support to this campaign.[119] The campaign became part of the organization in 81 cities. The businesses and newspapers made contributions on increasing the number of students record and improving the physical conditions of schools around the country.

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[117] *TGRT Haber* (2005), "Kadınlar Günü Eylemine Müdahale", March 14, http://www.tgrthaber.com.tr/news_view.aspx?guid=a1d0f6ea-1959-48b1-b6ec-1ffea5a568b9 (07.09.2007).
[118] The European Commission (2006) *Regular Report*, "Turkey's Progress Towards Accession".
[119] tumgazeteler.com (2004), "Haydi Kızlar Okula", May 1, http://www.tumgazeteler.com/haberleri/haydi-kizlar-okula-kampanyasi/ (18.11.2007).

The honor crimes were still going on in 2006 and there was not a permanent solution on the issue. Because, this was resulted from the inadequacy of some parts of society to which education was not sufficiently brought. The resources and material support for education should be ensured in these areas, especially in the east. Women's participation in the work force is still low when we come to an era of technology and as a year 2007. It is recorded that Turkey is the lowest on the categorisation of womens' work force number among the OECD countries.[120] In general, it can be concluded that an awareness around the country increased by the struggles of media, newspapers, private sector and there is much to be done on the implementation and more resources to poorer regions and educational activities should be carried out.

In Article 301, there were still some obstacles in front of freedom of expression, when talked about Turkishness, Republic and the institutions. Expressions that are for criticism and that include insulting should be evaluated carefully to seperate these two points and create a certainty on the issue. The provisions in the Penal Code that restricts freedom of expression, should be brought in line with EHRC. Because, for years, the anti-terror law Article 6 and 7 and Article 159, newly 301 of the Penal Code caused problems in judgement and decisions after the cases. Especially, directly or indirectly, Article 6 and 7 of the anti-terror law effected negatively the judgement process and the freedom of expression.[121]

On associations, the need for permissions from officials to get extra material help from abroad, was a restriction on the issue. Moreover, the foundations that are financed by abroad, needed to get permission from the officials. There were news and reports of police and security forces applying ill treatment on the streets. There was a need for a homogenity in application of laws on punishments and on the right of having a lawyer and being informed. There were still differences in the implementation of decisions and provisions. Moreover, Istanbul Protocol should be implemented in homogenity around the cities in Turkey. The issues related to the openness and specialty of medical examinations were not suitable with the standards. The visits on police stations and detentions were enough, but the control of the institutions were not adequate. There was no scheduled order on the implementation of programs though. The medical examinations of people in Southeast were performed in places

[120] *BİA Haber Merkezi* (2006), May 15, http://www.bianet.org/2006/03/17/75933.htm (17.03.2007).
[121] *Radikal* (2006), "Terörle mücadele ve yasa tasarısı", May 14, http://www.radikal.com.tr/ek_haber.php?ek=r2&haberno=5854 (16.09.2007).

of detention.[122] This was not convenient with the declarations of Ministry of Justice and Health.

II.2. IMPACT OF THE EU CONDITIONALITY ON THE LEGISLATIVE CHANGES IN HUMAN RIGHTS IN THE TRANSFORMATION PERIOD

EU conditionality is a political process that the EU uses in its relations with the candidate countries. The EU uses this political process to exert influence on policy changes mostly and rarely to resort to its exclusion power in case of non-compliance or foot dragging to changes. The EU uses its political influence to bring the candidates to the same line or similar line with itself. The EU imposes certain norms and values and tries to make changes on candidates before accession.

These are all done for accession to the EU and to prepare candidate states for accession. There are several tools that the EU uses in conditionality mechanism. There are also factors that make the EU conditionality effective. These are all examined below, but the first thing that is examined are tools and levers of EU conditionality.[123] Here, gate-keeping (going through the stages of accession), monitoring, aid and technical assistance, demarches and public criticism are examined for the period from the beginning of Helsinki Summit until recently.

II.2.1. Gate Keeping (Access to Negotiations and Further Stages in the Accession Process)

This is the most important tool for conditionality mechanism of the EU, because it gives chance for candidate governments to go through the stages in the accession process. Other tools may be also effective on candidates, but they do not have such a direct effect and incentive on candidates. The consequences are directly seen in this tool**.** The EU made a linkage between access to negotiations and conditions for democracy for the first time in Helsinki. The conditions were the same for Turkey, too.

[122] The European Commission (2006), *Regular Report*, "Turkey's Progress Towards Accession".
[123] Grabbe, Heather (2002), p.258.

Turkey could not meet these conditions in 1999. Turkey reached the success in conditions in 2004 and the negotiations started in 2005. So, that means Turkey passed from one stage to another. The stages for candidates are; trade access, additional aid, association agreements, start of negotiations, opening and closing of chapters, accession treaty, ratification of the accession treaty by national parliaments and European Parliaments and lastly becoming a member of the EU.[124] The stages are linked to meeting the human rights and other democratic conditions and other economic conditions. Turkey made its application in 1987 and at that date, Turkey was addressed as insufficient in its human rights record. There were human rights violations at that time.

After Luxembourg Summit in 1997, a similar picture was there. Turkey was not adressed as a candidate, because of its poor human rights record. However, Helsinki Summit in 1999 changed many things and addressed Turkey as a candidate like other candidates. It was a stage after Customs Union which may be seen as a trade access that is the first one. Turkey faced an effective conditionality politics after 1999 and the reforms came with a magnificent speed and opening of negotiations came in 2005 as a result of these reforms and the EU conditionality made Turkey join to negotiations.[125]

Gate keeping also works by criticisms, demarches and exclusions. These are one of the main political tools that the EU uses on the way to stages from agreements to membership. The EU criticizes Turkey in case of a failure on certain policies. On certain warnings and criticisms, there is a shock tactic to embarress the candidate, for example Turkey, and there is some kind of shaming in these criticisms. These are applied on certain speeches, interviews on newspapers, or on TVs. The recipient country feels the pressure and makes the change to get the reward, in other words, for example beginning of negotiations.[126]

II.2.2. The Impact of Criticisms and Demarches on the Transformation Period

There are many examples of these criticisms and demarches by authorities in European Commission and there are also examples in newspapers that were interviews done

[124] Grabbe, Heather (2002), p.259-262.
[125] Grabbe, Heather (2002), p.261.
[126] The European Commission (2001-2006), *Regular Reports*, "Turkey's Progress Towards Accession".

with EU authorities about certain situation and warnings to Turkey. On 14th February 2002, EU Commissioner Gunther Verheugen mentioned that Turkey must absolutely comply with Copenhagen criteria to obtain the beginning of negotiations. In his meeting with İsmail Cem, he mentioned that the step ahead that the EU was looking for, was the change on death penalty and the education on other languages than the mother tangue. He said that the developments in Turkey would determine the beginning of negotiations. He promised that the beginning of negotiations was close if the conditions were handled concretely by Turkey. Moreover, he spoke to Nejat Arseven who was the state minister that was responsible for human rights and he took notes about the last developments on human rights.[127]After these criticisms, Turkish authorities released harmonization packages and made the legal changes. The changes were on death penalty and mother tongue, too. So, we can say that the criticisms and demarches were effective on Turkish authorities.

However, on 14th November 2002, Verheugen criticised the Turkish government and mentioned that Turkey did not comply with the Copenhagen Criteria. He said that Turkey was the only candidate that could not succeed the Copenhagen Criteria. He mentioned that that was the reason that they did not start the negotiations with Turkey. He said that the reforms were fine improvements, but they expected more reforms and implementation.[128] On 8 November 2003, Verheugen said that the EU was anxious about the role of the military on politics in Turkey, and about the insufficiency of human rights and respect to minority rights. He added that Turkey must improve Kurdish people's situation and must remove the unusual state decision that was sourced from Southeast.

He said that the strength for reforms was available on Turkish government and the conditions were started to be discussed in Turkey. Verheugen expressed that the reforms needed were put in the Accession Partnership document and the priorities were on constitutional guarantee on freedom of expression, removal of death penalty, putting an end to torture, removal of unusual situation in Southeast, the reduction of military's role in politics and cultural rights.[129]

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[127] Birand, M.Ali (2002) "Herkesin Hakkını Verelim", August 10, *Hürriyet,* www.webarsiv.hurriyet.com.tr/2002/08/10/164736.asp (08.05.2007).
[128] ntvmsnbc (2002) "Türkiye Kriterlere Uymuyor", November 14, www.msnbcntv.com.tr/news/118831.asp (10.03.2008).
[129] Avrupa Birliği Genel Sekreterliği (2003), "Verheugen Tarih Verdi", April 29, www.abgs.gov.tr/index.php?p=29539&l=1 (08.05.2008).

After these criticisms, Turkey removed the unusual situation in the Southeast, politics had been more civilized, cultural broadcasts increased, new additions were made on freedom of expression in the Turkish Penal Code and new human rights institutions were established to decrease torture. Moreover, new harmonization packages would be considered as improvements and decisiveness of the government would be appreciated. So, here we can say that the criticisms and Accession Partnership documents by the EU made things easier and eased Turkish government's concentration on reforms and implementation. These happened through the discussions of the agenda in Turkey and in public, on TVs, the possible reforms in the TGNA, and new reforms and packages were accepted.

EU conditionality caused shaming and warnings on Turkish government and the possible reforms were started to be discussed and released. On 1st May 2001, Verheugen declared that the death fastings in prisons should be ended to stop possible deaths.[130] In a short time after these criticisms, Turkish government decreased these deaths and made some arrangements on prisons, made the conditions better for realizing all rights for prisons. The activities, the conditions and detention conditions were made better with new changes in laws.

On 28th of October in 2003, Verheugen mentioned that although there were successful reforms, there were still violations of human rights. According to him, the understanding of democracy is different from that of the EU and that resulted from the power of the military on politics. He said that there were many torture incidents still going on. He added that there were still some shortcomings that would be issued in the next Progress Report.[131] Within a short time after these criticisms, Turkish government attached importance to these criticisms, and started a zero-tolerance policy on torture and attached importance to the situation on prisons, on detention and using power against the demonstrations. We see that starting from 2003, torture decreased in Turkey.

In 2003, Verheugen once again said that Turkey must hurry up and make the needed reforms. He said that the time was going against Turkey. He mentioned that he trusted AKP

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[130] Avrupa Birliği Genel Sekreterliği (2003), "Verheugen'dan Basın Toplantısı", June 11, http://www.abgs.gov.tr/index.php?l=1&p=28109 (07.04.2008).
[131] ntvmsnbc (2004), "Her Koşulda Reformlar Sürmeli", September 7, http://www.ntvmsnbc.com/news/285868.asp (20.05.2008).

government on reforms. Verheugen also visited Turkey and came to Ankara to speak to Foreign Affairs Minister İsmail Cem. He said to İsmail Cem that the EU would examine the developments in Turkey and if the conditions would be ready, then they would start the negotiations with Turkey. He said that the beginning of negotiations was linked to overall success in Copenhagen political conditions.[132]

The EU with this logic, tied its conditionality completely on political conditions. The incentive was the beginning of negotiations. Verheugen promised that in case of completion of conditions, then the date will not change and 2005 would be the date to start negotiations. Therefore, 2004 Progress Report was better than the old ones, and with the advice of the Commission, the negotiations would start. The new Commissioner Oli Rehn also criticised and followed the developments in Turkey, also after the start of negotiations. It can clearly be said that the process of conditionality can be divided into two time periods. The first one is before negotiations and the one that took Turkey to the start of negotiations. The second one was to take Turkey to a higher point and to control the period of implementation in Turkey.

In 2005 on 13th September, Olli Rehn expressed his sadness on the prosecution of Orhan Pamuk because of his expressions. He said that this was against the EHRC. He also added that he had doubts about the implementation and the interpretation of the new TPC. He also had warnings about the Article 301 of the TPC. He asked for the change in the article.[133] On 3rd of May in 2007, Olli Rehn criticised the interference of the military to politics and he added that this was a failure on democracy. The interferences of military was at the time of president elections and it was at the time that the military was not happy about the regime of AKP in Turkey.[134]

Olli Rehn criticised Turkish judiciary for the decision made for Hrant Dink. He said that he was disappointed after the decision made for Hrant Dink and he also added that for the guarantee on freedom of expression, he called for the Turkish government to change Article 301 and he reminded the government that freedom of expression was one of the main principles of Copenhagen Criteria and it was a part of democracy. The EU also criticised

[132] *Yeni Şafak* (2002), "Verheugen'dan Ödev Kontrolü" , February 15, http://www.yenisafak.com.tr/arsiv/2002/subat/15/p2.html (19.04.2008).
[133] ABHaber.com (2006), "Rehn, Dink'e Verilen Cezayı Eleştirdi", 12.07 http://www.abhaber.com/haber.php?id=12622 (04.05.2008).

Turkey's judiciary which dragged foot to reforms and still there were people who were followed because of their expressions. Article 301 and 305 were criticised hardly by the EU and these were said to be obstacles on freedom of expression. The commands that the lawyers made in the cases were also subject to criticism.[135]

EU Commission Turkish Delegation President Hans Jörg Kretschmer also criticised the Article 301 and added that the EU was insisting on the change or removal of the article and he said that an unliberal Article like 301 could not take place in a country's Penal Code like that of Turkey's and he added that Turkey could not speed up without the presence of freedom of expression.[136] In 2008, Olli Rehn criticised Turkey because of the excessive force used in 1 May celebrations. He said that the negotiations were going on, but this process could be faster when Turkey carries on with the reforms. The excessive force and syndicate rights were criticised by Olli Rehn and he mentioned that the reforms must be faster. He tied the human rights reforms to faster negotiations.[137] Olli Rehn also expressed his opinions in 6th May of 2008 and he added that the EU expected better implementation of the new state of Article 301. He visited Ministry of Justice and Mehmet Ali Şahin and told him that implementation of these articles were very important in showing the application of the EHRC. The parties talked about the judicial reform and they talked about the last reforms in recent times.[138]

II.2.3. Monitoring by the Progress Reports

The other tool of EU conditionality for Turkey is monitoring by Progress Reports. The criticisms on the report express the failures and shortcomings in certain policies or in certain human rights issues. With this mechanism, the EU effects Turkey by listing the failures and shortcomings by also shaming, embrassing Turkish officials and listing what should be done.

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[134] BBCTurkish.com (2007), "Rehn ve Lagendijk'ın açıklamaları", May 3, http://www.bbc.co.uk/turkish/europe/story/2007/05/070503_rehnlagendijk.shtml (17.05.2008).
[135] *Radikal* (2005), "Reformlara Asılın", October 7, http://www.radikal.com.tr/haber.php?haberno=166235, (15.05.2008).

[136] *Radikal*, (2007) "Olli Rehn: '301'i değiştirin", October 9, http://www.radikal.com.tr/haber.php?haberno=235178&tarih=09/10/2007, (04.05.2008).

[137] ntvmsnbc, (2008) "1 Mayıs'ta Orantısız Güç Kulanıldı.", May 6, http://www.ntvmsnbc.com/news/445297.asp (09.05.2008).
[138] Avrupa Birliği Genel Sekreterliği (2008), "Rehn'den Şahin'e Ziyaret", May 7, http://www.abgs.gov.tr/index.php?p=41735&l=1 (10.05.2008).

Turkish government has taken these warnings into consideration and attached importance to the advices by the EU and this made Turkey do the fast reforms after these Progress Reports.

In 2000, with the Progress Report, the EU started to prepare Turkey for transformation period. The EU criticised the torture incidents and said that these incidents were going on. The fines for these incidents were not so much and this situation resulted preservation of security officers from fines. Weak position of the government to handle the situation was criticised by the EU Commission. The EU also mentioned that detention procedures were still far away from compliance with the ECHR case law. Furthermore, the people in detention could not be visited by the lawyers. The EU then criticised the inadequacy of health service on detentions.[139] After these criticisms, after 2000, the police schools added human rights education to their program. Moreover, new prisons would be built and small cells would be built by Turkish authorities. New activities and programs were presented for prisoners. The EU criticised the inadequacy of freedom of expression. The commands on judgements were still infringing freedom of expression. Judges and officers were criticised for not complying with EHRC in their cases. The EU expressed that punishments would be given in case of an incitement to force. Freedom of meetings were criticised by the EU Commission. The EU wrote in the 2000 Progress Report that those freedoms were not respected. For conferences and for activities of NGOs, permission by the authorities was needed.[140]

The cooperations of national and international NGOs were forbidden and needed permission by the Ministries Council. Nevruz celebrations were banned in Istanbul and this was criticised by the EU. However, after 2 or 3 years, we can say that there was no need for permission, the cooperations of national and international NGOs became free and Nevruz was celebrated in free conditions. So, this shows that things changed by the help of EU conditionality. In 2001, the EU criticised TPC Articles 159 and 312 and anti-terror law Article 7 and 8. After a while, an offer was submitted to TGNA for changes of these articles. For better analysis of human rights preservation, Human Rights Board and Research Councils were established. The Research Councils were established for a better exploration of human rights infringements. After a short time, 26780 security officers were started to be trained on human rights. Because of the criticisms on torture, Turkish government released a bulletin

[139] The European Commission, (2000) Regular Report, "Turkey's Progress Towards Accession".
[140] *Ibid.*

that included duties that were needed in detentions, prosecutions and investigations. That bulletin certainly banned torture. Police stations and gendarmeries were started to be visited. And, detention periods were decreased. The EU criticised death fastings and excessive force of security officers on placing the prisoners. After these criticisms, Turkish authorities released a new law on creating monitoring councils in prisons. With this new law, 133 monitoring councils were established. These monitoring councils were established for controlling how discipline precautions were made and controlling prison conditions. The reports on prisons were presented to Ministry of Justice.[141] The criticisms were increasing on closure of political parties. After a short time, the new political parties law was enacted. According to it, for the closure of a political party, the activities of a political party which are against the basic principles, must be supported by all members of the party.

In 2002 Progress Report, the EU criticised the failure on implementation of certain court decisions. Some of them were cancelled because of the passage of time. The Turkish government opened the way in front of retrial and these cancellations decreased after a short time. On the other hand, after the criticisms on death penalty, the death penalty was removed in peace times. On torture incidents, the EU declared that the people responsible from torture, were sentenced on little punishments, their punishments were converted to fines or the sentences were postponed.[142] To change this implementation, first, ECHR decisions were translated to Turkish and they were written on Police Academy journal and the education on Police High Schools increased to 2 years. Moreover, the competence of the police was reduced and limited to stop abuses or excessive usage of force. In addition to this, catching guilty people, taking to detentions, and taking statements were linked to a certain law. More education centers were made and more prison officers were taken to occupation. According to the law, the officers who did not comply with the to rules, were started to be applied sanctions. A new automation system started and a prison recording system started in prisons.[143]

After the criticisms on Article 159 of the TPC, a change on the article was made. The crime would exist only if there was an incitement on state and public institutions and a threat would exist on Turkish Republic. The prison statements were lowered. Moreover, the Article

[141] The European Commission, (2002) Regular Report, "Turkey's Progress Towards Accession".
[142] *Ibid.*
[143] Örücü, pp. 613-615.

312 was changed and the crime would exist in a case that incitement as a dangerous position for public order. In addition to this, the Articles 7 and 8 of anti-terror which were criticised by the EU, were changed and propoganda to incite terror was added to the article. Without the conditionality of the EU, these changes would not be made.[144]

The EU criticised the inadequacy of freedom of setting associations. According to the EU, this freedom faced some obstacles. Associations law Articles 7,11 and 12 were changed. The limitations of cooperation with foreign associations were removed. Banned languages would not take its place in the article anymore. Because, the freedom on using every language on communication was widened. The age limit to set associations and meetings were lowered to 18, that it was 21 before the new law was enacted. Public institutions also had the chance of establishing associations and making demonstrations.[145]

In 2003 Progress Report, the EU Commission declared that they were anxious about postponement and convertion of sentences into fines. This was an insisting policy setting, because it was the second time that the EU was unhappy about these sentences on torture and ill treatment. In light of this, the Turkish government changed Articles 243 and 245 of the TPC. Because, the new arrangement removed the possibility of convertion of sentences to fines and postponement. In addition to this, the criticisms in 2002 Progress Report made the Turkish authorities change the detention conditions in favor of ECHR principles. Commitee on prevention of torture declared that in 2003, detention periods and detention conditions were suitable and in compliance with ECHR principles. The EU Commission had been helpful on change. The Commission insisted on these detention conditions and periods at least three times in Progress Reports and Turkey made the changes.[146]

With the warning from the EU, the presence of security forces in treatments made by the doctors, was banned. Also, the prisoners started to stay in rooms because of the modernization of prisons. Furthermore, Monitoring Councils continue to examine the life conditions, discipline precautions, health, rehabilitation and eating conditions of prisons. These all mean that there had been a better preservation of conditions and modernization

[144] "Uyum Kanunları İle İfade Özgürlüğünde Yapılan Değişiklikler" http://www.abgm.adalet.gov.tr/Yenisey.pdf (20.10.2007).
[145] Human Rights Foundation of Turkey (HRFT), (2002)"*Human Rights in Turkey*", May 2002 Report, www.tihv.org.tr/eindex.html (10.06.2008).
[146] The European Commission (2008), Regular Report, "Turkey's Progress Towards Accession".

started in prisons.[147] The modernization caused less torture and bad treatment in prisons. On freedom of expression, the EU conditionality was effective on legal changes. Most of the limitations were removed and most of the prisoners were released, who were convicted because of their expressions.

Insistence from the EU created positive results on anti-terror law. Because anti-terror law article number 8 was completely removed, that was used to prosecute people.[148]And on the other hand, the content of helping terrorist organizations was narrowed. Cinema and music products became more free than before with a narrowing of the content of the crime. These products would only be banned when there was harming integrity of the republic, and basic principles of the Republic. The EU criticized inadequacy in media freedoms in Turkey. The Commission said in the reports that a concrete result was still not available. Articles 159, 312 and anti-terror law Article 7 were still used to prosecute people who criticized public and state institutions.

Past criticisms of the EU on former Progress Reports created positive results at the end. This positive development occured in freedom of associations. The limitations on setting associations decreased. Another problematic issue that was on freedom of meetings, was modified and the crime would exist only if there was an imminent threat of commiting the crime. With a new law on political parties, for a closure of a political party, the Constitutional Court must decide the closure with a three fifth ratio. These changes were all made with the harmonization packages that were prepared by the calls from the EU. The EU conditionality was effective on the preparations of harmonization packages. When we look at the developments and the last scene in 2004, we see that the criticisms by the EU decreased and we see that there was an overall improvement in nearly all of the areas and in most of the policies. We see that there is an incremental improvement in each human rights area and this shows that EU conditionality made a remarkable impact on human rights areas.[149]

[147] Türkiye Ekonomi Politikaları Araştırma Vakfı (2006), "2006 Siyasi Kriterler", November 8, http://www.tepav.org.tr/tur/admin/dosyabul/upload/Turkiye_2006_Ilerleme_Raporu_Siyas_Kriterler.pdf (12.12.2007).
[148] İnsan Hakları Derneği (2002), "Türkiye Demokrasinin Neresinde?", October 10, http://www.ihd.org.tr/index.php?option=com_content&task=view&id=485&Itemid=90 (21.12.2007).
[149] The European Commission (2004), Regular Report, "Turkey's Progress Towards Accession".

II.2.3.1. Impact of Progress Reports on the Transformation Period

When we look at the general situation at the end of the transformation period (after these fast track reforms), there is an overall progress and the implementation is also better than the beginning of 2000s in the issues of freedom of expression, fight on torture, freedom of media, freedom of associations, prison conditions and institutionalization of human rights On implementation and administration of human rights, since 1999 there had been Monitoring Councils, Reform Monitoring Councils, Human Rights Presidency and City Councils and there had been a bond between these institutions and the state. These institutions had determined many human rights violations and solved the complaints that were coming to them. Moreover, TGNA Human Rights Exploration Council took many violations and made advices on hindering violations.

On Human Rights education and training, Ministry of Interior, Ministry of Justice made programs on human rights for training gendarmerie and police centers. On hindering torture, detentions before cases were made on equal terms with European standards. The sentences on torture were not postponed or converted into fines anymore. And the medical examinations of detainees would not take place with the security forces anymore. The records of detentions and rights of detainees were handled with a new and contemporary recording system. In addition to these, Turkish authorities made written declarations that the security officers had to avoid making ill treatment to detainees. The detainees had the right to communicate with the lawyers. The struggles of Turkish government paved the way to a remarkable reduction on torture.

On freedom of expression, after the changes for removing restrictions, the cases on freedom of expression decreased. An overall reduction occured on issued cases on Article 159, 169, 312 and Article 7 of the anti-terror law and furthermore, the criminals regarding the cancelled Article 8, were released from the prisons. In 2004, in 103 cases about freedom of expression, Article 10 of the EHRC was used to evaluate the cases. So, a clear and an imminent threat on enmity and incitement to hatrett must take place in the crime. On freedom of media, with the new media law, there was no banning and removing of the newspapers or books anymore.

On freedom of associations, the new law in 2004, establishing branches in foreign countries, making meetings with the foreigners was allowed. Permissions taken from the authorities to establish associations would not be needed anymore. The associations that were doing activities other than their programs, would only be punished with fines, therefore they would not be closed.[150]

II.2.4. Monitoring by the Accession Partnership Documents

II.2.4.1. Accession Partnership Document 2001

In 8 March 2001, the EU Council published the first Accession Partnership document and this was an important guideline for Turkish authorities. It listed the short and medium term priorities of which type of policies can be implemented for legal changes and implementation. The EU prepared the Accession Partnership document to show the areas that need change. Short and medium terms are shown in the documents that shed light on the requirements and the important points that needs to be changed and determines how long the changes can take time.

In the short term, the EU made clear that legal and constitutional guarantees should be ensured. And the people who were sentenced on peaceful expressions should have been noted. Peaceful meetings and setting associations should have contained legal and constitutional guarantees. Civil society should have been promoted. Moreover, the EU asked Turkish government to empower the provisions on defence with torture. According to the European Commission, Turkey must have complied with the Convention on prevention of torture. In addition to this, the officers should be trained systematically. The training of the officers should have been ensured by cooperation with the international organizations. The training should also have been performed on the EU acquis and the judges should have been trained on human rights. The reason behind these training programs was to make connections with international standards to empower the functions of the judiciary. The death penalty should also have been removed and the conditions should have been improved. On the other hand, mother tongues should have been free on T.Vs and radios. Then, the EU asked Turkey to

[150] The European Commission (2001), Regular Reports, "Turkey's Progress Towards Accession".

decrease the differences on regions and improve the social and cultural conditions. Lastly, the EU asked the empowerment of conditions before the detention and the processes should have been similar with European Convention on Human Rights.[151]

The aim of the Accession Partnership was to determine the priority areas that are needed to be issued. It is also for determining the aid that would be supplied for Turkey in light of priority areas. The priority areas are closely linked to the Copenhagen criteria which determines the conditionality which is applied to candidate countries. Not only the legislative changes, but also the implementation should be guaranteed by the candidate countries. The EU prepares the priority areas in light of Progress Reports which belongs to that year in which the Accession Partnership document is prepared.[152]

Corresponding National Program

On 19 March 2001, the government prepared a National Program as a response and plan to implement these short, medium and long term policies. According to the Program, the government responded positively that reforms may be done in the near future on freedom of expression, association, assembly, religion, torture and the limitation of the role of NSC.[153] The responsible people who were in the Council, were from the army and this was a clear misfit. The EU asked the demilitarization of the Council and civilization.

In the short term, the government announced that fundamental rights and freedoms, freedom of expression and freedom of media should have been observed and the changes should have been made. TPC Article 312 was also to be observed by the Turkish authorities and this would be done without giving harm to values that the article defended. Also, the Articles 7 and 8 of the anti terror law would be observed and changed with the same understanding that the values of the Turkish system would not be harmed. Moreover, media law was planned to be observed by the authorities. The understanding of the Turkish authorities were similar on those observations and changes. They attached importance to the values that are defended.

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[151] Devlet Planlama Teşkilatı (2001) "Accession Partnership Document." , www.avrupa.info.tr/Files/File/RECOURCE_CENTRE/key_links/006**Accession**%20**Partnership**%20**Document**.doc

[152] *Ibid.*

[153] Avrupa Birliği Genel Sekreterliği (2001), Ulusal Program , http://www.abgs.gov.tr/index.php?p=195&l=1

In the medium term, the government declared that losses resulting from terrorism and the fight against terrorism would be enacted. Political Parties Law, Police Duties Law, gendarmarie Duties Law was decided to be organized. Also, in the medium term, new TPC was to be legalized.[154] On setting associations and peaceful meetings, the institutional restructuring of the civil society organizations, work guarantees would be legalized in the short term. In medium term, the constitutional provisions about syndicate rights would be renewed according to European Social Charter and ILO conventions. The provisions and articles would be controlled and changed related to setting associations and peaceful meetings.

On fighting against torture, the government presented its decisiveness on the issue. Responsible people on torture incidents would be sentenced with accompanying legal precautions. With these precautions on mind, Adli Tıp Kurumu would be modernized and duties of police, gendarmerie and its laws would be reorganized by the authorities. Ceza Muhakemeleri laws would be legalized. Security forces would be trained and regional aid would be balanced by the authorities.[155]

On detention before the case, Article 19 of the Constitution would be renewed. Moreover, the legalization of the law for compensation of the harms sourced from terror and defence with terror. In short term, human rights education and training of police schools would increase to 2 years. In addition to this, training programme for Internal Ministry and many institutions were to be prepared and the training programme would work with cooperation with UN. On the efficiency and functionality of the judiciary, the government wrote that they would revise NSC law. Also, in the short term, the provisions that hinder the independence of the judiciary would be revised. In the medium term, the revision of judgement of public officers would be realized. Military law would also be revised. On the removal of death penalty issue, it would be handled by the TGNA because of the competence of TGNA. On language issue, Turkish government declared that the official and education language is Turkish in Turkey, however, the government declared that different usages of other languages would not be hindered. But, that freedom would not be used as a seperating

[154] *Ibid.*
[155] *Ibid.*

and dividing manner. On the other hand, equality of men and women would be ensured with new Turkish Civil Code.[156]

II.2.4.2. Accession Partnership Document 2003

In 2003, with the Accession Partnership document, the EU asked the implementation of the legislation at EU standards. Secondly, the EU asked the precautions taken to hinder torture which must be similar to article 3 of the European Convention on Human Rights. Thirdly, the EU mentioned that timely and fair judgements to officers and other people should have been organized with the conditions that in which the people has the right to have a lawyer and defend themselves. The EU also asked for the reforms on freedom of expression and the situation of the people must have been clear who were trialled on peaceful expressions. Moreover, promotion of the civil society, peaceful meetings, setting associations should have been supported. Languages other than Turkish must have been casted on TV channels. [157]

Importantly, the EU asked the correct implementation of ECHR case law. Prison conditions must have been in EU standards. The training of judges and officers should be also implemented. The reduction of the margin between regions, especially South East of Turkey should have been improved with regional policies. The EU monitors the application of Accession Partnership documents by the Partnership agreements. What is more, the aids by the EU for these reforms and implementation was connected to the conditions on correct implementation of Customs Union, the Copenhagen Criteria and the correct implementation of the Accession Partnership documents.[158] In 2006, with the Accession Partnership Document, according to the EU, the institutions should have been clearer and more active in problem solving and the workers should have been directed with a more European oriented policy.

The Accession Partnership mentioned and asked for the compliance of Turkish law with International Human Rights law. According to UN principles, the EU asked for

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[156] *Ibid.*
[157] Devlet Planlama Teşkilatı (2003), "Accession Partnership Document."
[158] See http://europa.eu/scadplus/leg/en/lvb/e40111.htm (13.04.2008).

establishment of a Human Rights Institute which was independent and with enough resources. The cases were asked to be monitored by independent bodies. The EU asked in the short term that judgement and investigation techniques according to the Human Rights Convention must have been thought to the officers. The decisions of the cases and its content must have been similar to the principles of the European Human Rights Convention. Moreover, the conditions for a concrete retrial must have been ensured.[159]

Corresponding National Program

In the national program, the Turkish government committed its decisiveness on concrete implementation and spreaded the logic of reforms to the understandings and ways of doing things. On freedom of expression, Turkish government was decisive on the implementation of widening administrative and legal reforms. The government expressed its will on removing the obstacles in front of broadcasting on different languages and education on those different languages. The government also stated its will to make the applications homogenic by improving human rights and realizing ECHR case law training for judges.[160]

On freedom of setting associations and on peaceful meetings, the basic struggle would be to harmonize the domestic laws with EHRC articles 10, 11, 17 and 18. Moreover, the provisions on setting associations and foundations would be revised. On torture, the government expressed its decisiveness on implementing zero tolerance. The government would be sensitive on implementing zero-tolerance on torture and on monitoring and reporting activities. More investigations would be made on torture and impunity would be tried to be hindered.

Modern investigating techniques and medical examinations would be strengthened. On the other hand, people would be informed about their rights on making complaints on detentions and prosecutions. In light of these applications, public officers would be informed about European Convention on Human Rights case law and the EU law. Thus, education programs would be increased. Moreover, for homogenity to be applied in judicial system, education programs that would include most lawyers and officers, would be widened. Then,

[159] Devlet Planlama Teşkilatı (2003), "Accession Partnership Document."
[160] Avrupa Birliği Genel Sekreterliği (2003), Ulusal Program , http://www.abgs.gov.tr/index.php?p=195&l=1

the government expressed its will on increasing the quality of prison monitoring institutions. Prisons would be harmonized with international standards.[161]

II.2.4.3. Accession Partnership Document 2005

The EU asked for the approval of protocol number 12, that was about anti-discrimination in all kinds. In the document, the EU asked for implementation of proactions according to zero-tolerance. In addition to this, impunity was the problem to be tackled and the investigations were asked to be made concretely by the Turkish government. For medical skills to be satisfactory, Istanbul protocol was asked to be implemented by Turkish authorities. In judgements, the Commission asked Turkey to implement judicial help and translation service for a concrete defence. Moreover, the EU asked Turkish authorities to ensure the freedom of communication with lawyers. Relatives must have been informed about their rights and relatives must have had the rights to communicate.[162]

According to the case law of ECHR, freedom of expression must have been realized and the EU said that the revision of people's situation who were issued cases on peaceful expressions. Proactions on use of excessive force had to be taken. Political parties law should be renewed and financing political parties must have been harmonized with EU implementations. According to the EU Commission, civil society must have played its role on shaping public policies and they must cooperate with international partners.

II.2.5. Financial Aid and Technical Assistance to Turkey on Human Rights

After gate keeping and monitoring with Progress Reports, one other lever of EU conditionality is aid and technical assistance to candidate states to foster certain application of policies and human rights reforms. In this section, the aids by the EU to certain projects and policies will be explored. In some of the projects, the institutions of the Turkish state, in some projects civil society organizations take part in the implementation of the certain projects. They get some aid from the EU to make investments on certain projects and they also get

[161] *Ibid.*
[162] Devlet Planlama Teşkilatı (2005), "Accession Partnership Document."

other aids for institutional restruction. In transformation years, between 1999–2004, the aid from the EU, were used to improve and foster human rights changes through political criteria.

II.2.5.1. Special Projects

In 2003, financial aid before accession was around 5,000,000 Euros for the project called "Human Rights, democracy and developing citizenship education." The investment from the EU was 150,000 Euros and institutional restructuring was 4,850,000 Euros. Responsible institution was Ministry of National Education. Also in 2003, there was a project called "increasing the efficiency and effectiveness of Turkish police." Total amount of aid was 2,521,000 Euros and the responsible institution was Internal Ministry. General Secreteriat for EU Affairs arranged another project called "Development of NGO and public institutions relations and increasing the level of NGO participation to democracy." 2,000,000 Euros were given by the EU to institutional restructuring. In 2004, the project was to implement human rights reform program. The amount paid by the EU for this project was 5,392,500 Euros. For the project, Human Rights Presidency, Ministry of Justice and Internal Ministry were responsible. Support for cultural rights were organized by Ministry of Tourism and Board of Media. The aid given was 2,500,000 Euros. Establishment of ombudsman system was prepared by Ministry of Justice and the investment was 1,170,000 Euros.[163]

Within MEDA1 program, for civil society organizations, the aim of a project was to strengthen civil society organizations, to increase the initiative of citizens and to increase the dialogue between civil society and the EU. The EU aid for this project was 8,000,000 Euros. Another project was to develop human rights in Turkey. The aim of the project was to prepare seminars for promotion of human rights, to point out the differences between EU countries and Turkey and to ensure respect for human rights. This project was supplied by Marmara University EU institute. On freedom of media, a project within MEDA1 program was arranged and the aim of the project was to help journalists and to support activities regarding freedom of media. The aid by the EU was 35,000 Euros. Another project within MEDA1 was KADER's project to integrate the relations between the EU and KADER and to increase the

[163] *Radikal* (2003), "AB'den Türkiye'ye Yeni Yol Haritası", April 15, http://www.radikal.com.tr/haber.php?haberno=72187 (19.05.2008).

support for penetration of woman to political life in Turkey and to support democratization. The EU aid was 339,396 Euros.[164]

II.2.5.2. Small Projects

A small project was Citizenship Education project. The aim of the project was to foster democratic principles and human rights understanding. The EU contribution was 250,000 Euros. The responsible organization was Turkish Democracy Foundation. Another project was about democratization. The aim was to foster democracy and to introduce modern democratic state concept and to introduce the EU standards on democracy. Antalya Law Office and Friedrich Neumann foundation were responsible for the project. The contribution of the EU was 100,000 Euros.[165] "Umut Otobüsü" was another project and this project eased finding lost people and to awake attention on lost people. The contribution was 20,000 Euros. Moreover, there was a project called "Human rights of women." This project aimed to train women on management and leadership to ensure their participation in public life. EU aid for this project was 170,000 Euros.[166] The EU aids and technical aid on how to do the projects were enough for Turkey to increase implementation, however they may not be as much as other candidates. This is resulted from the Turkish authorities' failure to present and recommend projects. In 2002, the total EU aid was 126 million Euros and in 2003, total aid on human rights projects was 144 million Euros.[167]

II.3. FACTORS OF EFFECTIVENESS IN EU CONDITIONALITY IN THE TRANSFORMATION OF TURKEY

In this section, the EU conditionality is analyzed by evaluating the main factors of an effective conditionality in relation to Turkey. This section determines whether the EU conditionality is effective or not. This analysis is important to support the main argument of the thesis that the EU conditionality is the main factor contributing to the transformation of Turkey.

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[164] Gençkol, Metin (2008), "AB Mali İşbirliği Politikaları ve Türkiye." , May 17, http://ekutup.dpt.gov.tr/ab/genckolm/malipoli.pdf (08.05.2008).
[165] Ondokuz Mayıs Üniversitesi, "Meda 1 Kapsamında Desteklenen Projeler." www.omu.edu.tr/uib/document/projeler.doc (09.04.2008).
[166] Erasmus (2007), "Türkiye-AB Mali İşbirliği Kapsamında AB Fonları", July 14, http://web.deu.edu.tr/erasmus/deutur/pdf/Tur_Avp_bir_ab_fonlari.pdf (05.05.2008).
[167] *Ibid.*

II.3.1. Cost and Benefit Calculations of Turkey

For an effective conditionality to take place in case of Turkey, benefits and incentives should be more than the political and economic costs of membership carrot.[168] For Turkey, the carrot was beginning of negotiations. Between the years 1999 and 2004, when the conditionality principle of the EU was effective for Central and Eastern European candidates and on Turkey, benefits were passing the next stage that was negotiations. Turkey would be placed in the next stage, that was promised by the EU in 2004, which would be realized in October 2005.

The costs were transfering some of its sovereignty to Brussels, working hard for new reforms and persuading other parties and people in TGNA. The benefits were starting negotiations and passing the other stages on the way to membership. EU would bring democracy to the country and the government was decisive to make democratization in the country and to bring human rights to European standards. These were also benefits together with the negotiations carrot. The reforms and freedoms would be ensured and these may bring securitization in Southeast. The reform process was costly because of other partys' complaints on sovereignty, especially when the meetings are performed in Europe in Summits. Deniz Baykal was complaining about the correct exploration of pages in the Summits. There were also other parties like İP, MHP, CHP who were complaining about sovereignty issue.

They were unhappy about the sovereignty issue that would be transfered in case of passage of certain reforms. The death penalty issue was problematic and there were opposite opinions on the death penalty of Öcalan. MHP was furious because of the dead soldiers and they were furious about Öcalan issue. However, the incentive of starting negotiations was a present for AKP government and it was a gift on the way to membership. The reforms were fast and the government worked hard. This was the result of believing in benefits such as starting the negotiations. So, it can be said that benefits were attached importance by the government rather than the costs that were mentioned.[169] So, having chosen the incentive of starting negotiations and catching the train of democracy, the government carried on with the reforms. In turn, this increased the effectiveness of conditionality mechanism.

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[168] Zalewski, Piotr (2004), pp.33-35
[169] Zalewski, Piotr (2004), pp.33-37.

II.3.2. Clarity of the EU Documents for Turkey

In transformation period, which was from 1999 to 2004, the EU conditionality effectiveness also showed itself on documents. In Progress Reports and in accession partnership documents, the explanations were clear and understandable. The Accession Partnership document included short and medium term targets that could be reached by Turkey. For example in 2001 Accession Partnership document, in the short term, the EU made clear that legal and constitutional guarantees should have been ensured. And the people who were sentenced on peaceful expressions should have been noted. Peaceful meetings and setting associations should have contained legal and constitutional guarantees. Civil society should have been promoted.

As it is seen, the road map shows when and what to observe and what to plan and realize. The list is clear enough to remind the responsibilities of the candidate Turkey and by this conditionality tool, the national program responded to this conditionality tool by listing the priorities and in which conditions these reforms would be done.[170] In the transformation period, the EU was sure and conscious about the negotiations and these documents were written by the negotiations carrot was in hand. However, after the negotiations started, not only there was an Accession Partnership document, but also there was not a clear incentive for Turkey to be motivated. The Progress Reports were carefully written and analyzed to examine what the improvements were and what should be done to improve the shortcomings in Turkey. Those were the analysis of what the human rights situation is in Turkey. However, there was always the problem of how these reforms should be done. In other words, there was clean note of what to do, however "how" question was always ambigious. But, this situation did not change the effectiveness of the EU in transformation period.

II.3.3. Consistency Against Turkey

Commitment of the conditionality recipient is higher when the conditionality actor offers real, substantial and precisely defined incentives and rewards for change. The more conditional the membership perspective, the effectiveness of conditionality increases. The

[170] Avrupa Birliği Genel Sekreterliği (2003), Ulusal Program, http://www.abgs.gov.tr/index.php?p=195&l=1

promise of membership and the threat of being excluded should consist of the same seriousness to be effective.[171] The European Commission recommended the start of negotiations and the Council decided to start the negotiations on 3rd of October in 2005. When we look at the time of the beginning of negotiations, we see that the EU did what it promised. There was a clear incentive that was the start of negotiations and the progress reports followed the situation in Turkey and when the progress increased each year, the EU appreciated Turkey's performance and decided to open the negotiations.

The EU conditionality is effective when the reward depends on certain conditions and the EU must insist on its fulfillment.[172] This makes the target governments concentrate on the conditions and apply strong implementation of the conditions. This is the same for Turkey. We have seen that the EU insisted on the fulfillment of certain reforms such as freedom of expression, zero-tolerance for torture, freedom of setting associations, freedom of meeting and demonstrations and the repeal of death penalty. And we saw an incremental changes on these policies and the democratization has increased each year. The goals were precise and the incentives were certain and the follow-up of the EU paved the way to incremental changes in these policies.[173]

II.4. EFFECTIVENESS OF EU CONDITIONALITY

When we look at the effectiveness of conditionality, the recipient should believe the international actor's consistency, the international actor should present a valid and credible incentive, the conditions that the actor asks from the recipient should be clear and understandable, they should not be vague. Moreover, the actor should treat candidates on equal terms and fairly. These factors determine whether the recipient country desires the incentives such as negotiations and membership and fears that it will lose some incentives and go back to the former level, or its relations may finish.[174] In the transformation period, we see that the EU presented a valid and credible incentive or pre-incentive such as negotiations and

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[171] Uğur, Mehmet (2004), *AB ve Türkiye: Bir Dayanak ve İnandırıcılık İkilemi***,** Agora Yayınevi, İstanbul, pp. 28-34.
[172] Zalewski, Piotr (2004), pp.30-35.
[173] T.C Başbakanlık Basın, Yayın ve Enformasyon Genel Müdürlüğü (2005), "Dış Basında Türkiye-AB İlişkileri", October 11, http://www.byegm.gov.tr/YAYINLARIMIZ/Avrupabirligi/2005/10/11x10x05.htm (10.05.2008).
[174] Grabbe, Heather p.255.

the membership. The EU made the negotiations start on time, the EU did not add any discriminative provisions or did not add any special will.

The EU insisted on the changes, controlled and criticized Turkey many times about the issues of freedom of expression, torture, freedom of setting associations, freedom of demonstrations and media and civil-military relations. The EU insisted on the fulfillment and implementation of these topics many times. And, Turkey knew that in case of a non-compliance, the negotiations would not start. Also, Turkey knew that the present will be the beginning of negotiations. These findings make us consider the EU's conditionality as credible and consistent.[175] The language and the road maps of the EU were also consistent. The EU prepared Accession Partnership documents that are consistent and are clearly determined and announced by the EU. The EU did not make discrimination at the expense of Turkey in transformation period. Consequently, the EU conditionality triggered many changes and reforms in the transformation period and when we come to the end of transformation period, we see that the implementation was better than 1990s.

The changes touched very sensitive issues like death penalty, and freedom of expression. Torture was hard to stop in these years, especially in the years that PKK was attacking to Turkey. The number of the civils in NSC, the right of radio and TV broadcast in other languages than Turkish was introduced; death penalty was abolished in all circumstances. These developments made Turkey a candidate that complied with Copenhagen Criteria.[176] With all these information in hand, we can say that the EU conditionality in transformation period was effective on Turkey.

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[175] Schmelfennig, F. "The Conditions of Conditionality" , Paper Prepared For Workshop 4, Enlargement and European Governance. 2002, http://www.essex.ac.uk/ECPR/events/jointsessions/paperarchive/turin/ws4/Schimmelfennig.pdf pp. 28-30.
[176] Schmelfennig, Frank (2002), pp. 30-35.

CHAPTER III. IMPLEMENTATION OF HUMAN RIGHTS IN TURKEY AND REASONS BEHIND THE PROBLEMS

III.1. HUMAN RIGHTS AND THEIR IMPLEMENTATION IN INTERNATIONAL ARENA: THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The aim of the Convention is to rescue civil rights and freedoms and to save the peoples' rights and freedoms against totalitarian regimes. And the fundamental of this Convention depends on the Second World War and what it stole from people. Having learnt some lessons from this war, Europeans attached importance to peace and human rights. Turkey is a country that started to involve in the agreement with the Convention, so that means that Turkey is in a condition that must be controlled by the ECHR whether it applied the rules and whether there is infringement of the provisions of the Convention. Turkey signed the Convention on November 4, 1950. It came into force in 1954.[177]

According to the Turkish Constitution, Article 90, the international agreements are accepted as laws which are superior to national ones. Moreover, the first article of the Convention mentions that the state must introduce these basic rights to everybody in a country. So, that is another proof of the Convention's binding feature. Furthermore, in a conflict between the national laws and the Convention, according to the Article 90, the Convention is superior. In Ireland/England case, the ECHR mentioned that the Convention brings responsibilities to both sides sourced from the agreement. One other article is Article 15 of the Constitution that states that the responsibilities sourced from international conventions cannot be infringed.[178]

[177] Çalışkan, Mesut (2004), "Avrupa İnsan Hakları Sözleşmesinin Anlamı, Kapsamı ve Özellikleri, Sözleşmenin 2,3,6, ve 10. Maddelerinin Türk Hukukundaki İzdüşümleri", http://www.inhak-bb.adalet.gov.tr/aihs/aihsgenel.htm pp.1,4. (15.02.2008).
[178] *Ibid*., pp.1-4.

Supreme Court and Council of State placed this superiority in some of their decisions. For example, Council of State in one of its freedom of expression case, mentioned that a provision even if it is against the constitution, it should be approved by the courts, because it belongs to an international convention. The superiority of the international laws was considered by the court. The Constitution Court used the Article 11 of the Convention in the political party closure cases as a supportive information.[179] That is another example of the references made to the Convention in domestic cases. However, ECHR cannot determine whether national laws are applied or not. Therefore, ECHR has the right and responsibility of controlling whether national laws are convenient with the Convention provisions.

III.1.1. Implementation of Freedom of Expression by the European Court of Human Rights

Article 10 of the Human Rights Convention shapes the freedom of expression with its principle and its limits. Article 10 secures three types of freedoms. These are freedom of having opinion, taking and giving information and knowledge, and lastly expressing information and opinion. Having opinion is the starting point of a person before expressing his opinions and thoughts.[180] Taking and giving information is important for the countries which aims restructuring their democracies.

Criticising the government and institutions is an important right. Commercial disourses are other freedom areas that are secured with this article. And one other secured item is unproved knowledge. There may be some opinions that they cannot be proved. So, this means that these kind of ideas are also in the secure area of the freedom of expression. For example, in Lingens/Austria and in Dalban/Romania cases, the journalists' expressions were hindered, because of the admissions that the information could not be proved that it was right. And, ECHR mentioned that article 10 of the convention was infringed.[181]

Also, heavy, harsh and impolite expressions are in the secure area of freedom of expression. For instance, in Thorgeirson/Iceland case, the journalists wrote that the police was

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[179] *Ibid*., pp.3-7.
[180] Şamlı, Yasin (2006), "Yeni Türk Ceza Kanunu ve İfade Özgürlüğü", September 19, http://www.hukukcular.org.tr/yazi_detay.php?Yazi_id=14&yazar=19 (17.02.2008).
[181] Çalışkan, Mesut (2004), pp.4-8.

behaving like animals and their culture did not improve. They were criticising the excessive force on people. The ECHR mentioned that it was considering that the language used to criticise was harsh. However, the court decided that the harsh criticisms were for improving public benefit and to generate reforms in Iceland. Therefore, the decision was that the journalists were right and their freedom of expression was infringed by the people who hindered it.[182]

Third, giving and taking information were secured by the convention. For example, in Lingens/Austria case, criticising the prime minister as he was immoral and oppurtunist, was evaluated by the court that criticising people were free to distribute information to the Public and the court found them right. In the cases of Thorgeirson and Lingens, the court commanded about the situation that the media was responsible for transporting the information and knowledge to people and the national court interfered to this right of distributing and creating a discussion oppurtunity. So, this was accepted as an infringement of freedom of expression.[183] Articles 25 and 26 of the constitution organizes freedom of expression in Turkey. Article 25 states ”No matter what the reason and aim is, nobody can be made to explain his ideas and opinions. And nobody can be blaimed because of his thoughts and ideas.” Moreover, Article 26 states, ”Everybody has the right to express his views and opinions by written, oral and in other ways alone or with the public. This right also covers getting news and expressing opinions.”[184]

This means that the Turkish constitution describes freedom of expression in general with Article 26. And in the second part of the article, it organizes which acts are for and against freedom of expression and its limits. These articles are in line with the Article 10 of EHRC. Article 10, 15 and 17 describes certain limits to freedom of expression and some restrictions that may be applied in abnormal conditions. Freedoms are not completely free, there are some limits that can be applied.[185]

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[182] Ünal, Şeref “AİHM Kararlarının Türk İç Hukukuna Etkileri”, http://www.anayasa.gov.tr/eskisite/anayargi/unal.pdf (14.03.2008).
[183] Binici, Hüsamettin (2004), "Avrupa İnsan Hakları Sözleşmesinin 10.maddesinde Düzenlenen İfade Özgürlüğüne Bir Bakış", www.inhak-bb.adalet.gov.tr/aihs/madde10.htm pp.5-8. (16.05.2008).
[184] Can, Osman “Anayasa Değişiklikleri ve Düşünceyi Açıklama Özgürlüğü”, http://www.anayasa.gov.tr/eskisite/anyarg19/can.pdf p.7, (23.03.2008).
[185] *Ibid*., pp.7-10.

III.1.2. The Limits on Freedom of Expression in the ECHR Decisions

The second part of Article 10 of the Convention draws the borders of freedom of expression. EHRC asks three conditions from the countries to limit the freedom of expression. Firstly, the limitation of the interference should be foreseen in national laws. This means that the limitation should have a valid reason that is found on national law. Secondly, the interference should have a certain and serious aim.

The expressions can be limited in case of national security, integrity, public security, public order, for hindering a crime, for protecting health, for protection of fame and rights of people and for ensuring the authority and objectiveness of the judiciary. Third, the interference should be suitable for requirements of a democratic society. These three points should be persuading and should be valid. If one of them is missing, then the result would be infringement of a certain expression of freedom.[186] In Zana/Turkey case, limitation of the expressions of Zana was evaluated that it is right, since that interview would make the dangerous situation worse, could be dangerous for public security. Therefore, the court made its decision in favor of Turkey.[187]

In Handyside/United Kingdom case, the ECHR brought about new insights about the context of freedom of expression, in other words, which acts are in the context of freedom of expression. In Handyside decision, the expressions and opinions which are not only kind and simple, but also harsh and shocking expression of ideas and opinions were included to the lines of freedom of expression. It was announced in the decision that the expression of the detainee was found in the context of freedom of expression.[188]

In Sürek and Özdemir/Turkey case, the ECHR evaluated the situation so that the expressions used in the criticisms in the interview with Sürek and Özdemir, were a part of

[186] Şenoğlu, Fuat (2007), "Temel Hak ve Özgürlükler, Bu Hakların ve Özgürlüklerin Sınırlanması ve Bunlarla İlgili Kavramların Açıklamaları", http://www.turkhukuksitesi.com/makale_493.htm (12.02.2008).
[187] Binici, Hüsamettin (2004), p.7.
[188] Tezcan, Durmuş (2002), "Avrupa'da Düşünce Özgürlüğü", http://www.humanrights.coe.int/media/documents/translations/Turkish/turkish%20version%20of%20the%20booklet.pdf pp. 42-44, (10.03.2008).

one-sided criticism to the problems and responsible people in one part of Turkey.[189] Moreover, ECHR concluded that the limits and restrictions to these criticisms were not considered legal. So, the expressions were considered in the realm of freedom of expression.
In Arslan/Turkey case, ECHR announced in its decision that the writings could be considered hostile, however in case there is incitement to hatred, violence, there would not be any punishments on hostile writing. The expressions were analysed and the target was found not wide and the possibility of its effect on all the country was found hard to occur. Therefore, the expressions would not be dangerous for public and security. The analysis keeps its eye on the target of the expression, its possible effects and is on the question of whether there is a threat for public and security. ECHR analysis is like this, but in Turkey, the analysis made, depend on sentences and commands about the expressions.[190]

In Ceylan/Turkey case, violence was evaluated far from being incited, and defence with guns was not persuaded. Therefore, a limit to freedom of expression was found illegal.
In Başkaya and Okçuoğlu/Turkey case, an incitement to violence was not found and it was determined that the official policy of the government could be criticised in case there is incitement to violence in writings. In Polat/Turkey case, the importance was attached to the way of distribution. The expressions of the author was not distributed by the media, and therefore, the ECHR evaluated that the expressions' target was not far reaching. So that, the expressions were far from effecting big part of the country and it would not be dangerous for generating violence and public order. Here, the target and the expressions' reach was observed before the decision.[191] In Gerger/Turkey case, it was commanded that the message that was read to a small group of people and its effect on people was found weak. In the message, words about counter act, fight and independence were used, however there was no incitement to attack with guns, therefore, the crime was not determined.[192]

[189] Kaleli, Serruh (2006), "Avrupa İnsan Hakları Mahkemesi'nin Türkiye ile ilgili Olarak Verdiği Kararların Genel Değerlendirmesi", September 22, http://www.anayasa.gov.tr/images/loaded/kitap/kaleli.pdf pp.3-5, (15.02.2008).
[190] Akkuş, Mustafa (2004), "Türk Yargısının İfade Özgürlüğü ile İlgili Uygulaması ve Bu Konuyla İlgili Son Anayasal ve Yasal Reformlar", http://www.abgm.adalet.gov.tr/makkus.pdf p.15-20, (20.04.2008).
[191] Kaleli, Serruh (2006), pp.4-6.
[192] Binici, Hüsamettin (2004), pp.7-10.

III.1.3. Implementation of Freedom of Expression in Turkey

Turkish Constitutional Court began to use and accepted the Convention's superiority in recent years. It used to accept national ones. So, that means another improvement in cases. In its decisions, the Constitution Court makes references on ECHR decisions but again it attached importance to Constitution principles. The Supreme Court made references to articles of the Convention and we understand from its decisions that it evaluated the Convention superior to national laws. In 2001, Council of State in one if its decisions, determined that a radio and television security document was against the Article 10 of the Convention. In 2002, the ungiven permission by the apartment for a prayer place was found suitable to articles of the Convention. In 2005, the court attached importance to Article 10 of the convention. In a TV programme, producers showed a judge on criminal acts and was punished by RTÜK. However, the court violated the decision via the convenience of the Article 10.[193]

Administrative courts made references to the Convention's articles. Doctor couples wanted to work in the same place, but they were rejected. But, the court mentioned that the husband's work was in a different area, and it refered to Article 8 of the Convention and made an abolishment decision. In another case, the Administrative Court referred to Article 1 of the Convention mentioning that the judgement was needlessly neglected over a suitable time and made an abolishment decision. In one case in which a prisoner was killed by another prisoner, the court made reference to Article 2 of the Convention.[194]

III.1.3.1. Elements of Crime in Article 301 of the Turkish Penal Code

This Article includes some vague expressions like denigrating and Turkishness. Denigrating is itself a subjective word and Turkishness is vague. Article 66 of the Turkish Constitution describes Turkishness as being depended on Turkish state with loyalty. Article 301 determines Turkishness as the asset arising from collective culture from all over the world. But, these sentences are open to subjective understandings.

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[193] Akkuş, Mustafa (2004), pp.15-20.
[194] *Ibid*., p.18.

In Turkey, the real thing that is saved is public benefit. The inconcrete element of the crime is the flagrant act against the respect and honour of the institutions. The Supreme Court in one of its decisions, wrote that the detainee was in a flagrance when he made his speech in a crowded place so that many people could hear and this was counted as an offence against the Republic. The Supreme Court attached a special importance to criminal intention in cases. In some cases, where there was no criminal intention, the court violated the decision in favour of the detainee. For example, in a decision of the Supreme Court, it was mentioned that the speech was made by a man who drank alcohol and made a speech against the Republic, but the court overruled the decision because there was no criminal intention.[195]

Secondly, for a crime to have material elements of crime, "being overt" is another condition that is evaluated by the Supreme Court. "Overtly" means that the act was seen or heard by at least two people. Thirdly, it must have insulting elements. For this reason, the last part of Article 301 was written so that the difference between insulting and criticism may be noticed easily. Fourthly, third part of the Article 301 determines the heavy punishment conditions that paves the way to increase on the crime.[196] The reason behind this provision is that when the crime is made in another country, then this may harm the honour of the institution of a country in international field. But, when is an act counted as criticism and when is it named as insult? Turkish courts evaluate this difference by exploring the expressions whether it hurts a common feeling. On the other hand, ECHR determines these situations more flexibly. Moreover, it gives a greater chance to criticisms about politics. To conclude, Turkish Courts evaluate the cases depending on whether there is an insult that touches to the honour of the institutions of Turkey.[197] This is also valid for honour of people. The important thing here is that, in order to save the detainee from being named as detainee (detainee status), the first judgement is to investigate whether the expression is criticism or insult. If this expression is for criticism, then the person will be questioned under normal status, not as a detainee. This will be useful for the person to be held for shorter and in a comfortable position. But, if the expression consists of insult, then the judges look at whether there is a criminal intention on the expression. This is the Turkish application on the issue. On

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[195] Sancar, Türkan Yalçın (2004), "Türk Ceza Kanununun 159. ve 312. maddelerinde yapılan Değişikliklerin Anlamı", http://auhf.ankara.edu.tr/dergiler/auhfd-arsiv/AUHF-2003-52-01/AUHF-2003-52-01-TSancar.pdf pp. 20-25, (18,04.2008).
[196] İlkiz, Fikret (2006), "Ceza Hukuku Reformu Sonrası Türkiye'de Düşünce özgürlüğü", http://www.konrad.org.tr/Medya%20Mercek/12ilkiz.pdf (27.11.2007), pp.7-10.
[197] *Ibid.*, pp. 10-15.

the other hand, for example, in France, a provision under freedom of the media saves the military and the courts. Another provision saves the ministers, public officers from insult. So, it can be concluded that there are similarities of applications with another countries, but in European countries the sued cases are clearly lower than Turkey's.

An arrangement on the Article 301 may be a change on the word, Turks with " Turkish nation" to narrow the application field of the article. The word "insult" must be brought instead of the phrase "denigrating." This will help to seperate criticism and insult easily. These will be beneficial for a fair judgement and these recommendations and the changes can make the judgement more objective. Evaluating an expression whether it has the aim of criticizing or not is the basic problem in Turkish law. Because, it changes from one person to another, in other words, it is subjective.[198] Therefore, to make it clear, the Turkish judges are investigating whether there is a clear intention on the expression. Determining the intention is very hard, because the only proof in hand is the expression. Therefore, making command is very important to clarify the situation. ECHR investigates the situation according to possible result of the expression on people and the public. The first thing that is investigated is to determine whether the expression is a criticism or not. Secondly, if it is not criticism, then the next step would be to determine an intention. Turkish judges make the evaluation like this.[199]

III.2. ECHR AND TURKISH JUDICIARY: A COMPARATIVE ANALYSIS FOR IMPLEMENTATION REGARDING FREEDOM OF EXPRESSION

When the decisions of the ECHR and Supreme Court and other courts in Turkey is observed, it is realized that there is a difference in commands made by the courts. The ECHR and for example Supreme Court attach importance to different points while they are judging. The ECHR investigates the possible results and effects of the expressions on people and on society. For example, ECHR explores whether an expression incites violence and racism. ECHR searches for the possible outcomes after the expressions.

[198] Uygun, Oktay "TCK 301: Türklük ve Türk Milleti Kavramları", http://www.boell-tr.org/images/cust_files/080704160813.pdf pp.1-4, (03.04.2008).
[199] *Ibid*., pp.20-24.

Until this point, the main principle is saving the individual. On the other hand, our judges attach importance to the expression and its content and they do not think about its possible outcomes. Turkish mentality is on saving the state rather than the individual. The decisions of Constitutional Court were paralel to 1982 Constitution and it created an atmosphere of crime of thoughts. However, Council of State made practices in favour of freedom of expression and in its decisions, it searched for a clear and concrete incitement. Supreme Court decisions were harsh, however it is more flexible and supportive to freedom of expression in recent years and the judges attach more importance to EHRC more than before.[200]

The Turkish Constitutional Court in its decision on Welfare Party case, mentioned that laws must be shaped according to contemporary values and there should not be the separation of religious and ethnic differences so that there would be multi-laws, because this tends to harm secular governance. The law related to differences has no share in life and it faces no prevention from the EHRC. The ECHR also replied with positive answer to this and accepted that words used by the president of the party are against secular governance. Supreme Court mentioned in some of its decisions that the expressions were heavy criticism. The decisions were not considered legal and as a criticism before, however, they were accepted as insult or incitement. This is a very important development, because we hear heavier criticisms around than incitements.

In one decision, the court also mentioned that, freedom of expression does not consist of just good words, but also it contains heavy criticisms and irritating words. Criticism is naturally not a polite way of speaking, it is also harsh. Moreover, the court mentioned that the public officers should be criticized and this criticism included public benefit inside.[201] Our courts are evaluating the situation with also potential threats. The expressions are evaluated with observations on the property of the expression having harmed to public order. The courts are observing that whether there is an incitement to violence. For example, saying that Islamic laws are necessary for the Turkish governance is not considered as a crime according to

[200] Bıçak, Vahit (2003), "Uluslararası İnsan Hakları Normlarını Yorum Organı Olarak Avrupa İnsan Hakları Mahkemesi ve Kararlarının Türk Hukukunun Gelişimine Katkısı", http://hukukcu.com/modules/smartsection/item.php?itemid=64 pp.5-9, (18.10.2007).
[201] Çalışkan, Mesut (2004), p.7.

Turkish judiciary. Because, this is accepted as a natural way of expressing the thought. However, if there is a risk resulting from the expression, the situation may change.

In 2004, on Erdal Taş case, the Supreme Court referred that hatred speeches, incitement to violence creates dangers for public order and they were not considered in the area of preservation of freedom of expression. In light of this reference, the Supreme Court decided that the expressions of Erdal Taş did not include incitement to violence and there was no possibility of incitement to enmity and the expression could be considered as criticism. The Supreme Court went on and added that "It must not be forgotten that freedom of expression is not thinking like the others and it consists of making analysis and criticisms. The expressions that create anger and discussion are also in the preservation of freedom of expression."[202] A Council of State command in one case, mentioned that with the last corrections on Articles 216 and 218 of the Penal Code, a person could only be designated as guilty in a situation that he makes the incitement very overtly and in a possibility of a threat that exists for the public order. This command also proves that EHRC had some clear and positive reflections in Turkey's law.

III.2.1. Supreme Court Cases

A case was sued against Mehmet Şevket Eygi and Selami Çalışkan. They were writing on a newspaper and they were judged on inciting the people to enmity. In the observation of the case, Mehmet Şevket Eygi wrote that there were anti religious pressures against people and criticised that the abusers of religion were behaving against Islam. The first thing that must be paid attention is that, the judge starts his words with "when the column is read as a whole". This is important, because this shows that the judges want to pay attention to the expressions as a whole and evaluate it in detail. The judges decided that the expressions would not be in a position that they would be critical for public order and the expressions do not have incitement to enmity.[203] Moreover, the criticised were accepted as abusers of religion. The column did not have inciting factors to violence, thus there was no threat against public order. The criticisms were not made to certain people and for all these reasons, it was

[202] Metin, Ferhat (2003) "Avrupa İnsan Hakları Mahkemesi'nin Kararlarının Türkiye'de Uygulanmasına İlişkin Çalışma", (20.11.2007).
[203] Akkuş, Mustafa (2004), pp. 10-15. Case Number: 6377/2004.

decided that the part of crime did not exist.[204] In a case in 2003, the person that was judged was Ali Teker, who was judged under Article 312, that was about incitement the people to enmity. The column was about a girl who could not be registered to University, because she was wearing head scarf. Again, the judges started the decision with the words, "as a whole" and decided that the parts of crime that were incitement to enmity that would be critical for public and there was no religious, racist disparity.[205]

In another case in 2003, Abdurrahman Dilipak was released because his column did not carry out incitement to enmity by seperating groups and classes in the country. Therefore, we can say that the reforms and their implementation started to be seen and the trend is going on better than before. The responsibility to implement the rules and Europeanize the implementation belongs to the responsibility of the judges, and other people who take place in trainings and educations.

III.2.1.1. Selahattin Aydar Case: A Detailed Analysis for Implementation in Turkey Regarding Freedom of Expression

Selahattin Aydar was the detainee as a result of his column in a magazine. He was sued a case on article 312 part 2 of the Turkish Penal Code which was about inciting people to enmity and to resentment on religious differences. He was asked to be punished for a year and 8 months. There were different commands about the interpretation of the crime, but the result was recorded in favour of freedom of the detainee.[206] The case decisions and commands were different at the beginning, however when the interpretations (Case Law) were logically and when the interpretations (Case Law) of European Court of Human Rights were observed and benchmarked by the judges, the decisions and commands changed. The commands and interpretations at the beginning and the Europeanized style of interpretations regarding the case was observed in this case. The Turkish Constitution states in Article 2 that the Turkish Republic is a democratic, secular and a social state governed by rule of law and in the Article 14, it mentions that no freedom has the right to break the integrity and secular principles of the Republic. Article 3 puts that the secular position of the country cannot be changed.[207]

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[204] *Ibid*., pp.16-20.
[205] *Ibid*., pp.26-32.
[206] Selahattin Aydar Case, Yargıtay Beyoğlu Cumhuriyet Savcılığı, 2004. Karar No: 206, 8. Yargıtay Ceza Dairesi, İstanbul 6 No.lu DGM.
[207] Can, pp.10-13.

The column of the author Selahattin Aydar is worth to be observed here. The author writes that in the recent years, there are pressures on people practicing their religion, on children that wants to read Koran, that there are insults on people who attach importance to religion. He adds that the 8 year education was imposed on people and imam schools were tried to be decreased. He puts that the people are being hindered by these people and he calls them atheists. The author believes in an islamic future.[208]

The judges in the aftermath of the first case, evaluated the situation as the author is in the ambition of an islamic future and considered the Republic as an obstacle in front of islam and he evaluated the precautions of secular nature as an atheist behavior and he named some part of the people as atheists and this was thought as a discrimination and this was an incitement to hatred and enmity on religious differences. The judges evaluated the situation on the basis of Article 312 of the Penal Code. The head judges put that the crime was endangerment crime and there was no need for a presence of a call for violence. They found the situation enough for harming on the public order. The conditions were found adequate and sufficient for the crime. The violence events in some countries were shown as a valid reason that may cause threat.[209]

However, with the changes on the Penal Code in recent years, article 312 was amended so that there would be a condition that was required to be searched in case of determining a crime. The amendmend was the addition of a clause "in a possible threat for public order". That brought the condition of a material and concrete danger. This needed the call for violence. The amendmend was parallel to the interpretations of European Court of Human Rights. By looking at the changes and with the mood of having looked at the whole passage instead of sentence by sentence, it was evaluated that the column included insults in its content. However, the call for violence was not found and a concrete and a imminent threat was not determined. The judges evaluated that the column was harsh and hard, but did not consist of incitement to enmity and hatred. As we see here, the differences of commands by the judges at the beginning and after the amendmends and observation of the column and the ECHR interpretations are clearly noticed. The Supreme Court mentions that it attached

[208] Yeni Şafak (2004), "Aydar'a 312.maddeden Ceza", May 26, http://yenisafak.com.tr/arsiv/2004/mayis/26/g03.html (24.12.2007).
[209] *Ibid.*

importance to the degree of incitement and its results on public security and order. If there is no clear harm on the security and order, then it must not be penalised.[210]

It was decided that the legal elements of the crime did not exist. It was concluded that the case must be evaluated once again by the General Council of the Judiciary. Because, the changes in the legal system required this re-evaluation. It was also pronounced that importance was attached to the Article 10 of the ECHR and democracy and basic rights would be taken into consideration. The new application was based on endangerment and it should have to be set on imminent threat. It was recalled that importance was to be attached to the Case Law of Court of Human Rights and the Supreme Court Case Law would be empowered through ensuring security, letting criticism and making political propaganda easier and flexible.

With the changes in Penal Code, it was aimed that freedom of political criticism and the deepening of the public order was to be balanced. In 2003, the Supreme Court, in its decisions, mentioned the threat for public order as "imminent threat", that awakes violence, force and that aims to incite." When the column in Milli Gazete was evaluated, the column of "Çocuklarımıza Sahip Çıkalım" had no doubt of having targeted the secularity principle, it was disturbing and heart breaking. In the column, secularity was named as atheism, and there were harsh criticism in the paper. In Turkish Constitution, secularity had been named as a condition for public order. Religious and consciousness freedoms are the results of secularism.[211]

Given these information, the Court noted that the legal elements of crime did not exist. The Court thought that the imminent and clear threat principle made the elements of the crime clearer. The General Council and the Supreme Court discussed the possibility of existence or non-existence of the legal elements of the crime. In order to analyze the case properly, the courts made a good review of international norms on freedom of expression while they were analysing the case. The Courts also looked over the new form of Article 312 of the Penal Code and made the Case Law of the Turkish judiciary similar to European standards on the freedom of expression issue. The Courts emphasized that the international norms were important to seperate incitement to hatred and enmity from defending the right. Because, the

[210] Sancar, Türkan Yalçın (2004), pp. 98-99.
[211] *Ibid.*

international norms were important to determine the thin line between harsh criticism and incitement to enmity.[212]

National and International Norms on Freedom of Expression

While the Turkish Courts were analysing the case, they made references to Article 9 and 10 of the European Convention on Human Rights. These articles mention that everybody has the right to have thoughts, consciousness and religious freedom. In Article 10, everybody has the right to express opinions and thoughts. Freedom of expression is guaranteed in Article 9 and 10 of the Convention and in the 24th, 25th and 26th Articles of the Turkish Constitution. Article 24 gives people the right to consciousness and religious freedoms. Article 25 gives people the right to have thoughts and opinions and Article 26 is very close to the Convention Article 10 and lets the flow of information and freedom of expression. Article 17 of the Turkish Constitution clarifies the limits on freedom of expression. Articles 2, 4, 13 and 14 clarifies the domestic understanding on freedoms.

In Article 2, the state is considered as an institution that respects the human rights with solidarity of people. Article 4 notes that the governance in Turkey is a Republic and the principles of the Republic cannot be changed. In Article 13, it states that the limits of basic rights can only take place in favour of the Turkish Republic, democratic public order and secular Republic. Article 14 notes that none of the basic rights have the right to harm the integrity and secularist view of the state. All those national and international provisions notes the situations in which limitations can be performed. The limitations of freedom must have a valid aim a must and a social need and those limitations must not hinder the change in democracy. According to the Convention, for limitation, the reason for limitation is not enough. It also requires a must for a democratic society. The necessity of limitation must be considered as credible.[213]

[212] Hüsnü, Erdem Fazıl (2003), "TCK'nun 312.maddesinin Koruduğu Hukuksal Değerin Kısa Bir Analizi", http://auhf.ankara.edu.tr/dergiler/auhfd-arsiv/AUHF-2003-52-01/AUHF-2003-52-01-Erdem.pdf (25.03.2008).
[213] Can, pp.10-15.

Examples from Turkish Case Law

If the act does not create clear and imminent threat, the crime is not considered. The act must be observed and evaluated whether it incites people to hatred and enmity. Indirect effects are not enough for realization of incitement. If the danger of the crime is not effective to commit a crime, it cannot be counted as a crime. In case it is punished, then it will be an unfair judgement and limitation of freedom of expression. The problem here is to observe whether the thought creates a present and clear threat to society, government regime, and whether the crime incites people to act. According to the Supreme Court, the point to attach importance is the public order. That means that the public life goes on with relief and security. The important thing is the internal peace.[214]

When the Case Law of the European Court of Human Rights is explored, it becomes clear that importance is equally attached importance to freedom of expression and security. The balance is set up on the fundamentals of freedom of expression. As an example, in Aksoy/Turkey case, the Court considered the penalization of the detainee as unfair, because of his speeches on questioning the order in Turkish government and these speeches had no effect on inciting people. His ideas were not inciting to use of gun or the use of force. So, his penalization was considered as an infringement of freedom of expression. The Court evaluates the place and time of the expression and does not punish only aggressive expressions. According to the Court, place and time are also important on evaluating the cases. The Court in its decisions, noted that the harsh criticisms are also part of freedom of expression.[215]

Turkish Penal Code Articles 141, 142 and 163 and Article 8 of the anti-terror law were removed because of the article's dominance on democracy and freedom of expression. They were used to prosecute people. According to the Turkish law, the thing that is saved is not the state, but it has become the public order. And by the additions to Article 312, the crime now exists in a position that people incites the other people. It was the peoples' incitement to the state, but now it changed. Due to these changes, in Selahattin Aydar case, the judges read and explored the column once again as a whole and made re-evaluations on the case. They noticed that the column was not objective, the words were harsh and disturbing. However, the

[214] *e-akademi* (2005), *Hukuk, Ekonomi ve Siyasal Bilimler Aylık İnternet Dergisi*, sayı 37, http://www.e-akademi.org/incele.asp?konu=Yarg%C4%B1tay%20Ceza%20Genel%20Kurulu%20Karar%C4%B1&kimlik=-1393986298&url=makaleler/karar-15.htm (20.12.2007).
[215] European Council (2003), "AİHM Kararlarından Örnekler", http://www.barobirlik.org.tr/ihep/belgeler/aihm_kararlarindan_ornekler.pdf pp. 250-270, (21.12.2007).

thoughts may also consist of disturbing ideas. And they recalled that there was no specific group that was incited to hatred and enmity.

One Side of the Case: Different Ideas, Secularist Judges

In Selahattin Aydar case, we see that there were 27 judges and there were two different parties about the evaluation of the case. One part of judges was mentioning that secularism is an important issue and this cannot be harmed through the expressions that humiliate secularism and calling it as atheism. They said that the expressions of Selahattin Aydar were in a direction that might harm the secularist system that the Turkish Republic is built on.[216]

When the opinions of first group of judges were analyzed, the judges showed the examples from the Court cases from different countries. For example, in Jersild/Denmark decision, the expressions of creating hatred and aspersions that targets people or groups, cannot benefit from the advantages on the Article 10 of the Convention. In Handyside/England case, it was determined that hurting and shocking ideas were accepted inside the freedom of expression, however, the sexual part of the opinions had nothing to do with freedom of expression that harms people and hurts the right of other people on religion and conscientious freedom, must be avoided.[217]

According to these judges, the expressions that are humiliating like "atheist, terrible" were not counted in the sphere of freedom of expression. These expressions harm the freedom belief of other people and are against secularism. Therefore, this may break the public order. Secularism is an important issue and in Leyla Şahin/Turkey case, it was mentioned that the free usage of head scarf might break the main principles of secularism in the country. This may harm the equality between men and women. Secularism complies with the values that make up the Convention and the support of this principle is needed for promotion of democracy. Therefore, the expressions of Aydar were said to harm democracy and secularism.

The judges defended that looking for the elements of force or call for force may leave the system open for dangers and leave space for breaking the constitutional order and

[216] *e-akademi* (2005).
[217] *Ibid.*

presence. The expressions already carry concrete threat risk. The judges said that Turkey was open to conditions of religious abuse and the expressions that support Sharia means letting the abuse of rights. The Sharia is not consistent with democracy. They cannot be co-exist. In Welfare Party case, the statements regarding Sharia were not evaluated in the context of freedom of expression. A model which does not contain freedom of expression, cannot make the freedom of expression a savor to itself. In other words, freedom of expression cannot save a system which does not include freedom of expression.[218]

The judges pointed out that the social mood and requirements in the country make the limitation mandatory. The Madımak event was an example of this. The judges said that the expressions of this type are already a concrete risk of public disorder. The expressions were determined out of the sphere of freedom of expression and the concrete elements were already created by these expressions. The judges emphasized that a chaos in the country or an event, must not be waited to limit the expression. The potential of a chaos and an event is enough for limitation.[219]

The defenders of the same opinions were also thinking that the Convention gave the oppurtunity of limiting the expressions by the government, according to conditions in a country. In Leyla Şahin/Turkey case, the Court mentioned that the radical groups in some states seek the oppurtunities to capture the government and change the regime. So, Court recorded that in light of the historical experiences, the country can limit these expressions. They continue with the idea that the detainee created hatred steps against secularists with his expressions and incited people to use force against these people. The possible limitations in this case were normal, because the interference was not to the expression, but to the style, hatred and force in the expression. The limitations were for ensuring the democratic state.[220]

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[218] *Yeni Şafak* (2004), May 26, http://yenisafak.com.tr/arsiv/2004/mayis/26/g03.html (24.12.2007).
[219] *Ibid.*
[220] *Türkiye Barolar Birliği Dergisi* (2004), "Leyla Şahin/Türkiye Davası, Karar Tarihi, 29 Haziran 2004", Eylül Sayısı, http://serkancengiz.av.tr/fileadmin/articles/Leyla__ahin__1-_Web_Sa.pdf pp. 17-20, (25.12.2007).

The Other Side of the Opinions: A More Contemporary Approach

On the other hand, the other opinion was that the expressions of Selahattin Aydar did not include and consist of an imminent and present threat for public order, even though the expressions of Selahattin Aydar were disturbing and hurting. The judges explained that the expressions were part of freedom of expression and the legal elements of the crime did not exist. The judges in this side defended that the expressions had nothing to do with insulting people to hatred and enmity.[221]

The judges in this side, explained Article 312 of the Penal Code and the concrete endangerment and the conditions that make the crime as follows; The people must be incited each other to enmity and hatred. The hatred and enmity must be placed on the religious and racial difference between groups. Moreover, the expressions will have to break public order or create the possibility of breaking the public order. The judges in this side said that whether the acts target breaking the public order would be decided by the judge, by also looking at the Court examples and past Case Laws. However, if these conditions were not determined, then the crime was said not to be existed. This can be shown as an example of new and contemporary conditions for prosecution and the crime. The new understanding and applications of Turkish judges put the conditions for crime to exist: if the act is made in front of people, if the act brings the people together negatively, if the incitement act is enough to create threat for public order and if the act includes call for force. The conditions were reflected to many decisions of judges by the Supreme Court and this is a proof of reflections of applications of the Court of Human Rights Case Law in Turkish Law.[222]

Moreover, the judges in this side conclude in their decision that the article of Aydar does not include crime elements that are found in Article 312. Second, it does not include call for force and is not enough to break public order, so does not include crime elements.
The judges explained the concrete risk as the harm that can be realized, and with the act, the fear is not just enough for concrete threat. They also explain the public order as the absence of

[221] *Ibid.*
[222] *e-akademi* (2005).

choas and disorder in social life. But, they mention that any act that breaks the public order, does not have to break the national security.[223]

The Turkish judges in the case put the limitation condition as follows; the limitation of freedom of expression must refer to a legal provision. It must refer to at least one international reason in the Convention. Also, they evaluate that the limitation must refer to an unstable social situation or a social need. So, the judges (14 judges) decided by taking into consideration the latest legal changes in the constitution and the Penal Code with the harmonization packages and by canvassing the European Court of Human Rights Case Law that the elements of the crime did not exist and the crime needs concrete threat on public order. As a conclusion, these judges voted in favor of freedom of expression and the last decision was given in favour of freedom of expression. The votes in favour of freedom of expression were 14, which were only one vote more than the other judges which were 13. Aydar was happy with the decision and he said in his interview that this was an improvement in freedom of expression and this was a light shed in front of freedom of expression.[224]

III.2.2. Council of State Cases

Another case was about a broadcast that announced some admissions about a person or a group of people that they were involved in a corruption scandal. The thought of the judge was that freedom of expression was described in the EHRC in Article 10 in the first part. He mentioned in his report that in the second part of the Article 10, valid reasons of interference were issued.[225] Among the reasons of interference, he mentioned that one of them was ensuring the authority and the objectiveness of the judiciary and the other reason was for ensuring one's fame and personal rights. He mentioned in the decision that admissions and explanations which exist without giving the chance to people to defend themselves and one-sided accusations may harm the honour and fame of people and may also harm the functions of the judiciary. Moreover, the accusators become in a more valuable position than the accused. The announcer of the news cannot ignore his or the channel's responsibility. The lawyer evaluated the EHRC as a reference and the decision was very parallel to the referant

[223] *Ibid.*
[224] *Zaman* (2005), "Yargıtay, Düşünce Özgürlüğünün Önünü Açtı", May 2, http://www.tumgazeteler.com/?a=777174 (13.05.2008).
[225] Gölcüklü, Feyyaz and Gözübüyük Şeref, *Avrupa İnsan Hakları Sözleşmesi ve Uygulaması*, 2007, Turhan Yayınevi , Ankara, pp. 124-128. Decision number: 947/2005, Date: May 22.

Article 10 and parts the convention. With the reference made to provision of Article 10 of the convention by the Turkish judge, the reasons for interference was mentioned as firstly to ensure the independence and authority of the judiciary and to save the fame and rights of people. And also, a reference to Article 38 of the Turkish Constitution was made and this article mentioned that nobody could be named as guilty in case he is proved that he is legally guilty.

The other reference was made to radio and television law. It also required the condition that he is proved to have been guilty. The judges on this case also made reference to European International Television Convention, the responsibilities of the producers. This also mentioned that program services should be convinient with the human pride and fundamental human rights. The final decision after these references was, that while there was an ongoing trial and there was no certain judiciary decision on behalf of the detainee, and since there was no right was given to defend himself, and that this would harm the honour and fame of the person.[226]

In another Council of State case, the decisions were that, Constitution Article 24 of the Turkish Constitution organized freedom of religion and did not let everybody meet in places and this freedom could be obtained by some law rules. The event was about some people who wanted to make a building a religious place. The judges in that case made reference to Article 9 of the Convention and in the first part it noticed that religious freedom and expressing beliefs alone or together with a group. However the court added that the same article part two mentioned that these freedoms could be blocked with reasons for public security, public order, general health and morality.[227]

Council of State, in one of its decisions, mentioned that freedom of expression was accepted as a main principle of a democratic society in case there was a clear incitement and push to a crime. The judges decided that the person was involved in an expression that was in the borders of freedom of expression and the expression was not in a degree that it can harm national security, integrity, public order, general health, people's fame and rights and general

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[226] *Ibid*., pp.156-158.
[227] Eren, Abdurrahman , (2007), *Türkiye'de İnsan Haklarının Korunması,* Turhan Yayınevi, Ankara, pp.50- 57.

morality. This was straight and clear reference from Article 10, provision 2. The reference norms are widely used by the judges in recent years.

Another case was about a broadcast that was evaluated whether it was convenient for Turkish morality and national moral values. Council of State lawyer mentioned that freedom of religious and freedom of thought were organized with Article 9 of the convention and they were fundamentals of democratic society. The judges used reference of EHRC once again and mentioned that freedom of religious thoughts could be not only among the people sharing the same thoughts, but also for the people who think differently and this freedom could be open to people who are alone and by shedding light to people. Limits of this freedom may be blocked in case of a necessity. The judges made reference to Article 24 of the Turkish Constitution and referred to abuse of religion that it was forbidden.[228]According to these references, this radio broadcast would be in lines of freedom and it was determined that it did not include violence or incitement to violence and the content of the program includes religious informations and knowledge. In the end, the broadcast was named as suitable according to the Turkish family structure.

III.3. PROBLEMS IN IMPLEMENTATION OF REFORMS IN TURKEY

Turkish legislation had gone a long distance and it had become in EU standards. Especially, legislative changes related to torture are in European standards. The period between 1999-2004 is transformation period and in this period, the EU conditionality was effective and credible on Turkey. However, it lost its credibility after the negotiations started until recently. In transformation period, the EU conditionality was credible, but it is certain that there were problems in implementation of these changes in legislation. The argument here is that, the implementation problem arises from the problems in internal dynamics in Turkey. The implementation problem was not a result of weakness of the EU conditionality, but it was a problem originated from the internal dynamics of Turkey and Turkish politics.

In the implementation of new legislation, there have always been problems. Especially, starting from 2000, there have been problems in the implementation of torture and on organization of prisons. As the time passed by, torture decreased and the implementation

[228] Akkuş, Mustafa (2004), pp. 26-30.

has become better and in recent times, there are very little torture proofs. However, when it comes to freedom of expression, it is certain that there have always been implementation problems.

The first problem is to sue cases in the first step, for people who expressed peaceful or unpeaceful opinions altogether. In many European member countries, to sue cases is not the first step on evaluating the process. The second implementation problem in freedom of expression cases, is that the judges are looking at the content of the expressions. However, they must look at a imminent threat possibility, whether it causes a threat of disorder in the society. They must also follow whether the recipient has the right and possibility for answering or defending themselves. They must examine the strength of the owner's opinion regarding how much he can effect the society order. The main differences between the implementations of Turkey and ECHR are these.[229]

However, we see that there are still cases that are sued against people who express peaceful and unpeaceful opinions. On torture, there are many problems that lasted for many years. The state of the prisons was quite problematic. The conditions were inadequate for prisoners and the government made f-type prisons caused many deaths and death fastings.[230] The security officers were not investigated and prosecuted even though they took part in human rights violations.

People that were caught in Southeast were tortured for learning about some events. But, with a zero-tolerance policy of the government, the torture incidents decreased. The government also made declarations about the responsibilities of security officers. Another example could be shown in May 1st events. The police used excessive force on celebrators and May 1st celebrations were strictly controlled by the government.[231] This shows that there are still weaknesses regarding freedom of meetings and demonstrations, which are other

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[229] AB Genel Müdürlüğü ve TAIEX (2004), "Avrupa İnsan Hakları Sözleşmesinin 10. Maddesi Temelinde İfade Özgürlüğü ve Türk Yargısının Uygulaması" Seminer makale, http://209.85.135.104/search?q=cache:S2WYpzoM3k4J:www.abgm.adalet.gov.tr/diyarbak%C4%B1rprogramekim2004.pdf+A%C4%B0HS+ve+uygulamas%C4%B1+ifade+%C3%B6zg%C3%BCrl%C3%BC%C4%9F%C3%BC+pdf&hl=tr&ct=clnk&cd=3&gl=tr pp. 3-6, (14.09.2007).

[230] Amnesty International report (2002), "Turkey", http://insanhaklarimerkezi.bilgi.edu.tr/source/turkce/4.2.5.1/Amnesty%202002-Turkey.pdf (21.10.2007).

[231] ntvmsnbc (2008), "1 Mayıs'ta İki Polis Orantısız Güç Kullanmış", May 22, http://www.ntvmsnbc.com/news/447241.asp

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forms of freedom of expression. These show that there are still implementation problems even though there have been very successful changes in freedom of expression, meetings and demonstrations, setting associations and fight against torture. There are qualified reforms on paper, however when it comes to implementation of those changes, there are weaknesses.

III.3.1. The Reasons of Implementation Problems in the Transition Period

Implementation problem is a result of a resistance in Turkey to some changes. There are problems arising from internal dynamics of Turkey. Political system in Turkey has differences compared to some EU member countries.

III.3.1.1. The Role of the Military in Politics

Turkey's roots depend on a very different past and this makes differences in making policies and implementing certain changes and certain reforms. First, Turkish people considers the military as the savor and protector of the country. Because, the military took place in the liberation war and is seen as a valuable actor in Turkey. It takes its roots from the modernising power and similar view of Kemalism. It is considered that whenever there is a risk of sovereignty, then the military will handle the situation and protect the state from dangers. As a result of this situation, the military intervened in the political life in Turkey and this has decreased the quality of democracy in Turkey.[232]

We saw a similar scene on April 27th, 2007. The military made a silent diplomatic note against AKP when they mentioned that the regime in Turkey cannot change and Sharia cannot take place in a secular country like Turkey. Turkey depends on a very serious Republicanism and these take their roots from Kemalism. Turkey faced three different military coups and the effects of these coups varied. Especially, 1980 coup put many obstacles in front of democracy. The result was 1982 constitution that harmed many elements of democracy. The constitution is a product of military coup and it harms basic fundamental rights.

[232] Çavdar, Tevfik (2004), *Türkiye'nin Demokrasi Tarihi* , İmge., Ankara, pp.181-190.

The military sets up relationships with the government through NSC and constructs monitoring units that watch internal and foreign policies of Turkey. Military also gives briefings to the governments and interferes the nature of politics. The military has differences when compared to EU countries. According to the constitutions of the EU members, military depend on that their militarys are depended on civil authority. So, that kind of interference is unacceptable by the EU states.[233] The military also had played an important role in modernization of Turkey and on the independence of the country. In 19th century, ninety percent of the schools were military schools. When the military coups are observed, it is accepted that the times of the coups were on days when politics had no power to produce something and when the civil authority lost its power. Therefore, the reality is considered that saving the country against territorial threats is a real duty of the military when the past is observed.[234]

III.3.1.2. Statism

State-centric nature of Turkey is another problem. State is considered as sacred and Turkey is in a unitary system. The integrity of the state was considered as a very important aspect and it is always protected. There is no accepted minority other than the minorities that were stated in Lousanne Treaty. All the people living in Turkey are considered as Turks. Kurds and Turks lived so long for many years and fought together in the liberation war. The main understanding is that they are all accepted as Turks.[235]

The main understanding is saving the borders and ensuring the integrity of the state. These factors effected the implementation of human rights in Turkey. The effects were felt in the issues of freedom of expression, minorities and torture. In constitution and in Penal Code, there are many provisions that protect the integrity of the state. The judgements and prosecutions are made by taking the integrity of the state in the consideration. No imminent threat and possible disorder in the country are accounted. But, the important thing is the fragile situation of the country.

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[233] San, Coşkun "Türkiye'de Demokrasi ve İnsan Hakları Sorunları", http://www.politics.ankara.edu.tr/dergi/pdf/53/1/15_coskun_san.pdf pp. 3-6. (11.11.2007).
[234] Üskül, Zafer (1989), *Siyaset ve Asker*, Afa, İstanbul., pp.15-24.
[235] Aydın, Senem and Keyman, Fuat (2004), "European Integration and Transformation of Turkish Democracy" EU-Turkey European Papers, No:2.CEPS, pp. 19-24, (15.11.2007).

III.3.1.3. Security Problems and Terror

When we look at the fragile situation of the country, the first thing that comes to the minds is PKK threat. Turkey is in a very risky position when compared to other countries and members of the EU. The neighbours and the geopolitical situation of Turkey create the difficulty in defending itself. Turkey has dangerous borders and it is neighbour to Iran and Iraq. The issue of PKK always harms Turkey's efforts in human rights. Turkey could not set up a balance between its security and human rights promotion. Before 1999, when Öcalan was caught, the situation was very risky and after he was captured, the situation became relieved. However, when the terror started again after 2006, we saw that the security anxiety started again. While Turkey was fighting with terror, it was nearly impossible to promote human rights and make reforms. In addition to this, the most important thing is that the implementation was very hard under these circumstances.

Although Turkey wanted to ensure a zero-tolerance policy in torture, the torture and ill-treatment events appeared and it was very hard to stop these. Under these circumstances, the judiciary may be politicized and the cases became politicized and we saw the examples of nationalist, far rightist judges in the cases, especially in freedom of expression. Besides, in the implementation, there occurs problems because of security alert of Turkish judiciary system. Because, the structure of Turkey is different than the members of the EU. We see that there may not be a period or place to find "imminent threat." However, the conditions in Turkey or in Southeastern part of Turkey may also be imminent threat itself. The differences between the EU states and Turkey of security is important in determining the imminent threat itself.

III.3.1.4. Different Perspectives of Political Parties

The other factor that would be focused on is that the political parties are different and their EU membership view is different. Some of the parties are liberal, on the other hand some of them are not liberal. The liberal parties contribute to the effectiveness of EU conditionality

on Turkey. AKP is said to be a center right party, which turned its face to contemporariness and it turned its face to the West. It is liberal on economic terms.[236]

In Turkey, there are parties that want the EU membership and there are also parties that objected membership. AKP wants membership. It made effective reforms since it came to power in 2002 and all the reforms were at their times when AKP is in power. However, there were obstacles for some legislative changes and implementation of reforms. For instance, when the death penalty was spoken in TGNA, MHP deputies and CHP deputies were against it and voted against it.[237]

When we come to approaches of political parties to EU membership in Turkey, it can be said that nearly all of the parties in Turkey are in favor of EU membership, but they differ in their policy styles and ideologies. When we look at the discourses of political parties in Turkey, we see that ANAP (Motherland Party) supported EU membership. According to ANAP, it is the real patriot, EU membership is a national issue and the owners of this policy is the representative of the country. During the reforms in 2002, as it is known, Mesut Yılmaz was the minister of state responsible for the EU affairs. We can understand that ANAP considers the EU as the target in its policies.[238]

On the other hand, when we look at DYP (True Path Party), it considers the EU as a tool for development. EU is a tool for Turkey to take place among great countries and powerful ones in the world. It sees the EU as a tool for free trade and global production. DYP is a liberal party and considers the EU as a tool for its goals.[239] In light of these, DYP worked hard for the entry to the Customs Union. DSP(Democratic Left Party) evaluated the EU membership as a natural right coming from the agreements and from the history. However, the ideology is different and DSP wants the EU membership to be in equal standards as other candidates and members. And DSP thinks that it will defend their rights and national rights while working for the membership. That means that the harmonization laws and reforms must

[236] *YeniŞafak*, Cağaptay, Soner "AKP Ekonomide Övgüyü hak ediyor" http://yenisafak.com.tr/politika/?t=30.07.2007&i=58919 (31.08.2007).
[237] Avrupa Birliği Genel Sekreterliği (2001), "Türkiye İdam Cezasını Kaldırmıyor", September 24, http://www.abgs.gov.tr/index.php?l=1&p=20397 (23.12.2007).
[238] ANAP Party Program, http://www.anap.org.tr/sub.asp?id=83
[239] Belgenet, DYP Parti Programı (2001), http://www.belgenet.com/parti/program/dyp2001-1.html

not harm national benefits. Therefore, in case of a consideration of harm to national benefit, they would not accept such reforms.[240]

CHP (Republican Peoples' Party) also is in favor of EU membership. However, it considers it as a tool for contemporariness and Turkey already deserves to be in the club. Turkey is a member of the NATO and the Council of Europe and CHP considers the EU as Turkey's basic right. CHP thinks that Turkey is important for Europe.[241] For MHP, we can say that they defend their nation's rights and they have the fear of discrimination made by the EU. MHP thinks that their sensitivenesses are important and the EU affair must not harm Turkish sovereignty. They do not want Greece to interfere and they think that the EU must not make discrimination on Cyprus and Agean issues. They think that Turkey should take its place in the new world order.[242]

When AKP's party program is observed, we can see that the basic rights have an important place in the party program. These rights would be obtained by the EU membership. AKP puts in the party program that the implementation on human rights by the sources that are conventions, would be taken into consideration. Human rights institutions would be established and civil society's recommendations would be realized. Importance would be given to differences on opinions and freedom of expression. Moreover, freedom of media would be ensured. Torture, death in detentions would be followed and would be considered as unacceptable. AKP mentions in its program that they would change political parties law and would be more democratic. Citizens would be informed about basic rights and the right to join administrations would be given to them. The rights of political parties would be widened. AKP considers the EU as a tool for development. These developments are considered at the beginning of the program as, "Development and democratication program".[243]

All the parties that have the percentage weight to represent themselves in TGNA, may be accepted as in favor of the EU. However, in certain conditions, MHP and CHP had been against the membership, because of certain sensitivenesses in certain topics. These topics are new legislative changes, Cyprus or other discriminative conditions. CHP's vice president Onur Öymen said in one of his interviews that they were not against the EU membership, but

[240] DSP Parti Programı, http://www.dsp.org.tr/MEP/index.aspx?pageKey=PartiPrograml
[241] CHP Parti Programı, http://www.belgenet.com/parti/program/chp1994-1.html
[242] MHP Parti Programı, http://www.mhp.org.tr/program/program0.php

they did not want to surrend to the EU decisions. He said that some of the wills of the EU are discriminatory. Öymen said that they were against the idea of private status and priviledged partnership.

CHP mentions that they were struggling to enter to the EU on the same conditions as the other member states. Öymen says that they find the discrimination unacceptable. Some of the conditions were not asked from other countries. CHP is against the policies of AKP. For example, Öymen criticizes Prime Minister Erdoğan for sueing cases for himself. He sued 63 cases. He said that Baykal did not sue any cases for himself. He criticized Erdoğan for being intolerant against freedom of expression. MHP has national sensitivities and they think that the EU makes discriminations on certain issues.

They believe that the arrangements which are done in favor of human rights, must not help the disrupters around the country. For instance, they believe that broadcasting in other languages such as Kurdish language may harm the integrity and may cause certain conditions that could give chances to disrupters, i.e. PKK.[244]

These differences of political parties and their views may hinder policy processes and there may be obstacles in front of enactment of certain laws in TGNA. This was seen in some matters and there had been conflicts while the discussions went on. Especially, the provisions and changes in death penalty matter and the broadcasting in other languages, were discussed and these discussions hindered the enactment of laws and its implementations. MHP and CHP deputies hardly criticized AKP government because of their negotiation style. They criticized AKP for not reading or discussing the documents written by the EU just before the opening of negotiations in 2005. They believed that AKP negotiation power with EU officials were not enough.[245] In short, the parties in Turkey mostly are not against EU membership, but they want the correct negotiations with EU officials and they do not want surrending. They believe that they will not sign anything which is contrary to the national sensitivities. They also want the EU officials to take these sensitivities into account.

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[243] AKP Parti Programı, http://www.akparti.org.tr/program.asp?dizin=0&hangisi=0
[244] MHP Parti Programı (2005), http://www.mhp.org.tr/program/program0.php
[245] Avrupa Birliği Genel Sekreterliği, (2004), "Müzakerelerin Ucunun Açık Olması Hiçbir Şekilde Kabul Edilemez." December 17, http://www.abgs.gov.tr/index.php?p=31109&l=1 (15.03.2008).

III.3.1.5. Problems and Ineffectiveness of the Civil Society

Another reason of inconvenience on implementation is the ineffectiveness of civil society. In Turkey, the civil society had strengthened recently, especialy after 1980s. However, we cannot say that they are effective enough to persuade for policy making or policy change. Their resources are not enough and this causes limitations in their performances and these create inadequacies in implementation of human rights rules and provisions.

Civil society organizations have capacity problems in Turkey. As a result of inadequate financial resources, they cannot improve their capacities. Additionally, the civil society organizations may depend on state. They may not be independent. Some civil society organizations quit their works, when they understand that the organizations are not dependent anymore. They also depend on the state, when they need additional financial resources. Because, the more they are proponent of the state, the more they can get additional resources. The restrictions and controlling role of the state on civil societies cause harms to relationship between the civil societies.

The state-centric situation of policies in Turkey causes restrictions on civil societies. Also, the political parties do not help civil society organizations for certain projects. And sometimes, the parties use civil society to realize their ideological aims. In Turkish society, the civil society organizations do not convey society needs to the state. Instead, they may dictate state opinions to civil society. Because, they function as the guard of the state. This happens when a country like Turkey, finds itself in postmodern discussions before the modernization process ended. This causes restrictions in the name of the state.[246]

On the other hand, the civil societies must have democratic procedures and democratic understandings in their policy processes. However, we cannot say that the civil society in Turkey can produce democratic understanding in their own field. The experience of democracy is new and inadequate. So, this causes reductions in improvements of civil society. And, this also results in less civil society organizations with less capacity. In Turkey, one of

[246] Ercan, Hülya (2002), "Türkiye'de Sivil Toplum Tartışmaları Üzerine.", http://fenedebiyat.cumhuriyet.edu.tr/dergi_sayi/sos_bilimler/26_1/61.pdf pp. 13-19. (07.04.2008).

ten people is a member of one organization, whereas in Denmark, one person is a member of approximately three organizations.[247]

There are also inadequacies in qualified persons. Experts are needed for policy and project making. In addition to this, their relationship with the media is not enough. They cannot make presentation facilities and communication mechanisms of civil society are not enough. They also cannot communicate among themselves. Moreover, institutional and administrative processes are not concrete. Written culture, archiving, documentation and reporting activities are not completely contemporary. Therefore, the state and the NGOs cannot come together and make policies or implement policies, and NGOs are not adequate in their own fields.[248]

III.3.1.6. Decreasing Effectiveness of the EU

The EU conditionality was effective on CEECs when it took place in the introduction of Copenhagen Criteria. It was a solution for the CEECs countries to solve their problems and conflicts. The EU was a secure umbrella for the CEECs, and was a starting point for peace. It had been a reform driving force for those countries. The EU had also been a driving force for reforms after Helsinki Summit. There was nearly no development on democratization of Turkey before 1999. Because, the EU did not use conditionality tools to attract Turkey's will on development. In 1985, Turkey was said to be unprepared. It had economic and political problems.

The important point here is that, Turkey was declined by the EU, and there was no attracting power and tool of the EU and no future incentive was given to Turkey. So, there was no development in Turkey before Helsinki Summit. This situation was also present in 1997 Luxembourg Council. Turkey was not granted a candidacy status. An eligibility for Turkey was noted, and no incentive was offered to Turkey, such as negotiations, candidacy or other. The EU did not have a conditionality principle for Turkey until Helsinki. However, Helsinki was a turning point for Turkey. Given candidacy status, this set the framework for

[247] Saran, Ulvi (2008), "Sivil Toplum Kuruluşları Ne Kadar Sivil?", April 10, *Radikal*, http://www.radikal.com.tr/haber.php?haberno=252618 (18.05.2008).
[248] Keyman, Fuat (2004), "Sivil Toplum, Sivil Toplum Kuruluşları ve Türkiye" Sivil toplum ve Demokrasi, Konferans Yazıları no.4, http://stk.bilgi.edu.tr/docs/keyman_std_4.pdf pp.5-7, (20.05.2008).

Copenhagen Criteria. Turkey was going to be treated like the other candidates.[249] If the arrangements were done and reforms were applied, then the negotiations would start. This incentive of negotiations made Turkey pass reforms and conditionality had been an effective tool for Turkey.

Also, Turkey's will for reforms increased. Turkey established General Secreteriat for EU affairs in 2000. A ministry responsible for EU issues was set. However, the EU mentioned that there were still things to be done on human rights. A road map was prepared for Turkey and Accession Partnership Document mentioned the things to be done. Opening accession negotiations was a clear and credible incentive. As a result, the reforms increased. The reforms were done in different conditions. The EU also kept the incentives alive to AKP, too. The EU mentioned to AKP government that there will be negotiations if an advice from the Commission would be zero-olerance policy and other reforms were realized by AKP government. Finally, Turkey was presented its incentive and the negotiations started. Moreover, the EU was effective on making positive criticisms on Turkey on progress reports.

However, after the negotiations started, the effectiveness and impact of EU conditionality decreased. Furthermore, there were no incentives for Turkey and there were no future prospects for Turkey. Moreover, the EU used expressions like "open-ended process" or the "negotiations with Turkey are an open-handed process and the outcome cannot be guaranteed beforehand."[250] So, there was an ambiguity on whether the result would last with membership or not. The expressions were not used for Croatia. Therefore, we can talk about a double-standards in this issue. Then the EU added the condition of official recognition by Turkey and Access to Turkish harbours and airports. These conditions and phrases were not asked from other countries on the way to the EU membership.

The EU suspended eight chapters in the negotiations period. This act was criticized by AKP government and the credibility of the EU conditionality decreased. It must have been an incentive and a reinforcement by reward by the EU, but these decreased after the start of negotiations. Thus, Turkey had had to see the process as a tool for ongoing democratization

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[249] Ercan, Murat (2005) "Türkiye –Avrupa Birliği ilişkilerinin Siyasi Yönü ve bugünkü Mevcut Durum", http://www.universite-toplum.org/pdf/pdf_UT_342.pdf pp.10-12, (24.11.2007).
[250] ntvmsnbc (2005), "Müzakere Çerçeve Belgesi Ne Diyor?" October 5, http://www.ntvmsnbc.com/news/343855.asp (19.05.2008).

regardless of the membership carrot that was not given by the EU. In 2007, Turkish government released a 400 page road map, however this was released by the will of Turkish government. The EU did not present any motivating tool for Turkey. This ineffectiveness resulted a behavior that for instance, Prime Minister Tayyip Erdoğan said that they could rename the Copenhagen Criteria and they would go on with Ankara Criteria.[251] The credibility of the EU conditionality started to lose effect. Slowing down of the negotiations and reforms were a result of the ineffective and incredible EU conditionality and the internal dynamics of Turkey.

III.3.2. The Reasons of Slow Down in Reforms and of Implementation Problems After the Transformation Period

After transition period, the factors mentioned below have contributed to the existing reasons of implementation problems and, therefore, these problems have continued to be observed together with slow down of the legislative reforms as different from the transition period.

III.3.2.1. Ineffective Conditionality

Inconsistency and Unfair Treatment

Consistency and fair treatment by the EU to candidates are of the strictest factors that increase or decrease the credibility of EU conditionality. When the EU does not treat Turkey fairly, then the credibility will fall down. And, also when the EU does not present real, substancial and precisely defined incentives, then this will mean that the recipient would not be motivated for development.[252] Verheugen was a professional politician that ensured concrete and complete conditionality for CEECs and for Turkey. However, when Olli Rehn came to power for enlargement policy, some shortcomings began. After 2004, when the enlargement for CEECs began, the EU conditionality lost power. Because, the dreams of a federal system in Europe finished badly and intergovernmentalist governance always took

[251] Avrupa Birliği Genel Sekreterliği (2004), "Erdoğan Fransa'da", July 17, http://www.abgs.gov.tr/index.php?p=36389&l=1 (30.09.2007).
[252] Grabbe, Heather (1999), pp.6-9.

place. Even the enlargement became in the hands of big countries like France, England and Germany.

The Council captured the competence on enlargement policy. These resulted with certain discussions and conflicts among the EU members. For example, France never wanted the membership of Turkey to the EU and Sarkozy mentioned many times that Turkey was not a European country and they they did not want Turkey in the EU.[253] This resulted unfair behavior of the EU on Turkey . Because, Turkey would find the edge of negotiations easier with the perspective of membership. The behaviors against Turkey would harm the credibility of EU conditionality and it did. France and Austria were and are against the full membership of Turkey and they recommend anchoring or anchoring with a possible bond. However, these recommendations would decrease the will of Turkey . Because the membership perspective may be taken from the hands of Turkey. The promise would not be kept. Thus decreased the credibility of the EU.

One other sign of the fear of the EU is the decreased ratio seperated for enlargement when compared to 2000-2006. 2007-2013 term enlargement budget was decreased by one fifth when compared to 2000-2006.[254] This fear also showed its effects in Turkey-EU relations. The fearful enlargement strategy harmed EU conditionality as well as the relations between Turkey and the EU. EU members think of alternatives other than membership, But, these do not coincide with start of negotiations and old incentives that were given to Turkey. In short, now they are saying differently. The process of negotiations and reforms melted.

The EU conditionality was a very precious policy of the EU, because it ensured the stability on CEECs. And it saved itself from the possible wars such as Yugoslavia. It also saved Hungary from internal conflicts. However, after the negotiations started, the EU wanted to find many alternatives such as “open-ended” or “no guarantee for membership. These behaviors melted the relations and decreased the credibility of the EU. The Union found no concrete perspective for Turkey. In the last years until recently, the EU managed with Progress Reports and weak declarations. Some countries were happy of the slowed down

[253] VoaNews (2007), “Sarkozy'den Türkiye'ye Sert Çıkış”, May 3, http://www.voanews.com/turkish/archive/2007-05/2007-05-03-voa5.cfm (15.04.2008).
[254] AB Haber (2008), “AB'nin Türkiye Politikasının İflası”, June 28, www.abhaber.com/ozelhaber.php?id=1183, (11.07.2008).

process. The EU started to be incompetent or attracting the attention of Turkey. Without the EU conditionality, Turkey may be in difficulty on improving its position.

When we observe fair treatment degree of the EU, we see that in last years up to recently, there are many signs of double standards. The first example comes to minds when we look at Romania and Bulgaria. They became members in 2007, even though their economies were worse than Turkey's. The double standards hinder the credibility of conditionality. Fourth additional protocol of the European Convention on human rights was made signed to Turkey. However England, Greece and Spain were not party of it.[255]

One of the most important signs of double standards is that, in France, when there is an expression about there is no genocide on Armenians, the owner of the expression is prosecuted and judged. However, when an author talks about same things in Turkey, the EU criticizes the government and the judiciary for judging the person who made the expression. There is a clear double standards here. This harms the prestige and credibility of the EU conditionality. Maybe the most important example to double standards is seen when we look at the opinions that negotiations with Turkey will not end with membership. In a meeting in France, Erdoğan called the treatment as double standards to Turkey. Another example can be given when there were student events in france in 2006.[256] The EU did not even criticize that excessive force usage in France. However, when there is a use of excessive force in Turkey, even though it is sourced from the terror, the EU criticizes Turkish government and police for using excessive force.

Moreover, some of the criticisms for Croatia and Turkey are different. The treatments on Croatia and Turkey are different. For example, although Croatia started the negotiations on the same day with Turkey, in the reports, it says that "if Turkey cannot abide to the process, then it might be bonded with strong ties."[257] However, that kind of sentence was never used for Croatia. A paper that Financial Times wrote in 2005 mentions that Ankara was suspicious about the double standards of the EU. The mandatory explanation that Turkey must recognize South Cyprus, was considered as double standards by Ankara. These applications of double

[255] Zalewski, Piotr (2004), pp.14-17.
[256] BBC (2006), "Fransa'da Protesto Eylemleri", June 18, http://www.haberler.com/fransa-da-protesto-eylemleri-haberi (25.04.2008).
[257] Dış Ticaret Müsteşarlığı, "Avrupa Konseyi Zirve Toplantısı Sonuç Bildirgesi", http://www.dtm.gov.tr/dtmadmin/upload/AB/ABKurumsalDb/zirveceviri.pdf (20.05.2008).

standards makes the credibility of conditionality decrease. Because, a clear and certain incentive and membership perspective should be given to Turkey. However, we see that not only these perspectives are not given, but also there is not a homogenious implementation and fair treatment to Turkey. These decrease the motivation of Turkey for reforms and the process halts.

III.3.2.2. Internal Dynamics in Turkey

The second part is about internal dynamics in Turkey. Because of the internal dynamics in Turkey, the government could not concentrate on the reforms and there were implementation problems. The process of reforms slowed down. There are some factors that were the reasons of this slow down and implementation problems.

Repeating Terror

As it is well known, terror in Turkey was effective before Öcalan was arrested. After this incident the reforms and developments in human rights started and this situation went on as a miracle. When the harmonization packages and constitutional changes were made, the result was hard to believe. However, after the terror arosed again, especially the implementation of reforms were very hard to focus. Because, Turkish government was busy of defending the borders. Although the torture incidents decreased, it went on because of hard situation of choosing between setting security and promotion of human rights. PKK terror gained power after the transformation of Turkey. PKK terror wanted to break this democratization period. When the military measures were intensive, the terror stops, however when there is democratization, PKK gained power again. This is a circular relationship. When the PKK terror aroses, then the time and possibility for democratization decreases.[258] Because of the increasing terror after 2006, the government discussed the beyond border operation to North Iraq and the government passed the decision in TGNA and made it. The terror became so dangerous that the operation became urgent.[259] In 24 years, there were 40000 deaths, there were torture events, maybe the defence mechanism of Turkey may solve these problems.

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[258] Türk Solu.org , Fırat, G. (2006), "PKK terörü neden artıyor?" August 21, http://www.turksolu.org/114/basyazi114.htm (31.03.2008).
[259] *USA Turkish Times*, "Sınır Ötesi Tezkereye Onay" http://www.usaturkishtimes.com/haber/haberler/s%FDn%FDr_%F6tesi_tezkereye_onay/ (14.05.2008).

Political Agenda

The agenda of politics was so intensive that the reforms slowed down and Turkey's attention had been directed to internal dynamics. There were many important events that changed the agenda, such as president elections, headscarf issue. The president elections created a mix-up in the society and created a division among groups in the country. Islamists on one hand, expected Abdullah Gül to be the new president after Ahmet Necdet Sezer, and on the other hand, republicists and Kemalists did not want him to be the president who was islamist and according to them, he wanted to change the regime and AKP helped it. There were many people outside, making demonstrations, organizing meetings.[260]

On 27th of April in 2007, the military sent a diplomatic note to AKP. It criticized the government hardly and blamed the government for trying to change the regime and for harming Atatürk's principles.[261] This has also changed the attention and the agenda. In addition to this, nearly everyday, Turkish soldiers were killed by PKK and these events altogether caused anxiety among people in Turkey. The headscarf issue also made the agenda so busy. AKP government wanted to remove the ban on headscarf in universities. This event also made divisions among the public which seperated Republicans, Kemalists and the islamists. The issue created cold war between the AKP and the rectors. Rectors never wanted the removal of ban of headscarf. There were many conflicts between Recep Tayyip Erdoğan and rectors. When these happened, the people were discussing the process of democratization in Turkey. Moreover, 2007 summer was full again with agenda about elections. There were election talks and propaganda and the people in Turkey concentrated the elections. The result of the elections was expected with curiosity.

Loss of Motivation of Turkey After Negotiations

Because of the beginning of negotiations and the incentive of negotiations started, i.e after the basic carrot was presented to Turkey, and because of no single membership perspective was presented to Turkey by the EU, Turkey lost its trust to the EU and reforms

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[260] *Milliyet*, "Yüzbinler Çağlayanda Buluştu", 29.04.2007, http://www.milliyet.com.tr/2007/04/29/son/sontur04.asp, (13.03.2008).
[261] Ülsever, Cüneyt (2007), "27 Nisan Muhtırası Hayırlı Olsun" , April 29, *Hürriyet*, http://www.hurriyet.com.tr/yazarlar/6426009.asp?yazarid=3&gid=61 (30.04.2008).

and implementations were not effective and changes slowed down. There were countries in the EU, like France and Austria that were against the membership of Turkey. Under these circumstances, Turkey lost its motivation for development. Also, Turkey lost its motivation since Turkey already took the incentive of negotiations and there was no need to hurry up to make new reforms. Turkey was tired after miracle reforms.

CONCLUSION

Turkey made many changes in transformation period, between 1999 and 2004. The legislation is in European standards. There is a different view and Turkey is not a country anymore where torture is widespread. Freedom of expression had increased with the changes on Turkish Penal Code, however there are weaknesses in the implementation of freedom of expression. People are being prosecuted under Article 301 of the TPC. Article 301 was changed twice with the changes in Penal Code. Criticism and crime were seperated. More rights had been given to people who wanted freedom of setting associations, freedom of meetings and demonstrations and freedom of media.

Setting associations was eased with new laws and age and language limits were decreased. The permissions and procedures to set associations were eased. Possible cooperations with foreign associations became more free than before. Making meetings and demonstrations was eased with the removal of permissions from the government that had to be taken 48 hours before the demonstrations. The police does not interfere the meetings and demonstrations. However, in first of May in 2008, the police used excessive force with the wrong policy implementation of the government. But, this was an unusual situation. More important than these, the situation in prisons developed and there is nearly no torture in prisons. Automation system had started and medical treatment of prisoners improved. Life and prison conditions developed for prisoners, activities were planned for prisoners. Investigation conditions and techniques changed and there had been many declarations made for security forces. The impunity of security officers was not a problem anymore. Death penalty had been totally repealed and civils increased in National Security Council. Effect of democracy is felt better than 1990s. There are fair and democratic elections in Turkey. People can show their choices and make demonstrations like we saw in presidential elections in Turkey.

The EU conditionality has an important impact on transformation of Turkey. This political tool that the EU uses, was a very strong driving force for reforms. The EU politics had a remarkable performance on Central and Eastern European countries and the EU conditionality paved the way to stability in Central and Eastern European countries. These countries were given a concrete membership perspective and EU conditionality worked for enlargement. More important than this, they also wanted to be in a stable ground and they also

wanted to solve their problems. For example; without the EU conditionality, Hungary could not solve its minority problems.

These aspects are important, because it shows the effectiveness of the EU conditionality on those countries. A credibility and a consistency was there for those countries by the EU. At the same time, this credibility and consistency was also there for Turkey in the transformation years. We conclude that the EU was a strong driving force for reforms. The EU used the levers of gate-keeping that takes the country to other and higher levels of the accession, the EU also used financial aids and monitoring lever, in which the developments and shortcomings of human rights in Turkey are followed by the EU.

Progress Reports, Accession Partnership documents, demarches and criticisms increased the pressure on Turkey for reforms. In Progress Reports, the human rights situation in Turkey were analysed and the developments as well as shortcomings were recorded and released for the Turkish government. The criticisms in the Progress Reports created a bomb effect for Turkey that were also carried out to the media. The news broadcasted these criticisms by the EU and these pressures changed the political agenda in Turkey, whenever these Reports were released. The Accession Partnership documents are other political tools of the EU that presented the problems and their solutions. They are a kind of road map for Turkey. The EU determined the time of changes. Some of them would be performed in short term, and some of them would be made in medium terms.

The documents' effect was felt with the response of the Turkish government that prepared national programs after these Accession Partnership documents were released. This is important, because this aspect was one of the aspects that we can evaluate EU conditionality as effective. To be effective, the recipient country must know that it will take incentives such as negotiations and membership and the recipient should also know what it will lose in case of non-compliance. The carrots, sticks and responses should be clear for both sides.

By having the information and conceptual explanations in hand, the effectiveness of the EU conditionality can be examined. Effectiveness has some conditions to occur on Turkey. First, the recipient country should be effected by the carrot and the stick and it must make changes on democratization of the country. The carrot was the start of negotiations in 2005. In the Progress Report, it was mentioned that if Turkey complies with the Copenhagen Criteria, then with the recommendation from the Commission, the negotiations would start without delay. In light of this carrot, Turkey increased its struggles on reforms and Turkey did

many changes that were risky and the reforms were touching to sensitive points like sovereignty. For example, death penalty was hard to accept for nationalist groups like MHP. Turkey travelled a long way for democratization. With harmonization packages and legislative changes, freedom of expression has increased, torture has been nearly stopped, freedom of demonstrations and meetings has been widened. Political parties changed their programmes in favor of democratization. These were the distances travelled for democratization. So, it can be said that the first precondition of effectiveness was ensured.

Second, the effectiveness is examined by looking at credibility and consistency of the EU conditionality. If those are present, then we can say that the EU conditionality is effective. When we look at credibility, we must determine confidence of the candidate to EU's credibility. The candidate must believe in the EU. In other words, the EU must have credible carrots and sticks, and clear documents, clear conditions to present the carrot and must convince the candidate about the benefits on cost and benefit calculation of the candidate.

The EU offered real and substancial incentive and rewards that was the start of negotiations. The negotiations would start without delay in the condition that Turkey complies with Copenhagen Criteria. Turkish ministers were eager to pass the legislative changes and they were willing to increase the speed of democratization. The EU often warned Turkey on specific issues such as freedom of expression, and torture. Verheugen criticised Turkey for not complying with Copenhagen Criteria, by saying that Turkey must hurry up and pass new reforms. These meant a motivation for Turkey, but also meant sticks for Turkey. Because, Turkey knew that the negotiations would not start in case of a non-compliance with Copenhagen Criteria.

European Parliament had said that the negotiations may not have started, because of excessive force of police on womens' day. Elmar Brok, who was the Foreign Affairs Commissioner, said that Turkey must have given up these kind of habits like excessive use of force, to start negotiations. The EU also criticised the TPC articles that had been used to punish journalists. Also, Cemil Çiçek and Abdullah Gül had said that the negotiations may not have started. These sentences meant that the carrot and the stick were clear and credible. Turkey had known the possible results of the game.

When we look at the clearness of documents and conditions, we see that the researches for Turkey and observations began to be more precise and detailed. The EU Commission recorded the inadequate conditions in Turkey, such as the inadequacy of laws. The EU divided the problematic and improved issues into titles in Progress Reports. The information was collected from international NGOs and institutions such as Amnesty International.

Inadequate points were criticised such as Article 301 that was used to prosecute people. Also, Accession Partnership documents made the conditions clear and formal. The EU had listed the short and medium term changes and reforms that Turkey must have performed. These were clear and complete. However, "how" question was always left without answers. How to implement the implementations was a question mark, it was often vague.

Cost and benefit calculations were enough for Turkey to be motivated for reforms. AKP government had liberal program and applied liberal policies and passed the reforms. Some of the reforms were costly, because of the sensitive points that they touched. However, the Turkish government was decisive on reforms, because the government thought that they were also doing the reforms for democratization of the country. Abdullah Gül in one of his speeches, said that they must have hurried up and fastened democratization and they did not have time. Turkish government ignored the disadvantages and possible tension building up in South-East and ignored the points that touched sovereignty issue. But, it can be said that democratization was determined as a benefit and the government worked for it.

When we come to consistency, we see that the EU did not make discriminations to Turkey however the EU had little understanding of the problems that Turkey was in. Southeast of Turkey was always a danger for Turkey and the problems in freedom of expression and torture were a result of this problematic situation in South-East. The EU also insisted on the fulfillment of certain reforms like freedom of expression, fight against torture, freedom of setting associations, freedom of meetings and demonstrations and repeal of death penalty. We witnessed that in Progress Reports, the EU criticised the inadequate policies and legislation and when these did not change, the EU criticised torture incidents nearly every year in those reports. This created a pressure on Turkey and made Turkey prepare a zero-tolerance policy on torture, to be prepared by the government. The strong stance on the fulfillment shows that the EU had been consistent in effecting Turkey on certain policies. The EU triggered many changes with its follow-up on Turkey. The EU started the negotiations without delay and this was also a consistent behavior. We see that the conditions for effectiveness had been ensured and we see that the EU was effective in transformation period.

Turkey responded to EU conditionality by accounting its cost and benefit scenerio and Turkey wanted the membership whether or not the benefits were more or less than the costs. AKP government was decisive on the reforms and they also wanted democratization and started negotiations. This was also a sign of effectiveness of EU conditionality. Because, Turkey responded to the incentive of starting negotiations, when the Commission expressed that with the advice of it, the Council would start the negotiations. The EU kept its promise

and started the negotiations. This was also the sign of credibility. The EU also gave financial assistance to Turkey. The amount given to Turkey would be considered as inadequate, however we examined that it was five times more than the budget prepared for the years 2007-2013. There were some financial assistances that were given to be used for projects.

The new legislation was successful, however its implementation included inadequacies. EU conditionality was effective on the legislative changes, however internal dynamics of Turkey hindered the implementation of these legislative changes. For example, Hrant Dink, Orhan Pamuk and Elif Şafak was prosecuted because of their opinions. In freedom of expression, the judges are becoming more and more contemporary and they are making references to European Convention on Human Rights, especially to article 10, however the way they evaluate the case and the way that they examine is different from European Court of Human Rights. The Case Law has improved in Turkey in recent years. The evaluations of judges have become alike with ECHR. However, Turkish judges look at the content of the expression and try to save the state and institutions in Turkey. On the other hand, for ECHR, the main thing to be saved is the person.

Torture is not widespread anymore, however there are still excessive forces and bad treatments on the streets, especially when there are demonstrations and private days, such as 1st of May. The officers and other responsible people are being trained on fight with torture according to zero tolerance policy, however education is one of the factors that pave the way for these violations. Personal mistakes of the police paves the ways for violations.

There are other reasons that the implementation is hard to be performed. These are originated from internal dynamics of Turkey. State-centric view of Turkey, security anxiety, the role and importance of the military in Turkish politics, terror, ineffectiveness of the civil society are the factors that make the implementation hard. The cases are politicized, and democracy is sometimes in danger. The state-centric view of Turkey hinder the implementation process. Turkish judges attach importance to state and Turkish institutions. Therefore, this causes prosecutions of owners of peaceful opinions. One of the main differences between Turkish and ECHR case law is that in Turkey, before exploration with details, the cases are issued on people. The opinions for criticising the government and the institutions are sentenced.

Turkey is in a dangerous place where interests of states clash. PKK terror creates anxieties on security matters. So, having been busy with stopping or fighting against terror, Turkey sometimes could not deal with stopping torture. Turkey sometimes avoided giving rights on languages broadcasting to Kurdish people because of security considerations.

Because, Turkish government believed that freedom of meeting and demonstrations could be in limited ways. This was originated from the reason that people could be incited to mix-up and hatred in the country. So, the reforms on those issues were going on slowly, because of security considerations.

Moreover, military is important for Turkey, because of its remarkable role in liberations war and because of its role in capturing the governance three times with coups. NSC had military majority and this effected political life in Turkey. The habits coming from those years which were in 1970s and 1980s, created chaos in political life. For example, in April 2007, the military made a declaration like a hidden coup and this criticised the AKP for changing the regime and to harm democracy in the country. In democratic countries, these kind of interferences must not have been. So, these were creating activities against Copenhagen political criteria.

After the negotiations began, the credibility and effectiveness of EU conditionality lost its power on Turkey. There had become no certain membership perspective to Turkey, there were countries who were against the membership of Turkey and Turkey cannot know what the incentive will be in case of compliance. The discussions that include strong bond and private situation are creating suspicions by Turkey against the EU. Turkey had a wide political agenda. Terror and its effects made Turkey concentrate on terror problem and the presidential elections and general elections in Turkey made Turkey concentrate on these issues. These factors also effected Turkey's motivation negatively. Turkey's motivation was also lost because of uncertainty of membership and there had been a tiredness after the negotiations started. Turkey's legislation is in EU standards and implementation is in better situation in Turkey. However, there are still implementation problems. The EU conditionality was credible and effective in reforms and transformation of Turkey, however, it has lost its influence after the start of negotiations.

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