

**THE HUMAN RIGHTS FACTOR
IN
TURKEY-EU RELATIONS**

By

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Abstract: On the eve of the EU Copenhagen Summit, human rights seem to be playing the key role in determining Turkey' s relationship with the European Union. One can argue that this issue only confirms a historical trend. Over the past 200 years of modernization, Europe has been the prime catalyst in Turkey's quest for democratization and human rights. However, although Turkey has moved closer to Europe in the last two decades, its record on human rights continued to pose a problem, mainly due to Ankara' s realpolitik approach, marked by concessions on paper with a view to serve State interests rather than freedoms granted for their own sake. Nevertheless, even though these steps have been mainly oriented towards accomodation with Western values, they have gradually created a political environment wherein civil society can inject some momentum to the state policies, irrespective of external factors. The implementation of rights, however, has always lagged behind legislation, and the Turkish Government is faced again with the task of gaining credibility over its recent comprehensive reform package by implementing it integrally and rapidly. This essay attempts to sketch the itinerary of Turkey-EU relations as regards the human rights factor.

On 3 August 2002 the Turkish Grand National Assembly overwhelmingly approved a human rights reform package in order to meet the European Union' s preconditions for taking Turkey' s application for membership into serious consideration in the upcoming Copenhagen Summit. Among the reforms, there are highly sensitive subjects, such as the long-debated abolition of the death penalty and the lifting of the ban on broadcasting and teaching of mother tongues " other than Turkish" .

Clearly, these reforms seem to be a watershed for Turkey on the long road to Europe. So long is this road that as long ago as 1856, the British Foreign Secretary, the Earl of Clarendon, wrote to Lord Stratford de Redcliffe, then Ambassador in Istanbul:

“ ..the continued neglect of the Porte in human rights matters must lead to constant interference by foreign powers in the internal affairs of Turkey, which will be detrimental to her independence, and which it is alike the duty and the interest of the Porte to prevent..”¹ What was true then appears to be still true today as Turkey stands as an EU candidate. Hence our first assumption: within the context of Turkey’ s westernization project, the West -especially Europe- has been the main catalyst for democratization and the quest for human rights.

The human rights issue has become especially salient in the last two decades since Turkey’ s relationship with Europe has simultaneously turned more institutionalized and more controversial. Faced by the jurisdiction of the European Court of Human Rights, the Copenhagen criteria, and now the pre-accession process, Turkey’ s record has so far been negative, due as much to difficult circumstances as to a purely tactical approach aimed at “ getting something from Europe” . Therefore, our second assumption will be that Turkey has, to this day, tackled the issue of human rights from a realpolitik perspective, based first on a Hobbesian logic developed throughout the Cold War when it capitalized exclusively on strategic assets. Later in the 1980s, this was partially replaced by Prime Minister Turgut Özal’ s pragmatic liberalism, centered on economic priorities and lying behind his 1987 decision to apply for EU candidacy, “ at the cost “ of accepting the jurisdiction of the European Court of Human Rights and the right for individual petition before it. Today, in the post Cold War era, regional integration seems to be the best way to confront the challenges of globalization and Turkey is more eager than ever to realize its Western dream through full membership into the European Union. But the values of the latter require the institutionalization of respect for human rights and fundamental freedoms in member countries.

Consequently, Turkey is actually going through a frenzy of reforms aimed at democratization and greater concern for human rights. It can easily be observed, however, that for the time being implementation constitutes the main issue. Our third assumption will therefore be that Turkey can only fill the gap

between the principle and the practice of human rights when these reforms are properly internalized.

The aim of this paper is to sketch the itinerary of Turkey-EU relations in the light of the above assumptions centered on human rights.

From the Association Agreement to the EU candidacy

The European Union's commitment to human rights is itself in the process of evolution, especially since the 1980s. Indeed, protection and promotion of human rights did not figure among the initial objectives of the Union which primarily focused on economic integration from the 1950s onward. The turning point came at the end of the Cold War, with the prospect of enlargement. As countries from Central and Eastern Europe, as well as Turkey, emerged on the European horizon, respect for human rights became a "conditionality" for entry into the EU, and explicit formulae appeared. This accelerated the commitment of the EU to human rights, with the Maastricht Treaty(1992), the Copenhagen criteria(1993), the Amsterdam Treaty(1997) and now the European Charter for Fundamental Rights(2000) as milestones.

Turkey's candidacy to the European Union was officially recognized by the European Council at the Helsinki Summit in December 1999. Economic and geopolitical considerations aside, given the country's past record, this move can be interpreted more as a sign of encouragement than as a crowning achievement in the realm of human rights.

After the Association Agreement of 1963 with the EC, Turkey remained distant towards integration with Europe, due mostly to policy choices and domestic constraints of a purely economic nature at that time. The relationship inevitably turned political with the military intervention of 1980 in Turkey. From then on until the mid-80s, the European Community displayed a dual attitude towards Turkey: on the one hand, there was the highly critical standpoint of the European Parliament, while on the other hand, the milder and more cautious posture adopted by the Commission and the European Council. This dichotomy was as much based on differences of institutional structure as upon the particular circumstances of the time. European deputies, free from

governmental concerns and motivated by ideologies, constituencies, and in some cases, the influence of Turkish political exiles, did not attach great importance to the general context of political instability and violence that had led the military to take over in 1980. However, the Commission and the Council, as executive bodies, were more inclined to take the Turkish political crisis into account within the enduring Cold War context. Until 1983 when the Turkish National Security Council was dissolved, the European Parliament remained as the primary critic of human rights violations in Turkey².

The situation changed around 1985 when, on the basis of a report by the EC representative in Turkey, the European Parliament advanced five conditions for the normalization of relations with Turkey: abolition of the death penalty, prohibition of torture, ending of collective trials, recognition of the right to individual application to the European Court of Human Rights, abolition of all laws limiting freedom of thought³. This was a sign that EC policy was heading towards more unity and consensus and that five years after the military intervention, Turkey could no longer count on the “ understanding” of European governments. Parallel to the EC’ s own evolution towards the institutionalization and unification of human rights policy, a demand/compliance pattern seems to have settled between Turkey and the Community since then. A closer look at this pattern reveals a considerable amount of legislative and administrative achievements on the part of Turkey, with a particular concentration of efforts on the eve of important decisions taken by the European Community.

It was therefore no coincidence that, right after the Özal government’ s application for EC membership in 1987, the right to individual application to the ECHR was recognized, and then in 1988 both the United Nations and European conventions against torture were ratified. In trying to persuade the European Commission to accept Turkey’ s candidacy, Özal was gradually liberalizing the political system, at least on paper. However, after two years of evaluation the EC Commission rejected the application in December 1989. The reasons behind the decision lay in the conclusion of the Commission report: Turkey’ s problems of political pluralism and human rights, the Turkish-Greek rift, and the unresolved Cyprus question⁴.

Nevertheless, it was undeniable that, in the meantime, a democratization

process had begun in Turkey. In 1990, the jurisdiction of the ECHR was recognized and in the domestic front, the Turkish Penal Code and the Criminal Procedure Code were partially reformed by 1991. Another stumbling block on Turkey's long road to Europe was the Customs Union Agreement. Perfectly illustrating the direct impact of the European human rights policy on the Turkish political scene as well as Turkey's realpolitik approach towards it, the European Parliament started pressing for specific reforms in the field of human rights as a pre-condition for its approval of the Customs Union Agreement. In the light of these " suggestions" , Ankara proceeded to amend Article 8 of the Turkish Anti-Terror Law and undertook the revision of some constitutional provisions in favor of a broader political participation⁵. In what can be considered an immediate result, the Customs Union Agreement was signed on 6 March 1995 and approved by the EP on 13 December 1995. The Commission, on the other hand, included in its 1996 report on the functioning of the Customs Union, passages on democratization and human rights, as irrelevant as these issues might appear⁶.

On the eve of the April 1997 meeting of the Council of Association, the Turkish Grand National Assembly conducted a huge legislative reform in favor of political rights of state employees, freedom of expression and the improvement of conditions of detention. At the same time, a Supreme Board of Coordination for Human Rights was established in Ankara with members representing various ministries. This reform had no effect upon the EU Luxembourg Summit in 1997 where Turkey's eligibility was made conditional upon the improvement of human rights in general and minority rights in particular, not to mention the resolution of the ongoing Turkish-Greek and Cyprus issues. Besides, the Commission report published immediately before the Summit under the title " Agenda 2000" contained, for the first time, a criticism directed against the political role of the military in Turkey⁷.

Undeterred by the setbacks, Ankara stepped up its efforts towards the reform of human rights legislation and practice. In the fall of 1999, the Supreme Board of Coordination for Human Rights presented a report entitled " Agenda Human Rights 2000" prepared by the representatives of some 50 Turkish universities as well as 18 NGOs, and containing several constitutional and legal amendment projects. In October, for the first time, the State Minister on Human Rights convened State and civil society representatives together to create a

Consultative Council on Human Rights. This was an important step towards reconciling the State with civil society in a country where the latter had traditionally been unable to defend its interests. The Council designed a comprehensive democratization programme to be proclaimed after the EU Helsinki Summit in December 1999⁸. Turkey had never appeared so serious in its intentions of democratization and promotion of human rights.

The Helsinki Summit and after

The European Union's decision to confirm Turkish candidacy on 11 December 1999 illustrates a wish to grant this country a chance to achieve its 200-year old dream of Westernization. The integration process triggered since then has primarily focused on human rights, as first indicated by the short and medium-term political criteria set out in the Accession Partnership document the EU presented Turkey on 8 November 2000.

The short-term criteria, targeted to be effective by the year 2001, included legal and constitutional guarantees in favor of the freedom of expression, freedom of association, prohibition of torture, alignment of Turkish legal procedures with the European Convention on Human Rights, training of officials on EU legislation, maintaining the moratorium on capital punishment, and removing all kinds of language restrictions in broadcasting. Today, in the aftermath of the latest reforms, most of the guarantees seem fulfilled. The medium-term criteria had a larger scope and were supposed to be completed in more than a year, with work beginning in 2001. They emphasized implementation as a logical follow-up to legislation, called for the ratification of major international human rights instruments not yet ratified by Turkey, underlined the right to cultural diversity, recommended the lifting of the state of emergency in the South East, as well as the transformation of the National Security Council into a purely advisory body. Following the adoption of the Accession Partnership by the EU Council of Ministers on 4 December 2000, it was Turkey's turn to take the necessary steps towards full membership.

To this effect, the Turkish government proclaimed the "EU National Programme for the Adoption of the *acquis communautaire*" (NPAA) in March 2001. Juridically speaking, this is a unilateral declaration of will outlining the calendar and the process

of adoption of the *acquis communautaire*, along with the structural changes to be undertaken. The first part of the Programme focuses on the political criteria set out by the Accession Partnership document while the introduction contains a solemn declaration that Turkey will fulfill the Copenhagen criteria and “ accede to all relevant international conventions and take the necessary measures for their effective implementation for further alignment with universal norms manifest in the EU *acquis* and the practices in EU member States, particularly in the areas of democracy and human rights” ⁹.

In the light of these commitments, in October of 2001 the Turkish Grand National Assembly undertook one of the most comprehensive packages of constitutional amendments since the adoption of the 1982 Constitution. A total of 34 amendments include new and revised provisions reflecting the priorities put forward by the EU, such as freedom of thought and expression, prevention of torture, strengthening of democracy and civilian authority, freedom, security and privacy of the individual, inviolability of the domicile, freedom of communication, freedom of movement and residence, freedom of association and equality between genders. Within this context, most of the articles have been amended with specific reference to the relevant articles of the European Convention on Human Rights and/or its Protocols, as well as to the relevant sections of the Political Criteria of the EU National Programme¹⁰. These changes were also reflected in the new Civil Code which became law in January 2002, after decades of delayed action. Subsequently, the first wave of legal reforms aimed at harmonization with the EU *acquis* took place in February 2002, marked by the amendment of the Penal Code, the Anti-terror Law, the Law on State Security Courts and the Penal Procedure Code. The Turkish legislature then proceeded to amend various laws, including those on political parties, associations, freedom of the press, public demonstrations etc¹¹. Nevertheless, certain shortcomings in the exercise of fundamental freedoms still remained. Among the most important were the abolition of the death penalty, the right to broadcast in non-Turkish mother tongues (such as Kurdish, Arabic, Circassian, Laz etc.) and the right to teach such languages. These rights were granted at an extraordinary meeting of the Turkish Grand National Assembly on 3 August 2002, along with wider measures in favor of freedom of expression, the right for non-Muslim religious foundations to

buy and sell land and property, and the right for retrial in civil and criminal court, cases if so demanded by the European Court on Human Rights.

Civil Society organizations launched a common appeal in favor of EU membership in July. This pressure along with the upcoming EU Copenhagen Summit in December where Turkey expects to finally receive a timetable for negotiations, as well as the general elections scheduled for 3 November, have obviously played a key role in accelerating the final wave of the reform process.

In conclusion

Following this brief tour d' horizon on Turkey-EU relations from the perspective of human rights in the light of our introductory assumptions, we can easily assert that Europe has indeed been playing a pivotal role in influencing the democratization process in Turkey. The EU candidacy has undeniably imparted a new momentum to this process and to the enhancement of human rights. As to the ongoing debates, polarizations and reform patterns in Turkey, although they seem to justify our second assumption according to which the State has so far undertaken these efforts for the sake of national interest rather than for human rights per se, they also indicate the growing role of civil society in the improvement of the Turkish human rights policy. This positive trend can further develop only through proper implementation. It is indeed time for the new legislation to be put into practice through adequate mechanisms, inducing a gradual change of collective mentality. As indicated by the European Commission, " The extent to which individuals in Turkey will enjoy a real improvement in the exercise of fundamental freedoms in practice will depend on the details of implementing legislation, and the practical application of law" ¹².

The fulfillment of human rights and the strengthening of democracy cannot -and should not- be limited to the relationship with the European Union, no matter how effective it has been so far. Whatever the outcome of the EU candidacy process, Turkey has a primary moral responsibility towards its people to bring the country to the level of liberal democracies.

Only then will human rights cease to be a factor in Turkey' s relations with Europe.

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ⁱ Letter dated 23 September 1856 in “Instructions Respecting Financial and Administrative Reforms and the Protection of Christians in Turkey, 1856-75”, *Turkey No. 17*, House of Lords, 1877, quoted by David Barchard, *Building a Partnership: Turkey and the European Union*, İstanbul, TESEV, 2000, p.41

² İhsan D. Dağı, *İnsan hakları, Küresel Siyaset ve Türkiye*, İstanbul, Boyut Kitapları 2000, p.128

³ Resolution on the Human Rights Situation in Turkey, Document No. A2-117/85, the European Parliament, 23 October 1985, in Official Journal of the European Communities, No. C 343/60, 31.12.1985

⁴ Commission Report on Turkish Application, 18 December 1989, Brussels

⁵ The provision of the Anti-Terror Law on separatist propaganda was further nuanced by the addition of the “intention to destroy the unity of the State”, as a criteria to look for before making an accusation on grounds of separatism.

⁶ Bulletin of the European Union, 10-1996, p.63

⁷ “Agenda 2000:For a Stronger and Wider Union”, European Commission, Bulletin of the European Union Supplement, 5/97, Luxembourg, 1997, pp.56-57

⁸ This was the eleven-point “Short Term Democratization Program” launched by Mehmet Ali İrtemçelik, then State Minister on Human Rights.

⁹ EU National Programme/Introduction and Political Criteria (Unofficial translation), Ministry of Foreign Affairs, Ankara, 27 March 2001, p.2

¹⁰ See “Analytical Note on Constitutional Amendments from the Perspective of European Union Standards” Prime Ministry, Secretariat General for European Union Affairs, Ankara, 4 October 2001

¹¹ This second wave of reforms has taken place on 26 March 2002.

¹² “2001 Regular Report on Turkey’s Progress Towards Accession”, Commission of the European Communities, Brussels, 13.11.2001, SEC(2001)1756, p.20