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**THE EFFECTS OF THE EUROPEAN UNION ACCESSION
PROCESS ON THE TURKISH LAW ENFORCEMENT SYSTEM**

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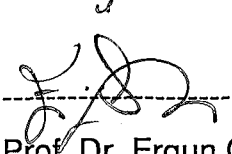
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ABSTRACT

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The EU accession process and the ultimate EU membership have always served as an appropriate anchor and incentive for Turkey to undertake the necessary reforms. Turkey has tried to incorporate into West by using European laws and institutions for 200 years; however, Turkey has always carried out them in her own understanding. To put it clearly, by the EU accession process, Turkey faces the fact that she has to play the game by obeying original of rules in order to become a member of the EU. Seeing that, this study aims to explain Turkey's amendments made to play the game originally, especially in the field of Justice and Home affairs. In conclusion, the scope of this analysis is to explain the transformation process of the law enforcement forces who have always been one of the most problematic parts of the Turkey's integration to West.

Key Words: European Union, Turkey, Human Rights, Law Enforcement System, Gendarmerie, Police

ÖZET

AVRUPA BİRLİĞİ GİRİŞ SÜRECİNİN TÜRK KOLLUK SİSTEMİ ÜZERİNDEKİ

ETKİLERİ

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Avrupa Birliği giriş süreci ve nihai üyelik Türkiye için hem uygun bir dayanak noktası hem de gerekli reformlara girişmesi için bir özendirici olarak yarar sağlamıştır. Türkiye 200 yıldır onun kanun ve kurallarını kullanarak Batı'yla bütünleşmek için çabalamasına rağmen, Batı'nın kurallarını kendi anlayışına göre uygulamıştır. Açıkçası, Avrupa Birliği giriş süreci ile birlikte Türkiye bir Avrupa Birliği üyesi olabilmek için oyunu kuralların aslına uyarak oynaması gerektiği hakikatiyle karşılaşmıştır. Bu yüzden, bu tez Türkiye'nin oyunu orijinal olarak oynamak için yaptığı ıslahatları, özellikle Adalet ve İçişleri alanındaki, açıklamayı amaçlamaktadır. Sonuç olarak, bu çalışmanın kapsamı Türkiye'nin Batı'yla bütünleşmesinde her zaman en sorunlu parçalarından biri olmuş olan Kolluk Güçlerinin değişim sürecini açıklamaktır.

Anahtar Kelimeler: Avrupa Birliği, Türkiye, İnsan Hakları, Kolluk Sistemi, Jandarma, Polis

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INTRODUCTION

After serious defeats, the Ottoman Empire understood that it was necessary to amend the structure in the 1700s. For that reason, the Emperor decided to take Europe as an example, which is in a more developed and uncorrupted situation by that time. The first reforms were related to the Army, chiefly for developing techniques and instruments. As a part of Army, the law enforcement (kolluk) system had been amended in this process by taking European institutions and laws with the help of transferred foreign trainers.

Accordingly, when Mustafa Kemal founded the new Turkish republic, he indicated that the first aim of the Republic is to reach the modernization level of the contemporary civilizations. To achieve this, Turkey had received most of the fundamental Codes and Institutions from Europe. However, the reception process was affected by the national determination so that the achievement of received provisions could have never realized fully. That is to say, the implementation of original laws by Turkey was different from receiving directly from developed countries owing to the national application habits. Consequently, the thesis is to discuss the existence of any difference in the reform attempts we have lived by the European Union (EU) accession process from the predecessors.

The last stage of modernization for Turkey had started forty years ago with the Ankara Agreement signed between Turkey and EEC. The Agreement proposed an economic integration for both sides with three stages ending with a Customs Union. Finally, the Customs Union was realized in 1995, nevertheless, Turkey has always wanted a relationship more than a Customs Union, namely full membership. For this

purpose, Turkey had made its first application for the full membership in 1987; unfortunately, the Community rejected the application in 1989 due to Turkey's deficiencies. Actually, the main reason of the refusal was not only caused by Turkey's condition, but also the changing structure of the European Community, since the Communism had yet collapsed by that time. The Western Europe wanted to unite with Eastern Europe entirely since the end of the Second World War. The basic idea of the European Integration had always been to set up a "United States of Europe" all over the continent. At the beginning, the Political Integration could not be achieved so that Europeans, especially Franco-German line, decided unifying in a step-by-step approach, specifically from economic unity to political one gradually. Therefore, they made first unification in steel and coal industries in the European Coal and Steel Community (ECSC), because steel and coal were the main sources of wars.

The collapse of the Soviet Union and Communism made the European Community to take new measures, such as preparing the Central and Eastern Europe Countries (CEEC) for democracy. In 1993, the Copenhagen European Council declared criteria for the EU membership which had not been necessary before. The Copenhagen criteria included three headings, economic ones, political ones, and administrative capacity to comply with Community provisions. The political criteria included the institutions guaranteeing democracy, the rule of law, respect for human rights, and protection of minority rights. These political criteria also created common values in the Union as a political unity; moreover, they were becoming guidelines for the CEEC in their way to the democratization.

EC rejected Turkey's application due to the new situation because of the new

transformation process in which Community itself passed and the new dimensions gained namely the common values of Europe defined by Copenhagen Political Criteria. In this context, Turkey faced up with new prerequisites for membership. Until 1999, Turkey did not comply with the new criteria because of the terrorism threat in the Southeastern Anatolia and the reluctance of Governments for the issue.

With the approval of Turkey's evaluation status by EU accession strategy paper in 1998, it was time for Turkey to adapt the European norms immediately. In 1998, the European Commission issued the first regular reports, by which the Union evaluated the developments of candidate countries and Turkey according to the Copenhagen criteria. This thesis accepted the 1998 progress report as the turning point in the reform processes of Turkey, because for the first time the Europeans evaluated Turkey for the implementation their rules and values. In other words, Turkey had to progress with obeying originally to the rules in consequence of the existence of assessment mechanisms.

In 1999, the Helsinki Summit showed that it was time for Turkey to make an attempt for both membership and ultimate Westernization purpose. The Accession Partnership for Turkey was issued in December 8, 2000 with the Regular progress reports, subsequently; the Turkish Government published the Turkish National Programme for the Adoption of the EU Acquis Communautaire in 2001. These two documents have formed the basics of the EU Accession Process with annual regular reports of European Commission. Because of 2001 and 2002 regular reports, it became necessary that the European Commission should prepare a revised Accession Partnership for Turkey and Turkey should prepare a revised National Programme so that they enabled to list in detail the priorities by illustrating deadlines for them.

Most strikingly, the 2002 Helsinki European Council concluded that Turkey was not ready for opening of negotiations, because the 2002 regular report stated that Turkey could not comply with the Copenhagen Political Criteria the precondition for them. Furthermore, the European Council confirmed that Turkey would again evaluate for the political criteria by the 2004 report before the December 2004 European Summit that would decide the starting of the negotiations.

It is understood from all these conditions that Turkey is not alone in reform-making process, since the EU, which is taken as a model in the development, would assess all the steps Turkey undertakes. In this context, the thesis is to prove that the final Turkish Reform Process is different from the previous ones on the ground that it is not only made for amending internal structure, but also for becoming a member of an international organization.

The Law Enforcement System has the key role in this process because most of the political criteria are pertinent to its institutions and implementations. Namely, the achievement of process means the modernization and improvement of the Police and Gendarmerie, who are “armed forces” in the country and accepted as the most consistent constituent. For this reason, the thesis selected the Law Enforcement System and Agencies as the research area. The thesis includes an introduction, five chapters, and a conclusion.

Chapter I is a summary of the development of Turkish Law Enforcement System (Kolluk) that forms the early stages of amendments since 1800s. The aim of the first Chapter is to provide knowledge about the system itself and its historical development as a guide for the subsequent explanations.

Chapter II aims to give information about the political dimension of European integration. It will state the dynamics of European Unification and its step-by-step approach, namely from an economic unity to a political one. Chapter II is also to recapitulate the contemporary structure and mechanisms of European Union, such as its laws, the three-pillar structure, and human rights policy.

Chapter III is to explain the major constitutional and legal changes for complying with the Political Criteria of Copenhagen. Especially, it will scrutinize the amendment related with fundamental rights, such as the right to life, the personal liberty, and security, the freedom of expression, with reference to the European Court of Human Rights (ECHR) decisions and European Convention of Human Rights (ECtHR) provisions.

Chapter IV is about the problematic issues related to the Law Enforcement System, the breaches of human rights, in particular, the cases of torture and ill-treatment. The EU, council of Europe and United Nations (UN) has always claimed an existence of systematic torture and ill-treatment in the Police and Gendarmerie as a method for clarifying the crimes, consequently the fourth chapter will try to allege the abolishment of the systematic abuse with the EU accession process.

Chapter V deals with the Turkish adoption to EU *acquis* in the field of Justice and Home Affairs (JHA), as the third pillar. The fifth Chapter commences with explaining the activities of the EU on JHA for creating an area of freedom, security, and justice and continues with the Turkey's progress in the related issues such as, asylum, immigration visa policy, police cooperation, and judicial cooperation.

CHAPTER I: HISTORICAL DEVELOPMENT OF TURKISH LAW ENFORCEMENT SYSTEM

1.1. Introduction: The Law Enforcement System

The internal security organizations in the world, though with structural differences, are generally organized in two types: monist and dualist system. The most important point in this classification is that whether the law enforcement system has any militarist peculiarities or not (Köse, 2000:20).

Monist system: in some countries, armed forces have no direct responsibility for the implementation of law enforcement service (e.g. the United Kingdom, the United States of America, and Germany). In these countries, there is no state organization like Gendarmerie; instead, the police organization has been assigned to perform security services without making any distinction between urban and rural areas within the structure of civilian administration. In other words, the states carry out this service without participation of the military organization.

Dualist system: on the other hand, in some countries like Turkey, the police are only responsible for the public security services in the urban areas within the district of municipal borders, whereas in other areas, the gendarmerie or another institution as a department of the army is responsible for that of the police in urban territories. That is to say, the law enforcement system has military parts, which are also used in external security and defense of the country. There are many different examples of the dualist system in the world, the army in their services dominates some, and the civilian authorities dominate the others. The Law on the Organization, Duties, and

Competences of the Gendarmerie, No. 2803 may be shown as an example how states organize the militarist law enforcement agencies; the Law has arranged the General Command of Gendarmerie within organizational structure of Turkish Armed Forces. On the other hand, the General Command of Gendarmerie is connected to the Ministry of Interior in doing its administrative duties. Actually, the militarist law enforcement agencies do not perform the services of police with military ways; on the contrary, they carry out them with the same rules and techniques, which the police enforce laws in order to provide public order and security (Köse, 2000:22).

In this thesis, two institutions of Turkish administrative system are scrutinized as the law enforcement organizations: the General Command of Gendarmerie and the General Directorate of Security. The concept of law enforcement (*kolluk*) or internal security is to be examined before the analysis of both institutions, since they are mainly founded in order to provide law enforcement services. For this reason, the service is to be explained in this section, because it is necessary to understand the characteristics of the law enforcement system. As previously mentioned, there are many types for classification of law enforcement system, e.g. the monist-dualist, which is made with references the organizational structure of the law enforcement institutions. They are also classified in two classes as administrative and judicial, according to the duty they carry out.

There are many definitions, made by Turkish scholars, for the concept of law enforcement (*kolluk*); Kunter described it as “the organization which makes the duty of protection”; according to Yenisey “a institution of the state which protects public order and security, and finds out crimes and criminals with the competence of using force in the line of laws”; Yılmaz defines the law enforcement as “the state forces

such as the gendarmerie, police, night watchman, and municipal police responsible for providing general order and security in the country”(Koç, 2001:7). As understood from the definitions, the concept of law enforcement refers to both of the agency and function, which provide security and order in society by preventing dangers and crimes. As an agency the law enforcement is classified in two types: the general law enforcement agencies (the police and gendarmerie) and the private law enforcement (private security) agencies (e.g. Border Security, Forest Security).

The Article 3 of the Law on the Duties and Competences of Police, No. 2559 described the general law enforcement agencies as the police and the gendarmerie, which are armed forces. In addition, the Law states that law enforcement activity is not only a mission, but also a competence, for this reason, the provisions describe the shape of its organization. The place of police is determined by the police organization, whereas that of gendarmerie is defined in the Law on the Organization, Duties and Competences of the Gendarmerie, No. 2803 with assigning the Gendarmerie responsible for non-municipal areas where have no police department, with also responsibility of the external security of prisons.

The aim of the administrative law enforcement services is to provide public security and public order. Public order is to make individuals live in security, peace, and health in public and areas open to public. In Turkey, this is organized in departments within the civil service as provinces, which are administered by governors as the head of state departments. In conclusion, the protection of public order is one of the primary duties of governor and she/he carries out this responsibility by means of the gendarmerie and police offices and officers

The general law enforcement agencies are classified in two types according to duty they perform: administrative and judicial duties. While performing their administrative duties, the law enforcement agencies are under the authority of three administrative law enforcement officials, as follows:

The Council of Ministers has the competence for making general procedures and orders to arrange public security and public order services in the country.

The Minister of Internal Affairs is the head of general administrative law enforcement officials due to the first Article of the Law on Security Organization, No. 3201 and the Article 22 of the Law on the Duties and Competences of Police, No. 2559. The minister may make general arrangements to provide public security and order; moreover, he/she may give direct orders to law enforcement officers and use his/her competences as Governors and Kaimakams do in their provinces and sub-provinces.

Governors and Kaimakams: the law enforcement officers, both police and gendarmerie, are assigned to the service of governors in provinces and kaimakams in districts, since the articles 9, 11, 32, and 43 of Province Administration Law give responsibility of public order and security to governors and kaimakams with the service of the police and gendarmerie departments.

While performing their judicial duties, the law enforcement agencies are under the authority of Republican Prosecutor. The Turkish Code of Criminal Procedure (C.C.Pr.), Law No.1412 only gives the competence to institute a public prosecution

and a case by an indictment to the Republican Prosecutor, moreover having informed about a crime the police and gendarmerie officers must report it to the prosecutors and continue their inquiries with the orders of them. The judicial law enforcement is carried by the same agencies of the administrative law enforcement organizations, it refers to the activities for finding criminal and crimes; that is to say, the police and gendarmerie begin to perform their judicial duties after committed a crime in their responsibility areas. It is related to act and perpetrator, the collection and protection of evidences, and finally in a broader meaning is to catch suspects and making other investigation procedures. The Article 154 of the Turkish Code of Criminal Procedure prescribes the judicial law enforcement as ‘‘the process which begins with making of one of the actions related to investigation for guilty act and perpetrators’’ (Yenisey, 1998:137).

1.2. Up to Modernization Movements of the Sultans

1.2.1 The Internal Security Systems of Former Turkish States

The Turks, formed many states during the history, had carried out public order and public security with the national defense institutions. The word *yarkan* was the first term used for police in the Uyghur inscriptions; on the other hand, *daruga* had also referred to police in Mongol language. In this period, the law enforcement services were wholly performed in the military organizational structure by means of military rules and techniques (Altner, 2001:6).

Having accepted Islam, Turks promulgated the Islamic law *Shari'a* in which the most prominent law enforcement agency was the Kadhi as prosecutor, judge even

governor. The Kadhi had enforced Shari'a in the courts, and he had also an administrative function to administer his territory; namely, the Kadhi had enforced not only the Islamic religious law, but also the regulations of Sultans. There were also officers named as *Şurta* (*body of guards*) who were assigned to help the Kadhi to provide public order and conduct the trials.

On the other hand, *Subaşı* had been first seen as the superintendent to provide public security. Under the service of the *Subaşı*, there were officers; the *asesler* and the *yasakçılar*, the former would be reciprocal to contemporary police officers, and the latter had the same duty of today's night watchman. While the *Subaşı* were responsible for the military forces of their territory, they also had the duty for providing public order and security with the competences of law enforcement. Prison administration had also under the superintendent of the *Subaşı*.

The *Timar* (fief) holders had to provide public order and security in the provincial territories due to the Ottoman Land system. Every fief holder was assigned to the mission of law enforcement of the land he used, since they had to prevent activities would cause problems in social and economic daily of their territories. Consequently, the law enforcement services, as armed forces based on land system, were carried for the aim of maintaining national defense system in the empire.

1.2.2 From the Conquest of Istanbul To Amendments

The most prominent peculiarity of the period was the formation of Istanbul as

the capital city. With the increase of population, new special arrangements were made for law enforcement officials and officers in Istanbul to ensure public security, whereas provincial areas went on using the former system at the same time. The Janissary Corps, central army was given law enforcement duties to provide internal security of Istanbul, the capital under the leadership of Janissary Commander. The term police station as *karakol* was firstly used in this period with the same duties of modern ones. The officers of the police organization in the capital were:

- *Böcekçibaşı* (detective) was the official accountable for pursuing and catching criminals,
- *Çuhadar* (footman) was the officer who worked gaining intelligence for *Böcekçibaşı*,
- *Asesbaşı* (night watchman) was the officers to provide order and security in nights (Bayram, 2001:8).

Sultan Mahmut II generally organized the law enforcement services in this structure until the abolition of Janissary Corps in 1826, whereas the *Subaşı* maintained performing the security and municipal police duties in provinces. They divided in seven types under the control of many different local administrative officials. By the time, the general debacles of the Empire had also affected the land system because of this; the law enforcement services were tragically corrupted. In other words, the *Subaşı* system was gradually becoming the main source of public disorder rather than providing peace and security in the social life (Altınar, 2001:10).

With the failure of military in the Unproductive (*Duraklama*) Period caused

many problems in performing internal security services, especially the variety and arbitrary of the *Subaşı* and the *Kadhi* became the primary reason in the corruptions of officers. The best example of this situation was stated in the treatise (*risale*) of Koçibey, which was reported to Sultan Murat IV. Koçibey delineated faults in government, and the causes of the Ottoman regression. He proposed that the Ottoman land system should be improved, bribery should be eliminated, and education should be reformed.

1.3. The Four Stages of the Ottoman Internal Security Changes

1.3.1. The Period of *Ihtisap Nezareti*

As mentioned in the previous section, the law enforcement forces of Ottoman Empire had always been a part of the army since the beginning of Rising (*Yükselme*) *Period*, however with the failure of military system, the Janissary Corps were abolished and new institutions were founded instead of the former. Furthermore, internal security services began to be performed by the new organizations; the first of which was the *Ihtisap Nezareti* even though which means the superintendent office of the markets; it was responsible for public security affairs with also municipal police duties in the capital. In 1826, the *Ihtisap Nezareti* commenced to carry out law enforcement services in the capital with the regulation of *Ihtisap Agalığı*. This regulation gave law enforcement services to the municipal police, since the abolition of the former military system and the pre-foundation process of the new one.

Rather in provinces public security services were also performed by newly founded organizations such as, “*Asakir’i Muntazamai Mansuri*”, “*Asakari Muntazamai Hassa*”, and “*Asakiri Redife*”. With the proclamation of Imperial Rescript of Gülhane in 1839, the duty of protecting citizens’ life and property was

carried out by officers who were assigned under the service of province and sub-province (*sancak*) governors. The situation had continued until 1846; however, the Ottoman Government could not establish an organization, which had the same efficiency and structure throughout the country for performing law enforcement services (Kahraman, 2000:9).

1.3.2. The *Tevhidi Zabita* (United Police) Period

With the proclamation of Imperial Rescript of Gülhane, the Sultan agreed to establishment of new institutions that should; protect his subjects' life, honor, and property; set up a regular system to assess taxes; and develop new methods to assure fair system of conscripting, training, and maintaining the soldiers of his armed forces. In this context, the Law that prohibited dual assignment enacted on September 6, 1843 abolished the method of assigning officials with both of the military and civilian duties. The law connected the governors to the ministry of Foreign Affairs and the military commanders to the Ministry of War (Karabörk, 1997:11).

Because of the new regulation, an organization named as the police was established on April 10, 1845 in Istanbul in order to unite the law enforcement services performed by many different agencies and functions. Besides, the 17-Article regulation defined the organization and the duties of the police. It gave to the law enforcement officials and officers, both the authority for protecting the public order and security with making general arrangements and procedures, and the competences to catch and follow criminals with the necessary duties to take dissuasive and preventive measures as they are assigned with administrative and judicial duties

today. It had been received from a French legal regulation. Particularly, having accepted the right to live by Sultans with the Gülhane Rescript, the French example of law enforcement institutions, which had been mainly affected by the 1789 revolution, but in spite of this Turkey has the same problems even today once upon a time Ottoman Empire criticized by the Western States. In conclusion, it would be alleged that the harmonization process of Ottoman Empire and Turkey for the European provisions should start in the beginning of 1800s in the realm of justice and home affairs.

On February 18, 1846, the *Zaptiye Müşirliği* was established in order to unite all the agencies dealt with law enforcement services, furthermore for the first time the provincial law enforcement agencies throughout the country, were connected to the central government by this regulation. The department was under the authority of *seraskerlik*, an institution in the army; for this reason a new type of law enforcement class was formed with the principal duty of ensuring public order and security in the same organization all over the Imperial territories. Consequently, the divided structure of the law enforcement system, Istanbul and provincial areas, not only was annulled by establishment of the office of *Zaptiye Müşirliği*; but also became a united and special institution with its own decentralized structure and own methods. Namely, the public order and security had been conducted without any special organization and methods until the establishment of the office of *Zaptiye Müşirliği* in 1846. It should be appropriate to describe that this period was the United Police (*Tevhidi Zabita*) because of its characteristic, which was the unification of both center-local, and police-gendarmerie.

1.3.3. The Beginning of the Dualist System

The period of the United Police, (*Tevhidi Zabita*) had prolonged until the abolishment of the *Zaptiye Mûşirliği* in 1879; a new regulation was separated the law enforcement organizations as the Police and the Gendarmerie so that the period would be defined as the beginning of the dualist system for Turkish Law Enforcement System. The defeat of 1878-1879 Ottoman-Russian wars had caused these necessary reforms, since Grand Vizier Sait Pasha wanted to create a new gendarme-type force that were in powerful European countries by doing away with the former institutions and rules. He imported French officers in order to realize his goals and rearrange the law enforcement system; furthermore, the new organization was founded by an order of Grand Vizier to the *Serasker*, by which the structure of the new system was established as the Gendarmerie for provincial areas. The new organization, named as the Center of General Gendarmerie (*Umum Jandarma Merkeziyesi*), was connected to the Army, however, the law enforcement services had been performed by an independent structure out of the Army since the foundation of *Zabita Mûşirliği* (Kahraman, 2000:11). In 1904, the first Gendarme schools were opened in Selanik as the Gendarmerie officer school, in Uskup and Manastir the Gendarmerie schools under the guidance of French officers. On the other hand, with the same decree, *Zaptiye Nezareti* was assigned for security services of the capital, Istanbul under the command of civilian authorities was an example of police type structure, and it had conducted these services as with the same structure and appointments of contemporary the General Directorate of Security from 1879 to the abolishment date of 1909. Moreover, *Asakiri Zaptiye*, the military corps with the charge of security services of the capital was abolished and substituted by the new police organization in 1881. The new police-type structure were also established in

15 provinces 1885; with the governance of a *Serkomiser* in each province (Altiner, 2001:16)

On April 19, 1907, a new police regulation was published, with 167 articles organizing the duties and competences of the central and local institutions of the police department, relations with gendarmerie, the punishment procedures of police officers and arrangements for logistics. It classified police duties in three parts as judicial, administrative, and political.

In summary, the law enforcement services had started to be implemented in a dualist system with the police and gendarmerie since 1879. However, these services had been performed under the authority of civilian officials since 1846; they began to be conducted under the control of the Ministry of War after 1879.

1.3.4. The Period of Interior Ministry (*Dahiliye Nezareti*)

From this point, the study goes on examining the Turkish law enforcement system in two different sections, the Police and the Gendarmerie, since the dualist system had been launched by the order of Grand Vizier to amend the system in 1879.

1.3.4.1. The Police

After the promulgation of Second Monarchy, it was decided that the Ottoman Police Organization should be reorganized by taking the French and German Police systems as the main example. The law on Istanbul Province and Security General Office Organization was enacted on July 22, 1909 with the abolition of *Zaptiye*

Nezareti; Emniyeti Umumiye Müdüriyeti (General Directorate of Security) was formed under the authority of the Ministry of Internal Affairs in order to carry out the police services all over the country apart from Istanbul. Since there was, also a new private organization established for law enforcement services of the Capital, Police Office under the control of the Istanbul governor. Both of the institutions carried out their duties and services due to provisions of the Police regulation enacted in 1907.

1.3.4.2 The Gendarmerie

The new structure Central Department of Gendarmerie (*Jandarma Dairei Merkeziyesi*) was substituted by General Command of Gendarmerie and organized as a part of the ministry of War. Another law related to gendarmerie was enacted in 1914; even so, a decree about this regulation was arranged to adopt the provisions of relations between the Police and the Gendarmerie on October 26, 1917. Finally, the General Command of Gendarmerie was connected to the Ministry of Internal Affairs for its administrative duties with the decree dated March 1919. Because of this, a hierarchic connection was formed for the Gendarmerie Organization as that of contemporary provisions regulated. This can be explained shortly as; the Gendarmerie was connected to Chief of Army due to its military duties and connected to Internal Affairs Minister due to its law enforcement duties and services, and finally connected to Ministry of War for the supply of Personnel with other logistics and fiscal issues.

1.3.4.3. General Evaluation of the Last Period

The public security and public order services were carried out by three

different organizations from the promulgation of the Second Monarchy in 1908 to the formation of the National Government in Ankara in 1920. These were:

- The General Command of Gendarmerie,
- The General Directorate of Security,
- The Police Department of Istanbul,

Having founded the General Directorate of Security (*Emniyeti Umumiye Müdürlüğü*) by Ankara Government on April 24, 1920 had caused a duality between Istanbul and Ankara departments of law enforcement until the abolition of the former by Ankara Government in 1922.

1.3.5 The General Evaluation of the Pre-Republican Period

The law enforcement system of Ottoman Empire had spent a long process of amendments and developments in which it became a contemporary law enforcement system rather being a part of armed forces, from the abolition of the Janissary Corps up to the establishment of National Government in Ankara. The main result of the process was to put the law enforcement agencies and officers under the control of civilian officials with making the Minister of Internal Affairs and Governors the principal agencies responsible for providing public security and public order. Nevertheless, they had also gained their own provisions and methods in performing the services of the law enforcement. Another characteristic of the period was the different implementation between the Capital and other areas, since special provisions and organizations had always existed for Istanbul.

To sum up, the Ottoman law enforcement system had no private agencies and

provisions in the early years, because of the Ottoman Land system, which mainly based on the support for the Military. However, the corruptions of the land system had affected the public security officers who were responsible for it. For this reason, the administration of the Empire had made many partial arrangements and reforms to recover the tangled system; however, the absence of a thorough regulation avoided the system becoming a modern effective one albeit after passing almost hundred years.

1.4. The Law Enforcement Organization of the New Republic

1.4.1. Receptions

While codification means in narrow scope “enacting law”, it also means the unifying process of scattered and non-written laws in a country to form a new legal system. Codification maybe made for conservative or reformist objectives with reference to law policy of the state. If the objective is to unite existing laws and rules in an order, this called as the conservative codification. On the other hand, in reformist one, the country receives a foreign legal system wholly or partially in order to change all the former institutions and provisions for creating a new public order. This also called as Ius Receptum, which means the reception of a foreign jurisdiction (Bozkurt, 1996:11).

In previous years of the Turkish Republic, the former law did not meet the needs of the society, so that it was abolished and wholly reorganized by the reception of Western laws. Firstly, the Civil Code and Law of Obligations were received from the Swiss Civil Code in 1926, because they were the main parts of a legal system.

Later, the other essential acts of the country were enacted by translating the related laws of West European countries, namely the New Republic decided to be a part of the modern world with changing its social structure by means of the reception.

The French Criminal Code dated 1810 had been implemented in Ottoman Empire since 1858, however, the Italian Criminal Code dated 1889 was chosen for the new Turkish Republic Criminal Code and enacted in the Grand Turkish National Assembly in 1926. On June 11, 1936, the Act No. 3038 amended the Criminal Code to adopt the new Italian Criminal Code, which was enacted on October 19, 1930. As a result of this amendment, the principle “there can be no crime and punishment without a law” wholly entered into the Turkish Criminal Code. In 1929, unlike the Criminal Code, the Code of Criminal Procedure was received from the German Code of Criminal Procedure dated 1877. Apart from these codes, many other laws were enacted by the way of reception from the European countries in order to meet the needs of the society for becoming a modern community. In conclusion, after political reforms, legal revolution was made in Turkey with choosing one by one the laws of different countries including the continental European law system. Actually, this revolution was the most important part of the reforms, which affected the daily life of citizens, and also it became the means for realizing modern structure of state and society. Despite, the national legal system could be created in later by way of reception; the main objective was to make Turkey a member of the modern States Community (Bozkurt, 1996:201).

1.4.2. The Legality of Implementations

As mentioned previous section, the existence of an intensive codification

movement dominated the foundation period in 1920s. For this reason, the new Republican Government and officials performed the law enforcement services with the help of two former Imperial regulations until the 1930s; however, they only made changes with administrative decrees. The first regulation of the republic related to law enforcement system was the Law on the Organization and Duties of the Ministry of Internal Affairs, No. 1624 dated May 19, 1930.

Up to the enacting of the Law No. 1624, the law enforcement services were based on the regulations of the Second Monarchy; these are the Police regulation dated 1913 and the Gendarmerie Decree dated 1917. To summarize, the duties and competences of the Police and Gendarmerie were principally determined by the old and dispersed provisions of the former legal arrangements of the Ottoman Empire.

1.4.3. The First Laws of Police and Gendarmerie

The Gendarmerie gained its contemporary legal status with the enacting of the Gendarmerie Law No. 1706 dated June 10, 1930; moreover, it also abolished all the former laws, regulations, and decrees related to the Gendarmerie. These are the Regulation of Gendarmerie dated October 1917 and the Decree on the Organization and Duties of Gendarmerie in 1919. In 1937, the regulation on Organization and Duties of Gendarme was enacted in order to explain the application ways of the Act No. 1706.

On June 30, 1932, the Law on Police Organization No. 2049 with 46 articles was enacted; it comprised staff ranks, appointment, promotion, accession to profession and punishment procedures of the police officers. Following, the Law on

the Duties and Competences of Police No. 2559 was enacted on July 4, 1934, most strikingly, the Law was the first legal regulation which was determining the procedures and methods of the law enforcement officials, even today it is used for using law enforcement competences, e.g. one of them the right to use arms for the police and gendarmerie officers. With becoming insufficient of the Law No. 2049, a new law was enacted as the Law on Security Organization, No. 3201, which is also valid in today. Subsequently, new regulations have been made in order to adopt the law enforcement system to changing circumstances, some of which were:

The traffic police was founded by the Highway Law No. 6085 enacted on May 11, 1953; on the ground that the new situations made the Law No. 6085 ineffective; on October 13, 1983, the Law No. 2918 was enacted as the new Highway Law.

Finally, as a law for implementing the general law enforcement activities, Law No. 2803 enacted as the Law on Organization Duties, Competences of Gendarmerie for the abolition of Law No. 1706. The new law has still one of the bases with its decree of Gendarmerie for actions of the law enforcement organization and officers; nevertheless, there have been many changes according to social and political developments for 20 years.

1.5. Evaluation for the Current Structures of Police and Gendarmerie

1.5.1. The Features of Law Enforcement System up to Helsinki Summit

Today the duties of providing public order and investigation of crimes and criminals are performed by the general law enforcement organizations, the General

Directorate of Security and the General Command of Gendarmerie. The primary legal basis for these organizations and their actions are determined in the Article 2 of the 1982 Constitution as follows "to provide peace in society is the first duty of the State", and the Article 5 of the Constitution states, "to ensure society's wealth, peace, and happiness is one of the objectives of the state".

The general law enforcement officials -the Gendarmerie and Police- have no united code of the law enforcement for performing their duties and using competences; in addition to this, there has recently made a lot of constitutional amendments and legal changes, especially during the EU accession process. The complexity has become more difficult to understand and apply legal provisions in practice. As a result, the following sections are to examine the Police and Gendarmerie executive structures with the legal provisions, which formed them. Finally, the last section is to reveal the main obstacles for the Turkish law enforcement organizations in the integrating process of the European Union system defined as the area of freedom, security, and justice.

1.5.2. The Gendarmerie Organization

The Gendarmerie is simply the state department providing public security and order in rural areas. The Gendarmerie organization is formed as the General Command of the Gendarmerie by the Law on the Organization, Duties, and Competences of the Gendarmerie, No. 2803 as the connection and relationship provisions, as follows:

Connection:

- For the education and training of the Corps, the duties assigned by military laws and regulations, and the duties related to Martial and Wartime regulations to General Staff,
- While performing public security, order and other administrative duties to the Ministry of Internal affairs,
- For the supply of personnel, arms, and ammunition to the Ministry of Defense.

Relationship: For the assignments given by other laws and regulations to other ministries and local Republican prosecutors.

The Law No. 2803 regulates the duties of the Gendarmerie in three types.

- The Administrative Duties are to provide the public order and security, to take necessary dissuasive provisions for preventing crimes, and lastly to secure the external borders of the prisons. Besides, the Act on the Governance of Province, No. 5442, states that Governors have the authority to give direct orders to the Gendarmerie and Police forces while performing these duties.
- The Judicial Duties are to make necessary provisions about the committed crimes and to perform judicial services related to them,
- The Military Duties are mainly related to national defense issues, training, education, and logistics.

Because of the militarist duties, the Gendarmerie Corps is divided into three classes:

The headquarters and related corps,

The corps connected to civilian administration:

- The Provincial Gendarmerie Command,
- The Sub-Provincial Gendarmerie Command,
- The Station Gendarme Command,

The corps non-connected to civilian administration:

- The Divisional Gendarmerie Command,
- The Gendarme Commando Corps,
- The Gendarme Aviation Corps.
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1.5.3. The Police Organization

The police are divided into two types as uniformed and non-uniformed according to the Article of the Law on Security Organization, No. 3201; on the other hand, the Article 8 has classified the police forces in three types due to duty they carry out as follows;

- Administrative police is arranged by the Law No. 3201, with responsibilities of providing public order, and this is the widespread police organization while performing preventive and persuasive law enforcement duties, e.g. the general search and identity controls,
- Judicial police perform their duties under the authority of prosecutors; namely, after committed a crime, the activities such as to catch criminals, to investigate crimes, and to collect and protect evidences. In organizational structure, there is no separation between administrative and judicial police; nevertheless, the Article 9/C states that the judicial police is the department appointed by the General Directorship of Police in a complete formation police stations in order to deal with the judicial

duties,

- Political police is defined as the department deals with the security of general interests of the State in the Article 9/B. The National Intelligence Organization (*MİT*) is assigned as the political police in Turkey.

The police organization is founded as the General Directorate of Security in the structure of Ministry of Internal Affairs. The first Article of the Law No. 3201, the Minister of Internal Affairs is assigned to the responsibility of public security and order of the country, moreover, he/she carries out the responsibility by means of the General Directorate of Security and the General Command of the Gendarmerie. The Police Organization is divided into three departments for their duty areas as follows:

- The Central Organization,
- The Divisional Organizations,
- The Provincial Departments, (the Provincial Security Department Directorship, the Sub-Provincial Security Department, and the Police Stations).
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1.5.4. Main Obstacles in the Alignment for the Political Issues

The history of the EU-Turkey relations should be divided into two main parts: pre-Helsinki period and post-Helsinki period. The 1999 Helsinki summit was the main milestone in relations. The EU gave a clear EU membership perspective to Turkey, on the condition that Turkey complied with the Copenhagen Criteria. Most of the Turkish governing elites, who had been aspiring for the EU membership because of its benefits regarding security, welfare, and civilization issues, perceived

the Helsinki decisions and subsequent developments as areas stimulation to fulfill significant legal and political reforms to improve Turkey’s human rights records quality of democracy in Turkey.

In this section, the EU requirements with regard to democracy and human rights before the post-Helsinki period are provided. The main references of the study about EU demands from Turkey for fulfilling the Copenhagen Criteria are the progress reports prepared by European Commission. The first report was announced in 1998, and it was very important document for Turkey’s European Union bid, because the Commission prepared a very comprehensive official document that wholly analyzed Turkey’s political and economic situations for the first time. As an introduction, the main issues of the report should be accepted as the indicator of main obstacles for the law enforcement agencies for integrating with the EU system (Usul, 2003:143).

After the European Council in Helsinki on 10-11 December 1999 certified that Turkey is a candidate country for the European Union, the Commission with approving of the Council of Ministers issued an Accession Partnership on December 8, 2000, which identifies short and medium term priorities to prepare Turkey for membership. The regular report of the year 2000 was issued along with this document. Having evaluated together the accession partnership document and reports, almost all political priorities are relevant to human rights violations in Turkey, especially related to the law enforcement system and officers (Sak, 2001:71).

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CHAPTER II: FROM ROME TREATY TO COPENHAGEN:

POLITICAL DIMENSION OF EUROPE

Dissimilar to other international associations, the European Union (EU) is an exceptional political organization to analyze and grasp, either in view of the fact that the EU does not easily correlate to nation states, whether unitary or federal, or to conventional international organizations. Most strikingly, it is constantly growing, often in very contentious ways. This contradiction can be explained by its broader political scene within which the EU operates in growing internal structure and future enlargement (El-Agraa, 1998:21). Recent developments has shown that the objectives of the Union are political rather than economic and in the words of the preamble of the Treaty of Rome, are to “lay the foundations of an ever closer union among the peoples of Europe” and by “pooling their resources to preserve and strengthen peace and liberty”.

The concept of a united Europe was promoted by nineteenth century intellectuals such as Victor Hugo, who declared in 1848 that the nations of Europe, “without losing their distinctive qualities or glorious individuality, will merge closely into a higher unity and will form the fraternity of Europe”. However, nationalism and competition for trade powers did cause politicians not to support such ideas, and spread of militarization led to the Great War in 1914. The horrors of the First World War created supporters who were much more open to the idea of European integration. The enthusiastic proponents tended to be smaller states that were tired of wars, and several made tactical moves. For instance, Luxembourg and Belgium created a limited economic union in 1922 (McCormick, 1999:37).

All discussions for European Integrity were swept violently aside by the rise of Nazi Germany, which aimed to correct the damages of the Versailles and creating a German living space. Nazis wanted a United Europe Home, but only in terms of the German rule over the continent. In addition, the tragedy of World War II led European politicians to take real steps for finishing competitions in Western Europe by uniting their countries.

To examine the concept of European integration, as it is understood today, essentially starts, and is generally dated in 1945. That is to say, the historical experiences of two Great Wars are of major importance in terms of actualization of the European integration movement. The origins of the European Union dated back to the period in which many international organizations were founded. Even today, most of these organizations founded after the World War II, are still actively working the United Nations (UN), the Organization for Economic Cooperation and Development (OECD), the World Bank, the International Monetary Fund (IMF), the North Atlantic Treaty Organization (NATO), the Council of Europe (COE). On the other hand, the uniqueness of European Union set up by the unification plan with the creation of the European Coal and Steel Community (ECSC), was the difference in its character and framework for launching a supranational organization. In other words, from the beginning it was designed to be supranational in nature and scope, as such it was both different from the classical federal state and traditional international organizations.

The Paris Treaty, which established the ECSC, was signed on April 18, 1951 aimed to establish a common market for coal and steel industries, to promote

economic development by means of cooperation, and to enhance employment and life standard of the Member States. Jean Monnet, was the main creator of the EU project, he declared peace would not be ruled in Europe unless states insisted on their national sovereignty. Instead, he proposed, “the states of Europe must form a federation or a European identity which will make them a single economic identity” (Karatekelioğlu, 2002). In short, Monnet’s strategy to unify the European nation-states was mainly based on the functionalist theory of spillover, which refers to a stage-by-stage process of integration. As the Schuman Declaration (1950) suggested “European governments would start with two industries essential to the making of war, coal and steel, then add other economic and political sectors until all major decisions were taken at a European level” (Salman & Nicoll, 1997:45).

This thesis is to explain the effects of the EU accession process on Turkish legal and administrative structure; in other words, Turkey must make the reforms to become an EU member. As early mentioned, the uniqueness of the EU is its supranational feature that leads to states make new regulations in their internal system to adopt the EU arrangements. To explain, the nation-state has to give up some areas closely related to their sovereignty. As a candidate state, Turkey should accept the reality that the bargains are made over the amount of sovereignty to be given up to the institutional mechanisms of the EU.

In conclusion, this chapter aims to define the features of the EU, especially its unique characteristics that are very important to see the reciprocal influences on candidate countries. The chapter is to explain mainly the political dimension of the European integration since economic integration actually does not affect the nation-

state sovereignty; however, political issues such as national security, Justice, and Home affairs are directly related to sacred areas of a nation-state. Besides, these changes in the sacred areas are the principal research subjects of the thesis.

2.1 Political Issues and Rome Treaty

2.1.1 Two Debacles: EDC and EPC

After holding first session of the counseling Assembly of the Council of Europe (COE) federalists and functionalists alike regarded this as a great success and decisive advance in the fight for a united Europe. They had two major goals: to develop some impression of supranational authority, and to reinforce the Assembly vis-à-vis the committee of Ministers. For, despite the resounding terminology, the creation of the COE had not in any degree reduced national sovereignty as represented by the ministers. In the last resort, the objectives of the Council were to be achieved by discussions in economic, social, legal, and administrative matters and in the maintenance and realization of human rights and fundamental freedoms. Defense was excluded because it was controversial while it had a wide field of reference, at the same time, its ability to do things was severely limited, most strikingly, and the major importance of the COE rests in the fact that it was the first European organization with a political aspect (Urwin, 1995:35).

Another attempt to unite Europe was made by Konrad Adenauer with first mooted the idea of a European Army in 1949. In August 1950, soon after the occurrence of the Korean War, France had backed the idea of a European Army in

the second session of the COE Assembly. The idea was opposed by Britain, and quickly vetoed by the Council of Ministers. Nevertheless, France suggested a plan known as the Pleven Plan, named after the French premier, Rene Pleven. The Plan, like other suggestions that had recently come out of the Council of Europe, followed the outline and objectives of the Schuman Plan very closely. The proposal included the idea of common European Army with a European minister of defense and the basis of discussion about the establishment of a European Defense Community (EDC).

The EDC was to be a military organization, but for many it was also to be a further step along the road to European Integration in addition to a common budget and common institutions. However, the problems related to the EDC concept never ended. When Konrad Adenaur alleged that, a European army without a correspondingly integrated European foreign policy would be significantly unreasonable. This indicates that existing ECSC and EDC institutions had powers to provide the supranational agencies to meet the need of European political control. This was the major reason that led to discussions on the possibility of a European Political Community (EPC). The EPC was not to be just a third community but nothing less than the beginning of a complete federation to which the ECSC and EDC would be subordinated. The draft treaty of the Political Community, with 117 articles, was displayed in Strasbourg on 10 March 1953. The problem was not the difficulty of turning the Political Community Treaty into reality, but the problems that the Six were facing in getting the EDC signed. The EDC treaty had not been ratified by any state when the proposal of Political Community Treaty was published. This caused the failure of the EDC, and a delay for the plans for a more United

Europe. The veto of the EDC also meant the fall the even more ambitious European Political Community, which did not move on beyond a draft treaty. Therefore, the attempts of officials like Monnet were still concentrated more eagerly upon the negotiations and the consolidation of the ECSC.

Following the EDC's breakdown, there was an intense flow of diplomatic activity to solve unsettled sources of Franco-German tension. One success of this was the decision, based on a British initiative, to create a German army under the umbrella of NATO and with the support of the Western European Union (WEU) that was now to embrace all six ECSC countries, as well as the use itself (Middlemas, 1995:28). However, the new body WEU was an independent structure and not a vehicle for European integration because of its structure. The WEU had the role to ensure the closest possible cooperation within the NATO and although it did play a limited role, and it remained essentially a paper organization.

2.1.2. Move toward Economic Unification

In Messina Conference, June 1955 the Six understood that the time had come to make a new advance towards the shaping of Europe. They are of the opinion that this must be achieved; first, in the economic field; since the political unification had been seen as too problematic to achieve. As a result, the Messina negotiations resulted from a Benelux proposal that the ECSC be expanded a general common market and a French proposal for a European Atomic Energy Committee (Weigall, 1992:94).

Consequently, in 27 March 1957, two treaties were signed in Rome. The former founded the European Atomic Energy Community (EUROTOM) and the latter the European Economic Community (EEC). The EUROTOM aimed at the joint regulations for the efficient use of the atomic energy for peaceful purposes, and the major goal of the EEC was to create an ever-closer union among the peoples of Europe.

The resolution at Messina and the subsequent Rome treaties were a manifestation of the spillover and a basic attempt to avoid the failure of EDC/EPC. The governments, resolved, in addition to gradual unification of national economies, they consider that the further progress must be towards the setting up of a united Europe by the development of common institutions (Karatekelioğlu, 2000:53). The original treaties only referred to economic issues to prepare institutions for political integration, as a result move toward economic unification, as positively correlated with a move towards political unification.

The Merger Treaty signed in 1965 and ratified in 1967, the institutions of the three communities were combined. Consequently, without losing their legal entitlement, set by their constituting treaties, the ECSC, EUROTOM, and EEC acquired the status of European Communities were the Commission, the Council of Ministers, the Court of Justice (ECJ) and the Parliament. These have acted as executive, legislative and judiciary components of the Communities. The ECJ is a major structure of supranationality. In retrospective, some authors assumed the ECJ as an incentive for the evolution of the constitutional and institutional architecture of the EC.

2.1.3. The European Political Cooperation

The Rome Treaty did not provide for a common foreign and security policy. The founders of the Treaty did not think in categories of foreign policy, let alone defense policy. After the 1954 EDC debacle, it was too expected that the new integration effort was concentrated solemn economic, rather than political integration. The EEC was to become the instrument of the Continent's political unification (Rhun, 1993:29). Political union was now seen as only achievable as an outcome of the economic integration.

The leaders of the Six met at a Summit in Bonn in 1961 to secure political cooperation among the member states, this as known as the Fouchet Plan but failed. In 1963, a Franco-German friendship treaty was signed dealing with integration. During the 1960's there was clash between national and supranational interests that blocked the way towards integration. This clash came to peak in 1965. France had not been taking part in the EEC meetings, in keeping with its empty chair policy (Gürer, 2000:18).

On December 1969, the Hague Summit was held to encourage further political integration. It was both concerned with the enlargement through the inclusion of Northern countries and with a call issuing for political and economic union. Accession negotiations with Denmark, Ireland, UK, and Norway fulfilled with the exception of Norway; the candidates ratified the accession treaties and became members. In the 1970s, some progressive steps were taken. The European Political Cooperation was established as an instrument to coordinate the foreign policies of

member states. The European Political Cooperation rested upon regular meetings of foreign ministers and high officials and its first achievement was to produce a concerted position during the Conference on Security and Cooperation (CSCE) in Europe that produced the famous Helsinki accord in 1975 (Middlemas, 1995:69). By using the European Political Cooperation mechanism, the nine successes fully allied their national policies at the CSCE meetings in Helsinki, an essential forerunner of the final accord with the USA and the Soviet Union in 1975.

During the 1980s Greece, Portugal, and Spain ratified accession treaties. The EC would become an economic oriented organization. The most important event of the 1980s was the adoption of the Single European Act (SEA) in 1985. A single market without barriers would be established and cooperation on the environment, research, and technology was under debate. A single market would require better decision-making the joint Italian-German initiative known as the Gencher-Colombo plan for a European Union Act came onto agenda in the London European Council meeting of November 1981. It included principally policy development, institutional improvement, and tidying up the relationship between the EC and the European Political Cooperation (McAllister, 1997:151). The plan weakened to solemn declaration issued at the Stuttgart Summit meeting of the Heads of the Governments in 1983. This reaffirmed their will to transform the whole complex of relations between their states into a European Union. They agreed to the development of a European Social Policy that, as they said, implies in particular the transfer of resources to less prosperous regions; to the strengthening of the EPC aimed at speaking with a single voice in foreign policy, including political aspects of security; and to the promotion of closer cooperation in cultural matters (Wistrich, 1994:41).

The European Political Cooperation is the process of information exchange, consultation, and common action among the twelve member states of the EC in the field of foreign policy. Its aim was to maximize the Twelve's influence in international affairs through a single European approach, which the essential counterpart to progress towards European Unity in the community framework. The key features of the European Political Cooperation are decision making by consensus among governments and direct contacts between foreign ministers.

Unlike the work of community, the European Political Cooperation has no legal commitments and organs, but unites the same member states and the Commission for a game played by different rules. The fact is that the two institutions use specific rules, apply these to decision-making, and follow up of conclusions reached. This for itself does not have to be a negative factor, although the consensus principle of the European Political Cooperation can be a brake on speedy decision-making and, consequently affect EC's acting upon the European Political Cooperation's impulses.

2.1.4. The Era of Post-Communism

In 1990, the EC was committed to twin Inter-Governmental Conferences (IGC) the former was about the European Money Union (EMU) and the latter about political union: H. Kohl in April had agreed to the proposal for the latter originally made by Mitterand in February 1990 (McAllister, 1997:222). The decision of the European Council, which emerged at Dublin in April, said:

“A detailed examination will be put in had forthwith on the need for possible treaty changes with the aim of strengthening the democratic legitimacy of the Union, enabling the community and its institutions to respond efficiently and effectively to the demands of the new situation, and assuring unity and coherence in the Community’s international action.”

While this process towards an IGC an economic and monetary union was taking place, the most extraordinary developments were taking place in Eastern and Central Europe. In 1989 the complete European system, which endured for about forty years, was shaken by the revolution which swept through Eastern and Central Europe and which, by the end of 1991 had even claimed the very existence of the Soviet Union and of communism as a political and socioeconomic system. The extra European environment was also altered in August 1990 by the Iraqi invasion and annexation of Kuwait (Nicoll, 2001:39)

The second IGC on political union held in the European council in Rome on December 14, 1990. The two IGCs were rather different the former had been extensively pre-prepared, and although some disagreements persisted, there was a certain understanding about what the IGC was going to achieve and what the end result would be. The political Union IGC was, by way of contrast, unprepared, apart from the much earlier work on political union and a recent Belgian memorandum on the subject. The two IGCs were officially launched in Rome but the work was really begun under the Luxembourg Presidency in the first half of 1991. The Netherlands took over the presidency in the second half of 1991 and with the responsibility for the IGC, which concluded at Maastricht in Netherlands on December 1991. The two IGCs were officially distinct but they were closely coordinated and there was a linkage between them. The new Treaty, the Treaty on European Union (TEU), was

officially signed in Maastricht on 7 February 1992. After delays in the ratification process, it finally came into operation on November 1, 1993.

2.2. The Transformation Process from an Economic Union to Political Union

2.2.1. The Maastricht, Amsterdam, and Nice Treaties

The Treaty of Maastricht, with the ratification of TEU, much of the outcome was obscure and studied ambiguity. As Nicoll emphasizes, it is important to note that it is the Treaty “on” not “of” European Union. The Treaty takes the form a treaty within a treaty, because most of its 250 pages concern the European Community, however there is also the creation Common Security and Foreign Policy (CFSP) and Justice and Home Affairs (JHA) pillars as part of the new European Union. According to Nicoll, the key features of the TEU were:

1. The creation of the European Union,
2. The timetable and criteria for Economic and monetary union,
3. The creation of pillar structure is parallel to the European Community system,
4. The introduction of union citizenship,
5. The intensification power of the European Parliament (EP), co-decision, the right to prior approval of a new Commission and the power of assent for major international agreements,
6. The formal introduction of the principle of subsidiary.

The EU enlarged to fifteen member states on January 1, 1995, by the Accession Treaties of Austria, Sweden, and Finland signed on June 24, 1994 at the European Council in Corfu. The Accession Treaty of Norway had also been signed at that occasion, however again, the Norwegian people voted against membership of the Union.

The Treaty of Amsterdam, the Heads of State, and Government of the fifteen countries of the EU revised the Treaty on European Union on June 17, 1997. The Treaty of Amsterdam establishes a more democratic Europe, emphasizing the respect of human rights and democratic principles by the Member States. It also makes clear improvement on matters relating to the free movement of citizens, while enabling the war on organized crime to be waged more effectively. Preparing the enlargement of the Union, the Amsterdam Treaty has deepened European integration by placing Justice and Home Affairs under the Community scope, by reinforcing the Common Foreign and Security Policy and by initiating new common policies, notably concerning employment and social protection. The Treaty has four main objectives:

1. To place employment and citizens' rights at the heart of the Union,
2. To make the Union's institutional structure more efficient with a view to enlarging the Union,
3. To overcome the last remaining obstacles to freedom of movement with ensuring the cooperation in the fields of JHA,
4. To give Europe a stronger voice in world affairs by making the with assigning a High Representative for the CFSP.

The Treaty of Nice; the European Council of Nice on December 2000, adopted a new treaty, which brings changes mainly to four institutional matters: the size and composition of the Commission, the weighting of votes in the Council, replacement of unanimity by qualified majority in decision making procedures, and closer cooperation.

As regards the composition of the Commission, the decision is that after the future enlargement of the union, each Member state will continue to have one Commissioner until the European Union, but thereafter the number of commissioners will be smaller than the number of Member States. Furthermore, the powers of the Commission President are to be enhanced.

The decision-making process will be altered, with effect from January 1, 2005, as follows: a qualified majority will be obtained if the decision receive a specified number of votes and approve in a majority of Member States. The qualified majority will replace unanimity in the case of thirty provisions, notably concerning judicial cooperation in civil matters, the common commercial policy, and industrial policy. The closer cooperation of some Member States will be reinforced and facilitated. Other major institutional reforms concern the Union's legal system and the role of Parliament is boosted on several new issues.

Indeed, the Nice European Council drew up, in a declaration on the future of the union annexed to the Treaty of Nice, a timetable for further work on the future of the European institutions, identifying four areas for study: delimitation of powers between the European Union and the Member states, with due respect for the

principle of subsidiarity, the status of the charter of Fundamental Rights\ the simplification of the Treaties; and the role of national parliaments in the European structure.

2.2.2 The Institutions and Law of European Union

The European Union is managed by Community institutions: the elected Parliament; the Council which represents the Member States at ministerial or, Heads of Government level; the Commission, keeper of the Treaties, endowed with powers to initiate and execute community laws, the Court of Justice, the legal administrator; the Court of Auditors which control finances; and finally, the consultative bodies involved in economic, social and regional matters (the European Economic and Social Committee (EESC), the Committee of the Regions of the European Union, the European Investment Bank, and the European Central Bank) (Euroconfidential, 2003:6).

The *European Council* is the highest ruling organ of the European Union and has the role of providing political impetus for the Union and defining general political guidelines, it is provided for in the Article 4 of the Treaty on European Union. This Article provides that the European Council shall meet at least twice a year, under the chair of the Head of State or Government of the Member State that holds the presidency of the Council. In practice, the European Council generally meets four times a year. The decisions of the Council result in the publication of declarations containing guidelines for future community action. These have crucial political validity, but no legal validity. Union provisions adopted later in accordance

with the procedures laid down in the Treaties provide the legality of European Council conclusions.

European Parliament (EP) is intended to bring a measure of democratic control and accountability to the other institutions of the EU. Its powers are restricted, it is not the legislative authority of the Union, and its status compares insufficiently with that of the national parliaments. The members are elected by the citizens of the Union in each member state to serve a five-year term of office. In the chamber, the members do not sit in national delegations but based on the political group to which they belong.

The Council of the EU is a community institution composed of one representative of each Member State at ministerial level, authorized to commit the government of that State. It is the Union's main decision-making organ. It alone or with the EP adopts the instruments of secondary legislation on proposals from the Commission. The Permanent Representatives Committee (COREPER), consisting of the permanent representatives of the Member States of the EU and of their deputies, which meets every week, prepares the Council's work. This committee also oversees and coordinates the work of committees and working parties made up of civil servants from the Member States who prepare at technical level the matters to be discussed in the Council and COREPER.

European Commission like the EP is a supranational organ of the EU as the executive organ of the Union. The Commission is the first and primary guardian of

¹ Also known as the Council of Ministers

the Treaties. It is often seen as the quintessences of the European idea as its members, although appointed by national governments, are under no obligation to them, and their total loyalty is pledged to interests of the Union as a whole. The commission currently consists of 20 members, two each from the five larger States (France, Germany, Italy, Spain, and the UK) and one each from the ten smaller members (Austria, Belgium, Denmark, Finland, Greece, Ireland, Luxembourg, the Netherlands, Portugal, and Sweden). The Council of Ministers appointed them for a five-year term on the nomination of their own national governments. There are three responsibilities of the Commission: initiative, implementation, and supervision.

The European Court of Justice (ECJ) is assigned the general task to ensure that the law is observed in a harmonized manner in the understanding and application of the Treaties, of the legal acts, and of the decisions adopted by the Council and the Parliament or by the Commission. The court of Justice consists of a judge per Member state and assisted by eight Advocates General. The members of those courts, which have their seat in Luxembourg, are appointed for a term of six years by common agreement of the Governments of the Member States. The Court of Justice has jurisdiction to proclaim that a Member State has failed to perform an obligation under the Treaties. The Member State is required to take necessary measures to comply with the judgment of the Court of Justice and, if fails to do so, a further action may be brought before the Court which may decide compensation.

The EU gained a pillar structure after the Maastricht Treaty; the main characteristic of this is different decision-making process for each pillar:

1. First pillar; the Community dimension, comprising the arrangements set out in the EC, ECSC and Euratom Treaties, i.e. Union citizenship, common Community policies, Economic and Monetary Union,
2. Second pillar(CFSP) is the common foreign and security policy, which comes under Title V of the EU Treaty,
3. Third pillar (JHA) is about the police and judicial cooperation in criminal matters, which comes under Title VI of the EU Treaty.

European Union Law makes the difference between the EU and any other international organization since it has built a body of law binding on all member states, substituting national laws when these conflict and backed up by rulings from the Court of Justice. The creation of this body of law has involved the voluntary surrender of powers by the member states in a broad range of policy areas, and the development the member states are subject.

Collectively, all the principles, policies, laws, practices and goals agreed and developed within the EU are known as the *acquis communautaire*. This includes case law that has resulted from decisions taken by the Court of Justice. The seven major treaties provide the EU legal order: the Treaty of Paris, the two Treaties of Rome, the Single European Act, Maastricht, Amsterdam, and Nice Treaties. These set out the basic goals and principles of European integration, and describe the powers of EU institutions and of the member states in their relationship with the EU. They have also set off thousands of individual laws, which come in five main forms as follows.

1. *Regulations* are the most powerful and play a central role in developing a

uniform body of European law. They are often designed to adjusting an existing law, binding on all member states, directly applicable, namely they do not need to be turned into national law, and take immediate effect in all member states.

2. *Directives* are binding on member states in terms of goals, although it is up to the states to decide how best to achieve those goals. They usually include a date by which national procedures must be established, and member states must tell the Commission what action they are taking.
3. *Decisions* are also binding, but they are usually specific in their intent and related to one or more member states, institutions, or even individuals. Some involve changes in the powers of EU institutions, some are directed towards internal administrative matters, and others are issued when the Commission has to adjudicate disputes between member states or corporations.
4. *Recommendations* and *Opinions* are not binding so it is debatable whether they can be termed law. They are sometimes used to test reactions to a new EU policy, but they are mainly used to encourage or provide adherence to classification of regulations, directives, and decisions (McCormick, 1997:108).

2.2.3 Common Foreign and Security Policy (CFSP)

Without waiting the completion of the stage of economic and monetary union, the EU has already taken steps in the direction of the stage of political union, which should progressively be based on common policies in the fields of foreign and security policy, on the one hand, and Justice and Home Affairs on the other. These fields, which are called the second and third pillars of the European Union, should more realistically be seen as the sites of construction of two wings attached to the

main edifice of the European Community.

Common Foreign Policy has taken its first steps by the European Political Cooperation, which provided for reciprocal information procedures and regular contacts in order to harmonize the viewpoints of the Member states in the field of international policy. The Treaty on European Union constitutes a separate pillar of the EU, since the way it operates and its intergovernmental nature distinguish it from traditional pillars of the Community, such as the Single Market and Trade policy (Title V). This difference is in the decision-making procedures, which require Member State consensus, whereas in traditional Community areas a majority vote suffices. As well, the instruments of the CFSP, like those of the third pillar, differ from those of the European Community. In Amsterdam, the amended Title V of the EU Treaty does, however, allow for adoption by a qualified in two cases: for applying a common strategy decisions defined by the European Council; for any decisions implementing a joint action or common position already adopted by the Council.

The Amsterdam Treaty with prescribing the objectives amended CFSP. These objectives are:

1. To protect the common values, fundamental interests, independence and integrity of the union,
2. To strengthen the Security of the Union in all ways,
3. To preserve peace and strengthen international security, in accordance with the principles of the UN Charter, the Helsinki Final Act and the Paris Charter; to

promote international cooperation,

4. To develop and consolidate democracy and the rule of law, as well as respect for human rights and fundamental freedoms (Moussis, 2002:142).

Finally, the Nice Treaty has changed the CFSP, for enhancing cooperation, which will be possible for the implementation of a joint action or common position if it relates to issues that do not have any military or defense implications. If no member states object or call for a unanimous decision in the European Council, a qualified majority, with a threshold of only eight Member States, adopts enhanced cooperation in the Council.

The Political and Security Committee will be authorized by the European Council to take appropriate decisions to exercise political control and strategic direction of a crisis management operation. This gives it an even more prominent role in the European Security and Defense Policy (ESDP).

2.2.4. Justice and Home Affairs (JHA)

Over the last fifty years the Member States have increased cooperation in the field of justice and home affairs at various levels: bilaterally, regionally (the Council of Europe) and globally (Interpol and the United Nations). Cooperation within the European Union is a more recent development. Although the Treaty of 1957 establishing the European Community (EC Treaty) includes as one of its objectives: the free movement of persons within the Community, it does not deal with the crossing of borders, immigration, or visa policy. Freedom of movement was viewed

in purely economic terms and concerned only for workers. Beginning in the seventies, the desire to extend this freedom to everyone and the growing importance of certain problems, such as cross-border organized crime, drug trafficking, illegal immigration, and terrorism, encouraged EU Member States to increase ad hoc cooperation in the field of justice and home affairs.

Unlike the foreign policy section, the field of home affairs was advancing much faster than that of the former in the EU system. The European Council of Tampere on October 1999 concluded number of common policy guidelines and priorities to develop the Union as an area of freedom and justice.

An actual European area of Justice: by improving entrance to justice with providing the public with better information on the legal systems of the Member States and by adopting common procedural rules for simplified and accelerated cross border litigation.

JHA aims to create a Union against crime for integrating crime prevention, stepping up cooperation against crime through the establishment of joint investigative teams, the creation of a joint structure for national police services, a unit made up of national prosecutors, magistrates, and police officers with the task of ensuring proper coordination between national authorities during investigations, the strengthening of the role of Europol and the drafting of common definitions, charges and penalties, and special action against money laundering.

It was also to create a common policy on asylum and migration for formulating

a comprehensive approach, put place a common European asylum system and uniform status for those who are granted asylum; fair treatment and a more vigorous integration policy for third country nationals who reside legally on the territory of the Member States, and common management of migration flows to tackle illegal immigration and trafficking in human beings.

The common values underlining the objective of an area of freedom, security and justice are long-standing principles of the EU. The challenge set out by the Amsterdam Treaty is to allow citizens to enjoy their long-standing democracies in common. Indeed, the three notions of freedom, security, and justice are closely interlinked. Freedom loses much of its meaning if it cannot be enjoyed in a secure environment and with the full backing of a system of justice on which all Union citizens and residents can count combat and contain those who seek to deny or abuse that freedom. The declared objective of the Union is to provide citizens with a high level of safety within area of freedom, security, and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia. The police forces, customs authorities and other competent authorities of the States; closer cooperation between judicial and other competent authorities in the Member states, and approximation where necessary, of rules on criminal matters in the Member States

The step-by-step approach of European integration is quite evident in the field of JHA, whereas questions relating to the free movement of persons, Asylum, Immigration, the management of external borders and judicial cooperation are not

fully solved up to now.

2.3 Human Rights as a Conditionality for Entry to the EU

2.3.1 The Internationalization of Human Rights

The issue of the internationalization of human rights entered the arena of international law and politics approximately 50 years ago with the adoption by the United Nations Universal Declaration of Human Rights in 1948. It is fundamental to note that in the light of developments in the past decades, human rights have become another branch of international law and politics. The impetus for the internationalization of human rights was World War II and atrocities associated with it.

The epoch after the Second World War witnessed significant transformations in global politics. The transformations in the field of human rights influenced international law, the concept of state sovereignty. The process, that can be referred to as “the internationalization of human rights”, considerably altered the shape of politics. The supranational forces that are pushing states for promotion and implementation of human rights have had great influence on the governance of states.

A second mechanism for the protection of human rights was the European Convention on Human Rights (ECtHR) signed in Rome on November 4 1950, which entered into force in 1953. The convention stated that an effective political

democracy and a common understanding and observance of human rights best maintain justice and peace. Individual nongovernmental organizations or groups of individuals who think that their rights were violated could lodge individual petitions against a particular Member State.

These two instruments enabled the work of building a European Community to proceed without a separate human rights foundation. To mark the beginning of their fiftieth anniversary year of the Universal Declaration, meeting in December 1997, appealed to all States to step up their efforts in the field of human rights by acceding to international instruments to which they are not yet party and ensuring more stringent implementation of those instruments.

2.3.2. The EU and Human Rights

Human rights considerations had not constituted a significant element within the EU's external affairs, which is cooperation agreements between the EU and developing countries, technical and financial assistance to them, the EU's trade preferences, and the European Political Cooperation (EPC), out of which the Common Foreign and Security Policy (CFSP) has developed. The EU, in theory, changed its human rights policy in respect of its external affairs when the end of the cold war was approaching. The end of the Communism threat was a real impetus for the EU to develop more idealist and human rights oriented external policies.

The European Union's activities fall within the general framework constituted by the United Nations Charter and the Universal Declaration of Human Rights, and

the International Pacts on civil and political rights and on economic, social, and cultural rights. These activities are also based on the commitments created by the main international and regional instruments for the protection of human rights. The priorities promoted by the international community in the final declaration and program of action adopted by the world human rights conference (Vienna, June 1993) created an action framework that is a particular source of inspiration for the European Union.

Three principles, arising from the Universal Declaration of Human Rights and the Vienna Conference of 1993, have formed the keystone of the international system for the protection of human rights:

1. Universality, which implies that no provision of a national, cultural or religious nature can prevail the principles preserved in the Universal Declaration of Human Rights,
2. Indivisibility, which prevents distinction between civil and political rights, and economic, social and cultural rights,
3. Interdependence, between human rights, democracy, and development.

With Europe being on the move from economic integration to political integration, the Human Rights issue came to agenda both as a guarantee of democracy, as a limit to the power of public authority, and as legitimating of that authority in terms of the rule of law (Neuwahl, 1995:1). The Treaties establishing the European Communities did not contain any specific provision on Human Rights, whereas the TEU constitutes the basis for a real step forward in the protection of

Human Rights. TEU devoted specific articles to Human Rights; in particular, the Article F (2) of TEU provides that:

“The Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 4, 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community Law.”

In fact, Human Rights have played important role in EC and EU external policies for many years, without any explicit legal basis, the EC organs have since the early 1970s applied Human Rights in the framework of the European Political Cooperation (EPC) in their relations to other states. Later, in the Article J.1(2) of the TEU explicitly laid down the respect for Human Rights and fundamental freedoms as one of five objectives of the CFSP. The EU attempted to develop a distinctive and consistent Human Rights vision by way of autonomous foreign policy instruments and in the framework of international organizations, the UN and the CSCE (Nowak, 1999:691). In this regard, it has become traditional practice to include the so-called political conditionality clauses in most of the economic and cooperation agreements with the third countries, which read as follows “respect for democratic principles and Human Rights inspires the domestic and external policies of the Community and of third country and constitutes essential element of this agreements” (Kardaş, 2002:138). This provided a legal basis to take restrictive measures vis-à-vis the third country in case of violations of Human Rights and democratic principles.

2.3.3. The Evolution of Human Rights Policy of the EU

Until now, the 1950 European Convention on Human Rights (ECtHR) has been the main legal instrument for safeguarding such rights in Europe. Although the European Community has not joined this Convention as such, all the Member States are parties to it and Court of Justice rulings have been based on the principles set out in the Convention and on the common constitutional traditions of Member States for protection human rights in the European Union.

In addition, the preamble to the Single European Act and subsequently the Article 6 of the Treaty on European Union formally embodied the obligation on the European Union to respect the rights defined in the European Convention on Human Rights. The question of whether the European Community should formally accede to this Convention was discussed prior to the revision of the Treaty on European Union, however the Court ruled on 28 March 1996, that under Community law as it stands it was not within the Community's powers to accede to the Convention.

Nevertheless, the European Court of Justice has developed jurisprudence for thirty years, which created measures adopted by the institutions of the Communities, and by Member States, besides they must be in accordance with minimum Human Rights standards (Nowak, 1999:697).

Even so, the Amsterdam Treaty reinforces the existing provisions on the protection of fundamental rights (Articles 6 and 7):

1. Establishing a number of principles on which the Union is founded (liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law),
2. Giving the Court of Justice powers to guarantee that these principles are respected by the European institutions,
3. Providing for restrictions for a violation of these values by a Member State (postponement of certain rights of the Member State).

2.3.4. Human Rights Requirements Adopted by the Amsterdam Treaty

Until the Amsterdam Treaty entered into force, the Article O of TEU did not contain any formal requirements, apart from to be a European State. In addition to the relevant economic and legal criteria, the European Council decided on June 1993 in Copenhagen on a number of political criteria for accession to meet by candidate countries in Central and Eastern Europe. These countries must have achieved stability of institutions guaranteeing democracy, the rule of law, Human Rights, and respect for and protection of minorities. The appraisal of the political criteria was divided into four components: Democracy, Rule of Law, Human Rights, and protection of and respect for minority rights.

Amsterdam was a significant step in this direction. Although the promotion and protection of Human Rights do not yet figure among the main objectives of the Union, the TEU for the first time provides that the Union be founded on the principles of liberty, democracy, Human Rights, and the Rule of Law. In the Common Provisions of the TEU (Title I), the central provision on Human Rights, Article 6 (Former Article F), has been substantially revised. Instead of the first

paragraph, referring to the national identities of the Member States Article 6(1) TEU reads as follows:

“The Union is founded on the principles of liberty, democracy, respect for human rights, and fundamental freedoms, and the rule of law that are common to the Member States.”

Whether or not Human Rights regarded as an aim or only as one of the basic principles of the EU, they steadily achieved such significance in the Union’s internal and an external policy that they were declared in the Amsterdam treaty was definite for the EU membership. According to a new passage to the Article 49 of TEU (ex Article O), only a European State that respects the principles set out in Article 6(1) may apply to become a member of the Union. The new Article 7 of TEU for the first time establishes a procedure for the suspension of rights of the Member States in the case of a serious and persistent breach by a Member State of principles mentioned in the Article 6(1).

The procedure consists of two steps. First, the Council, meeting in the composition of the Heads of State or Government and acting unanimously (without the participation of the Member State concerned) on a proposal by one third of the Member States or by the Commission, after obtaining the assent of the European Parliament may determine the existence of a serious and persistent breach. Second , the Council acting by a qualified majority as laid down in the Article 205(2) of TEC may decide to suspend certain rights deriving from the application of the TEU to the State in question including the voting rights in the Council (Nowak, 1999: 689).

2.3.5. The Charter of Fundamental Rights of the European Union

The Cologne European Council took the view that fundamental rights at Union level should be consolidated in a Charter to make them observable. The Heads of State and Government intended that this Charter would include the general principles embodied in the 1950 Council of Europe Convention, those derived from the constitutional practices regular to the Member States, the fundamental rights pertaining only to the Union's citizens, the economic and social rights contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers, and the principles deriving from the case-law of the Court of Justice and the European Court of Human Rights.

However, the Heads of State and Government who met in Nice, decided not to include any reference to the Charter in the Treaty. This means that, while they recognize its political value (it is the first time that traditional civil and political rights have figured side by side in a single text with economic and social rights), the text still has no binding legal effect. The European Charter of Fundamental Rights, which was officially proclaimed at the Nice Summit in December 2000, will promote coherence between the EU's internal and external approaches. The Charter makes the principal importance and relevance of fundamental rights more visible to the EU's citizens by codifying material from various sources of inspiration, such as the European Convention on Human Rights, common constitutional traditions, and international instruments.

For the first time, all the rights that had been scattered throughout a variety of legal instruments (international conventions, national law, etc.) were combined in a

single document. By bringing visibility and clarity to fundamental rights and freedoms, the Charter helps to set up citizenship of the Union and create an area of freedom, security, and justice in the words of the preamble. The Charter reinforces confidence as to the law on the protection of fundamental rights, which in the past was guaranteed only by the case law of the Court of Justice.

The Charter consists of a preamble and 54 articles divided into 7 chapters: Dignity, Freedoms, Equality, Solidarity, Citizens' rights, Justice, General Provisions

In conclusion, we can list the main peculiarities of the Human Rights policy of the Union as follows:

1. Recognizing that respect for Human Rights among its neighbors and partners has an enormous impact on its own security,
2. Understanding with history that respect for Human Rights is the only enduring foundation for building peace and harmony,
3. Forming a common foreign policy within which Human Rights must be principal element,
4. Cooperating with a vast number of other countries,
5. Playing a key role in many international organizations concerned with Human Rights,
6. Enlarging financial sources for humanitarian aid.

CHAPTER III: AMENDMENTS FOR POLITICAL CRITERIA OF COPENHAGEN

Of the previous two chapters, the former has scrutinized the historical evolution and contemporary structure of the Turkish Law Enforcement system and forces (the Gendarmerie and the Police), and the latter has tried to summarize general evolution and structure of the European Union and its predecessors. Especially in political dimension, it is essential to make comprehensible what following chapters explain in real. In fact, Turkish Law Enforcement system has implemented the Western norms, at least by adopting its laws and methods for more than 200 years. On the other hand, the formal acceptance of Turkey's candidacy to European Union (EU) membership in Helsinki Summit in 1999 became a turning point, which transformed this Western-oriented model to a real one, which is being together with the West.

Nevertheless, the EU gave a clear membership perspective to Turkey, only if Turkey compiled with Copenhagen criteria, which are the fundamental principles of the Union, providing that it has not only been built as an economic community, but also as a community with common values such as, democracy, the rule of law, human rights, and respect for and protection of minorities. Most of these values and criteria made by Turkish governments in post-Helsinki period in order to fulfill the criteria are actual membership prerequisites for Turkey's accession, in particular directly or indirectly related to Turkish Law Enforcement System.

International organizations have criticized Turkey, in spite of signing of most of the International Conventions on Human rights, for not endorsing some of them

and approving some with abstaining. Above all, the European Court of Human Rights (ECHR) and Amnesty International (AI) warned Turkey persistently for the law enforcement codes and their implementations. Although Turkey had fulfilled many improvements since the mid-1990s, the real advantage has become from 1999 to 2004, along with Helsinki Summit. Before explaining amendments and reforms, it is necessary to list the arguments for which the EU has criticized Turkey.

The main subject, which separated the developing process from the previous ones, is that this time the Western- oriented model, put into action so far by Turkey, and has to be carried out with the strict management and inspection of Westerners.

Particularly, in 1997 in the Luxembourg Summit, the EU prepared 1300 page-study, *Agenda 2000* described as a comprehensive strategy for strengthening and widening of the Union, and then the EU commission has commenced to evaluate the progress of candidate states and Turkey even though her candidacy was rejected by the EU Council in Luxembourg. Namely, this added a new aspect to the Turkey's modernization process so that the efficiency of the implementation began to be guided and monitored by the West itself, taken as a model since Sultan Selim III. According to the Commission.

“Turkey's record on upholding the rights of the individual and freedom of expression falls well short of standards in the EU. In combating terrorism in the south east, Turkey needs to exercise restraint, to make greater efforts to uphold the rule of law and human rights and to find a civil and not a military solution... Recent developments in the administration and the education system, while intended to strengthen secularism, nonetheless underline the particular role of the military in Turkish society... There are ambiguities in the Turkish legal system with regard to civilian political control of the military.” (Usul, 2003:238)

The Cardiff European Council, which took place in June 1998, welcomed the Commission's confirmation that it will submit its first regular reports on each candidate progress towards accession at the end of 1998. In case of Turkey, the European Council noted that "the report would be based on Article 28 of the Accession Agreement and the conclusions of the Luxembourg European Council"².

After the Agenda 2000, the commission declared its first progress reports about the Central and Eastern Europe Countries (CEEC), Cyprus, Malta, and Turkey met the membership criteria. The reports differentiated political criteria, economic criteria and other obligations of membership in the line with the method adopted by the Agenda 2000. As early mentioned, the political criteria were the stability of institutions guaranteeing democracy, the rule of law, human rights, and the respect for and protection of minorities, the report also asserted that "only Slovakia did not satisfy the political conditions, along with Turkey" (Usul, 2003:244).

Since the Luxembourg Council, the EU attempted to maintain position that Turkey is still very much eligible for accession, however needs to draw closer to the EU before actual negotiations for accession can begin. This strategy known as the Accession Partnership, concentrates on the required political and economic reforms that Turkey would need to make for accession negotiations, also seeks to mobilize all forms of economic and humanitarian aid to Turkey within a single framework. The partnership delineated the political criteria that Turkey will have to meet.

² Article 28 states that "as soon as the operation of the agreement has advanced far enough to justify envisaging full acceptance by Turkey of the obligations arising out of the Treaty establishing the Community, the contracting parties should examine the possibility of the Accession of Turkey to the Community"

3.1. The Process of Accession Partnership and National Programme

Until the declaration of the Accession Partnership, the EC pointed out the same points mentioned in the first report and evaluated the latest developments made by Turkey in its following 1999-2000 reports. Moreover, the Commission proposed the Accession Partnership for consulting Turkey and based on the intermediate objectives, principles, and conditions decided by the Council. It also took into account the analysis of the 2000 Regular Progress Report of Turkey towards membership (Baykal, 2002:24-25). These objectives can be listed as follows:

1. Strengthening constitutional and legal guarantees in the use of freedom of expression in the line with the Article 10 of the ECtHR,
2. Guaranteeing the right to freedom of association and peaceful assembly and encouraging development of civil society,
3. Strengthening legal provisions and undertaking all necessary measures to reinforce the right against torture practices,
4. Aligning legal procedures concerning pre-trial detention with the provisions of the ECtHR,
5. Reinforcing opportunities for legal redress,
6. Increasing training on human rights issues for law enforcement officials in cooperation with single countries and international organizations,
7. Improving the functioning and efficiency of the Judiciary,
8. Maintaining the de facto moratorium on death penalty in short-term, abolishing it and signing the Sixth additional protocol to ECtHR,
9. Decreasing regional disparities,

10. Permitting the use of mother tongue in TV/radio broadcasting,
11. Guaranteeing full enjoyment by all individuals without any discrimination of all human rights and fundamental freedoms,
12. Reviewing the Turkish Constitution and other relevant legislation with a view to guaranteeing rights and freedoms of all Turkish citizens as set forth in the ECtHR,
13. Ratifying the International Covenant on Civil and Political rights and its optional Protocol and the International Covenant on Economic, Social and Cultural rights,
14. Adjusting imprisonment conditions in prisons to bring them into the UN Standard Minimum Rules for the treatment of Prisoners and other international norms,
15. Aligning the constitutional role of the National Security Council as an advisory body to the Government in accordance with the practice of EU member states,
16. Eliminate the continuation of state of emergency in the Southeast³.

The Accession Partnership caused lengthy discussions during its drafting and adoption by the Commission and the Council both in Turkey and in the EU. Turkey criticized this because the Cyprus problem and the Turkish-Greek relations were laid down as conditions. The Nice Summit in December 2000 and the Nice Treaty signed by the member states, disappointed Turkey once again when it did not mention her in its projections on the institutional structure designed for 27 members was that the projection was based on the candidate countries currently involved in accession negotiations by that time (Baykal, 2002:26).

3 Tesev “ AB İzleme Projesi Ara Rapor” www.tesev.org.tr

Turkey's National Programme (NP), which set out her priorities and objectives for the necessary transformation of the country, in order to prepare for the Turkish Government adopted membership to the EU on March 19, 2001. In the introduction of the NP, it was stated that "the modern Turkish Republic is founded on the principles of peaceful foreign policy, secularism, the rule of law, a pluralistic and participatory democratic system, and fundamental rights and freedoms".

The Turkish Government had undertaken in the NP to closely monitor advance in the field of human rights, democracy, and the rule of law and regularly evaluate the work underway for harmonization with the EU acquis and to take all necessary measures to accelerate ongoing work.

In the context of reform process regarding democracy and human rights, the reviews of the Constitution would have priority, as well as the constitutional amendments would establish the framework for the re-evaluation of the other legislation. In conclusion, the constitutional amendments undertaken by the Parliament on October 3, 2001, became one of the priorities mentioned in the NP. According to Özbudun, these amendments summarily:

"deal with matters of detail or are simply changes in language which did not create a new legal situation. However, some of them are in the nature of genuine democratic reforms such as the shortening of pre-trial detention periods, the limitation of the death penalty, the changes that made the prohibition and dissolution of political parties more difficult. In short, while these amendments are not sufficient to satisfy fully the European Union criteria or to meet the expectations of the domestic public opinion, they constitute a modest but important step in the right direction"⁴

4 2001 Constitutional Amendments prepared by Ergun Özbudun on www.tesev.org.tr

The first Article of the Act No. 47095 replaced the phrase “no thoughts or opinions” in the fifth paragraph on the preamble of the Constitution (Cons.) with “no activity”. Additionally, the Act No. 4709 has abolished the grounds for restrictions the Article 13 of the Constitution under the heading “restriction of the Fundamental Rights and Freedoms” as “the indivisible integrity of the state with its territory and nation, national sovereignty, the Republic, national security, public order, general peace, the public interest and public morals or the protection public health”. In the new version of the Article, fundamental rights and freedoms may be restricted “ only based on specific reasons listed in the relevant articles of the Constitution without prejudice to the values defined therein and only by law”. This is appropriate to ECtHR, which has not allowed any general restriction. Furthermore, the new text brings two new additional guarantees; the former is the rule of restriction not to affect the core of right and the latter is not to be against the proportionality principle. Article 14 under the heading “Prohibition of the Abuse of Fundamental Rights and Freedoms” has been amended to limit the grounds for restricting fundamental rights. Together with this the revision, the Constitution principally adopted the regulation made by the Article 176 of the ECtHR.

The new Civil Code was enacted on November 22, 2001, which arranged issues such as, gender equality, the rights of children, the protection of poor and the freedom of associations and it has started to be implemented since January 1, 2002.

The Copenhagen European Council on December 2002 concluded that if the European Council on December 2004, based on a report and recommendation from

5 The Official Gazette no 24556 dated 17.10.2001

6 It regulates the general restriction of the rights.

the Commission, decides that Turkey fulfills the Copenhagen Political criteria, the EU will open accession negotiations with Turkey immediately. It also endorsed that the Commission's approach and announced that "accession strategy for Turkey shall be strengthened". As a part of this process, it has invited the Commission to submit a proposal for a revised Accession Partnership and announced a significant increase in pre-accession financial assistance for Turkey. By the way, Turkey prepared its revised NP on July 2003, in order to adopt the measures made by the Revised Accession Partnership; and then the revised NP organized the priorities in a more accurate manner with their completion time.

By so far, Turkish Grand National Assembly (TGNA) has enacted seven major laws named as the harmonization laws or democratization packages, since the enactment of Constitutional Amendments. Seven harmonization packages (February, March, August 2002 and January, February, July and August 2003) were enacted in order to align several laws with the Constitutional amendments as well as with the European norms.

The Harmonization Packages aim at aligning the Turkish legislation with the international norms in the field of democracy and human rights, particularly with regard to eradicating torture and ill-treatment, strengthening freedom of thought, conscience and religion, freedom of expression and freedom of peaceful assembly and association. Table 1 illustrates the numbers, enactment dates of them, and the changed or abolished law articles.

TABLE 1 Harmonization Packages

NO	Law no	Enactment date	Changed Laws and Article numbers
1	4744	February 6, 2002	Criminal Procedure Code: 107,128 State Security Courts Law: 16 Anti-Terror Law: 7,8 Turkish Criminal Code : 159,312
2	4748	March 26, 2002	Press Law : 16, ad.1,2 Law on Associations: 4,5,6,7,11,12,34,38,43 State Security Courts Law: 16 Act on Civil Servants 13 Province Governance Law: 29 Law on the Organization, Duties, and Competences of Gendarmerie: 9 Political Parties Law: 101,102,103 Law on Assembly and Marches: 9,17,19,21
3	4771	August 3, 2002	Press Law 5, 21,22,24,25,3031,34, ad. 3 Criminal Procedure Code: 327,335 Law on Associations: 11,12,15,39,40,45,46,47,56,62,73 Law on Legal Procedures 445,448 Law on the Establishment and Broadcasting of Radio and Television Channels 4,26 Act on the Duties and Competences of the Police 8,9 ,11,12,13, ad. 3 Law on Assembly and Marches: 3,10, Turkish Criminal Code 159 Law on Foundations 1 Decree Law on the Establishment and Duties of Directorate General for Foundations 3 Law on Free Zones: provisional Article 1 Foreign Language Education and Teaching Law 1,2
4	4778	January 2, 2003	Record of Convictions Law 5,8 Act on Press 15 Criminal Procedure Code: 316 Law on Establishment, Duties and Trial Procedures of Juvenile Courts 34 Act on Stamp Tax ad. 1 Law on Associations 5,6,11,12,16,18,44 State Security Courts Law 16/4 Act on Petition 1,2,3,4,7,8 Law on Human Rights Breach Investigation Boards 7 Law on Municipality Governments 8 Act on Prosecution of Civil Servants and other Public Employees 2 Act on Deputy Elections 7,11,39 State of Emergency Act 3-c Political Parties Law 8,11,66,98,100,102,104,111 Turkish Criminal Code 245 Turkish Civil Code 91,92 Law on Foundations 1

5	4793	January 23, 2003	Act , No. 4771 provisional Article 2 Code of Criminal Procedure 327,327a,335 Law on Associations 82 Law on Legal Procedures 445,445a447,448
6	4928	July 15, 2003	Record of Convictions Law 9 Act No. 4771 1-A Act changing Criminal Procedure Code & State Security Courts Law 31 State Security Courts Law 16 Administrative Courts Procedure Act 53, provisional 5 Act on Housing ad. 2 Population Law 16 Law on the Establishment and Broadcasting of Radio Stations and Television Channels 4,15,32, provisional 10 Act on Elections 55a,149a Act on Cinema, Video and Musical Works 3,6,9 Anti-Terror Law 1,8,10 Turkish Criminal Code 453,462 Law on Foundations 1
7	4963	July 30, 2003	Act on the Establishment and Trial Procedures of Military Courts 11 Act on Ministries: Chart No.1 Code of Criminal Procedure ad. 7 Establishment, Duties and Trial Procedures of Juvenile Courts 6 Law on Associations 1,4,8,10,16,17,31,38,83 Law on The National Security Council 4,5,9,13,15,19, provisional 4 Law on Supreme Council of Public Accounts ad. 12 Anti-Terror Law 7 Law on Assembly and Marches 15,16,17,18,19 Turkish Criminal Code 159,169,426,427 Turkish Civil Code 56,64,66,82,94 Decree Law on the Establishment and Duties of Directorate General for Foundations ad.3 Law on Foreign Language Education and Teaching 2

The following sections are to study the legal amendments, with their relation to Turkish Law Enforcement system in five subdivisions. In each section is to commence with related literature and constitutional regulations and amendments, then go on with explaining other legal changes and administrative instructions.

3.2. The Right to Life

The EU and international organizations have accused Turkey of not signing the sixth Additional Protocol to ECtHR, and abolishing the death penalty. This issue has been accepted as the most sensitive argument by Turkish side, even though Turkey has not executed any death sentence since 1984. In addition to, both the first regular progress report in 1998 and Accession Partnership warned Turkey to lift the death penalty and sign the Sixth Protocol. The Article 2 of the ECtHR and its Additional protocol arrange the Right to Life, the most important and basic of all other human rights (Sönmez, 2003:140). The Article 2 of the ECtHR states that¹:

Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force, which is no more than necessary:

- (a) In defense of any person from unlawful violence;
- (b) In order to affect a lawful apprehension or to prevent escape of a person lawfully detained;
- (c) In action lawfully taken for quelling a riot or insurrection.

On the one hand, the Article 2 gives states the negative obligation, the responsibility not to end citizens' life on purpose or by accident; on the other, it also gives the positive obligation, which is the responsibility to protect individuals' life. The positive obligation is constituted by the points, such as enacting a law in order to provide the safe of person's life, protection of people under the vital danger, and determining the conditions in which using force for killing people, which are

¹ European Convention on Human Rights and its Five Protocols on www.hri.org

envisaged as exceptions in the second paragraph of the Article 2.

In December 2000, the European Commission, the Council, and the Parliament jointly signed and proclaimed the Charter of Fundamental rights of the European Union, and its second Article described the right to life as “everyone has the right to life, and no one shall be condemned to the death penalty, or executed”. In this way, the death penalty is abolished on the European territory, even though the current legal status of the Charter is unclear.

On the other hand, the Council of Europe represented a death penalty free area; no execution has been carried out on its territory since March 1997. Of forty members abolished the death penalty, three others (Turkey, Armenia, and Russia) established a moratorium on executions, and the Committee of Ministers often invited them to speed up moves towards abolition of the death penalty in all circumstances has been recommended by the parliamentary since 1994, and reflected a general international trend.. The Committee of Ministers of the Council of Europe adopted a text banning the death penalty in all circumstances, including for crimes committed in times of war and imminent threat of war, described as derogations or reservations in sixth protocol to the ECtHR. The new text, Protocol No.13 to ECtHR will not allow any exception or derogation to any further extent. The text has opened for signature to all member states on May 3, 2002 in Vilnius².

The first NP in 2001 took up the abolition of the death penalty from the Turkish Criminal Code as mid-term priority and emphasized the continuance of the

² on www.belgenet.com/aihs -13

de-facto moratorium on its implementations. Up to the latest modifications, there were more than forty articles proposed the capital punishment in several laws. These are:

- Turkish Criminal Code: 125,126,127,129,131,133,136,137,146,149,156 450
- Military Criminal Code: 54,55,56,59,60,62,63,64,69,70,75,79, 80,89,91, 94, 97, 101,102,126,127,136,159,160, ad.4,5
- Law on Smuggling: 30; the Forest Law. 110
- Law on the National Park of Historical Gelibolu Peninsula: six

The Article 15 of the Act No. 4709 dated October 3, 2001, added to the Article 38 of the Constitution the seventh paragraph in which the death penalty is to be barred with the exception of in times of war, imminent threat of war, and terror crimes. However, Özbudun states that the exception of terror crimes does exist neither on the sixth protocol and, nor the laws and practices of the Member States of the Council of Europe (COE) so that the amendment, albeit a positive progress, remained deficient for the European standards³.

The Act No. 47714 enacted August 3, 2002, as well named as the third harmonization package, was endorsed by the Parliament in order to be provided accordance with the Constitutional amendments. The first Article of the law states that the death penalty provisions of the Turkish Criminal Code, Law on Smuggling and Forest Law are abolished and converted into the life sentence provision except for in times of war, imminent threat of war, and terror crimes.

³ On www.tesev.org.tr

⁴ The Official Gazette no. 24841 dated 09.08.2002

Being line with the sixth protocol additional to ECtHR, the death penalty has become abolished from the Turkish Law System except for the cited three exceptions. Nonetheless, another additional protocol to ECtHR numbered as 13 has opened for signatory of the Member States of the COE during the time Turkey making its regulations for lifting the death penalty. The new protocol aims to lift the death penalty punishment without any reservation and derogation throughout Europe; that is to say, Turkey's actions were again back the European norms, furthermore Turkey lifted the death penalty with exceptions even one of them, terror crimes, was not mentioned in the Sixth protocol.

For this reason, this first Article of the Act No. 4771 has been changed by the Act No. 49285, also named as the sixth harmonization package, all the death penalties proposed in other laws was turned into life sentences even for terror crimes and in times of war with the exception that of the Military Criminal Code. These laws are the Turkish Criminal Code, Law on Smuggling, Forest Law, and Law on the National Park of Historical Gelibolu Peninsula.

In spite of these amendments on death penalty, the Europeans have condemned Turkey for adjusting revisions for the provisions of the sixth protocol opened to sign in Stockholm in 1983 in which, there were no reservations or derogations for terror crimes. To dispose of these criticisms, Turkey signed the protocol No.6 on January 15, 2003 and Turkish Grand National Assembly (TGNA) enacted the Act No. 4913 dated June 26, 2003 named as "the law on the approval of signing the sixth protocol related to the abolition of the death penalty". In conclusion, the lifting of the death

5 The Official Gazette no. 25173 dated 19.07.2003

penalty, one of the most susceptible issues in the accession process for Turkish side, was succeeded to some extent.

While Turkey has been implementing these advances, the Committee of Ministers of the COE accepted the Protocol No. 13, which legalized the elimination of the death penalty at any case on February 21, 2002. Being opened to sign for the Member States of the COE, it came into effect on July 1, 2003 due to providing required ten signatory states condition fulfilled. In connection with this, the European Circles have started to condemn Turkey, remaining regulated the abolition of the death penalty with three exceptions, after the legitimacy of the 13th Protocol. Because of this, on January 9, 2004 Turkey had to sign the 13th Protocol, by which the death penalty is lifted not only in peacetime but also in time of war⁶. By doing that, Turkey has compiled fully with the European norms, and then Turkey became a part of the Europe where no death penalty remained. According to Bakır Çağlar, “this was a document, one of the standards to be at the same line with the humanitarian law, must be signed in order to acquire a place in the European region”⁷.

3.3. The Right to Personal Liberty and Security

The provisions related to the providing and protection of personal liberty, which is at the basis of all fundamental freedoms, are premier elements of international human rights texts and national constitutions. This right has a vital importance for not only people, but also the police and gendarmerie (Ünal, 2001:135). Hence, the most important Article of the ECtHR is the fifth one, which

⁶ Amnesty International Press Release on February 13, 2004 on www.amnesty.org

⁷ On Milliyet June 10, 2004

prescribes the right to personal security and freedom. The fifth Article includes two types of provisions (Gözübüyük, 2003:221), one of which is the recognition of the personal liberty and security, the other of which is the measure to protect personal liberty and security, namely proposed guarantees. For this reason, the Article impedes any arbitrary violations of the right by individual states. It lists one by one the conditions in which citizens can deprive of their on freedoms. These conditions for pre-trial police custody are:

- The detention of a person to execute a sentence given by a court,
- The apprehension of a person to provide committing a legal duty,
- The apprehension of persons for bringing before the authorized official
- To take necessary measures for preventing children,
- To undertake required provisions for public order and public health,
- To apprehend a person in order to deport or extradite.

Nevertheless, the same Article proposed the rights of a person detained in any instance cited above by its sub-articles respectively 2,3,4,5 as follow (Gözübüyük 2003:236):

1. The right to learn the imputation,
2. Bringing the person detained before a judge or legal officials:
 - 2a. The police custody periods: Before bring the person detained before a judge in a maximum four-day period was assessed,
 - 2b. The detention period: According to the Article 5(3), in the event of detention of a person arrested and brought before a judge every one has the right to claim a fair

decision as soon as possible, and the right to demand to apply an appeal court in case of illegal judgment,

2c. The release on bail should be assigned to warranty so as to prevent probable escape of the suspect. However, the aim of the warranty is only for ensuring the attendance of the suspect to the trial, not to compensate the damages caused by the crime.

3. Habeas Corpus (the individuals' right to a decision by a court as to the legality of a detention). Article 5(4) requires at the least that such an action must be authorized in national law, both as to the grounds and as to procedure involved. Where someone has been deprived of his or her liberty, he or she is entitled by Article 5(4) to an immediate decision by a national court as to whether the deprivation is legal and to an order for his/her release if it is not legal (Kay, 1995:347).

4. The right to compensation: the Article 5(5) requires a recompense for every one who has been the victim of custody or apprehension in breach of the provisions of the Article.

The EU and the ECHR has often accused of Turkey for abusing the right to liberty and security on the grounds the prolonged detention and custody periods, and withholding information from the relatives of the detained persons' detention circumstances. Moreover, ECHR has many times sentenced Turkey to compensate for the violation of the fifth Article. Because of this Turkish Government prepared many related amendments in the Constitution and other legal texts. The NP 2001 enlisted these as:

1. Reviewing the Article 19 of the Constitution,
2. Reviewing the Law on the Duties and Competences of the Police, No. 2559; the Law on the Organization, Duties and Competences of the Gendarmerie, No. 2803; and the Law on the Coast Guard Command, No. 2692,
3. Reorganizing the Forensic Medicine System,
4. Enacting the Turkish Criminal Code and Code of Criminal Procedure,
5. Amending the State Security Courts Law.

In this context, the Act No. 4709 dated October 3, 2001 was the first amendment and reorganized the sixth and seventh paragraphs of the 15th Article of the Constitution. Firstly, the Article 19 under the heading “Personal Liberty and Security” has been amended by replacing the phrase “in case of offences committed collectively, within fifteen days” in the fifth paragraph by the phrase “in the case of offences committed collectively, within four days”.

Secondly, the sixth paragraph of Article 19 has been amended in order to delete the special restriction on the provision about the notification of the next of kin of the person arrested or detained immediately. Thus, the fourth paragraph now prescribes that “notification of the situation of the person shall be made to relatives immediately”.

Thirdly, the phrase “according to principles of the law on compensation” is added to the last paragraph on the right to seek compensation from the state provided for persons subjected to treatment contrary to provisions. That is the most reformist and positive part of the constitutional amendment made by the Act No. 4709.

The Code of Criminal Procedure Law (Art. 107,128), the Law on the Duties and Competences of the Police (Art. 13) , No. 2559, the Law on State Security Courts and the Regulation on Arrest, Custody and Interrogation (Art. 6,9,14,21) were changed to be parallel with the amendment of 19th Article of the Constitution related to detention periods.

Firstly, the Act No. 47448 dated February 6, 2002, named also as the first harmonization package changed the phrase in the Article 107(1) of the Code of Criminal Procedure as “all of the decisions related to detention or prolonging of detention must be notified immediately to a relative of suspect or any one determined by him-her”. In this way, the absolute notification principle substituted the former provision regulating the issue as “the suspect himself or herself may notify any relative or order it from officials”. Consequently, this provision of amendment realized the full conformity with that of the ECtHR.

The first harmonization package also abolished the phrase “the detention may be prolonged to seven days for the crimes committed collectively provided that the demand of the public prosecutor and the approval of it by the judge” in the Article 128(2) of the Code of Criminal Procedure. Furthermore, the obligation for the notification of relatives or chosen persons is given to the public prosecutor with the phrase of 128(3) as “a relative or person chosen by the suspect should immediately informed about the apprehension or its extension by the written order of the public prosecutor”.

8 The Official Gazette no 24676 dated 19.02.2002

The 10(E) Article of the Act No. 4771 dated August 3, 2002, amended the Article 13(5) of the Law on Duties and Competences of the Police as “the apprehension of a person is immediately informed to his-her legal relatives” for being parallel with amendments cited above. However, the using of the term legally relatives narrowed the original regulation made by the Act No. 4709, because it cited that a relative of suspect or any one chosen by the detainee. This situation is another indication of what the thesis tries to prove, Turkey has always hesitated the whole adoption of the Western norms.

The fifth Article of the Act No. 4744 amended the Article 16 of the Law on State Security Courts as “the public prosecutor may order to prolong the interrogation period to four days for the crimes committed collectively, owing to any failure in gathering evidences, the presence of a large number of suspects, and so”. Moreover, the Article five of the Act No. 4744 shortened the custody periods for the crimes committed collectively from seven days to four days and it changed the maximum limit for them from 10 days to 7 days in the areas under the state of emergency. The last change has compiled with the constitutional amendments, since it proposed clearly that the periods would be prolonged in the areas under the state of emergency, martial law and in times of war, but the judge has to listen the suspect before giving any decision⁹. The detainee and the person about whom the public prosecutor gave the order of prolonging custody period to four days have always the right to consult a lawyer. Accordingly, the last Article the Act No. 4744 Abolished the provision prescribed in the Article 16 of the Law on State Security Courts as the judge would participate in the negotiations between the suspect and the lawyer if it

⁹ The Constitution Article 16-3

were necessary. Eventually, the Act No. 4928 dated July 15, 2003 also named as the sixth harmonization package annulled all of the former differences between interrogation procedures of the Law on State Security Courts and the Code of Criminal Procedure.

On September 18, 2002, the Turkish Government proclaimed a new regulation making amendments of the Regulation on Arrest, Custody, and Interrogation issued firstly on October 1998 in order to comply with the constitutional and legal changes cited above in line with the COE standards. In the outset of the apprehension or seizure, everyone has the right to be informed about the reason of apprehension and the imputation, and to be warned with the rights, remaining silent, consulting a lawyer with a written authorized paper, if not orally, regardless of any crime differentiation. It is if the suspect informs a relative or a chosen person about his-her detention or prolonging of it by a decision of the public prosecutor, in the Article 9(1).

The Article 14(1) proposes that no one can be deprived of his-her liberty for more than these periods (24 hours-4 days) without any judge decision. However, the periods may be prolonged to 7 days for the crimes charged by the Law on State Security Courts and committed in the areas under the state of emergency with the demand of the public prosecutor and the approval of the judge. The judge must listen to the seized person before giving any decision about the extension. Turkey has mostly ended the compensation judgments of ECHR for the violation of the Article five of the ECtHR and decreased the negative statements of the EC's progress reports for the breaches in the use of the right to liberty by making arrangements mentioned

above. To sum up, the police custody periods for the crimes committed collectively were shortened from 15 days to 4 days in the Constitution. They also shortened from 7 days to 4 days in the Code of Criminal Procedure. They were also proposed as four-day maximum limit for the crimes charged by the Law on State Security Courts in areas not under the state of emergency, whereas it remained 7-day limit in the state of emergency. In addition, the amendments also abolished the presence of exceptional conditions for notification of relatives, such as security and secrecy of the interrogation so that the obligation of notification gained an absolute situation anymore.

Amendments related to searches and seizures: The Act No. 4709 has amended the Articles 20, 21, 22 of the Constitution, which are related to the issues such as the secrecy of the private life, the domiciliary inviolability, and the communication freedom. The revision has amended the former phrase that the judge decision is required for restricting of the fundamental rights, if not a written order of competent authority is necessitated in case of emergency, and this written order must bring before a judge to approve in 24 hours, otherwise it would become invalid. Because of this, the previous exemptions the incidence of a judge decision and formal written command have been abolished by the strengthening the guarantees cited in the articles. In particular, it abolished the former phrase "the exceptions required by judicial interrogation" are legally assured so that it precluded the exploitations set off by the phrase. The new Article 20 recommended the restriction reasons as "national security, public order, the prevention of committing crimes, public moral and the protection of others" rights due to abolishment of the general restriction provisions in the Article 13 of the Constitution. The amendment provided the

accordance with the sixth Article of ECtHR prescribing under the heading “the protection of private life and the family”.

In this framework, the Act No. 4771 has changed the sixth Article of the Law on the Duties and Competences of the Police to determine who the authorized officials are both in “the preventive and judicial searches”. According to the Article, the highest provincial official of the area is the competent authority for ordering the search warrants in the preventive searches, whereas the judge and in case of emergency others listed in the Code of Criminal Procedure are the competent authority for ordering search warrants in the judicial searches. This prevented the abuses the private life right by the law enforcement officers during the searches. Subsequently, the Article 97(1) of the proposes that the judge is only the competent authority in the judicial searches, however in case of emergencies the public prosecutors and as the assistant of them, the law enforcement officials may take the decision of the searches.

To adopt the amendments cited above, the Ministries of Justice and Internal Affairs proclaimed the regulation on the Judicial and Preventive Searches on May 24, 2003 for determining the basics and procedures of search conditions prescribed in the laws. The regulation did separately list the preventive and judicial searches, as follows:

The Judicial Search and its conditions: the judicial search is the one made after committing of a crime in order to find criminals, crime instruments, and evidences. The competent authorities can search for the clues of the crime on people clothes, in

their houses, and the properties within the limits of people's private and family lives under the conditions accordingly listed (Yıldız, 2003:252-253).

- The presence of a reasonable suspicion,
- A judge decision or a legal written order of a competent authority in case of emergency: the authority to make decision for judicial search belongs to the judge (Cons. Art. 21, C.C.Pr. Art. 97(1), and Reg. Art. 7). The judge of the peace court in preliminary investigation, the major punishment judge in the last investigation, and the president of the court in cases of emergency decide the search warrant. In addition, the regulation gives the authority to public prosecutors' written order in case of emergency or in the impossibility of taking the written or the law enforcement officials. This written order should bring before a judge to approve in 24 hours (Reg. Art. 7(4)). The judge must declare his-her decision about the search or seizure in 48 hours, otherwise the search warrant and its results ended automatically (Reg. Art. 6/last),
- Deciding the search warrant: only in the existence of these three conditions, a search warranty can be decided and implemented to get involved people private lives and to prevent the fundamental freedoms.

Although the Articles 20, 21 of the Constitution proposed only a judge decision for search warranties, the sixth Article of the regulation has still proposed authority without judge decision to public prosecutor and assistants. That provision does not comply with either the European standards or constitution. In addition, the absence of a control mechanism for the search warranty of the public prosecutor and assistants is incomplete situation (Çamlıbel, 2003:3254).

The preventive search and its conditions: Unlike the judicial search, the preventive search is made in order to provide national security, public order, public moral, and prevent committing crimes, and to protect individuals fundamental rights and freedoms. The needed conditions for a preventive search are:

A realistic and acceptable reason, and a judge decision, if not, a written order from the highest rank provincial official. Rather, the law enforcement officials are not given to the authority to give a written order for a preventive search warrant unlike that of the judicial one,

According to the Article 14 of the Regulation, the preventive search cannot be performed in residences, business offices not to open public and their annexes. Additionally, the regulation proposes the consequences of the illegal searches in three ways: May commit a crime, the evidences obtained from an illegal search cannot be used in the penal trial (Cons-38/last, C.C.Pr.294/2); the searches committed illegally require compensation for the victims.

3.3.1 Other Amendments

The Act No. 4793; named the fifth harmonization package enacted January 23, 2003 has added a new paragraph to the Article 327 of the Code of Criminal Procedure as “it is accepted a reason for legal redress that the sentence is decided against the provisions of the convention protecting human rights and fundamental rights and its main protocols owing to a final verdict of the ECHR”.

The Act No. 4778 has amended the Article 3(c) of the Decree (No. 430 dated December 12, 1990, named as the Division Governor of State of Emergency and the provisions undertaken during that time) with a new phrase “for the detainees and prisoners convicted under the crimes of the state of emergency. The period for taking for investigation by the law enforcement officers is shortened from 10 days to four days. Besides, the Act No.4778 added the condition that the judge must listen to the detainees and prisoners before taking for investigation.

The state of emergency was cancelled in the remaining four provinces as of November 30, 2002 that contributed to the human rights climate in the Southeast Turkey. This measure had been implemented since the early 1980s due to secessionist terrorist activity.

The Article 40 of the Constitution under the heading “Protection of Fundamental Rights and Freedoms” has been amended by adding the sentence “the state must determine the legal course of action and authorities that maybe applied to by persons concerned” to the second paragraph in order to facilitate the citizens’ access to judicial remedies.

The Act No. 4771 made possible the legal redress by amending the Articles 445 and 448 of Code of Civil Procedure and, the Articles 335 and 337 of the Code of Criminal Procedure. That is to say, the retrial is possible in civil and criminal law cases for the decisions of the ECHR.

In addition to the legal redress, the regular reports emphasized the

improvements in the judicial area as regards a number of initiatives that were taken to strengthen the efficiency of the judiciary. These are the establishment of criminal executive judges as a judicial function, the setting up of special sections in the judiciary specializing in intellectual property rights and consumer protection as well as numerous training courses in human rights for judges and law enforcement officials.

Finally, the Act No. 4709 has added the phrase “the findings obtained illegally during searches cannot be accepted as evidences in trials”. That increased the level of existing legal provision to the constitutional level, namely the lawmaker wanted to strengthen the position of the existing provision.

3.4. Amendments for the Freedom of Expression

Freedom of expression is appearing as one of the most problematic subjects in regarding Turkey’s relationship with the ECHR (Altıntaş, 2001:51). Further development of the freedom of thought and expression in line with the EU acquis and the practices in EU Member States is a priority for the NP. The Constitution and relevant provisions of other legislation have been reviewed in order to enhance the freedom of thought and expression, in the line of the criteria referred to in Article 10 of the European Convention on Human Rights and Fundamental Freedoms, with the consideration as basic principles the territorial integrity and national security. With a view to enhancing the constitutional and legal guarantees of the freedom of expression, the short-term priorities are to¹⁰:

¹⁰ National Programme for the adoption EU Acquis 2001 p.17

- Review the provisions of the Constitution concerning the expression and dissemination of ideas, the freedom of science, and the press,
- Review the Article 312 of the Turkish Criminal Code, without prejudice to values protected therein; and the Articles 7 and 8 of the Anti-Terrorism Act,
- Review the Political Parties Act, No.2820;
- Review the Law on the Duties and Competences of the Police; the Law on the Organization, Duties and Competences of the Gendarmerie; and the Law on the Command of Coast Guard,
- Review the Act on Cinema, Video and Musical Works, No. 3257,
- Enact the new Turkish Criminal Code,

The 2001 constitutional amendments made changes in the preamble in addition, the Article 14 of the Constitution for improvements in the freedom of expression. The phrase of the first paragraph of the preamble as “no thought” was changed to the phrase “no activities”. The Article 14 of the Constitution regulates the abuses of the Constitutional rights and freedom has been changed as similar that of the preamble that there has to be an activity for the abuse of the rights. The same Act also abolished the ban of using the mother tongue languages in the constitution.

The main laws amended reinforce the freedom of expression are Articles 159, 312 and 426 of the Turkish Criminal Code and the Articles 7 and 8 of the Anti-Terror Law (İzbul, 2004:68). These are applied specifically to books that are considered to have contained elements of "obscenity" (Art. 426), "incitement of people to enmity and hatred" (Art. 312), "insulting or ridiculing Turkish national identity, the Republic, the Parliament, the Government, State Ministers, the military

or security forces of the State, or Judiciary" (Art. 159).

The Act No. 4744 (First Harmonization Package), dated February 6, 2002, changed the minimum prison sentence for the violation of Article 159 of the Criminal Code from "one to six years of heavy imprisonment" to "one to three years of imprisonment". The Act No. 4771 (Third Package), which enacted, amended the Article 159 again and the expression of thoughts was not considered as punishable actions as long as "the sole intention is criticism." Finally, The Act No. 4963 (Seventh Package), dated August 7, 2003, made further amendments and the minimum prison sentence for the violation of Article 159 was reduced from "one to three years of imprisonment" to "six months of imprisonment."

The Act No. 4744 abolished the imposition of heavy fines, stating that the actions which were considered to have amounted to the violation of the Article 312 of the Criminal Code in its earlier version would be considered so only if the offence of "incitement" was committed "in a way that would pose a danger against the public order."

The only amendment to the Article 426 of the Turkish Criminal Code was made following the Act No. 4963 (Seventh Package). A new clause of exemption was added to the definition of the offence of "issuing obscene publications", making exempt from this definition "works of scientific, artistic, and literary nature".

The First Harmonization Law amended the earlier version of the Article 7 of the Anti-Terror Law so that, in order to punish the person(s) who were considered to

have committed the offence of "making propaganda for the terrorist organization", the person(s) should have "advocated the use of methods of terror". The heavy fines were increased tenfold, from "50 million-100 million liras" to "500 million-1 billion liras". The Act No. 4963 (Seventh Package) further amended this article, by adding the word "violence" into the definition of the breach of Article 7 if person(s) "advocated the use of violence and other methods of terror".

The Act No. 4744 (First Package) initially reduced the length of the ban of broadcast media under Article 8 from "1 to 15 days" to "1 to 7 days". The Article 8 was subsequently completely repealed by the Act No. 4928 (Sixth Package), which came into force on July 15, 2003.

To conclude, in spite of the positive developments related to the freedom of expression, it is real fact that Turkey continues to be sentences compensations by the ECHR for the violation of the tenth Article of the Convention. Especially, the former provisions and implementations of the Article 312 of the Turkish Criminal Code and the eighth Article of the anti-Terrorism Act were not suitable for the ECtHR and the Case law. After the amendments in the cited laws, it is fact that these kinds of interpretations and decisions are allowed, but the democracy culture has to set up wholly to improve the conditions.

3.5 Amendments to the Act on Assembly and Demonstrations

Turkey encourages the further development of civil society, which will contribute to the improvement of democracy. To encourage individuals to

become more actively involved in social issues would be effective by improving the freedom of association and peaceful assembly. The Priorities of the NP in this context are to¹¹:

- Review the legislation on the freedom of association and peaceful assembly,
- Enact the Draft Law on the Establishment and Working Principles and Procedures of the Economic and Social Council,
- Enhance constitutional safeguards for non-governmental organizations and the institutions for social and economic democracy.

Firstly, the Article five of the Act No. 4771 (third harmonization package) has changed the second paragraph of Article 3 of Law on Assembly and Demonstrations No. 2911 dated 6.10.1983 as follows: “The organization of meetings and demonstrations by foreigners in accordance with the provisions of this Law requires the permission of the Ministry of Interior. Foreigners can address a crowd and carry posters, flags, inscriptions, and equipment as long as the highest gubernatorial authority of the meeting’s location at least 48 hours before the meeting”.

With the amendments to Article 10 of this Act in order for a meeting to be held, a notice to be signed by all members of the organizational committee must be submitted to the governor with jurisdiction over the locale of the meeting at least 48 hours before the meeting and within working hours.

These changes also reduced the age 21 to 18 at which one can become involved

¹¹ NP 2001 p.18

organizing meetings. A board comprised of at least seven people can organize protest marches or meetings. People who have diplomatic immunity can be neither the leader nor a member of the regulatory board of meetings or demonstrations.

Secondly, the act No. 4963 (Seventh package) has amended Law No. 2911 articles 15 and 16 so that if there is more than one assembly or demonstration to be held within the boundaries of a province or in the provinces under the jurisdiction of a regional governorate. The maximum period that some of these assemblies or demonstrations may be postponed has been reduced from “thirty” to “ten” days.

With the amendment to Article 17 of the Act, assemblies and demonstrations may only be banned where there is a “clear and present danger that a criminal offence will be committed”. The maximum period of time for which a meeting may be postponed or banned has been reduced from “two months” to “one month”.

With the amendments to Article 19 of this Act, the competence of the Governor to bar all assemblies and demonstrations in the provinces for specific reasons has been restricted to cases where “there is a clear and present danger that a criminal offence will be committed”. The maximum period for postponement and banning has been reduced from “three months” to “one month”.

3.6. Prison Conditions

Terrorist groups and gang leaders obtained control over prisons in traditional open zone prisons, since Turkish prison institutions were built on dormitory-type

prison system, which was eradicated in Western Europe in 1970s. The Governments tried to handle this problem over several years with caution.

Turkey has designed the F-type prison project based on small cells for one to three prisoners, taking West European practice as a model and in line with the recommendations of the European Committee on the Prevention of Torture (CPT). The new prison system is entirely compatible not only with European Prison Rules of the Council of Europe and UN standards, but also with the recommendations of the Council of Europe on the imprisonment of dangerous prisoners. Due concern has been given to all CPT recommendations on new prisons and necessary steps have been taken including legal changes. In this respect, Article 16 of the Anti-Terrorism Law has been amended to enable the extension of open visits and shared activities to inmates convicted of terror crimes.

Turkey established 129 Prison Monitoring Boards in 2001, which continue to carry out inspections on living conditions, transfers, and disciplinary measures in penal institutions. The Prison Monitoring Boards have made a large number of recommendations, focusing on living conditions, health, food, education, and rehabilitation of prisoners. It is reported that the work of the Boards has led to some improvements in prisoners' conditions in these areas. The Prison Monitoring Boards have not dealt with the sensitive issues, such as ill-treatment and isolation.

A new school in Ankara for training prison staff is now functional and two new schools in Istanbul and Erzurum will to become operational soon.

Furthermore, a law concerning the establishment of the office of supervisory judges to secure proper management of prisons has been adopted by the Parliament. Another law on the establishment of Prison Monitoring Boards composed of independent non-governmental experts has also been approved by the Parliament. The Regulation on the Management of Prisons has also been amended to enable inmates to make weekly telephone calls to their relatives.

CPT has visited new prisons many times. Its overall views on the reforms have been positive and encouraging. Turkey has authorized the publication of the CPT reports, including the reports on visits to F-type prisons, with a view to enhancing transparency in the system.

3.7 Conclusion

The Government set up a Reform Monitoring Group on September 2003, to watch the effective implementation of the reforms. Under the leadership of the deputy Prime Minister and Foreign Minister, this Group holds weekly meetings. The agenda of this group contains fact-findings tasks planned to identify difficulties practiced in the implementation of reforms¹².

The regular reports have still stressed that the immediate access to lawyer meant that incommunicado detention for prisoners convicted under the Law on State Security Courts continued and that no longer periods of custody still applied in the area under the state of emergency. The Commission pointed out that many of the

¹² 2003 Progress Report p.10

reforms require the adoption of regulations or other governmental measures, which should be along the lines of European standards. Most of these measures have already been introduced. The administrative and judicial bodies will need to implement the reforms in practice in order to be effective. Turkey's policies towards the EU have largely been concentrated on how EU handles Turkey or what might be its real intention, whereas there is almost no public debate on what membership to the EU entails and how Turkey would benefit from that.

The new laws have been applauded by many within Turkey and abroad. According to a leading Turkish political commenter¹³, the new laws are “steps of a revolutionary nature because from now on not the narrow-angled Kemalist view but the wide-angled Atatürkist approach will prevail in the implementation of the principles of the Republic. Certain taboos, which had remained untouchable for so many years, have come to be broken”.

13 M. Ali Birand,, “Happy is the one that calls himself a Turk”, Turkish Daily News, 6 August 2002.

CHAPTER IV: REFORMS RELATED TO THE HUMAN RIGHTS

In its *Agenda 2000* text, the European Commission gave the consideration of torture in Turkey “persistent cases of torture, disappearances and extrajudicial executions though repeated official declarations of the Governments pledges to ending such practices, put into the extent to which the authorities are able to monitor and control the activities of the security forces”. Moreover, 1998 report also states that in many cases torture is suffered by persons during periods of detention incommunicado in police stations before they are brought to court, on the other hand prosecutions and convictions of law enforcement officers (including police and gendarmerie) for torture and ill-treatment have so far led to rather light sentences by the European standards. Thus, systematic judicial prosecution of law enforcement officers for wrongdoing is not ensured.

The Human Rights Watch (HRW) has as well pointed out torture and ill-treatment cases in its annual reports about Turkey. According to HRW reports, the most met cases are torture, ill-treatment, rape in custody, pressure on Islamists and increased suppress on human right defenders.

4.1. The Context of Torture and ill-treatment

Article 3 , proposing the Right to Physical Integrity, together with Article 2, is regarded as preserving one of the most fundamental values of democratic society, which are not only common for the members of the Council of Europe, but also for the whole civilized world. The universal consent of these values has been confirmed

in numerous international instruments, so they are globally recognized. The Article 3 is expressed in unqualified terms, which means that no derogation from its guarantees is ever allowed. Even the highest reasons of public interest cannot warrant departure from prohibitions enclosed in the Article 3. Furthermore, according to Article 15(2) of the Convention, the guarantees of the Article 3 cannot be derogated from even in time of war or public emergency.

As the Court observed in the *Aksoy v. Turkey* verdict (1996, § 62):

“Even in the most difficult of circumstances, such as the fight against organized terrorism and crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention..., Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 even in the event of a public emergency threatening the life of the nation” 14

The General Scope of the Right is that the substance of Article 3 relates to the prohibition of various forms of ill-treatment, usually resulting from physical abuse of a person (substantive prohibition). At the same time, the case law of the Court reads Article 3 as containing two further rules: The State should take positive steps to defend individual persons from ill-treatment resulting from acts of other private persons or groups (positive obligation). In case of ill-treatment, the State must ensure an effective inquiry, particularly if the ill-treatment is caused by a State's action (procedural obligation) (Kay, 1995:122).

The State has an unconditional obligation to refrain from any ill-treatment of individual persons in violation of Article 3. At the same time, the State is also

14 Şeref Ünal, “ECHR Verdict about *Aksoy v. Turkey* Dated December 18, 1996 , *Yargıtay Dergisi*, . 23 p 3, 379, 1997

responsible for protecting individuals against ill-treatment resulting from omissions of the State authorities or, at least to some extent, from acts committed by other private persons or groups. In particular, it is the duty of the State to formulate its legislation in a way, which minimize a possibility of ill-treatment and establish substantive and procedural protection against such treatment.

Article 3 has mostly been applied to cases in which an individual has been subjected to any of the proscribed forms of treatment derived from deliberately imposed acts of State agents or public authorities, in particular in the context of detention, police-interrogation, or military action. However, the case law of the Court applied Article 3 also to other situations, like in particular to conditions in prisons. While every detention is certainly linked with certain degree of suffering, the conditions of detention must observe minimal standards of dignity. Thus, even if there is no example of intentional ill-treatment directed against a particular detained person, the whole situation in a particular prison or within the entire prison system may engage the responsibility of the State.

Furthermore, Charter of Fundamental Rights of the European Union prescribes the right to physical integrity in the fourth Article as “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

Turkey ratified the European Convention on the prevention of torture and inhuman or degrading treatment or punishment on February 2, 1988. This convention provides protecting the people claiming that they are the victims of the abuses of ECtHR Article 3, and the Convention allows the Committee of Council of Europe’s

for the Prevention of torture and inhuman or degrading treatment or punishment (CPT) with any authorized officials by the periodical visits. Turkey approved the visit of the CPT any place where the competent authorities have deprived of people from their freedoms, as a result, the 1992 and 1996 reports of the CPT has declared the presence of systematic torture in Turkey . In this context, the CPT has recently made four periodical visits to Turkey, the last of which realized on March 2004. One of the main objectives of the visit was to examine the current situation about the treatment of persons held by the law enforcement agencies and to assess the impact of recent legal reforms concerning police custody. The Committee's delegation visited law enforcement buildings and prison establishments in various provinces.

After Turkey's approval of individual application to the ECHR in 1989, there have been 392 applications for the claims of torture or ill-treatment, namely the breach of the Article 3. 149 of which have continued so far, 37 of which have ended with the judgment of the breach, 84 of which resulted in the friendly solution, 2 of which were unacceptable, 7 of which were erased from the registers, 50 of which were fully acceptable, and finally 63 of which were partially acceptable¹⁵. That the huge number of the opened cases in ECHR against Turkey relating to the Article 3 has caused a general thought of the presence of a widespread systematic torture in Turkey. Nevertheless, it is a reality that the number of torture cases has decreased for last two years 2002-2003, because the ECHR declared the existence of the decrease in the 2003 report.

¹⁵ Türkiye İnsan Hakları Vakfı (TİHV) Ocak 2004 Raporu on www.tihv.org.tr.

4.2. Former Legal Provisions in Turkey

There were several measures before the application of the National Programme as follows: A circular was issued by the Prime Ministry in June 1999 on the effective implementation of the Bylaw on Arrest, Custody, and Interrogation and on the strict supervision of the implementation of this Bylaw. In August 1999, provisions of the Turkish Criminal Code on torture and inhuman or degrading treatment were amended to align the definitions thereof with those in international conventions. Moreover, sanctions were increased in general and criminal penalties were introduced for health services personnel issuing falsified reports on incidents of torture. The Act on Prosecution of Civil Servants and other Public Employees was amended in December 1999, thereby stepping up the investigation and prosecution of public personnel.

Having made these explanations, the chapter will continue to point out the priorities of the 2001 NP related to the issue, evaluate the main legal provisions of the Turkish legal system linked to the third Article of the ECtHR and explain the amendments made by them. Series of laws and amendments are planned to improve the fight against torture and ill-treatment. In this context, the priorities are to16:

- Review the Act on the Duties and Competences of the Police, No. 2559, and the relevant regulation; the Law on the Organization, Duties and Competences of the Gendarmerie, No. 2803, and the relevant bylaw; and the Act on the Coast Guard Command, No. 2692, and the relevant regulation,

16 NP 2001 p.18

- Carry out arrangements to renovate the Forensic Medicine Institution,
- Enact the new Turkish Criminal Code and Code of Criminal Procedure,
- Search the accessibility of financial resources for training law-enforcement personnel for the prevention of human rights violations and increase the use of technology to monitor places where incidents of human rights violations continue to occur,
- Introduce legal provisions on the joint and several liabilities of perpetrators of torture.

The existing articles related to the issue of torture and ill-treatment in the Turkish legal system as follows:

1. The Article 17(3) of the Constitution,
2. The Articles 243,245,354,46,47,of the Turkish Criminal Code,
3. The Articles 135/a, 242/2 of the Code of Criminal Procedure,
4. The fourth Article of the law on Administration of Prisons related to the acts against hunger strikes and death fasts,
5. The Law on Execution Judges,
6. The Act on Monitoring Jails and Prisons,
7. The Act on Execution of Sentences, No.647
8. The Regulation on Arrest, Custody, and Interrogation

4.3. Reforms to Preclude Torture

The Article 17(3) of the Constitution has prescribed the provision prohibiting torture and ill-treatment. The Turkish Criminal Code proposed the torture as a crime in the Article 243; moreover, the crimes were regulated in the articles 186, 228, and

245 for the acts not being in the degree of torture. The first Article of the Act No. 4799, enacted on August 26, 1999 has amended the Article 243 of the Turkish Criminal Code to be more effective in the fight against torture by changing the components of the crime with increasing the sentence periods.

That the difficulty in sentencing officers accused of torture after finding enough evidences before the limitation is the most important problem encountered in practice. To prevent this, the fifth Article of the Act No. 4963 has added the Supplementary Article 7, to the Code of Criminal Procedure, the investigation and prosecution of cases of torture and ill-treatment are to be considered as urgent matters and as priority cases, are to be treated without delay. Unless necessary, hearings may not be adjourned for more than thirty days at the most, and these hearings will be held during the judicial recess. The aim of this amendment is to ensure the speedy conclusion of the investigation and prosecution of cases of torture and ill-treatment.

The Article three of the Act No. 4449 has increased the period of punishment existing in the Article of the Turkish Criminal Code for the health officers hiding the torture cases by making unreal reports. Especially, the changes in the detention periods made by the amendments cited previous chapter have been effective in prevention of torture and ill-treatment. That is to say, many of the torture cases had happened during the incommunicado detention. The Articles 19(5) of the Constitution and 128 of the Code of Criminal Procedure restricted the police custody period to 24 hours for crimes committed individually and to four days crimes

committed collectively. The Act No. 474817 (Second Package) states that compensation fees mandated by rulings of the ECHR for torture or ill-treatment will be due from the individuals who commit such crimes rather than from the Turkish state.

There have been made four changes in the cited Regulation on Arrest, Custody, and Interrogation on August 3, 1999, July 11, 2002, September 8, 2002, and finally January 1, 2004 in order to comply with the ECtHR provisions and ECHR decisions on the issues of torture and ill-treatment. All the detailed provisions are made by the changes in the processes of Arrest, Custody, and Interrogation on the ground that most of the torture cases happened during these processes. Nevertheless, public prosecutors are mainly responsible for the accurately implementation of these rules by the law enforcement officers. The control mechanisms for the amendments of the regulation are the public prosecutors as the superior of the law enforcement officers during performing their judicial duties. The regulation does meticulously prescribe the abuse conditions of the fundamental rights and freedoms by actions of torture and ill-treatment, as well in order to preclude unfair accusations. These conditions are:

1. The compulsion of the registration of the custody (art.11-12),
2. The notification obligation of the relatives of the detainee(art.9),
3. The obligation of doctor examination and report before custody and release with the correct implementation of examination rules (art.10),
4. The right to apply to a judge against the custody (art.15).

17 The Official Gazette no 24712 dated 09.04.2002

4.4. The Administrative Structure on Human rights:

In addition to these comprehensive legislative measures, institutional reforms have been initiated with a view to furthering protection of human rights. These are listed below:

TGNA Commission on the Investigations of Human Rights was set up by the Act No. 3686 enacted December 8, 1990 in order to monitor the developments for the respect for human rights in Turkey and the world, to adopt the implementations to those developments and to investigate the applications of the persons claiming the breach of the rights.

The State Ministry responsible for Human Rights has been assigned to be accountable for the coordination between Ministries since 1990. In the present government, the Deputy Prime Minister and Minister of Foreign Affairs are also delegated with the responsibility for human rights. The EU Secretariat General and the Human Rights Department, established within the Prime Ministry, are both joined to the Deputy Prime Minister.

The Supreme Committee of Human Rights was founded by the Prime Ministry circular No. 1997-17, in order to perform the unity in the actions of the public institutions and officers on human rights and fundamental freedoms, and to monitor the undertaken preventions and regulations, and finally to realize the coordination. It comprises minister of the Justice, Interior, Foreign, education, and Health under the presidency of the State Minister responsible for Human Rights.

Human Rights Consultative Board was constructed in the structure of Prime Ministry in order to develop human rights to consult in related issues and protect, and finally to make propositions and reports.

The Investigation Committee for Human Rights Breaches are set up by the State Minister responsible for the Human Rights who constitutes the committee with at least five persons, who work in relevant ministry, Non-Governmental Organizations (NGO), and studying the issue in order to make investigation and researches. The committee has started working for investigating and enlightening the breaches of human rights on August 15, 2001.

National Committee for the UN's "Decade of Human Rights Education" prepared a National Programme, which was made public in July 1999. The program envisages intensified human rights training for civil servants employed, in particular in the field of law enforcement.

Human Rights Department of the Prime Ministry, the Act No. 2419 enacted on October 5, 2001 formed this framework as a section affiliated to the Prime Minister. The Act has provided the Human Rights; moreover, it established a Human Rights Consultative Board as well as Provincial Human Rights Councils.

The Deputy Directorate General for Council of Europe and Human Rights of the Ministry of Foreign Affairs is dealing exclusively with human rights issues. The authorization of the department covers relations with international organizations in

the field of human rights (UN, OSCE, COE, etc.) as well as human rights issues on bilateral basis with other countries. It also deals with the applications lodged with the ECHR

Provincial Human Rights Councils have been established in all provinces and sub-provinces throughout the country. The Councils are assigned with investigating complaints and allegations of human rights abuses, and thereafter transmitting their findings to competent authorities for administrative and legal action. They also launch programmes for human rights education at the local level. Representatives of academic institutions, bar associations, medical chambers, trade and industry unions, NGOs, media, as well as local administrations participate in the work of the Councils.

Human Rights and International Organizations Department of the Interior Ministry is assigned to work in the field of human rights affiliated to the Board of Research, Planning, and Coordination.

Human Rights Office of the Health Ministry is founded in the structure of the Basic Health Services Department dealing with ensuring the appropriateness of the general judicial examination reports to the laws and the COE standards throughout the country.

Human Rights Department of the General Directorate of the Security is founded in order to follow the human rights activities, to monitor implemented measures and regulations, to ensure coordination.

Foreign Affairs and Human Rights Department of the Gendarmerie General Command is constituted in order to follow the advancements in the field of human rights, to monitor the realized measures and instructions.

4.5. Training of Law-Enforcement Personnel

The Turkish Governments have searched for building up international cooperation both at bilateral and multilateral levels in the human rights training by strengthening training of law-enforcement personnel the issue in progress at all institutions involved. The NP 2001 planned to:

- Carry out legal arrangements to extend education at Police Academies from 9 months to 2 years,
- Put into action, within the framework of the UN Decade of Education for Human Rights, the Human Rights Education Project of the Ministry of Interior and Its Affiliated Agencies (2000-2007),
- Educate law-enforcement personnel, within a period of 7 years, in the framework of a project developed under the 1997-2000 Police and Human Rights Programme of the Directorate of Human Rights of the Council of Europe.

In 1997, the Human Rights Directorate of the Council of Europe commenced the Police and Human Rights 1997-2000 Programme to supply a new ordered structure within which to generate human rights consciousness in police. The achievement of the three-year Programme led the Council of Europe to enter on a deeper stage of dedication to human rights and the police with the launch, in

December 2000, of a new Programme, “Police and Human Rights Beyond 2000”. The new police Programme will maintain to work towards enabling all police officers in the member states of the Council of Europe to gain knowledge of human rights standards, which have important implications for policing, and to obtain the skills that will enable them to apply these standards to their daily working practice (Kelly, 2000:2).

4.5.1 The Training Works in the Police Organization

The new Police Higher Education Act reconstructed the Presidency of Police Academy by building a Security Sciences Faculty, Security Sciences Institute, and 20 Police Vocational High Schools. The Article ten under the heading “Instruction, Student Sources, and Education Period of the Police Vocational High Schools” prescribes as “ 20 Police Vocational High Schools are opened to supply the officer need of the General Directorship of Police at the level of pre-license level affiliated to the Police Academy. By this way, the Law changed the 9-month education period of the police officers to 2-year period as promised in the NP.

The Pre-Service Education: There are three schools in the Turkish Police organization for pre-service education, the Police Academy, the Police Profession High Schools, and the Police College. In the Police Academy the course of “Human Rights and Public Freedoms has been educated at first and third class as weekly two hours since 1991. In the Police Profession High Schools, the course of Human Rights and Public Freedoms has been educated since 1992 as weekly two hours at the first and second classes.

The last of which the Police College has taught the course of Democracy and Human Rights in line with Education Ministry Programme at the third class one hour per week since 2000, because it is at the level of high school,.

In-Service Education of Human Rights: the in-service human rights education programs and courses support the pre-service education. The in-service education aims to intensify the knowledge of respect for the human rights and fundamental freedoms, to inform about the contemporary studies of international conventions related to the human rights. The native and foreign academicians and scholars with the conferences and symposiums support the courses.

Moreover, the courses of Human Rights and Public Relations are obligatory in all of the in-service training courses whether they are related to Human Rights or not. The annual education curriculum of the police organization planned all the programs. The program has set up the Human Rights course as six hours, Public Relations and Behavior Forms of the Police Course as three hours, and finally the course of EU harmonization Laws and the latest legal changes as three hours per each 1148 in-service vocational course.

It has planned 1148 in-service vocational courses by which 10642 personnel of super intender rank and 38683 police officers, and totally 49325 personnel were educated in the period 1999-2002. Besides, the general department of fight against terrorism and operations of the General Directorship of Police educated all of 12223 students of fundamental training vocational course in the field of human rights. Finally, five police chief's has graduated from the master of art programs of the

human rights department of the foreign universities, and 30 of them continued their education abroad.

The main subject of the education is to teach the basic principle method of judicial interrogation, which is to reach criminal from evidence rather than the traditional and criticized one to reach evidence from the suspect.

The Police Organization has made many amendments in the field of human rights at educational and institutional levels, however the European Commission insisted to wait the results of implementation to see the real developments. Because the EC believed that most of the recent developments are on paper rather than being effective in the daily life of citizens. On the other hand, the understanding of the state officers has rapidly changed due to these amendments, nevertheless a few has still perform badly during the judicial procedures. The accession process at least was effective in the main behavioral characteristics of the police officers and their chiefs. The changing attitudes can be seen more explicitly in newspapers and TV broadcasts because they made their news by evaluating all of the actions of the police with comparing the EU standards. To conclude, as the foreign reports noted there has no systematic torture in the country any more, in other words no department of the police has no more tried to use the inhuman methods as a principle for performing their judicial duties.

4.5.2 The Training Works in the Gendarmerie Organization

The objects of human rights training of the Gendarmerie are to teach the

importance of the context of the human rights and to work harmoniously with the legal regulations, to realize sincere relations with the citizens under the rules of the courtesy. It also aims to teach the concept of national and international texts. Finally, as the most important subject, the personnel have to learn the provisions of the International Conventions for the State, such as the compensation verdicts of the ECHR¹⁸.

Human rights course has been in the education programs of the Gendarmerie School Command since the education year of 1992-1993. The program has planned for the students of Officer Fundamental Course, Gendarmerie Noncommissioned Officers School, and Expert Gendarmerie Sergeant Schools. The Human Rights course has been taught to 2167 Noncommissioned Officers, 9904 Noncommissioned Officers, and 20742 Expert Gendarmerie Sergeants, and totally 32813 personnel since 1992¹⁹.

230 Gendarmerie personnel, 142 of which are officer, and 88 of which are noncommissioned officer, have taken the course of Human Rights Educators education in a week period in order to become lecturer in the courses opened in the gendarmerie units. The aim of the courses is to provide educator for the subsequent courses teaching all the gendarmerie personnel about the Regulation on Arrest, Custody, and Interrogation and the concept of human rights. Besides the Command of Gendarmerie Courses gives six hour obligatory lesson of human rights to the students of the other in-service training programs whether related to human rights or not, as the Police Organization did in its in-service training. Accordingly, the training

¹⁸ Human Rights Booklet of The Gendarmerie p.4-2

¹⁹ On www.jandarma.gov.tr

programs have given to totally 5500 personnel. To conclude, the course of human rights becomes the most important element of the education system of the gendarmerie, because the judicial and preventive duties can only be achieved with respect for human rights. As a law enforcement agency, the Gendarmerie must enforce the laws for protecting innocent people but also protecting the rights of criminals. The Gendarmerie uses the modern techniques in providing security, public order, and enlightening crimes. Namely, the modern law enforcement system has to perform legal methods so that it is useless to commit a new crime to solve another one.

In addition to these, seminars and conferences are given to the personnel in the field of human rights in the Gendarmerie Units throughout the country. 18045 personnel have joined up 58 seminars and 45 conferences between 1999-2003.

The TGNA enacted the Act on Noncommissioned Vocational High School, No.4754 on April 11, 2002. The aim of the Act is to improve the education level of the noncommissioned officers in the Turkish Military Forces. To realize this, the General Command of Gendarmerie has opened the School of Gendarmerie Noncommissioned Vocational High School in the two-year high school status since 2003. The High School is established in the structure of the Command of Schools with the other education institutions, the Gendarmerie Officer School, and Expert Gendarmerie Sergeant School.

The Security Sciences Department has begun education under the roof of the Turkish Military School Defense Sciences Institute opened in 2001. The MA program aims to give lectures crime, criminology, terrorism, and development of

international aspect of these and to make researches in the field of security sciences. 18 gendarmerie officers graduated from the institute and 39 have continued their MA programs.

Finally, the privates in the obligatory 15-month military service are given the course of human rights two hours every week during their eight-week fundamental training. Contrary to the common understanding in the society, the personnel under the military service in the Gendarmerie Organization both privates and reserve officers take the human rights and judicial duty courses. However, the Gendarmerie does not use them as the first choice in the implementation of judicial duties, because many of the officers and noncommissioned officers have taken special courses related to judicial duties to become experts, such as crime scene, judicial interrogation, explosive material specialists, etc...

The activities are made due to Turkey's human rights education program 1998-2007 prepared by the Decade of Human Rights Education National Committee as follows. The course books of the human rights in the Gendarmerie School Command rewrote in 1999. In this context, the course hours were increased from weekly one hour to two hours. Besides, the Command of the Gendarmerie Schools prepared a book named Gendarmerie Ethics, which has been also taught as a separate course weekly two hours since 2001. The Human Rights Brochure with improvements in 1996, 1997, 1998 has been delivered to the units in the level of Gendarmerie station in order to use in the human rights education, to guide the personnel in the new developments.

The program “Police and Human Rights Beyond 2000” work towards enabling all law enforcement in the member states of the Council of Europe to gain a knowledge of human rights standards, which have important implications for policing, and to obtain the skills that will enable them to apply these standards to their daily working practice. In harmony with the program, the COE made a suggestion for an education project to Turkey in the conference dated December 11-12, 2000 in Strasbourg in which three Gendarmerie officers presented the General Command of Gendarmerie. A project named Education Educators course has been launched on February 11, 2002. 36 gendarmerie officers and 36 police chiefs participated the 14-week course, 12 weeks of which were realized in Turkey, two weeks of which in abroad. In the context of the project, the student officers have been taught in Germany, Holland, and Denmark after completing two-week beginning course²⁰.

4.6. Amendments in the administrative structure

The police administrative structure amendments (Arslan, 2003:608-11):

Detention and Interrogation Rooms: the necessary works have been made for standardizing the detention rooms and interrogation rooms owing to provisions of the regulation on Arrest, Custody, and Interrogation. The Development has been succeeded in 2313 detention and development rooms in 1997-2002. In conclusion, the improvement works are so important in the EU accession process on the grounds that the COE and other international organizations have always condemned Turkey

²⁰ Human Rights Booklet of the Gendarmerie p.4-4

for the conditions of these rooms.

Record of Testimonies: a circular dated September 9, 1998 delivered to Province Police Departments aimed to prevent torture and to intensify the collection of evidences. The Circular proposed to take video records of interrogation of organized crime and terrorism cases in situations where public prosecutor and law enforcement officials felt the necessity.

POLNET Project: this project facilitates the information of citizens' credentials, whether they are searching or not by reaching the datum immediately and precludes people from the police custody and useless breaches of human rights and fundamental freedoms.

Juvenile Police: the Juvenile Police has been constructed in the structure of Department of Public Security as regards the provisions of the UN Charter of Children Rights. In 81 provinces, the department of preventing children has been transformed into the department of Juvenile Police with supplying specialists, such as social services expert, Pedagogue, Physiologist, etc. The department maintains to find out the physical, mental, and social problems derived from the outer reasons from the children and their families' actions.

Observation Units for Detention were constructed in 81 provinces under the control Main Command and Control Center. The purpose of the units is to notify the relatives of detainees and those concerned owing to the notification principle of the Code of Criminal Procedure. Namely, the units establish the detention information

network throughout the country.

State Servant Register Reports: A new section named respect for human dignity and rights, treat no one with inhuman behaviors is added to the annual Register Reports to the eighth Article of the register reports under the heading “Marks related to servants vocational capacity”. The new section is evaluated in 100 marks.

Circulars connected to Human Rights: the General Directorate of the Security published many circulars to the Provincial Police Departments in order to harmonize the implementation on contemporary amendments related to the EU accession process and human rights. Some issues of them are: as follows:

- To make testimony according to the new rules,
- To obey strictly the detention periods,
- To inform about the rules and the arrest of foreigners,
- To comply with the Regulation on Arrest, Custody, and Interrogation.

The Bulletin of ECHR Decisions is published to inform about the compensation decisions of the ECHR for Turkey. The Police Academy has started to publish the bulletin since April 2002.

Administrative Structure Amendments of the Gendarmerie²¹:

²¹ Human Rights Booklet of the Gendarmerie p. 4-4

The Center for Investigating and Evaluating of Human Rights Violations of the Gendarmerie (JIHIDEM) is a new example of the importance given by the Gendarmerie to human rights, in order to prevent human right violations while fulfilling duties and in order to answer the applications and complaints made by in this field by national and international organizations, citizens, and foreigners. The Center for Investigating and Evaluating Violations of Human Rights, which will serve 24 hours, has been set up at the Headquarters of the General Command of the Gendarmerie²².

The General Command of the Gendarmerie started to reconstruct all gendarmerie stations detention rooms to reach the standards proposed by the CPT: 247 of them have been restored and 427 of them have been rebuilt since 1996, consequently totally 674 detention rooms has been standardized.

The necessary administrative and judicial interrogations are immediately started for the personnel, who committed the crime of torture and ill-treatment. It is noteworthy that the number of personnel committing torture and ill-treatment crimes has decreased 31 percent in the comparison of years 2001 and 2002. The reason of the decrease is the result of control of all superintendents and the education programmes increasing the scope of human rights with the EU accession process²³.

Bahçesehir Juvenile Crimes Preventing Center: The General Gendarmerie Command established the center to perform the duties related to prevention of juvenile crimes and to protect the children committed a crime. The center also aims

²² The JIHIDEM Brochure of the General Command of the Gendarmerie p.1

²³ www.jandarma.tsk.mil.tr

to improve the living conditions of these children and their families. The center started its activities under the command of a woman officer with experts on October 23, 2001.

The Provincial Gendarmerie Command has monthly scrutinized the forms of the Code of Criminal Procedure implementations and compared the registrations of the gendarmerie stations and judicial officials, public prosecutors and courts. They also send them to the Ministry of Interior for the notification. The objective of this study is to monitor the cases of torture and ill-treatment complaints more effectively as regards the Code of Criminal Procedure. To conclude the high rank officials regularly scrutinize enforcement officers' implementations of the law.

4.7. Conclusion

With regard to the prevention of torture and ill-treatment the Government has declared a policy of "zero tolerance" about the prevention of torture and ill-treatment. Legislation in this area has been significantly reinforced. While implementation has led to some concrete results, the situation is uneven and torture cases happen individually²⁴.

According to Rıza Türmen, a judge in the ECHR for Turkey there has been new tendency in the verdicts and applications in the ECHR with the EU accession process since the endorsement of Turkey the individual application to the court in 1989. The subjects of applications have become different from former ones, for

²⁴ 2003 Progress Report p.18

instance the claims of torture have decreased, while that of freedom expression have increased, the Europeans have accepted with pleasure the developments in the field of democracy and human rights made by the Turkey. They also pointed out that these improvements make people fine with the State by becoming more individual and aware in using their rights (Aslan, 2003:613).

As early mentioned, the Turkish Law Enforcement System tries to keep up with the new technology and to increase the human rights knowledge of the personnel by regulating pre-service and in-service education programs in order to be parallel with the European standards. Moreover, the system investigates the responsible personnel for breaches of the human rights and adjudicates them with regard to the connected laws. They are also judged for the violation of the Article 243 and 245 of the Turkish Criminal Code in the independent courts.

CHAPTER V: MEASURES FOR HARMONISATION WITH JUSTICE AND HOME AFFAIRS (JHA)

There are two stages in the context of adoption to the *Acquis Communautaire* of the EU. The first of which is to comply with the Copenhagen Criteria for outset of formal negotiations, and the second of which is to adopt the existing laws to the current jurisdiction of the Community, especially in the field of justice and home affairs (İçel, 2003:402).

Justice and Home Affairs (JHA) are the newest European Union policies. They were first brought into the realm of the European Union in 1992 when the Maastricht Treaty added foreign and security policy and justice and home affairs policies as EU responsibilities to the well-established economic policies of the European Community. The cooperation in this field aims to create a freedom, security, and justice area where a free movement of persons can happen. In this context; Asylum, Immigration, External borders; Visa Policy, Police Cooperation, Organized Crime, Fraud, and Corruption, Fight against drugs, Judicial Cooperation in Civil and Judicial matters, issues are proposed²⁵.

The concept of the European Union as an area of freedom, security, and justice was enshrined in the Treaty of Amsterdam stating that the EU

- Must be maintained as an area of freedom, security, and justice,
- An area in which the free movement of persons is guaranteed,
- In conjunction with appropriate measures with respect to external border

²⁵ IKV Fundamental Definitions, p.16

controls, asylum, immigration, and the prevention of crime.

In October 1999, the European Council held in Tampere to describe operational conclusions from the Treaty for the implementations of the issues of JHA.

Meanwhile in Turkey, the NP 2001 was a list of the current Turkish laws so that the NP 2001 did not illustrate the detailed explanations such as needed legal amendments and international conventions. For this reason, the revised NP in 2003 listed not only general explanations but also required legal amendments by proposing deadlines for the achievement of them (Tekinalp, 2001:11). The following three sections are to commence with the explanations in short, the general context of the EU activities in the field of JHA and then continue the amendments in the headings, free movement of persons, area of security, and area of justice.

5.1. Free Movement of Persons

The treaty establishing the European Economic Community has contained provisions to ensure the free movement of workers within the community since 1957. This right has become a fact by means of various community instruments. The idea of the free movement of persons has gradually becomes with the creation of the Single Market. Since 1993, all EU citizens have been able to move and reside freely within the European Union (Arts 14-18 of the EC treaty).

The Maastricht Treaty placed asylum policy, external borders and immigration

policy among the matters of common interest to Member States defined in the title VI (also known as the third pillar). The Amsterdam treaty inserted these matters in the EC treaty (Article 61-69) and provided a transition period of five years before the community procedures apply in their entirety in parallel to this, common standards will have to be put in place with regard to controls at the Union's external borders, visas, asylum policy, and immigration.

In the meantime, the Commission states that EC-Turkey Association Council resolutions dated 6 March 1995 and 30 October 1995 provided for cooperation between the EU and Turkey on certain issues falling under the heading of justice and home affairs in its November 1998 Report. Political considerations meant that these arrangements remained in abeyance until 1998. The European strategy stressed the importance of implementing these two resolutions. On 25 June 1998, a meeting was held in Brussels between the specialized Council Committee and the Turkish authorities, a number of topics relating to JHA were covered. The Commission stressed the need to develop active cooperation with Turkey on the issues of JHA.

5.1.1 Asylum

Asylum is a form of protection given by a State on its land based on the principle of recognition refugee rights internationally or nationally. It is granted to a person who is unable to seek protection in his/her country of citizenship and residence in particular for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion²⁶.

²⁶ European Commission Fact Sheet No. 6 on Asylum

The EU has always tried to ensure an area of free movement. Since the beginning of 1990s, the flow of persons seeking international protection in the EU has been such that the Member States have decided to find general solutions to this problem. A set of commonly agreed principles at European Community level in the field of asylum can provide a clear benefit and continuing to maintain Europe's humanist tradition.

Concerning Turkey, The European Commission stressed that progress still needed to be made in spite of some improvements, particularly asylum for lifting the geographical reservation to the 1951 Geneva Convention in its November 1999 Report.

The NP 2001 described the priority on asylum that it is willing to lift its geographical reservation to 1951 UN Convention relating to the Status of Refugees²⁷, provided that certain conditions, concerning its ability to cope with refugee flows and support from the Union. Turkey established an inter-departmental working group within the Ministry of Interior to prepare a strategy for harmonizing Turkish Law and practice on asylum with the *acquis*. In accordance with a circular issued by the Ministry of the Interior, asylum seekers are gradually being provided with cards enabling them even with medical care.

The NP 2001 also listed the existing Turkish laws and the required changes in them as follows: The Act No. 5683 on Foreigners Residence and Travel in Turkey, the Act No. 4360 on changing Act No. 5683.

²⁷ Convention relating to the Status of Refugees Geneva, 28 July 1951; Protocol relating to the Status of Refugees New-York, 31 January 1967

The revised NP in 2003 listed 15 priorities for harmonization with the EU legislation and capacity building for asylum. The revised NP planned also these amendments in the draft Law on Asylum with expiration date 2005. These changes are mainly related to the EU asylum legislation, Dublin Convention²⁸, Council decisions and regulations, and Council Directive²⁹ laying down the minimum standards for the reception of asylum seekers.

The revised NP proposes a schedule for 13 necessary Institutional changes in the field of asylum. These changes include in a twinning project, namely *TR02-JH03 Asylum and Immigration*. These necessary institutional changes are primarily:

- Establishing a single centralized institution under the Ministry of Interior specialized in the determination of refugee status and fulfillment of the legislative and administrative capacity,
- Developing social support mechanisms for refugees,
- Establishing refugee guesthouses and refugee shelter centers.

5.1.2. Immigration

The flow of international migration has always affected all EU Member States. They have agreed to build up a joint immigration policy at EU level. The European Commission has made proposals for developing this policy, adopting a two-track approach: on the one hand establishing a common legal framework concerning the

²⁸ Mainly proposes the responsible state for the asylum seekers in 1990

²⁹ 2003/9/EC of 27 January 2003

conditions of admission and stay of third-country nationals and on the other an open coordination procedure to encourage the gradual union of policies not covered by European legislation. The objective is to manage migration flows better by a coordinated approach, which takes into account the economic and demographic situation of the EU.

Turkey has become a country, which is at the centre of news on irregular migration for the last few years. There are numerous media reports for ships full of illegal immigrants landing on the coast of Greece, Italy or France coming from Turkey. Occasionally human tragedies are also stated when these ships run aground or sink. Irregular migrants generally pay charge well into thousands of US dollars and fall into the hands of dishonest smugglers who oblige them to travel under inhumane conditions (Kirişçi, 2003:12).

The NP 2001 defined the coordination as the first priority for the fight against illegal immigration owing to the fact that there are many institutions dealing with the issue such as Defence, Interior, Foreign Affairs, Health, Tourism Ministries and Customs Undersecretary. Moreover, Turkey has always participated regional and international Organizations, such as: CIREFI³⁰, Budapest Process, The Third Study table of the Exploiting Pact and SECI³¹.

Turkey completed some progress with regard to the signing of readmission agreement with the third countries as to provide a more effective fight with immigrants. Turkey signed a readmission agreement with Kyrgyzstan in May 2003

³⁰ Turkey has become a member of the Centre for Information Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI) in 2001

³¹ Southeastern Europe Cooperation Initiative

regarding the readmission of the nationals of two countries. Negotiations with Bulgaria have advanced and the agreement with Romania has been initialled. Turkey is currently also negotiating a readmission agreement with Uzbekistan. The agreement signed with Syria in September 2001 was ratified by the TGNA in June 2003³². Although the EU has asked Turkey for the opening of the negotiations on an EU-Turkey readmission agreement, Turkey is rejecting to sign it.

Even though Turkey continues to be an important transit and destination country for illegal migration flows, the tendency of illegal migration through Turkey has shown a decrease. Besides, it is reported that as a result of intensified efforts and initiatives targeting illegal migration international routes for migration flows have been diverted outside Turkey in 2002 and 2003.

5.1.3 External Borders

In the 2003 Accession Partnership, improvement of the capacity of the public administration to develop effective border management in line with the acquis and the best practices of the EU was listed in the short-term priorities. In the medium term priorities section, the continuation of the alignment with the acquis and best practices concerning border management, in addition to preparations for the full implementation of the Schengen acquis.

Besides, relating to the section on free movement of people, work on harmonization with the EU acquis on the right to residence is continuing. In this

32 2003 Progress report p.35

framework, depending on the outcome of negotiations, the harmonization of the legislation, including the date of the entry into force of the reciprocity principle, will be completed upon accession.

The sub-working groups under the Asylum, Immigration, and External Borders Task Force, which consist of experts from the relevant public institutions and organizations, have adopted national strategy papers on these three topics as a result of their semi-annual meetings, working visits and legislative screening activities. In the light of these strategy papers, harmonization training in the field of external borders and on restructuring and legislative approximation concerning external borders will be undertaken.

Turkey set up a responsible Task Force for the preparation of overall strategy alignment with the EU acquis on border management and it has concluded its work. The strategy adopted as part of the revised National Programme, proposes the creation of a new body within the Ministry of Interior for all border protection issues, including coast guards, composed of non-military, professional law enforcement officials. Turkey also continued to increase and promote its infrastructures and technical facilities such as optical readers for the detection of forged and falsified documents at border gates.

One of the priorities mentioned about the border management is to intensify it to comply with the Schengen Provisions, which were developed out of the European Community structure, and then the Amsterdam Treaty inserted it into the structure.

The Act No. 3497 on Land Borders Protection and Security gives the

responsibility of external borders of Turkey to the Turkish Land Forces. However, 881 kilometers of the borders (390 km of Iran border and 387 km of Iraq border, and 81 km of Syria border) were under the control of the Gendarmerie before EU Accession process in 2002. The NP in 2001 proposed the change of border protection between these two institutions as a priority. Consequently, the 83 km of Syria border and 300 km of Iran border responsibility passed to the Turkish Land Forces. By the way, only 387 km of Iraq border and 90 km of Iran border was left under the control of the General Command of Gendarmerie.

Turkey has established checkpoints in order to monitor the movements from East to West, and the sea contact points are open for 24 hours. Turkey has contacted the neighbor countries to establish early warning systems. Turkish Coast Security has begun to allocate 70 percent of its sources to combat with illegal migration and human trafficking.

Finally, The Act No. 4787 has amended the Coast Security forces structure with giving special status to itself and defining its personnel as expert out of the structure of Turkish Navy. The Act No. 4787 changed the law on coast guard Command No. 2692, the Act No. 211 on Turkish Armed forces Internal Service and lastly the Act on Personnel of Turkish Armed Forces No. 926.

5.1.4. Visa Policy

The Treaty of Amsterdam represents a rise forward in integrating EU visa policy, bringing all aspects of the visa policy into the legal and institutional structure

of the Union. EU institutions have also defined a number of measures to guarantee common standards for producing EU visas and residence permits across the Union, regardless of the Member State in which they are produced. However, the United Kingdom and Ireland based on a protocol annexed to the Treaty of Amsterdam preserve autonomous visa, immigration, and asylum policies; this means that they do not join the measures adopted in these fields, unless they clearly announce their willingness to do so. Concurrently, another protocol annexed to the Treaty of Amsterdam integrated the Schengen acquis (the Schengen agreements and the implementing decisions) into the European Union Treaties. Because of this protocol, the harmonization procedures introduced by the original Schengen signatory Member States in the field of visas are now part of the EU acquis. The harmonized conditions and criteria to issue uniform visas are laid down in Articles 9-17 of the Schengen Convention and specified in detail in the Common Consular Instructions³³.

Turkish Government has taken essential steps to adjust to the EU Visa Negative List. By May 2003, 75% alignment with the said list was completed. For full alignment, the situation of six countries needs to be reviewed. As a first step, Turkey introduced visa requirements for six Gulf countries (Bahrain, Qatar, Kuwait, Oman, Saudi Arabia, and United Arab Emirates) which the EU subjects to visa requirements, as of September 1, 2002. As a second step, thirteen countries (Indonesia, Republic of South Africa, Kenya, Bahamas, Maldives, Barbados, Seychelles, Jamaica, Belize, Fiji, Mauritius, Grenada, and Santa Lucia) have been listed for visa requirements, and these entered into force between May-July 2003³⁴.

³³Official Journal J C 313, 16.12.2002
³⁴ NP 2003 p.662

5.2 Area of Security

Police and judicial cooperation has been developed together with the principle of the free movement of persons to ensure that the abolition of frontier checks does not become synonymous with increased crime. as a result, compensatory measures have been adopted and the globalization of such phenomena as trafficking in drugs and human beings has led Member States to look for common solutions to reinforce national action.

The Amsterdam Treaty emphasizes measures for the impediment of organized crime, but the new Title VI (Police and Judicial cooperation in criminal matters) of the Union Treaty in the main preserves the intergovernmental procedures laid down in the Maastricht Treaty in 1993. The Action Plan, adopted by the Council and the Commission in December 1998, sets out different measures to be adopted in the short term (two years) and the medium term (five years) to establish an area of security. They include the development of Europol , and particularly the organization of its relations with the judicial authorities of the Member States, the incorporation of the Schengen acquis regarding police and customs cooperation and organizing the collection and storage of data on cross-border crime.

Finally, the European Council³⁵ referred the problems of crime prevention, speeding up cooperation in the fight against crime and the detailed action required fighting money laundering.

³⁵ In Tampere, Finland 15 and 16 October 1999

5.2.1. Police Cooperation

Europol Convention on European Police Office was signed to improve police cooperation between the Member States for combating terrorism, illegal traffic in drugs and other important forms of international crime³⁶. This Convention set up a European Police Office "Europol" to be placed in the Hague, Netherlands. Its task is to improve the effectiveness of the competent authorities in the Member States and cooperation between them in the connected areas.

As Europeans take advantage of their rights to travel freely around the EU for either business or personal reasons, the need for greater co-operation between national police forces, customs services, and legal systems is set to boost tremendously. In the same way, the activities of international terrorist groups and criminal organizations take advantage of this freedom. To combat them proficiently, the EU's national law enforcement agencies must co-operate with their counterparts in other EU countries on an almost daily basis. Several measures have been set up to help them work together immediately and proficiently.

In Turkey, the Smuggling, Intelligence, Operations, and Information Department of Interior Ministry (KİHBİ) has the duty of coordination between related institutions and registration of all the information about the committed crimes all over the country. Furthermore, it regulates meetings of the Coordination Board of Smuggling and Intelligence every two months.

³⁶ Council Act of 26 July 1995 drawing up the Convention on the establishment of a European Police Office Official Journal C 316 of 27.11.1995.

In the structure of the General Directorate of police, there is a department of Fight against Smuggling and Organized Crime, and a branch office of Smuggling and Organized Crime under the structure of Provincial Police departments.

In the same way, there is a department of Smuggling and Organized Crime in the headquarters of the General Command of the Gendarmerie and a branch office of smuggling and Organized Crime in the structure of Provincial gendarmerie Commands.

Turkey approved the 2000 Convention against Transnational Organized Crime (Palermo convention) in March 2003 as well as its Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women, and Children and the Protocol against Smuggling of Migrants by Land, Sea, and Air. The Turkish Criminal Code had already been amended by the Act No. 4771 August 2002 to adapt to the two Protocols to the Palermo Convention. The amendment added two paragraphs to the Article 201 of the Turkish Criminal Code numbered as 201/a and 201/b defining respectively the crime of smuggling and human trafficking as a new crime type.

The Ministries of Justice and Internal Affairs conducted training the new anti trafficking legislation. Consequently 75 officials of the Ministry of Internal Affairs and 600 judges and prosecutors were trained on combating human trafficking in persons was set up in October 2002 under the coordination of the Ministry of Foreign Affairs.

5.2.2. Organized Crime (OC), Fraud and Corruption

Two main action plans against organized crime have been adopted at European Union level since 1997. The Millennium Strategy as the most recent one was evaluated to make further plans in the second half of 2003. The European Commission in 2004 will submit a new forward planning document.

Falling frontiers between the European Union Member States are producing many benefits; however, they are also making it easier for criminal organizations to be active across Europe. Whereas the occurrence of organized crime is not new, criminals have been taking advantage of fast moving technological advances such as the Internet, overall globalization and, to the extent that the European Union is involved, the freedom of circulation and establishment the single market entails.

The efficiency of conventional implements and national level responses has diminished against the background of highly sophisticated criminal groups acting strategically at international level. The challenge is therefore both local and global.

The impact of OC is felt by all states and by everyone in the EU, now and then even directly or personally. It creates noteworthy damage to societies and economies. The event of OC is increasingly transnational, with OC groups working together in widespread networks across the EU. The areas of crime vary from trafficking in human beings, drug trafficking to illegal immigration, financial crime, commodity smuggling, and property crime. Many OC groups operating today are known to join

in more than one kind of crime³⁷.

According to the OC report³⁸, Turkish OC groups are engaged in drugs and arms smuggling, money laundering and protection rackets. While these groups continue to control the heroin trade in the EU affecting the United Kingdom, especially the Netherlands and Germany, there are clues that other groups have begun to face up to them. In some cases, Turkish groups are described as importing heroin and holding strategic control, while ethnic Albanian groups distribute the drug. The most significant change is the rise for soft drug trafficking by Turkish OC groups.

Meanwhile, the TGNA adopted a new law³⁹ on Combating Smuggling of Goods in July 2003. The law clarifies the definition of smuggling and provides for financial penalties to be imposed in minor cases, and for sentences of imprisonment, in general, to be imposed only in cases of organized smuggling.

Putting into practice the legislative amendments of August 2002, pertaining to prohibiting trafficking in persons and prescribing serious penalties that are increased with aggravating circumstances, more trafficking-related arrests have been made. The Turkish authorities arrested 1157 members of organized trafficking gangs in 2002. In the first three months of 2003, this figure reached 169. Of those arrested, legal procedures were opened against 676 organizers for breach of Article 201a of the Criminal Code (offence related to smuggling) and against 34 organizers for breach of Article 201b (offence related to trafficking in human beings), both

37 EUROPOL 2003 European Union Organized Crime Report on www.europa.eu.int p.5

38 The OC Report p.15

39 No. 4926 Dated 10 July 2003

amended by the Act No. 4771 namely the third harmonization package on August 3, 2002.

In January 2003, Turkey accepted new legislation intended for implementing the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, ratified in 2000. Therefore, the Turkish Criminal Code, the Public Procurement Law, the Law on Preventing Money Laundering, the Law on Control of Narcotics, the Law on the Organization and Tasks of the Ministry of Finance, and the Law on Public Officials were revised. These amendments mainly introduced two new offences into Turkish legislation. First, the offence of bribing a foreign public official was inserted into Article 211 of the Criminal Code. Second, laundering property and proceeds acquired or derived from bribery, including bribing a foreign public official, has been added to Article 2 of the Law on Prevention of Money Laundering. Furthermore, in accordance with the above-mentioned amendments, legal persons were made subject to criminal responsibility with regard to bribery.

5.2.3 Implementation of the EU Acquis in the Field of Drugs

Nearly one in five of the European Union population has used an illicit drug at least once⁴⁰. An increase in drugs and organized crime tops the list of fears among European citizens, with 69 % seeing it as the greatest threat to their society. Coping with the complex issues posed by drugs has been a major challenge for the European Union. To solve this, the European Commission has gathered the full extent of its

⁴⁰ on http://europa.eu.int/justice_home/drugs

expertise in the fields of health and consumer protection, education and culture, employment and social affairs, development, enlargement, justice and home affairs, the internal market, research, energy and transport, taxation and customs and statistics. It has developed a multidisciplinary and integrated approach to the drugs phenomenon.

The Europol Drugs Unit (EDU) was established as a forerunner to the European Police Office (Europol). The EDU operated from 1995 to 1999 and was replaced by Europol on July 1, 1999.

Turkey and the EU signed a Precursors Agreement in February 2003 with the purpose of enhancing the international fight against the production and commerce of precursors and chemical substances used in the illegal manufacture of narcotic drugs and psychotropic substances through exchange of information and monitoring of trade flows. Turkey has made new improvements for adapting to the EU Drug Strategy 2000-2004, proposed by the Joint Declaration of 28 February 2002 on the expansion to all candidate countries of the EU Action Plan on Drugs and its future implementation with regard to achievement of the national drug strategy. So far, negotiations for Turkey's membership of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) have continued⁴¹. National Contact Point is transferred from the Institute of Family Research to the structure of Smuggling and Organized Crime Department of the Ministry of Internal Affairs. The National Contact Point has worked in coordination with the Turkish Academy for fighting drugs and Organized Crime (TADOC).

⁴¹ 2003 Progress Report

5.3 Area of Justice

The objectives of the Tampere policies are that not only should freedom and security be assured at an EU level but also, that people and businesses should be able to enjoy them equally. They should also have the full protection of the law, and easy access to the law, anywhere in the EU. Criminals should no longer be able to take advantage of the differences between national laws and the judicial systems of the member states, and of the lack of co-operation between national police and customs authorities in neighboring countries.

The four major principles inspiring judicial cooperation in the European Union are approximation of the laws and regulations of the Member States, coordination of proceedings, mutual recognition of final decisions, and the protection of the rights of individuals.

5.3.1. Judicial Cooperation in the Field of Civil Law

European Union governments have acknowledged that judicial co-operation is essential. Earlier in 1968, the first six Member States decided on common rules on jurisdiction and enforcement of judgments in civil and commercial matters often referred to as the Brussels Convention. In 1993, the Maastricht Treaty identified judicial co-operation in civil matters as an area of common interest for EU Member States. Going even further, the Treaty of Amsterdam made judicial co-operation in civil matters a European Community policy linked to the free circulation of people.

To be party to the Conventions on taking evidence in the fields of civil and commercial law, legal assistance and judicial jurisdiction, and mutual recognition and enforcement of court decisions is deemed important.

It aims to facilitate the temporary Commission demands for the collection of evidence on legal and commercial issues. Granting of rights for jurisdiction, acceptance of judicial verdicts, legal, and executor aid, and the right to obtain copies from official records and court verdicts are envisaged to complete. It is necessary to strengthen and facilitate the cooperation on the prevention of detention of persons because of their legal and commercial transactions.

Additionally, the relevant legislation of the European Union, which has been in continuous development, will be pursued closely; cooperation possibilities with the European Union will be explored. Preparatory works will be realized with regard to following subjects⁴²: Mutual recognition and enforcement of decisions given by civil courts; Harmonization of laws and rules on judicial jurisdiction and conflict of laws; harmonization of rules pertaining to civil procedure with those of the member states; facilitation and simplification of service procedure of judicial and extra-judicial documents in civil and commercial law; the European Enforcement Order for Uncontested Claims; jurisdiction on matrimonial and parental responsibilities and the mutual recognition and enforcement of court decisions; bankruptcy and insolvency proceedings, alternative dispute resolutions, awarding compensation to the victims of crime, taking evidence in civil and commercial matters, and the law to be applied to

⁴² on http://europa.eu.int/justice_home/activities

contractual obligations.

The necessary legislative measures in this field are three approval laws for the ratification of the three conventions. These are:

- Convention on the Taking of Evidence Abroad in Civil or Commercial Matters⁴³,
- Convention on jurisdiction and the enforcement of judgments in civil and commercial matters⁴⁴;
- Convention on International Access to Justice⁴⁵ (The Hague, 25 October 1980) Convention on the International Private Law Conference

Accordingly, Turkey has to make an agreement with the EU for the provision of Council Regulation (EC) No 743/2002 of 25 April 2002 establishing a general Community framework of activities to facilitate the implementation of judicial cooperation in civil matters.

5.3.2. Judicial Cooperation in the Field of Criminal Law

The scope of the law-enforcement authorities within the EU is still largely limited to the boundaries of their respective; therefore, it has become easier for criminals to activate transnational all over the EU owing to states have taken different measures to strengthen the European Single Market. While mutual

⁴³ The Hague, 18 March 1970)

⁴⁴ Lugano, 16 September 1988

⁴⁵ Convention on the International Private Law Conference No. 29 the Hague, 25 October 1980
Convention on the International Private Law Conference No. 29

recognition of national standards was essential in achieving the European Single Market, joint recognition of decisions taken by national judges was also set to become the cornerstone of judicial cooperation in criminal matters. The aim of judicial cooperation is also to ensure that individuals have their rights assured equally, no matter under which Member State's jurisdiction their case is being heard.

The Council Decision of 28 February 2002⁴⁶ set up the EUROJUST to improve judicial cooperation and effectively combat forms of serious crime, to facilitate the coordination of action for investigations and prosecutions covering the territory of more than one Member State. Subsequently, at the Intergovernmental Conference, which was held in Nice in December 2000, the Heads of State and Government decided to amend Article 31 of the EU Treaty, introducing a reference to, and description of Eurojust's tasks. More recently, at the Laeken European Council in December 2001, the Member States decided that, pending a decision on the location of the headquarters of certain agencies, Eurojust would have its provisional headquarters in the Hague.

This decision institutes Eurojust as a body of the Union with legal personality. Each Member State must assign a national member of Eurojust a prosecutor, judge, or police. The national members mentioned above are subject to the national law of the Member State, which appointed them. Furthermore, each Member State determines the length of the term of office as well as the nature of the judicial powers conferred on its national representatives⁴⁷.

⁴⁶ Official Journal L 63, 06.03.2002

⁴⁷ Fact Sheet no. 15 on EUROJUST

In this field, the first necessary legislative measure for Turkey is an approval law for the ratification of the Council of Europe Convention on Cyber Crime, opened to signature on 23 November 2001 and Common Position of 27 May 1999 adopted by the Council on the basis of Article 34 of the Treaty on European Union, on negotiations relating to the Draft Convention on Cyber Crime held in the Council of Europe⁴⁸. It has planned to enact by 2005.

Secondly, some articles of the Turkish Criminal Code should be changed to comply with the EU provisions until 2004, namely the Council Decision of 29 May 2000 to combat child pornography on the Internet (2000/375/JHA) and Joint Action of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union regarding action to combat trafficking in human beings and sexual exploitation of children⁴⁹.

Lastly, Turkey should amend the Law on Combating Organizations Pursuing Illicit Gain (Art. 7) No 4422 and Law on Anti Terrorism (Art. 20) No 3713 for adopting the Resolution of the Council on November 23, 1995 on the protection of witnesses in the fight against international organized crime.

48 No. 1999/364/JHA

49 No. 1997/154/JHA

CONCLUSION

In 2002, the elections proved the importance of EU membership in Turkish politics, because the pro-European parties received more than 70 percent of the votes. Accordingly, the Justice and Development Party (AKP) as the winner of the elections put the EU membership policy into its first priority. This approach has shown itself especially in the legislation owing to one party government with a majority in the TGNA. The new Government added four more harmonization packages to three of them previously enacted.

The amendments mentioned in previous chapters include changes in many former taboos for the Turkish Law Enforcement system, such as the abolition of death penalty, the broadcast in mother tongues, the abolition of thought crime, and the detention and custody periods.

In this process, the new laws have shortened the detention and custody periods, which were main reason for torture and ill-treatment cases. Besides the violations of human rights were also principal criticisms of the EU, COE, and other international organizations. Nevertheless, torture and ill-treatment were eliminated from the system as an interrogation method, by the new legislation and strict implementation. They not only shorten the detention periods but also prolong the sentence periods for those cases with accepting them as urgent lawsuits in jurisdiction. The state civil servants, who are convicted for these crimes cannot be prosecuted with Law No. 4483 regulates the jurisdiction conditions of the civil servants in a special way.

The Police and Gendarmerie has changed their organizational structure to adjust to new legislation, as they have tried to implement them more effectively. They also put the EU Accession process into the first priority of their administrative policy, namely they add a new dimension to their management conception as the EU approach in all activities. Moreover, the Law Enforcement agencies investigate the responsible personnel for breaches of the human rights and adjudicate them with regard to the connected laws. The independent courts also judged them for the violation of the Articles 243 and 245 of the Turkish Criminal Code.

In the field of education, the Police and Gendarmerie are not only enhancing the scope and period of human rights education, but also installing human rights as the center of education system. To realize this, all training courses are to include the human rights courses whether they are about the issue or not. The Turkish Law Enforcement System also tries to keep up with the new technology and to increase the human rights knowledge of the personnel by regulating pre-service and in-service training programs in order to be parallel with the European standards.

ECHR verdicts of compensation for Turkey have gradually decreased owing to the new amendments and implementation. In particular, the decisions lessen in the number of issue such as the long pre-trial conditions, incommunicado detention, torture, and ill-treatment. Although some scholars claimed that, the reason of the decrease was the elimination of terror threat in the Southeastern Anatolia, Turkey had many bad records of human rights even in the periods when there was no terrorism in the country.

Even though the Turkish Law Enforcement system completed many amendments and developments, the EU has still criticized Turkey for unsatisfactory implementation of the legal changes. It is a fact that the administrative and individual changes would take longer time than the legislative ones on the ground that Turkey has amended the laws immediately without any widespread and deep discussion process rather in an up-down approach. The EU accession process is different from the previous democratization attempts owing to the existence of foreign control instruments; whereas, it is similar to previous ones in the method of legislation as from outside-in and top-down without any public debates. To sum up, the process succeeded a remarkable transformation in the structure and understanding of the Police and Gendarmerie by doing away with their strict state-protecting approach with creating a humanist approach.

Most strikingly, the concrete change can be observed from the daily media news, they assess all the law enforcement reports in EU approach whether they comply with the process or not. In other words, the media would also be accepted as another control mechanism by commenting news with reference to harmonization.

As a final point, the European Accession process and ultimate EU membership have caused a new era for Turkish modernization, in which Turkey must carry out reforms in a different way from the past since the last precondition for EU membership is the positive commentary of the Commission Regular report of 2004 as mentioned in the Helsinki in 2002. The decision of European Council in December 2004 will be crucial about the continuation of Turkish reforms because any negative response would bring to a standstill in implementing amendments.

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