

THE EUROPEAN UNION'S APPROACH TO HUMAN RIGHTS AND ITS EFFECTS ON TURKEY

By LALE BURCU ÖNÜT

Research assistant, Dokuz Eylul University, Faculty of Law

Abstract:

This paper is primarily about how the EU -European Union- dealt with and further deals with its role in promoting the human rights within the context of its internal human rights policy. In this context, the results of the potential evolutions regarding the possession of a binding Charter of Fundamental Rights and the accession of the EU to ECHR -The European Convention on Human Rights- are also analyzed. Furthermore, the importance of the Copenhagen political criteria from the perspective of Turkey - EU relations is discussed. Turkey's progress in human rights is examined as an example for showing the effects of the EU's role in promoting respect for human rights with regard to its external human rights policy. Finally the underlying reasons beneath the decrease of the progress speed are assessed.

Keywords: EU's internal human rights policy, The Charter of Fundamental Rights, European Convention on Human Rights, EU's external human rights policy, The Copenhagen political criteria, Turkey- EU relations.

Introduction

European Union is an organization who does not have a long story of human rights. Any reference to human rights in the original EEC -The European Economic Community- Treaty is not available. Until the 2000 declaration of the Charter of Fundamental Rights, the EU did not possess a human rights catalogue. Also, up to now the charter has no legal value. However, it can not be denied that the EU has an important role in promoting human rights. The most important steps for the reinforcement of the protection of human rights in the EU were accomplished by the Treaty of Maastricht, Amsterdam and by the declaration of the Charter of Fundamental Rights. And the fact that the EU is interested in the human rights policy of the candidate states can not be neglected. EU insisted that States seeking admission to the Union must satisfy human rights requirements. In this context, Copenhagen political criteria play an important role. Copenhagen political criteria are important for Turkey too. In 2004, the Commission considered that Turkey sufficiently fulfilled the political criteria, set by the Copenhagen European Council -1993- and recommended the beginning of accession negotiations. Accession negotiations were opened on 3 October 2005, after several reforms regarding the principle of democracy, social state and the rule of law were made. Major reforms are made between 2001 and 2004. However, the progress speed began to decrease in 2007. In this paper which is written for building bridges of understanding, first we discuss the EU's internal human rights policy. In this context, the results of the EU's role in promoting human rights are analyzed. In the

second part, we evaluate the Turkey - EU relations with regard to EU's external human rights policy. In this context, the EU's approach to Turkey and Turkey's progress on human rights are discussed.

1. The EU's Internal Human Rights Policy

The EU plays an important role in promoting respect for the human rights of its citizens and of all other residents within the Union. How the EU performed this role will be more clear, if the history of the EU's internal human rights policy and certain potential developments are examined.

History of the EU's Internal Human Rights Policy

The Absence of Human Rights Policy in the Establishment of the EEC

The European Union does not have a long story of human rights. There is no reference to fundamental rights in the original EEC Treaty (Özkan 1990, 96). An exception might be the right to equal payment between men and women (Art. 119). But this is rather a condition of free movement of persons, than the right of non-discrimination (Dutheil de la Rochère 2004, 347). Despite the absence of any reference, the CJEC -The Court of Justice of the European Communities- began in the late 1960s to affirm that respect for fundamental human rights is part of the legal heritage of the Community (Alston and Weiler 1999, 9- 10). CJEC applies fundamental human rights as a general principle of law (Özkan 1990, 96).

The Reinforcement of the Protection of Human Rights in the EU

As the EU didn't have a Charter of Fundamental Rights until 2000, it imported those rights from national and international legal systems (Douglas- Scott 2006, 633). Article F of the Maastricht Treaty (O.J. 1992) is the legal basis of this importation. And it has been one of the most important steps for the reinforcement of the protection of human rights in the EU. Today this article is valid as article 6/2 of the Treaty on EU (O.J. 2002). It states that "The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law." Another important step was accomplished by the Treaty of Amsterdam. We observe the acceptance of the principles that the EU is founded on. Article 6/1 states that "The Union is founded on the principles of liberty, democracy and fundamental freedoms and the rule of law, principles which are common to the Member States". In spite of these evolutions, any charter of rights isn't available neither in the Maastricht Treaty, nor in the Amsterdam Treaty.

The declaration of the Charter of Fundamental Rights was another important step. Until the declaration of the Charter of Fundamental Rights (O.J. 2000), the EU possessed no human rights catalogue. It was proclaimed in Nice, on 7 December 2000. Several of the rights stated in the Charter of Fundamental Rights are based on the ECHR, some of the Charter's rights have their origins in the common constitutional traditions of the Member States or are at least inspired by national constitutional law, others are inspired by judgments of the Court of Justice, some are based on the

European Social Charter of 1961 and the Revised Social Charter of 1996, and some are based on existing EC or TEU provisions (Knook 2005, 395). Nevertheless up to now the charter has no legal value (Dutheil de la Rochère 2004, 349). On this subject Advocate General Tizzano indicated that the Charter of Fundamental Rights is not in itself binding (Tizzano 2001, I-4881, para. 27). Regarding the same issue, Advocate General Léger indicated: "It should be noted that those values have in common the fact of being unanimously shared by the Member States, which have chosen to make them more visible by placing them in a charter in order to increase their protection. The Charter has undeniably placed the rights which form its subject-matter at the highest level of values common to the Member States" (Léger 2001, I-9565, para. 80). In the preamble of the Charter, it is also stated that "This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights." So we must accept that the Charter is no more than an authoritative expression of the fundamental rights recognized in the EU (Dutheil de la Rochère 2004, 349). But in the future it can be in itself binding.

Certain Potential Evolutions Regarding the Protection of Human Rights The EU as a Holder of Binding Charter on Fundamental Rights

In 2000, the EU possessed human rights catalogue without a legal value. And after that, authorities began trying to grant it a value of positive law. They considered including the charter into the draft constitution for this purpose. Integrating the charter in the Constitution, represented an important shift away from the conception of fundamental rights solely constituting a part of the general principles of Union law to one that also posits fundamental rights as individual rights (Morijn 2006, 16). But, the Treaty establishing a Constitution for Europe was rejected by referenda in France and Netherlands. However the project of granting value of positive law to charter continues. The Charter is not included in the Treaty of Lisbon. However it has been indicated by reference to article 6/1 of Lisbon Treaty, that the Charter of 2000, as amended on 12 December 2007 will have the same legal value as the Treaties. When the Treaty of Lisbon is compared to the Treaty establishing a Constitution for Europe, it is observed that the difference relates more to the form than the substance (Poncins 2008, 67). If the Treaty of Lisbon comes into force or the Charter has the value of positive law by another way, Union citizens will be transparently empowered to invoke their rights against various European institutions, bodies, and agencies, as well as the Member States when implementing Union law (Morijn 2006, 16).

The EU as an Adherent to ECHR

Another expected evolution is regarding the accession of the EU to ECHR. The EC- EU adhesion to ECHR is a long discussed issue. There are two interlopers in front of this adhesion. First of all, The ECHR is only open to the ratification of states

(Article 59 of the ECHR) and the EC-EU isn't a state. On the other hand, as indicated within the opinion 2/94 of the CJEC, EC don't have any powers for the accession to the ECHR. And the accession can be realized only by the way of Treaty amendment (CJEC, Opinion 2/94). Yet, the EC- EU isn't the signatory of the ECHR. However, the Court uses the European Convention on Human Rights (CJEC, C. 36/75, para.32). And it is taking great care to avoid any conflict with the case-law of the Strasbourg Court (Juncker 2006, 4). Nevertheless, it has sometimes felt free to interpret the ECHR in its own way (Tezcan 2002, 218-219; Douglas-Scott 2006, 651). The most important examples of these interpretations are observed within the cases "National Panasonic" and "Hoechst". The CJEC indicated within the judgment "National Panasonic" that Article 8/1 of the ECHR is to be applied as a principle to legal persons (CJEC, C.136/79, para.19). However, CJEC invoked the necessity of the maintenance of competition's system intended by the EC Treaty for refusing the National Panasonic's allegation on the infringement of the right to respect for home (CJEC, C.136/79, para.20). And within the judgment "Hoescht", CJEC indicated more clearly that the existence of a fundamental right to the inviolability of the home must be recognized in the Community legal order as a principle common to the laws of the Member States in regard to the private dwellings of natural persons. On the other hand, in the same case, the CJEC stated that the right of the inviolability of homes isn't applicable to undertakings (CJEC, C. 46/87, para.17). However, the European Court of Human Rights accepts to apply Article 8/1 of the ECHR also to undertakings (Tezcan, Erdem and Sancakdar 2004, 401). Within the judgment "Niemietz", the European Court of Human Rights stated that interpreting the word "home" as including certain professional or business premises would be consonant with the essential object and purpose of Article 8, namely to protect the individual against arbitrary interference by the public authorities (Case of Niemietz v. Germany 1992, para.31). Above is an example of the difference between interpretations of two distinct European Courts. Such differences between interpretations can be decreased if EU adheres to ECHR. We must indicate here also the other potential results of the adhesion. As indicated by Juncker, the EU accession to the ECHR will not affect the division of powers between the EU and its member states. Accession will however subject the EU institutions to the external monitoring of compliance with fundamental rights. Accession will also allow the EU to become a party in cases directly or indirectly concerned with Community law before the European Court of Human Rights (Juncker 2006, 4). The European citizens will be able to address to the Court of Human Rights if they think that European acts isn't in conformity with the ECHR (Poncins 2008, 82). If CJEC or another EU institution infringes ECHR, the violation will be able to be determined by the Court in Strasbourg (Alston and Weiler 1999, 11). The adhesion that is mentioned above can be realized only by the way of Treaty and Convention amendments. The Treaty of European Union (Treaty of Lisbon), which is not yet in force, contains an article on this subject. Article 6/2 of the Treaty on European Union states that the Union shall accede to the ECHR and such accession shall not affect the Union's competences as defined in the Treaties (O.J. 2008, C.115/13). Protocol 8 relating to article 6/2 of the Treaty of European Union on the accession of the Union to the ECHR is about conditions of this accession (O.J. 2008, C.115/201). On the other hand, Article

17 of the Protocol 14 of the ECHR will amend Article 59 of the ECHR, allowing the European Union to accede to it (Council of Europe, Text of protocol no. 14). Protocol 14 will come into force when it is ratified by all member states. It is signed by every Council of Europe member state. However, only Russia has not yet ratified the protocol (Council of Europe, Signatures and ratifications).

In this part, we analyzed the EU's role in promoting respect for the human rights in the context of its internal human rights policy. The EU has also important roles in the international scene. Its role can be seen clearly if the Turkey and EU relations are examined as an example.

2. Turkey- EU Relations in the Context of the EU's External Human Rights Policy

The EU took the responsibility of influencing the human rights policies of other states. It is interested notably in the human rights policies of the candidate states. The effects of the EU's role in promoting respect for human rights in other countries can be seen, if the Turkey's progress on human rights is examined as an example. Before this examination a general evaluation on Turkey- EU relations is also necessary.

General Evaluation on Turkey - EU Relations

History of Turkey- EU Relations

Turkey made its first application in 1959 for joining the European Economic Community (EEC). The request was premature (Erhan and Arat 2002, 818-819). The EEC's response to this first application was to propose the creation of an association until Turkey's circumstances permitted its accession (T.C. Başbakanlık Dış Ticaret Müsteşarlığı 2007, 288). The agreement creating an association between the Republic of Turkey and the European Economic Community (Ankara Agreement) was signed on 12 September 1963 (J.O. 1964, no.217, 3687- 3688). This agreement envisaged the establishment, in three stages, of a customs union (Art. 3, 4, 5). Definitive arrangements were laid down for completing the final phase of the customs union by the Decision 1/95 of the Association Council (O.J. 1996, L.35, 1- 47). On the other hand, in 1987 Turkey formally applied for full membership. Turkey had to wait the Helsinki European Council (1999), for being accepted as a candidate state on an equal footing with other candidate states (Helsinki European Council 1999, para.12). However, the Helsinki European Council didn't set any date for the beginning of negotiations. This date was set by The European Council on 16 December 2004 as 3 October 2005. On 3 October 2005, after negotiations between the Member States, the Council was finally able to reach an agreement on a framework for negotiations on the terms of Turkey's membership of the European Union. And accession negotiations were opened. Today, one of the Turkey's targets is to be a member of the EU. However, it's not an obsession (Cem 2005, 9, 74).

Importance of the Copenhagen Political Criteria in Terms of Turkey- EU Relations

The Copenhagen criteria were laid down at the June 1993 European Council in Copenhagen. These criteria include the political criteria, the economic criteria and the ability of the candidate state to adopt and implement the *acquis*. Especially, the

Copenhagen political criteria are about the stability of institutions guaranteeing democracy, the rule of law, human rights and protection of minorities (European Council in Copenhagen 1993, 13). These criteria are generally applied as a condition to conclude accession process. However, for Turkey, it was applied as a condition to open accession negotiations (Cem 2005, 81). The conclusion of the European Council in Copenhagen (2002) certifies this statement. It concluded that "if the European Council in December 2004, on the basis of a report and a recommendation from the Commission, decides that Turkey fulfils the Copenhagen political criteria, the European Union will open accession negotiations with Turkey without delay" (Copenhagen European Council 2002, 5, para. 19). And, in 2004, the Commission considered that Turkey sufficiently fulfilled the political criteria set by the Copenhagen European Council '1993' and recommended the beginning of the accession negotiations (Commission of the E. C. 2004, "Recommendation of the European Commission on Turkey's progress towards accession", 3). On 3 October 2005, accession negotiations were opened with Turkey. Turkey realised a significant progress on human rights before the beginning of accession negotiations.

Turkey's Progress on Human Rights

Several Turkey's Reforms Concerning Human Rights

Political reforms of Turkey are mainly covered in two major constitutional reforms (in 2001 and 2004) and eight legislative packages adopted by National Parliament (between February 2002 and July 2004.). These reforms on human rights don't come from the EU legislation. Reforms come from the principle of democracy, social state and the rule of law. But we can't deny that Turkey was motivated by the probability to join the EU. Which reforms did Turkey do on human rights before the accession negotiations?

- "The government has increasingly asserted its control over the military.

Civil-military relations evolved. In order to enhance budgetary transparency, the Court of Auditors is granted permission to audit military and defence expenditures. Extra-budgetary funds are included in the general budget, allowing for full parliamentary control. In August 2004, for the first time a civilian was appointed Secretary General of the National Security Council."

- "The independence and efficiency of the judiciary are strengthened."

- "New codes are adopted, including a Civil Code and a Penal Code. The new Civil Code includes provisions aimed at improving gender equality and strengthening guarantees regarding the protection and rights of the child."

- "State Security Courts are abolished. Some of their competences are transferred to the Serious Felony Courts."

- "The legislation to establish Intermediate Courts of Appeal are adopted."

- "Turkey acceded to most relevant international and European conventions and the principle of the supremacy of these international human rights conventions over domestic law are enshrined in the Constitution."

- "The death penalty is abolished in all circumstances according to Protocol 13 of the European Convention on Human Rights. Remaining references to the death penalty in existing legislation are removed." The Protocol 13 was signed by Turkey on 09.01.2004. It was ratified on 06.10.2005 (OJ 2005).

- "Further efforts are made to strengthen the fight against torture and ill-treatment."
- "Pre-trial detention procedures are aligned with European standards."
- "The authorities adopted a zero tolerance policy towards torture and a number of perpetrators of torture are punished."
- "Constitutional amendments and a new press law increased press freedoms."
- "Constitution is amended to lift the ban on the use of Kurdish and other languages. Several Kurdish language schools are opened in the Southeast of Turkey. Broadcasting in Kurdish and other languages and dialects is now permitted and broadcasts have started. Broadcasting and education in languages other than Turkish are authorised."
- "The state of emergency, which had been in force for 15 years in some provinces of the Southeast, is completely lifted."
- "Turkey ratified major international conventions as well as European Conventions such as the International Convention on Civil and Political Rights, on Social and Economic Rights and Protocol 6 of the European Convention on Human Rights."

After these reforms that are mentioned above (Commission of the E.C. 2004, "2004 Regular Report on Turkey's Progress Towards Accession"), negotiations were opened. The shared objective of the negotiations is accession. However, in the negotiating framework, it is indicated that negotiations are "an open-ended process, the outcome of which cannot be guaranteed beforehand" (Negotiating Framework 2005, para. 2). Furthermore, in the negotiating framework, it is indicated also that if Turkey breaches seriously and persistently the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, the Commission will recommend the suspension of negotiations. In such case, the Council will decide after having heard Turkey, whether to suspend negotiations (Negotiating Framework 2005, para. 5). The decrease of progress speed can not be seen as a reason of the suspension. However, the reasons of the decrease in the progress speed must be analyzed correctly for the future of the Turkey- EU relations.

The Reasons of the Progress Speed's Decrease

We mentioned above that the government increasingly asserted its control over the military. However, we must admit that the armed forces continued to exercise significant political influence. As indicated in Turkey 2007 Progress Report, senior members of the armed forces stepped up their public comments on domestic and foreign policy questions including Cyprus, secularism and Kurdish issues. Sometimes, the General Staff reacted publicly to government statements or decisions. The General Staff directly interfered with the 2007 presidential election by publishing a memorandum (The General Staff 2007) on its website expressing concern at the alleged weakening of secularism in Turkey (Commission of the E.C. 2007, p. 9). On the same day with this memorandum, presidential election was held in the Parliament. This election was boycotted by opposition parties, and the sole candidate Abdullah Gül, failed to obtain the required two-thirds majority. Following an application of the opposition party (CHP), the Constitutional Court ruled that the vote be invalidated because a two-thirds quorum of participants was lacking. The Constitutional Court

ruled by a majority of seven to four that a quorum of two thirds is necessary for the first and second rounds of presidential elections in Parliament, and annulled the first round of voting (Constitutional Court 2007). The decision of the Constitutional court led to strong political reactions and allegations that the Constitutional Court was not impartial when reaching this decision (Commission of the E.C. 2007, 10). After the new general election in 2007, AKP won an even larger share of the vote, putting the military squarely on the wrong side of popular opinion (Kohen and Matthews April 2008). And in August, the newly-elected Parliament elected Abdullah Gül as a President at the third round. But the controversy did not finish. In 2008, the chief prosecutor of Ankara's Court of Appeals filed an indictment that seeks to shut down Turkey's ruling Justice and Development Party (AKP) and ban more than 70 AKP members from politics, including most of the cabinet, the prime minister and the president. At the end of the case, the court decided to cut the half of the Treasury aid instead of shutting down the party (Constitutional Court 2008). However, the threat of political instability prevented Turkish Government from making progress during the process that is mentioned above. In such circumstances, Turkey's internal problems have the priority. These problems caused the speed of the reforms to decrease. But it wasn't a unique reason. The statements of several European leaders were another reason of this decrease because of their effects on Turkish citizens. Several European leaders recoiled, rebuffing Turkey instead of recognizing just how far Turkey has come (Kohen and Matthews February 2008). French President Nicolas Sarkozy says he opposes Turkish membership in the EU, because it's "an Asian country". German Chancellor Angela Merkel opposes Turkish membership in the EU. She says that "Turkey's membership is going to constrain the EU." And she offers "privileged partnership" instead of full membership. These statements reduced the willingness and support of Turkish citizens not only to EU membership, but also to the realization of reforms. Furthermore, a close connection can perhaps be observed between some internal problems and the effects of floating approaches on Turkey.

Conclusion

There is no reference to fundamental rights in the original EEC Treaty. But the EU acknowledges that it has an important role to play in promoting respect for the human rights and implements its role through the arrangements reinforcing the protection of human rights in the EU. The declaration of the Charter of Fundamental Rights is one of the most important examples of these arrangements. This Charter isn't in itself binding. However it is an authoritative expression of the fundamental rights recognized in the EU. For this reason, fundamental rights included in the Charter can be applied as the general principles of Union law. However, there are also attempts for granting value of positive law to Charter. If the Charter earns the value of positive law, fundamental rights will be posit as individual rights. Furthermore, if the Charter earns the value of positive law, Union citizens will be transparently empowered to invoke their rights against European institutions, bodies, and agencies, as well as the Member States when implementing Union law. Another attempt is on the accession of EU to ECHR. In the case of accession, if CJEC or another EU institution infringes ECHR, the violation will be determined by the Court in Strasbourg. These attempts show also the EU's aim for

the reinforcement of the protection of human rights. These projects which have the aim of having a binding Charter of Fundamental rights and accession to ECHR are the result of EU's role in promoting respect for the human rights in the context of its internal human rights policy. Beside its role of promoting respect for the human rights within the framework of its internal human rights policy, the EU has also important roles in the international scene. The EU takes the responsibility to influence the human rights policies of other states. Notably, it is interested in the human rights policy of the candidate states. In this context, The Copenhagen political criteria which were laid down in 1993 are very significant. They were applied as a condition to open accession negotiations for Turkey. In 2004, the Commission stated that Turkey sufficiently fulfilled the Copenhagen political criteria and recommended the commencement of the accession negotiations. Turkey made important reforms before of the beginning of the accession negotiations. These reforms are the results of the principle of democracy, social state and the rule of law. But Turkey was motivated by the probability to join the EU. Nevertheless, the progress speed began to decrease in 2007. The threat of political instability is the main reason of this deceleration. Turkey had to spend more time on its internal problems first. The statements of several European leaders were also the reason of this decrease in the speed of progress. These statements reduced willingness and support of Turkish citizens not only to EU membership, but also to the realization of reforms. It's true that the realization of reforms is the main responsibility of Turkey which is founded on the principles of democracy, social state and the rule of law. But Turkey needs a close cooperation of EU member states instead of conflicting statements with EU's general approach on Turkey.

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