INSTITUTIONALISATION OF HUMAN RIGHTS IN TURKEY IN THE CONTEXT OF INTERNATIONAL ASSESSMENT MECHANISMS

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ABSTRACT

INSTITUTIONALISATION IN HUMAN RIGHTS IN TURKEY
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The thesis aims to analyse the process of institutionalization of human rights in Turkey, by assessing the nature of the institutions with the focus on the dynamics forcing Turkey to establish a totally new structure devoted to human rights. In line with this aim, firstly worldwide development of institutionalization in the area of human rights is examined. The process of accession to EU has been a strong impetus for Turkey to ensure the compliance with the Copenhagen political criteria and to undertake legislative reforms for this purpose. Therefore in line with the ongoing trends in the international area, the process of institutionalization of human rights in Turkey until December 2012 is analysed. However changing recommendations of EU along the road changed the nature of the reforms after 2006 in terms of establishing new structures. Especially after 2006, Turkey faced a new agenda oriented to establish new independent democratic structures to ensure and monitor that human rights are implemented within the country accordingly with international standards. These institutions are namely Human Rights Institution of Turkey, Ombudsman, Law Enforcement Monitoring Commission and Equality Body.

However having independent structures is not common within Turkish public administration. This study mainly analyses the legislation of these new institutions and draft legislation to be established and the evaluations made so far by the independent experts, the Council of Europe, United Nations and external and domestic human rights NGOs to identify whether these institutions are in line with EU acquis/EU best practices.

Keywords: Human Rights, Institutionalism, Human Rights Institutions, European Union,

ÖZ

ULUSLARARASI DEĞERLENDİRME MEKANİZMALARI KAPSAMINDA TÜRKİYE'DE İNSAN HAKLARINDA KURUMSALLAŞMA

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Bu tez insan haklarına adanmış yeni bir yapı kurmak için Türkiye'yi zorlayan dinamiklere odaklı olarak, Türkiye'deki insan hakları alanındaki kurumsallaşma sürecini kurumların niteliklerini değerlendirerek incelemeyi amaçlamaktadır. Bu amaç doğrultusunda, ilk olarak insan hakları alanındaki kurumsallaşmanın dünyadaki gelişimi incelenmektedir. AB'ye katılım süreci, Türkiye'nin Kopenhag siyasi kriterlerine uyumunun sağlanması ve bu amaçla yasal reformlar gerçekleştirmesi için önemli bir itici güç olmuştur. Bu nedenle uluslararası alanda devam eden eğilimler doğrultusunda, 2012 yılı Aralık ayı itibariyle Türkiye'nin insan hakları alanındaki kurumsallaşma süreci analiz edilmiştir. Ancak AB'nin değişen tavsiyeleri yeni yapılar kurma konusunda 2006'dan sonra reformların niteliğini değiştirmiştir. Özellikle 2006'dan sonra Türkiye, ülkede insan haklarının uluslararası standartlar doğrultusunda temini ve izlenmesi için

yeni bir gündemle karşı karşıya kalmıştır. Bu kurumlar Türkiye İnsan Hakları Kurumu, Kamu Denetçiliği Kurumu, Kolluk Gözetim Komisyonu ve Eşitlik Kurulu'dur. Ancak bağımsız yapıların olması, Türk kamu yönetiminde alışılmış bir durum değildir. Bu çalışma, AB müktesebatı ve AB iyi uygulamalarıyla uyumlu olup olmadığını belirlemek üzere, bu yeni kurulmuş kurumların mevzuatlarını, kurulacak kurumların ise taslak mevzuatlarını, bağımsız uzmanlar, Avrupa Konseyi, Birleşmiş Milletler ile dış ve yerel insan hakları sivil toplum kuruluşlarının değerlendirmelerini incelemektedir.

Anahtar Kelimeler: İnsan Hakları, Kurumsallaşma, İnsan Hakları Kurumları, Avrupa Birliği

To My Family and My Beloved Nephew Tonyukuk

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LIST OF ABBREVIATIONS

UDHR	Universal Declaration of Human Rights
USA	United States of America
ICCPR	International Covenant on civil and Political Rights
ICESC	International Covenant on Economic, Social and Cultural Rights
UN	United Nations
ECtHR	European Court of Human Rights
EC	European Communities
EU	European Union
NGO	Non-Governmental Organisation
OHCHR	United Nations Office of the High Commissioner for Human Rights
NHRI	National Human Rights Institutions
ICC	International Coordinating Committee of National Human Rights Institutions
OSCE	Organisation for Security and Cooperation in Europe
COE	Council of Europe
ECHR	European Convention for Protection of Human Rights and Fundamental Freedoms
ECSC	European Coal and Steel Community
EEC	European Economic Community
EURATOM	European Atomic Energy Community
ECJ	Court of Justice of the European Union
TFEU	Treaty on the Functioning of the European Union
TEU	Treaty on European Union
ILO	International Labor Organisation
TL	Turkish Lira
OPCAT	Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
İHOP	İnsan Hakları Ortak Platformu- Human Rights Joint Platform

ECRI	Council of Europe European Commission Against Racism and Intolerance
HRW	Human Rights Watch
OMCT	World Organisation Against Torture

CHAPTER 1

INTRODUCTION

Human rights become essential for countries requiring a significant importance in international relations throughout time. Human rights have been the issue of many international conventions and these conventions are mainly used to set a universal application of human rights across the countries.

However the definition of the terms has been an important matter throughout the history. In spite of the discussions on the coverage of human rights, a partial consensus on the definition has been reached in the international area thanks to the international conventions developed.

The recognition of human rights is mainly reached by the adoption of the Universal Declaration of Human Rights (UDHR) in 1948. Article 1 of UDHR stipulates "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

The prevailing characteristic about human rights is that persons are entitled to have human rights as he/she is born as a human being. Donnelly (1989:18) states "human rights are held by all human beings, irrespective of any rights or duties individuals may (or may not) have as citizens, members of families, workers, or parts of any public or private organization or association. They are universal rights"

Augender (2002:80) defines human right as "a universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human simply because he is human." Melden (1977:189) suggests that "human beings have an

intrinsic value" as being inspired by Kant and violation of human rights is the failure to respect their intrinsic worth.

However these definitions do not explicitly state what are covered in the concept of human rights. According to Felice (1996), different historical conditions and economic and social development led to the rise of different concepts of human rights. The coverage of the term "human rights" developed with the categorization of human rights into three generations originated with Vasak (1977) who conceptualised the idea of third generation human rights. Vasak (1984) also introduced their correspondence to the normative themes of French Revolution- liberty, equality and fraternity. In his framework, liberty corresponds with the first generation of civil and political rights; equality corresponds with the second generation of economic, social, and cultural rights; and fraternity corresponds with the third generation of solidarity rights.

The first generation of human rights is personal and political rights, developed as an outcome of the revolutions in Europe and USA in 18th century. The persons are entitled to the first generation of human rights beginning from the moment of birth. They carry the characteristic of being inalienable and they cannot be subject to any restriction imposed by state. Among other rights, the right to life, freedom of expression, freedom of thought, freedom of religion, freedom of assembly and association, voting rights etc are first generation rights. Wellman (2000:639) states that "the first generation of human rights includes primarily those defined in the International Covenant on Civil and Political Rights (ICCPR)"

The second generation of human rights developed within the process of fighting with economic and social inequality at the end of the 19th century and beginning of the 20th century. The second generation rights are economic, social and cultural rights and freedoms. The right to labor, the right to choose one's profession, the right to leisure, and the right to social Services are instances in this category. Wellman (2000:639)

states that “The second generation consisted mainly of the human rights specified in the International Covenant on Economic, Social and Cultural Rights” (ICESC).

Vasak (1977) introduced a third generation of human rights which are collective, or group rights, in contrast with the rights belonging to the first and second generations, which were individual rights. The third generation of human rights started to form in the second half of the 20th century as a result of the fight of many nations in the world for national sovereignty and decolonization. Most often, these rights are called the rights of solidarity. Among other rights, right to peace, right to development, the collective right to political, cultural and social self-determination, and the right to a healthy and sustainable environment and right to the common heritage are third generation rights.

Roland (2002:25) notes that the difference between ‘protected from’ and ‘provided by’ led to a further classification of rights such as negative or positive.

According to Vasak (1977), the first generation of human rights is deemed as negative rights which the state has no positive obligation with respect to the realization of these rights. Roland (2002:25) states “These are rights owed to the individual, to be protected from arbitrary action by the state”. The second generation of economic, social and cultural rights is positive rights imposing positive obligations upon state. According to Roland (2002:25), these comprise “rights owed to the individual by the state such as the right to be provided a primary level education”. These rights are realized by the integrated efforts of all actors which are states, private associations, individuals and international community (Algan, 2004).

The negative rights which are civil and political rights require governments to refrain from breaching individual rights whereas the positive rights which are economic, social and cultural rights require action from governments to achieve them. However Donnelly (1998) make a critique of a distinction such as negative or positive in terms of rights asserting that the rights in their nature may be called as both negative and positive. He

puts forward that human rights require both positive action of state and restraint by the state to some extent for the individuals to fully benefit from rights.

Vasak (1982:4-8) states that "Any society that is to protect human rights must have de jure or free state in which the right to self-determination and rule of law exist, a legal system for the protection of human rights, an effective organized or unorganized guarantees".

The perception that the human rights of every individual should be protected diffused around the world especially after the World War II due to the international treaties, especially based on United Nations (UN). According to Wotipka and Tsutsui (2008), the increase in the number of treaties in the area of human rights as well as the number of states that become party to these is remarkable in the sense that states willingly accept the limitation to their sovereignty. They assert that many states ratified these treaties in order to be legitimate actors in the international community despite the limitation imposed on the state's sovereignty.

Turkey did not act different from the other states within the period of World War II. Turkey was one of the 48 countries that signed for the Universal Declaration of Human Rights adopted by UN in 1948. Thereafter Turkey has been a member of Council of Europe and signed the Convention for the Protection of Human Rights and Fundamental Freedoms in 1950, ratification of which was completed four years later.

However Casier (2009) assert that Turkey did not pay any attention to the human rights before 1980s. Human rights become increasingly a matter of concern thanks to Turkey's recognition of the right of the individual petition to the European Court of Human Right (ECtHR) in 1987 and the Turkey's application for membership to the European Communities (EC) in 1989. These initiatives provided political justification for interferences of European countries.

Since then respect for human rights has been one of the outstanding issues in the process of Turkey's accession to European Union (EU) since Turkey is granted a candidate status at Helsinki Summit. Due to internal dynamics, Turkey had significant shortcomings in terms of human rights and thus did not record a progress until the Helsinki Summit.

However following Helsinki summit, Turkey chose to restore its shortcomings in the area of political criteria through constitutional amendments, overhaul of basic legal codes and harmonization packages. There have been comprehensive amendments in 2001 and 2004 so that one-third of the Constitution, adopted in 1982, was amended as of 2004. Eight harmonization packages entered into force to meet priorities declared in the Accession Partnership Documents of the EU Council and Regular Reports of Turkey prepared by the European Commission.

During the reform process, harmonization package - a draft law consisting of a number of amendments to various laws- is used as a tool to amend more than one code or law at a time. The method of harmonization package was found as a time-effective way since it is approved or rejected in a single voting session in Parliament. Using this approach, legislation that was not in line with EU standards in the area of human rights was amended in a quick manner. The impact of the harmonization packages in Turkey has been significant in the history of developments in human rights in terms of its rapidness and comprehensive contents since these packages amended the existing legislation to a great extent to improve human rights, strengthen safeguards against torture and ill-treatment, expand the area of freedom of expression and freedom of the press, strengthen the freedom of association, assembly and demonstration, expand cultural rights, ensure gender equality, and consolidate democracy.

The political reforms were continued decidedly in parallel with the harmonization packages. Many significant laws such as Turkish Penal Code, Turkish Civil Code, The

Code of Criminal Procedure and The Law on the Execution of Sentences, The Law on Municipalities were revised.

In 2006 the Government announced the 9th Reform Package on 12 April 2006. It has been considered as the continuation of the series of the harmonization packages since it has been called as the ninth one. However it was not designed as a single piece of legislation as in the case of harmonization package. Indeed the so-called 9th reform package includes number of pieces of draft legislation and international agreements that are on the agenda of the Parliament, the presentation of new pieces of legislation to the Parliament and some administrative measures. The 9th reform package was indeed an announcement of the Government agenda for future period at that time. The Law on Ombudsman and restructuring of the Human Rights Presidency of the Prime Ministry were also included in that reform package. However considering these two significant pieces of legislation went into force as 2012 and there are still a number of items of the 9th Reform Package that has not been achieved, it has not been as realize completely as the previous political reforms attempts.

There have been long-standing reforms realized primarily in the field of Copenhagen political criteria in parallel with the acceleration of the accession process to EU. This path has been decided by Turkey's own initiative in order to realize one-way modernization process, destination of which is EU membership. However Turkey has not reached an ideal position in terms of implementation.

The amendments in the legislation and revision of major codes are also acknowledged by the European Union through the Commission's Reports and European Parliament's Reports. However the implementation of the legislation in the area of human rights is still subject to critiques from EU, international organizations, domestic and international nongovernmental organizations (NGOs).

According to the United Nations Office of the High Commissioner for Human Rights (OHCHR, 1993), national governments are the main actors in the realization of human rights since the states are supposed to promote and protect the human rights through a number tools which are adequate legislation, independent judiciary and enforcement of individual safeguards and remedies and democratic institutions. Therefore ratification of major conventions and amending the existing legislation in line with the international norms is not sufficient to guarantee effective implementation which leads to the full enjoyment of human rights. The concerns over the effective implementation underline the need and importance of democratic institutions safeguarding human rights in the international arena. In the last two decade, countries started to establish national institutions devoted to provide the full enjoyment of human rights.

Gunther (1999:141) asserts "the state was considered as the pre-eminent protector of human rights as well as pre-eminent violator." He expresses the reason why all approaches to human rights try to find why human rights are negative rights as people first experienced the violation of human rights. However the idea of State being protector of human rights came with the awareness that human rights can be put at stake also by increasing social power. He (1999:141) concludes that "human rights of second and third generations resort to state as guarantor of human rights". States prefer the establishment of institutions assigned with the protection, respect and promotion of human rights to undertake the responsibility of being guarantor of human rights in line with international norms.

Turkey also put efforts to establish human rights based structures in public administration beginning from 1990s. There have been specific units dealing with the human rights issues in hierarchy of the public administration such as departments, directorates for a long time. However none of these units have been established in order to overcome the dilemma that the violator of human rights may become the protector of the human rights. Therefore in Turkey there was no unit carrying the quality of democratic institution which is a organization model acting independently of hierarchy.

However Turkey felt the need to establish such democratic institutions as requirements of EU negotiation process and international organizations especially after 2006.

However the achievement of establishing a new independent structure in the area of human rights requires a new institutional culture and the abandonment of the former approaches and behaviors. The goal of establishing an independent human rights mechanism that respects, protects and promotes the human rights poses a challenge for the Turkish citizens as well as bureaucrats of existing institutions and recently established institutions since this period requires transformation of mentality to set the new culture focused on human rights.

The aim of the thesis is to examine the process of institutionalization in the area of human rights, by assessing their nature with the focus on the dynamics forcing Turkey to establish a totally new structure devoted to human rights. The accession to EU membership has been a strong impetus for Turkey to comply with the Copenhagen political criteria and to undertake legislative reforms for this purpose. However changing recommendations of EU along the road changed the nature of the reforms after 2006 in terms of establishing new structures. After 2006, Turkey has found out a new agenda oriented to establish new independent structures to ensure and monitor that human rights are implemented within the country accordingly with international standards. However having independent structures is not common within Turkish public administration. Thus the public institutions, bureaucrats and Turkish citizens even the NGOs located in Turkey are completely stranger to the concept of establishment of the new independent structures. Since the drafting phase of the legislations of these independent structures are prepared by the existing public institutions with the contribution of NGOs, the resistance to having an independent body showed itself as some provisions curbing the ability of the institutions to act independently within the relevant legislations.

CHAPTER 2

WORLDWIDE DEVELOPMENT OF INSTITUTIONALISATION IN THE AREA OF HUMAN RIGHTS

The general idea of human rights, that that can be legally protected, began to strengthen at the end of the Second World War. The Second World War prompted the states to assemble a forum to deal with the War's consequences and most importantly to prevent such appalling events in the future.

The Second World War was the pushing factor of the formation of UN. UN officially came into existence on 24 October 1945, when the Charter of the United Nations had been ratified by China, France, the Soviet Union, the United Kingdom, and the United States and by a majority of other signatories. In 1945, representatives of 50 countries met in San Francisco at the UN Conference on International Organization to draw up the Charter. The Charter was signed on 26 June 1945 by the representatives of the 50 countries. Poland, which was not represented at the Conference, signed it later and became one of the original 51 Member States. Hence they preferred to have a strong language for the respect for human rights and fundamental freedoms in the Preamble of the Charter of the UN. So the respect for human rights and fundamental freedoms has put as the cornerstone of the United Nations. Jack Donnelly (1999:73) considered this as "a decisive step in codifying the emerging view that the way in which states treat their own citizens is not only a legitimate international concern but subject to international standards." in his paper.

The purposes of the UN include achieving international co-operation in solving international problems of an economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for

all without distinction as to race, sex, language, or religion as listed in Article 3 of the Charter.

UN continued its moves to formulate international human rights norms. Following the UN Charter and Universal Declaration of Human Rights, important conventions have been signed and ratified such as The Convention on the Prevention and Punishment of the Crime of Genocide (1948), Convention of Elimination of All Forms of Racial Discrimination (1965), Convention on the Elimination of All Forms of Discrimination Against Women (1979), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). Along with these, International Covenant on Civil and Political Rights (1966) and International Covenant on Economic, Social and Cultural Rights (1966) entered into force.

Commission on Human Rights[1] that was established by Economic and Social Council, acting under article 68 of the UN Charter, at its first meeting on 10 December 1946 encompasses the UN's three branched approach to the global protection and promotion of human rights. The three branches are UDHR, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The global human rights regime strengthened with the end of the Cold War which has changed both national and international context to pave way to an improved national human rights performance and more aggressive international promotion.

In the course of these developments, the states made efforts to set the international normative objectives binding through international organizations. As a result, UN became a representative of human rights.

[1] The Commission on Human Rights has been dissolved and the Human Rights Council, established by GA resolution 60/251 15 March 2006, is now charged with addressing human rights violations.

To set the standards for national human rights institutions (NHRI) across its members, UN General Assembly adopted the Principles relating to the Status of National Institutions ("Paris Principles") in 1993 (Burdekin, 2007). Kumar (2003, 268) states "the Paris Principles provide enormous guidance and direction on the formation of NHRIs in general, and also about the standards and principles that NHRIs must follow in order to function effectively". According to the Chapter 23 Peer-Review Report on Human Rights Institutions (Kirsten and Adamson, 2011:5), "These Principles are the recognised basis for the assessment of NHRIs, and are also increasingly recognised as basic principles for the establishment of Ombudsman institutions, as well as other independent state institutions". The Principles relating to the Status of National Institutions, sets international minimum standards on the status and roles of NHRIs (UNDP-OHCHR Toolkit, 2010). In 1993, Vienna World Conference on Human Rights adopted the Vienna Declaration and Programme of Action. These documents stress NHRIs have an important role to promote and protect human rights as well as to disseminate human rights information and provide human rights education.

The Paris Principles provides the flexibility to the states in order to develop their national institution in a way suiting their needs, and their institutional, cultural, legal and societal framework. Considering the practices in EU, it is seen that institutes focusing on education and research in the area of human rights are widespread in Denmark and Germany, while national institutions in the form of inclusive advisory boards or commissions with a broad participation basis that submit opinions on human rights to the government and the parliament are more common in France and Greece.

The guideline nature of the Paris Principles means that there are a diverse range of NHRI models both globally and within the EU. However, despite this diversity, the Paris Principles are the recognised standards for the mandate and structure of NHRIs.

However, irrespective of the model chosen, there are a number of key elements contained in the Paris Principles that are recognised as essential components of all NHRIs

The Paris Principles outline a number of core priorities for competence and responsibilities to promote and protect human rights, composition and guarantees of independence and pluralism and methods of operations with additional principles concerning the status of commissions with quasi-jurisdictional competence that is within the role of NHRI to hear, investigate and resolve the individual complaints (Mambo, 2008).

Paris Principles require a national institution the followings under the heading of competence and responsibilities.

1. competence to promote and protect human rights.

2. broad mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:

- To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

- To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
- To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;
- To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.
- Paris Principles require a national institution the followings under the heading of competence and responsibilities.

Paris Principles also requires guarantees of independence and pluralism of a national institution through the following:

- The composition of the national institution and the appointment of its members shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly

by powers which will enable effective cooperation to be established with, or through the presence of, representatives of

- Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- Trends in philosophical or religious thought;
- Universities and qualified experts;
- Parliament;
- Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

- Infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

- In order to ensure a stable mandate for the members of the national institution, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

There are additional tools for the interpretation of the Paris Principles which assessments of national human rights institutions are relied on. The global coordinating body of national human rights institutions, the International Coordinating Committee of NHRIs (ICC), established a committee to review the compliance of national institutions with the Paris Principles. This peer-assessment is carried out by the Sub-Committee on Accreditation and reviewed and agreed by the ICC.

The Sub-Committee on Accreditation has produced a set of General Observations on the Paris Principles. These observations interpret the provisions of the Principles and are used by the ICC in the accreditation process.

In parallel with the developments of the UN, there were also some initiatives on Europe since the European states suffered much from the effects of the Second World War. After the war ended, the leaders of the European countries made some efforts of peacekeeping and cooperation with throughout the region and founded three organizations: the Council of Europe (COE), the European Coal and Steel Community (ECSC), European Economic Community (EEC), and the Conference on Security and Cooperation in Europe (now known as the Organization for Security and Cooperation in Europe (OSCE)).

There was need of reconstruction and to create institutions to contribute to eradicating the causes of war and protecting from any threat that may harm the use of fundamental rights and freedoms. As a result of these efforts, COE was established under the Treaty of London in 1949 as one of the first attempts at European reconciliation and co-operation after the divisions and nationalism the Second World War (McMahon, 2006). The purpose for establishing such a council emerged from the need to make further efforts to prevent another war. Ten members which are Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, and the United Kingdom joined the COE in 1949 whereas Turkey and Greece had become members later in 1949.

According to Balducci (2008), the idea of establishment of the COE which is based on principles of pluralist democracy, rule of law and human rights is inspired by the UDHR. One of the biggest successes of the Council in the name of promoting human rights is the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). It is the first legal document of the COE to protect human rights and also the first international human rights convention with enforceable mechanism. The ECHR also created the European Court of Human Rights (ECtHR) which was attributed

the task of judging on member states' compliance to the rights and freedoms that the Convention covered. Balducci (2008) points out "the ECHR had the purpose of operationalising the UDHR and making it enforceable on the European continent, giving the rights to the citizens of the signatory member states to act against their own state before an international court."

The ECHR's preamble provides for "the maintenance and further realization of human rights and fundamental freedoms," which "are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend."

The convention deals mainly with civil and political rights, which are found in Articles 1-18. Articles 19-51 list the working mechanisms of the European Court and Commission, while Protocol 1, 4, 6, 7, and 12 include additional rights. The right of individual complaint (Article 25) obliges the states to accept the Court as having authority to rule over issues from within that state.

ECtHR has jurisdiction over COE member states that have opted to accept the Court's optional jurisdiction. Once a state has done so, all Court decisions regarding it are binding. Judges are elected to the Court by the Council of Europe's Parliamentary Assembly.

The Court accepts applications of instances of human rights violations from individuals as well as states. However, it is rare for a state to submit allegations against another state, unless the violation is severe. In order for an application to be accepted by the Court, all domestic legal remedies available to the applicant must have been exhausted. Thus Schimmelfennig (2006:1250) puts forward "they not only created a legally binding international human rights catalogue alongside those human rights codified in, or incorporated into, national constitutions, they also established a judicial enforcement

mechanism beyond the nation-state". Moravcsik (2000:218) recognizes "The ECHR system is widely accepted as the 'most advanced and effective international regime for formally enforcing human rights in the world today".

The efforts to reconcile and recover the Europe have resulted in the establishment of three communities. In 1952, six countries (Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands) signed the Treaty establishing the European Coal and Steel Community and the Treaty came into force on 23 July 1952, for a period of 50 years. Also the six countries signed the treaties establishing the European Economic Community and the European Atomic Energy Community (EURATOM) which led to the creation of European Union as a European peace project. These treaties came into force on 1 January 1958.

The Conference on Security and Cooperation in (CSCE) was established by the Helsinki Final Act in 1975 which is the largest regional security institution in the world under the name of the Organization for Security and Co-operation in Europe. The Helsinki Final Act was signed in 1975 by 33 states, including Canada, the Soviet Union, and the United States.

Tasks of the OSCE include arms control, preventive diplomacy, confidence- and security-building measures, human rights promotion, and democratization, election monitoring and guaranteeing economic and environmental security.

OSCE is the first international security organisation that takes into account human rights as an integral part of security. The Helsinki Final Act, the founding document of the OSCE, underlined the human rights principles are an explicit element of a regional security framework (Neill W.G.O. and Lyth A., 2001). Two of the ten Guiding Principles of the Helsinki Final Act refer to human rights. The Helsinki Final Act recognises human rights as "an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and cooperation" among states

Firstly, Principle VII calls for respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief. The last paragraph of Principle VII confirms that member states of the OSCE should act in accordance with the United Nations Charter (1945) as well as the UDHR (1948). It states, "In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the UDHR. They will also fulfill their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound". Secondly, Principle VIII is underlies the equal rights and self-determination of peoples."

Since the Act is not binding on states, failure to comply does not have any legal, consequences, rather it raises the political consequences.

According to Balducci (2008), the emergence of the EU promotion of human rights is mainly determined by the influence of the evolution of the international human rights regime and by the development of an EU internal regime for the protection of human rights. This combination contributed to the image of EU identity on human rights.

The founding states of the EU set up the European Court of Justice in order to enforce compliance with the EU Treaties and to resolve legal disputes within the EU system following the establishment of ECtHR.

However until the 1992 Maastricht Treaty human rights protection and promotion within EU had not officially been included in the treaties. At the inception period of European integration, the three Communities were mainly economic organizations who are assigned to increase the welfare of the six founding members. The treaties establishing the three communities provided guarantees for the citizens of the member states in line

with the four freedoms established by the Treaties. They were considered as the actors of the economy.

Court of Justice of the European Union (ECJ) (formerly The Court of Justice of the European Communities) was set up under the ECSC Treaty in 1952. It is based in Luxembourg. Article 19 TEU provides that the role of the ECJ is '(…) to ensure that in the interpretation and application of the Treaties the law is observed.' It makes sure that EU legislation is interpreted and applied in the same way in all EU countries, so that the law is equal for everyone. It ensures that national courts do not give different rulings on the same issue. The Court also ensures that EU Member States and institutions do what the law requires. The Court has the power to settle legal disputes between EU Member States, EU institutions, businesses and individuals.

As in the case of ECtHR, ECJ gained power through its case law. After having established EC law supremacy over member states' law in 1964, in 1970 the ECJ affirmed that fundamental rights were general principles of EU law. The actions of the ECJ are also reasonable in terms of constitutional traditions of the member states as well. Therefore the de facto inclusion of human rights protection within the EU was basicly due to the international (UDHR, International Covenants, and International Conventions), regional (ECHR and rulings of the ECthHR), and the national aspects (constitutional traditions of the member states)

The ECJ underlined in the 44/79 Hauer judgment of 13 December 1979 and the judgment 4/73 of 14 May 1974 that fundamental rights form an integral part of the general principles of the law, the observance of which it ensures; that in safeguarding those rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States, so that measures which are incompatible with the fundamental rights recognized by the constitutions of those states are unacceptable in the Community; and that, similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can

supply guidelines which should be followed within the framework of Community law. That conception was later recognized by the joint declaration of the European Parliament, the Council and the Commission of 5 April 1977, which, after recalling the case-law of the Court, refers on the one hand to the rights guaranteed by the constitutions of the Member States and on the other hand to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (Official Journal C 103, 1977:1).

This case law of the ECJ was also recognized by the three EC political institutions, the Council, the Commission and the Parliament in their joint declaration of 1977, which stated their support for the basic principle of non-violation contained in the jurisprudence of the ECJ. The Joint Declaration referred to the ECJ case law in establishing that human rights principles within the EC shall be drawn from the rights guaranteed by the Constitutions of the member states and from the European Convention on Human Rights signed in 1950. This created the base to formalize the protection of human rights in the successive Treaties of the Union, which drew inspiration from the Court's rulings in its case law, as exemplified in their references to the ECHR and to the constitutional traditions of the member states.

At the Copenhagen European Summit of 14 and 15 December 1973, the Heads of State or Government of the nine Member States of the enlarged European Community affirm their determination to introduce the concept of European identity into their common foreign relations. Among the conclusions of the said Summit, the Council underlined that the respect for and maintenance of representative democracy and human rights in each member state are essential elements of membership of the European Communities.

In the Declaration of European Identity (Copenhagen 14 December 1973), it is declared that they are determined to defend the principles of representative democracy, of the rule of law, of social justice which is the ultimate goal of economic progress and of respect for human rights and set these as fundamental elements of the European Identity.

In 1992, EU has inserted human rights into a treaty of his own for the first time. EU member states have agreed to have a specific article for human rights in the Treaty on European Union (TEU). The said Treaty states "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" in Article F. By this statement, EU member states made it clear that there is a parallel link with ECHR and their constitutional traditions in terms of respect to fundamental rights. The said Treaty also regulates that "The Union shall provide itself with the means necessary to attain its objectives and carry through its policies." Verified by this Article, EU's acting as a watchdog for the respect to human rights also found its basis in TEU.

The Treaty of Amsterdam, entered into force as of 1999, was a further step in terms of EU's role in being a watchdog for respect to fundamental rights. It amended TEU by inserting a phrase such as "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States."

The suspension clause was written into the EU Treaty (Article 7) by the Treaty of Amsterdam. Under this clause, some rights of a Member State (e.g. its voting rights in the Council) may be suspended if it seriously and persistently breaches the principles on which the Union is founded (liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law).

The Treaty of Nice added a preventive mechanism to this procedure. On a proposal by one third of the Member States, by the Commission or by the European Parliament, the Council, acting by a majority of four fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach of

these fundamental principles by a Member State, and address appropriate recommendations to it. Article 354 of the Treaty on the Functioning of the European Union (TFEU) provides the voting procedures to be used by the main European institutions when a Member State faces application of Article 7 of the TEU.

In June 1999, the Cologne European Council concluded that the fundamental rights applicable EU level to be consolidated in charter. The heads of state/government aspired to include in the charter the general principles set out in the 1950 European Convention on Human Rights and those derived from the constitutional traditions common to EU countries and to reflect the principles derived from the case law of the Court of Justice and the European Court of Human Rights. The charter was to include also the economic and social rights included in the Council of Europe Social Charter and the Community Charter of Fundamental Social Rights of Workers.

The charter was drawn up by a convention consisting of a representative from each EU country and the European Commission, as well as members of the European Parliament and national parliaments. It was formally proclaimed in Nice in December 2000 by the European Parliament, Council and Commission.In December 2009, with the entry into force of the Lisbon Treaty, the charter was given binding legal effect equal to the Treaties.

The Charter brings together in a single document rights previously found in a variety of legislative instruments, such as in national and EU laws, as well as in international conventions from the COE, UN and the International Labour Organisation (ILO). By having fundamental rights in a holistic way with a more clear definition, the Charter undelined the importance of human rights in the perspective of EU.

The entry into force of the Lisbon Treaty reinforces the protection of fundamental rights in the European Union by indicating the accession of the EU to the ECHR and granting the Charter of Fundamental Rights of the EU binding force.

Also human rights are one of the main expectations from the candidate countries to EU under the framework of Copenhagen Political Criteria (after the European Council in Copenhagen in 1993 which defined them) which are among the essential conditions all candidate countries must satisfy to become a member state. These are stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

CHAPTER 3

THE DEVELOPMENT OF INSTITUTIONALIZATION IN HUMAN RIGHTS IN TURKEY

The governance of human rights at national level has a complex nature due to the needs of horizontal implementation and variety of institutions involved. In order to have solid mechanism to protect, respect and promote human rights and freedoms, the presence of an independent judiciary, effective structure of law enforcement bodies, effective and representative legislative body and sustainable education focused on human rights training at all level is necessary. Besides these, the institutions directly monitoring the implementations in terms of human rights especially a national human rights institution have unique roles in setting a strong and effective national human rights protection system.

Civil society also has a significant role to in establishing a culture of human rights within society especially through the dedicated work of NGOs, which, because of their independence and flexibility, are often able to express their views and act more freely than either public institutions or any other organization (OHCHR, 2010). However the central responsibility for protecting human rights is undertaken by the states.

Turkey had a bad outlook in terms of protection of human rights especially during the period after 1980. Casier (2009) underlines that the Turkey's problems with regard to human rights during the post-1980 period has to be considered specifically in the context of fight against terrorism and the existence of a 'security regime. Casier (2009) asserts that it is presumed that "the citizens' first duty is to safeguard the integrity of the republic, which is at odds with the more inclusive and pluralistic culture of democratic tolerance promoted by the European Union through the 1950 European Convention on Human Rights"

However Turkey has started to undertake steps in the area of human rights especially efforts directed to set an institutional mechanism as following the track of other nations' achievements. This process can be traced back to 90s in Turkey as in the cases of other countries.

According to OHCHR's survey dated 2009; the number of national human rights institutions has increased rapidly in the America in the early 1990s, in Africa in the mid-1990s, and in Asia and the Pacific in the late 1990s, while Europe has seen a steady growth since the mid-1990s.

Turkey has become party to the major human rights treaties and conventions throughout the time. Each convention has put legal obligation to implement nationally the human rights standards covered in these documents. Therefore especially within the ongoing Turkey's EU accession process, Turkey has focused its efforts to ensure that the rights covered in international norms become not only part of the national legal system, but also to take appropriate steps to ensure that the rights are implemented by all people without any discrimination.

Turkey's efforts to establish a mechanism in terms of human rights have followed a track of EU-led process mainly right after Turkey assumed a candidate state to EU at the Helsinki Summit of EU Council (1999).

Following Helsinki Summit, the Accession Partnership by the Council and the Framework Regulation is adopted. Turkey responded to Accession Partnerships by preparing its own National Programs for the Adoption of the EU acquis in 2001, 2003 and 2008 consecutively which are submitted to the European Commission. The National Programs were produced with a careful appreciation of the short and medium term priorities as spelled out in the Accession Partnership Documents.

Throughout time, Turkey planned its future reforms based on the National Programs including the content and schedule of the reforms. However the intensity and the pace has not been the same throughout the period up until now. The schedule of the reforms identified in National Programmes were not realized in due time.

Lately the importance of democratic institutions like national human rights institution, ombudsman system, and independent monitoring system of law enforcement bodies, anti-discrimination and equality board gained importance in order to establish a full-fledged human rights mechanism across Turkey.

3.1 HISTORY OF HUMAN RIGHTS INSTITUTIONS BETWEEN 1990-1999

The efforts regarding the institutionalization in the area of human rights have followed a parallel track with developments taking place across the World.

Hicks (2001) notes that Turkey's application for EU membership in 1987 and the ongoing fight against terrorism increased the criticism of Europe for Turkey's record on human rights since the shortcomings in these are put as obstacles to Turkey's future membership. Turkey replied to these increasing criticisms firstly granting the right of individual petition to ECtHR, ratification of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1988 and recognising the compulsory of ECtHR are binding in 1990.

As a first step, Human Rights Investigation Commission was established in 1990 through the Law dated 5.12.1990 and no. 2686 under Turkish Grand National Assembly.

In 1991, State Minister was assigned to monitor and coordinate the human rights.

In 1993 The Undersecretariat for Human Rights, established with the Decree lost its effectiveness due to the fact that the Law establishing the said institution was annulled by the Constitutional Court

The Office of Chief Consultant for Human Rights and Human Rights High Advisory Board were established in 1994.

Following the abolishment of the Board in 1996, the High Council for the Coordination of Human Rights was established through the Prime Ministry Circular dated 09.04.1997 and numbered 1997/17. The High Council was chaired by the State Minister responsible of issues related human rights and composed of undersecretaries of Ministry of Justice, Ministry of Interior and Ministry of Foreign Affairs, Prime Ministry. The aim of the High Council was to monitor, coordinate and to recommend regarding new legislation when needed to ensure that the practices of the public institutions and officials are in line with the legislation in place. Arıkan (2002) asserts the report published in 2000 by the High Council as an example of dynamism brought by Helsinki Summit since the report included the proposals for constitutional and legislative amendments as well as administrative measures to improve the human rights in Turkey

Through By-Law published in the Official Gazette dated 04.06.1998, the National Committee of the Decade for Human Rights Education was established as affiliated to the High Council for the Coordination of Human Rights. The National Committee was composed of representatives of Prime Ministry, Ministry of Justice, Ministry of Interior, Ministry of Foreign Affairs and Ministry of National Education, Ministry of Health and Ministry of Culture and also four representatives of voluntary institutions working in the area of human rights and four academics. The National Committee was assigned to prepare a national programme to implement the UN Human Rights Education Decade Plan in Turkey and to monitor the education carried out in line with National Programme and to convey its assessment to the High Council.

3.2 EXISTING STRUCTURE IN THE AREA OF HUMAN RIGHTS AS OF DECEMBER 2012

Turkey intensified its efforts to establish institutions and units devoted to human rights within the existing public administration from the outset of 2000s.

According to Kılıç (2002), the law enforcement bodies are mainly found responsible for human right abuses and thus Turkey has established a number of structures to monitor the enforcement of human rights including the Prime Ministry Human Rights Presidency, the Human Rights Board, the Human Rights Consultation Boards and the Investigation Boards and others.

3.2.1 The Prime Ministry Human Rights Presidency

Following these developments, the need for an institution has risen. The Prime Ministry Human Rights Presidency was established through Decree no.626 published at the Official Gazette dated 4.10.2000. However the authorization law dated 29.6.2000 and no.4588 which formed the basis of the said Decree has been annulled upon the request of main opposition party by the Constitutional Court's decision dated 5.10.2000 and decision no. 2000/27 on the grounds that it is in conflict with the Constitution,. Therefore the Decree has lost its legal and constitutional basis. Therefore the Constitutional Court annulled the Decree no.626 by the decision dated 26.10.2000 and no.2000/32. Following that, the Human Rights Presidency was established by a new Law which is the Law Amending the Law on the Organization of Prime Ministry that has been published in the Official Gazette dated 21.4.2001 and no.24380. The Presidency was established with 12 cadres.

The Human Rights Presidency has responsibilities which include to liaise with 'state and private authorities' on human rights issues and provide coordination within government; to monitor the implementation of human rights laws and consider their compliance with

Turkish legislation and international human rights standards, to monitor, evaluate and coordinate training and to examine and investigate claims of violation

The duties of the Human Rights Presidency are stated in the Law on the Establishment of Human Rights Presidency are as follows:

a) To be permanently in touch with both state and private authorities in charge of the issues related to the human rights and to provide the coordination between these organizations.

b) To monitor the implementation of the regulations related with human rights, to evaluate the observation results, to remove failures met in the application and in the legislation and to coordinate the studies in order to conform the Turkish National Legislation with the supported international human rights documents and to make proposals on these issues.

c) To monitor, to evaluate and to coordinate the application of the pre-service education, training and service-in human rights education programmes in the public association and organizations.

d) To examine and to investigate the application of the human rights violation claims, to evaluate the research results and to coordinate the studies regarding the measures to be taken.

e) To carry out the secretary service to the councils established related respectively with their missions under the coordination of Prime Ministry.

f) To carry out the other related duties given by the authority.

By the same Law, new structures which are the High Board of Human Rights, the Consultative Board of Human Rights and the delegations acting as Inquiry Boards for Investigating Human Rights Violation Claim were established. With the help of the boards, the Law aims to regulate the implementation and coordination of issues concerning human rights by a permanent structure under the Prime Ministry with the support of the required mechanisms. The secretariat services of both these boards were undertaken by the Human Rights Presidency.

The High Board was assigned to carry out works regarding the legal and administrative regulations to protect and promote human rights and to give recommendations regarding human rights for the Prime Ministry, ministries and other public institutions. The High Board was composed of undersecretary of Prime Ministry, Ministry of Justice, Ministry of Interior, Ministry of Foreign Affairs, Ministry of Health and Ministry of Labor and Social Security under the chairman of the State Minister who shall be assigned by the Prime Minister. The Board was authorized to form commission and working groups.

Human Rights Consultative Board was established as affiliated to a State Minister who is assigned by Prime Minister to act as a consultative structure in national and international issues covering human rights and to provide communication between state organs and civil society organizations (NGOs) regarding human rights. The Consultative Board is composed of relevant ministries, public institutions and professional organizations, NGOs working in the area of human rights and people who has publications and studies in human rights. The Board was chaired by the person who would be elected out of its own members. The expenses of the Consultative Board were covered through budget of Prime Ministry.

Also the Law enabled the formation of the delegations which were called the Inquiry Boards for Investigating Human Rights Violation Claims as affiliated to the State Minister to examine and to research the claims of human rights violations. The The members of the delegations was regulated to be selected by the State Minister according to the place of research and subject-matter among representatives of Prime Ministry, Ministry of Justice, Ministry of Interior, Ministry of National Education, Ministry of Health and people studying in the area of human rights and professional organizations. The delegations should not be less than five persons. Delegations might have been assigned to carry out examinations and researched and submit a report of results.

3.2.2. The Provincial and Sub-Provincial Human Rights Boards

Also, the Provincial and Sub-Provincial Human Rights Boards were constituted through By-Law that was published on the Official Gazette dated 2.11.2000 and no. 24218. The Boards make inquiries regarding the claims of human rights violations, to make research regarding the protection of human rights and to prevent human rights violations and to report the results to the authorities, to raise awareness of the public and law enforcement officers. Provincial and Sub-Provincial Human Rights Boards with a structure including wide participation by civil society representatives were established in all provinces and districts throughout the country.

The composition of the boards are as follows in 2000: The Provincial Human Rights Boards are composed of mayor, the rectors of the universities or academic, provincial director of Turkish National Police, the commander of Gendarmerie, provincial director of health, provincial director of national education, provincial director of social services, a lawyer, representatives of bar association, chamber of medicine, chamber of commerce and industry, union of chamber of merchants and craftsmen, the members of NGOs who are invited by the Governor, a representative of media which is elected by the media institutions themselves

The Sub-provincial Human Rights Boards are composed of district mayor, the rectors of the universities or academic, sub-provincial director of Turkish National Police, sub-provincial commander of Gendarmerie, academic assigned by the faculty or high school if any, sub-provincial head of health group, sub-provincial director of national education, village headman or neighborhood unit, the representatives of professional units, the members of NGOs called by the sub-governors.

The Governor or sub-governor may call relevant public institutions or institutions of private sector to the meeting when needed.

However, the composition of Provincial and Sub-Provincial Human Rights Boards were restructured in November 2003 and gained a structure with majority of representatives of NGOs in order to represent all segments of the society. This new structure composed of 15 members has only two public officials. The representatives of NGOs which are working at the Boards are as follows:

At least three NGOs involved in human rights

- Mayor or his/her representative
- University representative
- Representative of General Provincial Council
- Representatives of chamber of medicine
- Representative of bar association
- Representative of village headman
- Representatives of the political parties having groups at the Parliament
- Local press representative
- Representative of school-family union
- Representative of trade union
- Representative of chambers of trade and industry

As there has been a widespread organisation all around the country and all the segments of the society are given the chance to be represented, a rich flow of information is being provided to the Boards. More than 14,000 volunteers are working at the Boards.

Considering that the number and efficiency of the NGOs in Turkey are not at the desired level yet, the responsibility on the Governors as the Chairman of Boards can be better understood in terms of alleviating the level of effectiveness for the Provincial and District Boards of Human Rights.

Another important point is that each member in the Boards has equal voting right and that the Chairman has no veto power. This surely ensures the civilian structure of the Board and the efficiency of the decisions.

Throughout Turkey there are 972 Human Rights Boards of which 81 are the Provincial Human Rights Boards and 891 are the Sub-Provincial Human Rights Boards. These Boards are composed mainly of local NGO representatives working on voluntary basis. The Boards are composed of approximately 1296 members in total at the provincial level and approximately 14580 members in total at the sub-provincial level. Each Provincial and Sub-Provincial Human Rights Board has a Human Rights Complaints Desk where the Board deals with the human rights violation allegations and receives the application forms. In any case Boards had to report human rights violations to the Human Rights Presidency so that the Presidency can investigate the case within the relevant institution. At some circumstances, the Boards try to solve the problem at its place.

Casier (2009) puts forward the establishment of provincial and subprovincial human rights boards as an important legal reform to integrate protection of human rights with the public administration He also considered this as sign verifying the end of politics of denial of the 1990s.

The Boards have acted as bridges between Human Rights Presidency and the people seeking to find a solution for the human rights violations since Boards are ways of reaching the relevant public institutions more easily.

3.2.3 Prison Monitoring Boards

The Monitoring Boards established to enhance the rights of the convicted prisoners and detainees paved the way for the supervision of the prisons and detainee houses by civil boards. The above-mentioned institutions are functioning properly since 2001.

According to the Article 6 of the Law No. 4681 on Monitoring Boards for the Prisons and Detention Centers, DG Prisons and Detention Centers make public the numbers, subjects, and recommendations fulfilled and not fulfilled in the report prepared by the Monitoring Board. 77 % of the recommendations made by the Monitoring Boards were fulfilled in 2011, while this figure was 73 % in 2010.

Yonah, Edgar, Krause (2008) note "The Government will ensure the effective implementation of the measures adopted for the improvement of conditions in prisons and detention houses. In the light of the recommendations of the Council of Europe and the Committee for the Prevention of Torture, the aligning of prisons with international standards (…) and Prison Monitoring Boards will continue"

Statistics on Prison Monitoring Boards (March 2012)[2]

Type Of Decision	Adult	Juvenile	Total
Judicial control	14,788	1,133	15,921
Medical treatment and probation	74,163	5,470	79,633
Alternative sanction	2,513	933	3,446
Postponement, probation	616	219	835
Suspension of announcement of judgment	3,796	970	4,766
Probation after release	329	26	355
Probation for persistent violator	671	0	671
Conditional release	344	6	350
Execution at home	102	0	102
Effective remorse	203	25	228
Other punishment and measures	2,771	293	3,064
Total	100,296	9,075	109,371

[2] Ministry for EU Affairs, (2012). Additional Contribution to the Turkey's 2012 Progress Report.

3.2.4 The Committees in the Parliament

Parliaments have also an important responsibility to ensure that human rights are protected and respected through their legislative power and approval of the budget by allocating sufficient funds to that specific area. Beside The Parliaments has a role to oversight the executive in terms of human rights. Most of the parliaments realize this task through standing committees. These committees are also the means for the public to contribute actively to the decision making process. (National Democratic Institute for International Affairs, 2004)

There are significant committees working in the area of human rights in the Parliament. However there are two main committees which are Petition Committee and Human Rights Inquiry Committee that receive requests and complaints.

The Petition Committee was firstly established under the Parliament by the Law on Application by Petition, Examination and Decisions on Petitions which was published in the Official Gazette dated 5.1.1963 and No.11300. However the said Law was abolished in 1984 by a new Law on the Right of Petition which has been published in the Official Gazette dated 10.11.1984 and No.18571.

The Petition Committee assesses the requests and complaints and monitors the implementation of its decisions by the relevant institutions, and submits the applications to the Plenary of the Parliament so that the decisions are given by the General Assembly when needed. Petition Committee is important in the sense that the Parliament as a legislative body monitors the full- implementation of the laws that the Parliament itself adopts. A subject-matter elaborated by a petition is inquired by the Parliament; the operations made by the public institution are questioned through questions. The independence of the Committee is ensured through the provision in the Internal Regulation of the Parliament stating the members of the Petition Committee may not take place in Council of Ministers, Presidency Board of the Parliament and other

Parliamentary committees. Furthermore the works carried out by the Petition Committee do not become invalid at the end of legislative terms. Therefore the petitions that are not concluded yet although they are on the agenda of the Commission or the General Assembly shall be concluded by the following Parliamentary organs.

The Human Rights Inquiry Committee was the first mechanism at national level to protect human rights. It was established with the Law on Human Rights Inquiry Committee published in the Official Gazette dated 8.12.1990 and no. 20719.

With the amendment to the Law on the Human Rights Inquiry Committee by the enactment of the Law on the Administrative Organization of Turkish Grand National Assembly that published in the Official Gazette dated 18.12.2011 and no. 28146, the Committee has been entitled to review and evaluate the draft laws submitted either by the Government or the Members of Parliament.

The number of the members of the Committee is determined by the Plenary of the Assembly upon Board of Spokesmen's proposal. The political parties and the independent members are represented in the Committee relatively to their proportions in the Assembly. The elections for the Committee membership take place twice during each session. The term of the office is two years for each period.

The second article of the said Law, which determines the field of operation of the Human Rights Inquiry Committee, states that "this law acknowledges the human rights defined in the Turkish Constitution and various international treaties and declarations such as the Human Rights Universal Declaration and European Convention on Human Rights". The duties of the Human Rights Inquiry Committee are defined in the fourth article of the said Law.

- Following the developments regarding the human rights at international levels

- Determining the amendments in scope of human rights required for the conformity with the Turkish Constitution and related international treaties and declarations as well as proposing constitutional amendments
- Informing and advising other committees in the Turkish Grand National Assembly about the current issues on demand
- Investigating the conformity of the implementations of human rights within the Constitution and the international treaties Turkey adheres as well as holding inquiries for improvements and making proposals
- Investigating the petitions sent to the Human Rights Inquiry Committee and in case of a human rights violation, referring them to the departments or offices concerned
- Arousing attention of the members of the parliament in foreign countries in case of any violation of human rights
- Preparing a committee report on annual activities and results as well as the activities concerning human rights abroad

The Committee has the right to obtain information from the ministries, general and annexed budget administrations, local authorities, village headmen, universities, all other public institutions and organizations as well as private institutions. Additionally, investigating those on-site and calling the persons concerned for a committee hearing are within the Committee's province.

If required, the Committee may ask qualified persons' opinion and may work outside Ankara. The Human Rights Inquiry Committee may act autonomously and initiate inquiries without any present appeals.

The Committee may also form subcommittees to hold inquiries. In case of any crime factor in the appeals, the Human Rights Inquiry Committee may file criminal complaints to the chief public prosecutor's office.

The reports prepared by the subcommittees are discussed at the Committee and are included in the Committee report upon agreement by vote. The reports of the Committee are presented to the Presidency of the Turkish Grand National Assembly and are included in the plenum agenda with the advice of the Consultative Committee. By means of reading or general debate it is possible to obtain information.

The Committee reports are also sent to the Prime Ministry and to the concerned ministries. By this means any deficiencies or mistakes during the Committee's work can be identified and informed to the executive powers. In that case, the Committee transmits the Committee report to the Presidency of the Turkish Grand National Assembly so that further inquiries for the alleged guilty individuals can be held.

3.2.5 Damage Assessment Commissions

European Court of Human Rights were receiving a large number of applications regarding the victims of terrorist acts or those who suffer damages resulting from counter-terrorism measures in Turkey. In its Aydın İcyer decision of 12 January 2006, the Court ruled that the Law on Compensation for Damages Caused by Terrorist Acts and by the Counter-terrorism Measures published in the Official Gazette dated 27.07.2004 and no. 25535 constitutes both in theory and in practice, an effective remedy at domestic level for persons seeking compensation from such damages and decided that the applicant should first apply to the domestic remedy and found the application inadmissible. Following the İçyer decision, hundreds of other similar cases pending before the Court have already been declared inadmissible for the same reason. The result achieved is remarkable thanks to the resolute implementation of the Compensation Law by the Turkish administration at both national and local levels, using considerable resources.

Kurban (2012:14) notes that "Turkey's Compensation Law was adopted not with the purpose of developing a reparations program for the displaced, but out of a political

necessity arising from international law and politics. Faced with the imminent prospect of having to pay millions of euros in the 1,500 cases pending at the time before the ECtHR as well as pressure from the EU to expeditiously address the needs of the displaced, the Turkish government was obliged to develop a "domestic legal remedy" as a viable alternative to litigation at the ECtHR"

However the Law and its implementations illustrate Turkey's commitment implementing the Convention and the Case-Law of the European Court of Human Rights.

From the entry into force of the Law to July 2012, the Damage Assessment Commissions have received 360,826 applications and concluded 299,343 of them. The Commission has taken the decision to honour compensation for 162,281 applications while 136,462 applications have been rejected.

As of July 2012, the total amount of compensation affirmatively concluded by the Commission and claimed to be honoured to persons having signed the peaceful settlement document is 2,779,010,464 TL. Of the total amount, 2,770,448,123 TL has been honoured to the relevant persons and efforts to honour the rest 8,562,341 TL is in progress.

3.3 NEWLY ESTABLISHED STRUCTURES IN THE AREA OF HUMAN RIGHTS

Despite widespread efforts of institutionalization in the area of human rights in Turkey, as briefly explained above, the lack of a structure that is in conformity with the Paris Principles is often criticized by various agencies and organizations at the national level and also in EU progress reports at an international level.

The structures expressed above play a key role since they have an impact not only on the work of the new institutions, but also on their acceptance by the general public as independent human rights bodies. In addition, the existing system has impacted upon the development of the new institutions.

3.3.1 Human Rights Institution of Turkey

The United Nations attach great importance to the establishment of national human rights institution to strengthen governance and to further protect human rights. Reif (2000) asserts that most of the national human rights institutions have been established within the 1990s to establish democratic forms of governance or to improve their democratic structure.

National human rights institutions act as an important bridge in terms of implementation of international human rights standards in the national legislations by the intensive support of international organizations (Altıparmak, 2000).

In 2008 National Programme of Turkey for the Adoption of the EU Acquis, Turkey commits that works on the restructuring of the Prime Ministry Human Rights Presidency in the framework of Paris Principles would be concluded under the section of political criteria.

The establishment of an independent national human rights institution is also one of the priorities of the institutionalization in the area of human rights and one of the requirements of the Chapter 23- Judiciary and Fundamental Rights within the Turkey's negotiation process with EU.

The Law on the Human Rights Institution of Turkey was published in the Official Gazette as of 30.06.2012 and no.28339. It is long-awaited law, enactment of which has been one of the major expectations of all stakeholders including civil society. The

members of the Human Rights Board, which is decisive organ of the Institution has been elected as of 2012 September and the President of the Board has been elected as of 24 January 2013 in their first meeting. After the election of the President, the institution has been officially established.

The Law on the Human Rights Institution of Turkey regulates that the Institution is independent in its duties and responsibilities, autonomous in terms of administrative and financial structure, has its own budget and staff, charged with protection and promotion of human rights in broad-spectrum.

The decision-making and administrative body of the Institution is the Human Rights Board of Turkey which consists of eleven members consisting of one President and one Deputy President; seven being selected by the Council of Ministers, two being selected by the President and one being selected by the Higher Education Board, 1 being selected by the Bar Association. The broad composition of the Board is regulated as such to guarantee the independence and impartiality of the Institution. The President is selected directly among the members of the Board.

Electoral procedure is arranged in detail in the Law. The Article 5 of the Law on Human Rights Institution of Turkey states that the principle of pluralistic representation of relevant civil society, social and professional organizations, different ideologies, universities and experts shall be considered in the election of the members. In the Article 14, it is stated that the Institution shall have regular consultation meetings (at least once in three months) with public institutions, civil society organizations, higher education institutions, media, researchers and related institutions and individuals in order to discuss the problems on protection and promotion of human rights and exchange views and opinions.

The immunity of the members and the procedures regarding the termination of the membership are arranged in detail in the Law. The members of the Human Rights

Board, decisive organ of the Institution, are given the guarantee of judges and prosecutors in order to carry out their works independently.

Duties of the Institution are defined to include all subjects pertaining to human rights in line with the Paris Principles envisaging that duties of Human Rights Institutions shall be as extensive as possible. Accordingly, the Institution has the duty and competence to conduct work towards ensuring that everyone fully enjoys human rights without any discrimination on the basis of principle of equality, monitor the legislation draft legislation and its implementation, giving opinion and recommendations on demand or on its own initiative, to conduct research on the overall situation of human rights at national and international level and into special problems arising in this area and publishing reports and periodicals. Also the said Institution has the duty to evaluate, examine and investigate the applications concerning any kind of discrimination and allegations of human rights violations, inform the relevant institutions and bodies of results of the examination and investigation, follow up their results and make these public where necessary and to monitor human rights violations of any kind, act on its own initiative on human rights violations when it considers necessary, conduct necessary investigations with a view to putting an end to human rights violations, warn the related authorities, take steps towards bringing legal proceedings against public institutions and bodies and their officials who are responsible for these violations,

Also the institution is assigned to conduct regular visits to the places where the people who are put under protection or who are deprived of their liberty as a result of any decision which is of judicial, administrative or official nature, specify the standards of these places, forward reports on these visits to the relevant institutions and bodies, make these public if it considers necessary, examine and evaluate the reports on visits to such places by Prisons and Detention Houses and Provincial and Sub-provincial Human Rights Boards,

Also Article 8 regarding the Working Procedures of the Human Rights Board regulates that the Board can be called to extraordinary meeting in 5 days by the Chair. Having such an article in the Law also increase the scope of the duties.

There is no provision in the Law that may restrict or be interpreted so as to restrict the competence area of the Institution. Setting the priority areas among such an extensive range of duties is at the sole discretion of the Institution.

Regarding the independence, according to the Law, Human Rights Institution of Turkey is a public entity with administrative and financial (fiscal) autonomy. Article 2 of the Law states that the Institution is independent in its duties and responsibilities, no institution or authority shall give order, instruction, recommendation and suggestion.

As a result of administrative and financial autonomy, Human Rights Institution of Turkey has its own budget, staff and assets. The Institution is entitled to make secondary legislation and administrative arrangements in its responsibility area.

With regard to the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), The Law on the adoption of the OPCAT was enacted on 12 March 2011 and the ratification process was finalized on 27 September 2011. The enactment of the Law on Human Rights Institution of Turkey constitutes the solid structure to undertake the task of competent national preventive mechanism that is required to be established as a requirement of OPCAT.

The content of the Law has received many critics since its drafting phase relating to its level of compliance of Paris Principles.

However the internationally acknowledged method for the credible assessment of NHRI is “accreditation” taking place under the rules of procedure of the International

Coordinating Committee's Sub-Committee which is the official recognition that NHRIs meet or continue to comply fully with the Paris Principles.

Among 27 member states of the EU, 18 EU member state has accreditation from the ICC. 10 institutions have A status, 7 has B and 1 has C statute out of 18 EU member states. There are no national human rights institutions in 9 EU member states

Even "International Coordinating Committee of National Human Rights Institutions", the international accreditation body requires that the national human rights institutions to apply with their one-year activity report to be accredited. Any initiative to evaluate an institution which did not start to operate with regard to Paris Principles will fall short of its intention (cannot be regarded as objective evaluation). Neither any EU institution nor Turkey's public institutions can give an objective assessment whether the established Institution complies fully with Paris Principles.

Also it must be noted that all "A" status NHRIs, as well as all "B" status NHRIs that have not applied for a review of their status, are subject to reaccreditation every five years to ensure that they maintain and improve their compliance with the Paris principles. This means any institution cannot inherit the Status continuously.

The establishment of Human Rights Institution of Turkey, which is achieved by the driving factor of EU accession process, is a major step after a long period of drafting phase in the area of human rights. However the establishment and implementation of the Institution in line with Paris Principles is of paramount importance since this Institution is the cornerstone of national human rights protection systems and, increasingly, serve as relay mechanisms between international human rights norms and the State. Human Rights Institution of Turkey will be the principal element of an effective national human rights system. It will be a structure connecting civil society to the state organisations. Since the executive organs are mainly the targets of human

rights complaints, the independence of the Institution has a great importance in order to be able to criticize the actions of the state.

With regard to EU accession process of Turkey, the establishment and implementation of the Institution in line with Paris Principles is expected to contribute to the opening of negotiations of Chapter 23, which is under political blockage currently since the establishment of that Institution is one of the main requirements of Chapter 23.

However the evaluations regarding being in line with Paris Principles or effectiveness are being made by many actors even at the drafting phase.

"The effectiveness of a national human rights institution at any point in time depends, however, on legal, political, financial and social factors, many of which fall within the power of the executive and legislative branches of government. Thus, ultimately, it is the action of these two branches of government which is crucial in determining the strength or weakness of a national human rights institution." (Reif:42)

3.3.2 Ombudsman

In a democratic system, the mechanisms to ensure accountability are multi-dimensional and the ombudsman institution is one of these mechanisms (Sözen and Algan, 2009). An ombudsman is an independent public authority assigned to hear complaints or grievances about the way public services are delivered, to investigate such matters and to solve or rectify them.

"There is even a world-wide ombudsman movement which has reached such proportions that it often has been labeled as ombudsmania. A key to understanding the ombudsman's popularity is its relative simplicity; "grievance-man," "mediator," and "citizens' defender" are commonly used and not inaccurate synonyms." (Hill, 1974)

The Ombudsman is also established at the EU level as a supervisory body. European Ombudsman is introduced to the EU by the Maastricht Treaty at supranational level in order to supervise the maladministration of the Union institutions. The European Ombudsman started to operate fully in 1995. By the Lisbon Treat enacted on 1 December 2009, the legal status of the European Ombudsman has been strengthened and the election of the ombudsman is done by the European Parliament (Köseoğlu, 2010)

TFEU (228,3) states that the Ombudsman is independent in the performance of his duties. The mandate of the European Ombudsman is defined in TFEU Article 228: "The European Ombudsman shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Institutions of the Union."

Lae (2011) underlines that "In the absence of a treaty provision that put forth a definition for "maladministration, "the first Ombudsman, Jacob Söderman, made a definition that maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it."

According to the viewpoint published in 2006, Council of Europe Commissioner of Human Rights Thomas Hammerberg, ombudsmen are key defenders of human rights. Hammerberg stresses that there is a great variety of ombudsman institutions and they tend to differ in name and mandate due to specific national needs. However he emphasizes the lessons learnt from other experience with regard to independence, competence and financial resources.

Regarding independence, Hammerberg (2006) underlines "the ombudsman should stand above party politics and not take instructions from anyone. The institutions can not function properly if the government does not prefer to respect their integrity". Regarding competence, Hammerberg identifies that ombudsman should be free to investigate any

issue within their competence without taking any prior approval from anyone. He also attached great importance to financial resources since these institutions should be sufficiently funded to act independently of the government and not be under financial control that may harm its independence. Adequate amount of financial resources are also needed to ensure the handling of the complaints free of charge efficiently with a minimum degree of mandatory formality.

Turkey had no separate ombudsman institution responsible for inspecting public services up until June 2012, but the efforts to establish an ombudsman institution in Turkey tracks back to the end of 1990s.

The establishment of ombudsman system is also one of the priorities of the institutionalisation in the area of human rights and one of the requirements of the Chapter 23- Judiciary and Fundamental Rights within the Turkey's negotiation process with EU. Also Turkey's National Programme (2008) includes the commitment that fully effective Ombudsman Institution would be established.

The establishment of an ombudsman system has been a priority for Turkey since 1996. Seventh (1996-2000) and Eight (2001-2005) Five-Year-National-Development-Plans state: "For an effective and fast dispute settlement mechanism between public administration and the citizens, a Public-Supervisory (Ombudsman) System that would be an independent body to supervise the administration, to deal with the public complaints, shall be established. Accordingly, importance shall be attached to the establishment of the necessary infrastructure, and the system will comprise all the administrative procedures and activities without exception."

In 1997, a commission was set up to draft Ombudsman Law with the participants of academicians, representatives of related ministries and judge-rapporteurs; the draft law prepared by the above mentioned commission was submitted to the Prime Ministry and subsequently to the Parliament in 1999, but lapsed after the 2002 elections.

It was updated in 2004 and enacted by the Parliament on June 15, 2006 as part of the reform process for alignment with EU best practices.

A twinning project under the 2004 Turkey- EU Financial Cooperation is launched for the needs of strengthening the capacity of the Ombudsman Institution. In 2005, the Turkish Ministry of Justice had already selected its twinning partners. However, the Law for the establishment of the Ombudsman Institution failed to enact before the Parliament in due time and the previous project did not provide further results.

The President vetoed the Law on 1.7.2006 on the grounds that the Constitution did not contain any provision forming a basis for the establishment of the Ombudsman Institution. The Parliament adopted the law without any change upon the veto of the President. The Constitutional Court annulled the Law on Ombudsman (No. 5548) on 25 December 2008 by its decision no 2008/185 upon applications of the President and the main opposition party.

The reasoning of the Court to annul this Law was based on the lack of constitutional grounds for creating such an institution within the Turkish administrative system.

Establishing the Ombudsman institution is set as a short term priority in Turkey's Judicial Reform Strategy (2009) and its action plan (subtitle 8.8.). The action plan cites that necessary legislative and constitutional amendments will be made to establish the Ombudsman institution in Turkey.

In line with the Judicial Reform Strategy, the constitutional amendment package (Law No. 5982 Amending Some Provisions of the Constitution of the Republic of Turkey, Official Gazette dated 13.05.2010 and no.27580) that was approved in a referendum held on 12 September 2010 introduced the constitutional grounds of the Ombudsman Institution under Article 74 and recognized the right to appeal to the Ombudsman. The

Ombudsman Institution is regulated under Article 74 of the Constitution, titled "Right of Petition". The title of the article was changed as "Right of Petition, Right to Information and Appeal to the Ombudsman" and the ombudsman, who would act as a mediator between state and citizens, is charged with assessing complaints about the functioning of the administration.

Following the Constitutional Amendment, a draft law has been prepared by the Ministry of Justice. In the preparation phase of the Draft Law on the Ombudsman Institute, the Ministry of Justice continued its efforts to benefit from experiences of the EU and EU member states. In this regard, an international workshop was organised in Istanbul on 27 January 2012 with the participation of European Ombudsman Nikiforos Diamandouros, ombudsmen of Sweden, the Netherlands and Greece.

The establishment of an ombudsman system was of crucial importance in the EU harmonization process. The Ombudsman will address natural and legal persons facing malfunctioning of the public administration and violation of their rights. In the event of establishing the Ombudsman Institution in Turkey, controversies between the state and citizens will be resolved by the ombudsman. This will enable citizens to exercise their rights without having to go to court.

The Draft Law was re-submitted to the Parliament as of 17 May 2012. The Law No. 6328 on the Ombudsman Institution was adopted by the Parliament on 14 June 2012 and it entered into force on 29 June 2012.

Article 74 of the Constitution provides the constitutional basis for the Ombudsman Institution. The Institution is assigned to examine the complaints made by natural or legal persons, conduct researches and make recommendations concerning the malicious, defective or insufficient functioning of the administration with the sense of justice and in terms of respect for human rights and the compatibility with law and equality.

With the Law, it is aimed to establish an independent and effective complaint mechanism for increasing the quality of public services. It is envisaged that all kinds of acts together with attitudes and behaviors of the administration are within the remit of the Ombudsman.

The Institution is affiliated to the Parliament. It has legal personality and private budget.

The Institution is responsible for examining, all sorts of acts and actions as well as attitudes and behaviors of public administration upon application of natural or legal persons and also making recommendations to the public institutions depending on the applications.

However, the acts of President on his or her own competence and the decisions and orders President undersigns ex officio, the acts concerning the implementation of the legislative power, the acts concerning the implementation of the judicial power and the acts by the Turkish Armed Forces which are purely of military nature are outside the competence of the Institution.

The Institution consists of a chief ombudsman, five ombudsmen, secretary general and other personnel.

In order to be elected as the chief ombudsman or ombudsman, the candidates must

- be a Turkish citizen,
- be at the minimum age of 50 for the chief ombudsman and 40 for the ombudsman on the date when the election is held,
- have graduated from a four-year university program
- have worked in state institutions, international organizations, civil society organizations or in the private sector for at least 10 years.

Those who are banned from public rights, members of any political party during the application or convicted from certain offences cannot be elected as ombudsman.

Those who seek to be elected as the chief ombudsman or ombudsmen and who meet the eligibility criteria can apply to the Speaker's Office.

The chief ombudsman is elected by the General Assembly of the Parliament. The chief ombudsman is elected with a two-thirds majority of the entire membership in the first or second voting. If the two-thirds majority of the entire membership cannot be attained during the second vote, then a third vote is held in which the candidate securing the absolute majority of the entire membership is deemed to have been elected. In case an absolute majority of the entire membership cannot be reached at the third round, a fourth round of voting is held between the top two candidates securing the highest number of votes.

The five ombudsmen are elected by the Joint Commission, whose members are from the Petition Commission and the Human Rights Inquiry Commission of the Parliament. Similar voting procedures in the election of ombudsmen are applied.

The tenure of the chief ombudsman and ombudsmen is four years and they may be re-elected to the same office only for another term.

Regarding independence and impartiality, The Law includes a provision stating that no authority, organ, institution or person can issue orders or instructions or circulars or advices to the chief ombudsmen or ombudsmen during the exercise of their duties.

Applications to the Ombudsman will be received no later than 9 months after the date of enforcement. Natural and legal persons may apply to the Ombudsman. Upon demand, an application may be kept confidential. Applications are free of charge.

Before any application is made to the ombudsman, the mandatory administrative application remedies specified under special laws and listed in the Law on Administrative Procedure must be completely exhausted. Any application filed before exhausting administrative application remedies shall be sent to the relevant organisation. However, in cases where it is likely to have damages that are hard or impossible to compensate, the institution may accept applications even if administrative application remedies are not exhausted.

Applications can be made to the ombudsman within 6 months following the date of notification of the response exhausting the administrative remedies mentioned above or after the termination of the 60-day period during which the administration fails to respond to the application.

Any application filed during the term of litigation will freeze the litigation process.

The ombudsman finalises its examination and investigation within 6 months at the latest following the date of application.

The information and documents the ombudsman may request in connection with the matter it examines and investigates is submitted to the ombudsman within 30 days following the date of notification of such request. Upon request by the chief ombudsman or ombudsmen, the relevant authority will launch an investigation about those who refuse to submit the documents or information requested within this period without any justifiable reason.

Regarding the nature of decisions, the decisions of the ombudsman are in the nature of recommendation. The ombudsman will notify the outcome of its examination and investigation, and, if any, its recommendation to the relevant authority and to the applicant.

If the relevant authority does not find the action to be performed in line with the recommendations of the ombudsman, it notifies the reasons to the ombudsman in 30 days.

The ombudsman prepares a report about its activities and recommendations at the end of every calendar year and this report is discussed in the General Assembly of the Parliament. The annual report is published in the Official Gazette. The ombudsman may make public statements as it deems necessary without waiting for the annual report.

Regarding the current state of play, the Chief Ombudsman was elected by a voting in the General Assembly of the Parliament and the ombudsmen are elected by voting in the Joint Committee. According to the Provisional Article 1 of the Law, the Institution is established when the elections of Chief Ombudsman and ombudsmen are concluded.

The establishment of ombudsman system in Turkey will contribute to reduce the number of filed cases before the courts. A well-functioning ombudsman system will assist to overcome the alleged maladministration and human rights abuses at administrative level. This Institution will not only reduce the judiciary's burden, but also allow citizens to have their demands met more quickly without having to apply to courts.

The Ombudsmen in several countries have already made a significant effect if the institution is respected by the executive. Also it should be noted that ombudsman idea has spread and the institution has been set up in almost all countries.

One of the most significant benefits of the ombudsman other than providing protection to the rights of the individuals is to contribute to the public authorities to reach the highest standards of conduct. The Ombudsman acts like a public relations officer telling the public the reason of lawfulness of the operations if the administration is found rightful whereas ombudsman also identifies the deficiencies in the administration and

contributes to the required amendments to overcome the existing deficiencies (Kılavuz R., Yılmaz A., İzci F, 2003).

3.3.3 Department of Human Rights of the Ministry of Justice

The Department of Human Rights was established on 3 June 2011 under the Directorate General International Law and Foreign Relations of the Ministry of Justice in order to carry out necessary work on measures to reduce number of applications to and judgments against Turkey by the ECtHR through effective implementation of the ECHR and elimination of causes of violation, closely monitor judgments of the Convention bodies, coordinate preparation of defenses by respective institutions and agencies and safeguard human rights and freedoms. The newly founded Department finds its legal basis in the Decree Law No. 650 which was published on Official Gazette dated 26 August 2011 and no.28037. The primary goal of the Department is to identify and ensure swift implementation of general preventive measures concerning violations. Some of other tasks of this Department are as follows:

- translation of the important judgments of the ECtHR into Turkish
- compilation and archiving of decisions of the ECtHR
- following scientific studies regarding the ECHR and its implementation and distribution of related books, articles, case law and books to members of the judiciary
- statistical studies
- organising local and international symposiums, seminars and other training activities

In order to establish a well-functioning and more effective defense system and to find permanent solutions to current problems concerning the ECtHR cases a protocol was signed between the Ministry of Justice and the Ministry of Foreign Affairs which came into force on 1 March 2012. According to provisions of this protocol, this Department is

responsible for the preparation of government's defense except a few exclusions regarding international relations and foreign policy. The Department is also be responsible for the coordination of the conclusion of the cases with friendly settlement and one side declaration methods.

Furthermore the new Department performs studies regarding the implementation of ECtHR judgments and abolishment of infringements mentioned in ECtHR decisions. It also prepares action plans and reports about general and individual precautions to be taken regarding the implementation of ECtHR decisions and the process to abolish the situations which cause violations.

The Department's official website[3] provides easy access to the ECtHR judgments about Turkey and other states as well as statistical data regarding these judgments.

Assigned to find out the reasons leading to violations of ECHR, the Department carries out activities to bring long-lasting solutions to persistent violations indicated in the judgments of the ECtHR. To this end, it organised a workshop titled "ECtHR Judgments Regarding Turkey, Problems and Solution Proposals" on 15-17 November 2011 in Ankara to identify the root-causes of the violations and to propose solutions accordingly. Specialists from the ECtHR and the Council of Europe, as well as lawyers and specialists from the high courts of Turkey, senior officials and other staff from the relevant institutions participated in the conference.

The conference aimed to determine the problematic areas in Turkey regarding the human rights and what is required for the solutions to these problems in the light of the ECtHR judgments. In this regard, 6 workshops were formed based on the rights that are mostly violated:

[3] Ministry of Justice - Department of Human Rights website is www.inhak.adalet.gov.tr.

- right to life
- prohibition of torture and ill treatment
- right to liberty and security
- right to a fair trial
- right to respect for private life
- freedom of expression
- property rights

The final declarations of these workshops were thereafter turned into "the Draft Action Plan Regarding the Prevention of the Violations of Human Rights". The main objective of the Action Plan is to prevent violations of the European Convention on Human Rights in Turkey. The Draft Action Plan has been prepared by the contributions of the relevant public institutions latest. The studies are still underway.

In addition, as part of these studies, a section titled "human rights" was incorporated into the Judicial Reform Strategy document.

3.3.4 The Individual Application to the Constitutional Court

"A constitutional complaint is a specific subsidiary legal remedy against the violation of constitutional rights, primarily by individual acts of government bodies which enables a subject who believes that their rights have been affected to have their case heard and a decision issued by a Court authorized to provide a constitutional review of disputed acts." (Mavčič A.M, 2011:4)

According to Sierck (2007), the individual application to Constitutional Court is available in Germany and only 3699 application are found admissible out of 157,233 applications between 1951 and 2005. This verifies that the definition of violation by the German Federal Constitutional Court and the perception of the public regarding violation differ from each other. However the applications to the Constitutional Court

contributed to the formation of legislation regarding human rights in the country since the most of decisions given based on the individual applications are related to the main problems for the society such as ban on smoking, abortion, nuclear energy (Aydın, 2011).

2010 Constitutional Amendments introduced the individual application to the Turkish judicial system concerning protection of fundamental rights.

The Law on the Establishment and Rules of Procedure of the Constitutional Court which was published in the Official Gazette dated 3.4.2011 and no. 67894 regulates the implementation of the individual application procedure. Extra secondary legislation (by-laws) has been adopted for recruitment of assistant rapporteurs, their entry exams, trainings, etc.

The individual application procedure to the Constitutional Court became operational as from 23 September 2012 pursuant to the Article 148 of the Constitution and Articles 45 and 51 of the Law on the Establishment of Constitutional Court and Adjudicatory Procedures. Every citizen who claims that his/her fundamental rights and freedoms safeguarded by the Constitution, ECHR and its protocols to which Turkey is party, are violated by any public authority, will be able to submit his/her complaint to the Court. Legislative acts of the Parliament or regulatory actions (regulations, by-laws) issued by the executive cannot be subject to application.

Individual applications can be lodged to the Constitutional Court once all other judicial remedies are exhausted. It is expected that the workload of the Constitutional Court will considerably increase after the Court starts to receive individual applications

The individual application procedure is as follows: The examination for admissibility is conducted by the commission composed of 2 members each. Non-admission decisions are final and are notified to concerned parties. Examination of admissible individual

applications on the merits is conducted by the Chambers composed of a chairman and four members. Examinations will be carried out on file but when it is deemed necessary hearings may be held.

Commissions or chambers may carry out all types of examinations and investigations to find out whether a violation has occurred against a fundamental right or not. After examination on the merits, a decision on violation or non-violation of the applicant's right is rendered. In case of a decision on violation, a judgment may be rendered on the actions to be taken in order to abolish the violation and its consequences. In case that the violation has been caused by a court decision, the file is forwarded to the concerned court in order to renew the judicial procedure so that the violation and its results will be cleared up.

In cases where any legal interest is not seen with renewal of judicial proceedings, it can be decided payment of compensation in favor of the applicant. Between 23.9.2012 and 6.11.2012, 442 applications were received. 92 of them have been forwarded to the Commission.

The Categories of Individual Applications to the Constitutional Courts as of 6.11.2012[4]

NO	Subject	Number of Applications
1	Right to Fair Trial	302
2	Protection of Family	1
3	Equality before Laws	12
4	Right to Property	18
5	Right to Education	1

[4] Ministry for EU Affairs, (2012). Additional Contribution to the Turkey's 2012 Progress Report.

6	Breach of Fundamental Rights and Freedoms	10
7	Individual Freedom and Security	4
8	Freedom of Expression	3
9	Freedom to Elect and to be Elected	1
10	Freedom of Assembly	1
11	State Respecting Human Rights	1
12	No Reference	88
	TOTAL	442

Significant measures are taken in order to ensure the effective functioning of the procedure.

Details of application procedure, duties of members and rapporteurs and their assistants, working procedures of commissions, examination of applications, etc. have been regulated in full detail in the Working Procedures of the Constitutional Court which was published in the Official Gazette on 12 July 2012. The Court has been re-organized and its structure has been redesigned and chief rapporteurs, additional rapporteurs and staffs have been recruited. The numbers of rapporteurs recruited increased and assistant rapporteurs are employed. All of the members, rapporteurs and assistant rapporteurs employed in the Constitutional Court joined study visits to ECtHR and Council of Europe. All forms for application, a guide for making application, a handbook "Individual Application in 66 Questions" have been prepared and made public on the website of the Court (Ekinci, Sağlam, 2012).

Bureau of Individual Application is established within the Constitutional Court in order to receive and file applications, examine whether applications meet the formal requirements and, if necessary, asks from applicant to complete missing items and carries out communications. Also the Research and Jurisprudence Unit was established

to prepare research reports, gives opinions on draft reports and decisions and publishes important jurisprudence on individual application.

3.3.5 Commission established within the Law on Settlement of Some Applications Made to the ECtHR through Compensation

The length of the judicial proceedings in Turkey is strongly criticised. In the judgment of Ümmühan Kaplan v. Turkey case on 20 March 2012, ECtHR ruled that Turkey had violated the right to a fair trial and right to an effective remedy. Applying the pilot judgment procedure to cases of a similar nature, the court suspended the review of cases of this kind and requested Turkey to form, within one year, an effective remedy for excessively long proceedings.

This remedy provides for establishment of a commission functioning similar to the previous ones; Damage Assessment Commissions in the South-eastern region of Turkey. Thus, such a commission is foreseen to pay compensation to those who applied to the ECtHR because of lengthy trials.

The Law No. 6384 on Settlement of Some Applications Made to the ECtHR through Compensation was published on the Official Gazette on 19 January 2013. The Law mainly aims to decrease the number of violation decisions given by the ECtHR and offers a domestic legal remedy in terms of compensation to those who have applied to the ECtHR before 23 September 2012 on the grounds of lengthy trials and non-implementation of court's decisions. In this context, a commission will be established to review the applications within the scope of the Law. Applications to the Commission will start one month after 19 January 2013, the date of publication of the Law in the Official Gazette. Thereafter, applications can be made within a 6-month period.

The Law covers the applications made to the ECtHR due to excessively long civil, criminal and administrative trials as well as the applications for delayed or deficient

implementation or non-implementation of court's decisions. Upon a proposal of the Ministry of Justice, the scope of the Law may be extended to other violation areas by a decision of the Council of Ministers. At present, the Law covers the applications made to the ECtHR before 23 September 2012. Yet, applications made after this date may be included in the Law by a decision of the Council of Ministers.

The Commission established within the scope of the Law is composed by 5 members: 4 judges/prosecutors working under the Ministry of Justice and 1 official from the Ministry of Finance. The members are appointed by respective Ministers. The Minister of Justice elects the Chairman of the Commission among the members. Simple majority is required for the Commission to convene and conclude an application. The Commission concludes an application within 9 months. Commission's decisions may be appealed to the Ankara Regional Administrative Court within 15 days after the Commission's notification. Appeals are concluded within 3 months and appeal decisions are final.

3.4 THE STRUCTURES FORESEEN TO BE ESTABLISHED IN THE AREA OF HUMAN RIGHTS

3.4.1 Law Enforcement Monitoring Commission

An independent and effective police complaints system is of fundamental importance for the operation of a democratic and accountable law enforcement mechanism. In the Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police (2009), it is stressed that ECtHR has developed five principles for the effective investigation of complaints against the law enforcement officers which are in line with Article 2 and 3 of the European Convention on Human Rights:

· Independence: there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence;

· Adequacy: the investigation should be capable of gathering evidence to determine whether police behavior complained of was unlawful and to identify and punish those responsible;

· Promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law;

· Public scrutiny: procedures and decision-making should be open and transparent in order to ensure accountability; and

· Victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.

Also the provision of an effective and impartial procedures in the investigation of complaints regarding the law enforcement bodies are also included in the reports of European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and Council of Europe European Code of Police Ethics.

Turkey has adopted a zero tolerance policy to torture and ill-treatment. This policy continued with the constitutional and legal reforms which gained momentum in the later period. Also National Programme (2008) commits that the importance will continue to be attached to, the implementation of the measures adopted in the context of "zero tolerance policy" against torture and ill-treatment, covering all public officers, in line with the European Convention on Human Rights, the provisions of the Turkish Penal Code and the recommendations of the European Committee for the Prevention of Torture and prevention of impunity. Within that respect, Ministry of Interior has

implemented TR 0501.05 “Independent Police Complaint Commission and Complaint System for Turkish National Police and Gendarmerie” between February 2007 and May 2009. The project has been developed in order to ensure greater accountability of the Police and Gendarmerie establish an independent and effective complaints system; develop the usage of modern investigative techniques and crime prevention strategies; provide more effective and rapid functioning of the existing mechanisms which enable examination, monitoring and finalization of the complaints, and secure transparency regarding complaints against law enforcement. Within the Project, the conceptual and institutional framework of the complaint handling mechanism based on general meetings and exchange of views was established.

Based on these efforts, Ministry of Interior has prepared the Draft Law on the Establishment of Law Enforcement Monitoring Commission[5] to introduce a new structure within the area of human rights.

The aims of the Draft Law on the Establishment of Law Enforcement Monitoring Commission are to ensure reliance on Law-Enforcement, to ensure the available mechanism faster and more effective on inspecting, monitoring and concluding complaints about Law-Enforcement, to provide transparency on Law-Enforcement Complaints; to prevent the Law-Enforcement forces from incrimination and to reassure trust to the Law-Enforcement

The Draft Law on the Establishment of Law Enforcement Monitoring Commission foresees the establishment of a new complaint system which will be more efficient so that the confidence of the public and law enforcement personnel on the complaint system will be enhanced without imposing a new burden on the bureaucracy.

[5] Draft Law on the Establishment of Law Enforcement Monitoring Commission. Retrieved 27.12.2012 from http://www2.tbmm.gov.tr/d24/1/1-0584.pdf

Through the new structure, the weak sides of the investigation process which is conducted by the administrative bodies regarding the unlawful acts committed by the law enforcement personnel is expected to be overcome.

To achieve the functioning of the new complaint system, two main bodies will be institutionalized under the framework of the Ministry of Interior together with the establishment of a central registration system

The scope of the Law includes Turkish National Police, General Command of Gendarmerie and Turkish Coast Guard Command. However crimes emerging the military duties of staff of General Command of Gendarmerie and Turkish Coast Guard Command are out of scope of the Law. The complaints regarding the actions and practices performed by the judicial and military units are excluded from the scope of the Draft Law.

Within the Draft, the establishment of a Commission for the Monitoring of Law Enforcement Bodies is envisaged. The Commission will be established as a permanent commission under the framework of the Ministry of Interior; no other legal personality other than the Ministry is envisioned. In the Commission, representatives of the law enforcement bodies will not exist, functionally an independent structure has been intended to be established.

The Draft envisages that all the complaints and denunciations about the law enforcement personnel will be monitored and supervised by the Commission. The assigned duties of the Commission can be described as supervision, monitoring and standard setting rather than executive duties. In this way, it is intended that the Commission will improve the effectiveness of the existing complaint system.

The goals of the Commission for the Monitoring of Law Enforcement Bodies can be summarized as achieving unity of implementation among the Turkish National Polcie,

General Command of Gendarmerie and Turkish Coast Guard Command, contributing to developing policies towards the future through devising a database, ensuring the accountability, efficiency and transparency of the law enforcement services and enhancing the confidence on the law enforcement bodies.

According to the Draft, the Commission itself does not have the right to conduct direct investigations; only in certain cases the Commission will have the power to demand disciplinary proceedings and inspection from the related authorities.

The Commission will be composed of the following members:

- Undersecretary (Director),
- Ministry of Interior Director of the Inspection Board,
- Ministry of Interior First Legal Advisor,
- Prime Ministry Human Rights Director,
- Ministry of Justice Director General of Penal Affairs,
- One member chosen by the Council of Ministers upon the proposition of three candidates by the Minister from the University Departments of Criminal Law and Law of Criminal Procedure,
- One member chosen by the Council of Ministers upon the proposition by the Minister of Justice among three self-employed lawyers who are eligible for being elected as the President of the Bar Association.

The Secretariat of the Commission will be performed by the Inspection Board. One of the Vice-Presidents of the Inspection Board will be responsible for carrying out the secretariat duties.

Duties and authorities of the Commission are to maintain coordination, to ask for Disciplinary Investigation, to act on its own.

The Commission can ask for Disciplinary Investigation from the Inspection Board in 30 days just after the denouncement or complaint is being taken. After this request, process is being carried out under general disciplinary rules by the Inspection Board.

The Commission fulfills the duties and authorities given by the draft law, independently on its own. None of the organ, office, authority or person can give order and instruction or advice and suggestion to affect Commission's decisions. It is designed not to have an organizational independency but a functional independency.

Regarding the working principles, the Commission meets monthly at the very least and when necessary. The meetings of the Commission are held with the participation of at least five members and takes decisions by the votes of at least four members at the same direction. None of the members can refrain from the vote.

Also a committee of inspectors is foreseen to be established. The new complaint system envisages the establishment of a separate committee of civil inspectors composed of civil inspectors from the Inspection Board of the Ministry of Interior. It is intended to reinforce the faith and trust on the complaint system through the supervision and oversight of the law enforcement bodies by the Commission which will function independently. Moreover, with the establishment of a committee of expert inspectors at the Inspection Board, it is aimed that investigations will be made in a more effective and impartial manner.

These inspectors are assigned no other tasks other than the above-mentioned ones and also are subjected to periodic in-service training on the relevant tasks.

The disciplinary proceedings and preliminary examinations on the following crimes which are asserted to be committed by the Law Enforcement Bodies will be conducted by these inspectors; a) murder, b) intentional injury, c) torture, d) excessive use of force, e) organized crimes.

In provinces and districts when cases are reported where such crimes are committed, the related authorities will immediately start investigations and concurrently report all the operations to the Secretariat of the Commission for the Monitoring of Law Enforcement Bodies. Moreover, within the boundaries of possibility, the disciplinary proceedings and preliminary examinations in the provinces and districts concerning these cases will be conducted by the personnel belonging to the category of civil administrative authority services. In situations where a civil inspector is appointed for disciplinary proceedings and preliminary examinations, all other administrative examinations and disciplinary proceedings will be handed over to the appointed civil inspector. In addition to the civil inspectors, it is also possible to assign other inspectors from related institutions when required by the nature of the case.

Furthermore, the special provisions are reserved for the Chief Public Prosecutors to conduct direct investigations.

In Turkey, a central registry and analysis system concerning the denunciations and complaints about the law enforcement bodies does not exist. The lack of such a system can be considered as one of the most serious deficiencies among other weaknesses of the complaint system. The current data regarding the complaints about the law enforcement bodies are poor and not qualified for making satisfactory analysis.

Therefore, with the Draft Law, the establishment of a central registry system where all the complaints and denunciations shall be recorded is envisaged. The criminal and disciplinary actions performed by affiliated bodies, governorates and subgovernorates are monitored instantly. The main purpose of this central registry system is to ensure that all the administrative investigations will be supervised and monitored from a single center so that the investigations can be finalized in a more effective, rapid manner and in accordance with law. Moreover, it is expected that the central registry system will enable

the oversight of the complaint system, the formation of a standard registry and analysis system among the Law Enforcement Bodies, and the activation of the complaint system.

According to the Draft, the central registry system will be operated through an information processing network which will be established among the provinces, districts and Ministry of Interior. The Secretariat of the Commission for the Monitoring of Law Enforcement Bodies will be responsible for the operation of the central registry system.

At provinces, the governors and district governors will be the responsible units for managing the central registry system.

Also an amendment is foreseen in the Criminal Procedure Code so that the legal investigations on the crimes that fall under the scope of the Draft Law will be prioritized and proceedings will immediately be finalised by judicial authorities.

With regard to current state of play, The Draft Law was approved by the Parliamentary Committee on Internal Affairs on 13 June 2012[6]. It is currently on the agenda of the General Assembly of the Parliament.

3.4.2 The Establishment of Anti-Discrimination and Equality Board

Non-discrimination/equality mainstreaming is the systematic incorporation of non-discrimination and equality concerns into all stages of the policy process. It is implemented on the six grounds of gender, racial or ethnic origin, disability, age, religion or belief and sexual orientation. Article 10 of the TFEU provides a legal basis for anti-discrimination. According to Article 10, in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Directive

[6] Turkish Grand National Assembly. Retrieved 27.12.2012 from http://www.tbmm.gov.tr/develop/owa/tasari_teklif_sd.sorgu_yonlendirme

2000/43/EC (Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin) puts the principle of equal treatment and protects racial and ethnic origin in different fields of life such as employment, social protection,, social advantages, education, access to the supply of goods and services including housing. Protection against discrimination based on racial or ethnic origin would be strengthened by the existence of a body or bodies in each Member State, with competence to analyze the problems involved, to study possible solutions and to provide concrete assistance for the victims. Directive 2000/78/EC (Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin) established a general framework for equal treatment in employment and occupation prohibiting discrimination on grounds of religion or belief, disability, age and sexual orientation. 2004/113/EC (Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services) is about the equal Treatment in access to goods and services. Directive 2006/54/EC (Council Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation) regarding equal treatment directive requires member States shall designate a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex. These bodies may form part of agencies with responsibility at national level for the defense of human rights or the safeguard of individuals' rights.

Also the European Commission against Racism and Intolerance 2011 Turkey report recommends that a body specifically entrusted with combating racism and racial discrimination be either set up or clearly identified amongst existing mechanism as quickly as possible and also draws attention to its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination which advocates the setting up of such bodies.

In that regard, establishment of a equality board is one of the priorities of Chapter 19-Social Policy and Employment while anti-discrimination is one of the subject covered under Chapter 23-Judiciary and Fundamental Rights and political criteria. Also full enjoyment of all fundamental rights and freedoms by all individuals without discrimination is a commitment under 2008 National Programme.

Within that framework, Turkey has prepared the Draft Law on Anti-Discrimination and Equality[7] which is being elaborated at the Prime Ministry.

During the drafting phase, Ministry of Interior started the works as based on the draft legislation prepared by Human Rights Joint Platform (İnsan Hakları Ortak Platformu-İHOP) a joint platform of NGOs in Turkey. The base document has undergone through a comprehensive process after a series of consultations with NGOs and submitted to the Prime Ministry. In accordance with the Constitutional principle of equality, the Draft Law aims "to ensure the rights of persons to be treated equally and to provide effective prevention of discrimination"

Discrimination is prohibited on the grounds of gender, race, color, language, religion, belief, ethnic origin, philosophical and political view, social status, marital status, state of health disability, age and other reasons.

The Draft Law foresees that in case of violation of prohibition of discrimination, incumbent and authorized public authorities are obliged to end violation, recover results, prevent recurrence and adopt relevant measures for judicial and administrative investigation

[7] Ministry for Interior, (2011). Draft Law on Anti-Discrimination and Equality. Retrieved 12.11.2013 and http://www.icisleri.gov.tr/default.icisleri_2.aspx?id=5692

Types of Discrimination are listed in the Draft Law as follows: segregation, giving orders for discrimination or executing these orders, multiple discrimination, direct discrimination, indirect discrimination, mobbing, victimization, unreasonable regulations, hate speech, harassment and discrimination on assumed reasons.

With the Draft Law, the following two bodies are foreseen to be established: "Anti-Discrimination and Equality Board" (the Board hereinafter) consisting of 12 members of whom 5 appointed by the Council of Ministers, 4 by the President, and 3 among the relevant NGOs and "Advisory Commission" (the Commission hereinafter) consisting of 29 representatives among relevant public institutions, NGOs, universities, trade unions, and professional organisations.

The main features of the Draft Law are as follows:

In the case of violation of the prohibition of discrimination, competent public authorities are obliged to take the necessary measures in order to stop and prevent recurrence of the violation, to compensate damages resulting from the violation, and to ensure the follow-up of judicial and administrative proceedings.

The Board takes action ex-officio if the Board is by any means informed that a discriminatory practice took place.

Associations, foundations, trade unions, professional organisations or public institutions operating in the field of discrimination may apply to the Board, on behalf of victims, by claiming that the victims have been subjected to an individual or institutionalized discrimination practice.

Applications submitted to the Board are examined by rapporteur experts. The rapporteurs have to submit the report on applications to the chairman in one month at the latest. The Chairman makes preliminary rulings about the applications in the form of

acceptance or rejection. The Board concludes the accepted applications within 6 months from the date of application at the latest. The period may be extended up to 9 months for once only.

Anyone who claims to be subjected to discrimination may apply to the Board. Applications can be made by petition, e-mail or through verbal application. In addition, a phone application system free of charge will be established.

The Board has public legal personality status, and administrative and financial autonomy. It is associated to the Prime Ministry.

The Commission provides assistance and guidance to the Board in their works and activities.

The Board may submit, if asked, its opinions and recommendations to the courts or relevant public institutions.

The personnel or institutions which are accused of discrimination have to assume the burden of proof that is used to implement administrative and judicial procedures upon an application to the Board. However, this is not the case if the claim has no reliable basis or the right to application is misused.

No organ, authority or person may give orders or instructions to the Board for the purpose of affecting its decisions.

CHAPTER 4

THE ASSESSMENT REGARDING TURKEY'S ONGOING EFFORTS ON THE INSTITUTIONALISM IN THE AREA OF HUMAN RIGHTS

4.1 THE ASSESSMENT OF EUROPEAN UNION, UNITED NATIONS AND COUNCIL OF EUROPE ON INSTITUTIONALIZATION IN HUMAN RIGHTS

Turkey has been announced as the candidate country for EU membership during the Helsinki European Council held on 10-11 December 1999. This produced a breakthrough in Turkey-EU relations since Turkey was officially recognised as a candidate state without any precondition on an equal footing with the other candidate states. As foreseen in the Helsinki European Council conclusions, the European Commission prepared an Accession Partnership for Turkey, which was declared on March 8th, 2001. As Turkey proceeded with meeting the priorities, the Commission published Accession Partnership Document for Turkey on 19 May 2003, 23 January 2006 and 18 February 2008 consecutively.

The Accession Partnerships indicate the priority areas for Turkey's membership preparations. The priorities are identified on according to the findings of the Commission's regular reports regarding Turkey.

The political criteria section of Accession Partnership Document constitutes a significant portion of the priorities set for Turkey by the Commission. The role of EU-set goals in the establishment of institutions in the area of human rights can be tracked within the accession partnership documents.

In the 2003 Accession Partnership Document, there was no priority indicated in order to establish an institution in terms of human rights both in short term and medium term

priorities. However as a medium-term, EU identifies the guarantee of full enjoyment by all individuals without any discrimination and irrespective of their language, race, color, sex, political opinion, philosophical belief or religion of all human rights and fundamental freedoms. However EU set some priorities referring to Council of Europe and UN conventions together with the UN standards. In that framework, the following priorities are listed: signing and ratification of Protocol 6 of ECHR, ratification of the International Covenant on Civil and Political Rights and its Optional Protocol and the International Covenant on Economic, Social and Cultural Rights, adjustment of detention conditions in prisons to bring them into line with the UN Standard Minimum Rules for Treatment of Prisoners and other international norms.

Ratification of the above documents and guarantee of full enjoyment by all individuals without any discrimination are kept as priorities in the in the Accession Partnership Document (2003) as well. it is stated "Turkey will nevertheless have to address all issues identified in the regular report…It should be recalled that incorporation of the acquis into legislation is not in itself sufficient; it will also be necessary to ensure that it is actually applied to the same standards as those which apply within the Union." Through these statements, EU declared once again that the incorporation of the acquis into the national legislation will not be sufficient without due implementation.

Besides, alignment of the legislation, practices and interpretation of the public officials with the ECHR are underlined as priorities by specifying the categories of rights and freedoms and priorities such as fight against torture and ill-treatment, legal aid, freedom of expression, freedom of association and peaceful assembly, freedom of thought, conscience and religion, independence of judiciary, training of judges and prosecutors. Also the case-law of ECtHR is put as a reference within the priorities. Bringing the national implementation to the level of practices of the EU member states are also identified as target in terms of conditions for functioning of the religious communities, the conditions of prisons. However as in 2003, EU has not made any point for the

establishment of human rights institutions such as national human rights institution, ombudsman or equality board.

The Accession Partnership Document (2006) is the first among the accession partnership documents that refers to the establishment an independent national human rights institution in Turkey. In that respect, to promote human rights with the active support of an independent adequately resourced national human rights institution in accordance with the relevant UN principles is set as short-term priority for Turkey in 2006 by the EU. Also complying with the ECHR including with full execution of the judgments of the European Court of Human Rights is underlined as a priority under the section of human rights and the protection of minorities.

The Commission continues to include same priority within the 2008 Accession Partnership Document. This document sets "the establishment of an independent, adequately resourced national human rights institution in accordance with relevant UN Principles" as a short-term priority under the human rights and the protection of minorities.

As addition to the Accession Partnerships, European Commission follows the candidate country by preparing and publishing annual regular reports for the candidate country where the relevant countries' progress in complying with the Copenhagen accession criteria is assessed. These reports are documents that the Commission services present their assessment of what each candidate has achieved over the previous year. Within that respect, regular reports paves the way for the reforms on human rights through its guiding nature to candidate countries by underlying the priorities within the political criteria and acquis that Turkey is required to meet.

The Commission published its first regular report on Turkey in 1998. Up until 2012, the regular reports were kept consistent in terms of general statement in human rights. However after a certain period of time, the regular reports are started to be designed in

detail and the reports even started to give a comprehensive assessment of draft pieces of legislation. However the reports are expected to give a general outlook on the record of the candidate countries in terms of realization of the priorities under political criteria and transpose of acquis into the national legislation.

Comparing the reports from 1998 to 2012 clearly puts the changing perception of Commission in terms of priorities expected from Turkey within the context of human rights institutions.

In its 1998 Regular Report on Turkey, the Commission concluded that there are certain anomalies in the functioning of the public authorities, persistent human rights violations and major shortcomings in the treatment of minorities. Having acknowledged the Turkish government's commitment to combat human rights violations in the country, Commission underlined that this had not so far had any significant effect in practice. The Commission called Turkey to continue the process of democratic reform on which Turkey embarked in 1995.

2001 Regular Report (2001:21) states that "With respect to the enforcement of human rights, Turkey has established a number of bodies (law of 5 October 2000): the Human Rights Presidency, the High Human Rights Board, the Human Rights Consultation Boards and the Investigation Board". The Commission refrained from assessing the impact of the bodies since they were newly established at that time.

In 2002 Regular Report, the Commission states that Turkey had made noticeable progress towards meeting the Copenhagen political criteria since the Commission issued its first report in 1998, and in particular in the course of 2002. In the said assessment, it is also underlined that these reforms provided much of the ground work for strengthening democracy and the protection of human rights in Turkey and they opened the way for further changes which should enable Turkish citizens progressively to enjoy rights and freedoms commensurate with those prevailing in the European Union.

However the Report includes a clear evaluation that Turkey does not fully meet the political criteria due to having a number of limitations in the reforms on the full enjoyment of fundamental rights and freedoms, further requirement of the adoption of regulations or other administrative measures, which should be in line with European standards, the need of effective implementation for the reforms by executive and judicial bodies at different levels throughout the country. This statement has a clear significant in that period of time since Turkey expects to start the negotiations as soon as possible with Turkey. This made clear that Turkey has to speed up its efforts to fully meet the Copenhagen political criteria to start the negotiation process. Therefore in 2003 and 2004 a series of important reforms entered into force mainly by the harmonization packages.

In 2003 Regular Report, with regard to the enforcement of human rights in terms of institutionalization, the references to the provincial and sub-provincial human rights boards, Reform Monitoring Group, The Parliamentary Human Rights Inquiry Committee and the establishment of Human Rights Violations Investigation and Assessment Centre in the General Command of Gendarmerie has took place with positive assessments. It is said that the complex structure of human rights boards and committees established over the two years (2002 and 2003) had been strengthened and also the number of district Human Rights Boards was increased from 831 in 2002 to 859 in 2003.

In 2004 Regular Report, Commission underlines that the impact of the bodies established such as the Human Rights Presidency, the Human Rights Boards and the Human Rights Office within the Ministry of Interior and The Human Rights Committee of Parliament on the ground is very limited. This assessment is the first concrete assessment where Commission draws attention to the missing points of the human rights institutions.

As agreed at the European Council in December 2004, accession negotiations have been launched on October 3, 2005 with the adoption of the Negotiation Framework by the Council of the European Union. As clearly defined in the Negotiation Framework, negotiations are opened on the basis that Turkey sufficiently meets the political criteria set by the Copenhagen European Council in 1993, for the most part later enshrined in Article 6(1) of the TEU and proclaimed in the Charter of Fundamental Rights.

In 2005 Report, the Commission makes the assessment that "the impact of the Presidency remains low as it has a limited budget, its role in relation to line ministries is poorly defined and it is not consulted on legislative proposals" The Commission started to assess the implementation in detail in 2005 and addresses for the first time to the Paris Principles and the importance of independent, adequately resourced national human right institutions which complies with the UN Paris Principles. It is also stated in the Report "The Human Rights Presidency has held contacts with international partners aimed at inter alia improving the functioning of the Presidency and local boards and creating an independent, adequately resourced national human rights institution which complies with the UN Paris principles. To date these projects have not produced concrete results." Therefore the Commission made its first reference to the Paris Principles and the importance of having an independent, adequately resourced national human rights institution.

Starting from 2005, the establishment of ombudsman system and equality body became the permanent item in the regular reports. No progress in the establishment of an ombudsman system has been criticized and a call for the establishment of equality body required by acquis is stressed under the context of Chapter 19 Social Policy and Employment.

Starting from 2006 Regular Report, Commission stresses the need to further upgrade the human rights institutional framework on the grounds that "the Human Rights Presidency lacks independence from the government, is understaffed and has a limited budget."

In 2008 Regular Report, the Commission criticizes Turkey for not recording any development on the institutional framework in the area of human rights stating "There have been no developments on the institutions monitoring and promoting human rights, such as the Human Rights Presidency, which lack independence and resources".

In 2009 Progress Report, Commission calls for further efforts to strengthening the institutional framework on human rights, in particular as regards the establishment of an independent human rights institution. In 2010 Progress Report, Commission started to address the legislation by stating "the legislation on human rights institutions needs to be brought fully in line with UN principles.

In 2011 Progress Report (2011:21), Commission made a detailed assessment of the Draft Law on National Human Rights Institution of Turkey by addressing the deficiencies of the draft legislation with regards to Paris Principles: "The draft Law establishing the Turkish NHRI submitted to Parliament in February 2010 does not comply fully with these principles. It is important that the provisions on the mandate, core functions, membership, staffing and funding of the NHRI cannot be amended by implementing legislation, but are set out in law. The NHRI's accountability to the Prime Minister does not provide that the budget comes from an autonomous source. Requirements for pluralism and gender balance are not explicitly included in the rules on recruitment of staff. The draft law does not specify that there is no restriction on the powers of the NHRI to examine issues arising from any part of the State or the private sector." Also 2011 Progress Report underlines that greater cooperation with, and involvement of, civil society was not reflected in the draft. Finally, The Commission calls Turkey to bring the legislation on human rights institutions in line with UN principles.

Also Commission made an assessment on the Draft Law on Establishment of Ombudsman and pointed out the criticisms in detail. The Reports stresses the need for the ombudsman to be held in high regard by the people and be perceived as non-

partisan, fair, impartial and reasonable and for reaching a consensus, thus involving parliamentary majorities for election of the Ombudsman. The Commission also criticisizes the provision allowing that transactions by the army of a military nature are out of the powers of the Ombudsman since the practice in most EU Member States is that an Ombudsman oversees the military in one way or another. Most importantly inability of the Ombudsman to conduct inquiries on his or her own initiative and the relative shortness of duration of 90 days to submit complaints to the ombudsman when compared to the practices at EU level.

The absence of independent police complaints mechanism and gender equality were also other negative assessments of the Report.

In 2012 Regular Report (2012:19), Commission continues its comment in line with the previous Regular Reports and states that the Human Rights Institution of Turkey does not comply fully with the UN Paris principles on human rights institutions, in particular as regards the independence of the proposed body. It was also underlined "It was not discussed with stakeholders, nor does it in any way reflect the concerns and proposals of national and international experts"

Also the lack of independent law enforcement complaints mechanism to investigate complaints of human rights abuses, ill-treatment and wrongdoing by and in Turkish law enforcement agencies and comprehensive anti-discrimination legislation, including on the establishment of an antidiscrimination and equality board are underlined. Regarding the Draft Law on Anti-Discrimination and Equality, Commission assessed that the current legal framework is not in line with the EU acquis on the grounds that relevant parliamentary committee amended the draft to remove references to discrimination on grounds of sexual identity or sexual orientation and there is discrimination against individuals along ethnic, religious, sexual identity and other lines.

The regular reports started to get longer in the political criteria section which is stemming from the fact that the Commission started to give detailed and comprehensive assessments as Turkey increased the intensity its efforts in the area of human rights. However analyzing the nature of the Reports, the year 2006 is seen as a breaking point where the Commission starts to call for the establishment of new structures in terms of human rights repeatedly. Through the period starting from 2006, important pieces of legislation are drafted in line with the priorities stressed in the Regular Reports. However the nature of drafting phase and the content of the Laws are also criticized in the recent Regular Reports. In that respect, the new steps taken in the area of institutionalization in human rights did not receive an appraisal from the EU side and instead criticized harshly in the Regular Reports without even seeing the phase of implementation. After the implementation of these institutions gets started, Commission is expected to reveal further criticisms in the next Regular Reports.

Besides regular reports, screening meetings and reports prepared as outcomes of these meeting by the Commission and adopted by the Council are important instruments for a candidate country to see what needs to be done in terms of alignment of acquis within negotiation process. Screening is basically a formal process of examination of the acquis, assessment of the state of preparation, determining the major differences between the acquis and the candidate country's legislation, and obtaining preliminary indications of the issues that will most likely come up in the negotiations

Turkey has started its negotiation process with the EU as of 3.10.2005, the screening phase started as a first step. Screening processes are also important in the sense that also the opening benchmarks of the chapters are conveyed to Turkey.

The introductory and explanatory screening meetings for Chapter 23 Judiciary and Fundamental Rights were held on 7-8 September 2006 and 12-13 October 2006 respectively. In the screening process, all the relevant public institutions made the presentations regarding the scope of Chapter 23. As a result of these meeting, the

Commission assessed that the institutional structure established for monitoring the human rights situation in general includes the Human Rights Presidency at the Office of Prime Minister, the Human Rights Provincial and Sub-Provincial Boards in which civil society representatives participate and the Human Rights Advisory Board under the Office of Prime Minister composed of NGOs, experts and representatives from Ministries and the Human Rights Inquiry Commission of the Parliament. The Commission underlined that both the Presidency and Boards carry out investigations on allegation of human rights violations.

The Commission underlined the need to upgrade the human rights institutional framework in Turkey. However Commission makes the assessment that the Human Rights Presidency lacks the independence from the Government. Additionally, also the assessment that Presidency and the Provincial and Sub-Provincial Boards interface with the responsible departments of the administration and of the prosecution in case of inquiries that might involve disciplinary or penal consequences respectively. Also it is underlined that the Parliamentary Human Rights Committee plays an active role in handling complains on human rights violations and conducting fact-finding visits to the reports. However at the time of screenings, 2006, it had no legislative role and is not consulted on legislation affecting human rights. As result, Commission made the evaluation that institutional framework in the area of human rights is fragmented in Turkey and has limited resources available. Therefore establishment of an independent adequately resourced national human rights institution in accordance with relevant UN Principles and establishment of Ombudsman system are identified as main requirements to open Chapter 23- Judiciary and Fundamental Rights.

The introductory and explanatory screening meetings for Chapter 19 Social Policy and Employment were held on 8-10 February 2006 and 20-22 March 2006 respectively. Within the screening process of Chapter Social Policy and Employment, regarding anti-discrimination, the Turkish legislation is found to be partially in line with the acquis in this field. In the screening report (European Council, 2006), the European Council called

for further efforts to ensure full conformity with the anti-discrimination acquis, including the establishment of an independent Equality body. In the screening report, it is stated that it is not clear which organizations would undertake the tasks set out in the EC acquis and whether they have the capacity to act effectively as a specialized equality body. This refers that instead of establishment of an equality body as a new structure, there is also possibility that one of the established institution may undertake this task. However Ministry of Interior foresees the establishment of a board "Anti-Discrimination and Equality Board" to undertake this task which is described above.

Also through the period, Turkish public institutions carried out a dialogue with their counterparts.

Within that respect, European ombudsman, Nikiforos Diamandouros made a detailed assessment (Ministry for EU Affairs, 2011) during the drafting period of legislation on ombudsman. Within that respect, broad mandate, broad review basis and sincere emphasis on the independence and avoidance of conflicts of interest, the fairly high requirements as regards the education and experience of the ombudsman and their staff and provisions foreseeing a high level of expertise, ambitious deadlines are considered as positive features of the draft.

However he identified problematic areas such election of ombudsmen within a Joint Committee since a large number of candidate is most likely to result in political bargaining between parliamentary parties. This may pose a serious risk of reducing the authority of a suis generis institution. Also the law does not clarify how principles of reciprocity will be applied in practice. The constitution lays down that citizens and foreign resident considering the principle of reciprocity have the right to apply in writing to the competent authorities. Following that it continues as "everyone has the right to obtain information and appeal to the Ombudsman." If the principle of reciprocity is sought, it would be inconsistent with the requirements of EU acquis on non-discrimination.

Also a pre-condition for complaining to the Ombudsman is the exhaustion of administrative appeal procedures envisaged under the Administrative Judiciary Procedure Law (Article 17/4). According to European Ombudsman, this constitutes a major problem since this may restrict the possibility of complaining to the Ombudsman. Since Law regulates that one can complain about all kinds of acts, transactions, attitude and behavior of the administration. However on the other hand by foreseeing the pre-condition, the law requires that one has to exhaust the administrative appeal procedures which normally apply to the administrative decisions. Within that respect, it may be difficult to complain to the Ombudsman about the attitude and behavior for which no administrative appeal procedures exist. What is suggested is that amendment of the exhaust to make appropriate approaches to the Administration, thus leaving it to the ombudsmen to exercise judgment in individual cases.

The European Ombudsman suggests that the Law includes clearly states that "without prejudice to their non-binding nature, the ombudsmen's recommendations constitute a valid basis for reversing administrative decisions, including when the ombudsman's findings are based on principles of ethics and good administration.

Also it is suggested that the law should provide for the Ombudsman also be able to launch own imitative inquiries, because international experience shows that this will strengthen the institutions' capacity to identify and propose solutions systematic administrative problems.

There were some other points identified as problematic or risky. But these points are corrected as to be in line with the EU best practices and comments of the European Ombudsman.

UN bodies also strictly watch the developments regarding Turkey.

In the Concluding Observations[8] on the initial report of Turkey adopted by the Human Rights Committee of United Nations at its 106th session, 15 October to 2 November 2012, The Committee expresses concerns that the Law For The Establishment Of The National Human Rights Institution adopted by the Parliament in June 2012 provides for the appointment of its members by the Prime Minister's office, thereby jeopardizing the independence of the Institution from the Executive Power in violation of the Paris Principle. The Committee underlined that Turkey should amend the law for the establishment of the national human rights institution, guaranteeing the organic and financial independence of the National Human Rights Institution in full compliance with the Paris Principles.

The Committee also expressed concerns that the current legislation of Turkey on discrimination is not comprehensive since it fails to protect against discrimination on all the grounds enumerated in the Covenant. In particular, the Committee is concerned about the lack of specific reference to the prohibition of discrimination on the basis of gender identity and sexual orientation.

The Committee also calls Turkey to enact legislation on anti-discrimination and equality, ensuring a comprehensive prohibition of discrimination on all the grounds as set out in the Covenant, including gender identity and sexual orientation and also to collect reliable and public data on cases of discrimination and the decisions by the competent judicial authorities.

Also Council of Europe European Commission Against Racism and Intolerance (ECRI) follows the Turkey's efforts through its reports. In the 2011 Report (ECRI, 2011:24), ECRI stresses that an ombudsman institution should be provided with all powers and

[8] UN, Human Rights Committee. (2012). Concluding observations on the initial report of Turkey adopted by the Committee at its 106th session, 15 October to 2 November. Retrieved on 3.11.2012 from http://www.ohchr.org/EN/countries/ENACARegion/Pages/TRIndex.aspx

responsibilities and all human and financial resources to function properly. Also Report (ECRI, 2011:24) recommends "a body specifically entrusted with combating racism and racial discrimination be either set up or clearly identified amongst existing mechanisms as quickly as possible". It also draws attention to "the importance for the victims of discrimination of having a clear avenue of redress and urges the authorities to ensure that, if a separate anti-discrimination body is set up, the distinct competencies of the various human rights institutions in Turkey are clearly understood".

4.2 PEER BASED REVIEWS

European Commission finances peer based missions for which independent experts are hired to prepare reports in the candidate countries when needed. These reports are guiding documents for the candidate countries and European Commission that monitors the level alignment of national legislation with the EU acquis.

As all the draft legislation of human rights institutions to be established were ready as of January 2011, European Commission asked Turkey's opinion to carry out a peer based review for the human rights institutions in Turkey. Following Turkey's agreement with the proposal, a peer based mission in the area of human rights institution within the context of Chapter 23 was organized between 17-21 January 2011 in Ankara. The mission was financed by European Commission and organized by the Ministry for EU Affairs and EU Delegation.

Independent experts prepared a report titled Chapter 23 Peer-Review Mission: Human Rights Institutions following a peer review of the proposals to establish new human rights institutions in Turkey. It focuses primarily on the draft laws for the Human Rights Institution of Turkey, Ombudsman and Anti-Discrimination and Equality Board. The assessment of the draft laws establishing these three institutions has been undertaken through both an analysis of the laws against the relevant international standards for independent national human rights institutions (the Paris Principles) and on the basis of

information gathered from meetings held in Ankara between 17 and 21 January 2011, and other documents provided prior to and at these meetings.

The Report assesses that there is no independent state mechanism for human rights monitoring in Turkey. Thus it draws attention that establishing mechanism carrying these qualities are both conceptual and practical challenges for Turkey. Although existing structures cannot provide a substitute for independent institutions in line with the Paris Principles, having local-level structures on human rights (Human Rights Boards) and having a structure in the central administration as a focal point for human rights (Human Rights Presidency) are considered as positive examples within the current structures.

4.2.1 Peer Based Review of Human Rights Institution of Turkey

Although the reports acknowledges that there was a clear commitment and willingness to create NHRI that meets international standards, it underlines that the draft legislation is not fully in compliance with the Paris Principles. Therefore report includes the recommendations of the experts for the draft to be fully in line with Paris Principles.

The report's findings are as follows:

Regarding accountability and appointment of membership, Roberts and Adamson (2011:2) draws attention to the fact that "the association of the NHRI with the Prime Ministry and appointment of most of the members by the Council of Ministers is likely to seriously impact both the actual and the perceived independence of the NHRI according to the Report."

Regarding eligibility and plurality of membership, the Report (2011:2) calls for "greater guarantees of plurality including representation of women, diverse societal groups and

minorities both in terms of reducing unnecessary restrictions on eligibility and providing a transparent and broadly consultative appointment process" although the law includes reference to the need for plurality of membership.

Regarding security of tenure and immunity, the Report (2011:2) puts forward that although there are provisions for security of tenure contained in the law, the protections to ensure the independence of the NHRI through providing security of tenure and protection from legal liability are found insufficient. Since the Law on Human Rights Institution of Turkey allows for the Council of Ministers to terminate the offices of Presidents and members who are identified by the Committee to have lost or never met the eligibility criteria, Kirsten et al. (2011:13) argues that law lacks a clear set of objective criteria that ensures there is no possibility for arbitrary termination of the President or members of the Board and recommend the removal process to be made by the Parliament.

Regarding budget, Kirsten et al. (2011:2,15) recommends that the budget comes from an autonomous source such as the Turkish National Grand Assembly to ensure independence as with the Ombudsman, although it is welcome in the Report that the NHRI is intended to have a separate budget.

Regarding staffing, the Report (Kirsten, 2011: 2, 15, 16) recommends having a strong staffing structure for NHRIs and keeping the seconded staff to an absolute minimum. The NHRI needs to be able to recruit a sufficient number of staff in a way that ensures pluralism and diversity in order to fulfill its functions.

Regarding subject matter jurisdiction, Kirsten et al. (2011:17) welcomes that the NHRI is intended to have a broad subject matter jurisdiction but it is recommended that the law to be more specific as to the NHRI's broad human rights mandate as envisaged by the Paris Principles. The Report states that the law lacks sufficient specificity as to the origin of the rights the NHRI is empowered to deal with. Experts recommend that the

Law to specify that ‘human rights’ as defined within the legislation includes all those rights contained in the international human rights treaties and conventions to which Turkey is party in particular, to define human rights as including all of the rights contained in the Charter of Fundamental Rights of the European Union to give the NHRI a clear and solid basis for the core of its work.

Regarding functions, the Report (Kirsten, Adamson, 2011: 2, 18) finds positive that NHRI is intended to have a broad range of powers. However, the core functions of the NHRI must be more clearly set out in the law. Based on the fact that the functions of the NHRI are divided between the Institution, President, Board and Units, Kirsten et al. found unclear why some of the core functions of the institution are assigned to different parts of the institution (Board, President, Units). The Report recommends to list the entire core functions of the institution explicitly for the avoidance of confusion and that only those functions that are specifically to be assigned to the President or Board be listed separately.

Regarding the role of civil society, Kirsten et al. (2011:3) acknowledges that there has been engagement with Civil Society in the development of the draft law since civil society plays an essential role in promoting and protecting human rights and engagement with civil society is an essential part of the work of NHRI. It is welcomed that there are provisions requiring the NHRI to undertake formal consultation. However, Report recommends amending the provision to ensure that engagement also takes place with NGOs on a regular basis outside this formal structure and to include a clear provision for the representation of civil society as members or staff of the NHRI.

4.2.2 Peer Based Review on Ombudsman

Kirsten et al. (2011:3) assess the establishment of an Ombudsman as a very positive step but express concerns about a number of aspects of the draft law including in relation to the mandate, qualifications of the Ombudsman and staffing.”

Regarding accountability, the Report (Kirsten, Adamson, 2011:2011:25) finds that the attachment of the Ombudsman to the Parliament as being independent in its operation is best practice in order to ensure the independence of an institution and recommends that the other institutions should also follow this model.

Regarding the budget, Kirsten et al. (2011:25) notes that having a separate budget to be received from the budget of the Parliament and other incomes ensures a model of administrative accountability and recommends that "the support by the Parliament is a strong model should be replicated in the other institutions"

Regarding the duties of the Ombudsman, the Report states that they are clearly defined in the law, which entitles the Ombudsman to examine and investigate complaints and to make recommendations to the administration.

Regarding appointment for the Chief Ombudsman and Ombudsmen, the use of a Parliamentary process in this regard represents best practice according to the Report. Therefore the appointment process is welcome.

However some concerns about the eligibility criteria, which require candidates to be over 50 years of age for the Head Ombudsman and over 40 years of age for an Ombudsman are stated. Some of the prescriptive provisions in relation to qualifications and a restriction in relation to criminal convictions are found overly restrictive and not proportionate to the need to ensure the level of expertise required for the role.

In addition, to ensure independence and compliance with the Paris Principles, the Report recommends that civil servants should not be appointed to the position of Ombudsman nor should these posts be filled by secondment. Also the report draws attention to that there are no provisions to ensure pluralism in the selection of candidates and the appointment of the Ombudsman.

The Report recommends that the qualifications required for the Ombudsman should not be overly restrictive and should be focussed on the required expertise and experience. There should be explicit provisions to ensure pluralism and gender balance in the appointment process. Civil servants or secondees should be appointed to the Head or other Ombudsmen posts.

Regarding mandate of the ombudsmen, since the draft version of the legislation as of January 2011 includes an article providing that the Ombudsmen can "make proposals on their own initiatives on the subjects and/or fields for which they are assigned by the Head Ombudsman, there are no criticisms regarding that. However this provision has been removed in the Law which is one of main areas that are criticised. Also experts stated that the Ombudsmen would work on thematic areas. These thematic areas are not defined in the Law since the areas would be decided based upon the expertise of the ombudsman in question, but may include for example a children's ombudsman.

Regarding proposals for Regional Offices, the law allows the establishment of regional or provincial offices. During the mission experts were told that the Ombudsman will use the buildings of the regional constitutional courts. In order to ensure public confidence in the institution and its independence, the experts recommend that the Ombudsman sets up separate offices and is not housed within courthouses

Regarding staff, the report recommends that the staff of the Ombudsman institution should not be seconded civil servants and should be limited to 25% of the staff if they are recruited, in line with the Paris Principles, and no senior staff should be secondees. Kirsten et al (2011) also call for explicit provisions to ensure pluralism and gender balance in the staff of the institution.

4.2.3 Peer Based Review on Law Enforcement Complaints System

Kirsten et al (2011:28) state clearly that none of the existing systems for complaints, or the proposed complaints commission are independent and recommend that an effective police complaints system should adhere to the major principles that the European Court of Human Rights has developed. The major principles are listed as independence, competence, promptness, public scrutiny and victim participation. The independent oversight of policing plays a vital role in protecting individual human rights, ensuring public trust and confidence in the police and promoting the efficient operation of law enforcement.

The Commission to be established to receive the complaints will be part of the Ministry of the Interior and will have no legal personality. According to Kirsten et al (2011: 28), "this is not considered as a substitute for an independent complaints system."

4.2.4 Peer Based Review on Anti-Discrimination and Equality Board

Kirsten et al (2011) states the recommendations primarily focusing on the structure of the Board from the perspective of the Paris Principles, which are the benchmark for ensuring the independence of all such public bodies.

The report's findings are as follows:

Regarding accountability, it is preferable for the experts that the Board is both independent in its operations, and seen to be independent. Therefore it should be directly accountable to Parliament in its functions rather than to Prime Ministry.

Regarding Functions of the Equality Board, The wide range of functions assigned to the Board is welcome. However it is recommended that the Board should be empowered to express and publish its views of its own volition.

Regarding appointment of the Board, the experts recommend that the draft law should be amended to include an open, transparent public appointment system, selection and appointment of members should be carried out by an independent board or selection panel. A specific provision to ensure gender balance and pluralistic representation should be included in the draft law. It should be explicitly required that members of the Board have relevant experience necessary for the position

Regarding foundation, the report states that there are concerns regarding the fact that there are a number of important elements of the functioning of the Board that will be left to secondary laws such as the establishment and assignment of the service units and district directorates which are foreseen to be regulated by the Council of Ministers in a directive. The experts recommend that Core functions and operations of the Equality Board should not be regulated in secondary legislation.

Regarding staff, the report underlines the need for clearer provisions for the level of staffing, and recommends to include the experience required and other key elements of their employment in the draft law and to specify the requirements of gender balance and pluralism. As in the cases of other new structures, the report recommends that the staff of the Equality Board must be independent and not more than 25% secondees.

Regarding publication of reports, the Board is recommended to publish its opinions, rulings and recommendations under its own name. However the decisions of the Board will be published in the Official Gazette which may impact the perception of the Board as an independent body.

Regarding budget, the Board's budget is foreseen to be derived from a range of sources, including the collection of 'administrative fines'. The report recommends that the budget for the Board to be clearly provided for as coming from the national budget in respect of its core functions and activities.

4.3 EXTERNAL /DOMESTIC HUMAN RIGHTS ORGANIZATIONS

Human Rights Watch (HRW) continously follow the human rights issues in Turkey throught its reports and paper.

The Human Rights Watch published a detailed paper named "Turkey: Scrap Flawed Plan for Rights Body" on 19.6.2012. The paper calls for Turkish Government to withdraw the draft law for the establishment of a national human rights institution on the grounds of the claims that the proposed body would lack impartiality and independence. It is underlined that Turkey has a history of government-controlled human rights bodies and every one of them has been disfunctional. However the Human Rights Watch draws attention that Turkey needs an effective and independent human rights body capable of holding the government to account.

In the said paper (Human Rights Watch [HRW], 2012:1), it is argued that the draft of the legislation fails in many ways to conform with the spirit and letter of the Paris Principles and stressed the following points:

- The Draft provides for the director, vice-director, and members of the board running the institution to be direct government appointments, selected by the Council of Ministers, and for the whole institution to be connected to the Prime Minister's office, although the specifics are unclear in the law.

- The Draft does not include guarantees that candidates for appointment to the board will be representative sof civil society

- There is no guarantee that the institution will be financially independent.

The paper (HRW, 2012a) stresses that in accordance with the Paris Principles, "the independence of a national human rights institution must be understood as independence from the executive, not as the attainment of an administrative status within the executive."

HRW also published a paper titled "Turkey: Reconsider Appointment to Key Human Rights Body" on 10.12.2012.

In the paper (HRW,2012b), it is stressed that the ombudsman will be separate from the National Human Rights Institution, which the government has also made a commitment to establish. Since the ombudsman can provide an important mechanism to investigate citizens' complaints against state officials and institutions, the paper (HRW,2012b) draws attention to the fact that "its effectiveness will depend on the person leading it and the way its powers are used".

According to the paper (HRW,2012b), the tasks of the ombusman which is supposed to be an "independent and effective complaints mechanism" are to scrutinize "all kinds of activities by the authorities and their conduct" and to investigate, research, and make recommendations in conformity with "an understanding of justice based on human rights."

Based on that, the paper (HRW, 2012b) criticizes that the ombudsman institution is excluded from scrutiny over "solely military activities of the Turkish Armed Forces." and underlines that given the track record of the military in Turkey, it is vital not to use this provision to shield the military from being investigated.

Also the World Organisation Against Torture (OMCT), the main coalition of international NGOs fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment has published

“International Fact-Finding Mission Report” (World Organisation Against Torture [OMCT], May 2012:13) about Turkey in which the following assesments are made:

- “The draft law on the Human Rights Institution of Turkey fails to comply fully with the Paris Principles.”
- “The fact that the institutions working in the area of human rights do not have contacts with the main domestic human rights groups and that some of them are not even known by such groups reflects the inadequacy and inefficiency of this system. In addition, it is also reflected by the fact that some are in charge of both implementing repressive legislation and protecting freedoms.”
- “While some mandates are over-lapping, others are unclear.”

Besides, the Human Rights Joint Platform (İHOP), one of the major NGO platform in Turkey, is a significant platform composed of outstanding NGOs. They have actively involved during the drafting process of the legislation and declared their assessment repeatedly starting from 2009. Lately they have conveyed their joint opininon regarding the draft legislation regarding Human Rights Institution of Turkey as of 18.4.2012. By 14.06.2012, they have announced a joint declaration that none of their opinions have been taken into account during the drafting period and they have repeated their opinions. Their findings are as follows briefly:

-The Draft was prepared without taking into account the principles of participation, comprehensiveness and transparency into account in accord with the international criteria.

-The draft is largely based on a state-centred approach, rather than an individual/citizen-centred approach.

-The institution is simply designed as a government agency similar to the existing human rights bodies.

-The institution is designed as a presidency mechanism similar to all previous human rights bodies. There is almost no option for the institution to carry out its functions against the will of its president.

-The members are appointed on the initiative of the government and no objective membership criteria have been defined.

-The Draft does not sufficiently secure the independency and impartiality of its members and it does not ensure especially the financial independency of the institution. The institution must have its own independent budget line and a substantial part of its budget should be allocated from the general budget with the approval of the Parliament.

-According to the draft, the structure and number of personnel is subject to the General Personnel and Recruitment Law No. 190 and this regulation will negatively affect the independency of the institution.

-The draft does not secure the pluralistic representation and participation of the board members

İHOP underlines that it is the letter and spirit of Paris Principles that these institutions are independent of other state organisations and political power and calls the Government for the establishment of a proper national human rights institution which shall serve common objectives, be independent and shall effectively prevent human rights violations and protect the human rights.

Regarding the Draft Law on Anti-Discrimination and Equality, İHOP has prepared a draft proposal aiming to remove the implementation having a discrimnative nature together with the International Minority Rights Group and Bilgi University. There have been some comments from the NGOs that the sexual identity listed as types of discrimination is removed in the latest draft.

CHAPTER 5

CONCLUSION

The main responsibility for protecting human rights rests with the governments. In the last three decades, most of the countries including Turkey become parties to main treaties and conventions with regard to human rights. Each treaty puts legal obligations for parties to nationally implement the human rights standards defined in these documents. Thus the human rights issue is rather an international issue rather than national.

States undertakes responsibilities to respect, protect and fulfill the rights as they are defined in the international treaties/conventions which the states are parties. The responsibility of respecting human rights requires the state cannot impose any measure or carry out an action that is contrary to rights and freedoms guaranteed. The responsibility of protecting requires the State should take actions to ensure that an individual benefit from all their rights and freedoms without any discrimination. In that context, states should establish mechanisms to protect human rights. Besides states should ensure the presence of independent judiciary, effective law enforcement officers, enforcement of individual safeguards and remedies as well as proper legislation to respect human rights. Also promotion of rights and freedoms through comprehensive and sustainable education and information campaigns are among the actions that State should take. These are only achieved with the actions of state. Therefore states have to ensure that the rights are defined in their national legislations. In order to put in place the effective national implementation in the area of human rights, the presence of democratic institutions is of paramount importance. To fully implement the rights and freedoms contained in the major human rights treaties and conventions, the establishment of democratic institutions is considered as a must in international arena.

In that respect, establishment of independent structures in line with the UN Paris Principles has become the main actions that states should take in order to respect, protect and promote the human rights.

The administrative reforms, especially in the area of human rights, continue at a high pace in most of the countries. Sezen (2011:325-340) explains the diffusion in the administrative reforms as policy transfer process which is defined as "the process by which the policies and/or practices of one political system are fed into and utilized in the policy-making arena of another political system' which is triggered by the international and national factors". In that respect, Turkey's administrative reforms are led mostly by EU.

Turkey shows willingness to establish these kinds of institutions starting from 2009 in parallel with the increasing criticisms of EU in 2006. The intensity of criticisms increased through time both from EU, UN and international and national NGOs. Since EU has become an actor to oblige the candidate states to implement the UN norms in the area of human rights, EU underlined the need of effective and independent national human rights institutions through a series of its monitoring tools including Accession Partnership Documents , regular reports etc.

As a result of these criticisms, Turkey has prepared important pieces of legislation to establish Human Rights Institution of Turkey, Ombudsman, Anti-Discrimination and Law Enforcement Monitoring Commission

Although the two of the long-awaited laws which are Human Rights Institution of Turkey and Ombudsman are enacted, the criticisms did not come to an end. All the international actors together with the international and domestic NGOs increasingly criticize these institutions that newly established.

Regarding Human Rights Institution of Turkey, the main criticisms on the establishment of Human Rights Institution of Turkey is regarding the role of executive in its establishment, affiliation and its actions.

Affiliation to a ministry or Prime Ministry of the human rights institution is one of the criticisms. The most appropriate authority for the affiliation of these kinds of institutions is the Parliament as in the case of Ombudsman since these institutions are to be seperated from the executive.

However each public institution has to be affiliated to the executive power, namely Government and cannot be affiliated to the legislative power unless otherwise is clearly stated by the national constitution in any parliamentary system where the principle of separation of powers is adopted. The Ombudsman is established as affiliated to the Parliament in Turkey due to the provision inserted to the Constitution during 2010 constitutional amendment. Since Human Rights Institution of Turkey does not take place in the Constitution, the affiliation can only be made to a public body instead of the Parliament. Regardless of the degree of pluralist and independent structure national institutions have, the Human Rights Institution of Turkey was obliged to be established as a public body and administrative structure. Within that context, the institution is affiliated to the Prime Ministry, which is considered the most relevant body among all the public bodies. Also in legal terms, the Law does not give any priority for Prime Ministry to have power on the institution.

One of the criticisms regarding the Human Rights Institution of Turkey is the lack of the Parliament among the institutions to elect the members and election of the most of the members by the executive on the grounds that this may harm the independency and autonomy of the Institution. The focus on the criticism is the dilemma of the Law since the executive that may have a responsibility over the human rights breaches also undertakes the role of protection of the human rights. Within these conditions, the critics claim that independent and autonom institutions shall not be established within

these conditions and therefore the Institution shall not be able to achieve the expected results.

Also national human rights institutions are also affiliated to the executive in the practices of EU member states. For instance, the national human rights institution of the UK (the Equality and Human Rights Commission) operates within the structure of central government, and the equivalent body in France (La Commission Nationale Consultative des Droits de l'Homme) is established under the Prime Ministry. Both institutions have been accredited with "A status", meaning they are fully in line with the Paris Principles. Hence, it is baseless to suggest that the institution's affiliation to the Prime Ministry and appointment of the members by the Council of Ministers are considered incompatible with the Paris Principles and endanger the independence of the institution.

The Paris Principles do not contain any provision that indicates which body appoints the members of the national human rights institutions. There is no provision that prevent the executive from appointing the members, either. Therefore, there is no legal ground for claiming that appointment of the members by the Council of Ministers is not compatible with the Paris Principles. Also members of the national institutions are appointed by the relevant minister in the UK and by the Prime Minister in France.

The president or members cannot be removed from office before the expiry of their terms of office. However, The Council of Ministers shall terminate the offices of President and members who are identified by the Board to have lost or never met the eligibility criteria. The provision guarantees that Board shall identify the president or members who do not have or have lost the required qualifications is considered positively. However the fact that the authority to remove from the office is the Council of Ministers is one of the criticisms since this means that the removal from the office will be done without even asking the authority electing the said members. This is seen as a factor that may weaken the guarantee over the membership.

It is also considered positively that it is not possible for public officials to serve as president or vice-president in the institution. The Law clearly raises this issue forward; "public officials who are elected as president or vice-president shall be discharged from their previous positions and institutions".

Concerning the ensuring of pluralism, Paris Principles underlines that national human rights institutions should be authorised with duties and competences so that they could effectively communicate with the non-governmental organisations operating in the field of human rights and/or pluralist representation of these non-governmental organisations in the national human rights institutions should be enabled. The Law covers these two priorities. According to the Law regarding the selection of members, representation of civil society, social and professional organisations, opinion leaders, universities, and experts will be ensured in a pluralist way. The Law also ensures that the institution will meet regularly, at least once every three months, with the involved public institutions and organisations, civil society organisations, higher education institutions, media organs, researchers and other concerned persons, institutions and organisations in order to consult and discuss about the issues in the area of human rights. Therefore, the issue of pluralism is sufficiently in place in the Law. However other criticism and recommendations can be taken into account during the implementation phase.

The provision of immunity is also included in the Article 6 of the Law on Human rights Institution of Turkey. "Aside from the red-handed cases that fall into the Aggravated Criminal Courts' area of responsibility; president, vice-president and members who are allegedly accused of committing illegal acts exclusively in relation with their duties and competences cannot be arrested, searched or interrogated. However, the Prime Ministry shall be immediately notified about the issue. The authorised Chief Public Prosecution Office shall directly launch investigation and prosecution against the law-enforcement chiefs and officers who breach the provision of this paragraph."Hereby the immunity of members of institution is sufficiently secured.

In practice, many countries have charged their human rights institutions as national preventive mechanisms required to be established in the framework of OPCAT. It is envisaged that Human Rights Institution of Turkey would assume the role of national preventive mechanism through the Unit of Fight against Torture and Ill-Treatment. However, it is not the aforementioned unit which will work as national preventive mechanism; it is actually the institution itself. Thus, the members of the Board are tasked with the visit prisoners or people under guard in parallel with the duties of Unit of Fight against Torture and Ill-Treatment. If the the Institution implements autonomously both financially and administratively; independent for its duty and authority in a pluralist structure, it will have the qualification recommended by OPCAT.

On the other hand, currently in Turkey there are different entities assuming similar duties to the national preventive mechanisms. Provincial and sub-provincial human rights boards are in charge of visiting detention centres and custodial prisons beside protecting and developing human rights. Moreover, locally organized penitentiary institutions and detention houses monitoring boards visit and monitor penitentiary institutions and detention centres. Both Boards report their studies and convey them to the related authorities. Even though there is a need for improving the institutional basis of existing structures, these Boards correspond to most of the requirements set by OPCAT.

Regarding the ombudsman, although the Law on Ombudsman has been in line with Paris Principles, there have been some criticisms following the chief ombudsman has been elected.

The ombudsman is an institution oversighting the administration besides judiciary without being related to the administration with the aims of finding prompt and effective solutions to the disagreements faced in the relations of administration and individuals. Since judiciary is dependent on working rules and procedures which causes a relatively longer period, Ombudsman institutions are established to find prompt solutions for the

disagreements between state and individuals in most of the EU member states and within the structure of EU institutional structure.

The Recommendation 1615(2003) of the Parliamentary Assembly of Council of Europe also underlines that "neutrality of the ombudsman and the fact that he or she is universally respected by both complainants and the subjects of investigations are vital to the proper functioning of the institution of ombudsman". The prestige of any ombudsman institution depends on the chief ombudsman for whom the whole society has a total agreement on his/her impartiality, independency and professionalism and his/her ability to represent the reputability of the institution in his/her character. The whole institution is built on the character of the chief ombudsman. Thus the implementation of the Ombudsman's recommendations by the public institutions will verify whether the elected ombudsmen serve the main intent of the Law on Ombudsman.

One of the criticism points stated by some parties is the exception of some tasks from the competence area of the Ombudsman. However there is no uniform approach in identifying the exceptions of the scope of the Law such as military actions in EU member states aswell.

The ombudsman, as a new institution, should function effectively from the outset since the perception of the public is dependent on the very first actions of the ombudsman. The Law on Ombudsman does not assign specific tasks to the ombudsmen. However it is preferable that the ombudsmen are assigned to specific tasks in order to ensure the effective functioning of the ombudsman system as in the case of EU best practices. Within that respect, the ombudsmen may be assigned to some specific areas of human rights such as women's rights, children's rights by a secondary legislation or in practice.

However the main problem with the Law is that Ombudsman can not carry out inquiries on its own. So duties of the Institution only refer to complaints. This limits the strength of the institution to identify and propose solutions of the administration.

Regarding Anti-discrimination and Equality Board for which drafting process of legislation is going on, the Draft Law is one of the major initiatives that Turkey has started or achieved since the anti-discrimination is rather a new concept for Turkish citizens as well as public instutions. It is also worth an appraisal that the base document taken into account was the document prepared by a well-known NGO platform in Turkey. However the drafting phase of this legislation needs to be carried out with due attention with the contribution of all stakeholders since the draft is expected introduce anti discrimination framework law introducing news concepts such as direct/indirect discrimination. It should be prepared in a way that all of the segments of society are taken into consideration.

The draft's coverage of broad range of areas of discrimination, including those contained in EU law and those contained in the international human rights treaties to which Turkey is a party, in particular, the International Convention on the Elimination of All Forms of Racial Discrimination[9] is essential.

The board foreseen to be established should be tasked both to promote and protect the rights. The Board should express its views both upon request and on its own initiative. Otherwise the strength of the Board may be undermined.

Independence of the Board is compelling for the public confidence. In all its actions, the Board should underline its independency. Also selection of candidates for the embership of the Board should be open, transparent process so that a wide range of candidates may apply and pluralism is respected.

The Board's power of sanction is of crucial importance since the draft foresees administrative fine penalties considering the impacts and consequences of the

[9] UN General Assembly. International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, 195.

discriminatory acts, financial power of the parties and the aggravating impact of multiple discrimination. The amounts may be reconsidered to increase. Also the following period regarding what will happpen if a person/entity who has committed a discriminatory act refuses to pay the fines should be clear within the draft also.

Regarding the Law enforcement monitoring commission, the draft law is expected to overcome the current problems regarding the handling of the complaints for law enforcement bodies .

There is a provision in the current draft which "within the boundaries of possibility, the disciplinary proceedings and preliminary examinations in the provinces and districts concerning these cases will be conducted by the personnel belonging to the category of civil administrative authority services." Since this mechanism is expected to be independent, "within the boundaries" phrase should be removed from the sentence.

However the initiative to establish a independent complaint mechanism is an important step to remove the perception that the impunity is a general problem across Turkey.

One of the major factors hampering progress in the institutionalisation efforts in the area of human rights seems to have been the established attitudes and practices followed by public institutions at different levels giving precedence to the protection of the state over the protection of human rights. Some of these attitudes are closely connected with the letter and spirit of the 1982 Constitution of Turkey although the Constitution has been revised to a great extent. In particular the Constitution has a revolutionary provision which is Article 90 of the present Constitution, which gives precedence to international treaties on human rights over national legislation thanks to the EU accession process of Turkey.

However the spirit of Article 90 should spread all over the society. To achieve that, the establishment of independent structures to be worked in the area of human rights is of paramount importance.

However the planning is also important since that the high of number of these institutions may cause some negative impacts which are not expected at the outset. The future overlapping of competencies may be prevented by taking into account all the legislation including the drafts.

In that respect Human Rights Institution of Turkey and Ombudsman are established. There are also some other experiences in EU where these two institutions are established seperately. However the tasks of equality body foreseen to be established as a form of Board may be assigned to existing Human Rights Institution of Turkey to prevent overlapping competence areas since the Human Rights Institution of Turkey is expected to receive complaints also based on discriminatory acts. So a specific unit dealing with anti-discrimination may be established within that Institution and it will contribute to the effective functioning of the Institution.

Law enforcement monitoring commission carries out a different character from the established institutions. However it is still possible to gather the said commission under the roof of National Human Rights Institutions.

However no matter what the number of the insitutions are established, it is the independence and effective functioning of the institutions that is expected to contribute to the protection, respect and promotion of human rights. It is a fact that these institutions start to function in an environment of prejudices since they have been criticized from the outset of the drafting process. It is the trust of public and the officials of public admistration that will make these institutions achieve their intended aims. If they act in a way to protect the administration instead of human rights, these institutions has the risk of ending up as being ineffective and unsuccessful mechanisms. In this case

people may prefer to apply directly the judicial processes which will lead to the abolishment of these institutions in the future.

Turkey's efforts and willingness to establish independent institutions are worth appraisal since they are the unique examples of Turkish public administration in its history. Whatever expected from these institutions is that they should funcition as being separate from the executive. However the independence of the institutions is a new concept both for Turkish public administration and Turkish citizens. In a country where state is called as "Father", Turkish citizens may have a hard time understanding the structure of these institutions to which they can complain about the state's actions to a body established as a public administration. Therefore complaint handling system should be based on principles of fairness, accessibility, responsiveness and efficiency. These institutions must give due attention to complaints and recognise that effective complaint handling will benefit their reputations and administration.

All the stakeholders give their comments about the efforts of institutionalisation in the area of human rights. Regarding Human Rights Institution of Turkey and Ombudsman, some has been taken into account and some has not been. However amending the existing laws consecutively may hamper the process without monitoring effectively the implementations of these institutions already established. If deficiences are also seen in the implementation, these may be overcome through implementative methods or secondary legislation.

Turkey has undergone through a major series of reforms beginning from 2000s with the motivation of EU membership. All major laws are revised or amended to a great extent to reach a significant level of alignment with the EU acquis in short period of time. However some major laws are amended by several times right after they are revised. Although Turkey's legislative power is capable of revising the existing laws in a quick manner, the amendments of major pieces of legislation consecutively does not help the system to function effectively as expected. The legislative and executive power should

analyze the implementation period of these laws since a significant amount of time is needed to analyze the weak points of the legislation and what portion of these deficiencies can be overcome through secondary legislation or changing the methods of implementation.

The efforts of the establishment of human rights institutions should be analyzed within that perspective. If these institutions become successful in their functioning, this progress is expected to change the mentality and the culture set in the minds of Turkish citizens so that democratic institutions may be established in the public administration.

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APPENDICES

APPENDIX A:

TEZ FOTOKOPİSİ İZİN FORMU

ENSTİTÜ

Fen Bilimleri Enstitüsü ☐

Sosyal Bilimler Enstitüsü ☐

Uygulamalı Matematik Enstitüsü ☐

Enformatik Enstitüsü ☐

Deniz Bilimleri Enstitüsü ☐

YAZARIN

Soyadı :
Adı :
Bölümü :

TEZİN ADI (İngilizce) :

TEZİN TÜRÜ : Yüksek Lisans ☐ Doktora ☐

1. Tezimin tamamından kaynak gösterilmek şartıyla fotokopi alınabilir. ☐
2. Tezimin içindekiler sayfası, özet, indeks sayfalarından ve/veya bir bölümünden kaynak gösterilmek şartıyla fotokopi alınabilir. ☐
3. Tezimden bir (1) yıl süreyle fotokopi alınamaz. ☐

TEZİN KÜTÜPHANEYE TESLİM TARİHİ: