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AN ANALYSIS OF HUMAN RIGHTS VIOLATIONS OF THE TURKISH SECURITY  
FORCES DURING THE EUROPEAN UNION HARMONIZATION PROCESS OF  
TURKEY

by

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## **ABSTRACT**

An Analysis of Human Rights Violations of the Turkish Security Forces during the

European Union Harmonization Process of Turkey

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This study is intended to measure the impact of international organizations on individual states' behavior during the era of globalization. In an effort to do so, it focuses on the relationship between Turkey and the European Union. With the goal of becoming a member of the Union, Turkey has passed a myriad of laws and regulations in addition to amendments to the Constitution during the past two decades. While these legislative improvements were intended to elevate the standards of democracy and human rights in the country, considerable development has also been achieved on the practical level. It has been observed that members of the security forces have undergone a significant transition during this process. Analyzing 863 cases before the European Court of Human Rights, the study found that there has been a noticeable decline in the quantity of violations committed by the security forces. Additionally, interviews with officials in the field disclosed that a new security perception and policing mentality has emerged during this process. To sum up, the study revealed that there has been a legal and professional improvement in the field of law enforcement particularly with the impact of the EU harmonization process.

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## **ABBREVIATIONS**

AFC: Aggravated Felony Court

AKP: Justice and Development Party

APD: Accession Partnership Document

AU: African Union

CEECs: Central and Eastern European Countries

CFSP: Common Foreign and Security Policy

CoE: Council of Europe

CPT: Committee for the Prevention of Torture

CSO: Civil Society Organization

DBP: Democracy and Peace Party

DEV-GENC: Revolutionary Youth

DEV-SOL: Revolutionary Left

DEV-YOL: Revolutionary Path

DHKP/C: Revolutionary People's Liberation Party/Front

EC: European Communities

ECJ: European Court of Justice

ECHR: European Convention on Human Rights

ECtHR: European Court of Human Rights

ECSC: European Coal and Steel Community

EEC: European Economic Community

EFTA: European Free Trade Agreement

ENP: European Neighborhood Policy

EP: European Parliament

EU: European Union

EURATOM: European Atomic Energy Community

FP: Virtue Party

HADEP: People's Democracy Party

ICCPR: International Covenant on Civil and Political Rights

IMF: International Monetary Fund

INGO: International Non-governmental Organization

IO: International Organization

JHA: Justice and Home Affairs

JITEM: Gendarmerie Intelligence and Counter-Terrorism

MEP: Member of European Parliament

MNC: Multinational Corporation

NAFTA: North American Free Trade Agreement

NATO: North Atlantic Treaty Organization

NGO: Non-governmental Organization

NPAA: Turkish National Program for the Adoption of the Acquis

NSC: National Security Council

OEEC: Organization for European Economic Cooperation

OZDEP: Freedom and Democracy Party

PKK: Kurdistan Workers Party

RP: Welfare Party

SEA: Single European Act

SP: Felicity Party

SSC: State Security Court

TAN: Transnational Advocacy Network

TDKP: Revolutionary Communist Party of Turkey

TEU: Treaty of European Union

TGNA: Turkish Grand National Assembly

THKP/C: People's Liberation Party/Front of Turkey

TKEP/L: Communist Labor Party of Turkey/Leninist

TKP/ML: Communist Party of Turkey/Marxist-Leninist

UDHR: Universal Declaration of Human Rights

UK: United Kingdom

UN: United Nations

US: United States

## 1. INTRODUCTION

This study is an exploratory study of the trends of human rights violations in Turkey before and during the European Union (EU) candidacy process.<sup>1</sup> In general, it intends to demonstrate the overall change in Turkey's human rights record within the shifting conceptual framework of governance phenomena. In particular, the study's focus is to explore to what extent the EU process has contributed a change in the practice of human rights violations of the Turkish security forces.

After referring to the progressively increased impact of international and regional organizations along with irresistible influences of globalization on the state behavior, the study will put forward the impact of the EU on constitutional and legal amendments in Turkey. Following the legislative changes of the last dozen years, it will focus on the practical reflections of these amendments in the field of law enforcement. Judgments of the European Court of Human Rights (ECtHR) constitute the principal data source of the study. The ECtHR has presided over 13,000 cases since 1959; of which Turkey has been a party to 2,589 (by April 2011). The study is based on a systematically sampled examination of these cases. The study aims to make an in-depth analysis of each selected case by using the method of content analysis and by disclosing the temporal, locational, and contextual changes in human rights violations implemented by the security forces over the past fifteen years.

The study will also include several interviews with the police and gendarmerie officers working in the field in order to add some flavor to the findings of the major data analysis. Details of these interviews will be discussed at the very end of the study.

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<sup>1</sup> Turkey applied for EU membership on April 14, 1987 and was accepted as a candidate state at Helsinki European Council on December 11, 1999. Accession negotiations between the EU and Turkey started on October 3, 2005.

### **1. 1. Statement of the Problem**

The processes of globalization have brought about new international and regional organizations as well as development of concepts such as democracy, human rights, and civil liberties. The EU espouses promotion of democracy and human rights as a fundamental objective in addition to its historical economic, social, and political goals.

In this context, Turkey, as one of the current candidate states of the EU, has spent considerable effort towards modernizing its democracy and human rights record. There has been an apparent transition in legal documentation and practical implementations in favor of freedoms and human rights since 1998. The present study intends to exhibit the tangible changes during the EU candidacy process of Turkey in terms of human rights violations that the security forces have been involved in. Therefore, the study does not only present the legal process, but also scrutinizes the reflections of these legal adoptions into practice in the field. In an effort to find out the effectiveness of constitutional and legal progresses, the study tries to understand the contextual change in the behavior the law enforcement personnel in the light of the ECtHR cases.

### **1. 2. Research Question**

As mentioned in the previous section, this study examines the overall human rights record of Turkey during the EU candidacy process. It, in detail, aims to scrutinize the tangible changes in the behavior of security forces in terms of human rights violations. In an effort to demonstrate this change, the study intends to answer the question of *“To what extent has the EU process contributed to a change in the practice of human rights violations committed by the Turkish security forces?”* The study proposes to

answer this question by examining the ECtHR decisions. The supporting research questions can be enumerated as follows:

- a. What are the major human rights violations in Turkey in terms of the European Convention on Human Rights (ECHR)?
- b. How can the violations committed by the security forces be classified?
- c. What are the similarities and distinctions between the violations committed by the police and the gendarmerie forces?
- d. How have the types, numbers, locations, and contents of the violations of security forces changed over the course of time?

The study, first, describes the overall human rights record of Turkey through the ECtHR cases. It draws a general picture of Turkey's human rights record including the applications according to years, applied articles, the Court's decision, etc. After seeing the overall situation, it makes a classification of articles violated by the security forces. Finally, it makes it possible to describe the changes in type, frequency, location, and implementation of the human rights violations that were committed by the security forces during this period.



## 2. LITERATURE REVIEW

Historically, actors of the international system and relations among these actors have been viewed from different points of view. Some (realists) have seen the system as a power relationship depending upon the national interests of actors. Others (liberals), on the contrary, have argued that the system is based not only on the interests of individual states but also on more complicated power relations among various actors ranging from the individual to international organizations (IOs). Another perception (radical/Marxist paradigm) has viewed the system as a long-lasting conflict between social classes.

Apart from these major theories, constructivist thought has approached the international system as a premise in which interests and identities of the actors are socially constructed. According to them, state behavior is shaped by the elites, identities, and social norms. While the previous paradigms view the state as the one of the principal actors of the system, for constructivists, the state and national interest are results of social identities and norms. They argue that “the building blocks of international reality are ideational as well as material.”<sup>1</sup> According to this standpoint, “legal rules and norms operate by changing interests and thus reshaping the purposes for which power is exercised.”<sup>2</sup> Therefore, with the feature of changing norms and rules in the international system, states begin to comply with the norms that are generated by supra-state actors but serve their interests, as well. As Bayers puts it, the rule-making process of international actors leads to the norms that form the future behavior of states.<sup>3</sup>

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<sup>1</sup> Ruggie, J. G. (1998). What makes the world hang together? Neo-utilitarianism and the social constructivist challenge. *International Organizations*, 52 (4), 855-885.

<sup>2</sup> Slaughter, A. M., Tulumello, A. S., & Wood, S. (1998). International law and international relations theory: A new generation of interdisciplinary scholarship. *The American Journal of International Law*, 92 (3), 367-397.

<sup>3</sup> Bayers, M. (1999). *Customs, Power, and the Power of Rules: International Relations and Customary International Law*. New York: Cambridge University Press.

## **2. 1. Changing Structure of the International System**

Relations among the members of the international system have varied over time. Previously, the nation-state was the dominant actor of the system. However, the structure of the current system has revealed that the state is not the only driving force in current global politics.

### ***2. 1. 1. The Concept of Sovereignty***

There are different approaches explaining the position and sovereignty of the state. Some argue that although there are new actors emerging and spreading around the world rapidly, the sovereign state is still the principal architect of the system. They maintain that the idea that autonomous and independent entities are gradually collapsing under the combined attacks of monetary unions, media groups, and non-governmental organizations (NGOs) misreads the history. The nation-state is surviving and adapting to new challenges of the system.<sup>4</sup> Others argue that the state has been forced to share its dominancy with non-state actors. It has not completely disappeared. It, however, has increasingly been challenged by the growth of international and nongovernmental organizations.<sup>5</sup> Another view about the role of the state focuses on threats caused by the lack of state authority. Recently so-called “failed states” are seen as the primary reason of war and injustice around the world.<sup>6</sup>

It can be considered that the nation-state in this new conception of international relations has undergone a significant transformation. Considering the impact of multinational corporations (MNCs), NGOs, and other non-state actors, one can assert that changes in world politics have somehow eroded features of the state. There has been a

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<sup>4</sup> Krasner, S. D. (2001). Sovereignty. *Foreign Policy*, 122 (January-February 2001), 20-29.

<sup>5</sup> Slaughter, A. M. (1997). The new world order. *Foreign Affairs*, 76 (5), 183-195.

<sup>6</sup> Rotberg, R. I. (2002). Failed states in a world of terror. *Foreign Affairs*, 81 (4), 127-140.

significant interaction between non-state actors located in different parts of the world. The current politics is based on the redistribution of power among these actors with the impact of computer and telecommunication technologies. This “power shift”, as mentioned by Mathews, is so efficient that NGOs are able to push around even the largest governments. For instance, during the establishment process of the North American Free Trade Agreement (NAFTA) coalitions of NGOs from Canada, Mexico, and the U.S. wanted to see provisions in the agreement on health, safety, pollution, consumer protection, immigration, and such issues. After months of resistance, the agreement was adapted as covering environmental and labor concerns.<sup>7</sup>

What has changed in state-centric perspective of the international system? The change in the system is that territorial states are no longer dominant actors in global politics. International, transnational, and sub-national entities have joined states as actors in what Rosenau labels the ‘multi-centric’ world that he contrasts to the ‘state-centric’ world of past centuries. In addition, states are weakening as they are pulled in different directions in a process of ‘fraggementation’ –a combination of integration and fragmentation- that encompasses impacts of both globalization and localization.<sup>8</sup> From a similar point of view, Mansbach, Ferguson, and Lambert argue that there has been a growth of complex interdependencies in the world allowing other actors emerge to complement and supplement the activities of nation-states. Therefore, traditional state-centric world order needs to be replaced by a ‘complex conglomerate system’.<sup>9</sup>

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<sup>7</sup> Mathews, J. T. (1997). Power shift. *Foreign Affairs*, 76 (1), 50-66.

<sup>8</sup> Rosenau, J. N. (2003). Governance in a new global order. In D. Held & A. McGrew (Eds.), *The Global Transformations Reader: An Introduction to the Globalization Debate* (223-233). Cambridge: Polity.

<sup>9</sup> Mansbach, R., Ferguson, Y. H., & Lambert, D. E. (1976). *The Web of World Politics: Nonstate Actors in the Global System*. Englewood Cliffs: Prentice-Hall, Inc.

The state's declining predominance does not mean that the state has completely withdrawn from the system; it is still playing an important role in the new form of politics. The change is based on the sharing of power and authority between the state and other non-state actors. This share might be considered as a challenge for the state's position but does not stand for the end of the state.

### ***2. 1. 2. Globalization***

As discussed in the previous sections, the actors in the system and their roles have been changing for centuries. The changes, today, are so quick that anything that had taken years in the history can now happen in seconds. While history witnessed the Thirty Years War and the Hundred Years War, today, wars last a few days. The change is not only about the length of wars, but also about the feature of them. While the historical wars were basically against real enemies –for example against a foe country and its armed forces- today's wars are so multifaceted that they are against terrorism, drugs, criminals, and so forth.

How can these changes be defined? What happened and things have changed? It is impossible to answer this question with a single answer. The change is not a momentary change, but a process of continuous transformations in all spheres of life. Globalization, as a sum of the processes bringing significant changes in all parts of life, has altered the social, economic, and political structure of the world. Individuals, organizations, societies, nations, and states have increasingly become interconnected and interdependent in today's world. Social and cultural relations between societies and political and economic relations between states and corporations have become considerably different from the ones of the previous eras. In this context, Steger views

globalization as “a set of complex, sometimes contradictory, *social processes* that are changing our current social condition based on the modern system of independent nation-states.”<sup>10</sup> The world has now been moving from the modern socio-political order of nation-states to the post-modern conditions of globality.

Langhorne defines globalization as “the latest stage in a long accumulation of technological advance which has given human beings the ability to conduct their affairs across the world without reference to nationality, government authority, time of day or physical environment.”<sup>11</sup> Langhorne links globalization largely with the impacts of technological developments on the social, economic, and political structure of the world. He classifies major changes in human life in three stages of development: (1) the invention of the steam engine and electric telegraph, (2) the invention of rocket propulsion and orbiting satellites, and (3) developments in computer, microchip, and the Internet world. These steps have caused and are causing significant changes in human life.

Held and McGrew’s studies basically intend to put forth a critical approach to globalization debates.<sup>12</sup> After they define the concept as “a shift or transformation in the scale of human organization that links distant communities and expands the reach of power relations across the world’s regions and continents,” they distinguish the pros and cons of the globalization debate (Table 1).

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<sup>10</sup> Steger, M. B. (2005). Ideologies of globalization. *Journal of Political Ideologies*, 10 (1), 11-30.

<sup>11</sup> Langhorne, R. (2001). *The Coming of Globalization*. New York: Palgrave, p. 2. Also in Langhorne, R. (2006). *The Essentials of Global Politics*. New York: Oxford University Press.

<sup>12</sup> Held, D., McGrew, A., Goldblatt, D., & Perraton, J. (1999). *Global Transformations: Politics, Economics, and Culture*. Stanford: Stanford University Press. Also in Held, D. & McGrew, A. (2002). *Globalization/Anti-Globalization*. Malden: Polity and Held, D. & McGrew, A. (2003). *The Global Transformations Reader: An Introduction to the Globalization Debate*. Malden: Blackwell.

	<b>Skeptics</b>	<b>Globalists</b>
Who governs?	US, G7 states vs. National monopoly capital through dominant capitalist states	US, G7 global directorate, transnational capitalist class (informal empire) vs. Multiplicity of agencies: national/suprastate, governmental, non-governmental, and corporate
In whose interests?	US, Western, national interests vs. National capital	Global corporate capitalism, US, and G7 states vs. Diverse global and particular interests varying from issue to issue
To what ends?	Maintain US/Western dominance, sustain Western security, defend and promote an open liberal world order	Promote and reproduce global liberal capitalist order vs. Plurality of purposes, regulating and promoting globalization, advancing global public policies
By what means?	International institutions, hegemonic power and hard power –coercion, geopolitics	Liberal global governance, hegemony and consent vs. Multilayered global governance: suprastate agencies, regimes, NGOs, global networks
Key source of change?	Dependent on challenge to US hegemony	Dependent on structural limits to global capitalism and its contestation by diverse anti-capitalist forces vs. Transformations produced by complex global interdependence, agencies of transnational civil society, and globalization of political activity/governance

**Table 1.** Contrasting interpretations of global governance.

Source: Held, D. & McGrew, A. (2002). *Globalization/Anti-Globalization*. Malden: Polity, p. 75.

Held and McGrew get involved in the debate by reflecting the both sides' ideas in their terms 'the globalizers' and 'the anti-globalizers or skeptics'. They examine the issue through the aspects of power (state vs. emerging global actors), culture (national culture vs. popular culture), economy (national economies vs. global economy), and governance (global governance vs. limits and failures of global governance).<sup>13</sup>

### **2. 1. 3. Governance in the Age of Globalization**

The political aspects of globalization revealed that world politics has considerably institutionalized during the age of globalization. Increasing influence of multilateral agreements, international and regional institutions, and transnational networks has generated a new form of governance. With the impact of the processes of globalization, actors and their influences on politics have broadly changed. Bulkeley and Betsill

<sup>13</sup> Held, D. & McGrew, A. (2002). *Globalization/Anti-Globalization*. Malden: Polity.

emphasize this change as the difference between old forms of government and new forms of governance (Table 2).

	<b>Old Government</b>	<b>New Governance</b>
Location of power	State	State and civil society
Exercise of power	Hierarchy and authority	Networks and partnerships
Actors	Public sector	Public, private, and volunteers
Role of the state	Providing, commanding, controlling	Steering, enabling, facilitating, collaborating, bargaining

**Table 2.** Change in the form of government

Source: Bulkeley and Betsill (2003). *Cities and Climate Change: Urban Sustainability and Global Environmental Governance*. New York: Routledge, p. 17.

As the table demonstrates, the monopoly of state is broken and the state shares power with civil society. The use of power in the previous version of government is based on states' hierarchical and authoritarian policies, in the new form of governance, there are many more actors working on the basis of networks and partnership. The public sector is not the only authority on decision-making processes; there are private, volunteer organizations taking part in the form of governance. Finally, the state's commanding and controlling position has been replaced with the new model of governance which is based on collaboration and bargaining among different types and numbers of actors varying, from individual to international organizations.<sup>14</sup>

## **2. 2. New Actors of the Global System**

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<sup>14</sup> Bulkeley, H. & Betsill, M. M. (2003). *Cities and Climate Change: Urban Sustainability and Global Environmental Governance*. New York: Routledge.

The international order we have today “is the result of the interaction between and among states, markets, and civil society.”<sup>15</sup> The state, once the dominant actor of the system, has now been forced to share its power and authority with various entities. These institutes consist of the individual, NGOs, MNCs, regional organization such as the European Union and African Union (AU), international organizations such as the United Nations (UN) and INTERPOL.

### ***2. 2. 1. Transnational Advocacy Networks***

The interaction between non-state actors and the mobilization of people around the world have resulted in a new type of governance. This type of governance is based on relations among non-state actors and their relations with states and international organizations. Transnational advocacy networks (TANs) are very important in this new form of governance. A TAN is a set of “relevant actors working internationally on an issue who are bound together by shared values, a common discourse and dense exchanges of information and services.”<sup>16</sup> International and domestic NGOs are key components of these networks. Keck and Sikkink juxtapose the major actors in these networks as (1) international and domestic nongovernmental research and advocacy organizations, (2) foundations, (3) the media, (4) churches, trade unions, consumer organizations, and intellectuals, (5) parts of regional and international intergovernmental organizations, (6) parts of the executive and/or parliamentary branches of governments, and (7) local social movements.

### ***2. 2. 2. Global Civil Society***

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<sup>15</sup> Muldoon, J. P. (2004). *The Architecture of Global Governance: An Introduction to the Study of International Organizations*. Boulder: Westview.

<sup>16</sup> Keck, M. E. & Sikkink, K. (1998). *Activists beyond Borders: Advocacy Networks in International Politics*. New York: Cornell University Press, p. 2.



The link between the non-state actors throughout the world generates a network and forces states and other actors to take action. Through the impact of increased movements and improved technologies, a global awareness emerges around the world for any kind of incident or progress, ranging from human rights violations and environmental degradation to the release of a prisoner and the election or toppling of a president. Transnational social movements and advocacy networks are the key factors of such advances on the global scale.

Civil society organizations (CSOs), at this point, can be considered as a means of developed democracy. The prerequisites for an optimal civil society are the rule of law, representative government, civil liberties, freedom, and such merits for all citizens.<sup>17</sup> Global civil society devotes itself to serve and protect these values on a global scale. The growth of global civil society “represents an ongoing project of civil society to reconstruct, re-imagine, or re-map the world politics.”<sup>18</sup> Individuals and organizations, trying to generate and develop consciousness of democracy and democratic institutions around the world, utilize specific tools to achieve their goals. These tools consist of domestic and global scale networks to govern the complex global issues of the world. These networks are independent from personal authority and state sovereignty.

NGOs are the primary institutional structures of global civil society. Today’s global civil society cannot be reduced to NGOs but neither can it be understood without them. They comprise an important part of the contemporary global governance and share a considerable amount of power with the actors of the international system. Sub-national

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<sup>17</sup> Peacock, J. L., Thornton, P. M., & Inman, P. B. (2007). *Identity Matters: Ethnic and Sectarian Conflict*. New York: Berghahn.

<sup>18</sup> Lipschutz, R. D. (1992). Reconstructing world politics: The emergence of global civil society. *Millennium* 21 (3), 389-420.

organizations, regional organizations, international organizations, MNCs, and of course NGOs participate in the process of global governance. Each of these organizational bodies plays a role in the formation of world politics. NGOs have a significant impact on the behavior of states and other actors. Their increasing number and power generate a more democratic form of global governance because issues can now be discussed on a larger scale and decisions can now be taken with a greater participation. The number of NGOs active in two or more countries –international nongovernmental organizations or INGOs- has rapidly increased especially after the 1990s. There were 1,083 registered INGOs in 1914, but more than 37,000 INGOs were active in 2000. The importance of the NGOs and their impact on peace and democracy can be understood better by comparing the great world wars and international conflicts of the Cold War years with the minor intrastate conflicts of the post-Cold War period.<sup>19</sup>

### ***2. 2. 3. International Organizations and Regional Entities***

As discussed in the previous sections, the concept of sovereignty has not been described with a unique definition. It previously was linked to the idea of states' autonomy and independence from each other. More recently sovereignty has been associated with the idea of controlling trans-border movements.<sup>20</sup> It has also been accepted as a unit of participation and has increasingly established a right to participate in the institutions and arrangements of the international community.<sup>21</sup>

International organizations rise as sources of international peace and security especially after the end of the Cold War. Furthermore, the emergence of a system in which laws made outside the state required compliance within it. With the influence of

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<sup>19</sup> Langhorne, R. (2006). *The Essentials of Global Politics*. New York: Oxford University Press.

<sup>20</sup> Krasner, S. D. (2001). Sovereignty. *Foreign Policy*, 122 (January-February 2001), 20-29.

<sup>21</sup> Taylor, P. (2003). *International Organization in the Age of Globalization*. New York: Continuum.

these developments, mutual involvements through common standards –for example, democratization- were promoted. A global surveillance system was set up to examine the human rights violations and anti-democratic practices. Since the late 1980s, the UN and other international organizations have directly been involved in democratization processes. The EU and UN have apparently been active in projects for developing a civil society in states having experiences with internal crises. Such organizations also have helped governments strengthen democratic reforms and human rights mechanisms.

Development of IOs does not mean the end of the sovereign state but it is matter of IOs involving and forming the spread of advantages and values like democracy, freedoms, and human rights. It is not a question of whether the state lost its sovereignty but a situation that sharing of sovereignty in a ‘multi-perspectival polity.’<sup>22</sup>

Additionally, linked to the impacts of globalization, there has been an apparent process of regionalization. Regional entities come together to discuss and solve regional problems as well as to generate regional progress. States of a particular region would be more confident in forming a community of interest. In addition, regional organizations would be more accessible than the broader and global ones. The relationship between regional organizations and IOs is based on the incentive for states to seek more effective participation in IOs through regional organizations. Extended agendas of IOs with multilevel and transnational concerns of regional entities bring about more effective solutions for regional problems. These processes are the typical reflections of

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<sup>22</sup> Ibid.

globalization on regional and global politics. In other words, the world order in the age of globalization consists of strong regions.<sup>23</sup>

### **2. 3. Regional Integration, European Union, and the EU Process of Turkey**

Regionalization, although it is one of the countless outcomes of globalization, can also be considered as a way to respond efficiently to the challenges of globalization. Regionalization is the process of integration including agendas and identities of regional actors that form and sustain to facilitate cooperation. Kim mentions three types of integration: (1) economic integration, (2) social integration, and (3) political integration. If a region is successful in integrating these three dimensions, it will have an efficient control over the market and increase stability in the region.<sup>24</sup>

The history of the twentieth century has witnessed three processes of regional integration. The world, first, experienced the tragedy of an aggressive nationalism and imperial regionalism during the inter-war period. In addition to the economic depression around the world, Germany and Japan's regional hegemony desires caused catastrophic results. The second type of regionalism, which was an economic regionalism, emerged as a response to American-centered hegemonic stability and multilateralism of the 1960s and 1970s. Finally, post-hegemonic regionalism is the era of current transition in the international system. In this era, the relative decline of the US hegemony has resulted in the emergence and increased influence of regional organizations on the world politics.<sup>25</sup>

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<sup>23</sup> Buzan, B. & Wæver, O. (2003). *Regions and Powers: The Structure of International Security*. Cambridge: Cambridge University Press.

<sup>24</sup> Kim, N. K. (2009). A Framework for peace in the era of globalization. In N. K. Kim (Ed.), *Globalization and Regional Integration in Europe and Asia* (1-6). Burlington: Ashgate.

<sup>25</sup> Telo, M. (2001). Introduction: Globalization, new regionalization and the role of the European Union. In M. Telo (Ed.), *European Union and New Regionalism: Regional Actors and Global Governance in a Post-Hegemonic Era* (1-17). Burlington: Ashgate.

Tavares explains the role of regional organizations in terms of the security perspective. He points out the need for security particularly in the post-World War II period. The UN, as an umbrella organization on global scale, and other regional organizations have endeavored to build peace and security both in the world and their regions. Tavares draws attention to comparative advantages and challenges of regional solutions for regional problems. First, members of a regional organization share the same cultural background; thus, they can handle a regional problem better than a global organization. Second, regional organizations can act more rapidly compared to a global organization. Third, regional action against a regional problem might be less costly than a global action. Fourth, since the members of a regional organization would suffer more directly the impacts of the problem, they are interested in preserving stability in the region. Fifth, in certain situations, regional organizations are more welcome than the global ones. Finally, sometimes, regional conflicts give an opportunity to smaller and less influential organizations to find a solution. In addition to these advantages, there are significant challenges of regional organizations. Tavares juxtaposes them as follows: (1) capacity, (2) (im)partiality, (3) priority, (4) institutional proliferation, (5) discrepancy, (6) information sharing, (7) clarification of exact mandate of regional organization, and (8) regional hegemony issues.<sup>26</sup>

In today's globalized world, regional partnerships have increasingly become widespread in order to improve regional cooperation and integration in a very broad area of interactions. In this respect, the economic advantages of regional integration have been obvious. Furthermore, diplomatic strength is also another aspect of such integrations.

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<sup>26</sup> Tavares, R. (2010). *Regional Security: The Capacity of International Organizations*. New York: Routledge.

Regional organizations now raise the possibility of forming an institutional structure in a body and can negotiate about the global issues with an effective amount of power. One of the essential prerequisites of such regional bodies is the involvement of various countries in a shared vision of the organization's core terms of reference. There must be a shared governance among participant governments, and a willingness to work with new arrangements. The absence of such willingness weakens the organization as history has frequently witnessed.<sup>27</sup>

### ***2. 3. 1. European Union***

As mentioned in the previous section, if an organization achieves three dimensions of integration –economic, social, and political- it can be considered as a successful regional organization. Kim views the European Union a successful example in this regard, and argues that the EU is one of the major actors in today's global politics.<sup>28</sup>

According to Eliassen and Morsen, there are two major perspectives explaining the analysis of European integration: neo-functionalism and inter-governmentalism.<sup>29</sup> Through an analysis from starting the very beginning of European integration Haas developed a theory in which he described the actors and mechanisms that would lead to further integration (neo-functionalism). In his view, interest groups and supranational actors are the key components of European integration. In other words, these actors could create effective policies by generating supranational relations among themselves. Then, in the 1960s Hoffmann identified actors and mechanisms that could promote or obstruct

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<sup>27</sup> Kirkham, R. (2004). CARICOM and the role of regional organizations in the global legal order. In D. Lewis (Ed.), *Global Governance and the Quest for Justice Vol. 1: International and Regional Organizations* (177-198). Portland: Hart.

<sup>28</sup> Kim, N. K. (2009). A framework for peace in the era of globalization. In N. K. Kim (Ed.), *Globalization and Regional Integration in Europe and Asia* (1-6). Burlington: Ashgate.

<sup>29</sup> Eliassen, K. A. & Morsen, C. B. (2001). Comparison of European and southeast Asian integration. In M. Telo (Ed.), *European Union and New Regionalism: Regional Actors and Global Governance in a Post-Hegemonic Era* (111-133). Burlington: Ashgate.

integration (inter-govenrmentalism). According to this perspective, European integration could only happen, if it was an interest of national governments. Therefore, these two approaches have tried to explain the basic motives and actors of European integration (Table 3).<sup>30</sup>

Neo-functionalist Family	Inter-governmentalist Family
<ul style="list-style-type: none"> <li>• Neo-functionalism</li> <li>• Historical institutionalism</li> <li>• Constructivism</li> <li>• Epistemic Community Approach</li> <li>• Advocacy-coalition Approach</li> <li>• Policy Networks Approach</li> <li>• Laguna Beach Approach</li> <li>• Fusion Thesis</li> <li>• Multilevel Governance</li> </ul>	<ul style="list-style-type: none"> <li>• Domestic Politics</li> <li>• Two-level Games</li> <li>• Liberal Inter-governmentalism</li> <li>• Inter-governmentalism</li> </ul>
<b>Actors:</b> A variety of non-state actors are crucial actors. The national member state government is just one of many influential actors. The influence of supranational actors is considerable.	<b>Actors:</b> The national state government is the crucial actor. The domestic situation informs the national state preferences/ some states are stronger than others. The influence of supranational actors is limited.
<b>Mechanisms:</b> There is some automaticity in the integration process due to functional spill-over, technocratic knowledge, etc. integration happens as a result of policy-making with a large variety of actors involved.	<b>Mechanisms:</b> There is no automaticity in the process, the safeguarding of national state interests is the crucial mechanism determining the outcome of the integration process. Integration happens due to bargaining among key actors, in particular national governments.

**Table 3.** Two major theories of European integration.

Source: Verdun, A. (2002). *The Euro: European Integration Theory and Economic and Monetary Union* (9-28). Lanham: Rowman & Littlefield, p. 14.

Among theoretical debates and practical transformations, European integration began to emerge right after the World War II. The root causes of European integration are to strengthen relations among the war worn states of Europe and to prevent prospective conflicts among them. Robert Schuman, the French statesman and one of the originators of the European Union, stated on May 9, 1950 that “any war between France and

<sup>30</sup> Verdun, A. (2002). Merging neofunctionalism and intergovernmentalism: Lessons from EMU. In A. Verdun (Ed.), *The Euro: European Integration Theory and Economic and Monetary Union* (9-28). Lanham: Rowman & Littlefield.

Germany would become not merely unthinkable, but materially impossible.”<sup>31</sup> The EU, which is today a global actor, emerged with the creation of the European Coal and Steel Community (ECSC) on April 18, 1951 with the Treaty of Paris. The founding members of the Community were Belgium, France, Germany, Italy, Luxembourg, and the Netherlands. The main objective of this Community was to foster “economic expansion, growth of employment, and a rising standard of living in the member states by means of creating a common market in coal and steel.”<sup>32</sup>

In 1957, the Rome Treaties were signed and two European Communities – European Economic Community (EEC) and European Atomic Energy Community (EURATOM) - were established. The European Free Trade Agreement (EFTA) was formed in 1960 with the participation of Austria, Denmark, Norway, Portugal, Sweden, Switzerland, and the UK. The EFTA’s goal was to create an industrial free trade region. In 1965, with the idea of widening and deepening the integration, the ECSC, EEC, and EURATOM were merged and the European Communities (EC) emerged.

The first enlargement wave of the EC occurred in January 1973. Denmark, Ireland, and the UK became the new members of the Community. Of the four applicants of first enlargement, the UK was the only one not to hold a referendum. The decision was taken by a parliamentary vote in the UK. Ireland and Denmark held referenda and passed the membership by 83 percent and 63.3 percent yes votes respectively. Norwegian electorate said no (54.4 percent) in the referendum for joining the EC.

The second enlargement, which is also known as the Mediterranean enlargement, took place during the 1980s. Greece became the tenth member of the Community in

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<sup>31</sup> Pinder, J. (2001). *The European Union: A Very Short Introduction*. New York: Oxford University Press, p. 1.

<sup>32</sup> Blair, A. (2005). *The European Union since 1945*. Harlow: Pearson, p. 19.



1981. In 1985, the Single European Act (SEA) was signed. The SEA extended the EC's focus into new areas such as environmental, social, and technological policies. As a part of the second enlargement, Portugal and Spain became members in 1986. This wave of enlargement was considered as a weakening effect for the Community because of economic and political conditions in the new member states.

In February 1992, the Maastricht Treaty, officially the Treaty of European Union (TEU), was signed and the EC officially became the European Union in 1993 after the ratification of the Treaty. The next enlargement of the Union covered northern EFTA states. Austria, Finland, Norway, and Sweden applied for membership, but Norway dropped out after a referendum. With the accession of Austria, Finland, and Sweden the EU reached fifteen members (EU-15) in 1995.

The next wave of enlargement was toward Central and Eastern European Countries (CEECs). There is a similarity between the Mediterranean enlargement and the fourth enlargement. The former took place after the political and economic stabilization processes of Greece, Portugal and Spain. During the 1960s there were dictatorial regimes and military juntas in these countries. Antonio Salazar in Portugal, Francisco Franco in Spain, and the Greek military junta were in power. Such closed regimes resulted in isolated economies in these countries. However, the stabilization efforts of outsider actors –the International Monetary Fund (IMF), World Bank, Organization for European Economic Cooperation (OEEC), etc. - and the demise of existing regimes created considerable economic and political changes in these countries. Such a political and economic evolution resulted in EC membership in the southern periphery of the Community. The 2004 enlargement of the EU resulted from a similar situation. After the

collapse of the former Soviet Union and the decline of communism in the CEECs, economic and political conditions had increasingly become in tune with the European standards. As a result, the EU expanded its frontiers to the very east of the continent with the membership of Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia in May 2004. In addition to these ten countries, Bulgaria and Romania became members in January 2007. Consequently, the ECSC starting with six Western European countries in 1952 reached twenty seven members in 2007.<sup>33</sup>

### ***2. 3. 2. Structure of the Union***

According to the TEU the European Union is based on three pillars. Pillar 1 is the founding pillar of the Union and handles economic, social, and environmental policies. The focus of this pillar is legislative and executive policies of the Union (European Union law, economic and monetary union, citizenship, education and culture, healthcare, environmental policies, immigration, etc). Pillar 1 consists of four main institutions and three bodies. The institutions are the Council of Ministers (the Council), the European Commission (the Commission), the European Parliament (EP), and the European Court of Justice (ECJ). Three bodies of the Union are the Economic and Social Committee, the Committee of the Regions, and the European Investment Bank. Pillar 2 is Common Foreign and Security Policy (CFSP) which regulates the issues such as human rights, democratization, and security and foreign policies. Pillar 3, Justice and Home Affairs (JHA), is the tool of the EU that fights against terrorism, international crime, drug and

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<sup>33</sup> Avery, G. & Cameron, F. (1998). *The Enlargement of the European Union*. Sheffield: Sheffield Academic. Baun, M. (2000). *A Wider Europe: The Process of Politics of European Union Enlargement*. Lanham: Rowman & Littlefield. Pinder, J. (2001). *The European Union: A Very Short Introduction*. New York: Oxford University Press. Blair, A. (2005). *The European Union since 1945*. Harlow: Pearson. Archer, C. (2008). *The European Union*. New York: Routledge. Berend, I. T. (2010). *Europe since 1980*. New York: Cambridge University Press.

human trafficking, in addition to being tasked with building police and judicial cooperation.

The Council is the main decision-making body of the EU. The presidency of the Council is held for six months (from January to June and from July to December) by each member state on a rotational basis. The presidency plays an important role in organizing legislative and political work of the Council. Distribution of votes in the Council varies in accordance with the population of the member states. Germany, France, Italy, and the UK have 29 votes; Spain and Poland have 27 votes; Romania has 14 votes; the Netherlands has 13 votes; Belgium, Czech Republic, Greece, Hungary and Portugal have 12 votes; Austria, Bulgaria and Sweden have 10 votes; Denmark, Ireland, Lithuania, Slovakia and Finland have 7 votes; Cyprus, Estonia, Latvia, Luxembourg and Slovenia have 4 votes; and Malta has 3 votes. The total number of votes is 345. Decisions are taken on the basis of simple majority, qualified majority or unanimity.

The Commission is the administrative and executive organ of the EU. The Commission consists of one commissioner from each member state. It proposes legislative acts for the Council and the EP. It is responsible for practicing and managing the EU's common policies, budget, and programs. In other words, the Commission, first, prepares and proposes legal documents of the Union, and after the approval of the Council the EP, it puts them into practice.

The European Parliament is elected by citizens of the EU. The EP has three roles: passing the laws, democratic supervision of the institutions, and deciding the EU's budget with the Council. Members of the European Parliament (MEPs) serve on a five-year-basis. After the last wave of enlargement (2004-2007) the EP consists of 736 MEPs. The

number of seats per country is as follows: Germany has 99 seats; France, Italy and the UK have 72 seats; Poland and Spain have 50 seats; Romania has 33 seats; the Netherlands has 25 seats; Belgium, Czech Republic, Greece, Hungary, and Portugal have 22 seats; Sweden has 18 seats; Austria and Bulgaria have 17 seats; Denmark, Finland and Slovakia have 13 seats; Ireland and Lithuania have 12 seats; Latvia has 8 seats; Slovenia has 7 seats; Cyprus, Estonia and Luxembourg have 6 seats; and Malta has 5 seats in the European Parliament.

The European Court of Justice is one of the oldest institutions of the Union. It was established in 1952. The ECJ consists of one judge from each member state. The ECJ reviews the legality of the acts of the institutions of the EU and ensures that the member states comply with the rules and regulations of the Union.<sup>34</sup>

### ***2. 3. 3. Membership Process***

European integration has been a *de facto* foreign policy issue for the region states since the establishment of the ECSC. Starting with the founding treaties of the Union, European countries attached a great importance to membership. Membership is a process of relations between the applicant state and the Union. Formally, this process starts with the application for membership of a non-member state. Once the formal application is

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<sup>34</sup> Pinder, J. (2001). *The European Union: A Very Short Introduction*. New York: Oxford University Press. Salmon, T. C. (2002). Salmon, T. C. (2002). The structure, institutions, and powers of the EU. In J. Gower (Ed.), *The European Union Handbook* (16-34). Chicago: Fitzroy Dearborn. Allen, D. (2002). The common foreign and security policy. In J. Gower (Ed.), *The European Union Handbook* (271-284). Xanthaki, H. (2002). Cooperation on justice and home affairs. In J. Gower (Ed.), *The European Union Handbook* (234-242). Poole, P. A. (2003). *Europe Unites: The EU's Eastern Enlargement*. Westport: Praeger. Council of the European Union, retrieved on April 5, 2011 from <http://www.consilium.europa.eu/showPage.aspx?lang=en>, European Commission, retrieved on April 5, 2011 from [http://ec.europa.eu/index\\_en.htm](http://ec.europa.eu/index_en.htm), European Parliament, retrieved on April 5, 2011 from <http://www.europarl.europa.eu/en/headlines/>, and European Court of Justice, retrieved on April 5, 2011 from <http://curia.europa.eu/>.

made to the Council, the Commission declares its ‘Opinion (*avis*)’ about the applicant country.

The Opinion is the detailed analysis of the preparedness of the applicant country. It consists of four criteria: (1) political criteria, (2) economic criteria, (3) ability to assume the obligations of membership, and (4) administrative capacity.<sup>35</sup> Although the Opinion is not a prerequisite for the beginning of the negotiations, it is an auxiliary element for the Council to make a decision. In the example of Greece’s membership process, the Commission recommended a lengthy pre-accession period. However, the Council overruled the Commission’s Opinion in favor of Greece, and decided to begin accession negotiations.

The Opinion is usually requested by the Council soon after the submission of application. The amount of the time spent by the Commission to prepare the Opinion varies from a few months (Norway’s application in 1993) to several years (Turkey, 1987-1989; Malta and Cyprus, 1990-1993). Some assert that the length of time might be considered as holding off an unwanted applicant until the EU takes care of other pressing business.<sup>36</sup>

After the Commission’s Opinion, the Council decides to begin accession negotiations. There should be a consensus between the applicant country and the EU on the specific chapters of the *acquis communautaire*.<sup>37</sup> There were 31 chapters in the 2004

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<sup>35</sup> Avery, G. & Cameron, F. (1998). *The Enlargement of the European Union*. Sheffield: Sheffield Academic.

<sup>36</sup> Baun, M. (2000). *A Wider Europe: The Process of European Union Enlargement*. Lanham: Rowman & Littlefield.

<sup>37</sup> *Acquis communautaire*, *EU Acquis*, or *Acquis*: Total body of EU’s legal system, rules, regulations, and court decisions that constitute the body of European Union Law. *acquis* (French): gain, profit, achievement, acquired, learned, that which has been agreed upon. *communautaire* (French): of the community, communal.

enlargement, and the EU asked Turkey and Croatia to complete 35 chapters for their accession.

The negotiations conclude with an agreement between the applicant country and the EU on a draft treaty of accession. Once the Council approves the treaty by unanimous vote, the treaty must pass from the EP with an absolute majority. After these steps, the treaty is signed by the member states and the applicant country. Finally, the treaty comes into effect after ratification by the applicant country and the member states; and the country becomes a member of the EU on the date which is appointed in the treaty.

### ***2. 3. 4. The European Union Process of Turkey***

Enlargement has been one of the most controversial issues of the EU politics since the very beginning. The UK initially refused to become one of the founding members of the Union. When it applied for membership in 1961, France vetoed UK's membership. Norway applied for membership three times in 1962, 1967, and 1992. The first time, it was vetoed by France. The other accession attempts of Norway were rejected by the Norwegian electorate in referenda. The most comprehensive enlargement of the Union took place with the accession of twelve states in 2004 and 2007. Eight CEECs and two island states (Cyprus and Malta) joined the EU in 2004; and other two CEECs (Bulgaria and Romania) joined in 2007.

Turkey officially applied for EU membership on April 14, 1987. Table 4 demonstrates the application, negotiation, and accession dates of last 12 member states and Turkey.

Country	Application	Negotiation	Accession
Turkey	April, 14, 1987	October 3, 2005	- - -
Cyprus	July 4, 1990	March 31, 1998	May 1, 2004
Malta	July 16, 1990	February 15, 2000	May 1, 2004
Hungary	March 31, 1994	March 31, 1998	May 1, 2004
Poland	April 5, 1994	March 31, 1998	May 1, 2004
Romania	June 22, 1995	February 15, 2000	January 1, 2007
Slovakia	June 22, 1995	February 15, 2000	May 1, 2004
Latvia	October 13, 1995	February 15, 2000	May 1, 2004
Estonia	November 24, 1995	March 31, 1998	May 1, 2004
Lithuania	December 8, 1995	February 15, 2000	May 1, 2004
Bulgaria	December 14, 1995	February 15, 2000	January 1, 2007
Czech Republic	January 17, 1996	March 31, 1998	May 1, 2004
Slovenia	June 10, 1996	March 31, 1998	May 1, 2004

**Table 4.** Application, negotiation, and accession dates of last 12 members

Turkey started accession negotiations with the EU on October 3, 2005. Croatia, FYR Macedonia, and Iceland are the other negotiating countries. Croatia applied for membership in 2003 and started negotiations in 2005. FYR Macedonia applied in 2004 and was started negotiations in 2005. Iceland applied to join the Union on July 16, 2009; started to negotiations in February 2010; and is expected to join the EU in 2012.<sup>38</sup>

As seen in the table and overall process of enlargement as well as the never ending accession story of Turkey, one can describe Turkey as ‘the permanent other’ for the EU.<sup>39</sup> The Luxembourg European Council in December 1997 was one of the breakpoints in Turkey-EU relations. Most of the member and applicant states were satisfied with the final decision of the Commission about the timeline of upcoming enlargement. Turkey, however, wanted to be treated by the Commission as an official candidate like other applicants such as Bulgaria and Romania. Greece and Germany were

<sup>38</sup> CNN. (July 17, 2009). “Iceland applies to join European Union.” Retrieved on April 10, 2011 from [http://edition.cnn.com/2009/WORLD/europe/07/17/iceland.eu.application/index.html?eref=edition\\_business](http://edition.cnn.com/2009/WORLD/europe/07/17/iceland.eu.application/index.html?eref=edition_business)

<sup>39</sup> Kosebalaban, H. (2007). The permanent “other”? Turkey and the question of European identity. *Mediterranean Quarterly*, 18 (4), 87-111. See also Ozcan, M. (2000). Avrupa Birliği-Türkiye ilişkilerinde temel belirleyici unsur olarak insan hakları. *Turkish Journal of Police Studies*, 2 (2-6), 87-96.

opposed to Turkey's demands on the pretext of Turkey's questionable democracy, poor human rights record, and the Cyprus conflict. The Council eventually declared that Turkey would not be allowed to join the accession process, because it had not yet met political and economic conditions for negotiations. Turkey found the EU's treatment unfair and suspended talks with Brussels on the issues of human rights, relations with Greece, and the Cyprus problem. Turkey also harshly criticized the EU for beginning accession negotiations with Cyprus.<sup>40</sup>

Although the following period witnessed that relations with Turkey had been worsening, Turkey was implicitly told in 1999 that while it did not meet the Copenhagen Criteria, it could move on to next stage of enlargement when it did so. The EU was aware that having good relations with Turkey was important because of its strategic location. In 2002, the Union offered Turkey to begin negotiations with no further delay, if it met the Copenhagen Criteria by 2004. Finally, Turkey began accession negotiations with the EU in October 2005.<sup>41</sup>

#### **2. 4. European Union and Human Rights**

As an increasingly important global actor, the EU has articulated some foreign policy objectives. While mention of human rights and democratic principles were absent from the previous forms of the Union, with the impacts of legal and structural changes the EU has sought to promote human rights and democracy in a wide range of areas.<sup>42</sup>

According to Smith's categorization, there are six major objectives of the current EU.<sup>43</sup>

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<sup>40</sup> Baun, M. (2000). *A Wider Europe: The Process of Politics of European Union Enlargement*. Lanham: Rowman & Littlefield.

<sup>41</sup> Poole, P. A. (2003). *Europe Unites: The EU's Eastern Enlargement*. Westport: Praeger.

<sup>42</sup> Sanchez, I. S. (2001). The European Union's human rights policy towards developing countries. In C. Cosgrove-Sacks (Ed.), *Europe, Diplomacy, and Development: New Issues in EU Relations with Developing Countries* (67-78). New York: Palgrave.

<sup>43</sup> Smith, K. E. (2003). *European Union Foreign Policy in a Changing World*. Malden: Polity, p. 13.



- strengthening democratic principles and institutions and respect for human and minority rights;
- promoting regional political stability and contributing to the creation of political and/or economic frameworks that encourage regional cooperation or moves towards regional or sub-regional integration;
- contributing to the prevention and settlement of conflicts;
- contributing to a more effective international coordination in dealing with emergency situations;
- strengthening international cooperation in issues of international interest such as the fight against arms proliferation, terrorism, and traffic in illicit drugs; and
- promoting and supporting good government.

Article 6 § 1 of the Maastricht Treaty (TEU) declares that “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.” Additionally, Article 49 of the Treaty affirms that “Any European State which respect the principles set out in Article 6 § 1 may apply to become a member state of the Union.”<sup>44</sup> The European Council in Copenhagen, Denmark (June 1993) clarified the membership criteria for the upcoming wave of enlargement. According to ‘the Copenhagen Criteria’ “membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.”<sup>45</sup> In other words, applicant countries would not be admitted until they had stability of institutions guaranteeing these criteria. Accession to the Union would be based on compliance with the Copenhagen Criteria.<sup>46</sup> However, Sadurski argues that the principal focus of conditionality was largely on market integration between 1993 and 1997. Democracy, the

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<sup>44</sup> European Union. (2006). *Consolidated Versions of the Treaty on European Union and of the Treaty Establishing the European Community*.

<sup>45</sup> Copenhagen European Council, 21-22 June 1993. *Presidency Conclusions*.

<sup>46</sup> Adrey, J. B. (2005). Minority language rights before and after the 2004 EU enlargement: The Copenhagen criteria in the Baltic states. *Journal of Multilingual and Multicultural Development*, 26 (5), 453-468.

rule of law, human rights, and protection of minorities issues gained acceleration only after 1997.<sup>47</sup>

After the completion of the 2004 enlargement the European Commission published the European Neighborhood Policy (ENP) Strategy Paper. The Commission touched upon “shared values” such as democracy and good governance and the promotion of human rights in this paper. The paper states that the Union’s neighbors have already been adherent to fundamental rights and freedoms formed by the UN conventions and other multilateral agreements. The ENP aims to promote commitment to these shared values. The more the neighboring countries implement commitments in practice, the more improvement will be achieved in these values.<sup>48</sup> In fact, the EU’s concern about democracy and human rights is not new or specific to the ENP. Since human rights have been the principal normative issue of contemporary international society, political conditionality, as a tool of norm promotion, has become a *de facto* feature of the EU enlargement. Improving impact of political conditionality has broadly been witnessed in the domestic changes with candidate –and also neighboring- states.<sup>49</sup>

Schimmelfennig and Sedelmeier classify the applicant countries’ conditionality process as (1) democratic conditionality and (2) *acquis* conditionality. In this context, democratic conditionality is the EU’s external incentives that are based on the norms of human rights, liberal democracy, and the institutions of market economy. This type of

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<sup>47</sup> Sadurski, W. (2006). EU enlargement and democracy in new member states. In W. Sadurski, A. Czarnota, & M. Kryger (Eds.), *Spreading Democracy and the Rule of Law?: The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders* (27-49). Dordrecht: Springer.

<sup>48</sup> Commission of the European Communities, 12 May 2004. *European Neighborhood Policy Strategy Paper*. Brussels.

<sup>49</sup> Maier, S. & Schimmelfennig, F. (2007). Shared values: Democracy and human rights. In K. Weber, M. E. Smith, & M. Baun (Eds.), *Governing Europe’s Neighborhood: Partners or Periphery?* (39-57). New York: Manchester University Press.

conditionality is not fundamental for the EU, but an outcome of historical development of Western democracy. *Acquis* conditionality, on the other hand, is an indicator of applicant countries' complete preparedness for membership. It is based largely on the rule adoption of applicant countries.<sup>50</sup>

Sometimes, such requirements of conditionality have been found controversial and might not reflect the similar conditions of earlier implementations as mentioned previously in the example of Greece's accession process. There is also the criticism that the EU's objectives of human rights and democracy promotion toward the third parties might occasionally be inconsistent. Human rights violations in Russia, for example, have sometimes been ignored because of Russia's strategic importance for the EU. However, political criteria are strictly applied when a candidate state is in the same situation. On the other hand, the EU might be hesitant about some countries (Ukraine and Belarus for instance) although they have achieved a considerable improvement in political conditions.<sup>51</sup>

## **2. 5. European Union and the European Convention on Human Rights**

One of the major concerns about the EU's human rights policies is its accession to the European Convention on Human Rights (ECHR) –formally the Convention for the Protection of Human Rights and Fundamental Freedoms. The ECHR is an international treaty of human rights which was signed by the members of the Council of Europe (CoE) in 1950 and entered into force in 1953.

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<sup>50</sup> Schimmelfennig, F. & Sedelmeier, U. (2005). Conclusions: The impact of the EU on the accession countries. In F. Schimmelfennig & U. Sedelmeier (Eds.), *The Europeanization of Central and Eastern Europe* (210-228). Ithaca: Cornell University Press.

<sup>51</sup> Schimmelfennig, F., Engert, S. & Knobel, H. (2005). The impact of EU political conditionality. In F. Schimmelfennig & U. Sedelmeier (Eds.), *The Europeanization of Central and Eastern Europe* (29-50). Ithaca: Cornell University Press.

The CoE is a completely different organization from the EU and its sub-organizations. The CoE currently has 47 members from Europe and Eurasia. Quoting from Ovey and White, Jordan argues that “the creation of the Council of Europe and the adoption of the Convention of Human Rights are an acknowledgement that the protection of human rights is viewed as an indispensable element of European democracy.” The CoE membership is generally viewed as a stage for legitimizing new regimes, and setting the groundwork for future EU and NATO memberships.<sup>52</sup>

As mentioned previously, the EU’s roots are based on economic principles rather than political ones. The first reference to human rights was in the Single European Act of 1986.<sup>53</sup> The EU has its own human rights legislation (the Charter of Fundamental Rights of the European Union) and the judicial structure (the ECJ). Although the EU law and member state laws are required to be in accordance with the ECHR, the Charter of Fundamental Rights was not a legally binding document. The EU also was not a member of the ECHR until the Treaty of Lisbon. The Treaty of Lisbon was signed by member states in 2007 and entered into force in December 2009. The Treaty has amended two major treaties of the EU, the 1992 Maastricht Treaty and the 1957 Rome Treaty. The Lisbon Treaty also made the Charter of Fundamental Rights legally binding.

The fact that the EU was not a signatory of the ECHR meant that it was not legally bound by that.<sup>54</sup> However, this duality, in addition to the national courts, would

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<sup>52</sup> Jordan, P. A. (2003). Does membership have its privileges?: Entrance into the Council of Europe and compliance with human rights norms. *Human Rights Quarterly*, 25 (3), 660-688.

<sup>53</sup> Ahmed, T. & Butler, I. J. (2006). The European Union and human rights: An international law perspective. *The European Journal of International Law*, 17 (4), 771-801. Schimmelfennig, F. & Schweltnus, G. (2004). The Constitutionalization of human rights in the European Union: Human rights case studies and QCA coding. *Internal Project Dossier*. Retrieved on April 9, 2011 from <http://www.eup.ethz.ch/research/constitutional/fs-gs-dossier.pdf>

<sup>54</sup> Saltinyte, L. (2010). European Union accession to the European Convention on Human Rights: Stronger protection of fundamental rights in Europe? *Jurisprudence*, 2 (120), 177-196.

cause a competition among the judicial organs. Schimmelfennig describes the major constitutional courts in Europe as follows: (1) national constitutional courts, (2) the ECJ, and (3) the European Court of Human Rights (ECtHR) which is the human rights court of the CoE handling the cases related to the ECHR. In this respect, there are two challenges of national courts: the CoE and ECtHR are on the one hand; and the EU and ECJ are on the other. The ECJ needs to incorporate human rights into its own case law and bind its jurisdiction to the existing EU human rights legislation in order to preserve its autonomy in relation to the national courts. Additionally, it likely tends to avoid being legally bound by the ECHR in order to uphold its autonomy in relation to the ECtHR.<sup>55</sup>

Berghe points out a similar dilemma. He argues that such a discrepancy would be indispensable unless the EU acceded to the ECHR. According to his standpoint, while the ECHR aims at protecting human rights and fundamental freedoms, the EU's main concern is economic rights and conditions. On the other hand, while the ECtHR interprets the ECHR according to the ECHR's objectives, the ECJ interprets it according to the interests and objectives of the EU. Therefore, there is an inconsistency between the approaches of the ECJ and ECtHR as well as those of the EU and the CoE.<sup>56</sup>

Consequently, human rights and democratization take an important place in the legislative, executive, and judicial structure of the EU. Although the Union was initially based on economic integration, such values have been adopted as *sine qua non* conditions of membership. The Copenhagen European Council clarified that the prospective members of the EU have to meet the Union's criteria on human rights and democracy.

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<sup>55</sup> Schimmelfennig, F. (2006). Competition and community: Constitutional courts, rhetorical action, and the institutionalization of human rights in the European Union. *Journal of European Public Policy*, 13 (8), 1247-1264.

<sup>56</sup> Berghe, F. V. D. (2010). The EU and issues of human rights protection: Same solutions to more acute problems? *European Law Journal*, 16 (2), 112-157.

However, despite such improvements and emphasis on human rights, the EU itself was not a party to the ECHR. Although there was a general rule about the compliance of EU and member states laws with the Charter of Fundamental Rights, the Charter had not been legally binding until the Lisbon Treaty. The Charter became legally binding in 2009 with the ratification of the Lisbon Treaty.

## **2. 6. Human Rights in Turkey**

The turbulent years of the 1980s and 1990s exacted a great cost for Turkey both in domestic and foreign politics. Lack of economic and political stability, mostly because of weak coalition governments, resulted in an increase in terrorist activities and human rights violations, especially in Southeast Turkey. The state of emergency in this region limited the effectiveness of the central government and gave a wide margin of maneuver for the armed forces. Reciprocal impacts of terrorist attacks and military operations caused an extensive amount of internal migration within the country. While Turkey tried to improve its relations with the EC (EU after the 1992 Maastricht Treaty) and heightened the standards of democracy and human rights during the post-coup years of the 1980s, terrorist attacks of the separatist Kurdistan Workers Party (Partiya Karkaren Kurdistan in Kurdish, the PKK hereafter) obligated Turkey to postpone realizing its efforts. Moreover, laws and implementation against terrorist activities occasionally caused major restrictions in certain areas.<sup>57</sup> Hicks views the period of 1984-1999 Turkish politics under the influence of 3 major concerns: 1-) 1980 military coup, 2-) the Constitution which was put into force by the military-based government in 1982, and 3-)

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<sup>57</sup> Ozcan, M. (2000). Avrupa Birliği-Türkiye ilişkilerinde temel belirleyici unsur olarak insan hakları. *Turkish Journal of Police Studies*, 2 (2-6), 87-96.

the emerging threat of terror. Such an environment resulted in the following problems in terms of democracy and human rights in Turkey:<sup>58</sup>

- The perennially unstable parliament, and the succession of weak, short-lived, coalition governments throughout the nineties. These have obstructed the practical task of law-making.
- The overt influence of the military on political affairs, and its direct intervention in policy making through the military-dominated National Security Council, including the dismissal under military pressure of an elected Prime Minister, Necmettin Erbakan in June 1997.
- The acute disruption and social polarization emanating from the Kurdish conflict, including the involvement of the state in a violent counter-insurgency campaign that has displaced millions of Kurds from the south-east. The conflict has cost more than 35,000 lives, most of them civilians, and has served as a justification, in official statements and much public discourse, for state violations of human rights to counter a terrorist threat.
- A constitutional framework that gives the protection of the basic rights and freedoms of citizens a distinctly lower priority than the protection of the state interests.
- A narrow view of permissible political expression, increasingly restrictive towards political Islam in recent years, that has resulted in the trial and imprisonment of scores of journalists, intellectuals and activists for exercising their right to non-violent freedom expression. The penalization of speech on sensitive issues, like the Kurdish conflict and Islam, has disproportionately affected human rights activists whose criticism of state policies in these areas has been constructed by prosecutors as criminal activity.

Therefore, unstable political governments along with economic problems constituted the major problems of the country in the 1990s. The February 28 process<sup>59</sup> led to the collapse of the Erbakan government. One of the results of this process was the closure of the Welfare Party (Refah Partisi-RP) by the Constitutional Court. The closure of the RP was criticized by the EU with the following statement of the 1998 Progress Report, “this decision is in accordance with the provisions of the Turkish Constitution. However, the European Union is concerned at the implications for democratic pluralism

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<sup>58</sup> Hicks, N. (2001). Legislative reform in Turkey and European human rights mechanisms. *Human Rights Review*, 3 (1), 78-86.

<sup>59</sup> February 28, 1997 is one of the most important dates in Turkish politics. Generals as members of the National Security Council (NSC) submitted their ideas on secular structure of the State and political Islam. The NSC adopted a series of decisions and Prime Minister Necmettin Erbakan, the head of the Islamist Welfare Party (RP), was forced to sign the document. Turkey witnessed significant changes in political, administrative, and judicial areas in the following years.

and freedom of expression.”<sup>60</sup> The Virtue Party (Fazilet Partisi-FP) was established as a successor of the RP. However, it was also shut down by the Constitutional Court in 2001 on the account of the fact that it was an extension of the anti-regime RP. Two political parties emerged from the FP. First is the Felicity Party (Saadet Partisi-SP) which largely followed the *traditional* trends of the RP and FP. The other, the Justice and Development Party (Adalet ve Kalkinma Partisi-AKP) that described itself as the *progressive* wing of the movement, turned its face to Europe. The AKP has pursued assertive policies towards the EU and modernization of Turkey since it established, while the SP, alike its antecedents RP and FP, has defended a decisively anti-EU view.<sup>61</sup>

Turkey’s relations with the EU on the basis of democracy and human rights are twofold. On the one hand, the EU’s stance against Turkey’s accession should clearly be identified. Whereas the Union is considerably generous and friendly in cases of other applicants’ accession processes, it has been hesitant towards Turkey. Although the Copenhagen Criteria and the political and economic conditionality of the Union is one of the reasons for this inconsistency, there are other motives for the EU to brush Turkey’s demands under the carpet. These are juxtaposed by Muftuler-Bac as (1) the institutional set-up of the Union, (2) enlarging the Union in terms of population, which enables Turkey the second efficient member in the Council and the EP after Germany, and (3) public opinion about Turkey’s membership in EU-15 countries. According to

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<sup>60</sup> Regular Report from the Commission of Turkey’s Progress towards Accession. (1998). Secretariat General for EU Affairs. Available at [www.abgs.gov.tr](http://www.abgs.gov.tr)

<sup>61</sup> Kosebalaban, H. (2007). The permanent “other”? Turkey and the question of European identity. *Mediterranean Quarterly*, 18 (4), 87-111.



Eurobarometer Poll only Spanish, the Dutch, Portuguese, and Irish electorate are in favor of Turkey's membership<sup>62</sup>, other eleven<sup>63</sup> countries are against it.<sup>64</sup>

On the other hand, one should bear in mind that Turkey's distinctive characteristics played an important role in the course of EU process. Although democratization process in the country dates back to the mid-1940s in terms of transition to a multi party system, no civilian president took office until 1987. Turkey faced, in this process, three official military interventions (in 1960, 1971, and 1980) to civil politics in addition to February 28, 1997 National Security Council decisions, also known as *post-modern coup*, and the April 27, 2007 memorandum, widely known as e-memo (*e-muhtira*).

The military regime, in 1980, shut down all political parties and imprisoned politicians along with thousands of citizens both from left-wing and right-wing groups. The military implemented oppression after taking over in order to keep the streets under control. While building the political process, legislation, and the new constitution, the military regime placed a great emphasis on the unitary and secular structure of the state, integrity of territory and identities. The realities of population and multi-cultural differences were all but ignored. There were restrictions on the practice of cultural and ethnic identities.<sup>65</sup>

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<sup>62</sup> Spain: 43 % in favor, 25 % against; the Netherlands: 42 % in favor, 41 % against; Portugal: 41 % in favor, 34 % against; and Ireland: 39 % in favor, 28 % against.

<sup>63</sup> Sweden: 37 % in favor, 46 % against; Italy: 34 % in favor, 48 % against; Denmark: 34 % in favor, 54 % against; UK: 32 % in favor, 34 % against; Belgium: 28 % in favor, 59 % against; Finland: 27 % in favor, 53 % against; Greece: 26 % in favor, 67 % against; Luxembourg: 25 % in favor, 65 % against; Germany: 24 % in favor, 57 % against; France: 21 % in favor, 62 % against; Austria: 21 % in favor, 63 % against; EU Total: 30 % in favor, 48 % against.

<sup>64</sup> Muftuler-Bac, M. (2002). Turkey in the EU's enlargement process: Obstacles and challenges. *Mediterranean Politics*, 7 (2), 79-95.

<sup>65</sup> Cakmak, C. (2003). Human rights, the European Union, and Turkey. *Alternatives: Turkish Journal of International Relations*, 2 (3-4), 63-90.

In such an environment, the PKK emerged as so-called protector and representative of the oppressed Kurdish population. Mutual violence, both from the State and the terrorist organization, resulted in 37,000 deaths, more than 2,000 murders committed by unidentified perpetrators, 1,179 destroyed villages and hamlets and 6,153 settlements, and tens of thousands of arrests, disappearances, tortures, and so forth.<sup>66</sup> These are unwanted incidents for Turkey's human rights records.

However, despite the lack of stability and the fear of terror, Turkey has implemented a significant progress in reaching democratic standards and internalizing human rights. Whereas some argue that Turkey would not undertake reforms if the EU accession was not an objective for the Turkish politics,<sup>67</sup> others believe that Turkey did not fulfill the democratization and human rights reforms because the EU required so, but because the Turkish people deserved them.<sup>68</sup>

While EU-Turkey relations have been fluctuating from the beginning, Turkey has always tried to adopt the universal norms of democracy and human rights. The EU can be considered as an accelerator factor in this process. Despite the unstable conditions of the 1990s Turkey enacted significant changes in political and judicial areas. In 1992 detention period in criminal investigation was limited. In 1993 the media was liberalized and private radio and television channels were allowed. Fundamental amendments were made to the Penal Code (Turk Ceza Kanunu-TCK) and Counter-Terrorism Act (Terorle Mucadele Kanunu-TMK). The 1999 amendment to the Constitution removed the military

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<sup>66</sup> Bozarslan, H. (2001). Human rights and the Kurdish issue in Turkey: 1984-1999. *Human Rights Review*, 3 (1), 45-55.

<sup>67</sup> Turkmen, F. (2008). The European Union and democratization in Turkey: The role of the elites. *Human Rights Quarterly*, 30 (1), 146-163.

<sup>68</sup> Hicks, N. (2001). Legislative reform in Turkey and European human rights mechanisms. *Human Rights Review*, 3 (1), 78-86. See also Ozcan, M. (2000). Emniyet Teskilati'nin Avrupa Birliği mevzuatına uyumunda yontem sorunu. *Turkish Journal of Police Studies*, 2 (7-8), 135-156.

member of the State Security Courts (SSCs) (Devlet Guvenlik Mahkemesi-DGM). Subsequently the Aggravated Felony Courts replaced the SSCs. Another improvement in the Penal Code in 1999 was the increased length of sentences for those found guilty of torture and ill-treatment.<sup>69</sup> The following section will examine these improvements in the light of regular progress reports of the European Commission towards Turkey's accession which have been monitoring the legal and practical situation in Turkey since 1998.

The major legislations on regulating democratic rights, freedoms, and human rights were enacted after the first EU Accession Partnership Document (APD) was published in 2001.<sup>70</sup> The goal of the APD was "to set out in a single framework the priority areas for further work identified in the Commission's 2000 regular report on the progress made by Turkey towards membership of the European Union, the financial means available to help Turkey implement these priorities and the conditions which will apply to that assistance."<sup>71</sup> According to the Document, the priorities and intermediate objectives were divided into short term and medium term. The short term goals were expected to be completed by Turkey substantially by the end of 2001. The medium term goals were the ones that would take more than one year to be completed. The criteria consisted of enhanced political dialogue and political criteria, economic criteria, internal market, taxation, agriculture, fisheries, transport, statistics, employment and social

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<sup>69</sup> Hicks, N. (2001). Legislative reform in Turkey and European human rights mechanisms. *Human Rights Review*, 3 (1), 78-86. Turkmen, F. (2008). The European Union and democratization in Turkey: The role of the elites. *Human Rights Quarterly*, 30 (1), 146-163. Hale, W. (2003). Human rights, the European Union and the Turkish accession process. *Turkish Studies*, 4 (1), 107-126.

<sup>70</sup> Nas, C. (2004-2005). AB entegrasyon surecinin Turkiye'de siyasal sistem uzerindeki etkileri. *Journal of Academic Studies*, 23, 45-56.

<sup>71</sup> Official Journal of the European Communities (2001, March 24). Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey. Available at the website of Secretariat General for EU Affairs: [www.abgs.gov.tr](http://www.abgs.gov.tr).

affairs, energy, telecommunications, culture and audio-visual policy, environment, justice and home affairs, customs, and reinforcement of administrative and judicial capacity.

According to the 2001 Accession Partnership Document, Turkey was expected to achieve the following political criteria in short term and medium term.

*Short term political criteria (to be achieved by 2001):*

1. In accordance with the Helsinki conclusions, in the context of the political dialogue, strongly support the UN Secretary General's efforts to bring to a successful conclusion the process of finding a comprehensive settlement of the Cyprus problem.
2. Strengthen legal and constitutional guarantees for the right to freedom of expression in line with Article 10 of the ECHR.
3. Strengthen legal and constitutional guaranteed of the right to freedom of association and peaceful assembly and encourage development of civil society.
4. Strengthen legal provisions and undertake all necessary measures to reinforce the fight against torture practices, and ensure compliance with the European Convention for the Prevention of Torture.
5. Further align legal procedures concerning pre-trial detention with the provisions of the ECHR and with recommendations of the Committee for the Prevention of Torture (CPT).
6. Strengthen opportunities for legal redress against all violations of human rights.
7. Intensify training on human rights issues for law enforcement officials in mutual cooperation with individual countries and international organizations.

8. Improve the functioning and efficiency of the judiciary, including the State Security Court in line with international standards. Strengthen in particular training of judges and prosecutors on EU legislation, including in the field of human rights.
9. Maintain the *de facto* moratorium on capital punishment.
10. Remove any legal provisions forbidding the use by Turkish citizens of their mother tongue in TV/radio broadcasting.
11. Develop a comprehensive approach to reduce disparities, and in particular to improve the situation in the south east, with a view to enhancing economic, social, and cultural opportunities.

*Medium term political criteria (to be achieved after 2001):*

1. In accordance with the Helsinki conclusions, in the context of the political dialogue, under the principle of peaceful settlement of disputes in accordance with the UN Charter, make every effort to resolve any outstanding border disputes and other related issues.
2. Guarantee 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 of all Turkish citizens as set forth in the ECHR; ensure the implementation of such legal reforms and conformity with practices in EU member states.
3. Abolish the death penalty, sign and ratify Protocol 6 of the ECHR.

4. Ratify the International Covenant on Civil and Political Rights and its optional protocol and the International Covenant on Economic, Social, and Cultural Rights.
5. Adjust detention conditions in prisons to bring them into line with the UN Standard Minimum Rules for the Treatment of Prisoners and other international norms.
6. Align the constitutional role of the NSC as an advisory body to the Government in accordance with the practice of EU member states.
7. Lift the remaining state of emergency in the south east.
8. Ensure cultural diversity and guarantee cultural rights for all citizens irrespective of their origin. Any legal provisions preventing the enjoyment of these rights should be abolished, including in the field of education.

Turkey adopted the first National Program (the Turkish National Program for the Adoption of the Acquis, NPAA) in March 2001. The NPAA declared that “Turkey will accede to all relevant international conventions and take the necessary measures for their effective implementation in order to ensure alignment with the universal norms manifest in the EU *acquis* and with the practices in EU member states, particularly in the areas of democracy and human rights.”<sup>72</sup> In this context, the NPAA revealed that the Turkish Government would monitor closely the progress in the areas of human rights, democracy, and the rule of law in accordance with the EU *acquis*, and would take all necessary measures to accelerate the process. In addition, all legislative and executive requirements would be implemented in the short and medium term as mentioned in the APD. Principal

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<sup>72</sup> The Turkish National Programme for the Adoption of the Acquis. (2001). Secretariat General for EU Affairs. Available at [www.abgs.gov.tr](http://www.abgs.gov.tr)

issues mentioned in the NPAA were individual rights and freedoms, the freedom of thought and expression, the freedom of association and peaceful assembly, civil society, the judiciary, pre-trial detention and detention conditions in prisons, the fight against torture, human rights violations, training of law enforcement personnel and other civil servants on human rights and regional disparities.

## **2. 7. European Commission Progress Reports towards Turkey's Accession**

As a procedural requirement of the candidacy process, the European Commission publishes annual progress reports about each candidate state. The goal of the progress reports is to monitor each candidate state's path on legislative, executive, judicial, and practical progress. In addition, these reports demonstrate the enhancement on the criteria that are projected with the accession partnership documents and national programs.

As mentioned in the previous sections, Turkey was accepted as a candidate state by the EU in 1999. The Commission has published its reports since 1998. Reports are generally published in October or November and cover the period that begins with September of the previous year.

This part of study will examine the legal amendments and implementation monitored by the Commission on political criteria which include democracy and the rule of law, human rights, and protection of minorities. Making an overall assessment by scanning the progress reports roughly, one can argue that Turkey carried out significant amendments between 2002 and 2005. These amendments brought about fundamental changes in the 1982 Constitution. The Government continued to modernize the Constitution in 2007 and 2010. While the initial progress reports emphasize legal

improvements in the early 2000s, the recent reports mostly focus on the practical situation and implementation of the amendments in the field.

The Commission's first report on Turkey was published in 1998.<sup>73</sup> According to the 1998 Progress Report, Turkey has ratified most of important conventions for protection of human rights. Similar to other European constitutions, the Turkish Constitution refers to main fundamental rights, such as the right to physical integrity, freedom of opinion and press, and freedom of association. However, the practice of civil and political rights remains problematic. There are restrictions on the freedom of expression. Torture, disappearance, and extra judicial executions are considerably widespread. Persistence of these cases put into question the effective control and supervision of security forces. Officials' criminal prosecution is subject to the permission of the administrative bodies. Therefore, appropriate standards of prosecution are questionable for security forces charged with offences emerging from their duties.

The Commission reports its concerns about the freedom of expression. The report criticizes the national courts' propensity to interpret the cases as threats to the unity of the state, territorial integrity, and secularism as mentioned in the Constitution and laws such as the Penal Code and Counter Terrorism Act.

Despite the fact that publication in languages other than Turkish has been free since 1991, radio and TV broadcasting is still forbidden in Kurdish.

Overall, there are certain anomalies in the functioning of the public authorities, persistent human rights violations, and major shortcomings in the treatment of minorities.

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<sup>73</sup> The European Commission. 1998 Regular Report from the Commission on Turkey's Progress towards Accession. Secretariat General for EU Affairs. Available at [www.abgs.gov.tr](http://www.abgs.gov.tr)



The Government has a commitment to combat human rights violations, but there has not been any significant effect in practice.

The 1999 Report views the removal of military members of the State Security Courts as a major progress in the judicial area.<sup>74</sup> The report confirms that despite the existence of the basic elements of a democratic system, Turkey has not met the Copenhagen Criteria yet. Although torture is not systematic in the country, it is still broadly practiced.

The report reflects findings of visits of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the UN Working Group on Enforced or Involuntary Disappearances. They found that systematic prosecution of law enforcement officials for offenses from their duties had not been ensured.<sup>75</sup>

On the other hand, an amendment to the Penal Code has redefined torture, ill-treatment, and abuse of power; and foreseen higher penalties for civil servants who committed such offences and medical personnel who draft fake reports on torture and ill-treatment cases.

The 2000 Progress Report views 1999 as a cornerstone for the relations between the EU and Turkey.<sup>76</sup> It is mentioned in the report that Turkey has signed the

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<sup>74</sup> The European Commission. (September 13, 1999). 1999 Regular Report from the Commission on Turkey's Progress towards Accession. Secretariat General for EU Affairs. Available at [www.abgs.gov.tr](http://www.abgs.gov.tr)

<sup>75</sup> UN, Economic and Social Council. (December 28, 1998). Civil and Political Rights, Including Questions of: Disappearances and Summary Executions. Report on the Visit to Turkey by two Members of the Working Group on Enforced or Involuntary Disappearances 20-26 September 1998. Available at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/efb18eb4337a6c768025672b003c3b30?OpenDocument>

<sup>76</sup> The European Commission. (November 8, 2000). 2000 Regular Report from the Commission on Turkey's Progress towards Accession. Secretariat General for EU Affairs. Available at [www.abgs.gov.tr](http://www.abgs.gov.tr)

International Covenant on Civil Rights and Political Rights and International Covenant on Economic, Social, and Cultural Rights in August 2000.

During the period that the 2000 report covers, the Turkish Grand National Assembly (TGNA) Human Rights Committee published several reports on police stations, and prisons; and conducted interviews with prisoners, officials, and other parties.

Protocol 6 of the ECHR abolishes the death penalty, but it is still in force in Turkey. However, the moratorium has been maintained including the case of Abdullah Ocalan, the arrested leader of the PKK.

Problems with the freedom of association and assembly persist. Organizing conferences and distribution of leaflets require permission from the authorities.

Torture and ill-treatment cases, mostly against those suspected of terrorism and separatism, are still widespread. Ironically, sentences for these offenses are still light. A notable improvement with regard to human rights is that human rights courses were incorporated in the Turkish National Police Academy and other police education centers in 1999-2000 academic year.

The 2001 Report mentions the adoption of the National Program (NPAA) and a reform package of thirty four amendments to the Constitution in October 2001.<sup>77</sup> The package consists of provisions on the freedom of thought and expression, prevention of torture, strengthening civilian authority, and so forth. These amendments are in line with Turkey's priorities mentioned in the Accession Partnership Document.

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<sup>77</sup> The European Commission. (November 11, 2001). 2001 Regular Report on Turkey's Progress towards Accession. Secretariat General for EU Affairs. Available at [www.abgs.gov.tr](http://www.abgs.gov.tr)

One of the major progresses is the change in the structure of the National Security Council. The number of civilian members of the Council was increased from five to nine. Additionally, the function of the Council was re-formed. That is, the Government would now only evaluate the recommendations of the Council; it previously had to give priority consideration to decisions of the NSC.

An amendment to the Constitution limited the conditions of death penalty with the cases of terrorism, war time, and the imminent threat of war. The moratorium had still been maintained.

Several human rights institutions were established during the report period. The Human Rights Board, an inter-ministerial body, was one of them and responsible for promoting and strengthening protection of human rights. Human rights trainings had continued. The Government projected to give human rights training to over 26,000 officers by the end of 2001.

The Minister of Interior issued a circular in July 2001 and clarified the duties and obligations of law enforcement officers on arrest, detention, and interrogation. The circular explicitly prohibited the practice of torture and ill-treatment. Additionally, there was an increase in the number of prosecutions of official suspected of torture and ill-treatment.

In general, the Constitutional amendments are considered a significant step towards guaranteeing human rights, fundamental freedoms, and limiting the death penalty by the Commission. These amendments relatively remove the restrictions on the freedom of expression and association. The Commission concludes that the future implementation will demonstrate the impact of these improvements in practice.

Three reform packages adopted in February, March, and August 2002 were complementarily mentioned in the 2002 Progress Report.<sup>78</sup> These reforms demonstrate that Turkey had a determination to move towards further alignment with the values and standards of the EU. The August amendments were considerably comprehensive. They outlawed the death penalty in peace-time, allowed radio and TV broadcasting in Kurdish, widened the freedom of expression and gave greater freedom for non-Muslim minorities. This package also allowed learning different languages and dialects in private courses.

With regard to international documents, Turkey ratified the 1969 UN Convention on the Elimination of All Forms of Racial Discrimination. It also withdrew the derogation concerning Article 5 of the ECHR (right to liberty and security) in the provinces under the state of emergency. The NSC recommended lifting the state of emergency in two southeastern cities (Hakkari and Tunceli) as of July 2002; and in the last two cities (Diyarbakir and Sirnak) by the end of year.

The TGNA Human Rights Investigation Committee carried out investigations in detention centers. Human rights boards were established in 81 provinces and 831 sub-provinces. However, the report points out the reluctance of NGOs to participate in the boards mostly because of the presence of members of the boards from security forces.

Despite the CPT's recommendations for access to a lawyer's legal aid right after the deprivation of liberty, there were some problems regarding access to a lawyer. Offenses under the competence of the State Security Courts constituted one of the major reasons of this problem, because the Law on the Establishment and Prosecution Methods

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<sup>78</sup> The European Commission. (October 9, 2002). 2002 Regular Report on Turkey's Progress towards Accession. Secretariat General for EU Affairs. Available at [www.abgs.gov.tr](http://www.abgs.gov.tr)

of the State Security Courts gave the right to access to a lawyer only after 48 hours in detention.

Upon the recommendations of the CPT, the Directorate General of Security issued a circular prohibiting the black painting in the interrogation rooms and the projection of light onto the face of detainee.

The 2002 report conveys the findings of the CPT delegation's report of a gradual improvement in detention conditions in the Istanbul area, but allegations of torture and ill-treatment in the custody were still frequent in the South East. No disappearance was reported in 2001 but two members of People's Democracy Party (Halkin Demokrasi Partisi-HADEP), who disappeared in January 2001, were still missing.

The report criticizes the lightness of sentences to torture and ill-treatment. It noted that prosecutors need to gain the permission of administrative authorities to be able to prosecute the suspects of torture and ill-treatment allegations. However, one of the progresses mentioned in the report is that according to the March amendments, civil servants are liable to pay the compensation stipulated by the ECtHR.

In order to increase awareness on human rights, the rulings of the ECtHR were begun to be translated into Turkish and published in the Journal of Police Academy.

The August amendments provided some safeguards against the police abuse by limiting their discretionary authority. However, the report criticizes the presence of the police during medical examination of detainees.

Similar to the previous report, the 2003 Report mentions the reform packages that were adopted in January, February, July, and August 2003. The packages principally included the freedom of expression, freedom of demonstration, cultural rights, and

civilian control of the military.<sup>79</sup> The January package amended the articles 243 and 245 of the Penal Code. The amended Penal Code prevented torture and ill-treatment sentences from being suspended and converted into fines. Another amendment lifted the requirement to obtain the administrative permission in cases of torture and ill-treatment. This package also repealed the limitations on access to a lawyer for defendants under the jurisdiction of the State Security Courts. The July amendments eliminated incommunicado detention with regard to these courts. With the package that passed in August, torture and ill-treatment cases were considered as urgent cases by the courts and for which hearings should be conducted even during the judicial recess.

Other progresses in 2003 were the lift of the state of emergency in the South East and ratification of Protocol 6 of the ECHR which abolished the death penalty except in the time of war and the imminent threat of war. The Government declared a zero tolerance policy towards torture and ill-treatment. The structure of Human Rights Boards was strengthened and their number increased from 831 to 859.

The report cites the CPT visits to police stations. It found that although there were minor examples in recording the exact time of apprehension, the officials were getting meticulous about the length of custody periods.

Overall, the 2003 report highlights that the fight against torture and ill-treatment has been strengthened and the scale of torture has declined. However, there are individual cases causing concern.

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<sup>79</sup> The European Commission. (December, 2003). 2003 Regular Report on Turkey's Progress towards Accession. Secretariat General for EU Affairs. Available at [www.abgs.gov.tr](http://www.abgs.gov.tr)

With regard to developments in 2004, the Progress Report was satisfied with the civilian control over the military.<sup>80</sup> The NSC became an advisory board and had no longer executive power. For the first time in its history, a civilian was appointed as the Secretary General of the NSC. Civilian boards such as the High Education Board and High Audio-Visual Board no longer had members from the military. Defense expenditures were reduced. Education spending (3.06 % of GNP) exceeded defense spending (2.59 % of GNP) for the first time.

With regard to international protocols, Turkey had already ratified Protocol 6 of the ECHR as mentioned in the 2006 progress report. In January 2004, Turkey signed Protocol 13 which abolished the death penalty in all circumstances.

In May 2004, a reform package was adopted and SSCs were completely abolished. Aggravated Felony Courts (AFCs) were established in place of SSCs and cases such as organized crime, drug trafficking, and terrorist offenses were transferred to these courts.

Broadcasting in languages other than Turkish started in state broadcasting channel TRT in June 2004. These included news, documentary, entertainment, and sports programs in Arabic, Bosnian, Circasian, and Kurdish, as well as Kirmanci and Zaza dialects of Kurdish.

The amendments to the Regulation on Apprehension, Detention, and Statement Taking stated that law enforcement officials could not be present in the same room with the doctor and detainee during the medical examination, unless otherwise requested by

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<sup>80</sup> The European Commission. (October 6, 2004). 2004 Regular Report on Turkey's Progress towards Accession. Secretariat General for EU Affairs. Available at [www.abgs.gov.tr](http://www.abgs.gov.tr)

the doctor. Additionally, the results of medical examinations should be sent directly to the office of public prosecutor, not be copied to law enforcement officers.

Small cards, with the rights of suspect on them, were distributed to all law enforcement officers throughout the country. Enlarged versions of the cards were displayed in police stations.

The number of sub-provincial human rights boards increased from 859 to 931 and members from security forces were removed from the boards.

It is mentioned that the access to a lawyer during pre-trial period is improving. Although a CPT report indicates that officers discourage detainees from requesting help of lawyer, NGOs suggest that individuals also tend to refuse this right even when it is offered, because they think requesting a lawyer might be seen as an admission of guilt.

Allegations of systematic torture made the Commission carry out a mission in September 2004. This mission enabled the Commission to observe that there was no systematic torture as alleged and to confirm that the Government spends considerable effort and had a commitment towards its zero tolerance policy.

2005 was a turning point in the EU-Turkey relations. The Council decided to open accession negotiations with Turkey and EU-Turkey relations entered a new phase on October 3, 2005.<sup>81</sup>

The 2005 report states that despite the existence of torture and ill-treatment cases, international and local NGOs as well as the experts from the field such as lawyers and forensic doctors have assessed that the phenomena of torture and ill-treatment has diminished. The President of the CPT declared in October 2004 about the measures taken

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<sup>81</sup> The European Commission. (November 9, 2005). 2005 Regular Report on Turkey's Progress towards Accession. Secretariat General for EU Affairs. Available at [www.abgs.gov.tr](http://www.abgs.gov.tr)



by Turkey that “it would be difficult to find a CoE member state with a more advanced set of provisions in this area.”

According to reports of bar associations and other NGOs, the overall situation continued to improve, although various forms of torture and ill-treatment were still present throughout the country. Furthermore, these reports revealed that while severe forms of torture and ill-treatment were rarely used in detention facilities, there were still different forms of ill-treatment outside the detention facilities, for example during the transportation of detainees or in the context of demonstrations.

A final legislative regulation mentioned in the 2005 report is the amendments to the Penal Code. The new law increased the term of imprisonment for the officers who committed torture and ill-treatment. Additionally, it increased the term that allowed the cases to be dropped from 10 years to 15 years.

The 2006 Report finds Turkey’s effort satisfactory on ratifying international agreements and protocols regarding human rights.<sup>82</sup> The report mentions comprehensive legislation efforts and highlights the downward trend in the number of torture and ill-treatment cases. However, it reveals the concerns about the cases outside detention facilities, violations in the Southeast, and enforcement of courts’ decisions about officers charged with torture and ill-treatment. It also criticizes the effectiveness and independence of human rights organizations.

Most of the previous restrictions on public demonstrations had been lifted during the report period. Nevertheless, excessive use of force by the security forces was criticized in the report.

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<sup>82</sup> The European Commission. (November 8, 2006). 2006 Regular Report on Turkey’s Progress towards Accession. Secretariat General for EU Affairs. Available at [www.abgs.gov.tr](http://www.abgs.gov.tr)

In the 2006 report, for the first time since 1998, terrorist attacks were mentioned. The report declares that 774 terrorist attacks were reported which led to 44 military, 5 police, and 13 civilian casualties between November 2005 and June 2006. Riots took place in the Southeast during funerals of the PKK members in March. Demonstrators attacked the police, stores, sidewalks, and bus stops. Such incidents generated concerns about human rights violations in the region.

The 2007 Progress Report accepts the downward trend in the number of torture and ill-treatment cases as a result of the Government's zero tolerance policy.<sup>83</sup> Legislative improvements played an important role in this trend. However, the report states concerns about individual ill-treatment cases, particularly for pre-detention period.

Problems with access to a lawyer largely disappeared in the city centers. NGO reports indicate that despite various practices in the rural areas, most detainees reach a lawyer right after arrest in urban areas.

Finally, the report points out that the freedom of assembly is broadly in line with the European standards and number and members of the associations have increased regularly. However, the issue of the freedom of expression is still problematic and there are ongoing investigations against individuals who expressed their non-violent opinions.

According to findings of the 2008 Report Constitutional and legislative amendments increased the standards of human rights in the country.<sup>84</sup> However, strict supervision of individual cases is required in order to prevent officers' violations outside detention facilities and in the cases of public demonstrations.

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<sup>83</sup> The European Commission. (November 6, 2007). 2007 Regular Report on Turkey's Progress towards Accession. Secretariat General for EU Affairs. Available at [www.abgs.gov.tr](http://www.abgs.gov.tr)

<sup>84</sup> The European Commission. (November 5, 2008). 2008 Regular Report on Turkey's Progress towards Accession. Secretariat General for EU Affairs. Available at [www.abgs.gov.tr](http://www.abgs.gov.tr)

Article 301 of the Penal Code, which contained restrictions on expression of non-violent opinion, was amended and upper limit of the penalty lowered. Additionally, the Minister of Justice's permission was now required in order to launch a criminal investigation. After this amendment, courts forwarded 257 cases to the Minister of Justice for authorization. The Minister reviewed 163 cases by September 2008, and refused to give permission for criminal investigation in 126 cases.

The 2009 Progress Report briefly refers to an investigation, which is known as *Ergenekon*, with regard to civilian control of security forces. It is mentioned that members of armed forces were involved in activities for preparing a coup.<sup>85</sup> In addition, a serving Gendarme colonel and 6 others were arrested in an investigation on extra-judicial executions in the Southeast during the 1990s.

Despite the zero tolerance policy and improved legal framework, the report criticizes practical shortcomings particularly for the length and results of criminal investigations.

It reported that articles of the Penal Code which were previously used for restricting the freedom of expression were no longer used systematically. However, there were still individual cases based on some articles.

The 2010 Progress Report emphasizes the importance of the Constitutional amendments that were adopted in May and approved in a referendum in September 2010.<sup>86</sup> It believes that the impact of the amendments must be strengthened with a broad

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<sup>85</sup> The European Commission. (October 10, 2009). 2009 Regular Report on Turkey's Progress towards Accession. Secretariat General for EU Affairs. Available at [www.abgs.gov.tr](http://www.abgs.gov.tr)

<sup>86</sup> The European Commission. (November 9, 2010). 2010 Regular Report on Turkey's Progress towards Accession. Secretariat General for EU Affairs. Available at [www.abgs.gov.tr](http://www.abgs.gov.tr)

public consultation and full engagement of civil society during the implementation process.

The report does not consist of specific incidents but makes an overall assessment on human rights. It refers to the ratified international human rights agreements and protocols. It also highlights the increased number of human rights trainings. Positive trend on prevention of torture and ill-treatment is mentioned. However, individual cases of disproportionate use of force are criticized in the report.

## **2. 8. Evaluation of the Progress Reports**

The European Commission's reports on Turkey's progress have been published ever since Turkey was accepted as a candidate state. These reports include all criteria and opened chapters discussed in the APD. However, this study focuses only on the progress in the fields of political criteria, human rights, and democratization.

Reading the relevant chapters of reports from the beginning, one can realize that the Commission has been satisfied with the legal progress in Turkey for the last twelve years. The reports touch upon the modernization of the Constitution and other laws during the period of Turkey's EU accession process. The role of the Military in civilian politics has disappeared. The judicial system and high boards in the public bureaucracy have largely been civilianized. Aggravated Felony Courts have replaced State Security Courts and limitations on detention procedures and access to a lawyer have been lifted for offences under the jurisdiction of these courts.

Restrictions on the freedom of expression, association, and assembly have substantially lifted. However, the Commission still has some concerns on these fields,

particularly regarding the expression of non-violent opinions, and the use of disproportionate use of force by the security forces during public demonstrations.

With regard to human rights, the progress reports notice the dimension of the improvement in the legal framework. Turkey has signed and ratified most of the international agreements and protocols. Turkey is no longer reluctant to execute the judgments of the ECtHR. Although there is an increase in the number of the ECtHR applications over time, the reports reveal that most of the applications are regarding article 6 (right to a fair trial) and article 1 of protocol 1 (protection of property). Nevertheless, there has been a proportional decrease in the applications for article 2 (right to life) and article 3 (prohibition of torture and ill-treatment).

Legislative amendments to the laws and regulations regarding human rights, duties of the security forces, and access to a lawyer have resulted in numerous progresses in these areas. Detention periods have shortened and detention conditions have improved. Detainees have access to a lawyer in most of the major cities and city centers, but there are still minor problems with the rural areas. Prosecution of officials who committed human rights violations is no longer subject to permission of administrative organs. Term of imprisonment for such offenses has been increased.

Although the reports criticize the conduct of the security forces in practice particularly outside detention facilities and during public demonstrations, it is intended to reduce such misconducts by means of human rights training.

In conclusion, previous systematic problems have disappeared and the recent reports only mention individual cases. While incidents of both torture and ill-treatment

take place in the first reports, the cases and term of torture are not frequently mentioned in the recent reports, ill treatment alone is mentioned.

### 3. METHODOLOGY

As the research question indicated in the first chapter, this study is an exploratory case study of human rights violations in Turkey during the EU process. According to Yin, potential data sources of case studies are documents, archival records, interviews, direct observations, and physical artifacts.<sup>1</sup> The present study aims to make an in-depth analysis of the ECtHR documents covering the period of 1995-2010.

Turkey gave its citizens the right to file individual application to the Court in 1987, but the first case against Turkey was held in March 1995 (*Loizidou v. Turkey*, 23.3.2005). Therefore, this study examines the context of cases including Turkey as a party starting from 1995.

To make a detailed analysis of human rights violations of the Turkish security forces, the study utilizes the method of content analysis. Content analysis, in fact, is a research technique “for objective, systematic, and quantitative description of the manifest content of communication.”<sup>2</sup> Neuendorf defines content analysis as a “summarizing, quantitative analysis of messages that relies on the scientific method.” It is not limited to the types of variables that may be measured or the context in which the messages are created or presented.<sup>3</sup> Holsti argues that although definitions of content analysis have tended to change over time, it has three major requirements: (1) objectivity, (2) system, and (3) generality.<sup>4</sup> For Krippendorff, content analysis is used for making replicable and valid inferences from texts to the contexts of their use (Figure 1).<sup>5</sup>

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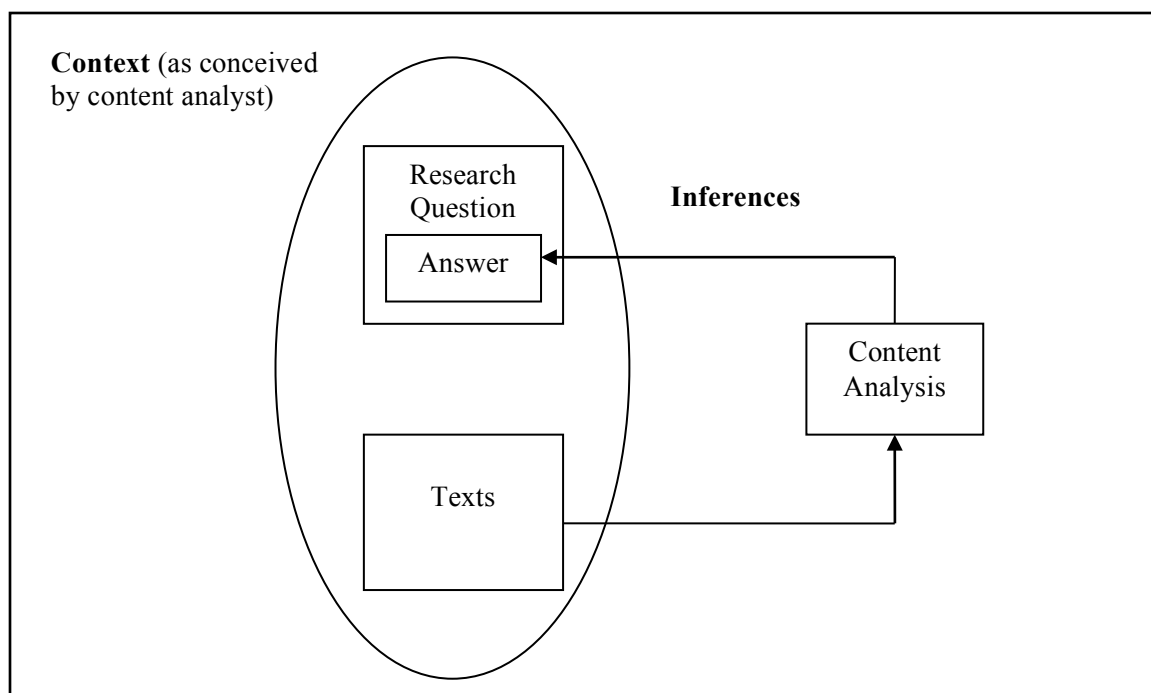
<sup>1</sup> Yin, R. K. (2009). *Case Study Research: Design and Methods*. Thousand Oaks: Sage, p. 101.

<sup>2</sup> Barelson, B. (1952). *Content Analysis in Communication Research*. Glencoe: Free Press.

<sup>3</sup> Neuendorf, K. (2002). *The Content Analysis Guidebook*. Thousand Oaks: Sage.

<sup>4</sup> Holsti, O. R. (1969). *Content Analysis for the Social Sciences and Humanities*. Philippines: Addison-Wesley.

<sup>5</sup> Krippendorff, K. (2004). *Content Analysis: An Introduction to Its Methodology*. Thousand Oaks: Sage.



**Figure 1.** Content Analysis: Answering questions concerning a context of texts.  
Source. Krippendorff, K. (2004). *Content Analysis: An Introduction to Its Methodology*.  
Thousand Oaks: Sage, p. 82.

Although content analysis is accepted as a method that is typically used to analyze messages in the fields of communications and media, many studies exist in other areas of social sciences using a qualitative form of content analysis. Content analysis is not a method based only on counting words or extracting objective content from texts, but it allows the analyst to understand a social reality in an objective manner. Content analysis, studying qualitative data sources as mentioned by Yin, is an inductive way of generating theory. Scholars tend to explain the steps of content analysis in different ways. For example, Bernard and Ryan mention seven steps of content analysis as follows: (1) formulating a research question or a hypothesis, (2) selecting a set of texts to test the question or hypothesis, (3) creating a set of codes, (4) pretesting the variables on a few of the selected texts, (5) applying the codes to the rest of the texts, (6) creating a case-by-



variable matrix from the texts and codes, and (7) analyzing the matrix.<sup>6</sup> Zhang and Wildemuth also make a similar classification on the process of content analysis. First, the data should be prepared for a qualitative analysis. If there are interview records at hand, for instance, they must be transcribed to be able to study. Second, messages or documents should be unitized before they can be coded (defining unit of analysis). Third, categories of the data and a coding scheme according to this categorization must be prepared. Fourth, before coding and testing all the data, a sample of them should be tested in order to validate clarity and consistency of the coding scheme. Fifth, after testing a part of the data, all texts are coded. Sixth, consistency of the entire codification is tested. Seventh, a conclusion is done by exploring the dimensions of categories and identifying relations between the categories. Finally, findings are reported.<sup>7</sup>

### **3. 1. Units of Analysis**

According to an official publication of the ECtHR, which was published in April 2010, the Court held 13,762 cases by December 2010.<sup>8</sup> The document only includes the cases that the Court has made a final decision. In other words, it does not include approximately 130,000 pending cases.<sup>9</sup> Turkey is a party to 2,589 cases between 1995 and 2010. The cases that include Turkey as a party constitute the units of analysis of this study. Table 5 presents the distribution of the cases by years.

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<sup>6</sup> Bernard, H. R. & Ryan, G. (2010). *Analyzing Qualitative Data: Systematic Approaches*. Thousand Oaks: Sage.

<sup>7</sup> Zhang, Y. & Wildemuth, B. M. (n.d.) *Qualitative Analysis of Content*.

<sup>8</sup> European Court of Human Rights (April 21, 2011). Chronological List of Judgments, Advisory Opinions, and Published Decisions. Available at <http://www.echr.coe.int/echr/>

<sup>9</sup> BIA News Center. (April 12, 2011). 15,200 Files against Turkey pending at ECHR. Retrieved on April 22, 2011 from <http://www.bianet.org/english/freedom-of-expression/129202-15-200-files-against-turkey-pending-at-echr>

<b>Years</b>	<b>Cases</b>
1995	3
1996	5
1997	8
1998	18
1999	19
2000	40
2001	229
2002	107
2003	124
2004	174
2005	292
2006	339
2007	333
2008	267
2009	357
2010	274
<b>Total</b>	<b>2589</b>

**Table 5.** ECtHR cases including Turkey from 1995 to 2010.

Source: European Court of Human Rights, Chronological List of Judgments, Advisory Opinions, and Published Decisions, April 21, 2011.

### **3. 2. Sampling**

The reliability of a study is very important. Particularly in social sciences, it is relatively difficult to conduct a study based on reliable findings. In order to achieve reliability in the present study, the sample cases are selected systematically (systematic sampling). To make a systematic sampling, a skip interval was established. In other words, each  $x$ th case was studied starting from the first case. Neuendorf suggests the following formula for establishing a skip interval to systematically sample the units of analysis:

$$N \text{ (Population)} / n \text{ (Sample)} = \text{skip interval.}$$

This study intends to cover a large quantity of cases. By taking a sample of 863 cases into consideration, the skip interval of the study will be:

$$2,589/863 = 3$$

Therefore, this study focuses on the each third case starting from the *Loizidou v. Turkey* case. Consequently, the study will cover one third of cases (863 cases) including Turkey (2,589 cases) during the ECtHR history of the country.

### 3. 3. Coding

This is the process of the study in which raw data is systematically be transformed and aggregated into units allowing accurate description of relevant content characteristics.<sup>10</sup> Each studied case is coded according to their distinctive aspects in this step. A coding form for each year is prepared. However, the cases between 1995 and 2000 are coded in the same coding form because there are only 93 cases (31 studied cases) in that period. Coding forms included the following data:

- a. Judgment Date
- b. Application Date
- c. Incident Date
- d. Duration of the case
- e. Article Number
- f. Decision of the Court
- g. Location (only for articles 2, 3, and 5)

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<sup>10</sup> Holsti, O. R. (1969). *Content Analysis for the Social Sciences and Humanities*. Philippines: Addison-Wesley.

- h. Committer (only for articles 2, 3, and 5)
- i. Explanation (only for articles 2, 3, and 5)

Location and committer of the violation and a brief explanation about the case are studied only for the articles 2 (right to life), 3 (prohibition of torture and ill-treatment)m and 5 (right to liberty and security) which are regarding security forces. For example, article 3 of the ECHR holds that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” Therefore, this article is directly related to a right that can be violated by the security forces. On the other hand, article 1 of ECHR Protocol 1 regulates the protection of property. Such a violation is counted only to demonstrate the overall classification of violations but can be ignored in terms of location and committer.<sup>11</sup>

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<sup>11</sup> See Appendix 1: Sample Coding Form

#### 4. TURKEY'S CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

As mentioned in the previous sections, the goal of this study is to demonstrate the overall human rights violations and material changes in the behavior of security forces in terms of human rights violations over time. The study uses the ECtHR cases as a data source. The Court publishes its judgments periodically. The study takes one of the most current documents which was published on April 21, 2011. According to the document the Court handled 13,762 cases by the end of 2010.

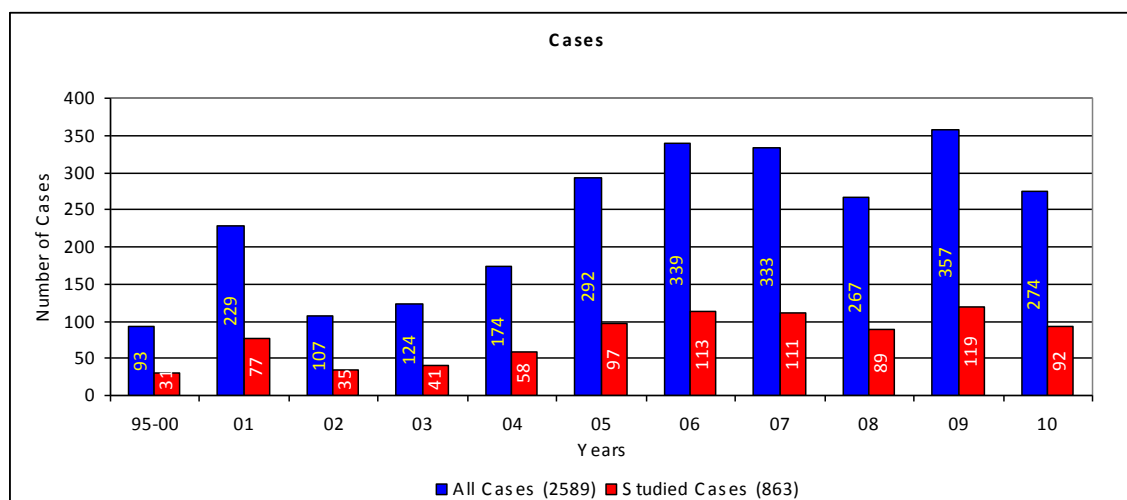
The first case of the Court is *Lawless v. Ireland* which was held on November 14, 1960. The Court presided 1,027 cases until the establishment of the New Court with Protocol 11 of the ECHR in November 1998. Increase in the number of applications and pending cases caused a reform in the structure of the Court. Consequently, the ECtHR underwent an organizational change and started to work full-time after 1998. From January 1, 1999 to December 31, 2010 the Court held 12,735 cases.

Turkey had not been a party to any case until 1995. The first case against Turkey, *Loizidou v. Turkey* **15318/89**<sup>1</sup>, was held on March 23, 1995. There are 93 cases against Turkey for the period of 1995-2000. This study includes 31 of these cases as sample. Total cases and studied cases for the following 10 years are as follows: 229 total and 77 studied cases in 2001, 107 total and 35 studied cases in 2002, 124 total and 41 studied cases in 2003, 174 total and 58 studied cases in 2004, 292 total and 97 studied cases in 2005, 339 total and 113 studied cases in 2006, 333 total and 111 studied cases in 2007, 267 total and 89 studied cases in 2008, 357 total and 119 studied cases in 2009, and finally 274 total and 92 studied cases in 2010. Overall, there are 2,589 cases against

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<sup>1</sup> Hereafter the cases will be mentioned by the case numbers (e.g. 15318/89 for *Loizidou vs. Turkey* case).

Turkey from 1995 to 2010, and this study brings one third of these cases (863 cases) into focus (Table 6).



**Table 6.** Turkey's cases before the ECtHR

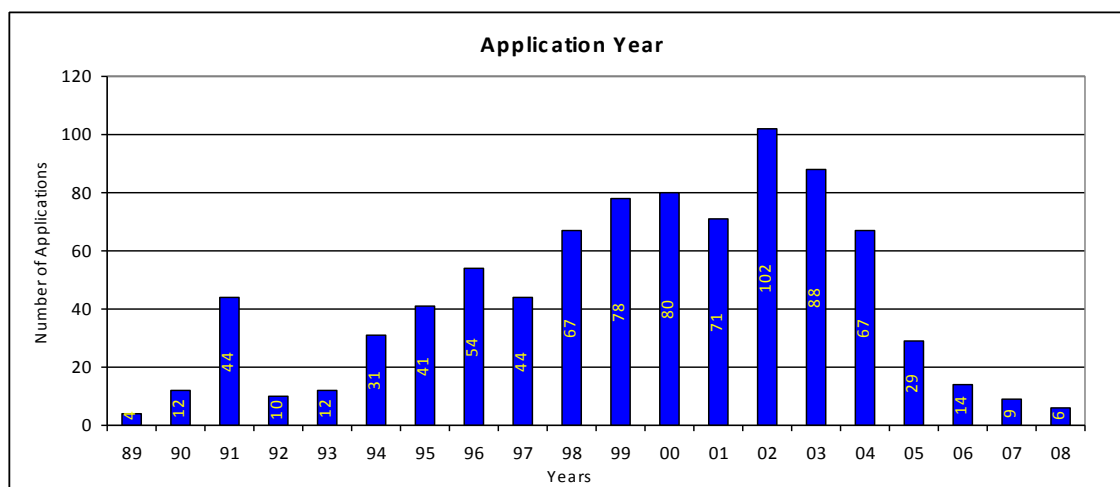
#### 4. 1. Approximate Length of Cases

The Court finalizes a case in approximately 6.5 years (78 months). For instance, application date of the first case (**15318/89**) is July 27, 1989 and the final judgment date is March 23, 1995. Therefore, the total length of the case is 5 years, 7 months and 26 days. In other words, it lasted 68 months. The shortest case among the studied cases is 42296/07. Its application date is September 13, 2007 and judgment date is January 27, 2009. It ended up in 1 year, 4 months and 14 days (16.5 months). The longest case, on the other hand, is 15973/90. Its application date is December 20, 1989 and judgment date is November 2, 2010. Thus, it took about 251 months (20 years, 10 months and 20 days).

In order to explore the average length of cases, this study measures the period between application date and judgment date for all studied cases. After examining all 863 cases, it has found that the average length of a case is more or less 6.5 years.

#### 4. 2. Number of Cases by Application Years

The study has also discovered how many applications were filed by years. For the studied 863 cases, application years vary from 1989 to 2008 (Table 7).



**Table 7.** Number of applications by year

As the table demonstrates, in 1989, 4 applicants applied to the Court against Turkey. There are 12 applications in 1990, 44 applications in 1991, 10 applications in 1992, 12 applications in 1993, 31 applications in 1994, 41 applications in 1995, 54 applications in 1996, 44 applications in 1997, 67 applications in 1998, 78 applications in 1999, 80 applications in 2000, 71 applications in 2001, 102 applications in 2002, 88 applications in 2003, 67 applications in 2004, 29 applications in 2005, 14 applications in 2006, 9 applications in 2007, and 6 applications in 2008.

There is an important point with the number of applications in the last years. The downward trend in the applications does not indicate that there is a decrease in the applications. As previously mentioned, the average length of a case is 6.5 years. This study only covers the cases that were concluded by 2010. Therefore, it is important to bear in mind that since the Court has not finalized most of the cases for the last several years, it is impossible, for now, to discover the exact number of applications for recent years. It can only be revealed by a similar study that will be conducted in the future.

### **4. 3. Articles Prosecuted against Turkey**

The European Convention on Human Rights (ECHR) is an international convention among the members of the Council of Europe (CoE). The ECHR is consisted of fifty nine articles in three sections and six protocols (Protocol Numbers 1, 4, 6, 7, 12, and 13).

Article 1 contains the general provision of “The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.”<sup>2</sup> Section I (from Article 2 to Article 18) regulates the rights and freedoms of individuals, section II (from Article 19 to Article 51) constitutes the structure of the European Court of Human Rights, and Section III (from Article 52 to Article 59) includes the miscellaneous provisions.

With regard to the 863 cases in this study, Turkey has been subjected to judgment for nineteen articles. These articles are;

- a.** Article 1 of the Convention (obligation to respect human rights)
- b.** Article 2 of the Convention (right to life)
- c.** Article 3 of the Convention (prohibition of torture)
- d.** Article 4 of the Convention (prohibition of slavery and forced labor)
- e.** Article 5 of the Convention (right to liberty and security)
- f.** Article 6 of the Convention (right to a fair trial)
- g.** Article 7 of the Convention (no punishment without law)
- h.** Article 8 of the Convention (right to respect for private and family life)
- i.** Article 9 of the Convention (freedom of thought, conscience, and religion)
- j.** Article 10 of the Convention (freedom of expression)

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<sup>2</sup> Article 1 of the ECHR.



- k.** Article 11 of the Convention (freedom of assembly and association)
- l.** Article 12 of the Convention (right to marry)
- m.** Article 13 of the Convention (right to an effective remedy)
- n.** Article 14 of the Convention (prohibition of discrimination)
- o.** Article 18 of the Convention (limitation on use of restriction on rights)
- p.** Article 34 of the Convention (individual applications)
- q.** Article 1 of Protocol 1 (protection of property)
- r.** Article 2 of Protocol 1 (right to education)
- s.** Article 3 of Protocol 1 (right to free elections).

The ECtHR comes to a conclusion in three ways on the alleged violations of articles. It may decide that (1) there has been a violation, (2) there has not been a violation, or (3) it is not necessary to examine the allegation.

The Court has made 1,466 decisions concerning violations in Turkey. It also has additional 72 decisions such as friendly settlement and to strike the case out of the list. Thus, the total number of decisions is 1,538. The explanation of the difference between the number of the cases (863) and number of the decisions (1,538) is that, there are very few applications in which the applicants complain about only one article. In most of the cases their allegations are about violation of two or more articles. For example, the Court has 511 decisions on Article 6 of the Convention and 217 decisions on Article 1 of Protocol 1. In fact, most of the applicants, who allege that the state has violated Article 1 of Protocol 1, also allege that it has violated Article 6 of the Convention. In other words, an individual who claims that Turkey has violated his property rights, also comes up with the allegation that it has violated his fair trial rights. In the example of the case **33239/96**,

the applicant complains about the violations of Articles 3, 5, 6, 8, 13, 14 of the Convention and Article 1 of Protocol 1. The Court concludes that there has been a violation of Article 13, no violation of Articles 3, 5, 8, 14 of the Convention and Article 1 of Protocol 1, and not necessary to examine the allegation on violation of Article 6 of the Convention. Thus, a single case includes 7 decisions on different articles of the Convention.

With regard to 72 cases with the judgment of friendly settlement, striking out, and such decisions, the present study does not take them into consideration. In other words, the study only focuses on the 1,466 decisions on the allegations against Turkey. There are several reasons for this ignorance. First, these cases do not include the adequate information in the case document in order to make a conclusion if there is a violation or not. For example, there are some cases among them, the applicant had died or had not provided the Court with the requested information or document. Therefore, the Court decides to strike the case out of the list. Additionally, in some cases of friendly settlement judgments, the Court concludes that the respondent state (Turkey) accepts to make a payment to the applicant as a compensation for his/her right. However, such a conclusion does not include the terms of “violation”, “no violation”, or “not necessary to examine” in the text of the document. Therefore, although it can relatively be considered that there is a violation, it is impossible to classify this violation in terms of articles of the Convention. Finally, such cases consist of only 8.4 % of all studied cases. These cases include various allegations ranging from Article 2 to Article 34 of the Convention and articles of Protocols. Even if they were taken into consideration, their impact on a

specific article would not be greater than 2-3 %. Thus, they do not have a significant impact on the overall results of the study.

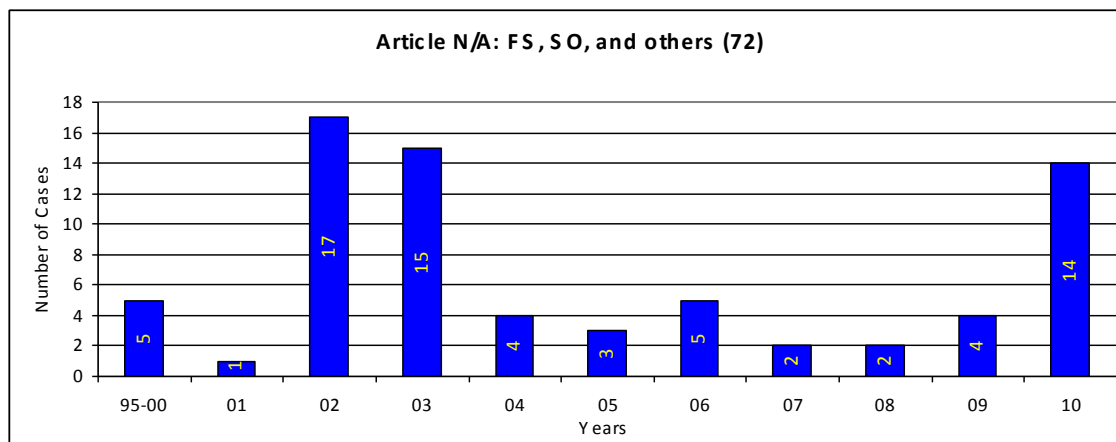
Distribution of the Court's decisions on each article will be evaluated in detail in the following sections. Here is the overall number of judgments on articles. As previously mentioned there are 72 cases that have not been studied. The Court has 2 judgments on cases regarding Article 1 of the Convention. It has 71 judgments on Article 2 and 122 judgments on Article 3 of the Convention. There is only one decision, which is a not necessary to examine decision, on Article 4. The numbers of decisions on Articles 5 and 6 are 132 and 511 respectively. There are 9 decisions on Article 7 and 48 decisions on Article 8. The Court has 10 judgments on cases regarding Article 9, 84 judgments on cases regarding Article 10, and 25 judgments on cases regarding Article 11 of the Convention. It has only one not necessary to examine decision on Article 12. There are 135 judgments on Article 13 and 67 judgments on Article 14. Number of decisions on Articles 18 and 34 are 18 and 6. Finally, the Court has 217 judgments on Article 1 of Protocol 1, 4 judgments on Article 2 of Protocol 1, and 3 judgments on Article 3 of Protocol 1.

#### **4. 4. Distribution of Violations by Years**

This section of the study intends to demonstrate the distribution human rights violations in Turkey from 1995 to 2010. As mentioned in the previous section there are 19 articles that are subject to the cases against Turkey. Additionally, there are 72 cases in which the Court does not have a decision if there is a violation, no violation, or not necessary to examine.

##### ***4. 4. 1. Non-Applicable Articles***

First, the study briefly takes 72 non-classified cases. The Court concluded in that way for 5 cases in the period of 1995-2000. For the following ten years the number of cases with the Court's friendly settlement or striking out decision is as follows: 1 in 2001, 17 in 2002, 15 in 2003, 4 in 2004, 3 in 2005, 5 in 2006, 2 in 2007, 2 in 2008, 4 in 2009, and 14 in 2010 (Table 8).

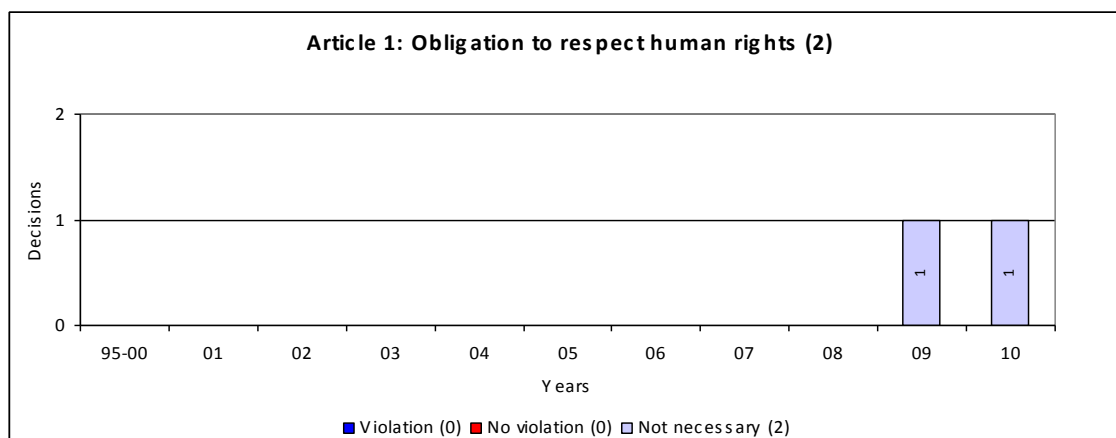


**Table 8.** Non Applicable Articles (friendly settlement, striking out, etc.)

#### ***4. 4. 2. Article 1: Obligation to Respect Human Rights***

As mentioned in the beginning of this section, this article identifies the contracting parties' responsibilities to secure the rights and freedoms of individuals defined in the following Section (between Articles 2 and 18) of the Convention.

The Court has only 2 decisions –one in 2009 other in 2010 and both of them are not necessary to examine decisions- on the allegations of violation of Article 1 of the Convention (Table 9).

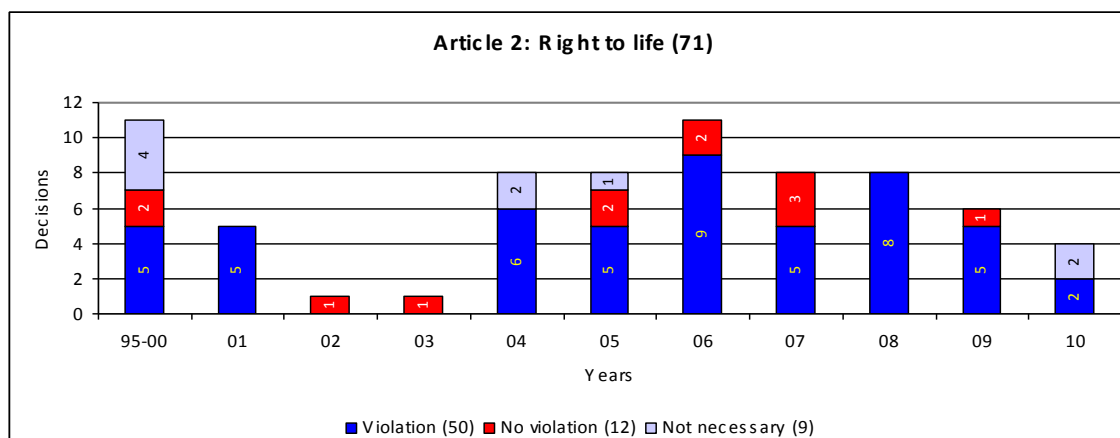


**Table 9.** Article 1: Obligation to respect human rights

The first case, **16259/90**, was filed by two Cypriot sisters on February 23, 1990. They alleged that their mother donated her property, which is located in the District of Kyrenia in Northern Cyprus, to her two daughters in 1985. However, they had been prevented from having access to their house since 1974. According to their allegation, the house had been occupied by officers and/or other members of the Turkish military forces. Their application is based on the violation of Articles 1 and 3 of the Convention and Article 1 of Protocol 1. The Court holds that there is a violation of Article 3 of the Convention and Article 1 of Protocol 1, but it is not necessary to examine if there is a violation of Article 1. The other case is **11011/05**. The applicant alleges that Turkey has violated Articles 1, 6 and 13. However, the Court holds that there is only violation of Article 6 and it is not necessary to examine the allegations on Articles 1 and 13.

#### ***4. 4. 3. Article 2: Right to Life***

Article 2 of the Convention emphasizes that “everyone’s right to life shall be protected by law.” The ECtHR held 71 judgments on protection of this right. According to these judgments, Turkey has violated this article in 50 cases, has not violated it in 12 cases. The Court found it not necessary to examine in 9 cases (Table 10).



**Table 10. Article 2: Right to life**

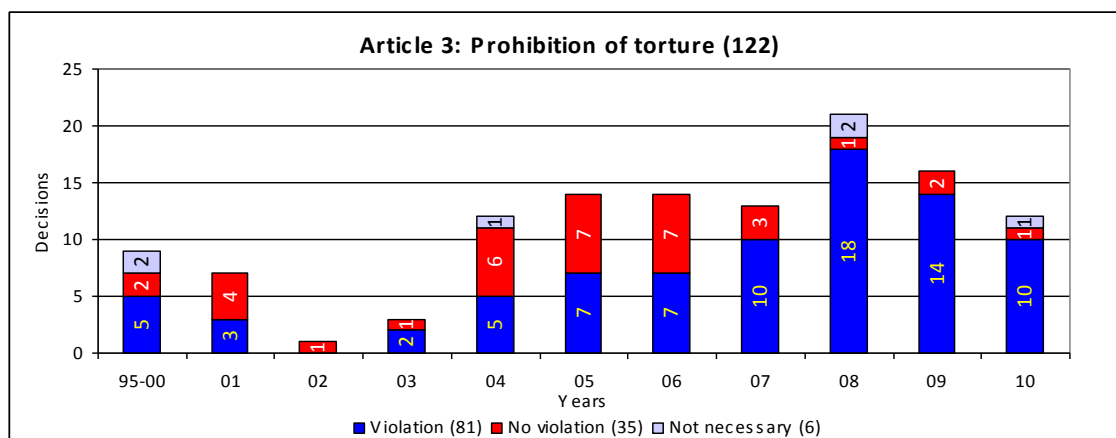
As the table demonstrates, the Court held in 5 cases between 1995 and 2000 that Turkey violated this article. 5 of the judgments in 2001 were also concluded in the same direction. There is no violation decision in 2002 and 2003. From 2004 to 2010 the numbers of violations of Article 2 are as follows: 6 in 2004, 5 in 2005, 9 in 2006, 5 in 2007, 8 in 2008, 5 in 2009, and 2 in 2010.<sup>3</sup>

#### ***4. 4. 4. Article 3: Prohibition of Torture***

Article 3 of the Convention constitutes safeguards against torture, inhuman or degrading treatment or punishment. Applications regarding this article largely emerges from the practices of security forces. Most of the allegations are based on excessive use of force during the time of arrest, ill-treatment during the custody and/or pre-trial detention periods, and some other situations such as pain and distress that the relatives of victims face.

Total number of decisions of the Court on this article is 122 (Table 11).

<sup>3</sup> Article 2 (right to life), Article 3 (prohibition of torture) and Article 5 (right to liberty and security) are largely violated by security forces. The following chapters will be based on violation of these articles. Chapters 5, 6, and 7 will make a detailed analysis of temporal, geographical, and contextual changes in violation of these articles.



**Table 11.** Article 3: Prohibition of torture

The ECtHR held in 81 cases that individuals were subjected to torture or ill-treatment during the studied period. It held 35 no violation decisions and 6 not necessary to examine decisions. The Court held 9 cases between 1995 and 2000 and decided in 5 of them that Turkey violated this article. It found no violation in 2 cases, and found it not necessary to examine in 2 cases during the same period. The Court held 7 cases in 2001 with the allegations of violation of article 3 and judged in 3 of them that this article was violated. There was only 1 case in 2002 regarding article 3 and it concluded that there was no violation in that case. The numbers of cases that the Court found violations in the following years are as follows: 2 in 2003, 5 in 2004, 7 in 2005, 7 in 2006, 10 in 2007, 18 in 2008, 14 in 2009, and 10 in 2010.

#### ***4. 4. 5. Article 4: Prohibition of Slavery and Forced Labor***

Article 4 of the Convention states that;

- (1) No one shall be held in slavery or servitude.
- (2) No one shall be required to perform forced or compulsory labor.
- (3) For the purpose of this Article the term “forced or compulsory labor” shall not include:
  - a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention of during conditional release from such detention;
  - b) any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;

- c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- d) and work of service which forms part of normal civic obligations.<sup>4</sup>

During the ECtHR history of Turkey, there has been only one case (case number: 16064/90) with allegation of violation of this article (Table 12).



**Table 12.** Article 4: Prohibition of slavery and forced labor

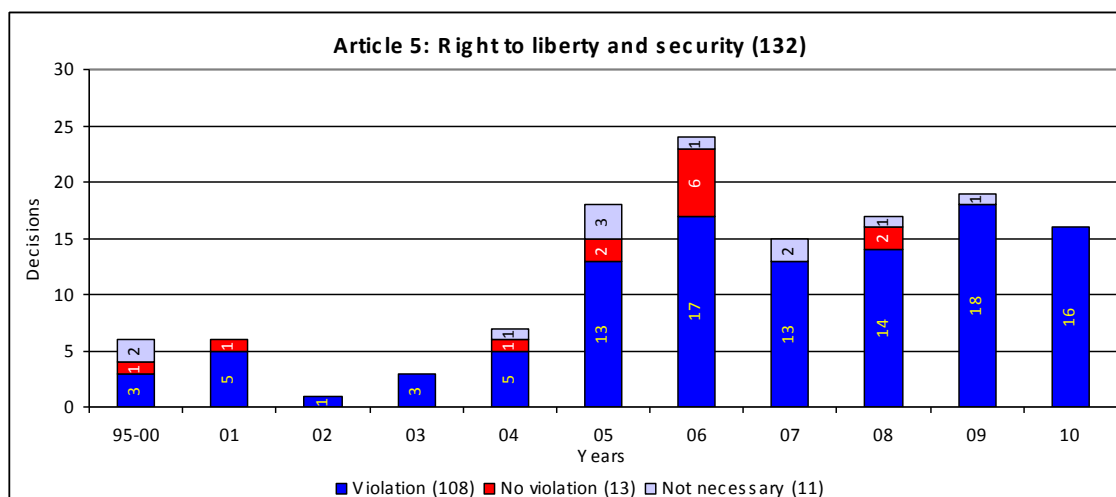
The Court held in that case that it is not necessary to examine if there was a violation. Applicants, 18 Cypriot nationals, applied to Court in 1990 for their relatives who disappeared during the military operations carried out by the Turkish Army in 1974. They relied on the Articles 2, 3, 4, 5, 6, 8, 10, 12, 13, and 14 of the Convention. The Court held that there had been violations of Articles 2, 3, and 5; but not necessary to examine Articles 4, 6, 8, 10, 12, 13, and 14.

#### ***4. 4. 6. Article 5: Right to Liberty and Security***

Similar to articles 2 and 3, this article is largely in relation to the practices of security forces particularly because of the long custody periods and will be scrutinized in the following chapter. In many cases, the Court holds that this article is violated by the justice system because of the length of pre-trial detention in long-lasting cases.

<sup>4</sup> Article 4 of the ECHR.





**Table 13.** Article 5: Right to liberty and security

The ECtHR has 132 decisions concerning Article 5 in 863 studied cases (Table 13). In most of these decisions, it held that Turkey violated individuals' liberty and security rights. The number of decisions in this direction is 108. The Court found no violation in 13 cases, and not necessary to examine in 11 cases. There are 3 violation decisions in the cases between 1995 and 2000, 5 violation decisions in 2001, 1 violation decision in 2002, and 3 violation decisions in 2003. Increase in the number of violation decisions continues until 2006 with 5, 13, and 17 decisions respectively. There is a decline in the cases finding violations in 2007. The Court has 13 violation, and 2 no violation decisions in 2007. There is a slightly upward trend in violation decisions for the following two years: 14 violation decisions in 2008 cases. Finally, the Court found 16 violations in the cases that were held in 2010.

#### ***4. 4. 7. Article 6: Right to a Fair Trial***

Article 6 of the Convention is consisted of 3 sections. Section 1 of the article includes the general provisions regarding fair trial rights of individuals. This section stipulates a fair and open hearing, a reasonable time to finalize cases, and independence and impartiality of courts. Section 2 is based on the provision that everyone is presumed

innocent until proved guilty according to law. Finally, Section 3 includes 5 clauses regulating the rights of individuals who are charged with a criminal offense. More specifically, Article 6 of the Convention states that;

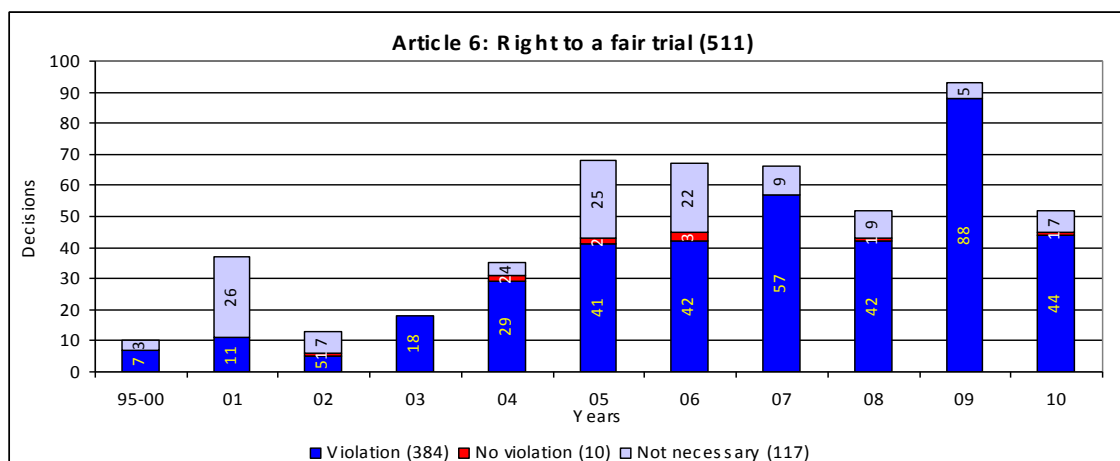
- (1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- (2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- (3) Everyone charged with a criminal offence has the following minimum rights:
  - a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - b) to have adequate time and facilities for the preparation of his defense;
  - c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.<sup>5</sup>

The ECtHR has 511 decisions (384 violation, 10 no violation, and 117 not necessary to examine decisions) in studied 863 cases (Table 14).

There are very few no violation decisions with regard to this article: 1 in 2002, 2 in 2004, 2 in 2005, 3 in 2006, 1 in 2008, and 1 in 2010. Distribution of violation decisions is as follows: 7 between 1995 and 2000, 11 in 2001, 5 in 2002, 18 in 2003, 29 in 2004, 41 in 2005, 42 in 2006, 57 in 2007, 42 in 2008, 88 in 2009, and 44 in 2010.

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<sup>5</sup> Article 6 of the ECHR.



**Table 14.** Article 6: Right to a fair trial

According to the Court's judgments, decisions regarding Article 6 § 1 constitute the largest portion of the whole decisions on this article. There are 449 decisions (350 violation, 3 no violation, and 96 not necessary to examine decisions) regarding this section of the article.

The Court holds in 350 judgments that Turkey has violated Article 6 § 1 of the Convention. There are two major facts underlying these violations: State Security Courts (independent and impartial tribunal), and long periods of criminal investigations and prosecutions (reasonable time). Primarily, as mentioned in the literature review chapter, State Security Courts with one member from the military used to be a part of the Turkish judicial system until 2004. The military member in these courts was removed with an amendment to the Article 143 of the Constitution in June 1999. Subsequently, in May 2004, these courts were completely abolished and replaced with Aggravated Felony Courts with another package of amendments.

According to June 9, 1998 judgment of the ECtHR (**22678/93**) the applicant argued that the local State Security Court could not be considered as an independent and impartial tribunal within the meaning of Article 6 § 1 of the Convention. The military

member in these courts is dependent on the military authorities, and in other words dependent on the executive. While performing his judicial duties, military member of the court remains an officer and maintains his links with the military and its hierarchical system. It is difficult to be impartial for an officer whose professional carrier is linked to his decisions in the court room. The Government, on the other hand, submitted that appointment procedures of military members of these courts and their performance satisfy the criteria laid down by the ECtHR's case-law. Military members of the SSCs are safe from any pressure from their superiors. Their professional assessment procedures are applied only to their non-judicial duties. After receiving the submissions of the parties, the Court referred to independence and impartiality standards of the courts. It mentioned that, it is not disputed whether two other judges are independent and impartial, but the Court must determine what the position is with regard to the military member of SSCs. It is not the Court's task to determine whether it is necessary to establish such courts in a state, but to find out whether such a court breaks an individual's right to a fair trial. In the present case, the applicant is convicted of disseminating separatist propaganda as a member of a political party. As the Government submits that the justification of military judges in SSCs is their competence and experience in the fight against terrorism and organized crime, the applicant can legitimately have concerns about the independence and impartiality of the SSC. The Court, accordingly, held that there was a violation of Article 6 § 1.

In another example (**54673/00**), Turkey breached Article 6 § 1 of the Convention by violating the reasonable time provision of the article. The applicant in this case signs contracts with a local municipal authority concerning a road construction on an

unspecific date. During the construction, the municipality declares that the contracts were cancelled by the decisions of municipal council. Local Commercial Court decides on March 16, 1992 that the cancellation of the contracts is unlawful and invalid. The applicant, then, asks the municipality to carry out the judgment of the court. However, his request is denied. On March 4, 1993 he brings an action against the municipality before the local Commercial Court for damages emerging from the cancellation of the contracts. The case continues until April 30, 1998. The court, on that date, accepts the claim of applicant partially and orders the municipality to pay him a certain amount of money. The applicant appeals to the Court of Cassation on September 3, 1998. The Court of Cassation upholds the judgment of the first instance court, and rejects the applicant's appeal on December 14, 1998. The applicant requests rectification of this judgment on February 12, 1999. The Court of Cassation rejects this request, as well, on June 7, 1999.

The applicant complains about the length of proceedings in this case. The Government, on the other hand, submits that the length of the case does not exceed the reasonable time requirement because the case is complex and includes technical details. The ECtHR clarifies the conditions of reasonable time for proceedings. The Court notes that the case begins on March 4, 1993 and ends on June 7, 1999. It finds no substantial delays before the Court of Cassation, but proceedings before the first instance court lasts more than 5 years. Additionally, the Court considers that the present case is not a complex case as the Government asserts. Therefore, considering the total length of proceedings, six years and three months, the ECtHR holds that there has been a violation of Article 6 § 1 of the Convention.

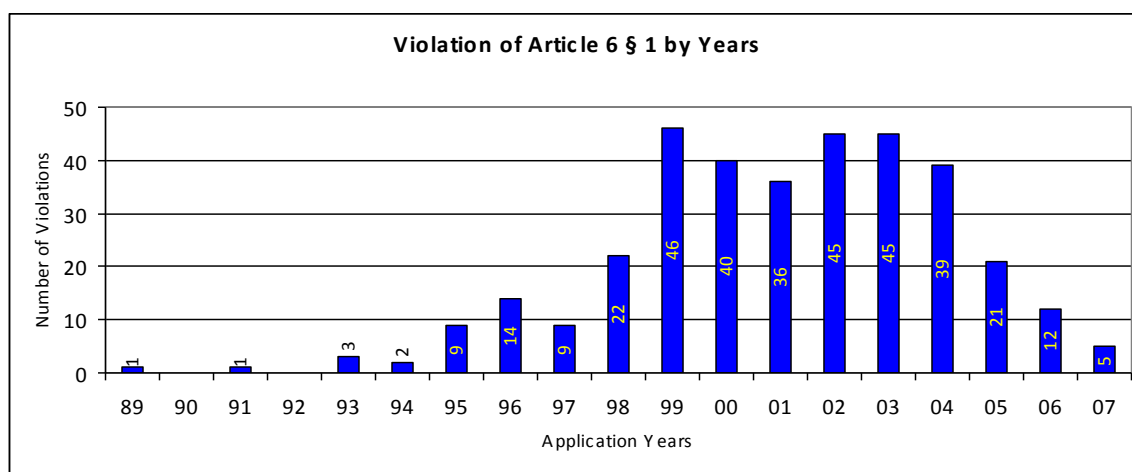
Consequently, most of the cases before the ECtHR regarding Article 6 conclude that Turkey has violated this article due to two major problems in the judicial system. First is, although they were abolished in 2004, State Security Courts particularly because of their military members; and the second is the length of judicial proceedings. There are 384 violation decisions regarding Article 6, and 350 of these violations are on the subject of Section 1 of this article.

Distribution of 350 violation decisions on Article 6 § 1 by year can be classified as follows: 7 violation decisions in the cases between 1995 and 2000, 11 violation decisions in 2001, 5 violation decisions in 2002, 17 violation decisions in 2003, 28 violation decisions in 2004, 40 violation decisions in 2005, 42 violation decisions in 2006, 55 violation decisions in 2007, 41 violation decisions in 2008, 65 violation decisions in 2009, and finally 45 violation decisions in 2010.

Since the State Security Courts were abolished in 2004, it is considered that the ECtHR may not receive as much applications as the previous periods with regard to the independence and impartiality of the courts. However, as the European Commission's progress reports highlight annually, Turkey is short of judges and prosecutors to be able to finalize criminal investigations and prosecutions within a reasonable time. Therefore, until this problem is recovered with the appointments of adequate number of judges and prosecutors, it can be predicted that Turkey will remain subject to ECtHR's judgments on lack of individuals' right to a fair trial for not completing judicial proceedings within a reasonable time.

It is difficult to make an analysis on the distribution of violations by examining the dates that the final decisions are given. In other words, the judgment dates do not

reflect the exact time of the violation. For instance, in the cases that were held in 2010 the Court decided that there were 45 (40 violation and 5 not necessary to examine) decisions regarding to Article 6 § 1 of the Convention. However, all of these judgments belong to the applications that were filed in previous years. Therefore, it is also important to give the application dates of the cases that the Court found violations in order to make an analysis on the material time of the violations. Table 15 demonstrates the application dates of the cases regarding Article 6 § 1. Application dates can help estimate the approximate time of violation, because individuals are required to fill an application within six month of the violation.<sup>6</sup>



**Table 15.** Distribution of Article 6 § 1 violations by years

In this context, the study has found that there is only one application resulted with a violation decision in 1989 and one in 1991. There are 3 applications in 1993, 2 applications 1994 and 9 applications in 1995 that the Court held that Turkey violated Article 6 § 1. The numbers of applications resulted in a violation decision for the period of 1996-2007 as follows: 14, 9, 22, 46, 40, 36, 45, 45, 39, 21, 12, and 5. As mentioned in the previous sections, the decrease in the recent years does not indicate that there is a

<sup>6</sup> Article 34 of the ECHR.

decrease in that period. Since the average length of a case is approximately 6.5 years, it is impossible to measure the exact number of violations for the last several years.

Compared to Article 6 § 1 there are very few decisions on other sections and clauses of this article. The largest portion after Article 6 § 1 belongs to Article 6 § 3 (c) which regulates the defense right of individuals. The Court has 33 decisions (29 violation, 1 no violation, and 3 not necessary to examine decisions) on Article 6 § 3 (c). The distribution of the violation decisions by year is as follows: 2 violation decisions in the cases held in 2007, 1 violation decision in 2008, 23 violation decisions in 2009, and finally 3 violation decisions in 2010. In terms of the application years, there are 4 applications in 2000, 6 applications in 2001, 4 applications in 2002, 8 applications in 2003, 5 applications in 2004, and 2 applications in 2005.

The Court refers to Article 6 (without mentioning any particular section of the article) in 15 cases. Among these cases, it does not have any violation decision. There are 4 no violation decisions and 11 not necessary to examine decisions.

The remaining decisions regarding the right to a fair trial consist of 3 decisions (1 violation, 1 no violation and 1 not necessary to examine) on Article 6 § 2; 3 decisions (1 no violation and 2 not necessary to examine) on Article 6 § 3 (a), 3 decisions (1 violation and 2 not necessary to examine) on Article 6 § 3 (b), and 3 decisions (1 violation and 2 not necessary to examine) on Article 6 § 3 (d). The Court also holds in 2 cases that Turkey has violated Article 6 § 3 of the Convention without mentioning any particular clause of Article 6 § 3.

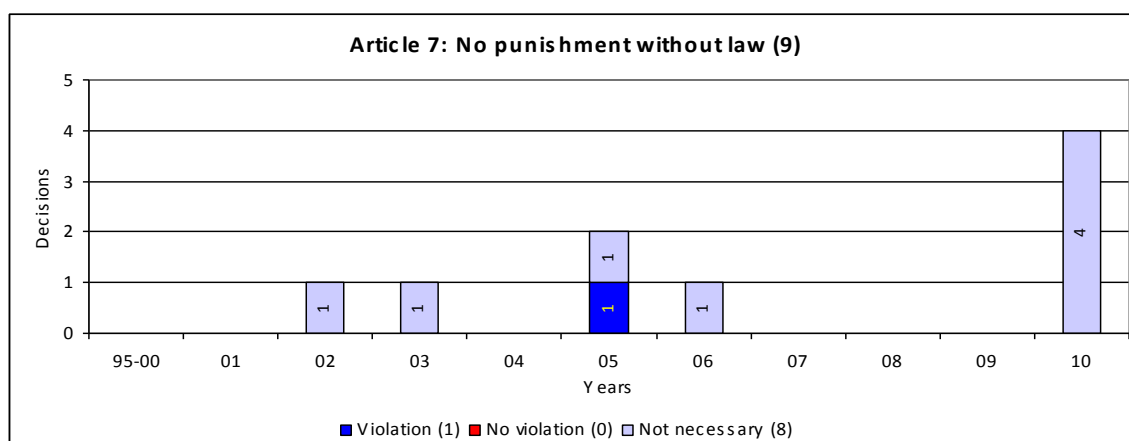
#### ***4. 4. 8. Article 7: No Punishment without Law***



Article 7 of the Convention is based on the legal principle of *nulla poena sine lege* (no punishment without law). According to this article individuals cannot be held guilty of any criminal offence which does not constitute a criminal offence under national or international law at the time when it was committed:

- (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
- (2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.<sup>7</sup>

The cases against Turkey before the ECtHR comprise 9 decisions regarding this article (Table 14). There is only one violation decision (**29365/95**) which was held in 2005 and 8 not necessary to examine decisions (1 in 2002, 1 in 2003, 1 in 2005, 1 in 2006, and 4 in 2010) regarding Article 7 of the Convention (Table 16).



**Table 16.** Article 7: No punishment without law

In the case that the Court holds that Turkey has violated this article (**29365/95**), the applicant complains about the violations of Articles 7 and 10 of the Convention and Article 1 of Protocol 1. He is the owner of a publishing company. He was subjected to criminal prosecutions and sentenced to imprisonment for publishing several books

<sup>7</sup> Article 7 of the ECHR.

between 1991 and 1994 which were held by State Security Courts to constitute propaganda against the indivisible unity of the State under the various articles of Counter Terrorism Act. Additionally, some of the books were confiscated. The ECtHR holds that the imposition of a prison sentence in the present case is not compatible with the principles of Article 7 of the Convention. Therefore, there has been a violation of this article. Furthermore, there is a violation of Article 10 with regard to the freedom of expression. However, the Court finds it not necessary to examine whether there is a violation of Article 1 of Protocol 1 in terms of the confiscation of the books.

In addition to this case, the Court has 8 more decisions on Article 7. All of these decisions are not necessary to examine decisions.

#### ***4. 4. 9. Article 8: Right to Respect for Private and Family Life***

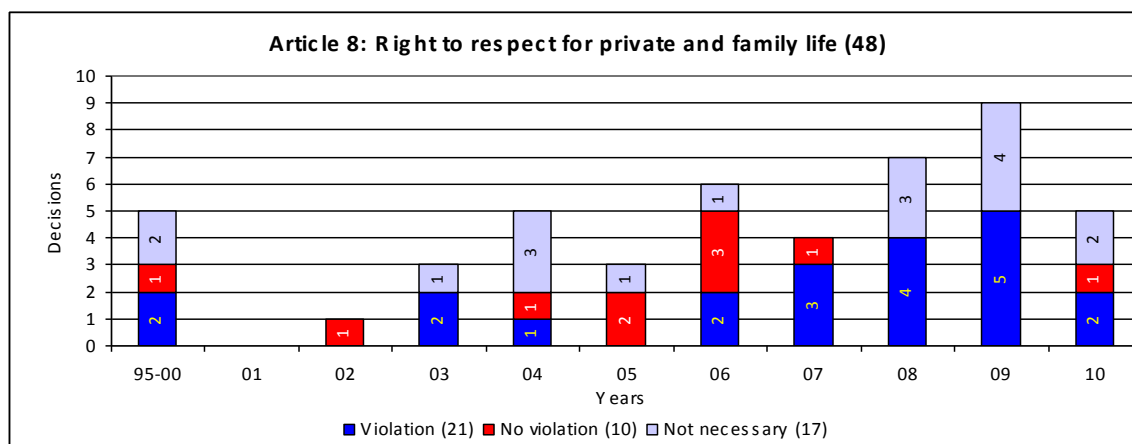
Article 8 holds the provisions of;

- (1) Everyone has the right to respect for private and family life, his home and his correspondence.
- (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety of the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.<sup>8</sup>

Turkey has been subject to 48 decisions regarding this article. The Court held that, Turkey violated this article in 21 cases, did not violate it in 10 cases; and found it not necessary to examine in 17 cases. The violation decisions by years are as follows: 2 violations in the cases between 1995 and 2000, 2 in 2003, 1 in 2004, 2 in 2006, 3 in 2007, 4 in 2008, 5 in 2009, and 2 in 2010 (Table 17).

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<sup>8</sup> Article 8 of the ECHR.



**Table 17.** Article 8: Right to respect for private and family life

As mentioned in section 4. 4. 7, the number of violation decisions does not reflect the exact information related to the time of violation. For example, as Table 16 demonstrates, the Court has 5 violation decisions in 2009. However, applicants of these cases applied to the Court in 1990, 1991, 1997, 1998, and 2004. Therefore, it is necessary to examine the application dates of these cases in order to make a more reliable analysis on the dates of violations. With regard to the application dates of these cases, it is found that the trend of the Article 8 violations is as follows: 1 violation in 1989, 2 violations in 1990, 1 violation in 1991, 2 violations in 1993, 1 violation in 1996, 2 violations in 1997, 3 violations in 1998, 3 violations in 2001, 2 violations in 2002, 2 violations in 2003, and 2 violations in 2004.

This article can be applied to a considerably broad field. There are only 7 cases that applications are based merely on violations of Article 8 (**42596/98**, **34496/97**, **73520/01**, **39862/02**, **9460/03**, **3976/05**, **4694/03**). Applicants in other 41 cases applied to the Court with allegations of violations of other articles in addition to Article 8. Some of these cases include the allegations regarding Articles 2, 3, and 5 and will be discussed in the next chapters. Frequently, allegations of violation of Article 8 are accompanied with

Articles 3, 5, and 6 of the Convention and Article 1 of Protocol 1. For instance, in a case (**15318/89**), the applicant submitted that she used to live in Northern Cyprus. She left her home in 1972 and began to live in elsewhere. She alleges that Article 1 of Protocol 1 is violated by the members of the Turkish armed forces, when the Turkish Army took the control of the area where her home was located in 1974. She also argues that Article 8 of the Convention is also violated. The Court holds that there has been a violation of Article 1 of Protocol 1 in terms of the applicant's property rights. However, there is no violation of Article 8 because "home" as mentioned in this article is a property that is used for residential purposes. Therefore, since the applicant had no longer lived there, the Court held that there was no violation of this article.

In another case (**22427/04**) applicant applied to the ECtHR with allegations of violation of Articles 6, 8, and 13 of the Convention. The facts in the case are briefly that, the applicant was prosecuted in for membership of an illegal organization but was acquitted in 1990. He was arrested during a demonstration in 2003 and accused of controverting the Demonstrations Act, damaging public property, and resisting arrest by using force. During the prosecution, a police report was submitted to the local court including the applicant's record that was drawn up in 1990. There were two entries in the report that showed the applicant as a member of two illegal organizations (DEV-YOL and DEV-GENC). It also included the personal information of the applicant, such as fingerprints, address, birth registry details etc. He argued that, the national press reported the incident as "one of the persons arrested in the demonstration was a member of DEV-GENC." and this had adverse effects on his professional carrier and psychological integrity. He complained that the police records submitted to the local court was unlawful

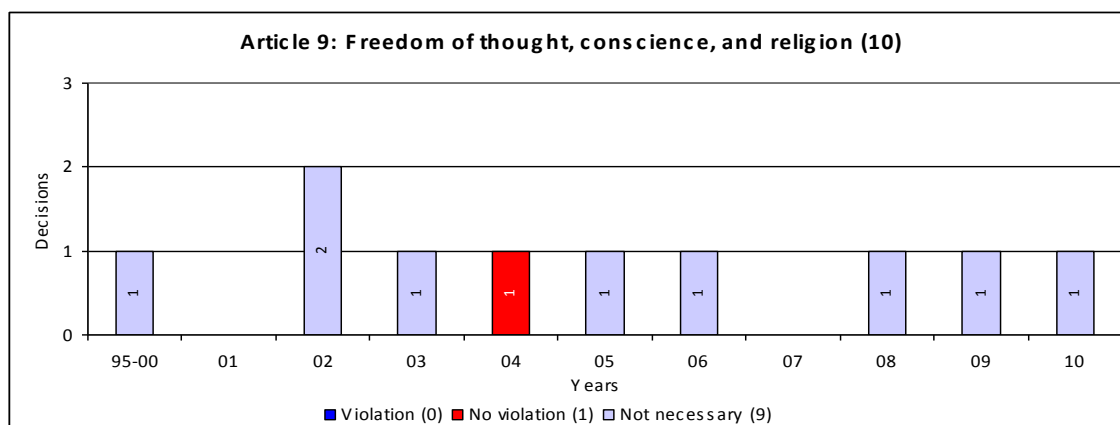
and the news on the national press violated right to respect for his private life. The Court held that there was a violation of Article 8. He also complained with the allegations of violation of Articles 6 and 13 but the Court held that it was not necessary to examine if there was a violation of these articles.

#### ***4. 4. 10. Article 9: Freedom of Thought, Conscience, and Religion***

Article 9 of the Convention protects individuals' thought, conscience, and religion rights. The article states that;

- (1) Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- (2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.<sup>9</sup>

There are 10 decisions regarding this article. One of them is no violation decision, and the others are not necessary to examine decisions (Table 18).



**Table 18.** Article 9: Freedom of thought, conscience and religion

#### ***4. 4. 11. Article 10: Freedom of Expression***

Article 10 of the Convention has the provision of;

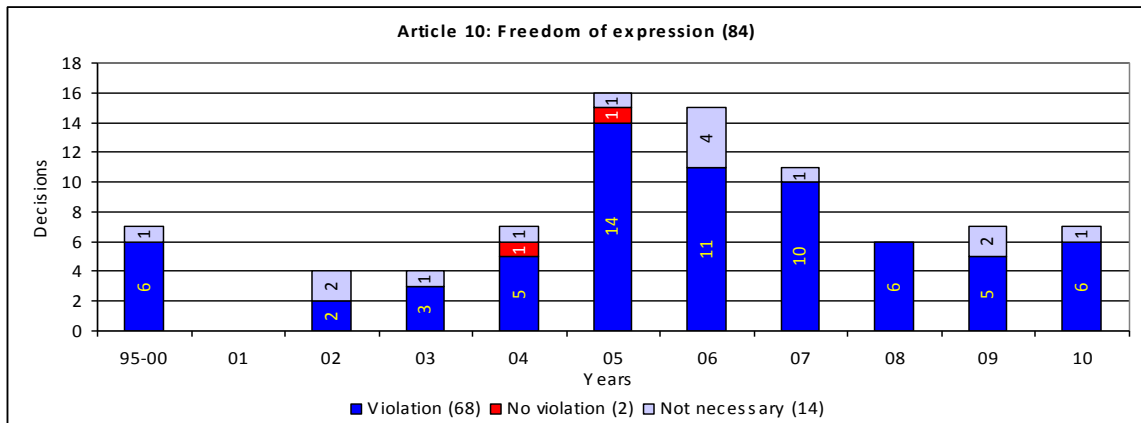
- (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference

<sup>9</sup> Article 9 of the ECHR.

by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

- (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.<sup>10</sup>

The ECtHR has 84 decisions regarding this article in the cases against Turkey. 68 of them are violation decisions. There are only two cases in which the Court held that this article was not violated. In 14 cases, the Court found it not necessary to examine if there was a violation (Table 19).



**Table 19.** Article 10: Freedom of expression

The Court presided 7 cases regarding Article 10 of the Convention between 1995 and 2000, and held in 6 cases that Turkey violated this article. There is no case with regard to Article 10 in 2001. There is an increase in the number of violations in the cases held from 2002 to 2005; 2 violation decisions in 2002, 3 violation decisions in 2003, 5 violation decisions in 2004 and 14 violation decisions in 2005. Then, violation decisions decrease until 2009. The numbers of violation decisions for 2006, 2007, 2008, and 2009 are 11, 10, 6, and 5 respectively. Finally, the Court decided in 6 cases that were held in 2010 that Turkey violated this article. With regard to the years of violation, the study has

<sup>10</sup> Article 10 of the ECHR.

found the following results. According to the case files of 68 violations of Article 10, Turkey violated the freedom of expression 3 times in 1993. There were 5 violations in 1994, 4 violations in 1995 and 3 violations in 1996. The numbers of violations from 1997 to 2004 are 5, 6, 10, 5, 6, 5, 7, and 6 respectively. There were no violations in 2005, 2006, and 2007. Finally, the Court held that Turkey violated Article 10 of the Convention 3 times in 2008.

Regular progress reports of the European Commission underline the importance of the right to freedom of expression in democratic societies. They criticize the articles of the Penal Code that can be used for restricting this right. However, as seen both in the progress report and the violations of Article 10, there has been a decrease in systematic restrictions in the use of this right.

#### ***4. 4. 12. Article 11: Freedom of Assembly and Association***

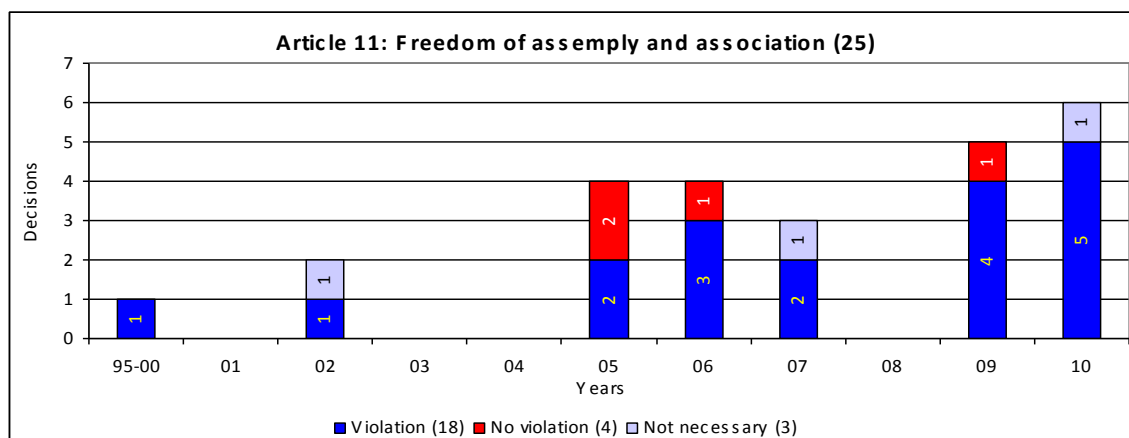
Article 11 of the Convention states that;

- (1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for protection of his interests.
- (2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.<sup>11</sup>

Turkey is a party of 25 cases before the ECtHR including this article (Table 20).

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<sup>11</sup> Article 11 of the ECHR.



**Table 20.** Article 11: Freedom of assembly and association

There is only one violation decision between 1995 and 2000. There are one violation and one not necessary to examine decisions in 2002. There are two violation and two no violation decisions in 2005; three violation and one no violation decisions in 2006; and two violation and one not necessary to examine decisions in 2007. As for 2009 and 2010, there are four violation and one no violation decisions in 2009; and five violation and 1 not necessary to examine decisions in 2010.

With regard to the years of violations, the study has found that there has been no violation since 2005. There were 2 violations in 1994, one violation in 1997, 2 violations in 1998, and one violation in 2000. From 2001 to 2004 there were 3, 3, 2, and 3 violations respectively. Finally, there was only one violation in 2005.

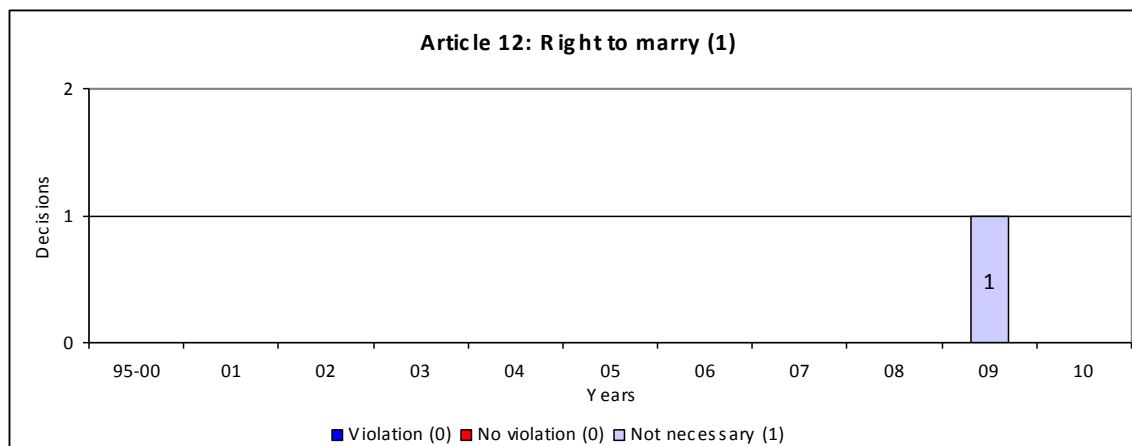
Progress reports emphasize the lifted restrictions in the right to freedom of assembly and association. They point out the increase in the numbers and members of assemblies, trade unions, and such associations.

#### ***4. 4. 13. Article 12: Right to Marry***



According to Article 12 of the Convention, “men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.”<sup>12</sup>

The ECtHR held only one case (**16064/90**) against Turkey including the allegation of violation of this right.



**Table 21.** Article 12: Right to marry

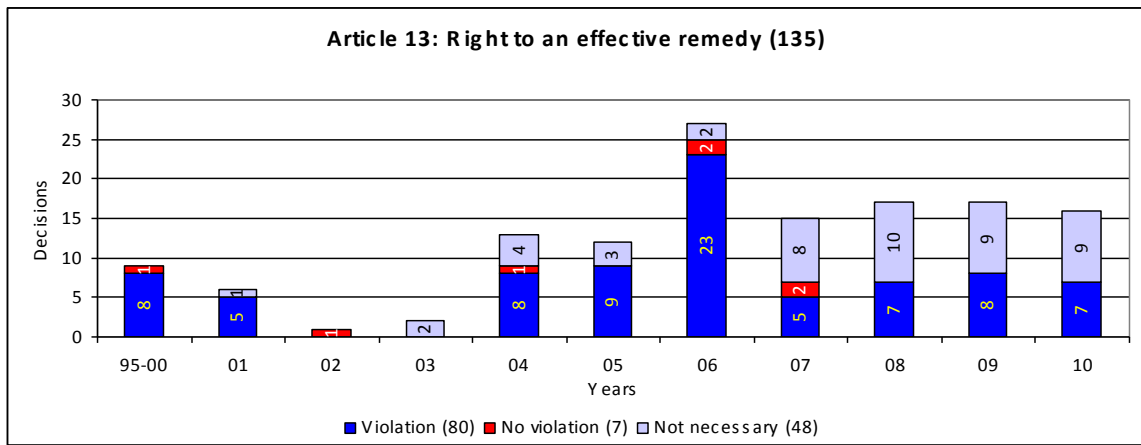
Applicants, 18 Cypriot nationals, applied to the Court with the allegation of violations of Articles 2, 3, 4, 5, 6, 8, 10, 12, 13, and 14 of the Convention in 1990. The Court held on September 18, 2009 that there was a violation of Articles 2, 3, and 5, but it was not necessary to examine the Articles 4, 6, 8, 10, 12, 13, and 14.

#### ***4. 4. 14. Article 13: Right to an Effective Remedy***

Article 13 of the Convention protects the rights of individuals who are subject to violations according to the ECHR. The article states that “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by

<sup>12</sup> Article 12 of the ECHR.

persons acting in an official capacity.”<sup>13</sup> As expressed in the article, if an individual whose rights are under protection of the Convention is supposed to get an effective remedy immediately, even in the event that his right is violated by an officer or an institution. Therefore, applications regarding this article are accompanied with allegations of violations of other articles especially Articles 2, 3, 5, and 6 of the Convention and Article 1 of Protocol 1. Turkey is subject to 135 cases concerning this article (Table 22).



**Table 22.** Article 13: Right to an effective remedy

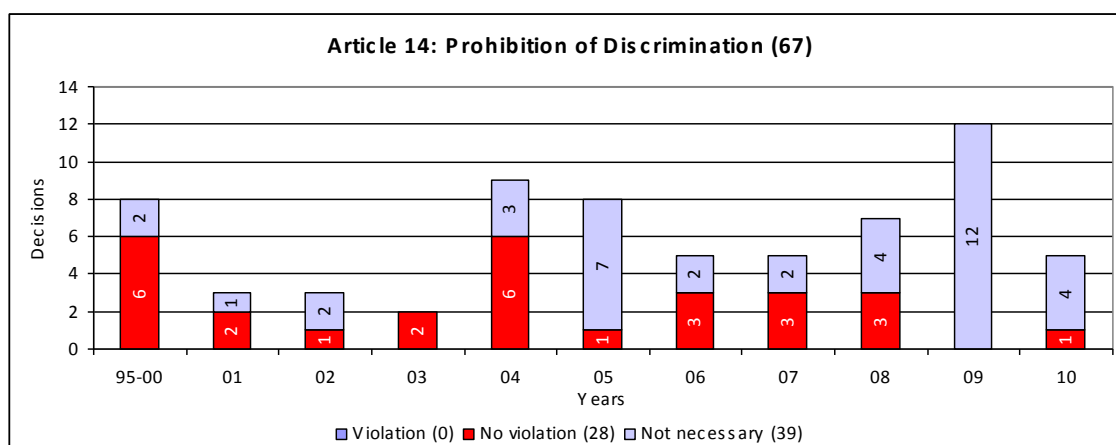
Of these 135 cases, there are 80 violation decisions, 7 no violation decisions, and 48 not necessary to examine decisions. According to the judgments of the Court, there are 8 violation decisions in period of 1995-2000 and 5 violation decisions in 2001. The Court does not have any violation decision in 2002 and 2003. The distribution of the violation decisions for the period from 2004 to 2010 is as follows: 8 violation decisions in 2004, 9 in 2005, 23 in 2006, 5 in 2007, 7 in 2008, 8 in 2009, and finally 7 violation decisions in 2010. Considering the application dates of the cases that resulted in violation decision, as mentioned in the case files, the study has found that one application filed in 1992 resulted in violation decision. There were 3 violations in 1993, 10 violations in 1994, 4 violations

<sup>13</sup> Article 13 of the ECHR.

in 1995, 6 violations in 1996, 3 violations in 1997, 9 violations in 1998, 8 violations in 1999, 4 violations in 2000, 8 violations in 2001, and 3 violations in 2002. The Court did not receive any application resulted in violation decision in 2003. For the following years, 6 applications in 2004, 6 applications in 2005, 4 applications in 2006, 1 application in 2007, and 1 application 2008 concluded that Turkey violated Article 13 of the Convention.

#### 4. 4. 15. Article 14: Prohibition of Discrimination

Article 14 of the ECHR stipulates a safeguard for prohibition of discrimination. The article affirms that “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”<sup>14</sup> There are 67 decisions in the cases against Turkey.



**Table 23.** Article 14: Prohibition of discrimination

None of these decisions is a violation decision. There are 28 no violation decisions and 39 not necessary to examine decisions. The study has found that most of

<sup>14</sup> Article 14 of the ECHR.

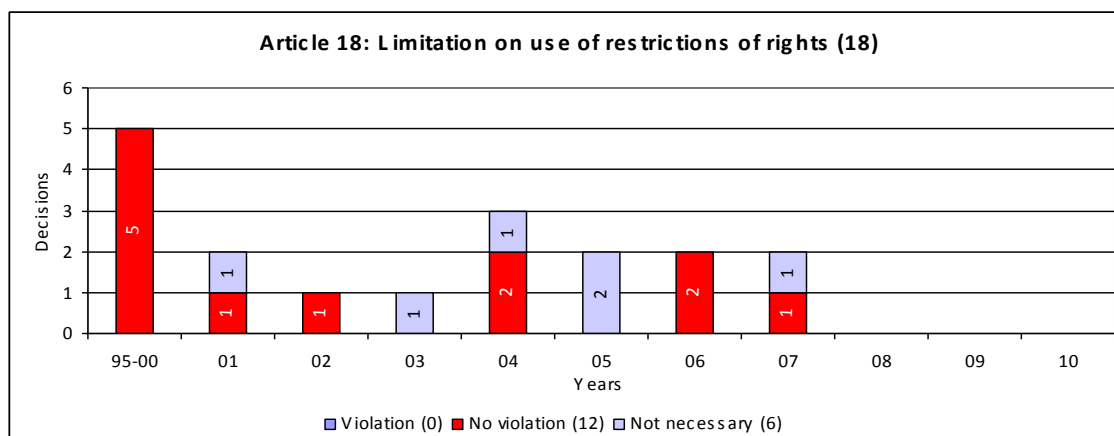
the applicants (52 percent of total applications) alleging that Turkey violated Article 14 are from Kurdish origin (35 applicants). Ten of the applications are related to allegations of Cypriot nationals largely regarding their property rights. There are 7 applications related to property rights within the Turkish territory, two of them belong to Greek churches and one belongs to an Armenian church. Finally, there are a number of applications filed by individuals as representatives and members of several political parties (e. g. Freedom and Democracy Party-OZDEP, Democracy and Peace Party-DBP, and People's Democracy Party-HADEP), newspapers and magazines (e. g. Ozgur Gundem, Yeni Evrensel, and Ozgur Evrensel), illegal organizations (e. g. the Kurdistan Workers Party-PKK, and Communist Labor Party of Turkey/Leninist-TKEP/L) and foreign nationals (one individual from Iceland, and members of an Iraqi family). All these applications are filed along with allegations of violations of other articles, such as Article 2, 3, 5, 6, 8, 10, and 11 of the Convention and Article 1 and 2 of Protocol 1. The applicants' allegations are based on the fact that Turkey violated their rights that are protected under the provisions of mentioned articles; also they were subjected to discrimination. However, the ECtHR has had no violation decision on these cases.

#### ***4. 4. 16. Article 18: Limitation on Use of Restrictions of Rights***

Article 18 of the Convention states that "The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."<sup>15</sup> The ECtHR has presided 18 cases against Turkey with the allegations of violation of this article (Table 24).

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<sup>15</sup> Article 18 of the ECHR.



**Table 24.** Article 18: Limitation on use of restrictions of rights

There has been no violation decision among these 18 cases. The Court held in 12 cases that Turkey did not violate this article; and it found it not necessary to examine if there was a violation in 6 cases.

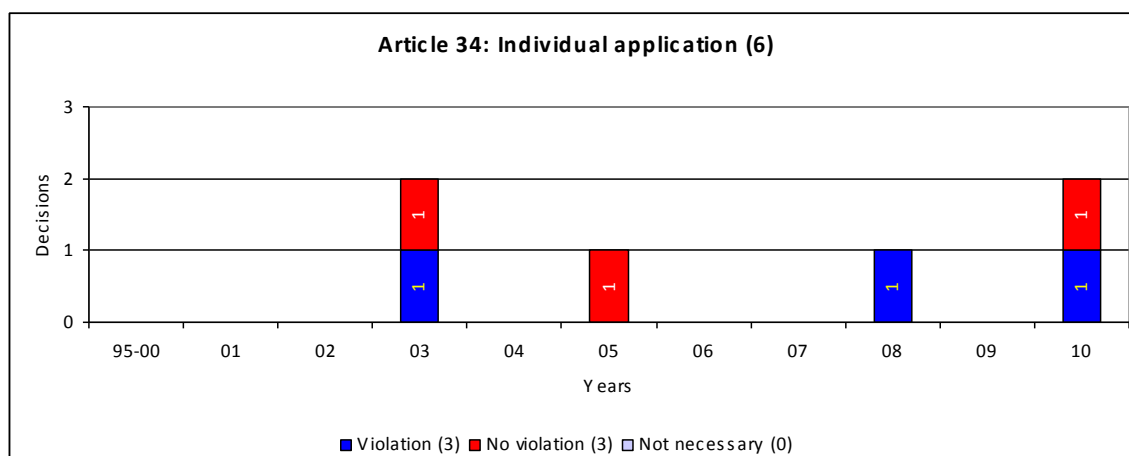
#### ***4. 4. 17. Article 34: Individual Applications***

As mentioned in the beginning of this chapter, The ECHR comprises 3 sections. The first section (from article 2 to article 18) includes the provisions regarding fundamental rights and freedoms, second section (from article 19 to article 51) is based on the establishment of the Court, and the last section (from article 52 to article 59) is consists of miscellaneous provisions. Article 34 is in Section II and regulates the right to apply to the Court in case of violation of any of the rights exist in section one. The article states that;

The Court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the right set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.<sup>16</sup>

<sup>16</sup> Article 34 of the ECHR.

The ECtHR held 6 cases against Turkey with allegations of violation of this article. It held that Turkey violated this right in 3 cases and did not violate it in 3 cases (Table 25).



**Table 25.** Article 34: Individual application

Three violation cases were held in 2003, 2008, and 2010. According to these cases, Turkey violated Article 34 of the Convention in 1999, 2005, and 2008. Applicants in each 3 cases are not Turkish nationals. Uzbek citizens in the first cases, Iraqi citizens in the second case, and an Iranian citizen in the third cases apply to the Court with the allegation that Turkey violated their right protected with Article 34 along with some other allegations.

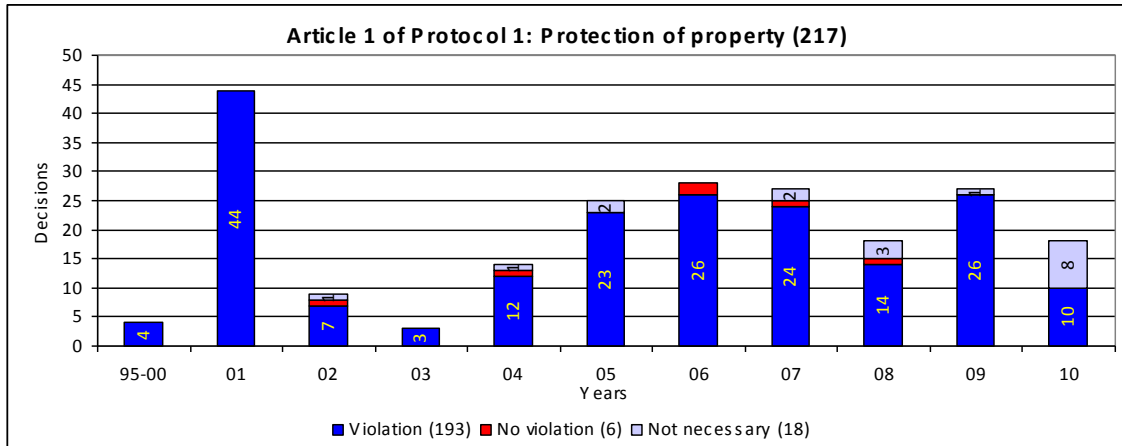
#### ***4. 4. 18. Article 1 of Protocol 1: Protection of Property***

As mentioned in the beginning of this chapter, the ECHR has six additional protocols with some amendments and supplementary provisions. Protocol 1 is one of them and has 6 articles. Article 1 of this Protocol states that;

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.<sup>17</sup>

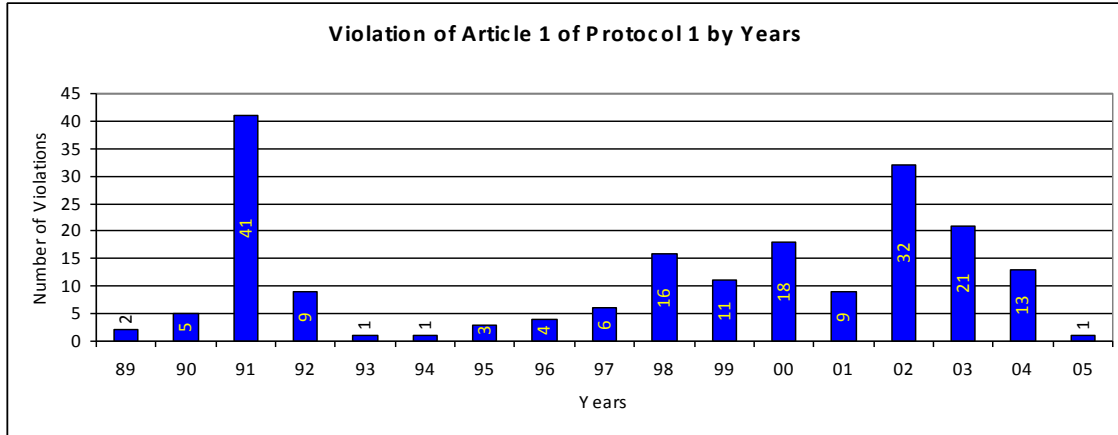
The ECtHR has held 217 cases with regard to this article. Turkey violated this article in 193 cases, and did not violate it in only 6 cases. The Court has 18 not necessary to examine decisions in 217 cases (Table 26).



**Table 26.** Article 1 of Protocol 1: Protection of property

The distribution of cases resulted in violation decisions is as follows: 4 between 1995 and 2000, 44 in 2001, 7 in 2002, 3 in 2003, 12 in 2004, 23 in 2005, 26 in 2006, 24 in 2007, 14 in 2008, 26 in 2009, and 10 in 2010. As Table 27 demonstrates, the study has found that the years of applications that were resulted in violation decisions range from 1989 to 2005.

<sup>17</sup> Article 1 of Protocol 1.



**Table 27.** Distribution of Article 1 of Protocol 1 cases with violation decision

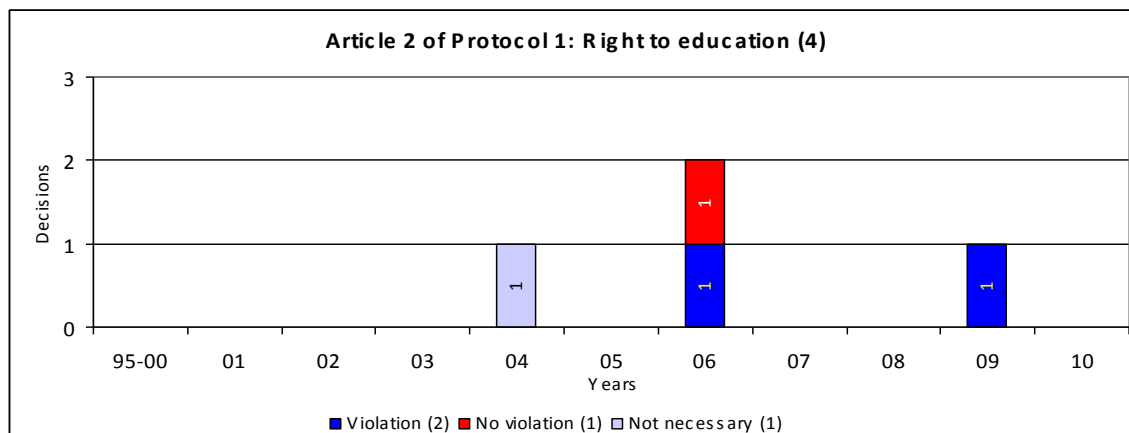
According to the findings of the study, there were 2 applications in 1989 in which the Court found a violation. The numbers of applications that resulted in violation decision of the Court for the period from 1990 to 2005 are as follows: 5 in 1990, 41 in 1991, 9 in 1992, 1 in 1993, 1 in 1994, 3 in 1995, 4 in 1996, 6 in 1997, 16 in 1998, 11 in 1999, 18 in 2000, 9 in 2001, 32 in 2002, 21 in 2003, 13 in 2004, and 1 application in 2005.

Most of the applications regarding this article are filed along with allegations of violation of Article 6 of the Convention. Therefore, applicants in most of these cases allege that their fair trial rights are violated as well as their property rights. The applicants apply to the national courts, first, upon an alleged unlawful expropriation exercise. Since the cases take long due to work load in the Turkish judicial system, they carry their allegations to the ECtHR. Finally, the Court makes a judgment on both Article 6 of the Convention and Article 1 of Protocol 1. In most of the cases, the Court holds that there is a violation of Article 1 of Protocol 1, but finds it not necessary to examine the allegations about Article 6 of the Convention.

#### ***4. 4. 19. Article 2 of Protocol 1: Right to Education***



This article comprises the provision of “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”<sup>18</sup> The ECtHR held 4 cases against Turkey regarding this article (Table 28).



**Table 28.** Article 2 of Protocol 1: Right to education

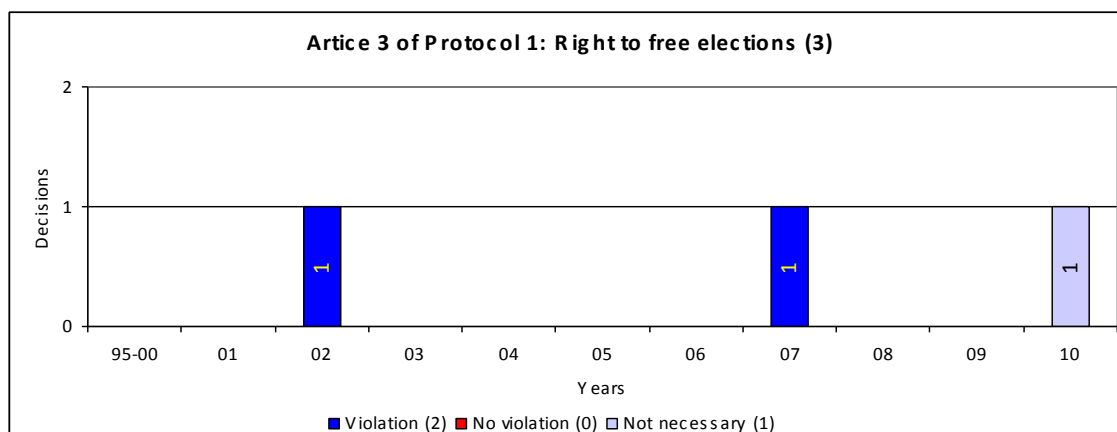
The Court has 2 violation, 1 no violation, and 1 not necessary to examine decisions. According to the case files, the violations took place in 1997 and 2002.

#### ***4. 4. 20. Article 3 of Protocol 1: Right to Free Elections***

This article states that “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”<sup>19</sup> There are 3 studied cases regarding this article. Two of them resulted with violation decision and the other with not necessary to examine decision (Table 29).

<sup>18</sup> Article 2 of Protocol 1.

<sup>19</sup> Article 3 of Protocol 1.



**Table 29.** Article 3 of Protocol 1: Right to free elections

The study has found that Turkey violated this article in 1994 and 2002.

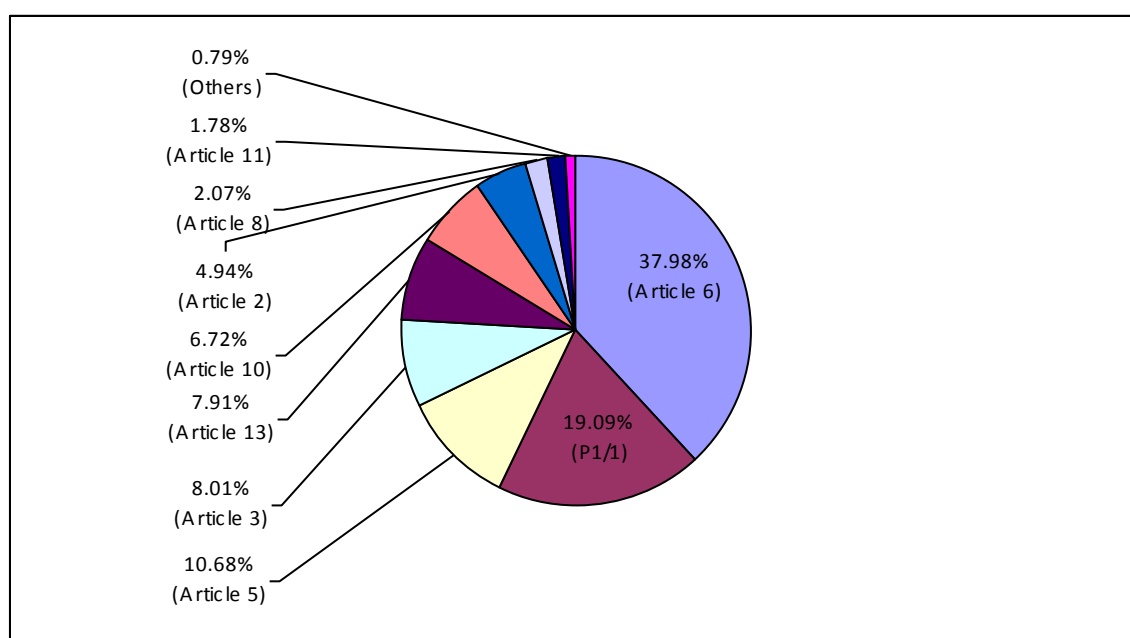
#### 4. 5. Conclusion

This part of the study was based on the examination of applications and decisions against Turkey before the ECtHR. According to the findings of the study applications against Turkey were filed with the allegations of violation of Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 18, and 34 of the Convention, and Articles 1, 2, and 3 of Protocol 1. In addition to this, the study has disregarded 72 applications because of the Court's friendly settlement and striking out judgments.

The ECtHR made 1,538 decisions on the studied 863 cases. Disregarding the 72 decisions, the study has found that there are 1,011 violation decisions, 144 no violation decisions, and 311 not necessary to examine decisions.

Violations regarding Article 6 of the Convention constitute the largest portion (37.9 %) of the total violations (Table 30). The vast majority of the applications (87.8 %) and violation decisions (91.1 %) among the sections of Article 6 are related to Article 6 § 1. Four hundred and forty nine decisions, of which 350 violation, 3 no violation, and 96 not necessary to examine, were held on Article 6 § 1. Primary allegations concerning this article are lack of independence and impartiality of the courts, particularly the State

Security Courts, and the length of criminal proceedings in Turkey. The ECtHR convicted Turkey of violating the right of a fair trial because of the length of proceedings, although the average length of a case before the ECtHR was 6.5 years. As mentioned in Section 4.4.7, in the case 54673/00 the Court held that Turkey violated Article 6 § 1 for not finalizing the criminal proceeding within a reasonable time. According to the case file, the process in Turkey started on March 4, 1993 and ended on June 7, 1999. In other words, it lasted 6 years and 3 months. According to the Court's judgment it was a violation of fair trial. However, the Court itself finalized the case in 6 years and 2 months. The application was filed on November 26, 1999 and the Court held the final judgment on February 2, 2006.



**Table 30.** Violation decisions by article

Second largest portion of the violations belongs to the Article 1 of Protocol 1 with 193 violation decisions (19 % of all violation decisions). The Court has 6 no violation, and 18 not necessary to examine decisions (total 217 decisions) on this article. Most of the applications regarding this article come from individuals who were displaced after the

1974 Cyprus Operation of the Turkish Army and the ones whose land and buildings are subject to expropriation due to road and dam constructions within Turkey.

There are 108 violation (10.6 % of all violation decisions), 13 no violation, and 11 not necessary to examine decisions on Article 5 of the Convention. Details of these violations will be examined in Chapters 5, 6, and 7; so, this section simply comprises statistical findings.

Article 5 is followed by Article 3 with 81 violation (8 % of all violation decisions), 35 no violation, and 6 not necessary to examine decisions. The following chapters will include detailed information on Article 3 violations.

The study has found that Turkey violated Article 13 of the Convention 80 times (7.9 % of all violations). The Court has 7 no violation and 48 not necessary to examine decisions. Most of the applications concerning Article 13 (right to an effective remedy) were filed by the victims/applicants of Articles 2, 3, 5 violations.

Although the European Commission harshly criticizes restrictions on and violations of the freedom of expression (Article 10 of the Convention) in the progress reports, the study has found that the Court has received 84 applications regarding this article. Of these applications, the Court found 68 violations (6.7 % of all violation decisions). It has 2 no violation decisions and 14 not necessary to examine decisions.

Article 2 violations, which will *in extenso* be examined in the next chapter, constitute 4.9 % of all violation decisions of the Court. The Court received 71 applications with the allegation of violation of Article 2 and held in 50 of them that there was a violation. It found no violation in 12 cases and found it not necessary to examine in 9 cases.

The court has 21 (2 % of all violation decisions) and 18 (1.7 of all violation decisions) violation decisions with regard to Articles 8 and 11 of the Convention, respectively. The study found very few violation decisions concerning the other articles of the Convention (0.7 % of all violation decisions).

## 5. VIOLATIONS OF THE SECURITY FORCES

The previous chapter examined Turkey's cases before the ECtHR falling under the scope of 19 different articles. This chapter will demonstrate details of violations which were intentionally committed by the security forces. Because of their duties and responsibilities the security forces were involved in certain violations as described in Articles 2, 3, and 5 of the Convention. These articles regulate the right to life, prohibition of torture and right to liberty and security. In fact, as the Court decisions disclosed, the security forces not only violated the rights described in these articles, but also several others like the right to private and family life (Article 8 of the Convention) and protection of property (Article 1 of Protocol 1) as in the examples of cases **42569/98** (violation of Article 8 by the police in Ankara in 1997), and **25760/94** (violation of Article 1 of Protocol 1 by the gendarmerie in Diyarbakir in 1994). However, the study found that the number of such cases was quite low (only three Article 8 violations of the police forces and two violations of Article 1 of Protocol 1 of the gendarmerie forces). Additionally, these violations were not directly related to the responsibilities of the security forces arising from their duties. Therefore, the study ignored such violation decisions and focused only on the articles which define the rights that are principally violated by the security forces while performing their duties with the power coming from the law.

In this respect, while the previous chapter basically put forth a statistical evaluation of all cases of Turkey concerning nineteen articles, this chapter will only investigate the cases of violations bearing upon the security forces. It will provide an in-depth analysis of violations of police and gendarmerie forces by years and locations. The following chapters, based on the findings of this chapter, will illustrate similarities and

differences between the violations of different branches of security forces and disclose professional problems with the implementation of security services in Turkey. Additionally, facts concerning unknown killings in a particular part of the country during a particular period of time will be discussed in the following sections of this chapter. In an effort to build a lucid organizational framework, the following three chapters are structured as follows. This chapter will define the three articles the ECHR addresses. It will also apply this approach to other international documents to spell out how these rights became universal. Then, it will represent the overall situation in Turkey in terms of violations of these rights as handled by the ECtHR. Finally, it will focus on the specific violations of the police and gendarmerie forces as well as the violations emerging from the cases of unidentified perpetrators. In Chapter 6 the analysis of the study will be based on the density, structure, and content of the violations. It will focus on where and when the violations have been intensified, how the Court has assessed the cases in terms of the nature of the violations, and how the target population of the violations can be categorized. As another important issue to discuss, the study will indicate professional problems that may emerge while the security forces perform their duties in Chapter 7. The chapter will also disclose the phenomenon of unknown killings and the facts emerging out of this phenomenon for those reported during certain years within the study period.

### **5. 1. Article 2 of the Convention: The Right to Life**

This section is based on violations of Article 2 of the Convention. After providing an overall definition of the right to life in the light of the ECHR and other international documents, the section will detail violations of this right in Turkey. Finally, it will focus

on those violations involving the security forces (police and gendarmerie) and violations committed by unidentified perpetrators.

### ***5. 1. 1. The Scope of the Article***

The right to life is the most fundamental human right. Principal documents describing human rights and generating a human rights regime place emphasis on this right. The 1948 Universal Declaration of Human Right (UDHR) states, “Everyone has the right to life, liberty and security of person.”<sup>1</sup> Similarly, the 1966 International Covenant on Civil and Political Rights (ICCPR) holds that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”<sup>2</sup> The United States Declaration of Independence also mentions this right as a fundamental human right: “... all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are life, liberty and the pursuit of happiness.”<sup>3</sup>

The right to life constitutes the first right in Section I –the section including provisions on rights and freedoms of individuals- of the European Convention on Human Rights. Article 2 of the Convention states that:

- (1) Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- (2) Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary;
  - a) in defense of any person from unlawful violence;
  - b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - c) in action lawfully taken for the purpose of quelling a riot or insurrection.<sup>4</sup>

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<sup>1</sup> Article 3 of the Universal Declaration of Human Rights.

<sup>2</sup> Article 6 of the International Covenant on Civil and Political Rights.

<sup>3</sup> United States Declaration of Independence.

<sup>4</sup> Article 2 of the European Convention on Human Rights.



Although this article includes a provision for the death penalty, supplementary protocols of the Convention have outlawed this provision. Protocol 6 abolished the death penalty except for times of war or of imminent threats of war. Protocol 13 of the Convention abolished the death penalty under any circumstance.

### ***5. 1. 2. Violation of Article 2 in Turkey***

International conventions and the ECHR attach particular importance to the right to life. This right is also protected by law in Turkey according to the provisions of related domestic legislative documents. The relevant article of the Penal Code states that any person who intentionally kills another shall be sentenced to life imprisonment.<sup>5</sup>

As the previous chapter revealed, 71 of the 863 studied cases before the ECtHR against Turkey included allegations of violations of Article 2 of the Convention. The Court concluded in 50 of these cases that Turkey had violated this article. It found “no violation” in 12 cases, and found the applications “not necessary to examine” in nine cases. Focusing on 50 cases that resulted in violation decisions, the study found that there was one violation in 1991, there were three violations in 1992, six violations in 1993, thirteen violations in 1994, three violations in 1995, nine violations in 1996, three violations in 1997, three violations in 1998, four violations in 1999, one violation in 2000, and three violations in 2001. The Court also has one violation decision on an application, which was filed in 1990 (16064/90), that implied Turkey violated this article in 1974 during its military operation in Cyprus.

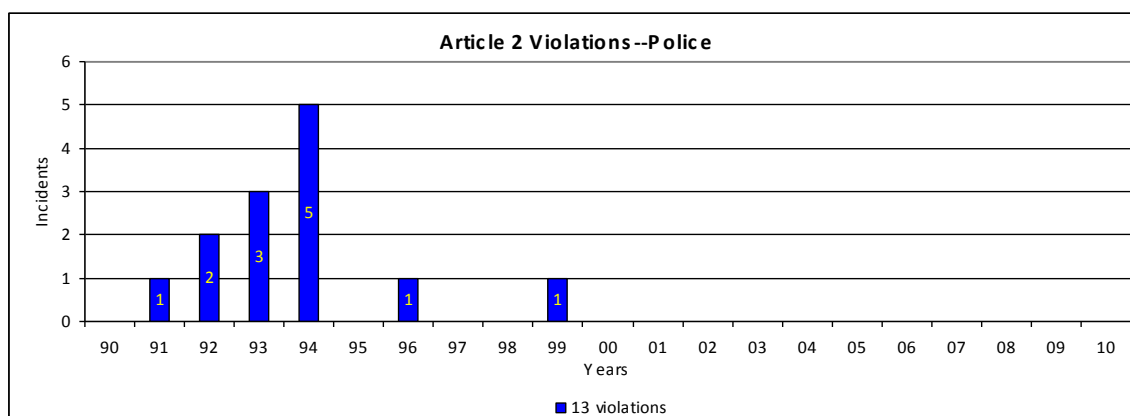
This section will provide an in-depth analysis of these violations. It will examine the geographical and temporal distribution of the violations. Additionally, it will clarify the perpetrators of these violations and whether they have any links to official security

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<sup>5</sup> Article 81 of the Turkish Penal Code.



This part of the study will examine violation decisions of the ECtHR which comprised violations of the police forces. The study revealed that thirteen of the Court's decisions were based on violations that were committed by the police. The police violations took place between 1991 and 1999 (Table 31).



**Table 31.** Violations of the police forces by years

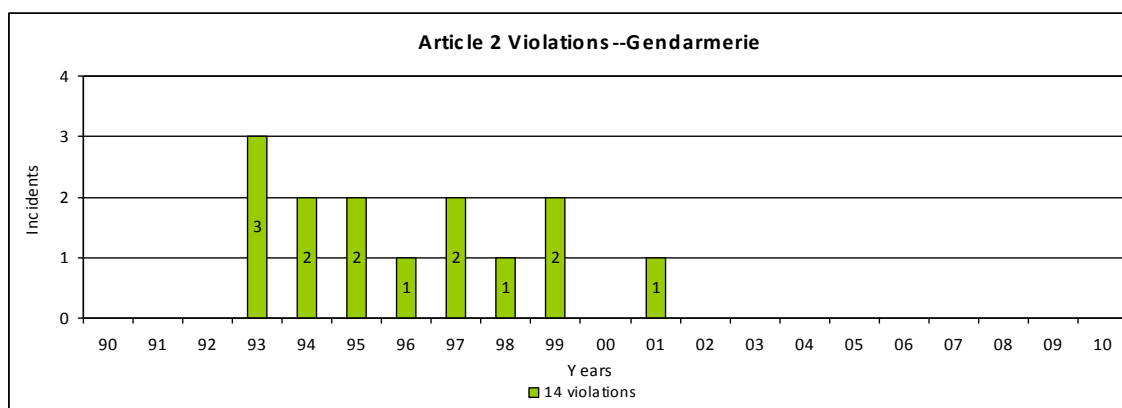
There has been no violation since 1999. There was one violation 1991. There were two violations in 1992, three violations in 1993, and five violations in 1994. According to the findings of the study, there were no violations in 1995, 1997, and 1998. There was one violation in 1996, and one violation in 1999.

With regard to the distribution of violations by cities, the study found that the police violated this article mostly in Istanbul. The police were involved in six Article 2 violations in Istanbul. There were 2 violations in Adana. There was one violation in each of the following cities: Agri, Ankara, Diyarbakir, Mus, Sanliurfa, and Sirnak.

#### ***5. 1. 4. Evaluation of Gendarmerie Violations***

The previous section provided superficial information about the numbers and distribution of the police violations examined in this study. This section will, now, examine violations of the gendarmerie forces following the same structure. This study investigator will provide a detailed analysis of these violations and other articles, in the

subsequent chapters. According to the findings of the study the gendarmerie forces were involved in 14 violations of the right to life. As Table 32 demonstrates, the gendarmerie violations took place between 1993 and 2001, which is almost the same period as the police violations had taken place.



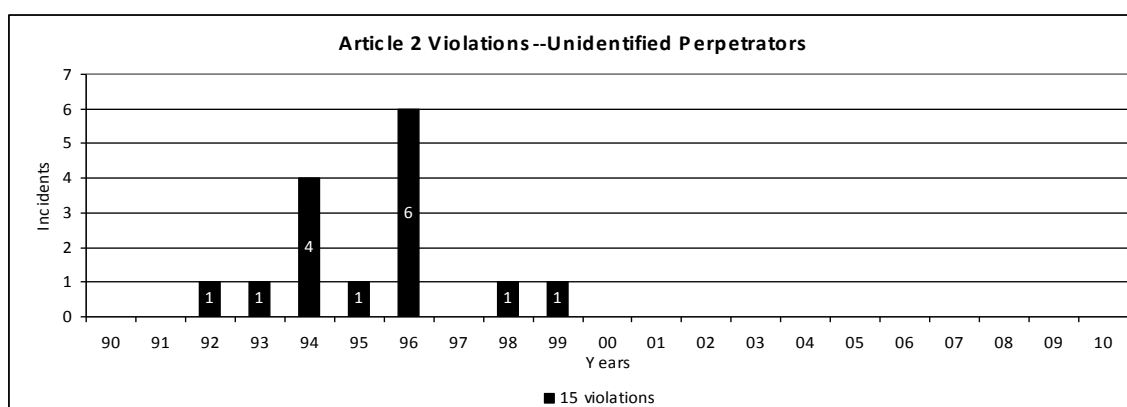
**Table 32.** Violations of the gendarmerie forces by years

The study found that the gendarmerie forces were involved in three violations in 1993, two violations in 1994, two violations in 1995, one violation in 1996, two violations in 1997, one violation in 1998, two violations in 1999, and one violation in 2001. The study did not find any gendarmerie violations in 2000. Furthermore, as the study revealed there had been no Article 2 violations of the gendarmerie since 2001.

As to the geographical distribution of these violations, the study found that most of the gendarmerie violations took place in the eastern city of Diyarbakir. The study found five violations in Diyarbakir. Diyarbakir is followed by some other eastern cities: three violations in Sirnak, two violations in Tunceli, and one violation in Van. The gendarmerie forces violated the right to life in once in each of the following cities: Amasya, Sivas, and Tokat, which are located in mid-Turkey.

#### ***5. 1. 5. Evaluation of Violations of Unidentified Perpetrators***

As the previous two sections put forth, the security forces in Turkey were involved in thirty seven Article 2 violations. In addition to the violations of the police and gendarmerie forces, the study found among the cases before the ECtHR that there had been a considerable number of violations which had not been committed by the official agents of the state, but some “unknown” perpetrators. The study classified these violations under the category of “violations of unknown perpetrators.” The study did not find a significant difference between the time periods of these violations and the others which were discussed in the previous sections. The violations under this category took place between 1992 and 1999 (Table 33).



**Table 33.** Violations of unidentified perpetrators by years

The study found one violation in 1992, one violation in 1993, four violations in 1994, one violation in 1995 and six violations in 1996. According to the findings of the study, there was no violation in 1997. Finally, there was only one violation in 1998 and one violation in 1999. Similar to the police violations, the study has not come across any violation since 1999.

Considering the locations of Article 2 violations committed by the unidentified perpetrators, the study revealed that Diyarbakir was the center of these violations. There were nine violations in Diyarbakir. Two other southeastern cities witnessed three

violations; two in Sirnak and one in Sanliurfa. One violation took place in Istanbul and another in Kahramanmaras. The study also found a violation in which the relative of applicant disappeared while he was traveling from Istanbul to Edirne. According to the allegations of the applicant and other documents in the case file, the exact point of the violation could not be clarified. The study considered this violation to have been committed in Edirne.

#### ***5. 1. 6. Other Violations***

The goal of the study was to discover whether there has been an increase or decrease in the human rights violations of the security forces during the European Union harmonization process of Turkey. In this respect, the study for the most part paid attention to the rights which are defined in Articles 2, 3, and 5 of the ECHR. Coding and data analysis processes revealed that the ECtHR found 50 Article 2 violations in Turkey. Forty two of these violations were classified in the previous sections as violations of the police, gendarmerie and unidentified perpetrators. Apart from these categories, the study found eight additional violations, which did not match any of these categories. This section will briefly mention these violations, but not analysis of the violations will be presented, since these have not been counted in any of the categories of the committers.

Five of these violations took place during the fulfillment of compulsory military service. The ECtHR found procedural violations in all these cases. While the applicants alleged their relatives were killed by their superiors or died accidentally due to carelessness and negligence. They also complained that the cases had not been investigated effectively by the military inspectors and prosecutors. On the contrary, the

government maintained that there had not been intentional killings in those cases, but the relatives of applicants committed or attempted to commit suicide.

The study found two violations which were allegedly committed by a combination of actors. The first, took place in Diyarbakir Prison on September 24, 1996. Authorities deployed a group of police officers from the rapid response team to reinforce the gendarmerie and prison guards in order to control a riot. During the operation, eight prisoners died, 33 prisoners and 27 gendarmerie officers were wounded. Applicants, who were injured prisoners and relatives of the deceased, applied to the ECtHR and complained about the excessive use of force, which was not absolutely necessary in this case. The Court found that there had been a violation of Article 2 of the Convention. In the other case, which took place in Diyarbakir on April 21, 1994, a group of village guards abducted the relative of applicants and took him to the Saraykapi gendarmerie station.<sup>6</sup> Then, the body of the person was found next to the Diyarbakir-Silvan highway on the May 7<sup>th</sup>. At the end of the judicial proceedings, one of the village guards was sentenced to 20 years imprisonment for intentionally killing, and the others to six years and eight months. The ECtHR found Turkey guilty for violating Article 2 of the Convention. The last violation decision of the Court was based on the incidents that took place during the 1974 Cyprus Operation of the Turkish Army.

## **5. 2. Article 3 of the Convention: Prohibition of Torture**

As mentioned repeatedly, this study intended to discover how trends of human rights violations of the security forces changed in Turkey during the course of the EU

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<sup>6</sup> There will be detailed information about this station in Chapter 7 while analyzing the violations of unidentified perpetrators. In fact, this case could be assessed as a violation of the gendarmerie forces or unidentified perpetrators. However, since the case file did not include consistent information to code the case under one of these categories, the study put this case under the category of other violations.

process. In order to measure this change it focused on three particular rights mentioned in the ECHR. The study's focus has, thus far, been on the violation of the right to life which is described in Article 2 of the Convention. There were 50 violation decisions of the Court concerning Article 2 of which 13 were committed by the police, 14 by the gendarmerie and finally 15 were committed by unidentified perpetrators. In addition to these violations, there were eight additional violations, but the study did not link these with any of the previously mentioned perpetrators.

This section will follow the same format in order to scrutinize violations of Article 3 of the Convention. Its goal is to demonstrate trend in Article 3 violations of the security forces in Turkey. It will first address the context of the right as the ECHR handles this and the international dimension of the right to be free from torture and inhuman or degrading treatment. Then, it will describe the situation in Turkey according to the cases before the ECtHR. The classification of the data in this section will constitute the key component of the analysis which will be presented in the following chapters.

### ***5. 2. 1. The Scope of the Article***

This article regulates individuals' right to be safe from being subject to torture. The text of the article does not only include the concept of torture, but also covers inhuman or degrading treatment and punishment. It reads, "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."<sup>7</sup>

The prohibition of torture is also mentioned in and outlawed by other conventions. Universal Declaration of Human Rights, for instance, states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."<sup>8</sup>

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<sup>7</sup> Article 3 of the European Convention on Human Rights.

<sup>8</sup> Article 5 of the Universal Declaration of Human Rights.



Similarly, International Covenant on Civil and Political Rights points out that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”<sup>9</sup> There is another UN document in the matter of torture that it includes the detailed definition of torture, measures to be taken by the signatories, and requirements for investigation and prosecution of allegations of torture or inhuman treatment. The Convention against Torture, officially the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, defines torture as

“... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”<sup>10</sup>

Therefore, according to the provision of the Convention, torture, inhuman or degrading treatment may only be performed by a public official or a person with an official capacity. Furthermore, effects of a lawful sanction, such as pain or suffering, may not be considered as torture.

The Convention against Torture requires the states to take effective measures to prevent torture. It holds that each party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances may be invoked as a justification to torture. Superiors or a public authority’s order may not be invoked as justification of torture.<sup>11</sup> It, additionally,

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<sup>9</sup> Article 7 of the International Covenant on Civil and Political Rights.

<sup>10</sup> Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>11</sup> Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

requires the states to make all acts of torture illegal under their criminal laws. These offences shall be punishable by appropriate penalties considering the serious nature of them.<sup>12</sup> The Convention against Torture also requires the states to investigate and prosecute all allegations of torture and to carry out any civil proceedings required against the suspects of torture offences.<sup>13</sup>

### ***5. 2. 2. Violation of Article 3 in Turkey***

The European Convention on Human Rights, as well as previously mentioned international conventions, placed emphasis on the offences of torture and inhuman or degrading treatment or punishment. These offences, at the same time, fall under the scope of the Turkish Penal Code. Article 94 of the Penal Code states, “A public officer who performs any act towards a person that is incompatible with human dignity, and which causes that person to suffer physically or mentally, or affects the person’s capacity to perceive or his ability to act of his own will or insults them shall be sentenced to penalty of imprisonment for a term of three to twelve years.”<sup>14</sup> Therefore, the national law of Turkey is in line with the provisions of the ECHR and other international standards.

As Chapter 4 classified the cases of Turkey before the ECtHR, the Court presided in 122 cases against Turkey concerning Article 3 of the Convention. The Court held in 81 of these cases that Turkey had violated this article. It found “no violation” in 35 cases and found the allegations “not necessary to examine” in six cases. This chapter will focus on details of the 81 violation decisions of the Court. The distribution of these violations by year as follows: one violation occurred in 1992, eight violations occurred in 1993, five

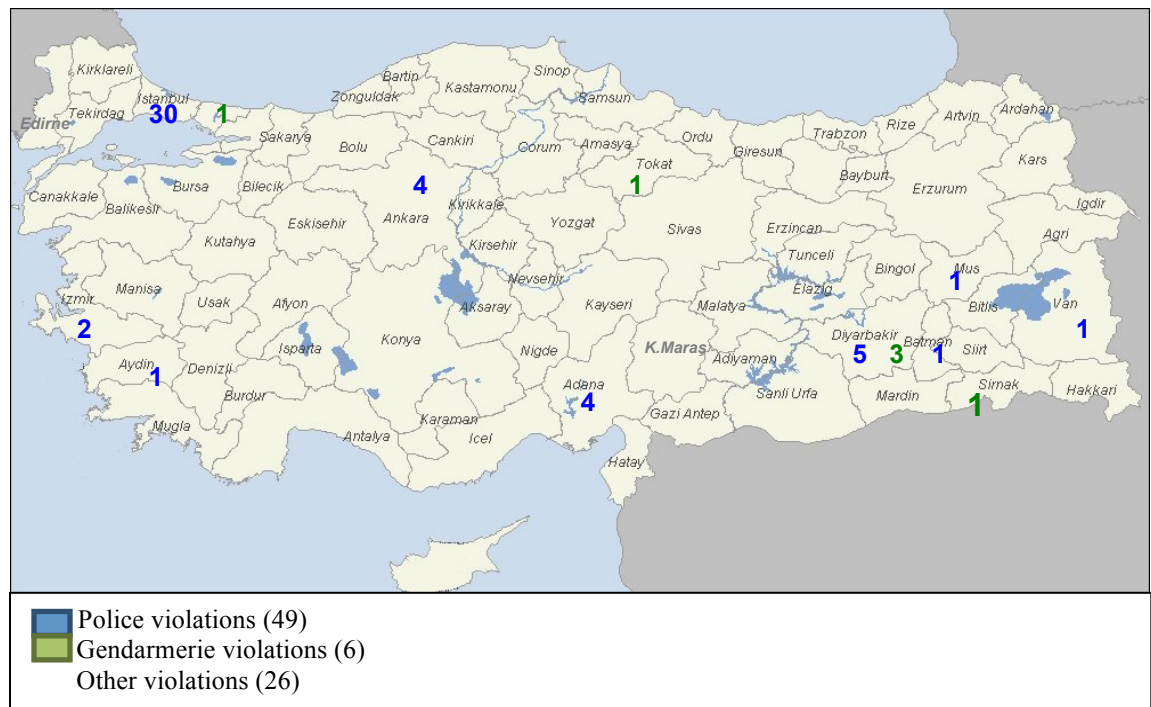
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<sup>12</sup> Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>13</sup> Articles 6 and 9 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>14</sup> Article 94 of Turkish Penal Code.

violations occurred in 1994 and 1995, six violations occurred in 1996, three violations occurred in 1997, four violations occurred in 1998, six violations occurred in 1999 and 2000, nine violations occurred in 2001, six violations occurred in 2002, five violations occurred in 2003, one violation occurred in 2004, two violations occurred in 2005, one violation occurred in 2006, one in 2007, and one in 2009. In addition to these violations, the study found eleven more violations where dates had not been coded since they were classified as ‘other’ violations. The details of these violations will be discussed in the next chapter; this section will only give brief information about them (Figure 3).



**Figure 3.** Distribution of Article 3 violations in Turkey

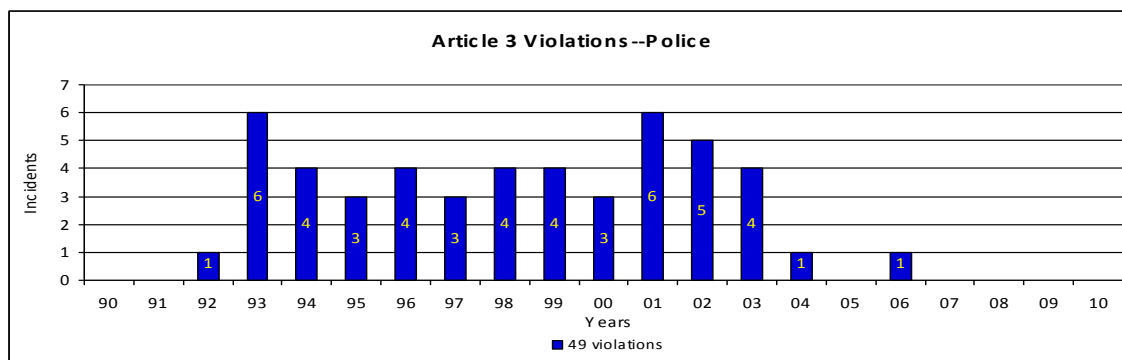
In terms of locations of the violations the study found that most of the violations took place in Istanbul. There were 32 violations in Istanbul. Locational distribution is as follows: nine violations took place in Diyarbakir, five occurred in Izmir, four violations occurred in Ankara, four took place in Adana, two violations occurred in Kocaeli, and one violation took place in each of the following cities; Aydin, Mus, Tekirdag, Tokat,

Van, Batman, and Sirnak. There were an additional eleven “other” violations, five violations coded as “justice system,” and two violations related to the fulfillment of “military service” that were not coded according to their locations.

Examining the context of the Court’s violation decisions concerning Article 3 of the Convention, the study discovered that the police were involved in 49 violations. The gendarmerie forces were subject to only six violations. The remaining 26 cases included various actors according to the coding criteria of the study such as the “justice system,” “military service,” joint violations of the “police and gendarmerie,” “police, gendarmerie and prison guards,” and “gendarmerie and prison guards.”

### ***5. 2. 3. Evaluation of Police Violations***

In this section, the study will discuss Article 3 violations of the police forces. Before providing details of the violations, it will call attention to a salient fact that there is a significant distinction between the numbers of the Article 2 and Article 3 violations of the police forces. As the relevant section disclosed, the Court found 13 police violations of Article 2. However, according to the findings of this section, the Court had 49 violation decisions recorded regarding Article 3 of the Convention. These violations of the police forces took place between 1992 and 2006 (Table 34).



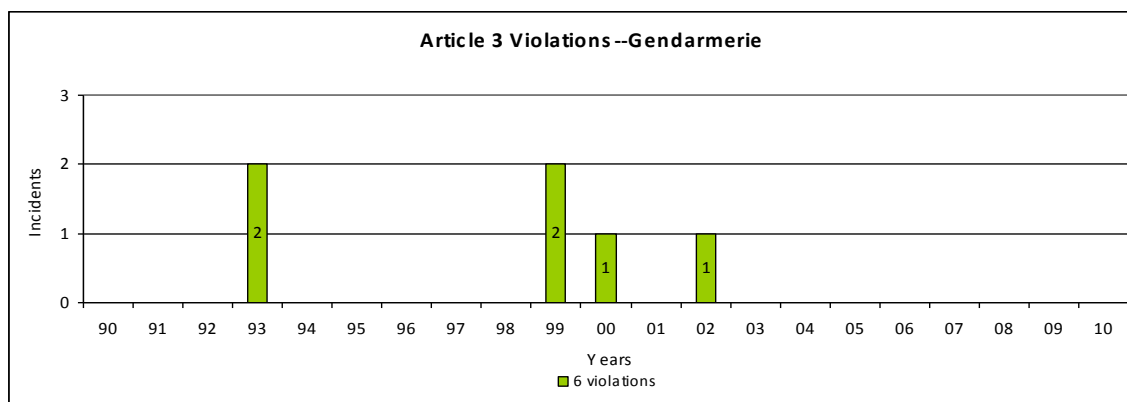
**Table 34.** Violations of the police forces by years

The vast majority of the violations took place between 1993 and 2003. The study did not find any violations after 2006. There was one violation in 1992, 2004 and 2006. Numbers of violations for other years were recorded as follows: there were six violations in 1993, four violations in 1994, three violations in 1995, four violations in 1996, three violations in 1997, four violations in 1998, four violations in 1999, three violations in 2000, six violations in 2001, five violations in 2002, and four violations in 2003.

As to the distribution of the violations in terms of cities, the study discovered that most of the police violations took place in Istanbul. There were 30 violations in Istanbul. Other cities that witnessed police violations were Diyarbakir with five violations, Adana and Ankara with four violations, Izmir with two violations, and Aydin, Mus, Van, and Batman with one violation.

#### ***5. 2. 4. Evaluation of Gendarmerie Violations***

As the previous section found a significant difference between the numbers of the Article 2 and Article 3 violations of the police forces with a considerably high number of Article 3 violations, this section also discovered a difference between the numbers of Article 2 and Article 3 violations of the gendarmerie forces, as well. However, this showed a downward trend. It was evident that the gendarmerie forces were involved in considerably lower number of Article 3 violations compared to their Article 2 violations. While the Court found 14 cases of Article 2 violations regarding the gendarmerie forces, it found only six cases of Article 3 violations were carried out by these forces (Table 35).



**Table 35.** Violations of the gendarmerie forces by years

These violations took place between 1993 and 2002. The study found two violations in 1993, two violations in 1999, one violation in 2000 and, finally, one violation in 2002. There has been no violation since 2002 bearing upon the gendarmerie forces.

As to the locations of the violations, the eastern provinces can be considered as the center of the violations similar to the Article 2 violations of the gendarmerie. Four of six violations took place in the eastern cities of Diyarbakir and Sirnak, three in the former and one in the latter. There was one violation in Tokat, which is a city located in mid-Turkey, and one violation in Istanbul.

#### **5. 2. 5. Other Violations**

The study coded these violations according to their perpetrators. Although the goal of the study was to demonstrate violations of the security forces, it intended to code and classify all of the cases according to the officials or institutions responsible for the violations. To this end, it found that there were additional actors that had been subject to the decisions of the Court such as the justice system and compulsory military service in Turkey. Violations by these actors were assessed under this category.

According to the Article 3 violations observed by the Court, the study revealed that there were 15 cases in addition to the 49 police violations and six gendarmerie violations. These cases were coded as violations of the;

- (a) justice system: one violation in 2003, two violations in 2005, one violation in 2007 and one violation in 2009 because of the pre-detention and prison processes,
- (b) military service: one violation in 1996 and one violation in 2000,
- (c) joint violation of the police and gendarmerie forces in Istanbul in 2001,
- (d) joint violation of the police, gendarmerie and prison guards in Diyarbakir in 1996, and
- (e) joint violations of the gendarmerie and prison guards in Izmir, Kocaeli, and Tekirdag in 1994, 1995, 2000, and 2001.

There were also 11 additional violations that the study did not evaluate under these categories because the applicants had not directly been subjected to torture or ill treatment, but had been relatives of victims. The Court found violations of Article 3 in respect of them because of the pain and sufferings arising from the treatment that their relatives faced. These violations will be discussed separately in the following chapters.

### **5. 3. Article 5 of the Convention: The Right to Liberty and Security**

The previous sections of the study examined Article 2 and Article 3 violations of the security forces, as well as other violations plus the violations of unidentified perpetrators. This section will discuss another article of the ECHR, which is also commonly violated by the security forces. This is Article 5 of the Convention and regulates individuals' right to liberty and security. Following the same format as the

previous sections, the section will, first, touch upon the scope of the article, in particular, as mentioned in the ECHR and the right, in general, as a norm of international human rights regime as handled by other conventions. Then, it will describe the situation in Turkey regarding the violation of right to liberty and security. Finally, it will scrutinize the details of violations of security forces and other institutions.

### ***5. 3. 1. The Scope of the Article***

Considering the organization of the study, one can realize that it handled the rights from general to specific. In other words, it, first, referred to Article 2 of the Convention which is related to the most fundamental human right, the right to life. Secondly, it mentioned Article 3 of the Convention that prohibits torture, inhuman and degrading treatment and punishment. Lastly, it will focus on the right to liberty and security, which is a relatively specific right compared to the first two mentioned rights.

Article 5 of the ECHR states that “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law;” and juxtaposes these cases as follows:

- “(a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”<sup>15</sup>

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<sup>15</sup> Article 5 of the European Convention on Human Rights.



According to the other sections of the article anyone who is arrested shall immediately be informed about the reason of arrest, brought before a judge or another judicial power, and be entitled to take proceedings. If the person is a victim of arrest or detention in contravention of the Article 5 he shall have an enforceable right to compensation.

Other international agreements contain similar provisions. The Universal Declaration of Human Rights states, “Everyone has the right to life, liberty and security of person.”<sup>16</sup> According to the International Covenant on Civil and Political Rights everyone has “the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”<sup>17</sup>

Therefore, the right to liberty and security is another important human right like the right to life and prohibition of torture that primary documents forming an international human rights regime attach important to this right.

### ***5.3.2. Violation of Article 5 in Turkey***

This right, like other studied rights, is protected by law in Turkey. According to the relevant provisions of the Penal Code;

“any person who unlawfully restricts the freedom of a person to move or to remain, in a particular place shall be sentenced to a penalty of imprisonment for a term of one to five years... Where this offense is committed... by misusing the influence derived from public office... the penalty to imposed according to the above sections shall be doubled.”<sup>18</sup>

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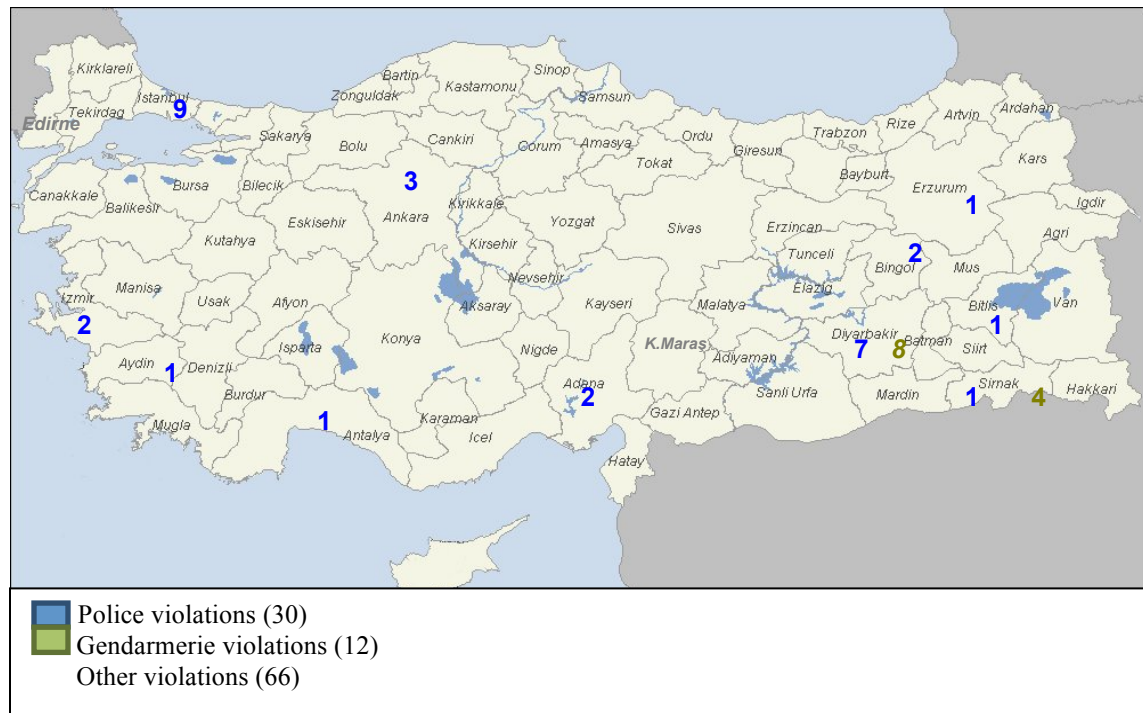
<sup>16</sup> Article 3 of the Universal Declaration of Human Rights.

<sup>17</sup> Article 9 § 1 of the International Covenant on Civil and Political Rights.

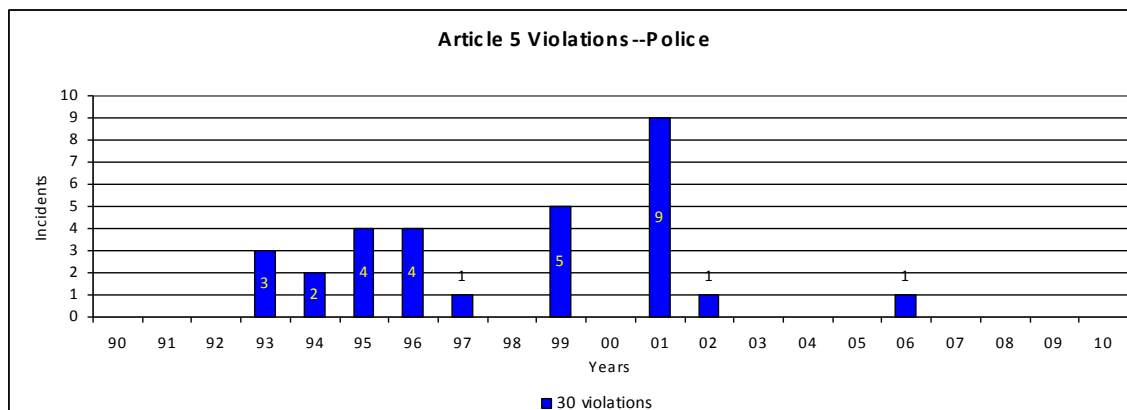
<sup>18</sup> Article 109 § 1 and 3 (d) of the Turkish Penal Code.

Therefore, it is a right that may be violated by the security forces by misusing the power of the public service that they perform. For this reason, it is one of the rights that this study focused on to measure the change in the practices of security forces.

According to the findings of the study the ECtHR presided over 132 cases including Article 5 violations against Turkey. It found “violations” in 108 cases and “no violation” in 13 cases. The Court had 11 “not necessary to examine” decisions. After examination of the violation decisions of the Court, the study found that the police and gendarmerie forces had been subject to 30 and 12 violations, respectively. There had been 66 violations that the study did not link to any of the security forces, because the majority of these violations arose from the distortion of judicial processes. There were a few more violations that the committers of those violations coded as “military service,” “unidentified perpetrators” and “other” committers (Figure 4).



According to the cases before the ECtHR, the study found violations of Article 5 of the Convention by the police forces in 30 cases. While the temporal distribution of Article 3 violations of the police seemed quite homogenous, the distribution of violations examined in this section fluctuated. The study found violations in the period of 1993-2006 (Table 36).



**Table 36.** Violations of the police forces by years

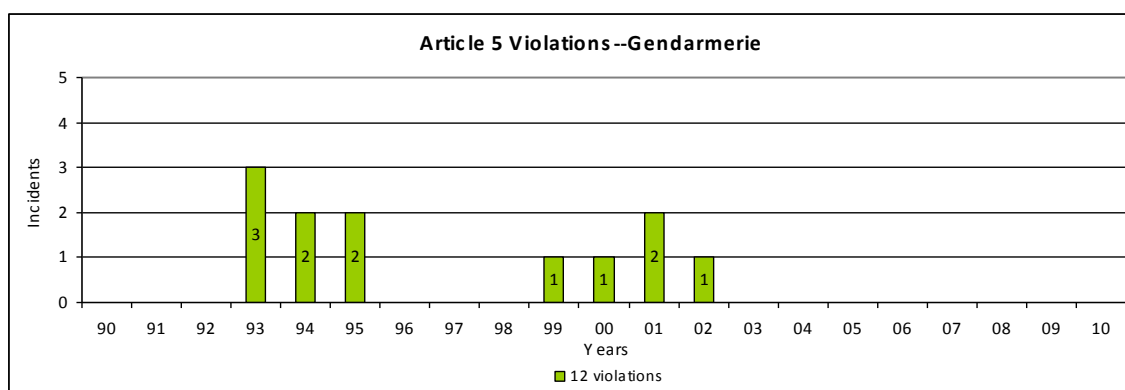
The number of violations varied from two to four between 1993 and 1996. Whereas there was only one violation in 1997, and no violation in 1998, 2000, 2003, 2004, and 2005, the police were involved in five violations in 1999 and nine violations in 2001. The study came across only two violations after violations that were committed in 2001; one in 2002 and one in 2006. There has been no violation since 2006.

The police were involved in Article 5 violations mostly in Istanbul and Diyarbakir. Nine violations took place in Istanbul and seven violations took place in Diyarbakir. There is no significant difference between the numbers of violations that were committed in other cities. There were two violations in Adana, three violations in Ankara, one violation in Aydin, two violations in Bingol, one violation in Erzurum, two violations in Izmir, and one violation in Sirnak. There were two violations that members of different cities' police forces were involved in; one of which was committed by the

Antalya and Izmir police, and the other was committed by the Istanbul and Bitlis police, but, they were coded as if they had been violated in Antalya and Bitlis.

#### **5. 3. 4. Evaluation of Gendarmerie Violations**

The study found 12 Article 5 violations committed by the gendarmerie forces. These violations took place in the period of 1993-2002. However, it can be argued the violations intensified between 1993 and 1995 and then 1999 and 2002. The study did not find any violation from 1996 to 1999 (Table 37).



**Table 37.** Violations of the gendarmerie forces by years

Similar to the previous findings of the study, the Court found no violations had occurred since the beginning of the 2000s. However, that is not to say that there were no violations in those years, but the ECtHR has not reported any specific cases. Furthermore, in order to measure whether there have been violations during the past several years, researchers may conduct similar studies in the following years. For example, the ECtHR made a decision concerning one violation of Article 5 in 2006. However, in examining the case file the study disclosed that the violation had taken place in 2002 and the person had applied to the Court in 2003. The Court made the final decision on this violation in 2006. Thus, it is difficult to say “there has been no violation since a certain time”

because, even if there was a violation, the Court may not have concluded that was the case so we cannot be sure whether there was any a violation or not.

The study found Article 5 violations of the gendarmerie forces only in two cities: Diyarbakir and Sirnak. Other articles of the Convention were commonly violated in the eastern cities, but this article was typically violated in only two cities. Although there were only six Article 3 violations, the distribution of these violations were homogenous, but Article 5 violations appeared only in these cities. This does not mean that there were no violations in other cities, but as the study systematically sampled the cases the presence of violations in other cities can be disregarded. As mentioned in Chapter 3, the study took one of every three cases, so, it can be argued that, if the study found 12 violations, then, there should be 36 violations. Yet, as the all studied incidents took place in Diyarbakir and Sirnak, the presence of violations in other cities can be disregarded, because this does not generate a significant difference.

### ***5. 3. 5. Other Violations***

As discussed in the previous sections, the violations subjected to in the study were not only based on misconduct of the security forces, but also on the presence of some unidentified incidents or executions of judicial processes. The right which was discussed in this section is one of those that can largely be violated by the judicial system in Turkey. As the right to liberty and security was violated by the members of the security forces, it was also violated by the judicial system due to the excessive length of the pre-trial detention period. Even so, the study found more violation decisions concerning the detention process than decisions concerning violations of the police and gendarmerie forces. While there were 42 violation decisions as a total of violations of both branches of

security forces, the “other” category included 66 violations, 59 of which were violations arising from the long pre-trial detentions. There were very few other violations as the Court found Turkey guilty of violating this right because of the military service, unidentified incidents, and related reasons. However, for the most part, the Court’s Article 5 violation decisions were based on shortcomings in the effectiveness of the criminal proceedings.

## **6. EVALUATION OF VIOLATIONS**

The previous chapter of the study intended to clarify specific rights protected by Articles 2, 3, and 5 of the ECHR. These are the right to life, prohibition of torture, and the right to liberty and security. These rights are not only placed under the protection of the ECHR, but are also embedded in a variety of international conventions primarily led by the UN and its sub-organizations. Since these rights are considered as the most fundamental human rights, the international bodies impose responsibilities on individual states to protect and monitor these rights and to prosecute the violators.

Another important aspect of these rights is that they may be violated by public officials, particularly members of the security forces. With the purpose of revealing the trend of human rights violations of the Turkish security forces, this study concentrated on violations of these rights as the relevant cases which were handled by the European Court of Human Rights.

To this end, the study paid particular attention in the previous chapter to the violation decisions of the Court concerning Articles 2, 3 and 5 of the Convention. In this chapter it will focus on density, structure and content of the violations of each article in respect of their committers. By doing so, it intends to generate a framework of analysis encompassing the details of the studied cases before the ECtHR and making projections to measure the impact of legislative improvements during Turkey's EU candidacy process. The section will, first, handle each article by violations of each actor according to the findings of the study that came out of the previous chapters. Then, it will make an overall analysis on the situation. The analysis will be based on the location and time of the violations in which they took place, the nature of the Court's decisions and the facts

coming out of the information in the text of the Court's judgments. In this manner, it will be possible to describe how human rights violations of security forces in Turkey changed over time.

### **6. 1. Density of the Violations**

It is important to mention, at the outset, that the violations of these rights –either by the security forces or unidentified perpetrators- had been considerably common during the 1990s, but, the study has not come across systematic violations since the early 2000s. It found several violations; however, there has not been adequate number of violations to make a sweeping statement on the situation. In addition to this, it is also important to consider the approximate length of a case handled by the Court. The study had previously found by taking each individual case's length and determined that the Court spends approximately 6.5 years to finalize a case. As mentioned in the Introduction and Methodology chapters, the data source of this study contains the cases which were finalized by 2010. Thus, although this can be considered as a reliability concern for the findings of the study, and can make the findings questionable particularly for the years after 2004, these findings are still important to generate a point of view about the trend of violations and to predict the future of violations in Turkey. Likewise, to conduct a similar study following the same strategies in the subsequent years would test the findings of the present study and produce a critical analysis.

After this note of caution concerning two important points in interpreting the results of the study, the chapter discussion will now focus on the density of violations of the three articles in respect of their actors. First of all, the study disclosed that police violations –for all three articles- became frequent in the western part of the country,



particularly in Istanbul. On the contrary, gendarmerie violations, generally, took place in the eastern provinces, predominantly in Diyarbakir and Sirnak.

Considering each article separately, the study discovered the following results. The police forces were involved in Article 2 violations mostly in Istanbul and in 1994. There were six violations in Istanbul (46% of all police violations) and five violations in 1994 (38% of all police violations). With the violations in Adana and Ankara, the study found that 70% of all police violations took place in the western part of the country. The majority of the police violations (84%) were committed between 1991 and 1994. According to the findings of the study, the police have not been involved in any Article 2 violation since 1999.

The gendarmerie forces, similar to the police, violated this article frequently between 1993 and 1999. Violations in this period constitute 92% of all gendarmerie violations. The study did not find any violations committed by the gendarmerie forces after 2001. In terms of geographical distribution of the gendarmerie violations, there is a significant difference between the police violations and them. Seventy eight percent of all gendarmerie violations were committed in the eastern part of the country, most of which took place in Diyarbakir (35% of all gendarmerie violations). As the study discovered, the gendarmerie forces were never involved in Article 2 violations in western cities.

The study also found a considerable number of unknown killings which were classified as violations by unidentified perpetrators. Sixty six percent of these violations took place in the years of 1994 and 1996. The last violation that the study came across took place in 1999. Eastern provinces, especially Diyarbakir can be considered as the

center of these violations with nine violations in Diyarbakir (60% of all violations) and 13 violations in the entire region (87% of all violations).

As to the cases of torture and ill treatment, it is possible to arrive at similar conclusions. While police violations are apparently common in the provinces located in the West, gendarmerie violations, which are very low in quantity, were more intense in the eastern provinces. As detailed analysis of the findings disclosed, the police violations became frequent between 1993 and 2003. Ninety three percent of all police violations took place during this period. The study found only one violation in 1992, 2004, and 2006. According to its findings, the last police violation was committed in 2006. The vast majority of the violations (61%) took place in Istanbul, as seen in the violations of Article 2. Considering the whole country, only 16% of all police violations were in the East, basically in Diyarbakir. One of the most interesting findings of the study is the quantity of gendarmerie violations. Compared to the number of police violations and violations of other articles, gendarmerie violations of Article 3 are quite low. The study found only six violations four of which (66%) took place in the eastern Turkey. There was only one violation in Istanbul. The gendarmerie forces have not been involved in Article 3 violations since 2002.

Finally, violations of the right to liberty and security were analyzed. The study found more police violations in the East compared to violations of previous two articles. While 40% of all police violations were in the eastern provinces, the gendarmerie violations took place only in two cities; Diyarbakir and Sirnak. Not surprisingly, the police violations intensified in Istanbul with nine violations (30% of all violations). Moreover, there were a considerable number of police violations in Diyarbakir (23% of

all violations), as well. In terms of temporal distribution of the violations, the study found that police violations mostly took place in two years; 1995 and 2001 (46 % of all police violations). Although the last police violation was seen in 2006, the study did not come across any violation in 2003, 2004, and 2005. Gendarmerie violations, on the other hand, intensified in the two periods; 1993-1995 and 1999-2002. There were no gendarmerie violations after 2002.

To conclude, the study provides the following arguments in an effort to depict the nature of the human rights violations in Turkey. The numbers of Article 2 violations of two branches of the security forces, as well as the violations of unidentified perpetrators, are close in number. Twenty six percent of all violations were committed by the police, 28 percent were committed by the gendarmerie, and 30 percent were committed by the unidentified committers. There were additional violations as the study coded them as other violations which constituted 16 percent of all Article 2 violations. However, it is impossible to render the same argument for the violations of Article 3. Disregarding the “other” Article 3 violations, the study found that 60% percent of Article 3 violations were committed by the police, while the gendarmerie forces were involved in only 7% of the violations. As to the violations of Article 5, the vast majority of violations (54%) arose from the excessive length of pre-trial detention and the study did not pay attention to these. The police forces committed 27 percent of all Article 5 violations and the gendarmerie forces committed 11 percent of all violations. The other violations constituted eight percent of Article 5 violations.

This conclusion, at the same time, generates a question concerning the violations of the police and gendarmerie forces: “Why did the gendarmerie forces commit more

Article 2 violations than the police did?” As the study disclosed, the number of Article 3 violations by the police is drastically higher than that of the gendarmerie violations. Similarly, the number of Article 5 violations of the police forces is higher than the number of gendarmerie violations. This is normal because the number of personnel in the police force is higher than the number of gendarmerie personnel and the population of the police’s responsibility area is higher than the population of the gendarmerie’s responsibility area. In other words, the police’s workload is exceedingly greater than the gendarmerie forces’ duties and responsibilities. Thus, it can be argued that more work resulted in more mistakes such as human rights violations for the police’s part. Therefore, it would be expected for police to be involved in more violations than the gendarmerie do. However, the situation is reversed for Article 2 violations. The gendarmerie forces committed more Article 2 violations than the police forces did. The study has not been able to provide an explanation to this situation. Although, the following sections will cover the structure and contents of the violations, this fact remains inexplicable.

At this point, the study explains the difference between geographical distributions of violations of two branches of security forces with the distribution of population. Whereas the level of urbanization was higher and most of the population lived in the cities in the western part of the country, the economy of the eastern Turkey had largely been based on activities of agriculture and animal husbandry performed by villagers during the period of time that the study covered. Thus, the police violations intensified in the west, while the gendarmerie violations were common in the east.

## **6. 2. Structure of the Violations**

The previous section revealed the distribution of violations of three articles. In addition to the density of the violations, the study carried out a categorization of the data according to the structure of the violations. By mentioning structure, the study intended to evaluate the nature of the Court's violation decisions. The Court handles the cases according to two aspects of violations. It examines them through the lenses of (1) material facts and (2) procedural processes. In other words, it may attribute its decision either to a substantive violation of the questioned article, or shortcomings in the domestic investigation of the allegations; it may also find violations in both respects. For instance, an individual, an alleged victim of violation of Article 3, applies to the ECtHR after being subjected to ill treatment following an arrest and the lack of effective investigation into his allegations during the domestic criminal proceedings. The Court observes the case in two ways: it examines (1) whether there is sufficient evidence to prove that the person was really subjected to ill treatment, and (2) if the domestic criminal investigation into the applicant's allegations properly was handled. The decision of the Court is based on the answers to these questions. If the answer is "yes" for the first question and the Court is satisfied with the allegations and further evidence, then it holds that there is a substantive violation of Article 3 of the Convention. However, if there is no adequate evidence supporting the applicant's allegations, then the Court does not consider the presence of substantive violation to be in effect; but, still investigates the answer to the second question. Here it examines the results of the domestic investigation claims concerning ill treatment of the applicant while at the hands of security forces. These questions include some of the followings: Did the public prosecutor launch an investigation? Did the local court carry out an effective and adequate investigation? If the

answer is “yes,” the Court may determine that “there is no violation,” but, if it finds deficiencies in these processes, then, it may find the respondent state guilty of violating Article 3 of the Convention. Therefore, the text of the Court’s decisions contains information regarding the characteristics of the violation and whether it was a substantive violation, a procedural violation, or a violation including both substantive and procedural violations.

After providing an idea about the basics of the Court’s decision, the following section will now reveal the facts arising from the structures of the published cases. First of all, the distinction of substantive and procedural violations is apparent only in the cases of Articles 2 and 3; since the Court has not assessed Article 5 cases from this perspective. Second, while all of the Article 2 cases have been handled in this format, the Court began to evaluate Article 3 cases in terms of the nature of the violations, only after 2007. In other words, the Court failed to mention whether there was a substantive or procedural violation of Article 3 until 2007. The emphasis of this distinction for Article 3 cases became apparent with the cases that were handled from 2007 onwards.

As mentioned repeatedly, the Court found violations by police forces in 13 cases of Article 2. Evaluating these cases, the study discovered that the ECtHR found substantive violations in six of these cases. For instance, case **21986/93** constitutes a typical example for this kind of violation. According to the context of the case file, the applicant’s husband was arrested by the Adana Police on April 28, 1992 for joining PKK activities including an armed attack against security forces in which one officer had died and four had been injured. He was taken to the counter terrorism branch of the security directorate without being examined by a doctor. On April 29<sup>th</sup> at 2 A.M. the custody

officer informed other officers that the suspect was ill. The officers, then, took him to the hospital. According to the doctor's report, the suspect's heartbeat, breathing, and other functions had stopped on arrival and he possibly had died 15-20 minutes before he was transferred to the hospital. On the same day, the local forensic doctor examined the corpse and found minor signs on his body: there were two dried 1 cm X 3 cm graze wounds at the front of the right armpit, a fresh 1 cm X 1 cm graze on the front of the left ankle, and a 5 cm X 10 cm old traumatic ecchymosis on the front of the chest. He also requested an autopsy to discover the cause of death. The autopsy report concluded that the actual cause of death could not be found and suggested that the case should be referred to the Istanbul Forensic Medicine Institute. The Institute issued a report on July 15, 1992, and found that there were no other traumatic injuries apart from those found by the previous report. There was no evidence that the person died from any direct trauma. The superficial traumas could have resulted from a struggle that took place on arrest. The report concluded that although the deceased had not had previous heart problems, the pressure of arrest and interrogation could have caused a cardiac arrest. After that, the public prosecutor decided not to prosecute the case. He stated that there was no evidence for justifying a prosecution. On December 22, 1992, the Court of Cassation quashed the non-prosecution decision. The local court, eventually, acquitted the defendant police officers on December 26, 1994 on the grounds of inadequate evidence. The applicant alleged that her husband died in police custody as a result of torture and the case had not been investigated effectively. The ECtHR found that the suspect had been put into custody without any injuries. It held that, "persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Consequently, where an individual is

taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused.”<sup>1</sup> Since the Government did not provide an explanation for the death of the suspect, there was a violation of Article 2. In addition to these substantive violations, the Court also found that the national authorities failed to carry out an effective and adequate investigation into the case, which, therefore, had been reported as a procedural violation of Article 2 of the Convention.

This case can be considered as a typical example of cases with substantive violations. However, the Court’s seven violation decisions do not include a substantive violation as found in this case. The Court holds, in those cases, that there is a violation of Article 2 not because of direct involvement of the police but because of the lack of effective and adequate investigation into the allegations of the applicants during the domestic criminal proceedings. For example, in one of these cases (**57084/00**), which took place in 1992, the Court found no substantive violation. However, it decided that Turkey violated Article 2 of the Convention because of the delays in criminal proceedings. Examining the facts submitted in the case file, the study found that the suspect was shot dead by the police in Kadikoy, Istanbul on April 17, 1992. According to the details of the case, the police received an anonymous phone call on the April 16<sup>th</sup> stating that the militants of the Turkish People’s Liberation Party/Front (THKP/C) had been preparing an attack. A number of police teams from different divisions arrived at the address on the same day at 11 P.M. They had an ambulance ready around the building.

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<sup>1</sup> European Court of Human Rights (2000). The Case of Salman v. Turkey (Application no. 21986/93), judgment June 27, 2000, para. 99. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=21986/93&sessionid=86163471&skin=hudoc-en>



After securing the area the officers knocked on the door of the apartment which was located at the twelfth floor of the building. One of the suspects opened the door and closed it immediately by saying that he would bring their ID cards. The suspects, then, hung the flag of the organization from the window, and began shouting slogans in favor of the organization. They also set fire to the furniture in the apartment. They were repeatedly told by the officers to surrender, but refused to obey the orders. The officers decided to enter the apartment at 2:30 A.M. by using explosives to open the steel door. However, it took a long time to open the door and a clash broke out between the suspects and the officers. When the officers entered the apartment, they found the bodies of three suspects, including the relative of the applicants. One of the officers, also, was injured during the operation. The police, then, conducted a search in the apartment and found 19 pistols, two hand grenades, silencers, wigs, 24 percussion bombs, three radios, and cartridges. The ballistics report declared that one of the pistols found in the apartment had been previously extorted from a night guard in the District of Eyup, Istanbul. The report also found that the suspects were killed as a result of shootings from a long distance. According to the report the officers had discharged 420 cartridges, while the suspects had discharged 700 cartridges. Furthermore, the autopsy report revealed that the body of the applicants' relative had encountered 45 bullets.

The public prosecutors took statements from the officers between January 18, 1993 and January 31, 1995. They also took statements from 18 witnesses between April 17 and 24, 1992. One of the witnesses was the father of the deceased who is one of the applicants of this case. All of the witnesses, with the exception of deceased's father, stated that the police first called the suspects to surrender. When the suspects opened fire

against the officers, they fired back in self-defense. The public prosecutor filed an indictment on April 18, 1995 and accused 19 officers who had participated in the operation with manslaughter. The defendants claimed that they had acted in line with the law.<sup>2</sup> They were acquitted by the local court on July 13, 2001. The court decided that the officers had no intention of killing the suspects. It declared that the operation had taken more than nine hours and the officers had done everything to apprehend the deceased alive. They fired only after being fired as a result of self-defense. The Court of Cassation quashed the judgment of the first instance court on June 19, 2002 for procedural omissions. The local court remedied the omissions and restated the acquit decision on October 21, 2003. The Court of Cassation upheld this decision on July 25, 2005.

The ECtHR handled the case upon the application of parents and wife of one of the suspects. The applicants alleged that the police could have captured their relative alive. The Government, on the other hand, maintained that the officers had done everything to arrest the suspects, but they did not obey the orders of the officers to surrender and fired at them. Evaluating the evidence, the Court found that the officers had arrived at the scene of incident upon receiving a phone call and had acted with great rapidity, thus, the situation could have been considered as an emergency case. Reflecting the decision of the local court, it decided that the officers used force as a result of unlawful violence emanating from the suspects. Therefore, the action of the police was in line with the conditions of “in defense... from unlawful violence” and “in order to effect

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<sup>2</sup> According to the Article 16 of the Law on Duties and Responsibilities of the Police (Law no. 2559) the police may use firearm (a) in case of self-defense, (b) to prevent an assault against others' life and honor, (c) to arrest a suspect of an offence which requires harsh penalty, (d) to prevent an attack against a person or building for which the officer is responsible to secure, (e) to apprehend a suspect of an offence which requires harsh penalty in case of not obeying the “stop” warning, (f) to arrest a person who is wanted for an offense which requires harsh penalty, (g) to confiscate a firearm or another tool that can be used to resist the officer, (h) to stop resistance and (i) to stop defiance to the State's force and activities. The conditions of use of force and firearm were changed in 2007 with an amendment to this Article.

a lawful arrest” as stated in the text of Article 2 of the Convention. Additionally, the Court believed that the use of force in the present case had not been more than absolutely necessary, because the suspects had first opened fire, and they had discharged 700 cartridges while the officers discharged 420 according to the ballistics report. It was not necessary to speculate on the possibility of using non-lethal methods by the police to arrest the suspects. Consequently, there was no violation of Article 2 as regards the killing of the applicants’ relative. However, with regard to the effectiveness of the investigation, the Court found that there had been a violation. The public prosecutor began to take statements from the officer eight months after the incident, and it took two years to complete all officers’ statements. Additionally, all proceedings lasted more than 13 years and this was found by the Court to be a procedural violation of Article 2.<sup>3</sup>

The ECtHR quoted a passage from a brochure which was published by a private company in June 1992.<sup>4</sup> The brochure included the names and lives of the members of the illegal DEV-SOL organization, who were killed in operations in 1992. It began with a dedication page which stated: “to Sabahats, Sinans, and Fazils, to them who had fallen on April 17, April 30, May 4... to them who had written ‘Revolutionary Left’ on the walls... and to all martyrs who devoted their lives to the revolution...” Sabahat, as mentioned in the beginning of this document, is the wife of Dursun Karatas, the leader of the organization. She was killed in the above mentioned operation, which was subject to the case **57084/00** with Taskin Usta, the relative of the applicants, and Eda Yuksel, another

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<sup>3</sup> European Court of Human Rights (2008). The Case of Usta and Others v. Turkey (Application no.57084/00), judgment February 21, 2008. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=57084&sessionid=87285996&skin=hudoc-en>

<sup>4</sup> Bayragimiz Ulkenin Her Tarafinda Dalgalanacak (Our Flag will Fly All around the Country), 1992. Istanbul: Haziran.

member of the organization. As the document states, Sabahat Karatas called a magazine while the operation was going on and described the course of the operation on the phone. She told the person on the phone that they would fight against the fascist police until the last drop of their blood and would never give up. She said that they burned every document related to the organization including their ID cards. If the conversation is assumed to be real, it can be seen that the suspects did not obey the orders of the police to surrender. They took it as a fight between them and the police, and kept fighting until they died. As seen in the example of case **57084/00**, the ECtHR found a procedural violation of Article 2. It accepted that the article was not substantively violated.

Consequently, in analyzing the Article 2 violations of the police forces, the study found that the Court came to conclusion of substantive violations in six cases. It did not find a substantive violation in another seven cases. It declared in those cases that the evidence and material before it had not been sufficient to establish that the police were primarily responsible for the deaths of the applicants' relatives. However, since investigations and criminal proceedings had not been thorough and effective, the Court held in those cases that there were procedural violations.

As the Court found only procedural violations in most of the Article 2 violations concerning the police forces, it came to the same conclusions in three sole gendarmerie cases. In 11 gendarmerie cases the Court found Turkey guilty of violating Article 2 of the Convention substantively. Therefore, the portion of substantive violations of the gendarmerie forces was higher than that of police violations. As in the example of case **32457/96**, the Court held that the authorities failed to take necessary measures to protect the life of the person, and had thus violated Article 2 of the Convention. According to

details of the case, the relative of the applicants was arrested by the gendarmerie in Bismil District of Diyarbakir on August 24, 1995 for aiding and abetting the PKK terrorist organization. The suspect, when he gave a statement to the officers, confessed that he had been helping the members of the organization, inviting them to his home, and supplying them with food, medicine, and weapon. He also stated that he had dug a shelter for the terrorists in Kamberli village of Bismil district. On the August 26<sup>th</sup> the soldiers took the suspect to the shelter that he had previously mentioned in his statement. Keeping a secure distance between the suspect and themselves, the soldiers asked him to open the cover of the shelter. As soon as he opened the cover, a bomb went off and the suspect died. After securing the area, the officers conducted a search in the shelter and found food, medicine, and weapons most likely belonging to terrorists. Taking the case before the ECtHR, the applicants alleged that their relative had been killed by the security forces while he was in custody and no effective investigation had been carried out. The Court, upon evaluation of the material before it, declared that;

“The text of Article 2, read as a whole, demonstrates that it covers not only intentional killing, but also the situations where it is permitted to use of force which may result, as an unintended outcome, in the deprivation of life. Article 2 may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual for whom they are responsible.

In this respect, it should be underlined that persons in custody are particularly in a vulnerable position and the authorities are under a duty to protect them.

...

Turning to the particular circumstances of the present case, the court’s first task is to determine whether substantial grounds have been shown for believing that the respondent state did not comply with its duty to take all necessary measures to prevent lives from being unnecessarily exposed to danger and, ultimately, from being lost.”<sup>5</sup>

The Court, therefore, found Turkey responsible for the death of the applicants’ relative.

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<sup>5</sup> European Court of Human Rights (2004). The Case of Ozalp and Others v. Turkey (Application no. 32457/96), judgment April 8, 2004, para. 33-36. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=32457/96&sessionid=87143408&skin=hudoc-en>

As mentioned previously, the Court's decisions on the violations of gendarmerie forces are mostly based on substantive violations as seen in this example. According to the findings of the study, 79 percent of the Court's decisions concerning the gendarmerie included substantive violations. In other words, four out of five gendarmerie cases included substantive violations. On the other hand, the proportion of police violations was considerably lower. As examined in the relevant cases, the study found that 47% of the decisions concerning the police forces included substantive violations. To put this in a different way, while almost eighty percent of gendarmerie cases included substantive violations, the portion of substantive violations in the police cases was less than 50 percent. Thus, it can be argued that the police forces had been more meticulous than their gendarmerie counterparts while conducting operations or taking persons into custody. Potential causes of this situation will be described while discussing contents of the violations as the following sections reveal the root causes of violations as they arise from operations, custody conditions, or disappearance.

Although the study's main focus was on violations of security forces, it disclosed the fact of unidentified killings in a particular region of the country that should not be ignored. Disregarding the details of these violations in this section, the study findings will briefly mention the structures of the Court's decisions concerning these cases. What the study discovered about these cases is the considerably low quantity of substantive violation decisions. The study found only in three cases where the Court had concluded this had occurred. The applicants of these cases alleged that their relatives had been killed by the agents of the state. However, the Court found these allegations groundless mostly due to the lack of sufficient evidence, but found the authorities responsible for not taking

necessary measures to protect the lives of the deceased rather than accusing the security forces –or other officials as alleged- of killing persons. The vast majority of the Court’s decisions were based on the lack of effective and adequate investigation into the cases, namely procedural violations. This section will not examine such violations in detail, but the following sections will include a comprehensive analysis of these, as well as the specific violations of the police and gendarmerie forces.

The study found that the ECtHR examined all Article 2 cases in terms of both the presence of material and procedural violations and mentioned these in its decisions. However, it did not do so in all Article 3 cases. The study revealed that the Court however, only began to mention these differences after 2007. In handling cases presented before 2007, the Court mentioned only the presence of a violation of the article in its decisions. However, it is possible to see whether the violation emerges from a material violation of the security forces or from shortcomings of the criminal proceedings in the cases handled in 2007 and the following years. As a matter of fact, there have been numerous cases that the Court, still, did not mention in respect to this difference even after 2007. In this context, the study found the presence of procedural violations in six police cases, which is a quite low proportion within the studied 49 cases. With regard to the gendarmerie forces, the Court did not find any procedural violation. In other words, all gendarmerie cases included substantive violations according to the decisions of the Court.

As mentioned previously in this section, the Court had mentioned the distinction of substantive and procedural violations only while handling the violations of Articles 2 and 3 – and not all Article 3 cases. With regard to cases of Article 5 of the Convention it

had not considered such a distinction. Therefore, the study was not able to compile any sub categories or alternate classifications regarding the violations of Article 5. However, the following sections will include detailed analysis of these violations in terms of the sub-sections of the article along with the nature of the violations of Articles 2 and 3.

### **6. 3. Content of the Violations**

The study was designed to carry out a broad description of the situation of human rights violations in Turkey during the study time period. First, it explained how the violations are distributed throughout the country by year and location. Then, it focused on the decisions of the Court in terms of nature of the violations. The section will deepen this description by examining the characteristics of the cases. It will investigate how violations emerged; that is to say, whether they arose from operations of the security forces, from custody-related-issues, or from other reasons. This section will also generate inferences regarding the social and ethnic backgrounds of persons who were exposed to violations. The analysis of these inferences will bring about a projection on the applicant body of the ECtHR in terms of their social and ethnic status. To do so, the case files were examined according to the information provided by the applicants and national authorities.

#### ***6. 3. 1. Characteristics of the Violations:***

This aspect of the study will evaluate the violations in relation to their occurrence. Its goal is to determine what conditions or incidents give birth to human rights violations. The study found differences between these conditions as causes of applications for different articles of the Convention. For instance, whereas applications with allegations of Article 2 and Article 3 violations were typically filed for alleged death and torture



incidents as a result of operations and police/gendarmerie custody situations, Article 5 applications were filed mainly for allegations of the lack of lawful arrest, the length of custody and pre-trial detention periods and other arrest and custody related issues.

In this respect, one of the major findings of the study is the form of incidents that caused violations. Analyzing 13 Article 2 violations of the police forces, the study discovered that seven violations (53% of all police violations) originated in police operations as in the example of the case **57084/00**, which was mentioned in the previous section, five of the violations (38% of all police violations) resulted from inexplicable deaths in or after police custody, and one violation (7% of all police violations) was the result of a disappearance of a person while in custody.

In an effort to highlight and stress its arguments and to make its findings comprehensible, the present study approach was to use specifically selected examples among the studied cases to depict certain features. The following case, **19180/03**, clarifies the causes of Article 2 violations resulting from police custody. The facts submitted by the applicants and the government revealed that the relative of the applicants and one of his friends were students at the Istanbul University. They were arrested by the police on March 15, 1993 having Molotov cocktails in their possession; and were placed into custody. The health of the applicant's relative deteriorated on the second day of custody and he was taken to the hospital. He was unconscious when he was transferred to the hospital. There were also slight bruises on his body. Additionally, according to the statement of the other suspect dated March 16, 1993, the deceased was beaten by the officers who conducted the arrest and those in the police station. The applicant's relative subsequently died in the hospital on September 5, 1993. The autopsy report explained the

cause of death as pneumonia related to respiratory insufficiency. The public prosecutor, thereupon, filed an indictment on the December 31<sup>st</sup> and accused two officers of causing death unintentionally as a result of ill treatment. Thirty three hearings were held between 1994 and 2006. The friend of the deceased was the only witness of the incidents, but could never be found during this period. The local court, ultimately, decided not to hear the witness and sentenced the officers to 6.5 years imprisonment. The officers appealed the decision of the local court and the Court of Cassation quashed this decision on account of there being an insufficient investigation due to lack of witness statements. The proceedings was still pending when the ECtHR held its judgment. The Court mentioned several deficiencies in its judgment related to the efficiency of criminal investigation. First, the public prosecutor had not taken the statement of the friend of the deceased who was the only witness of the incidents that took place in the police station. Second, the Government did not provide any information about the situation of the officers whether they had been suspended from public service or not. Finally, the Court held that such elements had disclosed significant defects in the reliability and thoroughness of the investigation. Therefore, there had been a procedural violation of Article 2 of the Convention.

To explain the fact of disappearance in police custody the following case (25659/94) can be used as an example. The violation, which is the only case of disappearance concerning the police forces that the study came across, took place in Ankara in 1994. According to the case file, the brother of the applicant was arrested by plain clothes police officers on September 12, 1994 and never came back. The Government submitted that according to the police records the person had been a member

of the illegal Revolutionary Communist Party of Turkey (TDKP) but had not been on the wanted list of the police and had not been arrested as alleged. Additionally, the custody records did not include any information about him. The Court noted that the police carried out 249 arrests between September 12 and November 21, 1994. There had been inconsistencies between the reports submitted to the Court and the CPT members. Witnesses, who were questioned by the public prosecutor and delegates of the Court, also stated that they had seen the brother of the applicant in the custody. The case file included the following statements of the witnesses taken by the public prosecutor:

a) Cavit Nacitarhan: "I was arrested on 12 September 1994 and remained in custody for twenty-four days. I did not know Kenan Bilgin. However, after my second day in custody I saw him every day. He would cry out: 'My name is Kenan Bilgin, I have been in custody since 12 September and my name has not been entered on the records; if anyone is released, please inform the press, lawyers and human rights [associations] about my case.'..."

b) Ozer Akdemir: "I was taken into custody on 26 September 1994. I did not know Kenan Bilgin, but I saw him three times at the Security Directorate. He was dressed only in his underpants..."

c) Salman Mazi: "I certify that I signed the written statement dated 11 October 1994. When I was in custody at the offices of the anti-terrorist branch at the Security Directorate between 12 and 25 September 1994, I saw Kenan Bilgin on several occasions..."<sup>6</sup>

Evaluating all the material regarding the arrest and disappearance of the applicant's brother, the Court decided that he should have been presumed dead following the unacknowledged detention by the police. It also emphasized that the national authorities had disregarded their responsibilities to protect the person's right to life. Consequently, it held that Article 2 of the Convention had been violated.

With regard to the gendarmerie violations, the study found the following results as the potential causes of violations: six violations (42% of all gendarmerie violations) resulted from gendarmerie operations against suspected targets, 4 of the violations (28%

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<sup>6</sup> European Court of Human Rights (2001). The Case of Irfan Bilgin v. Turkey (Application no. 25659/94), judgment July 17, 2001, para. 26. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=25659/94&sessionid=86163471&skin=hudoc-en>

of all gendarmerie violations) resulted from disappearances after alleged arrest by the gendarmerie forces, and 4 of the violations (28% of all violations) resulted in various forms of unprofessional implementation of security service –as was defined for this study.

The following cases shed light on the emergence of gendarmerie violations as a result of operations and the disappearance of the victim after the arrest. In the first case **(23818/94)** the study found that the applicant's sister had died during a gendarmerie operation against a group of PKK members in and around the village of Kesentas, Ergani District of Diyarbakir on September 29, 1993. The applicant alleged that there were no PKK militants around their village during the time of operation. The bullet, which killed his sister, came from the direction where the soldiers were located. The Government, on the other hand, maintained that the security forces had carried out an ambush operation in the vicinity of the village in order to seize the members of the PKK who had been active in the area. They also stated that there was not sufficient evidence that the applicant's sister had been killed by the security forces. The Court found in the light of the evidence before it that the commander of the regional gendarmerie station had not been present in the context of the operation. It also found that the only sketch map of the operation zone was drawn up by a non-commissioned officer who arrived at the incident scene after the operation had ended. Therefore, the Court declared that it could not have been established that the bullet killing the applicant's sister was fired by the gendarmerie forces because of the lack of adequate evidence and eyewitnesses. However, it declared that although it had not been established beyond the reasonable doubt that the person was killed by the security forces, the operation should have been carried out after taking the necessary

measures in order to minimize the risks to the lives of villagers. Additionally, there was no adequate investigation into the case. Therefore, this was categorized as violation of Article 2 of the Convention both substantively due to planning and conduct of the operation and procedurally due to the lack of effective and adequate investigation.

The following sections of the study will describe in detail, disappearances that were common in Turkey during a particular time period. The study reports the following case (25704/94) as a typical example of such a disappearance after an unacknowledged detention by the gendarmerie forces. The case file contained evidence that two sons of the applicant along with four other persons were detained by the security forces in the village of Dernek, Lice district of Diyarbakir on May 10, 1994. The applicant also alleged that the soldiers took her grandson on May 27<sup>th</sup> and he never came back. According to the statements of the parties, soldiers from the Lice Gendarmerie Headquarters and commando units from the 2<sup>nd</sup> Commando Regiment arrived at the village on the questioned date at 6 am and conducted an identity check. After the identity check, the soldiers took six villagers –including two sons of the applicant- with them and left the village. As the four detainees stated before the public prosecutor and the delegates of the Commission, all the detainees were taken to the Lice Regional Boarding School that was partially used by the security forces. According to their statements, the soldiers separated the sons of the applicant from other detainees on the second day of arrest and told them that they were being released. The remaining detainees were also released the next day. When they reached their village, they realized that the applicant's sons never came back to the village. The applicant, thereupon, made several applications to the local authorities to find out the whereabouts of her sons, but could not get any information.

The applicant, in her application to the ECtHR, complained about the disappearance of her sons as well as her grandson after being taken into custody by the gendarmerie forces. The Government, on the other hand, maintained that there had not been any operation during the alleged period of time. Certain operations had been carried out around the region, but the village of Dernek was not in the operation zone. Additionally, as submitted to the Court, custody records of relevant institutions –such as the gendarmerie stations and police headquarters- did not include the names of the applicant's sons and grandson. Therefore, it was not proven that the applicant's relatives had been detained by the gendarmerie. Thus, security forces could not be held responsible for their disappearance. The Court, eventually, found that the authorities accepted that there had been a series of operations around the questioned region and time. Witness statements also confirmed that their village was subject to the operations. Additionally, in light of the facts submitted by the villagers and inconsistencies with the practices of keeping custody records, the Court believed that the sons of the applicant had been detained by the security forces. Since the applicant's sons were detained with others, but not released with them and did not return to the village for more than six years by the time of the judgment, the Court considered that they must be presumed dead following an unacknowledged detention by the security forces. Therefore, this was a violation of Article 2. The deficiency and inadequacy of the investigation also generated a procedural violation of this article.

Case **63353/00** can be considered as a typical example for trying to figure out what the term unprofessional implementation of security service means. This violation took place in Ovacik village of Tunceli on June 4, 1998 at 11:45 pm. According to the

case file, a relative of the applicants was killed with a shell fired from a tank attached to the gendarmerie unit around the village. The applicants complained that their relative's right to life was violated by the security forces. The Government maintained that the villagers had been warned verbally and in writing that they should not have left their homes after the sunset for security reasons and because of the operations carried out in the region. The Court considered that it was the gendarmerie forces' duty to take the risks of error into account before conducting the operation in an area where civilians lived. It also found it unnecessary to use tanks in an operation in the region. The authorities should have deployed less life-threatening means even if the terrorist targets had been present. Therefore, it held that there had been a violation of Article 2 of the Convention.

Analysis of the violations of unidentified perpetrators disclosed significant facts most of which will be mentioned in the following chapter. Basically these violations were based on applicants' allegations stating that their relatives had been abducted, and subsequently, killed by the gendarmerie or the police –in most cases. The government's submissions upon these allegations were generally based on the denial of the statements given by applicants. As the Government maintained in such cases the official records had not included names of the allegedly arrested persons, however. Thus, the Court had not been able to establish solid facts due to the lack of sufficient evidence that the deceased or disappeared persons had been abducted or arrested by the state agents. Consequently, it did not hold in those cases that there had been substantive violations of Article 2. However, it found in most cases, procedural violations had occurred because of the lack of effective and adequate investigations into the cases. As mentioned in the previous section the study found only three cases of substantive violations. The Court held in 75

percent of the cases of unidentified perpetrators that there had been only procedural violations. To clarify the situation, one of the cases in which the Court found the presence of substantive violations can be presented as example. In the case **55983/00** a well-known pro-Kurdish politician and writer was killed by unidentified perpetrators in Diyarbakir in 1992. Investigating the case, the police found 13 cartridges at the crime scene, but were not able to identify the offender. Details of the criminal proceedings revealed that one of the potential suspects of the incident could have been an individual who had been a member of the PKK terrorist organization. However, the authorities could not confirm this information and locate the suspect. Additionally, one of the witnesses stated that the deceased had been receiving threats from the PKK. He had been forced to leave his hometown for refusing to pay the PKK's so-called *revolutionary tax*. Thereupon given the lack of an effective investigation to find the murderer of their father, the applicants applied to the ECtHR. They alleged that their father was a victim of an extra judicial execution and the national authorities had been responsible for the death of their father. Evaluating the details of the case, the ECtHR found no evidence supporting the allegations of the applicants. However, it believed that the respondent state should have taken necessary measures to protect the life -of the deceased. Because he had been a renowned Kurdish activist and had been receiving threats as the facts in the case file disclosed. Therefore, the Court held that Article 2 of the Convention was violated. In addition to the substantive violation, there had been procedural violation of Article 2 due to the lack of effective and adequate investigation of the allegations.

Almost all other violations of unidentified perpetrators emerged from the abduction of the deceased –allegedly by the security forces. However, since it was not



possible to establish a connection between the applicants' allegations and the material case, the Court decided that there had not been any substantive violations. However, it held that the authorities should have investigated the cases exhaustively and found and punished the perpetrators. The following chapter will include a section disclosing the facts emerging from the unidentified killings in Turkey.

The current analysis of the violations of Article 2 of the Convention brought about noticeable findings as discussed. It revealed that the violations of the police and gendarmerie forces were based primarily on operations. There were also a considerable number of 'disappearance' cases in which the Court considered that the persons should have been presumed dead. The findings of the study regarding the violations of Article 3 are different from the previous findings. First of all, the study discovered that there were a considerable number of violation decisions in respect of persons who were not directly affected by the incidents. In such cases applicants complained about the violation of Article 3 in respect of themselves in addition to their relatives who were the persons directly affected by the specific form of violation. The Court decides in a way that although the form of the act, performed by the members of the security forces, did not fit the definition of Article 3 violation for the person in question, it considered that there was a violation of Article 3 for the applicant because of the pain and suffering arising from the incidents. The study coded such cases under the category of "other" violations. To be more specific, as seen in the previously discussed example of case **25704/94**, which took place in Diyarbakir in 1994, the applicant alleged that her sons were arrested by the gendarmerie and never came back. The Court held that the sons of the applicant must be presumed dead following an unacknowledged detention by the security forces. The

applicant alleged that her sons and herself had been victims of violation of Article 3 of the Convention. The Court declared in respect of the applicant's sons that it was not satisfied with the evidence that her sons had been subjected to ill treatment on the date of the incidents. Therefore, they were not victims of violation of Article 3. However, the Court, at the same time, believed that;

“... ill-treatment must attain a minimum level of severity if it is to fall within the scope of the Article 3. The Court observes that the applicant has had no news from her sons for almost six years. She has been living with the fear that her sons are dead and has made attempts before the public prosecutor and requested the authorities to be at least given their bodies. The uncertainty, doubt and apprehension suffered by the applicant over a prolonged and continuing period of time has undoubtedly caused severe mental distress and anguish.

Having regard to the circumstances described above as well as the fact that the complainant is the mother of victims of grave human rights violation and herself the victim of the authorities' complacency in the face of her anguish and distress, the Court finds the respondent State in breach of Article 3 in respect of the applicant.”<sup>7</sup>

Consequently, although the Court did not accept the violation of Article 3 in respect of the sons of the applicant, it found a violation in respect of the plaintiff because of the suffering she had faced for years.

In another case **48804/99**, which also took place in Diyarbakir in 1996, the Court arrived at a similar conclusion. The case was classified as an Article 2 violation committed by unidentified perpetrators. The Court held in this case that it “has not found it established that the applicant's son was detained by members of the security forces, but has found that he was abducted on 25 March 1996 by two men...”<sup>8</sup> It found a violation of Article 3 of the Convention in respect of the applicant himself. It emphasized that the

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<sup>7</sup> European Court of Human Rights (2001). The Case of Cicek v. Turkey (Application no. 25704/94), judgment February 27, 2001, para. 172-174. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=25704&sessionid=87359169&skin=hudoc-en>

<sup>8</sup> European Court of Human Rights (2008). The Case of Osmanoglu v. Turkey (Application no. 48804/99), judgment January 24, 2008, para. 56. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=48804&sessionid=87359169&skin=hudoc-en>

applicant was the father of a person who had disappeared and he had witnessed his son being taken away by unidentified persons claiming to be police officers for more than 11 years before the date case handled. The Court believed that the applicant suffered distress and anguish as a result of the disappearance of his son and this constituted inhuman treatment contrary to Article 3. Thus, it is an important point to bear in mind that although there is no evidence that the security forces violated Article 3 by torturing or ill-treating the persons, the Court may still find a violation of Article 3 because of the psychological condition of the applicants as relatives of those persons in question.

Another important point concerning violations of Article 3 are allegations of applicants that include several forms of ill treatment while in police/gendarmerie custody. The applicants complained they had been beaten (as in the examples of cases **44132/98** which took place in Istanbul in 1993, and **31553/02** which took place in Diyarbakir in 2002), were given electric shocks on various parts of their bodies (as in the examples of cases **29422/95** which took place in Istanbul in 1993 and **32446/96** which took place in Adana in 1995), and kept blindfolded (as in the examples of cases **17721/02** which took place in Istanbul in 1996 and **27473/02** which took place in Istanbul in 2000) while they were in custody. However, while handling the cases, the Court considered the evidence reporting the results of the applicants' medical examinations rather than paying attention to their allegations which were not supported by adequate evidence. The relevant section of the next chapter, which is about the custody conditions and surveillance of custody facilities, will discuss this issue as a potential cause of the emergence of such allegations.

The analysis of Article 5 violations is based on violated sections of the article. As in the previous chapter that introduced the details of studied articles, Article 5 of the

Convention contains five sub-sections regulating different stages of the arrest and custody processes. It, primarily, points out everyone's right to liberty and security, and then, juxtaposes the conditions of a lawful arrest. The following sections of the article include the rights of persons who are arrested or detained. In this context, the Court, in most of its decisions, mentioned the violation of one –or more- specific sections of the article. However, it also held in some cases that there had been violation of Article 5 without mentioning any particular section of the article. This situation was common in some of the gendarmerie cases. In five out of 12 gendarmerie cases the Court did not specify what section of the article was violated but only stated that Article 5 was violated. These cases included violations of other articles, such as Articles 2, 3, and 13 of the Convention and Article 1 of Protocol 1. Thus, almost half of the gendarmerie cases regarding violation of Article 5 also included the violations of other articles. However, for the police violations, the study found in most of the Article 5 cases that they had not been linked to other violations. The majority of the Article 5 cases concerning the police included allegations of violations of only Article 5; but there were very few cases with alleged violations of Articles 2 and 3. Additionally, for the most part, the violations were based on the length of time of custody; and for 27 police violations, the Court decided in this way.

The study thus provides a basis for an argument related to the characteristics of violations of different security forces. While the cases concerning the police forces have relatively clear information concerning the characteristics of the violations or applicants, the applications against the gendarmerie forces remain ambiguous. The most important reason for this situation seems to be the differences between the methods the members of

these forces use to carry out their operations or arrests. The cases including the related police violations, apparently presented all details about the acts of the participants. Such cases had data concerning the time and place of the operations or arrests, information about the targets, and so forth. The case **67137/01** which is an Article 3 case, for example, includes the following information; “On 17 May 1997 five police officers from the anti-terror branch of the Istanbul Security Directorate searched the flat of the applicant. She and her husband were arrested and taken into custody on suspicion of their membership of an illegal organization, namely the TKP/ML. According to the search protocol drafted on the same day by the police officers and signed by the applicant, the police found a number of documents, guns, ammunition and dynamite. The report mentioned that the applicant and her husband resisted arrest.”<sup>9</sup> Similarly, in a case (**17721/02**), it was obviously mentioned that the applicant was arrested for being involved in an armed robbery by the police in Istanbul in 1996.<sup>10</sup>

However, the cases including the violations of the gendarmerie forces may be more vague in terms of the details of the operation or arrest. One of the reasons for this situation is the scope of operations in the gendarmerie region, particularly in the eastern part of the country. As seen in the previously mentioned disappearances, the gendarmerie forces, occasionally, carried out operations, which had taken weeks, in excessively large areas including plenty of villages. Therefore, it was difficult for the gendarmerie cases to

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<sup>9</sup> European Court of Human Rights (2006). The Case of Yavuz v. Turkey (Application no. 67137/01), judgment January 10, 2006, para. 8. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=67137&sessionid=87401016&skin=hudoc-en>

<sup>10</sup> European Court of Human Rights (2007). The Case of Hurriyet Yilmaz v. Turkey (Application no. 17721/02), judgment June 5, 2007, para. 6. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=17721&sessionid=87743143&skin=hudoc-en>

specify the exact information regarding targets of the operations unlike those of the police operations.

Another reason for such an ambiguity was the problem of accountability, which will be discussed in detail in the following chapter. Since the gendarmerie forces, as a part of the army, carried out security service in the regions, where frequent terrorist activities took place, questions arose about the cases of disappearances and deaths. However, the closed organizational structure of the armed forces prevented judicial authorities conducting effective investigations and the cases remained vague compared the ones that include the members of the police forces.

### ***6. 3. 2. Characteristics of the Applicants***

The purpose of this section is to describe the characteristics of the applicant body of the ECtHR. It intends to predict social and ethnic status of the persons who applied to the Court or who were affected from the violations. It also examines the links of these persons with terrorist organizations and proven extensions of these organizations in legal or illegal arenas such as student associations and political parties. Focusing on all cases of Articles 2, 3, and 5, the study summarizes the findings with an analysis of some remarkable facts that will be discussed in this following section.

In an effort to conduct this analysis, the study investigator first, applied the apparent information in the case file which did not require any additional inquiry to arrive at the status of the applicant –or the person affected by the violation. For instance, there was enough information to link the suspects in the sample case of **43925/98**, an Article 3 case violated by the police, that they involved possible members of an illegal organization, DEV-SOL. The case file contains the following statement:

“On an unspecified date police officers from the anti-terror branch of the Bagcilar Security Directorate reported that an illegal organization, namely Dev-Sol (Revolutionary Left), would organize a demonstration in front of the head office of a daily journal, namely *Hurriyet*, on 13 August 1994.

On 13 August 1994 the applicants, together with twelve other people, were arrested in front of the newspaper’s head office and taken to police custody at the Bagcilar Security Directorate. According to the arrest report drafted by the police, Dev-Sol members were arrested following a chase and two warning shots. It was also noted that the police officers made the detainees lie on the floor and collected the pamphlets and banners that they carried.

On 15 August 1994 the Istanbul Criminal Police Laboratory provided an expert report where it included that Yilmaz Yesilirmak’s handwriting matched the writing on several of the banners seized by the police.”<sup>11</sup>

As the case revealed there was sufficient information to conclude that the applicant in this case supposedly a member or sympathizer of the DEV-SOL which is an armed terrorist organization designated by the Turkish authorities.

On the other hand, if the case file did not include adequate information about the persons in question, the study investigator made additional inquiries and brought these findings together in order to figure out the potential social and ethnic backgrounds of persons or their links with terrorist organizations. For example, case **10036/03** included no information about the links of suspects with terrorist organizations. However, investigating the details of the case by paying more attention to the names of the deceased, the study revealed that one of the persons who died in the operation had been a member of the illegal DHKP/C organization. One of the websites close to the organization put his name on the list of “our martyrs.”<sup>12</sup> In addition to this, the witness of the incident, who was in the apartment with the deceased, stated before the local court that he and the deceased had been making explosives in their apartment and would carry out an attack on the local branches of the political parties of the existed coalition

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<sup>11</sup> European Court of Human Rights (2005). The Case of Karakas and Yesilirmak v. Turkey (Application no. 43925/98), judgment June 28, 2005, para. 10-12. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=43925&sessionid=87285996&skin=hudoc-en>

<sup>12</sup> <http://www.ozgurluk.org/sehitlerimiz/index-sehitler.html>

government in power.<sup>13</sup> However, this witness was subsequently described as a “confessor” by the organization.<sup>14</sup> Similarly, according to the case file **45902/99**, which is another Article 2 case, the Istanbul Police received an anonymous phone call stating that there had been a number of armed persons in a café on the 11<sup>th</sup> floor of a shopping mall in Beyoglu, Istanbul on August 13, 1993. Before the operation began, a team carried out reconnaissance in the café and confirmed the information given by the phone. Then, members of the counter-terror branch secured the area and entered the building. The officers asked the suspects to stop and surrender, but they failed to comply with the order and the officers returned the fire. When the firing ceased, the officers entered the café and conducted a search. According to the police report a stick of dynamite was found near the deceased. It also established that five persons died, and each of the five had a pistol next to their bodies. The ECtHR did not find a substantive violation in this case, but found a procedural violation regarding the investigation of the case. The applicant of this case was the father of one of the deceased, who was an eighteen-year-old man. According to the applicant’s statement “his son had not been involved in any criminal activity, and alleged that he had been killed unlawfully.”<sup>15</sup> However, the study disclosed that this person was a member of the illegal DHKP/C organization.<sup>16</sup> In another case (**54430/00**),

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<sup>13</sup> European Court of Human Rights (2010). The Case of Bektas and Ozalp v. Turkey (Application no. 10036/03), judgment April 20, 2010, para. 38. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=10036&sessionid=87296163&skin=hudoc-en>

<sup>14</sup> The witness in the case 10036/03 was imputed as a “confessor” by the DHKP/C terrorist organization according to a new article at their website. See the article “Adana Katliami Davasi: Infazcilarin ve Itirafcilarin Zavalliligi” available at [http://www.ozgurluk.org/kitaplik/webarsiv/vatan/vatan\\_arsiv/haberler/vatan/vatan22/adana.html](http://www.ozgurluk.org/kitaplik/webarsiv/vatan/vatan_arsiv/haberler/vatan/vatan22/adana.html) Retrieved December 10, 2011.

<sup>15</sup> European Court of Human Rights (2008). The Case of Kasa v. Turkey (Application no. 45902/99), judgment April May 20, 2008, para. 29. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=45902&sessionid=87298131&skin=hudoc-en>

<sup>16</sup> <http://www.ozgurluk.org/sehitlerimiz/index-sehitler.html>



for example, the Court did not mention any specific terror organization in its decision. However, focusing on the details of the incidents the study investigator believed that the applicants might have had potential links with the PKK. According to the case file, the applicants were arrested in Mus on August 15, 1993 for attending a demonstration. The date August 15<sup>th</sup> is an important one for the PKK; because it is the anniversary of the PKK's first attacks which were carried out in Eruh district of Siirt and Semdinli district of Hakkari in 1984. Members and sympathizers of the organization celebrate it every year with illegal marches and demonstrations.

Consequently, the study investigator spent time and specific effort to conduct an analysis of characteristics of the applicants and persons affected by the violations. The analysis showed that cases before the ECtHR were substantially filed by persons who were possible members –or relatives of members- of terrorist organizations or their extensions like political parties, student associations, or similar non-governmental organizations.

The analysis also showed that a significant quantity of these applications came from members of a particular ethnic group. Even if the case files do not include sufficient information to build a link between the applicants and the aforementioned organizations, the study revealed that number of applicants from certain provinces and districts constituted an important proportion of all studied cases. According to the facts derived from the analysis, the applicants, to a large extent, were the Kurds who live in the eastern provinces or in certain districts located in the West, yet, an area inhabited by a population largely migrated from the East (such as Istanbul, Izmir, Adana, and Mersin). Therefore, examining the findings of the study, one can realize that the number of applications from

the persons who do not have links with terrorist organizations and extreme groups, as well as those who are from origins other than Kurdish is very low.

To be more specific, of the 13 Article 2 violations of the police forces, seven were the result of operations against the suspected members of left-wing terror organizations such as DEV-SOL and DHKP/C. Six violations, on the other hand, arose from operations against the PKK, or deaths of suspects in custody who had been arrested on suspicion of being members of the PKK. With regard to the gendarmerie violations, two violations occurred as a result of operations against the left-wing terror organization, TKP-ML/TIKKO (The Communist Party of Turkey/Marxist-Leninist/Turkish Workers and Peasants' Liberation Army). Although the violations which took place in Eastern Turkey included several professional shortcomings as will be discussed in the following chapter, they emerged from the long-lasting struggle of the security forces with the PKK.

There is a similar situation for the cases including violations of Article 3 of the Convention. Considering the violation decisions concerning the police forces, the study found that 22 cases had somehow been linked to the PKK or political parties and youth establishments affiliated with it, or included persons from the eastern provinces, or from the regions of Western Turkey populated largely by the Kurds. There were ten cases of Article 3 violations of the police and examination of their content revealed that applicants of these cases had links with the armed or extreme left-wing organizations. The study investigator also found one violation where the applicants had been members of a religious terror organization, Hizbullah. To sum up, the study discovered 33 cases of Article 3 violations concerning the police forces were filed by the persons who were members –or relatives of members- of terrorist organizations, extensions of these

organizations, or persons from the Kurdish population. Similarly, five applications of the gendarmerie cases were filed by relatives of persons who had been members of terrorist organizations or who were from the eastern provinces. There was only one case of a gendarmerie violation in Istanbul where the person was arrested and allegedly ill treated during a demonstration against layoffs in a factory.

Focusing on violation decisions of the Court regarding Article 5, the findings are in line with the analysis of previous articles. Twenty eight of police violations (93% of all police violations) were somehow linked to terrorist organizations and/or members of a certain ethnicity. There were only two cases where the study investigator did not find any connection between them and a particular organization or social group. One of them was an armed robbery case; and the other was a smuggling case. With regard to the Article 5 violations of the gendarmerie forces, as mentioned repeatedly, all cases took place only in two of eastern provinces, Diyarbakir and Sirnak.

To summarize these observations, the results show that the vast majority of applications were filed (1) by members/sympathizers –or relatives of members- of terrorist organizations, (2) by members of organizations having links with the terrorist groups, and (3) by members of a certain ethnic origin, in other words the Kurds. All applications of Article 2 against both the police and gendarmerie forces confirm these findings. Sixty seven percent of police cases (33 of 49 cases) and 83 percent of gendarmerie cases (five of six cases) of Article 3 violations are also trended in the same direction. Finally, 93 percent of police cases (28 of 30 cases) and the entire gendarmerie cases of Article 5 violations were also filed by the individuals coming from the same backgrounds. The study found very few applications, having no statistical significance,

filed by persons who are not from these groups. Therefore, it may definitely claim that the ECtHR is viewed by the members of certain groups as an institution to support their political goals. By exhibiting these findings, the study does not try to acquit the security forces who committed human rights violations. On the contrary, it aims at increasing awareness by demonstrating dramatic results of the violations. However, as the findings of the study verify that the majority of applicants are from members of terrorist organizations or a minority group; questions may arise regarding the objectivity of the Court decisions as a data source to measure the state of human rights in a country. This fact may not necessarily be based on the built analysis of the applicant body of the Court. It can also be concluded by considering the presence of reluctant citizens who do not want to apply to the Court, even if they become a victim of violations because they do not want to blame their own State before an international institution.

## **7. LESSONS LEARNED FROM THE PREVIOUS VIOLATIONS**

The previous components of the study disclosed the reality of human rights violations in Turkey. Following a logical organization, these chapters, first, examined the overall violations; then, discussed major violations of the security forces; and finally, assessed the content of these violations by describing the characteristics of the violations and applicants and/or persons affected by the violations. This part of the study will be based on the facts derived from the analysis of the violations mentioned in the previous chapters. It will include professional problems that cause these violations. In an effort to put these problems in a sequence from the most specific to the most general, the study juxtaposed them as follows:

- (1) Medical examination of suspects after arrest,
- (2) Accuracy of custody records,
- (3) Inappropriate custody conditions and surveillance of custody facilities,
- (4) State Security Courts and the length of custody periods,
- (5) Authorization problems and the lack of coordination between forces in the field,
- (6) Security perceptions and the state of emergency,
- (7) Methods of counter terrorism and accountability, and
- (8) The fact of unknown killings.

### **7. 1. Medical Examination of Suspects after Arrest**

The study found in some cases that the security forces had placed suspects in custody without having them examined by a doctor. As the case **21986/93** revealed, the police did not take the husband of the applicant to a doctor before placing him in

custody.<sup>1</sup> In another example, **22279/93**, the applicant was arrested by the Istanbul Police on February 2, 1993 and underwent a medical examination on February 15, namely on the 40<sup>th</sup> day of his custody.<sup>2</sup> Similarly, the applicant in the case **47938/99** was examined by a doctor at the end of his custody period which had lasted 14 days.<sup>3</sup> Whereas these are some cases of violations of Articles 2 and 3 concerning the police forces, the decisions on violations of Article 2 concerning the gendarmerie forces –mostly as results of disappearances- did not include any details as to whether the persons had been undergone a medical examination.

The study discovered another problem with medical examinations that resulted in violation decisions because of the examination of suspects as groups. According to details of the case **32347/02** the police arrested 108 suspects in Diyarbakir in 1998 for joining demonstrations and hunger strikes organized in order to protest the arrest of Abdullah Ocalan, the leader of the PKK. Medical examinations of the applicant were carried out along with all other suspects at the same time and reported in the same document. The applicant also alleged that the report had been drafted in the presence of the police officers. The Court in its decision referred to the standards of the CPT on medical examinations of suspects. It stated that;

“... all medical examinations should be conducted out of the hearing, and preferably out of the sight of police officers. Further, the results of every examination as well as relevant

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<sup>1</sup> European Court of Human Rights (2000). The Case of *Salman v. Turkey* (Application no. 21986/93), judgment June 27, 2000, para. 12. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=21986&sessionid=87475478&skin=hudoc-en>

<sup>2</sup> European Court of Human Rights (2001). The Case of *Altay v. Turkey* (Application no. 22279/93), judgment May 22, 2001, para. 10-14. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=22279&sessionid=87475478&skin=hudoc-en>

<sup>3</sup> European Court of Human Rights (2006). The Case of *Akkurt v. Turkey* (Application no. 47938/99), judgment May 4, 2006, para. 7-8. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=47938&sessionid=87475478&skin=hudoc-en>

statements by the detainee and the doctor's conclusions should be formally recorder by the doctor.

Even if the applicant's allegations are inaccurate, that is to say if a medical examination was indeed carried out, no decisive importance can be attributed to the resultant report, since the Court has already held that collective medical examinations can only be described as superficial and cursory. The CPT has confirmed that every detained person should be examined on his or her own."<sup>4</sup>

Thus, there have been significant shortcomings regarding the arrest and detention of suspects. The security forces, occasionally, failed to have the suspects examined by a doctor before placing them in custody, and sometimes they did not have them examined properly as defined by the CPT and other organizations. As a result, the ECtHR pointed out in numerous cases that individuals, who were arrested and detained by the security forces, were absolutely under the responsibility of the State. If there was any change in the health conditions of the detainees, it was the respondent State's duty to provide an explanation about the life and health of those persons. In order to measure any change in the physical condition of a person who is in custody, he has to be examined by a doctor before entering the custody facility. Legally, security forces in Turkey are obliged to do so before taking someone into custody, while transferring him/her for any reason, and in case of any change in his/her health. According to Article 9 of Regulation on Apprehension, Detention and Statement Taking, if a person is subject to be placed in custody or is apprehended by using force, he shall be examined by a doctor and his health condition during the time of apprehension shall be recorded. If the person is subject to be released, to be transferred for any reason, to be taken before the judicial authorities and in the case of an extension in custody period, he shall be examined by a doctor and his

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<sup>4</sup> European Court of Human Rights (2008). The Case of Mehmet Eren v. Turkey (Application no. 32347/02), judgment October 14, 2008, para. 40-41. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=32347&sessionid=87475478&skin=hudoc-en>

health condition shall be recorded.<sup>5</sup> In addition to this provision, an amendment to this regulation, in 2005, outlawed the presence of members of the security forces in the same room with the doctor and detainee during the medical examination, unless otherwise requested and documented by the doctor. According to this amendment, security forces do not have access to the results of the medical examination. The doctor shall keep a copy of the report in the medical institution, give one of the copies to the detainee, and send another copy directly to the office of the public prosecutor. However, as seen in the sample cases, which took place in 1992, 1993, 1994, and 1998 respectively, the Court found Turkey guilty of violating Articles 2 and 3 of the Convention because the medical examinations of the applicants –or their relatives- had not been conducted in an appropriate way.

## **7. 2. Accuracy of Custody Records:**

Another shortcoming with the implementation of security service is the lack of accurate custody records. As the context of case **25659/94** revealed in Chapter 6, despite the existence of witness statements confirming that the person –brother of the applicant- had been arrested and placed into custody by the police, the Government submitted that custody records had not included his name. Ultimately, the Court held that the person should have been presumed dead after unacknowledged detention by the police, since there had been no information on his whereabouts due to the lack of inaccurate records as follows: “In that connection, the Court notes both its own findings and those of the Commission as to the general unreliability and inaccuracy of custody records.”<sup>6</sup>

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<sup>5</sup> Article 9 of Regulation on Apprehension, Detention and Statement Taking.

<sup>6</sup> European Court of Human Rights (2001). The Case of Irfan Bilgin v. Turkey (Application no. 25659/94), judgment July 17, 2001, para. 130. Available at



Similar to the disappearance of the person in this example, allegedly after being arrested by the police, the study uncovered examples of disappearances of persons while in gendarmerie custody. The studied cases revealed that the incidents of disappearances made the Court approach suspicious of these Turkish cases as regards the accuracy of the custody records. It mentioned in the case **25760/94** that;

“In the view of these considerations, the Court concludes that the authorities failed to provide a plausible explanation for the whereabouts and fate of Ipek brothers after they had been taken away from the hamlet of Dahlerezi and that the investigation carried out into their disappearance was neither prompt nor effective. It considers that it is confirmed in its conclusion by the prosecuting authorities’ failure to take statements from the members of the security forces and eye-witnesses and by their unwillingness to go beyond the military authorities’ assertion that the custody records showed that the Ipek brothers had neither been apprehended nor held in detention. The unreliability and inaccuracy of custody records must also be considered of relevance in this connection.”<sup>7</sup>

Despite the practical aspect of the situation as viewed in the Court’s decisions, the legal aspect of the matter was determined by the provisions of the aforementioned Regulation on Apprehension, Detention and Statement Taking. In fact, Articles 11 and 12 of the Regulation require certain standards on custody records. According to these articles, a suspect can only be put into custody after the following information is written in the “Book on Registration of Detainees” (Nezarethaneye Alinanların Kaydına Ait Defter)<sup>8</sup>: personal information (name, sex, date and place of birth, and ID/passport number), custody information (directed accusation, time and place of the offense, name of the official who ordered arrest and detention, name of the public prosecutor who was informed, and date and time that the public prosecutor was informed), entry information (date, time, and place of arrest, date and time of the entry, date, time, and number of

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<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=25659&sessionid=87475478&skin=hudoc-en>

<sup>7</sup> European Court of Human Rights (2004). The Case of Ipek v. Turkey (Application no. 25760/94), judgment February 17, 2004, para. 190. Available at

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=25760&sessionid=87475478&skin=hudoc-en>

<sup>8</sup> Article 11 of Regulation on Apprehension, Detention and Statement Taking.

doctor report, and details of search report), suspect information (name, address, phone of the person or diplomatic mission who was notified, date and time of the notification, signature of the suspect regarding notification, name and signature of the translator if required, and name and signature of the lawyer if requested) and exit information (date and time of exit, date and number of the transfer document, the authority that the suspect was transferred, and name and signature of the official who took the suspect over).<sup>9</sup>

With the enforcement of this Regulation and amendments to it in line with the European standards, the security forces and public prosecutors placed emphasis on the accuracy of custody records. Periodic and unexpected inspections to the police/gendarmerie stations and custody facilities rendered the custody officers and officers in charge of the stations more meticulous on custody records. As mentioned in the 2003 Progress Report of the European Commission, the delegates of the CPT noticed the improvement on the officers' awareness on accuracy of these records.<sup>10</sup>

### **7. 3. Inappropriate Custody Conditions and Surveillance of Custody Facilities**

This section of the study will shed light on two aspects of the custody facilities by examining the violation decisions of the Court. On the one hand, there were cases of violations revealing that the conditions of custody facilities had not been convenient for ensuring the health and safety of the suspects. On the other hand, there were cases revealing that the custody facilities had not been monitored effectively by the security forces. Accordingly, the Court found violations of several articles. For example, as details of one of the Article 2 cases, **25704/94**, which took place in Diyarbakir in 1994, divulged,

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<sup>9</sup> Article 12 of Regulation on Apprehension, Detention and Statement Taking.

<sup>10</sup> The European Commission. (December, 2003). 2003 Regular Report on Turkey's Progress towards Accession. Secretariat General for EU Affairs. Available at [www.abgs.gov.tr](http://www.abgs.gov.tr)

members of the security forces detained persons in a school. The case file includes the following facts:

“On 10 May 1994 at approximately 6.00 a.m., about a hundred soldiers from the Lice District Gendarmes Headquarters raided the applicant’s village. Leaving their vehicles at the entrance of the village, they arrived on foot.

The soldiers went round the houses to wake villagers up, telling them to gather by the mosque and to bring their identity cards with them. When about 400 villagers gathered by the mosque, the soldiers collected the identity cards of the male villagers. The women and children were sent home...

...The soldiers left the village, taking six villagers into custody. Witnesses confirmed that the detainees were taken to Lice Regional Boarding School.”<sup>11</sup>

According to the statement of one of the witnesses, the soldiers took six villagers to the regional boarding school together with some other detainees from neighboring villages. As the witness stated “At the boarding school, they were all blindfolded and put in a room close to the *hamam*, in the basement of the building.”<sup>12</sup> They spent three days and two nights in the school and were released from the regiment on the third day of custody.

Another witness, who was a sergeant and the commander of one of the gendarmerie stations attached to the district gendarmerie headquarters, stated that:

“...the district gendarmerie headquarters had custody facilities for only two or three detainees. If there were more, they were put in an office under the supervision of a soldier. Detainees were initially kept in the offices and then placed in the detention area. At that stage, their names were not registered. Following the interrogation, if it was established that the detainee had committed an offence, he was transferred to the Public Prosecutor’s office. If not, he was released.”<sup>13</sup>

The case file included the following statement based on explanations of another witness, who was a captain and the commander of the district gendarmerie headquarters:

“...To render a suspect ineffective and perform a body search, the witness had the authority to keep the person near him, for example in the cafeteria under guard. That suspect might then be released within 24 hours. Such a person would not be put in a

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<sup>11</sup> European Court of Human Rights (2001). The Case of Cicek v. Turkey (Application no. 25704/94), judgment February 27, 2001, para. 10-12. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=25704/94&sessionid=84875713&skin=hudoc-en>

<sup>12</sup> Ibid., para. 30.

<sup>13</sup> Ibid., para. 64.

custody room and therefore would not be mentioned in a custody ledger. The witness said that this was *taking someone in for observation* and not custody.”<sup>14</sup>

As seen in the decision of the Court, the gendarmerie forces had been using a school as a custody facility due to the lack of adequate and convenient facilities to place suspects in. It was confirmed by an official that available custody facilities could serve only two or three suspects at the same time. The case file also disclosed that there had been cases of detention without registering the names of detainees, which was defined by another official as “taking the person in observation” not in custody. Taking these facts into account, the study came to a conclusion that the ECtHR found Turkey guilty of violating several articles, particularly Article 2, of the Convention because of the lack of adequate and appropriate custody facilities, as well as accurate custody records, as mentioned in the previous section. However, according to Article 24 of Regulation on Apprehension, Detention and Statement Taking, custody facilities should meet the following standards determined by the CPT:<sup>15</sup>

- a) Custody rooms shall be at least 7 square meters (75.3 sq. ft.) and its height shall be at least 2.5 meters (8.2 ft.). The distance between its walls shall be at least 2 meters (6.5 ft.). It is provided with adequate natural light and ventilation.
- b) No more than five persons shall be placed into custody rooms except from the inevitable conditions.
- c) There shall be enough fixed and durable benches in custody rooms for detainees to sit and sleep.

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<sup>14</sup> Ibid., para. 73.

<sup>15</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2006). The CPT Standards: “Substantive” Sections of the CPT’s General Reports. (p. 8).

d) Considering seasonal and material factors, blankets shall be provided for the persons who are to stay overnight.

e) Necessary precautions are taken to meet the needs of bathroom and cleaning.

Sealed “Custody Instructions” are hanged at the entrance.<sup>16</sup>

The study findings revealed that custody conditions in Turkey, particularly during the studied period of the 1990s, had been far from the contemporary standards. As the study’s main objective was to disclose what improvements have been achieved in terms of human rights violations, the study aimed to draw attention to a particular case in which the detainees, *per se*, stated the current conditions of police custody after their release. In one recent criminal investigation, known as the *Ergenekon Case* which has frequently been criticized because of the lack of formal and contextual shortcomings<sup>17</sup>, several suspects from academia, plus journalists, and high-ranked-army officials were arrested and questioned. Despite the existence of criticisms, the investigation demonstrated that the police were substantially meticulous on arrest, custody and interrogation processes. The most apparent indicator of the police’s professional progress is revealed by the statements of the persons who were arrested and placed in custody. For example, Bayer

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<sup>16</sup> Article 24 of Regulation on Apprehension, Detention and Statement Taking.

<sup>17</sup> Primary criticisms intensified on the conduct of arrests, searches, statement taking, and such processes. Jenkins viewed the case somewhere *between fact and fantasy*. (Jenkins, G. H. (August, 2009). *Between fact and fantasy: Turkey’s Ergenekon investigation*. *Silk Road Paper*. Central Asia-Caucasus Institute Silk Road Studies Program). Various news articles found the investigation as a violation of freedom of press because of the arrested journalists: Watson, I. & Comert, Y. (2011, May 6). Turkey press freedom under fire. Retrieved on March 3, 2012 from <http://www.cnn.com/2011/WORLD/meast/05/06/turkey.press.freedom/index.html?iref=allsearch>). Some put forward social status of the persons who have alleged links with the organization subject to the investigation: Watson, I. (2009, April 13). Turkish police swoop for suspected conspirators. Retrieved on March 3, 2012 from <http://www.cnn.com/2009/WORLD/europe/04/13/turkey.arrest.television.plot/index.html?iref=allsearch>). Furthermore there have been significant criticisms on the formal deficiencies of the investigation, such as Guler’s news article: Guler, D. (2011, August 29). Ayni sorusturmada farkli uygulama: Hazirlanan iddianame, tartismalari da beraberinde getirdi. *Vatan*. Retrieved on March 3, 2012 from <http://haber.gazetevatan.com/ayni-sorusturmada-farkli-uygulama/396886/1/Haber>.

conveys in his column in daily *Hurriyet*, the experiences of one of the suspects, who was accused of being theoretical leader of the alleged Ergenekon organization. He states;

“I have to tell this at the outset: many things had changed in the police. There were young and smart officers wearing long hair and ear ring. They were using computer. There were experts among them. Even, one of them asked me about the PKK, and then, himself told me interesting things...

Selcuk keep telling his interrogation: When I was in custody, the officers asked if they could call me Ilhan Abi and I laughed. While we were going down I said the officers who was holding my arm that I would not escape; and he responded he was trying to secure me. Thus, I realized that I got really old. I witnessed that many things had changed in Turkey since the torture days of the March 12<sup>th</sup>; the mentality had changed.”<sup>18</sup>

Another suspect, who was arrested in Trabzon and transferred to Istanbul, gave a statement to the press upon his release. He mentioned how he was treated during police custody, as follows;

“I would like to spell out something which everyone is curious about. Either the Trabzon police or the Istanbul police are not the police that I figured in my mind. I am coming from an atmosphere in which extremely young, highly qualified officers have been working. They, literally, exhausted for us. I predominantly thank to the police. It is certainly an outstanding organization.”<sup>19</sup>

After emphasizing similar statements of the suspects, weekly *Aksiyon* defined these fundamental changes in policing by the EU process and democratization, as well as training;

“In fact, transition in the police is not something new. Leaving the positive impacts of the EU process and democratization aside, the change in the training system is an important part of this transition. For instance, young members of the police force graduating from the Police Academy get graduate degrees particularly in the fields of international relations and history. The new type of police officers develop a standpoint for everything parallel to their professional life. They do not only chase ordinary evidences, but also investigate and evaluate historical process of the incidents and their impacts on the society. The new generation police take advantage of globalization.

The counter-terror police identified with bushy moustache and *Toros* car no longer exist. The modern police, with higher education, some with long hair and ear rings, are doing really good job. Particularly, well-educated members of the counter-terror branch of the Istanbul Police aim at enlightening the society while providing security. The primary goal

<sup>18</sup> Bayer, Y. (2008, March 24). Polis sordu: Size abi diyebilir miyim? *Hurriyet*. Retrieved on March 3, 2012 from <http://www.hurriyet.com.tr/gundem/8525532.asp?gid=229&sz=86123>

<sup>19</sup> DHA. (2008, July 6). July 6, 2008. Prof. Dr. Ercument Ovali gozalti gerekcesini acikladi. *Milliyet*. Retrieved on March 3, 2012 from <http://www.milliyet.com.tr/default.aspx?aType=SonDakika&ArticleID=890418>

of this team, which sends 2,500 terrorists to their home from the interrogation room, is to save teenagers from the web of terrorist organizations.”<sup>20</sup>

As examples of statements of individuals and news articles found randomly from the press demonstrated, there has been a considerable change in the conditions of custody facilities and the behavior of officials. However, further research should be conducted in the field in order to measure the exact results of these improvements.

After presenting the data supporting the changes in conditions of the custody facilities, the study will now draw attention to another problem with these facilities. The lack of effective surveillance of custody facilities was an important problem highlighted during the studied period. As mentioned in Chapter 6, five of the police Article 2 violations resulted from deaths while the suspects were in custody. Two suspects were found dead by hanging themselves in their cells (in Diyarbakir and Mus in 1994), two had died while in custody due to health problems (in Adana in 1992 and in Agri in 1994), finally one suspect’s health deteriorated in custody and he, subsequently, died in the hospital (in Istanbul in 1993). In addition to the violations of Article 2, the study also came across various allegations of ill treatment of subjects according to Article 3 of the Convention. As mentioned in the previous chapter, the Court did not take the allegations of the applicants into consideration unless they were supported by convincing evidence such as doctor reports. However, the applicants complained about the ill treatment by the security forces and the case files included a description of the form of the alleged ill treatment. For example, the applicant in case **67137/01** was arrested along with her husband in Istanbul in 1997 and charged with being members of an illegal organization, the Communist Party of Turkey/Marxist-Leninist (TKP/ML). According to the search

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<sup>20</sup> Polat, G. (2008, July 14). Ergenekon’u cozen ‘bilimsel’ polisler. *Aksiyon*. Retrieved on March 3, 2012 from <http://www.aksyon.com.tr/aksyon/haber-23430-34-ergenekon-u-cozen-bilimsel-polisler.html>

protocol, the police found illegal documents, a gun, ammunition and dynamite in the suspects' apartment. The case file included the statement given to the public prosecutor by the applicant against the officers who conducted arrest and interrogation:

“...the applicant submitted, in particular, that when she was taken to the police station, she was separated from her husband and blindfolded. She claimed that she was attacked by police officers who pulled her hair and hit her, particularly between her shoulders. She maintained that they stripped her naked in front of her husband and that he was molested and sexually harassed. She claimed that, during her interrogation, one of the police officers threatened her with rape, while all the officers insulted her verbally and also threatened to accuse her of murder if she refused to cooperate. She maintained that she was also beaten following the appearance before the press. The applicant stated that it was impossible for her to provide witnesses since she was in custody, incommunicado, away from all eyewitnesses.”<sup>21</sup>

Although the applicant reported these allegations, the Court considered only the findings of the medical examination. However, if the custody and interrogation facilities were equipped with adequate surveillance systems, the accuracy of the applicant's allegations might be validated. In a similar example (**32578/96**), two applicants were arrested by the Istanbul Police on suspicion of membership of the PKK and placed in custody in 1995. They alleged that they had been kept blindfolded and forced to give information about persons they did not know. They also claimed that they had been beaten, strung up by the arms, threatened with death and given electric shocks. The first medical examination of the applicants did not find any signs of beating, force or violence on their bodies. They underwent a second medical examination two weeks after the first one, while they were in prison. This report found bruises on the body and ecchymoses on left foot of the first applicant, and pain in the chest and ecchymoses under the left eye of the second applicant. The case file included the submission of the Government contradicting the allegations of the applicants as follows;

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<sup>21</sup> European Court of Human Rights (2006). The Case of Yavuz v. Turkey (Application no. 67137/01), judgment January 10, 2006, para. 17. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=67137&sessionid=87536100&skin=hudoc-en>



“...the applicants underwent the second medical examination sixteen and thirteen days after the first one, respectively. This corresponds to a period during which they were in the E-type Bayrampasa prison together with other PKK members. In their [Government’s] opinion, these allegations aim at dishonoring the security forces in their struggle against terrorism.”<sup>22</sup>

The Court noted that the Government could not submit any plausible explanation for the bruises and ecchymoses on the bodies of the applicants by mentioning the State’s responsibility for persons’ in vulnerable situation in custody and found this was a violation of Article 3 of the Convention.

As mentioned in the relevant parts of the study, human rights violations of the security forces in Turkey intensified over a particular time period. If one pays attention to the incident dates of the sample cases discussed, one realizes that these examples basically took place during the 1990s. The previously mentioned Regulation on Apprehension, Detention and Statement Taking, was amended afterwards along with other legal documents during the European Union harmonization process, and was intended to remove the primary causes of human rights violations committed by the Turkish security forces. For instance, the Regulation included the following provision which can be considered a key factor for preventing human rights violations, as well as groundless allegations of the suspects dishonoring the security forces before the ECtHR and international arena: “Detainees may be monitored by taking necessary measures to protect their right to life. This activity may be recorded by using technical equipment.”<sup>23</sup> Furthermore, the afore-mentioned CPT standards view electronic recordings of police

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<sup>22</sup> European Court of Human Rights (2004). The Case of Colak and Filizer v. Turkey (Application no. 32578/96), judgment January 8, 2004, para. 29. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=32578&sessionid=87536100&skin=hudoc-en>

<sup>23</sup> Article 11 of Regulation on Apprehension, Detention and Statement Taking.

interviews as a useful safeguard against ill treatment of detainees, as well as having significant advantages for the security forces.<sup>24</sup>

In addition to the amendments to the Regulation, the Ministry of Interior designated 2009 as “the year of police stations” with a circular published on March 5, 2009.<sup>25</sup> The goal of the circular was to attain minimum standards of conduct in all custody and statement-taking rooms in all police stations. It mentioned the importance of closed-circuit television (CCTV) systems for ensuring the safety of the arrestees and security of the buildings. Furthermore, the former Minister of Interior declared in a press conference that all police stations were subject to renovation; and individuals who were arrested would be under surveillance from the time of arrest until their release.<sup>26</sup>

A recent domestic case of death as a result of ill treatment raised public awareness in Turkey during the last few years.<sup>27</sup> The deceased was arrested on September 28, 2008 while distributing a magazine along with his three friends. The allegations of misconduct were based on ill the treatment they had faced in the police station and Metris Prison after being placed in pre-trial detention. The person died as a result of ill treatment while in prison on October 8, 2008. The local court sentenced three officials, one of which was the Assistant Chief of the Prison, for life imprisonment, 15 others for five months to 7.5 years imprisonments, and acquitted the remaining suspects. The Court of Cassation

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<sup>24</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2006). The CPT Standards: “Substantive” Sections of the CPT’s General Reports. (p. 7).

<sup>25</sup> Ministry of Interior, Directorate of Press and Public Relations (2009). Press Release: 2009/29.

<sup>26</sup> AA. (2009, June 21). Nezarethanelere kamera konulacak. *Sabah*. Retrieved December 15, 2011 from [http://www.sabah.com.tr/Yasam/2009/06/21/nezarethanelere\\_kamera\\_konulacak#](http://www.sabah.com.tr/Yasam/2009/06/21/nezarethanelere_kamera_konulacak#)

<sup>27</sup> If this case was taken to the ECtHR by the relatives of the deceased and the Court found a violation of Article 2 of the Convention, it would be coded by the study as an Article 2 violation of “other” committers, because the study does not cover the violations of prison guards. However, the violation took place in 2008; domestic remedies have not been exhausted; and the Court could not have handled the case in such a short period of time. The study uses this case as an example in order to demonstrate the importance of surveillance system in investigation of the violations.

quashed the judgment for procedural omissions and the proceedings are still pending. What is important in this case regarding the subject of this section is the video images of the alleged ill treatment while the person was in the prison. The local court distributed the images to the press. It can be seen that the prison guards took the person out of his ward and took him to the infirmary of the prison.<sup>28</sup>

In conclusion, the cases before the ECtHR disclosed that the Court found violations of several articles of the Convention due to lack of adequate information about what happened in custody or in prison. However, if the custody facilities and prisons were equipped with CCTV systems –as was the case for the ill treatment of the deceased captured in the latest example- this would provide a possible preventive factor against officers who might otherwise commit human rights violations. Although the facilities did not have adequate surveillance during the studied years, most of the police and gendarmerie stations as well as other custody facilities and prisons have recently been equipped with such surveillance systems.

#### **7. 4. State Security Courts and the Length of the Custody Periods**

The problems and improvements discussed in the previous sections of this chapter were basically about the violations of Articles 2 and 3 of the Convention. The violations that will be examined in this section, on the other hand, will be linked to Article 5 of the Convention. According to the findings of the study, the root causes of Article 5 violations are related to the long periods of police/gendarmerie custodies and pre-trial detentions. The study did not pay attention to pre-trial detention period because this can be viewed as a violation regarding the justice system. For violations of Article 5, the study focused on

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<sup>28</sup> CNNTurk. (2012, February 19). Engin Ceber Davasi Yeniden Basliyor. *CNN Turk*. Retrieved on March 3, 2012 from <http://video.cnntrk.com/2012/haber/2/19/engin-ceber-davasi-yeniden-basliyor>

the length of police and gendarmerie custodies. As the previous chapters revealed, the Court found 30 cases of police violations and 12 cases of gendarmerie violations. Concluding the cases with a violation decision, the Court referred to a certain case of *Brogan and Others v. the United Kingdom* (Application no. 11209/84, 11234/84, 11266/84, and 11386/85) in which it found a violation of Article 5 of the Convention. Details of this case, which included the applications of four individuals, disclosed that the first applicant, Terence Patrick Brogan, was arrested on September 17, 1984 at 6:15 A.M. and released on September 22, 1984 at 5:20 P.M.; the second applicant, Dermont Coyle, was arrested on October 1, 1984 at 6:35 A.M. and released on October 7, 1984 at 11:05 P.M.; third applicant, William McFadden, was arrested on October 1, 1984 at 7:00 A.M. and released on October 5, 1984 at 1:00 P.M.; and finally the fourth applicant, Michael Tracey, was arrested on October 1, 1984 at 7:04 A.M. and released on October 5, 1984 at 6:00 P.M. All applicants were arrested by the police under section 12 of the Prevention of Terrorism Act, known as the 1984 Act, in Northern Ireland. The Court evaluated the evidence before it and held that;

“...The investigation of terrorist offences undoubtedly presents the authorities with special problems, partial reference to which has already been made under Article 5 para. 1 (art. 5-1). The Court takes full judicial notice of the factors adverted to by the Government in this connection. The difficulties, alluded to by the Government, of judicial control over decisions to arrest and detain suspected terrorists may affect the manner of implementation of Article 5 para. 3 (art. 5-3), for example in calling for appropriate procedural precautions in view of the nature of the suspected offences. However, they cannot justify, under Article 5 para. 3 (art. 5-3), dispensing altogether with “prompt” judicial control.

As indicated above, the scope for flexibility in interpreting and applying the notion of “promptness” is very limited. In the Court’s view, even the shortest of the four periods of detention, namely the four days and six hours spent in police custody by Mr. McFadden, falls outside the strict constraints as to time permitted by the first part of Article 5 para. 3 (art. 5-3).

...There has his has been a breach of Article 5 para. 3 (art. 5-3) in respect of all four applicants.”<sup>29</sup>

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<sup>29</sup> European Court of Human Rights (1988). *The Case of Brogan and Others v. the United Kingdom* (Application no. 11209/84), judgment November 29, 1988, para. 61-62. Available at

The Court applied its decision on this case while evaluating the allegations of violations of Article 5 concerning the excessive length of the custody periods. Focusing on the details of the studied cases, one can conceive that the Court found Turkey guilty of violating Article 5 § 3 which regulates the rights of persons in custody to be brought promptly before a judge or other judicial authority. As the following examples discovered, the Court found violations of Article 5 § 3 because persons were held in police custody for 23 days and 16 days in case **21380/93**<sup>30</sup>, which took place in Sirnak in 1993; for 15 days in case **22279/93**<sup>31</sup>, which took place in Istanbul in 1993; and for being held in gendarmerie custody for 11 days in case **41478/98**<sup>32</sup>, which took place in Diyarbakir in 1995; and five to nine days in case **56003/00**<sup>33</sup>, which took place in Sirnak in 1999.

The study also determined the root causes of these violations in the presence of State Security Courts (SSCs), which were established in 1983 based on Article 143 of the Constitution. According to the Law on Establishment and Prosecution Methods of the State Security Courts, suspects who committed offences falling under the jurisdiction of

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<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=brogan&sessionid=87617157&skin=hudoc-en>

<sup>30</sup> European Court of Human Rights (1998). The Case of Demir and Others v. Turkey (Application no. 21380/93), judgment September 23, 1998, para. 40. Available at

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=21380&sessionid=87617157&skin=hudoc-en>

<sup>31</sup> European Court of Human Rights (2001). The Case of Altay v. Turkey (Application no. 22279/93), judgment May 22, 2001, para. 62. Available at

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=22279&sessionid=87617157&skin=hudoc-en>

<sup>32</sup> European Court of Human Rights (2003). The Case of Nuray Sen v. Turkey (Application no. 41478/98), judgment June 11, 2003, para. 11. Available at

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=41478&sessionid=87617157&skin=hudoc-en>

<sup>33</sup> European Court of Human Rights (2007). The Case of Asan and Others v. Turkey (Application no. 56003/00), judgment July 31, 2007, para. 107. Available at

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=56003&sessionid=87617157&skin=hudoc-en>

these courts, could have been held in custody for 15 days without being brought before a judge. Furthermore, this period could have been extended until 30 days in the region of the state of emergency. However, as seen in the ECtHR's *Brogan and Others v. the United Kingdom* judgment, the Court found violations of Article 5 § 3 of the Convention for four days and six hours of custody. Therefore, long periods of police and gendarmerie custodies for offenses such as terror and organized crime constituted the primary cause of Turkey's Article 5 violations. The SSCs were abolished with an amendment to the Constitution in 2004 as mentioned in Chapter 2 of the study. Aggravated Felony Courts were re-organized with the abolishment of the SSCs and custody periods were limited to four days under any circumstances. In addition to the legal amendments, officials such as public prosecutors and the security forces were trained on the new legislation. Therefore, the decline in the number of Article 5 violations can be explained by these improvements.

#### **7. 5. Authorization Problems and the Lack of Coordination between Units**

The study found, as in the example of case **25704/94**, that the lack of coordination and a related vacuum of authority that existed between the agencies working in the field arose as an important problem. This problem became apparent particularly in the regions where the counter-terrorism activities were carried out principally by the gendarmerie forces. Analyzing the context of the aforementioned case, the study found that there had been two types of gendarmerie units taking part in operations; one of which was members of the local gendarmerie stations, and the other was gendarmerie commando units designed to reinforce the local forces. Members of both units wore the same type of uniform for security reasons while conducting operations. Furthermore, the gendarmerie commando units did not have the jurisdiction to carry out the judicial duties of the local

gendarmerie forces. According to a witness statement, for example, “The reinforcement units could never perform the gendarmes’ judicial duties. If these units went out in an operation in the mountain areas and found a suspect, they would wire the gendarmes to check whether the individual was wanted and, if so, then could bring him in... During operations, the ‘blue beret’ gendarme commanders removed their caps and wore normal army caps for camouflage.”<sup>34</sup>

As the applicant of this case complained about disappearance of her sons after being apprehended by the gendarmerie forces, there was not satisfactory information about the officers who conducted the arrest, nor about the authority the officers were attached to. Thus, the present investigator discovered that there had been a gap of authorization between the units taking part in operations particularly in the eastern part of the country.

### **7. 6. Security Perceptions and the State of Emergency**

The terror phenomenon and the security perceptions in Turkey –particularly in the eastern provinces- together formed the social, political, and economic conditions of the country during the 1990s. The increase in the number of terrorist attacks forced governments to take harsh measures to stop terrorist activities in the region. However, security-based-precautions caused human rights problems and social mobilizations –such as internal migration- within the country. The declaration of the state of emergency and the jurisdiction of local authorities in the southeast part of Turkey resulted in the destabilization of the region.

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<sup>34</sup> European Court of Human Rights (2001). The Case of Cicek v. Turkey (Application no. 25704/94), judgment February 27, 2001, para. 72. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=25704/94&sessionid=84875713&skin=hudoc-en>

The study investigator found that the ECtHR placed particular emphasis on the impact of the state of emergency in cases such as **23531/94**, **23954/94**, **25704/94**, and **25760/94**. The Court described the situation in the region and the power of regional governor as is outlined in the following passage quoted from the case **23531/94**:

Since approximately 1985, serious disturbances have raged in the southeast of Turkey between the security forces and the members of the PKK (Workers' Party of Kurdistan). This confrontation has, according to the Government, claimed the lives of thousands of civilians and members of the security forces. Two principal decrees relating to the southeastern region have been made under the Law on the State of Emergency (Law no. 2935, 25 October 1983). The first, Decree no. 285 (10 July 1987), established a regional governorship of the state of emergency in ten of the eleven provinces of southeastern Turkey. Under Article 4 (b) and (d) of the decree, all private and public security forces and the Gendarmerie Public Peace Command are at the disposal of the regional governor. The second, Decree no. 430 (16 December 1990), reinforced the powers of the regional governor, for example to order transfers out of the region of public officials and employees, including judges and prosecutors, and provided in Article 8: "No criminal, financial or legal responsibility may be claimed against the state of emergency regional governor or a provincial governor within a state of emergency region in respect of their decisions or acts connected with the exercise of the powers entrusted to them by this Decree, and no application shall be made to any judicial authority to this end. This is without prejudice to the rights of individuals to claim indemnity from the State for damage suffered by them without justification."<sup>35</sup>

As mentioned in Chapter 2, the state of emergency in the eastern provinces of Turkey had frequently been criticized in annual progress reports of the European Commission. It had lasted for 15 years between 1987 and 2002. The first attacks of the PKK in Siirt and Hakkari –known as Erüh and Semdinli attacks- in 1984 and the incidents during the following years resulted in the implementation of the state of emergency. It was first put into effect in Bingöl, Diyarbakir, Elazığ, Hakkari, Mardin, Siirt, Tunceli, and Van. Adıyaman, Bitlis, and Mus were designated as adjacent provinces. Then, Batman and Sirnak were attached to the administration of the state of emergency regional governorship in 1990, when their status was changed from a district

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<sup>35</sup> European Court of Human Rights (2000). The Case of Timurtas v. Turkey (Application no. 23531/94), judgment June 13, 2000. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=23531/94&sessionid=84752131&skin=hudoc-en>



to a province. Finally, the state of emergency expanded to Bitlis in 1994, which was initially an adjacent province. The previous chapter discussed the density of the human rights violations in terms of year and location when they took place. It is, now, apparent that human rights violations, particularly those of the gendarmerie forces and unidentified perpetrators, tended to be intense in the region of the state of emergency. Therefore, it can be argued that there is a correlation between the state of emergency and human rights violations. This might be the key factor underlying criticisms of the European Commission regarding the presence of the state of emergency in Turkey.

The state of emergency was extended 46 times by the Turkish Grand National Assembly with ballots for four-month-periods. It was, then, gradually lifted in the following provinces respectively: Elazig, Adiyaman, Mardin, Mus, Batman, Bingol, Bitlis, Siirt, Van, Hakkari, and Tunceli. Finally, the state of emergency was entirely terminated on November 30, 2002, when it was lifted in Diyarbakir and Sirnak.

During the time of the state of emergency, military units in the region were reinforced with personnel and logistics support. The status of the commando unit in Hakkari shifted from a regiment to a brigade, gendarmerie border units in Van were shifted from being a brigade to a division, and the gendarmerie border unit in Sirnak shifted from being a regiment to brigade and then to a division. An air base was established in Sirnak and a temporary gendarmerie brigade was established in the Baskale district of Van.

Additionally, the village guard system, which had been established according to the Article 74 of the Village Act, was expanded during the state of emergency in an effort to increase the support of local residents in aiding the security forces. Starting with 40

village guards in the Eruh district of Siirt, the number of the guards in the system subsequently reached 67,000 as a result of the decisions of the regional governorship.<sup>36</sup>

In conclusion, as discussed in this section, the terror problem in a particular region of the country was seen as mere security concern. Officials handling the situation had disregarded other dimensions of the problem and put the state of emergency into effect. However, far from solving the terror problem, the state of emergency destabilized the region and constituted one of the major causes of human rights violations in Turkey. In this context, the next section will assess the efficiency of counter terrorism strategies used in the studied period.

#### **7. 7. Methods of Counter Terrorism and Accountability**

As mentioned in the previous section, the authorities placed emphasis on the concept of security in the southeast of country during the 1990s due to the soaring terror problem. Ignoring the social and economic dimensions of this problem, the authorities intended to fight against terrorism by using security forces –particularly the military units and the gendarmerie in that region. The findings of the study revealed, as seen in numerous cases, that the use of armed forces and gendarmerie units resulted in several problems.

First of all, the use of excessive force and tools that were utilized in the questioned time period against the potential threats can be found to be exaggerated. As mentioned previously, the gendarmerie forces caused violations of Article 2 in one case (51358/99) by using land mines to secure the vicinity of the gendarmerie station. In another case (63353/00), the relative of the applicants died with a shell fired from a tank

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<sup>36</sup> Samanyolu Haber. (2010, June 24). OHAL nedir? Retrieved on January 13, 2012 from <http://www.samanyoluhaber.com/gundem/OHAL-nedir/427653/>

attached to the local gendarmerie unit. Unfortunately, there were more astonishing examples of questionable practices in the region. For instance, case **25760/94** was based on the allegations of the disappearance of an applicant's two sons and the destruction of his home and property by the security forces. The case file puts forth the incidents according to the statement of the applicant as follows:

“On 18 May 1994 at about 10 A.M. the applicant, together with his son Ikram Ipek, was bringing his sheep back to their hamlet near Tureli village, when a group of about 100 soldiers in uniform raided the village. The soldiers left their vehicles outside the hamlet and entered it on foot. They were armed with G-3 rifles and other weapons. A military helicopter circled above the hamlet. The applicant has since learned that the soldiers were not from Lice, but from Bolu. The Lice soldiers had told the applicant previously to be wary of the soldiers from Bolu.

The soldiers told the applicant and Ikram Ipek to gather with the other villagers, that is, men, women and boys –the young girls were told to remain in the hamlet- by the local school, which is located outside the hamlet. The houses in the hamlet cannot be seen from the school. One groups of soldiers remained by the school; the other group went into the hamlet.

The applicant saw flames rising from the village and his hamlet, and the women and children began to weep. The soldiers who were with them threatened them, saying: “If you start crying, we will burn you just like your houses.” All the villagers then fell quiet.

Both the applicant's and his brother's houses were completely destroyed by fire. After most of the houses had been destroyed, the soldiers released the villagers. But they did not release the applicant's sons Ikram Ipek and Servet Ipek, or Seyithan, Abdulkерim, Nuri, and Sait Yolur. These men went with the soldiers in order to carry latter's equipment to their vehicles.”<sup>37</sup>

Even though the facts that were represented by the applicant and other witnesses depicted the incident in detail, the Government simply maintained “No security operation was conducted in Tureli village or in Dahlerezi hamlet on 18 May 1994. Neither the applicant's sons nor any other persons had been taken into custody.” The representatives of the Government were also anxious about the PKK with regard to the destruction of the houses in the hamlet. However, taking the documentary evidence and testimonies of the witnesses into account the Court believed that an operation was most likely carried out by

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<sup>37</sup> European Court of Human Rights (2004). The Case of Ipek v. Turkey (Application no. 25760/94), judgment February 17, 2004, para. 15-18. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=25760&sessionid=84848531&skin=hudoc-en>

the members of Bolu Commando Brigade in the hamlet of the applicant on May 18, 1994. Most of the houses were burned down or badly destroyed during the operation. Although there had been PKK activities in the area, the Court did not find any proof that the PKK had carried out an attack in the hamlet on that date. With regard to the whereabouts of the applicant's sons for more than nine years, the Court was

“...satisfied that Servet and Ikram Ipek must be presumed dead following their unacknowledged detention by the security forces. Consequently, the responsibility of the respondent State for their death in engaged. Noting that the authorities have not provided any explanation as to what occurred following the Ipek brothers' apprehension, and that they do not rely on any ground of justification in respect of any use of lethal force by their agents, it follows that liability for their death is attributable to the respondent Government. Accordingly, there had been a violation of Article 2 on that account.”<sup>38</sup>

As to the destruction of the applicant's family home and possessions, the Court found that “the security forces deliberately destroyed the applicant's family home and possessions, obliging his family to leave their village. There is no doubt that these acts constituted a grave and unjustified interference with the applicant's right to the peaceful enjoyment of his possessions. Accordingly, the Court concludes that there has been a violation of Article 1 of Protocol No. 1.”<sup>39</sup>

Consequently, considering Turkey's struggle with terror and its counter terrorism experience for over two decades, one can argue that these tools were not effective for solving the terror problem. As the Court decisions externalized, these methods were not in line with the standards of contemporary counter terrorism strategies.

In addition to the inefficiency of these tools along with the conditions of the state of emergency, the problem of accountability and civilian control of the agents of state and institutions can be considered as another aspect of the situation. The power of the regional governor and other agents under the administration of state of emergency were

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<sup>38</sup> Ibid., para. 168.

<sup>39</sup> Ibid., para. 194-195.

mentioned in the previous section. Therefore, the concept of accountability is very important for the emergence and investigation of human rights violations. It is difficult to discover and investigate whether human rights are violated under the conditions of lack of civilian control of the security forces. Further, even if it is presumed that the violations take place, the results of these violations would not be declared to the press and general public since the investigations are carried out behind closed doors.

This problem of terror and security can also be considered together with the “Kurdish Question.” Analyzing the ruling Justice and Development Party’s (AKP) Kurdish Initiative<sup>40</sup> Unver theoretically tries to define the question by using the method of discourse analysis. He focuses on speeches of the members of Parliament between 1990 and 1999 that is depicted by him as “the most problematic period of the Kurdish problem.”<sup>41</sup> According to the analysis of the statements of the MPs for the period 1990-1999, the Kurdish question can be described as in the following concepts: (1) human rights, (2) democratization, (3) excessive/disproportionate use of force, (4) security/terror, (5) regional development/education (6) ethnic/cultural conflict, and (7) external powers.

Since Unver’s study approached the Kurdish question from the perspectives of MPs and political parties represented in the TGNA, its findings may be criticized for being far from objective. It cannot be expected that members of political parties will

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<sup>40</sup> The Kurdish Initiative (also known as the Democratic Initiative) was launched by the AKP in 2009, which was announced to the Parliament by former Interior Minister Besir Atalay, is a process of amendments to the rights and conditions of the Kurdish population. Its goal is to permanently end the conflict with the PKK and raise Turkey’s level of democracy. The campaign’s slogan is “more freedom for everybody.” The developments via the initiative process intend to change the names of towns and cities back to their original Kurdish names, to lift the restrictions on Kurdish in political campaigns, to allow prisoners speak Kurdish in prison with their visitors, to increase the time of broadcasts and number of channels broadcasting in Kurdish, etc.

<sup>41</sup> Unver, H. A. (2009, August 28). Kurt meselesi nasıl tanımlanır? *Radikal*. Retrieved on January 14, 2012 from <http://www.radikal.com.tr/Radikal.aspx?aType=HaberYazdir&ArticleID=951765>

make statements different from those of the general policies of their parties. Therefore, while the members of a party viewed the Kurdish question through the lens of cultural rights and democracy when the party was in the opposition, they defined the problem from a statist security/terror perspective after becoming the ruling party. Furthermore, the MPs, who touched upon the question as a security and terror problem, did not mention the disproportionate use of force by the security forces. Likewise those who defined the Kurdish question around cultural rights and language issues, hardly ever referred to the security aspect of the problem.

To conclude, despite the fact that the study's goal was to elucidate the change in the human rights violations of the security forces, this section approached the terror question through a broader perspective by emphasizing the deficiencies of counter terrorism strategies which were utilized during the period that human rights violations reached the peak.

### **7. 8. The Fact of Unknown Killings**

Coding and analyzing the elements of its data source, namely the ECtHR cases, the study investigator came across a remarkable finding other than violations of the security forces. This was the violation of Article 2 of the Convention by some unknown persons who were not attached to official security agencies of the State. The study coded such violations under the category of "violations of unidentified perpetrators." Although these violations remained unidentified during the time they were committed, the study was intended to point out some concepts mentioned by the Court and up-to-date evidences regarding these violations. Furthermore, although these concepts may not have made sense during the time that the violations were committed, they have recently

become meaningful for one who wishes to view the parts of the picture as a whole. The present investigation paid attention to the following concepts as they were used by the Court in case files classified as violations of unidentified perpetrators: (1) unknown persons, (2) a white Renault car, (3) the JITEM, and (4) the Susurluk Report. This section will briefly examine and evaluate these concepts as mentioned in the Court documents.

First of all, the study found that the ECtHR mentioned the existence of a series of unknown killings. In particular, what the study explored is the fact of “unknown perpetrator killing” during the 1990s. The Court used the term in the case **25354/94** as follows:

“The Court draws attention to its previous findings in similar Turkish cases to the effect that in 1993 and 1994, as a result of the conflict in south-east Turkey, there were rumours that contra-guerilla elements were involved in targeting persons suspected of supporting the PKK. It is undisputed that there were significant number of killings which became known as the “unknown perpetrator killing” phenomenon, and which included prominent Kurdish figures.”<sup>42</sup>

The Court pointed out these incidents occurred several times in the same case and in other cases. The matter was also touched upon in the case **23763/94** after the murder of a doctor in Sivan district of Diyarbakir in 1993. The document states that:

“...Following the killing of another doctor in Silvan on 10 June 1992, which led a third doctor to seek and obtain transfer from the area, Dr. Tanrikulu was reported in the press as having refused talk about that incident out of fear. At the time a large number of killings were being committed in Silvan by unknown persons. There were newspaper reports alleging that many of the killings were the work of counter-guerilla forces and it was reported that a military officer by the name of Captain V. had a list of names and the people were killed one by one. Dr. Tanrikulu’s name was rumoured to be on this list.”<sup>43</sup>

Consequently, the ECtHR put forward that the phenomenon of Article 2 violations by unidentified persons had been a reality during the 1990s. However, as the Court did not find adequate evidence to support the allegations that the violations had

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<sup>42</sup> European Court of Human Rights (2004). The Case of Nuray Sen v. Turkey (Application no. 25354/94), judgment March 30, 2004, para. 171. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=25354&sessionid=85148865&skin=hudoc-en>

<sup>43</sup> European Court of Human Rights (1999). The Case of Tanrikulu v. Turkey (Application no. 23763/94), judgment July 8, 1999, para. 18. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=23763&sessionid=85184083&skin=hudoc-en>

been committed by the security forces, the study classified these violations under the category of unidentified perpetrators.

The second concept that the present study found after scrutinizing selected Court documents was the mention of a “white Renault car.” The cases, which were studied under the category of violations of unidentified perpetrators, mentioned a certain type of car several times. Some of which pointed out only the color of the car, some indicated a particular make, and some of them specified the make and model of the car as seen in the following examples. In case **52390/99**, the Court detailed the facts as presented by the applicant, whose son disappeared in 1999, as “On 12 October 1999 the applicant was informed by two people that they had seen four persons forcing someone into a white car on or around 9 October 1999. He believed that the latter was his son.”<sup>44</sup>

Similarly a white Renault car was mentioned in the cases like **25354/94**, **27305/95**, **27693/95**, and **4451/02**. Case **4451/02**, for instance, revealed that the car was used with a fake license plate. The case puts the facts as;

“...While they were in front of the Forest Directorate Building, a white Renault estate car, with the registration number 06 EKN 22, approached them. Three men dressed in civilian clothes and carrying walkie-talkies introduced themselves as police officers and carried out an identity check. They then forced Mr. Kaya into the vehicle, stating that he had to go to the police station to make a statement... On 27 March 1997 the Human Rights Investigation Committee at the Turkish Grand National Assembly informed the applicants that Hakki Kaya was not in detention. The Committee further informed the applicants that the car with the registration number 06 EKN 22 was a Fiat Sahin, and not a white Toros estate car as alleged, and it belonged to a certain Y. C., who resided in Ankara.”<sup>45</sup>

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<sup>44</sup> European Court of Human Rights (2006). The Case of Seker v. Turkey (Application no. 52390/99), judgment February 21, 2006 para. 10. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=52390&sessionid=85325561&skin=hudoc-en>

<sup>45</sup> European Court of Human Rights (2006). The Case of Kaya and Others v. Turkey (Application no. 4451/02, judgment October 24, 2006 para. 9-14. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=4&portal=hbkm&action=html&highlight=4451&sessionid=85325561&skin=hudoc-en>



The third concept emerging from the studying the selected cases was the JITEM concept. This concept is an abbreviation for an organization, related to the Gendarmerie Intelligence and Counter Terrorism (Jandarma Istihbarat ve Terorle Mucadele), and was mentioned in several cases. The authorities, particularly the military and politicians, had shunned admitting the presence of such an organization for years. However, the criminal investigations that have recently been carried out, as well as improvements in the freedom of press have highlighted the undisputable fact that this underground organization was involved in a series of human rights violations in Turkey during the 1990s. It is also possible to come across the name and activities of this establishment in the Court documents. As was conveyed in the applicant's statement in case **34506/97**, the Court mentioned the organization in the following passage:

“... As the Siirt authorities had informed the that her husband's name was not mentioned in their records she had also applied to the public prosecutor's office at the Istanbul State Security Court, which informed her that her husband's name was not included in their records either. She finally stated that all of her inquiries indicated that her husband, who had no previous health of family problems, was in the hands of the MIT (*Milli Istihbarat Teskilati*; National Intelligence Agency) of the JITEM (*Jandarma Istihbarat ve Terorle Mucadele*; Gendarmerie Intelligence and Anti-Terror Branch), or even counter-guerilla. She stated that, in the absence of any other possibility, it was normal to conclude that a person with a political identity, opposing the State's official policy, could be in the hands of such organizations. They are responsible for many extra-judicial killings and this is acknowledged by the State authorities from time to time.”<sup>46</sup>

Similar statements were found in other cases, as well. Case **48804/99**, for instance, included the confessions of, Abdulkadir Aygan, allegedly a former PKK militant and the agent of the JITEM, as published in a newspaper:

“On 4 July 2006 the confession purportedly made by Abdulkadir Aygan was published in the newspaper *Ozgur Gundem*. Mr. Aygan was quoted as having stated that Atilla Osmanoglu had been kidnapped by the JITEM and that his head had been smashed with a hammer by a certain Cindi Acet 0also known as *Kocero*- so that it would not be possible to identify the body. The body, which had later been thrown into a disused oil tanker near

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<sup>46</sup> European Court of Human Rights (2005). The Case of Turkoglu v. Turkey (Application no. 34506/97), judgment March 17, 2005, para. 31. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=34506&sessionid=85325561&skin=hudoc-en>

the town of Silopi, had been found on 30 March 1996 and an autopsy report had been drawn up by the Silopi prosecutor. The file opened by the prosecutor had been given the preliminary investigation number 1996/313. According to the autopsy report, the body was that of a male measuring 175 centimeters, weighing 70 kilograms, approximately 25-30 years of age and with dark hair. There were number of severe cuts to the face, and parts of the skull were broken.”<sup>47</sup>

The individual who gave the interview to the newspaper was known as a former agent of the JITEM. Several newspapers and TV channels, subsequently, reached him and conducted similar interviews.

An interesting interview was published in the daily *Hurriyet*. What made this interview interesting was its participants; Rahsan Anter Yoruzlu and Abdulkadir Aygan. These two individuals were one of the applicants of case **55983/00** (Anter and Others v. Turkey), who was the daughter of the deceased, and one of the persons who allegedly participated in the killing which took place in Diyarbakir in 1992. The interviewer brought the parties together on January 11, 2006. The journalist describes the first moments of interview as;

“... When we entered the apartment, Aygan took Rahsan Anter’s hand, kissed and put it on his forehead. Rahsan Hanim, whose hadn was in the palm of one of her father’s murderers, began to cry. We headed to the living room. There was a silence for seconds. Rahsan Hanim left the room. I saw her crying in the hall. She came back next to his father’s killer in five or ten minutes. It was the most difficult interview that I have ever done in my professional life. When it was over, Aygan left and went to the city that he lived with his five children.”<sup>48</sup>

The interview continues as follows:

“R. A.: I am Rahsan Anter. It is the first time that I am meeting you. This is very difficult for me. You are a member of the network and one of the persons that killed my father.  
A. A.: That is right.  
R. A.: You are one the five men that held the weapon pointing my father. You planned it and gathered intelligence. After all, I am now, the daughter of a man who was violently killed, and you are the member of that network.  
A. A.: Yes, that is right.

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<sup>47</sup> European Court of Human Rights (2008). The Case of Osmanoglu v. Turkey (Application no. 48804/99), judgment January 24, 2008, para. 28. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=48804&sessionid=85325561&skin=hudoc-en>

<sup>48</sup> Kalkan, E. (2006, January 21). Babamin katiliyle bulusmaya nasil karar verdim. *Hurriyet*. Retrieved on January 24, 2012 from <http://arama.hurriyet.com.tr/arsivnews.aspx?id=3825189>

R. A.: In fact, we both are victims here. All I want is only the truth. Who, how, and why killed my father? How did you prepare to kill a seventy two-year-old man? What happened? Who decided, how did they decide? I want you to tell these.

A. A.: I will tell you everything from the beginning to the end.

...

- And then, what happened?

- Then, Hogir, myself, Mustafa Deniz, Ali Ozansoy went to the hill at the end of the Silvan Road by Yesil's Land Rover. Ali Ozansoy was waiting at the radio base. Hogir and I were at the beginning of the ramp. Yesil, with Mustafa Deniz, headed towards the hill. And Hamit had gone to the hotel to pick up Musa Anter. According to the plan, Hamit was supposed to bring Musa Anter to the meeting point by a taxi-cap and Hogir would shoot. However, we had heard nothing from Hamit for two hours. Hogir began to get flurried and said "There should be a problem. If the police find us, we will be in trouble." We walked to Yesil. Meanwhile, we heard police sirens. Yesil, turn the police channel on. After listening to the channel, he said "Everything is messed up. Let's go to the base." When we were back to the base, Ali Ozansoy told us that Hamit had killed Ape Musa (Uncle Musa). Afterwards, Hamit came over and said "Okay, I shot." Hogir asked "Why did not you bring him to us, and killed there?" Hamit summarized the incident; "After we got in to the cab, I told them that we were going out of town. They suspected. He was with his nephew. When we were around Seyrantepe, I tried to tell them stories, but they wanted to go back. I had them get out of the car and said, "We have almost arrived." I was walking and they were following me. I pulled my weapon and, shot both of them. He used an Uman make weapon which Yesil had given it to him. He had thrown the weapon to a garbage container. And, the operation was, thus, completed."<sup>49</sup>

There have been numerous interviews and news articles, during the last few years, with witnesses of incidents that took place in the questioned time period. In addition to these there are criminal investigations, which are still going on, in different parts of the country. For instance, a gendarmerie colonel, who was the commander of provincial gendarmerie battalion of one of Turkey's largest cities, has been imprisoned since 2009 for being responsible for unknown killings in Cizre district of Sirnak that took place in the period of 1993-1995 while he was the commander of the Cizre District Gendarmerie Headquarters.<sup>50</sup> In another investigation, which is based on statements of confessors and officials having knowledge about the questioned period, the investigation revealed that 19

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<sup>49</sup> Ibid.

<sup>50</sup> Today's Zaman. (2009, March 26). Death well colonel, Cemal Temizoz, arrested over human remains. Retrieved on March 5, 2012 from [http://www.todayszaman.com/newsDetail\\_getNewsById.action?load=detay&link=170668](http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&link=170668) Also see, Korkut, T. (2009, July 21). Temizoz trial will become bigger: According to lawyer Elci, a second indictment is expected in the case against former JITEM members. Retrieved on March 5, 2012 from <http://bianet.org/english/english/115990-temizoz-trial-will-become-bigger>

skulls were found in a construction zone next to a building which was allegedly used as Diyarbakir JITEM base during the 1990s.<sup>51</sup>

According to the facts represented by the media and the information that arose through the investigations, the JITEM was an underground organization that was established in the 1990s to fight against the PKK. It consisted of ranked and non-ranked officers from the military and former PKK militants known as “confessors”. In one of the articles published in daily *Star*, Ay describes the situation in eastern Turkey as follows:

“During the first weeks of 1990. The attacks of the PKK was increasing, the conflict between Hizbullah and PKK was gradually ascending. The ones who viewed the conditions could easily understand according to their experiences that a new process in terms of security would have been initiated.

...The White Toros Syndrome. During those years, if I had been a bit late home, my mom used to go out to the balcony, and look around whether there was the white Toros in vicinity. If a white Toros drove through a street twice, it would have been considered “misfortune.” Thus, it was time for bad things to come true in that street...

...Towards the late 1980s, they were, first, known as kontra, then became kontr-gerilla. But, they reach reputation with the term JITEM.

...According to the ones who established the JITEM, the government and the opposition prioritized their interests, did not regulate and amend the laws, regulations and circulars in order to fight against the PKK seriously and effectively. According to JITEM, at that time, authorities were all in betrayal and heresy. The State did not have an effective, logical and strategic counter-terrorism plan, but only implemented fleeting methods. PKK militants were either acquitted or punished with light penalties by the courts. Thus, the judiciary, also, could not take compelling decisions against the PKK. Via the regular military units, it is not possible to struggle with the PKK, which carry out guerilla tactics. Accordingly, it is necessary, righty away, to have anti-guerilla forces which will fight against the PKK.”<sup>52</sup>

<sup>51</sup> The historical building is now used by the Museum Directorate of Diyarbakir. During the construction, the workers came across bones and informed the authorities. Launching an investigation, the office of Diyarbakir Public Prosecutor found skulls belonging possibly to human being. The news articles related to the incident are available at the following websites: Anadolu Ajansi. (2012, January 22). Diyarbakir’da 19 kafatasi bulundu.” Retrieved on March 5, 2012 from <http://www.anadolujansi.com.tr/tr/manset/112061-diyarbakirda-19-kafatasi-bulundu> TRT Haber. Ickale’de 19 kisiye ait kemikler bulundu. Retrieved on March 5, 2012 from <http://www.trthaber.com/haber/turkiye/ickalede-19-kisiye-ait-kemikler-bulundu-25264.html> CNNTurk. (2012, January 18). “JITEM bahcesindeki kaziya hava muhalefeti engeli” Retrieved on March 5, 2012 from

<http://www.cnntrk.com/2012/turkiye/01/18/jitem.bahcesindeki.kaziya.hava.muhalefeti.engeli/645356.0/in dex.html> Mynet Yurt Haber. (2012, January 15). Diyarbakir’da kafatasi sayisi 15’e yükseldi. Retrieved on March 5, 2012 from <http://yurthaber.mynet.com/detay/diyarbakir-haberleri/diyarbakirda-kafatasi-sayisi-15e-yukseldi/96122> Aslan, F. & Bulut, B. (2012, January 22). Bulunan kafatasi sayisi 19’a yükseldi. *Hurriyet*. Retrieved on March 5, 2012 from <http://www.hurriyet.com.tr/gundem/19744970.asp>

<sup>52</sup> Ay, A. (2012, January 23). 1990’larda JITEM ve Goneydogu. *Star*. Retrieved on January 23, 2012 from <http://www.stargazete.com/acikgorus/1990-larda-jitem-ve-guneydogu-haber-417811.htm>

In an interview published in daily *Taraf* on July 12, 2010, Duzel talks about the JITEM with a former gendarmerie official. Some parts of the interview expose the JITEM as a fact in the questioned period:

“Q: What is the JITEM?

A: JITEM means Gendarmerie Intelligence and Counter Terrorism. It is an intelligence team established under the General Command of Gendarmerie.

Q: Why does the military try to deny the presence of the JITEM?

A: The persons worked for the JITEM were the personnel of the military. The military denies the JITEM, because the cost of these people’s work in the East and Southeast was pretty high. Let me put in this way: The JITEM was established to fight against terror, but what happened was quiet the opposite. It constituted the infrastructure of terror, it led terror continue and increase, it made the people go to the mountains. If you kill the moderate citizen and give his body to the dogs, you will never stop terror. But, you will increase terror. It is, in fact, pretty difficult to pay for the cost of what the JITEM had done.

Q: Why did not the military stop the JITEM?

A: JITEM was an organization that had been out of control. It was an independent organization that used all the power of state. It was involved in illegal activities. There were JITEM teams in places like Hakkari, Yuksekova, Silopi, Bingol, Van, Elazig, Mardin, and Cizre. These teams were under the jurisdiction of Diyarbakir Group Command and were directly linked to the General Command. They did not account for any authority. For example, the Region Commander in Diyarbakir could not interfere in what the team had done in the city.

Q: How cannot a Region Commander interfere in the team?

A: He could not. The Commander of the 7<sup>th</sup> Corps did not have any influence on the JITEM. JITEM personnel established a system on their own. We, as gendarmerie intelligence personnel, used to be afraid of the JITEM. They could even say about me “He is taking part in the activities on behalf of the PKK.” JITEM was frightening even for us.”<sup>53</sup>

As the interview and other resources put forth, there was a JITEM reality in Turkey during the 1990s. Even if it is accepted that it was innocently established, at the outset, to fight effectively against terrorism, its personnel, over time, began to exceed the limits of their authority. Subsequently, they were involved in illegal activities and human rights violations.

The study links such activities and violations to two major factors. On the one hand, the official agents of this organization began to exceed the limits of their legal

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<sup>53</sup> Duzel, N. (2010, July 12). Pazartesi Konusmalari: Huseyin Oguz: Oldurup, kelle vergisi aldilar. *Taraf*. Retrieved on January 24, 2012 from <http://www.taraf.com.tr/nese-duzel/makale-huseyin-oguz-oldurup-kelle-vergisi-aldilar.htm>

powers and implemented unauthorized arrests, interrogations, and executions. As Duzel's interview demonstrates, the members of the organization were an independent entity separate from the ordinary hierarchical structure of the gendarmerie. Such independence could have made the personnel feel free to exceed the limits of their legal powers. On the other hand, the "confessors", auxiliary elements of the organization, might have begun to use the authority coming from the State power for their personal interests. Since they were from the region and did not have adequate consciousness, training, and/or etiquette, which were supposedly existent in a state agent, they used the power of the organization against their antagonists and foes to solve personal or family conflicts.

As mentioned at the beginning of this section, examining the violation cases committed by unidentified perpetrators the study data revealed four concepts. Three of these concepts (unknown killings, a particular make and model of car, and JITEM organization) have already been explained. The last concept is the Susurluk Report. There are several cases referring to the details of this report. The Susurluk Report is a document, which was prepared by the office of the Prime Minister, to inform the Prime Minister and competent organs regarding incidents that occurred after an accident took place in Susurluk district of Balikesir in 1996. The accident revealed significant facts about the studied period in Turkey. A member of parliament, a former police chief, a far-right extremist and criminal wanted by the Interpol and his girlfriend had been traveling in the MP's car. The car hit a truck coming out of a gas station and three individuals died in the scene; the MP survived.

The case **25354/94** mentioned the report by referring to another case that was not one of the sampled and studied cases. However, in order to figure out the details, the

study investigator focused on the mentioned case and found comprehensive information about the report. According to this case, **22492/93**, the applicant submitted a copy of the report to the Court. The case included the policy implications proposed in the conclusion of the report:

“The report concludes with numerous recommendations, such as improving so-ordination and communication between the different branches of the security, police and intelligence departments; identifying and dismissing security-force personnel implicated in illegal activities; limiting the use of “confessors” (persons who cooperate with the authorities after confessing to having been involved with the PKK); reducing the number of village guards; terminating the use of Special Operations Bureau outside the south-east region...”<sup>54</sup>

The original report drew attention to the potential problems of using confessors in counter-terrorism. As mentioned previously the JITEM had used these individuals in order to take advantage of their previous knowledge and experience about the region and local people. The report included the following statement about the use of these units in the JITEM:

“Village guards and confessors performed effective duties during the first stages of the fight against the PKK. This situation was appreciated by the security forces. Effectiveness and flexibility of the Special Forces in the rural areas pushed gradually them into taking part in activities which were out of their duties. In addition, they developed tolerance against those who committed crime. It was seen that an organization, named the JITEM, was established under the Gendarmerie in order to co-ordinate the duties of special teams. The JITEM took part in effective activities in the region. In most of them, even the local gendarmerie forces had not been notified. Over time, activities of civilian and military persons performing under the JITEM became appreciable in the region. The rate of individual unmanageable behaviors increased, because it hosted a large number of village guards and confessors. Once these units left the region, they continued their activities in their new duty stations.”<sup>55</sup>

The report concluded as follows:

“Gendarmerie intelligence, previously, was considerably weak; even was dealing with only the petty crimes in provinces. The JITEM was improved during the tenure of

<sup>54</sup> European Court of Human Rights (2000). The Case of Kilic v. Turkey (Application no. 22492/93), judgment March 28, 2000, para. 32. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=22492/93&sessionid=85381359&skin=hudoc-en>

<sup>55</sup> Susurluk Report. Retrieved on January 24, 2012 from [http://www.kovan.ceng.metu.edu.tr/~erol/ses/susurluk/Susurluk\\_Kutlu\\_Savas'in\\_Raporu.html](http://www.kovan.ceng.metu.edu.tr/~erol/ses/susurluk/Susurluk_Kutlu_Savas'in_Raporu.html)

Commander Hulusi Sayin. It was reinforced with the persons who had ability to speak local dialects. However, it had never been as powerful as the MIT or military intelligence. As a matter of fact, it was not necessary. The armed struggle environment of the PKK during the 80s constituted the core of the gendarmerie intelligence. Thereby, JITEM's presence was based, for the most part, on the south-east problem.

However, the confessors and local units employed under the JITEM constituted the emergence of a considerable problem in itself.

Not only the local units, but also the intelligence personnel began to break the chain of military hierarchy. Major Cem Ersever could take action by himself within a setting in which there was his superiors.

...

The personnel, who were assigned to the gendarmerie intelligence, tended to keep their relations with the staff they had previously worked together, after they were assigned to the western provinces and even after they retired.

A notable point is that, the units who gathered intelligence did not directly fought in the south-east, continued to use their experiences during the following years. The ones who took part in the struggle tended the use the same tools and methods that they had previously used.”<sup>56</sup>

Consequently, the original Susurluk Report, and the cases mentioning the facts that emerged during the period studied revealed that there had been illegal activities committed by agents of the state, particularly by those assigned to the organization named JITEM. However, since the existence and activities of this organization had been denied for a long time by the authorities, the relevant cases could not conclude that the violations were carried out by the officials.

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<sup>56</sup> Ibid.



## 8. CONCLUSION

This study intended to discover the impact of the European Union process on human rights violations in Turkey by examining legal and practical aspects of the problem. Turkey's EU process technically began in 1987 with Turkey's formal application. The Union accepted Turkey as a candidate state in 1999 and the accession negotiations between the Union and Turkey began in October 2005.

The study's goal was to demonstrate how international organizations have had an influence on an individual state's behavior during the era of globalization. As a non-state actor, the EU induced significant changes in the legislative, executive and judicial mechanisms of Turkey, as well as other states in the region. In addition to these changes, it is apparent that there was a notable transition in the mentality and behavior of the personnel performing their duties in the field.

In particular, the study focused on answering the question of *"To what extent has the EU process contribute to change in the practice of human rights violations committed by the Turkish security forces?"* In addition to finding an answer to the main research question, it disclosed major human rights violations in Turkey as mentioned in the European Convention on Human Rights, classified violations of different branches of security forces, and made an in-depth analysis of characteristics of these violations.

Following a logical organization, the study, first, described the legal changes in Turkey as monitored by relevant institutions, such as the European Commission and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Then, it examined the judgments of the European Court of Human Rights (ECtHR) as a primary data source. By using the content analysis approach, it built

up a detailed analysis of Turkish cases before the Court. Finally, it conducted several interviews with officers working in the field, details of which will be documented in this chapter, in order to add some ‘flavor’ to the results of the primary data analysis.

### **8. 1. Reading the Findings of the Study**

It is important to mention at the outset that the study is based on the analysis of systematically sampled cases. In order to reach reliable results, a skip interval –which was three (3)- was established and one third of all cases of Turkey brought before the ECtHR were used as units of analysis. That is to say, the study conducted an analysis on 863 cases among 2,589 cases to which Turkey was party. Therefore, the findings of the study reflect one third of all items that were available for purposes of this study.

In addition to this, another important point to keep in mind while interpreting the results of the study is to take into account the amount of time that the Court spends for a case. During the coding process of the study data, the length of every single case was calculated by measuring how long it took from the date of application to the date of judgment. The data revealed that the length of an average case before the ECtHR was 6.5 years (78 months). In other words, it took approximately 6.5 years for the ECtHR to finalize a case. Thus, it is important for one to consider these facts in order to minimize misinterpretations with the findings of the study.

### **8. 2. Evaluation of Human Rights Violations in Turkey**

As mentioned repeatedly, the main purpose of this study was to discover the change in the trend of human rights violations of the security forces in Turkey particularly for over the last two decades. However, it did not only put discuss this change, but also described the overall human rights record of Turkey. What it found by

examining the ECtHR cases is that applications against Turkey were filed with allegations of violation of 19 articles of the ECHR. These articles are Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 18, and 34 of the Convention, and Articles 1, 2, and 3 of Protocol 1. Evaluating the contexts of these applications, the Court made 1,466 decisions concerning Turkey. Among them, the study found 1,011 “violations,” 144 were recorded as “no violation,” and 311 were recorded as “not necessary to examine” decisions.

In order to express the nature of the major human rights violations in Turkey over the study period, the study scrutinized certain selected violation decisions of the Court. By doing so, it found that the most violated human right in Turkey is the right to a fair trial (Article 6 of the Convention). The majority of the Court’s violation decisions (37.9% of all violation decisions) included violations of Article 6, in particular, Article 6 § 1. The study explained the potential causes of the violation of this article through two factors; (1) violations of the provision of “independent and impartial tribunal” because of military members of the State Security Courts and (2) violations of the provision of “within a reasonable time” because of protracted criminal proceedings as a result of the lack of adequate prosecutor and judges.

Second, people applied to the ECtHR for violations of Article 1 of Protocol 1 (protection of property). Nineteen percent of the Court’s violation decisions included this article. Applications of individuals who were displaced after the military operation of the Turkish Armed Forces in Cyprus in 1974 play an important role among the documented violations of this article.

The Court reported 108 violation decisions (10.6% of all violation decisions) in the area Article 5 and 81 violation decisions (8% of all violation decisions) for Article 3

of the Convention. These articles, along with Article 2, constitute the main focus of the study since they are largely violated by the security forces.

The study found that violations of the right to an effective remedy (Article 13) and freedom of expression (Article 10) constitute other major human rights violations in Turkey according to the decisions of the Court with 80 violations (7.9% of all violation decisions) and 68 violations (6.7% of all violation decisions), respectively.

The right to life is the most fundamental human right and under the protection of all international conventions. It is also one of the major subjects of this study, since it is especially related to the duties and responsibilities of the security forces. The ECtHR decisions include 50 violations concerning this right, which constitutes 4.9% of all violation decisions of the Court.

The study found very few violations of other articles. There were 21 (2%) violation decisions regarding Article 8 of the Convention and 18 (1.7%) violation decisions regarding Article 11 of the Convention. All other violation decisions constitute 0.7% of the Court's violation decisions. There are also some articles showing that the Court received only a few applications concerning these issues. Article 1 of the Convention (obligation to respect for human rights), for instance, is one of them. The ECtHR received only two applications regarding Article 1, and did not find those applications necessary to examine. Similarly, there was one application with the allegation of a violation of Article 4 (prohibition of slavery and forced labor) and one application with the allegation of a violation of Article 12 (right to marry). The Court did not investigate these applications, either.

### **8. 3. Specific Violations Committed by the Security Forces**

Applications filed against Turkey included alleged violations of 19 articles. The Court did not find violations in all of those cases. The previous section summarized the most frequent violations in Turkey. With regard to violations of the security forces, the study found that the police and gendarmerie forces were involved largely in violations of Articles 2, 3, and 5 of the Convention. Although there had been some other violations committed by the security forces –such as Article 8 of the Convention and Article 1 of Protocol 1- the study did not pay attention to them. Their rate of occurrence among all violations of the security forces did not constitute a statistically significant effect on the overall results of the study. Additionally, such violations may not be considered as violations arising primarily from duties and responsibilities of the security forces.

Focusing on Articles 2, 3, and 5 of the Convention, the study revealed that there has been no systematic violation since the beginning of the 2000s. Despite the presence of sporadic violations regarding individual cases in 2002, 2004, and 2006, the study did not come across violations in that period as intense as those that took place in the 1990s. Therefore, in making generalizations about the violations of the police and gendarmerie forces, the study predicated its findings on the violations of the 1990s.

In this respect, the police violations basically took place in the western part of the country, primarily in Istanbul and densely-populated provinces; gendarmerie violations, on the other hand, became frequent in eastern provinces, especially in Diyarbakir. In addition to the violations of the security forces, the study disclosed the presence of unknown killings and classified them under the category of Article 2 violations of the unidentified perpetrators. Such violations also took place in the East, substantially, in Diyarbakir.

Police and gendarmerie operations constitute the primary causes of violations. Whereas the Court found procedural violations in most of the police cases, it found substantive violations in four fifth of gendarmerie cases. Additionally, although there were very few disappearances during police custody, the phenomenon of disappearances after being arrested by the gendarmerie was quite common in the gendarmerie responsibility areas of the Eastern Turkey during the 1990s. Similarly, according to the classification of the study, there was no violation that resulted from extreme professional shortcomings by the police. However, the Court found Turkey guilty for practices of the gendarmerie such as using land mines to secure a gendarmerie station or using tank shells during operations which were carried out in a region where civilian lived.

The number of Article 2 violations of the police and gendarmerie forces is close to one another. There are more gendarmerie violations than police violations. However, the difference between the numbers of police and gendarmerie violations in terms of Article 3 and Article 5 is relatively higher. Considering the duties and responsibilities of the two branches of security forces, it is expected that the difference between the violations of these forces in favor of the gendarmerie is reasonable. However, the study could not find an explanation to describe the greater number of Article 2 violations of the gendarmerie forces.

As mentioned in the previous section, the right to liberty and security (Article 5) is one of the most violated rights in Turkey. The Court had records of 108 violation decisions concerning this right. However, most of these decisions were not based directly on violations of the security forces but on the length of pre-trial detention. The study, therefore, coded such violations as “violations of judicial system” and excluded them

from the analysis. Focusing on violations of the security forces, it found that, the vast majority of the police violations were based on individual cases, while almost half of the gendarmerie cases were linked to violations of other articles such as Articles 2 and 3, particularly resulting from disappearances. Violations of Article 5, generally, related to Section 3 of the article, which requires the security forces to bring suspects promptly before a judge or another judicial authority. The study findings helped to establish a relationship between the presence of the State Security Courts (SSCs) and violations of this article. These courts were abolished with a Constitutional amendment in 2004. While the SSCs existed, the security forces had the authority to hold suspects up to 30 days in custody for offences falling under the jurisdiction of these courts. However, the ECtHR held in *Brogan and Others v. the United Kingdom* case in 1988 that even four days and six hours of police custody constituted a violation of Article 5 of the Convention. Therefore, weeks of custody periods in Turkey for the cases handled by the State Security Courts constituted a significant portion of violation decisions of the ECtHR.

As to the personal characteristics of the applicants and persons who were affected by the violations, the study made some notable findings. It revealed that a considerable number of the applicants or persons affected by the violations were from a particular ethnic group or members and/or sympathizers of terrorist organizations or extensions of such organizations. The study findings revealed that while the vast majority of applications were filed by persons of Kurdish origin, suspected members of terrorist organizations such as the PKK, DHKP/C, DEV-SOL, and TKP/ML-TIKKO, or members of organizations active in social and political arena or those having links with such terrorist groups, there were quite few applications filed by ordinary people with no

distinctive characteristics and links with the aforementioned ethnic or terrorist groups. Therefore, the study explicitly stated that it seemed apparent that the ECtHR had been viewed by certain groups as a tool for achieving their political goals.

#### **8. 4. Legal Change and Amendments to the Relevant Laws**

In an effort to increase the level of democracy and develop legislation in line with the contemporary documents of human rights, Turkey passed many amendments to the Constitution and introduced many relevant laws and regulations during the European Union harmonization process. As mentioned in Chapter 2, on the one hand, such improvements can be viewed as efforts to meet the requirements imposed by the EU. On the other hand, they can also be seen as a necessity to serve its people with an internalized awareness of democracy and human rights. One way or another, there has been a significant process of legal amendments since the beginning of the 1990s. This process gained acceleration in the late 1990s and reached at peak with its reform packages of the 2000s.

During this period, the first legislative action took place in 1992 with an amendment to the Criminal Procedure Law on November 18, 1992 where the custody periods for offences committed by individual or multiple offenders or in the region of state of emergency were re-regulated. A constitutional amendment in 1995 lifted restrictions on participation to unions and associations. One of the most important amendments during this period concerned the State Security Courts. In an amendment to Article 143 of the Constitution on June 18, 1999, the SSCs could no longer have military members. In addition to this, the term of imprisonment for the public officials charged with torture and ill treatment was increased with an amendment to the Penal Code on



August 26, 1999 with Law no. 4449. A comprehensive constitutional amendment package was enacted on October 3, 2001 amending 34 articles of the Constitution. This package brought about fundamental changes in the restricting articles of the 1982 Constitution in terms of freedoms and civil liberties.

The TGNA passed several reform packages between 2002 and 2004. The first reform package, which came into force in February 2002, included amendments to Articles 159 and 312 of the Penal Code, Article 107 of the Criminal Procedure Law, Articles 7 and 8 of the Counter Terrorism Law, and Article 16 of the Law on Establishment and Prosecution Procedures of State Security Courts. These amendments re-defined certain offences in the Penal Code and the Counter Terrorism Law and limited the term of imprisonment for those offences, as well as limiting the custody period within the jurisdiction of the SSCs and lifting some restrictions for the custody period.

In addition to amendments to the Press Law, Political Parties Law, Associations Law, and Demonstrations Law, the second reform package included an amendment to Article 13 of the Civil Servants Law. According to the new form of this law, public officials would be held responsible for paying the amount of compensation, which is paid by the Government to the European Court of Human Rights as a result of the latter's violation decisions for allegations of torture and ill treatment.

The third reform package also included amendments in numerous laws such as the Penal Code, Associations Law, and the Law on Duties and Responsibilities of the Police. One of the most important amendments carried out with this package was the partial abolishment of the death penalty. According to the provisions of this amendment the

death penalty would be abolished except for cases related to war, or the imminent threat of war and terror offenses.

The fourth reform package, which passed in January 2003, included additional amendments to the laws which were already amended by the previous reform packages. With regard to the subject of the present study, this package included an amendment to the Law on Prosecution of Civil Servants and Other Public Officials. According to this amendment, the prosecution of offences defined by Articles 243 and 245 of the Penal Code (torture and ill treatment offences) was excluded from the scope of this law. Therefore, public prosecutors would no longer need the permission of administrative bodies to open an investigation against public officials upon allegations of torture and ill treatment. Additionally, the same package passed an amendment to the relevant articles of the Penal Code that the sentence proposed for offences of torture and ill treatment would neither be suspended nor converted into fines.

There were three more packages including several amendments to the laws on associations, broadcasting, press, education, etc. The eighth package, in May 2004, brought about fundamental amendments to the Constitution. This package abolished the death penalty in any circumstances. Additionally, Article 143 of the Constitution concerning the State Security Courts was completely abolished with this package.

In addition to constitutional and other legal amendments, the Regulation on Apprehension, Detention and Statement Taking underwent several changes during this process. First, the amendments in August 1999 enhanced the further provision of regulations regarding the apprehension and detention of juveniles. That amendment also included a definite statement regarding search of female suspects by female officers or

any other public official from the same sex. The original text of the regulation had mentioned this issue simply as a recommendation. Another amendment, dated September 18, 2002, included provisions regarding the right to have someone notified about the arrest and medical examination of suspects. The amended regulations held that the examination of suspects shall be conducted in the form of a patient-practitioner relationship and they shall stay alone in the room out of the hearing and sight of the security forces. The 2002 amendment also regulated the right to access to a lawyer and the lawyer's access to the investigation documents. The Regulation was amended one more time in 2005 in accordance with the changes in legal and executive situations.

### **8. 5. Practical Change Found in the Field**

Chapter 2 of the present study touched upon improvements in the legislation as mentioned by the European Commission in annual progress reports. The annual progress reports aim at measuring the level of preparedness of each candidate state for membership. The Commission has published these reports for Turkey since it was accepted as a candidate state.

Although these reports and relevant improvements indicate that there has been a significant progress to catch up the contemporary standards of democracy and human rights, there is still another important aspect of the issue which was mentioned by the CPT in 1992 as “despite the existence of legislation related to these fields, many safeguards were not more than a dead letter. So, torture and ill-treatment problem will not be eradicated by legislative fiat alone. In this context there is a concrete need to amend

laws, to promulgate new codes and also realize change in the mentalities.”<sup>1</sup> Thus, in addition to the amendments to the laws and regulations, the mentality of the persons who implement these laws and regulations in the field must change in order to achieve certain standards. If not, the officers will somehow find shortcuts to violate the laws and regulations, and eventually, human rights.

This important fact was seen and mentioned by the CPT 20 years ago. The study confirmed this finding while conducting interviews with officers from the field. Conversations with persons, who, personally, have taken part in law enforcement activities, revealed that the impact of amended laws and regulations within the process of the EU is an undeniable fact demonstrating the improvements in the legislative level has been effective. However, they have not, *per se*, been adequate to generate a new form of officer, who takes care of the rights of suspects; a new form of officer emerged with a new mentality. One of the police officers who had been in the service for 11 years accepts that “the laws and regulations should definitely have an influence on this change.” Then, he adds;

“But, now officers tend to take lessons from the previous incidents. Everybody cares about himself, his family, his country, and takes lessons from the previous experiences. They realized that the old policing had not worked; things have changed. Investigations and sanctions absolutely have an influence in this transition but everything is in your mind. You need to change your mentality.”

The same officer does not think the orders of superiors would have an impact on this change;

“If you do not change your mentality, the chain of order does not make any sense for you. Some say that ‘I do not care what the law dictates.’ So, if you change your point of view, everything gets better.”

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<sup>1</sup> Gemalmaz, M. S. (1997-1998). “Evolution of the CPT Activities in the Turkey Case” *Turkish Yearbook of Human Rights*, Vol. 19-20, 55-91. Also available at “3<sup>rd</sup> General Report on the CPT’s activities covering the period 1 January to 31 December 1992” <http://www.cpt.coe.int/en/annual/rep-03.htm#I>.

As outlined below, a gendarmerie officer, who worked in Adana, Ankara, Bingol, Batman, and currently works in Istanbul for the last two years, does not disregard the importance of new laws forcing the police and gendarmerie to change their behavior. However, he also admits that a transition in behavior comes with transition in the mind;

“There has been a progress, a positive change. Personnel view other people as human beings. Rules and regulations have now taken the place of old style policing. It is important to understand people, and treat them in a better way. Previously, the orders of superiors were the only rules and regulations. They have change with the impact of EU norms. Thus, rules and regulations have the primary importance, and then, the mentality. The mentality has changed and the worth of human increased for both of the organizations [the police and gendarmerie]. The change in rules and regulations caused remarkable changes in practice. For example, lawyers, now, check the time whether the custody period exceeds 24 hours. If so, they apply to the public prosecutor right away. However, this change did not become apparent in a wink. New generation is more meticulous about these changes. Training is also important but it is not the unique factor. Thus, rules and regulations are important, training is important, but they are not sufficient on their own. This most important this is to raise awareness. A professor and a shepherd may make the same mistake; so, awareness is more important than education. It is same for the law enforcement personnel. The personnel, now, care about things; they know that the rules and regulations have changed. If one does not have awareness, he may obey the rules; but simply obeys the rules, does not believe that he has to treat in that way because it is the right way.”

When asked if he –or any gendarmerie officer- can now treat a suspect in the same way as he did while he had been working in Adana and Bingol (between 1992 and 1998), he responded;

“No, I definitely cannot. In those years, we had the absolute power. Now, the rules and regulations are powerful; they stopped us. Additionally, the citizens are aware of these changes. They say that we are here to serve them. When you are powerful, you do not care about the victim. But when you lose you power, you know that you might be in the same situation. So, there has been no difference between an officer and a citizen, now. Everyone is equal.”

In fact, the statement of this officer reveals that officers in the problematic years of the 1990s found themselves more powerful that the citizens. They were definitely more powerful. However, it also seems as though they tended to use this power for breaking the law rather than enforcing it. The amended legislation forced them to obey rules and regulations as ordinary citizens.

One of the police officers with 28 years in service, 20 years in counter terrorism branches in Bingöl, Ankara, and Istanbul, discloses below how the change was achieved.

He first tells a story which demonstrates the policing of the mid-90s:

“When I was working in Ankara [between 1994 and 1997], the chief of public safety division had called all units over the radio and ordered that each unit was supposed to arrest ten persons. They would not be released unless they did so. What should have we done to be able to go home? We had to take ten persons to the police station. If we did so, then we could go home. What kind of policing is this? If I was one of those persons, I would hate the police, I would hate the state. The officers who arrested ten persons could go free; but how about the arrestees? How much time would they spend in custody? What was their fault? No one cared.”

Then, he continues to describe the new type of policing;

“Now, there is no such rubbish. The police use technology. We still work very hard, but we do not victimize people. We do what we got to do, take pictures, gather evidences while the suspect lives his own life. When we get sufficient evidence, we arrest him while playing cards in a coffee shop. We read his rights, tell him that he committed this offence and he is arrested. Now, I am doing my job without getting involved in crime; I am doing it according to the laws, rules, and regulations. This is important, the units, which deal with crime, now, work without getting involved in crime. It is important, because half of our colleagues used to be sued, but now very few of us go to court.”

As expressed by the officer who had a chance to observe almost 30 years of policing in Turkey, the organization has undergone a significant transition during this period. Groundless arrests no longer exist. Arbitrary practices for the most part have disappeared. According to findings of the analysis, it was disclosed that the lack of adequate surveillance in custody facilities resulted in notable human rights violations during the 1990s. The same officer explains the importance of using technology while people are in custody:

“We always work with the help of technology. The camera is always on when we are arresting a person, taking him into custody, during the search and interrogation. Even if we need to use force to control the suspect, we try to keep everything recorded. In this way, even if the suspect complains about ill treatment, we submit the video images to the authorities and they decide not to prosecute the case. Technical improvements are very important in lessening the allegations of violations.”

It is apparent that the security forces use technology more effectively today. Accordingly, there are fewer violations compared to the years where there was a lack of efficient usage of technology. Another officer explains the benefits of technology:

“We used to tend to make interpretations according to the state of the incidents; we had tried to predict potential offenders. But now, we follow knowledge and technological improvements. There CCTV systems anywhere. Previously, if we had arrested 25-30 persons, there were only 5 real offenders among them; but now we take 50 persons and 45 of them are found guilty by the judicial authorities. So, we work without victimizing people. Victimization of people diminished.”

Responding to a question regarding potential causes of such a change, he states that, the security forces, now, put themselves in the place of the suspects. He maintains;

“The old type officer used to train the rookie officer according to his type of policing. Now, this type of policing does not exist. Our superiors have the ability to analyze things going on around us. There is a remarkable difference between old type of officer and new officer, and old type of superior and new superior. Now, our chiefs tell us that their fathers, their mothers, and their brothers walk around out there like the persons whom we arrest. We have to treat people how we want our relatives to be treated. An officer should put himself into the place of the suspect. If I tell you a lie and lock you up, will the problem be solved? When you go to the prison, you will cause a cost to the state; and I will pay more tax to cover this cost. To place someone into the prison is not an achievement on its own. The achievement is to find the real offender and to solve the crime problem. We are now honest with the suspects. If you are honest, they give you the information you need. We build a bridge of dialog between suspects and us.”

Therefore, the findings of the study from the field confirmed the fact proposed by the CPT 20 years ago. It is apparent that there has been a mentality change, in addition to the process of amendments to the laws and regulations. Another police officer, who believes that the change began with the 2000s, stated:

“I would like to mention pre-2000 and post-2000 eras. The vast majority of the officers who worked in pre-2000 era had begun to work in the 1980s. They claimed that they were working for the state and nation. They saw people as potential criminals. However, those that began to work in the post-2000 era have mostly been well-educated officers. The concepts of the state and nation are still important; but the officers have the ability to inquire the question of what if my action constitutes a cost to the state and nation. As a result of this inquiry the belief that the offender is supposed to be handed over to justice is disseminated. Laws have changed. The judgments of the ECtHR played an important role. The approach of the media, news, education, and personnel body had changed. People have become more objective. Officers have begun to put themselves in the place of citizens. They have begun to criticize themselves. They were forced to catch up with the innovations. They assessed the incidents. The mentality of “if I want to be a good citizen, I have to be the best” became evident. They believe that if they do something wrong, they will be devastating the endeavor of others. Thus, the police have become

more professional. Accordingly, violations have diminished, and the losses of the police have also diminished.”

In addition to non-ranked officers, the study investigator contacted a chief of police, who gained his master’s and doctorate degrees from the US universities, about the mentality change of the police. The chief has served for about 20 years in the police force and is currently working in Diyarbakir where a considerable number of the violations took place according to the findings of the study. He, so to speak, summarizes everything mentioned by the previous officers and juxtaposes the reasons for the change as;

“The police have realized that the previous methods had not included solutions. The police, now, believe that those methods were counter-productive. This is the primary reason of the change. Second, standards of democracy increased. The third reason is the awareness of transparency. There is nothing to hide, anymore. The fourth is the impact of accountability. Nobody wants to get involved in incidents that they cannot provide an explanation. All operations, for instance, are digitally recorded now. There is no need to tell stories. Thus, everybody needs to be accountable for what they do. Another reason is that nobody wants to be known as the ‘former policeman’. After the 2003 Istanbul bombings, for instance, there was a pressure on the Istanbul Counter Terrorism Branch (TEM) to find the suspects. The TEM was ordered that “You got to find them!” This meant that they had to find the suspects by using any tools. However, Istanbul TEM resisted this pressure and stated that they would not be using the previous methods. They worked really hard; they did everything according to the rules and regulation, and finally found the suspects by staying within the legal framework.”

With regard to the impact of education, the same official states that;

“First of all, the individual education level of the TNP has been enhanced over the last decade. There is a relatively significant proportion of officers who were graduated from four-year-universities. They take a professional training after graduation. This policy made officers more qualified in implementing their duties, because policing is not only based on muscle power but also on intellectual capacity. In addition to the increase in the level of officers’ education, the organization also initiated in the early 2000s a process of education abroad. I can argue that the Turkish Police today have members holding the highest levels of degrees among other police organization in the world. While, our members used to go to other countries to be trained in certain areas, they now give lectures, participate in panels, conferences and long-term/short-term trainings in different parts of the world from Central Asia to North Africa and the Americas. Most of the European countries, Germany, Spain, Finland, Belgium and so forth have agreements with the TNP; our members with master’s and doctorate degrees visit local police organizations in these countries and give them lectures on specific areas of policing.”

To conclude, the major data analysis of the present study revealed that there has been a significant change in the practices of human rights violations of the Turkish security forces for approximately the last ten years. The interviews conducted with



officers who have been working in the field a long time confirmed the findings of the study. Additionally, they explained the root causes of such improvements. It is evident that the officers, now, do not see themselves as superiors of the citizens –or suspects- but believe that they are serving them. The officers, at the same time, try to find and solve the crime/terror problem. They do not simply try to lock up people without investigating the root causes of the problem. They believe that the influences of factors such as family life, previous education, recruitment, and the on the job training cannot be disregarded. However, the most important thing is to generate a new form of officer with a new mentality covering all these factors, and, of course, believing in these factors.

#### **8. 6. Strengths and Weaknesses of the Study**

This study can be considered as the first in the literature to investigate and describe human rights violations in a particular state, Turkey, within a considerably long period of time. Even if there are relatively broad and general studies putting forth the human rights record of Turkey, the present study intended to include the detailed description of human rights phenomenon in Turkey during its protracted European Union journey. Therefore, this research constitutes a great opportunity for further researchers and policy-makers to use and deepen its findings.

There are two major strengths of the study. On the one hand, it draws attention to a gap in the fields of international relations and human rights. It will possibly play an important and pioneering role for future research in these fields. Since it is an exploratory study, it focused on the question of “how” rather than “what.” It provided a description of how density, structure and contents of human rights violations shifted in Turkey over the last two decades. Thus, it gave birth to a broad area of data to answer the question of

“why.” The present study describing the situation of violations in Turkey that relate to three areas, and its findings may encourage further researchers to carefully explore the underlying reasons for these present observations. On the other hand, the study constitutes a unique opportunity for assisting policy-makers to measure the cost and benefits of existing human rights practices in Turkey. The ECtHR is an international organization and its decisions are binding for all member states. As the initial progress reports of the European Commission revealed, Turkey had previously been criticized by the Commission for omitting and being reluctant toward examining the sanctions of the Court. Therefore, each violation has a cost for Turkey, in addition to the negative impact on the prestige of Turkey in the international arena. Consequently, the findings of the study may help officials take necessary measures to foster efficient solutions for minimizing human rights violations.

As to the limitations of the present study, the lack of sufficient support from the field may be considered as the primary limitation of the study. As the main data source of the study was constituted by the published decisions of the ECtHR, it was largely based on court documents. It could have provided a more comprehensive analysis, if it had reached real persons who are or may potentially be parties of the Court’s decisions. A broader interviewee body might have rendered the findings of the study more reliable.

Another limitation is related to the validity of the data source. As the findings of the study revealed, the applicant body of the Court does not homogenously reflect all persons subject to questionable police or gendarmerie practices at a domestic level. In other words, the study results showed that the Court applications are, for the most part, filed by members of a certain ethnic group, suspects of terror offences, and/or members

of terrorist groups. There are very few applications from individuals who are exposed to human rights violations as a result of ordinary criminal offences.

Additionally, the number of final decisions provided by the Court is far from reflecting the exact numbers of applications. The study focused only on the published decisions which are a diminutive part of the total number of applications. All applications are, first, subjected to an admissibility assessment by commissions of the Court. If these are found admissible, the commissions then handle the cases. If a commission believes it is necessary to bring the case before the grand chamber, the case is examined and a judgment on it is made. The publications that the present study analyzed included those that were classified as final judgments of the Court.

Finally, the findings of the study may not be sufficient for determining the precise impact of the European Union on human rights violations in Turkey, because it did not concentrate on social, economic, and political changes in the country. The study goal was to demonstrate the overall change and contents of human rights violations as far as the ECtHR who handles the cases, not to explain reasons for increases, decreases, or other variations in the quantity of reported violations. Therefore, using different techniques of qualitative and quantitative research such as surveys and interviews with greater numbers of participants, further studies might provide more comprehensive results explaining the potential reasons for these rate changes in the violations studied.

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