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LATEST DEVELOPMENTS REGARDING HUMAN RIGHTS IN TURKEY

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"Every individual has the rights and freedoms to think what he wants, to believe what he wants, to possess a political opinion that is unique to himself, and to undertake or not undertake the requirements of the religion he has chosen. No one's ideas or conscience can be dominated."
ATATÜRK, The Founder of the Republic of Turkey (1925)

INTRODUCTION

It is appropriate to evaluate Turkey's human rights record on the 75th, anniversary of the Republic of Turkey. An evaluation will shed light on Turkey's achievements in this field.

What does human rights mean to us with regard to living in a modern state? The evolution of human rights has made the individual the focus of contemporary liberties and rights as opposed to the absolute power of the state. In general, in countries in which democracy and universal rights are accorded respect, one finds a genuine possibility to further real democratic values and practices in the everyday life of the individual.

The concept of human rights encompasses the basic rights and freedoms to which all human beings are entitled irrespective of their race, creed, religion, gender, ethnicity, language, national origin and age. Human rights have evolved to this day as the natural right of an individual in which he enjoys equal rights before the law. This definition of human rights is applied universally and thus the principles of human rights have become an effective measure of the democratic level of a society.

TURKEY'S COMMITMENT TO THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The horrors of the Second World War impressed upon the consciousness of the leaders of the world and their communities the need to ensure that humanity would never again be subjected to the abuse of power and cruel inhuman treatment. To that end, a draft prepared by a UN commission was accepted by the General Assembly of the United Nations, on December 10, 1948. This proclamation of human rights was designed as a guide for all member states in creating an environment which was in keeping with the dignity of mankind. Although this declaration has paved the way for a unified concept of human rights world-wide, it does not have the clout to impose sanctions on members who do not comply with the provisions of the document. It was the European Convention of Human Rights which brought about a mechanism of imposing sanctions on signatory European states by the functions of the European Commission of Human Rights and the European Court of Human Rights.

The Universal Declaration of Human Rights provides that the fundamental freedoms and personal,

civil, political, economic, social and cultural rights of the individual be promoted and respected. However, it should be pointed out that there is a limitation stipulated in this document with regard to the exercise of the individual's rights and freedoms. Article 29, section 2, of the Universal Declaration of Human Rights reads as follows:

In the exercise of these rights and freedoms everyone shall be subjected only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Turkey has been viewed by some observers and critics as not fully complying with certain criteria in the field of human rights. To give an example, the US State Department's Turkey Country Report On Human Rights Practices for 1997 stresses that 'Despite some reforms and the Government's stated commitment to respect human rights, serious human rights abuses have continued. Human rights nevertheless remained a priority public issue during the year. There is a general recognition that the country's human rights performance is inadequate and needs to be brought into line, not only with its international obligations and commitments, but also with popular aspirations and demands, and the Government's own policies.' The report on the other hand, acknowledges positive steps taken by the Government in human rights: 'The Government provides human rights training for the police and military. The military has continued to emphasise human rights training for its officers and non-commissioned officers, which human rights NGOs reported has led to a reduction in human rights violations. Human rights education is mandatory in primary schools, it is an elective in high schools.'

Some of the problems being perceived are caused by violence resulting from terrorist activities which have reached a degree no western country at present is experiencing. In order for a nation to prosper, it is necessary for the state to safeguard the life and property of all its residents. Since terrorism affects many innocent people and society as a whole, we must focus our attention on the limitations provided in the Universal Declaration of Human Rights. This is necessary because inherent in terrorism are actions which are in contravention to respect for the rights and freedoms of the innocent victim who winds up being the target of such actions.

It is not only Turkey that is waging a war against terrorism; on the eve of the new millennium terrorism has become an international menace and a threat to the security of many nations. The question here is whether the victim has any right at all. Do not innocent citizens and, on their behalf, their respective governments have the right to ensure and sustain a peaceful environment in which they may carry out their daily pursuits free of fear? This is why Turkey is struggling to maintain the sensitive balance between ensuring the welfare of the public and the exercise of human rights.

Critics of governments usually point to the human rights issue but they fail to recognise the reason for taking measures against terrorism and tend to brand these measures as violations of human rights without fully examining the actual problem. Here is a classic example of the limitation of freedom which elementary school teachers mention in their classrooms: if an individual screams 'fire', in a crowded theatre or circus and a stampede results whereby 30 people are trampled to death, then can we say that the individual was using his right to freedom of speech when he screamed 'fire'? Perhaps there wasn't a fire at all and the individual had other motivations for his actions. The point here is that freedoms can only exist if they are not to the detriment of others as we see from an examination of Article 29 section 2 of the aforementioned document.

PROVISIONS IN THE TURKISH CONSTITUTION REGARDING HUMAN RIGHTS

Turkey is a parliamentary democracy where the individual rights of each and every citizen, regardless of race, religion or ethnic background, have been ensured by the constitution and respective legislation. Article 2 of the Constitution reads as follows: ‘The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights’.

With regard to human rights, one of the fundamental aims and duties of the state, according to the Turkish Constitution, is ‘to strive for the removal of political, social and economic obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and the social State governed by the rule of law’ (Article 5).

Article 9 of the Constitution of Turkey stipulates that in a state based on the supremacy of law, ‘Judicial power shall be exercised by independent courts on behalf of the Turkish Nation’.

Article 12 states that ‘Everyone possesses inherent fundamental rights and freedoms which are inviolable and inalienable.’ Just as in the Universal Declaration of Human Rights, the Turkish Constitution allows the possibility by law for the restriction of fundamental rights and freedoms when law and order, national sovereignty or security is in jeopardy. That is not to say that all these legitimate justifications should be used to cover unlawful and inhuman actions. It should be recognised that the supreme document of any legal system in a country is its constitution. This reflects the very nature of the legal system in question as well as the way in which a society reaches a consensus on social order and interaction between the citizenry and the state.

The Turkish Constitution delineates the fundamental rights and freedoms of individuals with all contemporary concepts and principles of rights and freedoms included under the following headings:

- Prohibition of forced labour
- Personal liberty and security
- Privacy and protection of private life
- Freedom of residence and movement
- Freedom of religion and conscience
- Freedom of thought and opinion
- Freedom of expression and dissemination of thought
- Freedom of science and arts
- Provisions relating to the press and publication
- Rights and freedoms of assembly
- Right of property
- Provisions relating to the protection of rights
- Right to prove an allegation
- Protection of fundamental rights and freedoms
- Social and economic rights and duties
- Political rights and duties

A BRIEF LOOK AT TURKEY’S ACHIEVEMENTS IN THE FIELD OF HUMAN RIGHTS

International Legal Obligations

Turkey, from the beginning of the preparatory phase of the Universal Declaration of Human Rights, took her place with the family of democratic states and as a result became a party to almost all European and most of the major UN human rights conventions. Turkey is a party to a series of conventions within the framework of the United Nations, the Council of Europe and the Organisation for Security and Co-operation in Europe (OSCE), most of which deal with effective control mechanisms which include among others, the following legal documents:

- The Convention on the Elimination of All Forms of Discrimination Against Women (1985);
- The European Convention of Human Rights (in the context of this convention the right of individual petition to the European Commission of Human Rights was granted in January 1987; subsequently the compulsory jurisdiction of the European Court of Human Rights was also adopted in January 1990 and, recently, Protocol No. 11 to the Convention was approved in July 1997 creating a single court);
- The European Convention for the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (February 1988);
- The UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (August 1988);
- The European Social Charter (November 1989);
- The OSCE Paris Charter (November 1990);
- The UN Convention on the Rights of the Child (December 1994);
- Other instruments prescribed in ILO Conventions Nos. 59, 77, 87, 135, 142, 144, 151 and 158 regulating labour standards, between 1993 and 1995.

All the above documents have duly become integral parts in the Turkish legal system as required by the Turkish Constitution.

Internal Legal Arrangements

The Turkish parliament exerted great efforts to improve national legislation that has encompassed among others:

- Amendments to the Turkish Constitution in 1987 relieving banned political activities and easing the procedures for constitutional amendments
- Constitutional amendments in July 1993, enabling private initiatives in TV and radio broadcasting. Since then, media activity has developed enormously to encompass in national and local terms more than 260 TV networks, 1200 radio stations and 1750 newspapers;
- Enactment of the harmonisation laws to implement the Constitutional amendments in 1995: the Turkish parliament made an extensive effort in June 1997 and enacted the following 6 laws:

- Restrictions on trade union membership of public officers were abolished;
- The law went into effect and abolished the restrictions on the political involvement of co-operatives;
- Parliament passed a law enabling joint action of trade unions, professional associations and foundations;
- Another law became effective and abolished the restrictions on the political activities of associations;
- Membership of academic personnel and university students in political parties and their active involvement in party affairs were enabled by law;
- A law amended the trial procedures of the Constitutional Court providing the right to individual petition to the Court by members of parliament whose parliamentary immunity was lifted;
- Establishment of a Parliamentary Commission on Human Rights in December 1990 to investigate allegations and complaints and to introduce proposals for improving human rights conditions in Turkey;
- Amendments to the Turkish Criminal Code abrogating propaganda related crimes with a simultaneous relief in the legislation to enable publications in other local languages in April 1991;
- Amendments to Article 8 of the Anti-Terror Law in October 1995 alleviating the rigidity on propaganda activities by introducing the criteria of ‘aim or intent’ against the unity of the state;
- In August 1997, the Turkish parliament adopted a law cancelling the sentences of editors-in-chief formerly convicted of or currently charged with publishing articles praising separatism and terrorism. This law constitutes an initial step toward a further expansion of freedom of expression;
- A law went into effect on 9 August 1997 stipulating new arrangements for the administration of prison and detention house workplaces, and reorganising the training and production activities in prisons and detention facilities. The law also brings forth new financial resources for the development of facilities in prisons;
- Amendments to the Code of Criminal Procedures which reduces detention periods and improves custody conditions by introducing immediate and subsidised legal assistance for ordinary crimes, in December 1992;
- A law on the reduction of detention periods was enacted by parliament in March 1997. The new law introduced major reductions in detention periods by which Turkey’s detention periods were brought into line with European practices. The maximum detention period for ordinary crimes decreased from eight to seven days, the maximum detention period for crimes within the scope of State Security Courts was reduced from 15 to a maximum of seven days and from 30 to a maximum 10 days in the state of emergency region. Most importantly, in all cases, the extension of detention periods exceeding four days requires the decision of a judge. Furthermore, it is now possible for detainees falling under the competence of the State Security Courts to consult their lawyers. The scope of the State Security Courts is restricted and dedicated only to crimes against the integrity and

authority of the state. With the new law, articles 384, 385 of the Criminal Code are excluded from the scope of the State Security Courts;

- Gradual abolishment of the state of emergency covering 10 south-eastern provinces has begun and Mardin province was excluded from the area on 30 November 1996. In addition, Elazığ province has ceased to be an adjacent province to the area. The Government has its own agenda with regard to lifting the state of emergency entirely in the south-eastern provinces. It lifted the state of emergency in three more provinces (Bitlis, Batman and Bingöl) on 6 October 1997.

Administrative Arrangements

Let us now look at the structural reforms and other efforts exerted by the Turkish government: the Human Rights Co-ordinating High Committee was established on 9 April 1997 under a state minister. Its members are the under-secretaries of the Prime Ministry and the ministries of Foreign Affairs, Interior, National Education and Health. The main functions of this committee are to co-ordinate and monitor the implementation of measures to alleviate deficiencies in the field of human rights, in addition to formulating and presenting proposals to the government for the improvement of the current situation.

An Emergency Support Programme has been implemented to ensure the safe return of those who have left their homes in the area affected by terrorist atrocities. The programme involves support for households either in cash or in kind to assist repairing houses and starting up essential economic activities.

The Directorate General For Security has formed a working group to undertake the project work under the 'Human Rights and Police 1997-2000' programme that the Council of Europe formulated for the modernisation and training of police.

It has been decided to carry out preliminary studies and to contact friendly countries which have stated their readiness to assist Turkey in the field of human rights by organising training visits to those countries for Turkish security forces and prison administrators.

Turkish Radio and Television Corporation and the state minister responsible for human rights signed a protocol, which went into effect on 1 January 1998, with a view to broadcasting human rights education programs.

Custody Monitoring Units to follow up and provide information on persons in police custody were established in August 1995. In December 1996, the Ministry of Interior established an investigation bureau for missing persons which operates twenty-four hours a day.

The preparation of a draft law on 'Public Inspector' or 'Ombudsman', consistent with the universal standards is underway with a view to enhancing human rights in Turkey.

A draft law was prepared in October 1998 with the objective of compensating citizens that have been subject to damages in cases where there is an objective liability of the state, especially during the struggle against terrorism or as a result of it, without a requirement of a court order. Since the draft has been commissioned by the Council of Ministers, it is expected to be submitted to the parliament with priority status.

Inclusion of human rights topics in the school curriculum and training programmes of the security forces and prison staff and other public administrators has been realised. Within the framework of studies conducted by the Ministry of National Education in the field of education of human rights, it has been decided:

- to impose a compulsory course entitled 'Citizenship and Human Rights' on the 7th and 8th grades;
- to offer the course entitled 'Democracy and Human Rights' in secondary schools.

CONCLUSION

Turkish thought with regard to human rights has been influenced greatly by her culture, which encompasses a long period of time stretching back to Central Asia. Celaleddin Rumi, Turkey's great poet and mystic philosopher stressed humanism and ecumenism in the thirteenth century. His thoughts were influenced by his father who was a noted scholar of Balkh, an area which is now located within the borders of modern Afghanistan. Balkh, the former Bactria of ancient times was a centre of learning where many cultures and philosophies blended. Humanistic philosophy was stressed. With regard to freedom of religion, Rumi is known to have said that in all mosques, temples and churches he saw but one shrine, hereby issuing a statement upon the common values of all men. At a time when the world was torn by strife, sectarian wars and political divisions Rumi's philosophy stressed the human rights of the individual.

When Western nations chained the mentally ill in dungeons, the Seljuks created asylums for psychologically impaired people and treated them with music therapy and also with the sounds of birds and gurgling water from fountains in lovely verdant surroundings. Even mentally impaired individuals were the recipients of human rights concepts.

Yunus Emre, the wandering mystic poet of Anatolia was a great humanist stressing that the love shown to the Creator should also be accorded to human beings. This humanistic philosophy manifested during Seljuk times was transferred either consciously or unconsciously to the Ottomans and became a cornerstone of modern Turkish thought.

When the Jews could find no refuge in Europe from the fires of the Inquisition, it was in the lands of the Ottoman Empire that they found a heaven from persecution and were saved from certain death. They were welcomed by Sultan Beyazıt the Second and held important positions in the Ottoman Empire and also became very successful businessmen.

Throughout the ages Turkey has served as a 'Haven in the East' where individuals were free to practice their respective religions and occupy important posts professionally. During the Second World War, Turkey in spite of her difficult economic position, still opened up her doors to individuals fleeing persecution and death. Turkey's respect for human rights led her to be an overland bridge to the Holy Land for Jews fleeing Nazi oppression. In addition, in recent years, Turkey allowed Afghan refugees to migrate to Turkey and provided a temporary home for the peshmergas who were fleeing from the devastation of war-torn Northern Iraq.

The respect for human rights is, above all, dependent upon respect for human life and the desire to improve the deplorable conditions under which man may be compelled to live through no fault of his own. However there is still room for improvement in the exercise of human rights. The most

important element with regard to human rights is good intentions and a sincere approach to remedy any deficiency.