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THE ROLE OF TURKISH PARLIAMENT IN PROMOTING HUMAN RIGHTS

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The Role of Turkish Parliament in Promoting Human Rights

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Efforts of importance have been deployed by National Parliaments in order to prepare texts for the protection at national level of human rights and to integrate international instruments of human rights with the internal law. Parliamentary contribution to converting human rights into a supreme system of values placed at the foundation of all the democratic regimes cannot be denied.

The Turkish Grand National Assembly has been striving to protect human rights in two different directions. It has on the one hand amended various laws and the Constitution in order to make them in agreement with the international law of human rights and on the other hand forced administration and the government to comply with the human rights by means of its Committee for Human Rights which is specific to Turkey The said Committee was established by the Act dated 5th of December 1990, number 3686. The said law authorised and commissioned a special parliamentary committee to follow developments in the field of human rights. It was also called upon to table proposals with a view to amending norms of internal law which are not in line with the international norms and arrangements in the field of human rights. This power bestowed upon the Committee has been used in amending the Passport Act and the Act Establishing the Committee.

A most important duty of the Committee which is peculiar to it is to interfere with the infringements of human rights regardless of whether they take place at home or abroad. In connection with the internal infringements the Committee is empowered ex office or upon petition to request information from all public and private organisations, to subject them to inquiries and examination, and to interrogate whomever concerned. If and when the Committee deems it necessary, under Article 6, the Report prepared by the Committee is to be forwarded to the administrative unit through the Speaker so that it may start investigation about the responsible people. As is clear this provision restricts the executive power of the Committee. The administration is entitled only to decide whether the final report calls for any action. So it is clear that the function of the Committee is of advisory nature rather than executive. The Committee is expected to play a consultative role, to make proposals and warn the concerned whenever necessary. Yet it is not difficult to say that the Administration is careful to take the Reports of Committee seriously and act accordingly because of the moral authority of it and its role in shaping the public opinion. It is also possible for the National Assembly to discuss at the proposal of the Advisory Committee any Report of the Committee and request supplementary information from the Government.

Everybody is free to demand respect for his rights. He may resort to the administration, to the Assembly (right of petition) as well as to Courts. The most efficient way of recourse is no doubt the judicial one. One may defend human rights against the acts of the executive and legislative power by resorting to judiciary power which is divided into administrative, constitutional and judicial branches. Under Article 36 of the Constitution "Everyone has the right of litigation either as plaintiff or defendant before the courts through lawful means and procedure. No court shall refuse to hear a case within its jurisdiction."

It is usually against the Executive among the State organs that human rights were protected in the past. Keeping this fact in view Turkish Constitution provides under Article 125 / 1 that the Administration can be sued in Courts for any act of its. (Recourse to judicial review shall be open against all the actions and acts of the Administration)

As for the protection of human rights against the Legislative power, the Constitution enumerated a number of fundamental rights and freedoms and set forth the admissible reasons, methods and criteria for their restriction. The second and really efficient measure of protection of human rights against the Legislative Power is the existence of a Constitutional Court that ensures the constitutionality of the will of the elected majorities. In agreement with the general development observed everywhere, Article 148 of the Constitution foresees that Constitutional Court shall secure the conformity of laws, decrees in force of law and the Rules of the Procedure of the Assembly with the Constitution in respect of form and essence.

The only way in which individuals resort to the Constitutional Court in order to defend themselves against legislative acts infringing upon their rights is shown in Article 152 which says that if a court which is trying a case finds that the law or decree having force of law to be applied is unconstitutional, or if it is convinced of the seriousness of a claim of unconstitutionality submitted by one the parties it shall postpone the consideration of the case until the Constitutional Court decides on this issue. A person who is party to a case under trial in a Court may claim that a law or a decree in force of law which is intended to be applied to himself is infringing upon a right or freedom of his recognised by the Constitution and demand its cancellation by the Constitutional Court.

Since the control exerted by the Constitutional Court over the legislative function of the Assembly is not of preliminary nature, it is out of question for the Constitutional Court to hinder the legislative activity. When seized with a request to cancel a law freshly enacted and put into force, the Constitutional Court may only suspend its entering in force if the expected infringement seems to be irreparable. For instance the law no. 4839 foreseeing the forced putting into retirement of public servants aged 61 or more was suspended first and cancelled later on the grounds that it was not compatible with the constitutional principle of equality.

Common courts and administrative courts examine in rule those infringements which victimize individuals. The Courts of first instance treat such cases. The judges of the Supreme Court of Appeal or those of the Court of State gathering together when necessary in General Assembly, discuss and unite different rulings issued from different chambers into one unified ruling in order to guide the judges of the first instance as to the true meaning of a certain provision. When seized with a request for cancelling a law, the Constitutional Court might sometimes cancel it even though it was not yet applied and caused any victimization taking into considering potential victims.

The European Convention of Human Rights, which embodies the most developed international mechanism designed for the protection of human rights, was ratified on 10th of March 1954 by the Assembly. The individual's right of application to the European Commission of Human Rights foreseen in Article 25 was endorsed in 1987, and the compulsory jurisdiction of the Court in 1989. As foreseen by Article 46 the Contracting Parties undertook to abide by the final verdict delivered by the Court in cases involving themselves as a party. So the verdicts of the European Court of Human Rights are binding decisions.

Upon a recent ruling of the Court that the presence of a military judge among the judges trying a civilian violates at least apparently the independence and impartiality of the Court and thus contradicts Article 6 / 1 of the Convention, the provision permitting military judges and prosecutors to serve in State Security Courts was taken out of the Constitution. The related laws were then amended accordingly and military judges and prosecutors were replaced with civilian judges and prosecutors.

The Rulings of the European Court of Human Rights bind the legislative, executive and judicial organs of all member States. Yet those rulings establishing a fact that there has been an infringement of human rights do not cancel nor modify the national court decisions by itself. They only declare that the Convention has been violated. The Member States are bound to take necessary measures to carry out those decisions remaining free to decide how to do it. Now in Turkey under the newly enacted law no. 4771 the Rulings of the Court declaring an infringement is a reason for retrial. As a result of an amendment made by the Act no. 4778 , final judgements of the national courts were also taken into the scope of the retrial law. Thus the retrial of Leyla Zana and other convicted deputies of the Democracy Party has become possible.

There is no such a thing as lobbying in Turkish political system. So there are no lobbying groups in Turkey. Yet there are some local and nation-wide pressure groups such as trade-unions, businessmen clubs and professional chambers organised in various fields. Such pressure groups do have talks with the chairman and members of the Human Rights Committee and other deputies. They also come into contact with party groups in the Assembly and discuss many topics with them. Both the Human Rights Committee and some ad hoc committees set up to investigate into specific human rights infringements (such as the Committee of Inquiry into the Murders Committed by Unknown Perpetrators) request information from the chiefs of organisations which are active in the field of human rights whenever need arises.