



MECHANISMS OF HUMAN RIGHTS PROTECTION:

Anatomy Of
Human Rights
Regime In Turkey

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I. INTRODUCTION

Human rights are the historical, religious, moral and universal principles that everyone has the right by birth aiming to ensure a dignified life for individuals which is based on social, political, economic and cultural grounds. This reality is expressed in Universal Declaration of Human Rights (UDHR) in first article "All human beings are born free and equal in dignity and rights" and in second article "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". It is an undeniable fact that human rights; which are defined as the most important ideal and one of the successes of the history of humanity, are the basis of social peace and justice in our world which is filled with conflicts. As a matter of fact UDHR is built upon the thesis that "inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" (preamble).

Protection of the dignity or honour that all members of the human family has, ensuring a humane life, and establishment of a peaceful world has been the ideal and problem of humanity throughout the history. This issue has been the topic of a series of historical, social, political, religious and judicial texts ranging from Code of Hammurabi to Cyrus Cylinder, from Farewell Sermon to Magna Carta, from post-revolution manifestations in the West to UN regulations. But most important of all is the acknowledgement of human rights in international relations and international law de facto with the 1945 Charter of United Nations (UN), and officially with the adoption of Universal Declaration of Human Rights (UDHR) on December 10, 1948. The idea of human rights that is spread throughout the world in the last 70 years is not just confined to declarations and legal texts; on the contrary, mechanisms are developed in order to improve and protect it on social organization levels.

Human right mechanisms are political, administrative and judicial mechanisms to apply when our human rights and freedoms are violated, to protect and reclaim them and to relieve our victimization. In this framework, a series of national, regional and global institutions and organizations are developed in more than fifty years, each equipped with different powers that nourish, strengthen and support one another. Efficient structures are built such as national human rights institutions known as national courts and non-judicial institutions, and human rights commissions and courts on regional level and a series of councils, committees under UN roof, and last but not least importantly, International Criminal Court (ICC). The effectiveness, the power of enforcement and protection of these institutions decrease from national to the global level. Hence, human rights are protected most efficiently on the national level, then the regional level and least efficiently on global level... It is possible to depict this with the ripple metaphor in the still water. Just like how the ripples get loose away from the centre when a stone is thrown into still water and they disappear after a while; protection of human

rights weakens away from the centre, the national level. Therefore, if the aim is to protect the human rights worldwide, the domestic protection mechanisms should be strengthened.

Human rights are not a set of elusive ideals, or theoretical and abstract concepts; on the contrary they depict minimum humane and moral principles and concrete situations encountered frequently in the daily life. Human rights are a part of people's natural daily lives. They are about the situations we face all the time at work, at school, at home, in the market place, in cyberspace, in trade and in state offices. Human rights vests a concrete set of responsibilities to the states stipulated by national and international law. Law requires all persons, groups, and states to respect human rights and national, regional and global mechanisms to protect them. It is a fact that there is significant amount of efforts in this framework throughout world. Monitoring and auditing activities of non-governmental and international organization, and experts spread and become stronger day by day.

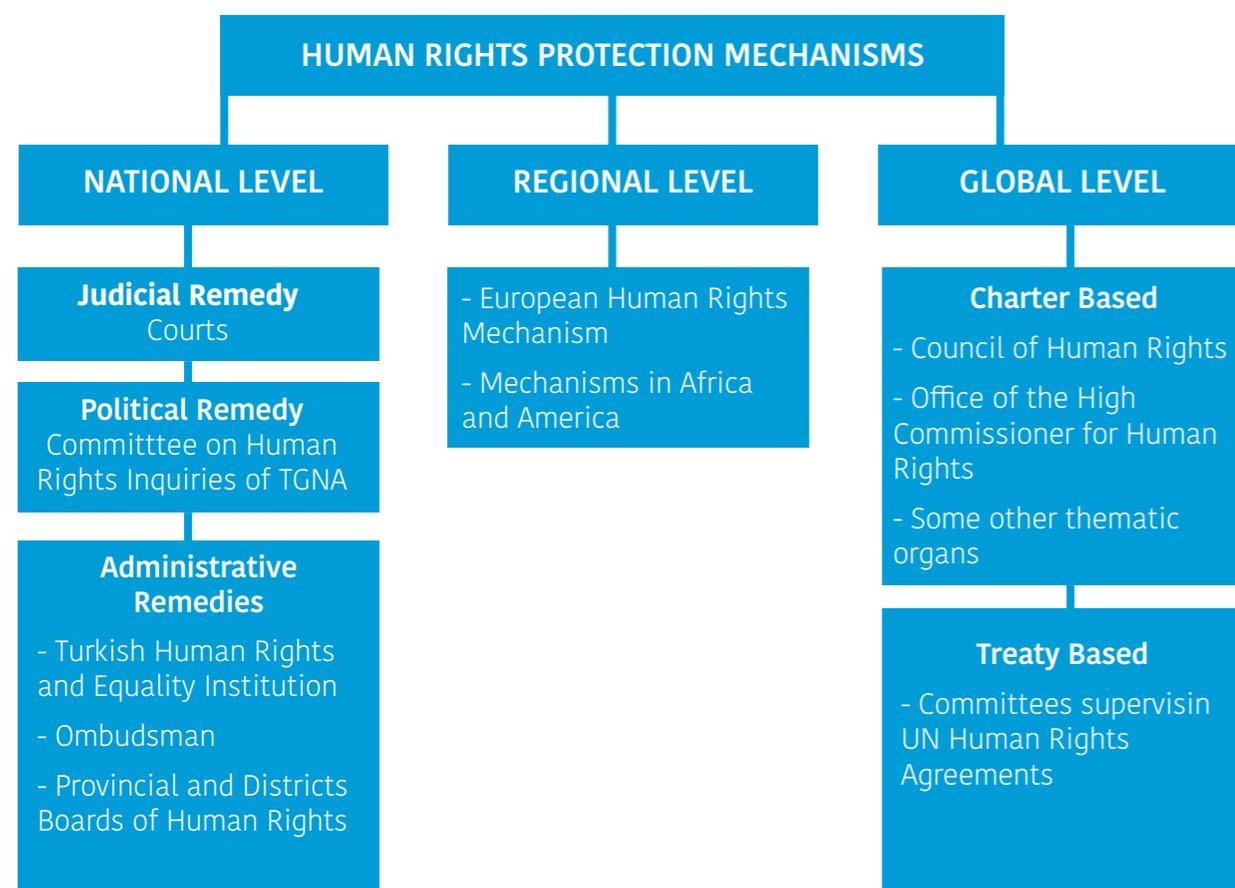
Whether they are democratic or not governments may be reluctant in implementing these human rights regulations as the regulations limit their own power. Therefore, international community should not content itself with overseeing the rights stated in the international human rights documents, but also assist and guide states in developing their own national protection mechanisms. Sharing of good practices and processes of learning from one another ensures a more efficient and effective protection and cooperation (HRDMF A, 3015). Non-governmental international human rights organisations such as Amnesty International (AI) and Human Rights Watch (HRW); regional human rights organizations such as Council of Europe, and affiliated European Court of Human Rights (ECHR), Organization for Security and Co-operation in Europe (OSCE) and global protection mechanisms such as UN Human Rights Council, the UN High Commissioner for Human Rights and the committees with the duty of overseeing global protection mechanisms such as the UN Human Rights Agreement are structures with different levels designed to support and strengthen each other.

II. THREE LEVELS OF PROTECTING HUMAN RIGHTS

Human rights protection mechanisms are on three levels: national, regional and global. As previously stated, principal is the protection on national level. Nonetheless, administrations may not appear too willing to protect human rights as it limits their power and empowers individuals. Although the constitutionalism movement tried to limit the power of the state, a real human rights protection was not achieved due to the fact that those who created constitution and executed it were either same actors or they were related to one another. Therefore, introduction of international oversight for human rights protection was only possible with the establishment of regional and UN Human Rights regimes after World War II. Progress accelerated in the Cold War era as the international human rights law started developing, however the revolution of globalization, communication and technology brought about new problems. The focus of these problems is the construction of international law on

state-centred philosophy. Because according to the traditional understanding of international law, the sole actor responsible to protect human rights and charge violations of human rights is the state. It seems that it is very difficult and even impossible to protect the human right with this traditional understanding in globalization age, especially in cyberspace where virtual world is intertwined with the real world. Although international human rights law refer to individuals and communities, that is to say non-state actors in a number of instances, the interpretation of these texts are still dominated by state-centred approach.

Despite all these problems, the protection of human rights in recent years has shown a rapid growth and diversity especially since the 1980s. Today, human rights protection regimes exhibit a multi-layered, multi-level and a very complex structure. Different regulations, institutions and structures are built in many regions. European Human Rights Protection regime of which Turkey is also a part, is one of the most developed and most complicated mechanisms in the world. The national level where the political, administrative and judicial tools are located, the regional level that is based on the European Court of Human Rights, and the UN centered global level which contains different monitoring and oversight mechanisms are at the core of this mechanism. In other words, the European human rights protection mechanism of which Turkey is a part, as can be seen in the table below, can be examined under the three groups in general: national, regional and global levels.



II.1 National Human Rights Protection Mechanisms: Internal Regime of Turkey

Even though international protection tools play a vital role, efficient protection of human rights begin and end on national level. Human rights and freedoms are primarily protected within the judiciary system just like the other rights in a democratic country where the rule of law is upheld. To this end the national law in the country must be in line with the universal principles of law (Quintana and Fernandez, 2012, p.13), and the constitutional order must be democratic, egalitarian and libertarian; and the law enforcing members of judiciary and security should be equipped with human rights culture. The role of rights-based education system and the activities of civil society are very important for these principles in order to root in the society.

It should not be forgotten that legislative and executive powers are important actors besides the national judicial institution. Apart from that, the awareness and the existence of a "human rights culture" created by non-governmental organisations and human rights education are very important elements (Council of Europe, 1998, p.4). They are tools for protecting and developing human rights in official and civilian ways. Internal mechanisms of Turkey for protecting human rights can be examined under three groups. These are, the judiciary which consists of courts, Human Rights Investigation Commission of the Parliament and lastly the administrative system consisting of Ombudsman; in other words, the auditor of the State and Humans Rights and Equality Institution.

II.1.1 Judicial Remedy: Most Effective First Step

The oldest and the most efficient method of protecting human rights is the judicial one, the national courts. There are a number of elements that affect the efficiency of the courts. The primary one is rule of law principle. Apart from that, there is access to law, functional independency and impartiality of judiciary and most importantly fair trial. The issue of rule of law and fair trial are so vital for the protection of human rights that 20%, so 6 of 30 articles of the (article 6 to 11) Universal Declaration of Human Rights is allocated to this topic. Likewise, the sixth and seventh articles of European Convention on Human Rights are related to the same topic.

Without a doubt, rule of law principle is one the fundamental aspects of fair trial. According to the International Jurists Commission, the rule of law means bringing justice against the governments that use the power of state: "The rule of law is beyond formal use of legal documents, it is the priority of Justice and Protection for all members of society against excessive government power" (Benedek, 2014, p.213).

Other elements of a fair trial are; law and equality before court, impartiality and functional independence of courts, open trial, right to trial within a reasonable time, right to remain silent, right to defend one's self and make a judgement, right to call witness and make the witness heard, right to benefit from interpreter free of charge, and access to efficient and fair judiciary and principle of "no crime or punishment without law" (Benedek, 2014 s.217-221).

II.1.2 Non-judicial Remedies for the Protection of Human Rights: National Human Rights Institutions

Even though the judiciary is the most efficient way of protecting human rights, slow functioning of judicial processes and non-performance of judiciary in the prevention of violations led to the development of non-judicial political and administrative mechanisms. These mechanisms are both able to function rapidly and play a preventative role and help to prevent some practices that are not covered by judicial jurisdiction.

Though the idea of protecting human rights through non-judicial remedies goes back to 1946 when the UN Human Rights Council was established; its dissemination in the international arena corresponds to Post-Cold War era. First concrete steps on this topic are the determination of Paris Principles in 1991 and their adoption in 1993 by the General Assembly of UN, and finally Vienna Declaration in the same year and the emphasis put on these institutions by the Action Plan. As a result of those steps, the number of accredited institutions has increased by multiple times in the world. Turkey is no exception to this process; she has attributed special importance to these institutions with the influence of the EU accession process and taken concrete steps in this direction immediately after the Cold War.

II.1.2.1 Paris Principles and Non-Judicial Institutions

As mentioned above, the idea of human rights spread rapidly and became widespread thanks to the affect of international peaceful climate after the Cold War. In this context, non-judicial human rights protection mechanisms have also sprung up rapidly. These institutions may have been constructed with different structures, functions and names in different countries: Even though their names may vary such as human rights institution, board, council, commission, Ombudsman, public auditor or public advocate, they have some common characteristics. First of all, they are independent of government, pluralist; they receive individual applications; they cooperate with relevant national and international human rights institutions and organizations , and they contribute to the defence of human rights standards as advocates, professors or

experts. Paris Principles which determines the legal and administrative infrastructure of these institutions states that they need to exhibit a structure that is independent of administration and pluralist. They are called National Human Rights Institutions (NHRI) in general. "National human rights institutions are pluralist and independent public bodies established in order to develop and protect human rights on the basis of constitution or law. Main aspects that differentiate these institutions from classical public bodies are the fact that they are independent of government, there are representatives of non-governmental institutions in their decision taking mechanisms, they are flexible and they have freedom of action" (THRI, 2015, p.13).

The Paris Principles identify a framework and provide guidance to the countries on the structure and properties of these institutions. Paris Principles are the minimum international standards that specify the functions and status of NHRI (UN, 2010, p.6).States may establish more efficient and stronger institutions by interpreting these principles in a wider sense according to the degree of their belief and commitment to human rights. Minimum requirements provided by the Paris Principles for NHRI are briefly as follows (UN, 2016):

1. National human rights institutions should be equipped with broad powers in order to protect and promote the human rights;
2. The duties, structure and jurisdiction of a national institution should be identified with constitution or law, and kept as wide as possible;
3. Among others a national institution should have the following duties and powers:
 - a) Present and publish commentaries, suggestions or reports about human rights by undertaking the initiative or upon the request of relevant bodies on the basis of providing guidance without taking orders and instructions from government, parliament or other competent bodies; Mentioned activities should cover following areas:
 - i) To review all legislative, administrative or judicial regulation that aims to protect human rights in terms of suitability to basic human rights and freedoms and to make suggestions to make them more suitable; suggest new legislative regulation or changing existing regulations if necessary.
 - ii) To investigate any human rights violations they are interested in;
 - iii) To prepare reports about the general human rights situation in the country or more specific topics;
 - iv) To attract the attention of the government to the human rights violations in any region of the country, develop suggestions for elimination of violations and express opposing views to the government if necessary;

b) To strive to make legal regulations and practices of the country coherent with the international human rights regulations of which the country is a side;

c) To be a party to international human rights regulations and to encourage the relevant authorities to implement them;

d) To contribute to the human rights reports which the country must present to UN institutions and committees or to the regional organizations and express opinion of the institution as a reflection of independence on the topic if necessary;

e) To cooperate with the relevant UN bodies, regional organizations or institutions actively operating in this field in other countries;

f) To assist the development of human rights trainings, education and related programs to be a part of them if schools, universities or professional institutions implement these programs;

g) To increase awareness of the public via providing information, delivering education, and expressing opinions on media channels for the fight against all forms of discrimination, particularly racial discrimination, making publications in the field of human rights.

- Same resolution of UN emphasizes the need to guarantee the structure of the organization, independence and pluralism. In this context, the composition of the Institution should reflect the pluralistic nature of the society and all necessary legal safeguards should be provided to all members. Chambers of commerce, professional organizations, physicians, bar associations, scientific organizations and other non-governmental organizations dealing with human rights should be included in this process. If necessary, representatives of government bodies should be able to participate only with an advisory status.

- National organizations should possess sufficient financial resources, infrastructure and personnel to carry out their work as they should.

- They should be able to investigate all issues freely within their jurisdiction, must listen to all the people concerned when necessary, should be able to obtain all the information and documents, must be able to express their recommendations to the public directly or through press, and should be able to maintain an advisory relationship with the other public agencies responsible to improve human rights and protect them whether they are judicial bodies or not (Joshi, 2016).

- They should be able to convene on regular intervals, and form working groups with their own members and if necessary with national or regional participation; and cooperate and consult on a regular basis with other human rights organs existing in the country; and be in close contact with non-governmental organizations that operate in the field of vulnerable groups and human rights protection and development, social and economic development, combat against racial discrimination, children, immigrant workers, asylum seekers, and people with disabilities.

- In addition to these semi-judicial national human rights institutions should be able to take individual applications and be able to take the essential measures if necessary. In this context, as persons may apply, so should the representatives, third-parties, non-governmental organizations or other organizations on behalf of the persons.

- Applications must be conducted in secrecy when necessary. Solutions should be delivered through consensus or binding decisions should be taken to the limits identified by law.

- Victims must be informed of all rights; particularly the possible solutions and necessary efforts should be exerted to make them accessible to the victim.

- To investigate all kinds of complaints and petitions or to forward those to the relevant authorities within the time limit set by law.

- To make recommendations to the relevant authorities to amend the relevant regulations or practices if legal and administrative regulations or practices pose an obstacle to resolve the grievances.

According to Paris Principles, in order to increase the efficiency and power of NHRIs, these institutions should be independent of the administration; they should reflect the social diversity, have wide powers, make recommendations to the government on human rights (Pohjolainen 2006, 2.34); carry out activities with the government so that the universal human rights principles and standards can be incorporated into domestic law (Jensen, 2015 p.2-5); be in comprehensive cooperation and in this context, to be in close cooperation with national and international human rights organizations and institutions; be actively involved in delivering education and increasing public awareness on the topic of human rights among other activities (Götzmann, 2013). Among other things, it is very important that these institutions are taken into consideration by the decision-making mechanisms for practicing and accomplishing mentioned activities.

National human rights institutions are accredited by the UN in the framework of the Paris Principles and they are graded to the extent of possessing features stated above. These principles refer to the characteristics that these institutions should demonstrate rather than imposing upon a single type of institution. Therefore, the national human rights institutions have a political nature in some countries, but most of them have an administrative structure. While these institutions are constructed with different names and structures in different countries, there is more than one institution and organization in many countries. Turkey represents a good example of this. Committee on Human Rights Inquiry to the Grand National Assembly of Turkey with a prominent political identity is established in 1990; it is followed by the Human Rights Presidency under the Prime Ministry (2001) reflecting administrative structure, then comes the Provincial and District Human Rights Boards (2003), and the Ombudsman follows that as a constitutional institution reflecting an important pillar of the process of membership to the EU, and the same year Turkish Human Rights Institution (THRI) is established with a special

law. Finally, the structure of THRI is changed and it is redrafted with new powers and functions under the name of Turkish Human Rights and Equality Institution.

These institutions are established in this framework in general; they all have different structures and powers. Unfortunately a general assessment would reveal that these institutions are far from meeting international standards even though some meet these standards relatively more, and some less.

Although the power of sanction of the national human rights protection mechanisms is quite restricted; they are accessible, they operate rapidly and put political and administrative pressure on bureaucracy and play a preventative role to the violations with the recommendations they develop which are the most important advantages of them.

Paris Principles demand that these structures are kept as broad as possible in terms of duties and powers and that those are highlighted in a clear way in the legal texts (UN,1993). The powers and duties of these institutions should be within a framework that protects and develops human rights. A regulation with the sole aim of protection or development is not appropriate according to Paris Principles (UN, 1993, Principle 1).

These institutions are also obliged to observe human rights of countries in general and prepare reports, recommendations, commentaries and analyses to the parliament and other relevant government agencies. Other responsibilities of these structures are to prepare commentaries and analyses and to present them to the public and relevant authorities on legal, administrative or judicial measures or some thematic issues such as violations of vulnerable groups like the disabled, the elderly, minorities, women or violations taking place in a certain region in the country. These institutions must operate in these areas with total institutional autonomy and freedom without receiving any orders or instructions from any authority. They should have the freedom to disseminate and public their work without being subject to any restrictions, or taking permissions or approval from anyone. Another important obligation is to contribute to the national human rights reports that are submitted to other regional and global organizations, primarily the human rights organs of UN (UN, 2010, p.34).

Another duty foreseen by Paris Principles is the harmonization of national legislation and practices with the international human rights regulations and to encourage government and relevant organs to transpose the international agreements and conventions into domestic law unless some of them still remain a part of the country. Not only should these institutions strive for making the country a party to the relevant agreements or transposing them into the domestic law, but also they make an effort to implement these legal documents efficiently and to bring them into action.

Another important obligation required by the national human rights institutions is to be in intensive cooperation with other national and international organizations that operate in the field of human rights that are either public bodies or NGOs. The real purpose is to share

the experience, to disseminate good practices and to avoid repetitions on a national level. Especially to co-opt with other national human rights institutions in the country will enable a more efficient protection of human rights on national level. Paris Principles lay great emphasis upon cooperation with other stakeholders, especially with non-governmental organizations. Interviews held with the personnel of the institution of THRI as well as the activity report of the institution reveals that THRI is very passive in this regard and it is not active enough to co-opt with other national institutions, non-governmental organizations and international counterparts in organizing joint activities, consultative meetings and conferences. "International Conference on National Human Rights Institutions Sharing Best Practices and Experiences" is held in June 2015 (Law and Life Association, 2016). THRI was able to organize the first and the last of the regular consultations in 2014, which need to hold with representatives from other institutions, non-governmental organizations, universities, unions, social and professional organizations (THRI, 2016, p. 63)¹. According to law, the consultative meetings should take place four times a year or twelve times every three years, however to conduct only one meeting draws the attention as a serious lack of performance. Authorized people from the institution keep expressing that the reason behind this lays the lack of personnel. In 2015, they were able to receive only 15 of 75 personnel allocated to them by law (iktisadi.org, 2016).

Human rights educations and researches are counted among the basic duties of the national human rights institutions. All international organizations, notably the UN concentrate on delivering education on democratic citizenship and human rights as a solution to the problems of increasing internal conflicts, radicalism, racism and xenophobia in the recent years. World's Human Rights Training Program (2005 -..), the UN Human Rights Education and Training Declaration (2011) and Democratic Citizenship and Human Rights Education Charter of Council of Europe (2010) are some of the leading examples. Because it is thought that the human rights education is the most important tool for disseminating and internalizing democratic values and universal human rights norms. As stated in the 26th article of Universal Declaration of Human Rights (UDHR), education and training on human rights is a part of the right to education. This education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms and shall further the activities of the United Nations for the maintenance of peace (UDHR, Article 26).

The law was amended in 2016 with the motive that THRI is inadequate to meet Paris Principles; the name of the institution is changed besides diversifying the powers and duties of it. The new name of the institution is set as the Turkish Human Rights and Equality Institution, and it is vested with the power of decision to compensation in cases of discrimination where the equality principle is violated. This administrative sanction will bring great value to the institution. Nonetheless, the new structure also meant distancing from Paris Principles in some issues. The decreased diversity of the members in the board is the most controversial topic that will be discussed in detail later on. The members elected by HEC and the Bar Association

¹ TİHK, 2015, s.63.

are removed, and the new principle which permits to assign all members by government and presidency is introduced.

II.1.2.2 Political Remedies for Protection: Committee on Human Rights Inquiry to the GNAT (CHRI)

Committee on Human Rights Inquiry of the Grand National Assembly of Turkey is accepted as the first institution that is established outside the judicial mechanism to protect and develop human rights. In other words, it is the first political structure established in Turkey within the framework of national human rights institutions. It was established before the Paris Principles were adopted by UN, which is why it is not in conformity with these principles in many ways. As it is within the body of the parliament and it consists of the representatives of the political parties, it is impossible for this committee to meet Paris Principles fully. However, the powers and activity of this Committee increased by passing time. It was first established as a committee for investigation, but was later transformed into a specialized committee. It was established by Law No 3686 pertaining to the Committee on Human Rights Inquiry on 05.12.1990 in the plenary of GNAT.

The members of the Committee consist of the political parties that have a group in the Parliament and those who cannot form a group, and are independent MPs. Membership is allocated to the political parties according to the distribution of vote of the parties in the Parliament. The total number of the members may vary in different legislative years.

According to the Law some of the duties of the Commission are as follows:

- To monitor developments in the field of human rights in the international arena,
- To determine the necessary amendments in order to adapt international treaties of which Turkey is a part of, and to propose constitutional amendments to that end.
- To investigate the petitions sent to the Committee about the allegations of human rights violations or to refer them to relevant authorities.

One of the most frequent activities of the Committee on Human Rights Inquiry in terms of human rights protection is to receive applications of human rights violations via petitions, to examine and refer them to the relevant authorities. According to Law No 3686, the powers of the Committee are pretty enormous; it has the authority to demand information from ministries, offices with general and supplementary budget, local administrations, mukhtars, universities and other public institutions and organizations as well as private institutions besides holding

examinations in these places, to ask for relevant people and to get information from them. In addition to that, the Commission may ask for appropriate specialists and work outside Ankara as well. In this context, the Commission is authorized to conduct on-site investigations into alleged violations of human rights.

In addition to that, the Committee on Human Rights Inquiry has the power to act spontaneously. Committee submits its reports to the Speaker's Office in the Parliament, and they may be added to the agenda of the plenary with the opinion and the suggestion of the Advisory Board, and it is possible to get information by reading these reports or by motioning to further discussions. According to the law, the Committee reports are sent to the Prime Minister's Office and relevant Ministries by Speaker's Office in the Parliament.

Despite these broad powers, the work of the Committee is not efficient in the protection of human rights due to political conflicts and political preferences. As the majority of the members are MPs of the ruling party, most of the time human rights violations are sacrificed to the political choices. Therefore, the Commission seems like a passive institution and it is exposed to serious criticism in the media as well as academic literature. It is expected that, with political legitimacy such a committee would be much more efficient in the protection of human rights.

II.1.2.3 Administrative Remedies for Protection: Ombudsman and Turkish Human Rights and Equality Institution

Various institutions with different structures and powers have been established in Turkey, as part of the administration in last 20 years whose main goal is to protect and promote human rights. Provincial and District Boards of Human Rights (2003), Ombudsman Institution established in 2012 as well as Turkish Human Rights and Equality Institution (THREI, 2016) are some of them. Previously established Prime Ministry's Human Rights Presidency (HRP) (2001-2012) and its affiliate or related institutions such as Human Rights Delegations and Supreme Boards of Human Rights (Akyeşilmen, 2012, s.100-102), were either transformed into another institutions or closed down as well as Law Enforcement Monitoring Board are no longer regarded within today's national human rights regime which required lots of efforts to establish.

Turkish Human Rights Institution was established on June 21, 2012 with the enactment of Law no. 6332 (THRI Law, 2012, Article 1) by GNAT in order to implement works on human rights protection and promotion, its name was later changed into Turkish Human Rights and Equality Institution with a legal amendment in 2016. THRI is an institution "which has public legal

personality, administrative and financial autonomy as well as a special budget, established to implement and fulfil duties given by the law or relevant legislation” (THRI Law, 2012, Article 3(1)). The fact that THRI was established by law and within the frame of Paris Principles protection and promotion of human rights were acknowledged within the duties and powers of the institution, justifies that the structure of this institution is in legal conformity with international standards; however its actions and implementations are the real determinants.

According to the leaflet prepared by the THRI, the duties of the institution are defined extensively. The institution lists the duties and powers in the leaflet as follows (THRI, 2014a):

- Carrying out studies on protection and promotion of human rights as well as preventing human rights violations,
- Scrutinizing complaint and appeals, following upon their results,
- Combating against torture and ill-treatment;
- Implementing training activities in the field of human rights,
- Following up and assessing developments in the field of human rights,
- Expressing opinion during preparation of reports that Turkish Government is obliged to submit to the human rights scrutiny, monitoring and auditing mechanisms established by international treaties of which Turkey became a party; sending representatives to the international meetings,
- Drafting annual reports that assess problems, developments and performance of public institutions and organizations in the field of human rights,
- Implementing campaigns and programs aiming at developing and promoting human rights and eliminating violations of human rights,
- Scrutinizing, investigating, assessing any sort of human rights violation claims upon appeal or ex officio; taking legal action against those found responsible for the violation,
- Conducting studies for preventing torture and any other cruel, inhuman or degrading treatments and punishments,
- Paying regular announced or unannounced visits to the places where the individuals deprived of their liberty or put under protection are kept,
- Expressing opinions and suggestions about the draft legislations, legislation, practices and other legal issues on human rights,
- Following implementation of judicial decisions that identify human rights violation,
- Participating in and contributing to pre-vocational and in-service trainings on human rights.

THRI emphasizes both in its legislation and activity report that its own duties encapsulate above mentioned provisions and argues that they make recommendations to the government by means of general and thematic reports they prepare. However, aside from the general recommendations given in the report, they don't mention any other concrete contribution having been made to the legal regulations. Within this framework, they predicate the special actions as follows: “The institution drafted reports based on each subject as part of its duty of thematic research and scrutiny. In these reports children's rights, prohibition of torture and ill-treatment, the condition of repatriation centres and refugee camps, prisoners' right to access health care, right to convene and hold demonstrations, the situation of prisons and treatment against prisoners were all scrutinized and relevant institutions were given advice.” (THRI, 2015, 56).

THRI has carried out numerous activities in three years. The annual activity reports of 2014 and 2015 are of greater importance. In addition to these, more than 10 reports were prepared on the developments and conditions of human rights. Some of them are the reports on Gezi Park Events based on a rather detailed research and were published on October 30, 2014 (TİHK, 2014b); the reports on Metris, Şanlıurfa and Sincan prisons; as well as Istanbul repatriation centres.

THRI or with its new name THREI has serious shortcomings in some matters under the Paris Principles such as the ability to reflect pluralist structure of a human rights society, to ensure security of the members, to have financial independence besides functional autonomy, accessibility and individual appeal procedures.

Even though the Ombudsman Institution was established in the same year with THRI, it is better known and receives far more individual appeals. For instance, while the number of individual applications made to the THRI in 2014 was 578, the number of individual applications to Provincial and District Boards of Human Rights was 2717², in the same year 5639 application were made to Ombudsman Institution³ and the number of applications to the Human Rights Inquiry Committee (HRIC) of GNAT was 2348⁴. It may be perceived as quite normal that the Human Rights Inquiry Committee (HRIC) of GNAT as well as Provincial and District Boards of Human Rights receive more applications since they are old and well known; however Ombudsman Institution could receive tenfold more applications than THRI even though they both were established and became operational in the same period. This result was achieved thanks to the good reputation, accountability and accessibility of the institution. Here we should pay attention to the fact that Ombudsman Institution compared to THRI was established as a constitutional institution with a more substantial legal structure as well as power of enforcement. Despite the so-called disadvantages of THRI, it should be admitted that the number of appeals is still too small.

² TİHK, 2015, s.183.

³ KDK, (2015), (Ombudsman) 2014 Annual Report, p.241.

⁴ TGNA, (2014), Committee on Human Rights Inquiries, Annual Report of 2014, s.24. https://www.tbmm.gov.tr/komisyon/insanhaklari/docs/2015/24yd_faaliyet_raporu_09072015.pdf. [Erişim tarihi, 28.01.2016].

Provincial and District Boards of Human Rights established by the legislation which was published in the Official Journal dated November, 2003, are obliged to raise awareness about human rights, to scrutinize and investigate violation claims as well as the obstacles to accessing human rights and liberties also social, political, legal and administrative factors causing human rights violations, to offer solutions for such obstacles and to protect human rights.

The pluralistic structure of the boards couldn't reflect credit upon their election procedures. Despite their public sector oriented structure, civil society organizations and professional organizations are also included under the same roof. While a governor or a deputy governor chairs each Provincial Board, a district governor chairs each District Board.

As underlined by Paris Principles, the importance of independence and autonomy of national human rights institutions were not sufficiently taken into consideration. These institutions are managed by public officers and they mostly select their members from civil society organizations and professional organizations which have closer ties with the administration. Therefore, CSOs have less chance to play an active and efficient role in protecting human rights. "Even more, for the same reason Turkey's leading human rights organizations such as Mazlum-der and İHD are protesting the structure of such boards by avoiding from applying to them." (Akyeşilmen, 2012, p.102).

True independence and autonomy as well as structural realignment as per Paris Principles are fundamental to the success and efficiency of national human rights institutions in Turkey. Even if some efforts have been made partly, the efficiency of human rights institutions has weakened again with the latest regulation.

III. INTERNATIONAL MECHANISMS: REGIONAL AND GLOBAL HUMAN RIGHTS MECHANISMS

International mechanisms can be analyzed in two stages. Regional human rights mechanisms are type of mechanisms established by regional treaties. Even if these mechanisms seem to have less enforcement authority than domestic law, their enforcement authority is indeed stronger than the global human rights mechanisms. In regional mechanisms, there are human rights treaties which constitute legal basis as well as commissions and courts to supervise the implementation.

The second ring of the international human rights mechanism is the UN Mechanism. It possesses wider global influence but weaker enforcement power. The UN Mechanism was established on two main pillars. The first pillar is composed of Human Rights Council, High Commissioner for Human Rights and other UN Human Rights Bodies created under the terms of UN Charter, and the second one is composed of UN Committees founded by UN Human Rights Treaties.

III.1 Regional Human Rights Mechanism: Council of Europe

Even though human rights are globally appreciated, more legally binding regional human rights mechanisms are not that widespread. Today, we can only mention about human rights protection mechanisms which are active in three regions of the world. These are regional systems created by European Convention on Human Rights (1953), American Convention on Human Rights (1969) and African Charter on Human and Peoples' Rights (1986) (Gawanas, 2016). In addition to these, the creation process of regional human rights protection mechanisms as part of the Arab League and ASEAN is still in progress.

The most developed one is the European Human Rights Mechanism. Council of Europe and its affiliate European Court of Human Rights (ECHR) are the most influential bodies of the European Mechanism. ECHR is the sole permanent human rights court of the world. On the other hand, Council of Europe was established in 1949 and has 47 members. Since the EU doesn't have a developed human rights mechanism, Council of Europe membership is a prerequisite for becoming an EU member state. The European Mechanism is not only limited with the Council of Europe. The EU has various institutions dealing with human rights issues even if they are scattered. Apart from this, Organization for Security and Cooperation in Europe (OSCE) is also a part of the huge complex system. OSCE basically deals with collective and minority rights. It also often oversees elections. OSCE is influential in the Central and Eastern Europe. OSCE and EU systems are not very functional; therefore it will be stucked to regime of Council

of Europe in this chapter. Moreover, Turkey is a key actor in human rights within the frame of ECHR. Therefore, it would be even more useful to touch upon ECHR, since Turkey is both a founder member of the Council and subject of the highest number of proceedings in ECHR. For instance, while Turkey has been subject to record number of convictions against human rights violations and convictions since the ECHR was established, she was to be the second country after Russia in 2014 along with 101 convictions and 11,33% of whole annual convictions (ECHR, 2014, p.4).

Applicants are first required to exhaust above mentioned domestic remedies before applying to the regional courts. ECHR is the first permanent human rights court of the world. African and American human rights courts operate only in certain periods of the year.

Council of Europe (CE) tries to safeguard human rights mechanism primarily the civil and political rights by efficient monitoring and protection mechanisms. CE attempts to protect human rights via a regional convention which is the European Convention on Human Rights and the European Court of Human Rights (ECHR) established based on this Convention and its additional protocols. In the beginning CE tried to safeguard human rights by means of European Human Rights Commission established in 1954 and European Court of Human Rights (1959). However, CE annulled the Commission in 1998 and left the authority to the ECHR for all processes.

III.1.1 European System and Turkey

Turkey like any other country that signed the European Convention on Human Rights (ECHR) made commitment to protect and respect the rights set by the Convention. As a founding member of the CE, Turkey acknowledged the judicial power of ECHR in 1987 and since then has worked in harmony with the Court. Although Turkey was convicted with the highest number of human rights violations by ECHR, it has still been striving for complying with the court decisions and fulfilling its obligation. Although Turkey is now the state with highest number of cases ruled by ECHR, once the country came after Russia in 2009 and later fell to the fifth place in 2013. However, Turkey underperformed Ukraine (13850) and Russia (9200) in 2015 and fell back to the third place (with 8450 pending cases), which made the country regress despite its' perennial democratization efforts.

ECHR is the first and sole permanent human rights court, the most influential human rights institution protecting rights of Europeans and an increasingly growing and strengthening mechanism; however it is also exposed criticism. First of all, the court is criticized for acting like a diplomacy court in some cases, although it has to remain objective and independent. Some countries even try to impress court members via diplomatic contact with court judges, council

authorities and member states in order to obtain favourable outcomes from some personal critical cases. It is apparent that their efforts succeeded most of the time. The headscarf case in Turkey ruled by ECHR and the closure cases of Refah Party (Welfare Party) and Fazilet (Virtue) Party are primary examples of the government's efforts and diplomatic manoeuvres that changed the course of the court ruling. The court ruling was found to be political rather than legal at that time. The second example concerns negative criticism against the slow court procedures, the high number of pending cases, and lack of adequate sources. Thirdly, it was criticized that more than 90% of the cases delivered to the court were declined by the first instance screening board and it was claimed that the court works as a mechanism absolving member states from responsibility of human rights violation instead of establishing justice.

III.2 Global Mechanism: UN Human Rights Regime

The human rights regime of United Nations (UN) consists of human rights protection institutions and bodies based on UN regulations such as UN Charter, treaties and declarations. The legal basis of the human rights protection mechanism is composed of UN documents whereas monitoring and development system are based on UN bodies such as Commission, Council and Committee.

The first article of the UN Charter, the foundational treaty of the UN, lists the purposes of the organization. The first article, "To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" (Article-1, Paragraph 3) shows that human rights is one of the foundational principles of the UN. In other words, the development and protection of human rights and freedoms are founding purposes of the UN.

III.2.1 UN Regulations on Human Rights

UN Regulations on Human Rights have their roots in treaties, resolutions or declarations and even conferences. While treaties provide basis for human rights law; declarations and conferences are mainly regarded as softer legal regulations that help raising public awareness of human rights worldwide. Following the UN Charter the first and most significant step towards human rights protection was the adoption of the Universal Declaration on Human Rights on December 10, 1948. This declaration is the first special regulation drafted and developed by the UN Commission on Human Rights (1946). It both paved the way for human rights regime and

provided basis for all the other subsequent regulations and regimes on human rights globally. (Fisher, 2006, p.2). The Declaration contributed to the development and promotion of human rights greatly; therefore, 10th of December, the year when it was adopted by the UN General Assembly is celebrated as World Human Rights Day globally.

UDHR (Universal Declaration of Human Rights) is the most significant brief but in-depth and enriched declaration including 30 Articles which encompasses all civil, political, cultural, economic and social human rights. All other subsequent regulations on human rights refer to UDHR and draw on its legitimacy. Even though UDHR is a sort of declaration, it is accepted as a part of the traditional law and regarded as a binding regulation in international law. UDHR pre-emptively initiated and guided twin treaties (1966) that constitute backbone of human rights law.

UN traditionally develops a declaration before drafting a treaty on human rights in order to create public opinion; following this they transform the same declaration into a treaty with minor elaborations or without any changes. Therefore, UN has adopted many declarations since UDHR. UN Declaration on Elimination of all Forms of Racial Discrimination, Declaration on Elimination of all Forms of Discrimination against Women, Declaration on the Right to Peace adopted in 1984 which defines peace as a human right, Declaration on the Right to Develop dated 1986, Declaration on the Rights of Indigenous People adopted in 2007 and Millennium Declaration are the leading ones.

As mentioned above, twin treaties were adopted in 1966 following UDHR. The ideological differentiation of Cold War also had reflection on human rights. Two separate covenants compiling the rights prioritized by capitalist and socialist countries were adopted in the same year (1966) and enforced (1976) instead of UDHR. These covenants are International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. Following this, mostly thematic covenants were adopted. Convention on Elimination of all Forms of Discrimination against Women (CEDAW) and Convention against torture and other cruel, inhuman or degrading treatment or punishment were adopted by the General Assembly of the United Nations respectively in 1979 and 1984. In the second half of the Cold War, following the UN Convention on the Rights of the Child in 1989, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted in 1990. Eventually, UN Convention on the Rights of People with Disabilities was accepted.

In addition to declarations, UN Conferences were held on women's rights, environment, racism and development at different dates worldwide in order to raise public awareness and to lay the groundwork for treaties. Rio, Cairo, Beijing and Paris Conferences are first examples of such events.

III.2.2 UN Human Rights Bodies

UN Bodies established to protect and develop human rights can be examined under two groups; Charter based and Treaty based bodies. Besides the Charter based bodies such as Human Rights Council (1946) and High Commissioner for Human Rights (1993), there are 10 separate committees including Human Rights Committee, the Committee on the Rights of People with Disabilities and the Committee on the Rights of the Child (OHCHR, 2016b).

III.2.2.1 Charter Based Human Rights Bodies

The most significant UN Charter based human rights bodies are Human Rights Council (1946) and High Commissioner for Human Rights (1993). There are also committees which are not necessarily human rights bodies but may take decisions on human rights such as General Assembly of the UN and UN Security Council. This chapter only focuses on these two institutions.

III.2.2.1.i UN Human Rights Council

The key human rights body of the UN is the Human Rights Council founded in 1946 (It was first established as Commission 1946 but later the name was changed as Council in 1996). Human Rights Council as a key UN Body is responsible for drafting a range of regulations including UDHR and twin treaties. The Council contributed to the formation of human rights standards in this regard; however its' impact on human rights protection or practices is quite limited, since the Council is not entitled to auditing. Annual Report on Human Rights throughout the World drafted by the Council after 1996 and the reports on various subjects prepared by working groups and independent experts can be evaluated as part of human rights monitoring activities. Human Rights Council fulfils its duty by means of sub-commissions on human rights consisting of 26 independent experts appointed by the Council or nominated by member states. Furthermore, Commission also gets support to carry out its duties from 14 working groups when necessary. Decision making bodies of the Council have political power as well as broad duties and jurisdictions as they are also state representatives.

III.2.2.1.ii UN High Commissioner for Human Rights (OHCHR)

The Office of the United Nations High Commissioner for Human Rights was established only in 1993; however, in such a short period of time it became one of the most powerful and effective institutions of UN in protecting and developing human rights. The appointment of the former president of the Irish Republic Mary Robinson as the first UN high commissioner for human rights combined with the peaceful and favourable conditions for international relations following Cold War made it a strong UN institution. As a result of intense activities by the Office of the UN High Commissioner, human rights oriented perspective prevailed in all activities carried out by UN. The Office of UN High Commissioner provides support to the other UN human rights bodies.

III.2.2.2 Treaty Based Human Rights Committees of the UN

UN Human Rights Committees are responsible for monitoring implementation of conventions adopted by the UN and each Committee is established by the convention that it monitors (Kerimova et al., 2016, 27-30). Duties, powers and structures of these committees differ from each other. Each committee consisting of independent experts is monitoring implementation of any relevant practice of the human rights. All the committees excluding the Human Rights Committee which monitor the International Covenant on Civil and Political Rights adopted by the UN are named after the covenant that they are assigned to monitor. These 10 committees are listed as follows.

- Human Rights Committee (CCPR)
- Economic, Social and Cultural Rights Committee (CESCR)
- Committee on Elimination of Racial Discrimination (CERD)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Committee against Torture (CAT)
- Optional Protocol to the Convention against Torture (SPT)
- Committee on the Rights of Child (CRC)

- Committee on Migrant Workers (CMW)
- Committee on the Rights of People with Disabilities (CRPD)
- International Convention for the Protection of All Persons from Enforced Disappearance (CED).

Treaty based UN Committees on Human Rights make use of five different procedures to supervise implementation of covenants in member states (Kerimova et. Al., 2016, p. 31-32). As seen in the following table each committee has a different power. The first monitoring procedure is reporting. This power that has been bestowed upon all committees consists of advising relevant country after revision of the elaborate reports periodically submitted by the state parties on the liabilities of a specific covenant as well as shadow reports presented by the civil society organizations. (OHCHR, 2016, p.3).

The second supervision is the individual complaint procedure. According to this, individuals have right to bring complaints on violations of human rights given by a covenant before the relevant committee. The relevant committee investigates the complaints and decides whether the claimed violation really occurred and informs the relevant country besides offering solutions (Steinerte and Wallace, 2009, p.18-19). The third procedure is the state to state complaint. According to this procedure, State parties have right to complain to the relevant treaty body (Committee) about alleged violations of the treaty by another State party (Steinerte and Wallace, 2009, s.20). This procedure has never been used since establishment of UN, which shows that states protect each other and wish to pursue good relations. At the same time this may also be evidence that human rights are not cared much by the state bureaucracy. The fourth procedure is inquiries. This procedure designates the relevant Committee authority to conduct inquiry if the Committee receives reliable information indicating that the rights contained in the Convention are being systematically violated by the State party. Two Committees have this power: Committee against Torture (CAT) and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The fifth and last monitoring procedure is paying regular visits. Only Committee against Torture (CAT) is authorized to use this procedure. This procedure includes regular visits of the Committee to the countries suspected of violations and aims at preventing or minimizing torture.

IV. Conclusions and Recommendations

After the Second World War, Turkey first became party to European, and then to the international human rights conventions and institutions. Despite starting democratic multiparty period in 1950s, as a result of recurring military coup attempts, it is hard to say that Turkey performed well in terms of both human rights and democracy. It should be underlined that Turkey made significant progress on both democratization and human rights from 2002 until 2013; however, it has fallen behind over the last three years.

We should also keep in mind that the quality of democracy has fallen and human rights violations have gained momentum globally, including consolidated democracies such as EU member countries and the USA. The recent increase of human rights violations in Turkey indicates a serious loss of performance in the protection mechanisms of human rights at national level. It is possible to observe the decline in the protection of human rights by exhausting legal remedies according to the ECHR statistics. But, it is also interesting to note that national human rights institutions are also in a similar downward trend. Not only preventions of violations but also awareness raising activities have dramatically diminished. The human rights based, brave decisions made by the Constitutional Court in recent years gave some hope; however, it is hard to mention the same thing due to the political events that have happened since 2015. Human rights mechanisms seem to be under serious pressure following the declaration of state of emergency. Despite such negative global and local dispositions, Turkey can at least develop its human rights protection regime and protect its position within European community to which it belongs. For this reason, some improvements should be implemented at national, regional and global levels in places where human rights are protected.

We should prioritize education on human rights as the first and most effective way of improving legal remedies and we should pay attention that the human rights curriculum used for training judges in faculties of law should be sufficiently intense. In-house trainings should be delivered in order to enhance human rights awareness among judges. First of all, investments should be made for creating a culture of human rights among judicial circles.

Secondly, the national institutions established for protecting and developing human rights should meet minimum standards known as Paris Principles. These standards may generally be listed as follows: national human rights institutions shall be equipped with wide range of powers; these institutions shall have functional and financial autonomy, their structure shall be plural and accessible with an individual complaint mechanism and their members shall be secured. In the report published by THRI in 2014, some activities of the institution are followed by this statement: "...the Institution needs to be made more independent, sufficient number of experts on human rights should be employed and these experts should be legally protected while doing their job."⁵ By the same token, public recognition and cooperation of THRI with civil

Supervising Procedures of UN Committees on Human Rights					
Committees/ Reports	Regular Reports	Individual Complaints	Intergovernmental Complaints	Investigation	Regular Visits
Human Rights Committee (CCPR)	X	X	X		
Committee on Economic, Social and Cultural Rights (CESCR)	X				
Committee on the Elimination of Racial Discrimination (CERD)	X	X	X		
Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW)	X	X		X	X
Committee Against Torture (CAT)	X	X	X	X	
Committee on the Rights of the Children (CRC)	X				
Committee on Migrant Workers (CMW)	X	X	X		
Committee on the Rights of Persons with Disabilities (CRPD)	X				

References: Akyeşilmen, N. and Şen, B.,(2008), "United Nations as a Security and Humans Rights Institution", Democracy Platform, No.16.

As shown on the chart, the powers and supervision procedures of the committees are different. At the same time, the structures of the committees also display difference. Another significant point to make is that Committees are independent from each other and do not work in coordination as expected. In this case, the same work often may be done more than once, which results in waste of energy and less efficiency. Therefore, the possibility to create synergy and to establish a more efficient protection mechanism is discussed within UN.

Turkey has taken the necessary steps in terms of UN Mechanisms. Turkey first became party to twin treaties and then to many primary conventions and protocols. Therefore, Turkey is a state which participates in the UN mechanism and tries to fulfil its obligations. Nevertheless, Turkey is less known and preferred in the UN Mechanism since the binding nature of the Mechanism is dominated by the international public opinion and limited with the international prestige of the countries.

⁵ EU Commission (2014), Turkey 2014 Progress Report, Brussels: EU Commission, p.48.

society organizations are also underlined as a necessity for its accessibility and "THRI should conduct more studies for increasing activities of the institution and for raising awareness among stakeholders and civil society."⁶ The same issues concern Ombudsman Institution, Provincial and District Boards of Human Rights.

In the light of the results obtained from this study, some necessary additional measures that can be taken in order to make national human rights institutions comply with the Paris Principles:

- The number of the staff in these institutions should be increased enough to carry out wide range of powers and duties given by Law and other legislations.
- Numerous strong offices should be established in order to increase accessibility and popularity of these institutions at national level.
- A compulsory consultation mechanism that convenes often and regularly should be established among bodies such as THRI, the Human Rights Inquiry Committee to the GNAT, Ombudsman Institution, Provincial and District Boards of Human Rights in order to prevent human rights violations as well as to protect human rights.
- The mechanisms defined by Law should be enhanced via promoting the relationship and cooperation of the Institution with civil society organizations, governmental institutions, professional organizations, syndicates, chambers and universities.
- These institutions should also give particular importance to education on human rights like its international peers in recent years so that they can play a more active role in combating racial discrimination, social polarization and conflicts.
- The necessary conditions should be provided for ensuring functional, administrative and financial autonomy of these institutions.
- The personnel of these institutions should also have some sort of legal security and immunity as distinct from other public officials.

Adoption of the above mentioned measures will not only make national human rights institutions comply with Paris Principles and also will contribute to protection and development of human rights, which is the core value of these institutions.

When taken at national level, these measures will also improve Turkey's presumption of human rights before international human rights protection mechanisms. Therefore, both government and the human rights sector share a huge responsibility. All stakeholders of human rights can build a more secure and free future in cooperation with each other and their international partners.

⁶ EU Commission, 2014, p.48.

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Friedrich Naumann
STIFTUNG FÜR DIE FREIHEIT