e-journal of
Social and Legal Studies

RWANDAN, TURKISH AND EUROPEAN ADMINISTRATIVE DECISONS ABOUT HUMAN RIGHTS

By Jacques KABANO[1]

Mustafa ÇAKIR[2]

"*When you deprive people of their right to live in dignity, to hope for a better future, to have control over their lives, when you deprive them of that choice, then you expect them to fight for these rights*."[3] – Queen Rania Al Abdullah of Jordan.

ABSTRACT

The powers of all Public authorities are subordinated to the law.The primary purpose of administrative law, therefore is to keep the powers of the government within their legal bounds, so as to protect the citizen against their abuse. If there is power there must be duty and this is the concern of administrative law to see that the public authorities can be compelled to perform their duties if they make default. These duties involve protect human rights and respect them. Rwanda as an African country and the former German and Belgian colony which has made its legal system a Romano-Germanic one has no special administrative courts but administrative cases are handled by specialized chambers in the ordinary courts . Turkey to the other side has a long history of judiciary from the ottoman empire to now , various reforms have been done to fit the European model as Turkey is a candidate to the European Union. In Turkey administrative cases have to be submitted into administrative courts. In this paper we will study human rights in Administrative courts or the cases on human rights which reached the courts due to an administrative decision. We will attempt some cases which involved the countries in the European Court of Human Rights.

[1] A master student of Public law at Kocaeli University.
[2] Assistant professor of international laws at Kocaeli University
[3] http://unfoundationblog.org/11-top-quotes-on-human-rights accessed on 1 March 2017.

Key words: Human Rights, Administrative decision, Administrative Law.

0. Introduction

Human rights is a broad concept to talk about, as itself differs from human rights law by its large and limitless framework to explain all of them in one article is quite impossible. As the name of the topic is, We will focus on some interesting decisions taken in Rwanda,Turkey and an attempt on those taken in Europe especially The European court of Human rights.

We will consider the consititutions of these rights where in Rwanda and Turkey we will explore some rights that can fall under administrative approach in the constitutions of these two countries, we will also consider the European approach on human rights and some decisions that have been taken.

Administrative law is that branch of law that defines and limits relationships between government agencies and people. It defines agency powers,agency limitations,and remedies available to parties agrived by agency action.[4]

The main importance of administrative law, is to examine the rule of law and to assure that powers entrusted to different administrative organs are not used for the sole purpose of serving the administrators.

The relationship between the private persons and the State in the area of human rights lies in the field of public law. Administrators are obliged to respect Human rights, which consist vertical legal obligations to them. Administrative actions in violations of such rights have to face judicial sanctions.

I. Rwandan administrative decisions about Human rights.

The constitution of Rwanda in its article 44 provides that "*the judiciary is the guardian of rights and freedoms of the public, ensures respect thereof in*

[4] A.M. COHEN,Practical administrative law for paralegals,west publishing company,Minneapolis,1996,p.3

accordance with procedures determined by law". In this perspective, the law regarding *the organization , structure and functioning of courts* has placed all administrative cases under the specialized chamber of Intermediate couts, High court and with a probability to reach the last resort,the supreme court. In this part we will talk about some cases that have been decided on upon the violations of human rights . Article 339 of *the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure* states that : "*before filing a claim, the aggrieved party who is against the administrative decision shall be required to first lodge an informal appeal with the immediate superior authority vis-à-vis the one who took the concerned decision. The authority shall be required to respond in a period of one (1) month which runs from the date he / she received the informal appeal. If he / she does not respond, the request shall be considered as if it is rejected. In case the applicant is not satisfied with the decision, he/she has a period of six (6) months to file a claim which runs from the date when he/she received the response, and if there is no response, such a period shall start running after one (1) month mentioned in paragraph 3 of this Article".* Article 341 of the same law stipulates *: "that An appeal against an administrative decision or suing against an administrative decision in court shall not suspend its execution until the court rules on the matter. However, in case of emergency, a party may request the President of the court through exparte application to suspend the administrative decision being attacked if its execution would cause an irreparable harm".*

I.1 Crucial examples of some administrative case linked outcomes about Human rights

In Rwanda, as mentioned before there is no administrative courts, cases engaging administrations are dealt with specialized chambers in ordinary courts. Administrative decision is beyond a judgment of an administrative court; it is every decision that comes from administration which has or may have caused any

prejudice to a staff or any normal person within the framework of that administration.

1.1.1 Right to judgement executed

When a judgment of the court has been provided after one month with no appeal the judgment must be executed either by a professional bailiff when the winner of the case can afford to pay him or by the non professional bailiffs who is mainly the executive secretary of the cell,sector,district or the minister of justice which is done for free. In some cases this right to have one's judgement executed has became a subject of human rights violation. There various cases that Exective secretaries are taken to courts due to the refusal of executing a court decision. The example here is the case of NYIRANEZA Espérance who sued the fact that 5 years has been elapsed without execution her judgement in the case no RCA No. 033/09/TGI/ NYBE.[5] This family suffered the deprivation of its rights over property. The Human rights commission in Rwanda has participated in the resolution of this case where the Executive secretary was forced to execute the judgment.

1.1.2 Right to property

Article 29 of the Rwandan constitution provides that **: "***every person has a right to private property, whether personal or owned in association with others. Private property, whether individually or collectively owned, is inviolable. The right to property may not be interfered with except in public interest, in circumstances and procedures determined by law and subject to fair and prior compensation*". With this regard MUNEZERO Jean Claude and his collegues sued Rulindo district for having given their forest plantations to SORWATHE sarl (Rwandan

[5] Rwanda commission for human rights,the annual report July 2014-June 2015, Kigali ,september 2015,p 89.

society of Tea) in 2002 without any compensation .[6] these persons have sued the district of Rulindo and they have got compensation for their land.

1.1.3 Right to Life

The article 10 of the Rwandan constitution provides that : "*The human person is sacred and inviolable*". The State under its administrative organs is the guardian of this article where it must ensure everyone life's protection. Article 12 emphasizes that : "*every person has the right to life and that no person shall be arbitrarily deprived of life*". However, many people die because of the negligence of some state organs like in prisons or where persons are shot dead by the persons entrusted by the State to hold guns for different responsibilities.

In this regard the example is the case of *NTAKIRUTIMANA Mariam resident of Rusizi District, who addressed the murder of her son IRASUBIJE Daniel who, was shot dead on 24th November 2011 in Nyungwe Forest by a forest ranger named NKURIYIMANA Jean. Referring to the claim of the Prosecution, the Commission of human right in Rwanda hired for a Lawyer to assist the family of IRASUBIJE Daniel in the civil case. The Lawyer followed up the case in the Prosecution and in the High Court, Rusizi Chamber, in judgment no RP 0006/13/HC/RSZ. On 31st December 2013, the judgment was pronounced in public; the Court confirmed that NKURIYIMANA Jean together with RDB (Rwanda Development Board) had to pay NTAKIRUTIMANA Mariam with her fellows an amount of damages equivalent to seven million Rwandan francs (Frw7,000,000).*[7] The RDB as a State organ paid because of the responsibility it has under the constitution which is to protect and respect the right to life.

---

[6] İbid,p.2

[7] Rwanda commission for human rights report,p.94.

1.1.4 Termination without cause

Termination without cause means that workers' contracts have been revoked without any legal basis. Articles 37 and 38 of the Rwandan constitution stipulate that any worker has the right to free employment and can defend his or her rights under conditions determined by law.This right evokes all duties and rights from employment contracts as being fired only by just cause because its his or her rights to stay employed as long as there is no just cause to termminate his or her employment. A crucial case here is the *case no RADA 0026/09/CS of TWAHIRWA Fulgence vs OCIR THE (a company that produces and sells tea)* . The supreme court of Rwanda did not receive the petition of Twahirwa based on lack of ex gracio administrative remedy that he did not prove to the court though the court indicated that he was attempting to defend this right to employment.[8]

I.2 NATIONAL COMMISSION FOR HUMAN RIGHT IN RWANDA

To say anything about human rights in Rwanda would be impossible if you ignore the national commission for human rights(NCHR) . This commission exists because it is provided by the constitution of Rwanda in its article 177 and it has been established by the Law N°04/99 of 12 March 1999. The fact that the commission is campaigning for human rights as sometimes it hires for lawyers itself to assist people many administrative cases about human rights violations are not examined by the judges but by the commission itself with mutual understanding together with administration in question.

II. Turkish administrative decisions about Human rights.

According to Article 125 of the Turkish Constitution, *recourse to judicial review shall be available against all acts and actions of administration. National or international arbitration may be suggested to settle the disputes, which arise from*

[8] The supreme court of Rwanda,case RADA 0026/09/CS .

conditions, and contracts under which concessions are granted concerning public services. Only those disputes involving foreign elements can be solved by international arbitration.

On the other hand, Section 2 of the Procedure of Administrative Justice Act states that the following are administrative suit types:

a) Annulment actions concerning administrative acts that are brought by a person whose interests were violated by the act, with the claim that the act is illegal due to a mistake made in one of the elements of competence, form, reason, subject and aim,

b) Full remedy actions brought by those whose personal rights have been directly affected by the administrative acts or actions,

c) Actions relating to disputes arising from administrative contracts signed to carry out public services except disputes arising from conditions and contracts under which concessions are granted and for which arbitration is suggested.[9]
Turkey as a candidate to the European Union and a member of the European Court of Human Rights, It looks to[10] copy and imitate some reforms that are happening into the union, including respecting decisions taken by the ECHR.

2.1 RIGHT TO PROPERTY UNDER TURKISH LAW

The aricle 35 of the Turkish constitution provides that . "*everyone has right to own a property"* and this right is only limited by the law especially when in its exercise conflicts with public interests in this case right to property does not stand. In the Turkish law, expropriation without compensation has been reported as the most appalling case.[11]

[9] N.K. ERGANİ ,The report of the turkish council of state On the review of administrative decisions of government by Administrative courts and tribunals, Sydney, March 2010,p.2
[10] N.İ.ÇOLAK, Arupa Birliği uyum sürecinde İDARİ REFORMLAR İngiltere ve Türkiye, Seçkin Yayıncılık San. Ve Tic. A.Ş.,Ankara,2005,p 331.
[11] M.AVCI, A study on confiscatıon without expropriation in The Turkish law,found at http://www.taa.gov.tr/.../a-study-on-confiscation-without-expropriation-in-the-turkish-law/pdf accessed on 9 March 2017.

For example, here there is a Plenary Session of the Chambers for Administrative Cases, where the council of state issued an approach: "*in order to perform expropriation, in actions for nullity filed with the claim of unlawfulness in procedures for the rejection of an application by the property owner, to conclude that there is uncertainty regarding the use of a property right and that the fair balance that should be established between public interests and property right is impaired, there is need for a minimum period of five years pursuant to the approval of zoning plans, the property rights of an immovable owner should be restricted for an uncertain period of time when the administration does not expropriate for a long period an immovable property that is allocated to public services in the zoning plan and thus the fair balance that should exist between public interests and property right is impaired*".[12] In one of its recent decisions, Chamber 6 of the Council of State ruled as follows: "The court decision regarding the rejection of the claim for compensation is not right given that the price of an immovable property allocated as a road or parking area in the zoning plan, but is not expropriated because it is not involved in the five-year zoning program should be paid after being determined by expertise"[13].[14]

2.2 Right to Life

The Turkish Constitution includes rules on the right to life, and restrictions thereof, similar to Article 2 of the ECHR. According to Article 17 of the Constitution:

---

[12] Council of State Plenary Session of the Chambers for Administrative Cases, Date of Decision:24.05.2012, Case No:2007/2255, Decision No:2012/801, Council of State Plenary Session of the Chambers for Administrative Cases, Date of Decision:14.12.2006, Case No:2003/385, Decision No:2006/2124,

[13] Chamber 6 of the Council of State, Date of Decision:17.04.2013, Case No:2011/8152, Decision No:2013/2702, See http://www.danistay.gov.tr/Güncel Kararlar, D.A:8 march 2017.

[14] AVCI,p151

“*Every one has the right to life*."

"*The cases of carrying out of death penalties under court sentences and the act of killing in legitimate-defense, the occurences of death as a result of the use of a weapon permitted by law as a necessary measure in cases of: apprehension, or the executing of warrants of arrest, the prevention of escape of lawfully arrested or convicted persons, the quelling of riot or insurrection, the execution of orders of authorized bodies during martial law or state of emergency are outside the provision of paragraph 1 (right to life).”*

In the case Opuz v H.O which later went to European court of human rights (Application no. 33401/02) ,domestic court and the ECHR protected the right to life at certain level.[15]

2.3. Right to Fair trial

The constitution of the Republic of Turkey ,in its Article 36- (As amended on October 3, 2001; Act No. 4709) states that: “*Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures. No court shall not refuse to hear a case in its jurisdiction*”. This is in accordance with Article 6 § 1 of the European Convention on human rights where it provides that “1. In the determination of his civil rights and obligations ., *everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...*”

In this regard a case related to Turkey has been submitted to the European Court of human right in the case SALDUZ v. TURKEY The Court held unanimously that there had been:[16]

---

[15] Opuz v Turkey found at http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=851046&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 accessed on 12 Mar. 17

[16] Opuz v Turkey found at http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=851046&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 accessed on 12 Mar. 17

- ***a violation of Article 6 § 3 (c)*** *(right to legal assistance) of the European Convention on Human Rights in conjunction with Article 6 § 1 (right to a fair trial) on account of the applicant's lack of legal assistance while he was in police custody;*
- ***a violation of Article 6 § 1*** *(right to a fair trial) in respect of the non-communication to the applicant of the written opinion of the Principal Public Prosecutor at the Court of Cassation.*

2.4. Termination without cause

Rightful termination of the employment contract is regulated in Article 25 of Turkish Labour Code No. 4857. Unless there is justified ground for termination (as mentioned in detail below); in case of termination, the employee will be entitled to the following payments:

- **Severance Payment:** The severance payment will be calculated as 1 month-salary (gross monthly salary plus other regular benefits (if any) that can be monetized) of the employee multiplied by the number of his/her employment years (with the employer). However, the current ceiling for yearly severance payment is TRY 3.541,37.
- **Notice Payment:** Only if the employee is not granted the necessary notification period as mentioned above.
- **Bad-faith Compensation**: In case of a lawsuit, if the court decides that employer's termination constitutes an act of bad faith, the employee will be entitled to bad faith compensation, which is in the amount of 3 times the notice period payment even if all of the notice period requirements are fulfilled

If the court decides that the termination was not based on valid grounds, the employer will be obliged to call back the employee to the duties within a period of 1 month. In case the employer fails to re-employ the employee within 1 month

after his/her application, the employer will be required to pay compensation to the employee in the amount of 4 to 8 months salary to be determined by the court. In addition to such compensation, the salary and all other rights of the employee covering the maximum of 4 months must also be paid to the employee for the period of unemployment until the final judgment of the court is received. This amount is paid to the employee regardless of whether the employer re-employs the employee. If both payments are made, there is no requirement to make any bad-faith compensation payment even if the court decides that there is an act of bad-faith . If a conflict is brought before court, each termination is evaluated on a case-by-case basis. In case of any event which the employer thinks that could present justified grounds for termination, it is always advised to immediately prepare an official minute reporting such incident signed by two witnesses (preferably one to be the superior of the employee) and if possible by the employee him/herself. Immediately taking and preserving evidence (e.g. photographs in case of damage to property) is also very crucial since the burden is on the employer to prove that the termination is based on justified grounds.[17]

The above presentation can be obsevered in these cases (12. Daire, E. 2008/791, K. 2009/7084, T. 15.12.2008, 3. Daire, E. 2006/3801, K. 2007/416, T. 15.02.2007, 3. Daire, E. 2006/3081, K. 2007/416, T. 15.02.2007 and 3. Daire, E. 2006/3799, K. 2007/414, T. 15.02.2007) [18]dealt with counsel of the state in Turkey.

Though most of human rights issues are managed by the office of the ombudsman in Turkish parlaiment, the human right instutition of Turkey has been also a key prayer in promoting and defending human rights in the country. The institution has been established by the law no 6332, this law provides duties of this organ. The Institution is responsible for carrying out activities to protect and promote

[17] Termination of the contract http://www.mondaq.com/turkey/x/395110/employee+rights+labour+relations/Termnaton+Of+Employment+Contracts+Under+Turksh+Law accessed on 12 March 2017.
[18] Sebepsiz fesih found at http://www.hukukturk.com/Sonuc.aspx?q=sebepsiz+fesih&KararTuru=2501 accessed on 10 March 2017.

human rights, to prevent violations of human rights, to combat torture and ill-treatment, To carry out research activities in order to monitor and evaluate the developments taking place in the area of human rights; to work towards solving the problems; to review and research petitions adn applications, follow up their outcome.

19

The instution is very active, the following are exemples of some activities[20] performed by this organization:

- Report on the Death of Lütfullah Tacik and Van Removal Centre of 05 January 2015
- Report on İstanbul Removal Centre of 26 November 2014 of Report on Gezi Park Cases of 03 November 2014
- Investigation Report on Incidents in Sincan Prison of 10 October 2014
- Investigation Report on ŞANLIURFA/SİVEREK of 27 June 2014
- Investigation Report on Metris Prison of 27 June 2014
- The National Human Rights Institution of Turkey 2014 Activity Report of 08 January 2016
- Investigation Report on Ali Uçkun Case under Suicide in Prison of 05 January 2016
- Visit Report on Children Ward in Muğla E Type Prison of 4 December 2015
- Visit Report on Imprisoned Patients in Ankara Numune Education and Research Hospital of 13 May 2015

---

[19] Available at http://www.tihk.gov.tr/en/about#462218-tasks

[20] See these documents in pdf at http://www.tihk.gov.tr/en/Documents-and-Decisions accessed on 13 March 2017.

- Report on Sexual Abuse and Ill Treatment in Antalya L Type Closed Prison of 27 February 2015

III. European administrative decisions about human rights

The Convention for the Protection of Human Rights and Fundamental Freedoms, commonly known as the European Convention on Human Rights, was adopted by the Council of Europe in 1950 and entered into force in 1953. This international legal text aims to protect human rights and fundamental freedoms by enabling judicial review of respect for these individual rights. It refers to the Universal Declaration of Human Rights proclaimed by the United Nations General Assembly on December 10, 1948.

For many years, many voices from the world judicial try to be heard by our governments successive years to denounce the lack of resources dedicated to one of the three constitutional powers, guarantor of any democracy, judiciary power. Without great effects so far ... Worse the world Judiciary seems to be less and less audible.[21]

The United Kingdom act on Human Rights of 1998 as well as the Charter of the fundemental rights of the European Union of 2000 have opened up new liabilities for public authorities, important heads of liabilities such as those from the abuse of the right to personl liberty, the right to a fair and impartial hearing and the right to effective remedies have been remarkable in different cases.[22]

Amost 74,000 cases are pending before the European Court of Human Rights in the so-called "*repetitive cases*".[23] Among others, the most violated article

[21] Europe situation, available at http://www.liguedh.be/wp-content/uploads/2019/02/EDH_2018_Web.pdf

[22] H.W.R.WADE & C.F.FORSYTH,Administrative law,Oxford university press,9.ed,New York,2004,p.746-47.

[23] ECHR press unit, Factsheet – Pilot judgments,Strasbourg,November 2016,p 1.

presented by the hundreds of applicants before this court is the Article 6 of the Convention, which states that "[…] *everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".* This single problem has been consistently showing that judgements held in time are pillars for sustaining human rights.[24] Different authorities have failed to comply with their duties entrusted to them by the constitutional documents, this is why many cases have been filed to the European court for human rights.

The pilot judgment procedure was developed as a technique of identifying the structural problems underlying repetitive cases against many countries and imposing an obligation on States to address those problems. Where the Court receives several applications that share a root cause, it can select one or more for priority treatment under the pilot procedure. In a pilot judgment, the Court's task is not only to decide whether a violation of the European Convention on Human Rights occurred in the specific case but also to identify the systemic problem and to give the Government clear indications of the type of remedial measures needed to resolve it.[25]

Every year hundreds of applicants complain before the European Court of Human Rights that judicial proceedings before their domestic courts have taken too much time and thereby violate Article 6 of the Convention, which states that This single issue still accounts for more judgments of the Court than any other. It is clear why speedy judicial proceedings are deemed essential from a human rights perspective. *Justice delayed is justice denied* is a maxim that is often used in this regard.[26] Different authorities have failed to comply with their duties entrusted to

---

[24] ***M. KUIJER,*** The Right to a Fair Trial: effective remedy for excessively lengthy proceedings (Articles 6 and 13 ECHR), Cracow, Poland,28 february 2013,p2.
[25] ECHR press unit, Factsheet – Pilot judgments,Strasbourg,November 2016,p 1.
[26] ***M. KUIJER,*** The Right to a Fair Trial: effective remedy for excessively lengthy proceedings (Articles 6 and 13 ECHR), Cracow, Poland,28 february 2013,p2.

them by the constitutional documents, this is why many cases have been filed to the European court for human rights.

3.1 European court of Human rights rights decisions about human rights with issues related to administrative framework.

The human rights act gives effect in domestic law to most of the European Convention on Human Rights(ECHR) and in consequence has had an impact upon the decision making processes of courts, legislatures, and a wide range of executive and administrative bodies.[27].[28]

3.1.2 Right to judgement executed : Prolonged non-enforcement of court decisions and lack of domestic remedy

Recurring practice consistently highlighted by the Court since 2002 in more than 200 cases in which the Russian State failed to execute judgment debts. In this case the applicant complained of the authorities' failure to execute domestic judgments awarding him social benefits.

3.1.3 Violations of the right to the protection of property

After Poland's eastern border had been redrawn in the aftermath of the Second World War, Poland undertook to compensate Polish citizens who had been repatriated and had had to abandon their property situated beyond the Bug River and now in Ukrainian, Belarusian or Lithuanian territory. Following an

[27] P.LEYLAND& G.ANTHONY,Textbook on Administrative law, Oxford university press,5.ed,Oxford,2005,p.211.
[28] See pilot judgments fact sheet p.6

application by a Polish national who complained that he had not received the compensatory property to which he was entitled, the Court found that the case..[29]

3.1. 4. Prohibition to torture

The right to freedom from torture or inhuman or degrading treatment or punishment under article 3 of the European convention on human rights is recognized in international human rights treaties[30] and in many, although not all,domestic human rights instruments. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is not part of a "legal vacuum". The authors of the convention had to situate the original place occupied by this new device in relation to pre-existing texts. The drafters were careful to avoid any overlap, although some ambiguities remain, both in the universal (A) and in the European (B) framework.

The prohibition of torture and cruel, inhuman treatment Since the adoption of the UDHR, degrading treatment has been numerous binding legal norms, including Article 3 of the European Convention on Human Rights. Inseparable from respect for human dignity, a necessary condition for it, this prohibition has become legally imperative, universal and absolute which admits of no exception and which places it at the top of the international normative hierarchy. If it's a principle that we do not expect to see it openly denied is this one. However, probably the political actors using migrations to hide their carelessness they can not be satisfied. However, a breach has been opened in the planned mechanism, with the safeguard clause in case of "exceptional circumstances" which allows a State to refuse a visit (Article 9). This amendment to the draft convention was decisive in securing the

[29] Adjournment of "Bug River" cases found on http://hudoc.echr.coe.int/eng-press?i=003-1062015-1099568 accessed on 3 March 2017.

[30] Article 5 of the universal declaration and art 7 of the ICCPR

support of certain great powers. Consulted on the text of the Convention, the NGOs that had initiated the 1983 draft found that the new version provided many detail improvements, but strongly regretted the introduction of Article 9 which weakened the text. in the European context, but above all limits its universal exemplarity. If the model were to be transposed, the "reasonable" interpretation of Article 9 could give way to practices that render the convention meaningless. Member States, often on the defensive due to internal arbitrations between national administrations, have probably neglected the international challenge of their work.

The responsibility of the State extends beyond prohibiting the use of art 3 treatment by State agents. I t includes a duty to ensure that individuals within their jurisdiction are not subjected to art 3 treatment by other individuals.[31] It also includes an obligation not to deport a person who needs medical treatment to a country where he will not receive it.[32] The state also has a positive obligation to carry out an effective investigation into allegations of breaches of art 3.[33]

Practical example: Germany Example[34]

Germany as a member of the European Unian and a state party to the Convention (ECHR) has been, transformed ECHR into its legal order through Art. 59 (2) BL. Every rights provided for in this treaty can be invoked anytime by citizens in German courts and national administrative entities. Art. 3 ECHR reads: "*No one shall be subjected to torture or inhuman or degrading treatment or punishment*." In this context this article prohibits torture.

[31] İn A v UK (1999) 27 EHRR 611, a violation of art 3 was found since the law had failed to protect a child from excessive chastisement by his stepfather.
[32] In the D v UK (1998) 24 EHRR 423, a violation of art 3 was found since the UK proposed sending D back to West Indies after he had contracted AIDS where he would not receive appropriate treatment of his condition.
[33] Aksoy v Turkey(1996) 23 EHHR 533; Selmouni v France (2000) 29 EHHR 403.
[34] N.WEISS, Impact of international human rights law on German adminitrative law,Germany,sepember 2010, pdf found at www.ius-publicum.com accessed on 3 March 2017.

Many cases result from police action: personal search, arrest, pre-trial detention, the treatment of asylum-seekers at the border, and interrogation methods may be some of the most critical points. These methods were also at stake in the case *Gaefgen v. Germany* (no. 22978/05, GC judgment 1. July 2010). *The applicant had kidnapped and murdered a child. He was arrested and interrogated by the police because he was suspected of having kidnapped the boy. The Deputy Chief of the Frankfurt police ordered a police officer to threaten the applicant with considerable physical pain, and, if necessary, to subject him to such pain in order to make him reveal the boy's whereabouts. The police officer threatened the applicant who, for fear of being exposed to the measures he was threatened with, disclosed the whereabouts of the boy's body some ten minutes thereafter.*

The Court held: "Having regard to the relevant factors for characterising the treatment to which the applicant was subjected, the Court is satisfied that the real and immediate threats against the applicant for the purpose of extracting information from him attained the minimum level of severity to bring the impugned conduct within the scope of Article 3." But: "Contrasting the applicant's case to those in which torture has been found to be established in its case-law, the Court considers that the method of interrogation to which he was subjected in the circumstances of this case was sufficiently serious to amount to inhuman treatment prohibited by Article 3, but that it did not reach the level of cruelty required to attain the threshold of torture." The Court dismissed unanimously the applicant's claim for just satisfaction. Meanwhile, the officer who made the threat of violence against Gaefgen was convicted by national courts of inducing abuse of authority in 2004 and was sentenced to a year's probation.

3.1.5. Right to Strike

It begins with the International Labor Organization's convention on the right to organize and bargain collectively of 1948, which a British Labor government was

the first to ratify; followed by the Council of Europe's social charter of 1961, which a British Tory government was the first to ratify; followed, in turn, by the UN's international covenant on economic, social and cultural rights of 1966.[35] Under both international law and Eurpean law ,there is consensus that States may place legal restrictions on the ability of members of the police and the armed sevices to exercise the right to strike.[36]Strikes in essencial services have the capacity to cause the public significant harm, in terms of injury to their lives or liberties.[37]

In order to promote and guarantee social rights which are not included in the European Convention on Human Rights, the Council of Europe has drawn up the European Social Charter, adopted in Turin in 1961. Among the rights guaranteed by the Charter include, in particular, the right to work, the right to organize, the right to collective bargaining, the right to social security, the right to social and medical assistance, the right of the family to social, legal and economic protection, and the right of migrant workers and their families to protection and assistance.

It was revised in 1996 to incorporate the rights contained in the 1988 Additional Protocol, to strengthen and improve certain existing rights and to add new rights. In order to ensure its respect, the European Social Charter has established a European Committee of Social Rights, which on the one hand adopts conclusions in the framework of a system of national reports, on the other hand makes "decisions" non-binding, within the framework of a system of collective complaints open to representative national and international organizations of employers and workers, as well as to non-governmental organizations. These

[35] Striking is a human right retrived from https://www.theguardian.com/commentisfree/libertycentral/2010/mar/26/ba-strike-human-rights accessed on 8 March 2017.
[36] T.NOVITZ, International and European protection of the right to strike,oxford press,New york,2003,p.311
[37] Macfarlane,L.J., The right to strike (Harmondworth: Penguin,1981), 135-40 and 176.

conclusions and "decisions" must be endorsed by the Committee of Ministers of the Council of Europe.

All workers, regardless of the nature of the employer, whether public or private, are entitled to this right to take collective action. This formulation can be read as recognising the right to strike. If collective action includes strike action, and the former is qualified as a right, then the latter must also be a right. However, the right to strike is not without limits. In the cases of *Viking and Laval* , the European Court of Justice (ECJ) held that while recognising the right to strike, this may still represent a restriction on the freedom to provide services and thus could only be conducted under EU law where it was to pursue a legitimate aim and was justified by overriding reasons of public interest. However, a less restrictive position was taken in a case heard before the European Court of Human Rights (ECHR) in 2008. In *Enerji Yapi-Yol Sen v. Turkey* (Application No. 68959/01), the court held that while the right to strike was not absolute and might be subject to certain restrictions, a law that banned strikes would represent too wide a restriction.[38]

However, despite this profusion of initiatives and instruments, European human rights diplomacy is now more disenchanted than applause. In January 2007, Kenneth Roth, the executive director of Human Rights Watch, said that the European Union was "boxing below its category". "Too often," he said, "his statements about human rights are rarely followed by firm action or pressure." Indexing "the underperformance of the EU" and its "lack of political will", the author concluded that "when it comes to promoting human rights, the whole thing, the European Union, is smaller than the sum of its parts "K. Roth," Filling the Leadership Void: Where is the European Union? ",[39] Amnesty International is not more tender. At the beginning of 2008, in its memorandum addressed to the

---

[38] Right to strike found at https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/right-to-strike accessed on 8 March 2017.
[39] Human Rights Watch World Report 2007, New York, pp. 1-32.

Slovenian Presidency of the EU, the organization noted: "The power of decision is the prerogative of the Council, that is to say of the Member States. However, these seem to embody the limitations rather than the aspirations of European human rights policy "Time for accountability, Amnesty International's ten-point program for the Slovenian presidency of the EU, January 2008. It is true that the international context is not conducive to an "ethical" foreign policy. The rise of ethnic and religious extremism is a frontal threat to the philosophy of human right.[40]

Conclusion

In this work entitled Rwandan, Turkish and European administrative decisions about human rights we have focused on some rights that administrations participates in, either by protecting that right or where found in position of violating such rights.

In Rwanda as an African Country and a witness of the fastest and most ferocious atrocity of the 20th century, administrative decisions must be taken carefully since the 1994 genocide was actually a result of bad decisions taken within a long period of time by administrators. Turkey and Europe share the same fate when it comes to human rights because they all are party to the ECHR Convention. However Turkish decisions once they reach this court statistics show that these decisions are likely to be overruled.

The European court for human rights seems to be more active than Turkish and Rwandan courts on human rights. The question is not that the former is specifically created to deal with human rights issues but the limitation of the

[40] Jean-Paul MARTHOZ, L’Europe et les droits de l’Homme, on 10 february 2008, available at https://www.revuepolitique.be/leurope-et-les-droits-de-lhomme/

human rights understanding and conceptualization in domestic courts undermine the universaliy of human rights.

BIBLIOGRAPHY

- A.M. COHEN,Practical administrative law for paralegals,west publishing company,Minneapolis,1996
- Adjournment of "Bug River" cases found on http://hudoc.echr.coe.int/eng-press?i=003-1062015-1099568 accessed on 3 March 2017.
- Aksoy v Turkey(1996) 23 EHHR 533; Selmouni v France (2000) 29 EHHR 403.
- A v UK (1999) 27 EHRR 611
- Chamber 6 of the Council of State, Date of Decision:17.04.2013, Case No:2011/8152, Decision No:2013/2702, See http://www.danistay.gov.tr/ Güncel Kararlar , D.A:8 march 2017.
- Council of State Plenary Session of the Chambers for Administrative Cases, Date of Decision:24.05.2012, Case No:2007/2255, Decision No:2012/801, Council of State Plenary Session of the Chambers for Administrative Cases, Date of Decision:14.12.2006, Case No:2003/385, Decision No:2006/2124,
- D v UK (1998) 24 EHRR 423
- ECHR press unit, Factsheet – Pilot judgments,Strasbourg,November 2016,p 1.
- ECHR press unit, Factsheet – Pilot judgments,Strasbourg,November 2016,p 1.
- Europe situation, available at http://www.liguedh.be/wp-content/uploads/2019/02/EDH_2018_Web.pdf
- externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 accessed on 12 Mar. 17
- H.W.R.WADE & C.F.FORSYTH,Administrative law,Oxford university press,9.ed,New York,2004,p.746-47.

- Human rights available at: http://unfoundationblog.org/11-top-quotes-on-human-rights accessed on 1 March 2017.
- Human Rights Watch World Report 2007, New York
- Jean-Paul MARTHOZ, L'Europe et les droits de l'Homme, on 10 february 2008, available at https://www.revuepolitique.be/leurope-et-les-droits-de-lhomme/
- M.AVCI, A study on confiscatıon without expropriation in The Turkish law,found at http://www.taa.gov.tr/.../a-study-on-confiscation-without-expropriation-in-the-turkish-law/pdf accessed on 9 March 2017.
- M. KUIJER, The Right to a Fair Trial: effective remedy for excessively lengthy proceedings (Articles 6 and 13 ECHR), Cracow, Poland,28 february 2013.
- M. KUIJER, The Right to a Fair Trial: effective remedy for excessively lengthy proceedings (Articles 6 and 13 ECHR), Cracow, Poland,28 february 2013.
- Macfarlane,L.J., The right to strike (Harmondworth: Penguin,1981), 135-40 and 176.
- N.K. ERGANİ ,The report of the turkish council of state On the review of administrative decisions of government by Administrative courts and tribunals, Sydney, March 2010
- N.WEISS, Impact of international human rights law on German adminitrative law,Germany, sepember 2010, pdf found at www.ius-publicum.com accessed on 3 March 2017.
- N.İ.ÇOLAK, Arupa Birliği uyum sürecinde İDARİ REFORMLAR İngiltere ve Türkiye, Seçkin Yayıncılık San. Ve Tic. A.Ş.,Ankara,2005
- Opuz v Turkey found at http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=851046&portal=hbkm&source=
- P.LEYLAND& G.ANTHONY,Textbook on Administrative law, Oxford university press,5.ed,Oxford,2005.
- Right to strike found at https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/right-to-strike accessed on 8 March 2017.

- Rwanda commission for human rights,the annual report July 2014-June 2015, Kigali ,september 2015
- Sebepsiz fesih found at http://www.hukukturk.com/Sonuc.aspx?q=sebepsiz+fesih&KararTuru=2501 accessed on 10 March 2017.
- Striking is a human right retrived from https://www.theguardian.com/commentisfree/libertycentral/2010/mar/26/ba-strike-human-rights accessed on 8 March 2017.
- T.NOVITZ, International and European protection of the right to strike,oxford press, New york,2003
- Termination of the contract
- http://www.mondaq.com/turkey/x/395110/employee+rights+labour+relations/Termnaton+Of+Employment+Contracts+Under+Turksh+Law accessed on 12 March 2017.
- The supreme court of Rwanda, case RADA 0026/09/CS .
- The universal declaration and art 7 of the ICCPR
- Turkish Institute of Human Rights, Available at http://www.tihk.gov.tr/en/about#462218-tasks
- Turkish Institute of Human Rights activity documents in pdf at http://www.tihk.gov.tr/en/Documents-and-Decisions accessed on 13 March 2017.