

**Turkish Law of Arrest in the Light of the “Right to Liberty and Security”
Guaranteed by the ECHR***

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A. Article 5 of the ECHR

According to the Art. 5 of the ECHR, *everyone has the right to liberty and security of person*” and an individual may only be deprived of his liberty “*in accordance with a procedure prescribed by law*”.

The purpose of the right is to ensure the freedom of physical movement of the person from one place to another¹ and to establish the related guarantees protecting such freedom. Therefore, this right basically protects individuals from arbitrary arrest,

*This article is based on a paper delivered at the German-Turkish Summer School held in Antalya, Turkey in 2003. Thus, the original presentation was based on the legislation in force at the time. However, on June 1st, 2005, a new Criminal Code (Act No. 5237 of 26.9.2004, Official Journal, 12.10.2004, No. 25611), Code of Criminal Procedure (CCP) (Act No. 5271 of 4.12.2004, Official Journal, 17.12.2004, No. 25673), and Code on the Enforcement of Penalties and Security Measures (Act No. 5275 of 13.12.2004, Official Journal, 29.12.2004, No. 25685) have all entered into force. The text has been revised and updated in order to cover the amendments provided by these codes.

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¹ See Tezcan, Durmus/Erdem, Mustafa Ruhan/Sancakdar, Oguz, Avrupa İnsan Haklari Sözleşmesi Işığında Türkiye’nin İnsan Haklari Sorunu (Turkey’s human rights question in the light of the European Convention on Human Rights), 2. Baskı, Ankara 2004, p. 208; Ünal, Seref, Avrupa İnsan Haklari Sözleşmesi (The European Convention on Human Rights), Ankara 2001, p. 136.

detention and apprehension.² However, the right does not apply only to criminal cases, but all instances of deprivation from physical liberty.³

The terms “liberty” and “security” do not have autonomous meanings, and complement each other⁴. The focus of the article is on “deprivation of liberty”⁵, and “security” should be understood as complementary to that.

As emphasised by the Court, the right to liberty and security of the person is a fundamental right in a democratic society. Therefore, any interference with this right by the authorities must be compatible with the rule of law.⁶ As the purpose of the article is to prevent only the arbitrary deprivation from physical liberty⁷, issues such as the right to free movement and right to travel from one place to another fall out of the scope of article five, and are handled by the Fourth Additional Protocol (art. 2) to the Convention⁸ instead. However, the distinction between freedom of movement and the right to liberty is a matter of degree and intensity rather than nature or substance⁹, and the Court will have to determine which is the right in question by assessing all the circumstances of the case.¹⁰ On the other hand, the way prisoners and detainees are

2 Schiesser/Switzerland, 4.11.1979, Series A, No. 34, § 30. Further see *Nash, Susan/Furse, Mark*, Essential Human Rights Cases, Second Edition, Jordans, 2002, p. 14; *Gölcüklü, A. Feyyaz/Gözübüyük, A. Seref*, Avrupa İnsan Hakları Sözleşmesi ve Uygulaması (The European Convention on Human Rights and Its Application), p. 221; *Tezcan/Erdem/Sancakdar*, p. 278; *Ünal*, p. 136.

3 Van der Leer/Holland, 21.2.1990, § 27). Further see *Robertson, A.H./Merrills, J.G.*, Human Rights in Europe – A study of the European Convention on Human Rights, Third Edition, Manchester University Press, 1993, p. 73; *Tezcan/Erdem/Sancakdar*, pp. 278-280; *Ünal*, p. 137.

4 Engel and others/Holland, 8.6.1976, Series A, No. 22, § 58-59, *Guzzardi/Italy*, 6.11.1980, Series A, No. 39, § 93; further see *Tezcan/Erdem/Sancakdar*, p. 278; *Ünal*, p. 134. For example, application of curfew at night is a restriction of liberty, while keeping the residents of a village locked in their house amounts to deprivation of liberty, see Comm. Dec. Cyprus/Turkey, 10.7.1976, no. 6780/74 and 6950/75, §§ 235, 286.

5 Bozano/France, 18.12.1986, Series A, No. 111, § 54.

6 See *Nash/Furse*, pp. 14-15.

7 Schiesser/Switzerland, 4.11.1979, Series A, No. 34, § 30.

8 Engel and others/Holland, 8.6.1976, Series A, No. 22, §§ 58-59, *Guzzardi/Italy*, 6.11.1980, Series A, No. 39, § 93.

9 *Guzzardi/Italy*, § 93. In the *Guzzardi* case the Court held that compelling the applicant to reside in confinement under police supervision in a small district of an island constituted a deprivation of liberty.

10 See *Ovey, Clare/White, C.A Robin, Jacobs & White* European Convention on Human Rights, Third Edition, Oxford University Press, 2002, p. 104; *Robertson/Merrills*, pp. 58-59; *Nash/Furse*, p. 15; *Tezcan/Erdem/Sancakdar*, p. 280. For example, forced hospitalisation at a mental hospital was found to constitute a deprivation of personal liberty, although the applicant was permitted to leave the hospital during day and at weekends (*Ashingdane/United Kingdom*, 28.5.1985, Series A, No. 93). In another

treated also falls out of the reach of article 5 and interests article 3, regarding the prohibition of torture instead. In relation to arrest, if somebody known to have been last taken under custody by the State disappears, under certain conditions he may be presumed dead. In this case, both article 2 regarding the right to life and article 5, since it must be accepted that he has been held under conditions contrary to the requirements of the article, will have been violated.¹¹

If we take a look at the scope of the article, it is established through the jurisprudence of the Court that everyone, whatever the personal status, enjoys the right to liberty.¹² However, the protection only applies for acts carried out by state organs.¹³ The article also applies to an arrest or detention made abroad by a Contracting State.¹⁴ Article 5 provides three categories of guarantees.¹⁵ It first proclaims the right to individual liberty. It secondly limits the causes for restriction to those exclusively foreseen in the Convention¹⁶, thus ensuring the lawfulness of restrictions to the liberty of person and preventing arbitrariness. Thirdly, it recognises the basic rights of the persons who have been deprived of their liberty.

instance, withholding of Somalian refugees by the French police in a nearby hotel and a lounge of the airport for twenty days was found to amount to a deprivation of liberty (*Amuur/France*, 25.6.1996). On the other hand, prohibition of visits to or residence in certain places is an example to a 'restriction of movement' not within the scope of art. 5, see *Clayton/Tomlinson*, Hugh, *The Law of Human Rights*, Vol. I, Oxford University Press, 2000, no. 10.86.

11 See in that sense *Çakici/Turkey*, 8.7.1999, § 104, *Timurtas/Turkey*, 13.6.2000, § 103, *Tas/Turkey*, 14.12.2000, § 82, *Akdeniz/Turkey*, 31.5.2001, § 106, *Sarli/Turkey*, 22.5.2001, § 69, *Cyprus/Turkey*, 10.5.2001, § 147.

12 *De Wilde, Ooms and Versyp/Belgium*, 18.6.1971, Series A, No. 12, §65, *Weeks/United Kingdom*, 2.3.1987, Series A, no. 114, § 40. For that reason, although the boundaries established by art. 5 should be evaluated differently for servicemen and civilians, a disciplinary penalty imposed on a member of the armed forces may also raise an issue under art. 5 if 'it takes the form of restrictions that clearly deviate from the normal conditions of life within the armed forces of the Contracting States. In order to establish whether this is so, account should be taken of a whole range of factors such as the nature, duration, effects and manner of execution of the penalty or measure in question' (*Engel and others/Holland*, 23.11.1976, Series A, No. 22, § 59).

13 *Nielsen/Denmark*, 28.11.1988, Series A, No. 144, § 58; *Koniarska/United Kingdom* (Appl. 3670/96), admissibility decision of 12.10.2000. Further see *Clayton/Tomlinson*, no. 10.85; *Tezcan/Erdem/Sancakdar*, p. 281. Note however that the meaning that should be derived from these rulings is contested by some authors, see *Ovey/White*, p. 106.

14 See *Clayton/Tomlinson*, no. 10. 83.

15 See *Clayton/Tomlinson*, no. 10. 81; *Gölcüklü/Gözübüyük*, p. 223.

16 *Engel and others/Holland*, § 57; *Ashingdane/United Kingdom*, Series A, No. 93, § 35. It is important to note that the list provided by the Convention is exhaustive of the situations in which a deprivation of liberty is lawful, see *Robertson/Merrills*, p. 59.

B. Definition and Purpose of Arrest

Arrest is an act which results in the deprivation of personal liberty in the absence of a decision duly passed by a judge.¹⁷ Arrest is not a punishment, but a protective (precautionary) measure which ensures the proper functioning and enforcement of criminal law.¹⁸ The purpose of arrest in both Turkish Law and the Convention is to:

- a) Bring the suspect before the competent legal authority on reasonable suspicion of having committed an offence;
- b) Prevent the committing of an offence, and
- c) Prevent the fleeing of the accused.

While judicial arrest occurs after a crime has been committed, it is sometimes possible for police officers to arrest a person even when a crime has not been committed, in order to protect public order and security or to prevent the person from physically harming himself or others. This is called preventive arrest and its purpose is to protect the society from possible threats, in the framework of the preventive duty of the police.

C. Categories of Arrest

Arrest could be categorised into four main types according to the previous Turkish Code of Criminal Procedure (hereinafter "CCP") which was in force until June 1st, 2005: judicial arrest, preventive arrest, arrest with a warrant and special arrest prescribed by

¹⁷ For different definitions see *Gölcüklü*, Feyyaz, *Ceza Davasında Sahis Hürriyeti* (Personal liberty in a criminal case), Ankara, 1958, p. 59; *Centel*, Nur, *Ceza Muhakemesi Hukukunda Tutuklama ve Yakalama* (Pre-trial detention and arrest in Criminal Procedure Law), İstanbul, 1992; s. 5; *Cihan*, Erol/*Yenisey*, Feridun, *Ceza Muhakemesi Hukuku* (Criminal Procedure Law), 2. Baskı, İstanbul, 1997, p. 308; *Soyaslan*, Dogan, *Ceza Muhakemeleri Usulü Hukuku* (Criminal Procedural Law), Ankara, 2000, p. 221; *Yurtcan*, Erdener, *CMUK Serhi* (Commentary on the CCP), 3. Baskı, İstanbul, 2000, p. 306; *Öztürk*, Bahri/*Erdem*, Mustafa Ruhan/*Özbek*, Veli Özer, *Uygulamalı Ceza Muhakemesi Hukuku* (Applied Criminal Procedure Law), 6. Baskı, Ankara 2001, no. 637; *Centel*, Nur/*Zafer*, Hamide, *Ceza Muhakemesi Hukuku* (Criminal Procedure Law), İstanbul, 2003, p. 242; *Kunter*, Nurullah/*Yenisey*, Feridun, *Muhakeme Hukuku Dali Olarak Ceza Muhakemesi Hukuku*, İkinci Kitap (Criminal Procedure Law as a branch of procedural law, Second Book), İstanbul, 2003, no. 48.16; *Sahin*, İlyas, *Türk Ceza Yargilaması Hukukunda Yakalama ve Gözaltına Alma* (Arrest and taking under custody in Turkish Procedure Law), Ankara, 2003, p. 27.

¹⁸ See *Centel*, p. 5.

CCP art. 157. Although it might be possible to elaborate different classifications, the same categorisation may be said to be valid for the new Code of Criminal Procedure.

I. Judicial Arrest

Judicial arrest is depriving the perpetrator of a criminal act of his personal liberty, before the issuance of a detention warrant, with the purported aim of making his detention possible. According to art. 19 (3) of the Turkish Constitution, arrest can only be exercised as prescribed by law and when the perpetrator is caught on the act or when delay is deemed prejudicial.

Judicial arrest, which is performed after a crime has been committed, is laid down in art. 90 of the CCP (ex art. 127).

There are two types of judicial arrest: 1) arrest performed by state officials, namely the police (and theoretically, the prosecutor) and 2) arrest performed by any ordinary (civil) person.

Pursuant to art. 90 (1), ordinary persons can only perform arrest under extraordinary circumstances. If the perpetrator is caught on the act (*in flagrante delicto*) any person may apprehend him. In case of hot pursuit (that is to say, when the perpetrator is pursued immediately subsequent to the act) either one of the following two alternative conditions must be met: a) the perpetrator must be under the suspicion of preparing to flee¹⁹ or b) it should be impossible otherwise to identify that person later. In other words, in relation to the second condition, there should be concrete (material) facts indicating that the suspect will flee from prosecution if not caught immediately.²⁰

If these conditions are met, an ordinary person is not under an obligation to arrest the suspect, but such right is granted to him.²¹ When an ordinary person arrests the

19 CCP art. 100 (3) presumes the existence of such risk for certain crimes (e.g. genocide, crimes against humanity, murder, torture, sexual assault, sexual exploitation of children, production and trafficking of narcotics and stupeficient substances...) exclusively listed in this paragraph.

20 See *Centel/Zafer*, p. 244.

21 See *Centel*, p. 175; *Cihan/Yenisey*, p. 311; *Soyaslan*, p. 221; *Conso*, Giovanni/*Grevi*, Vittorio, *Compendio di Procedura Penale*, CEDAM, Padova, 2000, p. 474.

offender, he can only hold that person as long as it is necessary for him/her to be handed over to the nearest available police authority.²²

The second type of judicial arrest is that performed by officials. The officials in question are the public prosecutor and, when there is no possibility of consulting the public prosecutor or their superiors, other police officers. In this case, the perpetrator need not be caught on the act. However, for police officers to gain the power to arrest a person, the following conditions must be met cumulatively (CCP art. 90 (2)):

- 1) The circumstances of the case should render detention or the issuance of an arrest warrant necessary, therefore the suspect should be under strong suspicion of having committed an offence (CCP art. 100 (1)) and there should be concrete evidence showing his culpability;²³
- 2) Delay must be deemed prejudicial; in other words, if the perpetrator is not arrested immediately there should be a risk of "collusion" (evidence being absconded or altered)²⁴ or alternatively, the possibility for the offender to flee. The determination shall be made by the officer in question according to his intimate conviction in light of all the circumstances of the specific case;²⁵
- 3) There should be no possibility to make an immediate plea to superiors or the public prosecutor in order for them to proceed with the other relevant measures.

Furthermore, in both types of judicial arrest, in cases where the prosecution of the crime depends on it, the complaint (request) of the victim must have been expressed. If the suspect has already been arrested, the person or one of the persons authorised to lodge

22 See *Cihan/Yenisey*, p. 313; *Soyaslan*, p. 221.

23 See *Centel*, p. 186; *Centel/Zafer*, p. 246; *Gölcüklü*, pp. 73, 84 et seq; *Soyaslan*, p. 222.

24 For detail see *Eryilmaz*, M. Bedri, *Arrest and Detention Powers in English and Turkish Law and Practice in the Light of the European Convention on Human Rights*, Martinus Nijhoff Publishers, 1999, pp. 61-63.

25 See *Centel*, p. 187; *Centel/Zafer*, p. 246; *Yurtcan*, p. 309; *Cihan/Yenisey*, p. 313, fn. 13; *Gölcüklü*, p. 73.

the complaint shall be informed (CCP art. 96). However, there is an exception for this last condition if the crime has been committed against minors or persons who due to their mental or physical illness, disability or other incapacity are not able to control their behaviour (CCP art. 90 (3)).

In addition, it is not possible to arrest perpetrators below the age of twelve at the time of committing the crime.

Finally, a type of arrest that we find suitable to analyse under this heading is that laid down in art. 17 of the Code on the Duties and Powers of the Police (hereinafter “CDPP”). According to this provision, the police may, in order to prevent a crime or apprehend the perpetrators of a crime already committed, request individuals to submit a document certifying their identity. If such person is unable to submit such document or prove his identity through the testimony of persons recognised by the police or if there is suspicion about the veracity of such document, the police may arrest and put under custody this person until the true identity is revealed or it is ascertained that the person is not wanted for arrest. The measure may not exceed 24 hours. This type of arrest, which may be named as “arrest for identification” may therefore be implemented both before or after the committing of a crime.

II. Preventive Arrest

Sometimes, it is possible for the police officers to restrict the personal liberty of a person even when a crime has not been committed, in order to protect public order and security.²⁶ It may also be possible to deprive a person of liberty to prevent him/her from physically harming himself/herself or someone else (“*Schutzhaft*” in German).²⁷ However, preventive arrest may only be made in case public interest so requires and if authorities are empowered by law to do so.²⁸

26 See *Cihan/Yenisey*, p. 308; *Kunter/Yenisey*, no. 48.17; *Sahin*, p. 151.

27 See *Cihan/Yenisey*, p. 308. This measure is also laid down in art. 5 (1) (e) of the Convention.

28 See *Cihan/Yenisey*, p. 308; *Kunter/Yenisey*, no. 48.17.

Such powers are entrusted to the police through art. 13 of the CDPP . The purpose is to protect the society from possible threats, in the framework of the preventive duty of the police. For this reason, the acts in question are not protective measures in the sense of criminal procedure law, but police security precautions.²⁹ In these cases, the person can only be held as long as the situation which has made the measure necessary continues.

Article 35 of the new Misdemeanours Act, which also entered into force on June 1st, 2005, establishes that a drunk person who acts in such way as to disrupt the peace and serenity of others shall be held “under control” until the effect of the drunkenness passes away. This new measure can also be considered as a type of preventive arrest.

III. Arrest Based on a Warrant

A warrant means a written and formal document.³⁰ In the following cases, an arrest warrant may be issued:

- 1) If a suspect who has been served a subpoena during the investigation process does not appear before the competent authority or if the suspect can not be served³¹ (CCP art. 98 (1)). In both cases, the suspect would be a “fugitive”. The justice of peace will draw up the warrant, acting on request of the prosecutor.
- 2) If the decision denying the request for objection of pre-trial detention is contested, the authority examining this new objection may draw up an arrest warrant (CCP art. 98 (1)).
- 3) If a person who has been previously apprehended flees from police detention; or a detainee or convict flees from the detention house or prison (CCP art. 98 (2)). In this case, the public prosecutor and/or the police may issue the warrant. According to ex art. 131 (1) of the previous code, this power belonged to the judge or the prosecutor.

29 Examples: taking people who cause disturbance at night to the police station, blocking a child who has ran away from home and taking him back home.

30 See *Yurtcan*, p. 318.

31 For example, due to the inability to locate him.

4) The previous code established that if a) a person already convicted does not appear for enforcement of the sentence at the required time; or if b) he/she rises suspicion about his/her intention to flee or hide or; c) effectively flees or hides, a warrant shall be issued. The new CCP art. 98 (3) briefly states that if a suspect flees during the prosecution process, an arrest warrant may be issued by the competent judge or court, on request of the prosecutor or *proprio motu*. In other words, if the convict does not appear for enforcement or effectively flees, this provision shall now apply. Article 19 of the new Code on the Enforcement of Penalties and Security Measures details the scope of application of this provision by ruling that if a convict does not appear for enforcement within 10 days of being served a summon or if he flees or arises suspicion about flight, the public prosecutor shall issue an arrest warrant. For the enforcement of imprisonment terms exceeding three years a warrant shall be issued directly (art. 19 (2)).

IV. *Sui Generis* Quasi-Arrest Power Laid Down by CCP art. 168

As stated in art. 157 of the previous code, an officer who starts to conduct an act regarding his duty on the spot, can “prevent” people who intentionally hinder the carrying out of such acts or persons who act in contravention of the measures taken within the scope of his competence, so that the officer may be able to perform the duty. In simpler words, such person may be arrested. The arrest can only last until the duty in question is performed, and in any case, not more than 24 hours.³²

D. General Principles Ruling Arrest

Under art. 5 of the ECHR, to ensure the legality of arrest some criteria must be met. Firstly, the conditions governing the measure must be prescribed by law. We have just analysed these rules. Secondly, the act must formally and substantially comply with these rules.³³ Although it is not formally for the European Court to review compliance

³² See *Centel*, p. 210; *Cihan/Yenisey*, p. 315. Similar power is entrusted to the police through art. 17 (B) of the CDPP.

³³ Comm. Dec. Philip Burnett AGEE/United Kingdom, 17.12.1976, no. 7729/76, p. 164; Comm. Dec. Dyer/United Kingdom, 9.10.1984, no. 10475/83.

with domestic law, as disregard of it entails a breach of article 5 of the Convention, the Court must be satisfied that national law has been respected.³⁴ Therefore the Court must test if the applicant has been deprived of his liberty in accordance with a procedure prescribed by law (*légalité*), and then analyse the lawfulness (*régularité*) of the deprivation.³⁵

Obviously, domestic rules must be in line with the Convention standards too.³⁶ In that sense, the provisions of domestic law must be clear, accessible and foreseeable, and not bear any ambiguity or arbitrariness.³⁷ Furthermore, one of the exceptions listed in art. 5 (1) of the Convention allowing for a restriction of personal liberty must be present.³⁸ These exceptions are listed exhaustively and may not be extended by analogy.³⁹ The Court will scrutinise that all of these conditions have been respected, since the fact that national authorities own a wide margin of appreciation in this issue⁴⁰ does not mean that there is any room for arbitrariness.⁴¹ As elaborated above, these conditions are met by Turkish Law.

34 See *Ovey/White*, p. 107; *Nash/Furse*, p. 15. To this effect see *Steel and others/United Kingdom*, 23.9.1998, § 54.

35 Comm. Dec. Philip Burnett AGEE/United Kingdom, 17.12.1976, no. 7729/76, p. 164; Comm. Dec. Dyer/United Kingdom, 9.10.1984, no. 10475/83 (see *Gölcüklü/Gözübüyük*, p. 223).

36 *Winterwerp/Holland*, 24.10.1979, Series A, No. 33, § 45-46; *van Droogenbroeck/Belgium*, 24.6.1982, Series A, No. 50, § 41; *Ashingdane/United Kingdom*, § 44; *van der Leer/Holland*, 21.2.1990, Series A, No. 170, § 22, *Herczegfalvy/Austria*, 24.9.1992, Series A, No. 242-b, § 61, 63-64.

37 *Winterwerp/Holland*, § 45. Further see *Robertson/Merrills*, p. 60.

38 Such exceptions are listed in art. 5 as follows: (a) the lawful detention of person after conviction by a competent court; (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law; (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or flight after having done so; (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

39 Although, inevitably certain police practices may sometimes violate this requirement (see *Eryilmaz*, pp. 370 et seq) the exceptions provided by Turkish Law is in accordance with the ECHR.

40 *Winterwerp/Holland*, § 45-46; *van Droogenbroeck/Belgium*, 24.6.1982, Series A, No. 50, § 41.

41 *Kurt/Turkey*, 25.5.1998, § 122-125; *Ashingdane/United Kingdom*, 28.5.1985, Series A, No. 93, § 44, *van der Leer/Holland*, 21.2.1990, Series A, No. 170, § 22, *Herczegfalvy/Austria*, 24.9.1992, Series A, No. 242-b, §§ 61, 63-64. Further see *Gölcüklü/Gözübüyük*, pp. 223-224; *Tezcan/ Erdem/Sancakdar*, p. 281; *Ünal*, p. 138.

Apart from these general requirements deriving from the scope of art. 5, there are certain other minimum requirements that rule the law of arrest in international and comparative law. Thus, the proportionality principle and the criterion of „lawful appearance’ should be taken into consideration. Proportionality means that depriving the suspect of personal liberty must be proportional in view of the exigencies of the circumstance, i.e. justified and necessary when balanced with the necessity of the case.⁴² Arrest may not be made if it is disproportionate to the significance of the case or to the punishment to be expected or if the same purpose may be achieved by means of another, less restrictive measure.⁴³ Within this framework, delay must be detrimental; in other words, if the measure is not implemented immediately, there must be a material risk concerning the integrity of the prosecution (for ex. a risk of flight).⁴⁴ As for apparent rightfulness, it means that the act must be apparently lawful, that is, the officer must “*prima facie*” satisfy himself about the lawfulness and necessity of the arrest.⁴⁵ Obviously, the act will later be reviewed by a competent judicial organ, and in case of unlawfulness the damage shall be compensated and, if necessary the officer be punished. To sum up, the officer must at first sight satisfy himself about the legitimacy of the arrest and depriving the suspect of personal liberty must be justified and indispensable for the purposes of criminal procedure when balanced with the damage caused to the suspect. Turkish Law recognizes both criteria.

Another important point which ensures the legality with view to domestic rules is that existence of “strong (great) suspicion” must be proved in order for a person to be put under custody. The ECHR does not recognise arrest for the purpose of “obtaining information”.⁴⁶ Unless there is some sort of valid and material grounds for suspecting of a person, he may not be deprived forcefully of his personal liberty. The “reasonable suspicion” criterion is based on an objective standard.⁴⁷

42 The same criterion may said to be valid in assessing the lawfulness of the deprivation of liberty under the ECHR, see *Clayton/Tomlinson*, no. 10.93.

43 See *Yurtcan*, p. 244; *Centel*, pp. 9-11, 193; *Centel/Zafer*, pp. 207, 243 et seq; *Gölcüklü*, pp. 19 et seq; *Conso/Grevi*, p. 355; *Eryilmaz*, p. 63; *Cihan/Yenişey*, p. 203; *Kunter/Yenişey*, no. 48.1.

44 See *Sahin*, p. 42; *Centel/Zafer*, p. 206; *Öztürk/Erdem/Özbek*, no. 634.

45 See *Yurtcan*, p. 241.

46 See *Robertson/Merrills*, p. 65.

47 See *Nash/Furse*, p. 15.

Therefore, as established by the Court in the *Lawless* case (1.7.1961),⁴⁸ arrest can not be an aim in itself.⁴⁹ In other words, authorities may only resort to arrest as a preventive measure in order to prevent a "concrete and specific offence" and in any case, in order to bring the suspect before the judge.⁵⁰ Note, however, that the Convention only requires the presence of "reasonable suspicion" for the lawfulness of arrest, thus sufficing with the presence of "facts or information that would satisfy an objective observer that the person concerned *may have* committed the offence" (*emphasis added*).⁵¹ As it should be noted, Turkish law requires that facts should warrant not simply "reasonable", but "strong" suspicion; in simpler terms, a higher degree of probability indicating that a crime has been committed by the person in question is necessary.⁵²

E. Performing the Arrest

Once the above-mentioned criteria are met, any act which deprives a person of his physical liberty constitutes an arrest, there is no formal procedure prescribed by law.⁵³ In other words, whatever the act is named under domestic law and whatever formal or non-formal procedure is followed by the agent performing the act, once personal liberty is restricted, the act falls under the scope of article 5. Even so, acts which very shortly just restrict the liberty of movement, such as identity controls or traffic stops, do not constitute an arrest. On the contrary, measures that in quality and intensity, go beyond

48 The United Kingdom applied a measure called „preventive internment“, which consisted of arresting and putting under detention for the interests of peace and public order those who were considered dangerous, without any intention to bring them to trial. The Court determined that arrest may only be lawful when implemented as a preliminary stage before the person is brought before a judge.

49 See *Eryilmaz*, p. 53.

50 Guzzardi/Italy, § 102. Further See *Gölcüklü/Gözübüyük*, p. 230; *Ünal*, pp. 142, 144.

51 Fox, Campbell and Hartley/United Kingdom, 30.8.1990, Series A, No. 182, § 32; Berktaş/Turkey, 1.3.2001, § 195, Labita/Italy, 6.4.2000, § 155. In any case, a genuine and bona fide suspicion (in sense of subjective conviction of the officer) does not suffice, the suspicion must be objectively reasonable. Although the Strasbourg organs can not substitute for the national authorities in evaluating the facts, the national assessment can be tested, also taking into account the margin of appreciation, in its reasonableness (Fox, Campbell and Hartley/United Kingdom, § 32, 34-35).

52 See *Gölcüklü/Gözübüyük*, p. 232; *Tezcan/Ertem/Sancakdar*, p. 284; *Ünal*, pp. 143-144; *Eryilmaz*, p. 71.

53 See *Centel*, p. 189; *Centel/Zafer*, p. 247. Indeed, the Convention does not require any particular procedure to be adopted neither, see *Robertson/Merrills*, p. 65.

this level and result in the effective restriction of physical freedom (such as taking the person to a police station), mean arrest.⁵⁴ Note however, that the Strasbourg organs have held that very short periods of detention shall also constitute a deprivation of liberty if there has been close confinement or arrest by the police or other authorities.⁵⁵ But even in these cases, the limitation was imposed on the physical liberty of the applicant, and not on his mere possibility of travelling from one place to another.

Once a person has been held, it is possible to superficially control by patting down the outer surface of his clothing to check if he possesses arms (“stop-and-frisk”; CDPP art. 9).⁵⁶ The Arrest, Custody and Interrogation Regulation (hereinafter “ACIR”) art. 6 (2) provides that such measure shall be implemented in order to clear the person of any weapons or similar arms, so that he is prevented from flight or hurting himself or others. In similar vein, art. 8 of the Regulation on Judicial and Preventive Searches allows for frisking a suspect in order to prevent him from harming himself, others of the officer in question. Any further and detailed control (e.g. controlling the luggage of his vehicle) would technically result in a “search” and would therefore only be possible – in principle – through a written order. In a similar way, acts which require medical examination of the body, such as controlling for drugs concealed within body cavities, would fall within the scope of a different measure, namely the “body examination” procedure laid down in artt. 75 et seq. of the CCP.

⁵⁴ See *Centel*, p. 190; *Centel/Zafer*, p. 247.

⁵⁵ See *Clayton/Tomlinson*, no. 10.88. Although in *X v. Germany* (1981), the questioning of a young girl for two hours without being arrested, placed in a cell or formally detained was not held in breach of the article.

⁵⁶ The stop-and-frisk measure which involves stopping the movement of a person in order to superficially control whether he possesses arms by patting down the outer clothing of a person, does not constitute an arrest. Furthermore, it does not technically amount to a search neither, reason for which it may be carried out without a written order. Such measure is laid down in art. 27 (4) of the Regulation on Judicial and Preventive Searches. See *Centel*, p. 192; *Kunter/Yenisey*, no. 48.24; *Centel/Zafer*, s. 249. In American Law, where a search can also be carried out only based on a warrant, it is accepted that the officer can pat down the arrestee in order to prevent destruction of evidence or his flight and to eliminate any weapons that might be used for harming himself or others (see *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968)).

While performing the arrest, force can be used. As prescribed by article 2 of the Convention, even deadly force may be used, provided that it is absolutely necessary.⁵⁷ Obviously, in cases of legitimate self-defence, deadly force can be employed *a fortiori*, provided that the circumstances of the case justify it. Thus, we are of the view that a suspect trying to flee should not be shot down in order to be caught, only a warning fire may be opened. On the other hand, a use of force that exceeds what is required in order to carry out the arrest will not be lawful and will constitute the crime laid down in art. 256 of the new Criminal Code (exceeding the limit of the power to use force).⁵⁸ In this case, provided that the minimum threshold of severity be reached, article 3 of the Convention may also apply. The Code on the Duties and Powers of the Police allows for the use of force, in case the suspect tries to resist against the act, as long as the level of violence applied does not exceed what is strictly rendered necessary by the specific circumstances of the case, and as long as the suspect's health is not endangered (CDPP art. 13 (3), additional art. 6 (2)).⁵⁹ In this case, attention should be paid to resorting to the minimum possible level of force. The principle of proportionality requires that the use of force should not exceed the level necessary in order to break the suspect's resistance and make sure that arrest can be carried out. If absolutely necessary, fire weapons may be used, but only as a last resort (*ultima ratio*) and taking into account the principle of proportionality. Even in this case, the ECHR requires that the officer may not, in principle, intend to use lethal force.⁶⁰

Indeed, according to Turkish Law, resorting to the use force which is intended or expected to be lethal can be lawful only under very special circumstances, such as the

57 Mc Cann and others/United Kingdom, 27.9.1995; Andronicou and Constantinou/Cyprus, 9.10.1997; Comm. Report Farrell/United Kingdom, no. 9013/80, p. 96; Comm. Dec. Stewart/United Kingdom, 10.7.1984, no. 10044/82, p. 162. Further see *Eryilmaz*, p. 247 et seq.

58 See *Gölcüklü*, p. 76; *Centel*, p. 192; *Soyaslan*, p. 221.

59 For details see *Eryilmaz*, pp. 97 et seq. Obviously, the acts mentioned above may be performed by police officers. If the arrest has been performed in flagrante delicto by an ordinary citizen, he/she may not resort to any other measures than those strictly necessary for the safeguard of his or other persons' physical integrity.

60 See *Tezcan/Erdem/Sancakdar*, p. 216.

obligation to act under legitimate self-defence. The Turkish Constitutional Court also stated this view⁶¹ which is shared by the ECHR.⁶²

Since there are no detailed provisions on the matter, the only problematic issue of Turkish Law regarding arrest may be the little guidance provided by law in determining the circumstances in which the use of force can be regarded as reasonable.⁶³ On the other hand, the great difficulty in formulating a fixed rule covering all different cases has to be conceded to the legislator as a reason which could explain the lack of specificity. In this case, it will be up to the judicial bodies to elaborate carefully such limits. Article 93 of the new CCP restricts the possibility to handcuff the arrestee to cases in which there are indications as to his/her intention to flee or as to a state of danger directed to their own or other persons' life or physical integrity.⁶⁴ Once a person is arrested by the police (or arrested by any ordinary person and handed over to the police), the public prosecutor shall immediately be informed of the situation and proceedings shall be made according to his orders (CCP art. 90 (5)). Furthermore, a detailed record shall be kept (CCP art. 97, ACIR art. 6). Failure to do so will result in criminal responsibility of the competent officer due to omission of duty (Criminal Code art. 257).⁶⁵

After being arrested, the person may be „taken under custody’ through a decision of the prosecutor. In other words, the CCP draws a distinction between “arrest” and “putting/holding under custody”. Being “under custody” qualifies the legal status of

61 See *Tezcan/Erdem/Sancakdar*, pp. 220-221.

62 See *Tezcan/Erdem/Sancakdar*, p. 217.

63 See *Eryilmaz*, pp. 214-215.

64 In any case, unnecessary handcuffing may only give rise to claims under article three of the Convention, regarding the prohibition of torture, inhuman or degrading treatment or punishment. As stated by the Court, handcuffing, one of the forms of treatment complained of in the present case, does not normally give rise to an issue under Article 3 of the Convention where it has been imposed in connection with lawful arrest or detention and does not entail the use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances. In this regard, it is of importance for instance whether there is reason to believe that the person concerned would resist arrest or try to abscond or cause injury or damage’ (*Öcalan/Turkey*, Grand Chamber Judgment, 12.5.2005, § 182). In other words, unless there is some sign showing the intention to debase or humiliate the suspect, unnecessary handcuffing by itself should not be considered in violation of article 3.

65 See *Sahin*, p. 308.

somebody arrested who has been subsequently held by decision of the prosecutor.⁶⁶ A person who is arrested shall be released immediately by the prosecutor unless it is indispensable for the sake of the investigation to put him under custody (CCP art. 91 (2)). If found necessary to be held under custody, the arrestee shall be taken to a special department of the police station, where only people under custody should be kept.⁶⁷ Finally, if the arrestee is to be held under custody or if he has been arrested through the use of force, he must be examined by a doctor who shall establish his health condition at the moment of arrest (ACIR art. 9 (1)). If for any reason the arrestee is to be transferred to another place or if the custody period is to be extended or the arrestee is to be released or handed over to judicial authorities, his health condition must also be established through a medical report (ACIR art. 9 (2)).

F. Rights Guaranteed to The Person under Custody

According to the Convention, “*everyone has the right to liberty and security of person*” and a person can only be deprived of his liberty “*in accordance with a procedure prescribed by law*”. Until now, we have briefly analysed the Turkish system and the relevant rules, which are in line with ECHR standards. The cases in which deprivation of liberty is possible (namely, a) the purpose of bringing the suspect before the competent legal authority on reasonable suspicion of having committed an offence, b) reasonably considering the measure necessary in order to prevent the committing of an offence, c) preventing the flight of the accused) are also prescribed accordingly to the rules of the Convention. Therefore, the only problematic issue may be the compliance of Turkish Law with the rights enshrined in the ECHR regarding those under custody. As an initial consideration, it must be underlined that the Convention rights had been fully incorporated into Turkish law by virtue of the so-called „EU Harmonisation Laws’⁶⁸. The newly enacted Criminal Procedure Code and the relevant complementary

⁶⁶ See *Centel*, pp. 5, 194; *Centel/Zafer*, p. 249; *Cihan/Yenisey*, p. 310, 322; *Sahin*, p. 25.

⁶⁷ See *Öztürk/Erdem/Özbek*, no. 643; *Yurtcan*, p. 306; *Gölcüklü*, pp. 81-82; *Cihan/Yenisey*, p. 322.

⁶⁸ “*AB Uyum Yasaları*”, in particular Act no. 4709 of 3.10.2001 and Act no. 4744 of 6.2.2002.

legislation have respected – and in fact – built upon that *acquis*. The rights guaranteed by article 5 are discussed below.

1) The right to be informed promptly, in a language which he/she understands, of the reasons of the arrest and of any charge against him (ECHR art. 5 (2)). This is to mean that the person should be told the reasons for arrest and the charges in a language and wording that might be understandable to a person of average intelligence.⁶⁹ It is sufficient that the arrestee be informed in general terms of the reasons. In this sense, art. 5 (2) differs from art. 6 (3)(a) in that the former allows the individual to make a decision about challenging the arrest (or detention) in court, while the latter should facilitate the preparation of the defence by the accused.⁷⁰ There is no formal requirement for compliance with the paragraph,⁷¹ there need be no writing at all, provided that the arrestee is made aware of the legal and factual circumstances of his arrest⁷². Again, it is sufficient that the reasons for arrest be inferred from all the circumstances (such as the questions asked during interrogation or evidence pointed out); art. 5 (2) does not require that the arrestee be expressly and formally informed.⁷³

The fourth paragraph of article 19 of the Turkish Constitution provides for the right envisaged in art. 5 (2) of the ECHR. Those who are arrested must be informed of the reasons and charges in written form, and where this is not possible, be immediately informed orally.⁷⁴ In that sense, Turkish Law provides a standard above that established by the Strasbourg organs which do not require the arresting officer to give all required information at the moment of arrest.⁷⁵ Various other provisions⁷⁶ provide for the same

69 See *Ovey/White*, p. 132.

70 See *Clayton/Tomlinson*, no. 10.128; *Robertson/Merrills*, p. 72.

71 *Ireland/United Kingdom*, 18.1.1978, Series A, No. 25, § 198.

72 *Murray/United Kingdom*, 28.10.1994, Series A, no. 300-A, § 71. Further see *Clayton/Tomlinson*, no. 10.130; *Robertson/Merrills*, p. 73.

73 See *Clayton/Tomlinson*, no. 10.131; *Robertson/Merrills*, p. 73.

74 See *Sahin*, pp. 304-305. Previously to the enactment of the Arrest, Custody and Interrogation Regulation, it was permitted for crimes committed in participation by at least three accomplices to withhold the notification until the time the suspects were brought before the judge. Note that the Strasbourg organs had found that delay of up to two days between arrest and information was acceptable, see *Clayton/Tomlinson*, no. 10.132.

75 See *Eryilmaz*, p. 230.

76 CCP art. 147, CDPP art. 13 (5) and ACIR art. 6 (4).

right, as well as the duty to inform the suspect fully and in a language and way that he understands of his legal rights ("cautioning"), amongst which are the right to remain silent, the right to access to a lawyer,⁷⁷ the right to inform a relative of the arrest and the right to challenge the lawfulness of the arrest.

An important right associated with this paragraph, is the right to inform a relative of the arrest. The revised 6th paragraph of art. 19 of the Turkish Constitution provides that the relatives of the person arrested be "*notified immediately*".⁷⁸ The same rule has been inserted into the CCP (artt. 91 (4), 95) and the CDPP (art. 13 (5)). Pursuant to these provisions, when a suspect is arrested, put under custody or the custody period is prolonged, a relative or any other person determined by the suspect shall be informed of the situation. The previous reading of the article allowed for an exception to this rule in cases where notification would have revealed the scope and subject of the investigation, thus endangering proceedings. This exception has now been abolished.⁷⁹

If the arrestee is a foreigner, unless he opposes in writing, the Consulate of the State of which he is a citizen shall be informed of the situation (CCP art. 95 (2)).

2) A second guarantee is the right to be brought promptly before a judge or other officer authorised by law⁸⁰ to exercise judicial power (ECHR art. 5 (3)). This is the fundamental constituent of the renowned *habeas corpus* guarantee. It basically provides that the individual's arrest or detention should be approved by a judge at an early stage

77 In Turkish Law, the person arrested can contact his lawyer at any time. According to the European Court, the important point is not the time when the suspect is allowed to contact his lawyer, but rather if he has been given enough time and means to prepare his defence (see *Imbroscia/Switzerland* (24.10.1993, Series A, No. 275, § 37 and last). Previous to the EU Harmonisation Laws, in Turkish Law, the right to legal assistance could be denied for 96 hours to terrorist suspects.

78 Any relative can be notified, by the police or in person.

79 The previous rule was criticised for violating the Convention standards, see *Eryilmaz*, pp. 382-384. However, we would like to note that abolishing this exception has sometimes reportedly resulted in counter-producing consequences. In fact, the suspect of an organised crime may use this opportunity to warn out other members of the organisation of imminent risks directed towards them.

80 Although such officer need not be a judge, he must be impartial and independent, *Niedbala/Poland*, 4.7.2000, *Nikolova/Bulgaria*, 25.3.1999; *Hood/United Kingdom*, 18.2.1999 (see *Gölcüklü/Gözübüyük*, p. 237).

in order to avoid prolonged administrative detention.⁸¹ According to the jurisprudence of the Strasbourg organs, although there is no clear-cut rule due to the need to take into due account all circumstances of the specific case at hand,⁸² a custody time exceeding four days⁸³ seems to violate the right to be promptly brought before a judge.⁸⁴ Until quite recently, Turkish Law allowed for custody periods which stretched up to 15 days.⁸⁵ After the amendments made in 2001 and 2002, the Constitution (art. 19 (5)) had reduced the custody periods to a maximum of 48 hours⁸⁶ in ordinary cases and a statutory maximum of 4 days for crimes committed in participation by at least three accomplices.⁸⁷ According to art. 91 of the new CCP, a person who is arrested shall be immediately brought before the prosecutor who may release him or decide to retain him under custody. In such case, the custody period may not exceed 24 hours. However, an additional time of 12 hours may be granted in order for the arrestee to be taken before the nearest judge or court. Note that the 12-hour extra time may only be used up if indispensable for transportation.

As an exception, for crimes committed together by at least three accomplices (technical "participation" is not required), and based on either "*difficulties in the gathering of evidence*" or the "*large number of suspects*", the prosecutor may extend the custody period for one day each time, for a total maximum of three more days. Finally, according to CCP art. 251 (5), in areas where public emergency has been declared, the statutory maximum period allowed may stretch up to seven days. However, in Turkey

81 See *Robertson/Merrills*, pp. 74-75.

82 Further see *Ovey/White*, pp. 111 et seq; *Eryilmaz*, p. 233 et seq.

83 In *Brogan/UK*, which was an extreme case because it involved the investigation of terrorist offences in a context like the one in Northern Ireland at that time, four days and six hours of custody was still found to violate the Convention.

84 *Brogan and others/United Kingdom*, 29.11.1988, Series A, No. 145, p. 32; *Aksoy/Turkey*, 18.12.1996; *Koster/Holland*; 28.11.1991, Series A, No. 221, p. 10. Further see *Gölcüklü/Gözübüyük*, p. 238; *Tezcan/Erdem/Sancakdar*, p. 288; *Ünal*, p. 151; *Cihan/Yenisey*, p. 319.

85 For various judgments holding Turkey in violation of art. 5 (3) see inter alia *Sakik and Others/Turkey*, 26.11.1997; *Gündüz and Others/Turkey*, 14.11.2000; *Aksoy/Turkey*, 8.12.1996; *Günay and others/Turkey*, 27.9.2001; *Akbay/Turkey* (friendly settlement), 2.10.2001; *Leyla Zana/Turkey*, 26.11.1997; *Demir and others/Turkey*, 23.9.1998; *Dikme/Turkey*, 11.7.2000.

86 Except the transportation time needed to send the suspect to the nearest tribunal.

87 However, in time of war or public emergency, it is possible to take measures exceeding these limits (art. 19 (5), last sentence of the Constitution). This exception is based on art. 15 of the ECHR and it seems proportional to the strict exigencies of extraordinary circumstances.

there is actually no such zone. Even if there was, this extraordinary provision would still comply with the ECHR due to the derogation provision included in art. 15. Furthermore, note that according to art. 251 (5), after the initial four days of custody, only the judge may rule for a further extension.⁸⁸

3) A third right is to take proceedings by which the lawfulness of the detention shall be decided speedily by a court and release ordered if the detention is not lawful (ECHR art. 5 (4)). While art. 5 (3) aims at keeping the custody period as short as possible, the right in question here provides the arrestee with a chance to challenge the lawfulness of the initial act.⁸⁹ The authority reviewing the act must be an impartial and independent judicial body⁹⁰. Although the European Court may not act like a first instance court and substitute its own assessment to that of the national authority with regard to the correctness of the decision, it can still review the lawfulness thereof in the light of the Convention.⁹¹ This right is guaranteed by the 8th paragraph of article 19 of the Turkish Constitution and has been incorporated into article 91 (4) of the CCP.⁹² The right has been granted to the arrestee, his defence counsel or legal representative, spouse, first and second kin by blood.

4) Finally, an arrestee who has been victim of an arrest in contravention to the provisions of the ECHR has an enforceable right to compensation (ECHR art 5 (5)). The Code on the Award of Compensation for Victims of Unjust Arrest and Detention⁹³ applied to the matter. The Code was in compliance with the ECHR as it provided for victims of unjust arrest to gain right to material and moral compensation, for both pecuniary and non-pecuniary damages. The amount of the compensation was a

⁸⁸ Although this provision creates a measure that is somewhere in the midst of arrest and pre-trial detention (see *Öztürk/Ertem/Özbek*, no. 646), at least it provides compliance with the Convention (see *Tezcan/Ertem/Sancakdar*, p. 289).

⁸⁹ See *Ünal*, p. 160.

⁹⁰ *Schiesser/Switzerland*, § 29, see *Ünal*, p. 161.

⁹¹ *De Wilde, Ooms, Versyp/Belgium*, § 82-83; *Winterwerp/Holland*, § 68; *Bouamar/Belgium*, 29.2.1988, Series A, No. 129, § 57 (see *Gölcüklü/Gözübüyük*, p. 243).

⁹² According to CCP 91 (5), a person who has been released from custody, can only be arrested again for the same reason through the decision of the prosecutor and if new and sufficient evidence has been collected.

⁹³ Act No. 466 of 7.5.1964. Official Journal, 15.5.1964, No. 11704.

problematic issue in practice. The revised last paragraph of article 19 of the Constitution provides that those who have been victim of unlawful arrest gain right to compensation according to "*general principles of obligations law*". Previously, there was no such clause. With this new definition, it was intended to induce judges to award a just compensation.⁹⁴ After the entry into force of the new CCP, artt. 141 et seq. of this code rule on the matter. These provisions apply to any request for compensation based on unlawful implementation of protective measures such as arrest, pre-trial detention, search, seizure, laid down in the CCP. It is interesting that the provisions of the CCP extend beyond the requirements of the ECHR. For example, a person who has been arrested *in accordance* with law may seek compensation if he/she has subsequently been acquitted (CCP art. 141 (1) (e)). As it is known, the mere fact that an arrestee has then not been prosecuted following the investigation does not entail a violation of the Convention by itself.⁹⁵ On the other hand, the State may resort to the civil servants who abuse of their office by acting in violation of formal requirements for liability to pay the compensation (CCP art. 143 (2)).

While the two provisions mentioned above could induce law enforcement officers to pay due diligence to the requirements of law and provide extra legal protection to individuals, the former might prove on the long-term to be a financially unbearable hunchback on the state and the latter could eventually scare officers off and cause their passivity. As a last point of reflection, while the Convention does not prevent states from making the award of compensation dependent on the ability of the applicant to prove damage resulting from the breach,⁹⁶ the CCP seeks no such proof. However, domestic jurisprudence may still demand that actual damage be proved.

G. Conclusion

94 See *Tezcan/Erdem/Sancakdar*, p. 293; Ünal, p. 164. However, a similar provision had not been incorporated into Act no. 466.

95 *Brogan/United Kingdom*, § 50, *Ciulla/Italy*, 22.2.1989, Series A, No. 148, § 41 (see *Gölcüklü/Gözübüyük*, p. 230).

96 *Wassink/Netherlands*, 27.9.1990, Series A, No. 185-A, § 38 (see *Clayton/Tomlinson*, no. 10.159). Compare *Eryilmaz*, p. 358.

The Turkish legislation regarding arrest was not much different from those of other European countries. Thanks to the so-called "EU Harmonisation Laws", the rights guaranteed to those deprived of personal liberty had also been brought up to the level of European human rights standards. The newly enacted criminal legislation which entered into force on June 1st, 2005, further built upon it and theoretically provided Turkey with one of the most advanced and human rights-oriented legal systems. This by itself constitutes a major step forward in Turkey's quest to catch up with Europe. However, it is the way these rules are actually applied in practice that matters. The important point is to correct the mentality that had caused the corruption in the criminal procedure system. An understanding which had induced law enforcement officers to seek evidence by getting hold of suspects first in order to achieve confession, rather than trailing the evidence which would have eventually lead them to the culprit. Now, unless it is well understood that the point is not in forcing suspects to speak, and until scientific equipment and methodology is introduced in order to contrast criminality, legislative amendments will not make it into practice. Indeed, if the purpose in keeping custody periods short is to prevent ill-treatment, even a few seconds could suffice for the ill-intentioned! Well aware of this simple truth, Turkey has progressed well with her homework.

With a large-scale education program launched by the state in order to instruct both lawyers and law enforcement officers, Turkey is trying truly hard to establish in all citizens a genuine sense of devotion to human rights. Obviously, certain things may take a bit of time. But the massive legal reform passionately carried out by Turkey will surely make a difference. Thus, my sincere hope and belief is that future Turkish implementation will be as modern as her brand-new legislation.