THE COMMISSION ON HUMAN RIGHTS INQUIRY:

TURKEY AS A CASE STUDY WITHIN THE CONTEXT OF

RECENT DISCUSSIONS ON CONSTITUTIONALISM

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ABSTRACT

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The legitimacy of judicial review seems recently to be under serious critique both empirically and theoretically. It seems as if that currently a struggle has been started on the part of the legislature in order to reclaim parliaments' share in ensuring the superiority of the constitution, a role which has been delegated exclusively to the judiciary for a long period of time.

The intention of this thesis is to understand the location of Turkey within the context of the recent struggle which has been started on the part of the legislature to reclaim its share in ensuring the superiority of the constitution and constitutional rights. This thesis specifically focuses on the Commission on Human Rights Inquiry (CoHRI) as it is the first national human rights protection mechanism established in Turkey operating at the parliamentary level. In this regard, a descriptive analysis of the CoHRI's performance of its functions that are related to providing a pre-emptive right review is made.

The descriptive analysis suggests that both the legal status of the CoHRI, which results from the formal rules and regulations on legislative commissions generally and on CoHRI particularly; and the functioning of TBMM as a plenary body form of legislature decrease the level of influence CoHRI has in terms of providing a pre-emptive right review mechanism.

ÖZET

İNSAN HAKLARINI İNCELEME KOMİSYONU: ANAYASACILIK ÜZERİNE YAPILAN GÜNCEL TARTIŞMALAR BAĞLAMINDA BİR VAKA ÇALIŞMASI OLARAK TÜRKİYE

Aslı Işın Canıbek

Siyaset Bilimi, Yüksek Lisans Tezi, 2014

Tez Danışmanı: Ersin Mahmut Kalaycıoğlu

Anahtar Kelimeler: İnsan Haklarını İnceleme Komisyonu, anayasacılık, önleyici hak denetimi, insan hakları

Son zamanlarda yargı denetimi hem empirik hem de teorik düzlemlerde ciddi bir şekilde eleştiriliyor. Yasama organları, uzun bir zamandır yalnızca yargı organına devredilmiş olan anayasanın üstünlüğünü temin etme görevindeki paylarını geri alma mücadelesi başlatmış görünüyor.

Bu tezin amacı, yasama organları tarafından anayasanın ve anayasal hakların üstünlüğünü temin etme görevindeki paylarını geri alma konusunda başlatılan mücadele bağlamında Türkiye'nin yerini anlamaya çalışmak. Bu tez özel olarak yasama organı kapsamında kurulmuş ilk ulusal insan hakları koruma mekanizması olan İnsan Haklarını İnceleme Komisyonu'na odaklanıyor. Bu bağlamda İnsan Haklarını İnceleme Komisyonu'nun önleyici hak denetimi mekanizması olarak çalışmasına ilişkin işlevlerini yerine getirmesi üzerine tanımlayıcı bir analiz yapılacaktır.

Yapılan bu analiz hem İnsan Haklarını İnceleme Komisyonu'nun genel olarak yasama komisyonları, özel olarak ise İnsan Haklarını İnceleme Komisyonu ile ilgili yasal düzenlemelerin ve prosedürlerin sonucunda ortaya çıkan yasal konumunun; hem de Türkiye Büyük Millet Meclisi'nin tümel bir bütün olarak çalışan bir yasama organı olmasının İnsan Haklarını İnceleme Komisyonu'nun önleyici bir hak denetimi mekanizması olarak etkisini azalttığını ortaya koyuyor.

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LIST OF ABBREVIATIONS

AYM	Constitutional Court of Turkey
CoHRI	Commission on Human Rights Inquiry
EU	European Union
TBMM	Grand National Assembly of Turkey
TIHK	National Human Rights Institution of Turkey

CHAPTER 1

INTRODUCTION

Checks and balances system has been recognized as one of the most significant pillars of democracies as it ensures that none of the three branches of government can become too powerful. When the history of checks and balances system is analyzed, the World War II can be identified as a turning point. Prior to the World War II, legislative supremacy and constitutionalism constituted two different principles which are irreconcilable with each other. In this regard the judicial review of legislations was considered not to be going hand in hand with the principle of legislative supremacy (Sweet, 2002, pp. 78-79; Gardbaum, 2001, p. 707). In this regard the principle of legislative supremacy is considered as sufficient alone to ensure an effective protection of constitution.

However, the period succeeding the World War II witnessed the marginalization of the principle of legislative supremacy; because the idea that an effective protection of constitutional rights cannot be compatible with the principle of legislative supremacy became more and more dominant. In this regard the American experience of checks and balances system began to be established in other countries and American model of judiciary-based constitutionalism became widespread to an unprecedented extent. In this period countries, which have been opting for the principle of legislative supremacy previously, started to adopt fundamentals of American model of constitutionalism in the face of majoritarian take-overs leading to the World War II. In this regard many countries adopted a list of fundamental rights and freedoms and delegated the *main* responsibility of ensuring the superiority of the constitution to the judiciary branch of

government by allowing judiciary review of the legislation (Gardbaum; 2001, pp. 714-715; Sweet, 2002, p. 79; Sweet, 2000, p. 31).

Given that anti-majoritarian concerns played a significant role in the marginalization of the principle of legislative supremacy, which took place at the empirical ground after World War II, the theoretical discussions on the legitimacy of judicial review of legislation establish the legitimacy of judicial review on the basis of the compatibility between judicial review and more substantive definitions of democracy (Freeman, 1990-1991). In this line of thought, it is argued that in minimalist definitions of democracy procedural methods, such as majority rule, take precedence over the very principles for the service of which these procedural methods are established in the first place. When the significance of the principles, underlying democracy, is ignored and procedural methods are overemphasized in a political system, judicial review is considered as an illegitimate act. This is so; because limitations on legislative outcomes imposed by judicial review are perceived to be constraining the citizens' right to participate in the decision making process which is in the form of determining electoral outcome (Freeman, 1990-1991, p. 333).

However, it is argued by the proponents of the judicial review that when a more substantive definition of democracy is adopted, the realization of principles underlying democracy becomes of primary importance and in this sense judicial review can be considered as contributing to the assurance of the realization of these principles. Accordingly, judicial review is an appropriate democratic institution, rather than being incompatible with democracy, to protect the fundamental principles of democracy by ensuring the sovereign power of each citizen and by checking the compatibility of legislative and executive outcomes with the interest of the each citizen (Freeman, 1990-1991, p. 353).

However, the legitimacy of judicial review seems recently to be under serious critique both empirically and theoretically again. It seems as if that currently a struggle has been started on the part of the legislature in order to reclaim parliaments' share in ensuring the superiority of the constitution, a role which has been delegated exclusively to the judiciary for a long period of time. In this regard the judiciary-based model of constitutionalism has been criticized on the grounds that there is necessarily no contradiction between legislative supremacy and effective protection of constitutional

rights. In this regard these criticisms reclaim the role of branches of government other than the judiciary in ensuring the superiority of the constitution. These criticisms built upon two streams of arguments in challenging the legitimacy of judiciary review. Firstly, these criticisms refer to studies about the problems with respect to the compatibility of judicial review with the principles of democracy; and secondly they refer to studies about whether outcomes of judicial review, as perceived by the proponents of it, hold true in the face of the empirical data.

First stream of studies, which establish the incompatibility of judicial review with democracy, base their justification on a procedural definition of democracy. In this regard, constrains imposed upon by courts on the legislative or executive outcomes, which come about through legitimately democratic procedures, is emphasized. It is argued that democracy should only be understood in procedural terms in the sense that majority rule is the only feasible and therefore appropriate method for ensuring the equal participation of each citizen and equal consideration of each different interest in the policy making process. In this regard judicial review is argued to be illegitimate in a democratic regime; because it imposes an unjustifiable constraint on citizens' right to participate in decision making process by overruling some outcomes which come about through the procedures that ensures the equal participation of each citizen and consideration of each different interest in a given society (Nelson, 1980; Walzer, 1981).

Second stream of studies which are intended to explain whether outcomes of judicial review, as perceived by the proponents of it, hold true in the face of the empirical data, base their arguments on the nature of mechanisms operating in the decision making process of judicial review (Waldron, 1994). In this line of thought it is argued that the criticism, which is put on minimalist definitions of democracy on the basis of the overemphasis on procedural rules in democratic process, can be equally directed to judicial review process itself. In this regard the mechanisms, which operate in the judicial review process, are argued to be equally majoritarian and procedurally defined. This means there is no substantive constraint on the outcomes produced by judicial review apart from the constitution itself which is also equally binding for the members of the legislative or executive branches of government. Therefore, it is argued that given the equal dominance of procedural and majoritarian rules in judicial review as in legislative process, there is no firm ground on the basis of which judicial review by

courts can be argued to be a more effective way of ensuring a more substantive conception of democracy.

In these studies it is also argued that given the outcomes of judicial review and limitations of it, relying solely on judicial review by courts in ensuring an effective constitutional regime needs to be questioned (Hiebert, 2005, 2006b; Ackerman, 2000). The main argument in these studies is that checking whether legislative and executive outcomes are compatible with the interest of each citizen cannot be confined to judicial review by courts. It is argued that even though judicial review is one of the most significant democratic institutions in a liberal constitutional regime it should not be the only one. Judicial review of legislative and executive outcomes needs to be accompanied by other types of institutional arrangements within already existing branches of government in order to have a more effective constitutional regime.

The criticism of American model of judiciary-based constitutionalism on the grounds that there is necessarily no contradiction between legislative supremacy and effective protection of constitutional rights, also provided alternative ways of conceiving constitutionalism as a founding principle of democracy. The skeptical position in question challenges basically the idea that judiciary needs to be the institution that society should rely on exclusively for an effective human rights protection.

What is more significant from a theoretical point of view is the new approach, which is brought about by these discussions on alternative models of constitutionalism, to the protection of rights (Hiebert, 2006a, p. 5). Within the context of the discussions on new approach to the protection of rights; it is argued that the responsibility of providing a resolution to rights issues needs to be allocated to different right review mechanisms which are established at various state levels alongside judiciary (Hiebert, 2006b, p. 10). The new approach to the protection of rights also re-visions the role of national human rights protection mechanisms by widening their scope of function from a sole role of monitoring the application of universal human rights at the national level to a more participatory role of integrating human rights perspective into the earlier phases of policy making and providing a pre-emptive right review mechanism.

This thesis intends to understand the location of Turkey within the context of the recent struggle which has been started on the part of the legislature to reclaim its share

in ensuring the superiority of the constitution and constitutional rights. In this regard, I will specifically focus on Commission on Human Rights Inquiry as it is the first national human rights protection mechanism established in Turkey operating at the parliamentary level.

The idea to establish a parliamentary commission which is supposed to specialize on issues of human rights violation, were stimulated within the context of Turkey's application for the full membership to the European Union, back then the European Economic Community, in 1987 (General Information about the Human Rights Inquiry). These discussions turned into a concrete act with the preparation of a legislative proposal by the four members of the Turkish National Assembly. This proposal is intended to define the rules governing the establishment of a commission on human rights in Turkish Grand National Assembly and to lay out its functions, competencies and its principles of working. Besides fulfilling requirements of international treaties and universal declarations on human rights with respect to the establishment of national human rights protection mechanisms; a significant motivation behind the establishment of the Commission on Human Rights Inquiry (CoHRI) is to provide a complementary mechanism, besides judiciary, at the legislative level for human rights protection in Turkey (General Assembly Discussion, 18th Term 4th Legislative Year 42nd Session, pp. 1-2).

The potential capacity of the CoHRI, as the first national human rights protection mechanism in Turkey, in terms of providing a pre-emptive right review mechanism besides judicial review is quite significant; yet an academic study on the work of CoHRI within the context of latest discussions in the literature on constitutionalism about the alternative ways of human rights review has not been made. The focus of this thesis is to make a descriptive analysis of the CoHRI's work within the context of the new perspective, which is brought about by the struggle of the legislatures to reclaim their role in ensuring the superiority of the constitutional rights, to the national human rights protection institutions. In this regard this thesis's focus will be on the CoHRI' function of integrating human rights perspective into the earlier phases of policy making and providing a pre-emptive right review mechanism.

This thesis is composed of three additional chapters following the current first chapter on Introduction. Chapter II is intended to set the theoretical and methodological

framework for this thesis. In this regard recent discussions in the literature on constitutionalism on alternative models of constitutionalism will be introduced and how these discussions bring about a new approach to human rights protection will be discussed. In Chapter II how such a new approach to human rights protection re-defines the roles of human rights protection mechanisms, operating at the national level will be discussed too. In Chapter II a review of the literature on parliamentary committees will be made given that this thesis methodologically will build upon this literature. In this regard the methodological discussions in the literature on parliamentary committees as to how to assess the committee work will be introduced. Moreover in Chapter II in the light of the recent theoretical discussions on alternative models of constitutionalism, Turkey's place will be discussed; the hypotheses of this thesis stated and the literature on parliamentary commissions in Turkey will be introduced.

Chapter III is devoted to the description of the methodology to test the two hypothesis of this thesis and to the data analysis. Firstly, in the light of the methodological discussions, introduced in the Chapter II, the methodology adopted by this thesis will be defined. Secondly data analysis, which will be composed of two parts, will be made. First part is intended to reveal the legal framework about CoHRI. In this regard in the first part an analysis will be made on how the rules governing both the inner functioning of CoHRI and its relation to the overall law making process in the legislature is laid out in various official documents. Second part is intended to reveal the impact of CoHRI in terms of integrating human rights perspective into the earlier phases of policy making and providing a pre-emptive right review mechanism. In this regard the influence of the CoHRI on government and on parliament will be analyzed. In this part legislative reports, which are produced as a result of the review function of the CoHRI, and investigator reports, which are produced as a result of the investigatory function of the CoHRI will constitute the subject matter of the analysis. The analysis on legislative and investigatory reports will be backed up by the qualitative interviews which I conducted with both the members of the Grand National Assembly and bureaucrats who work at the Committee on Human Rights Inquiry.

Chapter IV will contain the conclusions that can be drawn from the data analysis made in the Chapter III.

CHAPTER 2

THEORETICAL FRAMEWORK

2.1: Overview

Within the context of the latest struggle which has started on the part of the legislature to reclaim its share in ensuring the superiority of the constitution and constitutional rights, a new phenomenon has emerged in the literature on constitutionalism. The critical position in question challenges the paradigmatic model of judiciary-based constitutionalism and offers alternative ways of conceiving constitutionalism as a founding principle of democracy. However, there are varieties of positions within this new phenomenon; even though these positions are similar in their efforts at challenging predominant model of judicial review-based constitutionalism. The positions can broadly be classified, on the basis of their perception of bill of rights, respectively as "rights skeptics" and "court skeptics" (Hiebert, 2006, pp. 9-10; Campbell, Ewing & Tomkins, 2001, p. 8).

"Right skeptics" position, the main arguments of which are laid out systematically by Richard Bellamy (2007), constitutes a more extreme critical stance towards judiciary-based constitutionalism model. According to this position enlisting of individual rights and assignment of the role of legal protection of the individual rights to judiciary exclusively cannot be compatible with a republican conception of citizenship. It is argued that republican conception of citizenship presumes the relationship between individuals as an actively ongoing process in which individuals constantly reflect and renew the rules governing their lives. Accordingly, this is why the relationship between

citizens cannot be constrained into a relationship of right bearers as in the case of judiciary-based constitutionalism model (Bellamy, 2001, p. 16). In this regard this position can be considered as a strong critique against the concept of bill of rights which is enlisted in a constitution and ensured through judiciary mechanisms. Moreover, this position also disagrees with the idea of sole reliance on judicial review as an effective right protection mechanism. It is argued that the responsibility of reflecting upon the rules and normative frameworks, which govern individuals' lives, belongs to each and every individual in the society; and therefore there is no legitimate argument as to why judiciary should have this responsibility at the exclusion of the rest of the society. In this respect it is argued that a republican conception of citizenship can be better realized in a model of "political constitutionalism" where individuals' constant reflection on rules, governing their lives, is ensured through traditional democratic mechanisms such as elections and majority rule (p. 38).

"Court skeptics" position, which constitutes a more modest stance and therefore is more relevant for the purposes of this study, accepts the legitimacy of the bill of rights; however it challenges almost paradigmatic reliance on judicial review exclusively for the protection of the individual rights (Campbell et al., 2001, pp. 9-10). According to this position sole reliance on judicial review as an effective mechanism of rights protection rule out any possibility of inclusion of rights issues into political deliberation. It is argued that rights issues can legitimately be included in political debates and since there is no legitimate argument as to why judiciary should have an authoritative voice in such a political deliberation at the exclusion of the rest of the society (Hiebert, 2005, pp. 237-238); the responsibility of providing a resolution to rights issues belongs also to different right review mechanism which are established at both executive and legislative levels alongside judicial review (Hiebert, 2006b, p. 10).

These theoretical discussions, challenging judiciary-based model of constitutionalism, have also empirical correspondence given that some countries, such as UK or Canada, adopted some institutional arrangements which reinforce alternative constitutional ideas that are discussed in the literature. These new institutional arrangements foresee the possibility for the inclusion of rights issues into political debate and therefore establish different right review mechanisms at both executive and legislative levels alongside judicial review; and pave way for the possibility of political disagreement with judicial declarations of incompatibility with fundamental rights of

legislative and executive acts. In this respect these characteristics of new institutional arrangements stands in a complete contrast to the underlying principles of judiciary-based constitutional model (Gardbaum, 2001; Hiebert, 2006b).

However, even though the implementation of these new constitutional ideas is limited on the empirical ground until now, what is more significant from a more theoretical point of view, is the new approach, which is brought about by these discussions on alternative models of constitutionalism, to the protection of rights in society (Hiebert, 2006a, p. 5). This new approach to projection of rights is different; because firstly it encourages political rights review by foreseeing the inclusion of institutional actors, other than the judiciary in the responsibility of ensuring the compatibility of state's action with individual rights; secondly by enlarging the scope of rights review in the policy making process it aims at creating a culture of rights, which would stimulate both at executive and legislative levels greater reflection on policy making from a rights perspective (Hiebert, 2006a, pp. 35-36); thirdly it foresees a more interactive relationship between different branches of government given that whole branches have right review mechanisms and are responsible for rights protection (Hiebert, 2006a, p. 5; Hiebert, 2001).

The new approach to the protection of rights also brings a new perspective to the human rights protection mechanisms operating at the national level. The standards for the national human rights protection mechanisms have been set by a universal document known also as the Paris Principles. Paris Principles were adopted by the United Nations General Assembly in 1993 and became the most significant universal document which defines the framework for the proper functioning of the national human rights protection mechanisms. Paris Principles define various aspects of a properly functioning national human rights protection mechanism including the status of the national human rights protection mechanisms; their competencies and functions; the principles governing the composition and the working methods of NHRIs and etc (Principles relating to the Status of National Institutions).

Since its adoption by the United Nations General Assembly in 1993, Paris Principles have been the main document which national human rights protection institutions are supposed to comply with. However, the new approach, which is brought about by recent discussions on alternative models of constitutionalism, to the protection

of human rights actually allows a re-reading of the Paris Principles. This is so; because the new approach to human rights protection encourages the inclusion of institutional actors both at executive and legislative levels, other than the judiciary in the responsibility of ensuring the compatibility of state's action with human rights.

In this regard the new approach highlights the significance of the indispensable role of alternative right review mechanisms besides judicial review for an effective protection of human rights in the society. Moreover it promotes a greater reflection from a rights perspective in the policy making process by enlarging the scope of rights review. Accordingly the ideas, which are associated with the new approach to human rights protection, emphasize the role of alternative human rights protection mechanisms in integrating human rights perspective into the earlier phases of policy making. In this regard the new approach in question revises the functions of national human rights protection mechanisms by restoring the under-emphasized significance of them in taking an active role in providing a pre-emptive right review mechanism besides their monitoring functions. In this regard the new approach to human rights protection also a more active role for national human rights protection in being an alternative channel for the participation of civil society organizations in the earlier phases of law-making.

2.2: Works on Parliamentary Committees

This thesis methodologically builds upon the literature on parliamentary committees because the aim of this thesis is to make a descriptive analysis of the CoHRI's activity within the context of the new perspective, which is brought about by the latest struggle of legislatures to reclaim their share in ensuring the superiority of the constitutional rights to the national human rights protection institutions. In the light of these methodological discussions in the literature on parliamentary committees as to how to assess the committee work; this thesis intends to make a descriptive analysis of the CoHRI's function of integrating human rights perspective into the earlier phases of policy making and providing a pre-emptive right review mechanism.

2.2.1: Concepts and Categorizations on Parliamentary Committees

Strom defines parliamentary committees as a "sub-group of legislators, normally a group entrusted with specific organizational tasks" (1998, p. 22). Strom argues that the organizational arrangement of the legislation necessitates "vertical" and "horizontal differentiations" among the members of the legislation. These all sorts of vertical and horizontal differentiations, corresponding to the necessities of the organizational arrangement of the legislation, result in emergence of the "*privileged groups*" in which a set of the members of the legislature is entrusted with particular functions (p. 23). According to Strom parliamentary committees can be considered as a *privileged group* within the legislature and the power of a parliamentary committee lies in the overall increase in the political cost of bypassing such a privileged group, once they are entrusted with particular functions, by the other actors in the political system (p. 24).

Similar to the conceptualization of the parliamentary committees as "privileged groups", which are entrusted with specific powers and functions, committees can also be seen as being established as a result of division of labor of the legislative workload (Mezey, 1979; Strom, 1998, pp. 24-25). Accordingly committees can be considered as instruments of *economies of operation* and they are supposed to increase the efficiency of the legislature in at least two ways. First way in which committees can increase the efficiency of the legislation is to create "parallel tracks of deliberation" and maximize the amount of work that is done through these "parallel channels of deliberation" that cannot be practicable when left to floor discussions. The second way in which committees can increase the efficiency of the legislation is to provide opportunities for the members of the parliament to specialize on a particular policy area because of the focused jurisdiction of the committee work (Strom, 1998, pp. 24-25; Khmelko & Wise, 2010, p. 76).

As argued by Strom the relationship between committees and the rest of the political system can considered to be governed broadly by three characteristics of the committee system and therefore literature on legislative committees seems to be devoted to these three aspects. According to Strom first characteristic of the committee system is *structure* by which he means ways in which committees are formally organized, such as the number of committee members, jurisdictions of the committees etc (1998, p. 29). The second characteristic is *process* by which he means the

procedures defining the processes whereby committee's are supposed to interfere in the legislative and oversighting processes at various levels (p. 39). The third characteristic of the committee system is *power* by which he means various functions of the committee that defines committee's relationship to the other political actors and defines the extent to which committees can have an independent role in legislative process (p. 47). In this respect when assessing the committee work in terms of the influence it exerts on the rest of the political system, it is extremely significant to look at three interrelated aspects of the committee with a holistic approach, given that these individual characteristics of the committee have important implications for each other.

Committees are necessitated by the organizational arrangement of the legislatures and they become indispensable for democratic legislatures to function effectively. However there is significant variation among committees in legislatures of different countries with respect to their structure, their functions, the procedures governing their internal functioning and their relationship to the rest of the political system and etc. In the face of these significant variations, the literature on parliamentary committees offers various ways of categorizing individual committee systems of different countries. One of the broadest and traditional categorization of committees in different legislatures is made on the basis of the extent of power vested in the committees in the form of a range of functions (Campbell & Davidson, 1998, pp. 126-127; Shaw, 1998, p. 227). Accordingly, such a categorization, based on the extent of power of committees, establishes a "spectrum" in which "US Congressional Committees" and "British Parliamentary Committees" lies at the two poles. In this respect US Congressional Committees stands as the strongest committees given the extent of their law-making and oversight functions and the extent to which they effectively perform these functions compared to committees in different legislatures; and British Parliamentary Committees as the weakest because of the limitations that exist on the extent to which they can affect a change throughout the legislation process. In between these two poles there lie committee systems which constitute a middle ground between quite strong committees of the committee-oriented legislative system of the United States Congress and the relatively weak committees of the plenary body form of the legislature of the British system (Campbell & Davidson, 1998, pp. 126-127; Shaw, 1998, p. 227).

2.2.2: Institutionalization of Legislatures and Committee Behavior

The literature on parliamentary committees seems to diverge upon the behavioral characteristics of the committees. By behavioral characteristics it is meant the overall form that committees' actual practice take as a result of the experience that committee accumulated throughout time as an institution. Even though there is a convergence on the argument that parliamentary committees are established as a result of division of labor of the legislative workload; the literature offers three competing explanations of committee behavior and a significant number of studies within the literature on parliamentary committees have been devoted to finding evidence for which behavioral form have greater explanatory power for committees of different legislatures. These three behavioral forms, even though they take different names in different studies, can be categorized as distributional, informational and partisan models of committee behavior.

Distributional model of committee behavior suggests that committees having particular areas of jurisdiction provide a framework on which different committees claim leverage with respect to each other over a specific policy area and exchange their supports to each other. According to distributional model of committee behavior this kind of leverage that individual committees has also provided opportunities for the members of the committee to secure some gains for their constituencies by claiming "property rights" over a particular policy area and therefore try to maximize the chances for their reelection (Campbell & Davidson, 1998, pp. 129-130; Strom, 1998, pp. 25-26; Khmelko & Beers, 2011, pp. 503-504; Martorano, 2006, p. 208).

Informational model of committee behavior suggest that committees maximize the information produced about a particular policy area or a bill by providing opportunities for the members of the parliament to specialize on a particular policy area and by increasing the amount of time that is devoted to a particular policy area or a bill through division of labor among different committees. According to informational model of committee behavior committees improve both the quantity and quality of the knowledge produced within the policy making process; and by distributing this knowledge committees also enable other members of the parliament to reflect more on various aspects of a bill or a particular policy and therefore committee work produce more fruitful floor discussion and improve the quality of the outputs of the legislative

work (Campbell & Davidson, 1998, p. 128; Strom, 1998, p. 26; Khmelko & Beers, 2011, p. 504; Martorano, 2006, p. 208).

Partisan model of committee behavior suggests that committees are yet another arena in which different political parties, both majority and opposition parties, compete with each other in order to achieve the outcome through the committee work that is most preferred by the party line. According to partisan model of committee behavior members of a committee and the political parties they come from stands in a principal-agent relationship. Accordingly members of a committee, who constitutes the agent part of the relationship, are supposed to pursue party line throughout the committee work and act in order to realize the goals that political party, who constitutes the principle part of the relationship, preferred most Partisan model of committee behavior also suggests that committees may become vehicles for the majority party to enhance its leadership position in various aspects of legislative work ranging from agenda setting to writing legislative proposals. In this respect partisan model of committee behavior acknowledges the possibility that executive dominated legislatures go hands in hand with strong committees, which are entrusted with significant powers, given that committees may form yet another arena in which majority party exert a disproportionate influence on the legislative work (Campbell & Davidson, 1998, pp. 128-129; Strom, 1998, p. 27; Khmelko & Beers, 2011, p. 503; Martorano, 2006, p. 209).

In the face of these competing explanations of the committee behavior the literature on parliamentary committees seem to converge upon the argument that proper functioning of a committee system can contribute significantly to the process whereby legislature improve its policy making capacity and become more independent of the executive influence (Khmelko & Wise, 2010; Olson & Crowther, 2002; Strom, 1998). Such a perspective which considers a strong committee system as one of the most significant factors that encourage the institutionalization of the legislatures seems to be the underlying theme of the studies focusing on committees in developing democracies (Khmelko & Wise, 2010; Khmelko & Beer, 2011, p. 501). However, the strength of the committee system depends on the actual performance of its individual components and how to assess the committees' individual performance of fulfilling their functions constitutes another body of work in the literature on parliamentary committees.

2.3: Assessing Committee Performance

2.3.1: Conceptual Clarification

A great deal of study in the literature on parliamentary committees is devoted to the question of how to best evaluate the actual performance of the committees in fulfilling the functions that they are entrusted with. However, these studies in the literature on committees seem to diverge terminologically on the question of which concept qualify best to contain comprehensively the meaning of the committee performance. The literature on parliamentary committees offers three different concepts in this respect. These three different concepts are "committee effectiveness" (Tolley, 2009; Arter, 2003; Khmelko & Beers, 2011; Rosenthal, 1973); "committee strength" (Khmelko, Pigenko & Wise, 2007; Strom, 1998) and "committee influence" (Hindmoor, Larkin & Kennon, 2009; Monk, 2012; Kubala, 2011; Khmelko, Wise & Brown, 2010). These studies employ different concepts for evaluating the performance of the committees; yet they do not seem to diverge systematically upon the question of what to look at in order to evaluate best the committee performance.

Moreover, it seems there is no systematic methodological discussion with respect to terminological confusion and therefore there is no well-established methodological camps which prefers and encourages one kind of terminology over others. Nevertheless there is only a study (Monk, 2010) in which there is a methodological discussion on relative appropriateness of the concepts of "committee influence" compared to "committee effectiveness" in evaluating the actual performance of the committees. In this study it is argued that committees are yet another platform in which different political views compete with each other in order to have a greater stake in the outcome produced through the committee work. Accordingly, using the concept of "committee effectiveness" for evaluating the actual performance of the committees would undermine the "political nature of the committees". It is argued that the concept of "committee effectiveness" connote a sense of absolute objectivity which might be more appropriate such as with respect to implementation of policies; yet when it comes to evaluating committee performance the concept of influence seems to have a comparative advantage in terms of capture the "subjectivity" involved in the committee work (Monk, 2012, p. 5).

Before having a discussion on the different approaches which are developed in the literature for measuring committee's performance of their assigned functions in the following part; it needs to be indicated which concept will be used in this study which focuses on Commission on Human Right Inquiry's performance of its functions related to providing a pre-emptive right review mechanism. In analyzing the CoHRI's performance as a pre-emptive right review mechanism this thesis opts for the concept of committee influence instead of committee effectiveness and committee strength within the context of Monk's (2010) argument on the relative advantage of the concept of "committee influence" in capturing the subjectivity involved in committee work.

2.3.2: What to Look at in Evaluating Committee Performance

The literature on legislative committees contains various perspectives on what to look at when evaluating actual performance of the committees. Two different methodological trajectories, which are developed to evaluate committee performance, can be identified in the literature on parliamentary committees.

First methodological trajectory, which is identified in the literature on parliamentary committees, can be named as "stakeholders approach". According to "stakeholders approach" best way to evaluate the actual performance of the committees is to develop quantitative and qualitative methods in order to reveal the impact of the committee work on other groups in the political system which are supposed to interact with the legislative committees in performing their own functions. These groups in the political system, called by Monk as "relevant groups" (2010, p. 6), can be defined as whole actors that can be identified in the political system as likely to have an interest in the way that parliamentary committees work; because they are likely to be affected by the way committees perform their functions.

Stakeholders approach seems to be quite dominant in the literature on legislative committees for evaluating the performance of the committees in different legislatures. Nevertheless, studies which utilize stakeholders approach for evaluating the performance of the legislative committees, present differences with respect to the comprehensive list of who exactly these relevant groups are. Studies on committee performance, which use different sets of stakeholders in order to evaluate the committee

performance, do not seem to claim the set that they use is eventual comprehensive list of relevant groups; nevertheless it seems there is no consistent use of a particular set of stakeholders in studies on committee performance either.

For instance Monk's study, in which he tries to develop a theoretical framework for an appropriate evaluation of the committee performance based on a comparative analysis of the studies on the subject matter, identifies six groups to look at. He lists these groups as government, bureaucracy, parliament, civil society, voters and judiciary and he argues that (2010, p. 7) for a more comprehensive understanding of how well a committee perform its functions one should look at this list of relevant groups and try to develop quantitative or qualitative methods to reveal in what ways these groups are affected by the way legislative committees perform their functions. He also intentionally removes media, which is perceived as a potential stakeholder in many studies on evaluating the performance of committees in different legislatures, from the list of relevant groups. He argues that media do not need a separate treatment as a potential group to be affected by the way legislative committees work; because media groups have affiliations with specific "interest groups" and a separate treatment of media would duplicate the data taken from civil society (2010, p. 6). However, it seems he disregards the capacity of the media in increasing the awareness of the committee work in one way or another depending on the ideological position it has; which constitutes the reason why some studies on committee performance perceive media a potential stake holder.

Another study by Khmelko, Wise and Brown uses again members of the parliament in order to evaluate committee performance in Ukrainian parliament. In this study Khmelko, Wise and Brown underlines the significance of the committees in empowering the process of legislative institutionalization (2010, p. 72). In this regard they define the committee influence as the extent to which committees provide the parliament with the information that it needs to develop itself as an independent policy actor free from the disproportionate influence of the executive (pp. 74-75 and p. 76). In order to measure committee influence in the form of providing the parliament with a source of information, free from government influence, they make a statistical analysis as to which among the two, whether "ministerial drafts" or "committee recommendations" on legislation proposals has a greater explanatory power, if any, of the resultant plenary voting in the parliament (pp. 80-83).

Another study by Hindmoor, Larkin and Kennon, which is intended to evaluate the performance of The Education and Skills Committee in UK, identifies government, parliament, media and political parties as the potential stakeholders (2009, pp. 74-75). They also list the civil society as a potential stakeholder but they do not include this group in their study because they argue this would be beyond the scope of their study (p. 75). In this regard they define committee influence as the extent to which a committee is able to hold the legislation of executive origin in check and to provide a source of information which is free from disproportionate executive influence (p. 71). For measuring the committee influence on government they make a twofold analysis. Firstly they look at the responses of government to the reports of the committee between the years 1997 and 2005 and they classify the government responses into five categories ranging from "agreeing with the committee's recommendation" to "specifically rejecting it" (p. 76). Secondly they compare the committee's recommendations with the content of the eventual legislative outcome in order to have a conclusion on whether government responses are realized or not (p. 77). For measuring the committee influence on the parliament they look at the number of times a reference is made to the committee's reports in the plenary debates on the legislative proposals which constitute the subject of analysis of committee's influence on government. They additionally look at the number of times members of the committee speak in the plenary debate for seeking influence (p. 82). For measuring the committee influence on media they simply look at the media coverage of the committee work in years between 1997 and 2005 (p. 82). Finally for measuring the committee influence on political parties they just rely on 13 interviews that they make with the members of the committee and civil servants (p. 85).

Another study by Monk focuses on government as the potential stakeholder in order to evaluate the performance of the committees in the Australian parliament. Monk employs the concept of influence as the capacity of the committee work to change government action. In this regard Monk analyzes how government responds to the committee recommendations on legislation proposals in order to arrive at a conclusion as to the extent of committee influence in the Australian parliament. He also make an analysis on the committee reports which are able to change the government action in one way or another in order to reveal what kind of committee reports has the greatest chance of changing the government action (2012, p. 138). In this regard he also analyze

the media coverage of committee work as a potential factor which increase the chances for a committee report to shape the executive action and underline the significance of the media as a potential stakeholder in committee's work in terms of increasing the awareness of the committee work in public space (pp. 148-149).

Another study by Tolley which is intended to evaluating the performance of the Joint Committee on Human Rights in UK focuses on government, parliament and the judiciary as the potential stakeholders (2009, pp. 48-50). In this regard they offer various quantitative and qualitative methods. Tolley defines the committee influence as again the capacity of the committees to provide a source of information that is free from disproportionate executive influence (p. 47). In this regard for measuring the committee influence on government Tolley relies on existing works such as Klug and Powell's works on whether JCHR's recommendations are able to affect a change in the eventual legislative outcome of executive origin or not (pp. 48-49). For measuring the committee influence on the parliament Tolley relies on existing works such as Smookler and Klug in which an analysis of the number of times the reports of the committee is cited in the plenary meetings is made (pp. 47-48). For measuring the committee influence on the judiciary Tolley looks at the number of times the reports of the JCHR is cited in the judiciary decisions (p. 50).

Another study by Kubala which is intended to evaluating the performance of the Select Committees in UK focuses on media. Kubala defines committee influence as the capacity of the committee work to change/shape government action. In this regard Kubala underlines the importance of media coverage of the committee work in terms of enhancing the leverage that committees have with respect to the government. She argues that by increasing the awareness of the committee work in public space media coverage of the committee work would increase the "pressure on the executive to take action" (2011, pp. 699-700). In this regard she makes an analysis on the media coverage of the committee work in order to reveal the trends, if any, on which committees have the greatest coverage and which aspects of the committee work has the highest chance of getting covered in the media (pp. 700-701).

The second methodological trajectory, which is identified in the literature on legislative committees, can be named as the "institutional approach". According to the "institutional approach" the best way to evaluate the actual performance of the

committees is to make an analysis on the institutional rules and procedures which are supposed to govern not only the inner workings of the legislative committees but also govern the relationship between legislative committees and other actors in the political system. Institutional rules and procedures are considered to have a significant role in the resultant performance of the committees. This is so because according to the institutional approach these institutional rules and procedures are among the most important factors which shape the structure, process and powers of these committees, three characteristic of the committee system that are perceived as governing the relationship between committees and the rest of the political system.

An example of the studies in the literature on legislative committees which employs institutional approach would be a study by Khmelko, Pigenko and Wise. In this study they try to explain the factors for weaknesses or strength of the parliamentary committees in the Ukrainian parliament. Khmelko, Pigenko and Wise similar to the study by Khmelko, Wise and Brown underline the significance of the committees in empowering the process of legislative institutionalization (2007, p. 211). In this regard they define the committee strength as the extent to which committees provide the parliament with the information that it needs to develop itself as an independent policy actor free from the disproportionate influence of the executive (pp. 211-212). In accordance with the institutional approach that they adopt in their study, to measure committee strength in the form of providing the parliament with an independent source of information they discuss the significance of three institutional factors (p. 212). These institutional factors are suggested as the presidential versus the parliamentary regime types; features of the party systems such as the level of party discipline or ideological distance of the different parties; the quality of the staff who are employed in committees (pp. 212-215). In this regard, based on a survey of the members of the parliament, they try to find out whether the qualitative evidence supports the institutional explanations of the committee strength, defined as the capacity of the parliamentary committees to provide the parliament with a source of information, free from government influence; and whether any additional factors such as non-formal rules and attitudes that members of the parliament adopt have an influence on the level of strength that parliamentary committees has (p. 218).

Another study by Arter, which employs institutional approach, is also a significant example in studies on committee performance. In this study Arter defines

committee strength as the level of cohesion that the committee has; and by committee cohesion he means the extent to which the members of the committee identify themselves with the committee. In other words committee cohesion is defined by Arter as the extent to which a particular committee develop an identity of its own which in turn empower the capacity of the parliamentary committee to become an independent policy maker mechanism free from the disproportionate influence of the executive (2003, p. 74). With such a definition of committee effectiveness Arter tries to underline the overemphasis which is made on the definition of committees as another platform for the resolution of political conflicts and divisions. In this regard contrary to the existing tendency in the literature on legislative committees to relate committees with divisions, Arter tries to introduce a new approach by assuming "a significant degree of unity" in committees (pp. 73-74). In line with the institutional approach that he employs, he then discuss several institutional rules and procedures such as "committee membership incumbency"; "committee member expertise"; "the size of the committee"; the extent of the committee issue valence"; "the level of party system cohesion"; and most importantly "the right of the committees to initiate legislation" as the relevant factors influencing the committee effectiveness defined as the level of committee cohesion (pp. 76-77 and p.79).

Another study by Martorano, which intends to find out which among the three competing explanations of committee behavior, namely informational, distributional and partisan, is supported by the empirical evidence on American States (2006, p. 206). Martorano defines committee strength as the level of autonomy that the committees have with respect to being an independent policy maker actor. In this regard Martorano, builds upon Rosenthal's (1973) definition of which characteristics that an autonomous committee has, namely "the right to review legislation"; "the right to screen legislation"; "the right to shape the nature of legislation"; "the right to affect the passage of legislation". In accordance with the institutional approach Martorano adopts; he makes an analysis on the institutional rules and procedures which increase the level of autonomy that a committee has by the empowering the dimensions that Rosenthal's definition suggests (pp. 216-217). In this regard Martorano argues that these three competing explanations of committee behavior predicts different levels of committee system autonomy; distributional model being the most demanding model of committee autonomy and partisan model is the least demanding one. Accordingly she argues that

one of the best ways to compare these alternative explanations on the basis of committee system autonomy (pp. 208-209).

After reviewing the institutional and stakeholders approaches in the literature on how to assess committee work, it needs to be underlined that these two different approaches seem to converge upon the significance of qualitative methods in assessing the committee work. Kubala (2011); Arter (2003); Khmelko and Beers (2011); Khmelko Pigenko and Wise (2007); Hindmoor, Larkin and Kennon (2009) utilizes qualitative methods in their study. Moreover, Monk tries to develop a theoretical framework for an appropriate evaluation of the committee performance, underlines the importance of the qualitative methods in revealing the political nature of the committee work (2010, pp. 5-6). In addition to Monk; Evans and Evans also emphasize the significance of qualitative methods for evaluating the performance of different human rights protection mechanisms at parliamentary level in revealing a picture that is beyond the formal description rules and principles and providing a deeper understanding (2006, p. 564).

At this point it is important to underline another study which is made by Evans and Evans (2006) with the intention of filling the gap in the literature on human rights protection mechanisms in terms of setting a valid methodological framework for the "evaluation of the performance of the legislatures in protecting human rights" in the legislation making process (p. 546 and p. 548). In this study Evans and Evans aim to propose a methodological track for assessing the legislature's performance of their human rights protection function in the legislative process. In this regard they indicate that the methodology that they propose would specifically focus on the legislature's human rights review function in the very policy making process and on the pre-emptive role of legislatures (p. 548). They argue that such a methodological framework needs to acknowledge the disagreements about both the content and scope of the human rights and to be complex enough to grasp the complexity of legislative organization and policy making process (p. 549).

Evans and Evans argue that in order to reveal the impact of mechanisms of human rights protection on the way different actors in the political system approach human rights issues in performing their own functions more comprehensively, the aim of the methodology needs to be twofold. Firstly, the methodology needs to aim at

revealing the concrete positive outcomes gained through mechanisms of human rights protection. Secondly, the methodology also needs to aim at revealing the contribution of various human rights protection mechanisms to the process of policy making in terms of integrating further human rights perspectives in the policy making process. In this regard they emphasize that the "process" aspect of the methodology need to be able to reveal the capacity of different human rights protection mechanisms firstly to identify legislative proposals that might raise human rights concerns and secondly to increase the place of human rights considerations in the deliberative processes (pp. 551-552).

First component of the methodology that Evans and Evans develop is called "process-mapping". By "process-mapping" they mean a descriptive analysis of various official documents ranging from standing orders to laws in order to reveal the rules, principles, procedures which govern not only the inner workings of the different mechanisms that are involved in the processes of human rights review but also govern the relationship of these mechanisms to the other actors in the political system (p. 563). In this regard the first component of the methodology that they offer connects to the institutional approach in the literature on how to assess committee work in emphasizing the significance of formal institutional rules and procedures in shaping the powers of the different mechanisms and therefore their resultant performance of the human rights protection function.

The second component of the methodology that Evans and Evans offer is called "Impact Analysis". By "Impact Analysis" they mean an analysis on the influence that the work of different mechanisms of human rights protection operating at legislative level have on the other actors in the political system. They emphasize that such an analysis would back up the descriptive analysis of formal rules, principles and procedures governing the functioning of mechanisms of human rights protection by being closer to an "independent" evaluation of the impact of these mechanisms on the overall capacity of the legislation to human rights scrutiny in the legislative process (p. 564). In this regard the second component of the methodology that they offer connects to the stakeholders approach in the literature on how to assess committee work. This is so; because they emphasize the significance of revealing the impact of mechanisms of human rights protection on the way different actors in the political system approach human rights issues in performing their own functions in understanding the performance of the different human rights protection mechanisms.

The methodological approach that Evans and Evans develop seems to be more relevant for the purposes of this thesis because their methodology relates to different methodological approaches existing in the literature on how to assess parliamentary committees' work. In this regard inclusion of the Evans and Evans's study into the relevant works that this thesis's methodology relies upon is significant. This is so; because it would not only make the analysis in this thesis connected within a larger literature on human rights protection mechanism; but also would combine different approaches existing in the literature on how to assess committee work. The methodological approach they develop for assessing the overall performance of legislatures in terms of human rights protection function can also be applied to the assessment of performance of the individual mechanisms such as committees on human rights, which legislature has, of the same function. So Evans and Evans's methodological framework would subsume two different dimensions of the focus of this thesis, CoHRI, which are respectively its being a parliamentary commission and its being pre-emptive right review mechanism.

2.4: Turkey's Place within the Theoretical Framework and Works on Parliamentary Commissions in Turkey

In order to understand Turkey's place within the context of the latest struggle which has been started on the part of the legislature to reclaim its share in ensuring the superiority of the constitution and constitutional rights, an insight into the transitions that country undertook with respect to the constitutionalism is needed. In this regard the place of Turkey within the theoretical framework, which is set above, needs to be discussed historically and this will be done in the following paragraphs.

The 1924 Constitution, which constitutes the first constitution of Turkish Republic, gives the executive and legislative power to the Grand National Assembly and it opts for the fusion of powers (1924 Constitution, 5th Article). In this regard, the 1924 constitution seems to make the principle of parliamentary sovereignty main character defining the new Turkish Republic. The 1924 Constitution, lasting until the 1960 military coup d'état, recognizes the Assembly (*Meclis*) as the supreme decision making body, comprising of both the executive and legislative bodies, and does not

recognize any supreme authority to review the compatibility of the Assembly's decisions with the Constitution. In this regard the period between 1924 and 1960 can be seen as a phase in which the responsibility of ensuring the effective protection of fundamental rights, which are enlisted in the constitution and do not include social and economic rights, is mainly delegated to the Assembly without having a constitutional court reviewing the executive and legislative acts.

However, the 1961 Constitution can be seen as a turning point for the constitutional regime in Turkey in the sense that it adopts the principle of separation of powers. The 1961 Constitution is formulated with the intention of addressing the deficiencies of the political system which are accused of providing a framework for establishing a form of authoritarianism. Within the context of introducing mechanisms which would mitigate authoritarian tendencies in the political system, the Constitutional Court was established as an institution which reviews the compatibility of the legislative and executive acts with the Constitution that also includes this time social and economic rights as well (1961 Constitution, Article 147). The 1961 Constitution, lasting until the 1980 military coup d'état, seems to make Turkey more in line with the trends that world undertakes succeeding the World War II with respect to protection of constitutional rights in the form of adopting the essentials of the American model of judiciary-based constitutionalism. Turkey in this period adopted similar principles by establishing a constitutional court and entrust it with the main responsibility of ensuring the compatibility of the legislative and executive acts with the fundamental rights as a necessary measure preventive of authoritarian governments. Since then, the Constitutional Court of Turkey maintained its exclusive role in ensuring the superiority of the constitution and the compatibility of the legislative and executive acts with fundamental rights; even though in 1982 a new constitution was introduced and a number changes have been made into the constitution since then.

So currently, the place of Turkey within this theoretical framework seems to be closer to the predominant model of judiciary – based constitutionalism, given that Constitutional Court of Turkey (AYM) is the authoritative decision-maker with respect to providing resolutions of issues involving right conflicts (The Constitution of Turkey, Article 148 and Article 153). In this respect, judicial review by constitutional court in the Turkish case constitutes a practical implication of judiciary-based model of constitutionalism; because the practice emphasizes legal interpretation of fundamental

citizen rights and gives a primary role to constitutional court in checking the legislative and executive outcomes' compatibility with fundamental rights and freedoms. Yet the AYM is not the only institutional mechanism which is established for an effective right review in the society. Aside from the judiciary there are also institutional arrangements, established at both executive and legislative levels for human rights protection. Even though these institutions do not have a right to pronounce a disagreement with the decisions of the AYM; they function as a mechanism for reviewing the compatibility of legislative proposals with constitutional rights and for preventing any rights violation from occurring in the first place in the policy making process. Given that the aim of this thesis is to inquire into the location of Turkey within the context of the recent struggle which has been started on the part of the legislature to reclaim its share in ensuring the superiority of the constitution and constitutional rights; I will specifically focus on Commission on Human Rights Inquiry (CoHRI) as it is the first national human rights protection mechanism established in Turkey operating at the parliamentary level. In this sense, I will make a descriptive analysis of the CoHRI's performance of its functions that are related to providing a pre-emptive right review mechanism.

I expect my descriptive analysis of the CoHRI's performance of its functions that are related to providing a pre-emptive right review mechanism to yield that CoHRI has relatively limited influence in terms of both affecting a change throughout the legislation process and oversighting the government from a human rights perspective. In this regard this thesis has two hypotheses:

Hypothesis I: The legal status of the CoHRI decreases the level of influence CoHRI has in terms of providing a pre-emptive right review mechanism.

Hypothesis I, defined above, relates to the institutional approach in the literature on how to measure committee performance which underlines the significance of formal rules and procedures that are related both to the inner functioning of the legislative committees and to their relation to other actors in the political system. In the context of institutional approach the Hypothesis I states that the legal status of the CoHRI, which results from the formal rules and regulations on legislative commissions generally and on CoHRI particularly, decreases the level of influence CoHRI has in terms of providing a pre-emptive right review mechanism. In this regard I expect that the rules and regulations which form the status of the CoHRI to render the level of influence

CoHRI has in providing a pre-emptive right review mechanism weaker in the form of both affecting a change throughout the legislation process and oversighting the government from a human rights perspective.

Hypothesis II: The functioning of TBMM as a plenary body form of legislature decreases the level of influence CoHRI has in terms of providing a pre-emptive right review mechanism.

One of the broadest and traditional categorization of committees in different legislatures is made on the basis of the extent of power vested in the committees by the very design of the legislative process (Campbell & Davidson, 1998, pp. 126-127; Shaw, 1998, p. 227). Accordingly, if committee power is considered as a spectrum quite strong committees of the committee-oriented legislative system of the United States Congress and the relatively weak committees of the plenary body form of the legislature of the British system Legislatures lies at the two poles and in between there lie committee systems which constitute a middle ground between these two poles (Campbell & Davidson, 1998, pp. 126-127; Shaw, 1998, p. 227). In this context the Hypothesis II states that the functioning of TBMM as a plenary body form of legislature decreases the level of influence CoHRI has in terms of providing a pre-emptive right review mechanism. In this regard I expect characteristics of legislative process which are associated with legislatures functioning as a plenary body to render the level of influence CoHRI has in providing a pre-emptive right review mechanism weaker in the form of both affecting a change throughout the legislation process and oversighting the government from a human rights perspective.

After formulating the aim of the thesis and hypotheses, in the following paragraphs I will introduce the works on parliamentary commissions in Turkey with a specific focus on how this thesis is different from these studies and in what ways it makes a contribution. The literature on parliamentary commissions in Turkey can argued to be quite limited both in its quantity and its scope. There are only two studies which are devoted to parliamentary commissions in Turkey. These two studies are "Commissions in Legislative Assembly" by Tuncer Karamustafaoğlu and "Parliamentary Scrutiny of Human Rights" by İzzet Eroğlu.

The study by Karamustafaoğlu (1965) is intended to review different committee systems globally and then try to put Turkish commission system into the context of this

discussion in a comparative perspective. After having a brief discussion on the history of parliamentary committees both in the global context and in Turkey he argues that the committee systems of different countries present various differences with respect to their functions, their organizational structure, their issue valence and etc. Even though he underlines the significance of political culture and political history for the emergence of these differences, he seems to adopt an institutional approach in making this argument. Accordingly he emphasizes the significance of the institutional rules and procedures which are supposed to govern not only the inner working of the legislative committees but also govern the relationship between legislative committees and other actors in the political system (p. 66) He devotes a whole chapter (Chapter 6) to review different institutional rules and procedures in a global context as one of the most significant factors which shape the structure, process and powers of the legislative committees and therefore constitutes the main source for the existence of emerging differences among the committee systems of different countries.

Nevertheless, he argues that two different committee systems can be identified in the face of the various differences which committees in different countries present. Accordingly he proposes "specialized committee systems" and "non-specialized committee systems" as two general categories under which different committee systems can be subsumed (pp. 66-67). According to Karamustafaoğlu these two committee systems are exercised most purely by United States of America and by United Kingdom respectively (pp. 66-67).

In differentiating between "specialized committee systems" and "non-specialized committee systems" Karamustafaoğlu suggests the criterion of whether standing committees are formally assigned with specific policy areas (p. 67, p. 69 and p. 76). Accordingly "specialized committee systems" have standing committees which are entrusted with specific policy areas and this is why they are generally established in parallel to ministerial organization. In "specialized committee systems" committees work on the basis of cumulative experience that they have as a result of specializing on a specific policy area. The fact that each committee is specialized in a specific policy area also makes them to review legislative proposals before these proposals come to the floor for general discussion and offer significant changes with respect to the essence of the legislative proposals (pp. 76-77). On the other hand "non-specialized committee systems" might have standing committees; nevertheless these committees are not

assigned with specific policy areas. This is why the legislative proposals can only be reviewed by the standing committees after it is discussed and settled out with respect to its essence in the plenary session. This situation also makes standing committees in "non-specialized committee systems" weaker compared to the standing committees in "specialized committee systems" in terms of the scope of change that committee work can effect on the essence of the legislative proposals (pp. 69-70).

However the relevance of the study by Karamustafaoğlu for the purposes of this thesis is quite limited given the fact that it is a study made in the 1960s. Since the 1960s there had been a lot of changes and transformations happened in various aspects of the Turkish society including the constitution and political system.

A more up to date study is made by İzzet Eroğlu (2007) and this study is much more relevant for the purposes of this thesis given the fact that it focuses on the activity of different mechanisms at the parliamentary level, including the Commission on Human Rights Inquiry, in terms of their capacity to protect human rights at the level of parliament (pp. 2-3). His study can be considered as a descriptive study; because it is only intended to give a descriptive analysis of the activity of the various mechanisms at the parliamentary level in terms of their human rights protection function.

Eroğlu lists oral and written questions; plenary discussions; parliamentary inquiry; parliamentary investigation; interpellation as traditional mechanisms of human rights protection at the parliamentary level (p. 143) and he gives a descriptive analysis of each of them with respect to their performance of human rights protection function covering the years between 1991 and 2007. Subsequently he makes a separate and more detailed descriptive analysis of CoHRI's human rights monitoring functions.

In this regard he focuses on CoHRI's investigatory sub-commission works and individual petitions which are appealed to the CoHRI. Regarding the sub-commission works Eroğlu firstly categorizes human rights issues involved in sub-commission works between the years 1991 and 2007. Then he presents percentage of the sub-commission reports which become commission report for each human rights category (pp. 262-264). However it seems Eroğlu's analysis seems to lack a discussion on the relationship between investigatory reports and plenary meetings. Such an analysis would be important; because the reports prepared as a result of investigatory work of the CoHRI have a significant deal of leverage vis-à-vis the government and have an important

capacity to stimulate a reaction on the part of the government through creating pressure on the executive by stimulating discussion in the General Assembly. Secondly, he looks at individual appeals to the Commission on Human Rights Inquiry in the form of petitions, which the Commission is entitled to refer to the concerned government departments in case of a human rights violation (pp. 361-362). He makes a descriptive analysis of the petitions referred to the Commission on Human Rights Inquiry by looking firstly at the distribution of the number of the appeals over the years and secondly at the subject matter of the human rights issue involved over the years (pp. 362-364 and p.365).

Eroğlu also touches upon the effectiveness of the Commission on Human Rights Inquiry in his study. In this regard he argues that one of the most significant obstacles to the effectiveness of the Commission is the lack of competencies which the CoHRI is entrusted with. Eroğlu argues that since the CoHRI lacks an adequate level of competency towards the executive; the activity of the CoHRI is prone to inconsequential in terms of obtaining concrete results apart from shaping public opinion (pp. 421-422). In this regard he emphasizes that the CoHRI is unable to prosecute the post-treatment of its reports by the concerned departments of the executive without having an adequate level of obligatory power (p. 437). Moreover in connection with that, he also argues the CoHRI is not able to make effective follow-ups of the petitions, which it refers to concerned executive departments. In this regard he proposes that CoHRI needs to have the authority to refer instances of human rights violation to the judiciary directly (p. 425 and p. 438). Eroğlu's discussion on the effectiveness of the CoHRI in fulfilling its monitoring and investigatory functions presents a very promising starting point; however one of the most important shortcomings of his discussion is the lack of a methodological framework on the basis of which an appropriate assessment of the performance of CoHRI's monitoring and investigatory functions can be made. The absence of a methodological framework makes his study on the CoHRI's monitoring and investigatory functions disconnected from a broader literature on parliamentary commissions as to how to assess the commission work. The lack of impact analysis with respect to revealing the relationship between the investigatory reports of the commission and the plenary meetings seem to be resulting from his study's disconnectedness from the wider literature on how to assess commission work.

Eroğlu's work on parliamentary mechanisms for human rights scrutiny presents a detailed analysis of the CoHRI's investigatory and monitoring functions by providing a description of CoHRI's investigatory reports and CoHRI's work on petitions referred to the commission. As argued earlier CoHRI's functions, which are related to providing a pre-emptive right review mechanism, have been actively performed by the CoHRI since 2011. As argued by Eroğlu (p. 437) even though there is no legal infringement before the assignment of the legislative proposals, which are within the jurisdiction of the CoHRI, by the Office of the Speaker to the CoHRI it seems as if there is no legislative proposal assigned to CoHRI until 2011 when a legal change put into effect with regards to CoHRI's review function. After such a legal change the reviewing legislative proposals is added as a legally recognized function, a function which has already existed according to the articles of the internal rulings of the TBMM concerning the parliamentary commissions, into the duties of the CoHRI section in the commission law. So, the functions of CoHRI that are related to providing a pre-emptive right review mechanism seem to be under-studied and this thesis intends to contribute to fill this gap by making a descriptive analysis of the CoHRI's performance of its functions that are related to providing a pre-emptive right review mechanism.

Having introduced the works on parliamentary commissions in Turkey, in the next chapter I will define the methodology which is used in order to test the two hypotheses of this thesis.

CHAPTER 3

METHODOLOGY AND DATA ANALYSIS

3.1: Methodology

In this part I will introduce the methodology that is adopted by this thesis to make a descriptive analysis of the CoHRI's performance of its functions that are related to providing a pre-emptive right review. As argued earlier, in analyzing the CoHRI's performance of these functions, this thesis opts for the concept of committee influence instead of committee effectiveness. This is so; not only because concept of committee influence is better in capturing the subjectivity involved in committee work as argued by Monk (2010); but also because the functions of the CoHRI, that constitutes the focus of this thesis's analysis, are relatively new ones. Given that the CoHRI's functions, which are related to providing a pre-emptive right review mechanism, have been actively performed by the CoHRI since 2011, the data that will be used in the analysis will be quite limited. In this regard if the limits on the amount of data and on reaching general conclusions on the CoHRI's performance is considered; preferring the concept of the committee influence will be more in line with the purposes of this thesis in terms of capturing the descriptive nature of this study.

First component of the methodology is "process-mapping". Process mapping component of the methodology connects the thesis to the institutional approach in the literature on how to assess committee work which emphasize the significance of formal institutional rules and procedures in shaping the powers of the different mechanisms and therefore their resultant performance of the human rights protection function. In

process mapping I will look at how the rules governing both the inner functioning of CoHRI and its relation to the overall law making process in the legislature is laid out in various official documents. In this regard I will firstly look at how rules, principles, procedures shape the structure of the commission; and secondly how these rules shape the relationship of the commission to the overall legislation making process in the legislature and thirdly how these rules lay down the functions and powers of the commission vis-à-vis other actors in the political system.

The second component of the methodology is "Impact Analysis". Impact analysis component of the methodology connects this thesis to the stakeholders approach in the literature on how to assess committee work which emphasize the significance of revealing the impact of mechanisms of human rights protection on the way different actors in the political system approach human rights issues in performing their own functions in understanding the performance of the different human rights protection mechanisms. In impact analysis this thesis will focus on government and legislature as two relevant groups. In order to make an analysis on the impact of the CoHRI on the government I will analyze whether review function of Commission on Human Rights Inquiry is able to affect a change on the eventual legislative outcome of executive origin. In this regard I will firstly look at the number of times legislative reports of the CoHRI is able to make an amendment on legislative proposals of executive origin in line with its recommendations.

However it might not be possible to make a completely similar analysis to Hindmoor, Larkin and Kennon (2009) and Monk (2012), who make a similar impact analysis on the basis of official government responses to the committee recommendations, in the context of Turkey. This is so because in Turkey government is not enforced to give direct responses to the recommendations of the commission reports as this is the case in countries that Hindmoor and Monk studied. However it is still possible to trace the impact of the commission work on the eventual legislative outcome of government origin in the case of Turkey. In this regard it is important to underline that there are basically two channels available for the commission to affect a change on the legislative proposal of government origin in line with the human right concerns that it identifies. First channel is the commission meeting itself in which generally negotiations take place with the representative(s) of the government who had proposed the original legislative draft. So, these negotiations might result in the acceptance by the

representative(s) of the recommendations offered by the commission with respect to compatibility of the proposal in question with the human rights. Second channel is plenary meetings in which the legislative reports of the commission are read before the whole members of the assembly and the government. The recommendations of the legislative reports of the commission can affect a change on the eventual legislative outcome of government origin through stimulating debate on the proposal and influencing the plenary voting. Moreover in tracing the impact of the commission work on the eventual legislative outcome of government origin, it is still possible to use a scale similar to Hindmoor and Monk in order to make a more systematic evaluation of the commission's influence on the government. In this regard similar to the approach adopted by Hindmoor and Monk this thesis will also utilize a scale of government acceptance of the commission's recommendation in analyzing the commission's impact on the government.

The investigatory functions of the CoHRI also have a significant capacity to change the way government approach human rights issues in performing their own functions. In this regard the reports prepared as a result of investigatory work of the CoHRI have a significant deal of leverage vis-à-vis the government and have an important capacity to stimulate a reaction on the part of the government through creating pressure on the executive despite fact that the suggestions on these reports for the betterment of the implementations of the human rights law are not binding on the government.

Besides, as argued by Eroğlu (2007, p. 437) even though there is no legal infringement before the assignment of the legislative proposals, which are within the jurisdiction of the CoHRI, by the Office of the Speaker to the CoHRI it seems there is no legislative proposal assigned to CoHRI until 2011 when a legal change put into effect with regards to CoHRI's review function. In this regard until 2011 the work of the CoHRI is overwhelmingly composed of its investigatory functions.

Given such a significant capacity of the investigatory work of the CoHRI to stimulate a reaction on the part of the executive and relatively greater space occupied by the investigatory work of the CoHRI within the overall functions of the commission; not including the investigatory work of the CoHRI in the first component of my impact analysis needs justification. The reason why I will not be able to look at the

investigatory functions of the CoHRI in the first component of the impact analysis is threefold. Firstly establishing a connection between the suggestions in the investigatory reports of the CoHRI and subsequent government action is a theoretically problematic task. This is so because even though the suggestions in the investigatory reports of the CoHRI mainly identify many inadequacies and wrongdoings in the implementation of human rights law and points out the necessary adjustments, it is not possible to make a causal connection between government actions and the suggestions of the investigatory reports. For example let us say subsequent to CoHRI published a report based on its investigation of a particular jail in which it is stated that the capacity of the jail is far more exceeded, government issues an amnesty plan. However it is theoretically problematic to argue that the investigatory report of the CoHRI is what stimulated the government to take such an action and therefore to argue that the investigatory work of the CoHRI had an impact on the overall legislative outcome. Moreover besides the investigatory reports of the CoHRI the very act of investigation by the CoHRI might from time to time cause the government to make ad-hoc adjustments before they publish a report on their investigation. However it is not possible to study these kinds of ad-hoc adjustments in this study given that these kinds of acts are prepared behind closed doors and the deliberations do not get to be recorded.

Secondly, my thesis is located theoretically within the framework of the new approaches to human rights protection which was brought about by the discussions on alternative models of constitutionalism (Hiebert, 2006a, p. 5). In this regard for the purposes of my study the legislative functions of the CoHRI is relatively more relevant compared to the its investigatory functions given that the focus of the new approaches to projection of rights is to increase the amount of reflection from a rights perspective in the policy making process by foreseeing the inclusion of institutional actors, other than the judiciary in the responsibility of ensuring the compatibility of state's action with individual rights (Hiebert, 2006a, pp. 35-36). In this regard for the purposes of my study giving an emphasis on legislative functions of the CoHRI in the first component of the impact analysis is justifiable given that the interest of this study is mainly on capacity of the CoHRI in terms of providing a pre-emptive right review mechanism besides judicial review of legislative and executive acts.

Thirdly the activity reports of the CoHRI were not published between 2002 and 2007 due to lack of staff and given that investigatory reports can only be reached

through these reports such a gap, which corresponds approximately to the one fourth of its overall activity, would distort the consequences drawn from such an analysis of the investigatory reports in the first component of the impact analysis.

Nevertheless it may still seem to be problematic to remove the investigatory reports from the analysis which will be made in the first component of the impact analysis. However I expect to compensate for this in the second component of the impact analysis by making an analysis of the relationship between the investigatory reports and the plenary meetings. In this regard I will look at the number of times the references are being made either to the investigatory or legislative reports of the CoHRI in plenary discussions in order to reveal the impact of both investigatory and legislative functions of the CoHRI in terms of stimulate deliberative discussions on human rights issues in the plenary meetings. As a complementary analysis I will also look at how human rights focus of the oral questions, which is one of the most significant scrutiny mechanisms of the parliament, change across the time when CoHRI have been functioning. In this regard I will also try to inquire into whether the legal change, which adds review function to the duties of CoHRI in Act 3686 in 2011, has an impact on the human rights focus of the oral questions. I believe the second component of my impact analysis will compensate for the removal of the investigatory reports from the analysis in the first part; because as argued by Evans and Evans in revealing the impact of mechanisms of human rights protection on the way different actors in the political system approach human rights issues; it is also important to look at how these mechanisms influence the process of policy making in addition to concrete positive outcomes which are gained because of the work of these mechanisms of human rights review.

Moreover, given the emphasis on qualitative methods in both literature on how to assess committee work and the literature on parliamentary human rights protection mechanisms; this thesis also utilizes qualitative interviewing in order to back up the analysis on CoHRI's legislative and investigatory reports. In this regard in order to have a deeper understanding the influence of the CoHRI on government and on parliament I will also rely on the in-depth interviews that I conducted with five bureaucrats and three members of the TBMM who worked in the CoHRI.

3.2: Data Analysis

3.2.1: Process Mapping

The Commission on Human Rights Inquiry is different from other commissions in the parliament by being established by law alongside with the Commission on Equal Opportunity for Women and Men, the Commission on EU Harmonization, the Commission on Petitions and the Commission on State Economic Enterprise (Neziroğlu, Kocaman & Gökçimen, 2011, p. 44). In this regard in order to make a process-mapping analysis, which is intended to describe official rules and principles, governing both the inner functioning of CoHRI and its relation to the legislative process, I will mainly look at the Act 3686, establishing the CoHRI and internal orders of the Turkish Grand National Assembly. In this regard similar to Strom's approach I will look at how formal rules, principles, procedures shape firstly the *structure* of the commission, secondly how they shape *process* whereby CoHRI is supposed to interfere in the legislative and oversighting processes; and thirdly how they lay down the *powers* of the commission vis-à-vis other actors in the political system.

3.2.1.1: Structure and internal working of the CoHRI

The jurisdiction of the CoHRI is defined by the Act 3686. According to the Article 2 the jurisdiction of CoHRI contains the human rights and freedoms defined in the Constitution of Turkey, Universal Declaration of Human Rights and European Convention on Human Rights and in various universally acknowledged documents on human rights.

According to the Internal Rulings of the TBMM total number of the members of the CoHRI is determined by the General Assembly for each legislative session (Article 20). However with respect to the representation in the CoHRI; the Act 3686 makes additional arrangements specific to the CoHRI. Accordingly, member selection rules of CoHRI allow for the representation of independent members or political parties, which are not able to establish party groups in the Assembly, in the CoHRI (Article 3). A similar arrangement to the one on CoHRI exists also for some parliamentary commissions too; however their number is quite limited. In this regard CoHRI is

different in terms of allowing for the representation of independent members or political parties, which are not able to establish party groups in the Assembly alongside with the Commission on Equal Opportunity for Women and Men, the Commission on EU Harmonization, the Commission on Planning and Budget and the Commission on State Economic Enterprise (Neziroğlu, Kocaman & Gökçimen, 2011, p. 44). The selection of the members of the CoHRI is renewed two times for a single legislative period (Article 3).

In line with the internal rulings of the TBMM the Article 6 of the Act 3686 states that for CoHRI to have a meeting, at least one third of its members should present. However with respect to the decision making process Act 3686 specifies additional arrangements. According to the internal rulings of the TBMM the commission can have a decision with the absolute majority of the present members (Article 27). However, in the Act 3686 in addition to the absolute majority rule it is stated that quorum of decision cannot be less than one fourth of the total number of the commission members and plus one (Article 6). Moreover commission can also decide to work through sub-commissions both in its investigatory and legislative functions (Article 6). However the reports, which are prepared as a result of sub-commission work, are subject to the voting in the commission meeting in order to be included in the commission report.

3.2.1.2: Procedures and rules governing the relationship of the CoHRI to overall policy making process

The commissions in TBMM are divided into two main categories on the basis of their duration as ad-hoc and standing commissions. Ad-hoc commissions, such as parliamentary inquiry and parliamentary investigation commissions are established for information gathering on a particular subject matter for a limited period of time. Standing commissions on the other hand are established permanently and each of them is specialized in a particular policy area (Neziroğlu, Kocaman & Gökçimen, 2011, p. 42). CoHRI is also a standing commission, which is specialized on the subject of human rights. Until 2011 the work of the CoHRI is overwhelmingly composed of its investigatory functions. With the legal change, introduced in 2011, which adds review function to the duties of CoHRI in Act 3686, CoHRI became a different commission

alongside with very few parliamentary commissions by having both legislative and investigatory functions. In this regard since 2011 the CoHRI seems to perform both its investigatory and legislative functions and this is why the relationship of the CoHRI to the overall policy making process is sustained through two channels created by its investigatory and legislative functions.

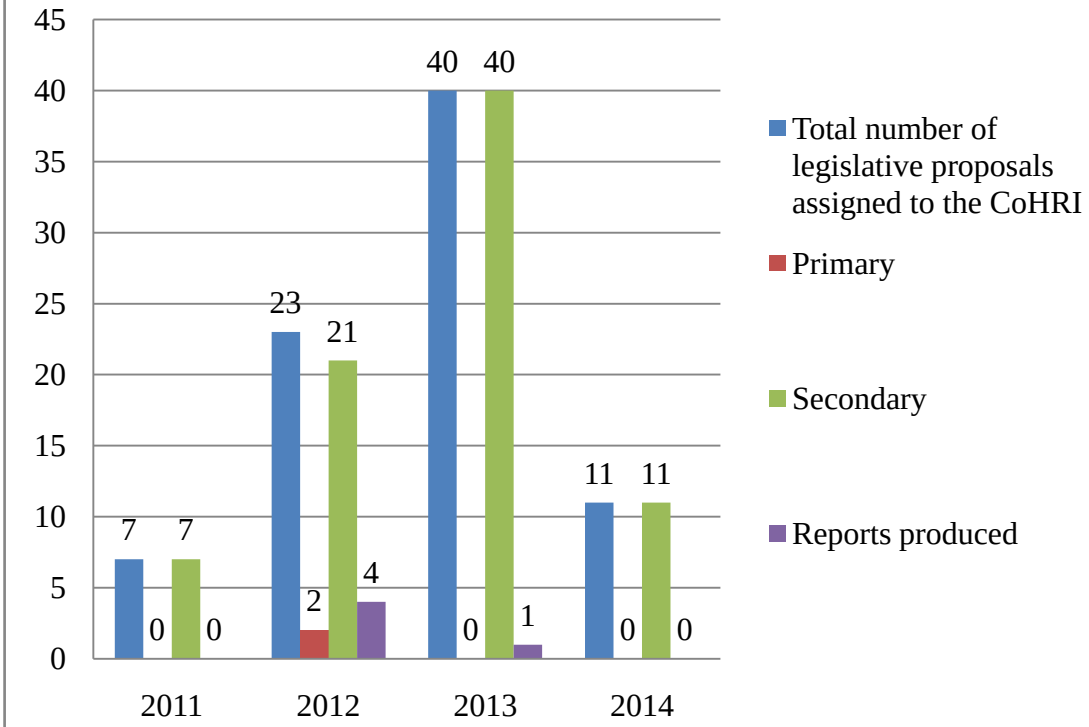
Nevertheless, as argued earlier the legislative functions of the commission has been started to be used since 2011 when a legal change, which adds review function to the duties of CoHRI in Act 3686, is put into effect. Before 2011, there is no legislative proposal assigned to CoHRI to examine its compatibility with the human rights. As argued by Eroğlu, even though review function is not enlisted in the duties of the CoHRI in Act 3686; according to the internal rulings of the TBMM commissions are already entrusted with the review functions and given that there is no a specific statement with respect to the review function in the Act 3686; CoHRI needs to be abide by the internal rulings of the TBMM in that respect and to have the function of examining legislative proposals for their compatibility with human rights (Eroğlu, 2007, p. 437; TBMM İç Tüzüğü, Article 35; Act 3686, Article 8). Nevertheless it seems not having the review function in the list of duties of CoHRI in Act 3686 in accordance with the internal rulings of the TBMM provided a framework for the development of a systematic reluctance on the part of the legislative process to bypass a commission, which is specialized on human rights policies.

In order for CoHRI to perform its review function a legislative proposal needs to be assigned to the CoHRI by the Office of the Speaker (Article 4). However, as all standing commissions, a legislative proposal can be assigned to CoHRI either as a primary (*esas komisyon*) or secondary commission (*tali komisyon*). Primary commission is the one whose report on the legislative proposal in question constitutes the basis of the plenary discussions on the legislative proposal in question. However, secondary commission is supposed only to give consultation to the primary commission on the matters that is of its policy specialization. In this regard, primary commission is the "eventual decision maker" with respect to commission report on the legislative proposal in question (Neziroğlu, Kocaman & Gökçimen, 2011, pp. 51-52) Once a legislative proposal is assigned to a standing commission either as a primary (*esas komisyon*) or secondary commission (*tali komisyon*), this commission would have a direct potential to affect a change in the content of the proposal in question with respect to its

compatibility with constitutional rights and freedoms. However, the potential in question is different for primary (*esas komisyon*) and secondary commission (*tali komisyon*) roles. This is so; because there are some structural limitations on the capacity of a commission to affect a change in the content of the proposal in question as a secondary commission. The structural limitations derive from the formal rules, which renders the capacity of secondary committees to affect a change in the content of the proposal weaker, by allowing the primary committees to prepare their reports without waiting for the preparation of secondary committee reports and without being abide mandatorily by the consultation provided by the secondary commissions once secondary committee reports are prepared. The relative weakness of the capacity of the secondary commissions to affect a change in the content of the legislative proposal is also exacerbated by the relatively lower chances for the secondary commission reports to be included in the plenary discussions on the legislative proposal in question given the limitations on their capacity to influence the primary commission report.

Subsequent to the 2011 legal change, which adds the review function to the list of the duties of the CoHRI it seems there are eighty one legislative proposals have been assigned to the CoHRI for examination. Only in two of them CoHRI is assigned a primary commission *(esas komisyon*) role; in the rest of seventy nine cases CoHRI is assigned a secondary commission (*tali komisyon*) role. In this regard it seems the role of CoHRI in examining legislative proposals for their compatibility with the human rights is overwhelmingly composed of secondary commission role. However out of eighty one assignments CoHRI produced legislative reports for only five proposals. In four of these legislative proposals CoHRI is assigned a secondary commission role by the Office of the Speaker; and in one legislative proposal it is assigned a primary commission role for examination. In this regard there is an apparent under-performance on the part of the CoHRI to function as a secondary committee. (For the allocation of assigned legislative proposals across years and for details of each year see the Graph 1)

Graph 1: Allocation of primary and secondary roles of CoHRI between 2011 and 2014



It is significant to underline that when a legislative proposal is assigned to CoHRI either as a primary (*esas komisyon*) or secondary commission (*tali komisyon*) there are basically two channels available for the commission to affect a change on the legislative proposal in line with the human right concerns that it identifies. First channel is the commission meeting itself in which generally negotiations take place with the representative(s) of the body who had proposed the original legislative draft. So, these negotiations might result in the acceptance of the representative of the recommendations offered by the commission with respect to compatibility of the proposal in question with the human rights. As a result of the commission meeting commission prepares a report on the proposal in which the human rights concerns identified by the members of the commission, negotiations taking place with representative of the government and commission's recommendations are written down. This report is sent to the Presidency of the TBMM and to the Prime Ministry and to the concerned ministries through the Presidency of the TBMM. Upon the decision of Consultative Commission (*Danışma Kurulu*) the primary commission's report is read before and discussed in the plenary meetings (Article 6). Plenary meetings constitutes the second channel whereby

commission can affect a change in line with its recommendations and human rights concerns through stimulating debate on the proposal and influencing the plenary voting.

However, with respect to its investigatory functions CoHRI can start an investigation on any matter of its interest by its own initiative. For example CoHRI can initiate an investigation on a prison upon a petition coming from a prisoner. Through its investigatory functions; CoHRI might also have an impact on the policy-making process. This is so because the reports which are prepared as a result of the CoHRI's investigatory functions are sent to the Office of Secretary and upon the decision of Board of Consultants commission's report can be read before the parliament and discussed in the plenary meetings. So through plenary meetings the investigatory reports of the CoHRI might have an impact by stimulating debate in the Assembly on the inadequacies in the implementation of the human rights at the national level and giving motivation for the preparation of legislative proposals by government or by the parliament addressing these inadequacies. This is why the investigatory functions of the CoHRI have a significant capacity to further integrate human rights perspective into the earlier phases of policy making process if it is able to activate the general assembly mechanisms.

3.2.1.3: Powers of the CoHRI

The functions of the CoHRI specified in the Article 4 of the Act 3686 as the following: firstly the commission is responsible for reviewing and following recent developments and changes with regards to human rights at international level; secondly the commission is responsible for checking the compatibility of the Constitution and other legal documents with the international treaties and universal declarations on human rights that the country complies with and for offering necessary legal arrangements. Thirdly the commission is responsible for examining legislative proposals as primary or secondary commission and of providing opinion, if it is requested, on issues which are discussed in other commissions in the National Assembly; fourthly the commission is responsible for investigating the compatibility of the practical implementations in the country with the Constitution and with the international treaties and universal declarations that the country complies with and for offering necessary amendments. Fifthly the commission is responsible for investigating the individual appeals to the commission by the citizens; inquiring whether there is

rights violation or not and referring them to the government offices concerned in case of rights violation. Sixthly the commission is responsible for investigating the human rights violations in foreign countries and for increasing the awareness of the parliamentarians in these countries of these violations. Finally the commission is responsible for preparing a report on its annual activities (General Information about the Human Rights Inquiry).

The competencies of the CoHRI are specified in the Article 5 of the Act 3686 as the following: the commission has the right to obtain information from the ministerial officials, government representatives, bureaucrats, local governors and from public and private institutions in its investigatory and legislative functions. Moreover the commission also has a right to consult experts on matters of CoHRI's interest (General Information about the Human Rights Inquiry).

Even though the CoHRI has the right to obtain information from various actors ranging from ministerial officials, government representatives to local governors in its investigatory and legislative functions; there is no ruling with respect to the competencies of the CoHRI which would empower CoHRI to follow its either investigatory or legislative reports up in order to hold accountable the relevant actors for the action that they choose with respect to these reports.

3.2.2: Impact Analysis

The impact analysis to be carried out in the following of the CoHRI's work will be composed of two parts. In the first part, I will look at how government responded to the identification of human rights concerns with respect to a legislative proposal of government origin by CoHRI's review function. In this regard I will make an analysis on the legislative reports of the CoHRI and look at how government responded to the recommendations of the CoHRI, which identifies human rights concerns with respect to the legislative proposal in question. Moreover in tracing the impact of the commission work on the eventual legislative outcome of government origin I will use a scale similar to Hindmoor, Phil Larkin & Andrew Kennon (2009) and Monk (2012) in order to make a more systematic evaluation of the commission's influence on the government. In this regard I will utilize a scale of government acceptance of the comments raised by the

members of the CoHRI in analyzing the commission's impact on the government. The scale in question will be composed of four categories which specify different kinds of responses that can be expected from the government. These categories are "accepting the comment"; "providing justification for defending the proposal in question"; "ignoring the comment"; "specifically rejecting the comment". Accepting the comment occurs when in the commission meeting the representative of the government agrees with the comment and makes a promise of act in line with the comment. Providing justification for defending the proposal in question occurs when the representative government does not agree with the comment; however he or she provides a justification for not doing so. Ignoring the comment occurs when the representative of the government simply ignores the comment and not even gives a justification in defense of the proposal. Specifically rejecting the comment occurs when the representative of the government specifically rejects the comment in a negative manner.

Subsequent to the categorization of government responses I will also try to understand to what extent the promise of action in line with the comments raised by the CoHRI's members is realized in the eventual legislative outcome. In order to understand whether recommendations, which get a promise of action by the government, are realized or not I will compare the recommendations of the commission and the eventual legislative outcome.

The analysis in this part would reveal the impact of the CoHRI's work on the government in terms of affecting a real change on the legislative proposals of government origin in line with the recommendations of the CoHRI's legislative reports which are formulated on the basis of the human rights concerns that CoHRI's review function identifies on the legislative proposals in question.

In the second part I will look at the number of times the CoHRI's either investigatory and or its legislative reports are able to stimulate deliberative discussions on human rights issues in plenary meetings. In this regard similar to the methodological approach adopted by Hindmoor, Phil Larkin & Andrew Kennon (2009) and Tolley (2009) I will look at the number of times the references are made either to the investigatory or legislative reports of the CoHRI in plenary discussions in order to reveal the impact of both investigatory and legislative functions of the CoHRI in terms of further stimulate deliberative discussions on human rights issues in the plenary

meetings. Moreover in order to have an understanding of the influence of legal change, introduced in 2011 with regards to CoHRI's review function, on the human rights focus in the parliament's performance of its other functions; I will look at how human rights focus of oral questions, which is one of the most significant scrutiny mechanisms of the parliament, has changed across years. The analysis in the second part would reveal the impact of the CoHRI's work on the parliament in terms of enhancing the integration of human rights reflection into the policy making process.

3.2.2.1: Impact of CoHRI on the government

As argued earlier since 2011, when CoHRI started to perform its review function actively, CoHRI has gotten eighty one assignments; however CoHRI produced legislative reports for only five proposals. In four of these legislative proposals CoHRI is assigned a secondary commission role by the Office of the Speaker; and in one legislative proposal it is assigned a primary commission role for examination.

Moreover it is also significant that four of the legislative proposals which are assigned to the CoHRI either as the primary or secondary commission for examination, have government origin and one proposal is made by the member of the governing political party. So given that the purpose of the first part of the impact analysis is to reveal the impact of the CoHRI's work on the government in line with the stakeholders approach in the literature on assessing commission work; it is important for the purposes of this study that all of this limited number of legislative proposals has government origin.

Prior to the detailed analysis of the each legislative proposal, it is significant to underline once more time that there are basically two channels available for the commission to affect a change on the legislative proposal in line with the human right concerns that CoHRI identifies. First channel is the commission meeting itself in which generally negotiations take place with the representative(s) of the Assembly who had proposed the original legislative draft. So, these negotiations might result in the acceptance of the representative of the recommendations offered by the commission with respect to compatibility of the proposal in question with the human rights. Second channel is plenary meetings in which the legislative reports of the commission are read

at the General Assembly (Floor) meeting of the TBMM. The recommendations of the legislative reports of the commission can affect a change through stimulating debate on the proposal and influencing the plenary voting.

The first legislative proposal which would be the subject of the impact analysis is a proposal which is offered by a member of the governing party. This legislative proposal is aimed at laying out the necessary conditions for giving permission to a convicted person to take a day in cases of the death or in cases of terminal illnesses of a relative. The proposal in question is examined by the CoHRI as the secondary commission and an analysis of the legislative report would reveal that there are eight comments in the negotiation process on the legislative proposal which can be subsumed under the heading of concerns for the right to fair trial in the commission meeting. However in the negotiation process it seems out of eight comments, which raise right to fair trial concerns, only one comment gets an acceptance and a promise for action by the member of the Assembly who had originally proposed the bill. Six of the comments can be classified under the category of "providing justification". With respect to these comments even though the representative of the government does not agree with the human rights concerns, that the members of the commission identify, he or she gives a justification for not doing so. One comment can be classified under the category of "ignoring the recommendation" by not having even a comment or justification by the representative of the government. The eventual legislative report does not seem to include these concerns on the right to fair trial and it is indicated in the report that there is no issue of incompatibility of the legislative proposal in question with respect to any of the fundamental rights and freedoms. However it seems as if an opposition mark is attached to the report by a single member of the commission which raises more strongly the concerns on the proposal in question with respect to the limitations it might bring on the right of the fair trial.

Nevertheless if second channel of impact is considered it is revealed on the basis of the plenary discussions on the legislative proposal in question that concerns on the proposal voiced both in the discussions in the CoHRI meeting and in the opposition mark of the legislative report seem to stimulate a significant debate in the plenary meeting (General Assembly Discussion, 24th Period, 2nd legislative term, 100th session). These discussions seem to lead to a proposal of motion which urges the withdrawal of the first part of the legislative proposal that is criticized a lot with respect to the

limitations it might bring on the right to fair trial. This motion is accepted and the controversial part is removed from the proposal. Moreover, when the eventual legislative outcome is analyzed it is revealed that one comment, which gets a promise of action by the representative of the government, seems to be not implemented. So, it seems in this case CoHRI seems to be more successful in affecting a real change on the legislative proposals of government origin in line with the concerns that CoHRI's review function identifies in the plenary meeting compared to the commission meeting itself.

The second legislative proposal which would be the subject matter of the impact analysis is a proposal which is offered by the Ministry of Interior. This legislative proposal is intended to fill the gap which is brought about the by the lack of legal framework that arranges the issues related to immigration into the country. It is indicated in the legislative proposal that these intended legal arrangements are aimed at sustaining the delicate balance between universal human rights and freedoms and security with regards to immigration issues (Yabancılar ve Uluslararası Koruma Kanun Tasarısı, 2012, p. 3). The proposal in question is examined by the CoHRI as the secondary commission and analysis of the legislative report would reveal that the legislative proposal evaluated by the CoHRI positively given that this proposal is the first serious attempt which is intended to arrange immigration issues (CoHRI's Report on "Yabancılar ve Uluslararası Koruma Kanun Tasarısı", 2012, p. 16). It seems there are four comments in the negotiation process out of which two are about techniques of law writing and practicability. The other two comments can be considered as identifying a human rights concern. One comment is about removal of a paragraph on the basis of the concern that this paragraph might allow discrimination in the implication of the "non-refoulment" principle and might create undesirable instances of human rights violation in the immigration process and the other comment is about the extension of the time period permitted for the immigrant to leave the country (p. 17). The legislative report indicates that in the process of negotiation with the representative of the government two of the comments, which identify human rights concern, get acceptance and a promise of action in the commission meeting. The legislative report does not specify any recommendation on this proposal given the positive atmosphere on the proposal. If the eventual legislative outcome is analyzed it is revealed that both comments, which get promise of action by the government representative in the

negotiation process, are implemented. So, in this case CoHRI seems to be more successful in affecting a real change on the legislative proposals of government origin in line with the concerns that CoHRI's review function identifies in the commission meeting compared to the first proposal discusses above.

The third legislative proposal which would be the subject matter of the impact analysis is a proposal which is offered by the Council of Ministers. This legislative proposal is intended to lay out the legal framework for the establishment of the Türkiye İnsan Hakları Kurumu (National Human Rights Institution of Turkey (TIHK)) in line with the Paris Principles, an internationally recognized United Nations document which frame the standards for the work of National Human Rights Institutions (Türkiye İnsan Hakları Kurumu Kanun Tasarısı, 2010, p. 4-5). The legislative proposal in question is examined by the CoHRI as the primary commission and it is decided beforehand to establish a sub-commission for a more detailed examination of the proposal in question (CoHRI's Report on "Türkiye İnsan Hakları Kurumu Kanun Tasarısı", 2012, p.10).

In the sub-commission meeting representatives from different civil society organizations were also present and voice their viewpoints on the proposal. When the sub-commission report is analyzed it seems there are serious concerns on the part of the civil society representatives for the proposal. The problems which are identified by the civil society representatives can be categorized into five categories, which are respectively five comments on the lack of clarity in the proposal on the functions and competencies of the TIHK; four comments on the overwhelming dominance of the executive branch of the government both in selection of the members and functioning of the TIHK including lack of financial independence; one comment on the inadequate role assigned for the selection of the members to both civil society organizations and the parliament; three comments on the inadequacies with respect to the assignment of staffs to the TIHK and non-assurance of immunity for the staff; and two comments on under-emphasis of the principle of pluralism in the TIHK. Even though these concerns cannot be subsumed under a particular human right concern; they are still important in raising some problems about the structure of a national institution which would probably play a significant role in human rights scrutiny and in investigating human rights violations in the country. However when the eventual sub-commission report is analyzed it seems there are ten recommendations on the proposal nine of which is about the techniques of codification and practicability issues. Only one recommendation can be seen a minor

attempt to clarify the functions and competencies of the Türkiye İnsan Hakları Kurumu (TIHK) in line with the concerns of the civil society organizations. The relative disinterest of the civil society representatives seem to suggest that the CoHRI fails to be an alternative channel for the civil society to participate in the decision making process in this case, a function which is foreseen by the new approaches to the national human rights protection mechanism. However it should also be indicated that there are two opposition marks, attached to the sub-commission report, and these opposition marks seem to voice the same concerns as the civil society representatives strongly.

In the commission meeting, where representatives from the government also present, similar concerns are raised as in the sub-commission meeting. There are three comments on the overwhelming dominance of the executive in the selection of the members and in the functioning of the TIHK; two comment on the need for the more space for the participation of the civil society and the parliament in the selection of the members of the TIHK and the assurance of the pluralism principle in the functioning of the TIHK In the negotiation process with the government representatives it seems as if that government representatives try to respond to the concerns which are raised in both the sub-commission report and the commission meeting. In this regard in this analysis it would be useful to take the comments raised by the civil society organizations given that the comments raised in the commission meeting are the summary of the comments raised in the sub-commission meeting. In the negotiation process government representative seems to reject specifically three comments on the lack of assurance of the administrative and financial independence of the Institution from the government. Four of the comments get acceptance and promise of action by the government representative and two comments gets a justification. In this regard six comments seems to be ignored by the government representative (CoHRI's Report on "Türkiye İnsan Hakları Kurumu Kanun Tasarısı", 2012, pp. 58-59).

In the legislative report it seems there are eleven recommendations four of which is about techniques of codification. The seven of the recommendations are intended to reflect the concerns raised both by the civil society representatives and by the opposition parties in the sub-commission and commission meetings by offering provisions for the integration of pluralism principle into the selection of the members of the Institution and for providing a larger role for the participation of the civil society organization into the selection process (CoHRI's Report on "Türkiye İnsan Hakları

Kurumu Kanun Tasarısı", 2012, pp. 60-61). However there are two opposition marks attached to the legislative report from which it can be inferred that these recommendations are far from fulfilling the concerns of the both opposition and civil society organizations.

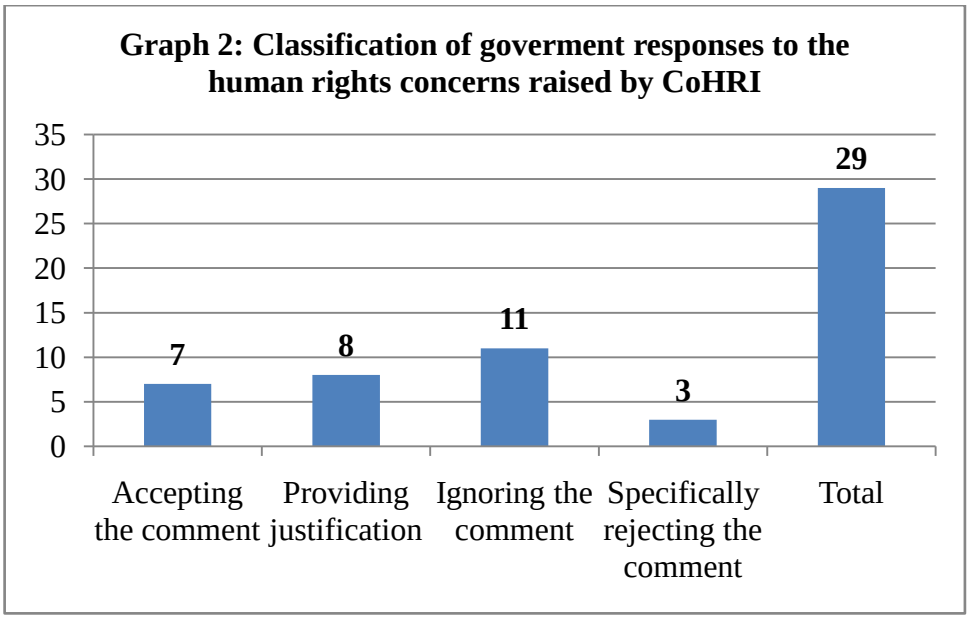
Nevertheless if second channel of impact is considered, it is revealed on the basis of the plenary discussions on the legislative proposal in question that concerns on the proposal voiced by the representatives of the civil society organizations and by the opposition marks of the legislative report seem to stimulate a significant debate in the plenary meeting (General Assembly Discussion, 24th Period, 2nd legislative term, 122th and 123th sessions). However even though all of the seven recommendations of the CoHRI's legislative report, which are intended to reflect the concerns raised both by the civil society representatives and by the opposition parties, is implemented in the eventual law; the discussions in the plenary meeting seem to be not affecting a further change in the content of the legislative proposal in line with the concerns on the proposal voiced by the representatives of the civil society organizations and by the opposition marks of the legislative report.

The fourth legislative proposal which would be the subject matter of the impact analysis is a proposal which is offered by the Ministry of Justice. The legislative proposal in question is intended firstly to bring the regulations on execution more in line with the purpose of re-integrating the condemned people into the society and secondly to lay out the conditions for allowing for defense in languages other than Turkish (Ceza Muhakemesi Kanunu ile Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanunda Değişiklik Yapılmasına Dair Kanun Tasarısı, 2012, pp. 34-35). The legislative proposal in question is examined by the CoHRI as the secondary commission and analysis of the legislative report would reveal that in the commission meeting there are four comments which raise human rights concerns. Three of these comments raise the concern that part of the proposal, which is about the defense in languages other than Turkish, might create some problems about the right of defense within the context of the right to fair trial. One comment raises the concern that the deprival of the people, who are condemned of terrorism, from the legal arrangements about the deference of the execution in the proposal might end up in acts of discrimination. However in the negotiation process it seems all of four comments, which raise human rights concerns, gets ignored by the representative of the government (CoHRI's report on "Ceza

Muhakemesi Kanunu ile Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanunda Değişiklik Yapılmasına Dair Kanun Tasarısı", 2012, pp. 37-38). The eventual legislative reports seem to include none of the comments, which raise concerns for the right to defense within the context of the right to fair trial, as a recommendation. However it seems there are two opposition marks, attached to the report, which raises more strongly the concerns on the proposal in question with respect to the limitations it might bring on the right to defense within the context of the right to fair trial.

Nevertheless if second channel of impact is taken into consideration it is revealed on the basis of the plenary discussions on the legislative proposal in question that concerns on the proposal voiced both in the discussions in the CoHRI meeting and in the opposition mark of the legislative report seem to stimulate a significant debate in the plenary meeting (General Assembly Discussion, 24th Period, 3rd Legislative Term, 56th and 57th Sessions). However the discussions in the plenary meeting seem to be not affecting a further change in the content of the legislative proposal in line with the concerns on the proposal voiced by the comments in the commission meeting and in the opposition marks.

The final legislative proposal which would be the subject matter of the impact analysis is a proposal which is offered by the Ministry of Family and Social Policies. The legislative proposal in question is intended to replace the demeaning words which are used in laws and decrees in the force of law for describing disabled people in order to eradicate the negative perception of disabled people by the society because of the usage of such descriptions and to enhance the integration of the disabled people into the society further (CoHRI's report on Kanun ve Kanun Hükmünde Kararnamelerde Yer Alan Engelli Bireylere Yönelik İbarelerin Değiştirilmesi Amacıyla Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılmasına Dair Kanun Tasarısı, 2013, pp. 4-5). The commission report indicates that legislative proposal in question is perceived positively by the CoHRI. Given the nature of the legislative proposal there is no recommendation on this proposal.



When all five legislative proposals are considered together, it seems as if out of the twenty nine comments, raised in the negotiation process, only seven comments become a recommendation in the legislative reports. With respect to the government responses to the comments raised in the negotiation process in the commission meeting out of the twenty nine comments government responses to seven comments are classified under the category of "acceptance"; government responses to eight comments are classified under the category of "providing justification"; government responses to eleven comments are classified under the category of "ignorance"; government responses to three comments are classified under the category of "rejection". When eventual legislative outcomes are analyzed in order to understand whether comments, which get a promise of action by the government, are realized or not; it is revealed that out of 7 comments, which get promise of action by the government, six of which were implemented in the eventual legislative process.

3.2.2.2: Impact of CoHRI on the parliament

When the General Assembly records, from December of 1991 to the July of 2013, are searched for the term "Commission on Human Rights Inquiry" in order to find out the number of times either legislative or investigatory reports of the CoHRI is cited in the plenary meetings; it is revealed that only in six cases the reports of the CoHRI is read out and stimulated discussion in the plenary meetings. In five cases the legislative reports of the CoHRI, which constitute the subject matter of the analysis in the previous

part, and only in one occasion the investigatory report of the CoHRI is read out in the General Assembly.

It seems with the legal change on CoHRI's review function, which was introduced in 2011, a significant channel has become available for CoHRI to gets its work to be recognized in the General Assembly. Even though CoHRI's performance of its review function has its own problems it seems there is a relatively greater capacity for CoHRI's legislative reports to get recognized in the General Assembly compared to its investigatory reports. This is so; mainly because the process whereby CoHRI's legislative reports get into the agenda of the General Assembly discussions is a relatively formalized one. Such a formalized process stands in a significant contrast to the under-formalized process whereby investigatory reports are supposed to have an impact on the parliament in line with its recommendations. The under-formalized process for investigatory reports seems to make legislative reports of CoHRI a more significant mechanism for CoHRI's work to have an influence on the parliament.

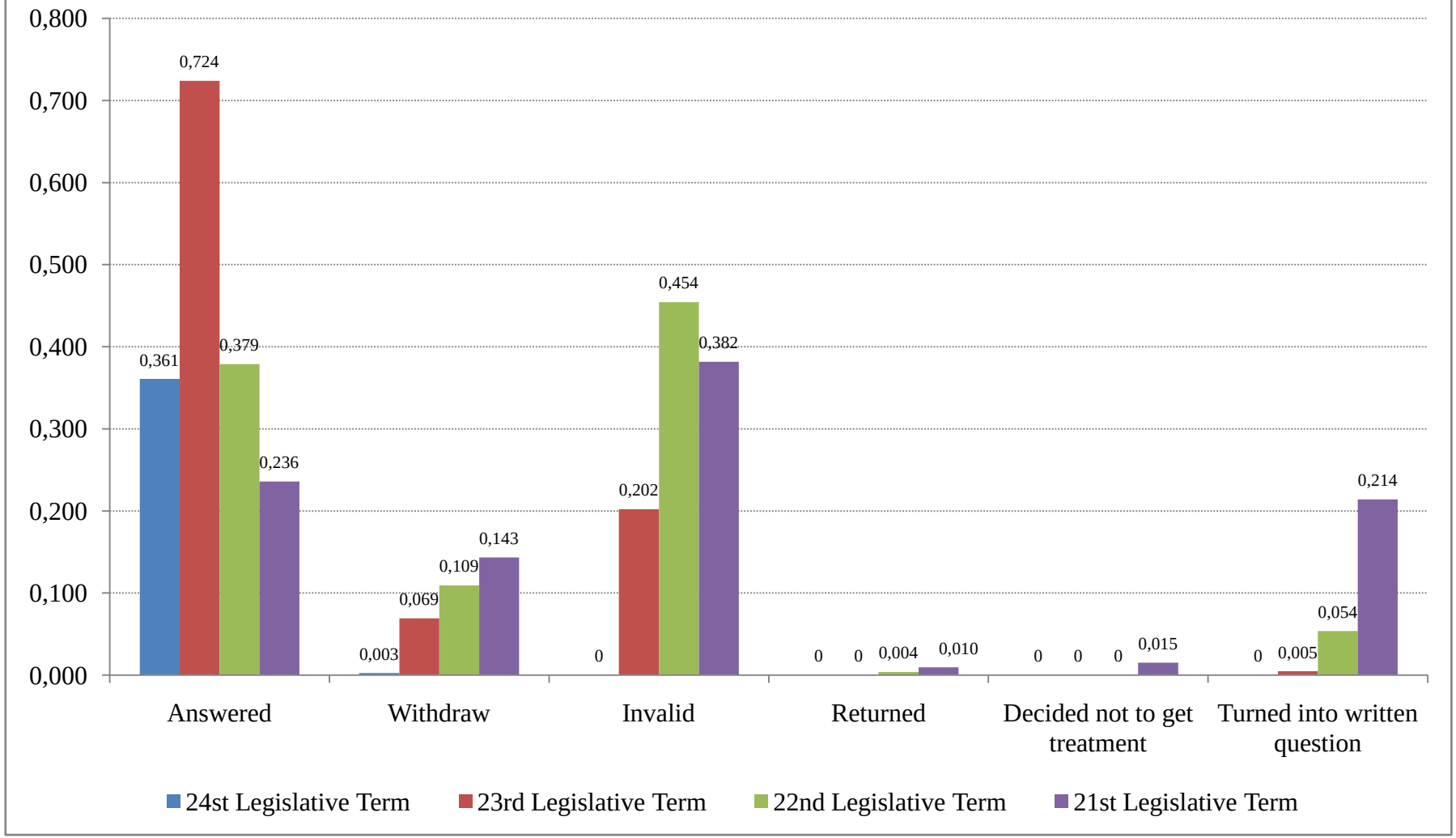
In this regard the year 2011 seems to be a critical point in terms of the capacity of CoHRI for having an influence on the way the parliament approach human rights issues in performing its own functions. As argued earlier one of the most significant aspects of the new approaches to the national human rights protection mechanisms is the emphasis on these mechanisms' role to increase the place of human rights considerations in the deliberative processes and to create a culture of rights in the policy making process (Evans & Evans, 2006; Hiebert, 2006a). In this regard the fact that the CoHRI became a more active commission in terms of getting its work recognized in the General Assembly after 2011 might have an impact on the human rights focus in the legislature's performance of its other functions. Therefore we may expect a gentle increase in the human rights focus in the TBMM's performance of its other functions starting with the 2011 decision when CoHRI became a more active commission.

In this regard I will look at how human rights focus of oral questions, which is one of the most significant scrutiny mechanisms of the parliament, change across years in order to have a clue about the influence of CoHRI's actively performing its review function. We may expect a gentle increase in the human rights focus of oral questions starting with the 2011 when CoHRI became a more active commission. It is not possible to attribute such an increase, if any, in the number of oral questions which focus on

human rights issues starting with the year 2011 to the CoHRI's becoming a more active commission; given that there are number of other factor such as the composition of the parliament which might play a role in such an increase. Nevertheless it is still important not to get a conclusion from the data which is contradictory to the expectation that is lied down above.

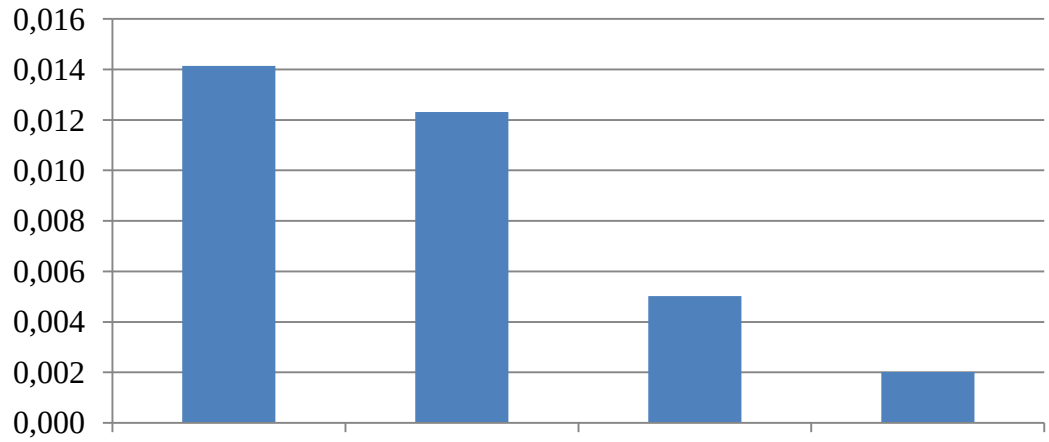
When an analysis is made on the situation of oral questions from 1998 to the present it seems as if that the oral questions can be categorized into six categories on the basis of the treatment that they get. The analysis reveals that among the 21st, 22nd and 23rd legislative terms the ratio of oral questions which are answered seems to be highest in 23rd legislative term; given that the 24th term has not yet ended (For the ratios of other categories see the Graph 3).

Graph 3: Treatment of oral questions between 21st and 24th legislative terms



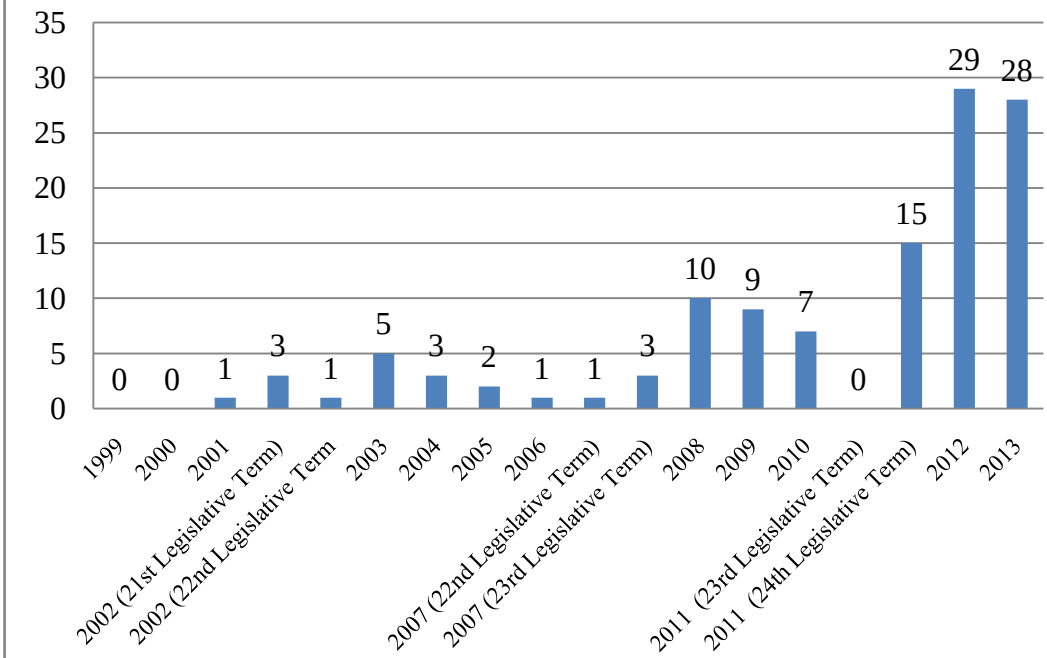
The results presented below are based on the analysis of oral question which focus on human rights issues by using the search term "right" and selecting the relevant cases. However the analysis only covers the 21st and 24th legislative terms which correspond to the years 1998 to 2014; because there is no available data for years 1991-1998. When we look at the ratio of oral questions which focus on human rights issues within the tally of each legislative term it seems as if there is a steady increase in the human rights focus of the oral questions even though results are not conclusive given that the 24th term has not yet ended.

Graph 4: The ratio of oral questions focusing on human rights issues within the tally of each legislative term



However when the *number* of oral questions which focus on human rights issues is analyzed; such an analysis presents a clearer picture with respect to the influence of CoHRI's actively performing its review function starting with 2011. The analysis reveals that there is an increase in the number of oral questions which focus on human rights issues starting with the year 2011. Between 2011 and 2013 the minimum number of the oral questions which focus on human rights issues is larger than the maximum amount attained between 1998 and 2010.

Graph 5: The number of oral questions focusing on human rights issues for each year



As argued earlier, even though it is not possible to attribute such an increase in the number of oral questions which focus on human rights issues starting with the year 2011 to the CoHRI's becoming a more active commission; it is still important to have a conclusion inferred from the data which does not contradict the expectations.

3.3: Interpretation of the Data Analysis in Relation to the Hypotheses

The descriptive analysis of the CoHRI's performance of its functions, which are related to providing a pre-emptive right review mechanism, yields that CoHRI has relatively limited influence in terms of both affecting a change throughout the legislation process and oversighting the government from a human rights perspective. Even though the analysis in question has a quite limited capacity to yield conclusive assessment on CoHRI's performance as a pre-emptive right review mechanism; it is still possible to identify some problems, which are introduced below, with respect to the CoHRI's pre-emptive right review function on the basis of the analysis and the in-depth interviews that I conducted with five bureaucrats and three members of the TBMM who worked in the CoHRI.

The first problem is the apparent reluctance on the part of the Presidency of TBMM to assign legislative proposals to the CoHRI for reviewing as the *primary* commission (*esas komisyon*) even in matters which are within the jurisdiction of the commission. It seems, not having the review function in the list of duties of CoHRI in Act 3686 in accordance with the internal rulings of the TBMM until 2011 provided a framework for the development of a systematic reluctance on the part of the legislative process to bypass a commission, which is specialized on human rights policies. As indicated earlier out of eighty one assignments of legislative proposals to the CoHRI only in one case the CoHRI can have a primary commission (*esas komisyon*) role. This problem is also cited in many of my interviewees. One of them argued that:

> "One of the most important issues with respect to the commission is the fact that non-assignment of the legislative proposals on human right law, to the commission for review. If the commissions, which examine the legislative proposals in question as the primary commission, ask for the CoHRI's opinion CoHRI can express its opinion; however this happens very rarely."

Two of my interviewees argued that this situation also resulted from the reciprocity between ministerial and commission organization. They state that given CoHRI does not have a corresponding ministry the commission is not assigned for any bills to be examined as draft laws. However when asked if this situation has consequences on human rights protection another interviewee replied:

> "There is a decrease in the Assembly's scrutiny and legislative proposals, which are in need of being discussed from a human rights perspective, become laws without being discussed from a human rights perspective. I cannot make sense of this. CoHRI is a specialized commission on human rights issues; if all other commissions are assigned with examining the proposals which are within their jurisdictions and there is reciprocity between executive and commissions then CoHRI should be assigned with examining the legislative proposals on human rights issues. For example now there are legislative proposals on judiciary and on internet; all of them should be assigned to CoHRI but this is not happening."

The second problem is the CoHRI's apparent underperformance of its reviewing function as the secondary commission (*tali komisyon*). As indicated earlier, even though there is a reluctance on the part of the Presidency of TBMM to assign legislative proposals, which are within the scope of human rights, to the CoHRI for reviewing as the primary commission (*esas komisyon*); since 2011 the CoHRI seems to be assigned eighty legislative proposals as the secondary commission (*tali komisyon*). However out of eighty proposals, CoHRI produced legislative reports for only four proposals. When

my interviewees are asked for explanation they generally suggest that the commission time is overwhelmed by its investigatory work. One of my interviewees stated also that:

> "… primary commissions do not need to wait for the reports of the secondary commissions for preparing their own reports; or even the secondary commission prepares it report the primary commission does not have to consider this report. Therefore I cannot say that as a secondary commission CoHRI has considerable effectiveness."

In this regard structural obstacles to the impact of the secondary commission work, as indicated above by my interviewee, might account for the apparent reluctance of CoHRI to perform its reviewing function as the secondary commission. This is so; because as argued earlier there are some structural limitations on the capacity of a commission to affect a change in the content of the proposal in question as a secondary commission. The structural limitations derive from the formal rules which renders the capacity of secondary commissions to affect a change in the content of the proposal weaker by allowing primary commissions to prepare their reports without waiting for the preparation of secondary commission reports and without being abide mandatorily by the consultation provided by the secondary commissions once secondary commission reports are prepared. The relative weakness of the capacity of the secondary commissions to affect a change in the content of the legislative proposal is also exacerbated by the relatively lower chances for the secondary commission reports to be included in the plenary discussions on the legislative proposal in question given the limitations on their capacity to influence the primary commission report.

The third problem is the inability of the commission reports, specifically ones which are prepared as a result of the commission's investigatory functions to be integrated into the agenda and debates of the General Assembly. This problem seems to hinder a possible positive relationship between the investigatory functions of the Commission and the General Assembly. The inability of the commission's investigatory reports to be presented to the General Assembly deprives the Assembly from a valuable source of information that has the capacity to be free from government influence and negates the possible contribution of CoHRI's investigatory work to integration of human rights perspective into the earlier phases of policy making. Given the overwhelming majority of the secondary commission (*tali komisyon*) role among legislative proposal assignments that CoHRI gets for examination; the reason for this problem might be the relatively lower chances for the secondary commission reports to

be included in the plenary discussions on the legislative proposal in question given the limitations on their capacity to influence the primary commission report. However the problem in question also relates to the absence of any ruling which would empower CoHRI to follow its either investigatory or legislative reports up in order to hold accountable the relevant actors for the action that they choose with respect to these reports. The lack of competence on the part of CoHRI in this regard might account for the inability of the CoHRI's investigatory and legislative reports to be discussed in plenary meetings through actively using accountability principle. This problem is also identified in the interviews I conducted. One of my interviewee, who worked as a bureaucrat in the commission, stated with respect to the investigatory reports that:

> "Following up of the commission reports is also very important. The General Assembly mechanisms for commission reports should be activated. But commission reports are not represented generally in the General Assembly. This is why ministries cannot be held accountable and the accountability principle cannot be activated through commission reports."

Another interviewee underlined the significance of the recognition of the commission's investigatory reports in enhancing the commission's influence:

> "Another change that would increase the effectiveness would be the activation of accountability principle through the commission. For example representatives of the government or bureaucrats from the ministries which the commission report is directed should attend the commission meetings and give account of what have been done about the issues that are highlighted in the commission reports; and this should be compulsory. Now reports are prepared but without activating the principle of accountability thorough these reports the scrutiny of the executive is not realized effectively."

The three problems identified above on the basis of the descriptive analysis and the in-depth interviews do not falsify the Hypothesis I which states that the legal status of the CoHRI decreases the level of influence CoHRI has in terms of providing a pre-emptive right review mechanism. This is so; because all three problems, which are respectively the reluctance to assign to CoHRI a primary commission (*esas komisyon*) role, the underperformance of CoHRI of its secondary commission (*esas komisyon*) role and inability of CoHRI's reports to be integrated into the agenda and debates of the General Assembly, can be traced back to the formal rules and procedures both on legislative commissions in general and on CoHRI in particular. In this regard three problems in question do not falsify the hypothesis that rules and regulations, which form the status of the CoHRI, render the level of influence CoHRI has with regards to

providing a pre-emptive right review mechanism weaker in terms of both affecting a change throughout the legislation process and oversighting the government from a human rights perspective.

The fourth problem which can be identified with respect to the CoHRI's performance as a pre-emptive right review mechanism is the difficulties that opposition parties face to overcome the numerical dominance of the governing party in the commission work. It seems as if that the numerical domination of the commission by the members of the governing party makes it more difficult for the members of the opposition parties to get their voices heard and render the commission ineffective in terms of holding the government accountable through both it investigatory and legislative functions. This situation can also be observed in the legislative proposals which are analyzed in this part. In three of the contested legislative proposals opposition seems to have difficulty in getting their concerns as recommendations of the eventual legislative report of the commission. Only in one case they are able to list a few of their concerns in the recommendation part. Rather they are left with the option of attaching an opposition mark to the report in question. One of my interviewee, who worked as a bureaucrat in the commission, stated that:

> "The commission is generally more effective when coalition governments are in power. For example between 1998 and 2002, when coalition governments were in power and when the commission is not dominated by a single governing party, I can say commission worked quite effectively."

Moreover same interviewee also stated that another related issue is the non-acceptance of the sub-commission reports, which constitutes one of the most suitable areas of work for the members of the opposition parties to get their voices heard. He states that:

> "… one of the most significant problems the inability of the sub-commission reports to become accepted by the commission through completing whole legal processes. The acceptance of sub-commission reports through passing all legal processes; becoming a commission decision and therefore presentation of these reports at the General Assembly is very significant for the effectiveness of the commission; because the place where opposition is most effective is the sub-commissions. In this regard sub-commission reports' becoming a commission decision is very important."

As argued earlier sub-commission reports are subject to voting in order to become a commission decision and when the commission is dominated by the members of the governing party it becomes more difficult for sub-commission reports, in which

opposition is most actively participate, to become a commission report. Non-acceptance of the sub-commission reports as the commission decision also negates any possibility for these sub-commission reports to be read and discussed in the General Assembly and to contribute to the integration of human rights perspective into the earlier phases of policy making. In this regard the inability of the sub-commission reports to become a commission report constitutes another site of the problem.

The extent of the problem can be inferred from the comments of my interviewees on how to make the commission a more influential right review mechanism. Choosing the president of the commission among the members of the opposition party or allowing for the equal representation for all political parties in the parliament are cited in the answers and they seem to suggest the empowerment of the opposition parties in the commission work. One of my interviewee, who worked as a bureaucrat in the commission, stated that:

> "A change, which would increase the effectiveness of the commission politically, is to choose the head of the commission from the members of the opposition parties. If it happens so there would be a quite effective scrutiny. Because now both the head of the commission and the majority of the members of the commission are from the governing party and such a commission with that composition is supposed to scrutinize the executive which is also from the same party. This of course is not effective. But if the head of the commission is from the opposition commission can work effectively for real."

Another interviewee, who worked as a bureaucrat in the commission, stated that:

> "The most important change is to make the head of the commission from the opposition. The fact that the head of the commission is from the governing party weaken the effectiveness with respect to the scrutiny. Eventually it is very difficult for the governing party to scrutinize an executive which is overwhelmingly composed of the majority party."

Another interviewee, who was a previous President of the CoHRI and now head of a significant civil society organization, argued that:

> "These kind of commissions are established to scrutinize the government. When commissions are also composed overwhelmingly by the governing party the scrutiny function cannot be performed properly. For scrutiny and investigative commissions to perform their functions effectively similar to the Commission on Constitution political parties should be represented in the commission on equal basis. When I was in charge, I offered this as an internal order change but it was not accepted. The head of the commission can be from the governing party, because the governing party deserves such a status, given that amount of vote they get for becoming the executive and moreover there is already an executive

> border where other parties also take place. But the membership to the commission should be allocated to all parties on equal basis."

The fifth problem is the seeming failure of the commission to be an alternative channel for the participation of civil society organizations in the earlier phases of law making a function which is foreseen by the new approaches to the national human rights protection mechanism. This situation can also be observed in the legislative proposals which are analyzed in this part. Out of five only in one case civil society's representation is ensured however in this case it seems civil society representatives had significant difficulties in getting their concerns as recommendations in the commission reports. One of my interviewees, who was a previous President of the CoHRI and now is the head of a significant civil society organization underline the difficulties that civil society organizations face in affecting a change in the content of the legislation and participating in the earlier phases of policy making through CoHRI. He states that:

> "We as a civil society organization have not yet got asked for our opinion by the commission. We ourselves make some demands on the basis of our own initiatives. For example we communicated with the commission to convey our demands and advices to make some changes on the law on Polis Vazife ve Salahiyetleri (Police Forces' Duty and Competencies); however we did not get adequate interest and support from the commission. With respect to this demand of change we also talked with the political party groups; even though the opposition seemed more moderate we could not still get a concrete result. So I do not think the commission is willing to cooperate with the civil society organizations…The commission becomes a mechanism for the governing party to empower its position completely"

About the legislative proposal on establishing the Türkiye İnsan Hakları Kurumu (National Human Rights Institution of Turkey) he states that:

> "For example, throughout the process whereby Türkiye İnsan Hakları Kurumu (National Human Rights Institution of Turkey) was established, despite the fact that we as civil society organizations communicated our concerns on the fact that such an institution with those kinds of working principles or selection of members cannot function independently of the government; this institution was established without taking our concerns and objections into the consideration and now it has no independent work."

Another side of the problem in question seems to be the lack of institutionalization of the relationship between the CoHRI and civil society. This situation is cited in the comments of my interviewees on the relationship of the civil society and CoHRI. In these comments it is stated that the lack of institutionalization leaves the relationship between the commission and civil society organization

dependent upon the personal preferences and efforts of the either the chair person or bureaucrats of the commission. Nevertheless it is important to underline at this point that CoHRI, as argued by two different bureaucrats, seems to increase the accessibility of police stations or local governors' offices for people representing the civil society.

The fourth and fifth problems identified above on the basis of the descriptive analysis and in-depth interviews do not falsify the Hypothesis II which states that the functioning of TBMM as a plenary body form of legislature decreases the level of influence CoHRI has in terms of providing a pre-emptive right review mechanism. This is so; because two problems, which are respectively difficulty of overcoming the numerical dominance of the governing party in the commission work for opposition parties and the failure of the commission to be an alternative channel for the participation of civil society organizations in the earlier phases of law making, can be traced back to characteristics of legislative process which are associated with legislatures functioning as a plenary body. The relatively greater dominance of the legislative process by the governing party, strong adherence to the political party lines in the legislative work and in this regard relatively smaller space for non-political party actors to involve in the earlier phases of policy making can be considered as characteristics of legislatures functioning as plenary body which two problems in question can be related to. In this regard two problems in question do not falsify the hypothesis that characteristics of legislative process which are associated with legislatures functioning as a plenary body render the level of influence CoHRI has in terms of providing a pre-emptive right review mechanism weaker in terms of both affecting a change throughout the legislation process and oversighting the government from a human rights perspective.

CHAPTER 4

CONCLUSION

The legitimacy of judicial review seems recently to be under serious critique both empirically and theoretically. It seems as if that currently a struggle has been started on the part of the legislature in order to reclaim parliaments' share in ensuring the superiority of the constitution, a role which has been delegated exclusively to the judiciary for a long period of time. The criticisms in question reclaim the role of branches of government other than the judiciary in ensuring the superiority of the constitution (Hiebert, 2005, 2006a, 2006b; Ackerman, 2000). In this regard the discussions on alternative models of constitutionalism also re-visions the role of national human rights protection mechanisms by widening their scope of function from a sole role of monitoring the application of universal human rights at the national level to a more participatory role of integrating human rights perspective into the earlier phases of policy making and providing a pre-emptive right review mechanism.

This thesis intention is to understand the location of Turkey within the context of the recent struggle which has been started on the part of the legislature to reclaim its share in ensuring the superiority of the constitution and constitutional rights. In this regard, this thesis specifically focus on Commission on Human Rights Inquiry as it is the first national human rights protection mechanism established in Turkey operating at the parliamentary level. In this regard a descriptive analysis of the CoHRI's performance of its functions that are related to providing a pre-emptive right review is made.

Even though the data that this thesis relies on is limited and therefore it might be problematic to infer general conclusions from the data in question; this thesis still contributes to the literature on alternative human rights protection mechanisms by providing a descriptive case study on a parliamentary commission on human rights in Turkey. In this regard this thesis adds to our knowledge of the performance of alternative human rights protection mechanisms and to our knowledge of real life application of new constitutional ideas. This thesis also contributes to the literature on alternative human rights protection mechanisms by setting a framework for future research and for the development of institutional reform packages by policy makers.

The descriptive analysis and the in-depth interviews that I conducted with five bureaucrats and three members of the TBMM who worked in the CoHRI suggests that CoHRI has relatively limited influence in terms of both affecting a change throughout the legislation process and oversighting the government from a human rights perspective. Given that problems, which are identified with respect to the relatively weaker influence of CoHRI as a pre-emptive right review mechanism, can be traced back either to the status of the CoHRI or to the characteristics of the legislatures functioning as a plenary body; the descriptive analysis and in-depth interviews does not falsify the two hypotheses of this study.

First three problems, which are respectively the reluctance to assign to CoHRI a primary commission (*esas komisyon*) role, the underperformance of CoHRI of its secondary commission (*esas komisyon*) role and inability of CoHRI's reports to be integrated into the agenda and debates of the General Assembly, can be traced back to the formal rules and procedures both on legislative commissions in general and on CoHRI in particular. In this regard three problems in question do not falsify the hypothesis that rules and regulations, which form the status of the CoHRI, render the level of influence CoHRI has with regards to providing a pre-emptive right review mechanism weaker in terms of both affecting a change throughout the legislation process and oversighting the government from a human rights perspective.

Other two problems, which are respectively difficulty of overcoming the numerical dominance of the governing party in the commission work for opposition parties and the failure of the commission to be an alternative channel for the participation of civil society organizations in the earlier phases of law making, can be

traced back to characteristics of legislative process which are associated with legislatures functioning as a plenary body. The relatively greater dominance of the legislative process by the governing party, strong adherence to the political party lines in the legislative work and in this regard relatively smaller space for non-political party actors to involve in the earlier phases of policy making can be considered as characteristics of legislatures functioning as plenary body which two problems in question can be related to. In this regard two problems in question do not falsify the hypothesis that characteristics of legislative process which are associated with legislatures functioning as a plenary body render the level of influence CoHRI has in terms of providing a pre-emptive right review mechanism weaker in terms of both affecting a change throughout the legislation process and oversighting the government from a human rights perspective.

Given the limited number of in-depth interviews used in this thesis a future research, which will improve this study, needs to have a larger number of interviews conducted over a longer period of time in order to improve the rigor of findings as to the CoHRI's performance as a pre-emptive right review mechanism. In this regard an approach which would integrate representative proportions of different political parties and bureaucrats, who are involved in CoHRI, into the interviewing process would enhance the interpretation of descriptive analysis and would allow for comparisons among political parties and comparisons between politicians and bureaucrats. Making comparisons among political parties might enhance our understanding of different perceptions of the various political parties with respect to the CoHRI's performance as a human rights review mechanism. On the other hand, making comparisons between larger segments of political actors interacting with the commission, such as bureaucrats and politicians might provide insight into the different approaches that politicians and bureaucrats have respectively to the both commission work and its performance as a pre-emptive right review mechanism.

The integration of the members of the General Assembly, of government and bureaucrats who are not involved in CoHRI into the interviewing process would also improve this study by enhancing our understanding of the influence that CoHRI has in terms of both affecting a change throughout the legislation process and oversighting the government from a human rights perspective is perceived by the members of the legislature, by the government members and by bureaucrats respectively. Making

comparisons among political parties and comparisons between politicians and bureaucrats might again helpful in inquiring into the different perceptions of different actors with regards to the CoHRI's performance as a pre-emptive human rights review mechanism.

Another possible improvement on this study would be the inclusion of an analysis on the media coverage of CoHRI's work given that media is identified as one of the most important stakeholders in measuring the committee performance. In this regard an analysis on media coverage across time might provide an understanding of the trends, if any, on the public visibility of the commission's work across time. Moreover such analysis might include also an inquiry into the different factors which play significant role in increasing the chances of committee work to be covered in the media.

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